



Summary of Judgment

The Queen v Nationwide News Pty Ltd [2018] VSC 572

2 October 2018

The Victorian Supreme Court has convicted Nationwide News, publisher of *The Australian*, of contempt of court and fined the company \$155,000 for what Justice Lesley Taylor said was a “very serious breach” of the *sub judice* contempt principle.

Action was taken in May 2018 by the Victorian Director of Public Prosecutions after *The Australian* on 28 April 2018 published an article that referred to prior convictions of an accused union leader, John Setka, who at the time faced imminent criminal proceedings.

The DPP had previously, repeatedly warned *The Australian* that publishing prior convictions would be a clear breach of *sub judice* contempt principles. Warnings were made in February 2016 (a general warning to all media publications), and in April and May 2016 after *The Australian* did publish articles referring to the prior convictions.

Nationwide News pleaded guilty.

Justice Taylor said while the Court accepted the contempt was “not deliberate”, and that no actual harm flowed from the contempt, the potential for harm was “very high”. Her Honour said *The Australian* had prominently and expressly linked Mr Setka’s prior convictions with proceedings that, at the time, were ongoing, and it did so despite a history of specific warnings and despite assurances to the DPP that it would take steps to avoid a contempt.

Her Honour noted that Mr Setka was a figure of notoriety, the readership of the article was not insignificant, and the potential for harm was averted “not by any praiseworthy conduct on the part of the respondent” but by the DPP’s decision to withdraw charges against Mr Setka.

Justice Taylor said the contempt apparently arose from “an inexplicable failure to recognise [that] the juxtaposition of prior convictions and an ongoing criminal proceeding” was a breach of the *sub judice* contempt principle. She said it was “difficult to imagine a more blatant example” of such a breach, adding that by virtue of the general and specific warnings issued to *The Australian*, it “was on very clear notice not to do precisely what it then did”.

Her Honour said that when the article was published in April 2018, Nationwide News had clearly not implemented adequate internal procedures or taken sufficiently sound steps to avoid contempt. It has since moved to remedy its internal processes.

Her Honour referred to several previous convictions of Nationwide News for contempt matters, and she described its entire record in such matters as “relatively good”.

Justice Taylor said that irrespective of whether actual harm flowed from publication of the article, “the fact of the respondent’s contempt is *of itself* disruptive to the orderly administration of justice and deserving of this Court’s censure”. She said the circumstances of the breach in this case warranted “more than a modest fine”.

Nationwide News was convicted of contempt of court and fined \$155,000. It has undertaken to pay the DPP’s costs of the action on an indemnity basis, a sum fixed at \$45,000.

NOTE: This summary is necessarily incomplete. The only authoritative pronouncement of the Court’s reasons and conclusions is that contained in the published reasons for judgment.