

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 397
3382143

BETWEEN SAJ
Applicant

AND IGD
Respondent

Member of Authority: Nicola Craig

Representatives: Donna Pokere-Phillips, advocate for SAJ
Stephen Corlett, counsel for IGD

Investigation Meeting: 24 and 27 June 2024 by audio-visual link

Submissions received: At the investigation meeting and 10, 17, 18, 19, 23 and
26 June 2025 from SAJ
At the investigation meeting and 11 and 23 June 2025
from IGD

Determination: 4 July 2025

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] SAJ is Te Tumu Whakarae, chief executive of IGD, a charitable organisation providing community services. Both are identified by randomly chosen letters.

[2] Issues arose between SAJ and the IGD Board in 2024 if not earlier. The parties first came to the Authority with IGD seeking an interim order restraining SAJ from publishing the contents of mediation communications. This resulted in a determination of the Authority granting an interim order preventing SAJ from publishing the contents

of various mediation material.¹ Then SAJ lodged an application about “contractual and governance breaches” along with unjustified disadvantage harming SAJ. An investigation meeting is set to hear both IGD’s and SAJ’s matters in September 2025.

[3] Most recently SAJ lodged an application for urgency regarding her suspension by IGD as part of an investigatory process. Along with other orders, SAJ seeks to be reinstated on an interim basis to her role until a grievance can be heard. IGD opposes the application on the basis that it was entitled to suspend SAJ and carried out the suspension in a fair manner.

The Authority’s process

[4] A case management conference was held with the parties. The Authority granted urgency on the basis of SAJ’s interim injunction application to reinstate from suspension on an interim basis. A timetable was agreed including the holding of the Authority’s investigation meeting by audio-visual link on 24 June 2025 to hear submissions.

[5] There was discussion on the possibility of directing the parties to mediation – the parties had already got to the point of SAJ being only willing to attend mediation on the basis of IGD totally waiving mediation privilege, with IGD unwilling to do so.

[6] SAJ’s application and subsequent material provided include a wider range of order sought, such as an injunction restraining IGD board members from further harassment or acting unlawfully and reinstating SAJ’s access to her email or the emails going to a nominated alternative, to allow important funding matters to be dealt with. The Authority indicated at the case management conference and by subsequent Minute that it is unusual for the Authority to halt a disciplinary process and it would need to be satisfied that there was a sound basis for it to make the orders sought.

[7] Affidavits were received from SAJ and her partner along with supporting affidavits from senior kuia and kaumātua, a person nominated to the IGD board, a former board chair and an IGD staff member. IGD provided affidavits from both co-chairpersons of its board. The parties also agreed to affidavits and documents from the earlier proceedings being considered in this application.

¹ *IGD v SAJ* [2024] NZERA 777.

[8] In the lead up to IGD's lodging of its notice of opposition, statement in reply and affidavits, SAJ filed (untimetable) an urgent submission along with documents and later a memorandum with further documents. Both the submission and the memorandum sought further orders, largely not already sought, including orders to be made before the interim investigation meeting. IGD opposed such "interim interim" orders. The Authority issued a Minute informing the parties that the additional orders sought would be dealt with at the interim investigation meeting.

[9] The day before the investigation meeting a sworn version of an affidavit of a co-chair was provided for IGD. This led to SAJ's representative informing the Authority that the statement in reply, notice of opposition and affidavits had not been received earlier. It appeared an email from IGD's representative serving the documents had bounced back and a second attempt was either not seen, not received or not appreciated to contain a link to documents. When the investigation meeting commenced on 24 June 2025, after discussion and IGD's representative seeking instructions, in order to ensure SAJ had the opportunity to see and comment on all those documents, the investigation meeting was adjourned with those documents to be provided, SAJ to have an opportunity to comment and the meeting to resume on 27 June 2025. IGD properly agreed to pause its investigatory process to allow the Authority to hear the interim application and issue a prompt determination.

[10] When the Authority meeting resumed on 27 June 2025 SAJ's representative wished to record that material had been prepared under short time constraints. A question about whether further time was needed, drew a response in the negative.

[11] In the usual way, I have dealt with this application for interim orders on the basis of untested evidence and submissions. Disputed matters cannot be decided on such evidence.

[12] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

Non-publication warranted

[13] In the earlier determination an interim non-publication order was made on the basis of the importance of mediation confidentiality and the significant potential for reputational harm to IGD and individual board members.

[14] IGD seeks to have that confidentiality applied in this matter as well,

[15] The Authority has the power to make non-publication orders.²

[16] The process involves identifying specific risks of harm then weighing the reasonable likelihood of occurrence against the open justice principle.³

[17] The open justice principle is seen as having greater weight at the substantive determination stage, as the parties will have had the opportunity to give oral evidence, be subject to cross examination and the Authority will issue final findings.⁴

[18] I accept that as related matters, there would also be some potential difficulty in upholding the non-publication order regarding the mediation matter if there was no non-publication order in this matter.

[19] There is a risk of significant reputational harm to the organisation and in individual board members. Given the approach taken by SAJ at several points, outlined below, there is a reasonable likelihood of occurrence.

[20] SAJ suggests mediation confidentiality, possibly the earlier non-publication order and/or SAJ's confidentiality regarding the Board's investigation process has been breached already. Some affidavit evidence is provided supporting that. However, there is also affidavit evidence denying that, as well as suggesting SAJ may have released information about her own situation. Given this disputed evidence, it is not prudent to take a different approach on non-publication at this stage.

[21] On an interim basis an order for non-publication in this matter is warranted, as set out below.

The issues

[22] The issues for determination in this interim application are:

- In terms of what is effectively an interim injunction sought, is there a serious question to be tried - does SAJ have an arguable case that she has been disadvantaged by unjustifiable suspension action and does she have an arguable case to be permanently reinstated from suspension?

² The Act, Sch 2, cl 10.

³ *MW v Spiga Limited* [2024] NZEmpC 147.

⁴ *JGC v MBC* [2020] NZEmpC 193.

- Where does the balance of convenience lie?
- Standing back and considering the case, where does the overall justice lie until the substantive matter is determined?⁵

[23] A variety of other orders were sought through submissions on behalf of SAJ – concerning full disclosure, halting the investigative/disciplinary process, good faith and non-contact with her directly.

Background

[24] As well as earlier involvement in the organisation, SAJ has been in her current role with IGD since 2016, reporting to the IGD Board. This involves responsibility for the organisation’s day to day operational decision-making and functions, including regarding other staff and employment matters. The Board has governance oversight and is responsible for managing SAJ and dealing with her employment issues.

[25] SAJ describes her successful obtaining in recent years of tens of millions of dollars of funding for IGD’s activities.

[26] SAJ refers to the Board being short of members in the Covid era and whānau members of Co-chair A being brought in as new members. SAJ saw this causing conflict of interest and transparency concerns. That theme is repeated by her in relation to some type of audit arranged by the Board, which was undertaken by an organisation run by a woman who is also the CE of another organisation which that co-chair is on the board of. SAJ was also concerned that that other organisation received similar government funding to IGD.

[27] The co-chairs refer to the Board having concerns about SAJ in 2024, raising them informally, then mediation occurring in late 2024, not resolving the matter and things escalating.

[28] The concerns are described as relating to breaches of delegated authority, delays in reporting to the Board and inadequacy of information provided to the Board.

[29] Broadly speaking both parties deny the concerns the other has about them.

⁵ For example, *Brooks Homes Limited v New Tax Refunds Limited* [2013] NZSC 60, *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36 and *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59.

Summary of recent events

[30] On 19 April 2025 SAJ sent a lengthy email to a major funder, copying in the CE of a partnership organisation (referred to as K) and some of K's board members. She appears to have done this without consulting the Board or informing it.

[31] The email questions why IGD had not received an invitation to tender with K for a contract, asking if the reason IGD was overlooked was because IGD's Co-chair A also chairs K's board. An IGD senior manager was also on K's board. Co-chair A and this manager are noted not to be included in the email because "it is a conflict". Further, "[w]e tautoko their ability to represent on [K's board] ... but the conflict / or that we may not be able to apply for funding[,] is concerning".

[32] IGD says there was an invitation to apply for the funding prior to SAJ's email being sent. There is a suggestion that an email invitation may have gone into an unexpected folder which SAJ did not access. IGD is also concerned about a suggestion in the email that K may be picking and choosing who it wants as providers.

[33] The Board has not provided evidence of when it found out about the 19 April email, with no steps taken regarding SAJ directly for a few weeks.

[34] Having found out, the Board has concerns, including that it had a "standard protocol" of raising issues with the entity concerned in first instance, and a potential for damage to its credibility and reputational damage with funders, stakeholders and other key relationships, affecting its operations. The Authority has not been provided with a written protocol.

[35] IGD seeks legal advice and initiates an investigation process regarding what it sees as possible serious misconduct by SAJ. The Board also wants to address other concerns about SAJ's performance including regarding reporting to the Board and co-operation with the auditor.

[36] As SAJ alleges in the 19 April email that Co-chair A has a conflict of interest, which that person denies, the IGD Board or possibly the co-chairs, decide that Co-chair A will no longer take part in kōrero about the investigation issues, or vote on any findings or outcomes about the process. The timing of this decision is not clear with no meeting, or other, notes provided. Co-chair A says that no decisions had been made by

the Board, other than to investigate its concerns, and regarding the suspension, prior to her stepping away from the process. Why this did not happen sooner is not discussed.

[37] There is an email chain showing SAJ being asked to attend a meeting with the co-chairs, without explanation about the meeting's purpose. After some exchanges about timing, the meeting is held on 26 May 2025. The Authority has no notes from any relevant Board meeting or the 26 May 2025 meeting with SAJ.

[38] There is evidence that the meeting begins with a harirū, followed by a karakia from Co-chair A and a mihi from SAJ's husband.⁶ The Board anticipates he would likely be present, as he has been attending SAJ's meetings with the Board for a while. It appears there is discussion about general business before moving to focus on SAJ.

[39] Co-chair B then does most or all of the talking on behalf of the Board. She says she summarised the Board's concerns, advising that full particulars would be provided by letter later that day, with mention made of SAJ's email of 19 April 2025 to the funder.

[40] By contrast an SAJ affidavit says that, possibly after some operational discussion, she was told they wanted her keys, and she was not wanted onsite as they wanted to investigate her.

[41] Neither party suggests SAJ is asked to respond to any allegations. The co-chairs say they ask for a response to a proposal to suspend SAJ for at least two weeks while they investigate.

[42] Co-chair B describes SAJ telling the co-chairs she was happy to step down, so long as the entire Board also stood down. In the absence of evidence of any follow up query regarding what SAJ thought in the event the Board would not stand down, it is taken that SAJ could not be seen as agreeing to just her being stood down.

[43] According to IGD affidavits, SAJ makes statements along the lines of that she is going to "go public" "with everything" and "everyone will know". Co-chair A puts these statements being made after SAJ is told (at the meeting) that she is suspended. Their meeting finishes with Co-chair B leading a karakia.

⁶ Harirū (handshake), karakia (prayer) and mihi (introduction/greeting).

[44] The IGD Board then meets and sends SAJ an 8-page letter that evening referring to the allegations and inviting SAJ to attend an investigation meeting scheduled for 10 June 2025. The letter identifies concerns that SAJ:

- potentially breached the employment agreement
- allegedly performed duties in a grossly negligent manner
- purportedly failed to follow lawful and reasonable instructions.

[45] Further information is provided under these headings - reputational issues, misleading and deceptive behaviour, financial management, Board Chair/Tumuaki governance relationships, reporting and performance. Some dates are provided, for example, a point about progression of an audit for 2023/2024.

[46] The Board appoints an acting chief executive, starting a day or so after SAJ is suspended. There seem to be connections between the acting CE, the funder the 19 April 2025 email was sent to and the community which IGD serves, including connection with Co-chair A. The Board rejects SAJ's assertion that the acting CE is a "key investigator" in the disciplinary process – saying the acting CE is not a board member and is not involved in the investigation.

[47] A meeting with the IGD senior leadership team (SLT) is called first thing on 27 May. Co-chair B says that she and another Board member tell the group the Board has concerns and a decision had been made to stand down SAJ for two weeks to allow them to investigate. Co-Chair B's evidence is that even when questioned, no information about the allegations was provided. Her impression from several things, is that the SLT already know about the suspension – with negative comments made about the Board and what it has just done.

[48] Following the suspension the Board says it became aware of additional concerns, regarding funding and SAJ sending work emails and documents to her personal email address. Seemingly included amongst the material sent was a police vetting form and passport for Co-chair B.

[49] IGD notifies SAJ about these concerns in writing, advising that additional information would be provided to her. The 10 June meeting is postponed by IGD to enable further investigation of those additional concerns. SAJ then expresses in writing her concern about her extended suspension and seeks full information about the concerns and allegations the Board intends to investigate.

[50] As a result of material provided on SAJ's behalf to the Authority the Board also becomes concerned about SAJ contacting, or at least responding to emails from, funders and stakeholders, after she is suspended. SAJ indicates during her suspension she is "engaging with funders to reassure them and protect the Trust's funding and services". IGD does not consider she should be in contact with such organisations, particularly when that is a key issue leading to her suspension.

[51] On 17 June 2025 IGD writes to SAJ providing information about the additional concerns as well as further particulars of the allegations in the 26 May letter. The 17 June letter runs to 50 paragraphs.

Considerations

[52] The Authority is permitted under s 127 of the Act to make an order for interim reinstatement pending hearing of a personal grievance. Reinstatement is a primary remedy.⁷

Restraint of investigatory or disciplinary process rare

[53] It is unusual for the Authority to intervene to restrain an employer from taking further steps in an employer's investigation or disciplinary process. The rationale for this is described in *Ports of Auckland Ltd v Findlay* by the Employment Court:

... [O]rders restraining an employer from proceeding with an investigative/disciplinary process into concerns about employee conduct will be rare. That will be even more so where, as here, permanent orders are sought restraining an employer from taking any further steps at all, effectively halting the employer's processes in their tracks. The reasons for this are clear. The first point is that such an approach runs the risk of putting the cart before the horse, and pre-judging the endpoint that an employer might (but might not) get to. It also runs the risk of cutting across an employer's obligation to investigate concerns, including health and safety concerns impacting on other employees. Also relevant is the interest, both to the individuals concerned, and more generally, in allowing such processes to run their course without undue interruption and delay. A stop-start approach to an investigative and disciplinary process which invites intervention along the way from the Authority; the Employment Court on challenge; and potentially the Court of Appeal and Supreme Court by way of further appeal; is plainly undesirable for public policy reasons.⁸

⁷ The Act, s 125.

⁸ *Ports of Auckland Ltd v Findlay* [2017] NZEmpC 45 at [23].

[54] At the first part of the investigation meeting, this approach was raised again with the parties. My understanding at that point of the response on behalf of SAJ was that she would proceed with an IGD investigation/disciplinary process if it was fair. However, when we reconvened, the position was that an order should be made halting the process until the Authority's substantive investigation could be held.

Employment agreement

[55] As well as implied duties of fidelity and trust and confidence, IGD relies on express terms of its employment agreement with SAJ which require the employee to:

- Use courteous and considerate behaviour in all dealings with ...customers, clients... or other business contacts.
- Comply with all lawful and reasonable instructions of the Employer
- Perform their duties with all reasonable s[k]ill, care and diligence
- Use best endeavours to promote, develop and extend the Employer's business interests and reputation and not do anything to its detriment.⁹

[56] SAJ's employment agreement includes provision about technology. This includes reference to SAJ being required to comply with current rules, policies and procedures established by the employer regarding technology systems to ensure the systems are not used contrary to the employer's best interests.¹⁰ No such rules or policies have been provided to the Authority. The extent to which the organisation attempted to prevent staff forwarding emails to their private email address is unknown.

[57] IGD also relies on the employment agreement's provisions:

- 27.1 The Employer may suspend the Employee from his or her duties while the Employer conducts an investigation in relation to any matter.
- 27.2 The Employer will seek the Employee's input (which may be brief) before suspension.
- 27.3 Suspension may be with or without pay for such periods as the Company shall, at its sole discretion, determine. ...

⁹ Employment agreement, clauses 20.1 and 20.2.

¹⁰ Employment agreement, clause 43.2.

[58] However, employers must have a sufficient reason to suspend and carry out a fair process.

Policy

[59] In summary, IGD Board policy approved in April 2024 recognises the need for real and potential conflicts of interest of Board members to be identified and registered with restrictions placed on involvement in relevant discussions. An interests register filed only shows conflicts with a notice date from 18 January 2025 onwards.

IGD has arguable case regarding unjustified suspension

[60] Turning now to the first issue of whether SAJ has an arguable case that she was unjustifiably suspended by IGD.

[61] Being suspended can clearly be disadvantageous to an employee. A recent summary of what is required is as follows:

[80] An employer is required to be fair to an employee when considering suspension. But that issue must be looked at in a sensible, flexible, and reasonable way to ascertain what the requirements of fairness are on the particular occasion and in the particular surrounding circumstances. By its nature, suspension often needs to be considered and implemented quickly, and the Court may need to take this into account in assessing the requirements of natural justice in any particular case.

[81] A suspension is not justifiable on the basis of suspicions of misconduct but may be justifiable where the employer has good reason to believe that the employee's continued presence in the workplace will or may give rise to some other significant issue. This would include, for instance, creating adverse impacts on other employees, which should be handled promptly.¹¹

[62] In this case there is the specific contractual requirement that SAJ's input "which may be brief" will be sought before suspension.

[63] SAJ argues there was a breach of tikanga. This is an important matter to the parties but is better explored on a substantive basis.

[64] Without attempting to deal with all other possible questions about the fairness of the suspension, a few are highlighted. Why the Board saw SAJ as needing to be

¹¹ *Mutonhori v Wairoa District Council* [2025] NZEmpC 44, including citations from *Tawhiwhirangi v Attorney-General, in respect of the Chief Executive, Department of Justice* [1993] 2 ERNZ 546 at 559, *Graham v Airways Corporation of New Zealand Ltd* [2005] ERNZ 587 at [104] and. *Singh v Sherildee Holdings Ltd* EmpC AC53/05, 26 October 2005 at [91].

suspended or away from the workplace, other than that there were serious allegations, is not very specifically identified. The letter of suspension refers to suspension being “as a consequence of the Trust’s concerns, and after consultation with you”.

[65] Leaving aside the 19 April 2025 email, it is clearly arguable that the Board was aware for some time of a number of the concerns now forming part of the investigation but had not taken performance management, investigatory or disciplinary action on previously, now bundling up the concerns with its concern about the April email.

[66] It is arguable that Co-chair A with an alleged conflict did not step away from the employment process soon enough. She attended the 26 May meeting where suspension was discussed with SAJ. Why this was necessary when there was an additional co-chair who was not the subject of SAJ’s allegations, is not identified by IGD. There were other board members who could presumably have stepped in. One went to the meeting with the SLT to talk about the standing down of SAJ and the appointment of an acting CE.

[67] This concern is reinforced by the fact the suspension letter comes from the co-chairs, is signed by Co-chair A herself and refers to the investigation being conducted with the assistance of a legal advisor and appointed trustees “including the Co-Chairs and/or [another named Board member]”.¹²

[68] On the basis of this material, it appears Co-chair A was involved in the decision to suspend. In addition the co-chairs did not adjourn the 26 May suspension meeting for discussion between themselves before informing SAJ of her suspension. This is supportive of SAJ’s allegation of predetermination of the decision to suspend.

[69] Not ideally, there was some uncertainty about how long the suspension was to be for. The 26 May letter refers to suspension until the investigation is completed but a two week suspension until the investigatory meeting also seems to have been alluded to.

[70] Although these issues will need to be fully explored, at this point, there is an arguable case that IGD acted unjustifiably in suspending SAJ to her disadvantage, in the way it did.

¹² Emphasis added.

IGD has arguable case for permanent reinstatement from suspension

[71] In circumstances where it is both practical and reasonable to reinstate, the Authority must provide reinstatement as a primary remedy.¹³ In a suspension situation this consideration has some air of transience where it is not ongoing employment which is considered but only suspension during an investigatory and possibly disciplinary process.

[72] In terms of practicability, there is little evidence to suggest difficulties with the acting CE's appointment if SAJ is reinstated. Such evidence as there is suggests staff would support a reinstatement. At this stage, given the disputed evidence, I cannot be satisfied that SAJ is unable to adequately perform her role.

[73] In terms of reasonableness, there are questions. SAJ indicates a level of distrust towards the Board, particularly Co-chair A, which would likely place some strain on the potential for reintegration into the workplace and resumption of her obligations, particularly reporting to the Board. There are two co-chairs though which could assist. IGD evidence does not greatly elaborate on difficulties the co-chairs see working with SAJ. They seem able to have continued to work with her over the last year or two despite concerns which now form part of their investigation.

[74] On what is before the Authority so far IGD has not specifically identified a need for SAJ to be out of the workplace whilst it investigated, so much as being focused on concerns about her behaviour.

[75] It is difficult to separate considerations here from those under the balance of convenience head. But by a fine margin, I conclude there is an arguable case that permanent reinstatement would be granted.

Balance of convenience favours IGD

[76] I now move on to weigh relevant injury or detriment the parties may suffer if interim reinstatement is granted or declined. This includes consideration of whether damages could be adequate compensation for any harm if reinstatement is not ordered.

¹³ The Act, s 125.

SAJ

[77] I look first at the impact on SAJ if she is not reinstated from suspension. Submissions refer to reputational harm, health harm and harm to the wider community.

[78] SAJ refers to suspension causing significant emotional distress, impacting her professional reputation and hindering ability to perform the role effectively.

[79] In one of the earlier proceedings the Authority received medical evidence that SAJ's health situation had resulted in significant emotional and physical strain. That was at the point when she was still working although I accept being suspended could be seen as bringing an additional stress.

[80] I note that IGD reserves its position in the 26 May letter about whether the suspension continues on pay, so leaving open the possibility of changing to without pay, "depending on the circumstances and progress of its investigation". Suspension without pay is a significant matter although SAJ's financial situation is little explored in the evidence.

[81] SAJ provides evidence that despite harm being caused to her, she remains committed to returning to the role and continuing to support the whānau and community who depend on the IGD's services. She would be deprived of that for at least a period if the suspension continues.

[82] In terms of reputation, a long serving senior staff member has provided an affidavit for SAJ, describing her as loyal and dedicated, an exceptional leader, including in upholding tikanga Māori. Others providing affidavits outline strong support for SAJ, as a dedicated leader, giving mahi and tiaki to others – a wahine toa.¹⁴

[83] There is a hint that damages or compensation might not be adequate but little specific evidence. It is fair to say that money does not come across as SAJ's focus. IGD argues damages are a suitable alternative remedy for SAJ to the interim orders sought, relying on public findings and an award of damages as an adequate remedy for her. The idea of public findings does not fit particularly well with IGD's seeking of non-publication orders although so far only interim orders have been dealt with.

¹⁴ Mahi and tiaki - work and care. Wahine toa – a female warrior, strong or brave woman.

Staff

[84] In terms of IGD's senior staff there is evidence in way of a signed account of events from the SLT that they were shocked by the announcement of SAJ's suspension and felt unsupported by the Board. The SLT describe the staff as having "significant confusion and anxiety" when told SAJ was not to be present at the workplace. This was a little while ago, so the situation may have altered.

[85] For the sake of completeness, I note there was no emphasis by IGD on any possible difficulties regarding its obligations to the acting CE, if SAJ is reinstated.

IGD

[86] Moving now to possible harm or detriment for IGD if SAJ is reinstated from suspension.

[87] Although the co-chairs' affidavits focus on concerns about the organisation rather than themselves personally, the tensions between SAJ and at least some, if not all, board members do suggest that her return to the workplace would not be without difficulty. A functional relationship between a CE and a board is important to an organisation's operations.

[88] Co-chair B's affidavit refers to SAJ's 2024 mediation confidentiality "threat" as demonstrating SAJ's lack of trust in the Board and her willingness to act contrary to the organisation's interests.

[89] In terms of the Board's concerns about SAJ's performance prior to the 19 April email, its awareness of those matters for some months or years previously, without the initiation of formal performance management or disciplinary process does suggest they place little impediment to SAJ's being reinstated.

[90] Co-chair B describes the Board not knowing how much damage SAJ may potentially have caused to the Trust by the 19 April email or other communications of a similar nature. As regards evidence from SAJ about her suspension activities, IGD says her actions have the potential to "severely undermine the trust's investigation" and the acting CE's authority, along with suggesting to staff, funding partners and stakeholders that the Trust's current investigation "is not legitimate, or is a sham, which it is not".

[91] Submissions for IGD suggest immediate reinstatement could have a significant detrimental impact on its ongoing relationships with third parties. It suggests that the relationship with organisation K has been negatively impacted already, from a (belated) response letter K's CE sent. However, this is dated after IGD after became aware of the 19 April email, with K's CE acknowledging someone had drawn to his attention that he had not responded.

[92] The Board is concerned that SAJ's email of 6 June 2024 sent to a coalition organisation, continues to allege that IGD suffers from governance issues (or I add, at least relationship difficulties between governance and operations) and the parties are in mediation. Given that mediation had stumbled before this, with SAJ's unwillingness to attend without the employer waiving all mediation privilege, that seems inconsistent, although I cannot rule out misunderstanding of the various processes.

[93] For the sake of completeness, I note that SAJ admits she communicated with funders after her suspension, she says to maintain the trust, financial stability and service continuity. Submissions also provide some case law support for reasonable actions during suspension.

[94] In summary, IGD is concerned about SAJ's unpredictability putting it at risk if she is reinstated – highlighting what it describes as the threat late last year to issue a media statement containing mediation material; sending to her personal email address a substantial amount of material (including some personal to co-chair B); the 19 April email to the major funder; the comments about going public said to be made when she was told she was suspended; and the emails sent to funders since suspension.

Conclusion on the balance

[95] The balance of convenience weighs somewhat in favour of rejecting the interim order sought. The potential harm to IGD of having SAJ back in the CE role is somewhat uncertain but possibly large. SAJ's actions both before and after suspension provide some basis for the employer's unease about a return regardless of whether SAJ has genuinely positive motives.

Overall justice favours IGD

[96] In summary, SAJ has an arguable case that she was unjustifiably suspended and that permanent reinstatement from suspension could be awarded. The balance of

favours IGD in terms of the potential harm to the organisation if SAJ returns to the workplace from suspension. I now step back and check where the overall justice lies.

[97] The CE is a key contact for funders and stakeholders. The Board has limited ability to effectively monitor and control the CE's day to day activities. That role is currently being undertaken by the acting CE.

[98] It appears there is still some way to go with IGD's investigation into SAJ although allegations have now been provided in at least some specificity, along with documents. It is unknown how long the remainder of the process will take at this point. The Authority's substantive investigation into the earlier matters is set for September. There is some potential for this matter to be included although no guarantee that the timing will fit with events.

[99] Although there is some strength to SAJ's unjustified disadvantage claim, the difficulties with the reasonableness of reinstating must be balanced.

[100] SAJ asks for intervention for the sake of the IGD organisation. Submissions refer to SAJ needing to go back in to stabilise the organisation and deal with all the contracts up for renewal. Whilst there is not a lot of direct evidence about contract renewals, there is support from senior staff, kuia and kaumatua about SAJ's importance in the organisation. IGD on the other hand is confident that the acting chief executive is capable of managing the organisation.

[101] By a relatively fine margin I conclude that the balance of convenience in IGD's favour should not be upset by this argument. The overall justice favours SAJ remaining suspended whilst IGD undertake a fair and proper investigation of the issues.

[102] The parties should reflect on their section 4 good faith obligations, including those requiring them to be active and constructive in maintaining a productive employment relationship.

Other orders sought

[103] The nature of other orders sought by SAJ has varied over time, partially due to developing circumstances.

Full disclosure

[104] SAJ seeks an order that disclosure of the full particulars of any allegations against SAJ be provided in writing in sufficient detail to allow her a meaningful opportunity to respond.

[105] IGD has indicated by word and action that it needs to provide adequate details of the matters it is investigating and documents in support. Additional details about the first allegations, along with regarding the second allegations have now been provided. Whether what IGD has and does provide is sufficient, will need to be assessed later if necessary. Also, as IGD's representative indicated at the Authority's investigation meeting, if SAJ considers particular documents for example are needed, they may be requested.

[106] No order is made in this regard.

Halting the process

[107] SAJ is concerned about the health of the IGD organisation but IGD does not share those concerns having appointed a temporary acting CE and being satisfied about that person's ability to hold the organisation.

[108] The identification of some potential concerns with IGD's process to establish an arguable case that SAJ was disadvantaged by unjustifiable action is not enough. The compelling undesirability of interrupting an employer's process is referred to above. I am not persuaded that this is one of those very rare situations where an order halting an investigatory/disciplinary process should be made.

Good faith

[109] SAJ seeks an order that IGD engage in good faith, including ceasing communications which suggest prejudgment, misconduct or on-going performance issues.

[110] IGD, and for that matter SAJ, are required to act in good faith. No doubt their history will be examined in the substantive investigation. There is little purpose in ordering that IGD act in good faith. It is represented and likely has already been advised of that obligation.

[111] SAJ is concerned that IAG communications are accusatory. Whilst predetermination is to be avoided, communications as part of an employer's investigatory/disciplinary process are required to identify what the employer's concerns are.¹⁵ Concerns may be matters of possible misconduct or poor performance.

Non-contact order

[112] SAJ seeks an order that IGD trustees or agents do not contact SAJ except through its lawyer, who should then contact her lawyer. This led the Authority to question the feasibility of interim reinstatement if this order was granted. SAJ's representative then indicated that the order only related to matters to do with the proceedings.

[113] IGD's representative is no doubt aware of the obligations under the Act regarding representatives and an order would serve little purpose.

Other orders sought

[114] I briefly refer to some orders mentioned in the various submissions:

- *An interim declaration that IGD's process in suspending SAJ breached principles of natural justice.* Now is not the time to make definitive findings about such things.
- *The Authority acknowledge it does not have jurisdiction to disband the Board but recommend disbandment and reinstatement of a new Board.* This seems well outside the Authority's role and in any event is an interim matter.

Costs and next steps

[115] Costs are reserved.

[116] SAJ invites the current Board and kaumatua to engage in a tikanga-consistent mediation or restorative process to help restore trust. This echoes a topic raised by the Authority previously.

¹⁵ The Act, s 103A(3).

[117] The substantive investigation is set for early September 2025 on the basis of issues identified before the current suspension occurred. The likelihood of expanding the issues to be investigation by the Authority and the suitability of the current dates have been briefly discussed with the parties. A case management conference will be organised shortly to continue that discussion.

Orders

[118] I order that the parties' names (and any identifying details) in relation to this and the other two proceedings between the parties are subject to an interim non-publication order to be in place until further order of the Authority.

Nicola Craig
Member of the Employment Relations Authority