IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 112/2024
[2025] NZSC 8

BETWEEN	LAI JANICE TOY Applicant
AND	THE KING Respondent

Court: Williams, Kós and Miller JJ

Counsel: A J Hamblett for Applicant
B J Thompson for Respondent

Judgment: 4 March 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Background

[1] The applicant, Ms Toy, seeks leave to appeal a decision of the Court of Appeal upholding her conviction and sentence under the Animal Welfare Act 1999.[1]

[2] In 2017, Ms Toy was convicted of five charges relating to ill-treatment and neglect of cats and a goat. Her sentence included an order under s 169 of the Act disqualifying her from owning, exercising authority over or being the person in charge of an animal or animals for five years.[2] After numerous animals were discovered on her property in May 2020, Ms Toy was convicted under s 169B(1) for contravening the disqualification order. She was sentenced to two years' intensive supervision and

1 *Toy v R* [2024] NZCA 446 (Ellis, van Bohemen and Hinton JJ) [CA judgment].
2 *Waikato SPCA v Toy* [2017] NZDC 24951 at [27].

ordered to pay reparation of $3,000; the District Court also made a further five-year disqualification order.[3] We adopt the Court of Appeal's description of the facts leading to the present appeal.

Submissions

[3] Ms Toy makes three submissions regarding her conviction appeal, pointing to errors which she says resulted in a miscarriage of justice and constitute a matter of general or public importance.[4] First, Ms Toy submits the Court of Appeal (and, before it, the District Court) erred on the issue of mens rea. Her submission is that s 169B requires proof that she intended to contravene the order and the jury should have been directed to that effect. Ms Toy did not dispute that she knew she was disqualified from owning animals.[5] Her defence at trial focused on the fact that she had interposed a trust structure between herself and the animals, and that others were also involved in the care of the animals at various times when she was unavailable.[6] Ms Toy also gave evidence that she did not believe in the concept of legal ownership of animals.[7] These factors, she suggested, went to the question of whether she intended to breach the disqualification order.

[4] Ms Toy's second submission is that the Court of Appeal erred in deciding domestic animals are not taonga. That is contrary to her perspective on the Māori world view. Third, Ms Toy submits that, as tangata whenua, her rights under Te Tiriti o Waitangi | the Treaty of Waitangi (the Treaty), He Whakaputanga | the Declaration of Independence and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) have been breached.[8] She says she is a kaitiaki and that animals are taonga under the Treaty, so it is a breach of her rights to deny her the exercise of kaitiakitanga over such taonga.

[5] As to her sentence, Ms Toy submits it is manifestly excessive. She says the Court of Appeal erred in rejecting her cultural report for filing for being neither fresh

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3 *R v Toy* [2023] NZDC 25148 (Judge Stephen Clark) [DC sentencing notes] at [47(a)–(c)].
4 See Senior Courts Act 2016, s 74.
5 CA judgment, above n 1, at [20].
6 At [22]; and DC sentencing notes, above n 3, at [10].
7 DC sentencing notes, above n 3, at [10]–[11].
8 *United Nations Declaration on the Rights of Indigenous Peoples* GA Res 61/295 (2007).

nor cogent;[9] the report was requested before sentencing but only delivered afterwards and in any case should have been considered as "background information" (as opposed to "evidence"). Ms Toy emphasises that her conviction was for breaching a disqualification order and not for neglect or ill-treatment of animals. She says the disqualification breaches her rights as tangata whenua and kaitiaki under the Treaty or, alternatively, if the disqualification was lawful and necessary, it should have been limited in scope to stray cats and goats only.[10] Regarding reparation, she says $3,000 is reasonable but the SPCA has not accounted for the value of the animals they seized.

Analysis

[6] We see nothing in the Court of Appeal's reasons that suggests a substantial miscarriage of justice may have occurred, nor do we consider the proposed appeal raises a matter of general or public importance. Even if Ms Toy's submission on mens rea were accepted and she could establish that she did not intend to own the animals on the property, the order provides two other pathways to conviction: that she exercised authority over or was the person in charge of the animals at the relevant time. The evidence does not raise a reasonable doubt as to her intention in either respect.[11]

[7] As to the arguments based on the Treaty, He Whakaputanga and the UNDRIP, we do not see this as an appropriate case in which to ventilate those issues. Nor do we see any issue of principle or any risk of miscarriage of justice in relation to sentence.

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

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

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9 CA judgment, above n 1, at [17].
10 These being the animals in relation to which Ms Toy was originally convicted for ill-treatment and neglect in 2017.
11 See DC sentencing notes, above n 3, at [13]–[17].