Supreme Court
New South Wales
Common Law Division

Case Title:	Munsie v Dowling
Medium Neutral Citation:	[2014] NSWSC 548
Hearing Date(s):	17 April 2014
Decision Date:	24 April 2014
Jurisdiction:	Common Law
Before:	Harrison J
Decision:	1. Decline to make orders 4 and 5 in the plaintiffs' notice of motion filed in Court on 17 April 2014. 2. Stand over the balance of the plaintiffs' notice of motion to 10am on Friday 16 May 2014 before the Duty Judge for directions. 3. Note that the plaintiffs' evidence in support of the contempt application is complete. 4. Direct that any evidence upon which Mr Dowling seeks to rely in response to the Statement of Charge should be filed and served by no later than 4pm Thursday 15 May 2014. 5. Order that the costs of the plaintiffs' application before me be costs in the proceedings.
Catchwords:	INJUNCTION – defamation – interlocutory relief – whether threatened publication abuse of process or obstruction of the due administration of justice – whether threat of publication should be restrained as contempt of court
Legislation Cited:	Court Suppression and Non-publication Orders Act 2010 Proceeds of Crime Act 2002
Cases Cited:	ABC v O'Neill [2006] HCA 46; (2006) 227

	CLR 57 Hubbard v Vosper [1972] 2 QB 84 at 96; [1972] 1 All ER 1023 Resolute Ltd v Warnes [2000] WASCA 359 Seven Network Ltd v News Ltd [2007] FCA 1062 Y and Z v W [2007] NSWCA 329; (2007) 70 NSWLR 377
Category:	Procedural and other rulings
Parties:	Justine Munsie and Kerry Stokes (Plaintiffs) Shane Dowling (Defendant)
Representation	Counsel: A S Dawson (Plaintiffs) Solicitors: Addisons (Plaintiffs)
File number(s):	2014/114469
Publication Restriction:	Nil

JUDGMENT

1 **HIS HONOUR**: The plaintiffs seek orders in terms of paragraphs 4 and 5 of a motion filed in Court before me on 17 April 2014, which in full contains prayers for the following relief:

> "1. That, on the undertaking of the plaintiffs' solicitor to pay the filing fee, leave be granted to file this motion in Court.
>
> 2. That service of this motion and the supporting affidavit of Richard Keegan sworn 16 April 2014 be effected by handing a copy of them to the defendant in Court on 17 April 2014.
>
> 3. If service in accordance with order 2 cannot be effected, personal service in accordance with SCR Pt 55 r 9 be dispensed with and service is to be effected by delivering this motion and the supporting affidavit of Richard Keegan sworn 16 April 2014 to the defendant's email address shanedowling@hotmail.com by 5pm on Thursday 17 April 2014.

4. Subject to order 7, the defendant be restrained, until further order, from publishing

a. the Article and the Twitter Publication (as defined in the affidavit of Justine Melissa Munsie sworn 14 April 2014);

b. the imputations set out in the statement of claim filed herein;

c. the statement of claim filed herein;

d. any matter concerning these proceedings;

e. any matter of and concerning the plaintiffs, or their legal representatives (being the firm Addisons, Martin O'Connor, Richard Keegan and Sandy Dawson) which is calculated to expose any of them to hatred, ridicule and contempt.

5. Subject to order 7, a suppression order pursuant to s 7 of the *Court Suppression and Non-publication Orders Act 2010* (NSW), on the ground set out in s 8(1)(a), prohibiting the disclosure, by publication or otherwise, of:

a. the existence of these proceedings;

b. the pleadings herein;

c. any information as to the relief claimed in these proceedings;

d. any information that comprises evidence, or information about evidence, given in the proceedings, including any information which tends to reveal the identity of the plaintiffs;

e. any submissions filed, read or given in these proceedings;

f. this notice of motion; and

g. any orders of the Court made in these proceedings. (the Suppression Order).

6. Subject to order 7, the Suppression Order:

a. applies throughout the Commonwealth;

b. operates, unless the Court otherwise orders, until the determination of these proceedings.

7. Orders 4, 5 and 6 do not prohibit:

a. Publication or disclosure by the parties for the purpose of obtaining legal advice for the conduct of these proceedings;

b. Publication or disclosure by the plaintiffs for the purpose of ensuring compliance with those orders.

8. A declaration that the defendant was in contempt of Court for breach of the orders of the Court made in these proceedings on Monday 14 April 2014, pursuant to the statement of charge subscribed to this motion and marked "A".

9. A declaration that the defendant has committed the offence provided for in s 16 of the *Court Suppression and Non-publication Orders Act 2010* (NSW) by contravening the suppression order made by the Court in these proceedings on Monday 14 April 2014, pursuant to the statement of charge subscribed to this motion and marked "A".

10. That the defendant be punished for contempt (including as provided for in s 16 of the *Court Suppression and Non-publication Orders Act 2010* (NSW)).

11. An order that the defendant pay the plaintiffs' costs of this motion forthwith and on an indemnity basis.

12. Such further or other order as the Court thinks fit."

It is unnecessary for present purposes to include in these reasons the terms of the Statement of Charge to which the notice of motion refers.

2 The plaintiffs' application was generated as a not unexpected response to Mr Dowling's actions after he had been served with orders made by me on 14 April 2014, which were in these terms:

"1. Grant leave to the plaintiffs forthwith to file in court a statement of claim together with a notice of motion each dated today.

2. Abridge time of the service of the notice of motion upon the defendant to 5pm on Tuesday 15 April 2014.

3. Order that the notice of motion and the statement of claim together with the supporting affidavit of the first plaintiff sworn today and a copy of these orders may together be served upon the defendant either by email to the address shanedowling@hotmail.com or by delivery to 5/68-70 Curlewis Street, Bondi Beach.

4. Appoint noon on Thursday 17 April 2014 for the return of the notice of motion.

5. Up to and including 4pm on Thursday 17 April 2014 make orders 6 and 7 in the notice of motion."

3 In the course of the proceedings on 17 April 2014, Mr Dowling proffered an undertaking that he would refrain from publishing anything on his website or otherwise concerning these proceedings, other than the fact that I had reserved my decision, until such time as I had decided this application.

4 Not without considerable misgivings, but with knowledge of that undertaking, I reserved my decision upon the matters that were in contention before me on 17 April 2014. I did not simultaneously accede to the plaintiffs' request to make orders in accordance with paragraphs 4 and 5 of the notice of motion in the interim. One significant reason for taking that course was to ensure that the conclusions that I ultimately reached and the decisions that I made were formulated with the benefit of a considered reflection upon the detailed and helpful submissions with which I had been provided. I accepted at that time that there was a risk, depending upon the conclusions that I came to, that Mr Dowling would secure by default in the meantime the collateral benefit that his alleged contempt of court and flagrant disregard for the orders made by me would go unpunished and that the plaintiffs' concerns about the ongoing damage caused to them in such circumstances would continue neither allayed nor mitigated. With that in mind I indicated that I would publish my reasons for judgment within the week that followed, which in the event included the Easter long weekend. Having taken that course, however, I have now come to the view that the plaintiffs are not entitled to succeed and are accordingly not entitled to the interim relief that they seek.

5 My reasons for reaching those conclusions are set out below.

6 The plaintiffs' original application came before me as Duty Judge. It was supported by an affidavit sworn by the first plaintiff on 14 April 2014. Ms Munsie is a partner of Addisons, which is a firm of solicitors instructed by the plaintiffs in these proceedings. It will be necessary in due course to refer to some of the material to which Ms Munsie has deposed.

7 The statement of claim commencing the proceedings pleads a cause of action by each plaintiff against Mr Dowling in defamation. The plaintiffs allege that Mr Dowling is the registrant of the domain name kangaroocourtofaustralia.com and the publisher of a website connected to that domain name called Kangaroo Court of Australia. In or about late February 2014 Mr Dowling published of and concerning the plaintiffs an article on that website which is exhibited to Ms Munsie's affidavit. The plaintiffs allege that the article in its natural and ordinary meaning carried the following imputations which were defamatory of them:

> "**Ms Munsie**
>
> (a) Ms Munsie, a solicitor, lied to the AFP about Channel Seven's ability to comply with an AFP search warrant.
>
> (b) Ms Munsie attempted to assist her client, Channel Seven, dishonestly to avoid revealing documents caught by an AFP search warrant which she knew would prove that Channel Seven had concluded an illegal deal to pay Schapelle Corby for an interview.
>
> (c) Ms Munsie has repeatedly committed perjury.
>
> **Mr Stokes**
>
> (d) Mr Stokes has used threats and intimidation against the AFP to avoid having to reveal documents caught by an AFP search warrant which he knew would prove that Channel Seven had concluded an illegal deal to pay Schapelle Corby for an interview.
>
> (e) Mr Stokes lied to the AFP about Channel Seven's ability to comply with an AFP search warrant.
>
> (f) Mr Stokes made dishonest threats against the AFP for their raid on Channel Seven when he knew that the raid only occurred because he and Channel Seven staff failed to comply with the AFP's production order deadline.
>
> (g) Mr Stokes has repeatedly committed perjury.
>
> (h) Mr Stokes is delusional."

8 The plaintiffs also allege that a link to the article published on Mr Dowling's twitter page www.twitter.com.kangaroocourt carried an imputation that both plaintiffs had been caught lying in relation to her or his respective dealings concerning Schapelle Corby.

9 There does not appear to be any contest that Mr Dowling published the matters complained of in the ways alleged by the plaintiffs.

10 By way of further background, Ms Munsie described the circumstances from which it would appear Mr Dowling's publications have sprung. The main article refers to recent Federal Court proceedings commenced by Seven West Media, Pacific Magazines Pty Ltd, Ms Munsie and Addisons against the Commissioner of the AFP and others in relation to search warrants that had been issued against Seven West Media, Pacific Magazines Pty Ltd and Addisons, together with orders issued under s 246 of the *Proceeds of Crime Act 2002* that had been issued personally to Ms Munsie and another Seven West employee. The search warrants and the s 246 orders had been issued as part of an investigation undertaken by the AFP in response to media speculation that Seven West Media had entered into an agreement with Schapelle Corby to provide a paid exclusive television interview following her release from a Bali prison in February 2014.

11 On 11 February 2014 the AFP had issued a production order under s 202 of the Act to Seven West Media requiring production of documents by 4pm on 14 February 2014. The AFP allowed an extension for the production of documents until the close of business on 17 February 2014. In the afternoon of that day, the AFP applied for search warrants addressed to Seven West Media and Addisons and the s 246 order addressed to Ms Munsie. The following morning, the AFP applied for the search warrant against Pacific Magazines Pty Ltd and the additional s 246 order.

12 The search warrants included statements that certain people, including Ms Munsie, were "suspects" in an investigation, when it was common ground that none of those people, other than Schapelle Corby, was or had ever been a "suspect". There were also statements contained in the s 246 orders that Ms Munsie and another Seven West employee were "reasonably suspected of having committed a criminal offence" when it

was again accepted that neither of them was or ever had been suspected in any such way.

13 Her Honour Jago J published her judgment in the proceedings on 26 March 2014 and found, among other things, that the decisions made by the Magistrates to issue the search warrants and s 246 orders were materially affected by legal error and should be quashed, with the effect that they are taken never to have existed. Her Honour held that the AFP did not make it clear to the issuing Magistrates that neither the deriving of literary proceeds nor the payment or facilitation of a payment that might give rise to a literary proceeds order was an offence. That ambiguity, together with the making of erroneous statements in the urgent circumstances in which the applications for search warrants were made, meant that it was likely that the issuing Magistrates incorrectly assumed that there was some offence relating to literary proceeds in the Act that would justify issuing the warrants. Her Honour rejected the submission that the erroneous statements were trivial or inconsequential, holding instead that the errors had materially misled the Magistrates who issued the warrants.

14 Ms Munsie has deposed to a belief that Mr Dowling may have attended the proceedings before Jago J in the Federal Court on 7 March 2014. There is no suggestion that if he was there, Mr Dowling was not entitled to observe the proceedings in open court as a member of the public.

15 For reasons that will become apparent shortly, Ms Munsie also deposed to some matters that predated both the publication of the matters complained of and also the Federal Court proceedings before Jago J. One of the things referred to by Mr Dowling in his article was a letter written to him by Ms Munsie on 26 May 2011. It was marked "NOT FOR PUBLICATION" and was in the following relevant terms:

> "We act for Mr Kerry Stokes AC.

We are instructed to write to you concerning your recent blog post entitled '*Kerry Stokes, Seven Group Chairman and Australia's number one perjurer, has been charged with contempt of court*' which appears on your blog kangaroocourtofaustralia.com.

Whilst our client acknowledges your right to discuss matters of importance and in the public domain, he is concerned by the suggestions in your blog post that:

> (a) he has been charged by the relevant authorities for contempt of court;
>
> (b) he has been charged with and found guilty of perjury,

neither of which is correct.

You should be aware that the contempt allegations which are presently on foot against Mr Stokes have not been made in the context of a proper criminal prosecution. Rather, it is Mr Warburton, Seven's former chief sales officer, who has made the allegations against Mr Stokes in the course of the civil action between Mr Warburton and his former employer. Although the AAP article to which your blog post refers uses the short hand term 'charges' to refer to those allegations, it is quite wrong to say that Mr Stokes 'has been charged' as this suggests that the matter is overseen by the appropriate criminal authorities and/or the Attorney General who would normally bring and prosecute such a charge.

Further, Mr Stokes has never been charged with, let alone found guilty of, perjury and it is highly defamatory to suggest that he has been.

Mr Stokes would be entitled to commence proceedings against you seeking urgent interlocutory relief to have your blog post removed and damages subsequently awarded to him for the damage which such false and defamatory suggestions can create.

However, as it is easily within your power to alter the content of your blog post, we suggest it would be more appropriate in the circumstances, if you were immediately to:

1. remove from the heading of your blog post the words '*Australia's number one perjurer, has been charged with contempt of court*'; and

2. remove from your blog post all other uses of the phrase '*charged with contempt of court*' and '*perjurer*'.

We would appreciate receiving your confirmation by 9am tomorrow..."

16 Far from complying with any of the requests made in that letter, Mr Dowling instead published the letter in full as well as material by way of comment on his website that included the following:

> "Yesterday, Thursday 26th of May I received a threatening letter from Kerry Stoke's [*sic]* lawyer, Justine Munsie – Addisons Lawyers...
>
> The letter raises two key issues. Issue one is that I said Kerry Stokes 'has been charged' and the second issue is they claim I suggest that Kerry Stokes 'has been charged and found guilty of perjury'.
>
> Issue one is clearly a smoke screen to conceal the real issue, which is issue two. A quick Internet search will reveal that almost every media organisation in the country has said that Mr Stokes has been charged with contempt of court or to that effect.
>
> So why has Kerry Stokes had his lawyers send me a letter complaining about it and not the other media organisations. (If his lawyers have sent a letter to the other media organisations they have not taken it down from their sites). The only reason he raises it in his letter is to conceal the only real reason for his letter which is he wants me to take down the references to him being a perjurer.
>
> Well, as I have previously stated on this site: 'In a court of law any inference that can be reasonably drawn from the primary facts has to be taken at its highest'...
>
> And given that as stated in my previous article that Justice Ronald Sackville said that Mr Stokes had given 'deliberately false evidence' and 'Mr Stokes evidence on this issue was not only implausible but, I must conclude, deliberately false,' Justice Sackville said etc.
>
> It is clearly fair and reasonable to conclude that Mr Stokes is a perjurer until proven otherwise.
>
> What must be said is that the letter from Mr Stokes lawyer, Justine Munsie, could and would be regarded as an attempt to conceal a serious indictable offence which is a crime in itself. The lawyer is trying to hide Mr Stokes [*sic*] perjury..."

17 In the light of that and other responses by Mr Dowling on his website to her letter in May 2011, Ms Munsie deposed that

> "...neither Mr Stokes nor I have any confidence that a similar letter requesting him to remove the Article [containing the matters complained of] from the website would be treated differently and we are concerned not to provide a basis for Mr Dowling to repeat

the false and defamatory imputations contained in the Article elsewhere on the website."

18 Presumably with those concerns in mind, the plaintiffs sought ex parte orders from me on 14 April 2014 that included an injunction that required Mr Dowling to take down the offending material and that also prevented Mr Dowling from publishing further similar material or material to a like effect. The plaintiffs sought in addition an order pursuant to s 8(1)(a) of the *Court Suppression and Non-Publication Orders Act*. As will already be apparent, I declined to grant an injunction in the terms sought having regard to the useful statement of the relevant principles in the joint judgment of Gleeson CJ and Crennan J in *ABC v O'Neill* [2006] HCA 46; (2006) 227 CLR 57 at [16] – [19]. I proceeded upon the basis that the Court had the power to grant an injunction in an appropriate case but that it is a power that is exercised with great caution and only in very clear cases.

19 I did, however, make an order prohibiting up to and including 4pm on Thursday 17 April 2014 the disclosure by publication or otherwise of the existence of these proceedings and certain specified related matters. I took that course as a matter of caution and fairness in the absence of Mr Dowling and without any material from him or in his behalf suggesting or supporting either the possibility or the likelihood that he may have had a defence, whether of justification or otherwise, to the proceedings. I chose to proceed cautiously, in the absence of material from which I could assess whether or not Mr Dowling may have had such a defence, even though there was no real room for debate upon the information provided to me at the time that the matters complained of were otherwise defamatory.

20 In the events that occurred, my caution was wholly and extravagantly misunderstood by Mr Dowling, who reacted very strongly to the fact that such an order had been made. In due course Mr Dowling revealed, upon the return of the motion on 17 April 2014, that he perceived that the non-publication order had been directed at him alone and that it amounted to or constituted just another example of unfair collusion against him and even

to a criminal conspiracy that, at least on one view of what he wrote about it, involved or included me.

21 Indeed, Mr Dowling's response to service upon him of the ex parte orders made by me on 14 April 2014, and the evidentiary material in support of it, has produced what has now become, for the time being at least, the central and significant publication upon which the plaintiffs rely in support of their concern to resurrect and re-agitate the application for interim injunctive relief. It has also led the plaintiffs to prepare and file the Statement of Charge referred to earlier alleging that Mr Dowling's disobedience or disregard for the orders that I made amounted to a contumacious contempt of court. That is a matter that will take its own separate course and requires no further comment at this stage.

22 On the contrary, the question of whether or not Mr Dowling's response, which is claimed by the plaintiffs to support their allegations of contempt, also affords them an additional but alternative basis for injunctive relief, is very much to the fore. That response came in the form of a long and arguably defamatory contribution to Mr Dowling's website, which for presently relevant purposes was in the following terms:

> "KERRY STOKES HAS SUPPRESSION ORDER PUT ON DEFAMATION PROCEEDINGS AGAINST KCA PUBLISHER
>
> Seven West Media Chairman Kerry Strokes has instructed a judge of the NSW Supreme Court, Justice Harrison, to put a suppression order on defamation proceedings that Kerry Stokes has instituted against me, Shane Dowling, and this website, Kangaroo Court of Australia. The matter is listed for court again on Thursday (17/4/14) at 12pm at the Law Courts Building in Sydney.
>
> The suppression order issued by Justice Harrison is one of the most dangerous documents I have ever read. It in effect says that I cannot tell anyone anything about Kerry Stokes's proceedings against me and I have to show up to court on Thursday.
>
> The proceedings above happened without my knowledge or consent on Monday (14/4/14) at the Supreme Court of NSW. Justice Harrison failed to give any written reasons for his decision to issue the suppression order which supports the argument all he did was take instructions off Kerry Stokes's lawyers, one being Justine Munsie who is also the author of Mr Stokes affidavit.

Another of Kerry Stokes lawyers, Richard Keegan, told me yesterday (15/4/14) that Justice Harrison or Kerry Stokes lawyers (Addison Lawyers) could have phoned me before the hearing but deliberately did not. In fact Kerry Stokes and Justine Munsie give a reason of why they deliberately did not contact me at paragraphs 32 – 36 of their affidavit as they were worried I would do a post and report it. Kerry Stokes has been caught closing down the media.

This is clearly a denial of natural justice by Justice Harrison and when you look at the facts Justice Harrison has committed the criminal offence of helping Kerry Stokes attempt to conceal his previous perjury in the C7 matter which I have previously written about.

Background

The defamation proceedings by Kerry Stokes and Justine Munsie relates to a post I published on the 23rd February 2014 titled "*Kerry Stokes, Channel 7 and lawyer Justine Munsie caught lying in the Schapelle Corby matter*" (Click here to read the post) This is on top of a previous defamation threat by Mr Stokes in 2011 which he failed to follow through with.

The reason Kerry Stokes says he needs a suppression order now is that he sent me a threatening letter in 2011 and said on the letter "*Not for publication*". I ignored the letter and did not contact Kerry Stokes and scanned the letter in and published it. Mr Stokes in effect says he does not want me to disobey his order again. I am not joking, read the affidavit at paragraph 32 to 35. (Click here to read) The problem is that has nothing to do with the court and Mr Stokes does not run this country.

Kerry Stokes previous threat in 2011

In 2011 Kerry Stokes threatened me with defamation via his lawyer Justine Munsie for a post I published on the 23 May 2011 titled "*Kerry Stokes, Seven Group Chairman and Australia's number one perjurer, has been charged with contempt of court*". (Click here to read the post)

The threatening letter from Munsie came on the 26th May and I published a post the same day titled "*Kerry Stokes threatens legal action against blogger*" (Click her to read the post)

I never heard from Stokes and Munsie again because there was nothing they could do. If you Google *'Kerry Stokes false evidence'* it comes up everywhere such as the SMH – Herald Sun – ABC. An example being:

'A FEDERAL Court judge has accused Seven Network boss Kerry Stokes of giving "deliberately false" evidence in his failed C7 pay TV case and condemned the action's $200 million legal bill as a "scandalous" waste." (Click here to read more)

The judge who said Stokes gave "*deliberately false*" evidence is Justice Ronald Sackville who was a Federal Court judge at the time and who is now an acting judge at the NSW Supreme Court. Justice Harrison should have a talk to Justice Sackville if he wants to know what Kerry Stokes is like.

Someone who gives *'deliberately false'* evidence is a perjurer so it is fair and reasonable for me to call Stokes a perjurer. If it was not, Kerry Stokes would have followed through with his previous threat of defamation proceedings. He has the means to do so and the legal costs are nothing to him.

It is interesting that on the 17th March 2013 I published a post titled *'Kerry Stokes, Australia's number one perjurer, also becomes the number one bribe taker if new media laws passed'* (Click here to read the post) and I never heard anything from Stokes or his lawyers.

It is my understanding you have 12 months to follow through with defamation proceedings so Mr Stokes has no claim on the previous posts. This should have sent the alarm bells ringing with Justice Harrison when Stokes asked for the suppression order as his previous threat and failure to follow through is in their affidavit.

Documents – Make sure you save a copy

Affidavit of Justine Munsie and Kerry Stokes (Click here to read) Yes that is right, one affidavit for two people. It is worth noting they have written to Google, because if you Google Kerry Stokes one of my posts shows up on page 2. They say this in paragraphs 11, 12 and 13 of their affidavit.

Court Orders: (Click here to read) It reads as JM and KS v SD so no one knows who we are. Keep that in mind if you come to court to watch as that is all it will have on the court list I assume. Notice of Motion (Click here to read) Statement of Claim (Click here to read)

Exhibits (Click here to read)

Nowhere on court orders does it say that I can show a lawyer the documents to get legal advice. It shows Justice Harrison thinks he is above the law and can do what he wants as he knew the documents were not being sent to a lawyer but being emailed to me at home.

Yestreday (Tuesday 15/4/14)

I received a call yesterday (15/4/14) at 4.57 pm which lasted 14 minutes from a person who identified himself as Richard Keegan from Addisons Lawyers. He said he was the contact person but the partner at the firm looking after the matter was Martin O'Connor. I knew who they were from my previous dealing with Munsie. He said he had sent me an email with attachments and

there was a suppression order on them and I had to be in court on Thursday. I asked him when they got the order and he said Monday. I asked why they did not let me know about the hearing and why did they not send me a concerns notice (a letter of complaint). He said because last time they sent me a letter it had "*not for publication*" written on it and I ignored their order and published it so they did not want to give me the chance to do it again.

Kerry Stokes failed to follow through last time as he cannot afford to hop in the witness stand and be cross-examined on his perjury and his claim is frivolous and vexatious and clear harassment.

Disgraceful conduct by Justine Ian G. Harrison

Justice Harrison

Justice Harrison was appointed a judge of the Supreme Court of NSW in February 2007 by the Labor Party.

Some of the questions that Justice Harrison needs to answer are:

1. Why would Justice Harrison not even try to phone me on Monday to allow me to defend myself? Courts matters are often heard on phone conference calls now days, so it would not have been unusual.

2. One of the orders Stokes is seeking is to take down a post which only relates to the most recent post not the previous posts which are very similar so there could not possibly be any real justification for a suppression order. In fact in the suppression order they do not even ask me to take down the post complained about. I just cannot tell people Stokes is suing.

3. Justice Harrison knows that Stokes and Munsie made threat before but failed to follow through so he should have had major doubts about their claim this time.

4. A blanket suppression order like Justice Harrison has given is a severe action to take. The main protection that I and other bloggers have is the support of our followers and the fact that we can get the message out to the public fast when need be. If I cannot communicate with others and the followers of this site when there is trouble then that protection is gone and it is a clear game of intimidation by Stokes and Munsie that Justice Harrison should never have supported.

5. This sites main focus is judicial corruption and I have to wonder if Justice Harrison has been lined up for payback for this site and me. It sure looks like it.

6. Why the secrecy by Justice Harrison? He is meant to be on the publics payroll not Kerry Stokes.

> Kerry Stokes and his lawyers are harassing me and abusing the legal system to do so. For me to do nothing and cop it sweet encourages them to do it to others. Well I am not going to stand for it and Justice Harrison has a lot of questions he needs to answer. I will be making a complaint against Justice Harrison with Chief Justice Bathurst and the Judicial Commission of New South Wales even though I doubt much will come of it as they look after their own boys and girls. But it is always worth going through the process. Harrison in now in the eye of the storm and well and truly on this sites radar.
>
> There is a war going on for a true democracy free of the corruption we see in the media daily and Kerry Stokes is attacking one of the key fundamentals of achieving the gaol and that is free speech and using the free speech to out the corrupt people. The Internet is the great equalizer and has empowered us all and Stokes and his kind do not like that.
>
> If I have defamed Stokes he can sue me as he has the resources which most people do not. He tried that last time in 2011 and it did not work so now he is getting very dirty and suppressing free speech with the help of a compliant judge. What I said in the most recent post is no worse than what I said in previous posts so there was no need for a suppression order.
>
> We'll see what happens on Thursday or what action Kerry Stokes and Justine Munsie take."

23 The form of the article as it actually appears on Mr Dowling's website contained hyperlinks to the material where indicated by the instruction to click for access, as well as photographs of Mr Stokes and me. It is unnecessary for present purposes to reproduce the article in a way that includes either the hyperlinks or the photographs in these reasons.

24 When the proceedings returned to me on 17 April 2014, Mr Dowling appeared unrepresented. I took the time, in light of the events that had come to my notice, to make clear to Mr Dowling the reasons that I made the orders in his absence that produced his particularly strident, albeit unfounded and ill informed, response. I said this:

> "One of the reasons that I decided to impose a suppression order was to prevent *anyone*, including Ms Munsie, Mr Stokes or anybody in their behalf, from publishing or publicising the fact that these proceedings had been commenced, or that allegations of defamatory publications by Mr Dowling had been made, at any time before he had had a proper or reasonable opportunity to come to Court to present a response to the allegations against him

> if he wanted to do so. For example, it is contended that the things alleged to have been said by Mr Dowling about Ms Munsie and Mr Stokes are not true but are lies. I anticipate that he contests that assertion, although I had and still have no appreciation of what the true position may be. Suppressing publication of these proceedings therefore had the intended effect of entirely limiting the possibility that any such suggestion made against Mr Dowling would be at large in the community before he had had an opportunity to respond. For example, among other things, it will or should be apparent that the order does not use names but only initials. It is reasonably apparent to me that Mr Dowling failed to understand or appreciate that the order was not simply directed at him or him alone but applied in precisely the same way to constrain the activities of the plaintiffs as well.
>
> In the events that have occurred, Mr Dowling has made his position clear by entirely ignoring the order, so that the possible benefit to him of any protection of his position has been completely surrendered by him as a matter of choice. That has included publishing the fact of these proceedings, together with arguably defamatory material about me, to several chosen recipients as well as to the world at large. When the proceedings first came before me earlier this week I had been asked to order that Mr Dowling take down his Internet posts and entire blog content. I declined to do that in accordance with my understanding of the authorities and legal principles concerned with that issue. That was also a decision made, in Mr Dowling's absence, that was intended to reflect this Court's disinclination, other than in an exceptional case, to take steps or to make orders that unnecessarily or improperly interfered with what is generally described as the right to freedom of speech.
>
> It appears from the material that I have since been shown, published by Mr Dowling since the matter came to his attention, that he either did not understand that, or indeed any of it, or that he has simply chosen to disregard it."

25 Mr Dawson of counsel for the plaintiffs contended that in the light of the scurrilous, threatening and defamatory material contained in that post, an injunction in wide terms should now be granted. He discarded any continued reliance upon the suggestion that this was a case that amounted to an exception to *ABC v O'Neill* but instead relied in support of his arguments upon what was said by the Court of Appeal in *Y and Z v W* [2007] NSWCA 329; (2007) 70 NSWLR 377.

26 That was a case in which the appellants Y and Z were parties to proceedings against X, the former husband of the respondent W. Y allegedly threatened that unless W intervened with X to ensure a

settlement of proceedings, Y would file an affidavit making allegations of gross impropriety against W. W was granted an interlocutory injunction restraining the appellants Y and Z, among other things, by Order 1.1(c) from "publishing to any person...any other imputation of and pertaining to W which is calculated to expose her to hatred, ridicule and contempt".

27 The Court of Appeal concluded that it was seriously arguable that the appellants threatened to commit a contempt of court by threatening to file an affidavit containing scurrilous material not for a bona fide purpose but in order to bring improper pressure on X to settle the case. The Court held that it was in that case seriously arguable that the appellants threatened to commit a contempt of court in the sense of interfering with the administration of justice by seeking to bring improper pressure on X by bringing improper influence to bear on W. The fact that W was a third party intermediary was not material as contempt may be committed when pressure is indirect and the Court was entitled to infer that W would be able to communicate with X.

28 Spigelman CJ said this at [3] – [6]:

> "[3] In the context of interlocutory injunctions it is well established that the nature of the right asserted by the Applicant for an injunction is a matter of significance, for example, to the strength of the case which the Applicant must establish and to the identification of the practical consequences of the interlocutory injunction sought. (See *Beecham Group Limited v Bristol Laboratories Pty Limited* (1968) 118 CLR 618 at 622; *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57 esp at [65], [72], [85] per Gummow and Hayne JJ, with whom Gleeson CJ and Crennan J relevantly agreed at [19].)
>
> [4] Such references to 'practical consequences' encompass the strength of the probability that the Applicant will be entitled to relief at trial and also to the comparison implicit in determining the balance of convenience. In my opinion, the 'practical consequences' of an interlocutory injunction are also relevant to the determination of the appropriate width of an injunction. Such matters differ if the cause of action is defamation rather than some other basis, relevantly, contempt of court.
>
> [5] There is a significant line of authority which applies the restrictive approach to interlocutory injunctions in the case of defamatory publications identified in *Bonnard v Perryman* [1891] 2

> Ch 269, to restraints upon publication based on other causes of action. (See e.g. *Australian Broadcasting Corporation v O'Neill* at [210] per Heydon J.) However, that approach is not appropriate in the case of a contempt of court, at least where the person to be restrained can identify neither a public interest nor a private interest in any publication. (C/f *Commercial Bank of Australia Limited v Preston* [1981] 2 NSWLR 554 at 558-562; 566; *Attorney-General v News Group Newspapers Limited* [1987] QB 1 at 7-8, 12-16, 19-20; *Attorney-General v Newspaper Publishing Pty Ltd* [1988] Ch 333 at 371.) In this context matters of this character will fall to be considered with reference to the Bread Manufacturers defence. (See *Ex parte Bread Manufacturers Ltd; Re Truth & Sportsman Ltd* (1937) 37 SR (NSW) 242.)
>
> [6] While the Court will, of course, always act on the basis that it must respect individual autonomy and will not restrain any person's freedom save to protect a legal right, the Court has jurisdiction to act in that manner and in a proper case will do so. For the reasons advanced by Ipp JA, this is a proper case."

29 The plaintiffs relied upon what was said by Ipp JA in summarising the legal principles concerning contempt of court as they applied in that case. Omitting reference to authorities, the principles are as follows:

> 1. the court has jurisdiction to grant an interlocutory injunction restraining a threatened contempt of court: at [35];
>
> 2. misusing the court's processes, at least where other parties are thereby prejudiced, may amount to a contempt: at [36];
>
> 3. it is a contempt of court to obstruct the due administration of justice by attempting to induce a settlement of an action by improper threats or intimidation: at [37];
>
> 4. the bringing of improper pressure on a party to collateral proceedings amounts to a contempt of court (involving the obstruction of the due administration of justice) irrespective of whether or not the pressured party is, in fact, deterred from litigating: at [38];
>
> 5. in a contempt involving obstruction of the administration of justice, the plaintiff must prove, according to the criminal standard of proof, that the material in question has, as a matter of practical

reality, a tendency to interfere with the course of justice in a particular case: at [39].

30 His Honour concluded at [41] that it was:

> "[41] ...seriously arguable that the evidence before Brereton J established that the appellants threatened that, in the proceedings between them and X, they would file an affidavit containing scurrilous material not for the bona fide purpose of advancing the true issues in those proceedings, but in order to bring improper pressure on X to settle the case."

31 His Honour found at [42] that "on this ground alone", W was entitled to appropriate interlocutory relief restraining the appellants from their threatened course of conduct. His Honour stressed:

> "... that by 'this ground' I am referring to the ground of contempt of court based on misusing the Court's processes."

32 His Honour's conclusions were relevantly set forth at [79] as follows:

> "[79] Having regard to the seriousness of the potential harm that would follow were the appellants not restrained, the strength of W's case, the overwhelming balance of convenience in favour of W, and the need to protect the administration of justice on an interlocutory basis, I consider that his Honour did not err in making an order in the terms of order 1.1(c). Without such an order, the appellants might be free to make good their threats. That would be harmful to the interests of justice."

33 It is the plaintiffs' contention in the present case that Mr Dowling has threatened to publish and to continue to publish material that is allegedly defamatory of them with the intended or calculated purpose, or in a way likely to have the result, that they will be so intimidated by such threats that they will discontinue these proceedings or otherwise be forced unfairly to reconsider their original decision to commence them in the first place. The threats which the plaintiffs complain have had this effect are allegedly all derived from or to be found in either or both of two locations. First, in the terms of a conversation between Mr Dowling and Richard Keegan, a solicitor employed by Addisons on 15 April 2014, to which Mr Keegan has deposed in his affidavit sworn 17 April 2014. Secondly, in Mr Dowling's

website post that is reproduced at [22] above. It becomes necessary to examine that material.

34 Mr Keegan said that he telephoned Mr Dowling at approximately 4.55pm on 15 April 2014 and introduced himself. He referred to the fact that these proceedings had been commenced. Part of the conversation then proceeded in these terms:

> "Keegan: The orders that have been made are interim until you come before the court on Thursday. His Honour is expecting you to be there. You are able to put your argument then. The article about Ms Munsie and Mr Stokes is clearly defamatory.
>
> Dowling: Can't really remember it – but they are usually brutal articles. No one contacted me or wrote me a letter. That is the normal thing that happens.
>
> Keegan: No we didn't contact you about it but we are not required to. This was explained to the judge.
>
> Dowling: I will have something to say about that on Thursday.
>
> Keegan: You are entitled to do that and that's why the orders made by Justice Harrison run up until Thursday.
>
> Dowling: What can I say about the proceeding?
>
> Keegan: You need to read the orders very carefully. You know your way around courts. The orders are very clear and they prevent you from disclosing the existence of the proceeding.
>
> ...
>
> Dowling: How can these orders be made?
>
> Keegan: We are entitled to ask the court to make the orders.
>
> Dowling: This is not some third world dictatorship.
>
> Keegan: You can explain your position to the judge on Thursday.
>
> Dowling: I can say that I am being sued. What names are on the court documents?
>
> Keegan: I'm not here to give you legal advice. I think you understand that. It is pretty clear you can't do anything like that as you would be in contempt of the orders which as you know is a serious matter. What you do though is a matter for you but you should look at all the documents I have emailed you.

> Dowling: The names are on the court documents.
>
> Keegan: You need to look at the orders. The defamation action concerns the articles you have written. If you or your lawyer want to discuss it then let me know. There might be a way that we can negotiate a way to resolve it. The hearing is at 12 noon on Thursday before Justice Harrison, I think it is court 10B but you'll have to check. You have my phone number and email address.
>
> Dowling: I won't have a chance to look at it tonight as I'm about to go out, I will look at it tomorrow."

35 Although Ms Munsie swore an affidavit in support of the original application for interlocutory relief, she did not do so in support of the current application. Mr Stokes has not provided an affidavit in either case.

36 Doing the best I can, there does not appear to me to be any flavour of a threat or intimidation in the material to which Mr Keegan has deposed. Whereas the question of the existence or identification of conduct that is capable of amounting to a threatened interference with the administration of justice must be answered by reference to objective factors, I note in passing that Mr Keegan does not purport to identify such a threat or refer to any such fear or perception on the part of the plaintiffs or either of them.

37 Nor am I able to identify any such threat in the terms of Mr Dowling's recent website article. Inherent in the nature of a threat of the kind being considered is the implied offer to withhold some offending or scurrilous material upon an improper but unenforceable condition that something will be done or withheld as the case may be. In this case the plaintiffs contend that they have come under improper pressure to withdraw the current proceedings or that the existence of the perceived pressure is capable of having a direct effect upon any decision they may make about whether or not to do so. However, the precise nature or content of the threat that they fear if they do not do so is not made clear. For example, Mr Dowling has not identified some as yet undisclosed matter that he proposes to publish if the plaintiffs do not yield to his perceived demands. Indeed, there is little if any evidence that Mr Dowling is suggesting, let alone demanding, that the

plaintiffs take or refrain from taking any step in the proceedings in a way that is favourable to him on pain of retribution of some kind in return.

38 If the plaintiffs' perception is that Mr Dowling will continue undiscouraged to publish matter that is defamatory of them, they have not nominated or identified any material of that sort that has not already been published. I have already referred in general terms to material published by Mr Dowling in 2011, which prompted Ms Munsie's "NOT FOR PUBLICATION" letter to him in May that year. It is inevitable in the present context that the matters complained of in these proceedings also be examined. The article that generated these proceedings in the first place is in these terms:

> **"Kerry Stokes, Channel 7 and lawyer Justine Munsie caught lying in the Schapelle Corby matter**
>
> Kerry Stokes who controls Channel 7 thinks he is above the law and when things do not go his way he thinks he can use threats and intimidation against the Australian Federal Police and government to solve the problem.
>
> Over the last few days this is exactly what has played out in the media in regards to the Schapelle Corby interview saga and could land in court next week if Stokes follows through with his threats. While it might be others at Channel Seven who are doing all the talking Kerry Stokes is the one driving it.
>
> In this post we will look at the truth behind Stokes's [*sic*] lies. And I should say upfront there is history between this site, Stokes and his lawyer Justine Munsie who threatened myself and the site with defamation proceedings a couple of years ago. (Click her [*sic*] to see Justine Munsie's threatening legal letter)
>
> **Background**
>
> Schapelle Corby was arrested in Indonesia (Bali) on the 8th of October 2004 and later convicted on the 27th May 2005 for the importation of 4.2 kg of cannabis into Bali.
>
> After more than 9 years in jail she was released on parole this year on the 10th February 2014.
>
> Numerous media organisations have been trying to get interviews with Ms Corby since her release and some have apparently offered substantial sums of money for exclusive interviews.
>
> Of those offering money channel 7 are the front-runner as they are currently paying for Schapelle Corby to stay in a luxury resort

since her release and their reporter Mike Willesee is staying in the same resort and in communication with Corby.

It has been widely reported that there was a deal for $2 million between Corby and Seven which was even criticised on air by one of channel 7's leading presenters David Koch. *'I reckon we should have nothing to do with her as a network. Totally disagree with paying a convicted drug smuggler $2 million*,' Koch said. (Click here to read more)

If David Koch is talking about it live on channel 7 like it was a done deal it is fair for everyone including the federal police to think there is a signed contract between Corby and Seven. Even more so when Mike Willesee responds to the David Koch comment:

'*He said he did not know how much Channel Seven had paid to secure the exclusive deal but it was not as much as $2 million.*

'I don't know what the figure is but that's crazy,' Willesee said as he left the Sentosa Seminyak for a walk. '*Way silly. It's not up there at all. I don't know what the deal is but I would very much like to interview her – and I hope to but I haven't seen her.*' (Click here to read more) Mike Willesee did not dispute that there was an agreement between 7 and Corby, all he disputed was how much it was. By what he says it sounds very much like he himself believes there is an agreement between 7 and Corby.

Proceeds of crime law

The problem for Schapelle and any paid interview is that Australia has laws against profiting for crime in Australia or by a convicted Australian overseas. It says on the federal police website:

'*The Proceeds of Crime Act 2002 (the Act) was passed on 11 October 2002 and came into operation on 1 January 2003.*'

'*The Act provides a scheme to trace, restrain and confiscate the proceeds of crime against Commonwealth law. In some circumstances it can also be used to confiscate the proceeds of crime against foreign law or the proceeds of crime against State law (if those proceeds have been used in a way that contravenes Commonwealth law).'*

'The Act also provides a scheme that allows confiscated funds to be given back to the Australian community in an endeavour to prevent and reduce the harmful effects of crime in Australia.' (Click here to read more)

Police raids

As you would expect the Australian federal police took immediate interest in Schapelle Corby when she was released on parole given the reports that the media wanted to pay her for an interview. On the day of the raid, Tuesday the 18th February, the federal police issued a media release which started off:

'The AFP has been in discussion with Channel 7 and their legal representatives regarding a Proceeds of Crime Act matter since 11 February 2014. The AFP has today executed a number of search warrants in Sydney in relation to this matter.' (Click here to read more)

Channel 7 were issued with an order to produce documents under the Proceeds of Crime Act, issued by the AFP on Tuesday the 11th of February which said that channel 7 had to hand over all documents sought by the AFP by 4pm Friday the 14th of February.

Seven's lawyer Justine Munsie tried playing games 4 hours before the deadline and emailed the AFP and in effect said they could not meet the deadline.

'But at midday on the day of deadline, Seven's lawyer, a partner at law firm Addisons, Justine Munsie, sent an email to the AFP asking if the search could be limited to documents which came into existence from 1 January 2014 as the search "would require Seven to search its archives and make enquiries of a large number of people, many of whom are no longer employed by Seven about the existence of any relevant documents".'

Federal agent Jeff Kokies from the Serious and Organised Crime unit emailed back and reinforced the 4pm deadline (Click here to read more) If Kerry Stokes and his staff at channel 7 had complied with the 4pm deadline then there would have been no need for a raid on their offices the following Tuesday.

Threats of legal action against AFP

Seven's commercial director, Bruce McWilliam, is demanding an apology from the AFP. *'It's not a crime to negotiate with a criminal to do an interview – and it's not a crime to pay a criminal for an interview. Everyone should be quite aware of that,'* he said. *'The only crime, the only thing that the act permits is that the government can seize any proceeds paid.'* (Click here to read more)

'Mr McWilliam phoned Communications Minister Malcolm Turnbull, who is his former legal partner, as the raids began on Tuesday morning to ask what was happening. That prompted a flurry of phone calls among Cabinet ministers. It is understood Mr Turnbull called Justice Minister Michael Keenan, whose office says he had been informed of the raids as they were happening, not before. Mr Turnbull then spoke to Attorney-General George Brandis, who then had a conversation with Mr Stokes.' Mr Stokes says 'jump!' and the government says 'How high?'

Kerry Stokes also has threatened to quit his government positions. Not much of a threat as far as I can see, we would be better off without the whinger.

Seven had threatened to launch legal if they did not get an apology by 5pm Friday and they also demanded that the AFP to revoke the discovery order under the Proceeds of Crime Act.

The apology related to a minor issue with the paperwork to obtain the warrant for the raid which incorrectly implied that Seven lawyer, Justine Munsie, was suspected of committing a crime. (Click here to read more)

The AFP did apologise for the "typing error" but told Seven to get lost as far as revoking the order is concerned.

Evidence of the lies by Kerry Stokes

Channel 7 have said that the police raid was an overreaction and that they had complied and handed over everything to the police that they were required to. Then why did Justine Munsie write to the AFP 4 hours before the 4pm deadline on Friday the 14th of February saying in effect that they could not comply? And why did Justine Munsie not inform the AFP earlier in relation to not being able to comply. Is she saying that she only realised 4 hours before the deadline even though she had 4 days to work that out?

The next question one has to ask is if Channel 7 says there is no agreement then why did both David Koch and Mike Willesee believe there was an agreement between 7 and Corby. And if there was no agreement why did channel 7 not make David Koch retract his on air statement?

If it does hit court next week as threatened by Seven, Kerry Stokes and Justine Munsie will perjure themselves like there is no tomorrow as both have form on the board for doing so. Kerry Stokes perjured himself in the C7 case a few years ago which I wrote about previously (click here to read more). And just last December Mrs Munsie was in the witness stand perjuring herself when she was representing bullyboy Ray Hadley from 2gb. Why was Mrs Munsie in the witness stand? Yep, you guessed it! Ray Hadley breached a court order and failed to hand over incriminating emails that had been subpoenaed. Mrs Munsie said that it was an oversight because Mr Hadley was 'not very good with emails'. (Click here to read more)

People might want to argue that Schapelle Corby is innocent and is entitled to the money. To me though that is a separate issue to Kerry Stokes thinking he runs the country and doing whatever he wants. The man is delusional.

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39 Rather than a fear that Mr Dowling will unless restrained publish material that has yet been made public, the burden of Ms Munsie's original affidavit is that she holds fears that Mr Dowling will continue, much as before, to defame her and Mr Stokes. Her expressed concern was "not to provide a basis for Mr Dowling to *repeat* the false and defamatory imputations contained in the Article and elsewhere on the website" [emphasis added].

40 In *Y and Z v W* at [82] and [83], Ipp JA dealt with the matter in the following terms:

> "[82] Spigelman CJ noted in *Bhagat* (at [49]) that when a court is concerned with an allegation of contempt by publication, the public interest in freedom of speech must be balanced against the public interest in the administration of justice.
>
> [83] In *Resolute v Warnes*, I said (at [37] to [38]):
>
> > 'While the Court is required to balance the interest of freedom of expression, which is a matter of public interest, and the due administration of justice which is likewise a matter of public interest (*R v Thompson* [1989] WAR 219 at 223), a material factor in the equation is whether, in purporting to exercise freedom of expression in the public interest, the respondent acted in a proper manner. When propriety is to be considered, factors such as the truthfulness and accuracy of the report come into play (*Davis v Baillie* [1946] VLR 486). Where criticism of a person's conduct is in issue, the fairness and temperate nature of the criticism may be determinative (*Attorney General v Times Newspapers Limited* [1974] AC 273). Improper pressure will be held to constitute contempt: *Attorney General v Hislop* [1991] 1 QB 514 at 531 per Nicholls LJ. Thus, in *Attorney General v Times Newspapers Limited* Lord Reid said (at 297 – 298):
> >
> > > '[W]here the only matter to be considered is pressure put on a litigant, fair and temperate criticism is legitimate, but anything which goes beyond that may well involve contempt of court'.
>
> And Lord Morris gave as an example of improper conduct (at 302):
>
> > '[C]onduct ... calculated so to abuse or pillory a party to litigation or to subject him to obloquy as to shame or dissuade him from obtaining the adjudication of a court to which he was entitled.'"

41 The reasons why the plaintiffs or either of them did not commence proceedings for defamation against Mr Dowling following his public response to Ms Munsie's 26 May 2011 letter or the prior publication on his website that inspired it are neither known nor relevant. It is however relevant, in my opinion, that nothing that occurred at that time discouraged the plaintiffs from commencing the present proceedings. Viewed from a distance it seems to me to be a fair assessment of Mr Dowling's response to Ms Munsie's 2011 letter that his reaction to the present proceedings would in all probability be no less public or indignant. I have a very strong sense that the plaintiffs could not have commenced these proceedings without a reasonable expectation at the very least that Mr Dowling would not remain silent about them for very long if at all. His references in the article that prompted this case to having been threatened with defamation proceedings "a couple of years ago" was on one view a patent reaffirmation of his strongly held opinion that he did not then and would not now take kindly to any attempts to silence him. If that meaning is one that is reasonably available from what Mr Dowling wrote, it can not have left the plaintiffs in any doubt that his views about the prospect or perception of being silenced were alive and well.

42 At the heart of the plaintiffs' contention that Mr Dowling is using unfair pressure upon them is that in persisting with his publication, even of material that has already been published by him, he has forfeited his right to continue to publish based on principles of freedom of expression and the public interest. This is said to be so because the absence of any truth and the inaccuracies in what he says amount to unfair and intemperate criticism, which in this case should be determinative of the question of whether or not he has committed or threatened to commit a contempt of court: "fair and temperate criticism may be legitimate, but anything which goes beyond that may well involve contempt of court."

43 Having regard to all of the circumstances of this case, I do not consider that Mr Dowling's conduct can be properly characterised as "calculated so

to abuse or pillory [the plaintiffs] or to subject [them] to obloquy *as to shame or dissuade [them] from obtaining the adjudication of a court* to which [they are] entitled." [Emphasis added] Putting the matter as bluntly as I can, I consider that the plaintiffs must have known, or at least reasonably anticipated, what it was they were getting themselves into when they commenced the proceedings. There was no guarantee that an injunction to restrain Mr Dowling would be granted ex parte when the proceedings first came before me, and so it turned out. Nor was there any guarantee that the suppression order I made would be continued after 4pm on 17 April 2014 when the matter returned.

44 In terms of the seriousness of the harm that would follow were Mr Dowling not restrained, it seems to me that any harm that the plaintiffs might suffer has already been wholly or substantially sustained. I accept that repetition of a defamation or the unabated presence of defamatory material in an electronic format may cause continuing damage to the reputations of people such as the plaintiffs. However, the plaintiffs have not, in my opinion, identified any additional as yet unpublished and discrete material that they anticipate Mr Dowling is utilising, or threatening to utilise, to dissuade them from persisting with these proceedings. If he had done so, I would have no doubt that he would have committed a contempt of this Court and that such behaviour should be enjoined by appropriate orders. It could only be by reference to such material, if it existed, that the nature or extent of the harm feared by the plaintiffs could properly or adequately be considered and assessed. The material of which the plaintiffs complain did not dissuade them from commencing these proceedings. A further publication or continuation of that material can in those circumstances hardly amount to a contempt of court or an interference with the administration of justice.

45 The plaintiffs would appear to have a strong case in the proceedings. Although the truth of Mr Dowling's assertions are yet to be tested or established, it seems highly unlikely to me, taken at face value, that anything said by him in the article complained of can be justified. The

allegations that Mr Dowling makes about the plaintiffs appear to be an unstructured collocation of assumptions and half-truths cobbled together with the questionable benefit of innuendo and surmise. They do not purport in the slightest way to be based upon any reliable information of a type that could give them credence. The fact that Sackville J published comments about Mr Stokes' performance as a witness in what has become known as the "C7 litigation" (see *Seven Network Ltd v News Ltd* [2007] FCA 1062 at [385] – [398]) does not provide a reliable basis for extravagant extrapolations about Mr Stokes, far less about Ms Munsie, that go beyond a fair report of his Honour's decision. It would regrettably appear that Ms Munsie has only attracted the attention of Mr Dowling's website as Mr Stokes' lawyer following the letter she sent to Mr Dowling on 26 May 2011. The very nature of the things published by Mr Dowling about each plaintiff at one level demonstrate or at least support the probability that they are the product of some generalised animosity or unsourced disaffection rather than reliable research or established facts. The plaintiffs would appear to have a strong prima facie case.

46 However, for much the same reasons as those that limit my ability to assess the seriousness of the harm that would follow if Mr Dowling were not restrained, it is not in my opinion seriously arguable that Mr Dowling has relevantly threatened to do anything at all that was intended improperly to overbear or influence the plaintiffs' conduct of this litigation, or that might have reasonably have had such a potential collateral consequence. However scurrilous the material that he has already published may be, I can see no basis for concluding that Mr Dowling has so far done or threatened to do anything calculated to interfere with the bona fide advancing of the proper issues in these proceedings, by bringing some form of improper pressure to bear on the plaintiffs. I am not satisfied that the plaintiffs have identified any already published material or other foreshadowed conduct that

> "...has, as a matter of practical reality, a real (or clear) and definite tendency to interfere with the course of justice."

See *Resolute Ltd v Warnes* [2000] WASCA 359 at [19].

47 Having regard to the material before me and to the reputation that Mr Stokes appears to enjoy as a determined and successful businessman, I am far from satisfied that he was or would have been intimidated in any way whatsoever by the conduct of Mr Dowling. The plaintiffs' own evidence included extracts from the judgment of Sackville J in the C7 litigation in which his Honour described Mr Stokes as a man who was "extremely resolute and persistent in pursuit of his objectives" [396], with a "rather Manichaean view of the commercial world" and a "propensity to engage in litigation" [397]. In my opinion, the likelihood that Mr Stokes would have felt overpowered or unfairly constrained, because of Mr Dowling's pressure upon him, to reconsider the wisdom of commencing defamation proceedings against Mr Dowling, so as to consummate a contempt of court by Mr Dowling, is to my mind at least completely remote if not entirely nonexistent. Even accepting that the matter has to be viewed objectively, it would be artificial to disregard the individual characteristics and level of robustness of the particular person whose decision to continue with the proceedings has allegedly come under unfair pressure amounting to contempt. On the evidence before me, I reject entirely any suggestion or submission that Mr Stokes has been, or that a reasonable person in his position would be, intimidated by Mr Dowling.

48 A proper consideration of where the balance of convenience lies must in my view also take a realistic account of the respective positions of the plaintiffs and Mr Dowling. As far as the evidence makes it clear, Mr Dowling does not conduct or publish his website as a business or as an undertaking from which his livelihood is derived and the partial restraint of his ability to post specified material would appear to be unlikely to cause him any particular financial hardship. On the other hand, for all I know, Mr Dowling might contend that the integrity of his operation as a blogger may be adversely interfered with or compromised by any order that he take down material that has already been published, or that restricts the subjects upon which he can continue to comment, if he is unable other

than in cryptic terms correspondingly to explain to his readers what has occurred.

49 By comparison, the plaintiffs face the prospect that if Mr Dowling's allegedly offending material remains on his website they suffer a hardship that will continue until they are able to succeed at a final hearing. The present proceedings were not commenced until approximately six weeks after the article of which the plaintiffs complain was published. Mr Dowling's website does not appear to be what could be described as a mainstream publication or a journal of record, so much as an electronic rallying point for individuals who have become, or who feel that they should be, disaffected with the legal or political process. The size of the following or readership of the website is currently unknown to me but would be unlikely to be significant having regard to the style and content of the examples taken from it that have become evidence before me. The hardship caused to the plaintiffs from the unrestrained publication of material that is defamatory of them in the apparently limited forum sponsored by Mr Dowling is likely in such circumstances to be slight. The tone and content of the website is capable in my opinion of suggesting to the ordinary reasonable reader that Mr Dowling's opinions are precisely that, and fail to communicate anything of interest with the force of credible authority. I can accept that Mr Dowling's unrestrained publications about them have for some time been, and will remain, an annoyance to the plaintiffs, but it is overstating the effect upon them to describe it as hardship. Ms Munsie is a well-respected and well-known member of the legal profession whose reputation amongst her professional colleagues in particular is unlikely to suffer at all pending the vindication that she seeks in these proceedings. Mr Stokes is even more widely known. I cannot agree that he will suffer any particular hardship in the circumstances as he waits for these proceedings to take their course.

50 In forming the views I have formed I have taken account of the uncomplicated wisdom of Lord Denning MR in *Hubbard v Vosper* [1972] 2 QB 84 at 96; [1972] 1 All ER 1023 at 1029 as follows:

> "In considering whether to grant an interlocutory injunction, the right course for the judge is to look at the whole case. He must have regard not only to the strength of the claim but also the strength of the defence, and then decide what is best to be done. Sometimes it is best to grant an injunction so as to maintain the status quo until the trial. At other times it is best not to impose a restraint upon the defendant but leave him free to go ahead... The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules."

51 It will be apparent that I am principally not satisfied that Mr Dowling has done or that he threatens to do anything that could amount to an abuse of process or a contempt of this Court by acting in a way calculated to cause, or possibly having the effect of amounting to, an interference with the proper administration of justice. He has not committed or threatened to commit a contempt of court that warrants restraint. Nor am I satisfied that the plaintiffs, or any reasonable person with his or her respective particular characteristics, would feel pressured to take some different course in these proceedings that he or she would not otherwise have considered as appropriate absent the conduct that the plaintiffs contend has placed unfair pressure upon them. It is tautological and impermissible for the plaintiffs in effect to rely upon Mr Dowling's real or threatened refusal to conform to the terms of an injunction, restraining him from publishing material that is defamatory of them, upon the basis that it amounts to an abuse of process, obstruction of the due administration of justice and thereby a contempt of court, when their entitlement to such relief, the sole claim in these proceedings, has been refused on an interim basis and is yet finally to be established on a continuing basis.

52 In arriving at that conclusion I have intentionally disregarded Mr Dowling's actions in publishing details of these proceedings in breach of my order. That is for two reasons at least. First, the plaintiffs have filed a Statement of Charge in accordance with the rules citing Mr Dowling for contempt of court. I have made procedural orders with respect to that process and it will take its own course. By reason of the nature of contempt proceedings, they ought in my view to proceed in public. It would not therefore be

appropriate in my opinion to restrain publication of these defamation proceedings while at the same time exposing Mr Dowling to allegations of contempt that arise directly and intimately from his conduct in those proceedings.

53 Secondly, as will be apparent, Mr Dowling has chosen to refer to me in arguably pejorative terms in the publication that the plaintiffs contend amounts to a contempt of court. Although in court before me on 17 April 2014 Mr Dowling expressly disavowed any suggestion that I should in those circumstances recuse myself from dealing with the present application, in contrast to the content of his email to the Chief Justice referred to by the plaintiffs in the Statement of Charge, it seems to me that it would be entirely inappropriate for me to become involved in, or to express even preliminary views about, whether or not he has committed a contempt as the plaintiffs allege or about what result might or should flow from his conduct if he has. I am mindful that the appearance of justice in this case is worthy of a degree of re-emphasis.

54 In the circumstances I make the following orders:

1. Decline to make orders 4 and 5 in the plaintiffs' notice of motion filed in Court on 17 April 2014.

2. Stand over the balance of the plaintiffs' notice of motion to 10am on Friday 16 May 2014 before the Duty Judge for directions.

3. Note that the plaintiffs' evidence in support of the contempt application is complete.

4. Direct that any evidence upon which Mr Dowling seeks to rely in response to the Statement of Charge should be filed and served by no later than 4pm Thursday 15 May 2014.

5. Order that the costs of the plaintiffs' application before me be costs in the proceedings.

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I CERTIFY THAT THIS AND THE 34 PRECEDING PAGES ARE A TRUE COPY OF THE REASONS FOR JUDGMENT/SUMMING UP HEREIN OF THE HONOURABLE JUSTICE HARRISON

B Heywood
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Associate

Date: 24.4.14