

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2021] NZERA 129  
3135660

BETWEEN            AEX  
                                 Applicant  
  
AND                    NSO  
                                 Respondent

Member of Authority:    Helen Doyle

Representatives:        Jills Angus Burney, counsel for the Applicant  
                                 James Pullar and Amy Kennerley, counsel for the  
                                 Respondent

Investigation Meeting:    On the papers

Telephone conference:    1 April 2021

Date of Determination:    6 April 2021

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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- A     Until further order of the Authority the names and any details that may identify the applicant, respondent, witnesses and children/young persons who may be referred to as part of this matter are prohibited from publication.**
- B     The Authority file is not to be accessed without the consent of the Authority.**
- C     Costs are reserved.**

**Employment Relationship Problem**

[1]     AEX lodged a statement of problem with the Authority on 30 March 2021 seeking an interim injunction and urgency. As part of the application AEX seeks a permanent non-publication order.

[2] In a memorandum of counsel lodged on behalf of the respondent it was confirmed that the names of both parties and all witnesses should be subject to non-publication orders.

[3] Mr Pullar and Ms Kennerley asked that any orders for non-publication be made by way of determination.

[4] Urgency has been granted to the application for an interim injunction.

### **Non-publication order**

[5] The Authority is empowered to prohibit publication under clause 10(1) of Schedule 2 to the Employment Relations Act 2000 (the Act).

[6] The Supreme Court in *Erceg v Erceg* has emphasised the principle of open justice and the high standard must be met before that principle can appropriately be departed from.<sup>1</sup>

[7] The grounds on which AEX seeks a non-publication order are:

- (a) That justice is not served by naming him.
- (b) Presumption that matters taken into account are the presumption of innocence, the risk of irrevocable harm, the risk of harm to family members and other people associated with AEX and the risk that a fair investigation could be affected by public pressure and the personal stress of identification prior to an outcome.
- (c) There are allegations and rumours circling AEX's employment and he says there has been a failure by NSO to provide necessary protections to ensure his safety.
- (d) That an order would give necessary protection of his career and safeguard his public reputation and dignity. If he is named then these aspects would be at risk.
- (e) AEX was previously a target of complaints and the complaints about the more serious misconduct were not upheld by the Police or NSO and the remaining complaints were resolved by NSO as "low level complaints." AEX is being

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<sup>1</sup> *Erceg v Erceg* [2016] NZSC 135 at [65] and [69].

caused great stress by the “catastrophizing and gossip mongering” of these past matters.

- (f) Media or social media coverage would cause significant distress to AEX and his family and damage current and future employment.

[8] AEX and family members have provided affidavit evidence in support of the application. The affidavits of family members support the potential impact that publication could have on their careers and the widespread nature of the rumours. There is also medical evidence of the impact the rumours have had on AEX’s mental health.

[9] On behalf of NSO, Mr Pullar and Ms Kennerley say that the publication of the names of the parties and witnesses risk exposing identities of the young people/children concerned.

### **Conclusion**

[10] I am satisfied taking all factors into account that the high standard to depart from the principle of open justice is met in this case. Publication would result in specific adverse consequences not only for the applicant but for his family members and other third parties including children and young persons who could be identified if there is publication of the name of the respondent. It is in the interests of justice to grant the application for non-publication until the merits and equities of continued non-publication can be considered fully.

[11] An online random letter selection tool has been used to select the letters that refer to the parties and they do not bear any resemblance to the parties’ actual names.

### **Orders**

[12] Until further order of the Authority the following information is subject to non-publication orders:

- (a) The name of the applicant;
- (b) The name of the respondent;
- (c) The names of any witnesses in this matter;
- (d) The names of any children/young persons who may be referred to as part of this matter;

- (e) Any details that may identify the parties, witnesses and the children/young persons.

[13] The Authority file is not to be accessed without the consent of the Authority.

**Costs**

[14] Costs on the application are reserved.

**Helen Doyle**  
**Member of the Employment Relations Authority**