

**IN THE EMPLOYMENT COURT
WELLINGTON**

**[2011] NZEmpC 154
WRC 35/11**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN GARRY NEIL HEPBURN
Plaintiff

AND HUHTAMAKI HENDERSON LIMITED
Defendant

Hearing: (urgent hearing on papers)

Counsel: Tanya Kennedy, counsel for the plaintiff

Judgment: 25 November 2011

INTERLOCUTORY JUDGMENT OF JUDGE A D FORD

[1] It is now after 5.00 pm on a Friday afternoon. Staff have voluntarily stayed on in the office to deal with this matter.

[2] An urgent application has been referred to me in which Ms Kennedy seeks a non-publication order suppressing any identifying details of two overseas exchange students allegedly identified in a determination of the Employment Relations Authority.¹ It is alleged in the statement of claim that the determination discloses the plaintiff travelled overseas during a period of paid sick leave due to “a romantic/sexual relationship” with one of the students. The plaintiff’s wife works at the high school in New Zealand that the two students attended. The allegation relating to the relationship referred to is strongly denied by the plaintiff and the student concerned.

¹ [2011] NZERA Wellington 184 (535-8740).

[3] Earlier today the Authority Member made a non-publication order in respect to the naming of either or both of the exchange students referred to in his determination. That order does not extend to the publication of identifying particulars contained in the Authority's determination.

[4] It is alleged in the statement of claim that "the news media are onto this issue and actively seeking further information ahead of publishing."

[5] Clause 12(1) of sch 3 of the Employment Relations Act 2000 provides:

12 Power to prohibit publication

- (1) In any proceedings the Court may order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Court thinks fit.

[6] The relevant principles involved in a consideration of any application for suppression of the name of any party or witness or other person or identifying particulars were considered by this Court in *Y v D*.² The test is whether it is in the interests of justice including those of the parties and the community. The Court has "a broad discretion which should not be fettered except to the extent that it must be exercised in the interests of justice in a particular case."³ As a general rule, the Court will be more sympathetic to an application made on behalf of a person who was neither a party nor a witness in the particular proceedings.

[7] The two overseas exchange students are not a party to the proceedings nor were they witnesses in the Authority investigation.

[8] In the short time available to consider this urgent application, I have formed the view that the interests of justice require the granting of the application. An order is, therefore, made pursuant to cl 12(1) of sch 3 of the Employment Relations Act 2000 prohibiting the publication of the names and any other identifying particulars relating to the two exchange students referred to in the Authority's decision.

² [2004] 1 ERNZ 1.

³ At [25].

A D Ford
Judge

Judgment signed at 9.00 am on 28 November 2011