

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

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2026] NZEmpC 18
EMPC 495/2024**

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

BETWEEN NECTA NZ LIMITED
 Plaintiff

AND JULIAN CHEVALIER
 Defendant

EMPC 501/2024

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

AND IN THE MATTER OF an application for recusal of counsel

BETWEEN JULIAN CHEVALIER
 Plaintiff

AND NECTA NZ LIMITED
 Defendant

Hearing: On the papers

Appearances: J Unsworth, counsel for Necta NZ Ltd
 J Chevalier, in person

Judgment: 9 February 2026

**INTERLOCUTORY JUDGMENT OF JUDGE M S KING
(Application for recusal of counsel)**

[1] This judgment resolves an application by Mr Chevalier to restrain or remove Mr Unsworth and the law firm he works for, Horsley Christie, from acting for the defendant, Necta NZ Ltd (Necta), and two intended defendants which Mr Chevalier

has applied to join to this proceeding (EMPC 501/2024). The intended defendants are Mr Law, the sole director of Necta, and Surge Management Group Ltd (Surge). Mr Law is both a director and shareholder of Surge. Mr Chevalier also seeks orders in respect of information he says is confidential, which is held by Mr Unsworth and Horsley Christie.

Background

[2] Sometime during late November to early December 2024, Mr Chevalier approached Horsley Christie for legal assistance regarding his employment relationship dispute with Necta.

[3] On 11 December 2024, Mr Chevalier sent Horsley Christie's receptionist an email providing access to a Google Drive folder, which contained digital copies of his personal grievance, submissions made to the Employment Relations Authority (the Authority), draft pleadings, and case notes which he says included his litigation strategy. The receptionist sent an email to Mr Unsworth advising him that Mr Chevalier was seeking urgent assistance with an employment dispute involving Necta, and that he had sent a Google Drive folder with evidence and statements from the Authority's investigation. Mr Unsworth forwarded the email to Ms Katene, a legal assistant, and left her to make initial inquiries with Mr Chevalier. Ms Katene called and spoke with Mr Chevalier. However, she has very limited recollection of the call.

[4] Mr Chevalier accepts that Ms Katene called and spoke to him for approximately five minutes during which she advised him to pay a retainer to secure Mr Unsworth's services. The call ended with him going away to consider this advice.

[5] Ms Katene arranged for the firm's IT team to confirm that the Google Drive folder was safe to open. However, she has no recollection of ever accessing the folder.

[6] No retainer was paid. Horsley Christie later informed Mr Chevalier that it was unable to provide legal assistance at the time and suggested he follow up in the new year.

[7] On 6 January 2025, Mr Chevalier followed up with the firm by email. With his evidence, he has provided the court with a redacted copy of this email, which he says reiterates key issues, available evidence and his intention to apply to join Mr Law to the proceedings. Horsley Christie then informed him that there was no capacity to take on his matter. Mr Chevalier accepts that no retainer was concluded.

[8] On 29 August 2025, Necta filed a notice of change of representation, indicating that Mr Unsworth was now acting as its solicitor and would be representing both it and the intended defendants.

[9] On 23 September 2025, Mr Chevalier made a request under the Privacy Act 2020 for any personal information held by Horsley Christie. Mr Unsworth responded, denying that the firm had any record of Mr Chevalier as a client.

[10] Mr Unsworth and Horsley Christie say that the fact that Mr Chevalier sought assistance does not make him a client. However, they do accept that they have a duty to hold and protect any confidential information Mr Chevalier may have disclosed when seeking assistance. In that regard, they say:

- (a) Mr Unsworth has not accessed the Google Drive folder provided by Mr Chevalier. Mr Chevalier, as owner of the Google Drive folder, can confirm who has accessed the folder and can revoke access to the folder for anyone at Horsley Christie.
- (b) Mr Unsworth has sworn an affidavit stating that he has not read Mr Chevalier's 6 January 2025 email and undertaken that he will not read it. Mr Unsworth gives evidence that the email has not been seen by the defendants and confirms that he is happy for the plaintiff to instruct him/Horsley Christie not to disclose it.
- (c) Mr Unsworth has no knowledge of the content of the phone call between Mr Chevalier and Ms Katene.

- (d) Ms Katene has sworn an affidavit to the effect that she cannot remember if she ever accessed the Google Drive folder. Her affidavit sets out her vague recollection of her brief phone call with Mr Chevalier and she does not recall any confidential information being discussed during that call. While Ms Katene remains employed by Horsley Christie, she now assists another lawyer at the firm and does not work in litigation.

[11] Mr Unsworth’s affidavit also provides that he was “instructed that it was known that the Plaintiff was shopping around Whanganui for a lawyer”.

Legal principles

[12] The principles relating to the removal of counsel are clear. As the Court of Appeal confirmed in *Cant v R*:¹

The Court may debar counsel from acting in a proceeding where it is necessary in order for justice to be done or seen to be done. The threshold for removal of counsel is high requiring something extraordinary to warrant that course.

[13] The Court of Appeal also referred to *Clear Communications Ltd v Telecom Corp of New Zealand Ltd* where Fisher J noted that the jurisdiction to remove counsel will only be exercised in cases of “truly egregious misconduct likely to infect future proceedings”.² The principles relating to removal of counsel were summarised in *Clear Communications Ltd* and later endorsed by the Court of Appeal in *Fava v Aral Property Holdings Ltd*. These principles are:³

- (a) The Court has jurisdiction to debar counsel and/or solicitors from acting in a particular case where that step is necessary for the effective and efficient administration of justice. ...
...
- (c) Removal of a lawyer is not a retrospective sanction for past misconduct but a prospective measure to safeguard the future conduct of the particular proceedings. ...
...

¹ *Cant v R* [2013] NZCA 321 at [61] (footnotes omitted).

² *Clear Communications Ltd v Telecom Corporation of New Zealand Ltd* (1999) 14 PRNZ 477 (HC) at 478.

³ *Fava v Aral Property Holdings Ltd* [2012] NZCA 585 at [34]; and *Clear Communications Ltd v Telecom Corporation of New Zealand Ltd*, above n 2, at 482–483.

- (e) A litigant should not be deprived of his or her choice of counsel without good reason. In particular, the Courts should guard against allowing removal applications to be used as a tactical weapon to disadvantage the opposing party. ...
- (f) An application for removal requires that a balance be struck between the injustice of depriving a party of his or her lawyer of choice and the injustice of allowing that lawyer to continue in prejudicial circumstances ...
- (g) In view of lawyers' obligations of confidentiality and loyalty, care must be taken not to visit upon the lawyer sins which may be essentially those of the client. ...
- ...
- (i) Similarly, the prima facie avenue for policing legal professional conduct is the disciplinary processes of the Law Society. ...

[14] In respect of professional conduct, the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) are made by the New Zealand Law Society and approved by the Minister of Justice under the Lawyers and Conveyancers Act 2006 (LCA).⁴ The Rules are binding on all lawyers and former lawyers under s 107(1) of the LCA.

[15] While a lawyer's obligations under the Rules may be relevant to the decision whether to restrain a lawyer from acting, it is not necessary to establish that the lawyer has breached some ethical or other obligation; nor is the jurisdiction exercised to punish a lawyer for misconduct.⁵

Removal of counsel is not warranted

[16] The basis of Mr Chevalier's application to remove Mr Unsworth as counsel for Necta is misconceived and inapplicable in these circumstances.

[17] Mr Chevalier refers to r 8.7 of the Rules, which prohibits lawyers acting against former clients:

⁴ Lawyers and Conveyancers Act 2006, ss 94, 95 and 100.

⁵ *Kelly v Carter* [2025] NZHC 978 at [31].

Use of confidential information prohibited

8.7 A lawyer must not use information that is confidential to a client (including a former client) for the benefit of any other person or of the lawyer.

8.7.1 A lawyer must not act for a client against a former client of the lawyer or of any other member of the lawyer's practice where—

- (a) the practice or a lawyer in the practice holds information confidential to the former client; and
- (b) disclosure of the confidential information would be likely to affect the interests of the former client adversely; and
- (c) there is a more than negligible risk of disclosure of the confidential information; and
- (d) the fiduciary obligation owed to the former client would be undermined.

[18] Mr Chevalier submits that he qualifies as a former client of Horsley Christie under r 8.7 because the term “former client” is not limited to persons who sign a retainer but includes prospective clients.

[19] However, the wording of r 8.7 is clear. I find that the definition of “former client” does not extend to prospective clients where no instructions have been accepted. Mr Chevalier's interpretation would effectively allow a litigant to disqualify any lawyer they had merely contacted from acting for the opposing party. This is an unworkable application of r 8.7 and would unfairly deprive litigants of choice of counsel.

[20] While the right of choice of counsel is not absolute,⁶ there is nothing extraordinary or egregious in acting against a party who made inquiries, and where no instructions were accepted.

[21] Nonetheless, Mr Chevalier may have some expectations of confidentiality as a prospective client under r 8.1:⁷

Duration of duty of confidence

8.1 A lawyer's duty of confidence commences from the time a person makes a disclosure to the lawyer in relation to a proposed retainer (whether or not a retainer eventuates). The duty of confidence continues

⁶ *Black v Taylor* [1993] 3 NZLR 403 (CA).

⁷ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 8.1.

indefinitely after the person concerned has ceased to be the lawyer's client.

...

[22] Mr Unsworth acknowledges that there are two potentially confidential documents in Horsley Christie's possession – the email dated 6 January 2025 and the Google Drive folder. Mr Chevalier also asserts confidentiality over the five-minute telephone conversation with Ms Katene; however, Ms Katene's affidavit states that she has only a vague recollection of this conversation.

[23] Mr Unsworth maintains that neither he nor anybody at Horsley Christie has accessed the Google Drive folder and emphasises that Mr Chevalier retains the ability to revoke the firm's access to it at any time.

[24] Regarding the 6 January 2025 email, Mr Unsworth has sworn an affidavit that: he has not read (and will not read) the email, that the email has not been seen by the defendant (or intended defendants), and that he is happy for the plaintiff to withdraw the email and instruct him and Horsley Christie not to disclose it to the defendant (or intended defendants).

[25] It was also submitted that Mr Chevalier has effectively disclosed his complete litigation strategy through extensive documents filed in these proceedings and, at best, it is speculative that disclosure of information held by the firm would adversely affect his interests.

[26] On balance, I consider that the information held by Mr Unsworth and Horsley Christie does not create a risk of disclosure that would justify Mr Unsworth's removal as counsel for the defendant.

[27] Although Mr Chevalier describes the information as confidential and relating to his litigation strategy, I note that he had already indicated an intention to join Surge and Mr Law to these proceedings as early as July 2025.

[28] While confidential information may be contained in the Google Drive folder, or in the 6 January 2025 email, or may have been shared during the phone call Mr Chevalier had with Ms Katene, I am satisfied that it has not been accessed by

Mr Unsworth and he and Horsley Christie have established an effective information barrier through the steps taken and proposed in [10](a)–(d) above. Further, Mr Unsworth and Ms Katene have provided affidavit evidence to that effect, and I have no reason to doubt their assurances. If Mr Chevalier remains concerned, he can take the proposed steps and revoke all access to the Google Drive folder, withdraw the 6 January 2025 email, and instruct Mr Unsworth and Horsley Christie not to disclose the email to the defendant (or intended defendants). Indeed, he is encouraged to do so.

[29] Lastly, I note that Mr Chevalier makes a number of other submissions based on the Rules, particularly in reliance on rr 5, 5.4, 6.1, 13 and 13.8.1. I do not consider these to be relevant or applicable.

[30] I am satisfied that there is no basis for removing Mr Unsworth from acting for Necta or the intended defendants in these proceedings. There are no extraordinary circumstances to justify that course.

Outcome

[31] The application is declined.

[32] Costs are reserved.

M S King
Judge

Judgment signed at 11.30 am on 9 February 2026