NOTE: HIGH COURT ORDERS PROHIBITING PUBLICATION OF THE FAMILY CIRCUMSTANCES REFERRED TO IN THE COURT OF APPEAL JUDGMENT AT [165], [167] AND [168] AND THE INFORMATION SET OUT AT [177] REMAIN IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 54/2025
[2025] NZSC 99

BETWEEN	PETER KARL CHRISTOPHER HULJICH Applicant
AND	THE KING Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: J C L Dixon KC and H M Z Lanham for Applicant
B H Dickey and A D Luck for Respondent

Judgment: 6 August 2025

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was an executive of Pushpay Holdings Ltd (Pushpay), a publicly listed company. In April 2018, Mr Crowther, a Pushpay co-founder, told the applicant he was thinking of leaving Pushpay and selling his nine per cent shareholding. At trial, the Crown alleged that on 3 May 2018, before that information was made public, the applicant advised or encouraged the principal beneficiary of a trust, or its trustees, to sell the trust's Pushpay shares despite knowing that the information, if publicised, would be expected by a reasonable investor to have a material effect on Pushpay's share price.

[2] Ultimately, Mr Crowther's shares were sold in June 2018 via a bookbuild process, in which some investors are invited to participate in the reallocation of shares during a trading halt. The Crown's expert, Mr McMahon, gave evidence at trial that a reasonable investor would regard the information disclosed by Mr Huljich as material because they would expect the shares to sell at a material discount in a bookbuild.

[3] The jury found the applicant guilty of insider conduct under s 244 of the Financial Markets Conduct Act 2013. The Court of Appeal dismissed his appeal against conviction.[1] He now seeks leave to appeal.

[4] The proposed appeal raises questions of when and how the materiality of information is to be assessed for the purposes of insider conduct. The applicant says that this Court has not provided guidance on these requirements, which are difficult to apply but must be met daily by directors and insiders.[2]

[5] The applicant also says the Court of Appeal erred in three respects which render its approach to materiality unworkable and caused a substantial miscarriage of justice.[3] First, the Court should have found that the expected price effect of the transaction was to be measured as at 3 May 2018, rather than when the transaction was expected to occur. Second, a bookbuild discount should not be used to judge the materiality of the information because that discount does not reflect a market price set when the information is "generally available" to the investing public.[4] Third, the Court should have concluded the jury reached an unreasonable verdict as there were several plausible alternatives consistent with innocence.

[6] The proper approach to the offence of insider conduct under the Financial Markets Conduct Act may be a matter of general or public importance and general commercial significance. However, we are not sufficiently persuaded on these facts

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1 *Huljich v R* [2025] NZCA 155 (Courtney, Mallon and Thomas JJ) [CA judgment].
2 It is said the proposed appeal raises a question of general importance and commercial significance: see Senior Courts Act 2016, s 74(2)(a) and (c).
3 See s 74(2)(b).
4 See Financial Markets Conduct Act 2013, ss 232(1) and 244(1)(b).

that the Court of Appeal might have erred in its approach to evaluating the materiality of information.[5]

[7] As the Crown submits, the jury found the information was material in fact and that the applicant knew it was material. The Court of Appeal also closely assessed the evidence on materiality and any plausible alternatives, such as the possibility that Mr Crowther might not leave or that the shares would not be sold via bookbuild. We agree with the Court's conclusion that the jury could accept Mr McMahon's evidence that the anticipated bookbuild discount when it occurred in June 2018 meant the information was material as at 3 May 2018.[6] There is nothing to suggest that the jury's verdict was unreasonable. For these reasons, we do not see any appearance of a miscarriage of justice.

[8] The application for leave to appeal is dismissed.

Solicitors:
Chapman Tripp, Auckland for Applicant
Meredith Connell, Crown Solicitor's Office, Auckland for Respondent

5 See CA judgment, above n 1, at [70].
6 At [130].