

- (1) ORDER PROHIBITING PUBLICATION OF CHRISTIAN NAMES OF PLAINTIFF'S CHILDREN
- (2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2020] NZHRRT 46

I TE TARAIPUNARA MANA TANGATA

Reference No. HRRT 067/2016

UNDER

THE HUMAN RIGHTS ACT 1993

BETWEEN

JACINDA KAREN THOMPSON

PLAINTIFF

AND

MICHAEL VAN WIJK

FIRST DEFENDANT

AND

THE BISHOP OF NELSON

SECOND DEFENDANT (discontinued)

AND

THE VICAR OF BLENHEIM PARISH

THIRD DEFENDANT (discontinued)

AT WELLINGTON

BEFORE:

Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:

Ms N Taefi for plaintiff

Mr M Van Wijk in person (did not participate)

DATE OF VARIATION HEARING:

Heard on the papers

DATE OF VARIATION OF NAME SUPPRESSION ORDERS: 1 December 2020

DECISION OF CHAIRPERSON VARYING INTERIM NAME SUPPRESSION ORDERS¹

¹ [This decision is to be cited as *Thompson v Van Wijk (Variation of Non-Publication Orders)* [2020] NZHRRT 46. Note non-publication restrictions.]

Introduction

[1] On the application of the plaintiff the Chairperson by interim orders made on 18 July 2017 in *Thompson v Van Wijk (Application for Non-Publication Orders)* [2017] NZHRRT 25 suppressed publication of the plaintiff's name, that of her husband and those of her children. The interim orders were in the following terms:

INTERIM ORDERS

[23] The following orders are made pursuant to ss 95 and 107 of the Human Rights Act 1993.

[23.1] Publication of the name, address, occupation and of any other details which could lead to the identification of the plaintiff in these proceedings is prohibited pending further order of the Chairperson or of the Tribunal.

[23.2] Publication of the name, address, occupation and of any other details which could lead to the identification of the plaintiff's husband or children is prohibited pending further order of the Chairperson or of the Tribunal.

[23.3] There is to be no search of the Tribunal file without leave of the Chairperson or of the Tribunal. The plaintiff and the defendants are to be notified of any request to search the file and given opportunity to be heard on that application.

[23.4] Leave is reserved to all parties to make further application should the need arise.

[2] At the substantive hearing held at Wellington on 8, 9 and 10 June 2020 the plaintiff asked that the interim orders be made final orders. Such final orders have not yet been made because the Tribunal's substantive decision is still in preparation.

Name suppression no longer sought by plaintiff

[3] The plaintiff has now by application dated 17 November 2020 given notice she no longer wants her name suppressed but continues to seek non-publication of the names of her children, including that of her child who died during childbirth.

[4] The plaintiff's reasons for seeking amended orders are set out in an affidavit sworn by her on 11 November 2020. As summarised in Ms Taefi's memorandum dated 17 November 2020 at para 16 those reasons are:

- a. The plaintiff intends to participate in the faith-based redress hearing in the Royal Commission into Abuse in Care on 7 December 2020.
- b. The plaintiff is advocating for survivors of abuse in faith-based settings and assisting churches to prevent sexual harassment and abuse. She is finding it difficult to do this, while maintaining her anonymity.
- c. The plaintiff's older children are aware of her claim and what occurred. She intends to tell her younger children when they are older.
- d. The plaintiff wishes to continue to protect her children from being directly identified.
- e. The plaintiff does not wish to speak about the details of the sexual harassment, which are still distressing to her and trigger her PTSD symptoms.
- f. The plaintiff now understands that the shame around what occurred does not belong with her.

Points on which clarification requested

[5] Neither the application nor the affidavit addressed in specific terms the circumstances of the plaintiff's husband. By inference it appears to have been assumed that if the plaintiff's name suppression lapses, so too would that of her husband. Also not addressed is the question whether name suppression of the plaintiff's children is achievable given the plaintiff does not seek name suppression for herself or her husband.

[6] The plaintiff was given opportunity to clarify these two issues. See the email dated 27 November 2020 timed at 11:28am sent by the Secretary of the Tribunal to Ms Taefi:

I write at the direction of the Chairperson.

Given the plaintiff has asked for the interim orders to be varied prior to 7 December 2020 please urgently file a further memorandum no later than 12 noon on Monday 30 November 2020:

1. Confirming that if granted, the orders now sought by the plaintiff will have the effect that neither she nor her husband will have the benefit of name suppression.
2. Explaining how continued name suppression (and the prohibition on the publication of any other details which could lead to their identification) for the plaintiff's children will be possible with the lifting of name suppression for the plaintiff and her husband.
3. Setting out the changes now sought by the plaintiff to the wording of the interim orders made on 18 July 2017.

Yours sincerely

[7] By memorandum dated 30 November 2020 Ms Taefi has confirmed:

[7.1] The orders now sought by the plaintiff will have the effect that neither she nor her husband will have the benefit of name suppression.

[7.2] The plaintiff does not seek a prohibition on publication of details that could lead to the identification of her children. She accepts that as a consequence of her own name being published, her children will be identified by those who know their parents' names. The extent of the order sought by the plaintiff is that her children are not identified by their Christian names. The order is sought to prevent a person publishing her children's full names in relation to the proceedings.

Decision

[8] In the circumstances outlined by the plaintiff in her affidavit it is appropriate that the interim orders made on 18 July 2017 be varied by:

[8.1] Revoking the non-publication orders insofar as they prohibit publication of the plaintiff's name, address, occupation and identifying details as well as the name and identifying details of her husband.

[8.2] Limiting the non-publication order regarding the plaintiff's children to an order that they not be identified by their Christian names.

[9] One consequence of the variations effected by this decision is that the plaintiff will have to file a new memorandum updating that dated 13 July 2020 and which identifies the evidence that the plaintiff would seek to redact were a third party to be given leave to search the Tribunal file. Such new memorandum is to be filed by 22 December 2020. However, should further time be required, application can be made.

THE MODIFIED INTERIM ORDERS

[10] For the avoidance of doubt the interim orders (as varied by this decision) are:

[10.1] Publication of the Christian names of the plaintiff's children (including the Christian name of her child who died during childbirth) is prohibited pending further order of the Chairperson or of the Tribunal.

[10.2] There is to be no search of the Tribunal file without leave of the Chairperson or of the Tribunal. The plaintiff and the defendants are to be notified of any request to search the file and given opportunity to be heard on that application.

[10.3] Leave is reserved to all parties to make further application should the need arise.

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Mr RPG Haines ONZM QC
Chairperson