

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

BETWEEN

VINCENT ROSS SIEMER
Businessman
27 Clansman Terrace
Gulf Harbour
Fax: 09 428 2521

Applicant

AND

DAVID COLLINS
Solicitor General of NZ
Level 10, Unisys House
56 The Terrace
WELLINGTON
Ph: 04 472 1719
Fax: 04 494 5678

Respondent

**AFFIDAVIT OF VINCENT ROSS SIEMER in SUPPORT OF
HABEAS CORPUS**

April 2010

Submitted by: Vince Siemer,
c/o 27 Clansman Tce.
Gulf Harbour
Facsimile: 09 428 2521

I, Vincent Ross Siemer, bankrupt, resident of Gulf Harbour, and the appellant in the proceeding identified above, do solemnly swear the following as true:

1. In mid-August 2007, the Solicitor General claimed a 9 August 2007 article on www.kiwisfirst.com and www.kiwisfirst.co.nz ("the websites") violated a Court gag injunction Michael Stiasny obtained against me on 5 May 2005. **In response, I deleted the words from the article which the Solicitor General objected to.**
2. Though I still do not consider these deleted words breached any injunction, I have not republished them. Nonetheless, the Solicitor General filed contempt proceedings against me six months after I removed the phrases, asking two judges of the High Court to imprison me indefinitely for *continuing* breach.
3. That I had censured the publications to conform to the Solicitor General's demand is self-evident in the affidavit of Esther Watt filed in support of his prosecution application. Ms Watt's affidavit – which is the only evidential support of the Solicitor General's prosecution – clearly shows on pages 4 - 5 that the phrases had been deleted. ***Attached and marked as Exhibit "CC" is a true of copy of Ms Watt's Exhibit CC in the prosecution affidavit dated 25 January 2008.***
4. At my 15-16 June 2008 trial, I informed the trial judges Chisolm and Gendall JJ that the suspect words on the websites had been removed 10 months earlier.
5. I attempted to further prove my innocence when cross-examining Esther Watt – the only witness against me. Ms Watt admitted she was a new lawyer tasked only with the job of periodically printing off pages from the websites. She insisted she had only 'skim read' the injunction. She testified it was not her job to give a legal opinion or even read what she had been directed to print off. She repeatedly testified she was not the one to ask about the injunction or what publications violated it.
6. Moreover, when I asked the S-G's only witness Ms Watt to give an example of an injunction breach in an article, Judge Gendall interrupted with:

*“Mr Siemer, it's a matter we're going to ask (the S-G's lawyer) to address in submission. You can continue if you wish but **whether Ms***

Watt can point to anything or not is not going to help us in the end. It's whether (the lawyer) can show to us the publication or publications which breach paragraph 1 of the injunction.”¹
[emphasis added]

7. Again, Ms Watt was the sole witness against me. Her evidence proved that the websites were not in active breach of the injunction. I am powerless when New Zealand judges are not interested in the only evidence but seek instead to rely on the unsworn submissions of the NZ Solicitor General's lawyer to convict me when the only evidence demands my acquittal.
8. By Judgment dated 8 July 2008, the Judges convicted and sentenced me to six months prison, quoting and relying on two long-ago censured website passages in Para [64] of their Judgment. It is evident from the prosecutor's *evidence* that the judges' passages were materially different. Equally troubling to me is that the second passage cited by the judges clearly does not violate any injunction or law. ***(Attached and marked with the letter "A" is a true copy of the article as it has appeared since August 2007).***
9. I sent a Memorandum dated 28 July 2008 to the two judges, noting the passages they quoted in Para. [64] had been changed per the Solicitor General's demand (at this date, a year earlier) ***(Attached and marked with the letter "B" is s true copy of this 28 July 2008 memorandum).***
10. I also emphasised in this Memorandum that the Judges had failed to specify what published words breached what terms of the injunction.
11. I even offered to shut down the websites completely, simply in exchange for a fair trial. The Judges refused. Instead, In a Minute dated 31 July 2008, Judges Chisholm and Gendall declared:
“The websites are to be unconditionally closed down in terms of our judgment of 8 July 2008, failing which Mr Siemer will be committed to prison for six months on Friday.”² *[emphasis added]*

¹ Page 39, line 25 of the witness transcript, *Solicitor General v Siemer* CIV2008 404 472, 16 June 2008

² Para. [2], Minute of Chisholm and Gendall JJ, *Solicitor General v Siemer* CIV2008 404 472

12. This demand illustrates my informed belief there was no legitimate legal issue with the actual injunction or specific words I published but, rather, the entire websites. I am being politically persecuted and sent to prison for publishing accurate news stories of a political nature, in contravention of s14 of the *New Zealand Bill of Rights Act 1990* and the *International Convention on Civil and Political Rights*.
13. To the best of my knowledge, I was never served with the sealed order upon which an alleged breach of has sent me to prison.
14. Every judge involved has refused my reasonable request they specify *what active publication words breach what injunction terms*.
15. When I argued my conviction to the Court of Appeal on the ground the New Zealand High Court Judges had relied upon non-existent breaches on *kiwisfirst* to send me to prison, the Court of Appeal relied on the same defective and unsafe judgment in declaring:
- “(Mr Siemer’s) arguments are untenable: at [8] the Court set out the relevant passage of the injunction at issue; and at [63] and [64] there are multiple quotations from the appellant’s websites that plainly breach the terms of the injunction.”*³
16. I stress again, not only were these Para. [64] “quotations” non-existent since early August 2007, the Court of Appeal had materially overstated the gag injunction in the very first paragraph of this judgment, (quoting):
- “The appellant appeals against a High Court order committing him to prison for a term of six months for contempt of court. The contempt resulted from the appellant’s **breach of an interim injunction requiring him not to publish material defamatory of Mr Michael Stiasny and his firm, Korda Mentha.**”*⁴ [emphasis added]
17. This was not the injunction. The interim injunction terms were limited to publishing fact and fact-based comments relating to Mr Stiasny’s fee overcharging, financial misrepresentations and overall misconduct in his receivership of Paragon Oil Systems Ltd in 2001.

³ Para. [108] Court of Appeal Judgment, 9 March 2009, CA447/08 *Siemer v Solicitor General*

⁴ Para [1], Judgment of the Court of Appeal, 9 March 2009, *Siemer v Solicitor General* CA447/2008 [2009] NZCA 62

18. By rejigging their order to imprison me into an “unless” order, the Court of Appeal ironically stated I will be released from prison once I stop publishing passages that have not existed for 2 years on the websites (since Aug. 2007).
19. Five (5) New Zealand High Court Judges materially misstated the gag injunction against me AND claimed published passages *actively exist*, despite the Solicitor General’s own **evidence** showing they do not *actively exist*.
20. When this evidence was presented to the **New Zealand Supreme Court** on 2 March 2010 (*SC48/2009 Siemer v Solicitor General*), Justice Noel Anderson responded, *“If he runs a website, presumably he understands English and ought to know what to remove.”*⁵ This statement by the Supreme Court Judge obscured the bonafide – and accepted – appeal ground that nothing on the websites was in breach of the accurately stated and correctly applied injunction.
21. That these websites were not in injunction breach was confirmed by an email from the New Zealand Domain Name Commissioner months before I was sentenced to prison by the New Zealand Court. This email indicates Crown Law also confirmed that the websites were “fully compliant” once the remaining link was removed (which it was the same day). *(Attached and marked with the letter “C” is a true copy of this 6 September 2007 email)*
22. Again, the evidence is that both the **Domain Name Commissioner** and the **Crown Law Office** confirmed my compliance with the injunction.
23. At my appeal to the **New Zealand Supreme Court** on 2 March 2010, the Solicitor General’s submissions relied upon two publications when opposing this valid appeal ground. These publications were published in JUNE 2007 and APRIL 2007 and were addressed in Para. [21] and [132.1] of the Solicitor General’s submissions to the Supreme Court.⁶
24. The fact is both of these publications were deemed by **Crown Law** to comply with the injunction in SEPTEMBER 2007, and this compliance has not changed.

⁵ Paraphrased based upon memory. Exact quote can be obtained from the Supreme Court record.

⁶ Crown written submissions on appeal, SC48/2009, dated 5 February 2010

25. That the Solicitor General understood these publications complied with the injunction at the same time he falsely claimed to the Supreme Court they did not is evident in his blinkered quotation of the actual passage in Para. [21] of his Supreme Court submissions. His quote of the relevant passage omitted the change I made to the article in AUGUST 2007 to comply with the Domain Name Commissioner and Crown Law's interpretation of the injunction. ***Attached and marked with the letter "D" is a copy of the quoted passage as submitted by the Solicitor General to the Supreme Court, and, marked with the letter "E", as the passage has correctly existed since August 2007.***
26. An accepted ground of my appeal to the Supreme Court was that nothing on www.kiwisfirst.co.nz or www.kiwisfirst.com was breaching the injunction. So, it was extremely relevant that the Solicitor General's submissions were deliberately masking the fact I had, long ago, appropriately censured the publications he was relying upon as an example of an active breach at the Supreme Court.
27. Nonetheless, Chief Justice Sian Elias – who I had formally applied to disqualify herself based upon her and her husband's close association with the benefactor of the interim gag injunction (Michael Stiassny) – informed the Crown counsel at the hearing that the Court did not want her to address this accepted appeal ground (which should have resulted in my acquittal).
28. Lastly, I record that the interim injunction I am being sent to prison for allegedly breaching no longer exists. It was replaced with a permanent injunction by Cooper J dated 23 December 2008 *"prohibiting the defamatory publications"*. I have published nothing defamatory, but am prepared to remove specific content deemed to be defamatory by the Court.

Sworn before me this)
day of April 2010)

Vincent Ross Siemer

JP or Solicitor

Cc: New Zealand Human Rights Commission
NZPA
Reuters