IN THE DISTRICT COURT
AT GREYMOUTH

I TE KŌTI-Ā-ROHE
KI MĀWHERA

CRI-2018-018-000125

WORKSAFE NEW ZEALAND
Prosecutor

v

ADAM CAMPBELL BUILDING LIMITED
Defendant

Hearing:	8 February 2019
Appearances:	L Moffitt for the Prosecutor M Zintl for the Defendant
Judgment:	8 February 2019

NOTES OF JUDGE A D GARLAND ON SENTENCING

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[1] Adam Campbell Building Limited appears before the Court having pleaded guilty to one charge of contravening s 36 1A and 48 of the Health and Safety at Work Act 2015 in that, being a person conducting a business or undertaking, failed to ensure so far as was reasonably practicable the health and safety of workers who worked for the company including Mr Rory Hayward, while the workers were still at work in the business or undertaking namely raising and re-piling the building located at the mouth of the Paroa River, and that failure exposed workers including Mr Hayward to a risk of death.

[2] The facts relating to this offending are these. The defendant is a limited liability company based in Greymouth that operates predominantly in the residential

construction industry. It was experienced in partially repiling houses, but was not experienced in lifting houses completely clear of the piles. At the time of the incident, it employed four workers including Mr Rory Hayward. Adam Campbell is the director or the defendant. He is a qualified and licenced building practitioner. At the time of the incident, he had seven years' experience in the industry.

[3] Rory Hayward commenced work with the defendant on 27 February 2017. This was his first construction role since completing a certificate of carpentry in November 2016. It is part of a pre-apprentice programme. As part of the course, he undertook work experience in the construction industry and had been involved in some repiling work during that time. He was only 18 years of age. Prior to undertaking the work at the Paroa River site where the incident occurred, Mr Hayward had only undertaken one small repiling job for the defendant. He was inducted and supervised by the defendant. He was given on the job training.

[4] The building concerned was a bach on piece of land near the Paroa River Mouth. It was a small bach. It was sitting very close to the ground on damp land that was susceptible to flooding. The owner had engaged the defendant to lift and repile it. The work commenced on 11 April 2017, digging base timbers into the ground at each of the pre-determined checking positions around the perimeter and placing the jack on top. The jacks were then raised to take the weight of the piles around the perimeter, so they could be disconnected. The workers then used jacks to raise the bach above the existing pile height. Blocks were then placed in position above the existing perimeter piles and the bach was lowered back down onto the blocks. The workers then starting jacking, disconnecting and blocking piles further under the bach at the direction of Mr Campbell. Mr Hayward, together with Mr Campbell and one other worker went under the bach to place the jacks and disconnect the piles during the course of the afternoon.

[5] Mr Campbell held a toolbox meeting before the work commenced. He instructed the workers to watch what they touched while underneath the bach and the maximum time to spend under the bach would, at any one time would be 30 minutes. They were to take five breaks throughout the day.

[6] There was heavy rain overnight and this delayed the work. The work started the following day due to the remote location and access difficulties. The workers arrived at the bach at approximately 12.30 pm. The meeting was held and Mr Campbell told Worksafe that he directed the workers not to go under the bach while it was on jacks as it would be unstable and unsafe as they were lifting it off the blocks.

[7] During this meeting, Mr Hayward asked about the middle of the bach sagging and Mr Campbell told him that it was not a concern as it would not break and there was no need to push the middle up.

[8] Over the two days of work, the bach was raised 400 millimetres. Just prior to 2.00 pm on the second day, Mr Campbell observed Mr Hayward under the bach trying to repack the adjust one of the jacks under the bach. He advised Worksafe that he told Mr Hayward that it was not safe to be there and Mr Hayward started crawling out. At approximately 2.00 pm, the bach shifted, twisted off the jacks and dropped. Mr Hayward was still under the bach crawling towards the perimeter when it dropped. He sustained fatal crushing injuries from the impact of the bach falling on him and died instantly.

[9] The work that was being undertaken was inherently dangerous and presented significant risks. There was a risk of the suspended load shifting and dropping causing crushing injuries to workers underneath the building or in close proximity to the perimeter of the building. The likelihood of the risk being realised was high as effective temporary support was not in place in the area. Under the bach had not been isolated.

[10] A Worksafe investigation determined that the incident was not caused by jack failure. The jacks being used were fit for purpose. The work was not undertaken safely or in accordance with the hierarchy of controls. The duty holder had identified the building and suspended load collapse as a hazard.

[11] The Worksafe investigation found that the defendant failed in two primary areas. It was reasonably practicable for the defendant to have implemented lateral bracing by maintaining sty block stacks under the building during jacking. Secondly,

by isolating the area under the bach, for example, by using danger warning tape. As a result of the defendant's failures, the victim sustained fatal injuries.

[12] The guideline on the lifting of buildings is readily available online. The principles articulated are equally applicable to the lifting and repiling of small buildings in any location, particularly where the ground is unstable. Worksafe has produced a fact sheet entitled, "Lifting Earthquake Affected Buildings in Christchurch," which sets out general guidance on the hazards and temporary building support methods. Appropriate temporary support is also addressed in the feature EQC Safety Alert, dated 26 September 2013 which was available online and the Canterbury Rebuild Safety Forum House Lifting Protocol Document. The latter documents states that a method of or bracing and or lateral support system must be in place and must be suitable for purpose.

[13] The defendant has not previously appeared before the Court.

[14] I acknowledge today in Court the presence of Alex and Rosie, the parents of Rory. I am grateful for the effort and the care that both of you have taken in preparation of the victim impact statements, not only your own, but also in particular the victim impact statement for Harri.

[15] Thank you to Mr Mora, the minister, the Anglican Minister who kindly read the victim impact statements on behalf of the family.

[16] In sentencing the defendant company today, I bear in mind the purposes and principles of sentencing which are set out in ss 7 and 8 Sentencing Act 2002. I am also very mindful of the provisions of s 151 Health and Safety Work Act.

[17] Both the prosecution and defence counsel have filed written submissions which I have found very helpful and I am very grateful to counsel for the effort and time that they have taken. In summary, the prosecution submits that this Court should order a sum for reparation for emotional harm in the sum of $120,000. In terms of the level of culpability in this case, the prosecution submits that this falls within the high band with a starting point of a fine of $1,000,000. In terms of aggravating and

mitigating factors and for the guilty plea, there are no aggravating factors personal to the company. In terms of mitigating factors, the prosecution submits that a discount of up to 20 percent might be appropriate with a further discount of up to 25 percent on account of the guilty plea entered to the charge. The resulting fine, the prosecution submits, which would be appropriate was a fine of $600,000. The prosecution also seeks legal costs of $1753.05.

[18] For the defence, Mr Zintl accepts that this was a very tragic accident. He submits that reparation for emotional harm in the sum of $110,000 would be appropriate, but for the financial incapacity of the company. He submits that reparation only and no fine should be imposed for that reason. Mr Zintl submits that given the incapacity of the company, reparation of $50,000 which would be, in his words, a big stretch. It might be appropriate if the company was given a period of five years to pay.

[19] In terms of the level of culpability, Mr Zintl submits that company's culpability should be assessed as being medium to high with a starting point of a fine between $600,000 and $800,000. He then asks for credit for co-operation, good safety record, willingness to attend restorative justice and for an early guilty plea and the offer of reparation.

[20] Finally, in relation to this part of the sentencing exercise, he submits that a fine would be futile given that the company is simply not in a financial position to pay a fine at all.

[21] The maximum penalty for this offence is a fine not exceeding $1,500,000. I have considered the decision of the High Court in *Stumpmaster v Worksafe New Zealand*.[1] A four step approach is required to sentencing.

[22] First, I must assess the amount of reparation that is payable. That is no easy task. As the Chief Judge Jan-Marie Doogue said in Worksafe New Zealand and the Department of Corrections, determining reparation for loss of life is by no means an easy task. It involves placing a monetary value on that loss which can only ever fall short of truly reflecting the grief felt. So, reparation is designed to give a measure of

[1] *Stumpmaster v Worksafe New Zealand* [2018] NZHC 2020

recognition to the loss in the best way that Courts are capable of doing that, because we are never capable of doing it to the extent that you will feel is necessary.

[23] The task of setting reparation for emotional harm in a case such as this does not simply involve ordering the same amount given in other cases involving a fatality. Each case must be judged on its particular circumstances. While certain cases may give a broad indication of an appropriate figure, it is unhelpful to pick apart those decisions and try to pair particular features with a particular level of reparation. There is not and cannot be a tariff for the loss of life or grief.

[24] The joint victim impact statements from the deceased's family make it vividly clear that the loss of a son and brother at such a young age in the prime of his life has crushed them emotionally. The emotional harm has, therefore, been enormous.

[25] I have also been informed of some direct and consequential financial losses. There are some actual losses of $7539 for funeral and related expenses. I have also been advised of the loss of income and some significant sums have been referred to.

[26] Worksafe have referred me to a schedule of cases where emotional harm reparation has previously been awarded in cases where the loss of life has occurred. In the Pike River Case, I note $110,000 was awarded to each family. Having regard to all of the circumstances, that sum in my view would seem appropriate in this case. I note that the defendant accepts that that sum would be appropriate subject to its ability to pay.

[27] I, therefore, assess the appropriate amount of reparation that would be payable, subject to the defendant's ability to pay, as follows. First, the sum of $110,000 for emotional harm to be paid to the defendant's parents for the benefit of themselves and their son, Harry. I also assess that the sum of $7539 to the deceased's parents is appropriate to reimburse them for expenses. I will return to consider the defendant's ability to pay this reparation funeral shortly.

[28] Turning now to the second step which is an assessment as to the level of a fine. I then need to fix the amount of the fine by reference first to the guideline bands and

then by having regard to the aggravating and mitigating factors relating to the offending.

[29] The list of factors noted in the *Department of Labour v Hanham & Philp Contractors Ltd & Ors* remains relevant.[2] First, there was a significant risk and potential for death in this case as a result of the defendant failing to manage the risk. It is without any doubt that this work was inherently dangerous. Not just for the deceased, but also for the other workers on the site. Secondly, it was reasonably foreseeable that if the risk was not properly managed, a death might ensue. The defendant was not experienced with this type of work. The deceased was young and inexperienced. He was, therefore, very vulnerable. The combination of high risk work, inexperience on the part of the defendant and an inexperienced and vulnerable employee created a very dangerous situation. The absence of effective temporary support in terms of lateral bracing when the building was lifted off its foundations or isolation to prevent workers going under the dwelling when it was not safe to do so, resulted in a high likelihood of the risk being realised. Thirdly, guidance on lifting buildings was available online especially following the Christchurch earthquakes. Worksafe had prepared general guidance material. Fletchers had also issued an alert dealing with appropriate supports. Suitable bracing and lateral support systems were also available in the Canterbury Rebuild Safety Forum house-lifting protocol document. So, there was information available to provide guidance if one was prepared to look for it. Fourthly, no issue arises as to availability or cost of implementing the necessary steps to ensure safety and to avoid the hazard. The hazard could have been remedied easily at reasonable cost which could have been recovered as part of the cost of the work. Finally, failure by the defendant to take appropriate measures to minimise the risk represents a serious departure from the standards prevailing in that industry at the time of the accident.

[30] A number of cases have been referred to me for comparative purposes by the prosecutor, namely *Worksafe New Zealand v Easton Agriculture Limited, Worksafe New Zealand v Oceania Gold NZ Limited, Worksafe New Zealand v Toll Networks NZ Ltd, Department of Labour v Quaystone Limited & Dreaver, Worksafe New Zealand v*

[2] *Department of Labour v Hanham & Philp Contractors Ltd & Ors* (2009) 9 NZELC 93,095 (HC)

Hunter Laminates Nelson Limited, and Stumpmaster v Worksafe New Zealand[3] Based on those cases, the prosecution submits that a starting point of $1,000,000 is appropriate. As I said, Mr Zintl, for the defendant submits a lower starting point of between $600,000 and $800,000 is appropriate. In my view, this offending falls at the top end or towards the top end of Band 3, high culpability and the appropriate starting point I would set at $900,000.

[31] Turning then to aggravating and mitigating factors personal to the defendant. The defendant company has no previous convictions for any offending and therefore, no uplift is required. In terms of mitigating features, first of all, remorse. The defendant was willing to participate in a restorative justice conference but the victim's family found that that would be too difficult in the circumstances, and I understand that. The defendant has cooperated with Worksafe throughout its investigation.

[32] In terms of efforts since that time to address the underlying cause, I note the defendant has continued to do repiling work. No concerns have been reported by Worksafe as to that type of work, but Worksafe have recently issued a prohibition and improvement notice with respect to some scaffolding on a recent work site. Mr Zintl has, however, provided a letter from the client which informs me that the scaffolding had not been fully put in place at the time of the inspection.

[33] I also take into account the company's previous good record. The defendant has no previous convictions and is entitled to have that taken into account.

[34] In terms of reparation, if reparation was paid in full then this would be a significant mitigating factor. Bearing in mind what the High Court said in *Stumpmaster,* I allow a reduction of 20 percent on account of those mitigating factors or in monetary terms the sum of $180,000. I next allow a further 25 percent reduction in the fine on account of the early guilty plea. That reduces the level of the fine to $540,000 subject to my assessment as to the defendant's ability to pay.

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[3] *New Zealand v Oceania Gold NZ Limited* [2018] NZDC 5274; *Worksafe New Zealand v Toll Networks NZ Ltd* Unreported Auckland DC CRI-2017-004-009639 24 April 2018; *Department of Labour v Quaystone Limited & Dreaver* DC Nelson CRI-2010-042-001094, 24 September 2010; *Worksafe New Zealand v Hunter Laminates Nelson Limited* DC Nelson CRI 2014-042-000957, 1 October 2014; *Worksafe New Zealand v Easton Agriculture Ltd* [2018] NZCD 2003; *Stumpmaster v Worksafe New Zealand*[3]

[35] I now need to determine whether further orders under ss 1522,158 of the Act are required. Worksafe seeks an order for $1753.05 being one-half of the prosecutor's costs. I accept that that is appropriate.

[36] Finally, I need to make an overall assessment as to the proportionality and appropriateness of the combined packet of sanctions. So far, I have assessed reparation in total at $117,539; a fine at $540,000; costs at $1753.05; that giving an overall total of $659,292.05. Subject to the defendant's ability to pay, these sums would in my view be proportional and appropriate to the offending in this particular case. However, Mr Zintl, on behalf of the defendant raises an issue in relation to the defendant's ability to pay both the reparation and the fine.

[37] In *Stumpmaster*, the High Court recognised that with the increase in fine levels there was likely to be an increase in cases where financial incapacity will arise. The Court said that the approach settled in *Hanham* should continue so that any adjustment made to the level of the fine should not affect the reparation order.

[38] In deciding upon levels of fine and or reparation, there are a number of legal principles that I must apply. In s 40 Sentencing Act 2002 subs 1, it provides, "In determining the amount of a fine the Court must take into account in addition to the provisions in s 7 to 10, the financial capacity of the offender." In s 40, subs 4A, it is provided, "In fixing the amount of the fine the Court must take into account the amount of reparation payable." In s 8, para [h], the Act provides,

> "In sentencing or otherwise dealing with an offender, the Court must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would in the particular instance be disproportionately severe."

In s 14 the Act provides, subs 1,

> "Even if it would be appropriate in accordance with s 13 to impose a fine, a Court may nevertheless decide not to impose a fine if it is satisfied that the offender does not or will not have the means to pay it."

Subsection 2 provides:

> "If a Court considers that it would otherwise be appropriate to impose a sentence of reparation and a sentence of a fine but it appears to the Court that

> the offender has or will have the means to pay a fine or make reparation but not both, the Court must sentence the offender to make reparation."

[39] By virtue of s 32 Sentencing Act, the Court may impose an order for reparation if an offender caused a person to suffer loss or damage or emotional harm, however, the Court's jurisdiction to order reparation is subject to s 12. Section 12 A provides,

> "If a Court is lawfully entitled under Part 2 to impose a sentence or order of reparation, it must impose it unless it is satisfied that the sentence or order would result in undue hardship for the offender or the dependents of the offender or that any other special circumstances would make it inappropriate."

[40] The issue of when reparation should be ordered was recently discussed by the High Court in the case of *Guiness v New Zealand Police* at paras [13] to [16].[4] His Honour Woodhouse J said, "under s 12 Sentencing Act, an order that will cause undue hardship cannot be made notwithstanding that the Court is otherwise lawfully entitled to oppose an order under Part 2, Sentencing Act. The relevant provisions in Part 2 of those contain in ss 32 to 38, these are sections which set out the general criteria for determining whether the Court can make an order at all and if so, the terms of the order and related matters. In my judgment, the order would cause undue hardship. That is not an assessment based on some abstract principle dependent on a subject of assessment of the Judge. It is based on the provisions of the Act and the decisions of the Court of Appeal binding on this Court as well as the District Court, together with other decisions of the High Court."

[41] He went on to say,

> "It is plain on all of the information that was available that the order imposed would result in an impossible financial burden for the appellant. It was an order that she simply could not comply with and it was plain enough that it was likely that it would produce very little and quite possibly produce nothing for the victims."

[42] Undue hardship means more than ordinary hardship. It is hardship greater than the circumstances warrant. Orders which cannot possibly be met should be avoided. The amount to be repaid by way of reparation should be realistic given the financial resources of the offender. Where there is no realistic chance that payment will be made within a few years, an order should not be made for the full amount sought.

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[4] *Guiness v New Zealand Police* [2015] NZHC 883

[43] Section 35 Sentencing Act allows the Court the flexibility to tailor of the sentences to meet the financial capacity of the offender. The Sentencing Act does not specify any period or maximum period during which reparation is to be paid, but a Court should not bond an offender for long periods. Generally, where the reparation will not be paid within five years either in instalment or otherwise, the order will cause undue hardship. This accords with s 86, subs 2, Summary Proceedings Act 1957 which provides that extensions of time for repayment of fines cannot exceed beyond five years after the date on which the extension was arranged. Instalments beyond five years have been regarded as inappropriate.

[44] The defendant in this case has filed two affidavits and as to his financial capacity and there have been two filed on behalf of its accountant. Mr Campbell and his mother, who is also a shareholder and a person with significant financial control over the finances of the company have given evidence today. That evidence suggests to me that the company was trading at a loss previously, but its position is improving. It has continued to trade in the past because of advances made by Mrs Campbell. Mr Campbell's evidence was that things have improved. While the company has an overdraft of around $17,000 at the moment, he expects that that will be paid off in the foreseeable future as work continues to come in.

[45] Mr Campbell says that the company could pay the sum of $50,000 by way of reparation if that was spread over five years. The company's accountant says that the company is not in a position to pay a fine at all.

[46] I have looked at the company's accounts for the last two financial years. The accountant has given financial information also for the current year. The prosecution has also had the opportunity to consider this information. The prosecution's position is that irrespective of the company's financial circumstances, the defendant should be ordered to pay reparation in full and the defendant should pay a fine at the first assessed level without any reduction. The prosecution submits that such an approach is warranted in this case because of the strong need for denunciation and deterrence.

[47] I accept that reparation is a very important component of sentencing for offending of this nature. I also accept that any fine that the Court imposes should be

sufficient to deter the offender concerned from re-offending, but it must also send a wider message to the community that failure to comply with Workplace Health and Safety obligations will be met with stern penalties. On the other hand, small businesses that are important to communities should not be fined to the point of extinction. In this case the defendant employs five workers including Mr Campbell. A number of families rely upon it for their livelihood. Apart from this very serious error, the company has otherwise been a responsible corporate citizen. It would not be appropriate for the Court to impose a fine in addition to reparation at a level that would cause its demise.

[48] The real question for me is to assess reparation at a level that will not cause undue hardship and the level of a fine that would bite but which would enable the company to continue to trade.

[49] I accept that having regard to the evidence of the defendant's current financial circumstances, including its assets and liabilities and earning capacity and also its future likely earning capacity, that to order it to pay full reparation would cause undue hardship, in that the company would be likely to be forced into liquidation, with the consequence that the victims would not receive any payment of reparation.

[50] In my view payment of reparation in the circumstances which is appropriate should be first for emotional harm in the sum of $70,000, and secondly, the sum of $7539 for funeral and related expenses. In the circumstances if the defendant company commits to payment of reparation in those sums in full, it will not have the ability to pay any fine at all. I am, therefore, not prepared to order the payment of a fine as that would be in my opinion an exercise in futility.

[51] In conclusion, I make the following orders.

[52] The defendant is ordered to pay reparation for emotional harm in the sum of $70,000 which is to be paid to the deceased's parents within a period of five years. The defendant is also ordered to pay the sum of $7539 for funeral and related costs to be paid to the deceased's parents within a period of one year. The defendant is ordered to pay costs of prosecution in the sum of $1753.05, to be paid within five years. On

7 September last year, I made final orders for suppression relating to the contents of the Hayward Family joint victim impact statements and also final suppression in relation to the name of the deceased's younger brother. I am satisfied that it is appropriate to make an order for final suppression in relation to the financial circumstances of the defendant as set out in the affidavits and in the evidence before the Court.

[53] Mr Zintl, however, makes application for final suppression of the defendant's name. He seeks final suppression on two grounds. The application is opposed by the victims.

[54] The first ground that was advanced was because of extreme hardship to the company. Mr Zintl submits that if the company's name is published, no one will want to use them, and if they get no work then the employees will lose their jobs and thus extreme hardship will be caused.

[55] I am not satisfied that publication would cause extreme hardship to the defendant company. Certainly, it has made a very serious error which has led to tragic consequences. Provided that the company has learned its lesson and placed appropriate measures in place to ensure that there is no repeat offending, then customers should continue to use it to do this kind of work. West Coast is a small community and I am sure that word has already got around identifying the defendant as the offender in this case and yet the defendant still continues to get work. Moreover, in my view, it is important that the public know that this company has offended in this way and that suspicion is not cast on other contractors.

[56] The second ground upon which final suppression is sought is that Mr Zintl has submitted it would endanger the safety of Mr Adam Campbell. In that regard, he is referred to me a letter from Dr Hathaway, a consultant psychiatrist. Mr Zintl submits that the psychiatrist is concerned that if suppression of name is lifted, it would have a major negative impact on Mr Campbell's mental health. He submits that the threshold in s 200 is met and that the Court should exercise its discretion in favour of final name suppression. Section 200, subs 2E Criminal Procedure Act 2011, provides that the Court may make an order forbidding publication of the name, address and occupation

of the person charged with or convicted of an offence. In *Robertson v Police* the Court of Appeal explained that s 200 had changed the law principally by specifying the grounds upon which suppression might be granted.[5] The predecessor provision simply conferred a discretion upon the Court. The change was thought necessary because of the presumption of open justice that appellant decisions had established was not being applied consistently at first instance. Section 200 mandates a two-step inquiry. Whether one of the thresholds in subs 2 has been crossed, and if it has, whether the exercise of discretion should be made. The first step gives the presumption statutory form, that is to say, it insists that the Court determine on what principled basis suppression might be granted. The legislation does not impose the burden of proof but the presumption will apply unless the applicant can point to something to displace it. The thresholds in paragraphs a, c and d, include extreme, undue and real risk. These are comparative standards. They will require that the Court compare the consequences of publication in the instant case with those that normally attend prosecution, distress, embarrassment, and adverse personal and financial circumstances usually attend criminal proceedings. Something out of the ordinary is needed if the applicant is to get across the threshold. That is an important principle.

[57] At the second stage, the Court must balance relevant considerations in the exercise of discretion. The open justice principle must be considered at this stage, notwithstanding that the threshold had been crossed. That is so because the ultimate question remains, whether open justice should yield. The balance must clearly favour suppression.

[58] In the case of *D v New Zealand Police & NZME Publishing Limited* the Court of Appeal also dealt with a case where the principle ground of appeal was whether the publication of *D's* name was likely to cause extreme hardship or to endanger his safety.[6] In that case the Court said in relation to self-harm cases, it is not uncommon for applicants to seek suppression on the ground that publication will cause them to self-harm or commit suicide. A review of the principle in cases the Court said is instructive and a number of points may be made. First, the possibility of self-harm or suicide always gives the Court cause for careful consideration. Secondly, Judges know

[5] *Robertson v Police* [2015] NZCA 7
[6] *D v New Zealand Police & NZME Publishing Limited*

the people may experience suicidal ideation when confronted with criminal proceedings which are immensely stressful but very seldom, if ever, are acted upon. Thirdly, for these reasons, a defendant who relies on a risk of self-harm or suicide attributable to publication of his or her name must normally point to something more than the usual feelings of anxiety and despair that may attend proceedings. Fourthly, the defendant's condition may be such that it also impinges on his or her ability to participate fully in trial. Fifthly, anything that reinforces or mitigates other risk factors may affect the likelihood that publication will precipitate self-harm or suicide. Sixthly, the opinions of medical professionals deserve respect but the Court need not to defer to them. Seventh, there are normally ways of managing the risk. Finally, suppression does not follow automatically from the Court being satisfied that the relevant risk exists.

[59] In the present case, I am not satisfied that this ground has been made out either. I acknowledge the stress and anxiety experienced by Mr Campbell awaiting for this outcome, however, I am encouraged by the fact that he has the support of the mental health unit and the team therein as well as the psychiatrist who will ensure that he is appropriately cared for. Critically, it is important in my view, for Mr Campbell now, that is he able to put these proceedings behind him and to resolve never again, to allow his standards of safety to drop in the future for the sake of his employees.

[60] For those reasons, the application for final name suppression is declined.

[61] Mr Campbell has indicated that he wishes to lodge an appeal against my decision on final suppression of name. I, therefore, direct that the interim order for name suppression is to continue until midday on Monday, 11 February 2019. It will lapse if no appeal is filed by that time. If an appeal is filed by then it will continue until the appeal is determined.

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Judge A D Garland
District Court Judge

Date of authentication: 04/07/2019
In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.