

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

CIV-2015-404-1845

UNDER the Defamation Act 1992
BETWEEN JORDAN HENRY WILLIAMS
Plaintiff
AND COLIN GRAEME CRAIG
First Defendant

Hearing: 9 September 2016
Counsel: P A McKnight and A Romanos for plaintiff
S J Mills QC and J Graham for first defendant
H Wilson for R MacGregor (interested party)
Date of Minute: 9 September 2016

**MINUTE NO. 2 OF KATZ J
[In-Court Media Coverage of witness]**

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[1] The plaintiff, Jordan Williams, alleges in these proceedings that the defendant, Colin Craig, the former leader of the Conservative Party, has defamed him. A key witness in the trial, which is now in its fifth day, will be Rachel MacGregor, Mr Craig's press secretary. Amongst other things, the nature of Ms MacGregor's relationship with Mr Craig, and what Ms MacGregor told Mr Williams about that, is in issue at trial. It is currently envisaged that Ms MacGregor will be called to give evidence for the plaintiff on Monday.

[2] Although no applications for in-court media coverage were received prior to trial, in accordance with the in-court media coverage guidelines, a number of applications have been received since the trial commenced. Those applications have all been granted, subject to leave being reserved for any witness to oppose being filmed, photographed or recorded. Ms MacGregor, through her legal adviser Hayden Wilson, has advised that she does not wish to be photographed, filmed or recorded while giving evidence.

[3] I have heard brief submissions on behalf of the media from Mr Hollingworth on behalf of Mediaworks, Ms Tahana on behalf of TVNZ and Ms Leask on behalf of NZME. They support the applications to variously film, record or photograph Ms MacGregor whilst she gives evidence. The key points made in support of in-court media coverage of Ms MacGregor's evidence include that:

- a) Ms MacGregor was previously a press officer, and is very experienced in dealing with journalists.
- b) Her identity is already well known, photographs of her are already in the media and have been used in reporting this story.
- c) Her credibility is likely to be in issue at trial. The jury will be looking at her demeanour and taking that into account and the public should be able to see that also.
- d) This is a defamation case involving a public figure. There is therefore a strong public interest element. The interests of open justice favour media reporting.
- e) The public should be able to hear Ms MacGregor's evidence in her own voice to be able to give it its full context and meaning.

- f) The In-court Media Coverage Guidelines (“Guidelines”) generally support the application, including the desirability of open justice as well as the principle that the media have an important role in the reporting of trials as the eyes and ears of the public.

[4] On behalf of Ms MacGregor, Mr Wilson submitted that open justice would not be compromised by declining the applications for in-court media coverage. There is no question that the media are entitled to report on what Ms MacGregor says in the witness box. However, the nature of her evidence and the cross-examination she is going to be subjected to is likely to be highly personal in nature. Being filmed and recorded will increase her stress and anxiety. She is not a party to the proceedings but is having her personal circumstances, in effect, dragged through the court by others. Her role, however, is solely that of a witness, albeit even that is against her preference. Ms MacGregor is no longer a public figure and there is no public interest in seeing her give evidence as opposed to the media being able to fully report on it.

[5] Mr McKnight supported the submissions made by Mr Wilson. Mr Mills took a neutral position.

[6] The Guidelines provide helpful guidance in respect of applications such as the present one, although they do not have legislative force. Ultimately any decision is at the discretion of the Court.¹ The Guidelines state that, in considering an application, the court may have regard to the following matters:

- a) the need for a fair trial;
- b) the desirability of open justice;
- c) the principle that the media have an important role in the reporting of trials as the eyes and ears of the public;
- d) Court obligations to the victims of offences; and

¹ See generally *R v Sila* [2008] NZAR 294 (HC); *R v Crutchley* HC Hamilton CRI-2007-068-83, 16 May 2008; *R v Dixon* HC Auckland CRI-2003-92-26923, 19 June 2008; And for civil cases: *Mutual Finance Group Ltd v Duff* HC Napier CIV-2008-441-000154, 1 August 2008; *Polymer Group Ltd v South Vineyard Ltd* HC Wellington CIV-2009-485-1298, 8 November 2010; *Ortmann v United States of America* [2016] NZHC 2043.

- e) the interests and reasonable concerns and perceptions of the parties, victims and witnesses.

[7] Guideline 12 also it provides further discretionary guidance in relation to coverage of witnesses. The most relevant guidelines for present purposes are:

- a) whether covering the trial is likely to affect adversely the quality of the evidence to be given by the witness;
- b) whether being filmed, photographed or recorded may cause undue stress or anxiety to the witness;
- c) whether the witness' privacy interests outweigh the public interest in publishing or using that witness' evidence, given the likely significance of the evidence.

[8] In my view, the key competing interests in this case are the interests of open justice on the one hand, and the privacy interests of Ms MacGregor, on the other hand.

[9] In terms of open justice principles, I accept that this is a high profile case involving a former politician. It has attracted extensive media attention. As the Guidelines note, the media have an important role in the reporting of trials as the eyes and ears of the public.

[10] On the other hand, I am required to take into account the interests (including the privacy interests) and reasonable concerns and perceptions of Ms MacGregor. While Mr Williams and Mr Craig may not shy away from publicity, Ms MacGregor has never actively sought it. On the contrary, the evidence currently before the Court indicates that Ms MacGregor has sought to avoid publicity throughout. She did not wish for the details of her personal relationship and correspondence with Mr Craig to enter the public arena. It is alleged in these proceedings (although I am not required to make any findings on the issue) that both the plaintiff and the defendant have breached their respective confidentiality obligations to Ms MacGregor. It also appears from the evidence to date that she did take active, but ultimately unsuccessful, steps to try and prevent information regarding her relationship with Mr Craig from reaching the public arena. Ms MacGregor is not a party to these proceedings, but simply a witness. The subject matter of her evidence is deeply personal, relating as it does to allegations of

possible sexual harassment and the general nature of her personal relationship with Mr Craig.

[11] Ms MacGregor has expressed a wish to move past the events in question, albeit that will obviously not be possible until after this trial. If her evidence is filmed and recorded, however, those recordings may well be available on the internet in perpetuity. Allowing Ms MacGregor to be filmed, photographed or recorded would, in my view, constitute a very significant intrusion on her privacy in relation to matters that are highly personal in nature. Further, I am concerned (as submitted by Mr Wilson) that in-court media coverage will significantly increase the stress of giving evidence on Ms MacGregor, given the personal nature of the evidence she will be required to give.

[12] I have carefully considered the interests of open justice. In my view they do not outweigh Ms MacGregor's privacy interests. Although this is a high profile case involving a defendant who is a political figure (or was at the time of the relevant events) Ms MacGregor is not herself a political figure. Indeed her counsel has advised that she is no longer a public figure at all. The interests of open justice in this case will, in my view, be met by the media being able to fully report on her evidence. There are currently no suppression orders in relation to any aspects of her evidence. The media will therefore be able to fully report on her evidence, without constraint. Any limitations on freedom of expression are therefore extremely minor in the circumstances. The media's ability to keep the public well informed will not be hampered.

[13] For all of the reasons outlined I decline all applications to film, photograph or record Ms MacGregor's evidence.

A handwritten signature in blue ink, appearing to be 'J. Katz', is written over a horizontal line.

Katz J