

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 33/2006  
[2006] NZSC 49**

**PETER MANA MCNAMARA**

v

**THE QUEEN**

Court: Blanchard, Tipping and McGrath JJ

Counsel: R B Squire QC for Appellant  
J C Pike for Crown

Judgment: 29 June 2006

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**JUDGMENT OF THE COURT**

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

**REASONS**

[1] Mr McNamara was convicted of rape and abduction. His single proposed ground of appeal in this Court against dismissal by the Court of Appeal of his conviction appeal is that certain remarks by the prosecutor in his closing address, and repetition in the trial Judge's summary for the jury of Crown and defence cases, created a miscarriage of justice because they were in breach of the spirit and intent of s 23A of the Evidence Act 1908. That section forbids, except with leave of the Judge, any questioning of a witness relating to the sexual experience of the complainant or her reputation in sexual matters.

[2] In our view, however, any further appeal on this ground is bound to fail. There was plainly no breach of s 23A. The references made by the prosecutor to the alleged character of the complainant simply reflected what was implicit in the respective cases presented by the Crown and the defence directed to the circumstances in which it was said that the complainant had been raped. The prosecutor cannot fairly be taken to have been making any insinuation about the existence of evidence unable to be called because of the rape shield. The proposed appeal therefore lacks any merit.

Solicitors:  
Mary-Ann McCarthy, Tauranga for Appellant  
Crown Law, Wellington