

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CRI-2024-004-000445  
[2024] NZDC 14690**

**NEW ZEALAND POLICE**  
Prosecutor

v

**GOLRIZ GHAHRAMAN**  
Defendant

Hearing: 24 June 2024

Appearances: A McClintock and P Philpott for the Police  
A Cresswell and M Dempsey for the Defendant

Judgment: 27 June 2024

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**RESERVED DECISION OF JUDGE J M JELAŠ  
[Section 106 application]**

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**Outcome**

[1] Ms Ghahraman's application for no convictions to be entered against her name is declined.

[2] I am not satisfied the entry of convictions will have a disproportionate adverse consequence for her future application to the New Zealand Law Society for a certificate to practise as a Barrister and Solicitor in New Zealand. The future assessment into Ms Ghahraman's fitness to practise is primarily triggered by her offending. The entry of the convictions will be a factor undoubtedly considered by the Law Society but not a determinative factor. The factors that would be considered by the Law Society extend well beyond the entry of a conviction.

[3] I have reached a similar position in respect of consequences for future employment prospects overseas. An international organisations assessment of Ms Ghahraman suitability to work as counsel before an International Court or Tribunal is an inevitable consequence flowing directly from the offending itself.

### **Background**

[4] Ms Ghahraman brings an application<sup>1</sup> that no convictions be entered against her name in respect of four charges of theft. Ms Ghahraman has accepted that on four separate occasions, between 22 October 2023 and 23 December 2023, she stole clothing from three fashion retail stores.

[5] Ms Ghahraman's application is opposed by the Police. The Police submit the statutory test for granting the application has not been met and therefore convictions must be entered.

[6] In advance of the hearing of Ms Ghahraman's application, lengthy and detailed submissions, with supporting materials, have been filed by Ms Cresswell and the Police.

[7] Ms Ghahraman's criminal proceedings has attracted a high degree of media interest. At the time of her offending, she was a Member of Parliament, being first elected to office in 2017. She was New Zealand's first ever Parliamentarian to have come to New Zealand as a refugee. The high public interest in this prosecution reflects the high standards expected of persons holding leading positions of public office.

### **Relevant law**

[8] The relevant applicable principles to applications for no convictions being entered are well settled. An application for discharge without conviction is governed by s 106 of the Act, which relevantly provides as follows:

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<sup>1</sup> Sentencing Act 2002, s 106.

### **106 Discharge without conviction**

- (1) If a person who is charged with an offence is found guilty or pleads guilty, the court may discharge the offender without conviction, unless by any enactment applicable to the offence the court is required to impose a minimum sentence.

...

[9] In applying s 106, the Court must follow the guidance contained in s 107 of the Act. This provides:

### **107 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.

[10] The assessment of whether the direct and indirect consequences of a conviction are out of all proportion to the gravity of the offending requires a three-step process. Firstly, there must be an assessment of the gravity of the offending taking into account all aggravating and mitigating factors of the offending and Ms Ghahraman. Secondly, I must assess the direct and indirect consequences of conviction being entered for Ms Ghahraman. There must be a “real and appreciable” risk that any posited consequence will occur. Finally, I must determine whether the identified real and appreciable consequences of a conviction would be out of all proportion having regard to the gravity of the offending. The disproportionality test requires there to be significantly more than a simple finding that the adverse consequences weigh more heavily than the gravity of the particular offending.<sup>2</sup> There is a residual discretion not to grant a discharge but that will rarely be exercised where the statutory criteria has been met.

### **Gravity assessment**

#### *The offending*

[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

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<sup>2</sup> *J v R* [2021] NZCA 690 at [21].

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.

[12] The second offence occurred on Thursday 21 December 2023 at approximately 3.47 pm. Ms Ghahraman entered Scotties Boutique with two associates.<sup>3</sup> 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.

[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.

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

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<sup>3</sup> There is no suggestion that any of Ms Ghahraman's associates had any knowledge of Ms Ghahraman's thefts.

[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 21<sup>st</sup> 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<sup>4</sup> 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.

[19] Ms Ghahraman in her affidavit in support stated she is unable to fully comprehend or explain why she stole the items. She states she did not want to keep or wear the items stating some would never fit her and she would never wear or use

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<sup>4</sup> The dresses had values of \$333.00 and \$4500.00 respectively.

them. It was unclear why Ms Ghahraman organised for only three of the four stolen items to be returned.<sup>5</sup>

*Mitigating factors*<sup>6</sup>

[20] As noted above, the gravity assessment also requires consideration of factors personal to Ms Ghahraman. Ms Ghahraman pleaded guilty to the four charges at the earliest opportunity.

[21] Ms Ghahraman, aged 43 years, has a minor 2006 prior conviction for driving a vehicle carelessly. I accept the Police submission she has no convictions relevant to the present application. Ms Ghahraman will be assessed as a first offender who aside from this offending has for the majority of her adult life displayed good character. The supporting references and letters from a wide group of professionals and community-based groups demonstrate Ms Ghahraman's long standing service, both paid and unpaid, to the some of our communities most vulnerable and marginalised members.

[22] Ms Ghahraman has consistently expressed her remorse, deep shame, and regret for her offences and almost immediately offered to make amends. She took up the opportunity to apologise directly to a manager of the Scotties Boutique store. All of the retail stores have been fully reimbursed for the total value of the clothing stolen.

[23] The police submit the context in which Ms Ghahraman has accepted responsibility and expressed her remorse, needs to be considered. Ms Ghahraman was effectively caught red-handed on the 23<sup>rd</sup> of December; it was that event that prompted her to return most of the stolen items through her associate. I accept the process of Ms Ghahraman accepting responsibility was most likely triggered by a realisation that she was under suspicion for theft. However, I am not persuaded that background context is of great significance. What is relevant is that Ms Ghahraman pleaded guilty extremely early and reimbursed the shops for the losses suffered. I do not consider it is of particular significance to dissect the exact circumstances of the events prior to

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<sup>5</sup> The top valued at \$290 was not returned.

<sup>6</sup> It is accepted that all factors personal to Ms Ghahraman are mitigating factors, there are no aggravating factors.

charges being laid. Ms Ghahraman has consistently expressed a willingness to take responsibility for her actions.

[24] Ms Ghahraman has suffered a number of significant adverse consequences as a result of her offending. She has resigned as a Member of Parliament resulting in a corresponding loss of income. Her offending has attracted a high level of publicity. Ms Ghahraman describes the most upsetting aspect of the media attention was the large contingent of media who camped outside her private home for weeks.<sup>7</sup> The offending and subsequent events has directly impacted her mental health. The extremely severe subjective symptoms of anxiety and depression that Ms Ghahraman was assessed<sup>8</sup> to be suffering from have been attributed to Ms Ghahraman's "present situation" being her unemployment, highly publicised personal events, criminal offences, and court processes.

#### *Mental health*

[25] Ms Cresswell submits Ms Ghahraman's recent diagnosis of post-traumatic stress disorder, is a clear and logical explanation for the offending before the Court. Ms Cresswell submitted there could be no other plausible reason or explanation for offending which was otherwise out of character for Ms Ghahraman. Ms Ghahraman's actions demonstrate that she was suffering a mental health crisis at the time of the offending. Ms Cresswell submits it would not be logical for Ms Ghahraman to choose to act in the way that she did. In essence, Ms Cresswell submits Ms Ghahraman's mental health was the significant contributing cause of the offending and as a result her culpability is substantially reduced.

[26] [Name deleted], a registered clinical psychologist, was commissioned by MsCresswell to "articulate an understanding of Ms Ghahraman's mental health over the past year and to hone in on the understanding of recent events in her life which have included the incidents of shoplifting ...".

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<sup>7</sup> Affidavit of Golriz Ghahraman at [35].

<sup>8</sup> The assessment was undertaken 30 January 2024.

[27] [The clinical psychologist] has been Ms Ghahraman's treating clinical psychologist for the past two years. She is described by [the clinical psychologist] as a committed client in the therapy process. Throughout treatment, [the clinical psychologist] was aware of Ms Ghahraman's personal background of trauma, being a child growing up in a war-stricken country, a member of a family that became refugees and asylum seeker, receiving aggressive treatment for multiple sclerosis, a frequent recipient of hate mail and other threats to her wellbeing as a member of Parliament and other personal challenges. Ms Ghahraman had reported to [the clinical psychologist] at the commencement of 2023, increased anxiety with the up-and-coming 2023 elections.

[28] In my view, [the clinical psychologist] does not articulate whether Ms Ghahraman's mental health contributed to her offending. At best, [the clinical psychologist] records the *possibility* that Ms Ghahraman's offending is "consistent with her trauma symptoms". [The clinical psychologist] describes a form of shop lifting, described as "loss reactive shoplifting", committed by otherwise law-abiding individuals who have loss or trauma in their past. [The clinical psychologist] does not expressly link Ms Ghahraman's thefts to her trauma. During the hearing, Ms Cresswell submitted it would not be prudent for [the clinical psychologist] to be that definitive in his report. I disagree. [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.

[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. I consider this conclusion consistent with other known background factors. Ms Ghahraman was in therapy during the period of the offending. [The clinical psychologist] also describes Ms Ghahraman making good progress during therapy and achieving some "hard won" gains. It is difficult to reconcile these



positive reports with someone so affected by trauma that they would offend in the way Ms Ghahraman did.

[30] That said, I accept, as do the Police 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, along with other factors. Her poor mental health during the offence period and after the offending is a factor I take into consideration. Ms Ghahraman has been working under extremely stressful circumstances for a considerable period. She has endeavoured to continue to serve her community despite the ongoing unacceptable harassment and threats directed at her. It is significant that she has required security at a level normally reserved for the Prime Minister. The work she has undertaken and the groups that she advocates on behalf of means that she is exposed to vicarious trauma. The trauma of her personal background also continues present. 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.

[31] I accept that Ms Ghahraman is continuing to make good progress with addressing the factors contributing to her mental health. No longer being a member of Parliament has provided Ms Ghahraman an unexpected opportunity to appreciate the constant stress and trauma she was regularly exposing herself to. [The clinical psychologist] describes her prognosis as very good. I therefore accept Ms Cresswell's submissions that there is a low-risk Ms Ghahraman would offend again in the future.

### *Analysis*

[32] It is accepted that the starting point sentence for the shoplifting offences would be one of imprisonment. Two of the offences carry maximum sentences of seven years' imprisonment. The police submit the starting point range would be 20 to 24 months imprisonment. Ms Cresswell submitted a starting point range of 6 to 9 months' imprisonment, emphasising the absence of loss suffered by the retailers.

[33] I consider it helpful to the gravity assessment process to firstly determine the gravity of the offending only, before all the remaining factors are considered.

[34] I accept the Crown submission that this was not spontaneous isolated offending. It occurred over a period of two months although the main offending occurred during the week prior to Christmas when three of the four thefts took place. There was clearly an element of premeditation and planning to the offending. I consider that inference is readily available by Ms Ghahraman carrying into Scotties bags she would then use to conceal stolen items in. Ms Cresswell does not take issue with that assessment. However, the degree of planning and premeditation is at the low level and unsophisticated. The total value of the items stolen must be considered (\$8,926.00). The two most serious offences were committed against Scotties Boutique Store where the items with total values of \$2060.00 and \$5773.00 were taken. The last offence being the most serious of all the offending could be viewed as an escalation in the seriousness of Ms Ghahraman's offending. The retailers have suffered no financial losses given Ms Ghahraman made full reparation payments to all of the retailers.

[35] The written submission from the police suggested that Ms Ghahraman's offending involved a breach of trust. I prefer Ms McClintock's revised position during the sentencing hearing. There was no breach of trust between Ms Ghahraman and the retailers. Rather Ms Ghahraman's actions fell well short of the expected conduct of members of Parliament. This is not a factor relevant to the determination of the start point sentence.

[36] After reflection upon the submitted cases, and others<sup>9</sup> I consider that the starting point sentence for the fourth theft to be in the range of 14-16 months imprisonment. That would then be increased to reflect the other offences. I consider a start point sentence of imprisonment of 20 to 22 months would be warranted. I have adopted a lower start point than that submitted by the police given the effects of the offending upon the victim retailers has been minimised by the payments of reparation. I accept the police submission that the gravity of the offences is in the mid-high range.

[37] The end gravity assessment must take into consideration the remaining numerous factors I have referred to above. Those factors have the effect of meaningfully reducing the offence-alone gravity assessment. Having regard to all

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<sup>9</sup> *Ralph v R* [2021] NZHC 1434.

factors I consider the gravity of Ms Ghahraman's offending reduces to the low end of the moderately grave offending range.

### **Consequences of a conviction**

[38] Ms Cresswell submits the real and appreciable consequences Ms Ghahraman will suffer if a conviction is entered is significant impediments to her career prospects and associated ability to travel. It was also submitted Ms Ghahraman's mental health will further adversely suffer.

#### *Impact of a conviction upon mental health*

[39] Ms Cresswell submits that Ms Ghahraman is at risk of experiencing further pronounced manifestations of her trauma, anxiety and depression due to the cumulative effects of the psychological and legal stress of a conviction.<sup>10</sup>

[40] It is clear from [the clinical psychologist]'s report that the offending itself and its immediate aftermath, has had a significant impact on Ms Ghahraman's mental health. The diagnosis of extreme severe symptoms of depression, psychological arousal and anxiety are assessed by [the clinical psychologist] as attributable to Ms Ghahraman's current situation.

[41] However, I am not satisfied that there is evidence of a real and appreciable risk that Ms Ghahraman's mental health will be further negatively impacted if a conviction is entered. [The clinical psychologist] reports Ms Ghahraman has a good level of insight and can think through solutions with help and can consider options and consequences. Ms Ghahraman can translate insight into action. Ms Ghahraman reports that in the five or so month since the offences she is better able to respond to her mental health stresses. She further reports that her current situation has allowed herself to re-connect with various supports in her community and close friends and family. While undoubtedly the entry of a conviction will have an impact upon Ms Ghahraman given it is contrary to what she seeks, there is nothing in the evidence before me that supports the submission her wellbeing will be significantly affected.

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<sup>10</sup> Defence submissions in support of discharge without conviction at [64].

Ms Ghahraman has professional and other supports in place to absorb an adverse legal decision. There is nothing in [the clinical psychologist]’s report, nor Ms Ghahraman’s affidavit that suggests the entry of a conviction against her name will markedly disrupt Ms Ghahraman’s recovery process.

[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] I therefore conclude that there is no real and appreciable risk that the entry of a conviction will be additionally detrimental to Ms Ghahraman’s mental wellbeing.

*Future employment and ability to travel*

[44] Ms Ghahraman seeks to ultimately return to her career, prior to entering Parliament, as a human rights advocate. Ms Ghahraman has previously worked as a criminal defence Barrister in New Zealand. Internationally she was worked for both the prosecution and defence team in three different international criminal tribunals. Employment with a Tribunal associated with the International Criminal Court would require her to travel to and obtain short-and long-term visas in various countries.

[45] There is evidence that Ms Ghahraman’s supporters are actively pursuing work opportunities for her. Included in the bundle of materials filed is a letter from Dr Kate Cronin-Furman the Associate Professor and Director of the Human Rights, MA Programme, at the University College of London (UCL), Department of Political Science. Dr Cronin-Furman has invited Ms Ghahraman to take up a position of “Practitioner-in-residence” which would require Ms Ghahraman to spend two weeks at UCL during the 2024-2025 academic year. While not directly referred to by Ms Ghahraman in her subsequent affidavit, I have proceeded on the basis that this short-term contract is being positively considered by Ms Ghahraman.

[46] Supplementary submissions filed by Ms Cresswell emphasised the employment opportunities currently being advertised at the International Criminal Court that Ms Ghahraman could apply for.

[47] In order for Ms Ghahraman to work in New Zealand or overseas as a lawyer she must obtain a practising certificate from the New Zealand Law Society. Before a practising certificate could be issued to Ms Ghahraman the Law Society must be satisfied, she is a fit and proper person to hold a certificate of practise. The Lawyers and Conveyancers Act 2006 s 55(1) sets out the test for determining if a person is a fit and proper person to be issued a practising certificate. The Law Society may take into account any matter it considers relevant including:

- (a) Whether the person is of good character;  
  
[...]
- (b) Whether the person has been convicted of an offence in New Zealand or a foreign country; and, if so,-
  - (i) the nature of the offence; and
  - (ii) the time that has elapsed since the offence was committed; and
  - (iii) the person's age when the offence was committed.

[48] Ms Cresswell submits the entry of a conviction will be detrimental to any future application Ms Ghahraman may make to the New Zealand Law Society for a practising certificate. I accept that the entry of a conviction will automatically require the Law Society to make inquiries and engage in a process of assessing Ms Ghahraman's fitness to hold a practising certificate. However, I am not satisfied that the entry of a conviction will pre-determine or unfairly weigh the Law Society's assessment process towards an application being declined. Section 55 requires the Law Society to have regard to the circumstances of the offending along with other factors in order to determine if Ms Ghahraman satisfies the fit and proper person test. A conviction alone does not determine an applicant's fitness to practise. The Law Society will ultimately need to assess Ms Ghahraman's conduct for itself along with

the steps taken by her to address the factors contributing to her offending. It is not unheard of for persons with convictions being issued practising certificates.

[49] I accept the police submission that a process by the Law Society of determining Ms Ghahraman fitness to hold a practising certificate is highly likely to be undertaken irrespective of the outcome of the present application. Ms Ghahraman's offending remains directly relevant to the assessment whether she is a person of good character.<sup>11</sup> In summary, any future application by Ms Ghahraman for a practising certificate will require the Law Society to assess her application because of the offending.

[50] I therefore determine the application before me on the basis that that the entry of a conviction will be a factor the Law Society considers when evaluating if Ms Ghahraman is a fit and proper person to hold a practising certificate.

[51] During the course of the hearing Ms Cresswell emphasised the possibility of Ms Ghahraman taking up employment with the International Criminal Court (or one of its associated International Tribunals). It was submitted a conviction would prevent such employment. Ms Cresswell's subsequent supplementary submissions attached the regulations of the International Criminal Court. Those regulations state that a person with a conviction for a serious criminal or disciplinary offence would not meet the criteria required of counsel. The regulations also specify that a person applying for a position of counsel at the ICC must provide a certificate issued by the Bar Association and/or relevant controlling administrative authority of the applicant confirming their qualifications, right to practise and existence of any disciplinary sanctions or ongoing disciplinary proceedings. Ms Cresswell has confirmed that the New Zealand Law Society is the relevant administrative authority. Ms Ghahraman's ability to apply for a position as legal counsel for/with the International Criminal Court will be dependent upon the Law Society issuing her a practising certificate.

[52] If Ms Ghahraman obtains a practising certificate from the Law Society, the entry of a conviction will require Ms Ghahraman to provide additional information in support of her application for employment with the International Criminal Court so it could be satisfied that the offending is not serious criminal offending. Given the

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<sup>11</sup> Lawyers and Conveyancers Act 2006, s 55(1).

widespread publicity surrounding Ms Ghahraman's offending, it would seem highly unlikely that the suitability of Ms Ghahraman being employed as counsel with an International court would only be triggered if a conviction was entered. A simple Google search of Ms Ghahraman's name would immediately alert the authorities to the offending which would undoubtedly prompt an assessment process into her suitability.

[53] Looked at in this way it is difficult to identify any new appreciable consequences of a conviction being entered beyond those identified above. Like 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.

[54] The travel/visa ground advanced is entirely linked to overseas employment. There are no travel plans in place. No information has been provided to the Court as to travel restrictions to any countries. It is submitted Ms Ghahraman's ability to travel internationally will be impeded if convictions are entered.

[55] The courts have observed on multiple occasions that a discharge reliant on a ground of travel restrictions is unlikely to be successful where future travel is speculative and not yet planned.<sup>12</sup> There is no ability for the Court without supporting evidence and plans of travel to assess if the entry of a conviction would impose an absolute bar or make entry unreasonably difficult or uncertain. For example, in respect of possible travel to the UK to take up the two-week position on offer to Ms Ghahraman it is not known if convictions for shoplifting will bar Ms Ghahraman's entry into the United Kingdom. I simply observe that her offences are entirely unrelated to issues of public safety or state security which many immigration authorities consider to be relevant considerations for determining entry into their domain. I am also aware that some countries require the disclosure of the fact of being arrested/charged, irrespective of whether a conviction was entered.<sup>13</sup>

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<sup>12</sup> *MacDonald v R* [2019] NZCA 91.

<sup>13</sup> The Court of Appeal in *MacDonald* determined that entry to the United States would require disclosure of arrest and offending. At [32].

[56] In the circumstances I am unable to conclude that the entry of a convictions will create a real and appreciable risk that Ms Ghahraman's travel will be unduly restricted. The consequences relating to travel lack specificity and are speculative.

### **Proportionality**

[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.

[58] I have reached a similar conclusion in respect of identified consequences for employment overseas. Those employment prospects will be reliant upon Ms Ghahraman first obtaining a New Zealand practising certificate. The relevant international body will undertake its own assessment of Ms Ghahraman's suitability to appear as counsel. I consider the assessment process by the International Criminal Court to be an entirely proportion response. The integrity of the International Criminal Court requires it to assess those applying to undertake the work of the court.

[59] In summary, the consequences relied upon in support of this application are inevitable consequences that Ms Ghahraman would encounter irrespective of the whether the present application was granted. The standard of conduct required of persons practising law, in New Zealand or overseas, is high and understandably so. It is proper that the relevant regulatory bodies make its own enquiries and assessment of persons seeking to act as legal counsel. They are consequences that Ms Ghahraman will encounter primarily as a result of her offending, not the entry of convictions. In any event, those consequences are not out of all proportion.



[60] Ms Ghahraman's application for a discharge without convictions being entered against her name is therefore declined.

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Judge J Jelaš

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 27/06/2024