

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 165
EMPC 379/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for permanent non-publication
BETWEEN	VGM Plaintiff
AND	JXC Defendant

Hearing: On the papers

Appearances: S Mitchell KC and A Drumm, counsel for plaintiff
M Dew KC and D Josephs, counsel for defendant

Judgment: 7 August 2025

**INTERLOCUTORY JUDGMENT (NO 4) OF JUDGE M S KING
(Application for non-publication)**

[1] These proceedings were brought as a challenge to the determination of the Employment Relations Authority (the Authority). The Authority determined that the defendant had been sexually harassed in their employment and that their dismissal was unjustified.¹

[2] The Authority made interim non-publication orders over the defendant's name, identifying details, health information, the contents of the pleadings and statements of evidence lodged in the Authority including the closed bundle of documents. A non-

¹ *JXC v VGM* [2023] NZERA 554.

publication order was also made over the names and identifying details of the plaintiff and its witnesses.² The Court made its own interim non-publication orders by consent regarding the identity of the parties and witnesses, their names and any details that would tend to identify them, and the evidence filed, including the details of the defendant's health information.³

[3] The defendant filed an affidavit in support of the Court granting interim non-publication orders. The affidavit and the closed bundle of documents filed with the Court included detailed evidence from a number of medical professionals regarding the defendant's medical conditions. The affidavit attested to the serious adverse consequences publication would have on the defendant's health and wellbeing. The plaintiff did not oppose the defendant being granted non-publication orders.

[4] The parties have now reached a resolution of claims brought by the plaintiff against the defendant.

[5] In a minute dated 24 January 2025 the Court indicated that it would likely grant permanent non-publication orders in favour of the defendant, given the nature of the allegations and affidavit evidence provided (which included detailed information from medical professionals). However, the position for the plaintiff and its witnesses was less clear.

[6] On 27 June 2025 and 16 July 2025 the plaintiff filed an application for permanent non-publication orders, affidavit evidence, and submissions in support. A summary of the key grounds relied on in the application includes:

- (a) Given the highly sensitive nature of the allegations, publication would adversely affect the plaintiff's business, and the professional and personal relationships of its witnesses, including certain witnesses' health and wellbeing and the health and wellbeing of their family members.

² At [6].

³ Orders recorded in a 30 November 2023 court minute.

- (b) The parties are part of a small, tight-knit community. Publication of the allegations would impact the community and publication of the identity of the plaintiff may inadvertently make the defendant identifiable.
- (c) The defendant denies the allegations and the parties have settled matters. The terms of settlement are confidential to the parties and their advisers. The settlement of matters between the parties reduces the public interest in the proceedings.

[7] The defendant does not oppose the application and will abide by the decision of the Court. Both parties rightly acknowledge that the issue of non-publication is a matter for the Court and that the Court will need to be satisfied that the test for permanent non-publication orders is met.

Legal principles

[8] The Court has the power under the Employment Relations Act 2000 (the Act) to make non-publication orders.⁴ While the Court has a broad discretion, this must be exercised consistently with applicable principles. The principle of open justice is of fundamental importance and may only be departed from to the extent necessary to serve the ends of justice.⁵ Ordinarily, the Court will only order non-publication where there is a reason to believe that specific adverse consequences could reasonably be expected to occur which justify a departure from open justice.⁶ The full Court in *MW v Spiga*⁷ recently outlined two steps that assist in that analysis.

[9] The first step is an assessment of whether there is reason to believe that specific adverse consequences could reasonably be expected to occur. The necessary evaluation will focus on such evidence as has been submitted and/or is available. Inferences may be drawn by the Authority or the Court, but these must be reasonable

⁴ Employment Relations Act 2000, sch 3 cl 12.

⁵ *M W v Spiga* [2024] NZEmpC 147, [2024] ERNZ 678 at [87], relying on *Erceg v Erceg* [Publications restrictions] [2016] NZSC 135, [2017] 1 NZLR 310 at [2]–[3] and [13].

⁶ *M W v Spiga*, above n 5, at [88]–[89].

⁷ *M W v Spiga*, above n 5.

inferences that may be taken from the evidence, based on the specific circumstances of the case, when considered in context.⁸

[10] The second step is a weighing exercise in which the Court must consider whether the adverse consequences that could reasonably be expected to occur justify a departure from open justice in the circumstances of the case.⁹ In conducting that weighing exercise, a number of factors may be relevant, including:¹⁰

- (a) the circumstances of the case;
- (b) the interests of the person or entity applying for a non-publication order;
- (c) the interests of the other party or parties to the litigation;
- (d) the interests of any third party;
- (e) the public interest, including the rights of media;
- (f) any further issues of equity and good conscience; and
- (g) tikanga and its principles, values, or concepts.

[11] However, the underlying test for non-publication is not whether there are specific adverse consequences justifying a departure, but rather whether a departure from open justice is necessary to serve the ends of justice.¹¹ The full Court in *M W v Spiga* acknowledged that there are situations where the administration of justice and broader public interest may weigh against full openness.¹²

Analysis

[12] The defendant has filed documents which provide highly sensitive medical evidence detailing the trauma of the alleged sexual harassment on them. I accept that publication of such medical information and/or further details of the allegations of

⁸ At [88].

⁹ At [89].

¹⁰ At [94].

¹¹ At [87], [89] and [103].

¹² At [92].

sexual harassment would worsen the defendant's medical condition, retraumatizing them and preventing them from moving forward.

[13] The plaintiff filed evidence and submissions regarding publication of the allegations of sexual harassment and the significant impact they could have on the plaintiff's business, due to their highly sensitive nature. It submits that publication would also unfairly affect the professional and personal relationships of its witnesses, who are named in the allegations, and the witnesses health and wellbeing, and impact on their family members. The plaintiff denies the allegations and does not believe that there is any public interest in naming the parties or any witnesses in this proceeding.

[14] The plaintiff's evidence comprises of a short affidavit from one of its directors attesting to the impact of publication on the plaintiff, its directors, and other witnesses. The plaintiff's evidence appears most concerned about the disputed allegations creating embarrassment and affecting its reputation and the reputation of its witnesses. However, the Supreme Court has held that embarrassment caused by allegations is insufficient to justify non-publication.¹³ The plaintiff has failed to provide any medical certificates or other information to support the concerns raised about the impact of publication on the health and wellbeing of its witnesses or their family members.

[15] Accordingly, I find that the plaintiff's evidence does not establish specific adverse consequences sufficient to grant non-publication over the plaintiff and its witnesses' names and identifying details.

[16] The Court has recognised that in most cases of sexual harassment, the interests of justice will require the name of a grievant, such as the defendant, to be protected so as not to discourage other victims.¹⁴

[17] However, for the plaintiff, the nature of such allegations goes against non-publication – there is a heightened public interest in naming it. There is an argument that any future employee or employer of the plaintiff should be able to consider the allegations before deciding to commence an employment relationship. However, as

¹³ *Erceg v Erceg*, above n 5, at [13].

¹⁴ *M W v Spiga*, above n 5, at [60]; and *Z v A* [1993] 2 ERNZ 469 (EmpC) at 495.

the Court has not had the opportunity to consider the allegations and evidence in any detail, the principle of open justice applies with less force than would be the case if the allegations had been proved.¹⁵

[18] The plaintiff also submits that it runs a business in a small tight-knit community. The plaintiff raises real concerns that any identification of it or its witnesses would likely lead to the identification of the defendant. Given the evidence, I am satisfied that identification of the plaintiff and its witnesses would likely lead to the identification of the defendant.

[19] It is the health and welfare of the defendant that is the material factor in this instance. In the circumstances of the case, I am satisfied that publication of the parties' and witnesses' names and identifying details means that the adverse consequences identified above could reasonably be expected to occur.

[20] Next, I consider whether the adverse consequences identified above justify a departure from open justice in the circumstances of the case. That involves a weighing exercise and includes an assessment of the factors (a)–(g) identified above.

[21] I have already set out the circumstances in which the defendant finds themselves in and have found that they have a demonstrable interest in being able to keep their sensitive medical information private. I have found above that publication about the allegations of sexual harassment could reasonably be expected to have adverse consequences on their health and wellbeing given the circumstances of this case. The Court has previously accepted that such specific adverse consequences are often sufficient to displace open justice.¹⁶ Both of these factors weigh in favour of an order being made.

[22] Both parties support the orders being made. I have identified that there are no third-party interests that are relevant to the assessment.

¹⁵ *Z v A*, above n 14, at 496; and *C v Air Nelson Ltd* [2011] NZEmpC 27, [2011] ERNZ 207 at [78].

¹⁶ See *Z v A*, above n 14, at [494]–[495].

[23] Given that the defendant raised allegations of sexual harassment, there is public interest in the defendant having their identity protected so as not to discourage other victims. While open justice would normally go against the name of the alleged harasser being protected, the allegations against the plaintiff were not proven in this Court and publication of the plaintiff's name and identifying details would likely lead to the identification of the defendant; this goes against naming the plaintiff.

[24] Finally, the Court has observed that “the policy imperatives underlying the principle of open justice apply with diluted force” where, as in this case, an employment relationship problem has been settled between the parties, without needing to be resolved substantively by the Court.¹⁷ With this in mind, the broader public interest weighs in favour of an order being made.

[25] I also consider the Court's equity and good conscience jurisdiction given the factors set out in [10] above, are in favour of an order being made.

[26] Accordingly, I consider that the facts of this particular case, and the interests engaged, are sufficient to displace the principle of open justice.

[27] It is therefore appropriate to make the non-publication orders sought.

Outcome

[28] I make the orders as set out below.

[29] Permanent non-publication orders are made in respect of both the Authority and the Court prohibiting the publication over the name and identifying particulars of the parties and witnesses and any evidence filed. In particular:

- (a) The plaintiff's name is anonymised as VGM by reference to a system of alphabetical identification.

¹⁷ *X v District Health Board* [2013] NZEmpC 160 at [15]; see also *M W v Spiga*, above n 6, at [93].

(b) The defendant's name is anonymised as JXC by reference to a system of alphabetical identification.

[30] The Court file is not to be inspected by any person without leave of a judge.

[31] I direct the Registrar of this Court to draw these orders to the attention of the Authority.

[32] The application is unopposed, there is no issue as to costs.

M S King
Judge

Judgment signed at 12.30 pm on 7 August 2025