



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

25 FEBRUARY 2026

MEDIA RELEASE

T v R

(SC 51/2025)

and

MAHONEY v R

(SC 114/2025)

Hearing in the Supreme Court Thursday 12 March–Friday 13 March 2026

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

Suppression

Publication of the name, address, occupation and identifying particulars of the complainant in SC 51/2025 is prohibited. Publication of the details of the appellant's previous convictions is prohibited until final disposition of the case. The name of the appellant is anonymised in this Court per *H v R* [2019] NZSC 69.

Publication of the name, address, occupation and identifying particulars of the complainant in SC 114/2025 is prohibited.

Background

This hearing involves two distinct cases. They both concern the use of counter-intuitive evidence (CIE) in sexual violence cases and judicial directions to the jury about the use of CIE.

CIE is evidence admitted in cases involving allegations of sexual abuse of young persons for the purpose of correcting erroneous beliefs or assumptions that a judge or jury may intuitively hold and which, if uncorrected, may lead to illegitimate reasoning.

Use of counter-intuitive evidence and jury directions in T and Mahoney

In *T* (SC 51/2025), the question is whether the references made by the prosecutor to CIE during the closing address, including comparing generic research findings to the

complainant's behaviour, were impermissible. In summing up, the Judge addressed the issue raised in the CIE and referred to by the prosecutor, but did not direct the jury as to the proper use of CIE.

In *Mahoney*, the issue relates to references to CIE in cross-examination and during the closing address. For example, during cross-examination, the prosecutor put definitions of specific behaviours to Mr Mahoney to suggest his conduct matched the research. The Judge directed the jury as to the purpose of CIE but did not explicitly warn that the CIE did not relate to the specific complainant's credibility.

In both *T* and *Mahoney*, the Court of Appeal found that the prosecutor's use of the CIE had not been improper. In *T*, the Court was also satisfied that the Judge had not misdirected the jury. In *Mahoney*, the Court found the Judge had erred by failing to specifically direct the jury as to the proper use of CIE, but was satisfied that this omission did not give rise to a risk of a miscarriage of justice in the circumstances. Both conviction appeals were dismissed.

Questioning of complainant regarding evidential video interview evidence in Mahoney

A further issue raised on appeal in *Mahoney* relates to questioning of the complainant by the prosecution after her evidential video interview (EVI) evidence had been played. The Court of Appeal acknowledged much of the questioning was repetitive and confusing but did not consider it impermissible.

This appeal

The approved question in both cases is whether the Court of Appeal was correct to dismiss the appeal against conviction.

The main issues on appeal concern the permissible uses of CIE, including the extent to which such evidence can be linked to the facts of the case; and the appropriate judicial directions as to CIE, including in cases where it has been used improperly.

The Court will also hear argument (in respect of *Mahoney* alone) on the issue of questioning of complainants by the prosecution following presentation of EVI evidence.

Remote viewing of hearing

Members of the public may apply to the Court for permission to view this hearing remotely. The [Protocol for Remote Viewing of Hearings](#) will apply. No recording is permitted.

If you wish to view this hearing remotely, please email your request with your name and phone number to the Supreme Court Registry, supremecourt@courts.govt.nz, before 1 pm on Wednesday 11 March.

The panel

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|---------------------------|---------------------------------|---|------------------------|--------------------------|
| The Hon Justice Miller | The Hon Justice Ellen France | The Rt Hon Chief Justice Winkelmann | The Hon Justice Kós | The Hon Justice Cooke |
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Judges as seen from the public gallery

Counsel

- T (Appellant in SC 51/2025): *J N Olsen and A Gruebner*
- Brian Timothy Mahoney (Appellant in SC 114/2025): *J E L Carruthers*
- The King (Respondent): *M J Lillico, J M Pridgeon and D Lye*

Sitting hours

On Thursday 12 March, Court will begin at 10 am and conclude at 4 pm with adjournments taken from 11.30 am to 11.45 am and from 1 pm to 2.15 pm. There is no afternoon adjournment.

On Friday 13 March, Court will begin at 10 am and conclude at 1 pm.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz.

Contact person:
Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Judgments

T (SC 51/2025)

Court of Appeal decision: [\[2025\] NZCA 136](#) (1 May 2025)
Supreme Court leave decision: [\[2025\] NZSC 117](#) (12 September 2025)

Mahoney (SC 114/2025)

Court of Appeal decision: [\[2025\] NZCA 490](#) (24 September 2025)
Supreme Court leave decision: [\[2025\] NZSC 187](#) (5 December 2025)