

circumstances that the Court should determine the matter. The respondents have indicated that they will abide by the determination of the Authority, but note that Ms Strachan has failed to identify any question of law (nor is there one), that there is no urgency and that the application is an abuse of process and hence the Authority should determine the employment relationship problems. A number of interlocutory issues remain between the parties, but they can be decided later by whichever body deals with the matter at first instance as a result of this determination.

[3] I accept the Moodies' submission that Ms Strachan has failed to properly identify any questions of law. However, I consider that there are at least two such questions, which are implicit in Ms Strachan's application, although not specifically isolated as such. One fundamental issue in this case is the status of Ms Strachan as an employee or not, both when Dr Moodie and Ms Strachan worked together on a 50/50 billing arrangement and before. During this former period, Dr Moodie claims that Ms Strachan was an unpaid observer, which is disputed by Ms Strachan. I accept that there is a mixed question of fact and law in relation to the status of unpaid observers in legal practices, which meets the requirements of subsection (a), namely because it could affect a large number of employers - *Hanlon v. International Educational Foundation (NZ) Inc* [1995] 1 ERNZ 1. Similarly, the question of whether a 50/50 billing arrangement in a law practice constitutes employment by the senior partner of the business is also a mixed question of fact and law that may also have a significant impact on legal practices and thus also constitutes an important question of law.

[4] Ms Strachan specifies certain other alleged important questions of law, namely that the employment agreement was one in writing, but did not cover all her terms of her employment; that Dr Moodie has alleged that Ms Strachan engaged in tax evasion; that the Moodies abused their position by getting Ms Strachan to invest a large sum of money into their offices; that the subsequent statements and allegations made by the Moodies about Ms Strachan are considered defamatory; and that several of these issues are already before the High Court in defamation proceedings.

[5] None of these matters constitute questions of law in and of themselves, or in combination. However, they are factors that go towards the discretion of the Authority, both in its residual discretion under subsection (a) and in its general discretion under subsection (d).

[6] I do not accept that subsection (b) can apply because there is no urgency whatsoever in this case, as Ms Strachan's relationship with the respondents ended in December 2006.

[7] I turn to subsection (d). This is a case where the Moodies cancelled mediation on the grounds that they will not negotiate on their defence to Ms Strachan's claims. While Dr Moodie and Ms Strachan are lawyers they accuse each other of comprehensive criminal conduct. Allegations of such serious nature by legal professionals may be more appropriately heard in a formal Court. Given the ongoing disputes between the parties, there is also a strong likelihood of challenge by any party to a determination of the Authority.

[8] I conclude that there are important questions of law, as indicated above, and therefore the conditions of subsection (a) are met. I also conclude that there are grounds for removal under subsection (d), particularly because of the seriousness of allegations made by legal practitioners against each other, which could be better dealt with at first instance in a Court.

[9] While the Authority is certainly able to deal with the matter more quickly than the Employment Court, because it has been seized of much of the material for a number of months, the likelihood of appeal negates this benefit. There are no other reasons not to grant the application in the Authority's residual discretion.

[10] I therefore order removal of the employment relationship problem between Elizabeth Grace Strachan and Robert Alexander Moodie, Suzanne Patricia Moodie and Moodie & Co Barristers and Solicitors (5142028) to the Employment Court for the Court to hear and determine it, without the Authority investigating the matter further.

G J Wood
Member of the Employment Relations Authority