

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

ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF APPLICANTS/RESPONDENTS OR PERSONS PURSUANT TO S 19 HARMFUL DIGITAL COMMUNICATIONS ACT 2015.

**IN THE DISTRICT COURT
AT NAPIER**

**I TE KŌTI-Ā-ROHE
KI AHURIRI**

**CIV-2021-041-000126
[2021] NZDC 18080**

BETWEEN

[EMILY SYKES]
Plaintiff

AND

[MATILDA NORTH]
Defendant

Date: 11 August 2021

Appearances: P Ross for the Plaintiff
No appearance by or for the Defendant

DECISION OF JUDGE D J HARVEY

[1] On 9 June 2021, his Honour Judge Rowe made certain orders pursuant to the provisions of the Harmful Digital Communications Act 2015. The orders were in favour of [Emily Sykes] against [Matilda North].

[2] The orders were that Ms [North] was to refrain from posting or sending any digital communication on any platform or medium to Ms [Sykes] or which referred to Ms [Sykes] in any way and that Ms [North] should not encourage any other person to send or post digital communications of any kind to Ms [Sykes] or to anyone else referring to or relating to Ms [Sykes].

[3] Judge Rowe declined to make an interim order requiring Ms [North] to publish an apology until she had been given the opportunity of being heard in response to Ms [Sykes]'s allegations.

[4] His Honour made directions as to the future conduct of the application and directed that there be a case management conference which has taken place today.

[5] Notice of proceeding was issued and served upon Ms [North] who has filed a notice of opposition and has indicated Mr Forster as being her legal representative. Neither Ms [North] nor Mr Forster have appeared in court today.

[6] Mr Ross, appearing for the applicant, is of the view that the interim order of Judge Rowe should in that event be made final. That is a course of action with which I agree.

[7] The orders that were sought by Ms [Sykes] were that Ms [North] cease or restrain from sending further digital communications and she should not encourage anyone else to engage in sending similar communications and that she should publish an apology.

[8] Rather like Judge Rowe, I wonder at the efficacy of the publication of an apology and I say that for a number of reasons. The first is that the publication of an apology in and of itself may only serve to bring back to the surface all of the harmful communications that have already been posted.

[9] Secondly, if an apology were to be published, who would be responsible for drafting the language of the apology? If I were to leave it, say, in the hands of Ms [North], it could well have a negative effect. She might use such language merely to reiterate the harmful communications under the guise of an apology and it is well known that people can do that. That is why I have some concerns about the efficacy of the publication of an apology.

[10] But I do agree with Judge Rowe that Ms [North] should cease and refrain from sending further digital communications and she should not encourage anyone else to engage in similar activity.

[11] I do note that the application that has been made does not seek a take down order and in that respect, I am not prepared, nor am I able under those circumstances, to make a take down order.

[12] The basis for the application is contained in Ms [Sykes]'s affidavit and a number of screenshots attached as exhibits. The parties, Ms [Sykes] and Ms [North], had had a relationship with one another and the first instance of Ms [North] sending a communication was on [date deleted] 2020. Ms [Sykes] was told that Ms [North] had posted that information on a digital platform but had shortly thereafter deleted it. Ms [Sykes] asked Ms [North]'s family to send her the post, but none of them would show it to her.

[13] Following that incident, there were further communications from Ms [North] sent via Facebook, Snapchat and Instagram and it appears that not unusually in cases of this nature, Ms [North] used fake accounts to send digital communications to Ms [Sykes].

[14] There is a myth that one can maintain a certain level of anonymity on the Internet. I describe it as a myth for that is exactly what it is. It is relatively easy to ascertain who it is who has sent a message by such a simple method as back checking on an Internet protocol or IP number. That has not been done in this particular case, but there are other ways as well and in this particular case, Ms [North] has been the sender of the messages according to Ms [Sykes] because of the content of the messages referring to other persons and to Ms [North]'s prior relationship with Ms [Sykes]. The messages contain information which was privy to both of them which was known to both of them and which would not be known to the so-called mysterious anonymous poster.

[15] The messages from the fake accounts apparently have been sent not only to Ms [Sykes], but to other associates of hers and from April, when she entered into a new relationship, the messages became worse.

[16] She exhibited messages received on [date deleted] 2021 from a profile of a person named [deleted] and I wonder if there is any coincidence between the name of [deleted] used as a nom de guerre as it were and the name of [person and event deleted]. The content of the message of [date deleted] is set out at paragraph [11] of Judge Rowe's decision and I do not intend to reiterate it, rather that I incorporate it into this decision.

[17] On [date deleted], there was an Instagram from a user who used the handle [deleted] which I will not attempt to pronounce and once again, the content was identifiable as coming from Ms [North].

[18] Certainly Ms [North] breached some of the communication principles contained in s 6 of the Harmful Digital Communications Act. Principle 2 requires that a digital communication should not be threatening, intimidating or menacing.

[19] Principle 3 requires that it should not be grossly offensive to a reasonable person in the position of an affected individual.

[20] Principle 5 requires that a digital communication should not be used to harass an individual.

[21] Principle 9 requires that a digital communication should not incite or encourage an individual to commit suicide.

[22] Principle 10 required that a digital communication should not denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation or disability.

[23] With the exception of principle 9, which is a specific principle relating to suicide, really, the communication principles that are set out in s 6 are no more and no less than rules of polite conversation and communication. But in this particular case,

one of the digital communications did encourage Ms [Sykes] to commit suicide and there was a threat to apply force to her to achieve that end. There was no doubt whatsoever that the communications are abusive and offensive.

[24] Indeed, the author of [date deleted] communication told Ms [Sykes] she was not wanted in this country and did not belong here.

[25] Clearly, the communications have caused Ms [Sykes] serious emotional distress. She describes herself as depressed, having suicidal thoughts and has sought medical assistance. She has been prescribed medication to deal with the after effects of the distress that she has suffered from these communications.

[26] A reasonable person in her position would, in my view, along with Judge Rowe, suffer serious emotional distress from the communications of this kind and her evidence is that she has so suffered.

[27] I am therefore of the view that the orders that were made by Judge Rowe should be made final.

[28] Furthermore, I consider that there should be suppression orders. The names of the parties to this proceeding should be suppressed and should not be published on any platform or in any way pending further order of the Court and the existence of these proceedings is not to be published either digitally or in any other forum pending further order of the Court.

[29] I make one exception to that. It is a requirement of the Harmful Digital Communications Act that the decisions of orders made under this Act should be published and I am of the view that this decision, along with the decision of Judge Rowe, could be published upon an appropriate database as long as the identity of the parties has been properly anonymised or redacted from the documentation, but otherwise, there is no need for publication of these proceedings. There is no obvious public interest in them and I believe that it would further exacerbate the harm that has already been caused to Ms [Sykes] were they to be published in any other forum other

than a proper legal database. Certainly, none of the digital communications to which I have referred should be republished either.

[30] Accordingly, the interim order that was made by Judge Rowe is made final.

Judge D Harvey
District Court Judge

Date of authentication: 13/08/2021

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.