

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2018] NZERA Wellington 38
3017796

BETWEEN JKL
 Applicant

AND OPQ LIMITED
 Respondent

Member of Authority: M B Loftus

Representatives: Greg Cain, Counsel for Applicant
 Steph Dyhrberg and Alistair Clarke, Counsel for
 Respondent

Investigation Meeting: On the papers
 8 May 2018 from Applicant
 9 May 2018 from Respondent

Determination: 9 May 2018

**FIFTH DETERMINATION OF
THE EMPLOYMENT RELATIONS AUTHORITY**

[1] On 9 October 2017 I issued interim orders in respect to various matters between the parties.¹ One of those orders prohibited publication of the pleadings, attached documents, information contained there-in and anything which may lead to the identification of the parties.

[2] That order has subsequently been renewed a couple of times with the most recent occasion being 23 April 2018.² That renewal remained in place till 17 May 2018. The reason for that renewal was the District Court was conducting a preliminary hearing into related charges levelled against JKL by the Serious Fraud Office on 8 May and it was expected name suppression would be an issue.

¹*JKL v OPQ Limited* [2017] NZERA Wellington 102

²*JKL v OPQ Limited* [2018] NZERA Wellington 29

[3] As it transpires the issue was raised and the District Court has granted name suppression though that is, at this stage, an interim order. It was granted by consent pending a full consideration of the issue which will be scheduled for a later date.

[4] The District Court's order has, however, led to an application my non-publication order be further extended. OPQ opposes the application but is willing to accept any order I make. In reality its opposition appears to be to a permanent order. It says:

*... should circumstances change and name suppression be lifted in the District Court, the Respondent will oppose any further extension of the non-publication order made by the Authority.*³

[5] While technically different my non-publication order has the same practical effect as the Court's suppression order and its renewal would be warranted, probably required, if a failure to do so could result in a real risk the administration of justice would be frustrated or rendered impractical.⁴

[6] To now name JKL would have the effect of nullifying the effect of the District Court's order as details contained in previous determinations on this matter would make it fairly easy to link the cases and identify JKL with respect to the District Court matter. Such an outcome would be contrary to the District Court's order and would frustrate the administration of justice.

[7] Conversely the approach taken by OPQ is consistent with that it has adopted from the start and is not one I can criticise. The principle of open justice dictates that in normal circumstances JKL's identity would be known. The current impediment to that occurring, at least from the Authority's perspective, is the situation in the District Court. Should that change OPQ is entitled to seek a review of the order's continuation and ask for its cancellation though JKL may, of course, take a contrary view.

Conclusion and Orders

[8] For the above reasons I order a continuation of the prohibition on publishing any information contained in the pleadings and accompanying documents filed in the

³ Respondent's reply to application dated 9 May 2018 at [5]

⁴ *R v Patterson* [1992] 1 NZLR 45 (HC) at p50

Authority as well as anything which may lead to the identification of the parties.⁵
This order remains in place until rescinded which, if that occurs, will most likely be at the suit of OPQ and dependent on what transpires in the District Court.

[9] Costs are reserved.

M B Loftus
Member of the Employment Relations Authority

⁵ Above n 1 at paragraph 48 (d)