

SC 32/2026: RH & JY Trust v WorkSafe

Appellants' Roadmap

	X-Ref
Overview: - Brief factual background. - The issue. - Appellants' answer to the issue. - Core statutory provisions. - Definition of "PCBU" (s 17) and the offence provision (s 48) easily accommodate orthodox trust law. - No need to deviate from ordinary trust law principles to make trust concept fit the PCBU definition. "Body of persons" has a particular meaning/scope of application (companies, inc'd societies; friendly societies; trade unions; unincorporated clubs; firms); trustees/trusts have never been treated as having the character of a "body of persons." They are in form and substance different. - Law has resisted, on frequent occasions, attempts to treat trusts as 'entities' or to assimilate them to other institutions recognised by law - Appellants' position not inconsistent with <i>Discount Brands</i> at [127], [152] nor <i>Cometa</i>. - Appellants' view of interaction between trustee indemnity and s 29 HSWA most closely accords with nature of that indemnity. - Appellants' approach promotes trustee accountability under HSWA and makes enforcement achievable. - Why the respondent's core arguments are wrong: inconsistent with trust fundamentals; no indication Parliament intended to depart from those fundamentals; inconsistent treatment of trusts depending on single vs multiple trustees. - Contrary to respondent's view, appellants' analysis of legislation shows that HSWA can operate effectively and as intended if trust fundamentals are respected.	AS [2.2] AS [1.1] HSWA ss 16-18, 32-33, 44-46, 47-54 AS [3]; <i>Graham Pitt & Bennett</i>; <i>Investec</i>; <i>Lewis</i>; <i>Carter Holt</i>; <i>Octavo</i>; <i>Frith</i>; <i>Townley</i>; <i>Campbell v Scott</i> AS [9.2]-[9.9]; AS [8], <i>Carter Holt</i> [133]-[137] AS [6.11]
Particular issues: body of persons - What is intended by "<i>body of persons...unincorporate</i>" (in the relevant sense) "Collective decision-making" sufficient? ... No, must be more than that. On analysis, the body must involve a voluntary associative choice by members to create an organisation with an existence separate from the members, that enables it to, eg sue/be sued, enter into legal relations, in its own right. This is the "substance" that must be satisfied before	[6.1] [6.3], [6.4], [6.9]

the Court will confer the “form” of a legally recognised “body of persons.” Common law has recognised a wide range of groups of persons as unincorporated bodies of persons – eg trade unions, clubs, friendly societies, etc – trusts have <i>never</i> been so recognised. It would be fundamentally inconsistent with trusteeship to do so	[6.5]-[6.9]
Particular issues: s 29, HSWA and trustee indemnity - Trust principles of trustee indemnity can apply to this kind of liability (a fine). “Indemnity” language is a misnomer. In fact, trustee indemnity is a proprietary right in the trust property that arises by operation of law as a necessary incident of the office of trustee. - Therefore not an “indemnity” within the intendment of s 29, HSWA; even if an indemnity (denied) not granted by “another person” - No statutory obstacle to trustee resorting to assets they hold on trust to meet a fine.	[8.6]-[8.9] [8.17]; <i>Carter Holt</i> [133]-[137] [8.21]
Particular issues: criminal procedure / enforcement - HSWA is a criminal statute – procedure governed by CPA, Summary Proceedings Act, Evidence Act – which must apply equally in all regulatory/criminal cases. Cannot be special rules for HSWA prosecutions. - Criminal liability in NZ is individual. Prosecuting “<i>the trust</i>” or “<i>the trustees collectively</i>” as a separate “person” conflicts with established law. It would create practical difficulties in terms of charging, plea, conviction and sentence. - A fine against “the trust” cannot (readily) be enforced against the trustees. Civil law does not recognise a trust as a distinct entity; a trustee’s right to access trust assets (via indemnity) applies only to liabilities incurred by them personally. - To make trustees personally liable for fine, requires a reversion to orthodox approach. Can’t have it both ways. - WorkSafe’s RMA cases – prosecution of trusts: demonstrate a divergent, local-geographic approach. Highlight need for SC guidance.	[4.5]-[4.6] [4.7]-[4.12] [4.14]-[4.17] RS, fn 23

AS = Appellants’ submissions RS = Respondent’s submissions

Having made appropriate enquiries, counsel for the appellants certify that, to the best of their knowledge, these submissions do not contain any suppressed information and are suitable for publication.