

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS, OF DEFENDANT PROHIBITED BY ORDER MADE UNDER S 200 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS, OF DEFENDANT'S HUSBAND OR CHILD PROHIBITED BY ORDER MADE UNDER S 202 OF THE CRIMINAL PROCEDURE ACT 2011.

**IN THE HIGH COURT OF NEW ZEALAND
WANGANUI REGISTRY**

**CRI 2015-083-529
[2015] NZHC 1245**

THE QUEEN

v

X

Hearing: 5 June 2015
Counsel: L C Rowe for Crown
D Goodlet for Defendant
Ruling: 5 June 2015

**RULING (2) OF SIMON FRANCE J
(Applications for name suppression)**

[1] This Ruling responds to an application by X and her husband (who has a different name) for permanent name suppression following her discharge without conviction on a charge of manslaughter.¹ The deceased was the couple's only child, a young boy aged 16 months at the time. The circumstances leading to his death are covered in the ruling granting a discharge and will not be repeated here.

¹ The application for suppression of the husband's name is made by the Crown. It is separately advanced by the defendant as a reason to suppress her name (Criminal Procedure Act 2011, s 200(d)).

[2] The applications are made pursuant to ss 200 and 202 of the Criminal Procedure Act 2011. The primary ground relied upon by the mother is s 200(2)(a) which is that publication will cause extreme hardship. The equivalent ground for the father is found in s 202(2)(a) where the test is undue hardship.

[3] It is convenient to deal immediately with the father's application which is not opposed. The father is plainly a victim in this matter, and has suffered a tragic loss. He is, both by reason of his work situation and by disposition, a person who has taken significant steps to protect his privacy. I have been provided with material that makes it plain that his on-going ability to continue in his current employment will be compromised if his name is published. The reasons why publicity would affect his present employment are clearly explained and legitimate. The material provided to the Court is compelling and comfortably satisfies the test of undue hardship. The Crown's application for suppression of his name is granted.

[4] A complication of this decision is that the deceased shared his father's surname. There have been mixed messages to date from the Court as to whether, despite interim suppression for the father, the media were permitted to publish the child's name. In a Minute dated 6 May 2015 Dobson J clarified that to do so would breach the then interim order. However I am aware that some publication had occurred prior to this time. Although formal suppression of the young boy's name is not necessary because it is an inevitable by-product of the order in relation to the father, I consider it will remove any uncertainty if I formally do so. I do not consider the fact of prior publication should affect this. It provides no reason to allow further undermining of the father's suppression order. I make it plain that any fresh publication or republication of a prior naming will be a breach of the order. I am sure responsible news agencies will immediately ensure removal of the name if they have not done so already.

[5] Turning to the defendant's application, the test which applies is that I must be satisfied that extreme hardship would be likely if her name were published. Whilst it is relevant to the assessment that I have discharged the defendant without conviction, the statutory test of extreme hardship applies equally to those acquitted of the offence. This reflects the high value placed on open justice.

[6] The first matter on which the defendant relies is the impact publication will have on her mental health, and her ability to cope with the present situation. In this regard I have been provided with a considerable amount of expert advice from those treating the defendant. I record my appreciation of the detail provided and the obvious endeavour and thought that lies behind it. Although experience has shown that publicity is often not as terrible in its effect as defendants imagine, I am satisfied in this case, based on the expert material, that the actual impact will be very significant, and represents a danger to her well-being. The evidence establishes that the situation is not one of only emotional distress.

[7] The second matter advanced is the impact on the defendant's ability to do her job. Obviously any impact on her mental health will impede a return to full work capacity, but the other factor advanced is the effect publication may have on her relationship with members of the public with whom she has contact. I suspect the impact will be more on the defendant's perceptions than on how the public will actually respond. However, I accept the present situation is a matter of high publicity and inevitably for a period it will be a topic that is often raised by people. It will, to that extent at least, be a distraction and therefore an impediment to her work. Standing alone it would not meet the test.

[8] A third matter can only be referred to obliquely. The defendant, in addition to her regular work, provides important international assistance to an organisation. She is a scarce resource and her ability to assist would be impeded. I accept this would be a hardship caused to her (and indeed consequentially to the organisation and society generally).

[9] The Crown, fairly in my view, accepts that all the material now available establishes the test of extreme hardship. Despite this lack of opposition, I nevertheless considered it appropriate, given the high public interest, to consider the application with a critical eye. Having done so, I am satisfied the statutory pre-condition is met. The impact on the defendant of publication of her name, given the comparatively lower level of her culpability,² and given the likely impact it

² As set out in the related judgment.

would have on her health and recovery, and to a lesser degree on her work, mean extreme hardship is established.

[10] I then turn to the exercise of my discretion. The loss of a young child in tragic accidental circumstances is always a matter of legitimate public interest. When those circumstances meet the requirements of culpable homicide, as the defendant here accepted by her plea that they did, the case for some degree of explanation is strengthened. The public is entitled to be given a general overview of the circumstances, and an explanation for why the Court has responded in whatever way it has. In my view the other decision I have delivered today meets those goals. The publication of the defendant's name would add little, and would have significant consequences. At this point, the privacy of the couple, and facilitating their recovery, are equally interests to be weighed in the mix. It is helpful to also record some of the matters emphasised by the Crown as significant to it, particularly the fact that the situation is known to the professional body and her fitness for work is being appropriately monitored and assessed, and that there is no identifiable risk of reoffending of any sort. Also the strength of her community contribution is acknowledged.

[11] In his submission the editor of the Wanganui Chronicle urged that in the event of suppression of the defendant's name, there should not be suppression of her relationship to the deceased, her occupation, her place of work and the name of the victim. It is submitted these are matters of public interest and have already been the subject of publicity.

[12] Concerning the last point, while prior publicity is relevant, it need not be determinative. Sometimes it will be decisive simply because the prior publicity is so extensive that the horse has bolted. Other times, while one cannot undo that which has happened, there is still value in preventing further publicity (if suppression is otherwise justified). I consider this is the case here. The reality is that some people, interested enough to work away at it, may make an educated guess from that which has been published at the defendant's identity. But that is no reason to allow general publication and does not undermine its possible future effectiveness. Suppression will be respected by responsible news organisations.

[13] On the matters specifically raised by the editor, the defendant's identity as a mother cannot sensibly be suppressed and is not. As for her occupation, I have described her as a health professional and that suffices. For reasons already, given the name of the deceased is suppressed, and as for her place of work, I see no interest in it being further specifically referred to.

[14] I have considered it appropriate to reach a conclusion on the defendant's application on its own merits and independent of her husband's situation. I note for the record, however, that an order would have been otherwise made under s 202(2)(d). Publication of the defendant's name would inevitably carry the risk of publicity as regards her husband and for the reasons given that would cause undue hardship to him. That separate statutory pre-condition being met, there is nothing in the circumstances that would cause me to exercise my discretion other than in favour of suppression of the defendant's name. The interests in the public knowing her name are not such as to outweigh suppression in order to avoid undue hardship to her husband.

Orders

[15] The identity of the defendant, and any information tending to lead to her identity is suppressed pursuant to s 200(2) of the Criminal Procedure Act 2011. The information provided in these rulings, and the terms used (e.g. mother, health professional) are permissible.

[16] The identity of the father of the deceased, and any information likely to identify him is suppressed pursuant to s 202 of the Criminal Procedure Act 2011.

[17] The identity of the couple's child, the deceased, is suppressed under s 202 of the Criminal Procedure Act 2011. This order is made to give effect to the preceding order, and to give clarity around the issue.

[18] As an exception to para [15], nothing in the order is to prevent the relevant professional supervisory body from having on-going access to all relevant material.

Simon France J

Solicitors:
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