

**ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING  
PARTICULARS OF A NON-PARTY**

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
ŌTAUTAHI**

**[2022] NZEmpC 47  
EMPC 317/2021**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for interim non- publication order
BETWEEN	GF Plaintiff
AND	COMPTROLLER OF THE NEW ZEALAND CUSTOMS SERVICE Defendant

Hearing: On the papers

Appearances: M Dew QC, S Kopu and J Hansen, counsel for plaintiff  
H Kynaston and H Khan, counsel for defendant

Judgment: 17 March 2022

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**INTERLOCUTORY JUDGMENT (NO 3)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for interim non-publication order)**

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[1] An application for an interim non-publication order has been filed on behalf of a witness for the plaintiff. Counsel for the defendant does not oppose the application. While the defendant does not oppose the application, the Court must decide whether such orders are appropriate in the circumstances.

[2] The Court has a broad power under sch 3 cl 12 of the Employment Relations Act 2000 (the Act) to order that “all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published,” subject to such conditions as the Court thinks fit. While the discretion is broad, it must be exercised consistently with applicable principles. The principle of open justice is a principle of fundamental importance. It forms the starting point for determining whether the circumstances of a particular case justify an order for non-publication.<sup>1</sup>

[3] A party applying for such an order must establish that sound reasons exist for the making of an order of non-publication, displacing the presumption in favour of open justice.<sup>2</sup> The discretionary exercise involves the Court balancing other interests with the fundamental principle of open justice. The discretion must also, of course, be exercised consistently with the objectives of the legislative framework that applies in this specialist Court. These objectives include the need to support successful employment relationships and to address the inherent inequality of bargaining power between employers and employees.<sup>3</sup> As has previously been observed, the significant detrimental impact that publication of the names of parties, or even witnesses, can have on their ongoing prospects of employment, regardless of the outcome of the case, is a factor which has become increasingly well recognised in this jurisdiction as relevant to the weighing exercise the Court is required to undertake.<sup>4</sup>

[4] This case engages issues relating to the vaccination of workers. COVID-19 vaccination is contentious in New Zealand and within the media and on social media. I accept that there is a material risk of adverse consequences for the named witness if their name and identifying details are published in this proceeding. Those risks include the witness and the witness’s family becoming a target of public scrutiny and for future employment prospects. I also weigh into the mix the limited public interest in knowing the identity of the witness and the fact that the plaintiff has interim non-

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<sup>1</sup> *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310; *Crimson Consulting Ltd v Berry* [2017] NZEmpC 94, [2017] ERNZ 511.

<sup>2</sup> *Erceg*, above n 2, at [13].

<sup>3</sup> Employment Relations Act 2000, s 3(a). See also *FMV v TZB* [2021] NZSC 102 at [54].

<sup>4</sup> See for example *GF v New Zealand Customs Service* [2021] NZEmpC 162; *FVB v XEY* [2020] NZEmpC 182, [2020] ERNZ 441 at [12]; *WN v Auckland International Airport Ltd* [2021] NZEmpC 153 at [43]-[44]; *JGD v MBC* [2020] NZEmpC 193, [2020] ERNZ 447 at [8].

publication orders made in their favour. Identification of the witness could lead to identification of the plaintiff.

[5] I am satisfied that the interests of justice require that an interim non-publication order be made. There is accordingly an order prohibiting publication of the name and identifying details of the named witness pending further order of this Court.

[6] Costs are reserved.

Chief Judge  
Christina Inglis

Judgment signed at 12.10 pm on 17 March 2022