

IN THE SUPREME COURT OF NEW ZEALAND

**SC 15/2009
[2009] NZSC 38**

WALLACE LESLIE WAUGH

v

THE QUEEN

SC 16/2009

INK MEDIA LIMITED

v

THE QUEEN

Court: Tipping, McGrath and Wilson JJ

Counsel: W C Pyke for Applicants
M D Downs for Crown

Judgment: 30 April 2009

JUDGMENT OF THE COURT

The applications for leave to appeal are each dismissed.

REASONS

[1] The applicant, Mr Waugh, set up a business involving the sale of medicines to customers outside New Zealand. The other applicant, Ink Media Limited, was a company set up as part of the business venture. As in the Court of Appeal there is no need to distinguish between the two applicants for present purposes.

[2] Both applicants were convicted on charges brought under the Medicines Act 1981. In short, the charges involved illegal selling and illegal advertising of medicines over the internet. One of the defences was that the relevant conduct took place outside New Zealand and the charges were therefore outside the jurisdiction of the New Zealand Courts. These and other contentions were rejected by the Court of Appeal which dismissed the applicants' appeals against conviction.

[3] They seek leave to appeal to this Court on the extra-territoriality point. We consider that s 7 of the Crimes Act 1961 is a complete answer to this point, both as regards the selling and the advertising charges. We do not consider that the advertising charges required the Crown to prove that any particular person in New Zealand saw the relevant information on the internet. It was sufficient that it was available to be seen in New Zealand. While extra-territoriality points are potentially of general importance, we do not consider the applicants have sufficient prospects of success in the light of s 7 to warrant a grant of leave in this case.

[4] For these reasons the applications for leave must be dismissed.

Solicitors:
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