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TO IN THIS DETERMINATION

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** C (Applicant)  
**AND** The Commissioner of Police (Respondent)  
**REPRESENTATIVES** Peter Cullen for Applicant  
Joanna Holden for Respondent  
**MEMBER OF AUTHORITY** G J Wood  
**INVESTIGATION MEETING** By way of submissions received by 21 May 2007  
**DATE OF DETERMINATION** 23 May 2007

**DETERMINATION OF THE AUTHORITY**

1. Ms C has applied to have her employment relationship problem with the Commissioner of Police removed to the Employment Court for it to hear and determine without the Authority investigating the matter. With the consent of the parties I have already made an interim order prohibiting the publication of Ms C's name and any information that may lead to the identification of Ms C.
2. Mediation has already taken place between the parties, but unfortunately was not successful in resolving the problems between them.
3. The application is made on the grounds that the problem is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court and/or that the Authority is of the opinion that in all the circumstances the Court should determine the matter, s.178(2)(b) and (d).
4. Ms C claims that she was harassed while in the course of her employment with the New Zealand Police, such harassment being principally but not solely limited to sexual

harassment. She also claims that the actions of Police staff resulted in her being unjustifiably constructively dismissed.

5. In support of her claim for removal she makes linkages with the inquiry into Police conduct conducted by Dame Margaret Bazley and the high profile trials of Police officers. She also relies on her needing urgent closure to this matter. She has provided a psychiatrist's report in support, which states that early resolution or an early hearing of this matter would be very much in Ms C's interests.
6. The Commissioner opposes the application, denying any relevance of the Bazley inquiry to Ms C's problems, believing that matters could be dealt with much less formally and at lower cost in the Employment Relations Authority and that there is no reason why the matter need to end up in the Employment Court if the Authority investigated the matter first. While acknowledging Ms C's wish for closure, the Commissioner sees no particular urgency in the matter (as events occurred over ten months ago) and undertakes that he would co-operate in having the matter dealt with expeditiously in the Authority.
7. The nature of the case, involving sexual and other forms of harassment and an alleged constructive dismissal, is not one of itself that would create the situation where it was in the public interest to remove the matter immediately to the Court. I do not accept that simply because the Government initiated a report into Police culture and that the report prepared by Dame Margaret Bazley found parts of Police culture particularly wanting, creates such a public interest situation in this case. This problem also does not, without minimising the seriousness of the allegations and the impact on Ms C, involve the same serious criminal allegations made against other Police officers that Mr Cullen referred to.
8. As I stated in *Moore v. The Commissioner of Police*, unreported, GJ Wood, 7 July 1999, WT80/99, it is important to emphasise the difference between the matter of the public interest as a legal term and the fact that the public (and the media therefore) may be interested in what occurs in these sort of proceedings. Potential publicity alone does not make an issue in the public interest. In legal terms the public interest has different connotations entirely, relating to how the best interests of justice is served, amongst other things. Thus simply because the Police are in an important position in society and it is therefore in the public interest that its officers and it should conduct its affairs properly, does not in itself mean that any case involving the Police should be removed to the Court in the public interest. Overall, I conclude that the nature of the employment relationship problem is not of such a nature that it should be removed to the Court.

9. Similarly, I find that the matter is not of such urgency it is in the public interest that it be removed to the Court. Ms C's claim was not filed with the Authority until 8 March 2007, despite Ms C having left the employment of the Police in June the previous year. For these reasons and those given below I therefore accept the Commissioner's submissions that the employment relationship problem is not of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court.
10. The Authority has the discretion in all cases to remove the matter under s.178(2)(d). I do accept that there is the possibility that Ms C may have to go through two hearings of her employment relationship problem, if either party is sufficiently dissatisfied with the determination of the Authority to challenge it. I also entirely accept Ms C's psychiatrist's report that the matter needs to be resolved as quickly as possible. There is no reason, however, why the Authority could not deal with the matter as promptly as (if not more promptly than) the Court. In addition, the vast majority of Employment Relations Authority determinations are not challenged in the Employment Court and there is no particular reason to expect to be this case to be an exception. Furthermore, the Authority's investigative processes are quite likely to prove to be to be less stressful for Ms C than the adversarial approach required of the Employment Court. I therefore conclude that the interests of justice would not be better served by removing this employment relationship to the Court under s.178 (2)(d).
11. I therefore decline to remove the employment relationship problem between Ms C and The Commissioner of Police to the Employment Court.
12. Costs are reserved.

**G J Wood**  
**Member of the Employment Relations Authority**