

**ALBANY TUHURU TAINUI**

v

**THE QUEEN**

Court: Tipping, McGrath and Wilson JJ

Counsel: G King for Applicant  
M D Downs for Crown

Judgment: 31 July 2008

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**JUDGMENT OF THE COURT**

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

**REASONS**

[1] The applicant seeks leave to challenge a decision of the Court of Appeal upholding his conviction for sexually violating a 14 year old complainant. Two grounds are proposed.

[2] The first suggests that evidence given by the complainant was inadmissible. The challenged evidence was to the effect that during the evening, an hour or so before the offending took place, the applicant had remarked to the complainant that

one in five women were the subject of sexual abuse. The Court of Appeal rejected the proposition that this evidence was “propensity” evidence and should have been excluded. The Court was correct to reach that conclusion. The challenged evidence was not evidence of propensity at all. It was evidence relevant to the applicant’s state of mind on the particular occasion and supportive, according to the weight the jury chose to put on it, of the offending charged. There is no point of principle involved in this ground and it cannot be said that the evidence should have been rejected on any other basis.

[3] The second proposed ground concerns contact which the applicant asserted had taken place between the complainant and a juror during the trial. The issue was raised with the trial Judge whose handling of the matter was endorsed by the Court of Appeal. Both the trial Judge and the Court of Appeal concluded that conduct of the kind alleged did not take place. Rather the contact was between the complainant and a court taker and was of an innocuous kind. We are not persuaded that there is any basis upon which this Court should examine what is essentially a factual issue a third time, there being concurrent findings below. There is no reasonable basis for asserting that the contact which actually took place might have led to a miscarriage of justice. Nor does this point raise any matter of general principle.

[4] As the applicant has not established any qualifying ground for the granting of leave, his application must be dismissed.

Solicitors:  
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