

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

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

**[2024] NZEmpC 61
EMPC 477/2021**

IN THE MATTER OF proceedings removed from the Employment
Relations Authority

AND IN THE MATTER OF an application to access Court documents

BETWEEN SIOUXSIE WILES
Plaintiff

AND THE VICE-CHANCELLOR OF THE
UNIVERSITY OF AUCKLAND
Defendant

Hearing: On the papers

Appearances: C W Stewart and D Church, counsel for the plaintiff
P M Muir and S-J Lloyd, counsel for the defendant
N Batts, counsel for S Thornley

Judgment: 10 April 2024

**INTERLOCUTORY JUDGMENT (NO 5) OF JUDGE J C HOLDEN
(Application to access Court documents)**

[1] Simon Thornley has applied for access to the transcribed notes of evidence in the substantive hearing of this matter and to any other documents filed in these proceedings that refer to him.

[2] By memorandum dated 4 March 2024, Mr Batts, counsel for Dr Thornley, confirmed that Dr Thornley was happy for the transcript released to him to be restricted to those portions of the evidence that make personal reference to him and/or that refer to the principle of academic freedom.

[3] The basis for his request is that the media reporting of these proceedings confirmed that Dr Thornley was referred to by name and discussed in the course of oral evidence. He is currently involved in proceedings in the Employment Relations Authority with his employer, the Vice-Chancellor of the University of Auckland (the University). He says the transcript and additional documents may contain information directly relevant to his employment dispute. He initially referred to the Privacy Act 2020 and the Official Information Act 1982, but he subsequently accepted that neither of those Acts apply to the Employment Court.

[4] I directed that the application be provided to the parties and subsequently had a telephone conference with the parties' representatives and counsel for Dr Thornley.

[5] After discussion, counsel for the University and Dr Thornley were invited to discuss the application to see if an agreed position could be reached in respect of the transcript.

[6] A memorandum was subsequently filed advising that the University and Dr Thornley agreed on some aspects of Dr Thornley's request but that they remain in disagreement in respect of others.

[7] The University is content for the full transcript of evidence for the University's witnesses to be provided to Dr Thornley, on the condition that the transcript is not to be distributed beyond Dr Thornley and his counsel and that it is only to be used and referred to by Dr Thornley and/or his counsel in the context of Dr Thornley's proceedings in the Authority. This would mean that he would have all the references to his name (and surrounding context), as well as all references to academic freedom made by witnesses called by the University. Dr Thornley was agreeable to the Court directing that the release of the transcript would be subject to the suggested condition.

[8] However, the University and Dr Thornley diverge with respect to references to Dr Thornley and/or academic freedom made by Associate Professor Wiles and witnesses called on her behalf.

[9] The Senior Courts (Access to Court Documents) Rules 2017 (the Rules) have been applied by the Employment Court to applications for access to Court documents using reg 6 of the Employment Court Regulations 2000 and/or by way of helpful analogy.¹ Rule 11 allows any person to ask to access any Court documents. Where an application is made, r 12 requires the Judge to consider the nature of, and the reasons given for, the request and to take account of various matters set out in r 12, to the extent they are relevant. Those matters include the principle of open justice and the freedom to seek, receive and impart information. Those matters must be balanced against the right to bring 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 as well as other confidentiality and privacy interests.

[10] In the present case, the hearing has concluded, but the substantive judgment has not been issued. The hearing was in open court, with media present. Dr Thornley was entitled to attend and to take handwritten notes.²

[11] Dr Thornley has a legitimate interest in what the University said about him. I also agree that he has a legitimate interest in what the University's witnesses said about academic freedom. Trying to isolate the transcript to evidence relevant to those matters would pose challenges for the Court's administration. However, given there are no apparent confidentiality or privacy issues, and the University is content for him to receive it, I see no reason why Dr Thornley should not receive the full transcript of the University's evidence. However, as no substantive judgment has been released, there should be limits on the use and distribution of the transcript.

[12] At this stage, therefore, Dr Thornley's application is granted to the extent that the transcript of evidence for the witnesses for the University is to be provided to him on the condition suggested, being that it is not to be distributed beyond Dr Thornley and his counsel and that it is only to be used and referred to by Dr Thornley and/or his counsel in the context of Dr Thornley's proceedings in the Authority against the University.

¹ *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 60 at [4].

² Courts of New Zealand "Note taking in court" <www.courtsofnz.govt.nz>.

[13] The University has advised that it will provide to Dr Thornley, through his counsel, the relevant portion of the transcript within seven days of the Court's judgment and that should now be attended to.

[14] The remainder of Dr Thornley's application will need to be dealt with separately by the Court. I consider it appropriate for a brief period to be allowed for Dr Thornley to consider the transcript received and, if he wishes to pursue the matter, for Dr Thornley and the parties to provide any further submissions in relation to the remainder of his application. Accordingly, if Dr Thornley wishes to pursue the remainder of his application, he is to confirm that to the Court within 14 days of the date of this judgment. He also may file brief additional submissions within that timeframe. The parties then would have a further seven days within which to respond before the Court makes a decision on the papers.

J C Holden
Judge

Judgment signed at 4.15 pm on 10 April 2024