

IN THE SUPREME COURT OF NEW ZEALAND

**SC 136/2014
[2015] NZSC 29**

BETWEEN WENDY MAREE WHITEHEAD
 Applicant

AND THE QUEEN
 Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: E J Forster for the Applicant
 P D Marshall for the Respondent

Judgment: 30 March 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] The applicant was convicted of one count of using a document with intent to defraud and seven counts of using a document dishonestly and without claim of right with intent to obtain a pecuniary advantage. Her appeal against conviction and sentence was dismissed by the Court of Appeal.¹ She seeks leave to appeal against that Court's decision to dismiss her appeal against conviction.

Background

[2] The background to the offending was as follows. The applicant became entitled to weekly compensation from the Accident Compensation Corporation after

¹ *Whitehead v R* [2014] NZCA 573 (Harrison, Asher and Lang JJ) (Court of Appeal Judgment).

the death of her husband in 1987. Under the relevant legislation, her entitlement to the compensation ceased two years after her entering into a relationship in the nature of marriage.²

[3] In 1998 a man (whom we will call M) came to live on the applicant's property. He began a sexual relationship with the applicant, which continued over the next 12 years. The applicant and M lived in the house on the applicant's property until 2010, when the property was sold. Thereafter, they moved to another property where they built a new home and continued to live on that property, albeit in separate accommodation.

[4] In each year between 2003 and 2010, the applicant completed an ACC form which included a question "Have you entered into a relationship with a person which is in the nature of marriage (for example, de facto marriage, living together)? If yes, please give the date the relationship began." The applicant answered this question in the negative and completed a declaration at the foot of the form to the effect that the information given was "complete, true and correct".

[5] ACC investigated the applicant's living arrangements in 2010 and formed the view that the applicant and M were in a de facto relationship which had commenced by 2003, contrary to the declarations that the applicant had made. This led to the charges against the applicant on which she was convicted.

Leave application - grounds

[6] The application for leave is advanced on two grounds. The first is that the trial judge did not give sufficient direction to the jury as to what constituted a de facto relationship. The second is that it was unfair to the applicant that her criminal trial preceded the resolution of her application to review the decision of the ACC to terminate her entitlement to compensation.

² Accident Insurance Act 1998, s 446(5)(b). That provision continued to apply notwithstanding the repeal of the Accident Insurance Act: Accident Compensation Act 2001, s 384.

First ground – jury direction

[7] As to the first ground, the essential argument is that the trial judge did not give sufficient emphasis to one of the 10 factors defined by Tipping J in *Thompson v Department of Social Welfare*,³ namely “whether the parties share costs and other financial responsibilities by pooling of resources or otherwise”. It was also argued that the judge did not sufficiently direct the jury on the requirement under s 29A of the Interpretation Act 1999 to have regard to the context or purpose of the law on which the question is to be determined (in this case, whether the applicant’s entitlement to compensation was rightly terminated).

[8] The Court of Appeal reviewed this issue in some detail⁴ and concluded that, when viewed as a whole, the summing up gave considerable emphasis to the financial interdependence of the applicant and M.⁵ It said the summing up also dealt adequately with s 29A.⁶ Nothing in the material advanced by the applicant in support of the application for leave gives us any basis for concern that the Court of Appeal erred in that assessment. The question is one relating to the specific facts of the case and the specific wording of the summing up, and does not raise any point of general or public importance. We see, therefore, no basis for granting leave on this ground.

Second ground – abuse of process

[9] As to the second ground, the applicant argues that an abuse of process occurred because the criminal trial preceded her application for review of the decision to terminate her weekly compensation. There are some practical issues that arise because the applicant agreed to the criminal trial going first initially, then changed her mind. She withdrew her application for review, so there is no extant application. She has, however, attempted to commence a new application for review out of time, and has appealed against the refusal to extend time.

³ *Thompson v Department of Social Welfare* [1994] NZLR 369 (HC) at 373.

⁴ Court of Appeal Judgment at [7]–[26].

⁵ At [25].

⁶ At [26].

[10] Putting those practical issues to one side, however, we are not persuaded that there is any indication of a miscarriage arising because the criminal process preceded the civil process. There would have been significant practical difficulties in dealing with the review proceedings first, particularly in light of the privilege against self-incrimination. It would also have been problematic as to whether the outcome of the review proceedings would have been admissible evidence in a criminal trial. In the circumstances, we see no error in proceeding with the criminal trial first, let alone any indication that an abuse of process arose because that occurred. Nor do we see any matter of public importance: the issue is fact-specific. This ground of the application also therefore fails.

Result

[11] The application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent