

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 121/10
5130719

BETWEEN ALEXA LESLEY INGLIS
 Applicant

AND VICE-CHANCELLOR OF
 MASSEY UNIVERSITY
 Respondent

Member of Authority: James Crichton

Representatives: Lesley Inglis in person
 Hamish Kynaston, Counsel for Respondent

Investigation Meeting: 8 and 9 September 2009 at Auckland

Submissions Received: 24 November 2009 and 13 January 2010 from Applicant
 19 October and 21 December 2009 from Respondent

Determination: 15 March 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant (Dr Inglis) alleges that she was bullied by Associate Professor Southwood while employed as a senior lecturer in the speech language therapy programme, a part of the College of Education at the Albany campus of the respondent university (Massey).

[2] Dr Inglis' claim is that, as a consequence of the alleged bullying, Massey conducted an investigation which she says was unsatisfactory. The investigation failed to establish that she had been bullied. Dr Inglis left her tenured teaching position at the university to take a short term fellowship overseas and she says that the consequences of Massey's failure are damage to her health and her loss of her tenured academic post.

[3] Massey says that in accordance with its statutory obligations under the Health and Safety in Employment Act and the university's own policy, it regards allegations

of bullying as extremely serious and that the university is committed to doing everything in its power to reduce or remove altogether the possibility of staff being bullied while in the university's employment. Allegations of bullying such as that brought by Dr Inglis are treated very seriously and are the subject of rigorous investigation.

[4] In the particular circumstances of this case, Massey says that it conducted an investigation insofar as it was able but that it was unable to verify that Dr Inglis had indeed been bullied.

[5] For her part, Associate Professor Southwood explicitly and unequivocally denied that she had bullied Dr Inglis and attributed all of Dr Inglis' complaints to her attempts to manage Dr Inglis' poor teaching performance.

[6] Dr Inglis arrived in New Zealand to commence her employment with Massey on 31 January 2006 and started work shortly thereafter. She alleges that almost from the beginning of the employment, Associate Professor Southwood, the head of the speech and language therapy programme and Dr Inglis' immediate supervisor, commenced to bully her. Before the teaching year began, there were a number of interpersonal exchanges between the two academics which Dr Inglis interpreted as bullying behaviour but which Associate Professor Southwood characterised as attempts to be of assistance to a recent arrival at the university.

[7] Once the academic year commenced, Associate Professor Southwood's evidence is that she began to receive significant and continuing complaints about the quality of Dr Inglis' teaching and that, in terms of her obligations to Massey, she was required to address those complaints and try to ameliorate the cause of them. This necessitated regular and continuing engagement by Associate Professor Southwood with Dr Inglis, commencing as early as March 2006. Associate Professor Southwood told me that she regarded Dr Inglis as *difficult to manage* and that there were frequent examples of missed communication between the two of them. However, Associate Professor Southwood felt obliged to engage with Dr Inglis because she was part of her teaching staff in the speech and language therapy programme and because of continuing complaints from students who reported that Dr Inglis was *intimidating and difficult*. Associate Professor Southwood characterises Dr Inglis' response to these issues as evidencing an unwillingness to take *responsibility for the complaints about her teaching*.

[8] Just as Associate Professor Southwood was experiencing real difficulty in managing Dr Inglis, Dr Inglis was having difficulty in coping with the same exchanges. She complains that Associate Professor Southwood applied standards to her that were not applied to any other academic staff, made demands on her that were unreasonable in all the circumstances, continued to be personally threatening and abusive and allegedly caused her to *fear for [her] personal safety*.

[9] There were continuing exchanges between the two protagonists on Associate Professor Southwood's evidence, principally directed at Performance Review and Planning (PRP) and it is common ground that while Associate Professor Southwood suggested remedial action which Dr Inglis might take to improve her teaching scores, Dr Inglis did in fact, of her own motion, adopt some of Associate Professor Southwood's proposals in that regard.

[10] Dr Inglis' evidence is that from October 2006 to February 2007 during her tenure at Massey, she regularly (up to twice a week) received nuisance telephone calls in her office at night. Dr Inglis accused Associate Professor Southwood of making those calls and the latter denied that allegation vehemently. Dr Inglis also alleged that Associate Professor Southwood complained about her hours of work, particularly her fondness for working late at night; Associate Professor Southwood's view of the matter was that she had obligations under both the Health and Safety in Employment Act and the university's own health and safety policy to ensure that staff had a balanced approach to their work and were not subjected to stress as a consequence of over-working.

[11] On 18 October 2007, Dr Inglis submitted a Massey accident or incident report form alleging that she had been bullied. This report, which it is common ground was the first formal complaint from Dr Inglis to Massey of her allegation of bullying was referred to the then head of the School of Education, Professor Michael Townsend. Professor Townsend wrote to Dr Inglis by letter dated 31 October 2007 requesting a meeting to discuss Dr Inglis' complaint and as a consequence, a meeting involving Professor Townsend, Dr Inglis, Dr Inglis' support person and Ms Kylie Brown, a Massey human resources adviser, was convened on 23 November 2007.

[12] In a lengthy meeting of some 2¾ hours, Dr Inglis outlined the nature of her complaint against Associate Professor Southwood and also tabled certain documentation to support her claim.

[13] The 23 November 2007 meeting was taped and there is dispute between Massey and Dr Inglis as to whether she agreed to the transcript of the meeting being provided to Associate Professor Southwood and any other parties who Professor Townsend might decide to interview. Professor Townsend and Ms Brown are both adamant that before the tape recorder was turned on at the beginning of the meeting, there was agreement between the four participants that the meeting about to take place would be taped and that a transcript of that tape would be made and would be made available to all participants and would be used by Massey for the purposes of the investigation. In particular, Massey witnesses are adamant that their understanding was that Dr Inglis had agreed to the transcript being provided to Associate Professor Southwood and any other parties that Professor Townsend decided to interview as part of his investigation into the allegation of bullying.

[14] In the result, once the transcript was prepared, it was immediately made available to Associate Professor Southwood together with other material relating to the allegations made by Dr Inglis so that by the time Dr Inglis had established that the transcript was available, it had already been provided to Associate Professor Southwood. Subsequently, Dr Inglis complained to the Privacy Commissioner about this alleged breach of her privacy.

[15] Associate Professor Southwood decided, on advice, essentially not to participate in Professor Townsend's investigation into the bullying allegation. She indicated that her exchanges with Dr Inglis were primarily around performance management issues and she denied any wrongdoing but refused to be interviewed by Professor Townsend or provide any further information.

[16] Professor Townsend reached the conclusion that there was nobody else who he could profitably interview and accordingly, when Professor Townsend's report issued, its conclusion was that he had been unable to reach any view in respect of the allegation that Dr Inglis had been bullied. The report compiled by Professor Townsend issued on 2 April 2008 and Dr Inglis gave a lengthy rejoinder on 30 April 2008. Six days later, on 6 May 2008, Dr Inglis gave three months' notice of her intention to accept a *senior post-doctoral research position at another university* and her wish to be considered for two years' leave of absence without pay to enable her to take up that fellowship. In the result, leave of absence for that length of time was not

granted and Dr Inglis' letter was taken as a notice of resignation such that her tenured position at the university came to an end on 18 July 2008.

[17] On that same date, Dr Inglis completed her application to the Authority having previously raised a personal grievance in her letter to Professor Townsend of 30 April 2008. The statement of problem seeks to have the Authority *evaluate* the investigation into bullying *for adequacy* and if found to be inadequate, for the Authority to investigate the bullying allegation afresh, and if bullying is found, for compensation to be awarded. The conviction that she was forced to resign her position because of the alleged bullying is also raised by Dr Inglis.

Issues

[18] The Authority will need to consider the following issues in order to determine this matter:

- (a) What is bullying in this employment relationship?
- (b) What are the allegations?
- (c) What was the investigation?

What is bullying in this employment relationship?

[19] The University's Harassment Prevention and Complaints Resolution policy defines bullying as follows:

Bullying is a form of personal or supervisory/managerial harassment, ... which is characterised by repeated and persistent, offensive, abusive, intimidating, malicious or insulting behaviour.

[20] The same policy document gives examples of types of behaviour which do not amount to bullying and it is helpful to set those that are relevant out now:

- Free and frank discussion about issues or concerns in the workplace, without personal insults;
- Legitimate criticisms made to a staff member about their behaviour or work performance (not expressed in a hostile, harassing manner);
- Issuing of reasonable instructions in line with delegated authority and expecting them to be carried out;

- Insisting on satisfactory standards of performance in terms of quality, safety and team cooperation;
- Giving negative feedback, including in a performance appraisal, and requiring justified performance improvement.

[21] The essence of the disagreement between the parties in the present case is whether the exchanges between Associate Professor Southwood and Dr Inglis, properly construed, are bullying behaviour by Associate Professor Southwood or simply examples of the Associate Professor endeavouring to get performance improvements from Dr Inglis after legitimate complaints about Dr Inglis' teaching, from students.

What are the allegations?

[22] Dr Inglis says that virtually from the beginning of her employment relationship at Massey, she was subjected to bullying by Associate Professor Southwood. Conversely, Dr Southwood's view is that she tried to be welcoming and collaborative with Dr Inglis but found Dr Inglis resistant to offers of assistance, prone to quickly develop a misunderstanding of a situation and inclined to read ulterior motives into the simplest offers of assistance. By way of example, Dr Inglis complains about an episode in the lunch room where she says that Associate Professor Southwood was critical of the way that she (Dr Inglis) ate her lunch. Dr Southwood denies any such thing but does confirm that she, on one occasion, provided Dr Inglis with a plate and cutlery simply to assist Dr Inglis because she was new.

[23] Dr Southwood describes how she sought to welcome Dr Inglis when the latter first arrived in the country by offering to meet her flight if Dr Inglis would provide details of when it was. In the result, Dr Inglis rang Associate Professor Southwood when she arrived at Auckland International Airport and although Dr Southwood offered to come immediately to the airport to collect her, that offer was declined.

[24] A further example of this sort of missed communication was when Associate Professor Southwood gave Dr Inglis her own PowerPoint slides and paper outlines for two papers that Dr Inglis was to teach for the first time. Dr Southwood is clear in her evidence that she told Dr Inglis that she could make whatever use she wished of that material, but somehow Dr Inglis got the view that she could only use the material without deviating from it at all.

[25] There was an issue about photocopying where Dr Inglis complained that she was the only member of the academic staff that had a limit placed on her ability to photocopy material. Associate Professor Southwood, in her evidence, simply says that is untrue and that all academic staff were spoken to about the need to constrain the use of the photocopying resource.

[26] Then there was an issue raised by Dr Inglis about her apparent inability to access the shared clinic drive on the IT network; Dr Inglis claims in her evidence that Dr Southwood singled her out by precluding her access to the shared drive. Not so according to Associate Professor Southwood whose evidence is that she provided access details to the programme for Dr Inglis on the same basis as she provided them to every other member of the academic staff and Dr Inglis had simply not chosen to go through the appropriate IT steps to become an accredited user.

[27] Then there were issues about claims that Associate Professor Southwood was deliberately interrupting Dr Inglis' meetings with students causing embarrassment to Dr Inglis and dismay to the students. Again, Dr Southwood denies the allegation and says that the only occasions she can recall when she might have interrupted a meeting between Dr Inglis and a student was when the meeting had already gone on for some time and she was seeking to gently bring it to a conclusion. On one occasion, Dr Southwood indicated that she had suggested a meeting between Dr Inglis and a student come to an end because it had already gone on for two hours and the school was closing for the night and on another occasion Dr Southwood interrupted because she herself had a subsequent meeting with the same student and again the meeting with Dr Inglis had gone on for a lengthy period.

[28] Dr Inglis raised issues around accommodation and said that Associate Professor Southwood was constantly critical of her accommodation arrangements. Dr Southwood says that she was simply concerned to ensure that Dr Inglis was appropriately housed and that was part of her obligation as a good and fair employer. As a matter of fact, apparently, Dr Inglis did have some difficulty obtaining suitable accommodation and Dr Southwood was simply concerned about that. It seems common ground that that issue ceased to be a subject of discussion when Dr Inglis told Associate Professor Southwood that her accommodation issues were none of Dr Southwood's business.

[29] Then there were issues raised by Dr Inglis about the hours that she chose to work. It is common ground that Dr Inglis worked hard and was frequently working at night in her office at the faculty. Associate Professor Southwood told me that this was a cause of concern to her, not because she objected to Dr Inglis working hard, but because she had obligations as a good employer to ensure that staff had an appropriate balance in their lives and that they were not *over doing it*. Dr Inglis' evidence is that Associate Professor Southwood chose to come in early in the morning but leave promptly at night whereas Dr Inglis' work pattern was, in effect, the reverse and Dr Inglis felt as if Dr Southwood was trying to simply make her conform. Associate Professor Southwood was adamant that her only concern was her obligation to protect the health and safety of her staff and that having a senior faculty member working alone late, on a relatively deserted university campus, was potentially unsafe.

[30] However, by far the most serious of the allegations that Dr Inglis makes against Dr Southwood is the allegation that Dr Southwood was making prank or nuisance calls to Dr Inglis while she worked late at night. In her interview with Professor Michael Townsend and Kylie Brown, the human resource adviser, on 23 November 2007, Dr Inglis describes these calls in the following way:

... there was a period of weeks last year when I was getting anonymous phone calls when no one was speaking and the mute button was on, except in one case where the person had forgotten so I heard the television. It would just be a call late at night. Nothing was said, the phone wasn't put down. I would sort of give my usual who I was, identification, but there would be silence. I would wait and wait and nothing would be said ..."

[31] Dr Inglis goes on to describe the steps that she took to try to investigate the calls and eventually she began making a statement to the nuisance caller to the effect that the calls were being logged and traced and from that point on Dr Inglis says the calls ceased. Significantly, Dr Inglis accuses Associate Professor Southwood of being the architect of these calls. There is not a shred of evidence to suggest that this allegation has any merit whatever. Associate Professor Southwood's behaviour is completely inconsistent with being the architect of the nuisance calls. She found out about the calls second-hand (that is, not from Dr Inglis) and immediately took every proper step to protect Dr Inglis, in particular by offering to making changes to the telephone system so as to protect her. Amongst other things, she offered Dr Inglis a new telephone number, and caller ID but Dr Inglis declined those offers. And, of course, Dr Southwood denies any personal involvement in making these calls.

[32] The real focus though of the bullying allegations revolve around the way in which the University attempted to manage complaints about Dr Inglis' teaching practice. Dr Inglis gave me the impression, in giving her evidence before the Authority, that she was very defensive about these matters and she spoke disparagingly of what she called *studentism* which apparently is the practice of universities and other teaching institutions tending to prefer the views of their student consumers rather than the responses of the teaching staff. Massey, of course, rejects that contention outright and simply says that it has an absolute obligation to treat complaints about teaching standards thoroughly and fairly so as to balance the rights of the employed academic against the rights of the student complainant.

[33] In the case of Dr Inglis, Massey's evidence is plain that from the very beginning of her career at the institution there were complaints about her teaching. Dr Inglis' evidence rationalises these complaints and suggests she does not want to take any responsibility for the matters complained about. The Authority has had available to it copies of student complaints received about Dr Inglis, both in relation to the quality of her teaching and her attitude to students. Dr Inglis arrived in February 2006 and the complaints start in March 2006. Professor Chapman, now Massey's Pro Vice-Chancellor, was acting head of the School of Education in 2006. In that role, he received student assessments of one of Dr Inglis' papers and his evidence on the matter is unequivocal: *the ratings were unusually low for academic staff in the College of Education, and lower than any student ratings I had seen since become a head of department in 1993.*

[34] Professor Chapman was obligated to take that matter up with Dr Inglis and he did so. Again, his evidence of that discussion is illuminating. When he raised the matter with Dr Inglis, she presented to him *a detailed four page single typed rebuttal of student concerns.* He describes that rebuttal as *externalising* the problem to the students or perhaps, to put it another way, Dr Inglis failed to take responsibility for her own shortcomings. Professor Chapman said that Dr Inglis was defensive in her responses and even suggested that some of the student comment was *defamatory.*

[35] I was impressed with Professor Chapman's evidence. Although his contact with Dr Inglis was limited, the contact that he did have in respect of this student assessment issue was, I found, most revealing. I thought Professor Chapman was reflective, balanced and serious in his attempt to deal appropriately with genuine and

serious performance failings of a senior academic. I got no hint in his evidence of vindictiveness or bias and I thought that he genuinely tried to fulfil his obligations to both the complaining students on one hand and the complained about staff member on the other.

[36] I reject entirely Dr Inglis' categorisation of *studentism* as being at play in this particular matter. I am satisfied there were performance deficits and that this example from the evidence of Professor Chapman is illustrative of the university's measured and sensible approach to dealing with the matter.

[37] However, most of the work in managing Dr Inglis' performance fell to Associate Professor Southwood. Her evidence is unequivocal that student complaints about Dr Inglis started the month after Dr Inglis arrived at the university and continued until she left. The process by which the management of performance was addressed, on a day-to-day basis, was through a series of Performance Review and Planning meetings (PRP) between Dr Southwood and Dr Inglis. Dr Inglis describes these PRP meetings as something of an ordeal and referred to *a tirade of anger* from Dr Southwood. Dr Inglis claimed to *fear for her personal safety*. Dr Southwood absolutely denies these extreme statements as being anything other than fanciful. There is no independent evidence to suggest that Dr Southwood behaved inappropriately and I must say that I did not find Dr Inglis a convincing witness in her recollections of these events. Associate Professor Southwood thought that Dr Inglis was overly sensitive, not collaborative and unable to deal appropriately with constructive criticism.

[38] Despite the obvious difficulties in this relationship, Associate Professor Southwood endeavoured to provide appropriate assistance to Dr Inglis but the majority of these initiatives were simply rejected by Dr Inglis. For example, there were two suggestions by Associate Professor Southwood that mediation might be useful to try and improve the relationship between the two colleagues, there were suggestions that counselling might be helpful for Dr Inglis, there were proposals in respect of guest lecturing in Dr Inglis' courses and there was a suggestion of involving the Student Advocacy Coordinator to try to help resolve student complaints about Dr Inglis.

[39] I am satisfied Associate Professor Southwood had a professional obligation to the University to try to manage the performance deficits of Dr Inglis as the same were

evidenced by continuing complaints from students and that she did that to the very best of her ability. I am not persuaded by Dr Inglis' various claims that the University supported the students over her, or that Associate Professor Southwood was over zealous in pursuing performance improvements or that the University was itself over-reacting to the situation.

[40] A particularly good illustration of the dynamics in this relationship was a staff meeting held on 28 September 2007 at which Dr Inglis presented one of her courses to academic colleagues so that there could be a group assessment of the particular course. The University's evidence is that the sort of exchange that took place in this meeting was exactly the same as had happened with previous academics presenting their courses and that the questions asked of Dr Inglis were the same sorts of questions that an academic would be expected to be asked about their own paper. So against the University's evidence that the process Dr Inglis was involved in was absolutely typical, we have Dr Inglis' own evidence stating that she felt Associate Professor Southwood was offensive and disrespectful and that she (Dr Inglis) felt the physiological symptoms of stress. Dr Inglis claims that Dr Southwood broke up the meeting in *an enraged voice and manner*. Conversely, Dr Southwood recalls Dr Inglis yelling something to the effect *this is an inquisition, I am being attacked. Under the Act I can say I am stressed*.

[41] This meeting is one occasion where there were independent witnesses to the exchanges between the two principal protagonists. The evidence of the Clinical Director of the Speech Language Therapy programme, Ms Cope, was given to the Authority. Ms Cope was present at the meeting. Her evidence is consistent with the evidence of Associate Professor Southwood and inconsistent with the evidence of Dr Inglis.

What was the investigation?

[42] I have already noted that on 18 October 2007 Dr Inglis submitted a Massey accident report form alleging that she had been bullied. I am satisfied this was the first occasion that she had made this claim. Professor Michael Townsend was, by then, head of the School of Education at Massey's Albany campus and it fell to Professor Townsend to preside over the investigation into the bullying allegations.

[43] As I have already noted, there was a lengthy interview conducted by Professor Townsend, assisted by a Massey human resources adviser, with Dr Inglis. That interview took place on 23 November 2007 and it was taped. Both Professor Townsend and Ms Brown, the human resources adviser for Massey, are adamant that Dr Inglis consented to the transcript of the tape being made available to other parties to be interviewed by Professor Townsend, including in particular Associate Professor Southwood who was the principal focus of the complaint. Dr Inglis subsequently protested that she had not consented at all to the transcript being made available to Dr Southwood, but by the time Dr Inglis' protest was lodged, the transcript had already been forwarded to Dr Southwood.

[44] In his detailed brief of evidence, Professor Townsend carefully describes the process that he went through in respect of the investigation that he was charged with. The process took some five months and was probably delayed particularly because of the pressures at the end of the academic year and also because of family sickness in Dr Southwood's family. In the result, in a moderate and carefully expressed decision, Professor Townsend concludes that, in effect, there is no case to answer. In reaching his conclusion, Professor Townsend notes that the complaint is a most serious one, notes that Dr Inglis has a genuine belief that she was bullied, but also notes that there is no independent corroboration of the alleged bullying behaviour and a categorical denial of it by Associate Professor Southwood.

[45] Professor Townsend also makes the point that the information provided by the complainant (Dr Inglis) was diffuse and generalised and thus difficult to inquire into, and further that Dr Inglis made it impossible for him to speak to a wider group of witnesses by refusing to allow the transcript of the meeting of 23 November 2007 to be provided to those potential witnesses. In the context of acknowledging that, at the very least, there was an unsatisfactory working relationship between Dr Inglis and Dr Southwood, Professor Townsend, in what I perceive to be the nub of his carefully considered decision, had this to say:

I am only able to make a decision on the information that was obtained and in the particular circumstances of this case I am unable to reach a definitive finding, on the balance of probabilities as to whether bullying and harassment has occurred, or whether bullying and harassment has not occurred. This is on the basis that there is not sufficient information or evidence to allow me to reasonably reach a conclusion either way.

[46] The effect of that conclusion might, on a simplistic analysis, be seen as a *cop out*. But that is certainly not the view that I take of the conclusion. In my opinion, Professor Townsend has done all that he was able to do to investigate the complaint and reach a proper conclusion on it. Given Dr Inglis' refusal to allow him a proper opportunity to conduct a free and open inquiry and to seek evidence from witnesses not first approved by her, a conclusion of this sort is inevitable. It is probably also fair to remark that Professor Townsend's task was not made easier by Associate Professor Southwood's refusal to engage with him in his inquiries. Dr Southwood took advice on the matter, as she is of course perfectly entitled to do, and that advice was to the effect that she should not engage with the inquiry. Her only contribution to the proceeding was to deny the allegation.

[47] For my part, considering the application that Dr Inglis has made to the Authority, I must now stand back and consider whether the inquiry presided over by Professor Townsend was a full and fair inquiry having regard to the particular circumstances that applied at the time and indeed whether another employer, coming to the matter afresh, would be likely to behave in a similar way and reach a similar conclusion. I conclude that the answer to that hypothetical question is in the affirmative; I am satisfied that, given the strictures placed on the inquiry by Dr Inglis herself, it would be impossible for any inquiry to reach a different conclusion because the quality of the evidence produced by Dr Inglis herself was so diffuse as to lack the necessary particularity that must exist in order for a proper investigation to be mounted and proper allegations investigated and confronted.

[48] Of course, it is not for the Authority to put itself into the shoes of the employer in a matter of this kind, but I can say that it seems to me that the evidence discloses a perception by Dr Inglis that she has been bullied but for me I am not persuaded there is any evidence whatever to support the conclusion that, in terms of Massey's own policy, Dr Inglis has, in truth, been the victim of bullying or harassment. My considered view is that the evidence discloses rather that, for whatever reason, there were uncertain personal exchanges between Associate Professor Southwood and Dr Inglis which set the relationship off on a rather tenuous footing and that when Dr Southwood then had to deal with continuing student complaints about Dr Inglis, the relationship deteriorated still further. However, I am not persuaded that there is any evidence whatever that Dr Southwood bullied Dr Inglis; for me, the evidence discloses only that Dr Southwood tried diligently to manage performance deficits by

Dr Inglis and that the consequence of those continuing exchanges (which lasted the whole period of Dr Inglis' tenure at the University) was to create in Dr Inglis' mind a belief that she had been bullied.

Determination

[49] Dr Inglis sought a re-evaluation of the investigation by the Authority and if the investigation was found to be inadequate then she wished the Authority to re-investigate the allegation of bullying and make findings. For reasons which I have already enunciated, I am not satisfied that the inquiry presided over by Professor Townsend was anything other than fair, balanced and satisfactory both in terms of process and in terms of conclusion, and from the Authority's perspective, looking at the evidence with a lawyer's eye and assessing that evidence against the University's own policy, I am not persuaded that bullying has occurred.

[50] For the sake of completeness, I deal finally with the contention that there may have been a constructive dismissal of Dr Inglis because she was *forced to resign* because she was bullied. I reject this claim also. First, as I have made clear, I find no evidence of bullying at all. Second, the evidence suggests that Dr Inglis left the employment because she had been successful in obtaining another position and, in any event, she sought a two year leave of absence from Massey in order to take up the alternative position so she can hardly claim to have been driven out by an uncaring employer if she was, as she says, *forced to resign*. Finally, the bullying complaint was made in September 2007 and the resignation happened seven months later and entirely devoid of any context that would suggest that it was activated by the bullying allegation. I am not persuaded that there has been any breach of duty by Massey which would have generated the foreseeable consequence of Dr Inglis' resignation.

[51] It follows from the foregoing that Dr Inglis' claim fails in its entirety.

Costs

[52] Costs are reserved.

James Crichton
Member of the Employment Relations Authority