

IN THE SUPREME COURT OF NEW ZEALAND

**SC 61/2007
[2007] NZSC 86**

CHRISTOPHER CLIFF MORRIS

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ
Counsel: C R Carruthers QC and D A Ewen for Applicant
J C Pike for Crown
Judgment: 30 October 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Mr Morris, has been charged with numerous counts of dishonest use of documents under s 229A of the Crimes Act 1961. The allegedly false documents are tax returns. The case has a long history. It first came to trial in February 2004. The applicant objected to evidence being given by a senior Inland Revenue Department investigator, saying that would breach s 81 of the Tax Administration Act 1994. This objection led to a directed acquittal and a case stated to the Court of Appeal under s 380 of the Crimes Act. The Court of Appeal

concluded that s 81 did not in fact bar the evidence of the investigator. It directed a new trial.¹

[2] At that trial Mr Morris was convicted. He appealed successfully. The Court of Appeal found that the evidence of the investigator was inadmissible, not because of s 81, but because it was hearsay. The convictions were set aside and another trial ordered.²

[3] Mr Morris now comes to this Court very belatedly challenging both the substance of the Court of Appeal's decision in 2004 (the s 81 point) and its order directing a new trial.

[4] We are not prepared to give leave in relation to either ground so long out of time. As it happens, the challenge to the new trial order is obviously without merit. The argument is that, in terms of the proviso to subs (2) of s 382 of the Crimes Act, the Court of Appeal could order a retrial only if in its opinion some substantial wrong or miscarriage of justice was occasioned on the trial by the rejection of the evidence. It is said that the Court of Appeal made no such finding and therefore lacked jurisdiction. Certainly, it did not make an express finding. However, that was hardly necessary when the injustice to the Crown in having its proposed evidence rejected for a breach of s 81, which the Court of Appeal had decided would not occur, was so obvious. The matter is to be judged in light of the position at the time of the Court of Appeal's decision, unaffected by the subsequent rejection of the evidence on a quite separate ground. As matters stood in November 2004, the only appropriate course was the direction of a retrial. And, even if the point had validity, it would not be right to give the applicant any advantage from it given the amount of time which has now elapsed.

[5] It now appears that the Crown intends at the trial which Mr Morris now faces to call direct evidence on the provenance of the tax returns and will not be relying in this respect on the evidence of the inspector. The s 81 point is therefore unlikely to arise on the retrial. If, unexpectedly, it does arise, an application to appeal any

¹ *R v Morris* (Court of Appeal, CA 120/04, 4 November 2004).

² *R v Morris* (Court of Appeal, CA 405/05, 3 October 2006).

conviction on this point could be brought to this Court. The interests of justice therefore do not require a grant of leave at this time on this point.

Solicitors:
Crown Law Office, Wellington