

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 196/10  
5310312

BETWEEN	DEBRA MARIE MURRAY Applicant
A N D	BATTERED WOMEN'S TRUST Respondent

Member of Authority: Helen Doyle

Representatives: Debra Murray, Self represented  
Robert Thompson, Advocate for Respondent

Investigation Meeting: 27 August 2010

Date of Determination: 19 October 2010

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**EMPLOYMENT RELATIONSHIP PROBLEM**

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**Prohibition from Publication**

[1] I prohibit from publication under clause 10 (1) of the second schedule to the Employment Relations Act 2000 the contents of the record of settlement entered into between Debra Murray and the Battered Women's Trust on 29 January 2010 under s.149 of the Employment Relations Act 2000, other than the clause referred to in this determination.

[2] I also prohibit from publication para.6 of the statement of evidence of Lois Herbert, Manager of the Battered Women's Trust.

**Employment relationship problem**

[3] Ms Murray said in her statement of problem that the Battered Women's Trust had breached clause 1 and clause 7 of the settlement agreement. She subsequently withdrew her claim in respect to clause 1, leaving the claim that the Trust breached clause 7 of the settlement agreement that provides:

*The Employee agrees to return any company property in her possession. The Employee will provide a list of items to be returned to her by the Employer.*

[4] Ms Murray provided a list of items to be returned to her in accordance with that clause but she says that the items were not returned and she now wants the Battered Women's Trust to comply with clause 7 and return her property.

[5] The Battered Women's Trust (the Trust) does not accept that it failed to comply with clause 7 of the settlement agreement. The Trust says that it returned the property that it could clearly identify as Ms Murray's personal property. The Trust says that it was not required to return documents created, developed and used for its purposes including documents that it had obtained by virtue of taking over the Family Safety Team contract in June 2009. Ms Murray had been previously employed by the Family Safety Team and was employed by the Trust in August 2009. Some of the documents she wished to have returned were those created and/or obtained by her when she was employed by the Family Safety Team.

[6] The Authority held a telephone conference with Ms Murray and Mr Thompson on 6 August 2010 to set a date for the investigation meeting. Ms Murray agreed during the telephone conference that she would provide an extended list of unreturned property to assist the Trust in their search for the items. Ms Murray duly provided this list.

**The Property Requested**

[7] The Authority has power to order compliance by virtue of s.137 of the Employment Relations Act 2000 where it is alleged the Trust has not observed or complied with the terms of settlement. The Authority firstly had to determine whether there had been a breach of clause 7 of the settlement agreement. If a breach is established the Authority then has a discretion to either make a compliance order, refuse to make an order or to postpone the making of an order.

[8] The settlement agreement did not specifically refer to items but simply the compilation of a list by Ms Murray to be given to the employer. The Authority therefore needs to consider the items requested. Ms Murray made it clear in her correspondence to the Trust and during the Authority investigation meeting that she did not seek to have returned to her any items that belonged to the Trust. The Trust do say however that some of the documents that Ms Murray wants returned belong to the Trust.

[9] Between the telephone conference with the Authority and the investigation meeting Ms Herbert said that she and another employee of the Trust, Heather Smith, with the assistance of Mr Thompson spent hours searching for the items Ms Murray had requested. Some other property in addition to that already returned to Ms Murray was located. This included text for a book Ms Murray had written, the book cover, related photos and two PowerPoint presentations. The other items that Ms Murray wanted to be returned were broken down into eleven main headings.

**Email address book**

[10] Ms Murray wanted a computer generated email address book with approximately 250 addresses to be returned to her. Ms Herbert in her evidence said that the email contacts had been searched through but that it was impossible to separate the contacts belonging to Ms Murray out from the Trust's work email addresses as they had become completely integrated. It was explained during the investigation meeting that this was because of the particular way the computers were set up in the Trust. As I understood the evidence it appeared that the addresses were common and could be accessed by all staff. Ms Murray did not accept that it was impossible to provide her with the email contacts.

[11] I am satisfied that Ms Herbert has attempted to locate these addresses but there are difficulties in differentiating between the work contact addresses and those personal to Ms Murray. In those circumstances I am not satisfied that there is a breach of clause 7. Even if I was to find that there was a breach in not returning the email contact addresses to Ms Murray, I would exercise my discretion against compliance because there is a degree of uncertainty as to whether the contacts could ever be retrieved given their integration with the work addresses.

**Black business card holder**

[12] Ms Murray described the black business card holder as four high with approximately 20 pages. She said that it had always been in the same place during her employment and that Ms Herbert would have had to move it or at least have seen it to get to the other resources Ms Murray had been provided with. Ms Herbert on the other hand said that she did not find the card holder and had never seen it.

[13] I am not satisfied that the failure to return the black business card holder is a breach of clause 7, but rather as a result of not being able to locate the property.

**Flash drives – one red with rounded ends and one silver flash with flat ends**

[14] Ms Herbert gave evidence about searching for the flash drives and looking at all of the pen drives that she could find. She said she had no idea where the drives were that Ms Murray wanted. I accept that a failure to locate these drives is frustrating for Ms Murray but I am satisfied that they were searched for and could simply not be located. I do not find a breach in that respect.

**3 x lime green A4 Lever Arch boxes full of resources**

[15] There was a dispute in the evidence as to whether all the contents of these folders had been sent to Ms Murray. Ms Herbert's evidence was that the contents of the Lever Arch boxes had definitely been forwarded to Ms Murray after the employment relationship had ended in or about February 2010.

[16] Ms Murray does not accept that the entire contents of the lime Lever Arch boxes were forwarded to her.

[17] I am satisfied from Ms Herbert's evidence that resources from the lime green Lever Arch folders were forwarded to Ms Murray. I do not find a breach in that respect.

### **Power Point presentations**

[18] Ms Herbert said that aside from the two Power Point presentations that were returned to Ms Murray, the other Power Point presentations could not be found or were the property of the Trust.

[19] Ms Herbert explained that property that had previously belonged to the Family Safety Team now belonged to the Trust and that whilst she knew Ms Murray was bringing with her resources from the Family Safety Team, she understood that the intention was that they would be used by the Trust.

[20] I find that in terms of the items that were the property of the Family Safety Team, the Trust now has a proprietary interest in those documents including the Power Point presentations. The Trust is not in breach of clause 7 by not returning those presentations.

[21] A number of other Power Point presentations could not be located by Ms Herbert and Ms Smith when they considered the computer file. I do not find a breach of the settlement agreement in terms of the Power Point presentation that could not be located.

### **Research Projects**

[22] Ms Murray referred to four of these projects. Ms Herbert said that three could not be found. The remaining document I accept was not able to be used outside of the Family Safety Team and that the police had advised the Trust not to release it. There is no breach in respect of that document.

### **Photos**

[23] I accept that some photos that were found were returned to Ms Murray. I am satisfied that an extensive effort was made to search for personal property and that all photos that could be found were returned.

### **Documents and educational tools**

[24] Ms Murray referred to a number of documents and educational tools. Ms Herbert gave evidence that many of these could not be found and that the few that could be located she considered were the property of the Trust.

[25] Having considered the evidence I accept that these documents were either used by the Trust or that they came into the Trust's possession when it obtained the contract with the Family Safety Team.

[26] Ms Murray also asked for a number of documents under the heading *educational tools*. It would appear that none of these documents could be found. I am not satisfied in relation to those documents that the failure to provide them could be seen as a breach of the settlement agreement.

### **The Book**

[27] I am satisfied that what was located in relation to **My Book – One Woman, One Soul and One Survivor** was returned to Ms Murray.

### **Templates**

[28] Ms Murray wanted to obtain templates from her computer. Ms Murray accepted that some of the templates had been created for The Trust but some did not have BWT headings. Ms Herbert said that she had searched for these templates although was unable to find the templates that Ms Murray had referred to that were other than the Trust's property. I am not satisfied that there was a breach in respect of the failure to provide the templates.

### **Determination**

[29] I accept Ms Murray genuinely believes that the Trust had items that belonged to her. I find that some of these items that Ms Murray considered were hers, were in fact the property of the Trust by virtue of the Trust obtaining the contract for the Family Safety Team. Some of the other documents were integrated and used by the Trust in training and by other staff.

[30] One of the other difficulties is that in spite of what I find was an extensive search many documents or items could not be located. There is probably truth in

Ms Murray's point that this could be due to the escalation of time and prevented if the matters had been dealt with earlier.

[31] I am not satisfied however this is a case where the Trust has simply refused to return property. I find that the Trust undertook a genuine and thorough search of the computer system and the relevant office space to ascertain whether there was personal property belonging to Ms Murray. As a result of continued efforts however, some property belonging to her was able to be recovered and returned.

[32] In all the circumstances I am not satisfied that the Trust has breached its obligations under clause 7 of the settlement agreement. Even if I had got to the point of finding that there was a breach, I would have exercised my discretion against making an order for compliance in these circumstances, because after an extensive search many of the items that Ms Murray wanted could simply not be found.

[33] There is nothing further I can do to assist Ms Murray with her employment relationship problem.

### **Costs**

[34] Mr Thompson asked that I reserve the issue of costs and I do so. Mr Thompson on behalf of the Battered Women's Trust has until 9 November 2010 to lodge and serve submissions as to costs and Ms Murray has until 30 November 2010 to lodge and serve submissions in reply.

Helen Doyle  
Member of the Employment Relations Authority