

Attention is drawn to paragraphs 9 and 10 prohibiting publication of certain information.

Determination Number: CA 33/05
File Number: CEA 31/05

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Jennifer Kemp (First Applicant)
AND Catherine Reid (Second Applicant)
AND Kelly Mules-Wilson (Third Applicant)

AND Q (Respondent)

REPRESENTATIVES Peter Cranney, Counsel for the applicants
Keith Binnie and Jenny Gibbs, Counsel for the respondent

MEMBER OF AUTHORITY Paul Montgomery

SUBMISSION RECEIVED 8 March 2005

DATE OF DETERMINATION 9 March 2005

DETERMINATION OF THE AUTHORITY AS TO NON-PUBLICATION

[1] In an application lodged with the Christchurch registry of the Authority by facsimile at 2.07 pm on Tuesday, 8 February 2005 counsel appointed by an employee of the respondent sought to establish that his client was a person *involved* in the proceedings before the Authority and therefore entitled to be represented in the investigation meeting for the purpose of protecting his client's interests. The employee represented by Mr McPherson is not a party to the proceedings and is not required to attend as a witness. In the alternative Mr McPherson sought suppression of his client's identity, gender, age and position with the respondent.

[2] Prior to receiving this communication from Mr McPherson, Mr Couch who prior to his going on annual leave represented the employee, had made unsuccessful attempts to have the employee deemed a *person involved* in the matter now before the Authority.

[3] It needs to be made clear that in considering Mr Couch's application the Authority decided that as Mr Couch then represented a person not a party to the relevant matter before the Authority he and his client lacked status in the proceedings. Further, the Authority gave its assurance that it would be vigilant in protecting this employee's interests and privacy in dealing with the matter before the Authority.

[4] In his letter to the Authority, Mr McPherson urged me to consider that the respondent's interests in the issues giving rise to the present action, and a potential action by his client against the respondent in respect to an aspect of the same incident, differed very considerably from those of his client, and that if the Authority was not prepared to afford his client right of representation then the Authority was empowered to issue orders prohibiting publication of his clients name, age, gender and the position held with the respondent party.

[5] There is no question as to the Authority's capacity to issue such an order and I accept counsel's submission in respect to section 10, second schedule to the Employment Relations Act 2000.

[6] In addition to the correspondence from Mr McPherson the Authority received a facsimile at 1.29 pm on Tuesday, 8 March 2005 from Mr Cranney, counsel for the applicants. In that communication counsel, in the light of a specific brief of evidence on behalf of the respondent, sought an interim order suppressing the respondent's identity. The facsimile was copied to counsel for the respondent and at the time of writing, the Authority has received no opposition to Mr Cranney's application.

[7] It needs to be made plain that neither counsel for the applicants nor for the respondent have previously been aware of the application made to the Authority in respect to Mr McPherson's client. As the Authority undertook to be *vigilant* in its protection of his client's privacy interests, I am of the considered view that in an investigative setting sufficient powers of suppression lay with the Authority to secure those interests and to avoid prejudice to them. Mr McPherson appears to be unconvinced by that assurance and requests formal suppression.

[8] Having considered the issues placed before me I decline Mr McPherson's client representation at the investigation meeting as previously indicated to Mr Couch, and for the same reasons.

[9] I order permanent suppression of the name, age, gender and position held by Mr McPherson's client in respect to the current proceedings.

[10] At the unopposed petition of counsel for the applicants, I order the interim suppression of the identity of the respondent pending argument of the relative substantial issues at the investigation meeting.

Paul Montgomery
Member of Employment Relations Authority