

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 113/2024
[2025] NZSC 51

BETWEEN	MARION JOAN PEARSON Applicant
AND	COMMONWEALTH OF AUSTRALIA First Respondent
	DISTRICT COURT AT WELLINGTON Second Respondent

Court: Winkelmann CJ, Kós and Miller JJ

Counsel: B J R Keith for Applicant
F R J Sinclair for First Respondent
A M Powell for Second Respondent

Judgment: 13 May 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant is a New Zealand citizen who formerly worked as a financial adviser in Perth. In December 2018, the Magistrates Court of Western Australia issued a warrant for her arrest on 136 charges of theft. The New Zealand District Court endorsed the Australian warrant under s 41 of the Extradition Act 1999 in November 2019. The applicant was arrested in New Zealand in December 2019 and granted bail and interim name suppression.

[2] In October 2021, the District Court found the applicant eligible for surrender under s 45 of the Extradition Act.¹ That Court rejected her arguments that extradition would be unjust or oppressive due to the time that had passed since the alleged offences, and that a less coercive alternative—participating remotely from New Zealand via summons—should be pursued. It also refused her application for permanent name suppression, concluding that the extreme hardship threshold was not met.

[3] An appeal and an application for judicial review of the District Court’s surrender and name suppression decisions were both dismissed by the High Court in May 2023.² Leave to bring a second appeal in respect of the eligibility decision was refused by the Court of Appeal in November 2023.³ An appeal from the judicial review decision was dismissed by that Court in September 2024.⁴ It rejected the argument that an alternative process was available to secure her appearance at trial while protecting her rights, holding the Judge was correct to find her eligible for surrender. Refusal of name suppression was upheld.

[4] The applicant seeks leave to appeal on two grounds: first, that extradition would be unjust or oppressive under s 8(1)(c) of the Extradition Act; and second, that the standard for name suppression should be modified in extradition cases. Fundamentally, these arguments reprise arguments advanced in the Courts below, but rejected by them.

[5] The applicant first submits that a summons procedure and remote pre-trial participation would better protect her rights, and that the Courts below failed to properly engage with her evidence or with relevant international authorities.

[6] As to name suppression, s 43(1)(b)(i) of the Extradition Act provides that the “public access and restrictions on reporting” provisions of the Criminal Procedure Act 2011 apply to extradition proceedings “so far as applicable and with the necessary

¹ *Commonwealth of Australia v Pearson* [2021] NZDC 19703 (Judge Black).

² *Pearson v Commonwealth of Australia* [2023] NZHC 1208 (Gendall J).

³ *Pearson v Commonwealth of Australia* [2023] NZCA 574 (Mallon, Churchman and Osborne JJ).

⁴ *Pearson v Commonwealth of Australia* [2024] NZCA 447 (Courtney, Goddard and Palmer JJ).

modifications”.⁵ The applicant submits that the “extreme hardship” standard for name suppression under the latter Act should be read down under that proviso.

Our assessment

[7] We do not consider the criteria for leave have been established. While the overarching questions posed may potentially raise issues of general or public importance,⁶ their determination is an intensely factual inquiry on which concurrent findings exist in now three Courts below. Further, and in any event, we are not persuaded the proposed appeal has sufficient prospects of success to justify the grant of leave.⁷ The proposed alternative summons procedure lacks enforceability in this jurisdiction and would be contrary to the object of providing “a simplified procedure for New Zealand to give effect to requests for extradition from Australia” prescribed in s 12(d) of the Extradition Act. The suggested construction and application of s 43(1)(b), as to name suppression, would be contrary to the scheme of the Extradition Act and the approach taken in comparable jurisdictions.

Result

[8] The application for leave to appeal is dismissed.

Solicitors:

Ord Legal, Wellington for Applicant

Te Tari Ture o te Karauna | Crown Law Office, Wellington for First Respondent

⁵ See Criminal Procedure Act 2011, Part 5 Subpart 3.

⁶ Senior Courts Act 2016, s 74(2)(a).

⁷ Section 74(1); and see subs (2)(b).