



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

11 March 2024

MEDIA RELEASE

L (SC 80/2023) v THE KING

(SC 80/2023)

Hearing in the Supreme Court Tuesday 19 March 2024

CASE HISTORY SYNOPSIS

This synopsis is provided by the Court 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.

Background

The appellant, L, was charged with the sexual abuse of the complainant, N, over a period of years. L was found guilty of 14 charges of sexual offending. However, L appealed successfully against the conviction and a retrial was ordered.

Before the retrial, L's counsel obtained a statement from C, a relation of the complainant. As C was living overseas, it was intended C give evidence remotely at the trial. However, the trial was adjourned due to COVID-19. In the meantime, C's mental health declined. L's counsel applied for C's original statement to be admitted instead of C giving evidence in person.

This was on the basis that C was now unavailable as a witness, under either s 16(2)(b) or (c) of the Evidence Act 2006. Under s 16(2)(b), a person is unavailable as a witness in a trial if they are outside of New Zealand and it is not "reasonably practical" for them to be a witness. Under s 16(2)(c), a witness is unavailable if unfit to be a witness because of age or physical or mental condition.

The Judge rejected L's application, holding that there was insufficient evidence to find that C was unavailable. At the conclusion of the trial, L was again convicted of all 14 charges.

L appealed his conviction to the Court of Appeal. L argued C's statement should have been admitted in evidence at the retrial. The Court of Appeal dismissed the appeal.

This appeal

L applied for leave to appeal against the Court of Appeal decision. On 3 November 2023, the Supreme Court granted leave to appeal. The approved question is whether the Court of Appeal was correct to dismiss the appeal. While leave was granted in general terms, the Supreme

Court noted that the argument should concentrate on the applicability of s 16(2)(b) of the Evidence Act to the facts of this case.

Name suppression

L, C and N's names are all suppressed. Their names, addresses, occupations and identifying particulars may not be published.

Viewing of hearing

The courtroom is open to the public. The hearing will not be live-streamed.

Application to view the hearing remotely may however be made under the [Protocol for Remote Viewing of Hearings](#). 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 Monday 18 March 2024.

The panel

The Hon Justice Kós	The Hon Justice Ellen France	The Hon Justice Glazebrook	The Hon Justice Williams	The Hon Justice Miller
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Judges as seen from the public gallery

Counsel

- L (Appellant): *H G de Groot and M J McKillop*
- The King (Respondent): *E J Hoskin and R K Thomson*

Sitting hours

Court will begin at 10:00am and conclude at 1:00pm with an adjournment taken from 11:30am to 11:45am.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 246](#) (19 June 2023)

Supreme Court leave decision: [\[2023\] NZSC 146](#) (3 November 2023)