

IN THE SUPREME COURT OF NEW ZEALAND

SC 116/2010
[2011] NZSC 4

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND THE SOLICITOR-GENERAL
 Respondent

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: Applicant in person
 F Sinclair for Respondent

Judgment: 7 February 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$2500 to the respondent.

REASONS

[1] The proposed appeal is against an award of indemnity costs in favour of the Solicitor-General. Mr Siemer published on two websites extracts from a pre-trial ruling in a criminal matter in breach of a suppression order, as the High Court found.¹ That finding has not been the subject of any appeal.

[2] Because the material remained on the websites the Solicitor-General brought contempt proceedings and sought costs. After several weeks Mr Siemer removed several passages from the websites and, as a result, the Solicitor-General concluded that there was no longer any current breach. Mr Siemer also signed an undertaking not to breach the suppression order in the future.

¹ *Solicitor-General v Siemer* HC Auckland CIV-2009-404-6243, 9 October 2009 at [16] per Winkelmann J.

[3] In those circumstances the Solicitor-General obtained leave to discontinue but indicated he wished to apply for costs. The High Court made an order for indemnity costs² which the Court of Appeal has now upheld,³ relying on r 14.6(4)(a), (b) and (f) of the High Court Rules.

[4] The proposed appeal is unarguable. Mr Siemer was held to be in breach of the High Court's order for suppression and seems to have acted with deliberation in publishing the material. The costs order was permissible in terms of the High Court Rules. Although Mr Siemer has not been held to be in contempt on this occasion, he has been held to be in breach of a court order and, if he had not removed the particular portions of the websites, he would surely have been found to be in contempt. Mr Siemer elected to sign an undertaking which implicitly admitted the weakness of his position. The Solicitor-General then took the sensible course of discontinuing the contempt application as his objective had been achieved but signalled at the time that costs would still be pursued.

[5] The award of indemnity costs was well open to the High Court. The allegation of bias against the Judge, made simply on the basis that he made an inquiry of Crown counsel about whether the excisions made the websites comply with the suppression order, has no basis. It seems that the Judge had been invited to consider this question by counsel but, in any event, the Court had necessarily to satisfy itself that its own order was now being complied with.

Solicitors:
Crown Law Office, Wellington

² *Solicitor-General v Siemer* HC Auckland CIV-2009-404-6747, 26 February 2010 per Lang J.

³ *Siemer v Solicitor-General* [2010] NZCA 549 per Chambers, MacKenzie and Simon France JJ.