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NOTE
Police v Campbell (No 2)

10 High Court Wanganui CIV-2009-483-127
31 August 2009
Randerson J, Chief High Court Judge

15 *Evidence – Privilege – Application for order that journalist disclose identity of
informant – Balancing exercise – Public interest in disclosure – Public interest
in news media’s communication of facts and opinion – Freedom of expression –
When court should override journalists’ right to protection from disclosure –
Whether protection should be overridden only in exceptional circumstances –
Whether standard of proof required before court orders disclosure – Evidence
20 Act 2006, s 68.*

*Criminal practice and procedure – Evidence – Application for order that
journalist disclose identity of informant – Balancing exercise – Relevant
factors – Public interest in prevention and prosecution of crime – Other means
of obtaining information – Seriousness of charge – Whether strengthening
25 prosecution case by disclosing identity of informant who confessed to crime
likely to have adverse effect under legislation – Evidence Act 2006, s 68.*

RANDERSON J, CHIEF HIGH COURT JUDGE. [1] In my interim
judgment delivered on 7 August 2009 (reported at [2010] 1 NZLR 483) I
reached the conclusion that the significance of the evidence enabling the
30 discovery of the identity of the informant and the public interest in the
prosecution of the alleged offending outweighed the factors identified in
s 68(2)(a) and (b) of the Evidence Act 2006 by a significant margin.
I concluded that, prima facie, an order should be made under s 68(2) that the
protection available under s 68(1) is not to apply.

35 [2] In the interim judgment I sought further submissions before reaching a
final conclusion about the scope of the evidence relating to identity which TV3
might be willing to provide or which might not be protected by s 68(1) in any
event. I indicated that it might be possible, by that means, to conclude that there
is sufficient evidence available to identify the informant without the need for an
40 order under s 68(2).

[3] Since the interim judgment, I have received memoranda from counsel
and have had a further telephone conference with counsel. Today, I heard
counsel in Court.

45 [4] The defendants have produced a “will-say” statement by the first
defendant, Mr John Campbell, which has been tendered on a privileged and
confidential basis. Mr Heron on behalf of the defendants has indicated that
Mr Campbell would be willing to provide a depositions statement to the

counsel along the lines of the will-say statement but remains unwilling to give any direct evidence identifying the person he interviewed or to take part in any formal identification procedure under s 45 of the Evidence Act.

[5] In general terms, Mr Campbell's will-say statement outlines the process he followed prior to the interview at the Duxton Hotel on 21 February 2008. His statement also describes the movements of TV3 personnel into and out of the hotel. He also refers to the steps he took to satisfy himself the person he interviewed was not an impostor. He will also confirm the accuracy of the transcripts made of the audio interview and the subsequent interview which went to air later the same day. 5 10

[6] As described in my interim judgment, the Crown already has evidence from surveillance footage at the Duxton Hotel on the afternoon the interview took place which is sufficient to identify the TV3 personnel (including Mr Campbell) and K entering and leaving the hotel and the precise times when they did so. I am satisfied that the will-say statement provided by Mr Campbell combined with the surveillance footage from the hotel does provide a sound basis to enable a jury to draw the inference that the person interviewed was K. 15

[7] As Mr Rowe for the Crown points out, to the extent that Mr Campbell's proposed evidence would enable the identity of the person interviewed to be discovered, Mr Campbell is not relying on the protection which might otherwise be available to him under s 68(1). But, as noted in my interim judgment, a journalist may choose to disclose material which would otherwise be protected if the journalist wishes to do so. In this case, Mr Campbell has drawn the line at disclosing any direct evidence of the informant's identity. 20

[8] Given the material now available to the Crown in the prosecution of those responsible for the burglary of the Waiouru Army Museum on 2 December 2007, I am satisfied that the balance under s 68(2) now falls against the making of an order under that subsection to the effect that the protection available under s 68(1) is not to apply. 25

[9] In formal terms, the application by the plaintiff for an order under s 68(2) is dismissed on the specific understanding that the first defendant Mr Campbell will provide a depositions statement to the police which follows the form of the will-say statement he has provided to the Court. An order is made in these terms. 30

[10] Leave is reserved to the plaintiff to apply to the Court if any further orders or directions are needed. 35

[11] The suppression orders made at [122] and [123] of the interim judgment of 7 August 2009 remain in force but with the following proviso to the order made at [123](g):

Provided that the outcome of the interim and final judgments may be stated along with the reasoning which has led to the Court's conclusion. 40

[12] I confirm the order made in Court today that no details be published of the will-say statement provided to the Court by Mr Campbell nor any comments by counsel or the Court upon that statement.

[13] As noted at [124] of the interim judgment, the issue of costs is reserved. If the parties are unable to reach agreement on this issue, memoranda should be submitted to the Court within 14 days of today's date. 45

Application refused.