



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

11 JUNE 2024

MEDIA RELEASE

JANE ALISON FARISH v THE KING

(SC 90/2023) [2024] NZSC 65

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 redacted judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Interim suppression

Publication of the judgment, the media release and the minutes, and any information therein, is prohibited until after the judgment is delivered at 2 pm on 11 June 2024.

Permanent suppression

Publication of certain evidence and submissions contained in the judgment is prohibited. See paragraph [82] of the judgment for further details.

Parts of the judgment are redacted and will be omitted from the version of the judgment which is made publicly available on 11 June 2024. Publication of the sections redacted in the publicly available version is prohibited.

The files for this appeal are not to be searched without the leave of a Judge of this Court.

What this judgment is about

This case concerns the courts' ability to suppress information relating to a criminal proceeding on the basis that publishing that information would be likely to endanger someone's safety. Because the appellant in this case is a judge, the Court's judgment considers the various public interests that arise, including the public interest in judges not being seen to receive special treatment when they apply for a suppression order.

Background

In August 2022, Ian Dallison tried to kill the landlord of his business premises. In the process, he inflicted serious injuries on his landlord and another victim. At the time, the appellant, Jane Farish, was Mr Dallison's girlfriend. She is also a District Court judge. She played no role in Mr Dallison's offending.

Mr Dallison applied for the appellant's name, address, occupation and other identifying particulars to be suppressed, arguing that public knowledge of their connection would risk his safety while he was in prison. The District Court granted the application on that basis, but the High Court later revoked the suppression order.

Mr Dallison appealed to the Court of Appeal. The Crown filed submissions that disclosed information about the appellant that was not in evidence and that was not connected to Mr Dallison's offending. This caused the appellant to intervene in the proceeding.

Procedural history

The appellant applied to the Court of Appeal seeking two suppression orders. The first application was brought under s 205(2)(c) of the Criminal Procedure Act 2011 on the basis that publication of certain information in the evidence adduced and submissions made in Mr Dallison's court proceeding would be "likely to endanger the safety of any person", but especially herself. The second application, brought under s 202(1)(c) of the Criminal Procedure Act, sought suppression of her identity on the basis that publication would be likely to endanger her safety.

In July 2023, the Court of Appeal dismissed Mr Dallison's appeal. The Court also declined the appellant's two applications for suppression.

On 30 October 2023, the Supreme Court granted the appellant leave to appeal the Court of Appeal's refusal to make an order suppressing the information. The Supreme Court declined leave to appeal the Court of Appeal's refusal to make an order suppressing the appellant's identity.

Supreme Court decision

The Supreme Court has unanimously allowed the appeal.

Section 205 of the Criminal Procedure Act

The Court first engaged with the meaning of the threshold: "publication is likely to endanger the safety of any person". It determined that the court must be satisfied that, as a result of publication, there is a real and appreciable possibility that someone is put into danger or exposed to peril or harm. "Safety" plainly includes their physical safety from assault or injury. Where publication may trigger an action that may result in harm to "any person", the court must consider the likelihood both that publication will cause that action and that the action will endanger the safety of any person. That risk may be mitigated or elevated depending on whether the identity of the person seeking suppression is or will be public.

Public interests that arise in this case

The Court agreed there is a public interest in Mr Dallison's offending. This public interest extends to the fact 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. But that information is now public.

The Court found that the public interest does not extend to the information that the appellant wishes to be suppressed. That information has no connection to Mr Dallison's offending. The public interest also does not extend to aspects of a judge's private life that are not unlawful, blameworthy or connected to criminal offending.

The Crown and Stuff also submitted that if this Court grants the appellant a suppression order, it may convey the impression that the court system is looking after its own, and it may invite speculation. The Court made four points in response:

- (a) If the threshold is met, judges have the same right as anyone else to protection from the risk of harm to their personal safety.
- (b) Whether that threshold is met or not is a question of fact. The fact that she is a judge does not reduce that risk. On the contrary, it may increase it.
- (c) The risk of the system being seen to protect its own must be seen in context. The Crown included the information in its submissions on Mr Dallison's application for suppression not because it related to his 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.
- (d) A reasonable observer who is aware of the publicly available information would recognise that any speculation about the nature of the risk to personal safety cannot be quieted without triggering the risk itself.

Whether the threshold for a suppression order is met

Differing from the Court of Appeal, this Court was easily satisfied that publishing the 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. The risk to personal safety is both immediate and serious.

The Court reached this conclusion from the evidence provided by the appellant and the Crown. That evidence, and the Court's analysis of it, has been redacted in the publicly available version of this judgment. But it can be said that the evidence does not sustain the inferences made by the Court of Appeal that resulted in it determining the risk to personal safety was low.

Whether this Court should make a suppression order

The Court found that the principle of open justice applies to all the information which the appellant wants to suppress now that it has been mentioned in submissions and evidence. The public should be the judges of what happens in the courts. But the Court did not accept that there is a strong public interest in the information, either in connection with Mr Dallison's offending or generally. The interests of justice also do not require the appellant to accept a serious risk to personal safety so that a court can avoid giving the false impression that she is being afforded privileged treatment. The appellant had no reasonable steps available to her to reduce the personal safety risk to the point where suppression would be unnecessary. In these circumstances, the interests of justice required that the information be suppressed.

Formal orders and redactions

The Court has made a permanent order under s 205 of the Criminal Procedure Act prohibiting the publication of certain evidence and submissions. The Court has also made ancillary orders to support the suppression order. The Court cannot be any more precise in its judgment that is made publicly available as that would expose the nature of the risk to personal safety.

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