

**ORDER CONTINUING SUPPRESSION OF THE APPLICANTS' NAMES,  
ADDRESSES, OCCUPATIONS AND ANY IDENTIFYING PARTICULARS  
UNTIL 2 PM ON 28 JUNE 2023.  
SUPPRESSION WILL LAPSE AT THAT TIME.**

**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>**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 31/2023  
[2023] NZSC 74**

**BETWEEN**

**JAMES HAY WALLACE  
First Applicant**

**MCLEAN'S MANSION CHARITABLE  
TRUST  
Second Applicant**

**AND**

**THE KING  
Respondent**

**Court: Glazebrook, Ellen France and Williams JJ**

**Counsel: D P H Jones KC for Applicants  
M J Lillico and I A A Mara for Respondent**

**Judgment: 26 June 2023**

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**JUDGMENT OF THE COURT**

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- A The applications for leave to appeal are dismissed.**
- B Order continuing suppression of the applicants' names, addresses, occupations and any identifying particulars on the terms set out at [15] until 2 pm on 28 June 2023. Suppression will lapse at that time.**
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## REASONS

### Introduction

[1] The applicants apply for leave to appeal against a decision of the Court of Appeal declining applications for suppression of their names.<sup>1</sup>

### Background

[2] The background to the applications is set out in the judgment of the Court of Appeal.<sup>2</sup> For present purposes we need only note the following. The first applicant, Sir James Wallace, was convicted in March 2021 after trial on three charges of indecent assault and two charges of attempting to dissuade one of the three complainants from giving evidence. He was sentenced to two years and four months' imprisonment.<sup>3</sup> The first applicant had the benefit of name suppression up until the decision of the Court of Appeal on the basis that it was necessary to protect his fair trial rights.

[3] The second applicant, the McLean's Mansion Charitable Trust Board (MMCT), owns McLean's Mansion, a large historic home in central Christchurch. The building was severely damaged in the Christchurch earthquakes. The trustees of the MMCT are overseeing the renovation of the building and hope to convert it into an arts centre. The first applicant became involved with the restoration project in 2016. In 2022 he became chairman of the MMCT and undertook responsibility for funding the restoration. Once the restoration is complete, further funding will be needed for the building to function as an arts centre.

[4] The Court of Appeal dealt with two (fresh) applications for name suppression. The first of these was an application by the first applicant and entities associated with him, including the MMCT. Relevantly, it was argued that in terms of s 200(2)(a) of the Criminal Procedure Act 2011, extreme hardship would be caused to the first

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<sup>1</sup> *Wallace v R* [2023] NZCA 56 (Collins, Ellis and Dunningham JJ) [CA judgment].

<sup>2</sup> At [5]–[28].

<sup>3</sup> *R v Wallace* [2021] NZHC 1213 (Venning J). Subsequent appeals against conviction and sentence were dismissed, culminating in the decisions of this Court in *Wallace v R* [2023] NZSC 24 (Glazebrook, Williams and Kós JJ) and *Wallace v R* [2023] NZSC 55 (Glazebrook, Williams and Kós JJ) (declining recall).

applicant or MMCT if he no longer had name suppression. The second application was made by MMCT under s 202(1)(c) of the Act on the basis it was a person connected with a person convicted of an offence. MMCT argued undue hardship would be caused to it and persons connected to it if the first applicant no longer had name suppression, given the strong links between the Trust and the first applicant.<sup>4</sup>

### **The proposed appeal**

[5] The first applicant maintains his application for leave to appeal but makes no further submissions on it. MMCT's proposed appeal would address whether it met the undue hardship threshold and, if so, whether the discretion should be exercised in favour of suppression. If MMCT had name suppression, it is submitted that an issue would then arise as to whether the first applicant's name should be suppressed so as not to identify MMCT.<sup>5</sup>

[6] MMCT wishes to argue on appeal that the Court of Appeal did not give the application proper consideration and, in particular, did not properly address the reality for MMCT should publication occur, namely, the potential demise of the project. That reality included that MMCT was faced with no real choice in accepting the first applicant as its chairman. MMCT emphasises that the restoration project is approaching a critical stage, with completion expected later this year, and points to difficulties publication will cause in obtaining the necessary funding on an ongoing basis. Suppression of the names of both MMCT and of the first applicant is said to be essential to protect MMCT given the latter's name is synonymous with the project.<sup>6</sup> MMCT highlights that public benefits that will flow from the establishment of the arts centre and that is a factor to be weighed against the principle of open justice.

[7] If this Court is minded to grant suppression, MMCT says that the Court would have two options. The first option would be to simply grant suppression, and the second option would be to grant suppression for a period of time up until the point MMCT was functioning as an independent unit.

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<sup>4</sup> Criminal Procedure Act 2011, s 202(2)(a).

<sup>5</sup> Section 200(2)(f).

<sup>6</sup> In contrast to *Sansom v R* [2018] NZCA 49 at [25]–[26].

## Our assessment

[8] The proposed appeals would have this Court reprise arguments made in the Court of Appeal. In dismissing the application by the first applicant, the Court of Appeal concluded the test of extreme hardship was not met. Rather, the effects of publication on him and “on his businesses and charitable interests” were “an ordinary and normal consequence of conviction and publication of the name of a high-profile offender with commercial and charitable interests”.<sup>7</sup>

[9] In relation to MMCT the Court considered it “significant” that the first applicant’s “current involvement with the MMCT” began in 2022, well after “his conviction and at a time when he knew that” publication of his name “was a very real prospect”.<sup>8</sup> The Court continued that to suppress his name:<sup>9</sup>

... on the basis of his involvement with the MMCT would fundamentally distort the principle of open justice that s 200 is designed to protect. The potential funders of the MMCT should be able to make decisions about donations and investments with the full knowledge of [the first applicant’s] criminal history.

[10] The Court said that even if satisfied the requisite hardship was established, it would have exercised the discretion against granting name suppression. The Court emphasised a number of factors in this respect, including the seriousness of the offending, and considered that, “[u]ltimately” the principle of open justice was “the prevailing factor”.<sup>10</sup>

[11] In addressing MMCT’s application, the Court said this was without merit and had been advanced in order to give the first applicant “an alternative pathway” for suppression. The Court said:<sup>11</sup>

It is significant that the hardship pleaded by the MMCT stems from the enhanced role that [the first applicant] has played in the affairs of the MMCT since his convictions in 2021. The MMCT was aware of [the first applicant’s] convictions when he became Chairman of the MMCT. It is difficult to accept the MMCT will suffer undue hardship in circumstances where it allowed [the

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<sup>7</sup> CA judgment, above n 1, at [33].

<sup>8</sup> At [35].

<sup>9</sup> At [35].

<sup>10</sup> At [40(e)].

<sup>11</sup> At [42].

first applicant] to become Chairman of the MMCT knowing he had been convicted of serious offences.

[12] The Court considered that even if MMCT met the undue hardship threshold, the Court would exercise its discretion against granting name suppression. That was because its potential investors should be able to “assess the merits of their proposed investment with full knowledge of the character of the man at the helm of the MMCT”.<sup>12</sup>

[13] Resolution of the appeals would turn on the application of the principles relating to name suppression to the particular facts. No questions of general or public importance arise.<sup>13</sup> The only issue is therefore whether it is in the interests of justice to grant leave to appeal because a miscarriage of justice may occur unless the appeals are heard.<sup>14</sup> We are satisfied that criterion is not met.

[14] While the reasons of the Court of Appeal were succinct, they addressed whether the hardship thresholds were met. It was in undertaking the very exercise of determining whether the hardship was undue that the parties’ knowledge of the situation at the time the first applicant took up his current role with MMCT came to be assessed. It was not unorthodox to treat that circumstance as relevant and, as well, to place some premium on the ability of potential investors to know who they are dealing with. We see no error in the Court’s assessment of the nature of the hardship and nor in the approach to the exercise of the discretion.

## **Result**

[15] The applications for leave to appeal are dismissed. The order made by this Court extending the interim suppression orders made by the Courts below will accordingly lapse. We extend that suppression for a short period following the delivery of this decision to enable the applicants to prepare for publication. We consider that is appropriate. We therefore make an order continuing suppression of the applicants’ names, addresses, occupations and any identifying particulars until 2 pm on 28 June 2023. Suppression will lapse at that time. After that time there

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<sup>12</sup> At [43].

<sup>13</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>14</sup> Section 74(2)(b).

will be no impediment to reporting of the applicants' names and identifying particulars.

Solicitors:  
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Crown Law Office, Wellington for Respondent