

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 496  
5457940

BETWEEN                      BRENDA MACKAY  
   Applicant  
  
AND                                THE CENTRE LIMITED  
   Respondent

Member of Authority:        Vicki Campbell

Representatives:             Ashley Sharp for Applicant  
   Graeme Lee for Respondent

Determination:                3 December 2014

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**A.        The application for non-publication orders is dismissed.**

**Employment relationship problem**

[1]        The respondent has applied for non-publication orders in respect of this matter. The applicant opposes the application arguing that a high threshold applies and that threshold has not been met.

**Issue**

[2]        While not clear in its submissions it seems the respondent is concerned to ensure the name of the respondent and its witnesses are not able to be identified. I have therefore addressed this preliminary determination on the issue of whether the name of the party's, witnesses or other person should not be published.

**The law**

[3]        The Authority has broad discretion to make non-publication orders pursuant to clause 10(1) of schedule 2 to the Employment Relations Act 2000 (the Act) which provides:

## 12 Power to prohibit publication

- (1) The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[4] The Employment Court has recently addressed the tests and principles to be applied in applications for non-publication orders.<sup>1</sup> The Authority must determine such matters in a principled way and from a starting point of “open justice”<sup>2</sup> unless the circumstances justify an exception to the fundamental principle.<sup>3</sup>

### Discussion

[5] The substantive matters to be determined by the Authority include questions of whether the applicant was unjustifiably disadvantaged during her employment as a result of sexual harassment and bullying and whether she was unjustifiably dismissed. The applicant also claims arrears of wages are owed to her and breaches of the Act.

[6] The respondent is a Christian ministry. The non-publication application is advanced on the basis that any publication could adversely affect the standing of the respondent and those people associated with it.

[7] The applicant submits that the respondent is not an entity that trades but is a place where various Christian ministries can have an office from which to conduct their business. The Director of the respondent against whom the allegations are made, does not have a connection or relationship with several of those ministries.

[8] The respondent has failed to identify any real risk that the organisations associated with it will be adversely affected by publication of the names of party’s or witnesses. A mere assertion of the impact of publication is not enough to displace the principle of open justice. What is required is actual proof of real and substantiated undue harm.

[9] The respondent submits that the allegations made about one of its Directors are grossly exaggerated, spiteful, dishonest, unfounded and deliberately designed to

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<sup>1</sup> *H v A Limited* [2014] NZEmpC 92.

<sup>2</sup> *Ibid* at [76].

<sup>3</sup> *Ibid* at [78].

damage his reputation. The respondent then acknowledges that the allegations have been fully investigated including discussing the allegations with women who have previously worked for the director. The respondent submits that the people who work closely with the Director as well as trustees who supervise his work have counselled the Director thoroughly to ensure no allegations such as those raised in the statement of problem could arise in the future.

[10] The applicant submits that at least one of the incidents referred to by the applicant in her statement of problem has been acknowledged by the Director of the respondent who apologised for his conduct and therefore the allegations cannot be described as “exaggerated, spiteful or dishonest”.

[11] Based on the information currently before the Authority it seems a large number of people closely or previously connected with the respondent are already aware of the allegations made by the applicant. The trustees who supervise the Director’s work have felt compelled to counsel him. Given that, it is difficult to see how the allegations could be as described by the respondent in its submissions.

[12] The respondent submits that publication would lead to a significant risk to the public perception of the causes the Director concerned is involved in, regardless of the outcome of the matter.

[13] The respondent alleges in its submissions that the applicant has maligned the Director’s integrity, caused damage to his reputation and made humiliating statements which the director has refuted as lacking any substance. On that basis it is submitted that any further publication of the details and the hurt and damage caused would far outweigh the perceived need of the public interest in the outcome of the proceedings.

[14] I accept that damage to reputation is a relevant factor in determining whether the orders sought ought to be made and that there is a risk that the respondent and its Director’s reputation might be damaged, even in the event that the allegations are later proved to be unfounded. The respondent has provided no real or substantive proof of

the harm it asserts in its submissions. In *Y v D*<sup>4</sup> the Chief Judge accepted that a risk of publicity would not amount to an exceptional circumstance.

### **Determination**

[15] I am not satisfied the circumstances or the respective interests and concerns are such that the principle of open justice should be displaced.

Vicki Campbell  
Member of the Employment Relations Authority

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<sup>4</sup> [2004] 1 ERNZ 1.