ORDER PROHIBITING PUBLICATION OF THIS JUDGMENT, THE MEDIA RELEASE AND THE MINUTES, AND ANY INFORMATION THEREIN, UNTIL THE JUDGMENT IS DELIVERED AT 2.00 PM ON 11 JUNE 2024.

ORDER PROHIBITING PUBLICATION OF CERTAIN EVIDENCE AND SUBMISSIONS CONTAINED IN THIS JUDGMENT PURSUANT TO S 205 OF THE CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [82].

ORDER REDACTING PARTS OF THE JUDGMENT THAT IS MADE PUBLICLY AVAILABLE.

ORDER PROHIBITING SEARCH OF THE FILES FOR THIS APPEAL WITHOUT THE LEAVE OF A JUDGE OF THIS COURT.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 90/2023
[2024] NZSC 65

BETWEEN	JANE ALISON FARISH Appellant
AND	THE KING Respondent

Hearing:	28 February 2024
Court:	Winkelmann CJ, Glazebrook, Ellen France, Williams and Miller JJ
Counsel:	F E Guy Kidd KC and K T Dalziel for Appellant B C L Charmley and T R Simpson for Respondent E D Nilsson and K M Hursthouse for Stuff Ltd as Intervener
Judgment:	11 June 2024

JUDGMENT OF THE COURT

A **The appeal is allowed.**

B **We make an order prohibiting publication of this judgment, the media release and the minutes, and any information therein, until the judgment is delivered at 2.00 pm on 11 June 2024.**

C **We make an order prohibiting publication of certain evidence and submissions contained in this judgment pursuant to s 205 of the Criminal Procedure Act 2011. See paragraph [82].**

D **We make an order redacting parts of the judgment that is made publicly available.**

E **We make an order that the files for this appeal are not to be searched without the leave of a Judge of this Court.**

REASONS
(Given by Miller J)

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Introduction and summary

[1] The question in this appeal is whether the Court of Appeal was wrong to decline suppression of part of the evidence adduced and submissions made before it in a proceeding in respect of an offence, exercising jurisdiction under s 205(2)(c) of the Criminal Procedure Act 2011.

[2] The proceeding was the prosecution of Ian Dallison for attempted murder and wounding with intent to injure. The evidence and submissions comprised information about the circumstances of the appellant, Jane Farish, who was Mr Dallison's

girlfriend.[1] She is a District Court judge. It is common ground between her and the Crown that she knew nothing of his plans and had no involvement in the offending.

[3] The appellant's name and her intimate relationship with Mr Dallison are information in which the public has an interest. So is her connection to the victims. But, as we will explain, that information is or will be in the public domain. The appellant did not seek to have it suppressed after Mr Dallison was charged. She intervened only after the Crown disclosed in the Court of Appeal other information that she had given to the police. That information is not connected to his offending. There is no reason to suppose it would have been led in evidence had Mr Dallison stood trial instead of pleading guilty. None of it is necessary to public understanding of the courts' handling of Mr Dallison's case.

[4] We also find that the information posing the greatest risk to personal safety is on the court record only because the appellant disclosed it to explain the nature of the risk that she faces. That information also has no connection to Mr Dallison's offending.

[5] We are satisfied that, in the particular circumstances of this case, publication of certain information is likely to endanger the safety of "any person" for the purposes of s 205(2)(c). That includes the appellant but also others. Differing from the Court of Appeal, we have no doubt that the threshold—a real and appreciable risk to personal safety—has been crossed. The risk to personal safety is both immediate and serious.

[6] The Crown, and Stuff Ltd (Stuff) appearing as intervener, argue that there is a risk of unfounded speculation that the appellant is receiving favourable treatment because she is a judge. We agree that the risk exists. But the appellant has the same right as anyone else to a suppression order on personal safety grounds where the statutory criteria are met. It would be wrong to deny her the protection of a suppression order that she would be granted were she not a judge. Further, her name and connection to Mr Dallison will be published, and a reasonable observer with knowledge of the publicly available information would not think she is receiving

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1 That is the term she uses to describe the relationship. They did not live together.

special treatment in the circumstances. She already faces specific risk to personal safety through her work as a judge. Publication of the information would substantially increase that risk.

[7] Having found that the threshold for a suppression order under s 205(2)(c) of the Criminal Procedure Act has been crossed, we are also satisfied that such an order is appropriate in this case. The information the appellant wants suppressed is now on the court record. The open justice principle applies to it. But there is not a strong public interest in the information, either in connection with Mr Dallison's offending or generally. In these circumstances, the public interest in open justice does not outweigh the risk to personal safety. The appeal will be allowed.

Narrative

[8] The Court of Appeal heard evidence and decided the issues as a court of first instance, which is unusual. We must explain how that came about, and also when and how some of the information was placed on court files.

[9] On 4 August 2022, Mr Dallison tried to kill the landlord of his business premises, Alberto Ceccarelli. He inflicted serious injuries on Mr Ceccarelli and his partner, Antje Schmidt. He had taken to their home nine firearms, some of which he was not licensed to possess. He was arrested, remanded in custody and granted interim name suppression.[2]

[10] On 19 August 2022, at his second appearance in the District Court, Mr Dallison no longer pursued suppression of his own name.[3] He was however granted suppression of the appellant's name, address, occupation and other identifying particulars, on the ground that she was both his girlfriend and a long-serving judge, and so knowledge of their connection would place his own safety at risk in prison.[4] His counsel recorded in a memorandum that the appellant did not seek suppression on

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2 A fuller account is found in the judgment of the Court of Appeal, which was principally concerned with Mr Dallison's own appeal: *Dallison v R* [2023] NZCA 282 (Cooper P, Gilbert and Collins JJ) [CA judgment] at [6]–[9].

3 *New Zealand Police v Dallison* [2022] NZDC 15879. By 19 December 2022, Mr Dallison had pleaded guilty to all charges.

4 At [3]–[7].

her own account, explaining that she did not contend that publication would cause her undue hardship.

[11] Mr Dallison was remanded to appear in the High Court, where he applied on 6 September 2022 for suppression of the appellant's identity and the reasons for suppression. That application was made under ss 202(1)(c), 202(2)(c) and 205 of the Criminal Procedure Act, on the ground that she is a connected person and publication of her identifying information would be likely to endanger his safety.

[12] On 11 November 2022, Isac J revoked the District Court order of 19 August and dismissed the application of 6 September.[5] He was not satisfied that publication would cause a real and appreciable risk to Mr Dallison's safety.[6]

[13] Mr Dallison appealed to the Court of Appeal, again seeking suppression of the appellant's identity on the ground that publication would risk his own safety. The Crown filed its submissions on 5 December 2022. They contained the following paragraph:[7]

> [53] … while there is no suggestion [the appellant] was involved in the alleged offending, she is not unconnected to the events in question. She will likely be a witness at trial. Her formal written statement, for example, traverses her partner's financial issues, their effect on his mental health, the fact he blamed Mr Ceccarelli for his financial woes, and his behaviour in the [days] prior to the alleged offending. She also describes Mr Ceccarelli calling her twice immediately after Dr Dallison's attack, including from the ambulance, and she gives details of Dr Dallison's large firearms collection and his shooting prowess. Finally, while the Crown is not suggesting any impropriety, there is a real, and non-prurient, public interest in the fact **[REDACTED]**.

[14] The information in that paragraph came from the appellant's formal witness statement and a police job sheet which was cited in a footnote. These documents were not in evidence. They had not been filed in any court. Stuff moved for access to the statement and the job sheet. The Crown advised that it did not propose to provide the

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5 *R v Dallison* [2022] NZHC 2968 [HC judgment] at [51]. Isac J at [13] treated the application for suppression that Mr Dallison made on 6 September 2022 as "an application to renew the [19 August] order", meaning that, upon revocation of that order, the 6 September application was implicitly dismissed.

6 At [41].

7 Footnotes omitted.

Court with these documents; from its perspective they were not necessary to decide the appeal. **[REDACTED]**.

[15] The Crown's disclosure led the appellant to intervene in the proceeding. She brought applications under s 202, for suppression of her identity, and under s 205, for suppression of any part of the evidence or submissions relating to the fact that **[REDACTED]**. She swore an affidavit in support, and after the hearing filed another one responding to questions from the Court. These affidavits contained the following information:

(a) She began a romantic relationship with Mr Dallison, whom she has known for many years, in 2012, but they always maintained separate homes. She had stayed at his home only once in the 12 months before his offending, although he would sometimes stay at her property.

(b) **[REDACTED]**

(c) **[REDACTED]**

(d) **[REDACTED]**

(e) **[REDACTED]**

[16] **[REDACTED]**

[17] The appellant and the Crown adduced expert evidence, and the Crown's expert was cross-examined at the hearing in the Court of Appeal on 31 May 2023. We discuss the evidence below at [53].

[18] By the time of the hearing in the Court of Appeal, Mr Dallison had pleaded guilty and was sentenced to six years and 10 months' imprisonment.[8] The Court of Appeal gave close consideration to his circumstances in prison and the likelihood that he might be in danger if his connection to the appellant were made

8 *R v Dallison* [2023] NZHC 976 at [46].

public.[9] It agreed with Isac J that the threshold of endangerment to Mr Dallison's safety under s 202(2)(c) of the Criminal Procedure Act had not been crossed.[10] It added that there were strong reasons not to order suppression, including that Mr Dallison was a respected professional person who owned a substantial number of guns and had used some of them to commit a violent crime.[11] His appeal was dismissed.

[19] The Court also declined the applications made by the appellant under ss 202 and 205. It held that it had jurisdiction to decide the applications notwithstanding that they were made for the first time in the Court of Appeal.[12] It declined them because it found that publication of all of the evidence, **[REDACTED]**, would not be likely to endanger her safety.[13] We examine the Court's reasons below at [57].

[20] Following the judgment, a Stuff reporter sought access to the appellant's affidavits. That application was overtaken by the appeal to this Court. The appellant in turn asked the Court of Appeal to redact from its judgment the information about **[REDACTED]**, saying that the information had been put before the Court to explain the nature and extent of the risk of endangerment. The Court had been asked at the hearing to suppress this information, but it had not addressed that application in its judgment. Counsel for Stuff and the Crown responded that the Court had no jurisdiction to redact information that it had not suppressed. The Court advised by minute of 11 August 2023 that the judgment contained all the Court wished to say and there was no proper basis for the requested redactions.

The appeal to this Court

[21] This is the appellant's appeal. Mr Dallison has played no part in it. The approved question for which leave was granted is whether the Court of Appeal erred in declining to make the order she sought under s 205(2)(c).[14] Under that provision a court may forbid publication of evidence adduced or submissions made in a

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9 CA judgment, above n 2, at [67].
10 At [73].
11 At [74].
12 At [77]–[82].
13 At [117].
14 *F (SC 90/2023) v R* [2023] NZSC 143 (Glazebrook, O'Regan and Ellen France JJ) [SC leave judgment].

proceeding in respect of an offence where publication would be likely to endanger the safety of any person.

[22] The Court declined leave to appeal under s 202, reasoning that the matters which the appellant wanted to raise in relation to suppression of her identity were essentially factual in nature and raised no appearance of a miscarriage of justice.[15]

[23] At each stage, interim suppression orders have been made to protect appeal rights.[16] The most recent order was made by this Court on 30 October 2023 in the leave judgment. It prohibited publication of the appellant's name, address, occupation and identifying particulars, along with the information to which the application under s 205(2)(c) relates, until final resolution of this appeal.[17]

[24] We analyse the appeal in the following way. We first examine the jurisdiction under s 205 and the courts' approach to suppression in criminal proceedings. We then discuss the public interest in the submissions and evidence in this case, and the public interest in judges not being seen to receive special treatment. We review the evidence about the risk to personal safety and the likelihood that publication will result in endangerment, explaining why we differ from the Court of Appeal. Having found that the risk is real and appreciable, we consider whether an order ought to be made.

Section 205 of the Criminal Procedure Act 2011

[25] Section 205 is one of a suite of provisions dealing with prohibitions on publication of information in court proceedings in respect of a criminal offence. Notably, ss 200 and 202 deal respectively with suppression of names, addresses and occupations of defendants (s 200) and witnesses, victims or connected persons (s 202). Section 205 deals with evidence adduced and submissions made in such proceedings.

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15 At [5].

16 HC judgment, above n 5, at [52]; CA judgment, above n 2, at [124]; and SC leave judgment, above n 14, at [6].

17 The Court of Appeal made such an order by minute on 13 July 2023. This Court substituted its own order on 30 October 2023.

It does not appear that an appellate court has previously been required to examine s 205 closely.[18]

[26] Under each of these three provisions, jurisdiction to prohibit publication arises if the court is satisfied that an applicable threshold has been crossed. If it has, the court may make an order.[19]

[27] Each of the thresholds concerns something that publication is "likely" to cause to happen in the future. "Likely" means there is a real and appreciable possibility that it will happen.[20] There is no onus of proof; rather, the court must be "satisfied" that a threshold has been crossed. An evidential burden attaches to the party seeking an order.[21]

[28] The statutory thresholds differ according to the status of the person affected (defendant, victim, witness or connected person) and the nature of the risk. So, by way of illustration, a defendant who seeks suppression of their name for personal reasons must satisfy the court under s 200(2)(a) that they will likely suffer "extreme" hardship, while a connected person who seeks suppression of their name for personal reasons under s 202(2)(a) must satisfy the court that they are likely to suffer "undue" hardship. "Extreme" and "undue" hardship are comparative standards which require that the court assess the claimed hardship against that which normally attends publication for a defendant, witness, victim or connected person, as the case may be.[22] Other thresholds do not call for a comparative analysis of that kind; rather, they require that the court decide whether a specified consequence is likely to happen in fact. By way of example, the threshold for suppression of a connected person's name is crossed

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18 *M (SC 13/2023) v R* [2024] NZSC 29 considered s 205 of the Criminal Procedure Act 2011 only briefly. *Ellis v R* [2020] NZSC 137 applied the former provision, s 138 of the Criminal Justice Act 1985 (now repealed). Section 205 of the Criminal Procedure Act has been substantively applied in four Court of Appeal decisions, excluding the one presently on appeal, but in none of these did the Court need to analyse the section: see *Martin v R* [2020] NZCA 609; *L (CA719/2017) v R* [2019] NZCA 675; *Ihaia v R* [2022] NZCA 599; and *Dew v Discovery NZ Ltd* [2023] NZCA 589.

19 *M (SC 13/2023) v R*, above n 18, at [35]–[39]; *Fagan v Serious Fraud Office* [2013] NZCA 367 at [9]; *Robertson v New Zealand Police* [2015] NZCA 7 at [39]; and *Parker v R* [2020] NZCA 502, (2020) 29 CRNZ 536 at [5] and [29]–[30].

20 *R v W* [1998] 1 NZLR 35 (CA) at 40; and *D (CA443/2015) v Police* [2015] NZCA 541, (2015) 27 CRNZ 614 at [30(a)].

21 *Robertson v New Zealand Police*, above n 19, at [44]; and *Bitossi v R* [2014] NZCA 595 at [8].

22 *M (SC 13/2023) v R*, above n 18, at [69]–[70].

under s 202(2)(c) if publication is likely to endanger the safety of any person, including the connected person themselves.

[29] Section 205 provides:

> **205 Court may suppress evidence and submissions**
>
> (1) A court may make an order forbidding publication of any report or account of the whole or any part of the evidence adduced or the submissions made in any proceeding in respect of an offence.
>
> (2) The court may make an order under subsection (1) only if the court is satisfied that publication would be likely to—
>
> (a) cause undue hardship to any victim of the offence; or
>
> (b) create a real risk of prejudice to a fair trial; or
>
> (c) endanger the safety of any person; or
>
> (d) lead to the identification of a person whose name is suppressed by order or by law; or
>
> (e) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or
>
> (f) prejudice the security or defence of New Zealand.

[30] As a matter of construction, this provision rests on the premise that the evidence adduced and submissions made in any proceeding in respect of an offence may be published unless there are grounds to forbid publication and the court decides to forbid it. One of the thresholds in subs (2) must be crossed before the court has jurisdiction to forbid publication of evidence adduced or submissions made. The threshold under subs (2)(a) is the only one that requires the court to consider whether hardship is undue. It is concerned with the impact of publication on a victim of the offence. The others all require that the court consider whether publication of the information concerned is likely to cause the specified consequence.

[31] The risk to which the court is directed under subs (2)(c) is that of endangerment of the safety of any person. To "endanger" someone is to put them in danger, or to

expose them to peril or harm.[23] "Safety" plainly includes their physical safety from assault or injury.

[32] The statutory language recognises that there will be instances where publishing case-related information may trigger an action that may result in harm to "any person". In such cases, the court must consider the likelihood both that publication will cause that action and that the action will endanger the safety of any person. The risk of endangerment is a function of those two linked risks. The court need not be satisfied that actual harm to personal safety will result. It must be satisfied that there is a real and appreciable possibility that publication will put the safety of any person in danger.

[33] We have explained that the same threshold—danger to the safety of any person—applies to suppression of the name, address or occupation of a connected person under s 202(2)(c). In practice, danger to personal safety may be addressed by prohibiting publication of identifying information, so ensuring the connected person remains anonymous. In this case, the appellant is to be identified as a connected person of Mr Dallison's. That may elevate any risk posed to her, or to other people through her, from the publication of evidence or submissions. For example, publication of her identity makes it easier for a reader to seek out publicly available information about her, **[REDACTED]**.

The courts' approach to suppression in criminal proceedings

[34] A court which is considering an application to prohibit publication of the identity of a defendant, witness, victim or connected person, or of evidence adduced and submissions made in the proceeding, must begin with the protected right to free expression,[24] the importance of open judicial proceedings, and the right of the media

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23 Bryan A Garner (ed) *Black's Law Dictionary* (11th ed, Thomson Reuters, St Paul (Minnesota), 2019) at 667.

24 New Zealand Bill of Rights Act 1990, s 14.

to report proceedings as surrogates of the public.[25] As this Court said in *Erceg v Erceg [Publication restrictions]*:[26]

> [2] The principle of open justice is fundamental to the common law system of civil and criminal justice. It is a principle of constitutional importance, and has been described as "an almost priceless inheritance". The principle's underlying rationale is that transparency of court proceedings maintains public confidence in the administration of justice by guarding against arbitrariness or partiality, and suspicion of arbitrariness or partiality, on the part of courts. Open justice "imposes a certain self-discipline on all who are engaged in the adjudicatory process – parties, witnesses, counsel, Court officers and Judges". The principle means not only that judicial proceedings should be held in open court, accessible by the public, but also that media representatives should be free to provide fair and accurate reports of what occurs in court. Given the reality that few members of the public will be able to attend particular hearings, the media carry an important responsibility in this respect. The courts have confirmed these propositions on many occasions, often in stirring language.
>
> [3] However, it is well established that there are circumstances in which the interests of justice require that the general rule of open justice be departed from, but only to the extent necessary to serve the ends of justice. …

[35] The general policy rationales for publication of court proceedings are that openness sustains public acceptance of processes and outcomes, and publication reinforces community norms about offending and its consequences.[27] These policy preferences apply generally and extend to the treatment of victims and connected persons, as well as offenders. A secondary general rationale is that publication relies on the media, who may find cases less newsworthy, or more burdensome to report, when someone involved in the proceeding cannot be named.[28] As the United Kingdom Supreme Court said when addressing name suppression in *Re Guardian News and Media Ltd*:[29]

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25 *M (SC 13/2023) v R*, above n 18, at [41]–[42]; and *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [41] citing *R v Liddell* [1995] 1 NZLR 538 (CA) at 546–547. The latter two cases were decided under former legislation but remain leading authorities because, as the Court of Appeal explained in *DV (CA451/2021) v R* [2021] NZCA 700 at [33] per Miller and Gilbert JJ, the Criminal Procedure Act provisions were designed to ensure that the approach adopted by the Court of Appeal in these cases was applied consistently at first instance.

26 *Erceg v Erceg [Publication restrictions]* [2016] NZSC 135, [2017] 1 NZLR 310 (footnotes omitted).

27 Law Commission | Te Aka Matua o te Ture *Suppressing Names and Evidence* (NZLC IP13, 2008) at [2.1].

28 The Law Commission has acknowledged that suppression orders "can have significant implications for the ability of the media to report on the administration of justice": Law Commission | Te Aka Matua o te Ture *Suppressing Names and Evidence* (NZLC R109, 2009) at [6.52].

29 *Re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 AC 697 (citation omitted) quoting *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457 at [59] per Lord Hoffmann.

> [63] What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique … More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd* [that] "judges are not newspaper editors". … This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.

[36] Other rationales for publication arise on a case-by-case basis, and where present they usually assume prominence in suppression decisions. For this reason a court must consider the public interest in publication in the particular case and balance that interest against harm from publication.[30] By way of illustration, there is a strong public interest in publication where the defendant is said to present a risk to others,[31] or where publication may cause other complainants or witnesses to come forward.[32] There may also be a countervailing public interest in the defendant's rehabilitation, as with youth offenders for example,[33] or the privacy of connected persons.[34] It is because the public interest in publication varies that the legislation employs a lower standard—undue hardship—for jurisdiction to suppress the identity of a witness, victim or connected person.

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30 *Lewis v Wilson & Horton Ltd*, above n 25, at [42]–[43].

31 *[LF] v R* [2022] NZHC 2547 at [109], approved by *M (SC 13/2023) v R*, above n 18, at [94] and [97]. See also *Dean v R* [2021] NZCA 293 at [12] where the Court of Appeal acknowledged the strong public interest in naming violent offenders as being primarily a public safety consideration, allowing those dealing with the offender in future years, such as new partners, to be able to access information about them.

32 *B (CA860/2010) v R* [2011] NZCA 331 at [21]; and *R v Liddell*, above n 25, at 545–546.

33 *M (SC 13/2023) v R*, above n 18, at [66]. See also *DP v R* [2015] NZCA 476, [2016] 2 NZLR 306, in particular at [42]; and *R v Q* [2014] NZHC 550 at [43].

34 For example, in cases where identifying the defendant will result in identification of victims, who themselves have suppression and/or would suffer undue hardship on publication of the defendant's name: *Stuff Ltd v R* [2021] NZCA 86, (2021) 29 CRNZ 658.

The public interest in the submissions and evidence in this case

*The evidence about **[REDACTED]***

[37] **[REDACTED]**

[38] The information in categories (a) and (b) would not have been the subject of evidence or submissions in the proceeding against Mr Dallison, but for the applications for suppression orders which the appellant made after the Crown mentioned in its submissions in the Court of Appeal that **[REDACTED]**. The information in categories (a) and (b) has been adduced in evidence and mentioned in submissions only to explain the nature of the risk that may follow publication of the Crown's submissions.

[39] The information in category (c) is different. It was already in the Crown's possession. The police obtained it when investigating Mr Dallison's offending. It triggered the appellant's application because it formed part of the Crown's submissions in Mr Dallison's appeal against the High Court judgment declining suppression of her identity in the interests of Mr Dallison's safety. She contends that publication of this information endangers her own safety because it invites the inference that **[REDACTED]**.

The public interest in this information

[40] The public interest in Mr Dallison's offending extends to the fact that his girlfriend knows the victims and took a call from one of them in the immediate aftermath of the offending, and the fact that she is a judge. It is weaker than the public interest in his own behaviour because she is not implicated in his offending, but it is information that ordinarily would be made public unless that would cause her, as a connected person, undue hardship. It is to be made public in this case. Her name and occupation are now not suppressed.

[41] The public might use information about Mr Dallison's professional status, privileged background and ownership of illicit firearms to assess his behaviour and to

evaluate the courts' handling of his case. The public interest is strong, but that information is not the subject of the appellant's application. It is already public.

[42] The public interest in the appellant as a connected person of Mr Dallison does not extend to **[REDACTED]**. The Crown accurately submitted in the Court of Appeal that the evidence on which its submissions were based did not need to be adduced because it would not have assisted the Court to decide Mr Dallison's appeal.[35]

[43] In this Court, the Crown and Stuff addressed the problem of irrelevance to the offending by arguing that the public interest in the conduct of judges extends to the evidence in this case because it might appear to possibly affect how the appellant may act in her official capacity. This is a public interest which concerns the exercise of the appellant's own judicial functions. It exists independently of any connection to Mr Dallison.

[44] It is true that a judge's conduct attracts closer scrutiny than that of many other members of the community. That scrutiny may properly extend to lawful activities in a private capacity, where such activities may affect the performance of judicial functions.

[45] However, the public interest does not extend to aspects of a judge's private life that are not unlawful or blameworthy, particularly when they are unconnected to the offending. **[REDACTED]**.

[46] **[REDACTED]**

The public interest in judges not being seen to receive special treatment

[47] There remains the risk, as submitted by the Crown and Stuff, that a suppression order granted to a judge who is a connected person of an offender may convey the impression that the court system is looking after its own. For the Crown, Ms Charmley argued that, because suppression orders invite speculation, a particularly damaging

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35 CA judgment, above n 2, at [23].

impression could be left if it were reported that a sitting judge's evidence relating to an investigation for serious criminal offending has been suppressed.

[48] We accept that suppression orders invite speculation. They also require the public to accept the court's opinion that there are good reasons to suppress information that the public cannot assess for themselves. Where the person who obtains such an order is a judge, the public may wonder whether that person has received special treatment.

[49] We make four points about the public interest in judges and other people working in the courts system not being seen to receive special treatment. The first is that s 205(2)(c) of the Criminal Procedure Act recognises that publication of evidence or submissions may be likely to endanger the safety of "any person", which includes judges. If the statutory requirements are met, they have the same right as anyone else to protection from the risk of harm to personal safety.

[50] The second is that the threshold inquiry into whether publication will endanger the appellant's personal safety is a question of fact. The fact that she is a judge does not reduce that risk. On the contrary, it may increase it.

[51] The third point is that the risk of the system being seen to protect its own must be placed in its factual context. The appellant initially did not seek suppression of her own identity. She did not claim that she would suffer undue hardship if her connection to Mr Dallison were made public. She intervened to seek suppression of her identity and related information only after the Crown filed its submissions in the Court of Appeal. And, with respect to counsel, it is not correct to describe the information in those submissions as evidence relating to an investigation for serious criminal conduct. No such evidence had been adduced at that time—indeed, her statement and the job sheet still are not in evidence. The information which led the appellant to intervene was included in submissions not because it related to Mr Dallison's offending, but because the Crown thought it was relevant to a wider public interest in the fact that a judge's boyfriend faced serious charges. The evidence filed since then relates not to the offending but to the risk of endangerment should the information disclosed by the Crown be made public.

[52] The fourth point is that the risk the public will think the judicial system is protecting its own must be gauged by asking whether a reasonable person with the publicly available information would think that is what the court is doing. In this case, a reasonable informed observer would recognise that the appellant's identity and connection to Mr Dallison have been made public. They would recognise that the system is not acting to shield her from scrutiny on account of her intimate relationship with someone who has attempted murder. They would accept that she has the same right as anyone else to seek an order under s 205 of the Criminal Procedure Act if publication would put personal safety at risk. Any speculation is likely to focus on the nature of the risk to personal safety that led a court to forbid publication of information about that risk. The observer would recognise that speculation about that cannot be quieted without triggering the risk itself.

The evidence about likelihood of risk to personal safety

[53] We have referred to the evidence of the appellant above.[36] She also filed additional expert evidence to the effect that publication of the information could put personal safety at risk. **[REDACTED]**.

[54] The Crown also filed expert evidence that agreed with the appellant's expert in some respects but disagreed there was a likely risk to personal safety. **[REDACTED]**.

[55] When cross-examined, the Crown's expert generally confirmed the points he raised in his affidavit. **[REDACTED]**.

[56] In this Court, the appellant sought to offer new evidence in the form of an affidavit deposing to the online publication of commentary in which judges are threatened generally and she is identified as a judge who is accused of treating sexual offenders too leniently. **[REDACTED]**. The evidence is relevant to the question of risk, and it is sufficiently fresh. We admit it accordingly.

The likelihood that publication will result in endangerment

[57] **[REDACTED]**

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[36] Above at [15].

[58] The Court of Appeal reasoned that several considerations mitigated the risk to the safety of the appellant.[37] **[REDACTED]**.

[59] In this Court, counsel for the Crown and Stuff supported the finding of the Court of Appeal **[REDACTED]**.

[60] The Court of Appeal did not appear to attach much weight to this aspect of the Crown expert's evidence, perhaps because there are very good reasons to discount it as a predictor of risk in this case. Population-level statistics are valid for an individual only if that individual's characteristics match those of the population. **[REDACTED]**.

[61] **[REDACTED]**

[62] We share the Crown expert's opinion about the risk that the release of such information will create. The risk **[REDACTED]** is high. It arises on publication of the fact that **[REDACTED]**.

[63] The Court of Appeal recognised that publication would increase somewhat the risk of **[REDACTED]**, but it found the risk to personal safety low. **[REDACTED]**.

[64] **[REDACTED]**

[65] In our view the evidence does not sustain the inferences made by the Court of Appeal that the risk to personal safety is low because **[REDACTED]**.

[66] For these reasons we are not prepared to accept that the risk to personal safety is low in this case. **[REDACTED]**.

[67] We also reject the argument, made by Mr Nilsson, that publication will not cause any risk to personal safety because (a) the risk already exists, or will when the appellant's connection to Mr Dallison is published, and (b) **[REDACTED]**.

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[37] CA judgment, above n 2, at [112].

[68] We are satisfied that the threshold has been crossed in this case. Publication of information **[REDACTED]** is likely to endanger personal safety. That risk is a serious one on the facts before us. Importantly, given the argument that suppression will be seen as the judicial system protecting its own, those immediately endangered will not be confined to the appellant herself. **[REDACTED]**.

[69] **[REDACTED]**

[70] We have considered whether we might permit publication of the information that **[REDACTED]**. As explained above, this is both more relevant to Mr Dallison's offending and less likely to risk personal safety.[38] **[REDACTED]**. And we have explained that the appellant's name will not be suppressed.[39] **[REDACTED]**. The fact that information about her is to be suppressed will draw attention to her. As noted earlier, there is likely to be some speculation about the nature of the risk to personal safety. In the circumstances, we consider that publication of this information would cause a real and appreciable risk to personal safety in terms of s 205(2)(c) of the Criminal Procedure Act.

Should the Court forbid publication of evidence and submissions?

[71] The Court of Appeal did not reach the second stage of the analysis but indicated that, had it found the threshold in s 205(2)(c) had been crossed, it would have declined to forbid publication of any of the information.[40] The Court considered that the public interest in Mr Dallison's offending extended to **[REDACTED]** and also all the surrounding circumstances, including the way in which the justice system responds to issues involving name suppression. It reasoned that the fact that a connected person seeking suppression is a judge adds to the public interest in all the surrounding circumstances.[41]

[72] In this Court, counsel for the Crown and Stuff supported this reasoning and argued that there is a strong public interest in all of the information, especially given

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38 Above at [38]–[39].
39 Above at [33].
40 CA judgment, above n 2, at [118].
41 At [119].

her position as a judge.[42] Both contended that there is little privacy interest **[REDACTED]**. Ms Charmley acknowledged that the appellant is an innocent party but argued that this counts for little because innocence, without more, does not extinguish the public interest in a person, nor qualify her evidence for suppression. There may be a public interest in a person's connection with an offender even if there is nothing for which they should be held accountable.[43] Counsel also pointed to the risk of speculation should information be suppressed.[44] They emphasised the importance of the judicial system not being seen to protect its own.[45] Mr Nilsson further contended that the appellant has already assumed any risk **[REDACTED]**.[46]

[73] The open justice principle applies to all the information which the appellant wants to suppress now that it has been mentioned in submissions and evidence. We accept Mr Nilsson's submission that the open justice principle assumes that the public should be the judges of what happens in the courts. He cited comments by Lady Hale P:[47]

> [42] The principal purposes of the open justice principle are two-fold and there may well be others. The first is to enable public scrutiny of the way in which courts decide cases—to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly. …
>
> [43] But the second goes beyond the policing of individual courts and judges. It is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties' cases. …

We accept that the information the appellant wishes to suppress will draw increased public attention to the circumstances of Mr Dallison's offending and her connection to it.

[74] But the submissions for the Crown and Stuff overlook the fact that the appellant's identity and connection with Mr Dallison and his offending will be made

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42 See above at [43].
43 See above at [40].
44 See above at [47].
45 See above at [47].
46 See above at [67].
47 *Dring (on behalf of the Asbestos Victims Support Groups Forum UK) v Cape Intermediate Holdings Ltd (Media Lawyers Association intervening)* [2019] UKSC 38, [2020] AC 629.

public. We must focus on the particular information she wants suppressed. As we have explained, that information is not connected to his offending.[48] It comprises almost entirely information that she has supplied to explain the nature of the risk to personal safety.

[75] For these reasons, we do not accept that there is a strong public interest in the information, either in connection with Mr Dallison's offending or generally. **[REDACTED]**.

[76] That brings us to the risk that suppression will create an impression that the judicial system is looking after its own. As explained above, we think counsel for the Crown and Stuff overstated this problem, but we accept it is real and highly undesirable.[49] A court must not take public trust for granted. However, the interests of justice do not require that the appellant accept a serious risk to personal safety so that a court can avoid giving the false impression that she is being afforded privileged treatment.

[77] A court can expect her, as a serving judicial officer, to take reasonable steps to avert the need for a suppression order. Two options were touched on by counsel in argument: **[REDACTED]**. She faces an elevated risk independently of this proceeding because she is the target of online attacks stemming from her work as a judge. We do not think she could do much to reduce the personal safety risk to a point where suppression of the evidence and submissions would be unnecessary.

[78] We have found that the post-publication risk of **[REDACTED]** is high and the associated risk of endangerment to personal safety is a serious one. Respectfully differing from the Court of Appeal, we find that it easily crosses the jurisdictional threshold. On the other side of the scales, the public interest in Mr Dallison's offending is strong, but it does not extend to the information to be suppressed. The public interest in the courts' handling of suppression for judges is also strong, but the appellant's identity and her connection to Mr Dallison will be made public. We do not

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48 Above at [38]–[42].
49 Above at [47]–[52] and [68].

think there is anything she might reasonably do to reduce the personal safety risk sufficiently to make an order unnecessary.

[79] We find the interests of justice require that publication of the information be forbidden.

Disposition

[80] The appeal is allowed.

[81] We make an order prohibiting publication of this judgment, the media release and the minutes, and any information therein, until the judgment is delivered at 2.00 pm on 11 June 2024. The delay will allow the Courts below to make any necessary redactions from their respective judgments and give any necessary directions about searching court records.

[82] We make a permanent order under s 205 of the Criminal Procedure Act prohibiting publication of the following:

(a) any evidence and submissions in this proceeding relating to the nature of the risk **[REDACTED]** and the information relevant to that risk **[REDACTED]**; and

(b) **[REDACTED]**.[50]

[83] We make an order redacting parts of the judgment that is made publicly available.

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[50] We have explained that **[REDACTED]** is not in evidence, but it is readily ascertainable by searching on material that is in evidence, and it should be suppressed to give effect to the orders we have made. **[REDACTED]**.

[84] We make an order that the files for this appeal are not to be searched without the leave of a Judge of this Court.[51]

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[51] Senior Courts (Access to Court Documents) Rules 2017, r 5(2).