

IN THE SUPREME COURT OF NEW ZEALAND
I TE KŌTI MANA NUI O AOTEAROA

SC 158/2025

BETWEEN Courtney Pauline Churchward

Applicant | Appellant

AND the King

Respondent

App Submissions

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Counsel for the appellant certify that this submission contains
no suppressed information and is suitable for publication

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MAY IT PLEASE THE COURT

1 Summary

- 1.1. In 2011, the Court of Appeal dismissed Ms Churchward's appeal against her life sentence in three paragraphs.¹ The reasoning was a straightforward application of *R v Rapira*, where the Court held that:²

[Youth] can have little weight when balanced against the public interest in denunciation and ensuing responsibility for the offending.

- 1.2. This led the Court to observe of Ms Churchward's case:³

This was a brutal murder. The personal circumstances of Ms Churchward cannot weigh against that.

- 1.3. In 2023, the Court of Appeal in *Dickey v R* held that:⁴

[177] For these reasons we think it is no longer correct to say, as the Court did in *Rapira*, that youth can carry little weight when balanced against the public interest in denunciation and accountability

- 1.4. Counsel submits that *Dickey* was the belated recognition of a critical error in *Rapira*. The result has been to transform sentencing in the High Court, based on the reality that youth is an almost dispositive factor in many cases. Almost certainly, if Ms Churchward were sentenced today, the sentence would be determinate. Counsel submits that this means that leave should be granted, and her sentence replaced with a determinate sentence under s 102.

2. Background

- 2.1. The applicants are cousins, who were living in Opotiki at the time of the murder. At the time, Ms Churchward was 17 and Ms Te Wini was 14. On 25 November 2008, the pair were out searching for cannabis.

¹ *Churchward v R* [2011] NZCA 531, (2011) 25 CRNZ 446 [CA Decision].

² *R v Rapira* [2003] 3 NZLR 794 (CA) [*Rapira*].

³ CA Decision at [58].

⁴ *Dickey v R* [2023] NZCA 2, [2023] 2 NZLR 405 [*Dickey*].

When they could not find any, they decided to burgle Ms Te Wini's next-door neighbour, hoping that he might have money or valuables.

- 2.2. While they were searching the property, the girls became mindful of the sleeping occupant, John Rowe. Concerned about what it would mean if he woke up, they armed themselves with wooden implements⁵ they found in the house and went to strike the victim – intending to knock him unconscious. In the dark, and after some hesitation, they hit Mr Rowe, who was not knocked out, and tried to get up. The girls fled, taking items and attempting to start Mr Rowe's car, before returning to Ms Te Wini's house through the fence. They divided \$1000 cash. Mr Rowe died as a result of multiple blunt force injuries.
- 2.3. Ms Churchward was convicted of murder following a trial where she admitted culpable homicide, but denied murderous intent. She was initially sentenced to life with an MPI of 17 years on the basis that a number of factors under s 104 of the Sentencing Act 2002 applied. She appealed, arguing both that a life sentence was manifestly unjust and that the MPI imposed was too high.
- 2.4. The Court of Appeal dismissed the appeal against the life sentence – going so far as to call the submission that it was manifestly unjust “highly optimistic.”⁶ This relied explicitly on the Court's earlier holding in *Rapira*.⁷ However, having received detailed evidence about the impact of youth on Ms Churchward's decision making, as well as detailed information about her personal background – that included being the victim of serious and repeated violence throughout her youth – the Court accepted that the 17-year MPI was unjust. An MPI of 13 years was substituted.
- 2.5. Ms Te Wini was also convicted following trial, but successfully appealed her conviction. She subsequently pleaded guilty expressly on the basis of s 168 of the Crimes Act. She was sentenced to life with an

⁵ A piece of wood Mr Rowe used as a walking stick and a thinner piece of timber like a broom handle.

⁶ At [17].

⁷ *R v Rapira* [2003] 3 NZLR 794 (CA).

MPI of 10 years. She appealed on the grounds that given her extreme youth, a life sentence was manifestly unjust. The Court of Appeal disagreed, holding that the level of violence in the offending was such that a life sentence remained the appropriate sentence.

- 2.6. Neither applicant pursued a further appeal against sentence at that time. However, the response of the Court of Appeal – especially in the case of Ms Churchward – indicated that the weight able to be placed on their youth at that time could not displace the default sentence. Reasonably, they determined at that time that nothing could be done.
- 2.7. However, once *Dickey* was released, the appellants took further legal advice. Given the time that had elapsed, that was not straightforward. It took time. On 20 October 2025, the applicants filed an application for leave, to have this Court consider their life sentences in light of a correct assessment of the significance of youth.

3. Leave is granted in the interests of justice

- 3.1. Ms Churchward was charged in 2008, and so her appeal is pursuant to s 383A of the Crimes Act 1961.⁸ That section is silent as to the time for bringing an appeal so r 11 of the Supreme Court Rules 2004 provides that it should have been brought within 20 working days of the decision of the Court of Appeal. That period ended on 17 November 2011.⁹ When this appeal was filed on 20 October 2025 it was 13 years, 10 months and four days out of time.
- 3.2. In addition to the usual requirements of leave to the Supreme Court, an application to extend time for filing will be determined based on whether the extension is in the interests of justice.¹⁰ This in turn requires balancing the interests of the particular applicant in having the

⁸ This pathway is preserved by s 397(2) of the Criminal Procedure Act 2011.

⁹ The decision of the Court of Appeal was issued on 19 October 2011. Accounting for labour day on 24 October, the 20-working day period ended on 17 November 2011.

¹⁰ In the Court of Appeal under the Crimes Act: *R v Knight* [1998] 1 NZLR 583 (CA); affirmed in *R v Lee* [2006] 3 NZLR 42 (CA); this approach has continued to apply under the CPA: *Hayat v Police* [2015] NZHC 795. There does not appear to be any authority specifically on extensions of time to appeal to the Supreme Court under s 383A.

appeal heard and the wider interest of finality. While not attempting an exhaustive list of factors, this Court in *R v Knight* described the test as encompassing:¹¹

... the strength of the proposed appeal and the practical utility of the remedy sought, the length of delay and the reasons for delay, the extent of the impact on others similarly affected and on the administration of justice, that is floodgates considerations, and the absence of prejudice to the Crown.

- 3.3. Recent decisions have adopted a more focused approach, emphasising the reasons for the delay and the merits of the appeal.¹² In many cases, the merits will be determinative.¹³ In the commercial drug-dealing context, long extensions (5–6 years) have been granted to appeal orders imposed due to under-examined sentencing practices (MPI under *Fatu*), because the Court accepted that the appeals should be allowed.¹⁴
- 3.4. Delay will be justified where it was beyond the defendant’s control, either in whole (for example, as a result of difficulties obtaining counsel¹⁵ or evidence)¹⁶ or in part (for example, where the defendant’s youth and disadvantage may have influenced the delay).¹⁷
- 3.5. Delay may also be explained where the defendant could not have known of the basis of the appeal when time for it expired. This can include a scientific development that undermines the result,¹⁸ or where a later decision in the same case identifies the legal issue that gives rise to the appeal.¹⁹ It may also arise where a later decision changes the law in a way that could alter the result of the case.²⁰ It is this final category on which the appellant in this case relies.

¹¹ *Knight*, above n 10, at 589.

¹² *Mikus v R* [2011] NZCA 298 at [26]; *R v Slavich* [2008] NZCA 116 at [14].

¹³ *Smith v R* [2020] NZCA 221.

¹⁴ *Rogers v R* [2022] NZCA 39; *Hura & Lang v R* [2023] NZCA 7.

¹⁵ *Elia v R* [2011] NZCA 381.

¹⁶ *Jones v R* [2015] NZCA 601; *Adams v R* [2017] NZCA 17.

¹⁷ *Davis v R* [2011] NZCA 380 at [2].

¹⁸ *R v Fell* [2001] EWCA Crim 696 at [85]; approved in *Ellis v R* [2022] NZSC 115, [2022] 1 NZLR 338 at [90].

¹⁹ *R v Smail* [2008] NZCA 6, [2008] 2 NZLR 448.

²⁰ *Taylor v R* [2018] NZCA 498.

4. Late appeals are allowed where legal errors affect outcomes

- 4.1. The position in conviction appeals is relatively clear. Where the law has been corrected by later decisions, even very late appeals will be entertained if the effect of the correction is to render a conviction unsafe. Put another way, while the correction of the law alone will not justify a late appeal, it will be enough if it is clear that it may have had a real impact on the outcome.
- 4.2. In principle, a judgment that changes the interpretation of the law can provide a justification for an extension of time. However, the fact of the change in law alone is insufficient. The applicant must show a sufficient level of merit in the prospective appeal that allowing the decision to stand “would work a substantial injustice.”²¹
- 4.3. The common law generally treats judicial decisions as statements of the law both retrospectively and prospectively.²² Consequently, a decision based on the law as it is understood at one time is able to be challenged when a later decision of a higher court alters that interpretation.²³ However, such an appeal will usually require an extension of time.
- 4.4. The mere fact that a decision has changed the interpretation of law relevant to the decision will not alone justify an extension. This was stated clearly in *R v Mitchell* where the Court of Appeal of England and Wales stated: “the fact that there has been an apparent change in the law ... does not afford a proper ground for allowing an extension of time in which to appeal ...”²⁴ However, in that case the Court considered that it was proper to extend time, given that the Court accepted that the evidence showed Mr Mitchell would not be convicted under the new understanding of the law, and that he remained a serving prisoner at the time of his appeal. The Court there observed:²⁵

²¹ At [15].

²² At [4], citing *Deutsche Morgan Grenfell Group plc v Inland Revenue Commissioners* [2006] UKHL 49, [2007] 1 AC 558 at [23].

²³ See for example *R v Knight*, above n 10.

²⁴ *R v Mitchell* [1977] 1 WLR 753 at 757A.

²⁵ At 757D.

If we were to refuse him the extension of time in which to appeal against conviction, we should be keeping him in prison, so to speak, when we as a court were convinced that he had not committed an offence.

- 4.5. This outcome can be explained by the fact that it is not the change of law alone that provides a basis for an extension, but that the fact of the change may genuinely impact on the outcome. This was the conclusion in *Kentwell v R* where the High Court of Australia noted that the fact of a change in the law, and accordingly an error in the decision under appeal, was insufficient because there may be: “no prospect that a lesser sentence would be imposed were the appeal to be entertained.”²⁶ Accordingly, it is usually where the error does not result in a different outcome that an extension will be refused.

- 4.6. Such an approach was endorsed by the Court of Appeal of England and Wales who, following a judicial reinterpretation of the approach to joint liability in that jurisdiction, said of appeals that relied on it:²⁷

In determining whether that high threshold [for an extension of time] has been met, the court will primarily and ordinarily have regard to the strength of the case advanced that the change in the law would, in fact, have made a difference.

- 4.7. The Court in that case placed little weight on finality where there was a clear error (even if only when viewed retrospectively), commenting:²⁸

If there was a substantial injustice, it is irrelevant whether that injustice occurred a short time or a long time ago. It is and remains an injustice.

- 4.8. That decision was subsequently summarised in *R v Crilly* as requiring:²⁹

First, to qualify for the grant of exceptional leave the defendant must establish a “substantial injustice” would be caused if it was denied. The fact that there has been a change in the law is not in itself sufficient where a person was properly convicted on the law as it stood at the time of trial, as here. Secondly, the threshold for

²⁶ *Kentwell v R* [2014] 252 CLR 601 at [33].

²⁷ *R v Johnson* [2016] EWCA Crim 1613 at [21].

²⁸ At [28].

²⁹ *R v Crilly* [2018] 2 Cr App R 12.

demonstrating a substantial injustice is a high one. Thirdly, in determining whether that high threshold has been met the court will have regard to the strength of the case advanced, that a change in the law would in fact have made a difference.

- 4.9. This decision reinforces what can be observed in the other decisions. While finality means that an extension of time to appeal will not be granted without good cause, the fact that a defendant will remain subject to a conviction or sentence that is recognised as unwarranted will usually be sufficient to set that aside. The language of the Court of Appeal of Newfoundland and Labrador is even more explicit:³⁰

[82] The principle of finality is not absolute. When its rigid application might lead to a miscarriage of justice, the finality principle must yield.³¹

- 4.10. Such an approach has even found favour in Canada in similar cases – despite a more stringent rule concerning cases that are no longer active, which prohibits the reopening of convictions when criminal statutes are struck down on constitutional grounds.³²
- 4.11. Nor is it necessary that the appeal will ultimately be successful. Where the error creates a sufficient level of uncertainty about the soundness of the sentence imposed, it is appropriate that this be considered fully by the appellate court.³³
- 4.12. The position with regard to sentence appeals is more vexed. There are clear examples of this approach being followed where the issue is a jurisdictional one – a sentence was imposed that was not available at law.³⁴ Equally there are examples where leave has been declined, on the grounds that a later change in sentencing practice does not give rise to a right of appeal. This is established practice in respect of “guideline”

³⁰ *R v White* [2023] NLCA 28.

³¹ *R v Calnen* [2019] SCC 6, [2019] 1 SCR 301 at [70].

³² *R v MAG* [2002] BCCA 0413. This case also provides an interesting procedural insight as the appeal was the result of a referral to counsel of the fifty cases where a particular provision had been applied, with the result that two cases were identified that warranted consideration on appeal.

³³ *Abreu v R* [2020] NSWCCA 286 at [9]–[10].

³⁴ *Hoggart v R* [2025] NZCA 573.

decisions.³⁵ However, there is a lack of clarity around what constitutes a “guideline” decision – as evinced by cases where the Crown seeks to categorise a case in this way to avoid retrospective effect.³⁶

4.13. Were this a case of an error that had led to a wrongful conviction, an extension, even at this late stage, would be relatively uncontroversial. However, this is a sentence appeal. Despite this, counsel submits that this is a case where the same approach is appropriate on two independent bases:

- i. This is a case of a genuine error about the correct approach to sentencing under s 102, not the wrong exercise of discretion. Accordingly, the approach described above remains appropriate.
- ii. In any event, the nature of a life sentence, and the scheme of the murder provisions, is such that the approach described above is appropriate in any event.

5. *Dickey* corrected an error, not an exercise of discretion

5.1. The first limb of this argument turns on the nature of the sentencing exercise itself – which is an example of genuine, but constrained, discretion. This means that appeals only succeed when it can be shown that the sentence imposed fell outside of the range of outcomes available to the Court.

5.2. This largely explains the hesitation to accept sentence appeals that arise from changes in judicial approach. However, it also provides a rubric for when those sentences should be affected. In short, if the change is one of practice within the established scope of discretion, then the change is not one that should enable a late appeal. On the other hand, if the change is one that affects the boundaries of that discretion, and therefore one that corrects an error in the way that the discretion has

³⁵ *Morgan v R* [2022] NZCA 112 (2022) 30 CRNZ 868 at [11]; *R v Cheung* [2021] NZCA 175; *Dempsey v R* [2023] NZCA 461.

³⁶ *F (SC 98/2025) v R* [2026] NZSC 78 at [44].

been applied, then leave should be granted to enable appeals where that error would have made a real and material difference.

Sentences and sentence appeals reflect constrained discretion

- 5.3. Discretion has been an established feature of New Zealand sentencing for more than a century.³⁷ However, sentence appeals are a significantly more recent part of New Zealand's law. The first right to appeal a sentence was introduced in 1923. This right was limited to the Magistrates Court and sat unused for more than 15 years. Sentences on indictable matters could not be appealed until 1945, and even then, comparisons between different cases were regarded with real scepticism.³⁸ Rather, appellate courts were highly deferential to the views of the trial judge.
- 5.4. More recently, New Zealand courts, and ultimately Parliament, have recognised the importance of consistency between different cases.
- 5.5. On Parliament's part, consistency is now enshrined in the Sentencing Act 2002 as a core principle of sentencing. It has the effect of a mandatory consideration – as does the principle that cases at or near the maximum seriousness should receive the maximum penalty. These principles are collectively aimed at the creation of a consistent spectrum of sentencing.
- 5.6. On the part of the courts, there is a clear trend of giving increasing significance to consistency as a core value in sentencing. As early as 1978, the Court of Appeal described the respective roles of the sentencing judge and the appellate Court in the following terms:³⁹

³⁷ There is a trend that can be observed throughout the process of codification from more specific offences with pre-determined sentences towards more broadly defined offences with greater discretion: Saul Holt "[Appellate Sentencing Guidance in New Zealand](#)" (2006) 3 NZPGL 1; Hall "Reducing Disparity by Judicial Self Regulation" (1991) 14 NZULR 208 at 216 – 217.

³⁸ *R v Brooks* [1950] NZLR 658 (CA) at 659. See also *R v Radich* [1954] NZLR 86 (CA) and *R v Rameka* [1973] 2 NZLR 592 (CA).

³⁹ *R v Pawa* [1978] 2 NZLR 190 at 191

...a sentencing judge must always be left with a reasonable and just area of discretion within which he will be entitled to operate. But there can be no doubt that the objective always must be equal punishment so far as it may be possible. It would be wrong if there were to be marked differences between one judge's sentence and another's for the same crime at the same general level of culpability...It is an important supervisory function of this Court to ensure, within reasonable limits, the even handed administration of justice throughout the country.

- 5.7. Broadly, this balance of individual sentencing discretion, constrained by appellate guidance aimed at consistency, remains current.
- 5.8. This foundation gradually developed into the practice of issuing tariff or guideline judgments, that provided detailed, quasi-legislative schemes, for the treatment of particular categories of offending.
- 5.9. The purpose of this practice – providing guidance to assist judges in exercising their discretion in a consistent fashion – is clear from the language used in these decisions.
 - i. In *R v A*, the Court referred to having been “asked to give general guidance on the approach to the new sentencing regime”⁴⁰ and went on to say that the judgment “signals an increase in the starting point... but it is not intended to fetter sentencing Judges in assessing the gravity of particular cases.”⁴¹
 - ii. In *R v Tereni* the Court described its decision as “reviewing” an earlier tariff⁴² and emphasised that, as noted in that earlier decision, “the border-line between each class may... be indistinct and incapable of exact demarcation.”⁴³ Accordingly, general description rather than precise numerical values was preferred. The divisions between these categories were said to be intended as “merely a means to give a guide to penalty.”⁴⁴

⁴⁰ *R v A* [1994] 2 NZLR 129 (CA) at 130.

⁴¹ At 132.

⁴² *R v Tereni* [1999] 3 NZLR 62 (CA) at [2].

⁴³ At [5], quoting *R v Dutch* [1981] 1 NZLR 304 (CA) at 308.

⁴⁴ At [11].

- iii. In *R v Mako*, the Court was explicit that its task was providing general principles that would need to be applied differently in different cases, observing:⁴⁵

[35]...the task of placing the particular combination of features comprising an offence in its proper relative position on the scale of seriousness is a matter of judgment calling for the careful exercise of the sentencing discretion. Features of the offending requiring assessment cannot be exhaustively listed.

- iv. By contrast, the Court was explicit that the approach in the earlier decision of *Moananui*, which determined gravity by reference to the type of target premises as having been in error, referring to is as “having operated to constrain proper assessments of criminality.”⁴⁶ In that decision, the Court also noted that:⁴⁷

It might give the appearance of unfairness to the respondent to formulate revised guidelines for sentencing in aggravated robbery cases and then to apply them in his case.

- v. The Court in *Taueki* was even more explicit in its goal:⁴⁸

[10] The principal objective of the guidelines set out in this judgment is consistency. Consistency has always been an objective of sentencing policy, and s 8(e) of the Sentencing Act 2002 now gives that statutory backing. We hope that this judgment will provide a single point of reference for sentencing Judges and counsel, and that this will lead to consistency in the sentencing levels imposed on offenders. What we seek to achieve is consistency in the approach adopted by sentencing Judges, which should in turn lead to consistency in sentencing levels. This does not override the discretion of sentencing Judges, but rather provides guidance in the manner of the exercise of that discretion.

- vi. Relevantly to the present appeal, the Court also recorded its expectation that decisions pre-dating *Taueki* would no longer be

⁴⁵ *R v Mako* [2000] 2 NZLR 170 (CA).

⁴⁶ At [31].

⁴⁷ At [21].

⁴⁸ *R v Taueki* [2005] 3 NZLR 372 (CA).

relevant to the sentencing exercise⁴⁹ – reflecting that the decision should be seen as altering the law that went before.

vii. In a number of these decisions, the Court of Appeal also explicitly stated a date when the guidelines would begin to have effect.⁵⁰

5.10. Collectively, this analysis shows that guideline decisions operate as tools to shape discretionary decision making. They do not correct an earlier error in the law, rather, they attempt to identify a scheme around which a consistent sentencing practice may be developed. Importantly, they do not purport to identify the single right answer – guideline decisions demonstrate judicial awareness that quasi-legislative decisions are being made and that the scheme ultimately determined is one of several possibilities. Put another way, the bands created by a guideline decision are a scheme on which reasonable minds may differ.

New guidelines do not invalidate earlier discretion

5.11. Against this background, the principle behind treating guidelines decisions differently comes into sharper relief. Ultimately, it is a consequence of what guideline decisions are – decisions intended to guide discretion, rather than to correct error.

5.12. Perhaps the clearest explanation of the distinction between guideline and non-guideline decisions is the Court of Appeal’s decision in *Cheung v R*. There, the Court of Appeal considered the difference between decisions that are or are not retrospective in detail, with reference to this Court’s decision in *Chamberlain v Lai*.⁵¹ In that case, the Court recognised that a decision could be issued with the express caveat that it would not act retrospectively. In the Court of Appeal’s view, this reflected the need for caution where an earlier decision was viewed as settling the law.⁵²

⁴⁹ At [10].

⁵⁰ *R v AM* [2010] NZCA 114, [2010] 2 NZLR 750 at [125]; *Zhang v R* [2019] NZCA 507, [2019] 3 NZLR 648 at [187]; *Taueki*, above n 48 at [60].

⁵¹ *Cheung v R* [2021] NZCA 175, [2021] 3 NZLR 259 at [22]-[25].

⁵² At [23].

5.13. The Court of Appeal also expressly recognised that the nature of guideline decisions, which operate within the boundaries of existing maximum penalties, do not directly offend against provisions like s 25(g) of the New Zealand Bill of Rights Act 1990. They are in a different category.⁵³

5.14. However, the critical point that made the difference in *Cheung* was the nature of what a guideline decision is. As the Court observed, in its final and determinative ground:

[45] Fourth, retrospective application of sentencing guidelines is not ordinarily unfair. As just explained, guidelines reflect evolving sentencing practice and are not intended to be prescriptive. Judges are expected to sentence by reference to the applicable statutory sentencing purposes, principles and factors. Guidelines invariably make that point and specify that judges may depart from the guidelines when necessary to fix a just sentence in a given case.

5.15. Put another way, the fact that a decision was imposed under an earlier guideline does not mean that the earlier decision was wrong or that a different sentence should have been imposed. The imposition of a new guideline in no way undermines earlier exercises of discretion – it simply shifts the expectations that will underpin the operation of the constituency principle in future cases.

5.16. This distinction explains why guideline decisions fall into a special category – not only because they disavow retrospective effect, but because they do not inherently contradict those earlier decisions. They represent a *change* in sentencing, rather than correcting an error. But it also provides a metric for objectively assessing whether a decision falls within this class or not – whether the decision recognises a change in sentencing discretion or whether it recognises a fundamental error in sentencing practice. Put another way, it is about whether it falls within the discretion that applies to sentencing, or whether it operates as a firm boundary beyond which that discretion may not extend.

⁵³ At [40] – [44].

- 5.17. This is also consistent with the language of s 250 of the Criminal Procedure Act. Where a guideline decision move within the legitimate range of discretion, it cannot be said that earlier decisions were in error or that a different sentence should have been imposed. The decisions made under an earlier guideline were reasonable, and correct on their own terms. However, where a fundamental error exists, this will impact not only those cases that occur after it is identified, but all cases where this error has led to a different conclusion.

Dickey corrected an error in the law

- 5.18. Against this background, it is necessary to consider what *Dickey* did – whether it moved the range of discretion, or whether it reflected a fundamental error. It is submitted that, both the decision itself and the way it has been received by the High Court, show that it is the latter.
- 5.19. The *Dickey* decision itself contains relatively little, in terms of practical changes to the law. After a lengthy analysis of the psychological research around the impact of youth on sentencing and a comparison of cognate jurisdictions, the Court expressly rejected recognising special category of sentencing for young people.⁵⁴ It reiterated that the approach to manifest injustice was generally consistent.⁵⁵ It maintained that youth alone would not normally allow a finding that a life sentence was manifestly unjust, although it should always be considered.⁵⁶ Perhaps most importantly, though, the decision considered the effect of *Rapira*, and concluded that:⁵⁷

...we think it is no longer correct to say, as the Court did in *Rapira*, that youth can carry little weight when balanced against the public interest in denunciation and accountability.

⁵⁴ At [143] and [169].

⁵⁵ At [167].

⁵⁶ At [177].

⁵⁷ At [177]

- 5.20. Counsel should also note that this conclusion was correct. While *Dickey* is not binding on this Court, its reasoning is sound. The decision accurately identified the way that New Zealand’s prior practice under s 102 was at odds with other cognate jurisdictions and gave too little weight to the effect of youth. This analysis, which is now well established in every other area of sentencing, demonstrates that the conclusion of *Rapira* – that youth can carry little weight – simply cannot be correct. The error that *Dickey* corrected was a genuine error, and this Court should adopt the same conclusion.
- 5.21. This finding, that *Rapira* was no longer correct (partly due to greater knowledge about the impact of youth,⁵⁸ and partly due to changes in the legislative scheme⁵⁹), appears modest. However, the impact is significant. In *Dickey*, correcting this error allowed the three appellants to reverse their life sentences. It also immediately opened the door to consideration of non-life sentences in a much wider range of cases. Ultimately, it proved to be the correction of a critical error in the law.
- 5.22. This analysis is confirmed when the effect of *Dickey* in the High Court is examined. This can be demonstrated in simple numerical terms:
- i. Prior to *Dickey*, only one out of as many as 40 young people⁶⁰ convicted of murder received a determinate sentence.⁶¹
 - ii. Following *Dickey*, with two exceptions⁶² every person under 18 convicted of murder has received a determinate sentence – a total of six.⁶³ This in the course of only three years.

⁵⁸ At [174].

⁵⁹ At [176].

⁶⁰ That is, those under the age of 18 at the time the offence was committed.

⁶¹ In *Dickey* at [138] the Court refers to 40 offenders sentenced for murder prior to that decision. At that time only one determinate sentence had been imposed for a young person, in *R v Nelson* [2012] NZHC 3570; this was acknowledged by the Court in *Dickey* at [154]. Since *Dickey*, two further people who were sentenced prior to the decision succeeded in having a determinate sentence imposed on appeal: *M v R* [2023] NZCA 319; *Lo v R* [2024] NZCA 359.

⁶² *R v Williamson-Atkinson* [2024] NZHC 611 – three s 104 factors applied in that case, but an MPI of 11 years was imposed; see also *R v Taylor* [2023] NZHC 3124 involved a defendant who had only just turned 18, that sentence was overturned on appeal *Taylor v R* [2025] NZCA 693.

⁶³ *R v P and D* [2024] NZHC 2118 (2), *R v Ronaki* [2024] NZHC 3019; *R v Stanaway* [2026] NZHC 173; *R v Faiers* [2023] NZHC 3368; *R v Huntley* [2024] NZHC 182. See also *R v Webster* [2026] NZCA 67; *R v Messery* [2024] NZHC 3770 and *Taylor v R* [2025] NZCA 693, who were all 18.

- 5.23. What this shows is that *Dickey* cannot be viewed as a guideline judgment. Not only does it not describe itself in those terms, but the core of the decision was not about moving the standard for an exercise of discretion. Rather, *Dickey* was about correcting a single distinct error in the law: the barrier that *Rapira* had created to non-life sentences. That is clear in the language of the decision. It is clear in the approach it takes to non-life sentences, which is to apply the same approach without that error. It is clear in the effect that it has had on subsequent decisions. Simply removing the barrier of *Rapira* has opened the door to significantly different outcomes for young defendants.
- 5.24. It also reveals that the impact of *Dickey* is likely to be significant in a range of cases. Since the decision, three-quarters of murderers under the age of 18 have received determinate sentences. These have included relatively serious cases, including cases where s 104 was engaged. This is relevant because since *Dickey*, the Court of Appeal has continued to apply a stringent test for late appeals – holding that most cases would not result in different outcomes.⁶⁴ This conclusion is difficult to sustain in view of the numerical effect of *Dickey* described above.

Conclusion

- 5.25. *Dickey* identified an error in the way that Courts had been approaching s 102 when dealing with young people. Following the 2003 decision in *Rapira*, youth was treated as an insubstantial factor. As a consequence, almost all of the adolescents convicted of murder received life.
- 5.26. However, contrary to *Rapira*, youth has had a significant effect both on the culpability of young people who commit serious crime, and on the impact a life sentence will have for them. Ignoring or minimising youth, means that courts failed, for a period of almost twenty years, to identify cases where a defendant's youth meant that a life sentence was manifestly unjust.

⁶⁴ *Kriel v R* [2024] NZCA 45. See also the approach taken by both the Supreme Court and the Court of Appeal in *Renata v R* [2025] NZSC 140; *Renata v R* [2024] NZCA 469.

- 5.27. For those affected by this error, it is no answer to say that the law has changed. *Dickey* correctly recognised that the law was wrong. This is not a change in sentencing practice. It is a recognition of an enduring fact – youth can make a life sentence manifestly unjust.
- 5.28. There are now a number of murderers – including the two applicants in this case – serving life sentences that did not properly consider their youth. For many of them, the sentence that has been imposed is manifestly unjust. That reality, and the ability of the law to recognise it, has only recently become clear. However, the effect of those sentences remains: they are manifestly unjust.
- 5.29. Accordingly, where there is a proper basis to conclude that an appellant may have received a different outcome if the sentence were heard today, with the benefit of *Dickey*'s correction of the law, a late appeal should be permitted to enable it to proceed.

6. Life is a category error

- 6.1. It is also significant that the two possible sentences in this case are fundamentally different, and are based on a categorisation of particular cases into distinct classes. In many ways, this is more akin to a conviction for a different offence than to a typical exercise of sentencing discretion.
- 6.2. For this reason, counsel submits that even if the Court is not satisfied that the nature of the decision in *Dickey* makes late leave appropriate, counsel submits that the subject matter is such that it should be treated in a manner similar to a conviction appeal.

Life sentences are a unique category

- 6.3. This submission is first made on the basis of how the Sentencing Act works. It provides firm categories for different murders – and this should be treated as more equivalent to different offences than different sentences along the same scale.

- 6.4. The effect of the murder sentencing provisions in the Sentencing Act was to create a kind of judicially-assessed degrees of murder scheme. The Act created a three-tier system of sentences. At the lowest end were cases where life imprisonment was considered unacceptable and a determinate sentence was imposed instead.⁶⁵ Next were murders which warranted life imprisonment but where the standard MPI (retained at 10 years) was considered sufficient. The Court retained an unaltered discretion to increase this period in case it was satisfied were “sufficiently serious”.⁶⁶ Finally, for “aggravated murder”, where specific aggravating factors were present, an MPI of at least 17 years was prescribed.⁶⁷
- 6.5. These reforms to the murder regime recognised two key principles. The first was that sentences should be tailored to fit the particular crime. As a result, the range of sentences was increased and new sentencing options introduced. However, this was constrained by the second principle – that murder sentences should be longer. This was the purpose of the 17-year minimum period of imprisonment (**MPI**) for “aggravated murder”, and was consistent with the overall theme of the legislation which was to increase penalties overall. This second principle also recognised the fears of some that Judges would not impose longer sentences unless they were forced to – which was the rationale behind a mandatory sentence being used.⁶⁸
- 6.6. The Select Committee report provides an insight into how the Bill was expected to operate in practice. In that report, the committee identified four categories. The first category, which was expected to be very small, was those cases where life imprisonment was inappropriate and a finite sentence was imposed. The second category, which was expected to capture the vast majority of cases was where life imprisonment was imposed together with the standard MPI of ten

⁶⁵ Sentencing Act 2002, s 102.

⁶⁶ Section 103.

⁶⁷ Section 104.

⁶⁸ The original draft of s 104 referred to mandatory starting points rather than end points. This was amended at the committee stage out of fear that Judges would use their discretion to reduce the ultimate sentence in most or all cases.

years. A third, somewhat smaller category, was cases where the Court would impose a higher MPI, but less than 17 years. Finally, in a very small number of cases, which the Committee described as the “worst murders”, the 17-year MPI would apply.⁶⁹

- 6.7. In this context, the division between a life sentence and a non-life sentence is not just a matter of discretion. It is a judicial categorisation about where a case properly sits. Where that categorisation exercise has misfired, it is not simply a discretionary decision that has gone wrong. It is a fundamental error requiring correction.

Life is a categorically different sentence

- 6.8. Nor does this submission rest exclusively on the scheme of the Act. The life sentence itself is distinct and should be treated differently. This is for several reasons.
- 6.9. First, because the applicants in this case received life sentences, they both remain subject to them at the time of the application. In *R v Mitchell*,⁷⁰ the fact that an offender would be effectively ordered to continue a wrong sentence was a significant factor in justifying the extension of time. A similar argument applies here.
- 6.10. Second, from the perspective of the applicants, there is no finality to the Court’s decision because the sentence will remain in place indefinitely. Given their ages, this is likely to be a very long period of time. The delay in seeking an extension appears much smaller when set against the background of such a long sentence. The sense of finality for the victims may also be diminished by the fact that continuing decisions will be made about the parole of each applicant throughout that sentence, where the facts of the original crime will remain relevant.

⁶⁹ Sentencing and Parole Reform Bill 2002 (148-2), select committee report [at 8](#).

⁷⁰ *R v Mitchell*, above n [24](#).

- 6.11. Third, the gap between a life and a non-life sentence is so wide, that any chance it was wrongly imposed could give rise to a miscarriage of justice – especially in the case of a young person.
- 6.12. Ms Churchward was recently paroled after more than 15 years in prison. She remains subject to significant conditions, many of which will likely remain in place for life. She is subject to recall – effectively reversing the presumption of innocence – for the rest of her life. Now aged 35, these conditions are likely to apply for four or more decades. By contrast, even the longest determinate sentence imposed for murder⁷¹ would expire next year.⁷²
- 6.13. For any person, this distinction would be significant, but for a young person it is overwhelming. Ms Churchward was 17 years old at the time of the offence. She has already spent close to half her life in prison, and now faces conditions for likely twice that length of time. Should she reach a normal life expectancy, more than three-quarters of her life will have been subject to this sentence.
- 6.14. Fourth, such an approach can already be seen in an earlier case where the same distinction, between a determinate or an indeterminate sentence, was at issue. In *Taylor v R*, the erroneous application of a sentence of preventative detention was at issue.⁷³ There, the recognition of an error in the application of the law was held to justify an extension of twenty years, even though the courts corrected the issue eight years into his sentence. In that case it was the dramatic difference in the applicable sentences and the certainty of the appeal succeeding that drove the conclusion. This is consistent with the usual approach described above for conviction appeals being applied where a categorically different sentence will work a substantial injustice if an extension is not granted.

⁷¹ *R v TH* [2023] NZHC 630, 18 years.

⁷² Ms Churchward was sentenced in December 2009.

⁷³ *Taylor v R* [2018] NZCA 498, [2019] 2 NZLR 38.

- 6.15. This wide gulf between life and non-life sentences means that the Court should approach potential errors that have resulted in life sentence with significant caution. In counsel’s submission, a wrongful life sentence is an inherent miscarriage of justice.

Conclusion

- 6.16. Where a legal error has been identified that means that people have been wrongly convicted, late appeals are available. The impact of a life sentence is no less severe than a conviction, and those who remain subject to life sentences should be entitled (where youth could have a meaningful impact) to a sentence imposed according to law.
- 6.17. Where the result of an error has been to mis-categorise a defendant, and to impose a sentence that does not fit the crime, the fact that this error was made a number of years ago cannot remedy the underlying injustice. For those who remain subject to life sentences – even the conditions and the risk of recall – this error will continue to pervade their lives. They will have no finality without it being corrected.
- 6.18. In *Mitchell*, the English Court of Appeal refused to countenance keeping a man in prison when the Court was “*convinced he had not committed an offence.*”⁷⁴ Here, if the Court considers that the sentence imposed may have been manifestly unjust, it should not countenance ordering that sentence to continue being served.

7. Leave Should be Granted

- 7.1. In the initial leave submissions, counsel argued that the core question in this appeal – what should be done about the 40 young people serving life sentences imposed prior to 2023 – was a matter of general and public importance. For reasons set out below, counsel also submits that those life sentences, if they were wrongly imposed, constitute a miscarriage of justice. Counsel adopt those submissions here.

⁷⁴ *Mitchell*, above n 24, at 757A.

- 7.2. However, the question of whether an extension of time is appropriate for these appeals requires the Court to consider directly the effect of *Dickey*. Like the decision in *Mist v R*,⁷⁵ *Dickey* recognised a distinct and significant error in the way that the courts had previously been imposing indeterminate sentences. This is not a discretionary matter, but the application of a legal test that, for two decades, was fettered by an inappropriate restriction. As the Court found in *Taylor v R*,⁷⁶ that error should be corrected where it has resulted in a different sentence, or where that is a real possibility.
- 7.3. The Court of Appeal's decision in this case shows the effect that *Rapira* had on the outcome for Ms Churchward. Relying on the principle that youth could have little relevance, the Court dismissed this part of her appeal in three paragraphs. This was despite the acknowledgement throughout the rest of the decision that Ms Churchward's youth was a substantial contributing factor to her offending.
- 7.4. Counsel addresses how the Court should consider her sentence appeal below, but for the purposes of leave it is sufficient to say what the Crown said in *Dickey*:
- ...when sentencing a young person for murder a court must always undertake a s 102 analysis, giving careful consideration to whether life imprisonment is manifestly unjust.
- 7.5. Ms Churchward did not receive that careful analysis. Her life sentence received three paragraphs of consideration. Regardless of the ultimate outcome of her appeal, it is appropriate for the sentence that will apply to her for at least the next four decades to be examined.
- 7.6. Counsel submit that leave should be granted.

⁷⁵ *Mist v R* [2006] 3 NZLR 145 (CA).

⁷⁶ *Taylor v R* [2018] NZCA 498, [2019] 2 NZLR 38.

8. If leave is granted, a determinate sentence should follow

- 8.1. This was senseless and tragic offending. The question of manifest injustice is difficult. It requires the Court to hold the gravity of what Ms Churchward did on one hand and the brutality of her short life in the lead up to the offending on the other.
- 8.2. It is submitted that the combination of Ms Churchward's very young age, her horrific background, the admission of manslaughter and a verdict that likely reflected a finding of recklessness, are such that her case falls into the category described in *Dickey*, where the combined effect of these factors means that life sentence was manifestly unjust.

A collision course with tragedy

- 8.3. Before the age of 17, Ms Churchward – Ngāi Tūhoe – had lived a life that few in the community could imagine. She had suffered a constellation of trauma and disadvantage that will rarely come before the courts. Her life was marred by [REDACTED] whānau dysfunction and violence, drug and alcohol abuse, state-care placement⁷⁷ extreme intimate partner violence, and [REDACTED]
- 8.4. The background is outlined in the reports of Dr Chaplow and Ms Bellve-Wack – that were before the Court of Appeal – and Ms Churchward's leave affirmation. The evidence is entrusted to the Court.
- 8.5. By late-2008, Ms Churchward's life had descended into chaos. In one sense, this was the terminus of a lifetime of trauma. But in a more proximate sense, it reflected two events that occurred in the lead up to the offending. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The second event was the commencement of a relationship with [REDACTED], a gang-member around 10 years her

⁷⁷ Although, mercifully, this appears to have been positive; Affirmation of Ms Churchward dated at 44.

senior, in early-2008. The relationship is well-described in the evidence. It was fundamentally dehumanising and dangerous. Ms Churchward was fortunate not to have been killed.

- 8.6. Around 10 days before the offending, Ms Churchward was subjected to a particularly severe assault. She fled while [REDACTED] was asleep.
- 8.7. Ms Churchward escaped from Auckland to Ōpōtiki, where her mother found her very thin,⁷⁸ dysregulated, depressed, withdrawn, easily startled and fearful when someone came to the door. Her mother found her to be irritable and thought that she had a drug problem. Ms Churchward spent her time drinking, smoking cannabis, and spending time with Ms Te Wini, who was herself in a vulnerable state.⁷⁹
- 8.8. It was in this context that the offending was committed.

Ms Churchward's culpability

- 8.9. In *Dickey*, this Court said that where s 104 is engaged, a Court is less likely to find that a life sentence is manifestly unjust under s 102.⁸⁰ However, there is clearly no barrier to the finding, which has been reached in one case by an experienced High Court Judge,⁸¹ and two cases by Divisional Panels of the Court of Appeal.⁸² What is important is an evaluation of all of the circumstances.
- 8.10. The offending engaged s 104. There is no avoiding the unlawful entry into Mr Rowe's home,⁸³ although this factor largely subsumes the fact that the murder was committed in the course of a burglary.⁸⁴ It is also accepted that Mr Rowe was vulnerable.⁸⁵ He was elderly and in poor health. Perhaps more importantly, he was asleep. The offending was to

⁷⁸ Dr Chaplow described her as "variably anorexic" (p 6).

⁷⁹ Report of Bellve-Wack, p 11.

⁸⁰ *Dickey v R*, above n 4, at [165].

⁸¹ *R v Yu* [2023] NZHC 1391

⁸² *Webster v the King* [2024] NZCA 679; *Webster v R* [2026] NZCA 67; *Taylor v the King* [2025] NZCA 693.

⁸³ Sentencing Act, s 104(1A)(c).

⁸⁴ Sentencing Act, s 104(1A)(d)

⁸⁵ Sentencing Act, s 104(1A)(h).

a degree brutal, but in the way that is inherent to most murders and not to a “high level”.⁸⁶

8.11. The s 104 analysis requires the balance of recognition that the offending was opportunistic, improvised and motivated by low-level secondary gain. Similarly, while Mr Rowe was vulnerable, that was not something known to Ms Churchward, and she was herself a very slight, 17-year-old.

8.12. It is also relevant that the verdict reflected a likely finding of reckless. Venning J did not comment on the probable mens rea. But an intentional killing was inherently unlikely to the extent that it made no sense on the facts. The girls were committing a burglary. The defence was structured around an argument that Ms Churchward only meant to knock Mr Rowe unconscious, to avoid being disturbed. Counsel argued that Ms Churchward did not foresee a risk of death associated with knocking a person unconscious, due to her immaturity and own experiences with serious violence.⁸⁷

8.13. Mr Mabey KC closed on Ms Churchward’s case in this way:⁸⁸

Well, you're judging a particular young lady as you saw her yesterday. You saw her; you'll have an assessment of what she's like and what makes her tick. You'll have heard what she said. She's clearly disturbed. When asked about what happened that night, "I can't blank it out". You might think she is full of self-hatred for what happened that night. She talks about the errors she's made in her life, even ashamed at the fact that she's been beaten by her, she calls her ex. Well it's a bad day when women in society take the blame for the violence that men do to them, but that's the sort of person you saw, even at her young age. She lives with what's happened. She lives with what she's done and she obviously blames herself for what happened, and so she should, but you must decide whether it's murder. Her self-hatred and loathing and regrets about her short life doesn't answer that question.

⁸⁶ Sentencing Act, s 104(1A)(e).

⁸⁷ CA Casebook, p 25 (defence opening) and p 37 (defence closing).

⁸⁸ CA Casebook p 32-33 (defence closing).

8.14. And on the issue of foresight:⁸⁹

...Her expectation of knocking out comes from her own sad experience. She's had it done to her and she knows what it means and she knows what the result is. For her to be knocked out is to be out of action for a number of minutes, you wake up, you've got a sore head, you get on with it. She's had that sad experience at the hands of [REDACTED] You need to factor that into her young mind when she's deciding that's what she's going to do to Mr Rowe.

8.15. Counsel noted that the violence had occurred in the dark, and that Ms Churchward had stopped when it became apparent that she was not achieving her purpose. She briefly turned the lights on and saw that Mr Rowe was injured but alive and trying to get up.⁹⁰

8.16. It was submitted that there were valuables in the room for the taking, and the fact that they had not been suggested that this was an assault gone wrong, where Ms Churchward had freaked out and left the room, knowing that Mr Rowe was hurt but being unaware of the real severity of his injuries. In other words, the assault was neither rational nor clinical and the idea that Ms Churchward formed murderous intent was unlikely.⁹¹

8.17. Although the verdicts imply that Ms Churchward must have at least contemplated a risk of death, it was unlikely to imply direct intention, and the recklessness might be regarded qualified by Ms Churchward's poor understanding of the true risks of violence.

8.18. Overall, the offending bears some resemblance to the facts in *Webster v R*,⁹² where a young and impaired defendant became involved in a serious attack on a co-worker. The analogy is far from perfect because Mr Webster (18) was a secondary participant in the assault and was affected by undiagnosed Foetal Alcohol Spectrum Disorder.⁹³ But the

⁸⁹ CA Casebook p 37.

⁹⁰ CA Casebook, p 38.

⁹¹ CA Casebook, p 39.

⁹² *Webster v R*, above n 82.

⁹³ Mr Webster has an active second appeal against conviction before this Court arguing that it is unlikely that he actually formed any intent (SC 3/2026).

cases are unified by the probable mental element of the offence. Mr Webster's life sentence was overturned.

- 8.19. What can be said more confidently is that Ms Churchward is not as culpable as the appellant in *Taylor v R*.⁹⁴ Mr Taylor was a principal acting alone, who murdered his mother while she was lying in her bed, by striking her head several times with a 10 kg dumbbell. He then placed towels on the top of a stove, which he turned on, and left the address. He later called the police and told them his mother was dead. Section 104 was engaged because of the brutality of the murder. The only inference was of direct intent. However, the personal and impersonal facts of the offending made life imprisonment manifestly unjust.

Personal mitigating factors

- 8.20. Ms Churchward was 17 at the date of the offending, placing her in the “adolescent” category of young people identified in *Dickey*.⁹⁵ For the sake of comparison, use of life imprisonment would be prohibited in Australian Capital Territory, and unlikely in Canada, Queensland, Victoria and New South Wales.⁹⁶
- 8.21. Further, this is a case in which youth has profound explanatory value. The offending discloses themes of impulsivity, engagement in risky behaviour, peer influence and a failure to properly evaluate risks.⁹⁷
- 8.22. This all occurred against a background of acute disadvantage, which is frequently seen in young people who commit serious offences.⁹⁸ Ms Churchward's life was as brutal as the offence she committed. Despite the stern sentence response which followed, Venning J acknowledged:⁹⁹

As counsel have suggested, in a way, both you Ms Churchward and you Ms Te Wini are victims as well. But you are not victims of society or the various support agencies or schools that you have had contact with. I make that clear are victims of the failure by

⁹⁴ *Taylor v R*, above n 82.

⁹⁵ *Dickey v R*, above n 4, at [76]

⁹⁶ At [126]–[141].

⁹⁷ *Dickey v R*, above n 4, at [76]–[87].

⁹⁸ At [86(c)].

⁹⁹ *R v Churchward & Te Wini* HC Rotorua CRI-2009-270-000361, 18 December 2009 at [19].

your own families and those close to you to provide any sort of positive direction, encouragement to learn or values to you as you grew up. Your families and those who were supposedly caring for you need to look long and hard at themselves in relation to their responsibility for what has happened in this case. How those responsible for you could allow 13 and 14 year olds, as you were, Ms Churchward a little older but from 13 or 14, to live as you have both described is difficult to understand. Those responsible for you and who should have had some oversight to your lives, have failed in the most basic way to support you and keep you from the sort of influences that have led you to behave and act as you have.

- 8.23. The truth is likely to be even more complex, almost certainly involving an intergenerational “...interaction of socio-economic circumstances, confused or partially developed cultural identities, individual and collective journeys which have resulted in diminished self-respect and a lack of voice – the lingering effects of colonisation and political oppression.”¹⁰⁰
- 8.24. Ms Churchward’s background – almost none of which was of her making – represents a tragic set of circumstances conspiring to create the pre-conditions for the events of 25 November 2008 and in some respects will have directly mediated them. The offence reflects profound dysregulation, emotional numbness and an unreal view of violence shaped by her own experiences. Put another way, it is difficult to imagine any of what happened occurring in the absence of everything that came before it.
- 8.25. Set against this background, Ms Churchward’s obviously positive attributes, her ability to excel in structured environments and ongoing family support were all cause for optimism in terms of her prospects for rehabilitation and reintegration. The recent decision of the Parole Board releasing her is evidence of the progress she continues to make.

¹⁰⁰ Sir Mason Durie *Imprisonment, Trapped Lifestyles, and Strategies for Freedom* (Ngā Kāhui Pou: Launching Māori Futures, Huia Publishers, Wellington, 2003).

Absence of strong indications for a life sentence (risk)

- 8.26. It is submitted that there are no strong positive indications for life imprisonment. Ms Churchward had minimal criminal history and no clear history of violence or aggression.
- 8.27. It is submitted that the offending can properly be regarded as circumstantial and not giving rise to an especially elevated level of general risk. Issues of community protection do not over-ride the mitigating factors favouring a determinate sentence.

A lengthy determinate sentence | the least restrictive outcome

- 8.28. Against the factors outlined, the unique impact of a life sentence on a person of Ms Churchward's age renders it categorically distinct from a determinate sentence.
- 8.29. If a determinate sentence was substituted, Ms Churchward would complete it shortly. She could expect to spend 40 or more years free of her sentence. Subject to a life sentence, unless she is able to have her conditions removed, she would spend those 40 years required to attend appointments with her parole officer at least monthly. She is subject to standard conditions that require her to notify Corrections each time she moves home or changes job and may be prohibited from associating with particular people or kinds of people for the rest of her life. Regardless of the conditions, she would remain subject to recall – effectively losing the presumption of innocence for life.

Conclusion

- 8.30. As a matter of overall impression, the purposes and principles of the Sentencing Act can be met by a significant determinate sentence, particularly taking into account the disproportionate impact of a life sentence on a young person.¹⁰¹

¹⁰¹ *Dickey v R*, above n 4 at [178]-[196].

Dated this 26th day of June 2026

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