

EDITORIAL NOTE: PERSONAL/COMMERCIAL DETAILS ONLY HAVE BEEN DELETED.

**IN THE DISTRICT COURT  
AT WELLINGTON**

**CRI 2015-035-000400  
[2016] NZDC 3095**

**MINISTRY OF SOCIAL DEVELOPMENT**  
Prosecutor

V

**CHARNI CHAPARNI CLEARY**  
Defendant

Hearing: 24 & 25 February 2016

Appearances: Mr A Govind for the Prosecutor  
Mr I Hard for the Defendant

Judgment: 18 March 2016

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**RESERVED JUDGMENT OF JUDGE PAH HOBBS**

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**Introduction**

[1] During the period 6 January 2011 to 3 November 2014 Ms Charni Cleary applied for and was granted a number of social welfare benefits.<sup>1</sup>

[2] The Ministry of Social Development allege that between 4 May 2012 and 3 November 2014 Ms Cleary failed to inform the Ministry that she was in a relationship in the nature of marriage with Mr G. As a result Ms Cleary has been charged with one charge of wilfully omitting to supply material information to the Ministry under s 127 of the Social Security Act 1964 and nine charges of using a document to obtain a pecuniary advantage under s 228(b) of the Crimes Act 1961. Ms Cleary has pleaded not guilty to the charges.

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<sup>1</sup> See Appendix A

[3] The onus of proving the charges rests with the prosecution. The prosecution must prove the essential elements of each charge beyond reasonable doubt.

### **Relationship in the nature of marriage**

[4] Due to the nature of the prosecution case and the way it was presented it is essential for there to be proof that Ms Cleary was at the relevant times living in a relationship in the nature of marriage. If she was not then the deception or fraud alleged by the Ministry is not made out.

[5] The importance of this issue arises from the provisions of s 63 of the Social Security Act which provides:

#### **63 Conjugal status for benefit purposes**

For the purposes of determining any application for any benefit, or of reviewing any benefit already granted, or of determining the rate of any benefit, or of the granting of any payment of a funeral grant under section 61DB or of any welfare programme approved by the Minister under section 124(1)(d), or of assessing the financial means of any person under section 69FA or Part 4 (and with every determination under this section also applying for every debt-recovery or offence provision in or under this Act), but subject to section 151, the chief executive may in the chief executive's discretion—

- (a) regard as single any applicant or beneficiary who is married or in a civil union but is living apart from his or her spouse or partner:
- (b) regard as married any 2 people who, not being legally married or in a civil union, have entered into a *relationship in the nature of marriage*—

and may determine a date on which they shall be regarded as having commenced to live apart or a date on which they shall be regarded as having entered into such a relationship, as the case may be, and may then in the chief executive's discretion grant a benefit, refuse to grant a benefit, or terminate, reduce, or increase any benefit already granted, from that date accordingly.

[6] Tipping J in *Thompson v Department of Social Welfare*<sup>2</sup> provided a list of matters he thought relevant to the existence of a relationship in the nature of marriage:

- (a) Whether and how frequently the parties live in the same house.

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<sup>2</sup> [1994] 2 NZLR 369, 373

- (b) Whether the parties have a sexual relationship.
- (c) Whether the parties give each other emotional support and companionship.
- (d) Whether the parties socialised together or attend activities together as a couple.
- (e) Whether and to what extent the parties share the responsibility of the bringing up and supporting any relevant children.
- (f) Whether the parties share household and other domestic tasks.
- (g) Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise.
- (h) Whether the parties run a common household, even if one or other partner is absent for periods of time.
- (i) Whether the parties go on holiday together.
- (j) Whether the parties conduct themselves towards and are treated by friends, relations and others as if they were a married couple.

[7] In the Court of Appeal decision of *Ruka v Department of Social Welfare*<sup>3</sup> Richardson and Blanchard JJ said:

In our view a relationship in the nature of marriage for the purpose of the Social Security Act is one in which an essential element is that there is an acceptance by one partner that (to take the stereotypical role) he will support the other partner and any child or children of the relationship if she has no income of her own or to the extent that it is or becomes inadequate. The commitment must go beyond mere sharing of living expenses, as platonic flatmates or siblings living together may do; it must amount to a willingness to support, if the need exists. There must be at least that degree of financial engagement or understanding between the couple. It will not, however, be negated by a refusal to support, or an arrangement that support will not be given, which is motivated by the knowledge the dependent partner will then

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<sup>3</sup> [1997] 1 NZLR 154 line 41

be able to claim a benefit. Such as stratagem cannot create a genuine absence of support.

Where financial support is available nevertheless there will not be a relationship in the nature of marriage for this purpose unless that support is accompanied by sufficient features evidencing a continuing emotional commitment not arising just from a blood relationship. Of these, the sharing of the same roof and of a sexual relationship (especially if it produces offspring) are likely to be the most significant indicators. But, since the amendment to s 63 in 1978, the sharing of a household is not essential. And, particularly in the case of older couples, the absence of sexual activity will not in itself deprive the relationship of the character of a marriage.

[8] An assessment of whether such a relationship exists requires a fact specific inquiry weighing up the various factors that exist in any given case ultimately reaching an objective common sense conclusion as to the nature of the relationship in question.

### **The evidence**

#### *Prosecution evidence*

[9] The prosecution called 14 witnesses and produced a significant number of documentary exhibits. The evidence broadly fell into four categories: living arrangements, financial arrangements, how Ms Cleary and Mr G presented to others and admissions or comments made by Ms Cleary and Mr G about the nature of their relationship.

[10] There is no dispute that Ms Cleary lived in three different houses during the relevant time period. The first was [address 1 deleted], the second [address 2 deleted] and the third [address 3 deleted] described as the “farmhouse” in evidence. It was accepted by Ms Cleary and Mr G that Mr G lived in the first and second house for a period of time. Mr G said he lived in the third for a period. Ms Cleary did not accept that Mr G lived in the third maintaining he only ever visited.

[11] The prosecution produced a tenancy agreement for [address 1 deleted] which listed both Ms Cleary and Mr G as the tenants. The original written tenancy agreement for [address 2 deleted] was also in the joint names of Ms Cleary and Mr G. Later at the request of Ms Cleary the property manager provided a second written

agreement that recorded Ms Cleary as the tenant. Ms Cleary entered into an agreement to rent the farmhouse from 8 October 2014. The landlord of that property Susan Hay gave evidence that Mr G lived at that address with Ms Cleary and her two children from her previous relationship together with the daughter of Ms Cleary and Mr G born on [date deleted] 2014. It was Ms Hay's evidence that Ms Cleary, Mr G and the children lived at the farmhouse property as a family.

[12] The prosecution also called four present or former social workers; Mr Brookes, Ms Cook, Ms Reid and Ms McCool all dealt with Ms Cleary's children in their capacity as social workers. They variously gave evidence of what was said by Ms Cleary during the relevant time period about the nature of Ms Cleary's relationship with Mr G. They also gave evidence that as a result of their dealings with Ms Cleary and Mr G and what was said they gained the impression that they were a couple.

[13] Mr Stephens, a former probation officer gave evidence. He was the defendant's probation officer in 2012. He gave evidence about and produced records of his discussions and interactions with Ms Cleary while living at [address 1 deleted] between May and November of that year. It was Mr Stephens' evidence that Ms Cleary and Mr G were partners.

[14] Constable Hutton of the Masterton Police gave evidence of interviewing Ms Cleary on 1 July 2012 about a domestic incident between Ms Cleary and Mr G. In that statement Ms Cleary stated that she had been in a relationship with Mr G for about five months.

[15] On 10 April 2013 Ms Cleary made a statement to Detective Wasson of the Masterton Police, again concerning an incident involving Mr G on 26 January 2013. In that statement Ms Cleary confirms that Mr G is her partner and that they have been together for just over a year.

[16] There is no dispute that on [date deleted] 2014 Ms Cleary gave birth to a daughter. Mr G is the father. Ms Julia Black who was the defendant's midwife

referred to a patient admission form completed by Ms Cleary in which she had listed Mr G as her partner.

[17] Ms Robinson a case manager for Work and Income gave evidence of admissions made by Ms Cleary in August 2014 about Mr G being her partner.

[18] Mr Mark Schultz the investigator for the prosecutor gave evidence. He referred to his interview with Ms Cleary. He also obtained and referred to documentation from utility companies, Sky, Telecom/Spark and Tiny Mighty Power. He also referred to bank statements of Ms Cleary's with BNZ and bank statements of Mr G's with ANZ covering the relevant time period.

### **Defence evidence**

[19] Ms Cleary gave evidence. She also called Mr G to give evidence on her behalf. Ms Cleary was not required to give evidence or call evidence. The fact that she did does not change the burden of proof. That remains with the prosecution throughout.

[20] It was Ms Cleary's evidence that Mr G had been a longstanding friend. Ms Cleary had left an abusive relationship with her former husband who continued to "*stalk her*" as she described it. Ms Cleary said she was advised by the Police not to live alone. She accepted that Mr G lived at [address 1 deleted] with her for a period of time but only as a flatmate with his own room. Ms Cleary said Mr G did provide emotional support but was never an intimate partner. Ms Cleary accepted that Mr G had paid the bond for the [address 1 deleted] property but that was because she could not afford to do so. She regarded it as nothing more than a loan. Ms Cleary said the phone and Sky bill were in Mr G's name because she had a poor credit record and would not have been able to have those utilities in her name as a result.

[21] It was Ms Cleary's evidence that Mr G only lived at the [address 2 deleted] address for a short period of time again as a flatmate. With respect to the farmhouse property it was Ms Cleary's evidence that Mr G did not live there but did help her and the children move in and visited from time to time. It was Ms Cleary's evidence

that at no stage was Mr G her partner. Whenever the term “partner” has been used by her in the past she said she meant “support partner”. She was advised by Children Young Persons and Their Families Service to have a support person and as already noted not to live alone due to the actions of her former husband. Ms Cleary said that the daughter she has with Mr G was the result of a one night stand.

[22] Mr G’s evidence was essentially the same as Ms Cleary’s on the material issues. It was his evidence that he was only ever a flatmate of Ms Cleary. He maintained that he had his own room at [address 1 deleted]. It was his evidence that he was only at the [address 2 deleted] address for a short period of time before he moved in with a friend. He did say that for a brief period of time he lived at the farmhouse property when they had decided to try and have a relationship in late 2014 which resulted in them applying for a joint benefit. Mr G said the relationship did not work out so he left the property to live with a friend at another address.

[23] Mr G also gave evidence that the daughter he had with Ms Cleary was the result of a one night stand. He confirmed Ms Cleary’s evidence that he had paid for the bond at [address 1 deleted] because Ms Cleary could not afford to. He said it was nothing more than a loan. He also confirmed Ms Cleary’s evidence about her credit history and his willingness to therefore transfer the phone and Sky bill from his previous property to the [address 1 deleted] property in his name. Mr G gave evidence that notwithstanding this the bills were paid for by Ms Cleary. Like Ms Cleary Mr G denied ever being in a relationship with Ms Cleary except for the brief attempt at a relationship in late 2014 when they applied for a joint benefit.

### **Analysis**

[24] On its own the fact that Ms Cleary and Mr G lived under the same roof does not indicate a relationship in the nature of marriage nor does a general perception by some who dealt with them that they were living in such a relationship. However when the prosecution evidence is drawn together and considered as a whole and a timeline constructed it reveals compelling evidence that during the period of the alleged offending Ms Cleary was living with Mr G in an intimate relationship which included ongoing emotional support and commitment. The most compelling

evidence is what Ms Cleary and Mr G themselves said about the nature of their relationship. I set out that timeline and evidence.

- (a) In April/May 2012 Ms Cleary told the social worker Mr Brookes that she was going to Masterton to set up home with her partner Mr G. Mr Brookes gave evidence of having meetings with Ms Cleary and Mr G. It was his evidence that they were clearly setting up a house together and talking about what they were doing.
- (b) On 13 April 2012 both Ms Cleary and Mr G signed a tenancy agreement for [address 1 deleted], with the tenancy to start on 1 May 2012. This is consistent with the evidence of Mr Brookes about the two of them setting up house together.
- (c) Mr Stephens, Ms Cleary's former probation officer during the period May 2012 to November 2012 has listed both her and Mr G's address as [address 1 deleted]. In his notes made at the time of his interactions with Ms Cleary she has described Mr G as her partner. His notes include statements by Ms Cleary that her relationship with Mr G is strong and that she doesn't know where she would be without him despite a domestic violence allegation against Mr G which Ms Cleary maintained had been blown out of proportion. On another occasion Ms Cleary says she feels safe with Mr G and again their relationship is strong. When pressed under cross-examination as to whether or not Mr G was something less than a physical partner Mr Stephens said he very much doubted it. He gained the clear impression that Ms Cleary and Mr G were in a relationship and his notes made at the relevant time reflect that.
- (d) Constable Hutton took a statement from Ms Cleary on 16 June 2012 in relation to an incident with Ms Cleary's ex husband that occurred on [address 1 deleted]. In that statement, which Ms Cleary signed as true and correct, she confirms that she and Mr G have been together for about four months, having known each other for a number of years.

- (e) On 1 July 2012 Mr G was spoken to by the police about an incident between him and an unrelated man. In that statement he refers to Ms Cleary as his partner.
- (f) Ms Cook was a social worker for the defendant's two young children between June and November 2012. It was her evidence that Ms Cleary introduced Mr G as her partner and that they presented as a couple. At a meeting following an alleged domestic violence incident it was Ms Cook's evidence that as far as she was aware they were living at the same address and the children talked of them as a couple. She also gave evidence that if you rang Mr G you could get Ms Cleary and if you rang Ms Cleary you could get Mr G.
- (g) Detective Wasson gave evidence of taking a statement from Ms Cleary on 10 April 2013 about an incident at [address 1 deleted] on 26 January 2013. In that statement, which again Ms Cleary has signed as true and correct, she stated that she and Mr G have been together for just over a year. In contrast to the defence evidence that Mr G had his own bedroom it is clear from the statement that Mr G and Ms Cleary were sharing a room. When describing the incident in question Ms Cleary said, "*I stayed in the front room and Mr G went back into **our room**.*" She further stated, "*I went into **our room** and a dvd was still going. Mr G was asleep.*"
- (h) In April 2013 Ms Cleary and Mr G signed a tenancy agreement for [address 2 deleted]. Mr Archer, the property manager gave evidence that they had been together at that address before the agreement was formally signed. Notwithstanding Ms Cleary's request that the tenancy agreement be placed in her name alone it was Mr Archer's evidence that Mr G continued to live at that address. He noted that Mr G's car was parked there whenever he went past albeit he drove past infrequently. Mr Archer also went to the property on two occasions and Mr G was present and appeared to be living at the address. Mr Archer also gave

evidence that when they left the address at the end of the tenancy Mr G was there packing items into his motor vehicle.

- (i) Mr G's employer Mr Eades gave evidence that as far as he was concerned Mr G lived at [address 2 deleted], it was just down the road from the garage where Mr G is employed. Mr Eades could see the house from the garage. It was Mr Eades' evidence that basically every day Mr G would walk to and from the [address 2 deleted] property. He would also go home at lunchtimes to that address. Mr G has been employed by Mr Eades since 2008 and continues to be employed by him.
- (j) Anna Reid was a social worker responsible for Ms Cleary's children between November 2012 and July 2013 a period during which Ms Cleary was living at [address 2 deleted]. Ms Reid said that Ms Cleary came to her office and described Mr G as her partner on one occasion. Much of Ms Reid's contact with Ms Cleary was by way of email. The email address Ms Reid used to correspond with Ms Cleary while she lived at [address 2 deleted] was Mr G's email address as it contained his name.
- (k) On [date deleted] 2014 the defendant and Mr G's daughter was born. On the Wairarapa DHB Patient Admission Form completed by Ms Cleary she has described Mr G as her partner.
- (l) Ms McCool, a social worker responsible for Ms Cleary's children between February 2014 and the end of 2014, had at least three meetings with Ms Cleary and Mr G. She noted that Mr G came home from work for these lunch time meetings which is consistent with the evidence of Mr Eades about Mr G going home at lunch times. It was Ms McCool's impression that the relationship between Ms Cleary and Mr G was an intimate relationship. She discussed with Ms Cleary the birth of their child. Ms McCool also gave evidence that Mr G had asked for financial support for mattresses for his children when they came to stay at [address 2 deleted]. She also gave evidence that Mr G admitted to her that he was in a relationship with Ms Cleary. Ms McCool also gave evidence that

she told Ms Cleary that she would need to advise Work and Income of the birth of her daughter which Ms McCool ultimately did. Ms McCool said Ms Cleary was upset by this and told her she had no right to inform Work and Income.

- (m) In August of 2014 Ms Cleary was interviewed by Ms Robinson, a service centre manager at Wairarapa Community Link Work and Income, previously employed as a case manager. Ms Robinson required Ms Cleary to provide a Personal Details Form as there were concerns about Ms Cleary receiving the correct benefits. In response Ms Cleary wrote a letter to be included in that form in which she states:

I have known [Mr G] for a very long time as friends and in the last two years we did have a relationship and had a child from this relationship. [Mr G] has in that time emotionally supported me in both pregnancy and me trying to get my children back from CYFS.

She states that the relationship is at an end. As a result of that letter Ms Cleary's benefits which had been suspended were reinstated.

- (n) While the time period during which Ms Cleary occupied the farmhouse falls outside the period of the alleged offending it is nonetheless evidence that points to the ongoing relationship between Ms Cleary and Mr G in contrast to what Ms Cleary told Ms Robinson in the letter of August 2014. It was Ms Hay's evidence that Ms Cleary and Mr G lived at her farmhouse property as a couple from October 2014. She gave evidence of Ms Cleary and Mr G coming to look at the house together. She gave evidence of them moving in together. She also described seeing Mr G going to work in the mornings at about 7.00 am and him coming home at night in his white Ute. It was Ms Hay's impression that they were in a relationship because they were together as a couple looking after the children. Ms Cleary was given eight weeks' notice on 23 September 2015 as Ms Hay had a new stock manager that required the farmhouse. Mr G himself admitted to living at the house for a period of time notwithstanding Ms Cleary's evidence that he did not live there at all,

only coming as a regular visitor. Ms Hay's evidence that they lived at the farmhouse property as a couple is consistent with Ms Cleary and Mr G applying for a joint benefit in November 2014.

[25] The evidence referred to above taken together is compelling. It clearly points to an ongoing intimate relationship between Ms Cleary and Mr G at least between the period April 2012 and November 2014. Ms Cleary's evidence can be put to one side as it is inconsistent with much of the incontrovertible evidence and indeed her own admissions to others during the relevant period about the nature of the relationship. Ms Cleary could provide no plausible explanation as to why she had told Constable Hutton, Detective Wasson and Ms Robinson that she was in a relationship with Mr G. Her suggestion that whenever she described Mr G as a partner either verbally or on a document what she intended or meant was "support partner" is simply not plausible.

[26] Likewise Mr G could provide no plausible explanation as to why he had described Ms Cleary as his partner on those occasions when he had done so. Much of his evidence was inconsistent with the compelling evidence about the nature of his relationship with Ms Cleary. His evidence was also inconsistent with Ms Cleary's about the living arrangements at the farmhouse. I am satisfied that the relationship between Ms Cleary and Mr G was much more than a flatmate or boarder arrangement and indeed was a continuous intimate relationship which included ongoing emotional support over the relevant time period.

[27] This conclusion is not the end of the matter. It is apparent from the decision of *R v Ruka* that there must be, in addition to the indicia of a relationship in the nature of marriage already established, a financial interdependence and commitment of the type described in that case.

[28] As previously noted the evidence of the financial arrangements came primarily from the prosecutor's investigator Mr Schultz. There is no evidence of transfers between Ms Cleary's bank account and Mr G's bank account. It appears from the documentary evidence that payments for utilities were made by Ms Cleary. However there were regular withdrawals of cash by Mr G from his account in

amounts between \$100 and \$200 but predominantly \$120 or near to. The inference the prosecution ask me to draw is that this money was withdrawn by Mr G and given to Ms Cleary as his contribution to bills and the like. It is at the very least consistent with the rental payment Ms Cleary has noted Mr G was paying as a flatmate or boarder. That however is the extent of interdependent financial transactions by reference to the bank accounts alone.

[29] As Thomas J noted in *R v Ruka*<sup>4</sup>:

The circumstances in which this requisite financial responsibility may be discharged will vary greatly. In the stereotypical marriage it is the husband who assumes primary responsibility with the support of his wife and family. In other marriages the responsibility for providing financial support may be shared. In yet other relationships the independent means of one spouse may be such that no financial contribution is required. But in all such cases a mutual understanding as to how the 'conjugal' unit is to be supported will be implicit in the relationship.

[30] Further Thomas J said<sup>5</sup>:

The financial interdependence may be direct, being actual support or indirect, reflecting a mutual understanding about the financial arrangements relating to the relationship.

[31] In this case there is evidence of financial support being provided by Mr G. Clearly he was contributing at the very least to the rental payments while living in an intimate relationship that was more than that of a mere flatmate or boarder. Mr G paid the bond for the [address 1 deleted] property of \$1,440 which was ultimately repaid into his bank account when the property was vacated which is at odds with the defence evidence that this remained an unpaid loan by Mr G to Ms Cleary. It was accepted that on occasions Mr G had contributed to hire purchase payments to Ms Cleary albeit infrequently.

[32] In addition to the actual payment of money it was accepted that the phone bill, Sky television bill and initially the power bill were in the name of Mr G at the [address 1 deleted] property, the phone and Sky bill having been transferred from Mr G's prior address. Ms Cleary was added as an authorised person to deal with

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<sup>4</sup> p 181 line 44

<sup>5</sup> p 181 line 8

these accounts. Ms Cleary gave evidence that this was simply a matter of convenience because she had credit issues which would have precluded her from having those utilities in her own name. This is at odds with the power bill ultimately being in her name at the [address 2 deleted] property and her purchase of a motor vehicle on credit.

[33] It is apparent from the documentary records produced that Sky television transferred the account in the name of Mr G to all three properties and that Ms Cleary dealt with Sky television when discussing payments and the like. Documentary evidence from Spark again confirms that Ms Cleary was authorised to deal with the account. Those records confirm contact made by Ms Cleary in relation to payment. It also notes contact made by Mr G about the account. It records Mr G advising that he would make payment by a certain date for some outstanding bill. It also records Mr G confirming that "*his girlfriend paid the mobile charges*". As I have previously noted the power bill was ultimately in the name of Ms Cleary at the [address 2 deleted] property and the email address for correspondence was that of Mr G.

[34] When speaking to Constable Hutton on 1 July 2012 Ms Cleary said:

[Mr G] and I are both working full time but we are under financial stress. I have a friend who has been living with us for the past 5 weeks. This is not working and she doesn't pay rent. She eats our food and boosts up our power bill. She already owes us \$800. We have told her to leave but she doesn't. this has put a lot of stress on our relationship. Both [Mr G] and I have children to support who are not living with us at the moment.

[35] It must be remembered that how a couple's financial arrangements appear on examination will vary and depend on the particular circumstances of that couple. As noted in *R v Ruka* a financial arrangement which enables one partner to claim a benefit does not create a genuine absence of financial interdependence or support or willingness to support. With that in mind it is relevant to note that in November 2014 Mr G and Ms Cleary were briefly on a joint benefit while living at the farmhouse. That benefit was applied for and granted shortly after Ms Cleary's interview with Mr Schultz, the prosecution investigator. During that interview Ms Cleary had said she couldn't be in a relationship with Mr G because Mr G's income was too low to support both her and her three children. This illustrates an

insight and knowledge on the part of Ms Cleary about the financial implications or difficulties of being in a relationship and on a joint benefit.

[36] Using the language of Blanchard J in *R v Ruka* I am satisfied based on the evidence that there was a commitment and willingness on the part of Ms Cleary and Mr G to support each other financially if that need arose that went beyond the mere sharing of living expenses. There was a degree of financial engagement and understanding between Ms Cleary and Mr G that illustrates that commitment and understanding. This finding coupled with the overwhelming evidence that Ms Cleary and Mr G were living in an ongoing intimate relationship satisfies me that during the relevant time period Ms Cleary was living in a relationship with Mr G in the nature of marriage.

### **The charges**

[37] The focus of the trial was on the nature of Ms Cleary's relationship with Mr G. However with the nature of that relationship established the prosecution must prove beyond reasonable doubt the essential elements of the charges Ms Cleary faces. With respect to the Social Security Act charge the prosecution must prove:

- (a) That Ms Cleary wilfully omitted to disclose that she was living with Mr G.
- (b) That this wilful omission was for the purpose of misleading or attempting to mislead any officer concerned with the administration of the Social Security Act.
- (c) That this resulted in Ms Cleary receiving a benefit under the Social Security Act.

[38] With respect to the nine Crimes Act charges of using a document the prosecution must prove beyond reasonable doubt in respect of each document:

- (a) That Ms Cleary used the document.

(b) That Ms Cleary did so dishonestly and without claim of right.

(c) That Ms Cleary did so with intent to obtain a pecuniary advantage.

[39] Dishonesty and Claim of Right are defined in the Crimes Act.

### **Social Security Act charge – CRN ending 115**

[40] As set out in Appendix A Ms Cleary had been on a benefit since 6 January 2011. It is clear from the documentary exhibits produced into evidence and from the evidence of Ms Robinson that Ms Cleary was required to advise of any change in her circumstances including starting or resuming of a relationship while on a benefit. It is also clear from the evidence that this obligation had been explained to Ms Cleary and she had acknowledged her understanding of that obligation.

[41] The evidence clearly establishes that Ms Cleary did enter into a relationship with Mr G from at least April/May 2012 until at least November 2014. The Social Security Act charge covers the period 4 May 2012 to 5 November 2012. During this period Ms Cleary made two applications for temporary additional support but failed on both occasions to inform the Ministry of the change in her circumstances namely the relationship with Mr G since going on to the domestic purposes benefit in January 2011. I am satisfied that this omission was deliberate or wilful on Ms Cleary's part and done for the purpose of misleading those responsible for administering her benefit which resulted in her receiving a benefit. I therefore find Ms Cleary guilty of this charge.

### **Crimes Act charges**

[42] The remaining Crimes Act charges concern seven temporary Additional Support Application forms (four of which are Re-Application forms), one Child Inclusion form and one Personal Details form.

[43] There is no dispute that each of these forms is a document as defined in the Crimes Act. There is no dispute that Ms Cleary has used each of the documents when she submitted them to the Ministry of Social Development. The question is

whether she did so dishonestly and without claim of right with the intention of obtaining a financial advantage. As I have already noted the documentary evidence together with the evidence of Ms Robinson establishes that Ms Cleary was obliged to advise the Ministry of Social Development if she was in a relationship at the time she used each of the documents in question. The evidence establishes that Ms Cleary was aware of that obligation.

[44] On all four of the Temporary Additional Support Re-Application documents (Exhibits 3, 6, 8, 9 and 12) and the Child Inclusion Form (Exhibit 10) Ms Cleary has specified that she did not have a partner and that she was single. With respect to the two remaining Temporary Support Application forms (Exhibits 4 and 5) there is no direct question about Ms Cleary's relationship status in contrast to the Temporary Additional Support Re-Application forms. However the two forms do ask whether Ms Cleary lives alone to which Ms Cleary has answered "no" describing Mr G as a "flatmate". This has meant all of the following questions about partner assets and income have been answered on the basis that Ms Cleary did not have a partner at that time.

[45] While not specifically referred to or advanced by the defence no doubt the defence ask me to accept based on defence evidence that Ms Cleary was not acting dishonestly when she used the documents and believed that she was entitled to maintain throughout the relevant period that she was single. The overwhelming nature of the objective evidence about Ms Cleary's relationship with Mr G is such that the irresistible inference to be drawn is that Ms Cleary did have a dishonest mind when she used the documents and cannot have believed that she was entitled to act as she did. I am therefore satisfied that Ms Cleary dishonestly and without claim of right used these documents. The obvious inference to draw is that she did so with the intention of obtaining a financial advantage. As the Supreme Court said in *Hayes v R*<sup>6</sup> it does not matter whether Ms Cleary is entitled to the benefit in any event or may be trying to avoid the risk of not continuing to receive it. It is the benefit itself that constitutes the advantage. I therefore find Ms Cleary guilty of the seven charges relating to the seven Temporary Additional Support applications (three of which are Re-Applications) and the one Child Inclusion form charge.

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<sup>6</sup> [2008] NZSC 3 at [16]

[46] The final charge relates to the Personal Details form scanned into the Ministry's system on 18 August 2014 (Exhibit 11). This follows Ms Robinson's interview with Ms Cleary after concerns were raised about Ms Cleary being on the correct benefits. Included in the Personal Details form is Ms Cleary's handwritten letter in which she admitted to being in a relationship with Mr G in the previous two years. It goes on to indicate that no such relationship now exists other than of the type suggested by her in evidence. As a result of this letter submitted with the personal details form Ms Cleary's benefit based on her single status was reinstated. Again the objective evidence establishes that at the time this form was used Ms Cleary was in a relationship with Mr G. The information contained in the personal details form prompted the reinstatement of her benefit. I am satisfied that Ms Cleary knew at that time that she remained in a relationship with Mr G. The evidence that they went on to a joint benefit only a matter of months after this form was used and the investigation into her benefit entitlements begun is also significant. I am therefore satisfied that Ms Cleary has used the Personal Details form dishonestly and without claim of right with the intention of obtaining a financial advantage and I find her guilty of this charge.

### **Conclusion**

[47] For the reasons contained in this judgment I am satisfied beyond reasonable doubt that Ms Cleary was in a relationship with Mr G in the nature of marriage during the relevant time period. Further I am satisfied beyond reasonable doubt that Ms Cleary is guilty of the 10 charges she faces.

PAH Hobbs  
District Court Judge

This Decision was sent by me to the Registrar  
on \_\_\_\_\_ at \_\_\_\_\_ pursuant to Section 106(4)(b).

## **APPENDIX A**

1. Domestic Purposes Benefit – between 6 January 2011 to 20 April 2011; and
2. Non Beneficiary Benefit – between 20 April 2011 to 21 November 2011; and
3. Sickness Benefit – between 30 November 2011 to 5 November 2012; and
4. Sickness Benefit – between 1 December 2012 to 15 July 2013; and
5. Job Seeker Support – between 15 July 2013 to 9 September 2013; and
6. Job Seeker Support – between 9 September 2013 to 3 March 2014; and
7. Sole Parent Support – between 3 March 2014 to 3 November 2014