

## **ZABURONI v THE QUEEN (B69/2015)**

Court appealed from: Queensland Court of Appeal  
[2014] QCA 77

Date of judgment: 15 April 2014

Special leave granted: 13 November 2015

Mr Godfrey Zaburoni was diagnosed with HIV in 1998. He and the Complainant met on the Gold Coast on New Year's Eve 2006/2007 and they commenced a sexual relationship soon afterwards. When asked by the Complainant at the time about whether he had any STDs, Mr Zaburoni denied being HIV positive. For the first 6 weeks of their relationship, Mr Zaburoni and the Complainant practised safe sex. Thereafter Mr Zaburoni stopped using a condom, with the relationship itself ending in September 2008.

In September 2009 the Complainant was diagnosed with HIV. On the day before her diagnosis, Mr Zaburoni admitted to her that he was HIV positive and that he had known about it for about "six months".

Mr Zaburoni was subsequently charged, pursuant to s 317(b) and (e) of the *Criminal Code* 1899 (Qld) ("the Code"), that between 1 January 2007 and 30 September 2008 he intended to (and actually did) transmit a serious disease (HIV) to the Complainant. On 18 April 2013 a jury found him guilty and Judge Dick later sentenced him to nine years and six months imprisonment.

The live issue upon Mr Zaburoni's subsequent appeal was whether he had actually intended to infect the Complainant with HIV.

On 15 April 2014 the Court of Appeal (Gotterson & Morrison JJA; Applegarth J dissenting) dismissed Mr Zaburoni's appeal. Justice Gotterson (with whom Justice Morrison broadly agreed) noted that the evidence had clearly established:

- a) that Mr Zaburoni was well aware of his infectious status; and
- b) that he had transmitted HIV to the Complainant.

His Honour then held that it was open to the jury, when considering the evidence of consistent unprotected sexual activity over several months, to conclude that Mr Zaburoni's behaviour was beyond reckless when it came to the risk of HIV transmission to the Complainant.

Justice Applegarth however held that the requisite intent to transmit HIV was not present. His Honour noted that the evidence left open the reasonable hypothesis that Mr Zaburoni, not knowing the degree of risk of HIV transmission, was both extremely reckless and also callous. As appalling as that behaviour was however, his Honour found that it could not be equated with a subjective, actual intent to transmit HIV. Justice Applegarth held that in the absence of any evidence of malice, or knowledge of the degree of risk of

transmission, a subjective intent to inflict HIV had not been proven beyond reasonable doubt.

The grounds of appeal include:

- The Court erred in concluding that the jury could infer that Mr Zaburoni had the requisite intent on the basis of his frequent engagement in conduct over a substantial period of time reckless as to the consequences of that conduct.
- The Court erred in finding that the jury could infer that Mr Zaburoni had the requisite intent from the first act of unprotected sexual intercourse to the last act of unprotected sexual intercourse and hence that the requisite intent occurred at the same time as the transmission of the disease.