Trent v Canterbury Regional Council

[2021] NZCA 123

Court of Appeal, (CA 257/2020) 17 March;
French, Ellis and Muir JJ 21 April 2021

Criminal justice — Sentencing — Fine — Discharge of contaminant in breach of s 15(1)(b) of the Resource Management Act 1991 — Second appeal — Leave to appeal.

Court of Appeal — Appeals — Application — Second appeal — Leave to appeal — Applicant and his employer pleaded guilty to a charge of discharging a contaminant in breach of s 15(1)(b) of the Resource Management Act 1991 — Focus of proposed appeal was significance, if any, that should be attributed to the fact that under the Resource Management Act 1991 there is a difference between the maximum monetary penalty to which companies and individuals are respectively liable — Sentencing an exercise of discretion — Argument rested on a flawed premise — Argument misconceived as it overlooked that maximum penalty for individual offenders for the offence in question was not in any event a fine of $300,000, but rather a term of imprisonment of two years — Whether a question of general or public importance was raised — Possible miscarriage of justice — Resource Management Act 1991, s 15(1)(b).

Resource management — Offences and penalties — Discharge — Contaminants — Breach of s 15(1)(b) of the Resource Management Act 1991.

Emergent Cold Ltd (the company) operated a temperature-controlled warehousing and cold storage business. The applicant, Mr Trent (T), was employed as its South Island Engineering Manager.

On 3 April 2018, the company instructed T to purge some vintage compressors of ammonia vapours to enable their safe removal to a motor museum. T undertook this task using a purging tank situated in close proximity to a gutter which directed water into the Christchurch City Council's storm water system.

The purging process took five hours during which time T attempted to control the smell of ammonia by adding more water to the tank to top it up. Consequently, there was an overflow from the tank of ammonia or ammonia contaminated water. There was no secondary containment system around the base of the purging tank to contain any spillage. There was also a small leak in the purging line going to the tank which T said he fixed.

Later that same day, a nearby resident contacted Fire and Emergency NZ to report a very strong ammonia smell. Fire and Emergency attended the site and spoke to T who advised that there was no issue, just the usual venting. However, once in the City Council's storm water system, the contaminated water flowed into the Kaputone Creek, resulting in an almost complete fish kill along 5 kms of the creek. A total of 1,779 dead fish were recovered, most of them eels including a very significant number

of longfin eels which are classified by the Department of Conservation as an at risk species and in decline.

The incident also had a significant cultural impact on local iwi as the creek was a long treasured wāhi taonga of the iwi. It was also an important food gathering place for Māori.

Both the company and T were charged with a breach of s 15(1)(b) of the Resource Management Act 1991 (the RMA) — the company on the basis that as T's employer it was vicariously liable for his actions.

Both T and the company pleaded guilty to breaching s 15(1)(b) of the RMA. The company was fined $145,350 and T was fined of $97,000.

T subsequently appealed his sentence to the High Court, where his appeal was dismissed. Dissatisfied with that outcome, T now wanted to appeal to the Court of Appeal. As such an appeal would be a second appeal, leave was required.

The focus of the proposed appeal was the significance, if any, that should be attributed to the fact that under the RMA there is a difference between the maximum monetary penalty to which companies and individuals are respectively liable for committing the offence of discharging a contaminant. For companies, the maximum fine is $600,000 and $300,000 for individuals.

Held, (1) there was no tenable basis for an argument that where a company and an individual are being sentenced in respect of the same offending, the starting point must always equate in a proportionate way to the difference in the maximum penalties for the following reasons: (i) it is a long established and fundamental principle that sentencing is an exercise in discretion. It is most emphatically not and never has been a mathematical exercise of the sort suggested on behalf of T; (ii) the argument rested on a flawed premise, namely the existence of an obligation to take the difference in maximum penalties into account in setting a starting point for individual offenders; (iii) the argument was misconceived in that it overlooked that the maximum penalty for individual offenders for the offence in question is not in any event a fine of $300,000, but rather a term of imprisonment of two years. A comparison of fine levels is not a comparison of maximum penalties; (iv) the argument assumes the reason for the higher monetary penalty for companies is that Parliament regarded companies as being generally twice as culpable as individual offenders or that offending by companies was inherently generally twice as serious. (paras 28-34)

(2) The correct position is that stated in *Waslander v Southland Regional Council* (cited below) at [53]: "The higher penalty for corporate defendants reflects both the need for the Court to be able to impose meaningful penalties that will carry the necessary punitive and deterrent effect on large commercial organisations and the absence of any alternative non-monetary sentences such as imprisonment which are available when natural persons appear before the Court for this type of offending". Further, there was no conflict between that and subsequent High Court judgments (paras 35, 36-43)

Waslander v Southland Regional Council [2017] NZHC 2699, approved

(3) This case did not raise a question of general or public importance requiring the Court's determination. The Court of Appeal agreed with Nation J that the difference in the maximum monetary penalties does not require a sentencing Judge to arrive necessarily at a monetary starting point which reflects that difference. In making that statement and the further point that the difference while of limited relevance in this case might be relevant in another case depending on the circumstances, the Judge was reflecting established and well understood sentencing principles. (para 44)

(4) Regarding the issue of a possible miscarriage of justice, Nation J's conclusion that the fine imposed on T was within the range of sentences reasonably available to the sentencing Judge was reached after an extensive analysis of the caselaw. In some of the cases, the conduct of the individual offender was undoubtedly more blameworthy than T, but on the other hand the consequences of his wrongdoing were for the most part far more significant. There is growing public concern about the quality of our waterways and the discharge of contaminants into them, something the sentencing Judge was also entitled to take into account. A second appeal was not warranted on the basis of a miscarriage of justice. The application for leave to bring a second appeal was declined. (paras 46, 47)

Cases referred to

Auckland Council v Jenners Worldwide Freight Ltd DC Auckland CRI-2014-092-257, 4 February 2015

Canterbury Regional Council v Canterbury Greenwaste Processors Ltd DC Christchurch CRI-2012-009-9820, 24 April 2013

Nelson City Council v KB Contracting & Quarries Ltd [2018] NZDC 11153

Orchard v R [2019] NZCA 529, [2020] 2 NZLR 37

Southland Regional Council v Egginton [2015] NZDC 14393

Sowman v Marlborough District Council [2020] NZHC 1014, [2020] NZRMA 452

Stumpmaster v WorkSafe New Zealand [2018] NZHC 2020, [2018] 3 NZLR 881

Taranaki Regional Council v Ravensdown Fertiliser Co-operative Ltd DC New Plymouth CRI-2011-043-2426, 15 December 2011

Waslander v Southland Regional Council [2017] NZHC 2699

Zhang v R [2019] NZCA 507, [2019] 3 NZLR 648, (2019) 29 CRNZ 282

Application

This was an unsuccessful application by Mr Trent for leave to bring a second appeal against his sentence of $97,000 for discharging a contaminant in breach of s 15(1)(b) of the Resource Management Act 1991.

T J Mackenzie and *A L Hollingworth* for applicant
T J McGuigan and *V M Sugrue* for respondent

Cur adv vult

The judgment of the Court was delivered by

FRENCH J

[1] Mr Trent and his employer Emergent Cold Ltd[1] both pleaded guilty to a charge of discharging a contaminant onto land in circumstances that might result in the contaminant entering water in breach of s 15(1)(b) of the Resource Management Act 1991. Judge Dwyer imposed a fine of $145,350 on the company and a fine of $97,000 on Mr Trent.[2]

[2] Mr Trent appealed his sentence to the High Court. The appeal was dismissed by Nation J.[3]

1 At the time of the offending, the company was known as Polarcold Ltd.

2 *Canterbury Regional Council v Emergent Cold Ltd* [2019] NZDC 23930 [Sentencing notes].

3 *Trent v Canterbury Regional Council (Christchurch)* [2020] NZHC 767 [High Court judgment].

[3] Dissatisfied with that outcome, Mr Trent now wishes to appeal to this Court. Because such an appeal would be a second appeal, leave is required.[4]

[4] The focus of the proposed appeal is the significance (if any) that should be attributed to the fact that under the Resource Management Act there is a difference between the maximum monetary penalty to which companies and individuals are respectively liable for committing the offence of discharging a contaminant. For companies, the maximum fine is $600,000. For individuals, it is $300,000.[5]

Background

The facts of the offending

[5] The company operates a temperature-controlled warehousing and cold storage business. Mr Trent is employed as its South Island Engineering Manager. He was a long serving and highly regarded employee.

[6] On 3 April 2018, the company instructed Mr Trent to purge some vintage compressors of ammonia vapours to enable their safe removal to a motor museum.

[7] Mr Trent undertook this task using a purging tank that was situated in close proximity to a gutter. The gutter directed water into the Christchurch City Council's storm water system. The purging process took five hours during which time Mr Trent attempted to control the smell of ammonia by adding more water to the tank to top it up. As a result, there was an overflow from the tank of ammonia or ammonia contaminated water. There was no secondary containment system around the base of the purging tank to contain any spillage. There was also a small leak in the purging line going to the tank which Mr Trent said he fixed.

[8] Section 15(1)(b) of the Resource Management Act relevantly provides that no person may discharge any containment onto land in circumstances which may result in the contaminant entering water. The only exceptions are if the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan or proposed regional plan for the same region, or a resource consent. None of those exceptions applied. Under Rule 5.89 of the Canterbury Land and Water Regional Plan, discharging hazardous waste to land where it may enter water is a discretionary activity and requires a resource consent. The company did not have a resource consent. The over-flow flowed across the ground and into the gutter. Mr Trent estimated the volume of the overflow as being in the order of 200 to400 litres although the Canterbury Regional Council contended it was significantly higher than that.

[9] Later that same day, a nearby resident contacted Fire and Emergency NZ to report a very strong ammonia smell. Fire and Emergency attended the site and spoke to Mr Trent who advised that there was no issue, just the usual venting.

[10] However, once in the City Council's storm water system, the contaminated water flowed into the Kaputone Creek, resulting in an almost complete fish kill along five kilometres of the creek. A total of 1779 dead fish were recovered, most of them eels including a very significant number of longfin eels which are classified by the Department of Conservation as an at risk species and in decline.

[11] The incident also had a significant cultural impact on local iwi as detailed in a mana whenua report provided to the sentencing Judge. The creek is a long treasured wāhi taonga of the iwi. It was part of an extensive network of wetlands and streams and was an important food gathering place for Māori. Eels were a particularly important food source. The report also advised that iwi are currently involved with the

4 Criminal Procedure Act 2011, s 237.

5 Resource Management Act 1991, s 339(1).

City Council in a project to raise the degraded ecological values of these waters. The iwi expressed its particular anger and distress at seeing all the effort and resources that had been put into protecting the longfin eel going to waste.

[12] Both the company and Mr Trent were charged with a breach of s 15(1)(b) of the Resource Management Act; the company on the basis that as Mr Trent's employer it was vicariously liable for his actions. The company accepted full responsibility for the offending and through counsel at the sentencing said it had not provided Mr Trent with adequate instructions or equipment to undertake the job which he had been given.

The sentencing in the District Court

[13] After considering four comparator cases,[6] the Judge identified the following factors as being particularly relevant to his decision:[7]

- The direct and devastating effect of the discharge on aquatic life in the creek;
- The extent of that effect over a distance of five kilometres or so;
- The fact that species recovery is likely to take a lengthy period of time, at least insofar as eels are concerned;
- The cultural significance of the waterways damaged by the offending and the affront to tangata whenua;
- The unsatisfactory manner in which the Defendants dealt with an obviously highly toxic material;
- The failure to have any bunding to contain spills from the purge tank which was situated in close proximity to the Council storm water drain, which any spill would obviously enter.

[14] The Judge then noted there was a need to set penalties for offending of this sort which encourage the safe storage and handling of dangerous and toxic materials and deter unsafe practices. He found there to be significant shortcomings and a high degree of culpability on the part of the company and "regrettably to some lesser extent on the part of Mr Trent".[8]

[15] Having regard to all of those matters, the Judge considered the appropriate starting point for the company was a fine of $180,000.[9] As regards Mr Trent, the Judge said the appropriate starting point was a fine of $120,000, noting in two important passages:[10]

> That, of course, is 66% of the starting point I have adopted for Emergent and reflects its acceptance of ultimate responsibility rather than any principle that companies should ipso facto be fined more than individuals. One hundred and twenty thousand dollars is a significant amount itself and recognises that there were real failings on your part as the man on the spot who was supervising the purging operation. The need for close management of that operation should have been apparent in light of the proximity of the Council drain if nothing else. The purging operation was undertaken over a period of about five hours during which time there had been a strong ammonia smell and it was apparent that an overflow was occurring.
>
> I accept that you did not turn your mind to precisely where the overflow might ultimately end up once it had got into the Council storm water system and I also accept that you did not really turn your mind to the very toxic nature of the discharge. I further

6 *Taranaki Regional Council v Ravensdown Fertiliser Co-operative Ltd* DC New Plymouth CRI-2011-043-2426, 15 December 2011; *Nelson City Council v KB Contracting & Quarries Ltd* [2018] NZDC 11153; *Canterbury Regional Council v Canterbury Greenwaste Processors Ltd* DC Christchurch CRI-2012-009-9820, 24 April 2013; and *Auckland Council v Jenners Worldwide Freight Ltd* DC Auckland CRI-2014-092-257, 4 February 2015.

7 Sentencing notes, above n 2, at [14].

8 At [16].

9 At [17].

10 At [18]-[19].

> accept that Emergent did not adequately instruct or supervise you in that regard. That is why I have chosen a lower starting point for you than I have for Emergent.

[16] The Judge then reduced the respective starting points on account of previous good character — both being first offenders — and also on account of their guilty pleas. The discounts applied resulted in the amount of the fine imposed on the company being $145,350 and on Mr Trent $97,000.[11] Both defendants were also ordered to pay costs.

The High Court appeal

[17] In the High Court, Mr Trent advanced three grounds of appeal.[12]

[18] The first of these was that the sentencing Judge had erred by failing to take into account the difference between the maximum monetary penalty for corporate offenders and individuals.[13] The second was that the level of the fine imposed on Mr Trent was out of kilter with other cases.[14] The third ground was that the sentencing Judge had erred in distinguishing a 2011 case on the grounds there had been considerable upward movement in sentencing levels since that case was decided.[15]

[19] All three grounds were rejected by Nation J who found there had been no error in the District Court's sentencing methodology and that the sentence was within range and not manifestly excessive.[16]

The application for leave to appeal to this Court

[20] In order to obtain leave to appeal, Mr Trent must satisfy us of one of two things: either that the proposed appeal involves a matter of general or public importance or that a miscarriage of justice may have occurred or may occur unless the appeal is heard.[17]

[21] The focus of the proposed appeal is (as it was in the High Court) that the sentencing Judge was required to take the differing maximum penalties into account.

[22] Mr Trent's counsel Mr Mackenzie accepted that the sentencing Judge had been cognisant of the difference in the maximum penalties but disputed the finding in the High Court that it had been taken into account. In Mr Mackenzie's submission, the Judge should have given the difference some weight by incorporating the lower maximum penalty applying to Mr Trent into the latter's starting point. Instead, the Judge wrongly anchored the starting point purely off the company's maximum fine when that was a maximum fine that was twice as high as what Mr Trent faced.

[23] According to Mr Mackenzie, the practical effect of the Judge's approach is that the sentence for Mr Trent does not reflect his lower culpability vis-à-vis the company that the Judge was trying to reflect. The company's starting point of $180,000 was 30 per cent of the maximum penalty applying to it. In contrast, the starting point adopted for Mr Trent was 41.66 per cent of the maximum penalty applying to him. The result was a sentence that reflected a third higher culpability, rather than the third less culpability that the Judge had intended.

[24] Mr Mackenzie further contended there are currently inconsistent approaches to the consideration of maximum penalties for dual sentencings of individuals and

11 Sentencing notes, above n 2, at [20]-[22].

12 High Court judgment, above n 3.

13 High Court judgment, above n 3, at [24].

14 At [56].

15 At [91].

16 At [105].

17 Criminal Procedure Act 2011, s 253(3).

companies in the lower courts. The issue was therefore not just confined to this case but one of general and public importance warranting resolution by an appellate court.

[25] In support of the leave application, Mr Mackenzie also contended an appeal was necessary to avoid the risk of a miscarriage of justice. If the different maximum penalty had been taken into account, it would have meant a significantly lower fine for Mr Trent. As it was, the starting point the sentencing Judge adopted was and still is 50 per cent higher than any adopted in relation to an individual offender in any other case.

Analysis

[26] Mr Mackenzie said all that could be said on behalf of Mr Trent. However, we are not persuaded that this case meets the threshold required to grant leave.

[27] In our view, there is no tenable basis for an argument that where a company and an individual are being sentenced in respect of the same offending, the starting point must always equate in a proportionate way to the difference in the maximum penalties. In this case where the culpability of the offenders was not equal, that approach would have meant the Judge was obliged to adopt a methodology involving first a relative culpability calculation that was then multiplied against a proportionate maximum penalty to reach a starting point.

[28] We say there is no tenable basis for such an argument for the following reasons.

[29] First, it is a long established and fundamental principle that sentencing is an exercise in discretion.[18] It is most emphatically not and never has been a mathematical exercise of the sort suggested on behalf of Mr Trent.

[30] Secondly, the argument rests on a flawed premise, namely the existence of an obligation to take the difference in maximum penalties into account in setting a starting point for individual offenders.

[31] When asked by us to identify the source of an *obligation* to take the difference into account, Mr Mackenzie relied on s 8(b) of the Sentencing Act 2002. Section 8(b) states that a sentencing judge must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences.

[32] However, s 8 is clearly addressed to the issue of a comparison of maximum penalties as between different offences. It does not purport to address the issue of different maximum penalties as between corporate and individual offenders who have committed not different offences but the same offence.

[33] The third reason we consider the argument is misconceived is that it overlooks that the maximum penalty for individual offenders for the offence in question is not in any event a fine of $300,000 but rather a term of imprisonment of two years. The company for obvious reasons is not liable to any custodial sentence. A comparison of fine levels is not a comparison of maximum penalties.

[34] A fourth difficulty with the argument is that it assumes the reason for the higher monetary penalty for companies is that Parliament regarded companies as being generally twice as culpable as individual offenders or that offending by companies was inherently generally twice as serious.

[35] However, in our view, the correct position is as stated by Mander J in the decision of *Waslander v Southland Regional Council*:[19]

18 *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [120]; and *Orchard v R* [2019] NZCA 529, [2020] 2 NZLR 37 at [28].

19 *Waslander v Southland Regional Council* [2017] NZHC 2699.

> [53] Similarly, comparison with the greater maximum penalty available for corporate defendants does not assist Mr Waslander's argument. Corporate defendants will usually be associated with larger commercial enterprises, although often it will simply be a matter of circumstance as to how the individual dairy farmer has organised or structured his dairy operation. The higher penalty for corporate defendants reflects both the need for the Court to be able to impose meaningful penalties that will carry the necessary punitive and deterrent effect on large commercial organisations and the absence of any alternative non-monetary sentences such as imprisonment which are available when natural persons appear before the Court for this type of offending. I do not consider the level of fine imposed in the present case breached any policy which sits behind the higher penalty levels for corporate defendants in terms of a percentage of the maximum penalty, as was contended for by Mr van der Wal.

[36] Contrary to a submission made by Mr Mackenzie,[20] the view expressed in *Waslander* is strongly supported by the legislative materials which led to the enactment of the Resource Management (Simplifying and Streamlining) Amendment Act 2009. Prior to that amendment, the legislation did not distinguish between companies and individual offenders in relation to fines. The maximum fine for both was $200,000.

[37] The recurring theme in the legislative materials is that the existing fine levels especially for companies were considered too low to be an effective deterrent.[21] To get the balance right the fine levels needed to increase and there needed to be a distinction drawn between individual offenders and corporate entities.[22] The latter had a greater commercial incentive to offend and without a very significant increase in the monetary penalty, the more cost-effective course for commercial entities was to break the law and then pay up. To put it another way, the risk of offending on economic grounds was greater in the case of companies. As of course generally speaking is their capacity to pay a fine.[23]

[38] Also contrary to a submission made by Mr Mackenzie, we do not consider there is any conflict between what Mander J said in the passage quoted above and what has been said in two other High Court cases *Stumpmaster v WorkSafe New Zealand*[24] and *Sowman v Marlborough District Council*.[25]

[39] Of those two cases, the first in time was *Stumpmaster*. The Court in that case undertook a review of culpability bands in light of the Health and Safety in Employment Act 1992 being replaced by the Health and Safety at Work Act 2015.[26] Unlike the amending legislation at issue in the case before us, the new Act not only increased penalties but importantly also introduced new classes of duty holders and expressly identified those who owed the primary duty of care.[27] In our view, the decision is not contrary to the proposition articulated in *Waslander* about the limited relevance of different maximum penalties under the Resource Management Act and has no bearing on this case.

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20 Mr Mackenzie submitted — incorrectly in our view — that little insight was to be gained on the penalty increase from the legislative materials.

21 (19 February 2009) 652 NZPD 1485;(8 September 2009) 657 NZPD 6133; and Ministry for the Environment "Departmental Report on the Resource Management (Simplifying and Streamlining Amendment Bill)" [Departmental Report] at 403-406.

22 (8 September 2009) 657 NZPD 6133.

23 Departmental Report, above n 22, at 403.

24 *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020, [2018] 3 NZLR 881.

25 *Sowman v Marlborough District Council* [2020] NZHC 1014, [2020] NZRMA 452.

26 *Stumpmaster*, above n 24, at [1].

27 At [17].

[40] *Sowman* — the second High Court decision relied on by Mr Trent — was a case under the Resource Management Act. Also, like the present case it involved a breach of s 15(1)(b). But that is where the similarities end. In *Sowman*, the employing company had been discharged without conviction[28] and the individual offender had been fined $18,000.[29] The latter unsuccessfully appealed on the grounds he too should have been discharged without conviction.[30]

[41] What Mr Mackenzie submits demonstrates inconsistency with *Waslander* is one sentence in the *Sowman* judgment. The sentence comes at the end of a paragraph discussing sentencing bands that had been developed for dairy effluent cases. In the paragraph, the High Court Judge (Cooke J), responded to a submission that the sentencing Judge had placed Mr Sowman in the wrong sentencing band. Cooke J said there were two reasons that suggested the bands should no longer be followed. First, they had been developed 13 years ago and secondly, they predated the 2009 amendment increasing the level of fines. He pointed out that the increase suggested there should be an overall increase in the levels of the financial maximums in each band and, in the sentence emphasised by Mr Mackenzie, added it also suggested the penalties should generally be higher for corporates than individuals in each band.[31]

[42] However, Cooke J did not refer to *Waslander*. Nor did he in any way attempt to re-evaluate the bands. And significantly for present purposes he also expressly acknowledged in a later section of the judgment that differences between corporate and individual responsibility was a consideration that "may make matters more complicated than the three bands".[32]

[43] We consider it is a stretch to suggest that one tentative comment subsequently qualified in a later section of the same judgment can mean the High Court authorities are in conflict.

[44] All of this leads us inexorably to the conclusion that this case does not raise a question of general or public importance which should be submitted for determination to this Court. We agree with Nation J that the difference in the maximum monetary penalties does not require a sentencing Judge to necessarily arrive at a monetary starting point which reflects that difference. In making that statement and the further point that the difference while of limited relevance in this case might be relevant in another case depending on the circumstances, the Judge was reflecting established and well understood sentencing principles.[33]

[45] Turning then to the issue of a possible miscarriage of justice.

[46] Nation J's conclusion that the fine imposed on Mr Trent was within the range of sentences reasonably available to the sentencing Judge was reached after an extensive analysis of the caselaw.[34] In some of the cases, the conduct of the individual offender was undoubtedly more blameworthy than Mr Trent but on the other hand the consequences of his wrongdoing were for the most part far more significant. There is growing public concern about the quality of our waterways and the discharge of

28 *Sowman*, above n 25, at [17].

29 At [25].

30 At [74]-[78].

31 *Sowman*, above n 25, at [65].

32 At [68].

33 High Court judgment, above n3, at [53].

34 The decisions traversed by Nation J were: *Taranaki Regional Council v Ravensdown Fertiliser Co-operative Ltd*, above n 6; *Sowman*, above n 25; *Southland Regional Council v Egginton* [2015] NZDC 14393; *Canterbury Regional Council v Canterbury Greenwaste Processors Ltd*, above n 6; *Nelson City Council v KB Contracting & Quarries Ltd*, above n 6; and *Auckland Council v Jenners Worldwide Freight Ltd*, above n 6.

contaminants into them, something the sentencing Judge was also entitled to take into account. We are not persuaded that a second appeal is warranted on the basis of a miscarriage of justice.

Outcome

[47] The application for leave to bring a second appeal is declined.

Application for leave to bring a second appeal declined

Reported by P. A. Ruffell