



**Supreme Court of New Zealand
Te Kōti Mana Nui**

3 MAY 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

ASG v HARLENE HAYNE, VICE-CHANCELLOR OF THE UNIVERSITY OF OTAGO

(SC 61/2016) [2017] NZSC 59

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The suppression orders made in the Employment Court on 27 May 2014 and 4 June 2014 remain in force.

The issues

This case dealt with the scope of suppression orders under s 200 of the Criminal Procedure Act 2011 in the context of an employment relationship. At issue were two questions: whether the disclosure of information about a University of Otago employee’s District Court appearance to his employer constituted a breach of the Court’s suppression order, and second, whether, having received the information, the University was entitled to rely and act upon it.

Result

The Court held that suppression orders made under s 200 of the Criminal Procedure Act do extend to prohibit “word of mouth” communications as well as publication by the media.

However, it held that the section does not encompass the dissemination of information to persons with an objectively established genuine need to know the information.

In this case, given the nature of the appellant's charges and his role at the University, his employer had a genuine interest in knowing he had pleaded guilty to an offence of violence against his spouse.

Having found no breach occurred, it was not necessary for the Court to address the second question regarding the actions taken by the University on receipt of the information.

Background

The appellant, ASG, is employed by the respondent as a campus security guard at the University of Otago. Whilst in this employment he pleaded guilty to one count of wilful damage and another of assaulting a female. Both charges were in relation to his former spouse. ASG appeared in the District Court for sentencing on these charges and was discharged without conviction. In addition, the Judge made an order under s 200 of the Criminal Procedure Act preventing publication of the appellant's name and other details.

The Deputy-Proctor of the University was in Court whilst ASG was being sentenced, having been informed by a third party of the proceedings. After seeking legal advice as to the scope of the suppression order, the Deputy Proctor disclosed ASG's name and details about the charges to a small number of individuals within the University with personnel responsibilities, including the Vice-Chancellor. The University undertook an investigation. ASG was suspended until the Vice-Chancellor reached the view that a final written warning was appropriate. ASG then returned to work.

ASG brought a personal grievance in relation to his employer, the Vice-Chancellor. He said he had been unjustifiably disadvantaged in two ways, first, by his suspension and, second, by the final written warning.

In assessing those claims, the Employment Relations Authority took the view that the University breached the name suppression order made by the District Court Judge. The Employment Court overturned this finding, deciding that there was no breach of the order. This was upheld by the Court of Appeal.

In this Court, the appellant submitted that s 200 prohibits any disclosure of the appellant's name or other details beyond the courtroom. The respondent submitted that s 200 only prohibits making the information available to the public or a section of the public generally, or alternatively, any disclosure beyond the courtroom except "bare disclosure" to persons with a genuine interest.

This Court has unanimously dismissed the appeal.

Reasons

The Court has found that the disclosure to the respondent of the information regarding the appellant's appearance in the District Court did not breach the suppression order. The Court has held that the prohibition of publication under s 200 encompasses both publication in the wide sense by the media as well as word of mouth communications. The focus of s 200 will generally be on publication beyond the courtroom to the public or a section of the public at large, although publication to one person or a small number of persons in a situation where that will undermine the purpose of the suppression order will also be captured by the section. The prohibition under s 200 does not encompass the dissemination of information to persons with an objectively established genuine need to know the information. In this case, given the nature of the appellant's charges and his role at the University, his employer had a genuine interest in knowing he had pleaded guilty to an offence of violence against his spouse.

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