

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKĀURAU**

**[2020] NZEmpC 154
EMPC 106/2020**

IN THE MATTER OF	an application for special leave to remove a matter to the Employment Court
AND IN THE MATTER OF	an application for disclosure
BETWEEN	SUSAN MARGARET KENNEDY Applicant
AND	THE CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Respondent

Hearing: On the papers

Appearances: A Halse, advocate for applicant
H Kynaston, L Grey and S R Clark, counsel for respondent

Judgment: 29 September 2020

**INTERLOCUTORY JUDGMENT OF JUDGE J C HOLDEN
(Application for disclosure)**

[1] Ms Kennedy has applied for special leave to remove her proceeding to the Employment Court. In that context, her representative has served the Chief Executive of Oranga Tamariki – Ministry for Children (Oranga Tamariki) with a notice requiring disclosure.

[2] Ms Kennedy seeks disclosure of a letter her estranged daughter sent to Oranga Tamariki in December 2018, together with correspondence related to her case between Oranga Tamariki and WorkSafe New Zealand, the State Services Commission, the

Privacy Commissioner, Parliament and Ms Kennedy's daughter (or any other family members).

[3] Oranga Tamariki opposes disclosure on the ground that none of the documents sought are relevant to these proceedings. Oranga Tamariki also says that, in some instances, the documents sought do not exist.

[4] This judgment resolves the application for disclosure.

Context is application for removal

[5] Where the Employment Relations Authority (the Authority) declines to remove any proceedings to the Court, the party applying for the removal may seek special leave of the Court for an order that the proceeding be removed to the Court.¹ Where such an application is made, the Court must consider whether:²

- (a) an important question of law is likely to arise in the matter other than incidentally; or
- (b) the case is of such a nature or of such urgency that it is in the public interest that it be removed immediately to the Court; or
- (c) the Court already has before it proceedings which are between the same parties and which involve the same or similar or related issues.

[6] It is in that context that the notice requiring disclosure must be considered, the issues being whether the documents sought:³

- (a) may, directly or indirectly, support either Ms Kennedy's application for removal or Oranga Tamariki's opposition to that application; or

¹ Employment Relations Act 2000, s 178(3).

² Section 178(2).

³ Employment Court Regulations 2000, reg 38(1).

- (b) may, directly or indirectly, prove or disprove any disputed fact in relation to the application for removal; or
- (c) are referred to in any other relevant document and are themselves relevant.

Ms Kennedy addresses the letter from her daughter

[7] In her submissions, Ms Kennedy outlines some history of her family relationships, culminating in her daughter writing to Oranga Tamariki. Although she says her family issues have absolutely nothing to do with the matters she alleges against Oranga Tamariki, she expresses her disappointment that the Authority is aware of this letter, but did not order Oranga Tamariki to supply it to her. She says she believes the Authority is not acting in good faith and has not acted in a manner conducive to settling her case. She says it instead has delayed substantive proceedings by refusing to order Oranga Tamariki to act in good faith and supply her with all available evidence. In conclusion, she submits that the Authority is condoning and supporting Oranga Tamariki in its attempts to detract from the details of the substantive case and to avoid addressing the workplace bullying and significant harm that the applicant alleges has occurred.

[8] Ms Kennedy makes no submissions in respect of the other correspondence.

[9] Oranga Tamariki says that the documents sought are not relevant to any of the grounds for removal. It says further that they are not relevant to Ms Kennedy's grievances. It says that, to the extent the documents exist, they comprise correspondence that took place months after Ms Kennedy's employment ended, and did not feature in any way in the events on which she relies in her unjustifiable disadvantage and dismissal claims. Oranga Tamariki does not presently intend to rely on any of the documents sought.

[10] It also says the letter from Ms Kennedy's daughter was sent in confidence, is therefore confidential, and contains sensitive personal information about the daughter.

[11] The only other correspondence with the family that could possibly be caught by the notice is a record of a telephone call from a family member in 2016 in connection with Oranga Tamariki's operational functions.

[12] Oranga Tamariki says that the correspondence with WorkSafe, the Privacy Commissioner and the State Services Commission was under separate legislation or for different purposes. There is no relevant correspondence to Parliament, although the Minister has been kept informed about Ms Kennedy's proceedings.

[13] Against that background, it says that none of the documents are relevant documents that ought to be disclosed.

No basis for disclosure

[14] There is no basis for finding that any of the correspondence sought goes to whether this is a case that ought to be removed from the Authority to the Court; Ms Kennedy's submissions do not suggest otherwise.

[15] Accordingly, there is no order requiring Oranga Tamariki to provide any of the documents sought in the notice requiring disclosure.

[16] As Ms Kennedy's employment with Oranga Tamariki ended in February 2018, approximately 10 months before her daughter wrote to Oranga Tamariki, it is also hard to see any relevance the letter from the daughter has to Ms Kennedy's substantive claim, but that will be a matter for the future, either in the Authority or, if the proceedings are removed, in the Court.

[17] The application for special leave to remove Ms Kennedy's proceedings to the Employment Court is now to proceed, in accordance with timetabling orders that will be issued in a separate minute.

[18] Costs are reserved.

J C Holden
Judge

Judgment signed at 10.40 am on 29 September 2020