

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 99/2021
[2021] NZSC 170

BETWEEN WINSTON RAYMOND PETERS
Applicant

AND ATTORNEY-GENERAL (ON BEHALF OF
THE MINISTRY OF SOCIAL
DEVELOPMENT)
First Respondent

BRENDAN BOYLE
Second Respondent

PETER HUGHES
Third Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: B P Henry and A R Kenwright for Applicant
V E Casey QC, N J Wills and S P R Conway for Respondents

Judgment: 2 December 2021

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondents costs of \$2,500.**
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REASONS

Background

[1] In 2010, Mr Peters began receiving New Zealand Superannuation. Due to an innocent error he made in completing the form (which was unclear in a material respect), he was paid at the higher, single rate instead of the lower, partnered rate. The

overpayment was discovered in 2017 and Mr Peters immediately arranged for it to be repaid.

[2] The Chief Executive of the Ministry of Social Development (MSD), Mr Boyle, was advised of the overpayment. He informed the State Services Commissioner, Mr Hughes. Mr Boyle also informed Ms Tolley, then Minister of Social Welfare. Mr Hughes later also informed Ms Bennett, then Minister for State Services. Around three weeks later, a number of reporters received anonymous calls that referred to the overpayment, and it was later publicised in the news media.

[3] Mr Peters brought proceedings in the High Court against MSD, Mr Boyle, Mr Hughes, Ms Tolley and Ms Bennett for the tort of invasion of privacy.¹ The High Court held that Mr Peters had a reasonable expectation that the details of the overpayment would not be disclosed to the media but dismissed his claims because he could not establish that the defendants were responsible for the disclosure to the media. Mr Peters had conceded that neither Minister was directly responsible for that disclosure.² The Court also held that the disclosures by Mr Boyle and Mr Hughes to their respective Ministers were for a proper purpose.³

[4] Mr Peters then appealed against the dismissal of his claims against Mr Boyle, Mr Hughes and MSD.

[5] The Court of Appeal agreed that information relating to the overpayment should not have been disclosed to the media.⁴ However, it also dismissed the appeal because:

- (a) in relation to the claims against Mr Boyle and Mr Hughes, there was no reasonable expectation that they would not disclose the information to their Ministers in good faith, and in any event they were protected by

¹ *Peters v Bennett* [2020] NZHC 761, [2020] 2 NZLR 699 (Venning J).

² At [278].

³ At [279].

⁴ *Peters v Attorney-General sued on behalf of Ministry of Social Development* [2021] NZCA 355 (French, Collins and Goddard JJ) at [9].

statutory immunity for Chief Executives under s 86 of the State Sector Act 1988;⁵ and

- (b) in relation to the claim against MSD, Mr Peters could not show that it must have been someone from that Department that disclosed the information to the media.⁶

[6] Mr Peters applies for leave to appeal that decision to this Court.

The application

[7] Mr Peters makes two main arguments:

- (a) the second limb of the tort of publishing private facts (that the publicity is objectively “highly offensive”) is too narrow and should be overturned; and
- (b) the issue of whether the Crown can be liable in tort is a matter of constitutional significance, and the Court of Appeal erred in finding “that there was no liability of the Respondents in tort”.

[8] Mr Peters submits that these issues are matters of general and public importance and that a miscarriage of justice will occur if the appeal is not heard.⁷

[9] Mr Peters also says that the *res ipsa loquitur* doctrine should be applied in this case to find MSD liable for the leak to media.

Our assessment

[10] While the two main arguments advanced by Mr Peters each involves matters of general and public importance, this case turned on its facts. Even if these arguments were resolved in Mr Peter’s favour, the result could not change. That is because Mr Peters could not establish who made the disclosure to the press or even whether it was an official from MSD. Further, *res ipsa loquitur* can have no application where,

⁵ At [10].

⁶ At [11].

⁷ Senior Courts Act 2016, s 74(2)(a) and (b).

on the evidence, by the time the disclosure was made, knowledge of the information was not restricted to MSD.

[11] There is no challenge to the Court of Appeal's finding that the disclosures by Mr Boyle and Mr Hughes to their respective Ministers were made in good faith.

Result

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

[13] Mr Peters must pay the respondents costs of \$2,500.

Solicitors:
Clifton Killip Lyon, Auckland for Applicant
Crown Law Office, Wellington for Respondents