

receive samples of building materials for the prefabricated houses to determine whether these products would be suitable for use in New Zealand. He said he provided details of the new post office box to his mother so she could arrange for samples to be sent there.

Buffer machine arrives at Vertex's post office box with two shipping container seals hidden inside

[12] On 15 September 2014 a package arrived from the Czech Republic at the International Mail Centre at Auckland International Airport. The consignor's name was similar to, but not exactly the same as Mr Antolik's mother's name. The address of the consignor was the same as that of his mother except that the unit number was not shown, only the street number. The contents of the package were described as "car accessories". The consignee was Vertex and the address was the post office box Mr Antolik had recently opened.

[13] Upon inspection by Customs staff at the airport, the package was found to contain an electric car buffer machine. Concealed inside the motor cavity of this machine were two shipping container seals comprising two bolts and two cylinders each of a different type and with a different identification number. These are used to seal the doors of shipping containers and are designed so that once they are broken they cannot be reused. This enables Customs to detect whether a container has been tampered with or opened prior to clearance. A Customs officer at the airport made a cut in each of the bolts so that they could be subsequently identified and took a note of the numbers on the cylinders (one of these was CZ01118711). The buffer machine was then repackaged with the marked seals inside it and returned to the mail system for delivery.

[14] Mr Antolik was expecting a package to arrive. His mother had sent him the track and trace number for it. Mr Antolik said he expected the package to contain samples of building materials for his proposed new business. On Thursday 18 September 2014 Mr Antolik collected the package from Vertex's post office box. He said he did not notice that the Customs declaration described the contents as "car accessories" and he was not expecting a buffer machine. He removed the buffer

machine from the box after he got home. He said he heard a rattling noise indicating that something was loose inside it. He said he plugged the machine in but it did not work. He said that he became "curious" and opened the machine up to see what was causing the rattling. He found the two seals inside. He said he thought these may have "got in there by accident", "maybe in the factory". Although he "found it weird", he said he "didn't pay much attention". He put the buffer machine back together and left it in his garage. He initially said he put the seals into a drawer in his office and "just forgot about it". However, Mr Antolik later retracted this and said that he threw the seals in the bin with the packaging. He claimed that he did not draw any link between the seals and any shipping container at that time.

Shipping container arrives in New Zealand

[15] On 17 September 2014 the shipping container with the fruit juice consigned to Mr Antolik's company arrived at the port of Tauranga. The waybill showed Mr Antolik's mother of AGS Studio in Prague as the shipper. R Ltd was shown as the consignee. The container number on the waybill was correctly shown as MRKU7568932 but the seal number was incorrectly recorded as CZ0118711. This matched the number on one of the seals that was found hidden in the buffer machine. However, the seal number recorded on the waybill and on the seal found in the buffer machine did not quite match the seal on the container because both had an additional "1" (the seal number on the container was CZ0118711). This discrepancy between the number on the waybill and the number on the seal of the container was noted by a Customs officer at Tauranga.

[16] After the seals were found in the buffer machine, a Customs officer was assigned to the task of ascertaining whether the seal numbers matched any container arriving from the Czech Republic over a three-month period. On Friday 19 September 2014 this Customs officer established that a container with a matching seal number had recently arrived at the port of Tauranga. On checking at that port she found that the container had already been dispatched to Metroport, a Customs bonded area at Onehunga, Auckland. She immediately directed two other Customs officers to go to Metroport but on arrival they discovered that the container had just been collected by Mainfreight and was on its way to Store Rite's premises in East Tamaki. Instructions

were then given to the driver to take the container, which had not yet been opened, to a secure inspection facility at the Auckland wharf.

[17] Just after 7.30 that evening, Customs officers opened the container and found that it contained pallets of juice cartons, all but 10 of which were branded "N". Seven of the other cartons were branded "R" and three were branded "H". The R-branded cartons were stacked on the top layer nearest to the doors of the container with the H-branded cartons underneath. Twelve one-litre Tetra Pak juice "bottles" were packed into each of the seven R-branded cartons. Six of these cartons had a single Tetra Pak bottle with a zip lock bag containing MDMA powder concealed inside.

[18] Mr Antolik's evidence was that he received a telephone call from a person at Mainfreight at about 5 pm that day advising him that the container had been redirected to the Port of Auckland to be examined by Customs. He was told that there was an issue with the seal. Mr Antolik said that his biggest concern was that he would not be able to make his scheduled delivery of juice to a supermarket client the following Monday. He said he decided to retrieve the seals that had arrived inside the buffer machine from his bin and check the numbers against the shipping documents he had saved on his computer. He said this was when he discovered that the number on one of the seals matched the seal number on the shipping documents. He said he found this "really strange and bizarre" and he decided to take the seals to Customs the following day to "find out what's happening with the container".

[19] Mr Antolik was under police surveillance on Saturday 20 September 2014 when he drove to the main entrance and security checkpoint for the Port of Auckland. He got out of his car and was seen observing the security checkpoint for approximately three minutes. He then drove to the secondary port entrance before driving off. Mr Antolik was arrested later that day as he was driving with his wife in the vicinity of the Auckland airport near the Customs office. Police found the two shipping container bolts in the pocket of Mr Antolik's trousers. The cylinders were in Mr Antolik's jacket pocket on the back seat of the car. Police also found a "post-it" note on the front passenger seat recording the container number matching the shipping documents and the seal found in the buffer machine — CZ01118711.

Crown case

[20] The Crown's case was that Mr Antolik was knowingly involved in the importation of the MDMA. The Crown contended that Mr Antolik's explanation about the buffer machine with the seals hidden inside it was implausible. The Crown suggested that the seals were sent by Mr Antolik's mother to enable him to open the container, remove the drugs and reseal it without anyone knowing.

Defence case

[21] Mr Antolik and his mother gave evidence. Both denied having any knowing involvement in the importation of the MDMA or the buffer machine with the hidden seals. They suggested that Mr Antolik must have been framed. Two unrelated scenarios were suggested as providing the potential motivation for someone to seek revenge against Mr Antolik by framing him as the importer of the MDMA.

[22] The first arose out of an incident in September 2003 in which a man was shot dead in Mr Antolik's presence. Mr Antolik said the shooter had been a passenger in his car after they had been socialising in a bar in central Prague. After stopping at the passenger's request, Mr Antolik said the passenger struck a man over the head with a beer bottle. This led to a fight during which the passenger shot the other man. Mr Antolik said he did not see the shooting because he was running back to his car at the time this occurred. The passenger got back into the car and instructed Mr Antolik to drive away, saying "I think I shot the guy". Mr Antolik observed that the passenger had a gun in his hand.

[23] Mr Antolik claimed he was visited two days later by two Czech policemen. He said the policemen must have been bribed by the shooter because they pressured him to give a false account that he had seen the incident and could confirm that the gun had discharged accidentally. Mr Antolik claimed that when he declined to give such false evidence, he was threatened with being charged as an accessory to murder. He said the police told him that if he went into hiding, he would be declared a fugitive from justice and could be shot on sight.

[24] Fearing for his safety, Mr Antolik said he fled to New Zealand. He said his friend, Jan Antolik, had two passports and gave him one of these. He entered New Zealand using this false name and passport.

[25] In late 2011 Mr Antolik was found guilty by a jury in the District Court at Auckland of four charges of supplying false or misleading information contrary to the provisions of the Immigration Act 1987 and one charge of possessing a false passport contrary to s 31 of the Passports Act 1992. Judge Wade accepted Mr Antolik's explanation about the background circumstances described above and discharged him without conviction on each of these charges.⁶

[26] During the course of the trial for the present offending Mr Antolik's mother produced a Czech newspaper article relating to this prosecution which included a photograph of Mr Antolik and referred to his assumed and real names. This article also referred to the murderer who had been a passenger in Mr Antolik's car and stated that he had been sentenced to 10 years' imprisonment. Although Mr Antolik's mother was not able to say whether the murderer would have served his full sentence, the implication was that he might have been motivated to seek revenge against Mr Antolik for failing to provide false evidence and the timing of his release may have coincided with the timing of the drug shipment. Further, the evidence was that although in 2014 five kilograms of MDMA would sell for over \$350,000 in New Zealand, it could be purchased in Europe for a small fraction of that price at that time. The cost of framing Mr Antolik by this means would therefore have been considerably less than \$350,000.

[27] The second scenario described in evidence as potentially providing a motivation to frame Mr Antolik arose out of his mother's purchase of a diamond from a merchant in the Czech Republic, TrustWorthy Investment CZ (TrustWorthy). Mr Antolik said his mother purchased this diamond on his behalf for an engagement ring. The purchase agreement was between R Ltd and TrustWorthy and is dated 20 March 2014. Mr Antolik's mother claimed that TrustWorthy supplied a diamond that was substantially inferior to the one she had purchased. She said that when she sought return of her money she was referred to Michal Spurny, the principal of

⁶ *R v Antolik* DC Auckland CRI-2009-004-25486, 21 December 2011.

TrustWorthy. She said that during a telephone conversation in May 2014, Mr Spurny threatened her by saying words to the effect that she needed “to be careful with [her] decision making” and “that [she] and [her] son could end up in a jail”. Mr Antolik’s mother said she responded by saying that if anyone was going to end up in jail it would be Mr Spurny and his associates. She engaged lawyers to write on her behalf and they made a formal complaint of fraud against TrustWorthy to the District Attorney’s office in Prague on 30 June 2014. The defence implied these events could also fit with the timing because the container left the Czech Republic by ship one month later, on 28 July 2014.

[28] Mr Antolik’s mother denied any involvement in sending the buffer machine with the seals to her son. She acknowledged sending him the tracking details for this package but claimed those details were given to her over the telephone by a woman she did not know and whose name she could not recall. She said this woman telephoned her and introduced herself as a broker or agent of Czech Trade, a company that assists other Czech companies “to make business contacts”. She said this woman asked her whether she exported to New Zealand and if so whether she would be interested in exporting building products for houses. Mr Antolik’s mother confirmed her interest in this and gave the woman Vertex’s post office box number expecting she would send brochures and samples of building materials to that address. She claimed that the only other time she spoke to this woman was when she rang back a few days later to give her the tracking details for the package which she passed onto her son.

[29] Mr Antolik’s mother acknowledged that the sender’s address on the package was her address although the unit number was missing. However, she said she does not know anyone with the same name as that shown on the package as the sender. Mr Antolik also confirmed that he does not know anyone by this name.

[30] Mr Jones QC represented Mr Antolik at the trial as well as on this appeal. In his closing address to the jury, he submitted that the Crown case fell well short of establishing that Mr Antolik was knowingly involved in the importation of the MDMA. He described the Crown’s investigations and evidence as inadequate and incomplete in many respects. He suggested that the Crown’s explanation of the purpose of the seals found hidden in the buffer machine made no sense because

Customs would not have allowed Mr Antolik to access his container before it was cleared. Mr Jones also reminded the jury that Mr Antolik's mother was not challenged on her evidence about the threat made by Mr Spurny that she and her son could find themselves in jail.

Verdict

[31] In unanimously finding Mr Antolik guilty, the jury must have been satisfied that the Crown's evidence was sufficient to prove the elements of the charge beyond reasonable doubt. The jury plainly rejected the evidence of Mr Antolik and his mother and must have been satisfied that the Crown had excluded the reasonable possibility that someone else had planted the MDMA in the container without Mr Antolik's knowledge in order to frame him.

Application to adduce further evidence

[32] Mr Antolik applies to adduce further evidence in support of his appeal, being an affidavit from Vaclav Kratochvil, a private investigator in the Czech Republic. Mr Kratochvil was hired by R Ltd in May 2016, some three months after Mr Antolik was convicted.

Further evidence

[33] Mr Kratochvil says in his affidavit that he was told by CS Cargo that container seals can be made to appear as though they have been locked when this is not the case. He was told that this can easily be done by placing a piece of cardboard between the two main parts of the seal to prevent the seal from locking. Mr Kratochvil says that this was demonstrated to him. This technique enables a container that appears to be sealed to be opened. Mr Kratochvil says that if this was done to the container consigned to R Ltd, it would have been possible to manipulate the seal and the cargo at any time after the container was loaded at Linea. He says that there are many petrol stations and parking places between Linea and the port terminal where this could have occurred without anyone noticing. Mr Kratochvil also states that security at the port terminal is "almost non-existent" and he was able to get in "without any problems".

He says that the area is not secured by a fence and there is no security service. Mr Kratochvil concludes that it is “very easy” to “manipulate cargo during its transport within the Czech Republic” and “there is no risk for anyone who chooses to do so”.

[34] Mr Kratochvil says that the shipping company, Maersk Line, confirmed that the seal on the container — ML CZ0118711 — is a legitimate Maersk seal but the seal number on the shipping documentation and on the seal found in the buffer machine — ML CZ0118711 — is not. His enquiries reveal that the seals are issued by a dispatcher in a Maersk office to the contracted shipping company, in this case CS Cargo. The seals are then given to the drivers who are responsible for locking them on the doors of the containers at the time of collection.

[35] Mr Kratochvil says he managed to track down the driver who collected this particular container but the driver refused to comment. Mr Kratochvil says the driver was employed as a contract driver by Maersk in the Zlin region in the Czech Republic which is where Linea is located. However, Mr Kratochvil says the driver left his employment approximately two weeks after the container was shipped.

[36] Mr Kratochvil also states that a man by the name of Matous Kozumplik was a member of the board of TrustWorthy at the time Mr Antolik’s mother had her discussion with Mr Spurny. Mr Kratochvil says he has ascertained that prior to joining TrustWorthy, Matous Kozumplik worked in a senior position in two companies founded in Zlin by a group of local entrepreneurs. He claims that these entrepreneurs are “controversial businessmen” who were investigated by the police about the sale of fake diamonds. Mr Kratochvil suggests that there could be a connection between Matous Kozumplik and a person by the name of Pavel Kozumplik, who is the owner of a transport company where the Maersk driver is said to have worked at some unspecified time in the past. Mr Kratochvil says that “Kozumplik” is not a very common name in the Czech Republic. He says that “further enquiry” revealed that Matous Kozumplik from TrustWorthy and the driver knew each other. Mr Kratochvil says that members of Matous Kozumplik’s family “are highly influential in the Zlin region due to their involvement in the regional politics and their close ties to the police and customs authority of the region”.

Legal principles

[37] The test to be applied in considering whether to admit new evidence was set out by the Privy Council in *Lundy v R*:⁷

The Board considers that the proper basis on which admission of fresh evidence should be decided is by the application of a sequential series of tests. If the evidence is not credible, it should not be admitted. If it is credible, the question then arises whether it is fresh in the sense that it is evidence which could not have been obtained for the trial with reasonable diligence. If the evidence is both credible and fresh, it should generally be admitted unless the court is satisfied at that stage that, if admitted, it would have no effect on the safety of the conviction. If the evidence is credible but not fresh, the court should assess its strength and its potential impact on the safety of the conviction. If it considers that there is a risk of a miscarriage of justice if the evidence is excluded, it should be admitted, notwithstanding that the evidence is not fresh.

[38] Ultimately, the question is whether the new evidence that has been presented might reasonably have led to an acquittal.⁸

Analysis

[39] We do not consider that the further evidence should be admitted. For the reasons that follow, we have concluded that it is neither fresh nor cogent. In our assessment the further evidence would have made no material difference and could not reasonably have led to an acquittal.

[40] Mr Antolik was charged in September 2014. The trial did not commence until February 2016. No explanation has been given as to why Mr Kratochvil was not engaged until May 2016 or why, with reasonable diligence, his evidence could not have been obtained before the trial. The evidence is not fresh.

[41] The Crown did not contend at the trial that it would have been impossible for the cartons containing the drugs to have been placed in the container at any stage between the time it left Linea's premises in July and the time it arrived in New Zealand in September 2014. The Crown did not seek to prove when, how or who actually did

⁷ *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273 at [120].

⁸ At [150].

this and it was not required to do so. Rather, the Crown's case was that at some stage prior to the container being opened at the Auckland port, the cartons containing the MDMA were placed there and that Mr Antolik was knowingly involved in this. Therefore, even accepting Mr Kratochvil's evidence that it is possible to use cardboard to prevent a seal from locking, this could not materially assist Mr Antolik's case.

[42] Similarly, the Crown did not suggest at the trial that even if Mr Spurny from TrustWorthy had been so minded, it would have been impossible for him to have arranged for the drugs to be placed in the container at some stage prior to its arrival in New Zealand. For that reason, the new evidence suggesting a possible connection between Pavel Kozumplik, the owner of the company that employed the driver at some earlier unspecified time, and Matous Kozumplik, a director of TrustWorthy at the time the diamond complaint was made, is not only tenuous and speculative, it is of little assistance.

[43] In any case, the new evidence cannot help Mr Antolik overcome the principal difficulties he faces. It appears that Mr Antolik's mother was only one of many who complained about the quality of diamonds supplied by TrustWorthy. It seems unlikely that she would be singled out for retaliation. Nevertheless, if Mr Spurny was motivated to seek revenge against Mr Antolik's mother for pursuing her complaint, it might be expected that she would have been targeted rather than her son who was on the other side of the world.

[44] If Mr Spurny had selected Mr Antolik as the appropriate target for revenge, it seems extraordinary that he would have chosen this elaborate method which was not only difficult, expensive and risky, it had only a modest chance of succeeding. He would need to determine that R Ltd was in the business of importing fruit juice, find out who supplied the juice and who was involved in packing and transporting it. He would also need to ascertain when the particular container was due to be packed, collected and shipped. He would have to incur the significant cost of purchasing the drugs, which was far more than was paid for the diamond.⁹ He would then need to find a way of concealing the drugs inside the juice cartons either before or after they

⁹ Mr Antolik's mother said she paid the equivalent of approximately NZD10,000 for the diamond.

were loaded into the container. He would also have had to arrange for someone to impersonate a broker from Czech Trade and telephone Mr Antolik's mother to find out where to send the buffer machine with the seals hidden inside. Having gone to these lengths, he would have to leave it to chance that New Zealand Customs would examine the package containing the buffer machine at Auckland Airport, find the seals hidden inside and then make the connection to the container arriving by sea at the port of Tauranga in sufficient time to find the well-hidden drugs. As was pointed out to the jury, there was no evidence that anyone tipped off Customs in relation to either the buffer machine shipment or the container shipment.

[45] Mr Kratochvil's evidence also cannot help overcome the implausibility of Mr Antolik's evidence of his reaction when he received the buffer machine and what he did thereafter. It strains credibility that Mr Antolik could have thought that the seals had been placed in the buffer machine by accident during assembly in the factory and that he threw them in the bin without giving it a further thought. The jury was entitled to reject Mr Antolik's evidence and that of his mother as simply not credible.

[46] For these reasons, even if the new evidence had been available at the trial, we are satisfied that it would not have made any material difference and could not reasonably have led to an acquittal. The application to adduce the further evidence must accordingly be declined.

Ground 1 — unreasonable verdict?

[47] We are satisfied that there was ample evidence from which a properly directed jury could conclude that Mr Antolik was knowingly involved in the importation of the drugs.

[48] It is not disputed that Mr Antolik and his mother arranged for the container to be shipped to New Zealand and his company was the consignee.

[49] The jury would have been entitled to reject as wholly implausible Mr Antolik's mother's account of the two telephone calls she claimed to have received out of the blue from a woman she did not know, whose name she could not recall, and who

happened to be interested in exporting building materials from the Czech Republic for use in the construction of houses in New Zealand. The jury would have been entitled to infer that Mr Antolik's mother sent the buffer machine containing the seals to her son addressed to the post office box he had recently opened, the details of which he had just provided to her. This would explain how she obtained the track and trace details for the package and why she sent them to her son. This would also explain why Mr Antolik dismantled the buffer machine, extracted the seals and placed them in a desk drawer in his office instead of immediately contacting his mother to ask why she had sent him these items rather than the brochures and samples of building materials he claimed to have been expecting.

[50] The potentially incriminating contents of the buffer machine could explain why minor discrepancies in the sender's particulars may have been deliberately recorded on this package. The discrepancy between the seal number on the container and the number shown on the shipping documents may also have been deliberate so as to match the number on one of the seals hidden inside the buffer machine.

[51] Mr Antolik's actions on the day he was arrested, having been advised that there was a problem with the seal on the container, also support the conclusion that he knowingly participated in the importation of the drugs. This ground of appeal fails.

Ground 2 — miscarriage of justice?

Late disclosure and mistakes in the Crown evidence

[52] Mr Jones submits that the Crown ought to have enquired whether the seal on the container was real or fake. He claims that this was critical evidence because it would have demonstrated when the drugs could have been put into the container, who locked it and when this occurred. We disagree.

[53] The suggestion that the seal on the container may have been fake appears to have been made by Mr Antolik for the first time during the course of his evidence at the trial. The Crown had no reason to enquire into this possibility prior to the commencement of the trial. To the extent that the authenticity of the seal might have

been open to doubt, Mr Antolik was able to exploit this gap in the prosecution evidence. We are unable to see how the Crown can be criticised for failing to make these enquiries let alone how a miscarriage of justice could have resulted.

[54] In any event, Mr Kratochvil's evidence is that the seal was an authentic Maersk seal. Further, he claims that by using a piece of cardboard an authentic seal can easily be prevented from locking. Moreover, the Crown did not seek to prove when the drugs were placed in the container or who placed them there. It follows that it is immaterial whether the seal was real or fake and any enquiries the Crown could have made about this would not have assisted Mr Antolik.

[55] Mr Antolik next complains that the actual seal number on the container was not confirmed until part-way through the trial when photographs were produced. Up until then, the Crown was relying on notebook entries which accurately recorded the seal number. We are unable to see how the late provision of the photographic confirmation of the accuracy of this evidence could have led to a miscarriage of justice.

[56] Mr Antolik also complains that a Customs officer incorrectly noted the website address for the "H" branded boxes in the container as ending in ".co.nz" whereas the photographs that were obtained during the trial showed that the website address ended in ".cz". This error was inconsequential. The jury was not left in any doubt about the correct position and we are satisfied that the error did not prejudice Mr Antolik. If anything, it helped his case. Mr Jones placed heavy emphasis on the errors and other alleged gaps in the prosecution evidence in support of his submission in his closing address to the jury that the prosecution was "superficial", "inadequate and incomplete".

[57] The next complaint arises out of the Crown's reliance on an instruction in a Mainfreight "cartage advice" form which accompanied the container shipment. This document contained the following instruction in a section entitled "warehousing facilities and loading/unloading constraints":

PLEASE PHONE JAN BEFORE DELIVERY [Mr Antolik's cellphone number] AS HE NEEDS TO BE PRESENT AT UNPACK

[58] Mr Antolik explained that he gave this instruction to Mainfreight at the time he first engaged Store Rite's services in late 2013 but after the first two or three months he did not attend when containers were unpacked. Mr Jones says that the Crown abandoned reliance on this evidence as a result. We see nothing improper in the Crown referring to this evidence. It is not unusual for some evidence to lose its potency or to be discredited through cross-examination or by the introduction of other evidence at trial. It seems that this is what occurred here because this part of the evidence assumed no importance by the end of the trial. It was not referred to by Crown counsel in his closing address nor was it referred to by the Judge in his summing-up. In his closing Mr Jones highlighted the Crown's retreat from this evidence as another illustration of the flaws in its case. We cannot see how a miscarriage of justice could have resulted from this.

[59] Finally, Mr Antolik complains that a Customs officer initially gave incorrect evidence by producing photographs that did not relate to the subject container. This error was acknowledged at the trial and corrected. Again, we see no risk of a miscarriage of justice resulting from this error.

Reversal of the burden of proof

[60] Mr Jones submits that the Crown has "sat on its hands" leaving the defence with the burden of attempting to prove Mr Antolik's innocence. We do not accept this. Crown counsel repeatedly emphasised throughout the trial that the burden remained at all times on the Crown to prove Mr Antolik's guilt to the requisite standard and that he was entitled to the presumption of innocence. The Judge also emphasised these points in the standard and appropriate directions he gave in his opening remarks and in his summing-up. The jury could not have been in any doubt that the burden of proof rested with the Crown at all times and there was no onus on Mr Antolik to prove his innocence.

Conclusion

[61] We conclude that both grounds of appeal must fail. The jury's verdict cannot be said to be unreasonable and we are far from satisfied that there is any risk that

justice has miscarried. There is no suggestion of any error in the Judge's directions to the jury. That Mr Antolik was convicted following the jury's unanimous verdict simply reflects that the Crown had a strong case and the jury was entitled to conclude that the defence theory was far-fetched.

Result

[62] The application to adduce further evidence is declined.

[63] The appeal is dismissed.

Solicitors:
Barter & Co, Auckland for Appellant
Crown Law Office, Wellington for Respondent

Released under the Official Information Act

Police of the Czech Republic

6(b)(ii)

9(2)(a)

Number of Pages: 4

Official Record

of a statement pursuant Sec 158 (5) of the Code of Criminal Procedure

9(2)(a)

Given Name and Family Name: Jan Antolik
Given Name and Family Name (previous): Antolik

9(2)(a)

Residential Address:

9(2)(a)

Current address:

Ph:

Mailing Address:

9(2)(a)

Employer's Address:

9(2)(a)

Employment:

Professional Status:

Identity Card:

9(2)(a)

Purpose of appearance:

9(2)(a)

Re: Mr Sroubek Karel

9(2)(a)

Translator's Remark: * Unknown abbreviation.

Instructions:

6(b)(ii) & 9(2)(a)

Released under the Official Information Act

6(b)(ii) & 9(2)(a)

Released under the Official Information Act

I fully understood the instructions and I wish to state following:

6(b)(ii) & 9(2)(a)

6(b)(ii) & 9(2)(a)

Released under the Official Information Act

9(2)(a)
Inspector

Witness:
9(2)(a)

Testifying person:
Jan Antolik

24/10/2009 05:43

cc
Subject 202712 ANTOLIK / Jan, DOB 20.10.81 in Ostrov/Czech Republic, Czech Passport no.
37636622

IP Prague 202712 23.10.2009 1435 GMT

URGENT

IP WELLINGTON

6(b)(ii)

6(b)(ii)

Released under the Official Information Act

27/10/2009

6(b)(ii)

For police and judicial use only.

Thank you for your co-operation.

Best regards.

Ed.
I. Hague

=====

WARNING

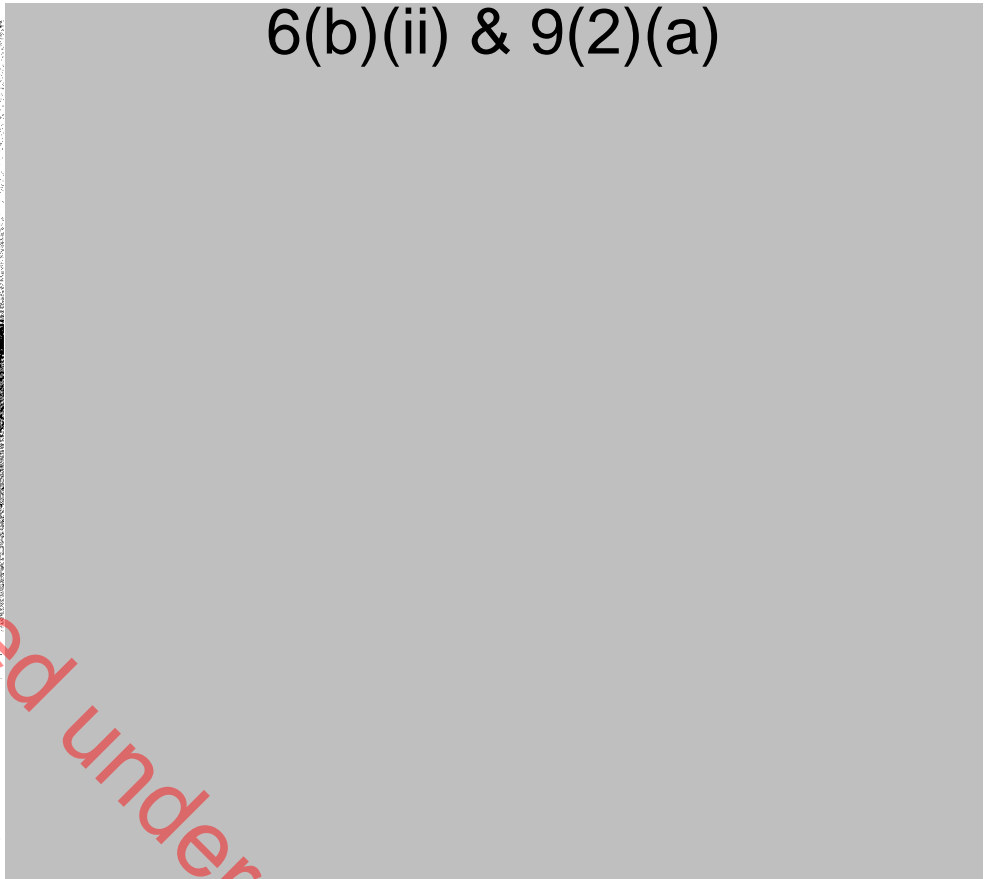
This message may contain information that is confidential and may be subject to the provisions of section 50 of the Policing Act 2008, which creates an offence to have unlawful possession of Police property. If you are not the intended recipient of this message or have received this message in error, you must not peruse, use, pass or copy this message or any of its contents.

Also note, the views expressed in this message may not necessarily reflect those of the New Zealand Police.

CC

Released under the Official Information Act

6(b)(ii) & 9(2)(a)



Released under the Official Information Act

out of scope

From: SPIERLING, Alistair (WELLHO) <[REDACTED] 9(2)(a)>
Sent: Wednesday, 21 March 2018 3:40 p.m.
To: Andree Taylor
Subject: FW: Karel SROUBEK aka Jan ANTOLIK

This is what I initially received from Interpol. They are okay with me sharing it with you.

Al

Alistair Spierling
Manager New Zealand Parole Board
Phone [REDACTED] 9(2)(a) (Mobile [REDACTED] 9(2)(a))
E mail: [REDACTED] 9(2)(a)

From: HUMPHRIES, Stephen (Steve) [mailto:[REDACTED] 9(2)(a)]
Sent: 20 March 2018 2:24 p.m.
To: SPIERLING, Alistair (WELLHO)
Cc: Interpol Wellington
Subject: Karel SROUBEK aka Jan ANTOLIK

Hi Alistair,

Further to our conversation a couple of weeks ago regarding SROUBEK / ANTOLIK, I went back to the Czech authorities to confirm that we have the correct understanding of their case against him, as there are a few slightly conflicting variations in our records. They have confirmed that the following summary is correct:-

Just to update our records and to confirm that our authorities fully understand the judicial processes that SROUBEK faces upon his return to the Czech Republic, can you please confirm that the following summary is correct:-

1. Prosecution

He is wanted for prosecution in connection with an incident on 07/09/2003 when he was one of a group of men involved in a violent attack on a victim, during which the victim was shot dead by another member of the group. We understand SROUBEK faces charges of "Attempted Bodily Harm" and "Disorderly Conduct" in connection with this incident.

- Is he also facing a charge of "Murder" ?

2. Service of sentence

He is wanted for service of a sentence of 54 months imprisonment in connection with an incident on 28/06/1999 in which he attacked and grievously injured two Police officers, and another incident on 04/10/1999 when he attacked a taxi driver. We understand that on 12/02/2002 he was convicted in relation to these two incidents for the offences of "Disorderly Conduct", "Damaging of Another's Property", and "Attacking a Law Enforcement Officer".

- Does he have any other convictions in the Czech Republic, other than the three convictions referred to above ?

Are we correct in our understanding of the case against SROUBEK ?

In answer to the two questions above, they advise that he has *not* been charged with murder (they have identified the shooter and it appears SROUBEK has not been charged as a party despite his involvement in the attack), and he has no other convictions in the Czech Republic other than the three convictions referred to at (2) above.

Could you please notify me of any developments in regards to parole so that I can keep my Czech counterparts updated.

Thanks for your assistance, and feel free to get in touch at any stage to discuss.

Best regards,

Steve



Detective Sergeant Steve Humphries

Senior Investigator: INTERPOL Wellington

Police National Headquarters | 180 Molesworth Street | PO Box 3017 | Wellington

P+ 9(2)(a) | M+ 9(2)(a) | ES 9(2)(a)

=====

WARNING

The information contained in this email message is intended for the addressee only and may contain privileged information. It may also be subject to the provisions of section 50 of the Policing Act 2008, which creates an offence to have unlawful possession of Police property. If you are not the intended recipient of this message or have received this message in error, you must not peruse, use, distribute or copy this message or any of its contents.

Also note, the views expressed in this message may not necessarily reflect those of the New Zealand Police. If you have received this message in error, please email or telephone the sender immediately

-----The information in this message is the property of the New Zealand Department of Corrections. It is intended only for the person or entity to which it is addressed and may contain privileged or in confidence material. Any review, storage, copying, editing, summarising, transmission, retransmission, dissemination or other use of, by any means, in whole or part, or taking any action in reliance upon, this information by persons or entities other than intended recipient are prohibited. If you received this in error, please contact the sender and delete the material from all computers.

THE QUEEN

V

JAN ANTOLIK

Hearing: 21 December 2011

Appearances: D Johnstone for the Crown
D Jones QC for the Prisoner

Judgment: 21 December 2011

ORAL JUDGMENT OF JUDGE ROY WADE

[1] Mr Antolik, please remain seated, because I want you to help your parents understand what it is that I am saying, albeit perhaps very briefly.

[2] On 4 November 2011, following a five day trial, the jury convicted you of four charges of supplying false or misleading information, contrary to the provisions of the Immigration Act 1987, and one charge of possessing a false passport, contrary to s 31 Passports Act 1992. I did not immediately enter convictions, but remanded you on the same terms of bail, to come back for sentence today, and I ordered the usual pre-sentence report and appendices.

[3] I say straight away, that it was an absolute pleasure to preside over your trial because I had the good fortune to hear two of the best advocates in this country locking horns with each other, and it was a real pleasure. The downside is that I now have to sentence you today and I tell you immediately, it has been one of the most

difficult sentencing decisions I have ever had to come to. Before I tell you what the decision is, I must briefly recite the relevant facts which were before the jury, and in the event, these essential facts were not in dispute. They are, that you originally had the birth name of Karel Sroubek, but you have used the name of Jan Antolik since your arrival in New Zealand. You were born in Prague, in the Czech Republic, on 20 February 1981. In the course of growing up, you displayed an interest in and an aptitude for the art of kick-boxing, which apparently originated in Thailand. Such was your talent in that sport that you began by winning a bronze medal in Thailand in 2001, followed by a gold medal in the 2002 European Championships. That resulted in your becoming a professional sportsman at the beginning of 2003.

[4] However, towards the end of the year, in September 2003, things went badly wrong in your life. On that occasion, you went to a bar in the centre of Prague. Essentially, you met up with others, and there came a time when there were two cars driving in convoy. You went in one of the cars following instructions from passengers to go to an area of Prague known as Prague 6. At some point, you were requested to stop your vehicle near a petrol filling station. One of the passengers asked you to stop the car whilst he looked at some premises, promising to be no more than five minutes, and whilst you and a companion were walking, you then witnessed the passenger who had asked you to stop the car smashing a beer bottle over the head of another man. That resulted in a fight breaking out and your running backwards towards your vehicle.

[5] There then followed a sound which you, at the time, you thought might have been due to a vehicle's exhaust, but which turned out to be the sound of a gunshot. The man who had asked you to stop jumped back into the car and instructed you to drive away, saying, "I think I shot the guy", and you saw for yourself that indeed he had got a gun in his hand.

[6] Not unnaturally, the Czech Police became involved. However, the evidence before me was overwhelmingly to the effect that the Czech Police have a reputation, widely held in the Czech community, that they are corrupt. In due course you were visited by two police officers and the only sensible inference is that the man responsible for the shooting had been able to bribe those officers into supporting the

shooter in a false account that the gun had gone off accidentally. When you were spoken to by the police, you then discovered that the petrol station in question was close to a second-hand car dealer currently being investigated for handling previously stolen cars, and then changing their identity. The two police officers put to you that the crime was going to be reported as a case of self-defence, with a man being shot trying to grab a weapon which was then accidentally discharged.

[7] You protested that you did not actually see for yourself what had happened, you did not want to be involved in any kind of cover-up, but the police officers made it plain that you had no other option but to support the account that was going to be given, otherwise there might be charges against you of being an accessory to murder and other unpleasantness. You were threatened that if you went into hiding, rather than co-operate with the police, you would be declared a kind of fugitive from justice, which would make you someone the police would be entitled to shoot on the spot. Apparently the Czech Police are armed as a matter of routine.

[8] You went home, you related your misfortunes to your parents, who advised you to see a practising lawyer. His advice to you was apparently to the effect that he could not advise you as a lawyer to run away and to make yourself scarce, but he made plain that would be the safest course of action for you to take. Before adopting that course of action, however, you did two things. The first was to make a video recording with your father's assistance, a matter of a very few days after the shooting, in which you recount what you had actually seen happen and more importantly, what you had not seen happen. You then approached your friend, Jan Antolik, who was also a kick-boxer. It transpired that Mr Antolik, for some reason (which we still do not understand) had two valid passports, and he willingly supplied you with one of them. You used the passport in the name of Antolik to cross the border from the Czech Republic into Germany because the border crossing was not usually subject to vigorous inspection of travel documents, and you then made the decision after your parents had confirmed that the police were indeed looking for you, to flee from the Czech Republic.

[9] You settled on the destination of New Zealand, partly because of its reputation for democracy and lack of corruption, but as well for the simple

geographical fact that it was as far away as possible for you to get from the Czech Republic. You then used Mr Antolik's passport on a number of occasions as set out in the indictment, namely on 15 April 2005, your application for a visitor visa which was count 1. On the same date, the application to work in New Zealand, count 2. On 5 November, applying to work in New Zealand, count 3, and on the same date, applying for residence in New Zealand, which was count 4.

[10] Later on you applied for and obtained another passport issued by the Czech Republic through the Consulate General Office here, resulting in your being charged on count 5 with possessing that passport, knowing that it was obtained by false representations and you again used the name Antolik and his date of birth in the documents in support of that passport.

[11] I repeat, none of that evidence was disputed at the end of the day, and in his closing address, Mr Johnstone, who so ably represented the Crown, expressly accepted to the jury that you indeed had a reasonable excuse for giving those Antolik details when you first arrived here on 16 September 2003. However, the Crown submitted that with the passage of time and the subsequent convictions of the man who committed the shooting, resulting in a long prison sentence for him, there was no reason thereafter why you could not have gone back to the Czech Republic, or for that matter had gone to the New Zealand Immigration Service to put forward the explanation given at your trial, and for you then to have applied to have stayed in this country under your original birth name.

[12] The defence that you put forward was that you could never be assured, even after seven or eight years, that you would be safe in the Czech Republic, either from the activities of the corrupt police, or possibly from the man convicted of the killing, who would have had a grudge against you as the video recording that you had made had indeed been put in evidence at the trial against him. It was upon that basis that you were convicted by the jury, notwithstanding the fact that your evidence was accepted in full. I have been provided with further information that makes me satisfied that indeed your concerns about still being subject to ill treatment either at the hands of the authorities, or at the hands of the individual concerned, are still there today.

[13] I am, of course, bound to accept the jury's decision, particularly as it is for the community as a whole to decide what is and what is not a reasonable excuse. However, I make no excuse for saying that for my own part, I do consider it somewhat of a counsel of perfection to have said that you should have gone back to your native country without any specific assurance that your life would not be in danger and it was quite understandable, to my mind, whilst you might fear (even erroneously) that the New Zealand authorities would not forgive you for your having misled them, and you may well have been genuinely of the view that if the New Zealand authorities knew what the truth was, they might revoke your existing visa and direct you to return to the Czech Republic. I am also reminded of the fact that in the interim, the Czech Republic has joined the European Union and there is apparently, still out there now, a European arrest warrant.

[14] I also note in your favour the undisputed evidence that you have never been a drain on the New Zealand public, first, either by way of drawing benefit or by taking advantage of the New Zealand health or education system. Quite to the contrary, the evidence before me suggests that you have made very much a positive contribution by reason of your international reputation and the tax that you have no doubt had to pay on your earnings.

[15] Also, Mr Jones makes the point quite soundly that the only false or misleading information given in your application forms was in relation to your true name and your date of birth. Such privileges you were granted by the Immigration Service were due to your own contributions and which you have fully deserved on your merit. What then is the appropriate penalty?

[16] I entirely accept that in the ordinary course of events, the appropriate penalty for both the passport and Immigration Act offences would be one of imprisonment at the order of somewhere between 18 months and two years, due to the overriding need for deterrence. However, this is an exceptional case.

[17] I do note here that the Crown, although maintaining that imprisonment would be an available option, do appropriately concede that a community-based sentence such as community detention or home detention would be appropriate here.

Mr Jones however, submits that in the particular and most unusual circumstances of this case, a discharge without conviction is the appropriate outcome. He does so on this basis. The affidavit that you have filed confirms that you are a hardworking sportsman and a businessman. You say, and I acknowledge, that you are still afraid of what might happen if you are returned to the Czech Republic and I can understand, as I say, your concerns in the light of the evidence put before me and I am satisfied that you genuinely did believe your life would be in danger and furthermore that was a result of your doing the right thing and telling the authorities the truth about what had happened.

[18] I have been reminded by Mr Jones of Article 31 United Nations Convention on Refugees which is part of our domestic law and also, of course, the recent cases of *X (CA746/09) v R* [2010] NZCA 522, 18 November 2010, and he has drawn my attention to the provisions of ss 156 and 158 Immigration Act 2009. Those provisions, in theory, enable the Minister to order the deportation of any person convicted of holding a visa under a false identity without any right of appeal or review.

[19] Mr Johnstone, for his part, has drawn my attention to a number of recent authorities and in particular, I have in mind the passages to which he has drawn my attention, in the case of *Osman v R* [2010] 199, at para 27, and the other case of namely, *R v Ondra* [2009] NZCA 489, paras 7 and 8 which make it plain that it is very important for the Court when sentencing, not to interfere with, nor anticipate the decisions of agents empowered by Parliament to deal with deportation issues. I entirely accept those criteria and I am satisfied that in the event your case will be looked at with some sympathy and with due consideration by the authorities. However, technically speaking, I cannot be satisfied that that will necessarily occur. I think Mr Jones is quite right in that in the same way that I listened to the evidence with care, it is important that the person making the decision, so far as your immigration status is concerned, should also approach that task with due care and I cannot be 100 percent that that would happen under the provisions of ss 156 and 158.

[20] I repeat that I am satisfied that your initial false applications were as a result of your doing the right thing, not the wrong thing and furthermore, had you been frank with the authorities when you first came here, it seems plain that you would have been granted a work permit and ultimately, residence in any event, on your own merits. So the fact that you did use a false name, I do not think has handicapped the State in any way.

[21] Now if I grant you a discharge without conviction, that will not ultimately prevent your deportation if the Minister, at the end of the day, considers that is the right thing to do, because of course, whatever order I make today, the Immigration authorities are well aware of your offending in any event. All that a discharge without conviction will do is that it will give you a certain chance of being able to argue your case on its merits and not run the risk of your being removed from this country without proper procedure and review. I am, therefore, disposed to grant you a discharge without conviction, on the ground that I am satisfied that the consequences of a conviction would be out of all proportion to the gravity of the offending.

[22] I can say that even without this argument about a discharge without conviction, I was minded to impose a community work order upon you in any event. I think there is much merit in Mr Jones' suggestion that I can still achieve that object by simply not ordering a discharge without conviction today, but promising you that will be done in due course, provided you do some community work in the meantime.

[23] I am therefore, going to adjourn this matter until my Judge-directed day in February, to enable you to do some community work in the meantime. Between now and the end of February, I would ask, Mr Antolik, that you do 200 hours of community work. I would then please ask you to come back to this Court on that date, with documentary evidence that you have completed that amount of community work, at which point I will discharge you without conviction. In a moment, I will give you the date.

[24] You will be remanded at large, until 28 February 2012 at 10.00 am. As I say, I am grateful to both counsel and I am grateful to you, Mr Antolik, and to your parents.



Roy Wade
District Court Judge

Released under the Official Information Act

Immigration Questionnaire

My answers to the questions below are numbered in the same numeric order as the questionnaire provided by INZ.

9(2)(a) & 6(c); next 6 pages also withheld on same grounds; these now-blank pages are not included in release file

Released under the Official Information Act

I

9(2)(a) & 6(c)

Released under the Official Information Act

Your sincerely

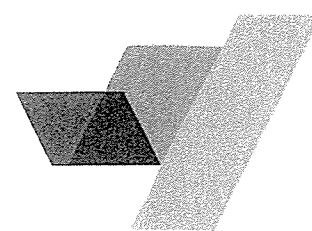
9(2)(a)

Signed :

Karel Sroubek a.k.a Jan Antolik

Date :

15 / 05 / 2018



Deportation Liability Questionnaire

As per the enclosed letter, Immigration Resolutions has concluded that you are or may be liable for deportation from New Zealand and is now seeking your comment. The purpose of this questionnaire is to help us understand your personal circumstances.

This questionnaire is optional; you do not have to answer any question unless you want to. You may also send extra supporting information and documents, which may include submissions from your family members, lawyer, immigration adviser or other persons. Any such submissions should be signed and dated by the person making them.

The information you provide will be included in a case file which will be considered by the Minister of Immigration or a Delegated Decision Maker (DDM). The Minister or a DDM will then decide whether you should be deported.

Instructions

Answer the following questions in English (or with translation) on a separate sheet of paper. Please note the number of each question alongside your answer. If you are completing this questionnaire electronically, enter your answers beneath each question. If a question does not apply to you, answer: 'N/A'. Please sign and date the document underneath your answers.

Once completed, return this questionnaire, your answers, and any other submissions and supporting documents to Immigration Resolutions at the address on the enclosed letter.

Submissions must be returned before the due date recorded in the enclosed letter. If you require an extension of time, please contact Immigration Resolutions before the due date. Immigration Resolutions may refuse to grant an extension where no good reason is provided.

It is an offence under section 342(1)(b) of the Immigration Act 2009 (the Act) to supply any information to an immigration officer knowing that it is false or misleading in any material respect. This should be noted by you and anyone else making submissions on your behalf or in support of your case.

If you are unable to complete this questionnaire, please contact Immigration Resolutions before the due date.

Questions

- 1) Please confirm your name, plus any previous names and aliases.
- 2) Please provide your address for service¹. This address will be used to serve, supply, notify or otherwise give notice or other documents to you.

NB: If you wish to have the address for service be that of a lawyer or agent they must provide a signed memorandum in accordance with section 386A(2)(b) of the Act stating that they accept service of the notice or document on your behalf.

- 3) Please provide your contact address, if different from the address provided in question 2 above. This can be a postal address.
- 4) What is your current email address, if you have one?
- 5) Please provide the address you will live at once you are released from prison.
- 6) If you intend to relocate in the next six months, please also provide your new address, if known.
- 7) Please advise us of your current home and/or mobile phone numbers.
- 8) Do you understand the reason why you may be liable for deportation, as detailed in the letter enclosed with this questionnaire?
- 9) Do you have any comment to make on the reason why you may be liable for deportation?
- 10) Why did you travel to New Zealand on 16 September 2003 using the false identity and passport of Jan Antolik.
- 11) You have three convictions in New Zealand and one of those convictions is for importing drugs which resulted in a sentence of imprisonment of five years and nine months. Do you have any comments to make about your offending while in New Zealand?
- 12) Where did you live before you came to New Zealand?
- 13) How long did you live there?
- 14) Do you have immediate family (partner, children, parents, siblings) living in that country or other countries besides New Zealand? If so, please provide details.

¹ An address for service is a physical address (not a post office box), in or outside New Zealand. This means that the address for service you give us, if different from the address for service you previously provided, will be taken as you giving written notice of a replacement address within the meaning of section 387(5) of the Act.

- 15) Do you have family living in New Zealand? If so, please provide details, including their names, dates of birth, relationship to you, and immigration status. This may include parents, siblings, or extended family who are important to you.
- 16) Are you in a partnership or marriage with anyone? If so, please provide their details, including their name, date of birth, and immigration status.
- 17) If you are in a relationship, please advise when it began.
- 18) If you are living with your partner, please advise when you first lived together.
- 19) Do you have any children from this relationship? If so, please provide their details, including their names, dates of birth, and immigration status.
- 20) Do you or your partner have children from previous relationships? Please provide their names and ages, and location if not in New Zealand.
- 21) Who is currently responsible for the day-to-day care of your children/step-children?
- 22) Are your children dependent on you for financial support?
- 23) Does any of your family visit you in prison? If so, who, and how often?
- 24) Are there any custody matters with respect to any of your children?
- 25) Are you in good health? If not, please provide details, including the treatment or medication you require or receive.
- 26) If you are not in good health, please describe how your medical conditions currently affect your daily life.
- 27) If you are not in good health, please describe how your medical conditions may affect your daily life in your home country.
- 28) Have you ever received counselling or other assistance for a drug or alcohol problem?
- 29) If you are liable for deportation as the result of a conviction, have you any outstanding appeal concerning that conviction?
- 30) Are you currently facing any charges, or under investigation for any offending?
- 31) Have you ever been convicted of any offence against the law in another country? If so, please provide details.
- 32) Whom will you live with once you are released from prison?
- 33) Are you currently employed? If so, please provide details, including the name of your employer, your role, what your daily work involves, and whether you work part-time or full-time.
- 34) What type of employment were you in before you came to New Zealand?

- 35) Have you worked for any other employer in New Zealand? If so, please provide details, including the term of employment and the name of the employer.
- 36) What type of employment do you intend to undertake in the future?
- 37) Is your partner currently employed? If so, please provide details, including the name of your partner's employer, his or her role, and whether your partner works part-time or full-time.
- 38) Do you, your partner, or any of your dependants receive a benefit or income support from the government? If so, please provide details.
- 39) Do you own any significant assets? If so, please provide details.
- 40) Do you have any debts? If so, please provide details, including how these are being repaid.
- 41) Do you have any qualifications, or are you currently attending any training courses? If so, please provide details.
- 42) While in prison, have you completed any training courses which may assist you once your sentence is complete?
- 43) If you have been convicted, have you completed any rehabilitative or counselling programmes that have helped you to address your offending?
- 44) Why did you choose to become a resident in New Zealand?
- 45) If you are deported, how would that affect you personally?
- 46) If you are deported, how would that affect your family?
- 47) If you have family in New Zealand, would any family member leave New Zealand with you if you were deported?
- 48) How do you believe you might contribute to New Zealand if your liability for deportation were suspended or cancelled?

Signed: _____

Date: ____/____/____

Translation from Czech Language

LAW OFFICE
9(2)(a)

9(2)(a) & 6(c)

Released under the Official Information Act

J

9(2)(a) & 6(c)

Released under the Official Information Act

9(2)(a) & 6(c)

Released under the Official Information Act

attorney-at-law

ADVOKÁTNÍ KANCELÁŘ

This is the untranslated version of the previous document

Released under the Official Information Act

This is the untranslated version of the previous document

Released under the Official Information Act

This is the untranslated version of the previous document

Released under the Official Information Act

Interpreter's Clause

As an official interpreter of English, appointed by the Regional Court in Prague on 9(2)(a), as recorded in file No. 9(2)(a), I hereby certify that the present English translation corresponds to the original Czech text of the attached document.

Recorded in the book of certified translations under the no. 528/13/2010

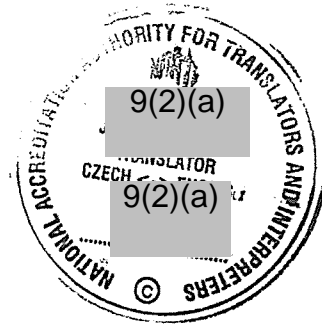
Dated on March 22nd, 2010

9(2)(a)



BARRISTER'S OFFICE
9(2)(a)

16



9(2)(a)

9(2)(a) & 6(c)

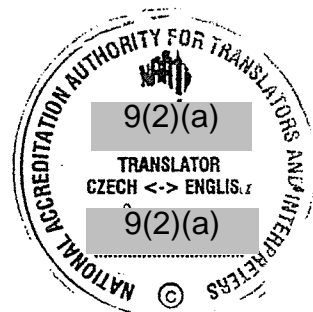
Released under the Official Information Act



EE022243

9(2)(a) & 6(c)

Released under the Official Information Act



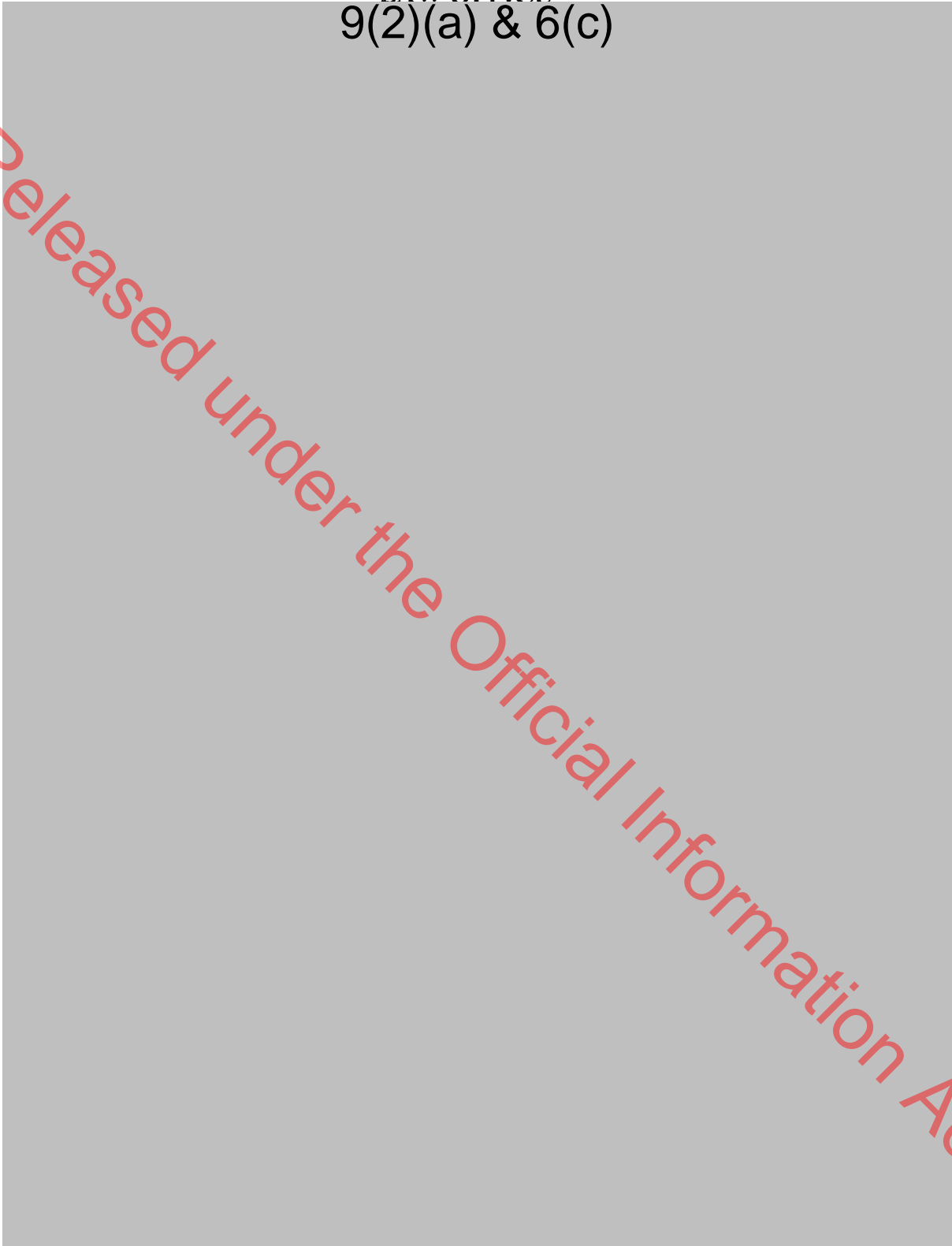
This is the untranslated version of the
previous document

Released under the Official Information Act

This is the untranslated version of
previous document

Released under the Official Information Act

LAW OFFICE
9(2)(a) & 6(c)



Released under the Official Information Act

