

**ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES),
OCCUPATION(S) OR IDENTIFYING PARTICULARS OF PROSPECTIVE
DEFENDANTS AND CONNECTED PERSON**

**IN THE DISTRICT COURT
AT PAPA KURA**

**I TE KŌTI-Ā-ROHE
KI PAPA KURA**

[2021] NZDC 18319

NEW ZEALAND POLICE

Prosecutor

v

W W

Prospective Defendant

H R

Prospective Defendant

XYZ

Connected Person

Teleconference: 13 September 2021 @ 6:30 pm

Appearances: Mr N Fletcher for the Prosecution
Ms R Reed QC – Prospective Defendants and Connected Person
Mr R Stewart – NZME Publishing Ltd, Radio NZ Ltd, Stuff Ltd

Reasons: 14 September 2021

**REASONS OF JUDGE B DAVIDSON
- PRE-CHARGE SUPPRESSION ORDERS**

The application

[1] Late yesterday afternoon the Registrar referred to me a “memorandum for WW and HR seeking name suppression in advance of first appearance”. This was filed by email around 2:30 pm. Further documents in support (copies of various social media

posts and blogs) were filed about an hour later. A memorandum on behalf of the named media entities was filed about 5:30 pm.

[2] I indicated to the Registrar that I had doubts as to my ability to make pre-charge suppression orders but said I would convene a teleconference.

[3] This occurred at 6:30 pm last evening.

[4] The application essentially seeks pre-charge suppression orders for both prospective defendants and a connected person, a parent of one of them.

[5] As at the time of the filing of the various documents and the teleconference no charges had been laid against the prospective defendants. The charges, if laid, will essentially allege breaches of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021.

[6] Media information from the NZ Police indicates charges are imminent with the prospective defendants due to be summonsed to court soon. Mr Fletcher, appearing for the Police at short notice, advised that a police officer had been assigned to the case. He responsibly noted that because of the Alert Level 4 court restrictions currently in place in Auckland, there might be some delay either in charge filing or first appearance.

[7] The alleged incident has attracted considerable mainstream and social media attention. It involves an allegation of the prospective defendants leaving Auckland on the strength of essential work exemptions, travelling by car to Hamilton and flying to Lake Wanaka in the South Island.

Jurisdiction

[8] At first blush, as I indicated to the Registrar and counsel in the teleconference, I would have no power to make such orders. My powers are statutorily based, supplemented by such implied or incidental powers necessary to give effect to those.

[9] The plain wording of ss 200-210 Criminal Procedure Act 2011 clearly contemplates that the various powers are engaged when a person is “charged with” an offence [s 200(1)] or make a “first appearance” in court [s 206].

[10] Initially it seemed to me, therefore, that any implied or incidental powers relating to these provisions could only be engaged when the power itself is engaged i.e. when charged.

[11] During the teleconference Ms Reed argued that although the mainstream media might be expected to act responsibly and await a prospective defendant’s first appearance in court rather than publish and act contemptuously, not so bloggers, social media advocates and citizen journalists. She noted the observations of the Court of Appeal, last year, in *X v R*¹ at the “potential hardship caused by the pernicious, judgmental, exponential, indelible and often ill-informed publication on social media platforms”.²

[12] For the media Mr Stewart was content to abide my decision, assuming I decided I had jurisdiction. Without giving any undertaking of non-publication by the media entities be represented he noted it would be “unwise” of them to publish.

[13] For the Police Mr Fletcher likewise was content to abide my decision.

Decision

[14] The issue is one of jurisdiction, not merit. As I have noted my preliminary view, in the limited time available to me and without full argument of the matter, was that I did not have jurisdiction.

[15] However, it must be at least arguable that the District Court does have jurisdiction under its incidental and implied powers, to make such orders. Relevant factors would be the imminence or otherwise of charges; any delay in first appearance (e.g. here the constraining Alert Level requirements in Auckland); the Judge’s sense or gauge of any adverse media, especially social media, reaction.

¹ *X v R* [2020] NZCA 387.

² At [51]-[52].

[16] In those circumstances I therefore made the orders sought on a pre-charge basis, prohibiting publication and the names and other identifying details of either prospective defendant and the connected person. I did so to allow the prospective defendants and the connected person to apply to the High Court for non-publication orders on a pre-charge basis.

[17] The orders will expire at 7:00 pm tonight on the basis Ms Reed QC will apply to the High Court which clearly has the necessary inherent jurisdiction to deal with the matter.³

Judge B Davidson

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 14/09/2021

³ See *Teacher v Stuff Ltd* [2019] NZHC 1170 at [17].