

[2] These are our reasons.

Chronology

[3] This matter has had a protracted history. We will confine ourselves to a brief summary of the key events.

[4] On 17 April 2018, Mr Yikar was charged with attempting to pervert the course of justice by trying to dissuade a witness from giving evidence against Sir James Wallace. Mr Yikar was an employee of Sir James and lived in his home. The witness was one of a number of men who had complained to the police that they had been sexually assaulted by Sir James.²

[5] Mr Yikar was initially granted interim name suppression. That order was made because Sir James had interim name suppression and allowing the media to publish Mr Yikar's name would inevitably defeat the purpose of the Court having granted interim name suppression to Sir James.³

[6] On 5 March 2019, Judge Collins refused to continue interim name suppression for Sir James, Mr Yikar and another defendant.⁴ At that stage, the trial was scheduled to take place in the District Court. That changed when evidence of another complaint against Sir James emerged causing the trial to be transferred to the High Court.

[7] On 14 June 2019, the High Court allowed an appeal by Sir James and ordered that his name, Mr Yikar's name and that of another defendant be suppressed until further order of the Court.⁵ Those orders were made because Sir James was intending to apply to sever some of the charges against him. The High Court explained when granting interim name suppression that if the severance application failed, then the interim suppression orders would lapse.⁶

² *R v Yikar* [2021] NZHC 985 [Yikar sentencing notes] at [2]–[7].

³ *R v Wallace* [2019] NZDC 6177 at [2].

⁴ *R v Wallace*, above n 3, at [5]; *R v Wallace* [2019] NZDC 5414 at [36]; and *R v Wallace* [2019] NZDC 5986.

⁵ *W v R* [2019] NZHC 1350.

⁶ At [107].

[8] The High Court subsequently severed one set of charges involving one complainant from the charges involving other complainants.⁷ As a consequence, Sir James and Mr Yikar had the benefit of interim name suppression during the course of their trial in order to preserve Sir James' fair trial rights in relation to his second trial.

[9] Sir James was convicted on 23 March 2021 on three charges of indecently assaulting three men and two charges of attempting to pervert the course of justice.⁸ Mr Yikar was convicted at the same time on one charge of attempting to pervert the course of justice.⁹ Sir James was sentenced to two years and four months' imprisonment.¹⁰ Mr Yikar was sentenced to 12 months' home detention.¹¹

[10] Sir James was found not guilty in relation to the charges brought against him in his second trial. The trial Judge suppressed publication of Sir James' name in relation to the charges he was acquitted of.

[11] Sir James' appeal against conviction and sentence in relation to the first trial was dismissed by this Court on 9 February 2023, as was Mr Yikar's appeal against conviction.¹²

[12] Sir James filed a notice of appeal in relation to the interim name suppression judgment made by the High Court. He also filed a new application for name suppression in this Court, and also relied on an application for name suppression filed in this Court by a connected entity.

[13] Interim name suppression orders were made preserving Sir James' position pending the determination of his appeals.

[14] Mr Yikar did not appeal the High Court name suppression judgment. Nevertheless, on 1 March 2023, before it determined Sir James' name suppression

⁷ *R v W* [2019] NZHC 3084 at [148].

⁸ *R v Wallace* [2021] NZHC 1213 at [1].

⁹ Yikar sentencing notes, above n 2, at [1].

¹⁰ *R v Wallace*, above n 8, at [46].

¹¹ Yikar sentencing notes, above n 2, at [28].

¹² *Wallace v R* [2023] NZCA 6.

appeal/application, this Court asked if Mr Yikar was proposing to file any submissions concerning name suppression. Mr Yikar did not respond.

[15] On 10 March 2023, this Court dismissed Sir James' appeal/application for name suppression.¹³ The Court deferred its judgment taking effect to enable Sir James to file an application for leave to appeal in the Supreme Court.¹⁴

[16] On 21 March 2023 the Supreme Court dismissed Sir James' application for leave to appeal his conviction.¹⁵ On 26 June 2023 the Supreme Court dismissed Sir James' application for leave to appeal this Court's name suppression decision.¹⁶ The Supreme Court said that its judgment dismissing the application for leave to appeal the name suppression judgment would take effect at 2.00 pm on 28 June 2023.¹⁷

The application

[17] Just hours before the Supreme Court's 26 June 2023 judgment was to take effect, Mr Yikar filed an application seeking interim name suppression. We understand he also filed a similar application in the High Court. The High Court declined to deal with Mr Yikar's application.

[18] We need not go into the details of Mr Yikar's application. Suffice to say that in his supporting affidavit Mr Yikar said his mother, who has been working in Turkey since November 2022, was concerned that publishing Mr Yikar's name in connection with his conviction would potentially have an adverse effect on her because of the shame that she would suffer through persons in Turkey learning about Mr Yikar's conviction.

[19] Mr Yikar explained that he wanted this Court to consider suppressing his name until his mother's contract in Turkey comes to an end in either December 2023 or "ideally June 2024".

¹³ *Wallace v R* [2023] NZCA 56.

¹⁴ At [45].

¹⁵ *Wallace v R* [2023] NZSC 24.

¹⁶ *Wallace v R* [2023] NZSC 74.

¹⁷ At [15].

[20] In her supporting memorandum, counsel for Mr Yikar explained that an application would be made by Mrs Yikar for name suppression in her capacity as a connected person.

Abuse of process

[21] The doctrine of abuse of process is long-standing. Lord Diplock said the following in *Hunter v Chief Constable of the West Midlands Police*:¹⁸

[A]ny court of justice must possess [the inherent power] to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people.

[22] Lord Diplock went on to opine that it would be unwise to attempt to create fixed categories as to what circumstances constitute an abuse of process.¹⁹ That case concerned a “collateral attack upon a final decision of a court of competent jurisdiction” which the House of Lords said was an abuse of process.²⁰ Lord Diplock’s description of the doctrine has been affirmed by the United Kingdom Privy Council,²¹ and by New Zealand courts.²²

[23] Another example of abuse of process is *Ashmore v British Coal Corporation*.²³ In that case, potential plaintiffs were invited to submit their cases for selection as representative cases for trial. The applicant failed to submit her case for consideration and then attempted to litigate the case independently of the main proceedings. The Court found that this was an abuse of process because “it [was] contrary to the interests of justice and public policy to allow those same issues to be litigated again” when the applicant had been given an opportunity to participate and had failed to do so.²⁴

¹⁸ *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL) at 536 per Lord Diplock.

¹⁹ At 536; and affirmed in *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8 (CA) at 10.

²⁰ *Hunter v Chief Constable of the West Midlands Police*, above n 18, at 541 and 546.

²¹ *Brandt v Commissioner of Police* [2021] UKPC 12, [2021] 4 All ER 637 at [34]; *Hurnam v Bholah* [2010] UKPC 12 at [43] per Lord Brown.

²² *Reid v New Zealand Trotting Conference*, above n 19, at 10; *Merisant Co Inc v Flujo Sanguineo Holdings Pty Ltd* [2018] NZCA 390 at [22], [25] and [27]; and *Waterhouse v Contractors Bonding Ltd* [2013] NZSC 89, [2014] 1 NZLR 91 at [30]. See also *McGechan on Procedure* (Thomson Reuters, online ed) at [HR15.1.05].

²³ *Ashmore v British Coal Corporation* [1990] 2 QB 338 (CA).

²⁴ At 349 per Stuart-Smith LJ.

[24] Litigation for the purposes of obtaining a “collateral advantage beyond that legitimately gained from a court proceeding” has also been found to constitute an abuse of process.²⁵ In the context of repeated suppression applications and appeals, this Court held in *Young v District Court at Hamilton* that:²⁶

Courts will not generally permit serial applications, eking out by instalment the various statutory grounds provided for in s 200(2) [of the Criminal Procedure Act 2011]. ... Repeated applications seeking identical relief in the absence of changed circumstance will generally be treated as an abuse of process. Repeated applications advancing new grounds that could with reasonable diligence have been advanced on a previous occasion may well also be an abuse of process, although the whole circumstances are to be considered.

[25] We declined to consider Mr Yikar’s application because it constituted an abuse of process. This conclusion was reached because:

- (a) Despite Mr Yikar’s mother having worked in Turkey since November 2022, Mr Yikar did not file an application for name suppression in this Court until 28 June 2023, even though his appeal against conviction was dismissed by this Court on 9 February 2023.
- (b) Mr Yikar sat on his hands, even after his counsel was asked on 1 March 2023 whether or not he wished to make any submissions in relation to name suppression. This is analogous to the abuse of process found in *Ashmore v British Coal Corporation*.²⁷
- (c) We do not see any merit in Mrs Yikar’s concerns. Even if there were a basis for her apprehensions, she and her son have had every opportunity to apply to the Court for interim name suppression orders in a timely manner. This is analogous to the circumstances of *Young v District Court at Hamilton*,²⁸ as Mr Yikar’s application could have been advanced earlier with reasonable diligence.

²⁵ *McGechan on Procedure*, above n 22, at [HR15.1.05(2)]; and *Goldsmith v Sperrings Ltd* [1977] 2 All ER 566 (HL) at 581 per Lord Denning MR and cited with approval in *Walker v Forbes* [2015] NZHC 1730, [2015] 3 NZLR 831 at [36].

²⁶ *Young v District Court at Hamilton* [2015] NZCA 584 at [28] (footnotes omitted).

²⁷ *Ashmore v British Coal Corporation*, above n 23.

²⁸ *Young v District Court at Hamilton*, above n 26.

[26] If we had entertained the application and made an interim order, this would have provided an opportunity for Sir James to also seek further interim suppression orders so as to preserve Mr Yikar's position. That would have created an intolerable spectacle of further delays in allowing the public to know about Sir James' convictions and would have undermined public confidence in the administration of justice.

[27] This Court will always consider name suppression applications/appeals that are filed in accordance with the timetable prescribed in the Criminal Procedure Act 2011 or where proper applications are brought in a timely manner.

[28] Mr Yikar's application had all the hallmarks of a desperate attempt to again frustrate the right of the public to know of his and Sir James' convictions. As this Court said in *Young v District Court at Hamilton*,²⁹ such serial applications in order to misuse the statutory grounds in the Criminal Procedure Act will not be permitted.

[29] Accordingly, we were satisfied the application constituted an abuse of process.

Result

[30] The application for name suppression is declined.

Solicitors:
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent

²⁹ At [28].