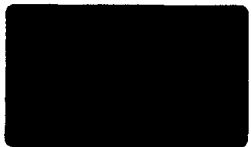


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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CP51/01

BETWEEN DAVID MATTHEW HOLDEN TIPPLE
Plaintiff

AND GRANT BLAIR BUCHANAN
First Defendant

AND THE ATTORNEY GENERAL OF NEW
ZEALAND
Second Defendant

AND TELEVISION NEW ZEALAND LIMITED
Third Defendant

AND TV3 NETWORK SERVICES LIMITED
Fourth Defendant

AND PRIME TELEVISION NEW ZEALAND
LIMITED
Fifth Defendant

Hearing: 19 and 20 November 2001

Counsel: G L Riach for Plaintiff
 J B Stevenson for First and Second Defendants
 W Akel for Third Defendant
 T J G Allan for Fourth Defendant
 M Corlett for Fifth Defendant

Judgment: 30 January 2002

JUDGMENT OF CHISHOLM J

[1] This proceeding arises from television news broadcasts concerning revocation of the plaintiff's firearms dealer's licence. It is alleged that the first defendant, then a police officer holding the rank of Inspector, published or caused to be published television news broadcasts by the third, fourth and fifth defendants which were defamatory of the plaintiff. The second defendant is said to be vicariously liable for the actions of the first defendant. The third, fourth and fifth defendants are sued in relation to their individual news broadcasts.

[2] Summary judgment is sought by the first and second defendants (*"the Crown"*) on the ground that s71 of the Arms Act 1983 provides an absolute defence to the plaintiff's claim against the Crown. If that application is unsuccessful the Crown seeks a pre-trial determination whether the words complained of are reasonably capable of bearing the meanings alleged in the statement of claim. Summary judgment is also sought by the third, fourth and fifth defendants on the ground that qualified privilege provides each of them with a complete defence. In addition, the fifth defendant relies on the defence of honest opinion. Should it become necessary the third and fifth defendants also seek a pre-trial determination whether the words complained of are reasonably capable of bearing the meanings alleged.

[3] This judgment is confined to the various applications by the defendants.

Background

[4] The plaintiff is a licensed arms dealer trading as "*Gun City*" from premises located in the Christchurch central business district. His licence was revoked by the police in 1981 but restored by the District Court on appeal.

[5] When the first defendant assumed responsibility for the Christchurch central arms office in 1998 he was informed that there were problems concerning the plaintiff's compliance with the Arms Act and Regulations. He met informally with the plaintiff and there the matter seems to have rested until May 1999 when Mr Buchanan, having received a report from arms officers, formed the view that there were sufficient grounds to warrant revocation of the plaintiff's licence. He forwarded the report to the National Firearms Co-ordinator with his recommendation to that effect. The recommendation was confirmed.

[6] Mr Buchanan considered that if the plaintiff's licence was revoked the police would need to take possession of the Gun City firearm stock. Arrangements were made for the firearms to be held in safe custody at the Burnham military camp and for four soldiers to accompany a contingent of uniformed police officers when the notice of revocation was served so that the firearms could be uplifted from the plaintiff's premises and transported to Burnham.

[7] According to his affidavit Mr Buchanan perceived that the revocation operation would necessarily involve some disruption to traffic and a high profile police/military presence in the vicinity of Gun City. Consequently he wished to

minimise public concern and avoid any implication that the plaintiff was involved in criminal activity. He decided that the media should be involved.

[8] Before the revocation operation commenced the following media release was prepared by a police media officer in conjunction with Mr Buchanan:

"25 May 1999

POLICE REVOKE ARMS LICENCE

Christchurch Police this morning have revoked the arms licence of a business reputed to have the largest trade in firearms (in volume) in the country.

Inspector Grant Buchanan says that there are 23 reasons outlined why the firearms licence has been revoked.

"I must emphasise that these are not charged as offences. We are not seeking the cancellation of the owner's personal firearms licence. This relates to the operation of the business."

The 23 reasons to revoke the licence relate to the manner of operating the shop which is contrary to the requirements of the arms act, says Mr Buchanan. This relates in particular to the administrative nature of recording the details of purchases and dealing with MSSA's and other restricted weapons.

"The Police have over the last two years expressed concern over this side of the business but no improvements have been noticed and Police are forced to take considered and serious action."

Ten City Beat staff assisted by some civilians have started removing the firearms, ammunition and restricted weapons from the premises on Barbadoes Street. Inspector Buchanan expects that it will take two days to empty the premises. He will not comment where the weapons will be taken to and stored.

Inspector Grant Buchanan".

This media statement was not to be released until after Mr Buchanan had confirmed to the media officer that the revocation notice and warrant to seize the firearm stock had been served. It is not pleaded that this media release is defamatory of the plaintiff.

[9] At approximately 9.30am on 25 May 1999 Mr Buchanan arrived at the Gun City premises accompanied by police and army personnel. After the notice of revocation and warrant had been served Mr Buchanan explained to Mr Tipple how the police proposed to proceed with the operation and that the stock would be removed.

The media officer was then authorised to release the media statement. At Mr Tipple's request Mr Buchanan agreed that Mr Tipple's brother could apply for a dealer's licence so that Gun City could trade, but on the basis that there would be no trading until the necessary application had been made by Mr Tipple's brother. After uplifting some business records the police left the premises at about 10.30am without uplifting the firearm stock.

[10] A number of media representatives, including representatives of the third defendant (TV1), were present outside the premises when Mr Buchanan left Gun City and he answered their questions to the extent that he thought appropriate. Later that day the fifth defendant (Prime TV) came to the Christchurch Central Police Station and Mr Buchanan agreed to the filming of an interview by that television channel.

[11] Evening news broadcasts by the third, fourth and fifth defendants (TV1, TV3 and Prime TV) included reference to Gun City. A transcript of those broadcasts follows:

"TV1

Anchor:

... faced threat of closure today. Christchurch Police revoked the retailers licence for alleged breaches of the Arms Act. They were about to begin shifting all Gun City's stock, but now face a Court challenge. Jendy Harper reports:

Reporter:

Back on the job, but not in business. David Tipple is still allowed to work at Gun City, but he's had to transfer ownership to another dealer after Police took away his licence to sell. They say crucial paperwork on the sale of military style semi-automatic and restricted weapons wasn't being done. It's understood some guns have been turning up not registered.

Inspector Grant Buchanan:

"We have expressed concerns over the last couple of years with the owner and there has at times been an increase in that paperwork, but then it falls down again after a while."

Reporter:

Gun City has sold more than 100,000 weapons since it opened. Every year 100 restricted.

But David Tipple says he did not need to do paperwork on old stock, guns the company bought before a 1992 law change which meant all registered weapons had to be registered.

He's rejecting a list of 23 complaints and challenging Police to a duel in Court.

David Tipple:

We are convinced that it is full of misconceptions and mistakes and that it will be overturned.

Reporter:

David Tipple has had his day in court before. 18 years ago Police revoked his licence. He says he won that case and over \$10,000 in costs.

TV3

Anchor:

... Gun City says he'll fight the Police action in the courts.

The Police produced 23 reasons to revoke Tipple's trading licence including his alleged failure to record the details of customers buying military style semi-automatic weapons.

PRIME TV

Anchor:

David Tipple, owner of Gun City has had his firearms licence revoked. Police claim breaches of the Arms Act in the way the business handled the sale of military style semi-automatics and other restricted firearms.

Reporter:

Police notified the owner of Gun City, David Tipple this morning of the 23 reasons why his firearms dealers licence was being revoked. None of the charges are criminal; some are simply administrative faults, but the police allege that it's a clear indication that Mr Tipple has little regard for the legislation regarding firearms.

Inspector Grant Buchanan:

"We've brought these matters to his attention on a couple of occasions before and we were hoping that there would be an improvement. You know, he's been given plenty of opportunities to get things right and he hasn't done so (and) at the end of the day

the legislative requirements are there, and really he's forced our hand to take what I consider is fairly drastic action."

It's not the first time David Tipple has found himself in a showdown against Police. A similar attempt to shut him down occurred in 1981. Mr Tipple says a personal vendetta could be behind today's move.

David Tipple:

Well I have heard other people suggest that ... that Police might have a picture of David Tipple and try to fit every activity into that picture but ... that'll be left for the Judge to decide

Reporter:

In 1981 the case went to Court and was overturned in Gun City's favour. It cost the Police \$10,000. Second time round and Inspector Grant Buchanan says he's not wasting Police time or money.

Inspector Grant Buchanan:

"Well I think particularly when we're dealing with licences, firearm licences and others, that's a privilege to operate a licence and it's incumbent upon the licence holder to comply with the legislative requirements. It's a responsibility thing. Now if they don't do so then they should lose that privilege and lose their licence.

1981 was about a similar sort of circumstances. In my way of thinking, if there's a continuation of that administrative way he's operating his business that's contrary to the regulations and the Act, then it just clearly paints a bigger picture that he's not prepared to stick within the legislative requirements."

Reporter:

But David Tipple who today re-hired his old lawyer, Nigel Hampton QC is equally as confident.

David Tipple:

We are convinced that it is full of misconceptions and mistakes and that it will be overturned.

Reporter

The case is expected to be heard in Court within four weeks. In the meantime Gun City will continue to trade under another dealer licence."

The TV1 broadcast also included previously made and unrelated footage of the plaintiff presenting, cocking and firing a military style semi-automatic rifle into a cylinder.

[12] Mr Tipple appealed to the District Court against the revocation. Following a hearing extending over four days the Judge reserved his decision. On 10 October 1999 he issued a judgment reversing the police decision revoking the plaintiff's firearms dealer's licence. The Judge found the plaintiff to be a fit and proper person to hold such a licence. Costs of \$25,000 were awarded against the police. Mr Stevenson does not object to this Court referring to that decision which was exhibited to Mr Tipple's affidavit.

Summary Judgment Principles

[13] Rule 136(2) empowers the Court to give summary judgment against a plaintiff if the defendant satisfies the Court that none of the causes of action in the plaintiff's statement of claim can succeed. Several observations in *Attorney-General v Robert Edward Jones* (CA7/01, 13 August 2001) at paragraph [5] offer useful guidance:

- "...
2. *The test is that none of the cases "can succeed" ... [there being a need] to see whether the plaintiff has a realistic, as opposed to a fanciful, prospect of success.*
 3. *The power ... was plainly intended to enable proceedings to be brought to an end by reference to compelling evidence.*
 4. *A summary judgment application will not however succeed where the court cannot confidently resolve disputed facts; the court must be satisfied that none of the claims can succeed; it is not enough that they are shown to have weaknesses; the assessment to be made is not one to be arrived at on the fine balance of the available evidence.*
 5. *While the plaintiff does not have to put up any evidence at all, if the defendant supplies evidence which would satisfy the court that the claim*

cannot succeed, the plaintiff will usually have to respond with credible evidence."

Similar observations were made in *Westpac Banking Corporation v M M Kembla New Zealand Limited* [2001] 2 NZLR 298 at p313.

[14] There seemed to be an underlying implication in Mr Riach's submissions that it would be contrary to principle for this Court to decide any of the applications for summary judgment in favour of the defendants because they all involved matters that the plaintiff was entitled to expect would be left to the jury. The following passage in *Lange v Atkinson* [1998] 3 NZLR 424 featured prominently in Mr Riach's argument:

"There are, however, two aspects of the jury's role to be noted, the second more significant than the first in the present context. The first point is that it is well established that it is for the jury to decide whether the report is "fair and accurate" when that is a statutory element of the protection. The second is that the English Court of Appeal has recently ruled, contrary to the prevailing understanding, that questions of "public concern and public benefit" under the United Kingdom equivalent of s18(1) (which refers to "public interest") are for the jury, Kingshott v Associated Kent Newspapers Limited [1991] 1 QB88 at pp 99 – 101. Bingham LJ speaking for the Court said at p101 that the question whether the matter was of public concern and publication was for the public benefit did not raise an issue of law:

"... the answer depends on a judgment of the significance of the matter reported and the public consequences of publication. These seem to me to be factual judgments which a jury is well fitted to make and in accordance with long established principle should make."

Although the matter is being left open, that approach has an attraction."

On my reading of *Lange* and *Kingshott* they are not authority for the relatively wide proposition I understood counsel to be advancing. The summary judgment jurisdiction was not under consideration. Moreover, the *Kingshott* approach was expressly left open by the New Zealand Court of Appeal.

[15] In cases where the requirements of rule 136(2) can be met, the power conferred by that rule to bring proceedings to an end can extend to defamation proceedings. *Ferrymead Tavern v Christchurch Press Ltd* (1999) 13 PRNZ 616 provides an illustration of a successful application by a defamation defendant on the

ground that qualified privilege provided an absolute defence. The recent Court of Appeal decision *Mitchell v Sprott* (CA21/01, 15 November 2001), which also involved a defamation claim, endorses the *Westpac Banking Corporation v M M Kembla New Zealand Limited* approach to Rule 136(2) in the context of a defamation claim.

Pleadings

[16] By way of a global pleading the plaintiff alleges that the Crown published, or caused to be published by the third, fourth and fifth defendants, 10 specified statements made by Mr Buchanan and news anchors/reporters during the three news broadcasts. While the Crown is prepared to accept responsibility for the words spoken by Mr Buchanan it denies that it published or caused to be published any of the words spoken by the news anchors/reporters. The Crown also pleads, inter alia, that the plaintiff's claim is barred by s71 of the Arms Act 1983 and that the words are not capable of having the defamatory meanings alleged.

[17] The claim against the third defendant relies on four specified statements made by the news anchor, news reporter and Mr Buchanan during the TV1 news broadcast. No statement of defence has been filed at this stage but it seems to be common ground that defences to be relied on by the third defendant will include qualified privilege under ss16 and 18 of the Defamation Act 1992 as well as an allegation that the words complained of are not capable of carrying the meanings pleaded by the plaintiff.

[18] A statement made by the news presenter during the TV3 broadcast which is alleged to have been defamatory of the plaintiff forms the basis of the cause of action against the fourth defendant. In response the fourth defendant pleads qualified privilege under ss16 and 18 of the Defamation Act . It also claims that the words complained of are not capable of bearing the meanings alleged by the plaintiff.

[19] The claim against the fifth defendant relies on five specified statements made by the news anchor, reporter and Mr Buchanan during the Prime TV broadcast. Pleadings to that claim include: qualified privilege under ss16 and 18 of the Act; honest opinion under Ss 9 and 10; and that the words complained of are not reasonably capable of carrying the meaning attributed to them by the plaintiff.

[20] Affidavit/s have been filed in support of each application for summary judgment. Mr Buchanan discusses the circumstances surrounding revocation of the plaintiff's licence, preparation and release of the media statement and his decision to grant media interviews. Deponents on behalf of the television defendants have described the link between the police media release and their news broadcasts. They have also provided information relating to the public interest aspect. By way of response Mr Tipple has outlined, inter alia, the relationship between himself and the Christchurch police, factors supporting his conclusion that the police media release was unnecessary, respects in which he maintains that the news items were not a fair and accurate summary of the police media release and the basis on which he denies that any matter of public interest arose.

Application By Crown For Summary Judgment

[21] Section 71 of the Arms Act 1983 provides:

"Protection of persons acting under authority of this Act

No action, claim, or demand whatsoever shall lie or be made or allowed by or in favour of any person against the Crown, or any Minister of the Crown, or any person acting in good faith in the execution or intended execution of this Act, save only in respect of any compensation that is payable in accordance with the express provisions of this Act."

The Crown's allegation that s71 provides a complete defence to the plaintiff's claim is rejected by the plaintiff who denies that the Crown acted in good faith or in execution or intended execution of the Act.

[22] First, the issue of good faith. Mr Riach highlighted a passage in the District Court judgment in which the Judge commented:

"It is clear that everything the local police had against the applicant was put in the report in the schedule and put in a way designed to be contrary to his [Mr Tipple's] interests. It may well have been Mr Buchanan's role to put the worst case scenario but the respondent was presented with a view of the conduct of the applicant in specific situations which was misleading and unfairly biased." (Emphasis added).

Mr Stevenson claimed that those observations could not be interpreted as indicating a lack of good faith on the part of Mr Buchanan. I cannot be confident that Mr Stevenson's submission is sound. Having seen and heard witnesses the Judge used relatively strong words which are apparently referable to Mr Buchanan. On their face those words indicate that the report was unfairly biased against Mr Tipple which at the very least must raise a genuine issue about whether the police were acting in good faith.

[23] Another matter raised in Mr Tipple's affidavit also needs to be taken into account. According to Mr Tipple the police revoked the licence of a Mr Scoon (Mr

Tipple's business manager) and this led to a successful appeal to the District Court in 1997. His affidavit continues:

"Following the successful appeal Mr Buchanan came into my store. He was red faced and furious. He threatened me in a loud voice, saying "If he (Scoon) so much as spits on the footpath, he (Buchanan) will have his licence off him for good". I thought his action to be most unprofessional but it is indicative of the way in which Mr Buchanan regarded my business and its employees."

This alleged incident cannot be dismissed as inconsequential and is certainly capable, if proved, of having a bearing on Mr Buchanan's good faith. Final determination may turn on issues of credibility. Clearly I am not in a position to determine such matters on an application for summary judgment.

[24] It follows that I cannot be satisfied that s71 provides an absolute defence to the plaintiff's claim against the Crown with the result that the Crown's application for summary judgment must fail. Under those circumstances it is unnecessary for me to consider whether the police were acting in execution or intended execution of the Act.

Crown's Application For Pre-Trial Determination

[25] It was accepted by Mr Riach that the issue whether the words complained of are capable of conveying the meanings pleaded can be properly decided as a preliminary issue. Principles relevant to that issue were summarised by Blanchard J in *New Zealand Magazines Limited v Hadlee* (CA74/96) 24 October 1996:

- "a) *The test is objective: under the circumstances in which the words were published, what would the ordinary reasonable person understand by them?*
- b) *The reasonable person reading the publication is taken to be one of ordinary intelligence, general knowledge and experience of worldly affairs.*

- c) *The Court is not concerned with the literal meaning of the words or the meaning which might be extracted on close analysis by a lawyer or academic linguist. What matters is the meaning which the ordinary reasonable person would as a matter of impression carry away in his or her head after reading the publication.*
- d) *The meaning necessarily includes what the ordinary reasonable person would infer from the words used in the publication. The ordinary person has considerable capacity for reading between the lines.*
- e) *But the Court will reject those meanings which can only emerge as the product of some strained or forced interpretation or groundless speculation. It is not enough to say that the words might be understood in a defamatory sense by some particular person or other.*
- f) *The words complained of must be read in context. They must therefore be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared. I add to this that a jury cannot be asked to proceed on the basis that different groups of readers may have read different parts of an article and taken different meanings from them: *Charleston v News Group Newspapers Limited* [1995] 2 AC 65, 72."*

The mode of publication is also relevant. In this case publication took the form of relatively transient television news broadcasts where the meaning conveyed would be largely a matter of first impression.

[26] Paragraph 7 of the statement of claim lists 10 separate statements which it is alleged the Crown published or caused to be published by the three media defendants: subparagraphs (a) to (d) comprise the statements made by Inspector Buchanan during the TV1 and Prime TV news broadcasts; 7(e) a statement made by the anchor person on Prime TV; 7(f) and (g) statements by the TV1 reporter; 7(h) a statement by the TV3 anchor person; 7(i) a statement by the Prime TV reporter; and 7(j) a statement by the TV1 anchor person.

[27] This global approach is not entirely satisfactory. First, no attempt has been made to distinguish between the three separate broadcasts despite the fact that each broadcast by a different television channel represents a separate publication. Secondly, as it stands the pleading lumps Mr Buchanan's statements in with the

anchors' and reporters' statements, apparently on the basis that the Crown *caused* the three broadcasts, including the statements by the anchors and reporters. On the undisputed material currently before the Court it is difficult to see how that allegation has any prospect of success and I gained the impression that it might be reconsidered by the plaintiff.

[28] Given that situation I intend to adopt the same approach as Mr Stevenson. In other words, I will first consider whether Mr Buchanan's statement in paragraph 7(a) (included in the TV1 broadcast) is capable of conveying any of the meanings pleaded in paragraph 9. Then I will consider whether Mr Buchanan's statements in paragraph 7(b), (c) and (d) (included in the Prime TV broadcast) are capable of conveying any of the meanings pleaded in paragraph 9. Beyond that the exercise may prove to be futile. Under those circumstances I am not inclined to consider whether any of the statements in paragraph 7(e) – (i) are capable of carrying the meanings pleaded in paragraph 9 until the pleading has been reconsidered by the plaintiff and, if the issue still remains, I can determine the matter in the light of any amendment to the pleading.

[29] Paragraph 9 of the statement of claim pleads that the statements in paragraph 7 meant and were understood to mean:

- "(i) That the Plaintiff was unfit to be the holder of a firearms dealer's licence;*
- (ii) That 23 separate and valid reasons existed enabling the Police to revoke the Plaintiff's firearm's dealer's licence;*
- (iii) The Plaintiff was committing criminal offences by breaching the Arms Act and/or the Arms Regulations;*
- (iv) The Plaintiff consistently flouted the Arms Act and Regulations in the manner in which he operated his business;*

- (v) *The Plaintiff was not a responsible firearms dealer and operated his business in an irresponsible and/or illegal manner.*
- (vi) *That there was a legislative requirement for military style semi-automatic and restricted weapons to be registered and the Plaintiff's actions resulted in this requirement being breached thereby endangering public safety;*
- (vii) *The Plaintiff did not have proper administrative controls in his business in relation to the completion of necessary paper work regarding sale of firearms;*
- (viii) *The Plaintiff permitted or caused the sale of firearms, namely military style semi-automatic weapon, to persons without completing the required paper work;*
- (ix) *The Plaintiff permitted or caused the sale of firearms, namely military style semi-automatic weapons, to persons who may or may not have been licensed to possess them;*
- (x) *The Plaintiff was careless and/or criminally reckless in allowing such sales to take place and thereby presented a risk to the general public from these weapons being in the hands of persons not authorised to possess them;*
- (xi) *The Plaintiff had failed to record the details of customers buying military-style semi-automatic weapons;*
- (xii) *The Plaintiff was incompetent and/or criminally reckless in running the business of a firearms dealer;*
- (xiii) *The Plaintiff had breached the Arms Act and/or Arms Regulations consistently over the period since the previous revocation by Police in 1981 and that the previous revocation was valid;*
- (xiv) *The Plaintiff's actions prevented and/or adversely affected proper arms control in New Zealand;*
- (xv) *The Plaintiff was not prepared to comply with the legislative requirements and had little regard for these requirements."*

Both counsel for the Crown and counsel for the plaintiff directed detailed attention to each of these meanings.

[30] Is Mr Buchanan's statement in paragraph 7(a) reasonably capable of carrying all or any of the meanings pleaded in paragraph 9? Before answering this question it is worth repeating Mr Buchanan's statement:

"We have expressed concerns over the last couple of years with the owner and there has at times been an increase in that paperwork, but then it falls down again after a while."

Construed as a whole and within the context of the TV1 news item by a reasonable person it is difficult to see how these words are capable of carrying any of the meanings advanced in paragraph 9 of the statement of claim. In my assessment the words themselves are at the worst a relatively mild expression of concern about the fluctuating standard of the plaintiff's paperwork over the last couple of years. Of course the viewer would also realise from the context that the plaintiff's licence had been revoked, but I do not think that this could dramatically alter the overall impression that a reasonable person could take away from the Buchanan statement. As I see it, the words would only be capable of carrying the paragraph 9 meanings if a thoroughly strained construction was placed upon them. That is not, of course, the proper test. It seemed to me that Mr Riach's attempts to support the paragraph 9 meanings relied on the three separate news broadcasts *taken as a whole*. Again, that is not the proper approach. Mr Buchanan's statement represents the proper starting point, not the three separate broadcasts taken as a whole.

[31] Now it is necessary to consider whether Mr Buchanan's statements on Prime TV (paragraph 7(b)(c) and (d) of the statement of claim) are capable of carrying all or any of the meanings pleaded in paragraph 9. Again it is helpful to repeat Mr Buchanan's statements:

"We've brought these matters to his attention on a couple of occasions before and we were hoping that there would be an improvement. You know, he's been given plenty of opportunities to get things right and he hasn't done so (and) at the end of the day the legislative requirements are there, and really he's forced our hand to take what I consider is fairly drastic action.

...

"Well I think particularly when we're dealing with licences, firearm licences and others, that's a privilege to operate a licence and it's incumbent upon the licence holder to comply with the legislative requirements. It's a responsibility thing. Now if they don't do so then they should lose that privilege and lose their licence.

1981 was about a similar sort of circumstances. In my way of thinking, if there's a continuation of that administrative way he's operating his business that's contrary to the regulations and the Act, then it just clearly paints a bigger picture that he's not prepared to stick within the legislative requirements."

By comparison with his statement on TV1, these statements by Mr Buchanan are significantly stronger. In my assessment they are capable of the inference that the plaintiff was unfit to be the holder of a firearms dealer's licence; that he consistently flouted the Arms Act and Regulations in the manner in which he operated his business; that he did not have proper administrative controls in his business in relation to the completion of necessary paperwork regarding the sale of firearms; that he has breached the Arms Act and/or Regulations consistently over the period since the previous revocation by the police in 1981 which was valid; and he was not prepared to comply with the legislative requirements and had little regard for those requirements. In other words, the statements are capable of carrying the meanings alleged in paragraphs 9(i), (iv), (vii), (xiii) and (xv) of the statement of claim. Whether they in fact carried all or any of those meanings will be for the jury.

[32] On the other hand, it does not seem to me that the words are capable of carrying any of the other meanings pleaded in paragraph 9 (i.e. the meanings alleged in paragraph 9(ii), (iii), (v), (vi), (viii) to (xii) and (xiv)). Those meanings could not be inferred by a reasonable person without either unrealistically distorting Mr Buchanan's statements or using the three broadcasts *as a whole* as the starting point rather than the words spoken by Mr Buchanan on Prime TV.

Media Defendants' Applications For Summary Judgment

[33] Each of the three media defendants claims that statutory qualified privilege provides it with a complete defence to the plaintiff's claim. In each case their qualified privilege defence focuses on the following statutory provisions:

"16. Qualified privilege-

...
(2) *Subject to sections 17 to 19 of this Act, the publication of a report or other matter specified in Part II of the First Schedule to this Act is protected by qualified privilege.*
...

18. Restrictions on qualified privilege in relation to Part II of First Schedule-(1) Nothing in section 16(2) of this Act protects the publication of a report or other matter specified in Part II of the First Schedule to this Act unless, at the time of that publication, the report or matter is a matter of public interest in any place in which that publication occurs.

First Schedule

...
15. *A ...fair and accurate report or summary of a statement ... issued for the information of the public by or on behalf of ... any department or departmental officer ...".*

Only two matters are put in issue by the plaintiff: first, whether at the time of the publication the report or matter was a matter of public interest in any place in which the publication occurred (s18(1)); and, secondly, whether the individual television items were fair and accurate reports or summaries of the media release (first schedule).

[34] With reference to the public interest aspect Mr Tipple has deposed:

"12. *I do not accept that the fact of revocation of my licence was a matter of public interest in all places in which that publication occurred. Annexed and marked "C" is a schedule showing the breakdown of Gun City sales throughout New Zealand at the relevant time. The figures referred to in the schedule are extracted from the Arms Register Book held by Gun City which records all sales of firearms and is available for inspection if required by other parties.*

13. *It can be seen that 86% of sales are in the Canterbury area with only 2% being in the North Island. Of that 2%, by far the majority are from rural customers who purchase by way of mail order. The large population bases in Auckland, Wellington and Hamilton would have little knowledge (if any at all) of Gun City or myself (at least until the statements were published) and would have no interest in the fact that my licence had been revoked. I know of several other dealers over the last few years who have had their licences revoked and this has not been the subject of any publicity, certainly not on national television. The assertions by Mr Corkery for*

example that there was at the time a substantial amount of public interest in the issue of gun licensing and selling are not supported by any evidence. The stories annexed to his affidavit appear to relate only to "guns" as a search term and do not refer at all to the selling of firearms. Nor in my view does the fact that the articles were published necessarily show that the public did have an interest in this issue and in particular does not differentiate between regions within New Zealand."

Mr Riach also claimed that since public interest had been put in issue by the plaintiff that issue should be left to the jury because it came down to a value judgment.

[35] Although the expression "*public interest*" used in s18(1) is not defined, it was carefully examined by Master Venning in *Ferrymead Tavern v Christchurch Press*. In that decision Master Venning noted that there was a distinction between a matter of public interest and a matter in which the public is simply interested. He also noted that there has been a move away from the requirement for there to be public concern and public benefit to the simpler "*public interest*" test utilised in the Defamation Act. Master Venning applied the broad test of public interest favoured by Lord Denning in *London Artists v Littler* [1969] 2 QB 375; [1969] 2 All ER 193; [1969] 2 WLR 409:

"There is no definition in the books as to what is a matter of public interest ... I would not myself confine it within narrow limits. Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others, then it is a matter of public interest on which everyone is entitled to make fair comment."

He noted that while the minority in *Bellino v Australian Broadcasting Corporation* 135 ALR 368 (High Court of Australia) had endorsed that approach, the majority had taken a more restrictive approach by limiting the expression to "*the conduct of a person engaged in activities that inherently, expressly or inferentially invited public criticism or discussion*". Apparently Master Venning favoured the minority approach.

[36] Whether the majority or minority approach in *Bellino* is to be preferred, it seems to me that the outcome in this case is clear-cut. There is no dispute that the business licence of a major firearms dealer had been revoked by the police and that the process of revocation involved a significant police and military presence outside the operator's city business premises at approximately 9.30am. Plainly this was a matter affecting people at large who had a legitimate interest in, and were concerned about, what was going on. It could also be said that activities of this nature inferentially invited public enquiry and discussion. Moreover, the police considered that those events involved implications rendering it appropriate to issue a media statement and for a senior police officer to make on-camera statements. Plainly this was a matter of public interest, at least in Christchurch, at the time of the three television publications.

[37] If Mr Tipple's affidavit provides any indication, his primary counter is that even if the media release constituted a matter of public interest in Christchurch, it was not a matter of public interest "*in all the places in which publication occurred*". But that is not the statutory requirement. As decided in *Ferrymead Tavern v Christchurch Press* the "*locational*" requirement of s18(1) is satisfied if the report or matter is a matter of public interest in any (meaning some) place or places where the report is published. *Todd, The Law of Torts in New Zealand* (2nd Ed, 1997) adopts a similar view at p930. There was no attempt by Mr Riach to argue that *Ferrymead* had been wrongly decided. Indeed, the plain wording of s18(1) counts against any such argument.

[38] It follows that revocation of the plaintiff's firearms dealer's licence was a matter of public interest in Christchurch at the relevant time and that the requirements of s18(1) are satisfied. Thus the first argument advanced by the plaintiff to counter the defence of qualified privilege relied on by each defendant fails.

[39] The other issue is whether the TV1, TV3 and Prime TV news items individually constituted fair and accurate reports or summaries of the media release. Although resolution of this issue requires an individual assessment of each news item, two observations can be made in relation to this topic generally.

[40] First, as explained by the English Court of Appeal in *Tsikata v Newspaper Publishing* [1997] All ER 655 (CA) the underlying philosophy is that the reporter represents the public – that person is their eyes and ears and has to do his or her best, using his or her professional skill, to give the public a fair and accurate report of what the reporter saw or heard. As Herron CJ and Ferguson J explained in *Thom v Associated Newspapers Limited & Anor* [1964-65] NSW 396 at 398:

"The report need not be verbatim, but to be privileged it must accurately express what took place. Errors may occur; but if they are such as not substantially to alter the impression that the reader would have received had he [sic] [read the media release] the protection is not lost. If, however, there is a substantial misrepresentation of a material fact prejudicial to the plaintiff's reputation, the report must be regarded as unfair and the jury should be so directed."

Secondly, in this case the Court has a sound foundation for assessing whether the individual news items constitute fair and accurate reports or summaries of the media release. It has both the media release and the tapes (plus a transcript) of the three news broadcasts.

[41] With those matters in mind I turn to the individual broadcasts.

Third Defendant's News Broadcast

[42] Mr Tipple's position in relation to the TV1 news broadcast is outlined in his affidavit:

- "8. *The statements published by the Third ... Defendant ... refer to deficiencies with paper work on the sale of the military style semi-automatic weapons (MSSAs).*
9. *The Third Defendant's item stated "They say crucial paperwork on the sale of military style semi-automatic and restricted weapons wasn't being done".*
...
10. *In fact the press release referred to "the administrative nature of recording the details of purchases and dealing with MSSAs and other restricted weapons".*
11. *There is no mention in the press release about recording the details on sales of weapons, especially concerning the identity of customers buying these weapons. The difference is significant in that the inference to be drawn from allegations of carelessness in respect of the sale of these weapons and recording details of the purchasers, is that these weapons are now in circulation without proper records of their owners and thereby are potentially being used in criminal activities. Further, it implies that I did not care whether this in fact occurred, which is of course, quite incorrect."*

In addition Mr Riach submitted that the unrelated video coverage of Mr Tipple firing a semi automatic weapon into a cylinder added to the inaccuracy of the news item by playing on the public's apprehension about weapons thereby sensationalising the alleged wrongdoings of the plaintiff.

[43] For TV1 Mr Akel contended that there was no material difference between the police media statement and the TV1 broadcast. He submitted that Mr Tipple was attempting to infer matters that could not arise from the news broadcast, that TV1 had carefully balanced the information provided by the police with comments from Mr Tipple, and that overall the broadcast fairly and accurately recorded the press release.

[44] In my assessment the TV1 news item would not have significantly altered the impression that a reasonable person would have gained from reading the police media release. The thrust of the plaintiff's complaint seems to be that the news broadcast referred to "*crucial paperwork on the sale*" of MSSAs and other restricted weapons whereas the media release referred to "*the administrative nature of recording details of purchases and dealing*" in relation to those weapons. Use of the words "*crucial paperwork*" can hardly alter the sense of the media release and it seems to me that reference to "*sale*" rather than "*purchases and dealing*" would be equally innocuous in the mind of a reasonable viewer experiencing the whole news item. Moreover, the inferences the plaintiff seeks to advance (in paragraph 11 of his affidavit) would not, in my opinion, be drawn by such viewer and I believe that Mr Riach is reading far too much into the previously recorded footage when he contends that it plays on public apprehension and sensationalises the alleged wrong doings of the plaintiff. Overall the broadcast amounts to an accurate summary of the media release.

[45] The broadcast was also fair to Mr Tipple. It balanced the information provided by the police with comments from Mr Tipple. It records Mr Tipple's stance that he did not need to do paperwork on old stock and that he rejects the 23 complaints relied on by the police. He personally states during the broadcast that he is convinced that the revocation is full of misconceptions and mistakes and that it will be overturned. His successful challenge 18 years ago is recalled.

[46] In the end result I am perfectly satisfied that the news item constituted a fair and accurate summary of the media release for the purposes of clause 15 of the First

Schedule and that the third defendant's defence of qualified privilege is made out. The third defendant is entitled to summary judgment accordingly.

Fourth Defendant's News Broadcast

[47] Mr Tipple's complaint about the TV3 broadcast is expressed in his affidavit in this way:

"The statements published by the [Fourth Defendant refers] to deficiencies with paper work on the sale of military style semi-automatic weapons (MSSAs)."

To a large extent this complaint echoes part of his complaint about the TV1 news item. For reasons already expressed I do not accept that references to paperwork and sale would alter the overall impression that the viewer would have received if he had read the press release.

[48] Despite its brevity I am satisfied that the TV3 news broadcast constituted a fair and accurate summary of the police media release. The broadcast announced that the police had produced 23 reasons to revoke Mr Tipple's trading licence, including his alleged failure to record details of customers buying military style semi-automatic weapons, and that Mr Tipple would fight the police action in the Courts. Clause 15 of the Second Schedule confers statutory protection on *a summary* so long as it is fair and accurate. The crux of the media release was that the police had revoked Mr Tipple's firearms licence. This was accurately reported by TV3. When that information is balanced by Mr Tipple's stated intention to fight the revocation in the Courts, it is difficult to see how the news item could be branded unfair. To me this is the classic "*bane*" (assuming that there is a bane) and "*antidote*" situation. Thus I am

satisfied that the TV3 news release constitutes a fair and accurate summary of the police media release and that TV3 is protected by qualified privilege. The fourth defendant is also entitled to summary judgment.

Fifth Defendant's News Broadcast

[49] In his affidavit Mr Tipple complains that the Prime TV news item stated that:

"Police claim breaches of the Arms Act in the way the business handled the sale of military style semi automatics and other restricted firearms." (Paragraph 9).

Again the complaint is based on an allegation that the broadcast has distorted the media release by unreasonably focussing on the *sale* of MSSAs and other restricted weapons. For reasons already expressed I reject that allegation.

[50] When the Prime TV broadcast is viewed as a whole it is clearly a fair and accurate summary of the media release. Not only does it accurately record the police media release, but like the TV1 broadcast it balances in some detail the police allegations with comments from Mr Tipple. Specifically it includes: Mr Tipple's statement that the matter would be left to a Judge to decide; the reporter's comment that the 1981 revocation was overturned in Gun City's favour and cost the police \$10,000 and that Mr Tipple is confident of a similar outcome this time; and Mr Tipple's statement that he and his lawyer are convinced that the revocation is full of misconceptions and mistakes and that it will be overturned.

[51] The fifth defendant has also made out a defence of qualified privilege and is entitled to summary judgment.

Outcome

[52] The Crown's application for summary judgment is dismissed. Its application for pre-trial determination of whether the words are reasonably capable of the meanings pleaded in paragraph 9 of the statement of claim is determined in accordance with paragraphs [30] - [32] of this judgment. Determination of the meanings of the statements referred to in paragraphs 7(e) to (i) of the statement of claim is adjourned sine die.

[53] Each media defendant is entitled to summary judgment on the basis that their respective news items are protected by qualified privilege. Judgment will be entered for those defendants accordingly.

[54] In relation to the Crown's application costs are reserved at this stage. Each media defendant is entitled to costs against the plaintiff. My initial view is that those costs should be in accordance with the 2B scale.. If agreement cannot be reached memoranda should be filed so that the level of costs can be determined by the Court.



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