ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF DEFENDANT PURSUANT TO S 200 CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360346.html

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CRI-2022-004-2642
[2022] NZHC 1339

THE QUEEN

v

AB
Defendant

Hearing:	2 June 2022
Appearances:	RMA McCoubrey and J R Ah Koy for the Crown WJS Mohammed for the defendant
Date of judgment:	8 June 2022
Reissued:	9 June 2022

JUDGMENT OF JAGOSE J
[Anonymised version]

This judgment was delivered by me on 8 June 2022 at 4.00pm.

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Registrar/Deputy Registrar

Counsel/Solicitors:
J-A Kincade QC, Auckland
Meredith Connell, Auckland

[1] AB faces a manslaughter charge (jointly with BC), and four charges of assault with intent to injure. She has not previously appeared before the Court, let alone been convicted of any offence. She has interim name suppression.

[2] AB has, in relation to this Court's determination of those charges, a minimum right "to be presumed innocent until proved guilty according to law".[1] That right, so critical to the rule of law,[2] appears to have escaped the court of public opinion, at least so far as it is convened on social media. There, AB is object of and subject to sometimes anonymous or pseudonymous vituperative comment and threat, much predicated on her assumed guilt of (or at least accountability for) the charges.

[3] AB perceives such commentary presently is constrained by her name suppression order. She seeks renewed interim name suppression for herself and, by association, her parents and their businesses, on grounds of 'extreme hardship'.[3] The latter separately seek interim name suppression as being connected to AB, on the lesser 'undue hardship' grounds.[4] By 'interim' is meant 'until trial', when considerations of open justice may have heavier import, as her counsel's claim for "pre-trial name suppression" recognises.

Background

[4] The charges arise from downtown Auckland incidents occurring in the early mornings of Friday, 22 April 2022, and Sunday, 24 April 2022, the latter leading to CD's death. I extend the Court's condolences to CD's survivors. AB, BC and CD appear to have been known to each other, and moved in common or similar social circles, including online. AB is 18 years old, as I am told is BC and was CD.

[5] Within two or three hours of the 24 April 2022 incident, AB received Facebook Messenger messages from an apparently identifiable account, saying:

> You little ugly bitch and your fuck head little boyfriend. Have fun going to jail bro cause you're definitely getting charged

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1 New Zealand Bill of Rights Act 1990, s 25(c).
2 *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1 at [196]–[198].
3 Criminal Procedure Act 2011, s 200.
4 Section 202.

> And jail people love little white whack bitches like u
>
> Hope you also know that he's probably not going to live either. Hes in a coma and his heart has stopped twice. So if he doesn't make it, you will have that on your shoulders forever
>
> Ugly step sister looking ass. Hope your bf drops the soap in jail and hope u rot in hell xx

That evening, the same sender commented on AB's mother's Facebook page, "Your daughter and her partner intentionally hit [CD] with their car. He is now in a coma", attaching contemporaneous social media and text messages relating to CD's hospitalisation. Under messages on the mother's page, congratulating AB on her work, the sender commented "Nice work [**Redacted**] such skills. Maybe next time try to focus on maybe not intentionally hitting someone with your car leaving them in the ICU".

[6] Earlier the same day, a text message from an identified but unknown mobile phone number to AB read "fuck you AB … genuinely. … youre dead to me". Pseudonymous social media messages — posted to AB's Instagram account also in the few hours immediately after the incident, advised "Let BC know [I'm] coming for [him] … And u too"; and in the evening of 26 April 2022 publicly offering "cash reward to anyone who knows the whereabouts" of BC and another person — infer AB's and BC's liability for CD's death. AB explains, while she was attending the police station on 24 April 2022, some of CD's friends — understood by her to have gang associations, and one she alleges to have family violence convictions — attended the flat at which she and BC lived (together with the other person) and subsequently the police station, looking for BC. AB comprehended, taken together, these were threats to "hunt [her] down", and "as though a bounty has been placed on [BC]", all of which she understandably found "absolutely [terrifying]".

[7] On following days, an unknown sender posted messages respectively to AB's and BC's Instagram accounts: "Say goodbye to ur [DE] job you filthy Cunt … Drink bleach and eat my Shit"; and "U Rfuuuucked Cunt … You're going to look good in my boot … And your teeth are gonna look mean on a curb … Where you at?". DE is the name of the [**Redacted**] business at which AB worked as an apprentice since May 2020, including by online presence "to build [her] brand, engagement and client base".

Describing AB and BC as "[S]cum", another pseudonymous poster to AB's Instagram account would "make sure your business is washed", which AB comprehends a reference to her [**Redacted**] work.

[8] A message from the same account was posted to DE's Instagram page "Heard you guys Employ murder influencers like @AB", adding:

> It would be a shame if people found out you have a person like @AB working for you who influences running people over in trucks leaving them in life-threatening comas[.]

AB expects she has lost her job "because of this harassment", which continued in other threats and abuse.[5] Her expectation is based on DE's advice it has to consider the impact of AB's circumstances on its personnel and brand reputation, the latter expressly "as we have seen from the social media messages we have received". Those include a message sent by a seemingly identifiable person to DE's Instagram page contending for AB's assault of a friend, adding:

> AB has been involved in another much more serious situation which I'm sure the police and/or AB will need to inform your company about.
>
> … Please reconsider your affiliation with this individual and how continuing to associate with AB may reflect on your company.

The Facebook commenter referred to at [5] above also sent a message to DE's Instagram page, attaching another message relating to CD's hospitalisation, adding "When you allow someone to represent your brand when they have hit someone with their car …" and "@AB".

[9] The charges were filed in the District Court at Auckland on Friday, 29 April 2022, when AB was granted interim name suppression (on a first appearance, as having "an arguable case" for such).[6] BC's and CD's names were ordered suppressed

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5 As exhibited to AB's 27 May 2022 affidavit, the messages are identified as being sent to AB's "former employer", although AB herself says only she is "pretty sure" she has lost her job.

6 Criminal Procedure Act 2011, s 200(4). Subsection (5) provides such order "expires at the person's next court appearance". That next appearance was on 18 May 2022, when the Crown advised it sought CD's name suppression "lapse". Fitzgerald J continued AB's name suppression pending determination of the present application before me, and with it BC's name as a particular likely to lead to her identification (Criminal Procedure Act, s 195 (definition of "name"): *R v AB* HC Auckland CRI-2022-004-2642, 18 May 2022 at [5] and [8]. BC did not separately seek renewed name suppression.

at the same time. Reports of the proceeding were published by mainstream media without identifying AB, BC or CD.

[10] On Monday, 2 May 2022 — with reference to an article published in the *New Zealand Herald* under the headline "Young man who died after alleged hit and run in central Auckland had just visited Britomart nightclub" — a Facebook post advised:

> Don't believe everything you read or hear. [CD] was murdered – these kids knew what they were doing, they did this on purpose. This was no hit and run, they grabbed him to hurt him, then left him for dead!!!

The sender also launched an online petition, apparently to have the manslaughter charges upgraded to murder (reposted — I infer, after being taken down — when CD's name suppression expired). Also on 2 May 2022, an anonymous sender posted to AB's Instagram account:

> You disgusting fuckin murderer, I hope you rot in a cell for the rest of … your Fkn life you big nose ugly mongrel … Lucky you have no friends left, you might've murdered another one[.]

The next evening, an apparently identifiable sender sent AB a Facebook Messenger message: "Wow this girl AB killed someone and walks free".

[11] In the evening of 2 June 2022, the day of my hearing the present application, an audio-visual post appeared on CD's Instagram account, which seems to have some 1500 followers. The post presented as if posted by him, and was of a close-up image of AB and BC hugging each other, their faces partially obscured by the 'poop' emoji, accompanied by the words "Guess who's going to jail tonight?" and a brief clip from an audio track of the song from which those lyrics are drawn. Third parties provided the screen shot and post to AB. Soon after, AB's Instagram account received a request from CD's Instagram account, advising "CD wants to follow you".

[12] AB explains these are:

> … threats and abuse coming from people who used to be good friends of mine; some of them are coming from people who I don't know; and some of them are coming from fake, anonymous accounts.

As a result of her mother's changing workplaces, AB says she attended many different schools and sports clubs, building a wide circle of friends including — through "a mutual best friend" — CD.

[13] AB's mother points to years of mainstream and social media — and otherwise in print and online — publications, connecting her and her business with her daughter. The mother has some profile — including online, both professionally and personally — in an international industry she describes as being particularly sensitive to anything risking participants' brand and reputation. She has closed some of her social media platforms to prevent their continuing receipt of abusive comments, affecting her ability to engage online.

[14] AB's mother apprehends "the floodgates would open" if AB's name suppression was revoked, emphasising her industry particularly is subject to prurient media commentary, with significant and lasting reputational and revenue impacts on her business and on AB's intention ultimately to engage in the same industry. She is anxious and vigilant for her daughter's present safety from threats and security from abuse, and similarly for her much younger son's safety, with detrimental impact on her intended "sensory deprivation" breaks required in recuperation from recent brain surgery. She expects there will be "a free-for-all if the abuse and petitions could be posted publicly" on revocation of AB's name suppression. AB's father contends similarly for the anticipated detrimental impact of suppression's revocation on his business, in another industry similarly reliant on social media for brand and marketing endeavours and accordingly the prospect for collateral abuse and threats. He emphasises the singularity of AB's name, and the related nature of all in Auckland with the same surname. He too is 'horrified' by the abuse levelled at AB, which he describes as the "hardest thing" he has experienced as a father.

[15] Conversely, CD's family opposes AB's renewed name suppression. They assert the public in general is, and witnesses or potential witnesses are, entitled to know her identity to be able to avoid her as being subject to serious charges. They say "current measures in place within the law" are sufficient to address any online threats or bullying against her, and she could remove herself from online interactions. They

comprehend she has had sufficient time to inform her family of the charges she faces, which now should be made public knowledge in the interests of open justice.

The law

[16] The Criminal Procedure Act 2011 — in its general provisions, under a subpart to address "[p]ublic access and restrictions on reporting" — establishes:[7]

> … proceedings are generally open to the public.[8] There is a power to clear the Court but that does not, in most cases, allow for the exclusion of the media.[9] …
>
> The Court also has power to suppress names and other identifying particulars of the defendant, witnesses, victims and connected persons as well as evidence and submissions where the statutory thresholds are met.[10] Section 200(1) states that a Court "may make an order forbidding publication of the name, address or occupation of a person who is charged with, or convicted or acquitted of, an offence".[11]

[17] Section 200, with "a lengthy provenance",[12] continues:

> **Court may suppress identity of defendant**
>
> …
>
> (2) The court may make an order under subsection (1) only if the court is satisfied that publication would be likely to—
>
> (a) cause extreme hardship to the person charged with, or convicted of, or acquitted of the offence, or any person connected with that person; or
>
> (b) cast suspicion on another person that may cause undue hardship to that person; or
>
> (c) cause undue hardship to any victim of the offence; or
>
> (d) create a real risk of prejudice to a fair trial; or
>
> (e) endanger the safety of any person; or
>
> (f) lead to the identification of another person whose name is suppressed by order or by law; or
>
> (g) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences; or

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7 *ASG v Hayne* [2017] NZSC 59, [2017] 1 NZLR 777 at [13]–[15].
8 Criminal Procedure Act, s 196.
9 Sections 197 and 198.
10 Sections 200, 202 and 205. Section 206 deals with the Registrar's power to make and renew interim suppression orders.
11 Unless the context otherwise requires, "name" is defined to mean "the person's name and any particulars likely to lead to the person's identification": s 194.
12 *ASG v Hayne*, above n 7, at [29].

(h) prejudice the security or defence of New Zealand.

(3) The fact that a defendant is well known does not, of itself, mean that publication of his or her name will result in extreme hardship for the purposes of subsection (2)(a).

(4) Despite subsection (2), when a person who is charged with an offence first appears before the court the court may make an interim order under subsection (1) if that person advances an arguable case that one of the grounds in subsection (2) applies.

(5) An interim order made in accordance with subsection (4) expires at the person's next court appearance, and may only be renewed if the court is satisfied that one of the grounds in subsection (2) applies.

'Likely', for the purposes of s 200(2), does not mean publication's more probable consequence, but only "the existence of an 'appreciable risk'".[13] Also, 'publication' means "publication in the context of any report or account relating to the proceeding".[14]

[18] Name suppression does not make the name-suppressed person's identity secret, but only prohibits publication 'in the context of any report or account relating to the proceeding' of anything risking their identification. By default, criminal proceedings remain held in courts open to the public, in which name-suppressed defendants nonetheless are identifiable and identified. Even so, suppression derogates from open justice in the right to freedom of expression to publish accounts and reports of court proceedings.[15] A corollary of open justice is people involved in court proceedings necessarily will be identified:[16]

> … a public trial is the best security for the pure, impartial and efficient administration of justice and the best means for winning public confidence in and respect for the system.

[19] Reasons must be given for suppression decisions.[17] A two-stage analysis is required:[18]

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13 *Huang v Serious Fraud Office* [2017] NZCA 187 at [9], citing *R v W* [1998] 1 NZLR 35 (CA) at 39, interpreting ss 139 and 140 of the Criminal Justice Act 1985, *Beacon Media Group Ltd v Waititi* [2014] NZHC 281 at [21] and *Wallis v Police* [2015] NZHC 2904 at [22].

14 Criminal Procedure Act, s 195.

15 *McIntosh v Fisk* [2015] NZCA 247, [2015] NZAR 1189 at [1], citing *JXMX (A Child) v Dartford & Gravesham NHS Trust* [2015] EWCA Civ 96 at [5]–[12].

16 *Clark v Attorney-General (No 1)* [2005] NZAR 481 (CA) at [11], citing *Scott v Scott* [1913] AC 417 at 463.

17 Criminal Procedure Act, s 207.

18 *Ratnam v R* [2020] NZCA 92 at [5]–[6], citing *DP v R* [2015] NZCA 465, [2016] 2 NZLR 306 at

> At the first stage the court considers whether the consequences in s 200(2) would likely follow publication of the person's name. This is a threshold determination.
>
> At the second stage, if the threshold is crossed, the court considers whether an order should be made as a matter of discretion.

[20] The first stage:[19]

> … insists that the court determine on what principled basis suppression might be granted.[20] The legislation does not impose a burden of proof but the presumption will apply unless the applicant can point to something to displace it.[21]

The applicant "must establish one of the prerequisites. This is a threshold test, not a balancing exercise".[22]

[21] The second stage must decide if "suppression [is] in the public interest".[23] Consistent emphasis is placed on "the importance of openness in the reporting of judicial proceedings and the right of the media to report on what happens in court fairly and accurately as 'surrogates of the public'".[24] At the second stage:[25]

> … the Court must balance relevant considerations in the exercise of discretion. The open justice principle must be considered at this stage, notwithstanding that the threshold has been crossed. That is so because the ultimate question remains whether open justice should yield. The balance must "clearly favour" suppression.

[22] Where the threshold quality is of 'extreme hardship', that means "severe suffering or privation". The adjective 'extreme' adds to the meaning of hardship or undue hardship by requiring something significantly more again.[26] Assessing if hardship has the necessary quality:[27]

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[6].

19 *D (CA443/2015) v Police* [2015] NZCA 541, (2015) 27 CRNZ 614 at [10].

20 *Robertson v Police* [2015] NZCA 7 at [43]–[46].

21 *R v Liddell* [1995] 1 NZLR 538 (CA) at 546; and *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546 (CA) at [41]–[43].

22 *Sansom v R* [2018] NZCA 49 at [10], citing *Fagan v Serious Fraud Office* [2013] NZCA 367 at [9]–[10] and *Robertson v Police*, above n 20, at [44]–[46].

23 At [10].

24 At [11], citing *R v Liddell*, above n 21, at 540, and *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2].

25 *D (CA443/2015) v Police*, above n 19, at [12], citing *Lewis v Wilson & Horton Ltd*, above n 21, at [43].

26 *Sansom v R*, above n 22, at [32], citing *Robertson v Police*, above n 20, at [48].

27 *Robertson v Police*, above n 20, at [49], citing *Jeffries v Police* [2014] NZHC 2379 at [24].

> … cannot take place in a vacuum. It is self-evidently contextual and in our view must entail a relative comparison between the contended hardship and the consequences normally associated with a defendant's name being published. It must be something beyond the ordinary associated consequences. …

It is "a comparative standard":[28]

> … [requiring] that the Court compare the consequences of publication in the instant case with those that normally attend prosecution. Distress, embarrassment and adverse personal and financial consequences usually attend criminal proceedings, and something out of the ordinary is needed if the applicant is to get across the threshold.

Discussion

[23] As a 'comparative standard', the requisite hardships must be assessed against the 'normal' consequences of identification not only in accounts or reports relating to court proceedings, but also in accounts or reports absent any proceeding. Direct and social media publication of abusive and ignorant commentary, predicated on AB's assumed accountability for CD's injury and subsequent death, did not wait for the charges commencing this proceeding to be filed. It practically was immediate, growing as third-party comprehensions of the 24 April 2022 incident developed and circulated among those evincing some interest in it. Immediacy and distribution are hall marks of social media messaging.

[24] For AB, William Mohammed placed significant reliance on appellate observations about social media commentary:[29]

> There can be no reasonable expectation that such reportage will be fair or accurate. And there is no realistic way of controlling its content or its spread, particularly in a high profile and politically controversial case. In our view this is a problem with which the Courts have yet fully to grapple, particularly in the context of suppression under s 200(2)(a), where a defendant is young and, so, especially vulnerable to trolling, doxing, and internet vigilantism.
>
> By way of some historical context, s 200 of the CPA has its origins in the 2009 New Zealand Law Commission report entitled Suppressing Names and Evidence. It was the Law Commission that recommended legislating relevant thresholds for suppression, including that the threshold for suppressing a defendant's name should be one of "extreme" hardship.

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28 *D (CA443/2015) v Police*, above n 19, at [11], citing *Lewis v Wilson & Horton Ltd*, above n 21, at [42]; and *Robertson v Police*, above n 20, at [49].

29 *X (CA226/20) v R* [2020] NZCA 387 at [49]–[54] (footnotes omitted).

> But in 2009, Facebook had been around for five years, Reddit for four, and Twitter for three. Instagram did not yet exist. Those platforms were even newer at the time of the release of the Issues Paper that preceded the Law Commission's report (the response to which informed the Law Commission's recommendations) in 2008. In the context of the proposed reforms, the Law Commission was aware of, and discussed the difficulties posed by, social media in terms of maintaining and respecting suppression orders. But no consideration was (or could have been) given to the universality and toxicity of social media's current form. Nor could consideration have been given to the even more recent phenomenon of "cancel" or "call-out" culture, in which social media is weaponised against those deemed to have transgressed the norms of any online group (or mob). And there can be no doubt that this new culture of public shaming has the potential to be mercilessly inflicted on young people who become embroiled in the criminal justice system — particularly in the context of alleged sexual offending — however briefly, and whatever the legal outcome of the case.
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> So ten or so years ago, even young defendants might reasonably be expected to endure the "hardship" ordinarily caused by the publication of their names in the mainstream media. But now, we think the potential hardship caused by the pernicious, judgemental, exponential, indelible, and often ill-informed publication on social media platforms is of a quite different magnitude. Public shaming of this or any kind forms no part of our criminal justice system. It is not the object of open justice. It serves no useful rehabilitative or other social purpose. Its object is humiliation and degradation.
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> As we have said, young people are particularly vulnerable in this regard. That vulnerability is no doubt psychological, but it has both practical and temporal aspects, too. The temporal aspect is simply that, by virtue of being young, the effects of internet shaming will last for longer — potentially for the remainder of the young person's life. The practical aspect is that the only way a person can protect or shield him or herself from ongoing exposure to online shaming is to go, themselves, offline. And as Danielle Citron has noted:
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> > When individuals go offline or assume pseudonyms to avoid bigoted cyber attacks, they miss innumerable economic and social opportunities. They suffer feelings of shame and isolation. Cyber mobs effectively deny people the right to participate in online life as equals.
>
> So we think that, in a case such as the present, it is time to recognise these realities. In our view such recognition can play out both in the assessment of whether hardship will, in any given case, be "extreme" and in the ultimate weighing exercise required in the exercise of discretion.

[25] Those realities also are evident in AB's circumstances. But this proceeding is not that "high profile, politically controversial" case of alleged sexual offending, for which the defendant was discharged without conviction, that discharge exciting social media commentary. There, the defendant was not identified in social media at all, and the likely hardship caused by his name's prospective publication followed on "unnaturally high" interest in using the proceeding "as a platform for wider (and

vitriolic) political 'debate'" (including by praying in aid an unrelated parliamentary investigation), about which there was "[a] considerable amount of harmful misinformation", as well as the expected threats and abuse. Notably, with publication, "such comments would grow in number and venom", but with the "important difference … they would likely then be directly linked to, or directed at" the defendant. Hence the Court of Appeal concluded "public shaming of the nature or magnitude that is likely to flow … here can[not] be said to be an ordinary consequence of publication".[30]

[26] AB's case, instead, is the consequence of her alleged involvement in the circumstances of CD's death, which death doubtless is a source of legitimate anger and hurt to his family and friends, and possibly to a wider circle of personal and online acquaintances. In AB's own words, "[s]ocial media is toxic. My generation is all over social media. Everyone follows everyone. People just get on the bandwagon. They share and repost what other people are saying". The 'reality' here is, proceeding or none, those emotions — artificial or real — are likely to be published, moreso now than might have been the case without social media's present 'universality and toxicity', as they already have done.

[27] Unlike the case before the Court of Appeal, AB was identified on social media with CD's death before any charges were filed and her name ordered suppressed, and I am given nothing to think revocation of her name suppression would bring her identity within the active (let alone vengeful) consideration of any materially wider group of people. I comprehend more and continuing hurtful or damaging social media commentary is not likely to be caused by publication of accounts and reports relating to this proceeding, but instead by AB's prior alleged involvement as comprehended by a relatively small section of the community (if then unconstrained by revocation of the suppression order). Even if not, detrimental consequences including those of adverse commentary may well accompany publication identifying defendants in the context of reports and accounts of criminal proceedings. That is the nature of much social media commentary. AB's case is not of the 'nature' or 'magnitude' incentivising the Court of Appeal.

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30 At [55]–[58].

[28] This Court generally is not the arbiter of social media discourse. Courts generally only become so engaged if such discourse is alleged to breach relevant standards — for example, by making "an untrue statement that has a tendency to lessen the subject's reputation in the estimation of right thinking members of society generally";[31] or by posting harmful digital communications;[32] or by creating "a real risk of prejudice" to fair trial rights[33] — or, as contended here, if publication in the context of accounts and reports relating to the particular proceeding risks the requisite criteria. Social media commentary on facts open to being relied on for AB's later charges is not of itself enough to constitute the necessary relationship with the proceeding. Such anticipatory engagement by the Court would risk unjustifiably chilling rights to freedom of thought and belief, "including the right to adopt and hold opinions without interference", and freedom of expression, "including the freedom to seek, receive, and impart information and opinions of any kind in any form".[34]

[29] 'Of any kind in any form' is "as wide as human thought and imagination",[35] but does not give "licence irresponsibly to ignore or discount other rights and freedoms".[36] I thus condemn outright, as denying AB's presumed innocence, the intimidating and judgemental direct and social media communications made to and about her and those associated with her. Claims to such vigilante 'justice' are intolerable. CD's family's plea to enable others to avoid her skirts the presumption, while they are right the seriousness of the charges engages a greater expectation of public scrutiny.[37]

[30] But my condemnation alone is not enough to render the consequence of those communications 'extreme' or 'undue'. In the present social media climate, they are instead — while deplorable, undesirable and unwarranted — the regrettably 'normal'

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31 Defamation Act 1992; and *Fourth Estate Holdings (2012) Ltd v Joyce* [2020] NZCA 479, [2021] 2 NZLR 758 at [33].

32 Harmful Digital Communications Act 2015, s 22, punishable by up to two years' imprisonment or a $50,000 fine. Section 6 sets out principles for such communications, including they should not: "be threatening, intimidating, or menacing"; "be used to harass an individual"; "make a false allegation"; or to incite or encourage others to do so.

33 Contempt of Court Act 2019, s 7, punishable by up to six months' imprisonment or a $25,000 fine. Notably, risk of such offending arises "from the time of the arrest or charge (whichever happens first) until the delivery of the verdict".

34 New Zealand Bill of Rights Act, ss 13 and 14.

35 *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 (CA) at [15].

36 *Hosking v Runting* [2005] 1 NZLR 1 (CA) at [231].

37 *Parker v R* [2020] NZCA 502 at [46].

and ‘ordinary’ consequences of such ignorant, repugnant and entirely unjustified communications irrespective of any proceeding. That ‘normality’ is illustrated by AB’s and her parents’ evidence of the fear, loss and pain occasioned by such communications unconnected to any account or report relating to this proceeding.

[31] I acknowledge such communications are likely to continue to be made — perhaps in some increased volume if commentary has been constrained by the present order, although I have no reason to think any more materially substantial portion of the community then may become engaged — on revocation of AB’s ordered name suppression and maybe also then relating to accounts and reports of this proceeding. Again — in the present vindictive social media climate, of which I take judicial notice as abundantly substantiated even without this proceeding — that is to be expected.

[32] I do not overlook AB’s relative youth and consequent vulnerability to online shaming. But I must weigh that against the fact, as Mr Mohammed put it in submitting AB should not have to exclude herself from electronic communication, “young people live their lives online”. Social media commentary’s existence and longevity online — prejudicing AB’s and her parents’ future, irrespective of this proceeding’s initiation and outcome — is not caused by publication of accounts and reports relating to this proceeding, but is endemic in the medium.

[33] For the same reasons, other potentially relevant grounds for renewed name suppression — that publication of accounts and reports relating to this proceeding would be likely to create a real risk of prejudice to a fair trial, or endanger the safety of any person[38] — also are not engaged. Additionally, so far as the former is concerned, juries firmly are directed to come to their verdicts on the basis only of the evidence given in the courtroom, without sympathy or prejudice for any participant, and to disregard anything they otherwise may have contemplated, heard or read about the case before them. Trial necessarily proceeds on the basis a jury will act as directed, and I am given no evidential basis on which to conclude it may not in AB’s case. On the latter, I accept the abuse levelled at AB and those associated with her already has resulted in psychological harm to AB and her parents, which is likely to continue and

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[38] Criminal Procedure Act, ss 200(2)(d) and (e) and 202(b) and (c).

perhaps increase. But I have addressed the source of that danger in my 'hardship' considerations. AB's allegations of gang associations and family violence are undeveloped so far as her or her family's physical safety is concerned. That some of the subjects of AB's allegations may live in the same apartment complex as [the father] is an insufficient basis to think it likely any publication relating to this proceeding risks endangering the family's safety. Affirmative evidence of risk to safety is required.[39]

[34] I am not satisfied publication of AB's name in the context of accounts and reports relating to this proceeding carries appreciable risk of any of the consequences entitling me to forbid publication of her name. I accordingly cannot identify any 'principled basis' on which suppression of AB's name should be renewed, except to continue its operation pending determination of any appeal of my decision. I therefore do not address the second stage of the analysis, as to how I should exercise my discretion.

Result

[35] AB's application for renewed interim name suppression is declined. I forbid publication of her name (including, as a particular tending to identify her, BC's name) until the later of either expiry of the period within which to appeal my decision, or determination of any such appeal.[40]

—Jagose J

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39 *R v Bitossi* [2014] NZCA 595 at [8].
40 Criminal Procedure Act 2011, s 286.