

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

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

**[2023] NZEmpC 62
EMPC 20/2023**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER	of applications for intervener status
BETWEEN	MW Plaintiff
AND	SPIGA LIMITED Defendant
AND	NEW ZEALAND COUNCIL OF TRADE UNIONS Intervener
AND	NEW ZEALAND LAW SOCIETY TE KĀHUI TURE O AOTEAROA Intervener
AND	AUCKLAND DISTRICT LAW SOCIETY INCORPORATED Intervener
AND	THE NEW ZEALAND BAR ASSOCIATION (NGĀ AHORANGI MOTUHAKE O TE TURA) Intervener
AND	THE EMPLOYMENT LAW INSTITUTE OF NZ INCORPORATED Intervener
AND	THE PRIVACY COMMISSIONER Intervener

Hearing: On the papers

Appearances: A Mapu, advocate for plaintiff
S Greening and K Hudson, counsel for defendant (granted leave to withdraw)
A Toohey, counsel to assist
P Cranney, counsel for New Zealand Council of Trade Unions
K Radich, counsel for New Zealand Law Society Te Kāhui Ture o Aotearoa
CW Stewart, counsel for Auckland District Law Society Incorporated
J MacGillivray, counsel for the New Zealand Bar Association (Ngā Ahorangi Motuhake o Te Tura)
AF Drake, counsel for The Employment Law Institute of NZ Incorporated
K Dalziel, counsel for The Privacy Commissioner

Judgment: 21 April 2023

INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL
(Applications for intervener status)

[1] This judgment considers several applications which have been made by various organisations for an order that they may intervene and be heard.

[2] The applications arise in the context of a challenge which flows from a settlement agreement which was concluded after termination of the plaintiff's employment. The settlement agreement was entered into under s 149 of the Employment Relations Act 2000 (the Act) and was signed off by a mediator.

[3] The defendant company was subsequently found to have breached the settlement agreement and was ordered to pay a penalty in respect of that breach.

[4] Non-publication orders were sought to preserve the confidentiality of the settlement sum and to preserve the confidentiality of the plaintiff's name and identifying details.

[5] The Employment Relations Authority granted the orders sought in respect of the sum but declined to make orders in respect of the plaintiff's name. The plaintiff

now alleges the Authority erred in this regard. It is claimed that the protection granted by the confidentiality clause in the s 149 agreement would be defeated without a non-publication order. A permanent non-publication order is accordingly sought.

[6] The defendant does not wish to take an active role in the challenge. Counsel have accordingly been excused from any further appearance on its behalf.

[7] In a minute of 10 March 2023, the Chief Judge said that issues relating to the way in which non-publication orders are to be dealt with in this jurisdiction have continued to arise and have been touched on in a number of cases and commentaries. In light of that consideration, counsel to assist the Court was appointed.

[8] The Chief Judge also considered that it would be timely for a full Court to be convened to consider the applicable legal framework for the making of non-publication orders in circumstances such as the present, including having regard to the interests at play, and the nature of the relationships involved in this specialist jurisdiction. A full Court has accordingly been appointed to hear the challenge.

[9] In two minutes, the Court has also indicated that in the circumstances, some organisations may wish to seek leave to be heard on the challenge. Accordingly, the Registrar was directed to provide copies of relevant documents to a number of entities, to enable them to consider whether they wish to apply for leave to intervene.

[10] In the result, the following organisations have filed formal applications for intervention:

- New Zealand Council of Trade Unions;
- New Zealand Law Society Te Kāhui Ture o Aotearoa;
- Auckland District Law Society Incorporated;
- The New Zealand Bar Association (Ngā Ahorangi Motuhake o Te Tura);
- The Employment Law Institute of NZ Incorporated;

- The Privacy Commissioner.

[11] Applications for intervention are to be considered under sch 3, cl 2(2) of the Act. The test is whether, in the opinion of the Court, the applicant is “justly entitled to be heard”. The test is very broad and is determined on the particular circumstances of the case.¹

[12] I have considered the applications brought by each of the above organisations. I am satisfied that they all have a legitimate interest in the important matter which falls for consideration and that they will materially assist the Court when dealing with the issues.

[13] I note that there is no opposition to this step from either of the parties, or from counsel to assist.

[14] Accordingly, I grant leave to each of the above organisations to appear and be heard. They are to be provided with a copy of all documents that have been filed to date. All documents filed from now on are to be served not only on the parties and counsel to assist, but also on the interveners.

[15] The Court will now convene a telephone directions conference with the plaintiff, counsel to assist, and counsel for each of the interveners. The purpose of the conference will be to discuss appropriate timetabling orders, and any other matters that may require consideration, including whether the hearing should be conducted in-person or on the papers.

B A Corkill
Judge

Judgment signed at 1 pm on 21 April 2023

¹ *Matsuoka v LSG Sky Chefs New Zealand Ltd* [2011] NZEmpC 24 at [6].