

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

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

**[2026] NZEmpC 26
ARC 40/14**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER OF an application to access Court documents

BETWEEN FRANIX CONSTRUCTION LIMITED
Plaintiff

AND BRYCE ROBERT TOZER
Defendant

Hearing: On the papers

Judgment: 16 February 2026

**INTERLOCUTORY JUDGMENT (NO 2)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application to access Court documents has been made by a witness in these proceedings. The proceedings came before the Court some time ago, and were the subject of a Court judgment. The applicant seeks a copy of the transcript of proceedings for the purposes of other (unrelated) proceedings.

[2] The applicant gave evidence for the plaintiff; they were not a party. Numerous attempts have been made by Registry staff to make contact with the parties to seek their views on the application. Those attempts have been unsuccessful. It is necessary to deal with the application in the absence of their views. I have, however, weighed

their likely interests when assessing whether the application ought to be granted and, if so, on what basis.

Approach

[3] The Employment Relations Act 2000 does not deal with access to documents held on the Court file, nor do the Employment Court Regulations 2000. It is, however, well accepted that the Court may grant access to documents held on the Court file, and has an inherent power to control the use of information disclosed in proceedings, where such control is necessary for the due administration of justice.

[4] A balancing exercise is required, including having regard to each party's interests. In undertaking the analysis, the Court has previously found it helpful to have regard to the approach set out in the Senior Courts (Access to Court Documents) Rules 2017 (the Rules).¹

[5] The Rules are made under the Senior Courts Act 2016. Section 173 of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.” Schedule 2 provides that “court information” includes the formal court record, the court file, information relating to particular cases and electronic records of hearings. Notes of evidence are held on the Court file. A person may ask to access any document under r 11 of the Rules.

[6] Rule 12 specifies a range of matters that must be considered when determining an application for access. These include the orderly and fair administration of justice and the protection of privacy interests. Rule 13 deals with the approach to balancing the matters to be considered under r 12. The balancing act requires regard to be had to what stage the proceedings are at. So, before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited; during the substantive hearing, open justice has greater weight than at other stages of the proceeding and greater weight in relation to documents relied on in the hearing than other documents;

¹ Applied via reg 6 of the Employment Court Regulations 2000 and/or by way of helpful analogy.

after the substantive hearing, open justice has greater weight in relation to documents that have been relied on in a determination than other documents, but the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing. In this case the application comes after the hearing and delivery of the judgment.

Analysis and result

[7] As I have said, access is sought to the transcript for the purposes of using it in proceedings in another Court. It is intended to be used to respond to claims that are said to have been made about the applicant's work history, which was covered during the course of their evidence in this Court. On its face that is a legitimate purpose. To the extent that there may be issues about the use of the material across proceedings, it may be noted that while s 50(1) of the Evidence Act 2006 is directed at the admissibility of evidence of a judgment or a finding of fact in civil proceedings, a transcript of evidence is neither of those things.² In any event, broader questions about whether the transcript, if access is granted, is admitted as evidence by another Court is not something that can or should be decided in the context of this application.

[8] As rr 12 and 13 provide, the protection of the privacy and confidentiality interests of others, and the protection of commercially sensitive information is relevant to the assessment process. The timing of the request is relevant. In this regard r 13(c) provides that after a substantive hearing the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing. The hearing occurred 11 years ago. That weighs against access.

[9] Three points can, however, be made. First, while concerns were raised during the course of the hearing about commercial sensitivity, no orders of non-publication were sought or made. And the judgment itself, which has been publicly available throughout the intervening period, contains some of this information, albeit in less detail.

² See, for example, *Hong v Kinnon & Kinnon* [2025] NZCA 117 at [74].

[10] Third, I consider that to the extent that residual issues about privacy, confidentiality and commercial sensitivity arise, they can adequately be addressed by way of conditions, which I return to below.

[11] I accept that providing access to the material sought is appropriate, having regard to the reasons underlying the request, and aligns with the interests of justice.

[12] There is accordingly an order permitting the applicant access to notes of evidence in these proceedings, but on the following conditions:

- (a) Access is granted to the notes of their own evidence as a witness. It does not appear that access to the notes of evidence as they relate to other witnesses is relevant to the reasons why access is sought.
- (b) Access is granted for the sole purpose of use in the proceedings to which the applicant is a party. They should be treated as confidential and not be shared or viewed other than for this purpose.

[13] No issue of costs arises.

Christina Inglis
Chief Judge

Judgment signed at 1.15 pm on 16 February 2026