



Supreme Court of New Zealand

13 August 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**LM v THE QUEEN
(SC 143/2013)
[2014] NZSC 110**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The appellant is a New Zealand citizen who, at the time of the offending, was living in Russia. He stood trial in the District Court on a charge which alleged that he had taken a photograph of his seven-year-old stepdaughter and a Russian man which would, if done in New Zealand, constitute an offence against s 132(3) of the Crimes Act 1961.

Section 144A of the Crimes Act provides for the prosecution of New Zealand citizens or those ordinarily resident in New Zealand for conduct which, if it had occurred in New Zealand, would be contrary to specified provisions of the Act involving sexual offending against children and young people. Amongst the provisions so specified is s 132(3), concerning indecencies involving children under the age of 12.

The Crown case at trial was that the appellant was a party to the offending of the man depicted in the photograph by virtue of ss 66(1) and 144(1)(a) of the Crimes Act. At trial and on appeal to the Court of Appeal, the appellant accepted that he was guilty as a party if he could be shown to have taken the photograph in question. On appeal to this Court however the appellant has put in issue the question whether s 144A permits prosecution of someone who was a party to the alleged offending and not a principal offender.

The Court has unanimously dismissed the appeal and upheld the appellant's conviction. The reasons given however varied between the majority, Elias CJ, McGrath and William Young JJ, and the minority, Glazebrook and Arnold JJ.

The majority considered that party liability can only be imposed under s 144A where there is an underlying offence under New Zealand law to which the party liability relates. Since the man depicted in the photograph is neither a New Zealand citizen nor ordinarily resident in New Zealand, he cannot be found liable under s 66(1) as the principal offender. It was not open to the trial Judge to hold the appellant liable as a party as the actions to which the appellant was a party did not amount to an offence under New Zealand law. However, the majority has found that the appellant could have been found guilty as a principal offender as physical contact is not fundamental to liability under s 132(3).

Glazebrook and Arnold JJ considered that the appellant was properly convicted as a party to the offending under s 144A, although they also consider that the appellant could have been convicted as a principal. They thought it was of no moment that the man depicted in the photo committed no offence in New Zealand as it is the acts of the appellant that are at issue. There was no logical reason why party liability should only be imposed in some circumstances and not others, as the acts of the person alleged to be a party are the same in each case.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 471 6921