

**IN THE DISTRICT COURT
AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE
KI ŌKAHUKURA**

**CRI-2017-044-003389
[2018] NZDC 24353**

NEW ZEALAND POLICE
Prosecutor

v

VINCENT ROSS SIEMER
Defendant

Hearing: 7 March 2018 and 21 November 2018
Appearances: Sergeant Gallagher for the Prosecution
The Defendant in Person
Judgment: 26 November 2018

DECISION OF JUDGE C S BLACKIE

Background

[1] The defendant is charged that on 28 May 2017, while a suppression order was in place, he published the name of the person who had been granted name suppression. The charge was laid pursuant to the provisions of the Lawyers and Conveyancers' Act 2006, ss 240(1)(c) and 263(1)(2). The defendant pleaded not guilty.

[2] The hearing to determine the charge has taken place in two parts. On 7 March 2018, the Court heard the evidence presented by the prosecution. That involved producing to the Court a certified copy of the decision of the New Zealand Lawyers'

and Conveyancers' Disciplinary Tribunal, dated 24 November 2016, in which the order for name suppression forms part. Also produced was the article published by the defendant headlined "NZ Police Used to Prosecute Watchdog the Old Way". The material complained of and subject to the charge was contained in that article.

[3] At the conclusion of the prosecution evidence, the defendant made an application for a discharge pursuant to s 147 of the Criminal Procedure Act 2011. Brief submissions were made at the hearing, followed by more comprehensive submissions filed subsequently.

[4] On 26 2018, I delivered a decision declining the application under s 147 and finding that there was a case to answer. In making that determination, I found that on the evidence produced to that point:

- (a) That there was a lawful order, unambiguous in its terms, binding on the defendant as it would have been on any other person.
- (b) The defendant had knowledge of the terms of the order.
- (c) The defendant published the name of the person whose name was suppressed by the showing of it on his blog site.

[5] In making those findings, I rejected the defendant's submission:

- (a) That no action for a non-publication order had been produced that pertained to the practitioner identified by him in his publication.
- (b) That the Tribunal had no inherent power to issue a suppression order.
- (c) That no order was made under the Tribunal's statutory powers.

[6] The defendant subsequently appealed the ruling on the "no case" application to the High Court. The appeal, however, was dismissed on the grounds that no final determination had been made by this Court and, therefore, the High Court had no jurisdiction.

[7] On 21 November 2018, the hearing resumed. The defendant elected neither to give nor to call evidence. He presented further written submissions.

[8] In first part of his submissions, under the heading – The Interests of Justice – the defendant is, in essence, challenging the decision in respect of his 147 application.

[9] In the second part of his submission, he relates in a more direct way to the legal issues and, more particularly, the elements of the charge which must be proved beyond reasonable doubt, which he listed as being:

- (a) The terms of the order were clear and unambiguous, were binding on the defendant and the defendant had knowledge from a proper Notice of the terms of the order.
- (b) The defendant acted in breach of the order, and
- (c) The defendant's conduct was deliberate in the sense that he deliberately or wilfully acted in the manner that was in breach.

[10] For the sake of completeness, I consider it helpful now to set out the entire article which was published on the defendant's blog site on 28 May 2017. The name of the person who sought and obtained name suppression before the New Zealand Lawyers' and Conveyancers' Disciplinary Tribunal is Neil Wells. His name is now in the public arena by virtue of the decision of the High Court in *Haden v New Zealand Police* [2018] NZHC 498, Clark J. That High Court decision was in respect of an appeal by Grace Haden, who, similarly to what is alleged against the defendant in this case, published the name of Mr Wells contrary to the same order made by the Disciplinary Tribunal. She was found guilty in the District Court and her appeal against the conviction was dismissed by the High Court.

[11] Mr Wells was now deceased.

[12] Relating to Mr Wells, the defendant published the following:

“NZ Police Used to Prosecute Watchdog the Old World Way

Another life lesson of how New Zealand justice is dealt comes a case stranger than fiction. It concerns a long lingering case of a coddled repeat fraudster,

where blanket Court suppression orders protected his “privacy” and where this offender then indirectly manipulated police resources to prosecute a whistle blower under a non-existent charge in order to keep his offending secret.

It began in 2006, when “*Transparency New Zealand*” blogger, Grace Haden published evidence revealing lawyer Neil Wells (pictured) was syphoning animal control fines in Waitakere City Council to his private trust with a similar name to the City agency. The politically connected lawyer, who had assisted the New Zealand government in writing animal control legislation, obtained a gag order and sued for defamation.

Haden’s defence was struck out for late filing and no trial was held. Instead, without evidence from a trial to rely on, District Court Judge Roderick Joyce ordered costs in a Ruling which admitted the Judge had conducted his own web searches to support his Ruling. The allegations and evidence against Wells were suppressed. Though justice did not rule the day, Wells was compelled to discontinue his fraud of council coffers, temporarily forfeited his lawyer practice certificate and moved to Te Kuiti.

Proving corruption is perpetuated if not emboldened by Court suppression orders which prevent public awareness. Wells moved on to defraud “a vulnerable elderly woman and long-time friend with some cognitive impairment” according to the New Zealand Law Society Standards Committee. The Committee pointed to Wells “lack of insight or remorse” following his offending.

In a 24 November 2016 Disciplinary Tribunal ruling, Wells was ordered to pay \$25,700 in compensation and costs. The Tribunal accepted the “more egregious and conflicted behaviour had begun during the period when (Wells) did not hold a practicing certificate and before he had been issued with a practicing certificate in mid-July 2014” and, therefore, could not be taken into account by the Tribunal. Conversely, the Tribunal cited Wells’ fragile health, many years of community service and agreement to no longer practice law as mitigating factors. These were also given as Tribunal reasons to again conceal his identity from the unsuspecting public, mindful they had accepted he had previously “parked” his lawyer credentials before he scammed his long-time friend – and this period had absolved him of his “more egregious and conflicted behaviour” because it lied outside the authority of the Tribunal.

A week ago, two police officers appeared at Ms Haden’s door with a summons she appear in the Napier District Court two days later on the charge she “breached a suppression order under the Lawyers’ and Conveyancers’ Act 2006”. The police refused to tell her what that order stated, saying they would be in breach of the suppression order if they identified it.

Haden then emailed the police, claiming the summons failed to properly inform her and was unenforceable. The police responded with this heavily redacted Tribunal decision, where only a reference to name suppression being justified was left unredacted. Even the Waikato Bay of Plenty Standard Committee applicant was blacked out, despite there being strong submissions opposing name suppression on grounds it would breach open justice to do so.

It is proven by history that ignorance of the public, assisted by unfettered power of the few, is the greatest enemy justice can have”.

[13] As far as the ingredients of this charge are concerned, the defendant's publication on his blog post speaks for itself. As I said (para [25]) in my decision of 26 April 2018, not only did the defendant have access to the Tribunal's decision but he also named the person who is subject to the suppression order. He specifically demonstrated his knowledge of the making of a suppression order when he made reference to:

- (a) Proving corruption is perpetuated, if not emboldened by Court suppression orders which prevent public awareness.
- (b) The Tribunal's reason to again conceal his identity from the unsuspecting public.

[14] It is patently obvious that the defendant had known of Mr Wells' activities dating back to 2006 when, according to blogger Grace Haden, he was allegedly involved in syphoning animal control fines. The defendant's article contained a photograph of a person purporting to be Mr Wells. The article follows the activities of Mr Wells through the defamation proceedings in the District Court and finally to the proceedings before the Disciplinary Tribunal. He quotes passages from the Tribunal's 24 November 2016 decision, including the Tribunal's reasons for making the suppression order.

[15] In further submissions, the defendant argued as whether it is open to a non-party defendant charged with contempt to challenge the lawfulness of the suppression order. He contended that there was no evidence the Lawyers' Disciplinary Tribunal waived the public's right under s 14 of the New Zealand Bill of Rights Act against any need for suppression – which it reasonably would have done if its intent was to bind the world. Not to mention such an analysis is a compulsory rule of law requirement in orders against the world (particularly mindful the world, as non-parties, are not being heard in respect of their affected rights). The defendant also submitted that the Tribunal decision was consistent with a direction to the parties only. This assumption was supported by the fact that Mr Wells was not mentioned in the decision by name. That omission is, therefore, fatal to any order against the world but conversely immaterial to the parties because they already know who "M", the identifying moniker in the decision, is.

Discussion

[16] Very similar points, if not identical to those put forward in this Court, were raised in submissions in the High Court by Grace Haden. She was prosecuted on an identical charge in the Napier District Court, following her publication of the name of Neil Wells contrary to the same 24 November 2016 disciplinary Tribunal order. The following specific points were raised:

- (a) The decision of the Tribunal on interim name suppression lacks a specific order and appears to grant suppression to an anonymous person, Mr W, by some undefined means.
- (b) The police did not produce an order made under s 240 in the name of Neil Wells, nor was there any evidence to sufficiently connect Neil Wells to “Mr W” or “Mr M”. Thereby, Ms Haden has essentially been charged of contravening a “secret order” which was not in the public realm and was silent as to the specific statutory power pursuant to which the suppression order was granted.
- (c) Mr Wells was not called as a witness. He was not the complainant and, since Ms Haden’s charge and appearance, Mr Wells had passed away.
- (d) That Ms Haden had no way of knowing an order existed in favour of Mr Wells is evidenced by the fact that it took the police seven weeks after charging Ms Haden to obtain a document that grants suppression in favour of Mr W, but is silent on whether the order is pursuant to s 240(1)(c).
- (e) *Hunt v A* [2007] NZCA 332 is authority for the proposition “contempt of Court is usually not committed without knowledge that one is doing something against a legal requirement”.
- (f) The freedom of expression guaranteed by s 14 of the Bill of Rights Act 1990 would be undermined if there is a requirement to comply with secret orders made in favour of an anonymous person.
- (g) The wording of the charging document confuses s 240 of the Lawyers’ and Conveyancers’ Act and s 200 of the Criminal Procedure Act 2011. Fair hearing rights require a charging document to be in line with a section creating the offence.

- (h) Ms Haden's publication was in the public interest.

[17] The High Court Judge rejected each of Ms Haden's contentions. The judgment records:

- “[21] The Tribunal's interim name suppression decision particularly records the fact that the application for name suppression is granted in s 240(1)(c). The nine-paragraph decision contains the Tribunal's assessment and determination of the application for interim name suppression. The decision expressly states - “the threshold for suppression has been reached”. The decision is signed, dated and bears the seal of the New Zealand Lawyers' and Conveyancers' Disciplinary Tribunal. Manifestly, the decision is an exercise of the Tribunal's power to make an order “prohibiting the publication of the name or any particulars of the affairs of the person charged”.
- [22] Similarly, in its substantive decision, the Tribunal discusses under the heading “Name Suppression” its interim decision and the circumstances ultimately justifying “permanent suppression of the practitioner, his former client and any identifying details”.
- [23] Ms Haden says she has essentially “been charged and found guilty of contravening a secret order which was not in the public realm”.
- [24] Ms Haden seems to envisage an “order of the Tribunal having particular characteristics before it can be regarded as effective”. If Ms Haden has that understanding, it is erroneous.
- [25] The range of “orders” the Tribunal may make is extensive. The Act confers on the Tribunal powers which may be regarded as procedural and also powers having considerable reach, such as the power to order the termination of a practitioner's employment, or suspension from practice or that a practitioner be struck off the roll. Where the Act gives the Tribunal power to act, the exercise of power is invariably by “order”. It is by “order” that the Tribunal, for example, imposes penalties or restores a practitioner's name to the roll and it is “by order” that the Tribunal places restrictions on the publication of any part of its proceedings.
- [26] The only limitation on the Tribunal's ability to make orders is that the orders are an exercise of the powers which the Act has conferred on the Tribunal. The Tribunal prohibited Mr Wells' name and identifying details pursuant to the power conferred by s 240. The Tribunal's interim and permanent suppression decisions are effective exercises of its statutory power to restrict publication.
- [27] Ms Haden is not able to shield herself on the consequences of her breach by mounting a technical argument that the Tribunal did not make a formal “order”: As Judge Adeane concluded, Ms Haden has chosen to ignore the Tribunal's order on a technical and semantic basis. It has no merit. In doing so, Ms Haden has contravened a suppression order.

[18] And further, the Court determined:

[31] Ms Haden's argument that the order lacks form and is, therefore, unenforceable is simply incorrect. Consistent with the requirements of the Criminal Procedure Act, the charges contained sufficient particulars to fully inform Ms Haden of the substance of the offence allegedly committed. As well, each charge related to a single offence and each also referred to the enactment creating the offence. I am satisfied that in all aspects the charging document met the statutory requirements for charging documents.

[19] On the question of men's rea, the Court said:

“[34] It is fanciful for Ms Haden to suggest that she was anything but aware of the suppression order in place to protect the identity of Neil Wells. Ms Haden took it upon herself to ignore the suppression orders, whose affect she well understood.

[20] As to public interest, the Court stated:

“[35] As to Ms Haden's asserted justification for her publications, I do not accept they were in the public interest. Whether or not any report, account of proceedings, before the Tribunal could be restricted is an assessment for the Tribunal to make. When determining whether it is proper to restrict publication, the Tribunal will consider the various competing interests that the legislature has deemed to be relevant to the Tribunal's assessment”.

[21] The case of “*Haden v New Zealand Police*” can be relied upon as authority for the proposition that, in this case, the defendant's submissions as to all the procedural issues have no merit. It remains, therefore, for me to make final findings in relation to the ingredients of the charge. I find:

- (a) The terms of the order were clear and unambiguous. They were binding on the defendant as they were on any member of the public in New Zealand.
- (b) The defendant had knowledge of the order. Obviously, he had read the 24 November 2006 Tribunal decision, as he quotes verbatim passages or extracts taken from the decision, including extracts relating to non-publication.
- (c) The defendant acted in breach of the terms of the order by publishing the name of the practitioner that the Tribunal suppressed.

- (d) The defendant's conduct was deliberate in that he wilfully acted in a manner that breached the order. The whole purpose of the blog site publication was to expose Mr Wells as "a long, lingering case of a cobbled repeat fraudster where blanket Court suppression orders protected his "privacy". He went on to state:

"Proving corruption is perpetuated if not emboldened by Court suppression orders which prevent public awareness".

- (e) In reality, it is quite clear that the principle behind the defendant's publication was to reveal and expose the activities of Neil Wells to his readers, despite his knowledge of and in the face of the Tribunal's order for name suppression.

[22] I find the charge proved beyond reasonable doubt.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

C S Blackie
District Court Judge