Supreme Court of New Zealand

21 October 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

LEROY JOHN BARR v NEW ZEALAND POLICE
(SC 34/2009) [2009] NZSC 109

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Mr Barr pleaded guilty in the District Court to a charge of driving with excess blood alcohol. In addition to being disqualified from driving for six months and being required to pay a fine and Court costs, he was ordered to pay the fee of $102.60 of the medical practitioner who took a blood sample from him and the fee of $93 of the analyst who analysed that sample.

Mr Barr appealed to the High Court against the order that he pay the medical expenses. He claimed that the District Court had no power to make this order. The High Court agreed. Mr Barr did not challenge the order that he pay the analyst's fee. His counsel apparently thought that there was power to make that order because the analyst's fee was the "blood test fee" which is payable up to a prescribed amount by those convicted on the basis of a blood test. Section 67 of the Land Transport Act 1998 so provides.

The Police appealed to the Court of Appeal against the decision of the High Court. The Court of Appeal allowed the appeal. It ruled that there was power to order payment of the medical expenses because the Costs in Criminal Cases Act 1967 permitted a Court to order a convicted person to pay any expenses properly incurred "in carrying out a prosecution". The medical expenses were such an expense.

Mr Barr appealed to the Supreme Court against the decision of the Court of Appeal. The Supreme Court has decided that the definition of a "blood test" in

the Land Transport Act as "the taking of a blood specimen for analysis" refers to the taking of a specimen rather than to the analysis of it. The "blood test fee" was therefore the fee of the medical practitioner who took the blood specimen, and not the fee of the analyst who analysed the specimen after it was taken. It followed that s 67 required Mr Barr to pay the medical expenses up to the maximum amount prescribed under that section, currently $93.

That finding of the Court meant however that the question then arose of whether the District Court had power to order Mr Barr to pay the analyst's fee. The Supreme Court has ruled that it did. The expense of conducting a scientific test is recoverable under the Costs in Criminal Cases Act, even if incurred prior to the decision to prosecute, provided that there is a sufficient nexus between the incurring of the expense and the prosecution. On the present facts there was a sufficient, indeed a very close nexus between the incurring of the analyst's fee and the prosecution.

The effect of these findings of the Court was that Mr Barr's appeal was allowed to the extent that he was required to pay $93 towards the medical expenses of $102.60 and was required to pay the analyst's fee.

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