

that it is in the public interest that the matter be removed to the Court, in reliance on s.178(2)(a) and (b) of the Act. St John rejects these claims.

[4] This determination will therefore deal with the issue of removal.

[5] While there has been mediation in the course of Ms Rose's employment, there does not appear to have been mediation subsequent to her leaving the employ of St John. Given the fact that the issues in dispute here relate to previous mediations, I have not directed mediation at this stage, but note that this will be a necessary issue to be reassessed at the next stage of proceedings.

Important Questions of Law

[6] The first of question of law is said to be whether a claim in a statement of problem can be amended by the Authority, or whether the Authority can alternatively require an applicant to so amend its statement of problem.

[7] St John claims that the first question of law is not important and arises incidentally. I do not accept this submission. It is clear that the Authority has power to prohibit the publication of what are described in clause 10(1) of the Second Schedule as *pleadings filed*. What is sought here, however, is deletion of certain, what may be loosely described as pleadings. Certainly evidence may be ruled out as inadmissible, and the Authority has the power to regulate its own procedure, so it could therefore decline to investigate parts (or even all) of the *pleadings* in a statement of problem, for instance on the grounds of irrelevance and/or inadmissibility of the supporting evidence. A question of law still remains, however, as to whether or not the Authority can order the removal of claims from an applicant's own statement of problem.

[8] I therefore accept that there is a question of law here that is important, because it may affect all future applicants. Furthermore, I am not aware of this question ever being previously determined by the Employment Court.

[9] That St John wants such claims excised from the statement of problem, and have declined to provide a statement in reply until that issue is addressed, demonstrates that this is a matter that is more than incidental to these proceedings.

[10] I therefore determine that the first question does constitute an important question of law arising other than incidentally.

[11] The second question of law raised is whether, as the claims in the statement of problem are not evidence, s.148 applies or not. The third question is whether or not reference may be made to a particular type of without prejudice discussion. While it is accepted that reference may be made to without prejudice discussions, it is said to be an important question of law as to whether that may be elaborated on in any particular way.

[12] I do not accept that questions two and three are important questions of law, relating as they do to matters settled by the Court of Appeal in *Just Hotel Ltd v. Jesudhass* [2007] ERNZ 817.

[13] The fourth question of law is said to be whether the Evidence Act 2006 is applicable to the interpretation of s.148 of the Act, which the Court of Appeal did not have regard to in *Jesudhass*, the Evidence Act not being in force at the time the facts in *Jesudhass* arose. I do not accept that this constitutes an important question of law, because the Evidence Act 2006 does not apply specifically to the Employment Relations Authority's investigations.

Public Interest

[14] Ms Rose also claims that the matter is of such a nature and of such urgency that it is in the public interest that it be removed immediately to the Court, but no specific submissions were made in support of this submission. Given the time that has elapsed since Ms Rose left her employment with St John I do not accept that there is any urgency in this matter.

Residual Discretion

[15] The Authority has, in a case like this where an important question of law has been identified, a residual discretion as to whether or not to remove the case. I accept that there are a number of factual matters in dispute and that the Authority is well practised in investigating such matters. This factor militates against removal. On the other hand, I accept that there is an important question of law that can only be authoritatively determined by the Employment Court.

[16] There would also be little benefit in the inherent delays in:

- (a) having the Authority determine the disputed preliminary points; and
- (b) have the Court in all likelihood deal with those points on challenge; and then
- (c) having the Authority determine the other disputed points subsequently, before the matter could again be addressed by the Court.

[17] I therefore order the removal of the employment relationship problem between Christine Rose and the Order of St John (File No. 5307107) to the Employment Court, for it to hear and determine without the Authority investigating the matter.

Costs

[18] Costs are reserved, for the Court to deal with as well as it sees fit, given the removal.

G J Wood
Member of the Employment Relations Authority