

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2013] NZEmpC 46
ARC 14/12**

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

BETWEEN JOHAN AARTS
Plaintiff

AND BARNARDOS NEW ZEALAND
First Defendant

AND COMMISSIONER OF NEW ZEALAND
POLICE
Second Defendant

AND MINISTRY OF SOCIAL
DEVELOPMENT
Third Defendant

AND THE PRIVACY COMMISSIONER
Fourth Defendant

AND THE OMBUDSMAN
Fifth Defendant

AND MINISTRY OF SOCIAL
DEVELOPMENT
Sixth Defendant

AND THE SERIOUS FRAUD OFFICE
Seventh Defendant

AND THE DIRECTOR OF HUMAN RIGHTS
PROCEEDINGS
Eighth Defendant

AND THE INDEPENDENT POLICE
CONDUCT AUTHORITY
Ninth Defendant

AND LANCE LAWSON BARRISTERS &
SOLICITORS
Tenth Defendant

Hearing: 11 and 13 March 2013
And by memorandum filed on 25 March 2013
(Heard at Auckland and by video link with Wellington)

Appearances: Robert Lee, advocate for plaintiff
No appearance for first defendant (appearance excused)
Sally McKechnie, counsel for second, third and sixth defendants
No appearance for fourth defendant (written submissions filed)
No appearance for fifth defendant (written submissions filed)
Michael Quigg, counsel for seventh defendant (on 11 March 2013)
Gillian Service, counsel for eighth defendant (on 11 March 2013)
Francis Cooke QC, counsel for ninth defendant (on 11 March 2013)
Andrew Schulze, counsel for 10th defendant (on 11 March 2013)

Judgment: 26 March 2013

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE G L COLGAN

[1] One of the issues for decision in this case is whether evidential videotape recordings of child complainants can and should be called for by the Employment Relations Authority in its investigation of Mr Aarts's personal grievance claims.

[2] The videotapes are in the custody of the Commissioner of Police, one of the parties to the proceeding. Regulation 40 of the Evidence Regulations 2007 provides that such recordings, which have not been used in evidence in a prosecution (as here), shall be destroyed seven years after they have been made. That seven year period expires on different dates in May and July 2013.¹

[3] One of the issues before the Court, which may remain as a live issue in the Employment Relations Authority's investigation, is whether it is empowered to call for these videotapes as evidence and, if so, it will be an issue for the Authority to determine whether it should do so. It is distinctly possible that the seven year period referred to above will expire before the Authority can make such a decision if it is empowered to elect to do so.

¹ Different recordings were made on various dates in May and July 2006.

[4] In these circumstances, the Court asked Ms McKechnie, counsel for the Commissioner, to take instructions on his proposals for the master and/or working copies of the tapes. I indicated that it might be necessary to consider some form of order preserving the evidence in these circumstances.

[5] The Commissioner has now undertaken to the Court that he will not destroy the relevant videotapes, unless and until these proceedings have been concluded, to ensure that this evidence may be available to the Authority if it calls for it.

[6] The Court accepts the Commissioner's undertaking to this effect. Such an undertaking accepted by a court has the effect of an order of the court. I do not propose to make any other order for the preservation of that evidence in these circumstances.

[7] Leave is reserved for either party to make any application for further orders or directions in this regard on reasonable notice.

GL Colgan
Chief Judge

Judgment signed at 9 am on Tuesday 26 March 2013