

NOTE: INTERIM HIGH COURT ORDER SUPPRESSING THE NAME AND IDENTIFYING PARTICULARS OF APPLICANT REMAINS IN FORCE.

NOTE: INTERIM HIGH COURT ORDER PROHIBITING PUBLICATION OF NAME OF RESPONDENT REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 127/2016
[2017] NZSC 25**

BETWEEN X
Applicant

AND YFT
Respondent

Court: Arnold, O'Regan and Ellen France JJ

Counsel: S M Cooper for Applicant
P F Wicks QC and M J Dew for Respondent

Judgment: 7 March 2017

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B We make no award of costs.

REASONS

[1] This is an application for leave to appeal against a decision of the Court of Appeal upholding (by a majority) a decision of the High Court to make an interim order suppressing the name of the respondent and the fact of its involvement in the proceeding until the proceeding comes to trial.¹

¹ *X v Attorney-General* [2016] NZCA 475 (Stevens, Wild and Winkelmann JJ). Winkelmann J dissented. The High Court decision was *X v Attorney-General* [2015] NZHC 3149 (Brown J).

[2] Counsel for the applicant argues that the decision of the Court of Appeal conflicts with its decision in another judgment issued on the same day (*Y v Attorney-General*) and has far-reaching consequences.² She also points to the dissenting judgment of Winkelmann J and argues that the approach her Honour takes should be preferred to that of the majority. Counsel argues that the decision raises questions of law of general application, particularly whether “corporate” defendants in civil proceedings, and especially historic child abuse proceedings, should be granted interim name suppression.

[3] This Court has recently dealt with issues relating to non-publication orders in civil proceedings in *Erceg v Erceg*.³ The Court noted the starting point for consideration of an application for a non-publication order must be the fundamental principle that justice should be administered in open court, subject to the full scrutiny of the media.⁴ It said that the parties seeking the non-publication order must show specific adverse consequences that are sufficient to justify an exception to that fundamental rule, and it described the standard as a high one.⁵

[4] We do not consider that the issues raised in relation to the present application justify this Court revisiting the issues dealt with in *Erceg*. We see the present case as essentially turning on its own facts. We do not therefore consider that a matter of general or public importance is raised by the application, and nor do we consider that a substantial miscarriage of justice may occur if leave is declined.⁶ In these circumstances we are not satisfied that it is in the interests of justice for this Court to hear and determine the proposed appeal.⁷

[5] The application for leave to appeal is therefore dismissed.

² *Y v Attorney-General* [2016] NZCA 474, [2016] NZAR 1512. An application for leave to appeal to this Court against that decision was dismissed: *Y v Attorney-General* [2017] NZSC 26.

³ *Erceg v Erceg* [2016] NZSC 135.

⁴ At [2] and [12].

⁵ At [13].

⁶ Section 13(2)(a) and (b) of the Supreme Court Act 2003, which applies to this application despite the repeal of that Act: Senior Courts Act 2016, sch 5 cl 10.

⁷ Section 13(4).

[6] We understand the applicant is legally aided. In those circumstances, we make no award of costs.

Solicitors:
Cooper Legal, Wellington for Applicant
McVeagh Fleming, Auckland for Respondent