**REDACTED VERSION**

**INTERIM ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF APPELLANT AND THE VICTIM PURSUANT TO S 292 OF THE CRIMINAL PROCEDURE ACT 2011 UNTIL THE EXPIRY OF THE APPEAL PERIOD IN S 291(2), OR, IF AN APPEAL IS FILED AND LEAVE GRANTED, UNTIL THE APPEAL IS FINALLY DETERMINED.**

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA219/2025**
**[2025] NZCA 470**

| | |
|---|---|
| BETWEEN | R (CA219/2025)<br>Appellant |
| AND | THE KING<br>Respondent |

| | |
|---|---|
| Hearing: | 21 August 2025 (further material received 3 September 2025) |
| Court: | French P, Campbell and Collins JJ |
| Counsel: | J H C Waugh and J P Seal for Appellant<br>M F Laracy, N R Coates and E P C Duckett for Respondent<br>R K P Stewart KC for Radio New Zealand as Interested Party |
| Judgment: | 15 September 2025 at 10 am |
| Reissued: | 18 September 2025 |

---

## JUDGMENT OF THE COURT

---

**A The application to adduce further evidence is granted.**

**B The appeal is dismissed.**

**C We make an order prohibiting publication of this judgment until 12.00 pm Wednesday 17 September 2025 to enable counsel to inform Mr R and his whānau of our decision.**

**D Interim name suppression continues for Mr R and Ms T pending disposition of application for leave to appeal to the Supreme Court.**

---

**REASONS OF THE COURT**

(Given by Collins J)

## Introduction

[1] Mr R appeals a decision of the High Court in which Grau J declined Mr R's application to suppress his name and that of his mother, Ms T.[1] Mr R was found to have killed Ms T on 4 June 2024, but also found not guilty of her murder by reason of insanity.[2]

[2] The application for name suppression in the High Court relied on s 200(2)(a) and (c) of the Criminal Procedure Act 2011. Those subsections provide that a court may make an order suppressing publication of the name and identifying particulars of a person charged with, or convicted or acquitted of an offence, if satisfied that publication would be likely to either:

> (a) cause extreme hardship to [that] person … or any person connected with that person; or
>
> …
>
> (c) cause undue hardship to any victim of the offence;
>
> …

[3] In addition, s 202(1)(b) provides that the court may make an order suppressing publication of the name, address or occupation of any victim of the offence, if satisfied under s 202(2)(a) that publication would be likely to "cause undue hardship" to a victim. While counsel for both Mr R and the Crown referred to s 202 in their submissions, name suppression for Ms T was not ultimately sought under that section. Rather, it was argued that Ms T's name ought to be suppressed as a necessary consequence of Mr R's name suppression under s 200. We discuss this further at [77].

[4] Victim is defined in s 4 of the Victims' Rights Act 2002 as including a member of the immediate family of a person who dies as a result of an offence committed by

---

1 *R v [R]* [2025] NZHC 932 [High Court judgment] at [64(d)].
2 At [19] and [27], referring to s 23 of the Crimes Act 1961.

another person. Immediate family is defined in s 4 of the Victims' Rights Act as "a member of the victim's family, whanau, or other culturally recognised family group, who is in a close relationship with the victim at the time of the offence".[3]

[5] It is well settled that when considering name suppression, the court must first determine whether or not the applicant has met any of the "threshold requirements" set out in s 200(2) of the Criminal Procedure Act.[4] As set out above at [2], the relevant threshold requirements in this appeal are either:

(a) extreme hardship to the applicant (or any person connected with that person);[5] or

(b) undue hardship to a victim.[6]

If the applicant passes the first step, the court proceeds to the second step which involves a determination of whether, after balancing the competing interests, a name suppression order should be made. At this second step, the principle of open justice is the starting point, which should yield only where the balance clearly favours suppression.[7] We explain the principle of open justice at [63].

[6] Mr R's appeal focusses upon the second step in the process we have summarised at [5]. The essence of his case is that principles of tikanga favour suppression of the names of Mr R and Ms T. Those principles are said to outweigh the public interest in open justice, at least while Mr R remains in a mental health facility. We elaborate upon the grounds of appeal at [65].

[7] This tragic case involves the killing of two people who were close to Mr R. **[Redacted]**.

---

3 Tohutō (macron) omitted in original.
4 *M (SC 13/2023) v R* [2024] NZSC 29, [2024] 1 NZLR 83 at [35], citing *Robertson v Police* [2015] NZCA 7 at [39]–[40].
5 Criminal Procedure Act 2011, s 200(2)(a).
6 Section 200(2)(c).
7 *M (SC 13/2023) v R*, above n 4, at [36]–[39], citing *Robertson v Police* above n 4, at [41].

**First killing**

[8] **[Redacted]**.

[9] **[Redacted]**.

[10] **[Redacted]**.

[11] **[Redacted]**.

[12] **[Redacted]**.

**Second killing**

[13] By 2012, Mr R's health had improved to the point where although he remained a special patient, he was able to receive treatment and supervision whilst living in the community.[8] In 2021 his status changed from special patient to one making him subject to a community treatment order.

[14] In May 2024, Mr R's mental health began to deteriorate. **[Redacted]**. When he became involved in an altercation with a whānau member, Mr R was readmitted to a mental health facility. He was released from that facility on 30 May 2024.

[15] On 4 June 2024, Mr R showed signs of relapsing. Members of his whānau became increasingly concerned about his mental health. Mr R telephoned his father and told him he was being pursued by a gang. Mr R's father telephoned a mental health nurse who had cared for Mr R, but efforts to find him that afternoon were unsuccessful.

[16] On the evening of 4 June Mr R went to a relative's home seeking a gun because he continued to believe that a gang was after him. The whānau member whom Mr R spoke to took him to the home of another whānau member but on the way Mr R said that he had killed his mother because she was possessed by the devil. Police were

---

[8] See s 50A.

immediately notified. Ms T's body was found in her home. She had been stabbed to death.

[17] Mr R was charged with having murdered his mother and remanded to a mental health facility under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act).

[18] Two psychiatrists, Dr Barry-Walsh and Dr Young, prepared reports pursuant to s 38 of the CPMIP Act. They both concluded that Mr R was fit to stand trial and that the defence of insanity was available to the murder charge.

[19] In a pre-trial decision given on 9 April 2025, Grau J concluded Mr R was insane at the time he killed his mother. This conclusion was based on psychiatric evidence which established that when he killed his mother, Mr R was suffering a relapse of his longstanding schizophrenia and that the killing of Ms T was underpinned by Mr R's delusional belief that his mother was the devil.[9]

[20] Mr R was thereafter detained for a second time as a special patient under the Mental Health Act. It is not possible to determine how long he will remain in a mental health facility, but it is likely he will be a special patient for many years.[10]

**High Court name suppression decision**

[21] Mr R and his whānau sought suppression of Mr R's and Ms T's names and anything that could identify them.[11]

[22] There were two bases to the applications:

(a) That Mr R would suffer extreme hardship if his name were able to be published in connection to the killing of Ms T.[12]

---

9 High Court judgment, above n 1, at [20]–[27].
10 This was also recognised by Grau J: see at [53].
11 **[Redacted]**.
12 Pursuant to Criminal Procedure Act, s 200(2)(a).

(b) That as victims of the killing of Ms T, Mr R's whānau would suffer undue hardship if Ms T's and Mr R's names were published in connection with the killing of Ms T.[13]

[23] The concerns of the whānau were conveyed to the Court in two letters from members of Mr R's whānau including one from his father. Grau J summarised the contents of the letter from Mr R's father in the following way:[14]

> [37] … It is a very powerful letter asking that names and facts that could lead to [the] identification [of Mr R and Ms T] should be suppressed, because of the profound impact publication of those matters would have. **[Redacted]**. As they put it, publication of the names will not change what happened. It will only make it worse for the whānau, and those whānau are victims here, as is [Mr R], for the failings in the mental health system. They have suffered enough, and it will be hard to move forward if suppression is not granted.

[24] The second letter was from a grandnephew of Ms T. He explained how the loss of Ms T "has left an indelible mark on [their] family".

[25] In his letter, Ms T's grandnephew observes:

> While it may be true that insanity played a role, we cannot ignore the fact that [Ms T] was still killed — by her son — in an act that can only be described as cruel and heartless[.]
>
> This is a failure of the system. Not only did the system fail [Mr R], but it also failed his whānau. It failed [Mr R's] relationship with his partner, his siblings, and his entire family. Ultimately, the system failed [Ms T].

[26] When speaking about Ms T's tangihanga,[15] her grandnephew, who officiated at that ceremony, says:

> The atmosphere at [Ms T's] tangi was one of profound sorrow, far beyond the usual solemnity of such occasions. We tried our best to celebrate her life, wearing bright colours and adorning her casket with butterflies and ornaments she loved. But the weight of our grief was overwhelming. We knew she had been murdered. We knew who had done it. And we knew that justice had to be served.

[27] In a report prepared pursuant to s 23 of the CPMIP Act, Dr Barry-Walsh supported name suppression for Mr R on therapeutic grounds. He expressed the view

---

13 Pursuant to s 200(2)(c).
14 High Court judgment, above n 1.
15 Ceremonies connected with mourning the death of a person.

that publishing Mr R's name in connection with the killing of Ms T risks causing Mr R's mental health to deteriorate and may even increase the prospects of Mr R taking his own life. He also noted that publication could reduce Mr R's prospects of rehabilitation and recovery.

[28] Dr Young also supported name suppression for Mr R. He said that there was a possibility of Mr R being moved into a residential aged care facility at some stage in the future, but that publishing his name in connection with the killing of Ms T would jeopardize the prospects of any future care arrangements in the community.

[29] When undertaking the first of the two steps required when assessing a name suppression application Grau J:

(a) Reiterated that the thresholds of "'[e]xtreme' 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".[16]

(b) Concluded that while name suppression would be in Mr R's best interests from a therapeutic perspective, his circumstances did not reach the very high threshold of extreme hardship.[17]

(c) Also concluded that undue hardship would be caused to Mr R's whānau if his and Ms T's names were able to be published. **[Redacted]**.[18]

---

16 High Court judgment, above n 1, at [51], quoting *Farish v R* [2024] NZSC 65, [2024] 1 NZLR 223 at [28].

17 High Court judgment, above n 1, at [53].

18 **[Redacted].**

[30] Grau J then proceeded to determine whether or not the public interest in knowing the identity of Mr R and Ms T outweighed the hardship that would be caused to their whānau if name suppression was declined. The Judge:

(a) Explained there was a high public interest in open justice in this unique case and that the balance does not "come down clearly in favour of suppression".[19]

(b) **[Redacted]**. ["]These are matters that the public has an interest and an entitlement to know about".[20]

(c) Said that proper reporting of the case would not be possible without naming Mr R and Ms T.[21]

(d) Recognised "Mr [R] poses an ongoing and serious risk to public safety, and the public have a legitimate interest in knowing the identity of a person who poses such a risk".[22]

(e) Noted the victims of the first killing had "a very real and very legitimate interest in knowing that this has happened again".[23]

[31] Grau J concluded that the public interest in open justice outweighed the undue hardship which whānau was likely to face. Accordingly, the applications for name suppression were declined.[24]

[32] Mr R immediately filed an appeal against the name suppression decision. This triggered the continuance of interim name suppression until we determine the appeal.[25]

---

19 At [59], quoting *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [43].
20 **[Redacted]**.
21 At [60].
22 At [61].
23 At [61].
24 At [62].
25 Criminal Procedure Act, s 286(3)(b); and postscript to the High Court judgment, above n 1.

**Application to adduce further evidence**

[33] Mr R has applied to adduce new evidence from Mr Che Wilson, an expert in tikanga, who explains how the desire for name suppression by Mr R and Ms T's whānau should be viewed from a tikanga perspective. We shall explain Mr Wilson's evidence at [38] to [44]. Mr R also applied to file copies of media reports that were published following the High Court hearing.

[34] The criteria for admitting new evidence on appeal involves a sequential analysis, which is best explained through asking the following questions:[26]

(a) First, is the evidence credible? If it is not credible, then the evidence should not be admitted.

(b) Secondly, is the evidence fresh in the sense that it could not, with reasonable diligence, have been obtained for the hearing in the court below? If the evidence is both credible and fresh, it generally should be admitted unless the court is satisfied that if it were admitted, the evidence would have no effect on the outcome of the decision under appeal.

(c) Thirdly, if the evidence is credible, but not fresh, would it have had an impact on the decision under appeal?

[35] The evidence from Mr Wilson is not fresh as it could, with reasonable diligence, have been presented to the High Court.

[36] Responsibly, the Crown accepts that Mr Wilson's evidence is credible and that ultimately, we will need to engage with the substance of his evidence when considering the merits of the appeal. We accordingly grant leave for Mr Wilson's evidence to be adduced.

---

[26] *Lundy v R* [2013] UKPC 28, [2014] 2 NZLR 273 at [120].

[37] Copies of media reports that occurred after the High Court hearing have been filed without objection as have media reports concerning the first killing. For completeness, we grant leave for that evidence to be adduced on appeal.

**Mr Wilson's evidence**

[38] Mr Wilson is undoubtedly an expert in tikanga,[27] and qualified to provide evidence on Whanganui tikanga perspectives. Like Mr R, Mr Wilson's iwi are part of the confederated tribes of Whanganui. In summarising Mr Wilson's evidence we shall set out interpretations provided by Mr Wilson of key te reo Māori concepts included in his report but caution that there is no perfect English equivalent of some Māori concepts.

[39] Mr Wilson explains:[28]

> [T]ikanga Māori (which embodies the three universal foundations of culture of kawa,[29] tikanga[30] and ritenga[31]) is an interconnected system of law that strives for the natural order of balance.

[40] Mr Wilson goes on to state that when a kōhuru[32] occurs, several kawa are engaged, including the principle of utu,[33] which is triggered in order to achieve balance and harmony in relationships. Other kawa triggered by kōhuru are mana,[34] tapu[35] and

---

27 In *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 Mr Wilson, who was a participating expert, was described along with the other experts as being an "eminent knowledge [holder] in the subject matter of tikanga Māori": see at [37], n 48.

28 Footnotes added.

29 Defined as "the universal laws of nature that inextricably bind hapū and iwi to the mountains, lands and waterways within their tribal domains": Ngāti Rangi Claims Settlement Act 2019, s 12 definition of "kawa". Mr Wilson also refers to scholar Dr Huirangi Waikerepuru's translation of kawa, which defines the concept as a "universal law" emanating from nature, that has a focus on "natural order".

30 Defined as "the customary laws of hapū and iwi that give validation to kawa through appropriate ritenga": Ngāti Rangi Claims Settlement Act, s 12 definition of "tikanga".

31 Defined as "the local practices of hapū and iwi carried out in accordance with the kawa and tikanga of those hapū and iwi": Ngāti Rangi Claims Settlement Act, s 12 definition of "ritenga".

32 The act of murder.

33 Broadly translated as retribution and/or reciprocity.

34 Broadly translated as prestige, authority, control, power, influence and status.

35 Broadly translated as something that is sacred, prohibited or restricted. Mr Wilson notes that mana and tapu are interconnected concepts and there are varying "states and levels of tapu" of a person.

noa.[36] The tikanga triggered by a kōhuru are hara,[37] which impacts upon mana, as well as muru[38] and whakawātea.[39]

[41] Mr Wilson explains that in traditional Māori society the perpetrator of a kōhuru would be killed irrespective of their mental state and that the perpetrator's family would be expected to provide material reparation (muru) to the victim's community or hapū.

[42] The kōhuru would also be discussed at the victim's tangihanga. Mr Wilson says it is common at a victim's tangihanga for speakers to openly talk about the way the victim was killed, and that this process can be "both confronting and comforting". The details of the way the victim was killed are often spoken about in front of the victim's tūpāpaku.[40] Mr Wilson states that: "The open dialogue can, in some examples, be a form of restitution." Mr Wilson explains that this occurred at Ms T's "tangi upon her return home to Raetihi Marae. It was public and laid down on the marae to ensure transparency with a massive amount of empathy too".

[43] Mr Wilson says that lifting "name suppression while [Mr R] is in custody would afflict extra muru on both whānau who are grieving the loss of [Ms T], the loss of [Mr R] and coping with the whakamā[41] of the two kōhuru".[42] He suggests this would be "excessive punishment on the whānau and could be deemed as a new level of utu being exacted on both whānau from an unrelated third party [the Court]. This could potentially spiral into an intergenerational quagmire of trauma".

[44] Mr Wilson explains however that if Mr R is released, it would be in line with tikanga for name suppression to be lifted because: "By this time, both whānau would have healed somewhat and able to shoulder any whakamā that may come with the lifting of name suppression."

---

36 Broadly translated as being free from tapu.
37 Broadly translated as offending or being in violation of tapu.
38 Broadly translated as plundering, confiscating, or the taking of ritual compensation.
39 Broadly translated as clearing, purging or cleansing.
40 Corpse.
41 Broadly translated as a feeling akin to shame, inadequacy or dishonour.
42 Footnote added.

**How tikanga can inform the law**

[45] The Supreme Court has recognised that tikanga is the first law of Aotearoa New Zealand.[43] The fundamental principles of tikanga, including whakapapa and whanaungatanga, were considered by the Supreme Court in *Ellis v R (Continuance)*[44] and by Te Aka Matua o te Ture | Law Commission in its report *He Poutama*.[45]

*Context*

[46] As Isac J has recently noted, four guiding considerations have emerged from case law and the Law Commission report that assist when determining how tikanga may inform the law.[46]

[47] The first of those considerations is the importance of context.[47] Tikanga is to be considered "where it is relevant to the circumstances of the case".[48] In such cases the incremental evolution of the common law is able to assess the compatibility of tikanga and common law principles.

[48] Williams J, in *Ellis v R (Continuance)* emphasised the importance of context when he said:[49]

> [267] The more difficult task is in determining the weight the relevant tikanga principle should carry in the determination. Should it be the controlling rule or principle, or merely an ingredient in a more multi-layered analysis? Again, the best guide will be context. A dispute taking place entirely within Te Ao Māori or one in which the disputants' expectations are that tikanga should be the controlling law is likely to be resolved according to tikanga, whether it is resolved by the community or by the courts. This is, for example, how the Native (and later Māori) Land Court awarded customary title between competing hapū. On the other hand, a dispute taking place at the

---

43 *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134 at [187], per Winkelmann CJ, Glazebrook, Ellen France, Williams and Kós JJ; and *Ellis v R (Continuance)*, above n 27, at [85] and [107] per Glazebrook J and [168] and [172] per Winkelmann CJ.

44 *Ellis v R (Continuance)*, above n 27, at [85] per Glazebrook J, [185] per Winkelmann CJ and [248]–[254] per Williams J. See also the Statement of Tikanga appended to the Supreme Court's judgment at [22]–[29] (tikanga), [90]–[95] (whakapapa) and [96]–[100] (whanaungatanga).

45 Te Aka Matua o te Ture | Law Commission *He Poutama* (NZLC SP24, 2023) at 49–50.

46 *Hata v Attorney-General* [2025] NZHC 519, [2025] NZAR 241 at [97]–[126]. Isac J noted the first principle is that "the common law cannot give effect to tikanga where it is contrary to statute, 'or to fundamental principles and policies of the law'": at [101] quoting *He Poutama*, above n 45, at [8.39(f)].

47 *Hata v Attorney-General*, above n 46, at [104]–[110].

48 At [104], quoting *Ellis v R (Continuance)*, above n 27, at [117] per Glazebrook J.

49 Footnote omitted.

> point of intersection between Te Ao Māori and the wider community is likely to require careful weighing of common law and tikanga principles according to facts and the needs of the case. This is the kind of controversy that is more likely to come to the courts. Here, tikanga will be an ingredient in a broader analysis in which the common law has already developed relevant rules or principles that must be taken into account. The significance of any contest between these competing considerations (if in fact they are in competition) will depend on the case. This considering and weighing of sometimes incommensurable principles will be familiar to environmental and family lawyers, among others.

[49] In this case, context requires a careful understanding of the perimeters of the appeal which is advanced on the proposition "that the High Court failed to appropriately consider aspects of tikanga that were raised in the victim impact statements" and which have been elaborated upon in Mr Wilson's evidence. As a consequence, it is argued by Mr R, that Grau J "incorrectly assessed the nature and extent of hardship that would be suffered by the victim's whānau" when refusing him name suppression.

*Tikanga can be multifaceted*

[50] The second consideration that emerges from the authorities is that tikanga involves interconnected principles.[50] As a consequence, two or more tikanga principles may be relevant to an issue. This point was made by the Law Commission in 2001:[51]

> As always in tikanga Māori, the values are closely interwoven. None stands alone. They do not represent a hierarchy of ethics, but rather a koru, or a spiral, of ethics. They are all part of a continuum yet contain an identifiable core.

[51] Mr Wilson's evidence identifies a number of interconnected tikanga principles.

[52] The first of those principles is the importance of whānau responsibility which, in this case places expectations upon Mr R's immediate family to bear some accountability for his actions. This reflects Mr Wilson's evidence that in traditional Māori society, Mr R would have been executed and his family would also have been

---

50 *Hata v Attorney-General*, above n 46, at [111]–[114]; and Statement of Tikanga appended to *Ellis v R (Continuance)*, above n 27, at [30].

51 Te Aka Matua o te Ture | Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at [126] (footnote omitted). See also *Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)* [2022] NZHC 843, [2022] 3 NZLR 601 at [306].

expected to atone for his actions through providing compensation or other form of redress to Ms T's whānau.

[53] Mr Wilson's evidence also explains how publishing Mr R's name in connection with the killing of Ms T adds to the whakamā suffered by her whānau notwithstanding assurances from authorities, including the courts, that they played no role in the events that led to Ms T's death. A consequence of the way tikanga operates is that communal and whānau responsibility for the actions of individuals means that Mr R's family shoulder a great deal of whakamā, which is able to be passed down to future generations.

[54] Another principle explained in Mr Wilson's evidence is that Ms T's tangihanga provided a forum for transparent and comprehensive discussion of the circumstances that led to her killing, and Mr R's role in her death. We understand from Ms T's grandnephew that she was a highly respected and much loved woman with deep connections to people in the Whanganui and Raetihi regions. Counsel thought it likely that several hundred people would have attended Ms T's tangihanga and many people would have spoken and heard about Mr R's role in the killing of his mother and how mental health services failed him and his whānau.

*Tikanga informs process and outcomes*

[55] A third consideration that can be found in recent case law is that tikanga informs process as well as outcomes.[52] Palmer J explained in *Ngāti Whātua Ōrākei v Attorney-General (No 4)*:[53]

> [362] Tikanga governs matters of process as well as substance. There are ways of resolving disputes about tikanga which are consistent with tikanga and ways which are not. Full discussion by kaumātua on a marae, abiding by the kawa of the marae and resulting in consensus, can be consistent with tikanga. Recourse to courts without agreement between the parties is not obviously tikanga-consistent. Only one of the tikanga experts who gave evidence here says that it is. Some say recourse to courts is inconsistent with their tikanga. Others say that recourse to courts is far less appropriate or preferable than tikanga-consistent processes.

---

52 *Hata v Attorney-General*, above n 46, at [115]–[121].

53 *Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)*, above n 51 (footnotes omitted).

[56] In this case, it has been argued by Mr Waugh on behalf of Mr R that tikanga should inform the outcome of the appeal.

*Integrity of tikanga*

[57] The Supreme Court has recognised the importance of tikanga in New Zealand's legal system, but it has also sounded a note of warning. While judges must increasingly engage with tikanga "they have neither the mandate nor the expertise to develop or authoritatively declare the content of tikanga".[54]

[58] The Law Commission has also recognised there are limits to the way tikanga can impact upon court decisions, particularly where tikanga is contrary to legislation, "or to fundamental principles and policies of the law".[55] The Law Commission has also explained that:[56]

> While tikanga remains an independent system, incorporating tikanga concepts into state law has the potential to shift the location for the development of tikanga to state law institutions. This carries a real risk of undermining the mana of tikanga institutions. There is a risk of tikanga being misunderstood, misapplied and assimilated unless engagement between state law and tikanga is undertaken carefully. There is a need above all to be mindful of tikanga as an integrated system of concepts sourced from and practised within Māori communities.

[59] We are very mindful of the need for caution when engaging with tikanga and in particular we appreciate that we are not qualified to define the content of tikanga. We should strive not to inadvertently undermine the mana of tikanga institutions.

**Analysis**

*The parameters of the appeal*

[60] We commence our analysis by examining the context in which it is contended tikanga should inform the outcome of the appeal.

---

54 *Ellis v R (Continuance)*, above n 27, at [270] per Williams J; see also the observations of Natalie Coates "How can we Protect the Integrity of Tikanga in the Lex Aotearoa Endeavour?" (2022) 17 Otago Law Review 223 at 236.

55 *He Poutama*, above n 45, at 223.

56 At 213.

[61] The appeal focusses upon the interests of whānau, as victims, in circumstances where the High Court found that whānau would suffer undue hardship if Mr R's name was published in connection with the killing of Ms T.[57] It is no longer claimed, as it was in the High Court, that Mr R meets the extreme hardship threshold set out in s 200(2)(a) of the Criminal Procedure Act.

[62] As the High Court has found that whānau passed the undue hardship test, this appeal concerns the second step in the name suppression decision making process. This in turn gives rise to the key issue in this case: does the undue hardship suffered by whānau outweigh the public interest in open justice?

*The principle of open justice*

[63] The principle of open justice encompasses freedom of expression, the importance of judicial proceedings being conducted transparently and the right of the media to report proceedings as "surrogates of the public".[58] In *Farish v R* the Supreme Court reiterated what it had previously said in *Erceg v Erceg* about the principle of open justice:[59]

> [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.

---

57 High Court judgment, above n 1, at [57].
58 *R v Liddell* [1995] 1 NZLR 538 (CA) at 546.
59 *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 (footnotes omitted), quoted in *Farish v R*, above n 16, at [34].

[64] The Supreme Court has recognised however that there are circumstances in which the interests of justice require that the "general rule of open justice be departed from" in order to serve the ends of justice.[60]

[65] Notwithstanding that the principle of open justice is a fundamental principle and policy of the law, Mr Waugh submitted that once the circumstances of the whānau were properly evaluated through a tikanga lens, the hardship suffered by the whānau outweighed the principle of open justice in this case. In summary, Mr Waugh submitted:

(a) Tikanga has been described as the first law of New Zealand. It was therefore imperative for Grau J to engage with tikanga in this case.

(b) Allowing publication of Mr R and Ms T's names will afflict further muru and add to the whakamā already endured by whānau. This would be an unreasonable punishment, particularly as the muru would be inflicted by an unrelated third party, namely the courts. This could be viewed as the courts exacting a "new level of utu", risking "an intergenerational quagmire of trauma".

[66] The Crown urges us to take a cautious approach when invoking tikanga in this case. Ms Coates, who presented this part of the Crown's case, pointed out that tikanga supports an open and transparent criminal justice process and that what happened on the marae at Ms T's tangihanga was consistent with the principle of open justice.

---

60 *Erceg v Erceg*, above n 59, at [3].

[67] In her oral submissions, Ms Coates also reminded us that:

> … criminal law is … extensively codified and so whilst there is space for tikanga to be considered and have an impact (and it has an impact in a number of places including sentencing, including process in the Matariki Courts for example), it is trite … to say that tikanga of course does not have unfettered free rein in terms of determining the outcomes and that its relevance needs to be [confined] carefully in the context of each individual case and of course each individual area of law in which [its relevance is] being asserted.

[68] At the opposite end of the spectrum from Mr Waugh's submission was the argument from Mr Stewart KC on behalf of Radio New Zealand. He acknowledged that tikanga might inform the assessment of hardship but firmly rejected the possibility of tikanga affecting the principle of open justice.

[69] In our assessment, tikanga may assist courts in determining whether or not an applicant has demonstrated they will suffer extreme hardship or whether a victim has established they will suffer undue hardship if name suppression is declined, and in assessing the extent of that hardship. But, even assessing the hardship of Mr R's whānau through that tikanga lens, we are not persuaded that that hardship outweighed the strong public interest in open justice in this case. This is because of the following factors.

[70] First, we agree with Grau J that there is an overwhelming interest in giving supremacy to the principles of open justice in this case. **[Redacted]**.

[71] Secondly, we agree with Ms Coates' submission that the way Ms T's death was discussed openly at her tangihanga was consistent with the principle of open justice. Indeed, Mr Wilson's evidence did not suggest that any tikanga principles were inconsistent with the principle of open justice. His evidence focussed, rather, on tikanga principles that were relevant to the hardship the whanau would experience. In saying all this, we recognise that Ms T's tangihanga served a cultural purpose and its objective was not to achieve open justice.

[72] Thirdly, while the media has been able to convey a lot of information about Mr R's actions without naming him or Ms T, future enquiries and the inquest into Ms T's death will be hampered if it is not possible for authorities to openly identify

Mr R as the person who killed two persons closely connected to him whilst he was dependant on mental health services.

[73] Fourthly, the public has a right to know about Mr R's distressing history of violence in order that they are aware of the risks that he may pose if he is ever again released into the community.

[74] Fifthly, like Grau J, we also believe that the family of **[redacted]** have a unique interest in knowing, and being free to discuss, that Mr R has killed another person closely connected to him.

[75] These factors overwhelmingly lead us to conclude that the hardship suffered by the whānau does not outweigh the principle of open justice in this case.

[76] For completeness, two other matters require comment. First, the Crown submitted that whilst Grau J did not specifically refer to tikanga principles, her analysis of the impact of Ms T's death on whānau closely aligned with tikanga. Having carefully looked at the letters from Mr R's father and Ms T's grandnephew, we think that Mr Wilson's explanation of tikanga principles was far more detailed and nuanced than the victim impact reports referred to by Grau J and that the High Court Judge understandably did not engage with tikanga because it was not mentioned to her.

[77] Secondly, we have considered whether it would be possible to suppress Ms T's name as a victim under s 202(1)(b) of the Criminal Procedure Act. Mr Waugh did not invite us to pursue that course of action. That was understandable as the undue hardship suffered by whānau arises from publication of Mr R's name, not the tragic death of his mother. We also agree with the Crown that there is a strong public interest in the public understanding the relationship between Mr R and Ms T and how the nature of that relationship sheds light on the effect of Mr R's illness and the failings of mental health services.

**Result**

[78] The application to adduce further evidence is granted.

[79] The appeal is dismissed.

[80] We make an order prohibiting publication of this judgment until 12.00pm Wednesday 17 September 2025 to enable counsel to inform Mr R and his whānau of our decision.

[81] Interim name suppression continues for Mr R and Ms T pending disposition of application for leave to appeal to the Supreme Court.

**Interim name suppression**

[82] On 16 September counsel for Mr R advised the Court that he has instructions to seek leave to appeal to the Supreme Court. He also applied for continuance of the interim name suppression orders for Mr R and Ms T. That application is granted pursuant to s 292 of the Criminal Procedure Act pending determination of the application for leave to appeal to the Supreme Court.

Solicitors:
Crowley Waugh Barristers and Solicitors, Whanganui for Appellant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent