

ATTENTION IS DRAWN TO THE ORDER
PROHIBITING PUBLICATION OF
CERTAIN INFORMATION REFERRED
TO IN THIS DETERMINATION

Determination Number: WA 1/05
File Number: WEA 190/04

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN A (Applicant)
AND Lowe Corporation Limited (Respondent)
REPRESENTATIVES Dinah Kennedy for A
Jim Ferguson for the Respondent
MEMBER OF AUTHORITY P R Stapp
ON THE PAPERS: 12, 20, 21 & 22 October & 3 November & 7, 8, 9,
AFFIDAVITS AND 14, 16 & 17 December 2004
SUBMISSIONS
DATE OF DETERMINATION 5 January 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] This is an application for the prohibition from publication of the applicant's name in a personal grievance matter that is subject to a 90 day rule determination. The parties have attended mediation where the matter was not resolved. I have decided to deal with the application to prohibit the publication of the applicant's name first.

[2] The applicant's request for name suppression has been based on anxiety and fear due to concerns about on going safety which a hearing in a public forum may put at risk. It has been accepted by the applicant that the respondent is not interested in name suppression and probably does not need it. The respondent is a large corporation that has no concerns about either anonymity or publicity particularly as the matters received considerable publicity for the company at the time the events occurred. It does not oppose the application.

[3] A went to the Police and became a Crown witness. A says that this caused the possibility of becoming a victim of revenge involving the person the Police carried out an undercover operation on or his accomplices. A further says that the Police made it known that there were gang connections involved. A has a concern about a risk to personal safety because of the gang connection and becoming vulnerable because of an involvement in the case at the time. A says that

any publicity will serve to reawaken interest in A as a witness for the prosecution and bring A's attention to criminal elements or associates of the co-worker who pleaded guilty and is now in prison.

[4] At the time the accused was arrested Police opposed bail on the grounds of a fear of intimidation of witnesses, including A, and the witnesses withdrawing or altering their evidence at any future trial. A gave evidence at a bail hearing in a statement. The Police say that the Judge felt that A along with other witnesses from the work place were strong enough people that they would not alter their evidence in the face of any threats. The accused was granted bail and later a variation was made to the bail conditions for the accused to be able to associate with A at work before the trial. There are arrangements in place for A to contact the Police if necessary. There is no evidence that A has ever had to contact the Police.

[5] The full account of A's testimony was revealed to the defence solicitor prior to depositions. The accused would presumably have become aware of A's involvement in the Police investigation.

[6] A has not produced any evidence that there are grounds for fear and any anxiety in regard to any publicity when the accused would presumably have known of A's involvement in the Police investigation when A's statement was given to the defence solicitor. The assertions are personal views held by A and A's mother. A has not supported the application with any evidence from the Police or other independent source such as a medical practitioner or any in-direct evidence to support any grounds for fear or anxiety about safety or that the interests of justice require such an order.

[7] Deposed evidence from A's mother of personal views and observations of A does not meet the threshold that there are fears for A's safety and the interests of justice are affected where the community have a right to know the litigants involved. I accept that the applicant has fears and anxiety but these would not be unusual in personal grievance proceedings. No request has been made from another witness for name suppression who I have been requested to interview by the respondent and who has provided deposed evidence of a role in the matter. The Authority's investigation meetings are required to be held in public unless there are very good reasons not to do so. No sufficient reasons have been advanced to depart from this practice.

[8] I therefore decline the application and the applicant can expect to be named when I deal with the application on the 90 day time frame and application to bring a personal grievance out of time.

In the meantime to protect the applicant's challenge rights I have not identified the applicant and this will remain as an interim order only.

[9] I await the consent of both parties to proceed on their submissions already provided on the 90 day matters and I request their consent to the next step in these proceedings be provided in writing.

[10] Costs are reserved.

P R Stapp
Member of the Authority