

Attention is drawn to the order prohibiting publication of certain information in this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2017] NZERA Auckland 161
3004593

BETWEEN CAROLINE HARRISON
Applicant

A N D ARTHUR BOYTE
First Respondent

A G AND D M BOYTE
PARTNERSHIP
Second Respondent

Member of Authority: Anna Fitzgibbon

Representatives: Robert Davies, Counsel for Applicant
Kate Ashcroft, Counsel for Respondent

Date of Determination: 02 June 2017

**PRELIMINARY DETERMINATION OF THE
EMPLOYMENT RELATIONS AUTHORITY**

Application for non-publication order

[1] By memorandum dated 30 May 2017, counsel for the applicant, seeks an order permanently prohibiting the publishing of all documents and other evidence which contains or identifies her financial information.

[2] The grounds for the application are that the information is sensitive and personal and that its release would prejudice the applicant's privacy in addition to there being no compelling public interest for its release.

[3] In a memorandum of the same date, counsel for the respondents seek a similar permanent non-publication order in respect of the respondents' sensitive commercial

information about the respondents' financial affairs, including those contained in the supplementary bundle of documents filed in the Authority.

Power to prohibit publication

[4] Schedule 2, clause 10(1) of the Employment Relations Act 2000 (the Act) confers a broad discretion on the Authority to make non-publication orders. It states:

10. Power to prohibit publication

(1) The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[5] In *Erceg v Erceg & Ors*¹, the Supreme Court reiterated that the principle of open justice is fundamental to the common law system of civil and criminal justice. However, the Court went on to say that it is “*well established that there are circumstances in which the interests of justice require that the general rule of open justice be departed from, but only to the extent necessary to serve the ends of justice*”². The Court accepted that “*the need to protect trade secrets or commercially sensitive information, the value of which would be significantly reduced or lost if publicised, are obvious examples of situations where such [non-publication] orders may be justified*”³.

[6] It appears that the information which the applicant is seeking a non-publication order in respect of, falls into the category of personal financial information.

[7] The information which the respondents are seeking an order in respect of falls in to the category of commercially sensitive financial information.

[8] The applicant's and the respondents' financial information has limited relevance to the matters being investigated by the Authority and which require determination by it. It is not in the interests of justice for the information to be disclosed.

¹ [2016] NZSC 135

² At [3]

³ At [13]

Orders

[9] I make permanent orders for non-publication of all documents and other evidence which contains or identifies the applicant's financial information, including her tax summaries and KiwiSaver records and joint bank statements. I make an order permanently prohibiting the publishing of all documents and other evidence which contains or identifies sensitive commercial information about the respondents' financial affairs, including those contained in the supplementary bundle, on the basis that it is in the interests of justice to do so.

Anna Fitzgibbon
Member of the Employment Relations Authority