

THE QUEEN v BECKETT (S94/2015)

Court appealed from: Supreme Court of New South Wales
(Court of Criminal Appeal)
[2014] NSWCCA 305

Date of judgment: 12 December 2014

Special leave granted: 15 May 2015

Ms Barbara Beckett was committed for trial in the District Court on the charge of perverting the course of justice pursuant to s 319 of the *Crimes Act 1900* (NSW) ("the Crimes Act"), or in the alternative, with making a false statement under oath pursuant to s 330 of the Crimes Act. Ms Beckett's impugned conduct occurred during the course of a compelled interview with investigators from the Office of State Revenue ("OSR"), pursuant to s 72 of the *Taxation Administration Act 1996* (NSW) ("the Administration Act"). During that interview, Ms Beckett provided copies of two cheques on which the issue dates had been altered, and she knowingly made a false statement to the investigators.

Ms Beckett applied for a permanent stay of her prosecution as an abuse of process. Sweeney DCJ dismissed that application and Ms Beckett then sought leave to appeal pursuant to s 5F of the *Criminal Appeal Act 1912* (NSW) ("the Appeal Act").

Upon appeal the issues for determination included:

- (1) Whether the proceedings were commenced and maintained mala fides;
- (2) Whether the representations made by Ms Beckett were made in "the course of justice" within the meaning of s 319 of the Crimes Act;
- (3) Whether s 72 of the Administration Act abrogated the right to silence and the privilege against self-incrimination;
- (4) Whether the information obtained in the compelled interview could be used, including by way of evidence in criminal proceedings in proof of an offence under the Crimes Act.

On 12 December 2014 the Court of Criminal Appeal (Beazley P, R A Hulme J and Bellew J) allowed Ms Beckett's appeal and ordered that count 1 on the indictment be permanently stayed. With respect to mala fides, their Honours held that there is no requirement, under s 71 or otherwise, that evidence given or information obtained pursuant to a compulsory examination under s 72 be used only for the purposes of a prosecution under a taxation law. They further held that there was no abuse of process in the manner in which the interview was conducted. Ms Beckett was not deceived or tricked into believing that she was not in any way liable to be exposed to other aspects of the criminal law by the OSR investigators.

The Court of Criminal Appeal specifically found however that the "course of justice" for the purposes of s 319 of the Crimes Act does not commence until the jurisdiction of a court or competent judicial tribunal was invoked. As the conduct engaged in by Ms Beckett, if proved, occurred prior to this occurring, it was incapable of constituting an offence under s 319 of the Crimes Act. Count 1 of the indictment needed therefore to be permanently stayed.

With respect to the abrogation of the right to silence and the privilege against self-incrimination, their Honours found that the privilege against self-incrimination was impliedly abrogated by s 72 of the Administration Act.

The grounds of appeal include:

- An act committed before the commencement of judicial proceedings may constitute an offence of pervert the course of justice under s 319 of the Crimes Act where the act is done with the intent to frustrate or deflect the course of judicial proceedings which the accused contemplates may possibly be instituted.