NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 122/2024
[2025] NZSC 37

BETWEEN	CHRISTOPHER OLIVER BRICE Applicant
AND	THE KING Respondent

Court: Williams, Kós and Miller JJ

Counsel: T Epati for Applicant
J A A Mara for Respondent

Judgment: 11 April 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Following a jury trial in the District Court, the applicant was found guilty of indecent assault. He was convicted and sentenced to six months' community detention and six months' supervision with a special condition to undertake any necessary counselling. He was also ordered to pay the victim $6,000 by way of reparation for emotional harm.[1] The applicant appealed, but the Court of Appeal upheld the sentencing Judge's refusal to discharge him without conviction or to permanently

1 *R v Brice* [2023] NZDC 26478 (Judge Zohrab) [Sentencing notes] at [74].

suppress his identity.[2] The Court took this view although it had been made aware after the appeal hearing—but before judgment delivery—that the applicant had made an additional $19,000 reparation payment to the victim.[3] The Court recorded its reasons as follows:

> [95] The fact Mr Brice has now fully (if belatedly) reimbursed the complainant for the economic losses she suffered as a consequence of the offending does not materially change our view that the Judge was correct to decline both the discharge without conviction and the name suppression applications. … The fact the payment has now been made therefore does not significantly affect the analysis undertaken in respect of both applications including our assessment of the gravity of the offending. The increased payment does not render Mr Brice's conviction disproportionate to his offending. Nor does it elevate the consequences of publication of his name to the qualifying level of extreme hardship.

[2] In this Court, the applicant now seeks leave to appeal against his conviction and the refusal of the Courts below to grant permanent name suppression.

The parties' submissions

[3] The applicant submits it is necessary in the interests of justice for this Court to hear and determine the proposed appeal because it involves a matter of general and public importance, and a substantial miscarriage of justice may have occurred.[4] The applicant submits the Court of Appeal erred in three respects. First, the Court erred in finding that the additional reparation payment and the victim's accompanying views were immaterial to whether a discharge without conviction should have been granted.[5] The applicant says the gravity of the offending is reduced by the additional payment having materially mitigated the impacts of the offending and by the victim potentially changing their view in favour of suppression as a result.

[4] Second, the applicant submits the Court of Appeal erred in declining his application to adduce further evidence from an expert clinical child psychologist as to the impact of lifting name suppression on his children.[6] Contrary to the Court's

---

2 At [66] and [84]; and *Brice v R* [2024] NZCA 539 (French, Jagose and Grice JJ) [CA judgment] at [98] and [100].
3 CA judgment, above n 2, at [91]–[97].
4 Senior Courts Act 2016, s 74(1), (2)(a) and (2)(b).
5 CA judgment, above n 2, at [86]–[97].
6 At [80].

findings,[7] the psychologist's evidence was cogent in supporting a finding of "extreme" hardship and there were compelling circumstances to justify ignoring the requirement for evidence adduced on appeal to be fresh.[8]

[5] Third, the applicant says the Court erred in finding that permanent name suppression was inappropriate as extreme hardship to the applicant's children was not established.[9] The applicant points to a discrepancy between two procedural pathways to name suppression under ss 200 and 202 of the Criminal Procedure Act 2011. One approach would be for the applicant to apply directly under s 200, on the basis that publication of his name would cause "extreme" hardship to his children;[10] the other is for his children to apply for name suppression under s 202 on the basis of "undue" hardship[11] and for the applicant then to seek suppression under s 200(2)(f) on the basis that publication would likely lead to the children's identification. The Court of Appeal applied the "extreme" hardship standard when it is arguable that it should have applied "undue" hardship.

[6] The applicant submits that the proposed appeal also raises issues regarding how victims' views and internationally recognised children's rights are relevant to name suppression. These matters are of general and public importance.

[7] In response, the Crown submits there is no issue of general or public importance, nor is there a real risk of a miscarriage of justice. The additional reparation payment does not materially alter the finding that the offending was "moderately serious".[12] Both Courts below considered the applicant's willingness to pay a greater sum in addition to the payment actually made before the appeal hearing,[13] and reparation payments are but one part of the overall assessment of whether to grant a discharge without conviction. The Crown further submits the Court of Appeal was

---

7 At [79].

8 The applicant refers to *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1998] 3 NZLR 190 (CA) at 193 per Richardson P and Tipping J; and *Q v New Zealand Customs* [2014] NZHC 2398 at [33].

9 CA judgment, above n 2, at [76], [78] and [82]–[83].

10 Criminal Procedure Act 2011, s 200(2)(a).

11 Section 202(2)(a).

12 Sentencing notes, above n 1, at [35], [37] and [39]; and CA judgment, above n 2, at [46] and [63]–[64].

13 Sentencing notes, above n 1, at [35] and [68]; and CA judgment, above n 2, at [17], [54], [62], [88] and [93].

correct not to accept the psychologist's evidence as it was not fresh; the freshness requirement is not to be "relegated to a technicality".[14] In any case, the Court had properly taken into account the potential impact of publication on the applicant's children. Finally, the Crown submits the "extreme" hardship threshold is necessarily high as it is set against the presumption of open justice. The interests of the applicant's children were properly considered as one relevant factor among others, and there is a clear public interest in open reporting in this case. Moreover, the argument that the "undue" hardship threshold should have applied instead of "extreme" hardship was not raised in the Courts below. It follows that this argument is unsuitable for appeal as this Court would lack the benefit the Court of Appeal's reasoned views.

Analysis

[8] While the parties' submissions raise some matters that in other circumstances might give rise to issues of general or public importance, we do not see the proposed appeal as an appropriate vehicle for their consideration. As to the weight to be attributed to reparations in sentencing, we note that both Courts below did, in fact, discuss the prospect of further reparation payments in addition to the initial $6,000 payment, and the Court of Appeal gave careful consideration to the fact of the additional payment once informed it had been made. We see these matters as intensely context specific and do not consider any genuine issue of principle arises on these facts. As to suppression, we agree with the Crown that the applicability of the "extreme" or "undue" hardship standards was not raised nor addressed in the Courts below and note, in any event, that the two procedural pathways to suppression were considered only recently by this Court.[15] More generally we see no appearance of error in the approach of the Courts below which would give rise to a risk of a miscarriage of justice, including as to the admissibility of additional evidence on appeal. It follows that we do not consider it necessary in the interests of justice for this Court to hear and determine the proposed appeal.[16]

---

14 *R (CA130/98) v R* CA130/98, 24 September 1998 at 4.
15 *M (SC 13/2023) v R* [2024] NZSC 29, [2024] 1 NZLR 83.
16 Senior Courts Act, s 74(1).

Result

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

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent