

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2025] NZEmpC 100
EMPC 306/2023**

IN THE MATTER OF a challenge to a determination of the
 Employment Relations Authority

AND IN THE MATTER OF an application for a non-publication order

BETWEEN JACQUELINE SARAH HARTE
 Plaintiff

AND HEALTH NEW ZEALAND – TE WHATU
 ORA
 Defendant

Hearing: On the papers

Appearances: L Acland, counsel for plaintiff
 Stephen Galbreath, counsel for defendant

Judgment: 16 May 2025

**INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK
(Application for a non-publication order)**

[1] This judgment resolves an application for non-publication orders by the defendant, Health New Zealand – Te Whatu Ora (Te Whatu Ora), in respect of eight witnesses it intends to call at the hearing of the de novo challenge that underlies this application.¹

[2] The Authority made non-publication orders in respect of seven witnesses on the basis that if the witnesses' names are published, they may struggle to find work in the future as a result of online screening undertaken by employers. It stated that there

¹ Te Whatu Ora is calling an additional witness in the Court.

was public interest in knowing the positions that the witnesses hold or held but that there was no significant public interest in knowing the names of the witnesses.²

[3] Te Whatu Ora stated in its application that non-publication orders are appropriate because publication may have a detrimental impact on the witnesses' future employment prospects, current employment, and mental wellbeing. It also stated that there is limited public interest in knowing their identities. As an alternative, it asked that the witnesses' names be anonymised if non-publication orders are not made.

[4] An affidavit has been filed on behalf of Te Whatu Ora in which it is claimed that the employment with Te Whatu Ora of at least two of the seven witnesses is not secure as a result of a change process. The affidavit states that the witnesses are concerned that publication of their names could have an impact on their ability to secure roles in the future. Further, the affidavit states that publication of their names will have an impact on their wellbeing, may undermine the midwifery team through the team losing trust and confidence in their leadership team and human resources support, and could have a chilling effect on witnesses coming forward to be involved in internal investigations.

[5] The application is not opposed by the plaintiff.

[6] The Court has a discretion under the Act to make non-publication orders.³ The starting point for the exercise of that discretion is the principle of open justice which is of fundamental importance and may only be departed from to the extent necessary to serve the ends of justice.⁴ Ordinarily, the Court will only order non-publication where there is a reason to believe that specific adverse consequences could reasonably be expected to occur which justify a departure from open justice.⁵

² *Harte v Te Whatu Ora – Health New Zealand* [2023] NZERA 421 at [1]–[11].

³ Employment Relations Act 2000, sch 3 cl 12.

⁴ *MW v Spiga Ltd* [2024] NZEmpC 147, [2024] ERNZ 678 at [87].

⁵ At [88]–[89].

[7] Once the Court releases a decision on the challenge, that decision will stand in place of the Authority's determination.⁶ That means that the non-publication orders that relate to the determination will lapse unless the Court makes new non-publication orders.

[8] As the Authority has made permanent non-publication orders which still stand until the challenge is determined, it is appropriate to make interim non-publications orders in respect of the names of the eight witnesses pending the challenge being determined. On the other hand, I am not satisfied on the evidence before the Court that permanent non-publication orders should be made at the present time.

[9] The concerns raised about the witnesses' future employment prospects are not sufficiently definite to constitute specific adverse consequences.⁷ There is no evidence that being named as a witness will have any impact on their future employment prospects beyond a vague concern identified in the affidavit filed by Te Whatu Ora. Similarly, there is no evidence that being named in the determination could have any impact on any of the witnesses' ongoing employment with Heath New Zealand.

[10] I am also not satisfied that the identified impact on the witnesses' wellbeing could constitute specific adverse consequences. Unfortunately, it is inherently stressful to participate as a witness in proceedings, and if the vague concerns about wellbeing identified by Te Whatu Ora were sufficient to justify non-publication for witnesses, then non-publication would likely have to be ordered for most witnesses appearing before the Court.

[11] Te Whatu Ora's affidavit also suggested that publication may undermine the midwifery team through the team losing trust and confidence in their leadership team and human resources support. However, as noted by the Authority in its determination, the witnesses will still need to be identified by their positions, which means that they will likely be identifiable to those who work within Te Whatu Ora.⁸ As a result, the risk of identification raised by it is unavoidable.

⁶ Employment Relations Act, s 183(2).

⁷ *MW v Spiga Ltd*, above n 4, at [69]–[78].

⁸ *Harte*, above n 2, at [10].

[12] Finally, I am not satisfied on the evidence that there is a real risk that the identification of witnesses will have a chilling impact on future witnesses coming forward in other cases such as Te Whatu Ora's internal investigations. The witnesses in these proceedings all hold or held human resources or management positions, and they presumably had a duty to be involved or to come forward if they had concerns.

[13] As Te Whatu Ora has not identified any specific adverse consequences that could justify permanent non-publication orders being made at this stage, I consider that it would not be appropriate to make non-publication orders. That does not preclude the witnesses from providing further evidence on the point during the hearing if they wish to do so.

[14] Further, it is entirely probable that it will not be necessary to name the witnesses in this proceeding. However, that will be a matter for the Court to decide when the decision is being drafted.

[15] In conclusion, interim non-publication orders are made over the names of the eight witnesses identified by Te Whatu Ora in its application, but permanent non-publication orders are not made at this point. Unless continued at the time, the interim orders will lapse when the Court issues its judgment on the substantive challenge.

[16] Costs will lie where they fall.

Kathryn Beck
Judge

Judgment signed at 3 pm on 16 May 2025