



COURT OF APPEAL OF NEW ZEALAND

TE KŌTI PĪRA O AOTEAROA

15 November 2024

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

***Brenton Harrison Tarrant v The King* [2024] NZCA 579**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Introduction

The Court of Appeal today released a decision granting Mr Tarrant’s appellate counsel permanent name suppression. The Court made the following orders relating to suppression:

1. Order permanently prohibiting publication of Lawyer A and Lawyer B’s names, addresses and identifying particulars under s 202 of the Criminal Procedure Act 2011. Publication of their occupation is permitted.
2. Order prohibiting publication of all affidavit evidence received in connection to this application, that is not contained within the public version of the judgment, under s 205 of the Criminal Procedure Act 2011.
3. Order prohibiting publication of the media release, the judgment or any information therein until the judgment is delivered at 2:00 pm on 15 November 2024.
4. Pre-existing order that the file for this appeal is not to be searched without the leave of a Judge of this Court remains in place.

Background

5. Mr Tarrant was convicted of 51 charges of murder, 40 charges of attempted murder and one charge of engaging in a terrorist act. He was sentenced to life imprisonment without parole. Mr Tarrant has applied to appeal his convictions and sentence.
6. Mr Tarrant's appellate counsel, Lawyers A and B, have applied for an order permanently suppressing their names as connected persons under s 202 of the Criminal Procedure Act 2011. Their application was made on the grounds that they would suffer undue hardship and/or that they and their families would be endangered if their names were published in connection with Mr Tarrant. The application was opposed by the Crown and four media organisations.
7. Affidavits were received from Lawyer A, Lawyer B, and two other senior defence barristers.

The issues for the Court to decide

In determining the application, the Court was required to answer the following questions:

- (a) Are counsel for Mr Tarrant "connected with the proceedings" or otherwise "connected with" Mr Tarrant? If so;
- (b) Have counsel established that publishing their names would be likely to cause them undue hardship or endanger the safety of any person? If so;
- (c) Should the Court exercise its discretion to make the order sought?

The decision

For the reasons set out in its unanimous judgment, the Court has concluded:

8. Mr Tarrant's counsel are "connected with the proceedings". The ordinary and natural meaning of "connected" equates to a person being "related or associated" with another person or event. Lawyers who appear in court on instructions from an offender perform a vital element in the proceedings and are therefore intrinsically connected with the proceeding.

9. Mr Tarrant’s counsel established that publishing their names would be likely to cause them undue hardship. The nature and seriousness of the abuse received by the senior defence lawyers who gave evidence, in combination with the unprecedented and highly publicised nature of Mr Tarrant’s offending, means Lawyer A and Lawyer B would be likely to receive extreme abuse and threats if their names were published in connection with Mr Tarrant. The hardship they would likely face is of a level and character beyond that of which defence counsel should be expected to weather. They and their families would also likely face a genuine risk to their safety.
10. The Court should exercise its discretion to suppress Lawyer A and Lawyer B’s identities. Consideration of various factors — including open justice, potential danger to the criminal bar, the cab-rank rule, the efficacy of any orders, and the potential precedential effect of the decision — does not give rise to any sufficient reason to decline the application.

The discretionary considerations

11. The importance of open justice and the ability of the media to report on court proceedings is discussed at paragraphs [37]–[40]. In this case it is undoubtedly important that the media is able to report on what the lawyers in Mr Tarrant’s appeal say. That Lawyer A and Lawyer B cannot be named will not prevent this.
12. The Court does not consider it likely there is a potential risk of danger to criminal barristers other than Lawyer A and Lawyer B. This is discussed at paragraphs [41]–[43].
13. Paragraphs [44]–[46] discuss the cab-rank rule. Under the cab-rank rule lawyers are professionally obliged to act for clients who instruct them. Lawyer A and Lawyer B are playing a critical role in the administration of justice in what is undoubtedly a very difficult case. They have been instructed to represent Mr Tarrant and intend to do so in accordance with the cab-rank rule.
14. The efficacy of and practical considerations in implementing a suppression order, and other ways to protect Lawyer A and Lawyer B have not influenced the Court’s decision. This is discussed at paragraphs [47]–[50].
15. Paragraphs [51]–[56] discuss the potential precedential effect of this decision. However, the unique nature of this case guards against the decision opening the floodgates to other similar applications.