

**IN THE EMPLOYMENT COURT
CHRISTCHURCH**

**[2010] NZEMPC 107
CRC 12/07**

IN THE MATTER OF proceedings removed from the
Employment Relations Authority

BETWEEN CHRISTINE PATRICIA COY
Plaintiff

AND COMMISSIONER OF POLICE
Defendant

Hearing: By memoranda of submissions filed on 13 August 2010

Appearances: Scott Fairclough, Counsel for Plaintiff
Antoinette Russell and Sally McKechnic, Counsel for Defendant

Judgment: 16 August 2010

INTERLOCUTORY JUDGMENT (NO 5) OF CHIEF JUDGE GL COLGAN

[1] Another interlocutory issue has arisen which requires decision by the Court. This relates to the obtaining by the defendant of the notes of June Penn and the permissible redaction of portions of those notes from the copies sent to the plaintiff's solicitors.

[2] The question of Ms Penn's documentary records was addressed at a telephone conference call hearing in Chambers as long ago as 30 June 2010 following which I issued a minute dealing with these matters at paragraph 4 as follows:

4. The practical way of dealing with these issues, given the Commissioner's agreement to the release of these documents, which he will confirm in writing to Mr Fairclough, is for Mr Fairclough to write to each of Mr Dugdale and Ms Penn in the first instance seeking the voluntary disclosure of these documents which is consented to by the Commissioner. If Mr

Fairclough is unsuccessful, the options remain open to him to seek third party document disclosure against each of Mr Dugdale and Ms Penn or, ultimately, to subpoena those persons to bring the documents to the hearing.

[3] As I understood the position then, Ms Penn was resistant to supplying her notes to the plaintiff, at least without an order directing her to do so by the Court. I obtained the impression that Ms Penn would do so if the Commissioner consented to that course. So, in an effort to avoid the delay and expense of an application for non-party discovery, I suggested to counsel for the parties that if a written authority from the defendant's solicitors to this effect could be sent to Mr Fairclough to be sent on with his formal request for the notes, it was likely that Ms Penn would supply these.

[4] What appears to have happened, however, is that the defendant's solicitors pre-empted that agreed strategy, wrote to Ms Penn, and were sent her notes. The defendant then treated those notes as his documents and redacted portions of them that he says are irrelevant to these proceedings before sending those redacted versions on to Ms Coy's solicitors.

[5] As an expeditious way of dealing with this issue before trial, the defendant has provided copies of the unredacted Penn notes to the Court to determine whether the redactions have been properly made on the basis that the redacted contents refer to events relating to other police officers and other issues not affecting Ms Coy's circumstances at the time.

[6] The nature of the relationship between the Commissioner, Ms Penn, and Ms Coy is important. Ms Coy raised a personal grievance with her employer, the Commissioner. The Commissioner referred the grievance to Ms Penn who, as I understand her role, is not a lawyer and was not engaged to provide the Commissioner with legal advice. Rather, the Commissioner, sought Ms Penn's advice as a human resources practitioner about the matters the subject of Ms Coy's grievance. Ms Penn was engaged because of her independence and expertise in the field of human resources and to undertake investigations on behalf of the Commissioner into Ms Coy's allegations.

[7] The notes contain references to several other cases of police officers which Ms Penn was asked to deal with at the same time as with Ms Coy's. These other notes are not relevant to the plaintiff's case even if, as she is concerned, they are relevant to the way in which managerial personnel who dealt with her case may have dealt with those of others. As other interlocutory judgments in this case have confirmed, it is not a broad inquiry into the managerial practices of police administration in Canterbury or South Canterbury.

[8] Having inspected the redacted portions of the Penn notes, I am satisfied both that they are irrelevant to Ms Coy's proceedings and there are good reasons of privacy in respect of the individuals affected that they should be redacted as they have been.

GL Colgan
Chief Judge

Judgment signed at 9 am on Monday 16 August 2010