

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**ORDER PROHIBITING PUBLICATION OF NAME(S), ADDRESS(ES),
OCCUPATION(S) OR IDENTIFYING PARTICULARS OF
APPELLANT(S)/RESPONDENT(S)/ACCUSED/DEFENDANT(S) PURSUANT
TO S 19 HARMFUL DIGITAL COMMUNICATIONS ACT 2015. SEE
<http://www.legislation.govt.nz/act/public/2015/0063/latest/DLM5711853.html>**

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CIV-2019-092-002953
[2019] NZDC 14047**

UNDER THE	HARMFUL DIGITAL COMMUNICATIONS ACT 2015
BETWEEN	[LORNA JONES] Plaintiff
AND	ONLINE CONTENT HOSTS Defendant

Judgment: 22 July 2019
(On the papers)

**DECISION OF JUDGE L C ROWE
[Directions]**

[1] [Lorna Jones] has applied, on notice, for orders under the Harmful Digital Communications Act 2015 arising from communications she has received by WhatsApp, Gmail and the social networking site “Hangouts”.

[2] The communications repeatedly and explicitly request intimate contact, forward pornographic material and in some instances, threaten to publicly release intimate pictures of the applicant unless she complies with the sender’s requirements.

[3] The content of the communications suggests the sender is the same person in each instance.

[4] The messages have been received by the applicant over the past six months. She has blocked contact numbers and email addresses used by the sender, but the sender has then used alternative numbers or email addresses to continue to send messages to the applicant.

[5] The sender has used the name “Abdul”, “Anwar Fraizal” and “Pramod Patel”, or no name at all, but it is not known if any of the names used are genuine. The sender claims to be from Delhi in India and claims, in one of the communications, to have seen the applicant in Delhi.

[6] Ms [Jones] asks primarily for the online content hosts to identify the sender of these communications and secondly, that the sender be prohibited or blocked from sending any further communications to her or sending information about her to anyone else.

Relevant principles

[7] Ms [Jones] is an individual who alleges she has suffered or will suffer harm as a result of digital communications. Netsafe has received Ms [Jones’] complaint and had a reasonable opportunity to decide what action to take. Ms [Jones] is accordingly permitted to apply for the orders she seeks.¹

[8] There is undoubtedly a threatened serious breach, or repeated breaches, of communication principles,² namely:

- (a) Principle 2 – a digital communication should not be threatening or intimidating.
- (b) Principle 4 – a digital communication should not be indecent or obscene.
- (c) Principle 5 – a digital communication should not be used to harass an individual.

¹ Harmful Digital Communications Act, ss 11(1)(a) and 12(1).

² Section 12(2)(a).

[9] It is less obvious that these breaches have caused or are likely to cause harm to Ms [Jones]. Ms [Jones] refers to stress she has suffered and that she cannot concentrate on her work. The harm required for appropriate orders under the HDC Act needs to amount to “serious emotional distress”. This might be demonstrated by Ms [Jones] through further evidence. The present evidence also does not fully address whether the threats made by the sender are likely to be empty threats (in which case there is little likelihood of harm), or there is good reason to believe the sender is able to carry out the threats.

[10] The orders sought by Ms [Jones] to disable material, or identify the author of the communications, require the Court to appoint a technical advisor to assist with these issues.³

[11] The applicant, unsurprisingly, asks that her name and contact details be suppressed.

Orders/directions

[12] As this application is to proceed on notice, I direct that it be reviewed by the Judge hearing the civil list at the Manakau District Court on 30 August 2019.

[13] I direct the Registrar to appoint a technical advisor and to send the technical advisor a copy of the application and supporting information. I ask that the technical advisor provide a report to the Court by 19 August 2019 addressing the following:

- (a) The likelihood that the identified online content hosts would be able to identify the author of the communications received by the applicant.
- (b) The likelihood that the author could be permanently blocked from communicating with the applicant or disabled from posting material about the applicant in NZ.

³ Sections 17(3) and 19(2)(a) and (b).

- (c) Advising the Court about how and where the online content hosts could be served with proceedings to enable them to respond.
- (d) Whether there are practical measures available to the applicant to protect herself from receiving further communications.

[14] The Registrar should provide the report to Ms [Jones] as soon as it is received and invite her comments in writing by 26 August 2019.

[15] If Ms [Jones] wishes to provide further evidence addressing the matters raised in paragraph [9], she should provide an affidavit from herself or other relevant witnesses by 26 August 2019. Ms [Jones] should take legal advice from her own lawyer or a community law centre if she is unsure of what is required.

[16] Ms [Jones'] name and contact details are suppressed pursuant to s 19(4)(c) of the HDC Act.

[17] Once the Court has received the technical advisor's report and any further evidence or submissions from Ms [Jones], the Court will be able to assess what directions are required for service and what, if any, hearing is required. Ms [Jones] does not need to be at Court on 30 August but should contact the Registrar that day to confirm what, if any, further steps are required from her.

Judge L C Rowe
District Court Judge

Date of authentication: 23/07/2019
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.