

NOTE: PUBLICATION OF NAME(S), ADDRESS(ES), OCCUPATION(S) OR IDENTIFYING PARTICULARS, OF COMPLAINANT(S) PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011.

NOTE: PUBLICATION OF NAME, ADDRESS OR IDENTIFYING PARTICULARS, OF FIRST APPLICANT PROHIBITED BY S 200 OF THE CRIMINAL PROCEDURE ACT 2011 UNTIL FINAL DISPOSITION OF PROCEEDINGS AND SUBJECT TO ANY FURTHER APPLICATION.

NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS, OF SECOND APPLICANT PROHIBITED BY S 202 OF THE CRIMINAL PROCEDURE ACT 2011.

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2015-004-011303
[2016] NZDC 1303**

**TYRONE WALLACE
FIRST APPLICANT**

AND

**"THE COMPANY"
SECOND APPLICANT**

v

THE QUEEN

Hearing: 28 January 2016

Appearances: R Mansfield for the First Applicant
T Epati for the Second Applicant
K Lummis for the Crown

Judgment: 2 March 2016

**RESERVED JUDGMENT OF JUDGE J BERGSENG
(Application for Name Suppression)**

[1] The first applicant, Tyrone Wallace (“Mr Wallace”), faces two charges of sexual violation by unlawful sexual connection and four charges of indecent assault. The allegations relate to the period 1 January 2010 to 31 July 2013. There are four complainants. Mr Wallace applies pursuant to s 200(5) of the Criminal Procedure Act 2011 for continuation of the order for interim name suppression until disposition of these proceedings. It is anticipated that a trial date will not be available for 12 to 18 months.

[2] The Company, the second applicant, applies for a permanent order of name suppression pursuant to s 202 of the Act, on the basis that it is connected to Mr Wallace and publication would be likely to cause it undue hardship.

Background

[3] Mr Wallace made his first appearance in the District Court at Auckland on 3 November 2015. He was represented by counsel. Pleas of not guilty were entered and trial by jury elected. An interim order for name suppression was granted. Continuation of the interim order is opposed by the Crown. The order has been extended to today so that argument could be heard.

[4] At the conclusion of the hearing I made an order for continuation of the interim order for the suppression of Mr Wallace’s name, address and any particulars that may lead to his identification, including his age and ethnicity. I also made a permanent order for name suppression in favour of the second applicant.¹ I now set out my reasons.

[5] At the same time I made an order suppressing paragraphs 16 – 18 of Mr Wallace’s affidavit pursuant to s 205(2)(a) of the Criminal Procedure Act 2011. This is to protect Mr Wallace’s fair trial rights.²

¹ The application for permanent suppression by the second applicant was not opposed by the Crown

² This aspect of the application was not opposed.

The charges

[6] The summary of facts indicates that the complainants at the time of the alleged offending were aged between 20 and 22 years. They were [occupations deleted] and were receiving acting coaching from Mr Wallace.

[7] The Company, the second applicant, is a company in which [The Director] has the majority shareholding; he is also a director of the company. The Company operates [company details deleted] in central Auckland. [The Director] is the [relationship details deleted] of the first applicant. Some of the alleged offending is said to have occurred at the second applicant's [company information deleted]. The first applicant appears on its website as offering [company information deleted].

[8] There is no suggestion that other than some of the alleged offending happening at the [location deleted] that the second applicant or its director, [The Director], was in anyway involved in the alleged offending.

The first applicant

[9] In support of his application Mr Wallace has sworn an affidavit setting out the basis on which he submits that without continuation of the interim order, he would suffer extreme hardship.

[10] Mr Wallace is [age deleted]. He resides in Auckland and his primary source of income is from acting. In addition to acting, he is [occupation details deleted].

[11] Mr Wallace has a 20 year involvement in the film and television industry. Over that period of time he has acted in a number of well known productions, including the television series [names of series deleted].

[12] Mr Wallace deposes to the fact that although not successful for the roles, he has recently auditioned for parts in the television series [names of series deleted].

[13] Mr Wallace's affidavit gives some detail of the alleged offending and sets out, in brief form, the basis of his defence. He confirms the complainants are known to

him as they were some of his former acting students.³ In respect of one complainant, he maintains that they had a long term relationship.⁴ He acknowledges physical contact with all of the complainants but maintains that it was in the context of acting coaching and that it was a particular form of teaching methodology, pioneered by Uta Hagen, a German-American actress and well renowned drama teacher.⁵ He maintains any physical contact with the complainants was with their informed consent.⁶

[14] Additionally, Mr Wallace makes reference to the fact that he has been the victim of sexual abuse at the hands of family members. That abuse began when he was in primary school and continued into his teenage years.⁷

[15] Mr Wallace's evidence is that he would prefer not to have to seek name suppression, as he has nothing to be ashamed of, and intends to defend the allegations. As to the effect publication of his name would have he states:

37. The entertainment industry is very sensitive about any negative stigma being attached to a performer. The assumption within the industry is that if a performer has negative stigma attached to them then it will ultimately affect the production itself and therefore its profitability. Producers and casting directors will therefore overlook any performer with even so much as a blemish against their names.

38. Similarly the suppliers to producers providing financial backing to film and television productions. As I have outlined above I am currently involved in a number of productions that are at crucial stages and require both producers to come on board with the projects and significant financial backing from potential financiers.

39. I am of an age and notoriety now where casting directors are beginning to take notice. As I have outlined above in 2015 I was approached by offshore casting directors to audition for two major international television programmes,[series names deleted]. These type of opportunities are so rare in the industry and those

³ Affidavit of defendant dated 19 January 2016 at [31].

⁴ At [35].

⁵ At [19] – [26].

⁶ At [34].

⁷ At [16] – [18].

roles considered the opportunity of a lifetime for many actors/actresses. If my name were to be published in connection with the allegations that have been made against me it would essentially spell the end of my acting career. This stigma attached to my name would be likely to perpetuate throughout the industry for years to come, even if I were ultimately to be acquitted of the charges.

[16] Mr Wallace is married and has [children's details deleted]. His wife works as a [occupation deleted].

[17] Mr Wallace maintains that publication of his name would have a devastating effect on his family and career and would have a huge effect on his ability to financially support his family.⁸ It is Mr Wallace's view that publication of his name could bring his career to an end.⁹ It is on this basis that it is submitted extreme hardship would arise were his name to be published.

Other evidence in support

Bill Nicholson

[18] In support of Mr Wallace's application is an affidavit from Bill Nicholson, acting agent and actor, who has known Mr Wallace for 20 years. Until recently Mr Nicholson represented Mr Wallace. Mr Nicholson describes Mr Wallace as an established figure in the acting community and a recognisable household name since appearing on [name of series deleted]. Mr Nicholson describes Mr Wallace as having reached an age and stature when "golden" opportunities will open up for him.¹⁰ He confirms Mr Wallace narrowly missed out on acting roles in the television series [names of series deleted].¹¹

[19] Mr Nicholson's evidence is that if Mr Wallace's name was published, it would have a devastating and lasting effect on his career. He states:¹²

⁸ At [41].

⁹ At [36].

¹⁰ Affidavit of Bill Nicholson dated 20 January 2016 at [12].

¹¹ As above at [12].

¹² At [19].

19. I truly believe that if Tyrone's name were to be published that it would spell the end of his acting and creative career. Even if he were to be ultimately acquitted of the alleged offences the damage would have already occurred to his reputation. Directors and producers would be far less likely to offer Tyrone roles in their productions and this would in turn have a devastating effect on his career. If Tyrone were not to continue to have name suppression this would have a huge effect on his income and therefore his ability to financially support his family.

Tony Harding

[20] There is an affidavit from Mr Tony Harding in support of Mr Wallace's application. Mr Harding is a film producer residing in Auckland but who mainly works on international feature films. Mr Harding has known Mr Wallace for approximately 18 months and has previously engaged him as a [occupation details deleted]. He describes Mr Wallace as one of the most recognisable and established figures in the New Zealand acting community and that he has a prosperous career [details deleted] ahead of him.¹³ Mr Harding goes on to say:

6. There is such a small film and television community in New Zealand that if a performer were to receive any negative publicity it would be highly detrimental to an actor's chances of employment. In fact it is likely that if an actor were to have the type of stigma attached to them that would result if Tyrone's name were to be published, then their chances of securing future roles within the film and television community would be virtually nil.

[21] Regarding international castings, Mr Harding is of the view that the negative stigma that would come with publication would make it virtually impossible for Mr Wallace to obtain such roles. Mr Harding summarised his views as:

9. I am certain that if Tyrone's name were to be published at this stage it would be detrimental or even fatal to his future career. The stigma that would result from the publication would have a lasting effect on his career and potential consideration by producers and directors for roles within their productions. In my opinion this would still be the case even if Tyrone were ultimately to be acquitted of the charges.

¹³ Affidavit of Tony Harding dated 20 January 2016 at [3].

The Crown's opposition

[22] The Crown opposes continuation of the interim order. This is on the basis that while it is acknowledged that there will be "undue hardship" to Mr Wallace if his name is published, it is submitted that, in the circumstances as outlined by Mr Wallace, the hardship does not meet the high threshold of "extreme hardship".

[23] Regarding the affidavits filed in support, Ms Lummis makes the observation that neither of the deponents say that they would cease their professional association with Mr Wallace were his name to be published.

[24] Additionally, Ms Lummis submits that Mr Wallace's evidence is lacking in details as to his financial situation. From enquiries undertaken it would appear that Mr Wallace has worked as a [occupation deleted] for his [company details deleted] in the past and continues to remain on the [company details deleted] website. The Crown submission is that this is indicative of Mr Wallace having an ability to derive an income other than from the film and television industry. It is also noted that he is not the sole income earner in the family.

[25] Finally, the submission is made that there are plenty of examples of actors, directors and those involved in the entertainment industry who have been charged with, and in some cases convicted of, serious sexual offending but that has not meant that they have not been able to earn a living from the entertainment industry. The examples given included Roman Polanski, Michael Jackson, Mike Tyson and with a more local flavour Mils Muliaina and Tony Veitch.

[26] The Crown reminded me of the provisions of s 200(3) of the Criminal Procedure Act 2011, that being well known, of itself, does not mean that publication will result in extreme hardship for the purposes of an application for name suppression.

Mr Wallace's submissions

[27] Mr Mansfield emphasises that the application is not being pursued on the basis that Mr Wallace is well known. His submission is that given the nature of the

industry that Mr Wallace works within, publication of his name, at this stage of the proceedings, would have the effect of depriving him of making a living pending his trial. Further, if publication happened and Mr Wallace was subsequently acquitted at trial, the damage to his reputation would already have been done and would, in effect, be irreparable.

[28] Mr Mansfield acknowledges that there are some members of the entertainment industry whose infamy is such that they are able to continue making a living within the industry, despite allegations and in some cases convictions in relation to serious sexual offending. His submission is that Mr Wallace is not someone of such infamy that such would be the result, were his name to be published.

The basis for granting name suppression

[29] Section 200 of the Criminal Procedure Act 2011 states:

200 Court may suppress identity of defendant

- (1) A court may make an order forbidding publication of the name, address, or occupation of a person who is charged with, or convicted or acquitted of, an offence.
- (2) The court may make an order under subsection (1) only if the court is satisfied that publication would be likely to—
 - (a) cause extreme hardship to the person charged with, or convicted of, or acquitted of the offence, or any person connected with that person; or
 - (b) cast suspicion on another person that may cause undue hardship to that person; or
 - (c) cause undue hardship to any victim of the offence; or
 - (d) create a real risk of prejudice to a fair trial; or
 - (e) endanger the safety of any person; or
 - (f) lead to the identification of another person whose name is suppressed by order or by law; or

- (g) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or
 - (h) prejudice the security or defence of New Zealand.
- (3) The fact that a defendant is well known does not, of itself, mean that publication of his or her name will result in extreme hardship for the purposes of subsection (2)(a).
- ...
- (5) An interim order made in accordance with subsection (4) expires at the person's next court appearance, and may only be renewed if the court is satisfied that one of the grounds in subsection (2) applies.

[30] The starting point is, prima facie, a presumption in favour of publication. As noted by the Court of Appeal in *R v Liddell*:¹⁴

...the starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as “surrogates of the public”.

[31] The reasons for the approach of openness are conveniently summarised in *Adams on Criminal Law*:¹⁵

- (a) Publication of Mr Wallace’s name avoids the possibility of suspicion falling on others;
- (b) Publicity may in itself lead to the discovery of additional evidence in relation to the offence;
- (c) Publication may help prevent future offending;
- (d) Publication promotes personal deterrence;
- (e) Publication enables those who are clients or patients or who may otherwise have contact with the accused to decide for themselves whether they do so;

¹⁴ *R v Liddell* [1995] 1 NZLR 538 at 546.

¹⁵ Bruce Robertson (ed) *Adams on Criminal Law* (online looseleaf ed, Brookers) at [CPA 200.01].

- (f) Where there is a significant risk of other undetected offending, publicity may encourage those victims to come forward thus enabling further charges to be laid and the victims of those offences to receive help.

Discussion

Mr Wallace

[32] The sole basis upon which the application is being pursued is pursuant to s 200(2)(a), that publication would be likely to cause extreme hardship to Mr Wallace. To constitute “extreme hardship”, the hardship must be such that it is excessive given that the norm is that persons subject to criminal proceedings will have their details publicly available for publishing. Further, such openness is presumed to be a good thing. Consequently, the hardship that must fall upon the individual must be beyond that which would normally be contemplated to flow from being involved in criminal proceedings. A certain amount of stress and hardship is envisaged to flow from the publication of a person’s involvement in the criminal justice system. Those factors alone do not justify making a suppression order.

[33] When considering this application I was conscious of the seriousness of the alleged offending. It involves two allegations of sexual violation by unlawful sexual connection which carries a maximum term of imprisonment of 20 years. The allegations involve four young women. The allegations involve Mr Wallace being in a position of trust and that this offending took place in the context of “actor coaching”. Given there are four complainants then the question arises, whether further complaints may come to light through publication of Mr Wallace’s name.

[34] I anticipate that it is for these reasons that Mr Wallace has provided some detail as to the nature of his defence. He has outlined the context in which he came into contact with the complainants. He has acknowledged that there has been some touching but that it had been in the context of confronting acting coaching in light of the type of acting roles that were being sought. Mr Wallace’s evidence is that the complainants were seeking roles in the programme [name of program deleted], which involved sexually explicit scenes and which he described as “raunchy”.¹⁶

¹⁶ Affidavit of defendant dated 19 January 2016 at [27].

[35] In his submissions Mr Mansfield outlined that each of the complainants came from [name of company deleted], that the police as part of their investigation have spoken to other clients of [name of company deleted] who received acting coaching from Mr Wallace and that there are no further undisclosed complainants.

[36] Regarding the seriousness of the offending in respect of the charge of sexual violation by unlawful sexual connection, Mr Wallace maintains a long term sexual relationship with that complainant. Regarding the three other complainants Mr Mansfield submitted, while acknowledging that indecent assault constitutes in itself serious offending, that there is a scale of offending within that description, and that the alleged offending is at the lower end of the scale.

[37] Mr Mansfield has submitted that it is important for the court to bear in mind that what is being sought is interim name suppression, through until the conclusion of these proceedings. If Mr Wallace is acquitted of the charges then there will be a further application for continuation of any suppression order. If Mr Wallace is found guilty he has indicated that there would not be an application for continuation of suppression. He reminds me of the need to balance the right of openness with the presumption of innocence.

[38] From the starting point of openness of court proceedings, I am satisfied that in the particular circumstances of Mr Wallace, the balance is clearly in favour of continuation of the interim order for name suppression, and that this displaces the prima facie presumption of open reporting. I am satisfied that the evidence of Mr Wallace reaches the high threshold of extreme hardship. I have accepted the evidence of Mr Wallace, and that filed in support of his application, that publication would not only result in the loss of his current ability to earn an income but would also significantly impact on his ability to earn a living from his chosen career in the future. Mr Wallace is [age deleted] and this has been his primary source of income for the past 20 years.

[39] Regarding Mr Wallace's ability to earn an income from alternative sources, the submission made by Mr Mansfield in response to the Crown's criticism of there being other sources of income available is that Mr Wallace is not a [occupation

deleted], that his name and details appear on the website primarily for the purposes of promoting his [relationship details deleted] business and that any work he has done for [company details deleted] has been without charge.

[40] While it appears to be the case that there are some involved in the entertainment industry who are of such infamy that what would otherwise be negative publicity can appear to enhance their professional reputation, I am satisfied that Mr Wallace is not of such infamy that he would be able to rely on this phenomenon.

[41] The Crown's submissions included reference to an on-line blog referred to as [name of blog deleted]. The blog makes reference to the appearance of a "[reference to applicant deleted]". Reference is made to Mr Wallace's age. The blog invites comment as to how many well known [age deleted] male television actors there are in Auckland. One of the responders suggests a former [name of series deleted] actor. As part of the Crown's submissions there is a Formal Witness Statement from Detective Greaves, who spoke to Rob Sims, a [age deleted] New Zealand actor. The report of the detective's discussion with Mr Sims is to the effect that while initially frustrated that he was under suspicion, he suggests that it is well known within the industry that Mr Wallace is the person charged.

[42] Speculation, on-line or otherwise, in my view is not a basis for discontinuation of the interim order.

[43] Given the common features of the complainants and the investigations that have been undertaken by the police I am satisfied that publication would be unlikely to lead to any further complainants coming forward.

[44] It is for these reasons that I have granted the application.

"The Company"

[45] I have read the affidavit of [The Director] filed in support of this application.

[46] Given the profile of [The Director] and his link to the [company details deleted] I was satisfied that publication would result in undue hardship to the second applicant and also to its director, [The Director]. Accordingly I made an order granting the application so that there is permanent suppression of The Company and its director [The Director]. The order includes the address and any particulars that would lead to the identity of the company and or its director.

Signed at this day of , at am/pm.

J Bergseng
District Court Judge