



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

14 OCTOBER 2024

## **MEDIA RELEASE**

**BRETT DAVID GRINDER v ATTORNEY-GENERAL AND ANOTHER**

(SC 147/2023)

**Hearing in the Supreme Court Tuesday 22 October 2024**

### **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**

The appellant unsuccessfully applied for the discharge of various special parole conditions under section 56(1) of the Parole Act 2002. This appeal concerns a judicial review of the decisions not to discharge the special conditions.

In 2003, the appellant was sentenced to preventive detention in relation to sexual offending that had occurred over a number of years. Preventive detention meant the appellant had to remain in prison unless the Parole Board (the Board) granted his release. In 2019, the Board released the appellant subject to standard and special conditions. The special conditions included electronic monitoring and restricting the appellant's ability to visit certain locations. On 9 February 2021, the appellant applied to the Board for a discharge of these conditions. The Board declined the application. Though the appellant sought a review of the Board's decision, the Panel Convenor dismissed his application. The appellant then applied to the High Court for judicial review of these decisions.

On 30 November 2022, the High Court granted the appellant's judicial review application. The Court found that the Board had applied the incorrect legal test when considering the application to discharge the special conditions. It directed the Board to consider whether the special conditions were a reasonable, necessary and proportionate means of ensuring the appellant did not represent an *undue risk* to the community.

On 24 November 2023, the Court of Appeal set aside the High Court decision. It concluded that special conditions can be imposed or maintained even if they are not necessary to ensure the risk to the community is less than "undue". Special conditions may validly address the risk of reoffending (even if the risk is not undue) provided that the conditions are for the specified statutory purposes and are not more onerous or last longer than is consistent with the safety of the community.

## This appeal

On 6 May 2024, the Supreme Court granted leave to appeal. The approved question is whether the Court of Appeal was correct to allow the appeal and in particular the proper approach to the imposition, variation or discharge of special conditions when a person subject to preventive detention is granted release on parole.

The Court also granted leave for The Law Association of New Zealand and the Criminal Bar Association of New Zealand to intervene. They will make submissions on matters of public interest but are not parties.

## Viewing of hearing

This hearing of the appeal will 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 Kós	The Hon Justice Ellen France	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Miller
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Judges as seen from the public gallery

## Counsel

- Brett David Grinder (Appellant): *V E Casey KC and I J G Hensman*
- Attorney-General (First Respondent): *C A Griffin and T Zhang*
- New Zealand Parole Board (Second Respondent): *M S Smith and V J Owen*
- The Law Association of New Zealand Inc (Intervener): *E P Priest and J J Jackson*
- Criminal Bar Association of New Zealand Inc (Intervener): *S Thode and J W Wall*

## 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). While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 596](#) (24 November 2023)

Supreme Court leave decision: [\[2024\] NZSC 50](#) (6 May 2024)