

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

**CIV-2004-404-003311**

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: 3 August 2006

Appearances: B Henry for Plaintiff  
W Akel for First Defendant  
C A McVeigh QC for Fourth Defendant

Judgment: 30 August 2006

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**JUDGMENT OF ASSOCIATE JUDGE CHRISTIANSEN**

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[1] Mr Carter and TVNZ want me to strike out Mr Peters' defamation case against them on the basis that what was said by Mr Carter and what was broadcast by TVNZ is incapable of being considered defamatory by an ordinary, reasonable person.

[2] The starting point of my considerations focuses upon Mr Peters' third amended statement of claim. In an earlier statement of claim, Mr Peters alleged that the statements/broadcast asserted that Mr Peters was a party to serious misconduct or contempt of Parliament. Mr Peters claimed the statement contained a clear inference of guilt of wrongful conduct.

[3] Mr Carter challenged those claims when he filed a strikeout application similar to that I am considering. The previous strikeout application was heard before Paterson J on 15 October 2004. At that time Paterson J noted it was his function to determine the meaning or meanings that the words are capable of bearing, because that was a question of law. If the judge determines the words are capable of bearing a defamatory meaning then it will be for the jury to say whether in fact the words do contain a defamatory meaning.

[4] After reviewing the statements made by Mr Carter, Paterson J held that none of the statements on their own, nor when considered as a whole, was capable of conveying to the reasonable person of ordinary intelligence, general knowledge and experience of worldly affairs, even reading between the lines, an assertion that Mr Peters had been guilty of either serious misconduct or contempt of Parliament. The learned judge struck out Mr Peters' claims against Mr Carter.

[5] Mr Peters has re-cast his claims against Mr Carter in the form I now have to consider. The allegations that impute guilt of wrongful conduct have been replaced by allegations that Mr Carter's statements contain allegations that Mr Peters is suspected of being a party to serious misconduct. If I determine that Mr Carter's statements are capable of bearing that meaning, then the trial judge will have the task of explaining the effects and implications of my ruling to the jury, whilst reminding them that the words are not capable of supporting an allegation of guilt of wrongful conduct against Mr Peters.

[6] TVNZ has not previously filed a strikeout application. Mr Peters' claims against TVNZ concern;

- (i) its television news broadcast on 22 June 2004;

(ii) its broadcast of the Holmes show item on 23 June 2004; and

(iii) its TVNZ website publication on 23 June 2004.

[7] TVNZ's strikeout application concerns only the second of these claims.

#### Judgment of Paterson J

[8] It provides a sufficient summary of the background to the dispute; no further detailed summary is needed of me in this judgment. Likewise I need not explain again the principles I should bear in mind upon a strikeout application. As the learned judge noted, these are well understood.

#### The Pleadings

[9] In the form in which they are presented by the third amended statement of claim, they provide a complex and often confusing combination of text and context. The boundary line between the two is difficult to decipher. The distinction is nevertheless an important one: in particular in this case as it affects the claim against Mr Carter. I will explain shortly.

#### The Claim Pleaded Against Mr Carter

[10] It comprises two levels:

- i) The allegations were of a very, very serious nature, warranting further investigation; and
- ii) They gave cause for suspicion that Mr Peters was party to serious misconduct and/or was in contempt of Parliament.

[11] The first level of those allegations provides little more than a verbatim account of what was said. Few, if any, particulars of meaning alleged have been given. Mr Peters does not suggest the words contain a true innuendo. Rather his claim is based on a claim that extended meanings of the words used give "false" innuendoes. In that respect he relies upon the "inner message", the "intended sense". He relies, as Mr McVeigh submits, upon some distillation of the actual words

themselves into a message or a symbol rather than the mere replication of those words. As such, and as a pleading, they may be inadequate because they fail to comply with s37(2) of the Act which requires the meanings of the words to be pleaded.

[12] I refer now to the second level of those allegations; namely that the words mean there was cause for suspicion that Mr Peters was party to serious misconduct or in contempt of Parliament in the course of the business in the select committee. Having retrenched from the position of alleging the words contained an allegation of guilt, Mr Peters' case is that the words mean there are reasonable grounds to suspect his involvement with unlawful conduct.

[13] Mr Henry submits it is important to look at the whole of the pleadings and the events encompassed by it. He said Mr Peters is not precluded from particularising the allegations he has (which I have identified as comprising two levels), but he acknowledges at the first level (very, very serious allegations warranting further investigation) it amounts to an allegation which does not suggest anything more than that there was a cause for an inquiry. Mr Peters also relies upon the allegation of suspicion of connection to serious misconduct (the second level). Mr Henry says a reasonable jury could find there was in those words spoken meaning that there was suspicion that Mr Peters was party to a serious misconduct. Mr Henry said if Mr Carter had simply stated:

“I have received an affidavit.  
It has referred to allegations,  
and concerns Mr Peters.”

then Mr Peters could not have challenged that. Instead he says inflammatory language was used, in particular by reference to the phrase “very, very serious allegations”. Mr Henry submits the first level of allegations therefore supports the second level by giving meaning to the whole.

[14] I do not agree.

[15] I consider that the statements made by Mr Carter are capable of bearing these meanings:

- i) Mr Carter had received an affidavit which contained serious allegations in it.
- ii) Mr Carter referred the affidavit to the Speaker for inquiry because there was a possibility that the plaintiff may or may not have been guilty of breach of privilege and/or misconduct; and,
- iii) Mr Carter could not say whether the allegations were correct or not.

[16] Therefore the statements can do no further than say that, because of the allegations contained in the affidavit, there was to be an inquiry. They do not go so far as to say that Mr Carter gave the impression that there were any reasonable grounds for suspicion that Mr Peters had been a party to serious misconduct or was in contempt of Parliament. There is nothing to suggest Mr Carter adopted the allegations. He passed no comment about the merit of them. He specifically stated it was not for him to judge “whether the allegations were correct or not”.

[17] Knowing Mr Carter was a Member of Parliament dealing with serious allegations made against another Member of Parliament, it is likely that the ordinary, reasonable person would infer that as a Member of Parliament and Chairperson of the select committee, Mr Carter took the appropriate course of action in referring the allegations contained in the affidavit to the Speaker for inquiry without adopting the allegations or making any judgment as to their merits. At worst, it could have been seen as political by-play.

[18] I am satisfied the statements mean no more than that the allegations contained in the affidavit are serious enough to warrant investigation by the Speaker.

[19] At the time the statements were made there was no disclosure of the contents of the affidavit. Neither was there, from the words of the statement, any meaning which could reasonably be inferred as suggesting that Mr Carter adopted the

allegations contained in the affidavit. It makes no matter in what form the claim of defamation against Mr Carter has been pleaded, for an allegation of suspicion of involvement with unlawful conduct is quite unreasonable. I consider a claim of defamation cannot then be sustained at that level. Therefore the pleading against Mr Carter should in its entirety be struck out.

#### The Claim Against TVNZ

[20] If Mr Peters has resiled from a claim that Mr Carter's statements impute guilt, he makes no such concession concerning the Holmes programme. The claim against TVNZ recites the Holmes programme in its entirety, but expressly states it does not rely upon those words recounting the disclosure by Mr Shirley (another party being sued by Mr Peters) in Parliament, which are subject therefore to Parliamentary privilege.

[21] Mr Peters' case pleads that the public "would further understand" from the Holmes programme that there was an assertion of involvement in serious misconduct of a potentially criminal nature. He expressed he does not rely upon the words reporting Mr Shirley's disclosure in Parliament: perhaps understandably, because they refer not to Mr Peters but to other persons.

[22] Mr Henry submits it is proper to use what is said in Parliament to understand the meaning of words used out of Parliament. He says the programme affirms what the affidavit says. Although strictly the allegations concern the payment of a sum of money to another person, it is alleged Mr Peters was present and that people would consider he was involved. Mr Peters had previously employed that other person. Against this background Mr Henry submits the programme scene is set:

- i) There is reference to many phone calls.
- ii) There is reference to more serious allegations in the affidavit that have not been independently verified.
- iii) The programme then inserts what Mr Shirley said in Parliament.

- iv) There is reference back to the affidavit deponent who said she stood by her claims.
- v) There is reference to a statement by Mr Simunovich against whose company allegations of impropriety had previously been levelled, reporting that those allegations had been dismissed and rejecting claims of inappropriate association with or by Mr Peters.

[23] In the context as outlined, and against the background of Mr Carter's earlier reported statements, Mr Henry submits there is an allegation of improper conduct in which Mr Peters was intimately involved. Specifically, Mr Peters claims:

- a) The select committee, of which Mr Peters was a member, cleared Simunovich Fisheries of any wrongdoing;
- b) The Simunovich family bribed Mr Peters in order to obtain a favourable outcome in the inquiry;
- c) Mr Peters accepted a bribe in return for influencing that outcome;
- d) Mr Peters influenced the outcome to clear Simunovich Fisheries of any wrongdoing;
- e) Mr Peters was paid a substantial sum of money as a bribe;
- f) Mr Peters was involved in serious misconduct which was potentially criminal and was a contempt of Parliament.

[24] Mr Henry submits that the Holmes show report of Mr Simunovich's denial only heightens concern for Mr Peters. This is because the theme of the story is Mr Peters taking a bribe against the background that he was a member of the committee that cleared Mr Simunovich of illegal practices.

[25] Mr Henry also submits that the Holmes programme, with its references to portions of the affidavit having been read by Mr Shirley in Parliament, together with Mr Carter's claims in his public statement that the affidavit contained very, very serious allegations, amounts to a publication in public of everything that was mentioned by Mr Shirley in Parliament. Frankly I think that explanation involves a contortion of fact and circumstance. I do not support the argument contended for on behalf of Mr Peters. I have already ruled that Mr Carter's statements are not capable of bearing defamatory meaning. Nor, in the context of matters pleaded against TVNZ, do they support a claim that a publication of what was said in Parliament thereby becomes a publication to the public.

[26] Mr Peters appears to spread his context net wider than he should. That is borne out by Mr Henry's submission that Mr Carter's claim that the affidavit contains very, very serious allegations amounts to a publication of everything that was said in Parliament. That approach is borne out also in the method of pleading used. The claim against TVNZ refers (para 10) to the fact that the deponent stood by her claims in it; and to the fact that the fifth defendant had referred to it in Parliament when he had read it out. However it cannot be that by this pleading there has been a publication of the affidavit outside of Parliament. Clearly nowhere in the statement of claim has it been alleged that those particular affidavit allegations were broadcast by TVNZ, or indeed by anyone else.

[27] The proper context in which to consider the broadcast by TVNZ is to refer to the Holmes programme in its entirety. It is not sufficient to look at parts of the whole and to plead a particular meaning from the parts.

[28] As pleaded, it does not appear to me that the Holmes show broadcast is capable of meaning that TVNZ itself has adopted the allegations as true and is itself alleging the conduct reported on. The only link which appears to serve an alternative view of matters lies in the affidavit and allegations in it. That link is at best tenuous to assist Mr Peters' claim. In fact the allegations in the affidavit were raised in Parliament. Viewers would not expect or take from the broadcast that TVNZ has adopted and is making the allegations itself.



[29] The broadcast makes it clear that the allegations are expressly reported as coming from the affidavit and not from TVNZ. In fact, the third amended statement of claim expressly recognises it was the fifth defendant who was making the allegations which were reported on the programme.

[30] Allegations of guilt, or statements supporting claims that the conduct alleged actually occurred, are not supported or supportable for the following reasons:

- i) Constant repetition of the word “allegations” put the conduct into a category of “suspicion” rather than guilt or actual involvement;
- ii) The Holmes show clearly reported the rebuttal and denial by Mr Simunovich of the allegations or any connection by Mr Peters to them;
- iii) Merely because the affidavit deponent expressed concerns of the Government select committee’s impartiality;
- iv) Because Mr Shirley stressed he was not making allegations but rather because of their serious nature was looking for a process for resolution of them;
- v) Mr Shirley said Mr Simunovich’s denial may well be the truth, and that is why a process of clarification was needed.

[31] I consider these other parts of the programme, taken together with the full text of Mr Simunovich’s denial and rejection, provide proper context in consideration of which claims of guilt of unlawful conduct or contempt of Parliament are not supportable by reference to any meaning contained in the Holmes show. TVNZ at no time said it adopted the allegations, much less that it was making them.

[32] I earlier stated the pleading was difficult to follow because of the manner in which it endeavoured to plead context in circumstances where I consider there was

no proper basis to plead the contents of an unpublished affidavit in support of the contextual framework. I have held the pleading against Mr Carter could not support a meaning of suspicion of involvement in unlawful behaviour to the level required. In reviewing the case against TVNZ I have assumed Mr Peters claims the Holmes show broadcast alleges guilt of unlawful behaviour as opposed to suspicion of unlawful conduct.

[33] What Mr Carter said could not, for the purposes of my review, be tainted by anything said elsewhere by TVNZ, radio or otherwise. The fact that Paterson J previously said Mr Carter's statements could not be understood to mean Mr Peters was guilty of unlawful conduct or was in contempt of Parliament, and the fact that Paterson J permitted the case against Mr Carter to be re-pleaded does not mean the learned judge considered the third statement of claim would be an acceptable substitution for the pleading he reviewed. My judgment goes further and rejects any claim that Mr Carter's statements are capable of supporting any inference of a suspicion of guilt.

[34] Insofar as TVNZ is concerned, my judgment goes only so far as rejecting the notion that a reasonable person of ordinary intelligence, general knowledge and experience of worldly affairs, even reading between the lines, would consider that the Holmes show asserts Mr Peters had been guilty of either serious misconduct or contempt of Parliament.

## Orders

- i) The words alleged against Mr Carter are incapable, as a matter of law, of bearing any of the meanings pleaded by Mr Peters. Therefore the particulars of Mr Peters' claim against Mr Carter discloses no reasonable cause of action, and it shall be struck out.
- ii) The words broadcast by TVNZ in its Holmes programme on 23 June 2004 are not reasonably capable of bearing the meanings that Mr Peters was involved in serious misconduct, that his conduct was potentially criminal, or was in contempt of Parliament. Accordingly, pleadings alleging Mr Peters was involved in that conduct are struck out.
- iii) As requested by counsel, costs in the outcome of these applications shall be reserved pending receipt of memoranda from counsel.

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Signed at: 1 pm

on: 30 August 2006

*Solicitors:*

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