ATTENTION IS DRAWN TO THE ORDER PROHIBITING PUBLICATION OF CERTAIN EVIDENCE (REFER PARAGRAPH [4])

Determination Number: AA 132/06
File Number: AEA 1289/05

Under the Employment Relations Act 2000

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE

BETWEEN	Dr Y (Applicant)
AND	Bay of Plenty District Health Board (Respondent)
REPRESENTATIVES	Bruce Corkill, Counsel for Applicant Karen Jones and Mark Beech, Counsel for Respondent
MEMBER OF AUTHORITY	Robin Arthur
SUBMISSIONS	27 February 2006 (Respondent), 6 March 2006 (Applicant) and 21 March 2006 (both parties by teleconference)
DATE OF DETERMINATION	20 April 2006

DETERMINATION OF THE AUTHORITY

[1] The respondent seeks an order for removal of this matter to the Employment Court under s178 of the Employment Relations Act 2000 ("the Act"). It asks for removal under s178(2)(d) – that the Authority is of the opinion that in all the circumstances the Court should determine the matter.

[2] The applicant is a doctor dismissed by the respondent Board in June 2004. He worked for the Board and its statutory predecessors for 11 years. His dismissal followed an investigation by his employer of a complaint about his management of a patient who died during the time she was under the applicant's care. He seeks:
(i) a declaration that he was unjustifiably disadvantaged by the employer's conduct of the investigation and then unjustifiably dismissed, and
(ii) orders for reinstatement, lost income, compensation and costs.

[3] The Board says its investigation and decision to dismiss for serious misconduct were properly conducted with the applicant given all the appropriate opportunities to respond before the decision was made.

Interim non-publication order

[4] I order that the name of the applicant, his former position and other details which might identify the part of the Board's services for which he worked and any information which would identify Patient A or her family not be published. The applicant is to be referred to as Dr Y, a letter bearing no relationship to his actual name. This order is made under Schedule 2 clause 10 of the Act. This order is on an interim basis until the start of an investigation meeting by this Authority or hearing at first instance by the Employment Court.

[5] The respondent says a dismissal of a doctor following an inquiry by his employer into a patient death will be of interest to the public and attract news media attention. There are risks that public confidence in the respondent's services may be unfairly affected. The matter is personal and sensitive both for the patient's family and the doctor. Publicity might also affect the viability of reinstatement sought by the applicant, if that were found to be an appropriate remedy.

[6] None of these factors necessarily override the public interest that generally the proceedings of the Authority and the Court and the identity of parties should be open and known. However, at this stage of this particular case, the risk of irreparable prejudice to the reasonable interests of both parties justifies an interim non-publication order made at least for the purposes of this determination on the removal application and until the matter comes for first instance consideration by either the Authority or the Court. At the opening of that part of the process, the decision-maker can weigh the relevant factors and make any necessary decision on the extent or continuation of the non-publication order.

[7] The respondent's application for removal suggests the matter will require expert evidence on a particular and specialised process or event which is at risk of occurring in the applicant's area of practice. Using the term for this process or event would probably identify the part of the Board's services for which the applicant worked, and that is subject to the interim non-publication order. For that reason, where necessary to refer to that term, this determination will use the phrase "the risk" or "the specialised risk" rather than the actual term.

Procedural background

[8] The applicant's statement of problem was filed on 19 December 2005. The respondent's statement in reply was filed on 25 January 2006.

[9] A teleconference with representatives of the parties was held on 17 February 2006. The Authority was able to schedule an investigation meeting for April. The applicant's representative, an official of the Association of Salaried Medical Specialists ("ASMS"), advised ASMS intended briefing particular counsel who was then involved in a six-week trial and did not expect to be "ready" for an investigation meeting until June.

[10] Respondent's counsel raised a concern that the respondent might be prejudiced as two key witnesses – its former chief executive and the applicant's former clinical director – had left the Board's employment. The applicant was dismissed in June 2004 and raised a personal grievance with his former employer shortly after but had not filed his claim in the Authority until December 2005 – 18 months later.

[11] The former chief executive had left the district and was said to be expecting to take up an overseas post shortly. I was able to locate his contact details by a search of publicly available websites and spoke with him. He now works in another role with the Counties-Manukau District Health Board. At that time he expected to know within a fortnight whether he would take up an overseas post. He helpfully contacted the Authority later in March to advise that his departure was now delayed for at least six months.

[12] The former clinical director was working overseas and the respondent was said not have a current contact address for him. I suggested that the respondent should take steps to locate the former clinical director through the medical registration authorities of the relevant country. By the time of a teleconference on 21 March to hear the removal application – some 32 days later – the respondent's counsel had not been able to contact him. However I had done so the previous day by

the elementary exercise of looking on the respondent's website at a staff newsletter which identified where the former clinical director had gone, searching the online medical register of that country to confirm he was there and using an online telephone directory to identify his home telephone number. I rang him and he helpfully confirmed his postal and email address and advised he would be back in New Zealand by the end of the year. These details have since been forwarded to the parties.

[13] The whereabouts of these two witnesses is now known. They are both contactable for the purposes of preparation and giving of evidence.

The removal application

[14] The respondent's representative advised at the teleconference on 17 February that the respondent intended seeking an order to remove the matter to the Court. A timetable was set for the respondent's application and applicant's reply. Although such applications are routinely decided on the papers, at the respondent's request, its application was heard by telephone conference on 21 March 2006.

[15] The respondent's grounds for removal as set out in its application were:

> *"1. It is in the public interest to remove the matter to the Court for determination*
> *2. The respondent is a public service provider and public confidence in the Respondent is essential.*
> *3. It is likely the news media will be interested in this matter especially given recent media attention involving the Respondent about unrelated but similar issues. The facts of the matter are highly sensitive and personal in nature and best not disclosed to the public.*
> *4. Regardless of the decision from the Authority, an appeal by either party is highly likely. Proceeding directly to the Court may save additional costs that would arise from an Employment Court appeal.*
> *5. Important questions of law are likely to arise.*
> *a. The issues revolve around whether the Applicant discharged his obligations to Patient A and whether he consequently breached his obligations to the Respondent.*
> *b. An analysis of expert reports is required, one of which is subject to an allegation of bias by the Applicant.*
> *c. There will be a need for expert evidence in relation to the Applicant's overall management of Patient A and the highly specialised area of "[the risk]" which will require extensive cross examination.*
> *d. There may be a need for particular discovery.*
> *e. There may be challenges to the admissibility of certain evidence intended to be led by the Applicant.*
> *f. The evidence will be best heard in a formal Court environment giving both parties the opportunity of cross examination. The evidence is complex and issues will arise regarding overseas witnesses.*
> *6. The Applicant's primary remedy, namely reinstatement will be subject to an interlocutory application which is not available to the Respondent in the Authority. Therefore the Respondent's legal rights are unfairly prejudiced in this regard.*
> *7. The Respondent believes there has been a significant want of prosecution and has been prejudiced. Accordingly it may seek a stay of proceedings, a remedy which is not available in the Authority.*
> *8. The Respondent refers to* Rigby v Coast Health Care *unreported CT 69/94 where the application to remove was granted:*

> *" … it could weak (sic) be where the grounds for removal are weak, removal is opposed, and there are no other abnormal features associated with the proceedings, then the Tribunal should use its discretion to keep the matter in question before it. However there are many factors here which would seem to point to the Tribunal exercising its discretion in favour of sending Dr Rigby's grievance to the Court. … they are the sheer length of the hearing, the resulting large mass of evidence to be analysed, the potential sensitivity of the evidence, the possible frequent recourse to the Tribunal Member/judge for rulings on various issues and the likely high public interest in the proceedings. They all overwhelmingly point to a Court rather than a Tribunal hearing.*

[16] Ms Jones, for the respondent, relied on *Rigby* for the proposition that while each of the grounds given may be weak in themselves, taken together as a bundle they are sufficiently strong to support removal. The respondent sought the removal order under s178(2)(d) – an overall discretionary provision – rather than the specific criteria of s178(2)(a)-(c).

- **Public interest**

[17] The respondent accepted that the necessary urgency was not present for this matter to come within the terms of s178(2)(b). Instead its argument appears to be conflation of two concepts. Firstly, there would be considerable interest *among* the public in the case. Secondly, a 'public interest' in maintaining public confidence in the Board's service was involved. In the second sense, 'public interest' refers to matters of public policy, that is wider concerns or principles of law which guide particular decisions.

[18] The respondent says the case – and how it inquired into and dealt with a complaint about a patient death – has a wide, potential effect on how the consumers of its services and the wider public see its services. The case is not solely about the position of Dr Y or issues within a workplace. I do not accept that as a factor favouring removal in this case. The workings – and sometimes, inadequacies – of many public services and corporations are often examined in the investigations of the Authority, and no less so by the hearings of the Employment Court. Even if protecting public confidence in the respondent's services is a valid public policy interest, there is nothing to suggest it will be better protected in one forum than another.

[19] There are also other public interests to consider. The Act does not allow for "forum shopping". Parliament has decided that personal grievance applications will be heard and determined in the Authority except in very limited circumstances. That is the process that applies whether the parties are from the highest or the humblest ranks in our society.[1] It is consistent with the rule of law before which we are all said to be held equal. There is a public interest in maintaining confidence that the employment institutions do not decide applications of this type on the basis of status of either party. To do otherwise would create an impression of a "two tier" system of justice in employment law. That this particular removal application involves a medical specialist and a significant public health provider cannot of itself influence whether the particular circumstances warrant removal.

- **Media attention**

[20] I do not accept likely media attention is a factor favouring removal. The respondent's submission appeared to be that the Court was better placed to control the potential disclosure of

[1] *Centre for Advanced Medicine v Sprott* (unreported, EC, AC 20/05, 10 May 2005, Shaw J) at [19].

sensitive and personal facts in this matter. However the statutory power of the Authority relating to non-publication of evidence and names, in appropriate cases, is the same as that of the Court: *Auckland District Health Board v X* (unreported, EC, AC33/05), 29 June 2005, Colgan CJ) at [46]. The Authority is also authorised to decide whether an investigation meeting should be in public or should be open to certain persons (s160(1)(e)).

[21] Further, it would be wrong to suggest that the Court is more likely than the Authority to impose a non-publication order or close its hearings to the media and public generally. The Court robustly upholds the principle of the open administration of justice, yielding only in particular, sensitive circumstances: *Auckland District Health Board v X* (above) at [46] and *Oldco PTI (New Zealand) Limited v Houston* (unreported, AC 18/06, 28 March 2006, EC, Couch J) at [58].

- **Likelihood of challenge**

[22] The respondent says that whatever the Authority's determination on the applicant's claim for reinstatement, the unsuccessful party is highly likely to elect to take a challenge to the Court. Ms Jones accepted that a likelihood was not a certainty.

[23] The objects of the Act in seeking to reduce the need for judicial intervention and to have most matters determined by a specialist decision-making body would be rendered meaningless if every party who said they were going to 'fight this all the way' were allowed to bypass the Authority and go directly to the Court on the basis of their subjective declarations.

[24] In this particular case 'the likelihood of informal resolution before or in the Authority' – to use the Court's phrase in *Auckland District Health Board v X* (above) – is not clear. At the time of the removal application, counsel for the parties were attempting to arrange further mediation. The respondent had asked for a direction to mediation but I did not find it necessary to give one as the applicant voluntarily agreed to attend further mediation. Yesterday the respondent advised that a tentative mediation date has been set for 22 May 2006 in Wellington.

[25] That the parties are still willing to meet in mediation strengthens my impression that the likely future course of this matter is not necessarily or inevitably a challenge in the Court. And whatever parties' might say at this stage, there is the prospect that their assessment of their relative strengths and weaknesses of their respective cases would change after having heard how the evidence 'plays out' in an investigation meeting. Overall, in this particular case, I consider the likelihood of a challenge to be at best a weak factor.

- **Important questions of law**

[26] Deciding whether the employer was justified in dismissing Dr Y for serious misconduct will require an assessment of whether the employer properly inquired into alleged breaches of obligations by Dr Y to his patient, and, in turn, the respondent. These obligations arose from his employment agreement and the statutory and professional requirements of practice. However the respondent has not argued that any aspect of that matrix of obligations gives rise to other than incidental points of law or bring its application for removal under the s178(2)(a) heading. Neither did its oral submissions on this point identify any important points of law other than to say the case would require some interpretation of the applicant's obligations which were not necessarily clear. This factor not so much weak as inchoate.

[27] The respondent says that the case will require analysis of a report by Dr Y's former clinical director on his treatment of Patient A. Dr Y alleges the report demonstrates a bias by the director who later recommended his dismissal. The Authority routinely deals with matters from across a

range of professions where specialised reports form part of the background of decisions to dismiss. Allegations of bias by the employer in preparing such reports and making such decisions are routinely part of unjustified dismissal claims. Counsel was not able to identify for me any aspect of this case that made this an important point of law or otherwise a factor favouring removal.

- **Cross examination**

[28] Expert evidence is said to be needed on Dr Y's overall management of Patient A and the specialised risk in that treatment. This in turn is said to require extensive and "robust" cross-examination of those experts on the treatment which was or was not appropriate and should or should not have been provided. Ms Jones said that evidence of professional competence would not be adequately brought out by what she described as "inquisitorial questions" in the Authority. Rather she said it required the "no holds barred" approach of cross-examination by counsel in the Court.

[29] I do not accept that submission. It misconceives the nature of proceedings in the Authority and, I suggest, the Court.

[30] As the Court stated in *Auckland District Health Board v X* (above), Parliament has determined that, generally, personal grievances should be considered first by the Authority using its "*unique and flexible investigative techniques*" if a matter is not resolved by mediation. Whether cases should remain for investigation and determination by the Authority or be removed for decision by adversarial litigation in the Court is not a question of the two institutions being in competition. That would "*lead to the unfortunate perception of jurisdictional chauvinism involving claims to the superiority of one methodology of decision making over the other*" (at [41]).

[31] While respectfully agreeing with the Court, there is also a risk of overstating the extent and effect of differences of procedure in the two institutions. In the Authority, most of the questioning is conducted by the Authority member. Almost invariably there is an opportunity for the representatives of both parties to ask additional questions both of their own and the other party's witnesses. While the Authority is not required to allow "cross examination" (s157(2A) of the Act), those additional questions provide an opportunity for each party to test and challenge the evidence of the other party.

[32] The Authority's questions are also a means – in fact, the primary means – by which the evidence of each party is tested and challenged. Propositions are contested and inconsistencies probed. In this way, it is not so much the case that there is no 'cross-examination' in the Authority, rather most of that testing process occurs as 'investigation' by the Authority.

[33] It is also important not to overstate the extent of the 'freedom' to cross-examine in the Court. Cross-examination there is not unfettered. It is, quite properly, subject to control for relevance, admissibility, oppression, repetition, and the usual courtesies to witnesses.

[34] In this particular case counsel suggests there will be a need for expert witnesses on the specialised risk and the special area of practice. The respondent wishes to call two experts and the applicant one. However this does not mean there will inevitably be a need for extensive questioning of them. It may be that the demands of this case are as appropriately met by having those experts meet and provide a joint statement on areas of agreement and disagreement: see the example given by the full Court in *David v Employment Relations Authority* [2001] 1 ERNZ 354 at [86].

[35] How expert evidence might best be dealt with cannot be assessed until the filing of witness statements. However, for the reasons given, I am not persuaded that the parties' wish to cross examine expert witnesses is a factor warranting removal of this matter to the Court.

- **Discovery**

[36] The respondent suggests that particular discovery will be required in this case. This includes material, said to be extensive, from hospital files dealing with a number of patients that Dr Y treated.

[37] The Employment Court regulations provide a regime for the mutual disclosure and inspection of documents. However there should be no difficulty in securing necessary documents for an investigation. The Authority has the power to order evidence and information (s160(1)) and may require the production of all necessary documents and records under the provisions of Schedule 2 clause 5(2). Non-publication orders can be made to protect the privacy of patient records.

[38] I am not persuaded that requirements for particular discovery – if in fact necessary – is a factor warranting removal of this matter to the Court.

- **Evidence**

[39] The respondent suggests that possible challenges to the admissibility of certain evidence intended to be led by the applicant is a factor favouring removal. It does not identify what that evidence might be. Ms Jones told me that the Court decides the admissibility of evidence on a legal basis but that was not necessarily the case in the Authority.

[40] I do not accept that submission. The Authority is authorised by the Act to take into account such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not (s160(2)). The equivalent provision for the Court allows it to accept, admit and call for evidence and information on exactly the same terms (s189(2)).

[41] The respondent also suggested that it might be prejudiced by evidence admitted in the Authority if the matter was subject to a challenge in the Court. However Ms Jones accepted that a challenge would be *de novo* with the evidence taken from the beginning. If there were evidence admitted in the Authority that the Court considered was not properly admissible under its rules of evidence, that could be excluded in the Court's hearing.

- **Overseas witnesses**

[42] The respondent suggests that "issues will arise regarding overseas witnesses". The Authority has the same ability as the Court to take evidence from a distance, by telephone or video link if necessary. Having located both the former chief executive and the former clinical director, Ms Jones accepted there was no reason that evidence could not be taken by telephone or video conference. The Authority is also authorised to interview witnesses before, during or after an investigation meeting (s160(1)(c)) so that convenient times – with counsel present – can readily be arranged.

- **Intention to seek 'strike out' of reinstatement remedy**

[43] The respondent says that it intends making an interlocutory application to strike out the applicant's claim for reinstatement. It says this application can only be made in the Court. Even if that were the case, I am not persuaded this is a factor favouring removal. I doubt there is any

realistic prospect that the Court would limit its discretion in advance and allow the striking out of the primary statutory remedy at an interlocutory stage. Parliament has given primacy to the reinstatement remedy but the discretion of the Authority or the Court to order reinstatement is something to be exercised after hearing the evidence. There may be valid reasons that – if the applicant were found to be unjustifiably dismissed – the remedy should not be granted. The practicability of reinstatement, taking account of concerns such as the quality of working relationships and difficulties caused by delay, is assessed after the hearing, not before.

- **Delay**

[44] The respondent says there has been 'chronic delay' in the applicant's prosecution of his claim. Ms Jones said the respondent has been prejudiced by not having the matter settled in a timely manner and not being able to permanently fill the position from which Dr Y was dismissed.

[45] Although Dr Y did not file his claim in the Authority for 18 months after his dismissal, and some 10 months after a mediation held in February 2005, his claim was nevertheless filed within the statutory period provided under s114(6). Case law from the Court and the Employment Tribunal prior to the enactment of this statutory period, holding that gross or inexcusable delay or other serious prejudice to the respondent may disentitle an applicant proceeding with a claim, is no longer directly relevant to claims filed within an express statutory timeframe. In any event, in this case, it would be premature to conclude that any delay by the applicant has, in fact, prejudiced the respondent's ability to provide evidence from its former chief executive and former clinical director. Ms Jones accepted that having located these two key witnesses, the respondent was not prejudiced in respect of evidence from them regarding the dismissal and the circumstances that led up to it. At this stage, I do not accept this is a factor favouring removal.

Applicant's position

[46] The applicant supported the application for removal of this matter to the Court. He accepted there would be issues relating to the discharge of his obligations to Patient A and to the respondent; that analysis of expert reports was required and that he would raise an allegation of bias on some expert opinion; that there were difficult issues regarding the specialised risk which would require extensive cross examination; that he wished to challenge the admissibility of some evidence; and that complex evidence was best heard in a formal court environment. The applicant summarised his reasons for supporting removal as being that "the matter will be very complex, involving a specialist area of medical practice and in these circumstances it is appropriate for the Court to determine the matter.

[47] That both parties want the matter removed is not of itself decisive. Parliament clearly did not intend that some parties by mere consent could – in the phrase used by the Court in a recent decision on removal[2] – "leap-frog the Authority's process" for reasons of their own and unrelated to the Act's objects to provide judicial intervention at the lowest level through investigations by a specialist decision-making body (see s143(f) and (fa)). Consent may be a factor – as one of many, but neither substantial nor decisive – in two circumstances. Firstly, it may be relevant under the provision of s178(2)(d) where a matter does not meet the other criteria for removal but the Authority is of the opinion that in all the circumstances that the Court should determine the matter. Secondly, it may be weighed as a factor in exercise of the Authority's discretion where a ground for removal has been established under subsection (2)(a)-(c) and the Authority is considering whether there is nevertheless a reason not to order removal. However in both circumstances it is not the fact

[2] *The Clerk of the House of Representatives v Witcombe* (unreported, EC Wellington, WC 1/06, 17 March 2006, Colgan CJ) at [23].

of a shared view between the parties but the reasons for that shared view that is relevant. It is those reasons that need to be assessed as to whether they meet any of the four grounds set out in s178(2).

[48] Mr Corkill, for the applicant, agreed that the removal application could only be made under the overall discretionary provision of s178(2)(d) as the circumstances of the case did not meet the criteria of sub-paragraphs (2)(a), (b) or (c).

[49] He submitted that the factors accepted by the applicant tipped the balance in favour of exercising the discretion for removal "in all the circumstances". These included the need for public confidence in the respondent as a public service provider, the fact that there had been a death in this case and the need for public confidence in the respondent's procedures to review the circumstances of such deaths. He submitted that most of the witnesses would be professionals who would not be easy to question. Questioning them would require a great deal of preparation and was best done in a formal Court environment with structured questioning. He accepted that all cases of this type need not go the Court. However there were particular circumstances making it appropriate here. These included what he called a "suite of regulatory issues" around Dr Y's registration which was the subject of earlier legal proceedings, the adequacy of Dr Y's supervision, and the "interface" with the Medical Council. There were also issues peculiar to the particular area of practice and the specialised risk.

[50] Mr Corkill accepted that the employment law issues in this matter were not themselves complicated and that the Authority often deals with cases involving a complex factual matrix. However he submitted that this was a case – as he put it – best run by the lawyers rather than the Authority.

[51] I am not persuaded that – on the basis of the statements of problem and reply and submissions of counsel on the removal application – this case is as complex as suggested by the parties. At heart, the applicant's personal grievance claim is not an appeal to the Authority or the Court from the employer's findings of fact. It is not an opportunity to decide every medico-legal issue that might arise. Rather, and in either forum, it is, as the Court has put it,:[3]

> *an inquiry into the question of whether the employer's representatives actually believed, and did so on reasonable grounds following a fair inquiry, that the employee was guilty of misconduct so serious it warranted dismissal.*

[52] There are issues which may require careful preparation of questions to professionals about areas of specialist expertise. That is true of many cases heard and determined in the Authority – whether they involve scientists, lawyers, accountants, engineers or doctors. And if the Authority's questioning is not thorough or deep enough – at least in counsels' view – there is an opportunity for counsel to address that by suggesting further questioning needed from the Authority or having leave to pursue those questions themselves.

Time to hearing

[53] As a matter of background (but not as a factor for or against removal) I have considered how long it would take for this matter to be heard at first instance if it were removed to the Court. The Authority was able to hear this matter in April but the applicant was not ready to proceed and the respondent had sought removal of the matter to the Court. The Authority is presently able to hear this matter in late June or early July.

[54] The applicant considers evidence is needed from three witnesses: himself, an ASMS official, and an expert in his specialised area of practice. The respondent wants evidence heard from more

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[3] *Chief Executive of the Ministry of Maori Development v Travers-Jones* [2003] 1 ERNZ 174 at 184.

than 12 witnesses: its former chief executive officer, its chief operating officer, its acting general manager for the relevant department of health services, its chief medical advisor, its hospital general manager, the applicant's former clinical director, other former colleagues of the applicant, an independent specialist who investigated and reported on the applicant's treatment of Patient A, a barrister involved at one stage of earlier inquiries, family members of Patient A and two expert witnesses.

[55] Mr Corkill told me that he estimated that this case would take three or four days whether it was heard in the Authority or the Court. I have had an inquiry made to the Registrar of the Employment Court who advised that if this matter were removed, it would be somewhere between 12 and 16 weeks before a case of that length be scheduled for hearing.

Determination

[56] For the reasons given above, I am not of the opinion that in all the circumstances the Court should determine this matter. I decline the application for removal of this matter to the Employment Court under s178(2)(d) of the Act.

Next steps

[57] It may be that either party will now seek special leave of the Court for an order removing this matter to the Court under s178(3). I note that in relation to the present application the parties agreed that removal was not warranted under the criteria set out in paragraphs (a) to (c) of subsection (2) which are the only criteria on which the Court may grant special leave for removal.

[58] Meanwhile the parties have arranged a tentative mediation date in Wellington on 22 May 2006. It might be useful to now set, at least as a contingency, a timetable for continuing the investigation if mediation does not resolve the issue. The parties should advise the Authority whether that would be helpful and a telephone conference to discuss this can be scheduled, but otherwise, no arrangements to continue the investigation will be made until after the mediation. The applicant is directed to advise the Authority following the mediation whether he wishes the Authority to proceed with an investigation.

Robin Arthur
Member of Employment Relations Authority