

NOTE: COURT OF APPEAL ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF WITNESSES/CONNECTED PERSONS (K, R, W AND M) PURSUANT TO S 202 OF THE CRIMINAL PROCEDURE ACT 2011 REMAINS IN FORCE.

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 24/2025
[2025] NZSC 60**

BETWEEN	WHITIAUA ROPITINI Applicant
AND	THE KING Respondent

Court:	Ellen France and Miller JJ
Counsel:	J D Munro for Applicant J G Fenton for Respondent
Judgment:	27 May 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Ropitini seeks leave to appeal his convictions for doing indecent acts on a young person.¹ He says that the Court of Appeal erred in holding that propensity evidence was properly admitted at his trial.² He says that decisions of the

¹ See *R v Ropitini* [2024] NZDC 13505 (Judge MacKenzie).

² *Ropitini v R* [2025] NZCA 3 (Ellis, Peters and Muir JJ) [CA judgment] at [55] per Ellis and Muir JJ.

Court of Appeal about the admissibility of propensity evidence involving defendants and/or complainants either side of puberty are not easily reconciled and resolving this is an issue of general importance.

[2] Mr Ropitini was 20 at the time and the complainant was 13. The propensity evidence concerned incidents said to have occurred when he was 12 and 17/18 years old and the alleged victims were aged 11 and 15/16 respectively. He challenged the admissibility of the evidence of his alleged previous conduct before trial and was unsuccessful.³ He renewed his challenge after conviction, confining it in this Court to the admission of the evidence of the propensity witness to the incident that allegedly happened when he was 12.

[3] The Court of Appeal divided on the question whether the propensity evidence relating to this incident was admissible. The question concerned what was described as the potentially qualitative difference between alleged offending by Mr Ropitini when he was 12 years old, with a girl roughly the same age, and alleged offending when he was 20 and the complainant was nearly 14.⁴ There was also a question whether a critical part of the propensity witness's evidence was vague and inherently unreliable.

[4] The majority held the Crown case was not that Mr Ropitini, as an adult, had a tendency to sexually offend against children or young teenagers; rather, the Crown case was that he was someone who, while young himself, had a tendency to opportunistically offend sexually against females of a broadly similar age and in broadly similar circumstances.⁵ The propensity witness's evidence was not so unreliable as to be inadmissible; she did not see exactly what was going on but saw enough to form a firm view that it was sexual and inappropriate.⁶ Other evidence tended to support her account, and the reliability issues were squarely before the jury.⁷

³ See *R v Ropitini* [2023] NZDC 6613; *R v Ropitini* [2024] NZDC 10066; and *R v Ropitini* [2024] NZDC 9899.

⁴ CA judgment, above n 2, at [46] per Ellis and Muir JJ.

⁵ At [48] per Ellis and Muir JJ.

⁶ At [51] per Ellis and Muir JJ.

⁷ At [51]–[53] per Ellis and Muir JJ.

The Court accordingly rejected the argument that the propensity witness's evidence was unfairly prejudicial.⁸

[5] We do not accept that the proposed appeal raises a question of general or public importance.⁹ The question of the correct approach to conduct engaged in by defendants at different ages is not in issue here,¹⁰ because the propensity evidence was not led to show Mr Ropitini had some kind of tendency as an adult to offend against children. Nor is there any appearance of a miscarriage of justice.¹¹

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

Solicitors:

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

⁸ At [54] per Ellis and Muir JJ.

⁹ Senior Courts Act 2016, s 74(2)(a).

¹⁰ The applicant seeks to contrast, in particular, *K (CA26/2014) v R* [2014] NZCA 229 at [44] as cited in *Wiropo v R* [2021] NZCA 538 at [19] and *A (CA85/2022) v R* [2022] NZCA 221 at [26] and [54]; with *Stark v R* [2015] NZCA 90 at [13] as cited in *Katoa v R* [2019] NZCA 289 at [13] and *R (CA429/2023) v R* [2023] NZCA 523 at [32].

¹¹ Senior Courts Act, s 74(2)(b).