ORDER PROHIBITING PUBLICATION OF EVIDENCE AND SUBMISSIONS CONTAINED IN THIS JUDGMENT PURSUANT TO S 205 CRIMINAL PROCEDURE ACT 2011. SEE PARAGRAPH [82] OF [2024] NZSC 65

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA623/2022
[2023] NZCA 282

BETWEEN	IAN WILLIAM DALLISON Appellant
AND	THE KING Respondent

Hearing:	31 May 2023 (further submissions received 8 June 2023)
Court:	Cooper P, Gilbert and Collins JJ
Counsel:	P L Borich KC for Appellant P D Marshall for Respondent E D Nilsson for Stuff Ltd as intervenor F E Guy Kidd KC for Judge Jane Farish as a connected person
Judgment:	7 July 2023 at 12.00 pm
Reissued:	11 June 2024 at 2.00 pm (redacted to comply with judgment of Supreme Court: [2024] NZSC 65).

JUDGMENT OF THE COURT

A The appeal is dismissed.

B Judge Farish's applications under ss 202 and 205 of the Criminal Procedure Act are declined.

C The existing suppression orders apply until noon on 17 July 2023 and shall then expire.

REASONS OF THE COURT

(Given by Cooper P)

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Introduction

[1] The appellant, Mr Ian Dallison, pleaded guilty to charges of attempted murder,[1] wounding with intent to injure,[2] and three representative charges of unlawful possession of pistols, restricted weapons and magazines.[3] On 28 April 2023, he was sentenced to an effective term of six years and ten months' imprisonment by Isac J in the High Court at Christchurch.[4]

[2] Prior to his sentencing, Mr Dallison had appealed against a judgment of Isac J, delivered on 11 November 2022, that revoked a suppression order originally made in the District Court, prohibiting publication of the name, address, occupation and any other details that might lead to the identification of his partner, Judge Jane Farish, as

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1 Crimes Act 1961, s 173.
2 Section 188(2).
3 Arms Act 1983, s 50(1)(a) and (b).
4 *R v Dallison* [2023] NZHC 976 [sentencing notes]. The sentence of six years and ten months' imprisonment was imposed on the charge of attempted murder. The sentences imposed on the other charges were to be served concurrently with that.

a person connected to him.[5] Being satisfied that Mr Dallison intended to appeal, Isac J made an interim order to the effect sought, under s 286(2) of the Criminal Procedure Act 2011.[6] That interim order remains in effect.

[3] On 31 May 2023 we heard the appeal, together with two further applications for suppression made successively by Judge Farish under ss 205 and 202 of the Criminal Procedure Act 2011.[7] Those applications were commenced in this Court, in the course of the present appeal, in the circumstances we address below. The Judge had been in a romantic relationship with Mr Dallison since some time in 2012, although, in the 12 months leading up to his offending, the relationship had, in her words, "become strained". She can properly be said to be a connected person for the purposes of s 202(1)(c) of the Criminal Procedure Act.

[4] At the conclusion of the hearing, we made an order suppressing the content of the submissions and evidence referred to in the course of the hearing in this Court until further order. For the reasons we express, we dismiss the appeal, and decline the applications made by Judge Farish. As a consequence, there will be no further restrictions on the reporting of details relating to the various proceedings that have followed Mr Dallison's offending.

Mr Dallison's offending

[5] It is appropriate to give a brief summary of the offending so as to provide the context for our consideration of the issues concerning suppression which we have to resolve. We do so based on the account given by Isac J when he sentenced Mr Dallison on an agreed summary of facts.[8]

[6] Mr Dallison was previously a senior and respected member of the medical profession, in private practice in Christchurch as an ophthalmologist. However, due to financial difficulties, he became indebted to his landlord, one of his victims, who

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5 *Police v Dallison* [2022] NZDC 15879 [District Court judgment]; and *R v Dallison* [2022] NZHC 2968 [judgment under appeal].

6 Judgment under appeal, above n 5, at [52].

7 Sections 202 and 205 of the Criminal Procedure Act 2011 refer to persons connected with the proceedings, or connected with the person accused of, convicted of, or acquitted of an offence.

8 Sentencing notes, above n 4, at [5]–[14].

eventually brought bankruptcy proceedings against him. A hearing of the bankruptcy petition was scheduled to take place on 4 August 2022, the day of Mr Dallison's offending. On the previous day, Mr Dallison had used Google Maps to ascertain the location of the victims' home. Later that evening, over a period of 20 minutes, Mr Dallison's cell phone polled in the suburb where the victims resided.

[7] Mr Dallison was declared bankrupt on the morning of 4 August 2022.[9] At about 6.45 pm that evening, he placed nine firearms and 167 rounds of ammunition in his motor vehicle. Mr Dallison had a substantial collection of over 200 personal firearms. Several of the firearms that he had with him on the evening of 4 August were weapons which he could not lawfully possess. The prohibited firearms included a loaded Ruger .22 calibre semi-automatic pistol, a Maglite torch-gun loaded with a 410-shotgun round, and two Mag pen guns, one with a silencer.

[8] Mr Dallison travelled towards the victims' home. On the way, he stopped at a service station and then at a supermarket to purchase batteries, which were needed to make the Maglite torch-gun capable of firing. Isac J noted it was clear that Mr Dallison had a round of ammunition in the torch-gun and that he had armed the weapon by inserting the batteries into it.[10] Addressing Mr Dallison, the Judge continued:

> [10] On arrival you parked a distance from the victims' home. You then armed yourself with the loaded Ruger pistol and put spare shotgun rounds as well as a spare magazine with 10 rounds in your jacket pocket.
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> [11] Having done so, you walked to the victims' home. Shortly after 7.30 pm, you entered through the main door at the rear of the house and walked into the kitchen, where your former landlord and his partner were eating dinner.
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> [12] You then fired the pistol at the first victim intending to kill him. The round narrowly missed his head, lodging in the door frame over his right shoulder. You then shifted aim and pointed the pistol at the victim's chest and, from approximately two-and-a-half metres, pulled the trigger a second time. But on this occasion the firearm jammed and the round did not discharge.
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> [13] Both victims then rushed at you. A violent struggle ensued for control of the firearm. It is no exaggeration to say Mr Dallison that the victims were

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9 The bankruptcy has subsequently been annulled after Mr Dallison sold his house and repaid his creditors.

10 Sentencing notes, above n 4, at [9].

> fighting for their lives. During the struggle you used your finger to gouge one of the victim's eyes. That injury appears to have caused lasting damage to his eyesight. You also pistol whipped his partner four or five times to the back of her head, wounding and concussing her.
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> [14] Neighbours heard her screams and cries for help. They entered the address and were able to restrain you and you were finally disarmed.

[9] The Judge remarked that the offending appeared to be "inexplicable"; an observation prompted by Mr Dallison's advanced age, his success as a senior medical specialist, and his privileged lifestyle.[11]

Applications for suppression

[10] It is now necessary to describe the steps taken by Mr Dallison, and subsequently by Judge Farish, in relation to suppression.

[11] Mr Dallison was arrested on 4 August 2022 and remanded in custody. He was initially granted interim name suppression in the District Court. At his second appearance on 19 August Mr Dallison did not seek to renew suppression of his own name. Ms Beaton KC, who was then instructed by Mr Dallison, filed a memorandum which was considered when the case came before Judge Davidson. Ms Beaton noted that Mr Dallison was now applying for an order suppressing the name, address and occupation of Judge Farish pursuant to s 202(1)(c) and (2)(c) of the Criminal Procedure Act. Ms Beaton recorded that:

> … suppression is not sought by Judge Farish to protect herself from hardship arising out of publication of her connection to Mr Dallison. Judge Farish does not consider that publication would cause her undue or extreme hardship. Rather, there is concern that publication of Mr Dallison's close connection to a District Court judge would be likely to endanger his safety while in custody.

[12] Also before the Judge was an email addressed to Ms Beaton by Detective Sergeant Kelvin Holden (DS Holden), who was the officer in charge of the police investigation of Mr Dallison's offending. The email included the following:[12]

> … DALLISON is currently remanded in custody at Christchurch Mens Prison. His partner is Judge Jane FARISH who has been a presiding judge in Christchurch for over 15 years. Police do not oppose the application to have her relationship with DALLISON supressed, one of the grounds for that is the

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11 At [15].
12 Emphasis omitted.

> risk to DALLISON from other prisoners if they find out he is a Judge's partner. Police have grave concerns for his safety if this becomes general knowledge in the prison population.

[13] Judge Davidson sought and obtained confirmation from counsel representing the Crown that its position on the new suppression application was neutral, subject to a qualification that the order for suppression should not be permanent. A transcript of the discussion which then took place shows that the Judge said the order would not be permanent, but should be "reviewed on [Mr Dallison's] first appearance in the High Court" as it was tied to his custodial status.

[14] The Judge proceeded to give an oral judgment in relation to suppression. Relevantly, he said:[13]

> [2] The defendant applies under s 202(1)(c) of the Criminal Procedure Act 2011 ("Act") for an order forbidding publication of the name, address, and occupation of a person connected with him; his partner, Jane Farish, a sitting District Court Judge.
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> …
>
> [5] As is well known, the judge is a full-time judge predominately undertaking criminal work in the Christchurch area. She has been a judge for many years and prior to that, for a similar period, was a Crown prosecutor in Christchurch. It is highly likely, if not inevitable, that during that period she will have interacted with prisoners, some of whom may currently be in custody, and not all of whom may have had what they regard as favourable outcomes.
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> [6] In my view, the application is entirely appropriate. The requisite grounds of endangering the safety of the defendant are made out.
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> [7] Accordingly, there is an order under s 202(1)(c) prohibiting publication of the name, address, occupation, and any other details that may lead to the identification of Judge Jane Farish as a person connected to the defendant.
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> [8] To support that order, there is a further order prohibiting publication of these reasons. That order is made under s 205 [of the] Act.

[15] Judge Davidson then recorded Mr Dallison's pleas of not guilty and his election of trial by jury.[14] The Judge noted that the interim order for suppression that had

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13 District Court judgment, above n 5.
14 At [9].

previously been made lapsed that day and remanded Mr Dallison in custody to appear in the High Court at Christchurch on 9 September 2022.[15]

[16] The first call of the case in the High Court occurred on 9 September 2022. Isac J continued the suppression order to a case review hearing on 10 November and made timetabling directions for the filing of evidence and submissions. Following receipt of the submissions, the Judge issued a minute on 9 November in which he noted that Judge Davidson's order had not been made subject to a specified term. This was important, because s 208(2) of the Criminal Procedure Act provides that, if the term of a suppression order is not specified, it has permanent effect. The Judge referred the parties to this Court's decision in *Boag v R*,[16] and sought that they address the question of whether the order made by the District Court was permanent; if so, whether the High Court had jurisdiction to revoke the order and, if it had, the test that should be applied.

[17] We will discuss s 208 of the Criminal Procedure Act in some depth later in this judgment. For present purposes, however, it is sufficient to note that the Judge concluded that he had the ability to review the suppression order under s 208 of the Criminal Procedure Act and, for the reasons that he gave, considered that he should revoke the suppression order made by the District Court.[17] We discuss Isac J's decision in more detail below at [25]–[33].

[18] This appeal followed on 15 November 2022, in exercise of the right to appeal in s 283(1)(b) of the Criminal Procedure Act. Submissions in support of the appeal were filed by Ms Beaton on 29 November, and by Mr Marshall for the respondent on 5 December. It is relevant to note here that at [53] of his submissions, in dealing with the issue of whether suppression was in the public interest Mr Marshall said:[18]

> First, while there is no suggestion Judge Farish was involved in the alleged offending, she is not unconnected to the events in question. She will likely be a witness at trial. Her formal written statement, for example, traverses her partner's financial issues, their effect on his mental health, the fact he blamed [the victim] for his financial woes, and his behaviour in the days' prior to the

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15 At [9]–[10].
16 *Boag v R* [2022] NZCA 277.
17 Judgment under appeal, above n 5, at [19]–[21], [38], and [40]–[51].
18 Footnotes omitted.

> alleged offending. She also describes [the victim] calling her twice immediately after Dr Dallison's attack, including from the ambulance, and she gives details of Dr Dallison's large firearms collection and his shooting prowess. Finally, while the Crown is not suggesting any impropriety, there is a real, and non-prurient, public interest in the fact a sitting criminal Judge's partner **[REDACTED]**.

[19] There was a footnote linking the statement that **[REDACTED]** to a formal written statement made to the police by Judge Farish on 11 August. There was also a reference to a police job sheet made by DS Holden dated 5 August recording that Judge Farish had advised that **[REDACTED]**.

[20] In addition, submissions were filed in this Court by Mr Nilsson on behalf of Stuff Ltd (Stuff) as intervenor dated 26 January 2023 in which he referred to:

> … a clear and compelling public interest in Judge Farish's relationship **[REDACTED]**.

[21] These submissions prompted Judge Farish to instruct counsel to make an application to this Court under s 205 of the Criminal Procedure Act for an order forbidding publication of any part of the evidence adduced or the submissions made in this Court on Mr Dallison's appeal in relation to **[REDACTED]**. The application, made on 18 April 2023, stated that the order was sought on the basis that publication of those facts would be likely to endanger the safety of Judge Farish, invoking the ground for suppression in s 205(2)(c). The application was supported by an affidavit, sworn on 28 April 2023, of **[REDACTED]**, about the risks to the Judge's safety attendant on publication. We discuss that affidavit further below.

[22] Mr Nilsson sought access to the formal written statement of Judge Farish dated 11 August 2022, and DS Holden's job sheet dated 5 August 2022 that had been referred to in [53], and the corresponding footnote, of the Crown's submissions. That application was opposed by Mr Dallison and Judge Farish. After a telephone conference with counsel, Gilbert J issued a minute on 15 February 2023 noting that the documents requested were not on this Court's file and that counsel had agreed that a joint memorandum would be filed advising whether the Crown would pursue an application for leave to adduce those documents as further evidence.

[23] Subsequently, a joint memorandum was filed on 1 March 2023 signed by Mr Borich KC, now acting for Mr Dallison, Mr Marshall for the respondent and Mrs Guy Kidd KC for Judge Farish. It was accepted that the summary at [53] of Mr Marshall's submissions (quoted above) accurately recorded matters described by Judge Farish in her formal written statement and that **[REDACTED]**. The Crown confirmed, for the "avoidance of doubt", that **[REDACTED]**. It was further noted that competing submissions would be made as to the relevance, or legal significance of these facts, to the issue of suppression. In these circumstances, counsel did not anticipate that the Court would require copies of the underlying documents. It was therefore not the Crown's intention to apply to adduce the documents as further evidence on the appeal.

[24] On 11 May 2023 Judge Farish filed a further application in this Court. The application was made pursuant to s 202(1)(c) of the Criminal Procedure Act and sought an order forbidding publication of her name, address and occupation. The order was sought on the basis that publication of those facts would be likely to endanger her safety. It was supported by an affidavit filed by the Judge and **[REDACTED]**, which had been previously filed.

Judgment under appeal

[25] As noted earlier, Isac J decided that the suppression order made by the District Court should be revoked.[19] His essential reasoning was founded on the principle of open justice, said to be one of constitutional importance and "fundamental to the common law system of civil and criminal justice."[20] He also quoted the observation from this Court's judgment in *R v Liddell,* a case involving the power to prohibit the publication of names contained in s 140 of the Criminal Justice Act 1985, that:[21]

> … the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as "surrogates of the public".

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19 Judgment under appeal, above n 5, at [51].
20 At [23], citing *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2].
21 At [23], citing *R v Liddell* [1995] 1 NZLR 538 (CA) at 546.

[26] Mr Dallison's application for continued name suppression had to be assessed under s 202 of the Criminal Procedure Act. The Judge noted that under that section, an order for suppression could only be made in limited circumstances.[22] The Judge applied authorities of this Court establishing that the determination of applications for name suppression requires a two-stage process:[23]

(a) first, a threshold determination where the court must consider whether the consequences listed under s 202(2) of the Criminal Procedure Act will be likely to follow from publication;

(b) second, if the threshold is crossed, the court must undertake a discretionary judgment of whether an order should be made guided by the principle of open justice. The circumstances must "clearly favour" suppression for an order to be made.

[27] First, the Judge assessed the threshold issue: whether evidence established that publication would be likely to endanger Mr Dallison's safety.[24] The Judge considered that there was insufficient evidence to establish that publication would pose a "real and appreciable risk" of harm to Mr Dallison.[25]

[28] The principal evidence relied on by Mr Dallison in the High Court was an affidavit dated 7 November 2022 of Joanne Gay Harrex, employed by the Department of Corrections (Department) as the Prison Director of Christchurch Men's Prison (the Prison), a position she had held for approximately four years. She noted that Mr Dallison had been assessed as requiring separation from the mainstream prison population. This was due to his age, the fact that he was in prison for the first time, and his relationship with a District Court Judge. These were matters which in her view would, in combination, make Mr Dallison "vulnerable to manipulation and potential stand-overs and violence." In view of these considerations, the Prison had decided to place Mr Dallison in directive protective custody under s 59(1)(b) of the

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22 At [24]–[25].

23 At [26], citing *D (CA443/2015) v Police* [2015] NZCA 541, (2015) 27 CRNZ 614 at [12], citing *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [43]; and *Ratnam v R* [2020] NZCA 92 at [5]–[6], citing *DP v R* [2015] NZCA 476, [2016] 2 NZLR 306 at [6].

24 This is the threshold ground in s 202(1)(c) of the Criminal Procedure Act.

25 Judgment under appeal, above n 5, at [47].

Corrections Act 2004. This meant that he was held in a small management unit with restricted access to other prisoners. Ms Harrex expressed the opinion that if Mr Dallison's personal relationship with Judge Farish were to become known by prisoners, it would create a "safety and good order risk" to the operation of the Prison and create "a significant safety risk, both physical and psychological, to Mr Dallison."

[29] The Judge considered that this evidence was "at best speculative and unsupported by any direct evidence of a meaningful threat."[26] Given that, when the affidavit was sworn, Mr Dallison had been in custody for some time, the lack of evidence of actual threats to his safety led the Judge to conclude that the protective measures in place were effective, and that it was appropriate to proceed on the basis that the Prison would continue to comply with its statutory obligations to ensure Mr Dallison's safe custody and welfare.[27]

[30] The Judge also discussed a hearsay statement which the Crown had placed before him, made by Detective Constable Leanne Benjamin.[28] The statement reported on a discussion with Lyndal Miles, previously the acting director of the Prison. The Judge noted that Mr Miles was reported as having said that "[t]here have been no issues [for Mr Dallison] to date", and that if suppression were lifted, there would be "no direct threat to [Mr] Dallison where he is now."[29] An anticipated review of Mr Dallison's custody and risk status on 22 November 2022 would enable the Prison to "find the most appropriate area for him to be to ensure his safety."[30]

[31] The Judge observed that Ms Harrex's opinion on the risk to Mr Dallison was not easy to reconcile with Mr Miles' statement.[31] The Judge noted that while it was unfortunate that the consequence of segregation was that Mr Dallison's ability to associate with other prisoners had been limited, that was considered necessary for a number of factors beyond his relationship with Judge Farish.[32] He also noted that

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26 At [42].
27 At [42].
28 We agree with Mr Nilsson's submission made in this Court that Ms Benjamin's statement was hearsay.
29 Judgment under appeal, above n 5, at [45].
30 At [9].
31 At [10].
32 At [46].

there was nothing to suggest that Mr Dallison would be free of some degree of segregation, even if the suppression order were maintained.

[32] For these reasons, the Judge was not satisfied that Mr Dallison had established there would be a real and appreciable risk to his safety should publication occur.[33] He went on to state that even if that had been established, the nature and extent of the claimed risk was outweighed by the importance of the principle of open justice. He added:[34]

> … I would be slow to accept the view that there is no public interest in the fact of Mr Dallison's relationship with a serving judge of the District Court. While there is absolutely no suggestion that the Judge is in any way involved in the allegations leading to the charges, those exercising public authority are held to a high standard. Rightly or wrongly, when family members of those holding public office find themselves before the courts, publicity surrounding the connection between the defendant and the official goes with the territory.

[33] Finally, the Judge recorded his view that, in any event, he would not have exercised the discretion in favour of ongoing suppression. Given his findings about the speculative nature of the risk, the Judge considered the interests of justice did not support further delay in publication.[35]

The appeal

[34] We consider the appeal against the High Court judgment before addressing the suppression applications made in this Court by Judge Farish.

Section 208

[35] The decision of Judge Davidson was plainly intended to apply on an interim basis, given that the file was to be transferred to the High Court for trial. He specifically stated during argument that it would be an interim order, although he omitted to record that in his written reasons. That being the case, we agree with counsel for the respondent and Stuff who both argued that, in accordance with this

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33 At [47].
34 At [49].
35 At [50].

Court's decision in *Boag v R*, there was nothing to prevent the High Court from revisiting the issue of suppression under s 208 of the Criminal Procedure Act.[36]

[36] That section provides:

> **208 Duration of suppression order and right of review**
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> (1) A suppression order—
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> (a) may be made permanently, or for a limited period ending on a date specified in the order; and
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> (b) if it is made for a limited period, may be renewed for a further period or periods by the court; and
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> (c) if it is made permanently, may be revoked by the court at any time.
>
> (2) If the term of a suppression order is not specified, it has permanent effect.
>
> (3) A suppression order may be reviewed and varied by the court at any time.

[37] Ms Boag, an intended Crown witness, had obtained a suppression order from the District Court as a connected person on the grounds that the publication of her name in connection with the proceeding might cause her undue hardship in the form of reputational and business harm.[37] The order was not made for a specific term, but it was recorded that it was made "subject to there being no material change to the factual basis on which it was advanced."[38] Subsequently, the proceeding was transferred to the High Court, and Ms Boag was not called as a witness.[39] However, evidence was adduced during the trial of a recorded conversation in which a witness alleged that Ms Boag had a direct involvement in the relevant offending.[40] That evidence had not been available to the District Court when the suppression order was made.[41] On the basis of the new evidence, applications were made by news media representatives for the revocation of the suppression of Ms Boag's name.

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36 *Boag v R,* above n 16.
37 *Boag v R,* above n 16.
38 *R v [W]* [2019] NZDC 5018 at [24].
39 *Boag v R*, above n 16, at [17] and [22].
40 At [11]–[12].
41 At [15].

[38] In considering whether the recording coming to light was sufficient to justify revisiting the original order, this Court said:

> [47] The rule that exceptional circumstances must be shown to justify revocation must be qualified, so that it does not extend to cases in which the order is permanent only because the court making it omitted to specify that it expired on a date. The rule is one of judicial policy, and no policy consideration requires exceptional circumstances to justify revocation of a suppression order which the original court granted on a provisional basis, envisaging that it might be modified as the proceeding continued to trial and disposition.
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> [48] We have concluded that the order made in this case was permanent for [the] purposes of s 208, but it was not permanent in the sense used in the leading authorities. The legislation deemed it permanent only because the court omitted to have it expire on a date. Nor was the order of a kind which one would ordinarily expect to be permanent. It was made in respect of a person who was to be called as a witness at trial. The court evidently envisaged that the evidence led there might justify revocation, as might the loss of suppression for others involved in the trial. We accordingly agree with Venning J, though for different reasons, that exceptional circumstances need not be shown to justify revocation of the order in this case.

[39] The circumstances of this case are clearly within the contemplation of what was said in that passage. We note also that once the prosecution had been transferred to the High Court, that Court became the court with original jurisdiction in respect of any review of a suppression order under s 208(3). That was the position confirmed in *Boag*; once a prosecution has been transferred, the District Court no longer has conduct of the proceeding in respect of which a suppression order has previously been made by the District Court.[42]

[40] In *Fawcett v R*, this Court rejected an attempt to rely on s 208 for the purposes of an appeal against a decision of the High Court declining to revoke a suppression order suppressing publication of the identities of two police officers.[43] This Court decided that there was no right of appeal in respect of decisions under s 208, and also rejected an argument that the Court could assume jurisdiction under s 208 on the basis that there had been changes of circumstances since the High Court's decision. The Court observed:[44]

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42 At [59].

43 *Fawcett v R* [2023] NZCA 183.

44 At [41] citing *Cosci v District Court at Tauranga* [2017] NZHC 1907, [2017] NZAR 1721 at [18]–[20] (footnotes omitted).

> [41] … it would be wrong for this Court to arrogate jurisdiction to itself to hear an appeal under the guise of a review, especially when Parliament has provided for express appeal rights in another provision. The review that is to be undertaken under s 208 is a review conducted by the same [c]ourt that made the order at issue. That is why it is called a right of review as distinct from a right of appeal. This Court did not make the suppression order at issue. Accordingly, assuming there are operative changes of circumstances arising since the High Court decision, then Mr Fawcett's remedy is clearly to go back to the High Court and seek another review.

[41] We note that, in that case, the relevant suppression order was made in the High Court, which was the trial court.[45] There had not been, as in the present case, a suppression order made in the District Court, followed by transfer of the prosecution to the High Court. The observation of this Court at [41] of *Fawcett* needs to be read in that context. In a case, such as the present, where the charges were transferred from the District Court to the High Court after a suppression order has been made, it is for the High Court to carry out any review that may be required under s 208.

[42] Here Isac J took the view that because of s 208(2) of the Criminal Procedure Act, the absence of any time limit in the suppression order made by Judge Davidson meant that it had permanent effect, notwithstanding the Judge's intention that it would only apply until the position was reconsidered by the High Court.[46] However, he also considered that, in accordance with what was said at [47] of *Boag* and because the District Court did not intend that the order be permanent, he was able to review the suppression order.[47] He considered that he should approach the issue, by asking first whether there had been a material change of circumstances since the order was made.[48] In adopting that approach, he referred to a further passage in *Boag*:[49]

> [49] It remains the case that, as the Court explained in *NZME*, a revocation application is not treated as the re-exercise of the original suppression power.[50] The court which made the original order may decline to revoke it where nothing has changed. Where the applicant for revocation complains that the order should not have been made its remedy is by way of appeal. A revocation application which does not point to a material change of circumstances may

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45 *R v Fawcett* [2022] NZHC 285.
46 Judgment under appeal, above n 5, at [19]–[20].
47 At [21].
48 At [20].
49 *Boag v R*, above n 16.
50 *NZME Publishing Ltd v R* [2018] NZCA 363 at [15]–[16], endorsing *B v NZME Publishing Ltd* [2018] NZHC 1042 at [25]–[28].

> be found to be a collateral attack on the original order and hence an abuse of process.

[43] However, this was not a case where there had been an application for revocation. Rather, after the charges were transferred to the High Court, Mr Dallison applied for a further order continuing suppression until trial.[51] In these circumstances, that application did not require consideration of whether there had been a change of circumstances, in accordance with the approach discussed at [49] of *Boag*, applied in *NZME Publishing Limited v R*.[52]

[44] On the view we take, it was not necessary for the Judge to analyse whether there had been a qualifying change of circumstances justifying the review of the suppression order. We consider that the transfer of proceedings to the High Court meant that it would have been possible for the Judge to simply consider suppression afresh under the power given by s 208(3) of the Criminal Procedure Act.

[45] Although counsel on this appeal made submissions concerning whether there had been a material change in circumstances, it follows from the foregoing discussion that we do not consider that was necessary. There was no suggestion in this case of a collateral attack or abuse of process. In the circumstances, it is sufficient to consider the issue of suppression on the merits.

[46] We proceed on that basis.

Submissions

[47] Mr Borich's submissions covered similar ground to the written submissions filed by Ms Beaton on 29 November 2022. He contended that the High Court erred in finding that publication of Mr Dallison's relationship with Judge Farish would not create a real, appreciable and ongoing risk to Mr Dallison's safety. It was inevitable that Judge Farish would have had dealings with prisoners currently housed at the Prison, including those who she had sentenced to imprisonment or whose applications for bail she had declined. Publication of Mr Dallison's connection with Judge Farish

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51 Judgment under appeal, above n 5, at [4].
52 *NZME Publishing Ltd v R*, above n 49, at [15]–[16].

would leave him an obvious target for retribution at the hands of aggrieved prisoners, or intimidation or manipulation more generally.

[48] The fact that Mr Dallison had been segregated, as explained in Ms Harrex's affidavit, showed that the risk was real. So too did evidence given by Ms Harrex that future alternative placement options have been considered, in the context of continuing suppression, but were limited to either a particular unit at the Prison for housing prisoners under voluntary protective custody, or a transfer to Invercargill Prison. Counsel argued that it was clear from media coverage that had already taken place that, if the suppression order were revoked, news of Mr Dallison's relationship with the Judge would soon become widespread within the Prison. Publication would actualise the potential risk to Mr Dallison's physical safety.

[49] Mr Borich argued that if the only way of managing the risk was ongoing segregation, that would pose a risk for Mr Dallison's psychological safety. Such prolonged solitary confinement would be contrary to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[53] and the United Nations Standard Minimum Rules for the Treatment of Prisoners.[54]

[50] Building on these arguments, Mr Borich submitted that Isac J had made two significant errors. First, he had overlooked the fact that the preponderance of the evidence established that there was a real risk that Mr Dallison's safety would be endangered unless there was suppression of the fact that his partner was Judge Farish. Second, the Judge had wrongly assumed that Mr Dallison would continue not to experience difficulties in the Prison once his relationship with Judge Farish was disclosed.

[51] The evidence of danger on which Mr Borich relied comprised the affidavit of Ms Harrex and the statement of DS Holden, which we have referred to above. He

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53 United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment 1465 UNTS 85 (opened for signature 10 December 1984, entered into force 26 June 1987), art 16(1).

54 United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) GA Res 70/175 (2015), arts 43–45. The Nelson Mandela Rules are non-binding in New Zealand, but s 5(1)(b) of the Corrections Act 2004 provides that corrections facilities are to be operated in accordance with "rules set out in this Act and regulations made under this Act that are based, amongst other matters, on the [Nelson Mandela Rules]".

contended that Isac J ought to have engaged with these sources and provided a clear reason for preferring one position over the other. He also emphasised the reasons given by Judge Davidson when granting suppression of Judge Farish's name under s 202(1)(c) to protect Mr Dallison on remand.

[52] Mr Borich told us from the bar (without objection) that Mr Dallison had been moved from a part of the Prison where he had been the sole prisoner to another unit where he is detained with 19 other prisoners. He referred to correspondence indicating that the Department had carefully considered whether to provide evidence or information, for the purpose of the appeal, about the measures taken to manage risks to Mr Dallison's safety. It was said the Department did not consider it necessary to do so given the High Court's acceptance that the Department would comply with its statutory obligations to ensure the safety and welfare of prisoners.[55] However, Mr Borich contended that the danger to Mr Dallison would be greater now as a consequence of the case's high public profile.

[53] Mr Borich also submitted the Court should be careful to avoid being overly influenced by the idea that suppression should not be granted because it might have the appearance of the Court taking action to protect a member of the judiciary. In these circumstances, if the Court was satisfied that Mr Dallison's safety would be endangered through publication of Judge Farish's name, that should be sufficient to outweigh the need of the judiciary to maintain the appearance of justice. That was especially so because there was no suggestion of wrongdoing by Judge Farish, and no connection between her and Mr Dallison's offending.

[54] For the respondent, Mr Marshall submitted that Isac J correctly found that Mr Dallison had failed to establish there was a real and appreciable risk to his safety should publication of Judge Farish's name occur.

[55] Mr Marshall submitted that the Judge had not erred in finding there was insufficient evidence to establish a real and appreciable risk of harm to Mr Dallison. On the material before the Judge, the identified risk was speculative and contingent on Mr Dallison being accommodated near or with a prisoner who:

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[55] This presumption is contained in *MS (CA405/2016) v R* [2016] NZCA 544 at [11].

(a) has had dealings with Judge Farish;

(b) is aggrieved as a consequence;

(c) becomes aware of Mr Dallison's relationship with Judge Farish;

(d) is prepared to seek retribution against Judge Farish by targeting Mr Dallison; and

(e) is willing to commit a serious offence against him in prison despite the risk of being caught and further punished.

While such a combination of events might happen, it was highly unlikely.

[56] Mr Marshall submitted that the courts proceed on the basis that the Department will comply with its statutory obligations to ensure the safe custody and welfare of prisoners, absent evidence it is failing to do.[56] There was no evidence suggesting that the prison authorities would be unwilling or unable to keep Mr Dallison safe in accordance with their statutory obligations, and the Acting Prison Director had observed Mr Dallison faced no direct threat to his safety as of September 2022. Measures could be taken to ensure his physical safety.

[57] Insofar as psychological harm is concerned, Mr Marshall submitted there was no evidence that if suppression were lifted Mr Dallison would have to be placed in solitary confinement. On the contrary, as Ms Harrex had foreshadowed, more placement options were available post-conviction and sentence, including in a unit where prisoners in voluntary protective custody were accommodated.

[58] Even if the endangerment threshold was met, Isac J had been right to conclude that discretionary considerations would not have favoured suppression. The principle of open justice was the starting point and should be upheld unless Mr Dallison could establish clearly why it should yield. Mr Marshall argued that despite the Judge's lack of involvement in the offending, there was a legitimate public interest in Mr Dallison's

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[56] *MS (CA405/2016) v R*, above n 55, at [11]; and *O'Reilly v R* [2019] NZCA 254 at [4].

close personal relationship with the Judge, who sits in Christchurch. There was also a legitimate public interest in transparency as to the steps taken by the judiciary in circumstances such as this to maintain and ensure public confidence in the administration of the criminal justice system.

[59] Mr Nilsson made similar submissions for Stuff in support of the High Court decision. We mean no disrespect to Mr Nilsson in saying that we do not think it is necessary to summarise them.

Evaluation

[60] Section 202 of the Criminal Procedure Act provides:

> (1) A court that is hearing a proceeding in respect of an offence may make an order forbidding publication of the name, address, or occupation of any person who—
>
> (a) is called as a witness; or
>
> (b) is a victim of the offence; or
>
> (c) is connected with the proceedings, or is connected with the person who is accused of, or convicted of, or acquitted of the offence.
>
> (2) The court may make an order under subsection (1) only if the court is satisfied that publication would be likely to—
>
> (a) cause undue hardship to the witness, victim, or connected person; or
>
> (b) create a real risk of prejudice to a fair trial; or
>
> (c) endanger the safety of any person; or
>
> (d) lead to the identification of another person whose name is suppressed by order or by law; or
>
> (e) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or
>
> (f) prejudice the security or defence of New Zealand.
>
> …

[61] As can been seen, these provisions are designed to authorise orders suppressing the identity of witnesses, victims and connected person in a wide variety of circumstances.

[62] In assessing whether an order should be made, the courts undertake the two-stage enquiry referred to above.[57] The first stage involves asking whether the threshold test in s 202(2) has been satisfied. If so, the Court may exercise its discretion to make an order under subs (1), but it is not obliged to do so.

[63] It is in the exercise of its discretion that the Court brings to bear the fundamental principle of open justice, which is not mentioned in the statute, but which nevertheless lies at the heart of the jurisdiction.[58] As was said by the Supreme Court in *Erceg v Erceg*, the principle of open justice is "fundamental to the common law system of civil and criminal justice. It is a principle of constitutional importance, and has been described as 'an almost priceless inheritance'".[59]

[64] And in *R v Liddell*, this Court observed, with reference to the suppression powers in s 140 of the Criminal Justice Act 1985, (the forerunner of the current statutory provisions):[60]

> In considering whether the powers given by s 140 should be exercised, the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as "surrogates of the public". These principles have been stressed by this Court … The basic value of freedom to receive and impart information has been re-emphasised by s 14 of the New Zealand Bill of Rights Act 1990.

[65] More recently, in *D (CA443/2015) v Police*, this Court emphasised that the open justice principle must be considered at the second stage of the enquiry, notwithstanding that the threshold has been crossed.[61] That is so, because

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57 *D (CA443/2015) v Police*, above n 23, at [10]–[12]; *Robertson v Police* [2015] NZCA 7 at [39]–[41], citing *Fagan v Serious Fraud Office* [2013] NZCA 367 at [9]; *Hawea-Edwards v R* [2021] NZCA 52 at [36]; and *Beacon Media Group Ltd v Waititi* [2014] NZHC 281 at [5].

58 *Parker v R* [2019] NZCA 350 at [8]; and *D (CA443/2015) v Police*, above n 23, at [12].

59 *Erceg v Erceg*, above n 20, at [2], citing *Scott v Scott* [1913] AC 417 (HL) at 447 per Earl Loreburn.

60 *R v Liddell*, above n 21, at 546.

61 *D (CA443/2015) v Police*, above n 23, at [12].

"the ultimate question remains whether open justice should yield".[62] In answering that question, the balance "must 'clearly favour' suppression".[63]

[66] At the first stage, it is apparent from the statutory language that the legislature intended there be a properly grounded finding that the adverse consequences of publication are likely. Likely in this context means that there is a real and appreciable possibility that the consequences will arise.[64] Here, what Mr Dallison must show is that the publication of the name and occupation of Judge Farish would be likely to endanger his safety.

[67] Section 202 is one of a number of provisions providing for suppression in pt 5 of the Criminal Procedure Act. These provisions are not specifically directed at persons who are in prison, as applies in the case of Mr Dallison. But the fact that he is in prison is obviously a relevant circumstance in considering his application. That is what creates the threat on which he wishes to rely: the fact that he is detained and is the partner of a judge who may have made orders resulting in the imprisonment of other inmates, or perhaps because the very fact that she is a judge would lead to the inmates reacting adversely to Mr Dallison.

[68] The countervailing consideration, however, is that being in prison means he is in a situation where he is required to be kept safe. It is clear that the Prison authorities were aware of his potential vulnerabilities and took action to ensure his safety. This is consistent with their obligation to keep all inmates safe which has been frequently referred to in decisions of the courts.[65]

[69] It is a fundamental obligation of the state, which relies on imprisonment as a tool of penal policy, that those in prison must be kept safe. The penalty of imprisonment involves the loss of many rights for the period of the imprisonment, pre-eminently freedom of movement. It is not part of the punishment that the person should be subjected to acts of violence at the hands of other inmates. The courts rely

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62 At [12].
63 At [12], citing *Lewis v Wilson & Horton Ltd*, above 23, at [43].
64 *D (CA443/2015) v Police*, above n 23, at [30(a)], citing *R v W* [1998] 1 NZLR 35 (CA); *NN v Police* [2015] NZHC 589; and *Hughes v R* [2015] NZHC 1501.
65 See *MS (CA405/2016) v R*, above n 55, at [11]; and *O'Reilly v R*, above n 56, at [4].

on the safety of the prison system when sentencing offenders to prison. As this Court observed in *MS (CA405/2016) v R*:[66]

> The courts proceed on the basis that the Department of Corrections will comply with its statutory obligations to ensure the safe custody and welfare of prisoners, absent evidence that it is failing to do so.

[70] In that case, there was evidence that MS had been assaulted in prison, notwithstanding that he was kept in segregation.[67] He faced one charge of murder and eight of assaulting children who lived at an address where he was a boarder.[68] Despite the assault, the Court rejected the claim that publication would be likely to endanger his safety as a ground for continued suppression.[69] This Court noted the Department was obliged to take steps to ensure there was no further assault.[70]

[71] This approach is clearly grounded on provisions of the Corrections Act. Section 6(1) of that Act sets out the principles that guide the operation of the corrections system. They include, in s 6(1)(g), a principle that sentences must not be administered more restrictively than is reasonably necessary to ensure amongst other things, the safety of persons under control or supervision. In addition, s 8(1)(b) states that the Chief Executive has a function of ensuring "the safe custody and welfare of prisoners". Similarly, the powers and functions of prison managers set out in s 12 provide that prison managers have, in relation to the prison for which they are appointed or designated as manager, the function of ensuring the safe custody and welfare of prisoners received in the prison.[71]

[72] In the present case, there has been no new evidence relevant to Mr Dallison's position since the matter was before the High Court. There is no evidence he has been subject to any threat to his safety in the prison. The Prison Director has not sought to provide any further evidence which could cause us to doubt the Prison's ability to see to Mr Dallison's safety, whether or not special measures might need to be adopted for that purpose.

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66 *MS(CA405/2016) v R*, above n 55, at [11] (footnotes omitted).
67 At [2].
68 At [1].
69 At [10].
70 At [11].
71 Corrections Act, s 12(b).

[73] All that is proffered is the argument that there will be a risk that some fellow prisoners will take action against Mr Dallison because of his relationship with a judge. We are not persuaded that this is sufficient to satisfy the statutory requirement that publication of Judge Farish's name would be likely to endanger Mr Dallison's safety.

[74] In the circumstances, the threshold test is not met and Mr Dallison's appeal must be dismissed. It is not necessary for us to go further and address in detail the discretionary considerations that would be reached if the first stage of the test had been satisfied. It is sufficient to record our view that there would be strong reasons not to order suppression in the circumstances of this case. Those reasons are founded on the strength of the public interest in all the circumstances surrounding the commission of a violent crime involving the use of weapons by a respected professional person who owned a substantial collection of guns. There must also be a public interest in the fact that Mr Dallison has sought to suppress the fact of his connection to a member of the judiciary on grounds of personal safety.

The applications by Judge Farish

[75] As noted above, Judge Farish has made two applications for suppression, the first under s 205 and the second under s 202. The circumstances, timing and ambit of these applications has already been described. In each case, the applications turn on an apprehended threat to the Judge's safety, which is not the issue raised by Mr Dallison's appeal.

[76] Both of the Judge's applications were made to this Court in the context of Mr Dallison's appeal. Because the applications were made to this Court in the first instance, we asked counsel to address the issue of jurisdiction.

Jurisdiction

[77] Section 205(1) provides that:

> A court may make an order forbidding publication of any report or account of the whole or any part of the evidence adduced or the submissions made in any proceeding in respect of an offence.

[78] We hold that there is jurisdiction to consider the application under s 205. Here, the genesis of the application was the content of written submissions made in respect of Mr Dallison's appeal to this Court. The s 205 application was directed to those submissions and evidence referred to in them. There is no reason why this Court should not have power to act under s 205(1) when the issue arises here for the first time. We see no reason to read the reference to "[a] court" in s 205(1) as requiring the application to be made to the trial court. Apart from the circumstances of this case, it is not hard to envisage other cases in which it might be necessary for this Court to suppress publication of evidence as a court of first instance. For example, where fresh evidence is sought to be relied on in the context of a conviction appeal, it would be impractical to suggest that an application to suppress the evidence should be initiated in the trial court.

[79] The position is slightly more complicated in the case of the application under s 202, because the power to suppress in s 202(1) is given to "[a] court that is hearing a proceeding in respect of an offence". This language appears to contemplate the making of an order suppressing the identity of witnesses, victims and connected persons at a trial which is ongoing. This can be contrasted with the backward-looking language of s 205(1), referring to "the evidence adduced or the submissions made". But, a reading of s 202 which gives this Court jurisdiction is appropriate to meet the interests of justice as they arise. We consider this Court does have jurisdiction on the basis that Mr Dallison's appeal is "a proceeding in respect of an offence", even though the appeal is limited to issues concerning suppression. Our jurisdiction arises because the application has been advanced in the context of that appeal.

[80] That approach is consistent with the implications of s 284 of the Criminal Procedure Act. That section concerns the "first appeal court" in the case of appeals under subpt 7 of the Act, namely appeals against suppression orders. Section 284 provides:

> **284 First appeal courts**
>
> The first appeal court for an appeal under this subpart is—
>
> (a) the District Court presided over by a District Court Judge, if the appeal is against a decision of the District Court presided

over by 1 or more Community Magistrates or 1 or more Justices of the Peace; or

(b) the High Court, if the appeal is against a decision of the District Court presided over by a District Court Judge; or

(c) either the Court of Appeal or the Supreme Court, in any other case.

[81] The fact that subs (c) enacts that, in cases not covered by subss (a) and (b), either the Court of Appeal or the Supreme Court is to be the first appeal court, is consistent with the proposition that applications for suppression may be made to this Court in the first instance. Where that happens, the Supreme Court becomes the first appeal court. A further demonstration that this is the correct position is s 285(1)(b) which relevantly provides that a person commences a first appeal by filing a notice of application for leave to appeal, if the court appealed to is the Supreme Court.[72]

[82] For these reasons, in the circumstances of this case, we are satisfied that this Court has jurisdiction to deal with both of Judge Farish's applications as the first instance court.

Evidence

[83] Although affidavits were filed in relation to two different applications, they are relevant to both, and we proceed accordingly. The evidence is:

(a) the affidavit of **[REDACTED]**, sworn on 28 April 2023, mentioned above;

(b) an affidavit of Judge Farish, sworn on 11 May 2023; and

(c) an affidavit by **[REDACTED]**, sworn on 24 May 2023, called by the Crown. **[REDACTED]** was cross-examined by Mrs Guy Kidd at the hearing in this Court.

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[72] We note that s 283(1) of the Criminal Procedure Act confers a right to a first appeal in relation to suppression orders. But, while s 71(a) of the Senior Courts Act 2016 confers jurisdiction on the Supreme Court to hear and determine appeals authorised by pt 6 of the Criminal Procedure Act, under s 72, that jurisdiction is subject to s 73, which enacts that appeals to the Supreme Court may only be heard with the Court's leave.

[84] **[REDACTED]**

[85] **[REDACTED]**

[86] In her affidavit, Judge Farish gave brief evidence about her relationship with Mr Dallison whom she has known for nearly 28 years. She was introduced to him through her late partner Mr Mayberry, who was tragically killed in a helicopter crash on 6 April 2011. Her relationship with Mr Dallison began approximately a year later. The Judge notes that, although they were romantic partners, they never lived together and kept quite separate houses. She lives on a rural property **[REDACTED]**.

[87] **[REDACTED]**

[88] **[REDACTED]**

[89] Judge Farish explained that in February 2023, she was alerted by Mr Borich to [53] of the Crown's submissions on this appeal. She then engaged Mrs Guy Kidd. At that stage, she did not believe that the media reporting was at a level where she would be able to meet the statutory test for name suppression. However, that opinion was changed by the subsequent media reporting.

[90] **[REDACTED]**

[91] She addressed other media articles in which similar comments were made, and referred to a blog which speculated about Mr Dallison's "wife" and "possible reasons for her anonymity",[73] as well as other materials discussing aspects of Mr Dallison's personal life, including matters unrelated to his offending. She also referred to "gratuitous" reporting of historical matters personal to the victims and news coverage of their home address. The Judge pointed to materials cited by the Crown as highlighting the "unreasonableness and danger" of uncontrolled reporting. Against the background of the matters discussed, she said:

[REDACTED]

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[73] We note that it seems that this blog was in fact referring to Mr Dallison's ex-wife, from whom he had separated in 2006.

[92] She also stated that her application under s 205 had nothing to do with her career. Rather, her concern was about her personal safety. **[REDACTED]**

[93] **[REDACTED]**

[94] **[REDACTED]**

[95] **[REDACTED]**

[96] **[REDACTED]**

Submissions

[97] The application for an order under s 205(1) sought to suppress the fact that **[REDACTED]** on the basis that publication of the facts would be likely to endanger her safety in terms of s 205(2)(c). In her submissions filed on 3 May 2023, Mrs Guy Kidd submitted that, given the potential consequences of publication, a cautious approach to the assessment of risk is appropriate.[74] She relied on **[REDACTED]**.

[98] As to the exercise of discretion, Mrs Guy Kidd pointed out that the facts referred to in the Crown's submission on the appeal were not related to anything concerning Judge Farish who was not involved in Mr Dallison's offending in any way. Her formal statement to the police was made solely for the purpose of assisting the police in their investigation of his offending. She was not called as a witness at the trial and was entitled to privacy in respect of her statement to the police. There was no legitimate public interest in or need for the public to know **[REDACTED]**.

[99] The application under s 202, seeking suppression of the Judge's name, address and occupation, was made on 11 May 2023, and, as referred to in the Judge's affidavit of that date, followed extensive media publicity about Mr Dallison and his offending that she considered justified an application on her own behalf.

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[74] Counsel relied on *R v Philip* [2022] NZHC 3197 at [18]–[21].

[100] In support of the s 202 application Mrs Guy Kidd claimed that there was a real risk that **[REDACTED]**.

[101] In terms of the discretion to make an order, Mrs Guy Kidd again emphasised the Judge had done nothing wrong or illegal and had nothing to do with Mr Dallison's offending. The fact that she was a judge should not mean she had lost her right to live privately, live peacefully in a rural location, or feel safe in her own home. **[REDACTED].** Nothing about her relationship with Mr Dallison raised any issue as to her ability to continue to sit as an impartial judge in unrelated proceedings. Mrs Guy Kidd emphasised in this context also the public interest in **[REDACTED]**. She referred to the risk, given the media's approach to date, that reporting about the Judge would be intrusive, sensationalised and extend well beyond the fact of her relationship with Mr Dallison.

[102] For the respondent, Mr Marshall submitted that, on the evidence, publication of **[REDACTED]** would create some risk of her safety being endangered. However, whether that endangerment was sufficiently "likely" so as to cross the statutory threshold was finely balanced. He submitted that publication of the Judge's name, address and occupation was not likely to endanger her safety. It was only remotely possible that **[REDACTED]**, based on a chain of speculative reasoning.

[103] Mr Marshall submitted that if the Court considered that the statutory threshold for suppression had been crossed, a number of important public interest factors weighed in favour of publication. Those included the fundamental importance of open justice and freedom of expression, the public interest in the appearance of independence and impartiality in the criminal justice system, and the importance of avoiding any perception that the judicial system was looking after "one of its own." In the circumstances, the Court should decline the applications to suppress the applicant's name even if it considered it appropriate to suppress **[REDACTED]**.

[104] For Stuff, Mr Nilsson argued that the first-stage threshold had not been satisfied. He noted that the evidence given by **[REDACTED]** amounted to a general claim that **[REDACTED].** He criticised the evidence as being speculative; in essence,

an assertion that there was a "risk of a risk" of harm, which was not sufficient. No evidence established a direct connection between **[REDACTED]**.

[105] **[REDACTED]**

[106] Even if there was a qualifying risk, Mr Nilsson submitted that the Court should exercise its discretion in favour of publication. He contended that there was a compelling public interest in a sitting judge's connection to proceedings for serious criminal offending, including the nature of that connection. He submitted that judges' personal and family relationships matter where those relationships may affect their public functions, or where they may give rise to a reasonable perception that they may. In this context, while there was no suggestion of impropriety on behalf of the Judge, Mr Nilsson argued that reasonable issues of perception could be seen to arise from both:

(a) the Judge's involvement in suppression-related matters where the Court is asked to address arguments similar to those that she has advanced in respect of this appeal; and

(b) the Judge's involvement in cases involving parties, such as Stuff, who have opposed the suppression of her name in this proceeding.

[107] Referring to *Boag*, Mr Nilsson submitted that there can be a compelling public interest in understanding the nature and context of a connected person's connection to offending, even where that person has done nothing wrong.[75] In the present case, there could be no reasonable expectation of privacy. The nature and purpose of the reporting would not be **[REDACTED]**; rather, it would concern her relationship with Mr Dallison, and the serious offending in which he had been involved as a senior member of the medical profession in Christchurch.

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75 *Boag v R*, above n 16, at [77]–[78].

Evaluation

[108] It is important to concentrate on the nature of the risk engaged by the Judge's applications. That is, a risk that publication of the fact that **[REDACTED]** (s 205) and of her name, address and occupation (s 202) would be likely to endanger her safety.

[109] **[REDACTED]**

[110] **[REDACTED]**

[111] Before addressing that issue, it is worth stating the risks that are not within the relevant statutory provisions. They are not directed at **[REDACTED]**. They do not cover unpleasant, intrusive or sensationalised media attention about the relationship between Judge Farish and Mr Dallison, nor the Judge's right to privacy. We understand why the publication of personal information might be objectionable to a connected person. However, as applies with all those connected to persons convicted of serious crimes, the possibility of unwanted media attention is not something that can be avoided unless one of the relevant grounds for suppression is made out. In this respect a judge can obviously be in no better position than any other citizen. And the Court deciding applications for suppression must adhere to the relevant statutory provisions, and be alive to the central importance of the right to freedom of expression affirmed in s 14 of the New Zealand Bill of Rights Act 1990.

[112] There are a number of considerations that would mitigate the relevant risk of danger, that is the risk to the Judge's safety. **[REDACTED]**

[113] **[REDACTED]**

[114] **[REDACTED]**

[115] **[REDACTED]**

[116] **[REDACTED]**

[117] For these reasons we consider the statutory threshold that publication would be likely to endanger the safety of Judge Farish has not been met, in the case of either application.

[118] If it were necessary to consider the issue of discretion, we would not have exercised our discretion in favour of suppression. We accept unreservedly that the Judge had nothing to do with Mr Dallison's offending, and **[REDACTED]**. Yet there is, nevertheless, a public interest in the relationship between them, and **[REDACTED]**. That public interest could, we think, extend to the fact that **[REDACTED]**.

[119] We think there must be a strong public interest in all the surrounding circumstances. Those circumstances include the way the justice system responds to issues involving name suppression for defendants and connected persons within the framework established by Parliament. The fact that the connected person is a judge can hardly be said to reduce the legitimate public interest in all the surrounding circumstances. Rather, it adds to it.

[120] For all these reasons we are satisfied that the discretionary considerations weigh heavily against suppression. The principle of open justice must prevail.

[121] None of this reasoning, however, can be taken to support publication of details of Judge Farish's address. **[REDACTED]** But we can see no justification for the address to be published, and we doubt that responsible news media would do so.

Result

[122] Mr Dallison's appeal is dismissed.

[123] Judge Farish's applications under ss 202 and 205 of the Criminal Procedure Act are declined.

[124] The existing suppression orders apply until noon on 17 July 2023 and shall then expire.

Solicitors:
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