

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

**CIV2004-404-3311**

04/26 YH

BETWEEN	WINSTON RAYMOND PETERS Plaintiff
AND	TELEVISION NEW ZEALAND First Defendant
AND	RADIO NEW ZEALAND Second Defendant
AND	YVONNE TERESA DOSSETTER Third Defendant
AND	DAVID CARTER Fourth Defendant
AND	KENNETH SHIRLEY Fifth Defendant

Hearing: 15 October 2004

Appearances: C A McVeigh QC for the Fourth Defendant in support  
B Henry and D Watson for the Plaintiff in opposition

Judgment: 5 November 2004

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**JUDGMENT OF PATERSON J**

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**Solicitors:**

*D.J Gates, P O Box 222, Whangaparaoa*

*Cavell Leith Pringle & Boyle, P O Box 799, Christchurch*

## **Introduction**

[1] Mr Peters, a Member of Parliament, has issued proceedings against five defendants alleging that they have each defamed him. One of those defendants is Mr Carter, a fellow Member of Parliament. Mr Carter has applied to strike out Mr Peters' causes of action against him. Alternatively, he has applied to have a question determined before trial. He also seeks an order that Mr Peters specify the general damages sought against him.

## **Background**

[2] Ms Dossetter, in January 2004, swore an affidavit in which she stated that a substantial sum of money had been paid to Mr Peters and Mr Meurant by Simunovich companies so that the companies' interests would be looked after before a Select Committee of the Parliament inquiring into the scampi industry.

[3] In a second affidavit, Ms Dossetter stated that she had no reason to disbelieve that her former partner, Ross (Mr Meurant), was providing cash to Mr Peters from the Simunovich interests. In addition, she provided an interview to Television New Zealand (TVNZ), in which she expressed major concerns at the impartiality of the Select Committee inquiry due to the relationships between Mr Peters, Mr Meurant and the Simunovich companies.

[4] On 22 June 2004, TVNZ on its *One News* programme, ran an item on Ms Dossetter's allegations. The allegation made by Mr Peters is that Ms Dossetter's allegations "were followed by a sound and video clip of [Mr Carter] published on its programme TV One *One News* in which Mr Carter stated:

I immediately passed it to the Speaker. The allegations contained in the signed affidavit were very, very serious and I felt the Speaker of Parliament had to be aware ... The Speaker has now come back to me and said that if I think the allegations are serious then I should formally write to him suggesting that he investigate." (the first statement)

[5] On the same television programme, the announcer said:

Mr Carter wrote back to the Speaker today calling for such an investigation. The document causing such sensitivity is an affidavit Yvonne Dossetter gave to TVNZ alleging her former partner Ross Meurant, a former MP, was working for both Simunovich Fisheries and New Zealand First.

The Dossetter affidavit did however contain other more serious allegations about what she says Ross Meurant told her about substantial payments made by Simunovich to Ross Meurant for Winston Peters.

Those allegations made by Yvonne Dossetter in an affidavit have not been independently verified. The allegations are at this stage unsubstantiated.

[6] A little later on the same programme, a further clip of Mr Carter was shown during which the interviewer asked him:

Isn't there a risk that this is playing into someone's political agenda?

Mr Carter's reply was

It's not for me to determine whether the allegations are correct or not. It is a signed affidavit and on that basis it cannot simply be buried. It has to be resolved one way or the other. (the second statement)

[7] The matter was featured on the *Holmes* programme on TV One, 23 June 2004 and there was further publicity, none of which directly involved Mr Carter.

[8] The pleadings in respect of the first and second statements in substance are:

- a) The allegations were published by Mr Carter to TVNZ on or before 22 June 2004 with the intent that TVNZ would further publish the same on its One Programme;
- b) At the same time, Mr Carter advised TVNZ that he had written to the Speaker of the House of Representatives calling for an investigation of the allegations made against Mr Peters in the Dossetter affidavit;
- c) The allegations convey the meaning that the plaintiff:
  - i) Was a party to serious misconduct;
  - ii) Is in contempt of Parliament.

- d) The allegations and their meanings as pleaded are untrue and defamatory of Mr Peters.

[9] The claim by Mr Peters against Mr Carter is expressed as:

- a) Damages;
- b) Costs.

[10] Radio New Zealand, another defendant, on 23 June 2004, reported during its *Morning Report* programme that Mr Speaker had been asked to consider a breach of privilege complaint against Mr Peters in connection with the scampi inquiry. The report noted that TVNZ had reported allegations contained in the Dossetter affidavit. The report included:

It is the latest in a series of allegations, scandals and top level inquiries into the \$100 m. a year scampi fishery.

[11] During the same *Morning Report* programme, Radio New Zealand published Mr Carter saying:

I sent it [the affidavit ] to the Speaker seeking his advice as to what to do with this affidavit. The response I got from him gave me no choice but to formally lodge it with the Speaker for him to determine whether it is in fact a breach of standing orders. (the third statement)

[12] The pleading in respect of the third statement is:

- a) The allegation was published to Radio New Zealand on or before 23 June 2004;
- b) The allegation conveyed the meaning that Mr Peters:
  - (i) Was a party to serious misconduct;
  - (ii) Is in contempt of Parliament.
- c) The allegation and the meanings as pleaded are untrue and defamatory of Mr Peters.

## Law

[13] On a strike-out application, it is necessary to assume that the facts as pleaded in the statement of claim are correct. In this case, that means I have to accept that Mr Peters may be able to prove that Mr Carter advised TVNZ that he had written to the Speaker calling for an investigation of the allegations made against Mr Peters in the Dossetter affidavit (para 8(b) above). Mr Carter, in his statement of defence, denies this allegation. A proceeding should only be struck out if the cause of action is so clearly untenable that it cannot possibly succeed. The jurisdiction is exercised sparingly and only in a clear case where the Court is satisfied that it has the requisite material and the cause of action cannot succeed.

[14] This is not a case on which Mr Peters relies upon a true or legal innuendo. There is no pleading in accordance with s37(3) of the Defamation Act 1992. Mr Peters relies upon what has sometimes been described as a false innuendo, namely, an implication which is to be derived from the words themselves without extrinsic aids. It is pleaded in accordance with s37(2) of that Act that the alleged meanings are part of the natural and ordinary meaning of the words used. They must be construed in accordance with the principles set out in paragraph 16 below which requires appropriate regard to be taken of the mode of publication and the surrounding circumstances.

[15] It is well settled law that the determination of the meaning or meanings the words are capable of bearing is treated as a question of law and is to be determined by the Judge. If the words are capable of bearing a defamatory meaning, it is for the jury to say whether in fact the words do convey a defamatory meaning: see Blanchard J in *New Zealand Magazines Ltd v Karen, Lady Hadlee* (CA74/96, 24 October 1996).

[16] There is a summary of the principles to be applied by the Judge in Blanchard J's judgment in the *New Zealand Magazines* case. He said:

In determining whether words are capable of bearing an alleged defamatory meaning:

- (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.

[17] Mr McVeigh QC, for Mr Carter, submitted that words which do not convey more than mere suspicion are not capable of bearing the meanings contended for by the plaintiff, ie that of actual guilt. He referred to the statement in *Gatley on Libel and Slander* (10<sup>th</sup> ed. Para 3.26) where after saying that a rumour of guilt is defamatory says:

But the same does not apply to statements that C is under suspicion or investigation, for if the ordinary sensible person was "capable of thinking that whenever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything."

[18] The authority given is Lord Devlin in *Lewis v Daily Telegraph* [1964] AC 234 at 286. The commentary needs to be clarified. Lord Devlin said at p285:

But a statement that an inquiry is on foot may go further and may positively convey the impression that there are grounds for the inquiry, that is, that

there is something to suspect. Just as a bare statement of suspicion may convey the impression that there are grounds for belief in guilt, so a bare statement of the fact of an inquiry may convey the impression that there are grounds for suspicion. I do not say that in this case it does; but I think that the words in their context and in the circumstances of publication are capable of conveying that impression. But can they convey an impression of guilt? Let it be supposed, first, that a statement that there is an inquiry conveys an impression of suspicion; and secondly that a statement of suspicion conveys an impression of guilt. It does not follow from these two suppositions that a statement that there is an inquiry conveys an impression of guilt. For that, two fences have to be taken instead of one. While, as I have said, I am prepared to accept that the jury could take the first, I do not think that in a case like the present, where there is only the bare statement that a police inquiry is being made, it could take the second in the same stride. If the ordinary sensible man was capable of thinking that wherever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything: but in my opinion he is not.

[19] In *Lewis v Daily Telegraph*, two daily newspapers published front page stories headed "Inquiry on Firm by City Police" and "Fraud Squad Probe Firm." The substance of the articles was that the police were inquiring into the affairs of a company of which Mr Lewis was Chairman. The relevant paragraph of the statement of claim read:

By the said words the defendants meant and were understood to mean that the affairs of the plaintiffs and/or its subsidiaries were conducted fraudulently or dishonestly or in such a way that the police suspected that their affairs were so conducted.

The majority of Their Lordships held that it was not possible to infer guilt of fraud merely because an inquiry was on foot. Lord Hodson noted that suspicion can be inferred from the fact of an inquiry, but it is not possible to infer guilt because that would be drawing an inference from another inference (p274). The fact that it is not possible to impute guilt from an inquiry does not mean that a report of an inquiry or of a suspicion of guilt cannot be defamatory. It may be defamatory to say a person is suspected of fraud because, in the circumstances, the statement may suggest that the person is guilty of fraud. Whether this is so or not may depend on whether the impression conveyed by the speaker is one of frankness or one of insinuation. Further, a statement that a person is under inquiry may, in the circumstances, be defamatory but the statement cannot mean that the person is guilty of the offence which is being inquired into. In those cases where the allegations are of suspicion or inquiry, the defendant may be able to justify (i.e. rely upon the defence of truth).

### **Submissions on behalf of Mr Carter**

[20] Mr McVeigh, after noting that Mr Peters is not alleging an innuendo, submitted that the words used in the three statements are not reasonably capable of bearing the defamatory meaning pleaded. Further, the Court is not entitled to look at any material beyond the words as pleaded by Mr Peters. This is not a case where the context is relevant because there is no pleading in respect of context. It was further submitted that Mr Peters cannot rely on the context of the broadcasts by TVNZ and Radio New Zealand for two reasons:

- a) It is not pleaded except as an aggravating factor going towards damages but not towards meaning;
- b) Mr Carter could not be held liable for the publications by TVNZ and Radio New Zealand as the final product was something very different from the material which he furnished to the representatives of the News media.

[21] On the fundamental issue, it was submitted that the words used were not capable of bearing the meaning that Mr Peters was a party to serious misconduct or was in contempt of Parliament. These words must in the circumstances be given their natural and ordinary meaning without reference to any other published words and without reference to the broadcasts by TVNZ and Radio New Zealand. It was submitted that as a matter of primary impression, the words cannot bear the meanings contended for. While not conceding that Mr Carter's words carried an imputation of suspicion, it was submitted that such an imputation was the worst that these words could be said to be capable of bearing and, as such, could not be defamatory.

[22] Counsel submitted that the only meanings that the statements made by Mr Carter are reasonably capable of conveying are:

That Mr Carter had an affidavit which contained serious allegations in it which warranted further investigation by the Speaker of the House because they carried with them the possibility that the plaintiff may or may not have been guilty of breach of privilege;

That Mr Carter was not able to say whether the allegations were correct or not. The statements did not suggest that Mr Peters was in fact a party to



serious misconduct or was in fact in contempt of Parliament. They only conveyed a suspicion.

[23] Mr McVeigh submitted that the ordinary reasonable person would have considered that Mr Carter was a Member of Parliament dealing with serious allegations made against another Member of Parliament. He was without making any judgment as to their truth, referring the allegations to the appropriate authority for inquiry and decision. Mr Carter was merely saying that the material in his possession was serious enough to warrant investigation by the Speaker. Further, this was a case which, in the words of Lord Devlin in *Lewis v Daily Telegraph*, would not make an ordinary sensible man conclude that there was guilt.

#### **Submissions on behalf of Mr Peters**

[24] Mr Henry, on behalf of Mr Peters, said that if considered necessary, he would amend the statement of claim and plead that the statements made by Mr Carter not only alleged that Mr Peters was a party to serious misconduct and was in contempt of Parliament, but also that there was a suspicion that he was a party to such misconduct and in contempt of Parliament. The essential difference between Mr Henry's position and Mr McVeigh's position is that Mr Henry submitted that the reasonable person hearing Mr Carter's comments, would consider Mr Peters was either guilty of or under suspicion of guilt in respect of both serious misconduct and contempt of Parliament. This was because Mr Carter on the basis of an affidavit containing hearsay comments, had made a complaint to the Speaker of the House and in his comments had conveyed that Mr Peters was not only suspicion but was actually guilty.

[25] The starting point for Mr Henry was the receipt by Mr Carter, in his capacity as Chairman of the relevant Select Committee, of the Dossetter affidavit from a fellow Member of Parliament. He agreed that no objection could be taken by Mr Peters if Mr Carter had merely sent that affidavit to the Speaker for further investigation. While Mr Carter did this, he also told the media and the world what he had done. This was a case of a competitor seeking a good story to damage a fellow competitor. Mr Carter went on camera to provide a news byte so that the

scandal could ignite. Mr Henry also submitted that it was Mr Carter who initiated the publicity.

[26] The first and second statements form the basis of one cause of action. Mr Henry relied upon both statements in support of his submission that the comments broadcast on the One News programme were defamatory. In summary, Mr Henry's allegations were that the statements indicated that Mr Carter was the complainant, had in his possession a document which contained very serious allegations, these allegations were supported by a sworn affidavit which, by implication, gave veracity to the allegations, and there was no reference by Mr Carter to the hearsay nature of the allegations. The second statement was, in effect, a re-affirmation of the truth of the first affidavit and Mr Carter depicted himself as the complainant because it was he who forwarded the affidavit to the Speaker.

[27] Mr Henry submitted that the third statement, when taken in context, meant that Mr Carter had sent the affidavit to the Speaker believing the contents to be true. By referring to "the response I got from him gave me no choice", Mr Carter was in effect adopting the allegations in the affidavit.

[28] Counsel relied on some of the matters referred to by Blanchard J in the *New Zealand Magazines* case (see para 16 above). In particular, he relied upon the comment in paragraph (d) that "the ordinary person has considerable capacity for reading between the lines." Reliance was also placed on paragraph (f), particularly the comment that the words must "be construed as a whole with appropriate regard to the mode of publication and surrounding circumstances in which they appeared." In this respect, it was submitted that regard should be had to the manner in which the media handled the matter.

[29] In respect of the "investigation/suspicion" point raised by Mr McVeigh, Mr Henry submitted that this was not a case of someone saying a complaint was being considered by the Speaker. Mr Carter went further than that and said that the affidavit contained serious allegations, the existence of the affidavit was referred to the Speaker, the Speaker responded by saying "if it was in a serious category, lay a complaint", Mr Carter then complained and made himself a complainant.

## Discussion

[30] It is necessary to consider what meaning the ordinary reasonable person would have taken from the statements. The words must be taken in context with appropriate regard to the mode of publication and the surrounding circumstances in which they appeared. In this case, Mr Carter must have known that his comments would be republished both by TVNZ and Radio New Zealand. The allegations contained in the Dossetter affidavits were serious and, if not true, were arguably highly defamatory. That the allegations were serious was acknowledged by Mr Carter in the first statement. Mr Carter, as chairman of the relevant Select Committee, was likely to be widely reported in the media on his reaction to the allegations in the affidavit which was in his possession. That there was considerable media interest in the matter would have been predictable.

[31] Mr Carter was in an invidious position. On the one hand, the allegations in the Dossetter affidavits were merely allegations. On the other hand, Mr Carter, as chairman of the Select Committee, could not ignore the allegations. He had an obligation to deal with them. This is the context and surrounding circumstances in which the statements were made. Although the context and circumstances are not pleaded as such, in my view, there is no requirement to do so. The meanings alleged do not fall within the type of meaning referred to in s37(3) of the Defamation Act.

[32] The alleged meanings which Mr Peters claims arise from the statements are that he was a party to serious misconduct and that he was in contempt of Parliament. Nowhere in any of the three statements did Mr Carter state that Mr Peters was a party to serious misconduct, or was in contempt of Parliament. The first statement given the plain and ordinary meaning as would be understood by a reasonable person would, in my view, be understood in the circumstances and context to convey:

- Mr Carter had received a copy of the affidavit which made serious allegations against Mr Peters;
- Because the allegations were very serious, he felt he had an obligation to advise the Speaker of them;

- The Speaker, after being advised of the allegations, told Mr Carter that if he thought the allegations were serious, he should formally write to him suggesting that he investigate.

[33] The cumulative effect of the various meanings in the first statement was, in my view, no more than that Mr Carter had received a sworn affidavit which contained very serious allegations against Mr Peters, on which he had sought advice from the Speaker and had been advised that if he considered the allegations serious, he should write to the Speaker suggesting an investigation. I cannot read into the first statement any suggestion that Mr Carter was adopting the allegations or in any way suggesting that Mr Peters had been guilty of them. Standing on its own, I do not agree that the first statement is capable of conveying the meanings that Mr Peters was a party to serious misconduct, or was in contempt of Parliament. Even the knowledge which Mr Carter undoubtedly had that his statements would appear during high profile news items do not, in my view, convert the first statement into an allegation by Mr Carter that Mr Peters was a party to serious misconduct or was in contempt of Parliament.

[34] The second statement did not, in my view, contain serious allegations. In fact, the contrary is probably correct. Mr Carter made it perfectly clear that it was not for him to judge Mr Peters by determining whether the allegations were correct or not. However, because the allegations had been made in an affidavit, the matter required investigation so that it could be resolved one way or the other. This statement, whether taken on its own or when considered with the first statement, is not capable of conveying to a reasonable person of ordinary intelligence, general knowledge and experience of worldly affairs, even reading between the lines, that Mr Peters had been guilty of either serious misconduct or contempt of Parliament. Even if there were subsequently suggestions in the news items in which the clips were played suggesting impropriety on behalf of Mr Peters, there was nothing in the words uttered by Mr Carter which suggested he was *guilty of such impropriety*.

[35] In the third statement, Mr Carter told the Radio New Zealand reporter that on receipt of the affidavit, he sent it to the Speaker seeking his advice. That advice gave him no choice but to formally lodge the affidavit with the Speaker for him to determine whether it was in fact a breach of Standing Orders. Once again, I cannot

read into this statement any implication, when the words are taken in their plain and ordinary meaning, that Mr Peters was a party to serious misconduct, or was in contempt of Parliament. The affidavit contained allegations. Mr Carter sought advice from the Speaker of the House. This advice was to lodge the affidavit with the Speaker so the latter could determine whether there was a breach of Standing Orders. It would have been remiss of Mr Carter not to have sought advice from some person of higher authority. Nowhere in the statement is there a suggestion that Mr Carter accepted that the allegations were correct.

[36] It is therefore my view that the statements, whether taken individually or cumulatively, are not capable of conveying to the ordinary person the meaning that Mr Peters had committed serious misconduct or that he was in contempt of Parliament. Whether Mr Carter was technically a complainant or not is irrelevant. He received serious allegations as a chairman of a Select Committee, took advice and followed it. At no stage did he suggest in any of the three statements that he believed the advice to be correct. I do not accept that implication can be taken from the plain and ordinary words of the statement. Whatever Mr Carter's motives may have been, they are, in my view irrelevant. It is necessary for a Judge to rule on the basis of the principles summarised in the *New Zealand Magazines* case and these do not include the motives of the maker of the statement.

[37] In the circumstances, there will be an order striking out the causes of action against Mr Carter. This, however, may not be the end of the matter. Mr Henry indicated that Mr Peters would replead. As noted, statements imputing suspicion that a person may have committed an offence are capable of being defamatory. Also a statement that there is to be an inquiry may be defamatory in certain contexts and circumstances. While there may be a defence to such allegations, whether it be qualified privilege or truth, those are matters which are not currently before me. On the material before me, I can see no objection to the matter being repleaded on the basis that the statements conveyed the meaning that there was a suspicion that Mr Peters had been a party to serious misconduct, and was in contempt of Court, and that in the circumstances such statements were in themselves defamatory. There could be a similar pleading in respect of the inquiry.

### **The damages issue**

[38] Specific damages have not been pleaded against any of the defendants because of s43(1) of the Defamation Act which states:

43(1) In any proceedings for defamation in which a news medium is the defendant, the plaintiff shall not specify in the plaintiff's statement of claim the amount of any damages claimed by the plaintiff in the proceedings.

Mr Henry takes the view that this section prevents damages being specified because two of the defendants are news media.

[39] In the end, this matter was not argued before me because Mr Peters said that he would advise Mr McVeigh of the amount of damages being sought. In the circumstances, it is not necessary for me to make an order. There are two possible interpretations of s43(1). The first is that if there is more than one defendant it only applies in respect of the news medium defendant. This is because the section refers to proceedings in which "a news medium is the defendant". (emphasis added) If the section was intended to apply to all defendants, whether news medium or not, the reference would have been to "a defendant." The second view is that the section does apply to defendants other than news media. This is because the section refers to "any proceedings for defamation in which a news medium is the defendant." (emphasis added) It is the proceeding to which the section applies, if there is a news medium defendant, and not the cause of action against the news medium.

[40] The first view appears to have been adopted in *O'Regan v The Radio Network Ltd* [2001] 1 NZLR 568 where it is apparent from the judgment that damages were specified against parties who were not news media but were not specified against the news media defendants. The judgment makes no comment on whether or not the statement of claim infringed s43(1). It is apparent from the debate on the Defamation Bill that the reason for the section is to prevent gagging writs. Although not stated, it would seem that s43(1) is aimed at preventing gagging writs against the news media, while s43(2) is aimed at preventing gagging writs where the defendants are not news media. Thus in the context of s43, s43(1) may only apply to the news medium defendant. This is the view I prefer. An argument to the contrary

is that a proceeding can indirectly become a gagging writ against a news medium if large damages are specified against the defendants who are not news media. However, if s43(1) requires interpretation, it should be done in a case where the matter is at issue and the Court has had the benefit of submissions in support of both interpretations.

### **Order**

[41] The causes of action against Mr Carter, namely, the fourth and sixth causes of action, are struck out.

### **Costs**

[42] Mr Carter is entitled to costs which are fixed on the basis of Category 2B, together with disbursements, fixed, if necessary, by the Registrar.

Signed at

am/pm on

2004

B J Paterson J