

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKAURAU**

**CIV-2019-004-002434  
[2020] NZDC 16975**

UNDER	THE EMPLOYMENT RELATIONS ACT 2000
IN THE MATTER OF	INTERIM NON-PUBLICATION ORDERS OF THE EMPLOYMENT RELATIONS AUTHORITY
BETWEEN	THE CHIEF EXECUTIVE OF ORANGA TAMARIKI – MINISTRY FOR CHILDREN Applicant
AND	SUSAN MARGARET KENNEDY Respondent

Hearing: On the papers

Judgment: 25 August 2020

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**DECISION OF JUDGE G M HARRISON**

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[1] Because of travel restrictions imposed by Covid-19 lockdown, the parties have been unable to attend a hearing and have agreed that the application be determined on the papers.

[2] Oranga Tamariki (The Ministry) applies to register as a judgment of this Court a decision of the Employment Relations Authority of 18 December 2019.

[3] That decision made interim non-publication orders in the proceeding before it, prohibiting the publication of:

- (a) The names of any non-expert witnesses that Oranga Tamariki identifies will give evidence on its behalf in the proceedings, being (currently) (seven named persons);
- (b) The names of any employees or former employees of Oranga Tamariki alleged by Ms Kennedy to have bullied her, treated her unfairly or otherwise disadvantaged her in employment;
- (c) Any pleadings filed or evidence given by the parties, including any briefs of evidence and supporting documents filed by a party as its intended evidence.

[4] The application is made pursuant to s 141 Employment Relations Act 2000. It provides:

- (1) Any order made or judgment given under any of the Acts referred to in section 223(1) by the Authority or the Court (including an order imposing a fine) may be filed in the District Court, and is then enforceable in the same manner as an order made or judgment given by the District Court.
- (2) ...

[5] What is immediately apparent is that the section provides no basis upon which any party to proceedings before the Employment Relations Authority, or the Employment Court can object to the filing of the Authority's order in this Court.

[6] As a consequence, on 12 March 2020 I ordered that the order of the Authority be registered as an order of this Court.

[7] Ms Kennedy was not notified of the application. She took exception to that.

[8] By minute of 21 April 2020 Judge M-B Sharp directed as follows:

The Court should have notified Ms Kennedy of the callover date for the application to register the Employment Tribunal's interim non-publication orders; it was not the responsibility of the applicant.

That the order was made at callover in the absence of the respondent who had not been served with notice of it, amounts to a breach of natural justice

notwithstanding that the Court MUST register such orders when application is made. Even though the Court has no discretion whether to grant this application, the respondent was entitled to be heard.

In those circumstances I hereby set aside the order and require the Court to allocate a further callover at which the parties may appear by AVL or other electronic means. Should they prefer, they may file submissions electronically and seek that the Court determine the matter in chambers. Whether a hearing is conducted in open Court or chambers, Ms Kennedy is warned that the same outcome will eventuate (the order will be made), as the Court's hands are tied. However Ms Kennedy will have exercised her right to be heard.

[9] I reject that I have to differ from the conclusion reached by Judge Sharp, in her statement that Ms Kennedy had right to be heard on the application.

[10] That is because the filing of the Authority's order in this Court is a procedural or administrative action required on the part of the Registrar of this Court, and cannot affect Ms Kennedy's rights. The order need only be filed in this Court because the Employment Relations Act does not provide for enforcement procedures of its orders or judgments.

[11] The process is quite simple. Section 141 provides that the order "maybe filed in the District Court". The District Court Rules 2014 define, by r 1.4, the words "to file" as follows:

To file, in relation to a document means to lodge the document in the form required by these rules in, or to send it by post or electronically in accordance with these rules to, the proper Registry (as determined under rule 5.1), together with the filing fee (if any) that is payable.

[12] The order of the Authority was consequently presented to the Registrar of this Court for filing. All that would be required is for the Registrar to take notice of the seal of the Authority which appears on the document sought to be filed.

[13] It is arguable therefore whether any judicial direction is required to approve the filing. On the face of s 141 the Authority's order may simply be presented to the Registrar of this Court and if identified as an order of the Authority the Registrar would create a file and allocate a case management system number to it.

[14] No subsequent steps may then be taken in respect of that order. Alternatively, if a breach of it was threatened, or occurred then enforcement proceedings could be taken in this Court.

[15] That would require a written application supported by affidavit outlining the alleged breach and for an appropriate sanction or order for enforcement to be made. Should that occur Ms Kennedy would clearly have to be properly notified of that application, because her rights would be affected and she would be entitled to be heard.

[16] As Judge Sharp noted this Court must register the Authority's order. There is no right of opposition to that administrative act.

[17] Judge Sharp directed that counsel be instructed to assist the Court. Counsel assisting has filed a memorandum in which he concludes that the best course to follow would be for the Registrar to issue a certificate of judgment. However I do not see that course is appropriate it generally being followed when action is taken in another Court on a judgment of this Court when the proceeding is not transferred to that other Court and the certificate of judgment is issued for evidentiary purposes only to confirm the existence of the judgment of this Court.

[18] Counsel for Ms Kennedy has filed a lengthy submission in which she challenges the validity of the order, although it was confirmed by the Employment Court, that this Court has no jurisdiction to enforce the order of the Authority. Those are clearly matters that may be raised in the event that further action is taken on the order as now filed, but cannot prevent the filing of the order as such.

[19] Insofar as it is necessary for me to do so, I direct the Registrar to accept for filing in this Court, the order of the Authority.

[20] This direction is made pursuant to Rule 1.11 and the inherent power of this Court to enable it to act effectively – *R v Connelly*.<sup>1</sup>

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<sup>1</sup> .

[21] The Ministry does not seek costs and no order is made in that regard between the Ministry and Ms Kennedy. Counsel assisting may submit his invoice for his services in the usual way.

G M Harrison  
District Court Judge