

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

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

**[2022] NZEmpC 80  
EMPC 87/2020  
EMPC 365/2020**

IN THE MATTER OF an application for the exercise of powers  
under sections 142B, 142E, 142J, 142M,  
142W and 142X of the Employment  
Relations Act 2000

AND IN THE MATTER OF proceedings removed from the Employment  
Relations Authority

AND IN THE MATTER OF an application for access to Court documents  
by New Zealand Police

BETWEEN A LABOUR INSPECTOR OF THE  
MINISTRY OF BUSINESS, INNOVATION  
AND EMPLOYMENT  
Plaintiff

AND SAMRA HOLDINGS LIMITED T/A TE  
PUNA LIQUOR CENTRE  
First Defendant

AND SAMRA ENTERPRISES LIMITED T/A  
GREERTON LIQUOR CENTRE  
Second Defendant

AND SAMRA BROTHERS LIMITED  
PREVIOUSLY T/A PAEROA LIQUOR  
CENTRE  
Third Defendant

AND AKAL HOLDINGS LIMITED T/A  
CHERRYWOOD LIQUOR CENTRE  
Fourth Defendant

AND PARAMJIT KAUR  
Fifth Defendant

AND SUKHDEV SINGH  
Sixth Defendant

Hearing: On the papers

Appearances: TM Gray, counsel for plaintiff  
S Sharma, counsel for defendants  
Sergeant D Roser for New Zealand Police

Judgment: 16 May 2022

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**INTERLOCUTORY JUDGMENT (NO 4) OF JUDGE KATHRYN BECK  
(Application for access to Court documents)**

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### **Introduction**

[1] An application has been made by New Zealand Police to access specified documents on the Court file. The documents sought are the notes of evidence of the hearing of this matter that took place on 9–11, 14 and 18 February 2022.

[2] The Police seek access because they believe the notes of evidence contain references to business ownership and interests that are vital to assist the Alcohol Regulatory and Licensing Authority and the District Licensing Committees in relation to their consideration of the applications for the cancellation of licences issued pursuant to the Sale and Supply of Alcohol Act 2012 for the three licensed premises at the centre of these proceedings.

[3] I directed that the application be provided to the parties. The plaintiff initially did not oppose the application but subsequently filed submissions in support of it. The defendants oppose it.

### **The law**

[4] The Court has recently considered the issues relating to access to documents held on the Court file in a number of decisions.<sup>1</sup> As set out in those judgments, the Employment Relations Act 2000 does not deal with access to documents held on the

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<sup>1</sup> *Courage v Attorney-General* [2022] NZEmpC 51.

Court file, nor do the Employment Court Regulations 2000 (the Regulations). The Senior Courts (Access to Court Documents) Rules 2017 (the Rules) have been applied by way of reference to reg 6 of the Regulations and/or by way of helpful analogy.<sup>2</sup>

[5] The Rules are made under the Senior Courts Act 2016. Section 173 of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.” Schedule 2 provides that Court information includes the formal Court record, the Court file, information relating to particular cases and electronic records of hearings. The material sought in this case is on the Court file. A person may ask to access any document under r 11 of the Rules.

[6] The principle of open justice is fundamental.<sup>3</sup> However, the principle may need to be departed from in certain circumstances when it is in the interests of justice to do so.

[7] Rule 12 of the Rules specifies a range of matters that must be considered when determining an application for access. It provides:

## **12 Matters to be considered**

In determining a request for access under rule 11, the Judge must consider the nature of, and the reasons given for, the request and take into account each of the following matters that is relevant to the request or any objection to the request:

- (a) the orderly and fair administration of justice;
- ...
- (c) the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice;
- (d) the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community) and any privilege held by, or available to, any person:

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<sup>2</sup> *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

<sup>3</sup> *Erceg v Erceg [Publication restrictions]* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] in relation to the principle generally; in relation to access to Court documents, see the discussion in *Commissioner of Police v Doyle* [2017] NZHC 3049; and *Berry v Crimson Consulting Ltd* [2017] NZHC 3026 upheld on appeal in *Crimson Consulting Ltd v Berry* [2018] NZCA 460, [2019] NZAR 30.

- (e) the principle of open justice (including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions):
- (f) the freedom to seek, receive, and impart information:
- ...
- (h) any other matter that the Judge thinks appropriate.

[8] Rule 13 deals with the approach to balancing the matters to be considered under r 12:

**13 Approach to balancing matters considered**

In applying rule 12, the Judge must have regard to the following:

- (a) before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited:
- (b) during the substantive hearing, open justice has—
  - (i) greater weight than at other stages of the proceeding; and
  - (ii) greater weight in relation to documents relied on in the hearing than other documents:
- (c) after the substantive hearing,—
  - (i) open justice has greater weight in relation to documents that have been relied on in a determination than other documents; but
  - (ii) the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.

**Analysis**

[9] Access has been sought to the notes of evidence so that they may be reviewed and possibly used to support applications to oppose and/or cancel licences issued pursuant to the Sale and Supply of Alcohol Act. The licences in question relate to the premises that were operated by the defendants which were places where breaches of employment standards took place.

[10] The applicant believes that the present sale and purchase of each business (excluding Samra Brothers Ltd) and the subsequent new licence applications are a contrivance and an attempt to conceal the beneficiaries of the licence privilege. The applicant says it understands that the notes of evidence may contain references to business involvement and connections between parties that may reveal that the present

applications are an attempt to deceive the District Licensing Committee and subvert the proper assessment of the suitability of the applicant for the licence.

[11] Counsel for the defendants submits that the proceedings relate to a claim of breaches and penalties under employment related legislation and are independent of any issues in relation to liquor licensing. The defendants say that there is no evidence to suggest that the sale of the businesses was anything other than arms-length business transactions. They note that New Zealand Police has extensive powers to request relevant information directly from them and say that there is sufficient evidence by way of sale and purchase agreements, a solicitor's trust account, ledger statements and settlement statements that can be provided to the applicant upon request to meet its needs.

[12] On that basis, counsel submits that no useful purpose would be obtained in the applicant accessing and reviewing the notes of evidence, most of which are in relation to breaches of employment legislation and which, it says, have nothing to do with liquor licensing.

[13] The plaintiff draws the Court's attention to three recent decisions regarding the relevance of breaches of employment legislation to liquor licensing decisions under the Sale and Supply of Alcohol Act.<sup>4</sup>

[14] It says each of these decisions reflects the view of the specialist institutions that administer the liquor licensing regime which is that breaches of employment standards are relevant to the issue of a licensee's suitability to hold a licence to sell or supply alcohol.

[15] The material being sought is the notes of evidence. This evidence was heard in open Court, and there are no non-publication orders in place in respect of the names of any party or witnesses in the proceeding, or in relation to any of the content of the evidence.

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<sup>4</sup> *Two Brothers Wholesale Ltd v Medical Officer of Health, Waikato District Health Board* [2021] NZARLA 32; *Christchurch City Council Alcohol Licensing Inspector v Neikita Enterprises Ltd* [2021] NZARLA 139–145; *Nekita Enterprises Ltd v Christchurch City Council Alcohol Licensing Inspector* [2021] NZHC 2598.

[16] The request for access has been advanced after the hearing and prior to judgment. As the Rules make clear, open justice has greater weight in relation to documents relied on at the hearing than other documents. The documentation (notes of evidence) was relied on by both parties at the conclusion of the hearing.

[17] After a substantive hearing, the protection of confidentiality and privacy interests have greater weight than would be the case during a substantive hearing. The defendants, however, have not relied on confidentiality and privacy as grounds for opposition. In any case, as already noted, there are no non-publication orders in respect of the notes of evidence sought and the evidence was given in open Court.

[18] I accept that the specialist institutions that administer the liquor licensing regime (being the Alcohol Regulatory and Licensing Authority and the District Licensing Committees) consider that breaches of employment standards are relevant to the issue of a licensee's suitability to hold a licence to sell or supply alcohol. It is desirable that they have as full information as practicable when making such assessments.

[19] Standing back and considering the matters in rr 12 and 13 and also the authorities I have referred to, I consider it to be in the interests of justice to grant the application. The applicant is accordingly to be provided access to the notes of evidence. Open justice favours access being granted to this documentation, and there are no identified confidentiality or privacy interests which might otherwise weigh against access being granted.

Kathryn Beck  
Judge

Judgment signed at 9 am on 16 May 2022