

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-A-TARA ROHE**

[2025] NZERA 150  
3132635

BETWEEN            DAVID OSBORNE  
                                 Applicant  
  
AND                    CALLAGHAN INNOVATION  
                                 Respondent

Member of Authority:      Geoff O’Sullivan  
  
Representatives:            David Osborne for self  
                                 Peter Chemis, counsel for the Respondent  
  
Investigation Meeting:      On the papers  
  
Information Received:      22 February and 11 March 2025 from the Applicant  
  
Determination:              12 March 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]      On 14 July 2022 the Authority issued a determination concerning a preliminary issue relating to Mr Osborne’s claim of alleged breaches of the Protected Disclosures Act 2000.

[2]      The Authority concluded that Mr Osborne could not raise personal grievances relating to his complaint of breaches of the Protected Disclosures Act. The Authority also concluded:

Mr Osborne’s protected disclosure was raised during his employment. I see no reason why any concerns Mr Osborne has in respect of how his employer responded to his protected disclosure whilst not being capable on current pleadings of creating personal grievances, could not be part of the factual matrix.

[3] Mr Osborne appealed the determination to the Employment Court.

[4] On 2 July 2024, the Employment Court found Mr Osborne's challenge to the Authority's determination was unsuccessful.

[5] On 22 February 2025, Mr Osborne has communicated with the Authority in an email headed "Request for recusal". Despite the way it has been presented, I have Mr Osborne's communication it has been treated as an application for recusal.

[6] The basis for Mr Osborne's application I recuse myself is based on the following:

- A refusal to hear his complaint regarding Callaghan Innovation's protected disclosure policy;
- Erroneous findings on the 90 day limitation period;
- Compromised procedural fairness due to Callaghan Innovation's influence;
- Allowance for Callaghan Innovation to halt proceedings;
- Excessive delay in the resolution of the case;
- Unilateral adjournment and delay tactics favouring Callaghan Innovation.

[7] Mr Osborne says that these provide evidence of partiality and procedural corruption.

[8] Mr Osborne's application for my recusal appears to be based on a misunderstanding of proceedings to date. It is plain the complaints made in his first two points are based on a misunderstanding and perhaps a misinterpretation of the Authority's determination and the Employment Court's decision upholding that determination.

[9] There have been excessive delays in bringing this matter to a conclusion. Those delays in no small part lie with Mr Osborne. I do not mean that as a criticism. Mr Osborne was entitled to appeal the Authority's determination. Likewise, Callaghan Innovation as a defendant in the Court, were perfectly entitled to apply to strike out part of Mr Osborne's proceedings. The Authority has been attempting to move this matter to an investigation meeting for some time. Mr Osborne has decided not to instruct counsel or an advocate, but has decided to run his case himself. Again, this is

Mr Osborne's right and I imply no criticism, however, the process Mr Osborne has followed has caused delay.

[10] There is no basis for recusal. The guiding principle is that I should recuse myself if, in the circumstances, a fair-minded, objective and fully informed observer would have a reasonable apprehension that I might not be impartial in reaching a decision on the case. As the Court has noted, the standard for recusal is one of "real and not remote" possibility, rather than probability.<sup>1</sup> Recusal is not available simply because a party believes that by seeking the disqualification of a decision-maker they will have their case tried by someone thought to be more likely to decide the case in their favour.

[11] For the above reasons I decline to recuse myself.

Geoff O'Sullivan  
Member of the Employment Relations Authority

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<sup>1</sup> *Saxmere Company Limited v Wool Board Disestablishment Company Limited* [2009] NZSC 72.