



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

28 FEBRUARY 2025

## **MEDIA RELEASE**

SOLICITOR-GENERAL'S REFERENCE (NO 1 OF 2024) FROM CA441/2023  
([2024] NZCA 318)

SC 110/2024

**Hearing of the Supreme Court in the Christchurch High Court  
Wednesday 12 March 2025**

### **CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

#### **Background**

These proceedings concern the law of ratification as it relates to delegated decision-making.

On 13 August 2019 the Crown filed charges against Mr Nikoloff for corrupt use and disclosure of official information under s 105A of the Crimes Act 1961. Under s 106 of the Crimes Act, the Attorney-General must give consent, or permission, before a person can be prosecuted under s 105A.

In practice, the Attorney-General's power under s 106 is commonly exercised by the Solicitor-General or by a Deputy Solicitor-General. Under s 9C(1) of the Constitution Act 1986, though, a Deputy Solicitor-General may consent to a person's prosecution under s 106 on the Attorney-General's behalf if the Attorney-General and Solicitor-General have both agreed in writing to this delegation.

In this case, Ms Brook, the Acting Deputy Solicitor-General (Criminal), consented to prosecute Mr Nikoloff under s 105A. However, the consent was invalid because although the Solicitor-General had granted a delegation of her own powers to Ms Brook, the Attorney-General had not agreed in writing to the delegation of his power under s 106 to Ms Brook. The only written consent from the Attorney-General in existence at that point was for a delegation to another named person who had previously held the position of Deputy Solicitor-General (Criminal). This error was identified in January 2021, before the trial commenced. On 16 March 2021, an "Instrument of Ratification" (the Instrument) was signed by the Attorney-General and Solicitor-General to ratify the consent given. This ratification would make Ms Brook's consent to Mr Nikoloff's prosecution valid.

Before the trial, Mr Nikoloff challenged the lawfulness of this ratification and applied for the charges to be dismissed under s 147 of the Criminal Procedure Act 2011.

On 11 June 2021, the High Court refused the application, concluding both that it was possible for the defective consent to prosecute to be ratified, and that the Instrument did in fact ratify the consent.

On 22 February 2024, the Court of Appeal allowed Mr Nikoloff's appeal, setting aside his conviction (although Mr Nikoloff had already served his sentence). The Court held that Mr Nikoloff's prosecution and conviction were "true nullities", meaning they could not be ratified. Further, even if they were not true nullities, ratification of the defective consent was not possible in the statutory and factual context of the case.

The Solicitor-General applied for leave, under s 317 of the Criminal Procedure Act, to refer two questions of law to the Supreme Court. These questions related to the effect of the procedure adopted by the Solicitor-General and Attorney-General to rectify the defective consent.

### **This appeal**

On 27 November 2024, the Supreme Court granted leave for the Solicitor-General to refer the following questions to be considered in the Supreme Court:

- (a) Was the defect in the leave given on behalf of the Attorney-General able to be remedied or rectified by the instrument of ratification?
- (b) Was the trial at which Mr Nikoloff was convicted a nullity?

### **Viewing of hearing**

The courtroom is open to the public.

This hearing of the appeal will also be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

### **The panel**

The Hon Justice Williams	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Ellen France	The Hon Justice Miller
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Judges as seen from the public gallery

### **Counsel**

- Solicitor-General (Referrer): *M F Laracy and Z R Johnston*
- Counsel assisting the Court: *S J Shamy and K N Stitely*

### **Sitting hours**

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

### **Enquiries**

Any enquiries about the hearing should be directed via email to [supremecourt@justice.govt.nz](mailto:supremecourt@justice.govt.nz).

Contact person:  
Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: Not publicly available  
Supreme Court leave decision: [\[2024\] NZSC 160](#) (27 November 2024)

