

**ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANY PART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED.**

**NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>**

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF SPECIFIED EVIDENCE AND INFORMATION PURSUANT TO S 205 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360353.html>**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 124/2021  
[2021] NZSC 159**

BETWEEN	LEONARD CAVE Applicant
AND	THE QUEEN Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: W C Pyke for Applicant  
B F Fenton for Respondent

Judgment: 17 November 2021

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B We make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest is permitted.**
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## REASONS

[1] The applicant faces charges of sexual and drug-related offending in relation to five former students of Dilworth School and one former student of St Paul's Collegiate. The date range of the alleged offending covers the periods between 1970 and 1985, in relation to the Dilworth offending, and between 2004 and 2006, in relation to the St Paul's offending. At the times of the alleged offending, the applicant was employed as a teacher by the schools concerned. In issue is whether the charges in relation to the Dilworth complainants should be dealt with at the same time as the St Paul's charges. This depends on the cross-admissibility of the evidence of the Dilworth and St Paul's complainants.

[2] In the High Court, Campbell J dismissed an application for severance.<sup>1</sup> The applicant's appeal against that decision was dismissed by the Court of Appeal.<sup>2</sup>

[3] The primary arguments in support of the proposed appeal relate to the period of time between the two alleged sets of offending (around 20 years), some distinctive features in relation to the alleged St Paul's offending that are said to be a likely cause of prejudice to the applicant and certain photographs that may pose some tactical difficulties (put rather higher than this by counsel for the applicant) as to how the defence should be conducted. These photographs, as described by counsel, appear to provide some support for the general narrative of the complainant, but could conceivably also provide some support for a defence of consent. As far as we can tell, the defence in relation to the Dilworth charges is that the alleged incidents did not occur.

[4] What was required of the High Court and the Court of Appeal was the application of established principles. The substance of the proposed appeal is simply that they got the application of those principles wrong. All relevant considerations were carefully reviewed in ways which reveal no apparent error. The proposed appeal thus does not involve a matter of general or public importance and there is no appearance of a miscarriage of justice.<sup>3</sup> As well, for the purposes of s 74(4) of the

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<sup>1</sup> *R v C* [2021] NZHC 1715.

<sup>2</sup> *C (CA424/2021) v R* [2021] NZCA 478 (French, Mander and Palmer JJ).

<sup>3</sup> Senior Courts Act 2016, s 74(2)(a) and (b).

Senior Courts Act 2016, we are not satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal ahead of trial.

[5] The application for leave to appeal is dismissed.

[6] For fair trial reasons, we make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest is permitted.<sup>4</sup>

Solicitors:  
Maurice Burney, Auckland for Applicant  
Crown Law Office, Wellington for Respondent

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<sup>4</sup> We note that on 16 November 2021, Moore J issued a minute suppressing certain information and evidence. This is the High Court order in respect of which there is a reminder above.