SUPPRESSION ORDERS APPLY. SEE [48] AND [49].

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2024-404-000387
[2024] NZHC 3035

BETWEEN	GOLRIZ GHAHRAMAN Appellant
AND	NEW ZEALAND POLICE Respondent

Hearing: 14 October 2024

Appearances: A Cresswell for Appellant
A McClintock for Respondent

Judgment: 17 October 2024

JUDGMENT OF VENNING J

This judgment was delivered by me on 17 October 2024 at 11.45 am.

RD
~~Registrar~~/Deputy Registrar
Date 17.10.2024

R. Dempster
Deputy Registrar
High Court

Solicitors: Meredith Connell, Auckland
Counsel: A Cresswell, Auckland

[1] Golriz Ghahraman, a former Member of Parliament, pleaded guilty to two charges of theft over $1,000, one of theft between $500 and $1,000 and one of theft under $500. Ms Ghahraman sought a discharge without conviction. Following a hearing on 24 June 2024, in a reserved decision delivered on 27 June 2024, Judge J M Jelaš declined Ms Ghahraman's application to be discharged without conviction.[1] Ms Ghahraman appeals.

Background offending

[2] I take the summary of the background offending from the District Court judgment:[2]

> [11] The first offence took place on Sunday 22 October 2023 at approximately 3.00 pm. Ms Ghahraman and a male associate entered the clothing retail store Cre8iveworx. Ms Ghahraman removed a number of clothing items from a display rack and took them into the changing room. Ms Ghahraman then tried on various garments. Ms Ghahraman came out of the changing room several times to confer with her associate. She also browsed other racks of clothing. At some point while in the changing room Ms Ghahraman concealed inside her clothing or bag, a black Zambesi shirt that had a value of $695. Ms Ghahraman spent 13 minutes in Cre8iveworx. She left after purchasing a pair of pants.
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> [12] The second offence occurred on Thursday 21 December 2023 at approximately 3.47 pm. Ms Ghahraman entered Scotties Boutique with two associates. After perusing various items on display Ms Ghahraman went into the changing room with a coat valued at $1900 and a pair of black pants. In the changing area Ms Ghahraman placed the coat inside a tote bag that she had carried over her shoulder into Scotties Boutique. Ms Ghahraman tried on the pants and then returned them to the display. She continued to browse Scotties Boutique holding the tote bag, containing the coat.
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> [13] Ms Ghahraman then removed a black wallet from a display cabinet. This wallet had a value of $160. The CCTV footage captures Ms Ghahraman walking to a deserted area in the store and surreptitiously placing the wallet inside her tote bag. Ms Ghahraman continued to browse items in the store before leaving without making any purchases. She was in Scotties Boutique for approximately 40 minutes. The total value of items stolen came to $2060.
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> [14] The following day on Friday 22 December 2023 at 1.50 pm, Ms Ghahraman went to the retail store Standard Issue. She was carrying a large brown tote bag over her shoulder. Ms Ghahraman placed a cardigan valued at $389 into her tote bag when the store attendant's attention was diverted. She then promptly left the store. The manager immediately noticed that the cardigan was no longer on the table after Ms Ghahraman had left.

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1 *New Zealand Police v Ghaharaman* [2024] NZDC 14690.

2 (Footnotes omitted.)

Ms Ghahraman had been the only customer inside the store at the time the cardigan was taken.

[15] The fourth and final offence occurred on 23 December 2023. Ms Ghahraman returned to Scotties Boutique store. She was again carrying a large tote bag. Ms Ghahraman removed from a display cabinet a bag that had a value of $650. She then walked to another area of the store, and in a similar way to what occurred on the 21st of December, scanned her surroundings and then placed the $650 bag into the bag she had entered the store with.

[16] A short while later she removed four clothing garments from a display rack and entered the changing rooms. These included two dresses. In the changing room Ms Ghahraman placed both dresses inside one of her bags. Ms Ghahraman then left the changing area and continued to browse the racks. She removed a top valued at $290. While moving around the store Ms Ghahraman bundled the top into a ball and placed it into a bag she was carrying. She continued browsing before exiting the store with the four stolen items that had a total value of $5773. Ms Ghahraman had spent 12 minutes in the store.

[17] Outside the store Ms Ghahraman was approached by the Scotties Boutique store employee who asked to check inside her bag. Ms Ghahraman refused to show the store employee the contents of her bag. However, she returned briefly into the store with the employee where she explained how the employees misunderstanding that Ms Ghahraman had removed items without paying had arisen. Ms Ghahraman pointed to a dress hung inside the coat. This explanation was accepted by the employee and the employee did not object to Ms Ghahraman leaving the store.

[18] Approximately 45 minutes later, at 2.16 pm, an associate of Ms Ghahraman entered Scotties Boutique carrying Ms Ghahraman's tote bag. It is not known what was exchanged between Ms Ghahraman's associate and the store employee. The associate returned to Scotties the two dresses and bag that had been taken. The top however was not returned.

The District Court judgment

[3] The Judge referred to the relevant statutory basis for a discharge without conviction and the settled principles that apply to such an application. After referring to the background facts to the offending, she then considered Ms Ghahraman's personal mitigating factors. The Judge noted that Ms Ghahraman pleaded guilty at the earliest opportunity and had made full reparation. She also treated Ms Ghahraman as a first offender who displayed good character, and noted her remorse, deep shame, and regret. The Judge also took account of the significant adverse consequences Ms Ghahraman had already suffered as a result of the offending, which included resigning as a Member of Parliament and being subjected to a high level of publicity. The Judge then noted Ms Ghahraman had a recent diagnosis of Post Traumatic Stress

Disorder (PTSD) and referred to the report of a clinical psychologist, Dr Kilian. Ultimately, while the Judge did not accept the submission on behalf of Ms Ghahraman that her poor mental health was a substantive or operative cause of the offending, she did accept that Ms Ghahraman was suffering from mental health issues at the time of the offending as a direct result of past and ongoing exposure to trauma. The Judge then noted Ms Ghahraman had been working under extremely stressful circumstances for a considerable period and had been subjected to unacceptable harassment and threats. The Judge also accepted Ms Ghahraman was at a low risk of offending in the future.

[4] Judge Jelaš noted the total value of the items stolen was $8,926,[3] and accepted the Police submission that the gravity of the offending itself was in the mid-high range. She considered that a starting point for sentence for the offending would be imprisonment between 20 to 22 months. Having regard to the numerous personal mitigating factors, the Judge considered the gravity of the offending for the s 107 assessment reduced to "the low end of the moderately grave offending range".[4]

[5] The Judge then turned to consider the consequences of conviction. She referred to the impact of a conviction upon Ms Ghahraman's mental health but was not satisfied there was evidence of a real and appreciable risk that Ms Ghahraman's mental health would be further negatively impacted if a conviction was entered. The Judge noted a number of the mental health issues reported arose from the offending itself, not the entry of the conviction.

[6] As to Ms Ghahraman's future employment, the Judge noted Ms Ghahraman had previously worked as a criminal defence barrister in New Zealand and internationally. She had worked for both the prosecution and defence in different international criminal tribunals. The Judge noted that the New Zealand Law Society was the relevant administrative authority, as Ms Ghahraman's ability to apply for a position as legal counsel with the International Criminal Court (ICC) would be dependent upon the New Zealand Law Society issuing her a practising certificate. The Judge was ultimately not satisfied that the entry of a conviction would lead to a pre-

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3 The correct total value is $8,917.

4 *New Zealand Police v Ghaharaman,* above n 1, at [37].

determination or unfairly weigh on the Law Society's assessment process towards any application she may make for a practising certificate, but she did accept the entry of a conviction would be a factor the Law Society would consider.

[7] The Judge then noted the general submission that Ms Ghahraman's ability to travel would be impeded. The Judge considered that the travel/visa ground advanced was entirely linked to Ms Ghahraman's overseas employment. There were no other particular travel plans in place and no information had been provided as to travel restrictions to any countries. The Judge considered the issue of future travel was speculative and not planned. In the circumstances, she was not able to conclude the entry of convictions would create a real and appreciable risk that Ms Ghahraman's travel would be unduly restricted.

[8] Turning to the assessment of proportionality, the Judge was not persuaded the consequences of entry of convictions would be out of all proportion given the gravity of Ms Ghahraman's offending. She considered that the standard of conduct required of persons practising law in New Zealand or overseas is high, and understandably so. It was proper for the regulatory authorities to make their own inquiries and assessments. In the Judge's assessment, the consequences relied upon to support the application were inevitable consequences that Ms Ghahraman would encounter, irrespective of whether the application was granted or not. The consequences were primarily as a result of her offending, not the entry of convictions. In any event, the consequences were not out of all proportion.

The appeal

[9] Ms Cresswell advanced the appeal on behalf of Ms Ghahraman on two principal grounds. First, it is submitted the District Court Judge overstated the gravity of the offending. In particular, that she erred in:

(a) finding there was no evidence of a causative link between Ms Ghahraman's diagnosis of PTSD and the offending, and

(b) placing undue weight on the fact Ms Ghahraman was in therapy at the time of the offending.

[10] Next, she submitted that the Judge erred in finding that the consequences of convictions were not out of all proportion to the gravity of the offending by:

(a) leaving it to the relevant bodies, (the Law Society, international bodies) to make the assessment more appropriately made by the District Court; and

(b) finding that mental health consequences were consequences of offending rather than of conviction.

Principles

[11] Section 106 of the Sentencing Act 2002 provides for a discharge without conviction. Section 107 then provides guidance for discharge without conviction:

> The court must not discharge an offender without conviction unless the court is satisfied that the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence.

[12] An appeal against a refusal to discharge a defendant without conviction is characterised as an appeal against both conviction and sentence.[5]

[13] Such an appeal is brought under s 232(2)(b) or (c) of the Criminal Procedure Act 2011 on the basis that a miscarriage of justice has occurred either by virtue of a material error by the sentencing Judge in entering a conviction or alternatively, if "for any reason" the Judge has erred in applying the principles for discharging an offender without conviction found in s 107.[6] Whether the threshold test in s 107 is met is a matter of fact requiring judicial assessment to which normal appellate principles apply.[7] If the appellate court concludes the refusal to discharge without conviction was wrong by reference to its own review of the merits, then the appeal must be allowed.[8]

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5 *Jackson v R* [2016] NZCA 627, (2016) 28 CRNZ 144 at [16]; and *Ovtcharenko v Police* [2017] NZCA 65 at [5].

6 *Gaunt v Police* [2017] NZCA 590 at [9]. See also *Jackson v R*, above n 5, at [12].

7 *R v Hughes* [2008] NZCA 546, [2009] 3 NZLR 222 at [11]; and *Doyle v R* [2022] NZCA 307 at [15].

8 *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.

The approach

[14] As the District Court Judge noted, the approach to an application for discharge without conviction is settled by Court of Appeal authority. It involves a three-step process. First, identifying the gravity of the offence, then identifying the direct and indirect consequences of a conviction and finally determining whether the direct and indirect consequences of conviction would be out of all proportion to the gravity of the offending.[9] In the recent case of *Bolea v R,* the Supreme Court referred to the three stage approach adopted by the Courts below.[10] While it recorded it made no comment on the correctness of the approach,[11] it did not suggest an alternative.

Gravity of the offending

[15] Ms Cresswell submitted that the Judge's assessment of the gravity of the offending as at the low end of moderate was incorrect. She submitted that, having regard to the mitigating factors, the gravity of the offending should have been assessed as low.

[16] The starting point is that the four charges Ms Ghahraman pleaded guilty to involved serious instances of theft. The offending took place on four separate occasions. It was not spontaneous offending. It involved a degree of planning both in preparation for the offending and during its execution. Ms Ghahraman remained in the stores for some time and concealed the items in a tote bag she carried with her. The items were secreted into her bag in changing rooms or in corners of the store which she sought out. The offending involved quite deliberate attempts to avoid detection, and, on one occasion, Ms Ghahraman went as far as providing a false explanation to staff of the store when challenged. A number of items were taken. On two occasions, items worth $2,060 and $5,773 were taken. The maximum penalty for such theft is seven years in each case. The total amount of property stolen was in excess of $8,900. The offending itself is rightly regarded as an example of serious theft.

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9 *R v Hughes*, above n 7, at [16]–[17] citing *Fisheries Inspector v Turner* [1978] 2 NZLR 233 (CA). See also *Blythe v R* [2011] NZCA 190, [2011] 2 NZLR 620 at [14]; *Z (CA447/2012) v R* [2012] NZCA 599, [2013] NZAR 142 at [8]; and *Prasad v R* [2018] NZCA 537 at [11].

10 *Bolea v R* [2024] NZSC 46, [2024] 1 NZLR 205.

11 At n 29.

[17] As noted, in assessing the gravity of the offending, the Judge referred to a number of mitigating factors which, in her opinion, reduced the gravity to towards the lower end of moderate. Ms Cresswell submits that the Judge should have gone further and assessed the gravity as low.

[18] To support that submission Ms Creswell referred to the case of *M v Police.*[12] In that case, Duffy J referred to offending which included shoplifting goods to a value of $1,450 from Smith and Caughey's department store on one occasion, as low level offending. In my judgment, M's case is best regarded as one to be confined to its facts. At the time of his offending, M's Attention Deficit Hyperactivity Disorder (ADHD) was untreated. After it was diagnosed, and he received treatment, M successfully went on to complete a university degree majoring in both accounting and finance some years later. However, his convictions were a barrier to his employment. Duffy J allowed M's appeal out of time and also admitted further evidence. The facts of M's case and M's circumstances are quite different to the present. The Judge described the shoplifting as impulsive and opportunistic. The offending Ms Ghahraman pleaded guilty to cannot be described in that way.

[19] Ms Cresswell's main point in submitting the Judge had erred in overstating the gravity of the offending was that she did not give sufficient weight to the clinical psychologist, Dr Kilian's, diagnosis that Ms Ghahraman was suffering from PTSD which may have led to her offending, when assessing the gravity of the offending. Ms Cresswell referred to the following passages from the judgment:[13]

> … [The clinical psychologist] is well placed to have provided an unequivocal statement of any causative links that may exist between the thefts and Ms Ghahraman's mental health. He has not. It is not the role of the Court to make the inferences submitted by Ms Cresswell when [the clinical psychologist] himself has stopped short of doing so. I therefore accept the police submission that [the clinical psychologist]'s report is equivocal on the critical issue of causative link.
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> [29] As a result, I am unable to accept Ms Cresswell's submission that Ms Ghahraman's poor mental health was a substantive or operative cause of the offending before the court.

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12 *M v New Zealand Police* [2023] NZHC 995.

13 *New Zealand Police v Ghaharaman*, above n 1, from [28].

[20] Ms Cresswell submitted it would be rare for a clinical psychologist to unequivocally establish a link between trauma systems and a specific behaviour. She suggested the report had made it clear that the symptoms displayed by Ms Ghahraman are termed as "loss-reactive shoplifting", and her Honour placed too much weight on the words used by the clinical psychologist that, "[i]t is possible that this shoplifting is consistent with her trauma symptoms", rather than reading that in the context of the preceding paragraphs which set out Ms Ghahraman's PTSD symptoms in detail. She also submitted the Judge should also have considered the issue in the context of the other defence evidence. In her affidavit, Ms Ghahraman had said that she had "started to feel a nothingness and the terror and fear that [she] would experience after shoplifting made [her] feel something, even if the feelings were negative". Ms Ghahraman also said that a number of the items stolen were not her size or were items she would never have worn. Ms Cresswell submitted there was a sufficient evidential link for the Judge to make a causative assessment.

[21] Ms Cresswell noted the Police did not call any expert evidence of their own to undermine Dr Kilian's report, therefore, the Judge should have found there was a likely link between Ms Ghahraman's PTSD and loss reactive shoplifting, and thus a connection between her offending and diagnosis. If the Judge had accepted that, then Ms Cresswell submitted the Judge would have been driven to accept the gravity of the offending as low. In not doing so, she had erred.

[22] Ms Cresswell also criticised the Judge for placing weight on the fact Ms Ghahraman was in therapy during the period of the offending and apparently making good progress. She submitted that without any information about what was discussed in the therapy beforehand, and no evidence contradicting the report of PTSD, it was not open for the Judge to suggest the fact Ms Ghahraman was in therapy during the offending period meant her PTSD was not a contributing cause to the offending.

[23] Ms McClintock referred to two Court of Appeal cases in which the Court had confirmed that persuasive and independent evidence is required of the causal impact of mental health on the offending to establish reduced culpability. Where the evidence falls short of establishing that causative link, the Court will decline to make a finding

of reduced culpability. In *R v Sabuncuoglu,* the Court considered the link between Mr Sabuncuoglu's symptoms of PTSD and the offending was "too weak to be influential on the sentencing outcome".[14] The Court declined to give a sentence reduction for reduced culpability, noting the psychiatrist's report failed to articulate the causal nexus required. In *Wheeler v R,* the Court of Appeal again declined to make a finding of reduced culpability noting that the ACC report "puts the causative link between Ms Wheeler's mental state and her offending as no more than possible".[15] The Court concluded the psychologist's opinions were speculative and failed to establish the sufficient nexus. In response, Ms Cresswell noted that these cases involved quite different offending: fraud and drug offending. Further, it is for the Court, not the expert to draw the link.

[24] I accept Ms Cresswell's submission up to a point. It is ultimately for the sentencing Judge to determine whether or not there is that causative link between the defendant's mental condition and the offending. However, that assessment obviously must be made having regard to the reports and evidence before the Court. It is at that point that the equivocal nature of Dr Kilian's report becomes relevant. In this case, the Judge properly considered whether the link between Ms Ghahraman's PTSD (which she accepted) and the offending was established, but determined it was not. Having reviewed Dr Kilian's report, I accept the conclusion that, read as a whole, the report was equivocal on the critical issue of a causative link. The Judge was entitled to reject the submission Ms Ghahraman's mental health was a substantive or operative cause of the offending. Ms Cresswell referred to Ms Ghahraman's evidence that some of the clothes were not her size and that she would not wear them. That may be so, but it really establishes nothing. The stolen clothes could have been sold or gifted to others and were not the only items taken. Next, there were other relevant facts pointing to Ms Ghahraman's intent at the time of the offending, including her general actions in the stores (and the time there) as recorded on CCTV footage of the incidents, and her express denials to the store security on the last occasion when challenged. The Judge was entitled to consider those facts when making her assessment of whether there was a causative link. Also, I note that in his report Dr Kilian seemed to be under the belief that Ms Ghahraman had made an immediate attempt to make reparation for

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14 *R v Sabuncuoglu* [2008] NZCA 448 at [27].
15 *Wheeler v R* [2017] NZCA 193 at [15].

the stolen items on the last occasion by having a proxy return them. However, she did not return all the items, as the summary records.

[25] Further, while I do not consider the Judge placed much weight on it, she was entitled to take the view that the fact Ms Ghahraman was in therapy and making progress was relevant to whether her diagnosis was causative of her offending. While Ms Ghahraman did not disclose her offending to Dr Kilian, the fact she had been diagnosed with PTSD and was receiving and responding to treatment at the time of the offending supports the Judge's view the causative link was not established.

[26] There is a final point. Even if the report had not been equivocal, while the opinion of medical professionals deserves respect and must be considered, the Court need not defer to them, and ultimately it is for the sentencing Judge to assess whether there is such a causative link having regard to all the circumstances.[16]

[27] Importantly, in any event, the Judge accepted that at the time of the offending Ms Ghahraman was suffering from mental health issues as a direct result of the past and ongoing exposure to trauma, along with other factors, and took that into account as a factor when considering the gravity of the offending overall. She concluded, "I consider her mental health to be a feature contributing to the offending but not necessarily causative of it. Her mental health has made her more vulnerable to offend."[17]

[28] I agree with the way the Judge dealt with Ms Ghahraman's mental health issues. On the basis that offending of this nature could be categorised as falling within bands expressed as low, moderate and serious, Ms Ghahraman's offending on the bare facts would be regarded as within the low end of the serious band, as reflected in the Judge's starting point for sentence. Taking account of Ms Ghahraman's personal circumstances reduces the gravity of the offending overall to the lower end of the moderate band as the Judge concluded.

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16 Such an approach was taken to medical reports regarding self-harm in *D (CA443/2015) v New Zealand Police* [2015] NZCA 541, (2015) 27 CRNZ 614 at [30(f)].

17 *New Zealand Police v Ghaharaman*, above n 1, at [30].

The consequences of conviction

[29] I turn to the consequences of conviction. Ms Cresswell submitted that the Judge did not appropriately assess the overall consequences of the convictions being out of all proportion to the gravity of the offending having regard to the consequences on Ms Ghahraman's future employment and the effect on her mental health.

[30] As to the effect on Ms Ghahraman's future employment, she submitted that the Judge's conclusion that, "[l]ike the Law Society, the International Court will likely take into consideration the entry of a conviction, given there was discretion not to, but that is of itself unlikely to be determinative", was speculative.[18]

[31] Ultimately, the Judge concluded:

> [57] I am not persuaded the entry of a conviction will be an out of all proportion consequence given the gravity of Ms Ghahraman's offending. The accepted consequences are innately linked to her intended future application to the New Zealand Law Society for a practising certificate. As discussed, the assessment of Ms Ghahraman as a fit and proper person to hold a certificate to practise as a Barrister and Solicitor in New Zealand will be undertaken irrespective of the entry of a conviction. The assessment process requires the Law Society to look beyond the convictions to the offending and surrounding factors relating to it. Looked at in this way there is no pronounced perceivable differences to the Law Society's assessment process if Ms Ghahraman is convicted or not.

[32] Ms Cresswell submitted that reasoning was out of step with the basic obligation under s 11 of the Sentencing Act, which had been confirmed by the Supreme Court in the recent decision of *Bolea v R*. I do not consider too much is to be read into the Supreme Court's reference to s 11 in that case, which was in the context of the aspect of its reasoning that what is required is an individual assessment of a particular person's circumstances.[19] Clearly in the present case, Ms Ghahraman's particular circumstances and the issue of whether she should be discharged without conviction were squarely before the Court.

[33] Ms Cresswell submitted the Judge erred in effectively deciding that, because the Law Society would do an assessment of whether Ms Ghahraman was a fit and

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18 *New Zealand Police v Ghaharaman*, above n 1, at [53].
19 *Bolea v R,* above n 10, at [56(a)].

proper person regardless of conviction, she did not have to make the assessment. She argued that effectively the Judge was asserting that Ms Ghahraman's risk to her future employment was a consequence of her offending rather than conviction and the Supreme Court had rejected such an approach in *Bolea* when it stated:

> [41] Our view is that where, as here, there is unchallenged evidence that the issue of a deportation liability notice will "almost certainly" occur, then (in the absence of other evidence) both the liability for deportation and the risk of actual deportation should be treated as consequences of conviction under s 107. It follows that we do not agree that, for persons in Ms Bolea's position, the process followed by the immigration authorities means that the "usual" position is that the prospect of deportation will be a consequence of the offending rather than the conviction.

[34] However, with respect to the appellant's reliance on the *Bolea* decision, it must be seen in the context of its own particular facts. The Supreme Court confirmed as much in its introductory comments when stating that the appeal concerned how a sentencing court was to treat "the risk the defendant will be deported when considering an application for a discharge without conviction".[20]

[35] In *Bolea,* the High Court Judge had drawn a distinction between liability for deportation and the risk of actual deportation, and noted that if Ms Bolea was ultimately deported this would be a consequence of her offending not of her conviction. The Court of Appeal dismissed the appeal, concluding:[21]

> … "in a very real sense" deportation resulting from a process in which the immigration decision maker can consider the gravity of the offending and the appellant's personal circumstances "can validly be regarded as a consequence of the offending and not the conviction".

[36] The Supreme Court concluded the Court of Appeal was wrong to have drawn such a distinction in Ms Bolea's case and to have treated the risk of actual deportation as a consequence of the offending, and not of conviction. Importantly, in Ms Bolea's case, the liability for deportation followed her conviction as the liability was provided for by statute in the event of conviction. However, the Supreme Court went on to conclude that, as the unchallenged evidence disclosed that the issue of the deportation liability notice would "almost certainly" occur following the entry of conviction, then

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20 At [1].
21 At [4] citing *Bolea v R* [2023] NZCA 39.

in the absence of other evidence, both the liability for deportation (which arose from statute) and the risk of actual deportation should be treated as consequences of conviction for the purposes of s 107, so that the potential for deportation should have been considered by the Court in the proportionality exercise rather than it being excluded as an irrelevant consideration.

[37] Ms Ghahraman's case is different. In her case, there was no evidence before the Judge that the Law Society would "almost certainly" not approve her application for a practising certificate if she was convicted.

[38] Relevantly for present purposes, the Supreme Court also referred to and distinguished the case of *Sok v R*.[22] Mr Sok's visa application had been denied as he failed to meet the good character requirements. In making that finding, the decision maker relied on the conduct (offending) which formed the basis of the charge. The Supreme Court cited it as an example of a case where the evidence made it clear the conviction was not the actual barrier to the outcome of concern to the person liable to deportation. Similarly, in the present case, the convictions themselves will not be a barrier to Ms Ghahraman's application to the Law Society for a practising certificate.

[39] To that extent, Ms Ghahraman's position is more comparable to that of Mr Sok's rather than Ms Bolea's, as the entry of the convictions will not expose her to any additional risk or liability. Ms Ghahraman will have to address the good character issue with the Law Society if she is going to obtain a practising certificate. Convictions on the charges will add little to that assessment. The Law Society's focus will inevitably be on Ms Ghahraman's conduct in relation to the offending itself. As was agreed, her ability to work overseas in the ICC will be determined by whether or not she obtains a practising certificate in New Zealand.

[40] Ms Cresswell criticised the Judge for not taking sufficient account of the supplementary submissions filed on 24 June 2024. Ms Cresswell submitted the submissions provided evidence that Ms Ghahraman had applied to work at the ICC as an International Cooperation Adviser and that a person with a serious criminal or disciplinary offence would not meet the criteria for admission. The submissions

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22 *Sok v R* [2021] NZCA 252, (2021) 29 CRNZ 962.

attached the regulations of the ICC that apply to the criteria to be met by counsel in that court.

[41] A number of points can be made in response. First, the Judge expressly considered the supplementary submissions (at [51]). Next, as Ms McClintock submitted, there was no updating evidence of the progress of Ms Ghahraman's application. Finally, and importantly, nor was there any evidence of how the ICC would regard the convictions in the present case, or whether they would be classified as "serious criminal or disciplinary offence considered to be incompatible with the nature of the office of counsel before the Court". The fact that reg 69(2)(c) provides for disclosure of criminal convictions suggests that not all convictions will be disqualifiers.

[42] Ms Cresswell also took issue with the Judge's approach to the consequences of a conviction on Ms Ghahraman's mental health. She noted the Judge referred to:

> [42] In addition, it is noted that some of the mental health issues that have been reported by [the clinical psychologist] arise from the offending itself, not from the entry of a conviction. Shame, embarrassment, public humiliation, relentless media attention, resignation from employment have all resulted from the offending.

[43] Ms Cresswell submitted the Judge's reasoning did not accord with or follow the approach of the Supreme Court in *Bolea,* and the effect on Ms Ghahraman's mental health from the shame, stress and media intrusion should have been treated as a consequence of conviction so that more weight was attributed to the consequences of conviction for her. However, with respect that is an unrealistic submission in the circumstances of this case. Once Ms Ghahraman's offending became public it created a media storm which undoubtedly would have had an impact on Ms Ghahraman's mental state even before she was charged. It also led to her resignation as a Member of Parliament even before conviction. A conviction entered some months later would add little to the stress engendered by the earlier publicity following the discovery of her offending. Importantly, neither Ms Ghahraman nor Dr Kilian expressly said that a conviction would have that effect. Indeed, Dr Kilian said:

> It would be worth indicating here that her mood and anxiety symptoms may well be more accurately attributable to the current situation in which [she] finds herself, specifically unemployment, social outrage, high levels of shame,

> highly publicized personal events and details, recent resignation, unemployment, and legal issues.

Notably, no mention of the effect of conviction.

[44] Although the Judge did not categorise them as such, having regard to the consequences on Ms Ghahraman, I would assess the consequences of conviction, as opposed to the consequences of the offending itself, as falling within the low band, albeit towards the higher end of that low band.

Proportionality

[45] The last assessment is whether the consequences of conviction are out of all proportion to the gravity of the offending. It is not enough that the consequences of conviction outweigh the gravity of the offending. They must be out of all proportion.[23]

[46] For the above reasons and given the above assessments of the gravity of offending and consequences of conviction, it follows that on any consideration of proportionality the consequences of conviction cannot be said to be "out of all proportion" to the gravity of the offending in this case.

Result

[47] The appeal is dismissed.

Venning J

Addendum re suppression

[48] In the District Court Ms Ghahraman had sought and was granted suppression of a number of details. I confirm the following suppression orders continue to apply:

(a) suppression of the name of the author of the letter of support attached at Tab D of the defence submissions in the District Court;

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[23] *R v Smyth* [2017] NZCA 530 at [12].

(b) suppression of the letter in support provided by an anonymous Iranian refugee (Tab M); and

(c) suppression of the medical evidence regarding Ms Ghahraman's personal medical conditions apart from the diagnosis and supporting details relating to the diagnosis of PTSD which is already in the public arena.

[49] Counsel discussed the issue of suppression of Dr Kilian's name which was redacted in the District Court judgment. I see no principled basis upon which Dr Kilian's name ought to be suppressed. I make no order for suppression of his name.

Venning J