

**ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING  
PARTICULARS OF PERSONS AT [26]–[27]**

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

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

**[2025] NZEmpC 9  
EMPC 481/2024**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for interim non- publication orders
BETWEEN	DQJ Plaintiff
AND	THE COMMISSIONER OF INLAND REVENUE Defendant

Hearing: 23 January 2025  
(Heard at Christchurch and via Audio Visual Link)

Appearances: A Fechney, advocate for plaintiff  
S Hornsby-Geluk, counsel for defendant

Judgment: 27 January 2025

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**INTERLOCUTORY JUDGMENT (NO 2) OF CHIEF JUDGE CHRISTINA  
INGLIS  
(Application for interim non-publication orders)**

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[1] The defendant seeks interim non-publication orders in respect of the names and identifying details of one of its witnesses and two other individuals who may be referred to in these proceedings. The plaintiff does not oppose the orders sought.

[2] The application arises in the context of a challenge to a determination of the Employment Relations Authority (the Authority), declining to order interim reinstatement in the plaintiff's favour and relates to one of the deponents who swore an affidavit in support of the defendant's opposition to the plaintiff's challenge; the deponent was the plaintiff's line manager. The application also relates to two individuals who were involved in events leading up to the plaintiff's dismissal. Both have sworn affidavits in support of the application for non-publication.

[3] The challenge was heard on 23 January 2025, and I heard from the representatives on the defendant's non-publication application as a preliminary issue at the outset of the hearing. I granted the application and said that my reasons would follow. These are my reasons.

### **Approach to non-publication**

[4] The full Court has recently considered the correct approach to non-publication in the Authority and the Employment Court in *MW v Spiga Ltd*.<sup>1</sup> The majority concluded that the approach to interim orders ought to be materially the same as the approach to permanent orders.<sup>2</sup> While I delivered a minority judgment in the case, it is appropriate to apply the majority's approach, which can be summarised as follows.

[5] Open justice is of fundamental importance and may only be departed from to the extent necessary to serve the ends of justice.<sup>3</sup> Ordinarily, the Court will only order non-publication where there is reason to believe that specific adverse consequences could reasonably be expected to occur that justify a departure from open justice.<sup>4</sup> Two steps were outlined to assist in that analysis.

[6] The first step is an assessment of whether there is reason to believe that specific adverse consequences could reasonably be expected to occur. The necessary evaluation will focus on such evidence as has been submitted and/or is available. Inferences may be required by the Authority or the Court, but these must be reasonable

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<sup>1</sup> *MW v Spiga Ltd* [2024] NZEmpC 147.

<sup>2</sup> At [91].

<sup>3</sup> At [87], relying on *Erceg v Erceg* [2017] 1 NZLR 310 [2016] NZSC 135, at [2]–[3] and [13].

<sup>4</sup> *MW v Spiga Ltd*, above n 1, at [87]–[89].

inferences that may be taken from the evidence, based on the specific circumstances of the case, when considered in context.<sup>5</sup>

[7] The second step is a weighing exercise in which the Court must consider whether the adverse consequences that could reasonably be expected to occur justify a departure from open justice in the circumstances of the case.<sup>6</sup> In conducting that weighing exercise, a number of factors may be relevant, including:<sup>7</sup>

- (a) the circumstances of the case;
- (b) the interests of the person or entity applying for a non-publication order;
- (c) the interests of the other party or parties to the litigation;
- (d) the interests of any third party;
- (e) the public interest, including the rights of media;
- (f) any further issues of equity and good conscience; and
- (g) tikanga and its principles, values, or concepts.

[8] The underlying test for non-publication is not whether there are specific adverse consequences justifying a departure, but rather whether a departure from open justice is necessary to serve the ends of justice or where the administration of justice may weigh against full openness.<sup>8</sup>

[9] I agree with a submission advanced by Mx Hornsby-Geluk, counsel for the Commissioner of Inland Revenue, that the relational underpinnings of many (if not all) cases arising in this jurisdiction is of relevance, and that in determining an

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<sup>5</sup> At [88].

<sup>6</sup> At [89].

<sup>7</sup> At [94].

<sup>8</sup> At [87] and [92]. The majority of the full Court indicated that non-publication may be appropriate where minimum entitlements are in issue and where proceedings are brought to enforce confidential settlement agreements.

application for non-publication it is appropriate to take into consideration the mana of the people and institutions involved and the relationships that may be impacted, returning (where possible) to a state of ea.<sup>9</sup>

## **Analysis**

[10] Having heard from the parties' representatives, and having considered the material before the Court, I was satisfied that it was appropriate to make the interim orders sought.

### *Whether adverse consequences could reasonably be expected to occur*

[11] In terms of the first step of *Spiga*, I was satisfied that there is reason to believe that specific adverse consequences could reasonably be expected to occur if the names and/or identifying details of the three individuals were published.

[12] The plaintiff's previous manager has deposed that they have serious concerns about their well-being in the event that they are named in the proceedings, and further identifies a concern that, if their name is published and they leave their current role, their future job prospects will be harmed. That is said to be because prospective employers may question their management abilities, which would be unfair.

[13] The other two individuals in respect of whom orders are sought were co-workers of the plaintiff. Both swore affidavits setting out safety concerns they have if their name and identifying details are made public, including a fear of possible retaliatory action by third parties.

[14] The evidence of the three individuals was not corroborated and was largely speculative. However, and as *Spiga* made clear, that is not fatal. There the majority were prepared to rely on similar evidence from the applicant, setting out the future detriment they thought they may suffer if their name and identifying details were published (centering on damage to reputation both in terms of potential future business interests and within their community). The majority found that the applicant's

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<sup>9</sup> See also *Spiga*, above n 1, at [220].

identified concerns did provide a reasonable basis for believing that such damage could reasonably be expected to occur.<sup>10</sup>

[15] Applying the *Spiga* majority approach to the material before the Court in this case, I was satisfied that there was reason to believe that specific adverse consequences could reasonably be expected to occur absent an order prohibiting publication of the names and/or identifying details of each of the three individuals.

*The weighing exercise*

[16] The second step of *Spiga* requires a weighing exercise that considers whether the adverse consequences identified justify a departure from the principle of open justice. I turn to deal with the factors I considered to be of particular relevance to the weighing exercise in this case.

[17] None of the applicants for non-publication orders are parties to the litigation. They have a legitimate interest in preserving their privacy; they certainly have an interest in ensuring their well-being is not unduly compromised, or being fearful of their safety.

[18] The plaintiff did not oppose interim non-publication orders being granted, and this factor weighed in favour of the application.

[19] As the representatives pointed out, naming the three individuals may well lead to the plaintiff being identified. That would undermine the orders made in the plaintiff's favour in both the Authority and the Court. This factor also weighed in favour of non-publication.

[20] In terms of the public interest, it is notable that *Spiga* focused on the approach to be applied when a non-publication application is made by one of the parties, particularly an employee party. This case differs because it involves an application in

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<sup>10</sup> The extent to which inferences may appropriately be drawn by this Court in such cases was referred to in *Spiga* and subsequently in *FDE v UVW* and *VSL v ZSM Ltd*, applying *Spiga: Spiga*, above n 1, at [88] and [165]; *FDE v UVW* [2024] NZEmpC 178 at [9]; *VSL v ZSM Ltd* [2024] NZEmpC 243 at [16].

respect of non-parties (a witness and two others). It is well accepted that there is less public interest in the identity of such people. I note that prior to *Spiga*, non-publication orders were not infrequently made in respect of non-parties without the need, for example, for evidence to be placed before the Court to establish the risk of adverse consequences.<sup>11</sup> And, as the full Court stated, it is already common practice for the names of participants to be anonymised or referred to only via job title.<sup>12</sup>

[21] Further, the majority's analysis in *Spiga* of publication as an incentive to resolve issues in mediation has no application to persons who have no control over mediation or the decision to proceed to litigation.<sup>13</sup>

[22] In short, the position of the three individuals weighed in favour of the orders sought.

[23] As the representatives pointed out, this case attracted a considerable amount of media interest in the Authority. Mx Hornsby-Geluk submitted that the coverage had exacerbated the applicants' safety concerns. While there is no doubt a degree of interest in the case, identifying the three individuals is not necessary in order to understand the case, what it is about and what interests are engaged. I concluded that there was no demonstrable particular interest in the public knowing the identity of any of the individuals.

[24] As I have said, Mx Hornsby-Geluk emphasised the relevance of relationships in employment matters, including in respect of applications for non-publication. The proceedings are at an interim stage; reinstatement is being sought and each of the individuals involved are employed by the defendant and would (if reinstatement is ordered) likely have some (apparently varying) degrees of contact with the plaintiff. I considered that an order of non-publication on an interim basis was likely to do the least amount of damage to the relevant relationships and provide the best basis for restoring relationships if reinstatement is ultimately ordered.

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<sup>11</sup> See for example *KN v New Zealand Steel Ltd* [2023] NZEmpC 150,

<sup>12</sup> At [96].

<sup>13</sup> At [51]-[54].

[25] Principles of equity and good conscience clearly favoured the making of the orders sought, particularly given the nature of the concerns identified by the three individuals, their interests and status as non-parties, the potential ongoing relationship issues involved, and the stage at which the proceedings are at.

## **Conclusion**

[26] I was satisfied that the ends of justice warranted an order of non-publication in respect of each of the three individuals. An order was accordingly made prohibiting publication of the name and identifying details of the three individuals identified in the defendant's application for non-publication orders. An associated order was also made prohibiting access to the Court file without the leave of a Judge.

[27] For completeness, and to avoid doubt, I also made clear that the current interim order prohibiting publication of the plaintiff's name and identifying details remains in force pending further order of the Court.

[28] I did not understand any issue of costs to arise on this application.

Christina Inglis  
Chief Judge

Judgment signed at 11.50 am on 27 January 2025