THERE IS AN ORDER PROHIBITING PUBLICATION OF THE NAMES OF THE PARTIES AND ANY INFORMATION LEADING TO THE PARTIES' IDENTITY

IN THE EMPLOYMENT COURT
AUCKLAND

[2017] NZEmpC 130
EMPC 218/2017

IN THE MATTER OF	an application for sanctions
BETWEEN	ALA Plaintiff
AND	ITE Defendant

Hearing:	26 October 2017 (heard at Tauranga)
Appearances:	M Ward-Johnson, counsel for the plaintiff ITE in person
Judgment:	26 October 2017

ORAL JUDGMENT (NO 3) OF JUDGE B A CORKILL

Introduction

[1] Earlier today I delivered judgment (No 2) in open Court, which should be read together with this judgment.[1]

[2] In that judgment, I found that there had been clear breaches of the Court's compliance orders, and that there was no justification for ITE to ignore those orders by publishing confidential information on multiple occasions as he might see fit.

[3] I then indicated I would receive submissions as to the sanctions sought by ALA, which is a sentence of imprisonment or alternatively a fine, whether permanent non-publication orders should be made, and whether an order of indemnity costs should be made.

---

1 *ALA v ITE* [2017] NZEmpC 128.

[4] Before receiving those submissions, I raised two issues with ITE. The first was whether in light of my conclusions, ITE would now remove the YouTube and Facebook material, and disable the OneDrive access he had provided to certain persons, forthwith. He said that he would consider doing so after talking to other persons and that he would need at least a couple of days to undertake that process. I asked him to confirm that he was not agreeing to remove the social media material forthwith; had he been willing to do so, I would have adjourned briefly for that to happen. ITE declined to take these materials down today, so the sanction process must proceed.

[5] The second issue related to the taking of legal advice. I explained to ITE that a duty solicitor was available immediately to provide legal advice; I asked him whether he wished for that to occur given the seriousness of his personal position. ITE told the Court that he did not want to see a duty solicitor today. I record that the Court has indicated to ITE on a number of previous occasions that he would be well advised to take legal advice;[2] I am satisfied that every possible opportunity has been given to him to do so. I am also satisfied that it has been made very clear that his position is potentially serious and that ALA is seeking either a sanction of imprisonment or a significant fine.

[6] I now summarise the case which each party has presented as to sanctions.

Sanctions

ALA's case

[7] Mr Ward-Johnson, counsel for ALA, submitted that there had been multiple and significant breaches of the Court's orders. He said there had been seven substantive breaches of agreed confidentiality which follow a history of compliance orders having been issued first and originally by the Employment Relations Authority (the Authority) and then on various occasions, subsequent not only to the compliance order made by this Court in 2016,[3] but subsequent to a decision of the Court of Appeal declining leave to appeal, and subsequent to a decision of Supreme

---

2 Minutes of 22 August and 4 October 2017, and during the hearing on 17 October 2017.
3 *ITE v ALA* [2016] NZEmpC 42.

Court[4] declining leave to appeal. These breaches have already been accurately described in judgment (No 2). I note that the breaches which are now before the Court are those which occurred on and after 25 August 2017.

[8] Mr Ward-Johnson submitted that ITE had acted in a determined and calculated manner to breach the compliance orders, without justification and that those actions showed a flagrant disregard for the Court's orders.

[9] Counsel referred to the relevant factors for determining a sanction, and submitted:

- The multiple breaches indicated a high level of culpability is high.
- There is, counsel said, a particular need for deterrence because ITE had shown on a number of occasions that he is unwilling to accept the terms of settlement and the compliance orders which had been made. There was also a need for general deterrence. It was submitted that the need for deterrence and denunciation was and is accordingly significant.
- Thirdly, it was submitted that ITE's attitude has been poor, and he had taken no steps to address the compliance issues.

[10] ALA accordingly seeks an order of imprisonment. Mr Ward-Johnson has submitted that whilst such a sanction should only be imposed as a last resort, ITE has demonstrated significant contempt for the Court's orders so that this step is appropriate.

[11] Mr Ward-Johnson said alternatively, if a fine was to be imposed, it was submitted that it should be a significant one as there were no mitigating factors or indication of late compliance.

[12] Mr Ward-Johnson said that the fact ITE is an undischarged bankrupt would not impede the imposition of a fine. This was because a provable debt in a bankruptcy is one owed by a bankrupt at the time of adjudication, or after adjudication but before discharge by reason of an obligation incurred by a bankrupt

---

4 *B v ALA* [2017] NZSC 51.

prior to adjudication.[5] A fine imposed by this Court now would not be precluded by the bankruptcy.

[13] I also observe that information provided to the Court by ITE himself indicated that although he had been bankrupted by ALA because of non payment of the significant sums he has been ordered to pay totalling approximately $138,000, he nonetheless, has assets totalling approximately $385,000. Thus he could discharge his debts to ALA, and meet a significant fine.

Submissions of ITE

[14] Turning to ITE's submissions he stated that judgment (No 2) did not, in his opinion, address the issue of the Court's orders effectively overriding the public's right to expect accountability in respect of a local authority. ITE submitted that this was a fundamental issue. He also questioned whether there was any basis for making non-publication orders.

[15] I make the observation that I have traversed these matters already very fully in judgment (No 2), and indeed in earlier judgments. I do not propose to do so again. ITE has the right to apply to appeal those judgments if he considers that the Court has erred in law.

[16] As to the imprisonment option, ITE referred to certain personal circumstances, namely, the fact that a family member is attending a camp where parents are providing support. Without him being available if imprisoned, those arrangements would be compromised. ITE also referred to another family member being ill.

[17] He told me that he had no other submissions that he wished to make regarding his personal circumstances.

[18] In reply, Mr Ward-Johnson opposed the delayed imposition of any sentence of imprisonment, if that is the decision of the Court; he said there would be a risk of

---

5 Insolvency Act 2006, s 232.

further breaches. ITE then advised the Court that he was willing to assure the Court there would be no further breaches if a sentence of imprisonment was to be delayed.

Preliminary observations

[19] Before evaluating the particular factors I am required to consider, it is worth repeating a statement made in the English Court of Appeal as to why the Court must act when there has been deliberate non-compliance with orders of the Court, or as it was described on that occasion, a contempt. In *Jennison v Baker* Salmon LJ said:[6]

> "Contempt of court" is an unfortunate and misleading phrase. It suggests that it exists to protect the dignity of the judges. Nothing could be further from the truth. The power exists to ensure that justice shall be done. And solely to this end it prohibits acts and words tending to obstruct the administration of justice. The public at large, no less than an individual litigant, have an interest and a very real interest in justice being effectively administered. Unless it is so administered, the rights, and indeed the liberty, of the individuals will perish.

[20] Regrettably, throughout the protracted litigation in which ITE has become embroiled, he has completely failed to recognise this fundamental proposition even when it has clearly been spelt out to him.

Essential prerequisites

[21] Turning to the essential prerequisites under s 140(6) of the Employment Relations Act 2000 (the Act), as I indicated in my judgment of 12 April 2017, several elements must be proved beyond reasonable doubt:[7]

(a) The terms of the order must be clear and unambiguous, binding on the defendant, and that party must have had knowledge or proper knowledge of the terms of the order. As I explained in the April judgment, I am satisfied that each of these prerequisites is established.

(b) Secondly, a defendant must have acted in breach of the terms of the orders involved. Again, I am satisfied that this prerequisite is made out to the necessary standard. The circumstances and relevant findings are

---

6 *Jennison v Baker* [1972] 2 QB 52 (CA) at 61; see also *Solicitor-General v Radio Avon Ltd* [1978] 1 NZLR 225 (CA) at 229.

7 *ALA v ITE* [2017] NZEmpC 39 at [32] – [39] (12 April 2017 judgment).

fully traversed in judgment (No 2). In fact there is no real dispute from ITE that he has taken the various asserted steps – apart from two emails, in respect of which I have rejected ITE's explanation.[8] In short, there have been multiple publications which have breached the confidentiality obligations which were reinforced by the compliance orders; these have occurred before and after these proceedings were commenced; and ITE has declined to comply with the Court's takedown orders.

Appropriate sanction

[22] The section of the Act which describes the sanctions which the Court may impose where a compliance order has been breached, states:

> **140 Further provisions relating to compliance order by court**
>
> …
>
> (6) Where any person fails to comply with a compliance order made under section 139, or where the court, on an application under section 138(6), is satisfied that any person has failed to comply with a compliance order made under section 137, the court may do 1 or more of the following things:
>
> (a) if the person in default is a plaintiff, order that the proceedings be stayed or dismissed as to the whole or any part of the relief claimed by the plaintiff in the proceedings:
>
> (b) if the person in default is a defendant, order that the defendant's defence be struck out and that judgment be sealed accordingly:
>
> (c) order that the person in default be sentenced to imprisonment for a term not exceeding 3 months:
>
> (d) order that the person in default be fined a sum not exceeding $40,000:
>
> (e) order that the property of the person in default be sequestered.
>
> …

[23] Mr Ward-Johnson referred to the well known sanctions decision of *New Zealand Railways Corp v New Zealand Seamens IUOW*,[9] where Goddard CJ cited with approval this passage taken from *Howitt Transport Ltd v Transport & General Workers' Union*:[10]

---

8 *ALA v ITE*, above n 1, at [25] – [27] and [38].

9 *New Zealand Railways Corp v New Zealand Seaman's IUOW* [1989] 2 NZILR 613.

10 *Howitt Transport Ltd v Transport & General Workers' Union* [1973] ICA 1, at [10].

> Non-compliance with a court order can have a wide range of qualities. It may, at the top end of the scale, consist of a flat defiance of the court's authority. Going down the scale, it may not amount to flat defiance, but rather to a passive ignoring of the court's order. Going down the scale still further, it may amount to a half-hearted or, perhaps, colourable attempt to comply with the court's order. And, at the bottom end of the scale, there may have been a genuine, whole-hearted use of the best endeavours to comply with the order, which nevertheless has been unsuccessful. In each case there is a breach of the court's order. In each case, to use the technicalities of the law, there is a "contempt of court". But the quality of a non-compliance varies over an enormous range. The penalties which will be imposed by this court for contempt will equally vary over an enormous range and will reflect the quality of the non-compliance. They will, in fact, reflect faithfully the court's view of the seriousness of the conduct of the person to whom the order was addressed.

[24] More recently, the applicable principles as to choice of sanction were outlined in *Peter Reynolds Mechanical Ltd v Denyer*,[11] and these were summarised in my judgment of 12 April 2017 as follows:[12]

> [139] An analysis of s 140 of the Act was given in the recent Court of Appeal decision of *Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre v Denyer.* The case concerned a fine which had been imposed because an employer had failed to comply with a compliance order requiring it to pay certain sums of money, but the Court made some general observations as to the purpose of the provision.
>
> [140] The Court of Appeal stated that as a starting point, imprisonment and sequestration should be regarded as sanctions of last resort for failing to comply with a compliance order.
>
> [141] The Court went on to observe that the imposition of a fine does not involve deprivation of liberty, but it does make clear that a failure to comply with a compliance order is to be taken seriously. Such a conclusion was reinforced by the increase in the maximum sum available for a fine from $10,000 under the Employment Contracts Act 1991 to $40,000 under the current Act.
>
> [142] It was also stated that the power had to be exercised in context. That context was an enforcement response for non-compliance in a manner akin to contempt.
>
> [143] Coming on to describe considerations which would be relevant to the amount of a fine, the Court of Appeal stated that the primary purpose of the sub-section was to secure compliance. That was apparent from the wording of the section. Secondly, however, the sub-section was intended to enable the Court to impose some form of sanction for non-compliance.

---

11 *Peter Reynolds Mechanical Ltd t/a The Italian Job Service Centre v Denyer* [2016] NZCA 464, [2017] 2 NZLR 451.

12 *ALA v ITE*, above n 7.

[144] Consequently a range of factors would be relevant, which were described in the following passage:

> [76] … factors will include the nature of the default (deliberate or wilful), whether it is repeated, without excuse or explanation and whether it is ongoing or otherwise. Any steps taken to remedy the breach will be relevant together with the defendant's track record. Proportionality is another factor and will require some consideration of the sums outstanding. Finally, the respective circumstances of the employer and of the employee, including their financial circumstances, will be relevant.
>
> [77] The wording of s 140(6) does not prevent a fine being imposed even where compliance has been achieved. The need to deter non-compliance, either by the party involved or more generally, is not to be overlooked. …

(footnotes omitted)

[25] I now consider each of the discretionary factors highlighted in that judgment.

Nature of the default

[26] In my judgment of 12 April 2017, I described the nature of the default which I was then required to consider as follows:

> [147] ITE continues to maintain that he was justified in forwarding the emails which he did to the newly elected members, on what he contended were qualified privilege grounds.
>
> [148] I consider that his reliance on that defence was opportunistic. As ITE said in his covering email to the newly elected members, he was acting in violation of a Court order. He predicted additional legal action, because it was obvious that he was not permitted to make such a disclosure.
>
> [149] His apparent concerns could not possibly give rise to a public interest defence entitling him to make the disclosures. The Court ruled out such a possibility when it granted the compliance order. The reasons for the making of the order were clearly spelt out. Plainly, ITE was not at liberty to continue his crusade by making further disclosures to ALA.
>
> [150] The step he took was in direct contradiction of the express terms of the order. Moreover, the disclosure incorporated two documents that had been specifically considered by the Court when making the compliance order, the video and the PD [Public Disclosures] Act [2000] submission.
>
> [151] The sending of the emails was a yet further breach of the obligations of a binding settlement agreement into which he had chosen to enter.
>
> [152] I am satisfied that the breach was a deliberate and flagrant disregard of the Court's order.

[27] These statements are equally relevant and applicable now, although the situation is more serious than it was then. The Court is now being required to consider breaches subsequent to that judgment, with further serious escalation of those after ITE was served with the present proceeding on 25 August 2017, and after I made the takedown orders on 1 September 2017 in a judgment which was served on him later that day.[13]

[28] I must conclude that the present circumstances are very serious. In summary:

- ITE's reliance on a public interest defence was and is opportunistic.
- His apparent concerns could not possibly give rise to a public interest defence, given the terms of the original compliance order and the subsequent discussion of the defence in my April judgment.
- The reasons for the making of the order have been clearly spelt out. ITE was not at liberty to continue his crusade by making further disclosures to anyone, whether associated with ALA, or beyond that organisation.
- The steps he took, both before and after my judgment of 1 September 2017, were in direct contradiction of the express terms of the original compliance order, and of my order of that date.
- I am satisfied the steps taken amounted to a deliberate continuous and flagrant disregard of the Court's compliance orders. I note that they have also breached the Court's non-publication orders, but no application for contempt in respect of those particular orders has been brought.

Steps taken to remedy the breaches

[29] No steps have been taken to remedy the breaches. Rather, ITE has chosen to raise a defence, which it should have been apparent, could not apply.

---

[13] *ALA v ITE* [2017] NZEmpC 109 at [28].

Track record

[30] Having regard to the history I have outlined earlier, it is clear that ITE has ignored the many warnings he has been given that disobedience of the Court's orders would likely lead to the imposition of sanctions.

Deterrence

[31] Given the wilful conduct, specific deterrence is an important consideration. ITE's failure to respect the Court's orders is egregious. The Court must mark its strong disapproval for such conduct. Given the point which has been reached, I consider there is also an issue of general deterrence, making it clear that anyone who chooses to deliberately flout the orders of the Court as ITE has done will face a very serious sanction.

Personal circumstances

[32] I have already outlined ITE's financial circumstances. He described himself in evidence as an IT consultant. No information has been provided as to the extent of that work. The only other information provided to the Court by ITE as to his personal circumstances is that he and his former partner have one child, and that there has been a property settlement which I assume followed separation, but no details of this have been provided to the Court. I have no evidence as to mental or physical health or any other factors which may have impacted on ITE's behaviour, apart from those referred to in his various communications to third parties.

Other factors

[33] In my judgment of 12 April 2017, I said that the most troubling aspect of the established breaches at that point was ITE's complete lack of insight. He had continued to breach the strict confidentiality provisions of the settlement agreement, and had flouted the compliance order.

[34] I also stated that the matter had been considered by the Employment Relations Authority when it made a compliance order, by this Court when it made

the original compliance order, by the Court of Appeal,[14] by the Supreme Court,[15] and then by this Court in its orders of 12 April and 1 September 2017. Notwithstanding each of these judicial considerations where it has been made perfectly clear, in effect, that ITE must comply with his confidential obligations, he has deliberately chosen not to.

[35] It has been submitted that the Court should consider the imposition of a term of imprisonment, or a significant fine.

[36] I do not consider that a fine is appropriate with regard to the breaches I have now been required to review. Financial orders have been imposed on two previous occasions, a penalty of $6,000 on 15 April 2016, and a fine of $7,500 on 12 April 2017. Significant orders for costs have also been made. None of these have acted as a deterrent; indeed they have been resisted by ITE, and there have been enforcement difficulties to the point where, ultimately, he was bankrupted. In these circumstances, the imposition of a fine is not an adequate response to the deliberate and continued breaches of the Court's orders.

[37] Whilst the imposition of a sentence of imprisonment is an order of last resort, and I have not been referred to any recorded instances where this has occurred previously, that possibility must be considered on this occasion, given the multiplicity of breaches, against the continued deliberate flouting of the Court's compliance orders.

[38] It is useful to consider decisions in courts of general jurisdiction, where committal orders have been made following prior breaches of court orders. A convenient starting point is the decision of Potter J in *Ferrier Hodgson v Siemer,* where the court reviewed an escalating situation where, like here, there had been repeated disobedience.[16]

[39] In respect of a first contempt by way of publication in breach of an injunction, a fine of $15,000 had been imposed, and the defendant was ordered to

---

14 *B v ALA* [2016] NZCA 385.
15 *B v ALA*, above n 4.
16 *Ferrier Hodgson v Siemer,* HC Auckland CIV-2005-404-1808, 9 July 2007.

pay the plaintiff's costs on a solicitor/client basis amounting to approximately $183,000.[17]

[40] The situation considered by Potter J was further publication and dissemination by Mr Siemer of material in breach of the injunction, it being alleged that these breaches were contumelious and intentional.

[41] The Court reviewed a range of previous cases of this kind, including:

(a) *ISIS Group Seminars Ltd v Hauwai*, where the defendant had breached an interim injunction which had restrained him from advertising, promoting or conducting certain seminars.[18] The High Court had concluded that the defendant had deliberately flouted the injunction order and that a deliberate contempt must be therefore met by a sharp penalty. A term of imprisonment totalling 21 days was imposed.

(b) *Attorney-General v Pickering* where there were continuing breaches of the terms of a court injunction.[19] The defendant had sold an unlicensed animal remedy in breach of the injunction. The Attorney-General sought a term of imprisonment of three months. The defendant had signed an undertaking that he would not continue to knowingly sell or use that remedy. The Court imposed a sentence of imprisonment for one month.

(c) In *Auckland City Council v Finau* a term of imprisonment of 21 days was imposed by the District Court for breaching an injunction restraining the defendant from continuing to display signs on his property which contravened council bylaws.[20]

(d) In *North Shore City Council v Parklane Motor Inn Ltd* a term of imprisonment of one month was imposed on a defendant who

---

17 *Ferrier Hodgson v Siemer*, HC Auckland CIV-2005-404-1808, 16 March 2006.
18 *ISIS Group Seminars Ltd v Hauwai* HC Auckland CP-1987/89, 6 March 1990.
19 *Attorney-General v Pickering* HC Hamilton CP-24/98, 21 September 2001.
20 *Auckland City Council v Finau* [2003] DCR 286.

> deliberately breached a court injunction by holding conferences at its premises which contravened a conditional use consent in breach of an injunction restraining him from doing so.[21]

[42] In light of these authorities and the circumstances which the Court had been required to consider, Mr Siemer was imprisoned for a period of six weeks.

[43] Two further High Court judgments should be mentioned. The first of these is *Yang v Chen* where the court was required to consider three contempts which occurred with regard to property dealings.[22]

[44] The court found that a fine or other penalty short of imprisonment was out of the question, because Mr Chan owed US 1.7 million dollars on a judgment which had been obtained in Australia. He had also failed to pay any costs orders in the New Zealand proceedings, and was an undischarged bankrupt. He also had a record of failing to comply with court orders which rendered any lesser penalty inappropriate.[23]

[45] That left the question of an appropriate term of imprisonment. Allan J considered the authorities which had been considered by Potter J in *Ferrier*. He also considered another High Court decision, *TGR Helicorp Ltd (in rec) v Rogers*, where the deliberate withholding of information and misleading the Court in defiance of certain court orders of a bankrupt, meant that imprisonment was the only effective remedy: a sentence of one month's imprisonment was to be served or until the extant orders were complied with.[24]

[46] Returning to the *Yang* decision, Mr Chan was sentenced to a term of imprisonment for six weeks.

[47] Finally, I refer to *Zhang v King David Investments Ltd (in liq)*, where the defendant, having consented to orders to transfer a property sold it instead to a third

---

21 *North Shore City Council v Parklane Motor Inn Ltd* [1992] DCR 346.
22 *Yang v Chen (No 7)* [2012] NZHC 848, [2012] NZAR 541.
23 At [21].
24 *TGR Helicorp Ltd (in rec) v Rogers* HC Auckland CIV-2008-404-4109, 3 February, 29 March and 15 December 2010.

party for a higher price.[25] Again, the Court referred to the case of *Siemer*, noting that:[26]

> Direct defiance of Court orders calculated to challenge the Court's authority, of escalating gravity and exhibiting no remorse will attract imprisonment of six weeks and, if repeated, three months.

[48] On the facts of that case, the individual was given an opportunity of remedying the breach within a period of 20 days, failing which she was to be imprisoned for 20 days or until the payment was made, whichever was the earlier.

Conclusion as to sanction

[49] I am satisfied that the circumstances are so serious that the Court must conclude that imprisonment is the only option.

[50] This is a situation of escalating gravity and numerous warnings. Despite the opportunity to remedy breaches, ITE has deliberately chosen not to do so.

[51] After weighing the various factors which I have considered, I regretfully conclude that an immediate sentence of imprisonment has to be imposed. I am not prepared to defer it. There has already been far too much delay in dealing with this matter; the point has been reached where a sanction must be imposed immediately.

[52] Whilst in some cases it has been appropriate to order that a term of imprisonment would last only for so long as the breach would continue, so that the individual concerned could purge the contempt and thereby be released, such a possibility is not in the present case appropriate.

[53] First, ITE has been offered every opportunity to remedy his breaches, at least as far as the use of media platforms are concerned, but has deliberately chosen not to do so – even today, when a final opportunity was offered.

---

25 *Zhang v King David Investments Ltd (in liq)* [2016] NZHC 3018.
26 At [41].

[54] Second, dealing with these particular breaches would not purge the sending of multiple emails; the harm that has been done by the sending of those emails cannot now be undone.

[55] In all the circumstances, ITE is sentenced to a term of imprisonment for 21 days. This is a committal order under s 37(4) of the Corrections Act 2004.

Non-publication orders

[56] ALA seeks permanent non-publication orders.

[57] I analysed this issue fully in my judgment of 12 April 2017. On that occasion, I made permanent non-publication orders so as not to undermine previous orders of the Court relating to non-publication and searching of the Court file.[27]

[58] The same reasoning must apply here.

[59] Accordingly, the interim orders which were made previously as to non-publication of the names and/or identifying details of either party to the present claim, and preventing any person from searching the Court file without the prior leave of a Judge of this Court, are made permanent.

Application for indemnity costs

[60] ALA has sought an order of indemnity costs against ITE. Mr Ward-Johnson has advised the Court that the sum he seeks is $44,840 (GST exclusive) for the period 18 August 2017 to 25 October 2017 and a sum of $2,500 to $3,000 for his appearance today. He also seeks disbursements totalling $2,339.61. Mr Ward-Johnson has also relied on the reasoning of Judge Inglis as set out in both her substantive judgment and costs judgments of 2016.

[61] When I asked ITE if he wished to make any submissions on this issue, he said that he had not had time to analyse the schedule of costs, and so he made no submissions on this topic.

---

[27] *ALA v ITE*, above n 7, at [177] – [181].

[62] The settlement agreement entered into by the parties provided:[28]

> [ITE] agrees and acknowledges that, if he breaches cls 11 and/or 12 of this agreement, he will be liable for any of [ALA's] costs and/or disbursements (including expert fees and/or solicitor/client costs] incurred in addressing, responding to or dealing with the breach.

[63] As Judge Inglis noted in her judgment of 15 April 2016, the agreement as to costs was reflected, in identical terms, in the undertaking signed by ITE on 4 June 2014.[29]

[64] As Her Honour also concluded on that occasion, it is well established that a party may contractually bind itself to pay the other's full solicitor/client costs, and that once it is established that the indemnity is applicable and that properly construed it concludes solicitor/client costs, no discretion remains available other than on public policy grounds or as part of an assessment by the Court as to whether the amount of the solicitor/client costs are objectively reasonable.[30]

[65] I turn to consider the question of whether the costs which have been incurred are indeed objectively reasonable. I have been provided with an invoice that covers the month of August. Mr Ward-Johnson has properly made deductions of certain attendances which do not pertain to the proceedings in this Court; I consider that to be appropriate. There is a second invoice for the month of September and again an appropriate deduction has been made in the schedule which has been presented to the Court today. Finally, Mr Ward-Johnson has presented a work in progress schedule for October, again making a deduction of four attendances for which recompense is not sought.

[66] I am satisfied that the hourly rate upon which these invoices are based is appropriate for a lawyer attending a matter of the kind which has come before this Court. The proceeding has involved a number of novel issues. There has been some duplication with regard to those issues, in that the public interest defence had been considered on an earlier occasion so that reference was able to be made to the

---

28 Settlement Agreement, cl 13.

29 *ITE v ALA*, above n 3, at [87].

30 At [86] and [89], citing High Court Rule 14.6(4)(e), and *Watson & Son Ltd v Active Manuka Honey Assoc* [2009] NZCA 595 at [35]. The Court of Appeal was not satisfied that Judge Inglis' analysis gave rise to a point of law justifying an appeal: *ITE v ALA* [2017] NZCA 126.

Court's previous judgments. Nonetheless, there were other aspects of the matter including the ability of the Court to make takedown orders and then at the sanctions stage, the question of imposing very serious penalties in respect of which, as I mentioned earlier, there is no previous recorded instance of the sanction of imprisonment having been imposed in this Court.

[67] Those complexities justify the extent of the attendances which have been incurred, and as I said, the hourly rate which has been charged. In my view, the matter comes back to the general purpose of a contract to pay fees. The assessment of both hourly rate and time incurred must be considered in the context of the particular contractual provision and circumstances, when the parties entered into this agreement.

[68] As to Mr Ward-Johnson's appearances today, I consider that an appropriate amount will be $1,500. The matter has been able to be dealt with reasonably efficiently and promptly and I so allow.

[69] ALA is entitled to invoiced sum $44,840 (net of GST), the $1,500 I have just allowed, and the disbursements of $2,339.61, a total of $48,679.61. ITE is ordered to pay this sum to ALA. There is no impediment to the making of this order in respect of an undischarged bankrupt, for the reasons I outlined earlier.

Final comment

[70] The circumstances which have arisen in the present case are most regrettable, and it is to be hoped that it is by now clear that wilful disobedience to orders of the Court will be taken seriously and met with the appropriate response, particularly where there are ongoing breaches.

[71] It is perhaps appropriate to finish by referring to the statement made by Goddard CJ when issuing writs of sequestration against unions who had deliberately breached two interim injunctions which affected the sailing of the Cook Straight Ferries. I respectfully agree with these remarks of the former Chief Judge:[31]

---

31 *New Zealand Railways Corp*, above n 9, at 632.

I want to conclude by saying that no Judge sitting in this Court relishes hearing applications for orders of the kind which have come before me in the case between these two parties. If anything, every Judge of this Court would view the task before him with feelings approaching distaste. But those feelings must be overcome, for every Judge, whether sitting in this or any other Court, takes upon his or her appointment to the Bench an oath to do right to all manner of people after the laws and usages of New Zealand without fear or favour, affection or ill-will. That is an oath prescribed by an Act of Parliament and is an indication of the community's expectation of impartiality from its Judges and the further expectation that they will not shrink from doing their duty, however unpleasant it may be.

B A Corkill

Judge

Judgment signed at 1.15 pm on 26 October 2017