NON-PUBLICATION OF THE NAME, ADDRESS AND IDENTIFYING DETAILS OF UXK AND AS TO THE CONTENTS OF THE DISTRICT COURT JUDGMENT REFERRED TO HEREIN

IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA
TĀMAKI MAKAURAU

[2021] NZEmpC 167
EMPC 226/2021

IN THE MATTER OF	an application for judicial review
BETWEEN	UXK Applicant
AND	TALENT PROPELLER LIMITED First Respondent
AND	THE EMPLOYMENT RELATIONS AUTHORITY Second Respondent

EMPC 229/2021

AND IN THE MATTER	of a challenge to a determination of the Employment Relations Authority
BETWEEN	UXK Plaintiff
AND	TALENT PROPELLER LIMITED First Defendant
AND	THE EMPLOYMENT RELATIONS AUTHORITY Second Defendant

Hearing: 19 August 2021
(Heard by VMR)

Appearances: A Fechney, advocate for UXK
R Upton, counsel for Talent Propeller Ltd
P Gunn, counsel for the Employment Relations Authority (abiding; appearance excused)
A Scott-Howman, intervener for the Ministry of Business, Innovation and Employment

Judgment: 5 October 2021

JUDGMENT OF B A CORKILL

Introduction

[1] UXK brought several employment relationship problems to the Employment Relations Authority. Three of them are relevant to this proceeding. Talent Propeller Ltd (TPL), a former employer of UXK, is a party to two of them. It is not involved in the third which involves a third party entity which had employed UXK.

[2] During her employment with TPL, UXK obtained suppression orders from the District Court. The subject matter of that proceeding did not involve TPL.

[3] In the first of the proceedings which UXK brought against TPL, an issue arose as to whether an unredacted copy of the District Court judgment should be produced to the Authority, so it could determine whether the document was relevant to the relationship problem, there being a dispute between the parties as to whether this was the case.

[4] Subsequently, multiple directions were made by the Authority, which initially required UXK to produce an unredacted copy of the document. When this did not occur, the Authority directed that it would produce the document on its own motion, since an unredacted copy of the document has been placed by UXK on another file involving a third party.

[5] UXK then initiated judicial review proceedings. She also issued a challenge in respect of the various directions on a non-de novo basis. This means that, if there is indeed a justiciable challenge, the Court is required to consider whether the Authority erred in fact and/or in law.

[6] The proceedings were timetabled for an early fixture, to be heard together. The Ministry of Business, Innovation and Employment sought, and was granted, intervener status.

[7] A submissions-only hearing then took place on the basis of an agreed bundle of documents. No evidence was tendered by the parties. This is perhaps regrettable. Although a reasonable impression of a complex chronology is available from the documents, there are some gaps and omissions, as I shall note later.

Relevant facts

[8] UXK was an employee of TPL from February 2019 to February 2020.

[9] In late 2019, UXK advised her manager at TPL about a proceeding in which she was engaged. Subsequently, a judgment was issued by the District Court in that proceeding, which was subject to a suppression order preventing the publication of her name, address, occupation or her identifying particulars. UXK informed her manager of the outcome of the proceeding, but she did not provide that person with a copy of the District Court judgment.

[10] On 19 February 2020, TPL dismissed UXK. The dismissal related to issues concerning the formation of her IEA. Soon after, on 26 February 2020, it filed a proceeding against her, seeking various remedies, including compliance orders and penalties for breach of her employment agreement.

[11] In its first statement of problem, when describing the lead up to a disciplinary process which resulted in UXK's dismissal, TPL referred to the District Court proceeding.

[12] On 9 March 2020, UXK filed a memorandum in the Authority asserting, amongst other things, TPL had breached that court's suppression order by referring to the District Court proceeding. She requested that TPL be directed to file a revised statement of problem. Attached to the memorandum was a redacted version of the front page of the District Court judgment.

[13] On 10 March 2020, the Authority acknowledged receipt of UXK's memorandum. On its own motion, it made an interim order of non-publication of names of both parties, which it said was necessary and in the interests of justice. This was the first in a series of minutes, many of which related in one way or another to the District Court judgment.

[14] On 16 April 2020, counsel for TPL wrote to the Authority stating that, although they believed it was not unlawful for it to have referred to the District Court judgment, the facts relating to it could become a distraction from the central claims TPL was bringing against UXK. An amended statement of problem was accordingly filed which contained no reference to those matters.

[15] On 21 April 2020, the Authority issued a fifth minute, which recorded matters that had been discussed at a case management conference the previous day.

[16] Appearing in person, UXK had sought a continuation of the interim non-publication order. This had been opposed by TPL on the basis that the District Court order to which reference had been made was no longer before the Authority.

[17] UXK had also argued there had been a breach of the suppression order. In the minute, the Authority said that issue was for the District Court.

[18] The Authority made a further non-publication order, again on an interim basis. The order protected the parties' names and the contents of the order of the District Court. The parties were directed to make submissions on whether the order should be made permanent at the outset of an investigation meeting which was pending at the time.

[19] Although the parties had requested an urgent hearing for resolution of the relationship problem raised by TPL, it could not proceed in its entirety because of COVID-19 related restrictions. Priority was, however, granted for one aspect of the company's claim which concerned alleged breaches of duties by UXK after her dismissal.

[20] In due course, the Authority investigated this issue, so as to determine whether compliance orders should be made. TPL's application for such an order was declined in a determination issued on 22 July 2020.

[21] One of the topics which was discussed by the Authority in its determination related to the issue of non-publication. It noted that any risk of publication of the "subject evidence" was unacceptable. Counsel for TPL had proposed that the determination be written so as to avoid any reference to the evidence. The Authority said this suggestion was reasonable but not sufficient to eliminate the risk of publication given the nature of the evidence. A permanent order was accordingly made.

[22] The Authority advised the parties that they would be contacted in due course to make arrangements for an investigation of the balance of TPL's claims, as well as a personal grievance which UXK had by then raised.

[23] Other statements of problem were also filed in the Authority by UXK on other matters. These cases were assigned to the same Authority Member. Two of the other cases are relevant for present purposes.

[24] The first proceeding was filed in early 2021, in which UXK brought a claim against three parties: TPL, a director of TPL, and as a subsequent employer. UXK alleged those parties had breached the non-publication order the Authority had made on 22 July 2020.

[25] For the purposes of this proceeding, the representative who was by this time acting for UXK, Ms Fechney, forwarded to the Authority and the parties involved a copy of each page of the District Court judgment, redacted in part, on 9 February 2021. Subsequently, the parties attended mediation without resolution of the problem. They now await a date for the investigation of this claim.

[26] The second proceeding was filed earlier, in 2019. It related to a relationship problem which UXK raised against another employer. The case appears to have been

dormant for a period, but it was reactivated by Ms Fechney in February 2021 with a request that it be dealt with urgently.

[27] In this proceeding, non-publication of both parties' names was requested. I infer from the minute which the Authority then issued on 1 March 2021 that it had been told that one of the grounds relied on was that the District Court judgment had been breached by another party and that this circumstance supported the making of a non-publication order.

[28] The Authority directed UXK to refile her application for non-publication by way of a memorandum. She was to include the order which she had told the Authority had been breached; how, when and who had breached it, and when she became aware of those problems. She was also to set out what steps she had taken to enforce the District Court order and if no steps had been taken, why. All asserted grounds were to be supported by affidavit evidence. The Authority also directed that no redacted documents were to be filed without leave.

[29] Ms Fechney told the Court that this direction was satisfied by the subsequent filing of an affidavit from UXK, which appended an unredacted copy of the District Court judgment in its entirety. She also said this particular proceeding has not progressed further due to the non-publications issues which have arisen in the proceedings which are before this Court.

[30] On 12 March 2021, challenges which had been brought by the parties to the Authority's first determination[1] came before the Court. The company's challenge was brought on the basis that the making of a permanent order was incorrect because alleged breaches of UXK's employment agreement had not yet been investigated. In circumstances where she may not be able to meet any financial remedies awarded against her, a permanent order would render "any breaches that may be ultimately established nugatory". There was accordingly an error of law. Further, the Authority had breached natural justice by taking into account medical evidence that was filed after the timetable for filing evidence had closed which it was alleged, had not been

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1 Described at paras [20]–[22] above.

verified or sworn, and was not subject to any questioning by the Authority Member, or the company's representative. No details of UXK's challenge have been provided to this Court.

[31] The challenges were resolved by a consent judgment of this Court.[2] The Authority's permanent non-publication order as to UXK's identity was set aside. The Court ordered that her identity was not to be published, pending further order of the Authority or the Court.[3]

[32] On 14 April 2021, a case management conference was held by the Authority to advance the hearing of the balance of the issues which remain for resolution. A sixth minute was issued on 15 April 2021 which dealt with the various matters that had been discussed for the purposes of an investigation meeting which the Authority directed would take place over three days in December 2021.

[33] A non-publication order had again been sought. The Authority recorded that this was not opposed on an interim basis. Such an order was made. The Authority stated that whether the order should be made final would be considered and determined after the Authority had heard evidence and submissions at the substantive investigation meeting. It is common ground that the Authority thereby intended the interim order would continue until the investigation meeting, currently scheduled for December 2021.

[34] Amongst other directions that were made was one in which UXK was directed to provide an unredacted version of the District Court judgment which she had filed in the proceeding on 10 March 2021.

[35] On 21 April 2021, Ms Fechney wrote to the Chief of the Authority confirming that she was now representing UXK on a number of matters that were before the Authority, all of which had been assigned to the same Member. She submitted there was a real, and perceived, risk of a conflict of interest. This was because there was now an overlap of the proceedings involving TPL, the proceedings which raised the

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2 *Talent Propeller Ltd v UXK* [2021] NZEmpC 26.
3 At [3].

claims arising from UXK's dismissals, and the proceedings in which it was alleged non-publication orders had been breached.

[36] The Chief of the Authority reviewed the matter and stated he had concluded on an interim basis that the Member should continue to investigate the employment relationship problems. Ms Fechney was offered the opportunity of providing further comment by the end of the month. The Court is advised that no further response was submitted at that stage.

[37] On 20 May 2021, UXK filed a statement of problem, as had been directed. It incorporated a chronology of events that ran from late 2018 to early 2020. As part of that timeline, reference was made to various aspects of the District Court proceeding in which she had been involved. She alleged that notwithstanding her disclosure of that proceeding to TPL during her employment, she continued to hold her employer's trust and confidence.

[38] In late May 2021, the representatives corresponded over the direction that an unredacted copy of the District Court judgment be provided to the Authority. Ms Fechney told counsel for TPL, Mr Upton, that she had understood from the discussion with the Authority at the case management conference that the document would only be disclosed if it were to be relied upon by UXK to support her application for a permanent non-publication order.[4] She advised that her client would not be relying on that document; her application for a non-publication order would be advanced on the basis of medical evidence. She said she would be happy to refer the matter back to the Authority for direction, as the minute did not clearly cover what had been discussed during the telephone conference.

[39] Mr Upton told Ms Fechney that he disagreed with these contentions. He then wrote to the Authority, stating that the District Court judgment had not been provided by UXK, as had been directed. He said that the unredacted judgment would be directly relevant to the application for a permanent non-publication order and that its contents would also likely contradict statements UXK had made in her CV, a document which

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4 Which resulted in the sixth minute of 15 April 2021.

was apparently relevant to the issues to be explored at the investigation meeting. He sought a further "urgent direction" for production of the document.

[40] Responding to these assertions, Ms Fechney wrote at length to the Authority. She said a misunderstanding had arisen. She disputed that the document was relevant. She said UXK's employment had not been terminated because of issues relating to the District Court proceeding. She suggested that TPL's insistence on the unredacted document being filed was no more than a fishing expedition.

[41] In its seventh minute of 2 July 2021, the Authority summarised the parties' respective positions as to the direction which had become contentious. No comment was made as to whether a misunderstanding as to the provisions of the document had arisen at the previous case management conference.

[42] The Authority then directed that it would assess the relevance of the unredacted judgment. An investigation meeting would be held on 15 July 2021, with submissions being filed in advance. The Member went on to state that it would not be possible to assess relevance without a copy of the unredacted judgment being provided for this purpose. A copy should be filed and served as soon as practicable. The representatives were to discuss the distribution of the unredacted copy and seek directions as necessary.

[43] On 3 July 2021, Ms Fechney wrote to the Authority stating UXK intended to seek removal of the matter to the Employment Court. It was submitted that the directions to produce an unredacted copy of the District Court's document breached the principles of natural justice, because UXK had not been properly heard about the significance of the non-publication order when the proceeding was originally filed and when it was most recently reinforced on 2 July 2021.

[44] Ms Fechney referred to the fact that the imposition of penalties was being threatened against UXK and herself for allegedly failing to produce the disputed document. In the circumstances, further steps would have to be taken, as neither she nor the client could risk these allegations of non-compliance. Ms Fechney again said removal of the proceedings to the Court was being considered.

[45] On 5 July 2021, Mr Upton responded stating there was no application to remove any aspect of the proceeding to the Court, and that there was no appropriate basis for doing so. He said natural justice had been, and would be, complied with. The parties had already been given an opportunity to provide submissions as to the relevance of the document.

[46] That said, Mr Upton confirmed he would be comfortable with the unredacted judgment being provided to him on a counsel to counsel basis, pending further order of the Authority. The "threats" made previously as to possible penalties were withdrawn, since the Authority had now directed there would be a hearing to determine relevance.

[47] On 6 July 2021, the Authority issued its eighth minute. It noted that no application for removal had been filed; if and when it was, it would be considered according to its merits.

[48] The Authority again recited the background to the disclosure issue, noting it was unremarkable that a document in dispute be produced for the purposes of assessing relevance.

[49] The Authority also noted that UXK had produced the unredacted copy of the District Court judgment in support of an application for a non-publication order in another proceeding which was before the Authority. It therefore needed to understand why UXK contended the document was relevant in that proceeding but not relevant to the current one.

[50] On 7 July 2021, UXK made a complaint to the Chief of the Authority. She recited the history as recorded earlier in this judgment, with emphasis on the multiple directions that had been made concerning the District Court judgment; she stated these had been inappropriate. She proposed that the Member be removed from cases where this issue arose, and that each of UKX's proceedings be assigned to separate members.

[51] On the same day, Ms Fechney informed the Authority that UXK would not be providing an unredacted copy of the District Court judgment, although she was willing for it to be shared with the Member only for the purposes of assessing relevancy. The possibility of removal of the matter to the Court and/or the issuing of a judicial review proceeding was referred to again, but it was hoped such steps could be avoided.

[52] On 8 July 2021, the Chief of the Authority responded to UXK's complaint stating the matter was currently before the Member for investigation, and it would thus be inappropriate for the issues to be discussed with the Member. Once a determination had been issued, the complaint could be considered further. It was also noted UXK could bring a challenge of any determination to the Court.

[53] On the same day, the Authority issued its ninth minute, in response to Ms Fechney's email of 6 July 2021. The Authority stated that in the absence of any proposal as to how relevance could be determined without the document in question being produced, UXK was once again directed to provide an unredacted version of the District Court judgment. She was required to do so by 4.00 pm on 12 July 2021.

[54] In response, Ms Fechney wrote to the Authority, repeating her recommendation that the unredacted document be shared with the Member only. She said this was an option allowed for under the Employment Court Regulations 2000 (the Regulations) when dealing with disclosure issues.[5] She noted, however, that counsel for TPL had not agreed to this possibility. She also suggested the filing of written submissions on the relevance matter and that the issue be resolved on the papers.

[55] In response, Mr Upton advised the Authority that if necessary his client would seek a compliance order.

[56] On 12 July 2021, the Authority issued its tenth minute, referring to the proposals Ms Fechney had made as to the way forward. The Authority said it was fundamental to a fair process that the parties be able to comment on the disputed material. The proposal made did not appear to allow for that possibility. The Member

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5 Employment Court Regulations 2000, reg 45(2).

also said disclosure provisions of the Employment Court Regulations did not apply to the Authority. A further opportunity for comment was offered.

[57] On the same day, Ms Fechney responded, repeating that the possibility which had been advocated of the Member only seeing the disputed document, was one allowed for under the Regulations. She argued that the Authority was required to act in equity and good conscience but could not act inconsistently with "any" regulations made under the Act.[6] She said the Authority could not conclude the procedure allowed for in the Regulations would be unfair if applied by the Authority; the guidance of the Regulations should be followed in the present case.

[58] On 13 July 2021, several steps occurred. In its eleventh minute, the Authority referred to the communication received from Ms Fechney concerning the process that may be adopted under the Regulations, stating that this proposal would be unfair and unreasonable for the Authority without giving both the parties a chance to consider the document first and then to make submissions. It would also amount to a fiction since the unredacted judgment had been filed by UXK in support of another application which was before the Authority.

[59] The Authority went on to say:[7]

> To ensure the investigation meeting scheduled for 15 July 2021 can proceed the Authority intends to produce the unredacted judgment by its own motion on a representative/counsel only basis. Given the nature of the judgment the question of whether the "bare communication" to persons with a genuine interest, assessed objectively, is one squarely before the Authority in the assessment of relevance.[8] The parties are to file any comment by 4.00 pm Tuesday 13 July.

[60] It was noted that further directions could be sought.

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6 Employment Relations Act 2000, s 157(3)(b).
7 Relying on s 160(2) of the Employment Relations Act 2000.
8 Reference was made to *ASG v Hayne* [2017] NZSC 59, [2017] 1 NZLR 777, [2017] ERNZ 208 at [79].

[61] In response, Mr Upton pointed out that the Authority might wish to revisit the possibility of the upcoming investigation meeting going ahead "on an open basis". He said TPL would be comfortable with the matter proceeding in its absence, attended only by him as its counsel.

[62] Next, UXK filed a further complaint with the Chief of the Authority, stating that the Member could not take documents from one file which was subject to non-publication and name suppression orders, when self-incrimination issues could arise, and file it on another. She said the Chief should urgently intervene.

[63] A short time later, the Authority issued a twelfth minute directing that if no comment was received from Ms Fechney, the imminent investigation meeting would be confined to counsel/representative only so as to protect the document at issue; that is, the meeting would be held in private.

[64] Then, Ms Fechney sent a detailed email to the Authority in respect of the eleventh and twelfth minutes, asking that it be copied to the Chief of the Authority.

[65] It was explained that an unredacted version of the District Court judgment had been provided on another file because the Authority had so directed. UXK had agreed to provide it, as it was "inherently relevant" to the reason for the termination of her employment as referred to in that statement of problem. That was not the case in the proceeding involving TPL.

[66] Ms Fechney sought an extension of time to consider filing the document. She told the Court this was so she could obtain legal advice, I infer because the issues had become very complex. TPL was asked to agree to the extension.

[67] In the circumstances, the Authority was asked to stay the direction that had been made, and to adjourn the proceeding whilst UXK obtained advice.

[68] Ms Fechney said a stay was appropriate because she and UXK did not wish to risk an allegation of contempt for disclosing a suppressed document or for breaching the Authority's directions. She repeated that the Member alone could receive and

inspect the disputed document, in accordance with the option allowed for under the Regulations. She referred to *New Zealand Meat Workers Union Inc v South Pacific Meats Ltd*, where the Court emphasised the desirability of consistency of some disclosure practices.[9]

[69] Ms Fechney went on to submit that the Authority was already aware of UXK's intention to challenge the process for considering relevance. She also said the client wished to engage with good faith so that a suitable resolution could be sought.

[70] The Authority then issued its thirteenth minute where some of the points made by Ms Fechney were briefly summarised. It then directed that the investigation meeting would proceed as scheduled, with safeguards. The meeting would be open to Ms Fechney and Mr Upton only. The document was to be provided strictly on a "counsel/representative basis" and only for the purposes of the relevance hearing. At 4.00 pm that day, a copy of the unredacted document was to be provided to Mr Upton and Ms Fechney by the Authority on that basis. They were not to distribute it without leave of the Authority. Ms Fechney told the Court the minute was sent to the parties at 4.02 pm.

[71] Soon thereafter, Ms Fechney advised the Authority that she was in the process of contacting "the Registrar of the District Court" to request an urgent oral application to stay the effect of the Authority Member's order. She told the Court that she had intended this to be a reference to the Employment Court.

[72] A short time later, the Authority issued its fourteenth minute, referring to the advice that had been received from Ms Fechney. It stated that though there may be some room to doubt the basis of the application to the District Court, from an abundance of caution, the investigation meeting would be delayed to 22 July 2021. The Authority went on to say that, in doing so, all relevant Authority documents, including minutes one to 13, should be attached to any application. The Member also noted her concern that this was a potential further instance of delay and obstruction of the Authority's investigation.

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9 *New Zealand Meat Workers Union Inc v South Pacific Meats Ltd* [2015] NZEmpC 138, [2015] ERNZ 104.

[73] On 14 July 2021, the Chief of the Authority responded to UXK's complaint of that day, reiterating that the matter was still before the Authority for investigation, so it would be inappropriate for the issues raised to be discussed with the Member.

[74] UXK's challenge and judicial review proceeding were prepared and served on 15 July 2021, according to a memorandum filed by Crown Law on behalf of the Authority on 16 July 2021. It recorded that given the filing of the judicial review proceedings which cited the Authority as second defendant, the Authority would adjourn the investigation meeting presently scheduled for 22 July 2021, to be reconvened once the Court's decision was known. It would not itself produce an unredacted copy of the District Court judgment pending the outcome of the proceeding in the Court. The Authority would confirm these matters in a minute to be issued shortly.

[75] UXK had applied for an order staying the Authority's proceedings. At a telephone directions conference held on 16 July 2021, the parties confirmed no decision was, in the circumstances, now required on the application for stay.

[76] On 19 July 2021, the Authority issued its fifteenth minute confirming the investigation meeting scheduled for 22 July 2021 would be adjourned; and that it would not produce a copy of the unredacted District Court judgment pending the outcome of this Court's proceedings. On the same day, UXK filed her challenge.

The parties' cases

[77] In her challenge, UXK seeks orders setting aside the directions of the Authority which required disclosure of an unredacted copy of the District Court judgment; and the direction that the Authority would produce the document on its own motion. Ms Fechney submitted that the applicable minutes were determinations susceptible to challenge under s 179 of the Employment Relations Act 2000 (the Act). She argued that the determinations were of substantive effect so that s 179(5) did not apply.

[78] Ms Fechney also submitted that the Authority had no jurisdiction to receive evidence protected by a suppression order under the Criminal Procedure Act 2011 (the CPA). Moreover, the document was not relevant to the application for a permanent non-publication order, because UXK did not intend to rely on it for that purpose.

[79] Nor would it be relevant to UXK's personal grievance claim. Although she had referred to the fact of the proceedings in the District Court in explaining she had been transparent with TPL as her employer, the outcome of the District Court proceeding was not a relevant matter for the purposes of her grievance. Moreover, since a penalty was sought against UXK, she was entitled to rely on the common law privilege as to self-incrimination for the purposes of the proceeding.

[80] The Authority should have proceeded on the basis that the Member only receive an unredacted copy of the document, as had been proposed and as is allowed for under the Regulations.[10]

[81] Ms Fechney also submitted natural justice was breached by the Authority's direction that it would produce the unredacted document of its own motion, and then direct that this occur under a timeframe where it was impossible for UXK to obtain timely advice.

[82] In summary, Ms Fechney said the relevant directions should be set aside; that the Court should recommend that if a party intends to produce a judgment protected by an order of a court, an application must be made to the relevant court for a necessary variation; and that issues of disclosure should be determined in light of the process allowed for in the Regulations.

[83] UXK's claim for judicial review relied on the same chronology but sought different relief. The remedies which were sought included an injunction preventing the Authority from producing the document by its own motion; a declaration that the stated intention to do so was ultra vires; that all current matters before the Authority involving UXK be allocated to different members of the Authority; and that the Court

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[10] That is, reg 45(2) of the Employment Court Regulations 2000.

reverse all directions relating to the District Court judgment, with the consequence that the document would be removed from all matters involving UXK.

[84] In his submissions, Mr Upton argued in summary that no right of challenge existed because no determination(s) had been issued. Alternatively, it was submitted that even if the minutes were to be regarded as determinations, the statutory bar in s 179(5) precluded consideration of a challenge. When considering whether the directions were procedural or substantive, the question was whether they would have an "irreversible and substantive effect" on either parties' rights; such a circumstances did not exist here.[11]

[85] Production of the document to counsel only, at a private investigation meeting, would avoid any prejudice. Moreover, non-publication orders could be made in respect of the District Court judgment at the investigation meeting concerning relevance. A right of challenge would exist in respect of the resulting determination.

[86] It was to be noted that the District Court judgment suppressed the "name, address, occupation or identifying particulars of [UXK]". It did not follow that the judgment should therefore be suppressed in its entirety.

[87] In answer to a question from the bench, Mr Upton agreed that the issue of relevance could be resolved by a different Member, a practice often adopted in disclosure disputes or as to the relevance of intended evidence. He also agreed that provision of the document to him on a "representative to counsel" basis could be subject to an undertaking.

[88] Mr Upton submitted that the document could be relevant to UXK's application for a permanent non-publication order, notwithstanding the fact she stated she would not rely on it for those purposes. In any event, it would be relevant for a further reason: UXK has referred in her statement of problem to the fact she had told TPL about the proceedings.

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[11] Relying on dicta to that effect in *H v A Ltd* [2014] NZEmpC 92, [2014] ERNZ 38 at [26].

[89] Turning to the judicial review proceedings, Mr Upton submitted that none of the qualifying factors for bringing an application for review in s 184(1A) of the Act applied; in particular, the necessary precursor of bringing a challenge and the obtaining of a judgment had not occurred.

[90] Mr Scott-Howman, who appeared for the Attorney-General on behalf of the Ministry of Business, Innovation and Employment – but not the Authority – assisted the Court with submissions which addressed both the facts and the law.

[91] He discussed leading cases on the question of whether minutes of the Authority could be determinations; and if so, whether the Authority's directions fell within the ambit of s 179(5).

[92] Mr Scott-Howman also addressed the jurisdictional basis for judicial review, citing recent cases which have discussed the applicable provisions in some detail.[12]

[93] With regard to the possibility of production of information on one file for the purposes of an investigation on another, he referred to the absolute privilege which is bestowed on information concerning the raising or resolution of a personal grievance under s 121 of the Act. This provision, he said, would require consideration by the Court. He submitted the proposed step could well have natural justice implications.

Analysis

Disclosure

[94] I begin by making some points relevant to disclosure in the Authority.

[95] Unlike the position in the Court, where there is a detailed regime regulating the disclosure of documents,[13] no such provisions have been promulgated for the Authority.

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12 *Samuels v Employment Relations Authority* [2018] NZEmpC 138, [2018] ERNZ 406; *Bennett v Employment Relations Authority* [2020] NZEmpC 54, [2020] ERNZ 136.

13 Employment Court Regulations 2000, regs 37–52.

[96] In the present case, the Authority correctly stated that the provision of relevant documents in the Authority is governed by s 160 of the Act.[14]

[97] That section relevantly provides:

> **160 Powers of Authority**
>
> (1) The Authority may, in investigating any matter,—
>
> (a) call for evidence and information from the parties or from any other person:
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> (b) require the parties or any other person to attend an investigation meeting to give evidence:
>
> (c) interview any of the parties or any person at any time before, during, or after an investigation meeting:
>
> (d) in the course of an investigation meeting, fully examine any witness:
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> (e) decide that an investigation meeting should not be in public or should not be open to certain persons:
>
> (f) follow whatever procedure the Authority considers appropriate.
>
> (2) The Authority may take into account such evidence and information as in equity and good conscience it thinks fit, whether strictly legal evidence or not.
>
> ...

[98] In *MAS Zengrange (NZ) Ltd v HDT Ltd*, former Chief Judge Colgan said this of the disclosure regime in the Authority:[15]

> [45] The scheme of the Act is that proceedings before the Authority are not in the nature of adversarial litigation. This includes its regime of document disclosure which does not provide for this to occur between parties directly in contrast with the position in this Court. The processes under the control of the Authority including the ability to determine what witnesses it will hear from and what documents it will consider. Clearly there are documentary disclosure constraints of relevance.
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> ...
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> [47] The plaintiff has now abandoned its submission that the statutory disclosure regime under the [Employment Court] Regulations is applicable to any orders that the Authority makes. That is a realistic concession. Parliament has deliberately not provided for a statutory disclosure regime in respect of the Authority as it has for the Court. The Court's regime does not apply by default. As [counsel] submitted, however, that does not mean that elements of the Court's statutory process cannot be adopted on a case by case basis, ... exempting ... documents which may be privileged, which may incriminate the

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14 *UXK v Talent Propeller Ltd*, 12 July 2021 (Minute No 10).

15 *MAS Zengrange (NZ) Ltd v HDT Ltd* [2013] NZEmpC 210, [2013] ERNZ 716.

> plaintiff, or which could not be in the public interest to be disclosed. General principles relating to privilege as expressed in the Regulations can guide the Authority's exercise of its broad powers.

[99] This summation applied to disclosure where privilege is asserted. I make the point that other aspects of the disclosure regime in the Regulations may also be legitimately considered for application by the Authority, albeit on a case by case basis. I shall return to this issue later.

Suppression orders under the Criminal Procedure Act 2011

[100] In the District Court judgment, which is the subject of consideration in this case, a suppression order was made under s 200 of the CPA.

[101] This provision is found in pt 5 of the CPA, subpart 3 of which relates to public access and restrictions on reporting.

[102] Section 200(1) provides that a court "may make an order forbidding publication of the name, address or occupation of a person who is charged with, or convicted or acquitted of, an offence".

[103] Section 194 provides that unless the context otherwise requires, "name" is defined to mean "the person's name and any particulars likely to lead to the person's identification".

[104] In *ASG v Hayne*, the Supreme Court analysed Parliament's intentions with regard to the name suppression regime in detail.[16] It is not necessary to repeat that discussion now, although the scheme may well be pertinent when the pros and cons of relevance are considered.

[105] In the course of its analysis, the court undertook a detailed analysis of the concept of publication as it appears in s 200(1). It held:[17]

> [79] Drawing these threads together, the focus in s 200 is, generally, on publication beyond the courtroom to the public or a section of the public at large. We say "generally" because it is necessary to ensure the passing on to

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16 *ASG v Hayne,* above n 8, at [12]–[23].
17 (Emphasis added).

> one other person or to a small number of persons (including dissemination by word of mouth), *in the situation where that will undermine the very purpose of the suppression order, is captured by the section*. The section does not encompass the dissemination of information to persons with a genuine need to know or, as the Court of Appeal put it, "a general interest in knowing", whether genuineness of the need or interest is objectively established.

[106] The court went on to consider whether, on the facts of that case, the disclosure that had occurred would undermine "the very purpose of the suppression order".

[107] It is evident that the Court acknowledged the scope of the concept can give rise to some uncertainty, and that some legislative clarification could be considered.[18]

[108] Be that as it may, the position which has been reached is that any consideration of use of information, including a judgment which is the subject of a suppression order under the CPA, is one requiring considerable caution.

[109] Any conclusion as to a "genuine need to know" must be one reached objectively. Where that issue arises before the Authority or Court, it is necessary to ensure that any disclosure, even to either of those bodies, does not undermine the very purpose of the suppression order.

Status of the Authority's minutes

[110] It is well established that references to the term "determination" under the Act are to be interpreted broadly.[19] The way in which a document from the Authority is described is not determinative of whether it is in fact a determination.[20] It is the substance rather than the form of the document that is important.[21]

[111] In the multiple minutes which were issued by the Authority, it made directions which fell into two categories. The first category was a direction that an unredacted copy of the District Court judgment be filed and served by UXK.[22] The second

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18 At [88].
19 *Abernethy v Dynea New Zealand Ltd* [2007] ERNZ 271 (EmpC) at [31]–[32].
20 *Morgan v Whanganui College Board of Trustees* [2013] NZEmpC 55, [2013] ERNZ 460 at [15].
21 *Morgan*, above n 20, at [21]; *MAS Zengrange*, above n 15, at [26]–[30].
22 *UXK v Talent Propeller Ltd*, 15 April 2011 (Minutes Nos 6, 7 and 9).

category was that the Authority would of its own motion produce the document, in unredacted form as it had been filed on another proceeding.[23]

[112] It is evident from the elaborate submissions that were made that directions in either category were contentious from UXK's perspective; she strongly opposed the disclosure of the unredacted document. Equally strongly, TPL sought its disclosure.

[113] In that context, the Authority resolved the issues, first by finding that an assessment of relevance was required and that an unredacted copy of the document should be produced for the exercise. The Authority impliedly made a finding of law that disclosure for the purposes of an investigation about relevance was justified, because the Authority had a "genuine need to know" what was in the document in order to make the assessment. With regard to the second category, it again made, impliedly, a finding that over UXK's opposition and notwithstanding the rights she wished to assert, the document could, and would, be produced by the Authority on its own motion.

[114] Given these findings, I am satisfied that the minutes are indeed determinations for the purposes of s 179(1) of the Act.

[115] Initially, Ms Fechney focused her submissions for the purposes of the challenge on those minutes which dealt with the first category of direction. However, in the course of the hearing, it became common ground that the pleading raising the challenge was sufficiently broad as to include the second category of directions. I proceed accordingly.

Section 179(5)

[116] The next issue is whether a challenge to the determinations is precluded by s 179(5) of the Act, because they are about the procedure the Authority has followed, is following or is intending to follow.

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23 *UXK v Talent Propeller Ltd*, 13 July 2021 (Minutes Nos 11 and 13).

[117] Again, the general principles which underpin the subsection are not controversial.

[118] The primary one is that Authority proceedings should not be interrupted by challenges at a preliminary stage. Continuity increases the speedy and non-legalistic decision-making of the Authority, keeps costs down, and avoids delays.[24] Access to justice considerations are dealt with in the right of challenge or review once the Authority has made a final determination on the matter before it.[25]

[119] But it is also the case that the Court must have regard to the effect of determinations in light of other policy objectives. The Court can consider determinations that have an irreversible and substantive effect.[26] That said, it is not enough that an order has an impact on the parties, because any decision achieves that.[27]

[120] In the end, the question for the Court is whether the issue at stake is justiciable, or whether it is a matter of procedure.[28]

[121] Here, I am satisfied that both categories of direction are justiciable and not merely procedural. Both relate to important rights held by UXK as a result of the suppression order made in the District Court.

[122] The first category of directions could compromise the District Court order, unless significant protections are introduced. Without these, the very purpose of the suppression order could be undermined by its contents being published in contravention of s 200 of the CPA.

[123] UXK says this is likely to occur, and that the production of an unredacted version of the document could have an irreversible and substantive effect on her rights. TPL says this would not occur. In my view, were the Court to uphold UXK's position,

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24 *H v A Ltd,* above n 11, at [17].
25 *H v A Ltd,* above n 11, at [23]; *MAS Zengrange*, above n 15, at [41].
26 *H v A Ltd*, above n 11, at [26].
27 *Fletcher v Sharp Tudhope Lawyers* [2014] NZEmpC 182 at [18].
28 *Aarts v Barnados New Zealand* [2013] NZEmpC 85, [2013] ERNZ 201 at [69].

then the determinations would have a substantive effect that could not be remedied in due course, because, as it was put in *H v A Ltd*, the horse would have bolted.[29]

[124] The second category of directions relates to fair hearing rights if the document were to be produced by the Authority of its own motion from another file, in several respects. There is an issue as to the likely effect of production on the absolute privilege held by UXK under s 121 of the Act. There may be other significant ramifications for a fair hearing, as I shall elaborate shortly. In these circumstances, there were significant natural justice requirements. TPL says there are no such difficulties. In my view, were the Court to uphold UXK's position, the determinations would again have a substantive effect that could not be remedied in due course.

[125] I am therefore satisfied that justiciable issues are raised by the challenge. Section 179(5) does not preclude consideration of the challenge with regard to either category of directions.

Challenge in respect of the first category of directions

[126] When first directing UXK to produce an unredacted copy of the District Court judgment so its relevance could be considered, the Authority did not make any protective directions to further the purposes of the intended process. However, the representatives were able to seek directions as necessary. This was an invitation to them to address any perceived issues. As I shall explain, the main issue with regard to these directions related to appropriate safeguards.

[127] Initially, Ms Fechney was concerned she had been misunderstood when she accepted, at a case management conference with the Authority, that the document could be produced in unredacted form. In her subsequent submissions, she explained this could happen if her client chose to rely on the document in support of her application for a permanent non-publication order. As noted, a debate developed as to whether the document would nonetheless be relevant not only to that application but also to her personal grievance. Once the Authority said it would resolve the dispute

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[29] *H v A Ltd,* above n 11, at [25].

as to relevance, Ms Fechney proposed that the document be produced to the Member only.

[128] It is perhaps regrettable that the Authority was not referred to appropriate authorities, since this is a well-established option when difficulties of the present kind arise, whether in this Court or in other courts.

[129] The Court of Appeal has emphasised that the discretion to inspect in this way is a completely unfettered one. That court has held that a ruling after inspecting the documents – even without the benefit of submissions as to content – is more likely to further the ends of justice than a ruling without inspection.[30] That said, the practice is by no means automatic.

[130] There is also good authority for the proposition that inspection taken by a judicial officer not connected with the case may be preferable.[31]

[131] Express reference to these propositions may well have assisted the Authority. Without them, the Member-alone option of inspecting the document,[32] was not fully evaluated. Nor was it correct to conclude that, because the Regulations do not apply directly to the Authority, they were not able to be considered at all; as noted earlier, the issue is not so binary.[33]

[132] A further problem which arose related to the Authority's concern that UXK's position was inconsistent: she had agreed to provide an unredacted copy of the District Court judgment in one proceeding involving a third party but not in the proceeding involving TPL.

[133] Ms Fechney made submissions as to why this distinction was important to UXK. She said TPL was one of the parties to the breach proceeding. By contrast, this problem did not arise in UXK's other proceeding where the unredacted document was

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30 *Seamar Holdings Ltd v Kupe Group Ltd* [1995] 2 NZLR 274 (CA) at 279.
31 *NZI Iron Sands Holdings Ltd v Toward Industries Ltd* [2019] NZHC 1416, [2019] NZAR 1199 at [40].
32 Employment Court Regulations 2000, reg 45(2).
33 At [99].

produced. Regrettably, this distinction became obscured by a submission made by TPL that UXK was attempting to obstruct and delay the investigation as to relevance.

[134] The next potential protection which was raised related to the possibility of the document being provided on a "counsel-to-counsel" only basis. Mr Upton proposed this option. It was opposed by Ms Fechney, but the Authority agreed to it.

[135] UXK has, as already noted, issued proceedings where she alleges TPL and other parties breached the previous non-publication order concerning the District Court judgment. She has also complained to the New Zealand Law Society about an undertaking given by Mr Upton in relation to another document.

[136] Both these matters are unresolved. No evidence was produced for the Court to consider the merits of either issue. Accordingly, I make no comment about them, other than to observe these issues have impacted on UXK's view as to whether representative to counsel disclosure of the District Court judgment is appropriate.

[137] Mr Upton told the Court he was willing to provide an undertaking to the Court for the purposes of representative to counsel disclosure. This possibility had not been considered by the Authority.

[138] Such an undertaking would, I assume, be in the usual form where counsel would confirm he was permitted only to utilise the document for the purposes of the relevance investigation; and that its contents would remain strictly confidential and not be disclosed to any other person unless otherwise directed by the Authority.

[139] An undertaking in this form is usually accepted. That is because a judicial body will not go behind a serious assurance given by counsel. Complete compliance with an undertaking by an officer of the court gives rise to an ethical duty. The judicial body is entitled to assume in the absence of evidence to the contrary, that the duty will be respected.[34] The process of litigation can only work on the basis of trust and confidence being maintained by members of the bar and, in turn, depends on an

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[34] See Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 13.1.

independent and strong legal profession which will, if necessary, hold its members to account. A court may also enforce an undertaking.[35]

[140] Thus, the offer of an undertaking by Mr Upton should be accepted since it can properly be accepted as providing an appropriate protection. The Court is entitled to assume that his undertaking will be honoured and fully complied with.

[141] I also note that this possibility overtakes the issue as to whether the Member who determines the relevant issue should alone consider the unredacted document.

[142] I next record that, at the hearing, the representatives of the parties agreed that the well-established practice of another judicial officer determining the relevance question should be adopted in the circumstances of this case. This possibility had not been considered by the Authority.

[143] Finally, I refer to a yet further protection: the parties agreed with the Authority that the investigation meeting as to relevance would take place in private, attended only by the representatives (whether by Zoom or otherwise) presenting submissions. As noted earlier, it was common ground that the current interim orders made by the Authority would continue at least to the point of the relevance investigation meeting. The need for further orders to protect information contained in the determination resolving relevance will obviously need to be considered following that investigation meeting.

[144] Given the protections referred to by the Authority as well as those referred to at the hearing of the challenge, I am satisfied it is appropriate to conclude that it is appropriate for UXK to be directed to produce an unredacted copy of the District Court judgment for the purposes of a relevance investigation meeting. In the final section of this judgment, I will summarise the position now reached.

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[35] Matthew Palmer (ed) Professional Responsibility in New Zealand (LexisNexis, Wellington, 2019) at [12.5]. See also *McCook v Chief Executive of the Inland Revenue Department* [2020] NZEmpC 126 at [17]; *Zhou v Chief Executive of the Department of Labour* [2011] NZEmpC 36; *Industrial Equipment Distributors Lifting Centre Ltd v Scouller* [2018] NZEmpC 90 at [45]–[46]; and *Air New Zealand Ltd v Kerr* [2013] NZEmpC 116.

Challenge in respect of the second category of directions

[145] The second category is more problematic. I have already referred to the fact that issues relating to the rights held by UXK under s 121 of the Act were not considered. It provides that any statements made, or information given, for the purposes of a personal grievance are absolutely privileged.[36]

[146] The Court was informed that the proceeding in which UXK had provided the unredacted document related to a personal grievance claim she had brought. On the face of it, the privilege applies for the purposes of that proceeding.

[147] No consideration was given to the consequences of the s 121 protection, if information from that proceeding was, on the Authority's own motion, removed to another proceeding. The unilateral step could give rise to a deemed waiver of the privilege for the purposes of those proceedings.

[148] Ms Fechney also told the Authority that disclosure could compromise UXK's common law right against self-incrimination, presumably for the purposes of the penalty claim against her. In my view, whilst that may be a factor to be considered at the relevance investigation meeting, it was not obviously a factor relevant to the own-motion direction because the point was, and is, able to be argued in support of UXK's case that the document is not relevant.

[149] That said, the possibility of utilising information or evidence on one file for the purposes of another was potentially controversial, particularly in these circumstances. Such a process can easily lead to misunderstandings and procedural error, especially if a judicial officer is required to manage multiple proceedings involving common parties.[37]

[150] Obvious natural justice problems may arise if parties are not fully heard as to whether information disclosed for the purposes of one matter should be introduced as evidence in another.

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[36] The effect of the section is discussed in *Anderson v The Employment Tribunal* [1992] 1 ERNZ 500 (EmpC) at 504.

[37] As recognised in *Accident Compensation Corporation v McCulloch* [2001] NZAR 897 (HC).

[151] This proposition may be tested with regard to the objects of disclosure of documents between parties in which there are protections relevant to the release of information from a proceeding. Those issues were explained by Winkelman J in *Dotcom v Attorney-General*, where she said:[38]

> [48] ... Discovery of relevant documents entails an invasion of the privacy of the providing party. It is an invasion of privacy because it involves an inroad on the rights of individuals to keep their documents private. However, the public interest in ensuring that all relevant information is available to the adjudicative process justifies the court's powers to order disclosure. That interest has been held to override the private and public interest in the maintenance of confidentiality.
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> [49] To respond to the perils associated with discovery, the common law develops safeguards. Those safeguards included limiting discovery only to the extent that it was necessary in order to enable a court fairly to decide the case before it.

[152] The Court went on to say that the collateral use of documents is authorised by the Court when special circumstances exist, and where release will not occasion injustice to the person giving discovery.[39] The discretion to allow use of documents is to be exercised on a case-by-case basis.

[153] These observations were of course made with regard to formal processes of discovery rather than the informal means by which an investigative body, such as the Authority, obtains information under broad powers.

[154] However, if Parliament had intended that the Authority's powers of investigation would override these fundamental rights, unequivocal statutory language to that effect would have been adopted.

[155] The broad power bestowed on the Authority to take into account such evidence and information "as in equity and good conscience it thinks fit, whether strictly legal or not", is not without limits. So, in *Morgan v Whanganui College Board of Trustees*, Harrison J held that in exercising its statutory discretion under s 160(2), the Authority must be guided by settled principles of common law.[40] As it has been put on many

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38 *Dotcom v Attorney-General* [2014] NZHC 1343 (footnotes omitted).
39 At [50].
40 *Morgan v Whanganui College Board of Trustees* [2014] NZCA 340, [2014] 3 NZLR 713, [2014] ERNZ 80 at [24].

occasions, such a discretion does not permit evidential open slather.[41] The discretion should be exercised in a principled way.

[156] It follows that considerable caution must be exercised in determining whether it is appropriate for the Authority to institute collateral use of documents held by it on one file for the purposes of another file, on its own motion.

[157] Mr Upton clearly told the Authority that if necessary TPL would seek a compliance order. Such an application, if granted, may well have led to a more straightforward outcome, with a challenge then being available.

[158] I accept Mr Scott-Howman's submission that issues of natural justice arose. The Authority erred by not considering these implications adequately. Accordingly, challenges in respect of the second category of directions succeed; those directions are set aside.

Judicial review proceedings

[159] The judicial review proceedings focused on the natural justice implications of the second category of direction; and sought orders that the proceedings involving UXK should be assigned to other members.

[160] There are significant difficulties with regard to the claim brought for judicial review, because of the qualifying circumstances for judicial review, as described in s 184(1A). It provides:

> **184 Restriction on review**
>
> ...
>
> (1A) No review proceedings under section 194 may be initiated in relation to any matter before the Authority unless—
>
> (a) the Authority has issued a determination under section 174A(2), 174B(2), 174C(3), or 174D(2) (as the case may be) on all matters relating to the subject of the review application between the parties to the matter; and

[41] For example *New Zealand Meat Workers Union Inc v South Pacific Meats Ltd*, above n 9, at [62].

(b) (if applicable) the party initiating the review proceedings has challenged the determination under section 179; and

(c) the court has made a decision on the challenge under section 183.

...

[161] Ms Fechney argued that the section should be interpreted in a restrictive way. She submitted that on the face of it, Parliament's intention of the provisions was to ensure that an Authority's investigation would not be interrupted by review until all matters relating to the subject of the review application had in essence been determined. She said the use of words "as the case may be" meant the Court retained a discretion to judicially review if to do so would not interrupt the Authority's investigative process.

[162] The Court of Appeal considered the section in *Employment Relations Authority v Rawlings* at some length.[42] It concluded that s 184(1A) was not "entirely felicitously drafted". However, it went on to observe that the purpose of the subsection was clear enough. It was to prevent review proceedings being filed until the Authority was quit of the case and any rights of challenge had been exercised. Moreover, it considered that the challenge procedure – especially where it proceeds de novo – could be expected to tidy up these sort of problems which might otherwise have warranted review.[43]

[163] I am bound by these conclusions. The Court of Appeal's conclusions do not permit a carve-out of the kind urged by Ms Fechney. The restrictions have to be considered. I am not satisfied that any of the three criteria of s 184(1A) are met.

[164] The judicial review proceeding is accordingly dismissed.

Result

[165] With regard to the first category of directions, I allow the challenge in part. The challenge partially succeeds on the basis that additional protections beyond those imposed by the Authority are necessary. I summarise the position as follows:

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42 *Employment Relations Authority v Rawlings* [2008] NZCA 15, [2008] ERNZ 26 at [33].
43 At [36].

(a) UXK is to produce an unredacted copy of the District Court judgment for the purposes of consideration of the issue as to its relevance to the proceeding, under a timetable to be fixed by the Authority.

(b) The document is to be provided to Mr Upton on a representative-to-counsel basis, providing he has first given a written undertaking to the Authority and to the representative for UXK, in the form referred to earlier.[44] That undertaking may be varied by the Authority, if necessary following its ruling on relevance.

(c) The relevance issue is to be investigated by a member other than the Member who has dealt with the matter to date.

(d) The interim order of non-publication of that document is to continue until the determination as to relevance is issued; following the investigation meeting, further protections may be necessary.

[166] I allow the challenge to the second category of directions and set those aside.

[167] Pursuant to s 183(2), this judgment replaces those aspects of the various determinations which it has been necessary to consider.

[168] In her statement of claim, UXK invited the Court to make recommendations as to how the Authority should deal with issues of this kind in future. I doubt there is jurisdiction to do so in the present case, since the Court is not dealing with a personal grievance,[45] but in any event it is unnecessary to do so given the content of this judgment.

[169] For the purposes of the challenge and the application for judicial review, I make an order of non-publication of the name, address and identifying details of UXK, and as to the contents of the District Court judgment, until further order of the Authority or Court. This order is necessary in light of the earlier interim orders made by the Authority and the Court.

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44 Above at para [139].
45 Employment Relations Act 2000, s 123(i)(ca).

[170] The Court's files may not be searched without leave of a Judge.

[171] Costs are reserved. If any party seeks these, an application supported by necessary information is to be filed and served within 28 days; a response may be given 28 days thereafter.

[172] The intervener must bear its own costs. I am grateful for Mr Scott-Howman's assistance.

B A Corkill
Judge

Judgment signed at 3.10 pm on 5 October 2021