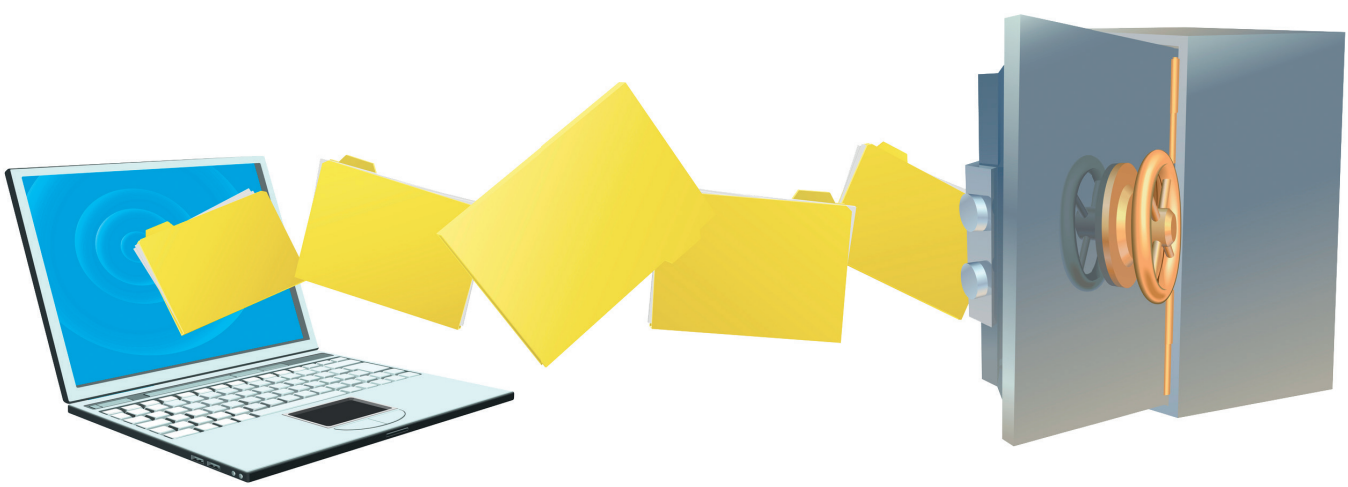
Prohibitory injunctions case study

FRANA DIVICH, PARTNER, HEANEY & PARTNERS.



Every council has at least one constituent that would describe themselves as a 'political commenter' and a "frequent critic ... of council and its officers".

Hutt City Council (the council) has Mr Schierlaw, a former councillor who served three terms on the council from 2007 until 2016.

In *Hutt City Council v Shierlaw* [2021] NZHC 257 Schierlaw found himself on the wrong side of an injunction application after he published some confidential council documents on Facebook.

Around 5 February 2021 the council provided an organisational review document to its staff. The document was headed as a confidential internal document. The council was asking for feedback from its staff on various matters raised for discussion in that document.

The confidential internal document proposed organisational changes affecting approximately 217 positions in the council. It included information sensitive to individual positions and in particular, disclosed a number of positions proposed to be disestablished.

It was provided in confidence through the council's internal intranet system which was not publicly accessible.

Schierlaw somehow obtained the organisational review confidential document. The council told the court that he knew, or was expected to know; that publishing the confidential information would breach rights of both the council and its staff and that it was likely to cause distress to the staff involved.

On 18 February 2021 the council's solicitors wrote to Mr Schierlaw requiring him to remove the confidential information from Facebook. Schierlaw declined to do so and then he published the letter he had received from the council's solicitors on Facebook. He also claimed that "public interest is a complete defence".

In court, Schierlaw, provided written submissions advising he had destroyed the organisational review confidential document and he had, and continues to have, no interest whatever in providing the confidential information of others in the public arena. He complained that the council had in his words, "quite a history of trying to shut me down".

The Court was satisfied that there was a serious question to be tried and that damages would not be an adequate remedy. The council's application for injunctive relief was granted. Schierlaw was ordered to: Take down all copies of the confidential information from any social media account including Facebook, under his control; and return to the council all confidential information belonging to it.

Prohibitory injunctions are the most common form of interim relief to restrain wrongful use of confidential information and are a useful tool in a council's arsenal when it comes to leaks and the publication of sensitive information.

It is important to note that an injunction may not be granted where to do so would be pointless, such as in circumstances where there has been publication to such a degree as to render an injunction against further disclosure ineffective or useless.

Any orders made must be particular and leave the other party in no doubt as to the scope of the order and what may or may not be done.

This is to avoid any doubt as to the scope of the order so as not to risk inadvertent breach and subsequent contempt proceedings. **LG**