



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

6 MARCH 2025

MEDIA RELEASE

DANIEL CLINTON FITZGERALD v ATTORNEY-GENERAL OF NEW ZEALAND

(SC 107/2024)

Hearing in the Supreme Court Thursday 20 March – Friday 21 March 2025

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.

Background

In 2021, the Supreme Court held that the seven-year “third strike” sentence imposed on Mr Fitzgerald following his conviction for indecent assault breached his fundamental right under the New Zealand Bill of Rights Act 1990 (NZBORA) to be free from grossly disproportionate punishment. As a result, Mr Fitzgerald has wrongly spent over four and a half years in prison. He now seeks damages on the basis that he has been arbitrarily detained in breach of s 22 of the NZBORA.

Courts below

On 27 September 2022, the High Court awarded Mr Fitzgerald \$450,000 in damages. It found that the Crown prosecutor was obliged to consider s 9 of the NZBORA and exercise prosecutorial discretion in a way that avoided the risk of Mr Fitzgerald becoming subject to a disproportionately severe punishment. The prosecutor should have exercised their discretion and proceeded on a different charge to remove the possibility that Mr Fitzgerald would be subject to a grossly disproportionate sentence for this offending. The Attorney-General appealed that decision.

On 5 September 2024, the Court of Appeal allowed the Attorney-General’s appeal. It held that Mr Fitzgerald’s grossly disproportionate sentence was not a result of the prosecutor’s action, but that of the sentencing Judge, as the sentencing Judge assumes ultimate responsibility for the final sentence imposed on any offender. The Court of Appeal noted further that the Supreme Court’s judgment in *Attorney-General v Chapman* [2011] NZSC 110 precludes the award of public law damages for judicial breaches of the NZBORA. Under *Chapman*, even if the sentence breached Mr Fitzgerald’s rights, damages could not be awarded.

This appeal

On 18 December 2024, the Supreme Court granted Mr Fitzgerald leave to appeal. The approved question is whether the Court of Appeal was correct to allow the Attorney-General's appeal.

In February 2025, the Court heard oral argument in *Putua v Attorney-General* (SC 31/2024). Mr Putua's counsel argued *Chapman* should be overturned. Counsel in Mr Fitzgerald's case have therefore been directed to consider arguments addressing the relevant implications if *Chapman* is overturned and if it is not.

Viewing of hearing

The courtroom is open to the public.

This hearing of the appeal will also be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice O'Regan	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Mallon
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Judges as seen from the public gallery

Counsel

- Daniel Clinton Fitzgerald (Appellant): *A S Butler KC and M D N Harris*
- Attorney-General (Respondent): *M F Laracy, J N E Varuhas and Z R Hamill*
- Te Kāhui Tika Tangata | Human Rights Commission (Intervener): *R A Kirkness, D T Haradasa and D Qiu*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

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: [\[2024\] NZCA 419](#) (5 September 2024)

Supreme Court leave decision: [\[2024\] NZSC 180](#) (18 December 2024)