

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF WITNESSES/VICTIMS/CONNECTED PERSONS PURSUANT TO S 202 CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360349.html>**

**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: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF ANY COMPLAINANTS/ PERSONS UNDER THE AGE OF 18 YEARS WHO APPEARED AS A WITNESS PROHIBITED BY S 204 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360352.html>**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 28/2018  
[2018] NZSC 52**

BETWEEN	THOMAS JAMES LUKE OLLIVER Applicant
AND	THE QUEEN Respondent

Court: Elias CJ, O'Regan and Ellen France JJ

Counsel: A J Bailey for Applicant  
M H Cooke for Respondent

Judgment: 15 June 2018

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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## REASONS

[1] The applicant was convicted after trial of three charges of indecent assault in relation to two complainants, G and H. He was acquitted on three other charges.

[2] The applicant appealed unsuccessfully to the Court of Appeal against conviction on the basis he had not had a fair trial.<sup>1</sup> He seeks leave to appeal to this Court on the same basis.

[3] The argument that the trial was unfair is based on what occurred with the empanelling of the jury. The applicant was originally to be tried in relation to three complainants. A jury was empanelled on Monday 19 September 2016. The balance of the jury panel remained in Court until a foreperson was elected and the charges read. The trial got underway but, on 20 September when complainant F was called, she became upset and could not give her evidence. Ultimately, the charges relating to F, which included a charge of sexual violation by rape and charges of sexual connection with a child or young person, were dismissed. The trial was aborted and the jurors on that panel were dismissed from further duty. A new trial began on Wednesday 21 September relating only to the remaining two complainants, G and H.

[4] The jury members for the second trial relating to G and H were selected from the panel which had been present at Court when the first trial commenced (minus the discharged jurors). The second jury had accordingly heard the charges read out in relation to all three complainants including the more serious charges relating to F.

[5] The trial Judge addressed the point in his opening remarks to the jury. Nation J said:

I do need to say that on Monday you were in Court when the charges were read out and there was a list of witnesses read out. It was anticipated at that stage that a trial would proceed and that it would take up all of this week. In fact, for reasons that can quite often occur and sometimes do occur, that hasn't been possible and that trial is completely at an end. What happened during that time, those first two days, is totally irrelevant to the matters which you now have to consider and you must put them out of your mind. If you don't do that, there won't be a fair trial for the Crown or for Mr Olliver.

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<sup>1</sup> *Olliver v R* [2018] NZCA 74 (Brown, Brewer and Collins JJ).

[6] The Court of Appeal accepted it was undesirable for the second jury to be drawn from the initial panel. But the Court said there was no risk of a miscarriage of justice given the Judge's direction and the limited nature of the jury's knowledge – the jury did not know any of the circumstances of F's allegations nor whether they had been resolved. The Court also said there was nothing to suggest the outcome was affected because, for example, the applicant was acquitted on half of the charges.

[7] On the proposed appeal, the applicant wishes to challenge the Court of Appeal's approach and, particularly, the reliance on the Judge's direction.

[8] No question of general or public importance arises. Rather, the Court of Appeal made a factual assessment as to the impact of what had occurred. Nor does anything raised by the applicant suggest there is an appearance of a miscarriage of justice arising out of that assessment.

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

Solicitors:  
Crown Law Office, Wellington for Respondent