

IN THE SUPREME COURT OF NEW ZEALAND

**SC 30/2006
[2006] NZSC 45**

BETWEEN	DOREEN WARNOCK (DECEASED) First Applicant
AND	COMBINED BENEFICIARIES UNION INCORPORATED Second Applicant
AND	CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Respondent

Court: Tipping, McGrath and Anderson JJ

Counsel: P D McKenzie QC and A J McGurk for Applicants
K Clark for Respondent

Judgment: 21 June 2006

JUDGMENT OF THE COURT

- 1. The application for leave to appeal is dismissed.**
- 2. We order that the costs of the application shall lie where they fall.**

REASONS

[1] The estate of the late Mrs Warnock wishes to challenge the conclusion reached in each of the Courts and Tribunals below¹ that the Department of Social Welfare, when making an advance to her in 1993 under s 125 of the Social Security Act 1964, was entitled to impose a requirement that she pay interest on the monies advanced. At each level below it has been held that the Director-General was entitled to charge

¹ The Social Security Appeal Authority, the High Court and the Court of Appeal.

interest on the basis that under s 125(2) the advance could be subject to “such terms and conditions” as the Director-General might determine.

[2] These words have been held consistently and unanimously below to confer on the Director-General a discretionary power to charge interest. We consider this interpretation is undoubtedly correct. The applicant therefore has no sufficient prospect of success to warrant the matter being considered by this Court.

[3] Furthermore, the necessary general importance of the point is at least debatable on any continuing basis in view of the fact that s 125 was repealed in 1996 with no comparable provision replacing it.

Solicitors:
Otene & Ellis, Auckland for Applicants
Crown Law Office, Wellington for Respondent