

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Manjit Singh (Applicant)  
**AND** The Chief Executive of the Department of Labour (Respondent)  
**REPRESENTATIVES** Samuel Hood, for the Applicant  
Greg Lloyd, for the Respondent  
**MEMBER OF AUTHORITY** Ken Anderson  
**INVESTIGATION MEETING** 13 January 2005  
**DATE OF DETERMINATION** 21 January 2005

**DETERMINATION OF THE AUTHORITY**

**The Employment Relationship Problem**

- [1] Mr Singh has applied for an interim injunction. He seeks to restrain his employer, the Department of Labour – New Zealand Immigration Service (“the Department” and “NZIS”), from continuing with disciplinary proceedings against him.
- [2] Mr Singh seeks an order from the Authority staying the disciplinary proceedings that have been commenced by the Department until such time as pending criminal charges against him have been concluded.<sup>1</sup>
- [3] An investigation meeting took place on 13 January 2005 with the Authority having received affidavits and written submissions beforehand. The matter was substantially progressed on the well prepared papers presented by both parties, supplemented by oral submissions.

**Background**

- [4] Mr Singh has been employed by the Department since 1989. Since that time he has held various positions. At the material times relating to this matter, Mr Singh has been employed as a Compliance Officer within the Border and Investigations Team based in the Hamilton office of the Department. The duties of Mr Singh largely involved locating and taking removal action against people illegally remaining in New Zealand pursuant to the Immigration Act 1987. Under the provisions of the Immigration Act, Compliance Officers have the authority to seize money and other assets for the purpose of recovering the costs associated with deporting illegal immigrants from New Zealand.

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<sup>1</sup> In his *Statement of Problem*, Mr Singh also raised the matter of a personal grievance but it has now been accepted by the parties that the Authority will only be addressing the application for an interim injunction as now set out.

- [5] On 15 and 16 October 2003, the Department received two separate allegations of corruption purporting to involve Mr Singh. The Department referred these matters to the New Zealand Police.
- [6] On 3 February 2004, Mr Singh was arrested by the Police and charged with four counts of theft pursuant to the Crimes Act 1961. The charges relate to the alleged theft of two motor vehicles and the alleged theft of two sums of money, \$1,900 and \$200. It is alleged by the Police, that the alleged crimes occurred while Mr Singh was carrying out his duties as an employee of the Department.
- [7] On 3 February 2004, Mr Singh was suspended from his employment on full pay while the Department conducted its own investigation into matters pertaining to Mr Singh's conduct. The investigation was largely conducted by Ms Janine Parsons, the Service Manager for Border and Investigations, NZIS. Ms Parsons has the responsibility for the Border and Investigation Teams based in Auckland, Hamilton, Wellington and Christchurch.
- [8] Ms Parsons wrote to Mr Singh on 7 May 2004. He was invited, along with a representative, to attend a meeting on 13 May 2004. The pertinent content of the letter is as follows:

“Further to your suspension letter dated 3 February 2004. There are several matters we would like to discuss with you. We are particularly interested in discussing the matters surrounding the criminal charges you now face.

As I am sure you understand these allegations are very serious and if proven will amount to serious misconduct and may form the basis of disciplinary action which may result in your dismissal from the New Zealand Immigration Service.

It is very important that you have the opportunity to state your position on these matters and raise any issues you feel will assist us in our investigation.

For the sake of clarity the matters we are most interested in relate to:

1. The circumstances surrounding the sale of a Nissan Pulsar belonging to Ms Lerdchanchi.
2. The circumstances surrounding the sale of a Mazda Cronos motor vehicle belonging to Mr Chatvarapitak.
3. The presence of various house hold appliances in your house that may not have belonged to you.

I would also like to note that this relates to the NZIS internal investigation and the possible breaches of NZIS procedures. This investigation has no bearing on the criminal investigation being carried out by the Police.”

- [9] However, as Mr Singh wished to obtain legal advice, the meeting was postponed until 16 June 2004. At the meeting that took place on that date, acting upon legal advice, Mr Singh maintained his right to silence on the basis that there was a clear connection between the matters that the Department was seeking information from him about and the criminal charges laid against him.
- [10] Mr Singh's lawyers wrote to the Department on 17 June 2004 and proposed that the Department should put in writing the questions that they have for Mr Singh and he would give consideration to which questions he could answer without risking incriminating himself in the criminal proceedings.

- [11] The Department accepted that proposal and in a letter dated 9 July 2004, five questions were put to Mr Singh for his response. The first three questions clearly have a direct nexus to the pending criminal proceedings and Mr Singh declined to answer those. The Department appears to accept Mr Singh's reasons for not answering these three questions, albeit the Department maintains the view that it has the right to ask them.
- [12] The fourth question relates to Mr Singh's use of a Department vehicle to travel from Hamilton to Manakau City and return, on 6 November 2003, and that the vehicle running sheet, filled in and signed by Mr Singh, records that the vehicle only had 45 kilometres of "local" travel for that day. In response to that question, Mr Singh has acknowledged he was at Manakau City on 6 November 2003. Indeed, he has been photographed there by the Police on that day. However, Mr Singh declined to give any further explanation, referring to the criminal charges.
- [13] The fifth question relates to Mr Singh admitting to the Police that he had met with a client of the Department, out of work hours. The Department sought from Mr Singh his reasons for not informing his Service Leader of this meeting and that the client was known to Mr Singh's brother in law. On 3 August 2004, via his lawyers, Mr Singh provided a written response to this question. The response appears to have been accepted by the Department as the matter has not been pursued or the subject of any further enquiry.
- [14] Following the exchange of some further correspondence between the parties, the *Report on the investigation into the serious misconduct by Manjit Singh, Compliance Officer, Border and Investigation* was completed by Ms Parsons on 29 October 2004. Ms Parsons concluded that:

"The employment investigation has revealed serious misconduct and no explanation has been forthcoming notwithstanding such a request has been made.

The employment investigation has revealed the use of a Departmental motor vehicle in an out of town location and the completion of a false vehicle running sheet by Mr Singh so as to give the impression to the employer that Mr Singh was still in Hamilton when he was in Manakau some 90kms plus to the North.

Immigration Compliance Officers work in an environment that is at any time potentially contentious. Because of the environment that Immigration Compliance Officers work in it is imperative that a high level of trustworthy conduct is maintained. Any official duties are required to be carried out with honesty, integrity and professionalism.

In the absence of any satisfactory explanation, the evidence shows that serious misconduct has taken place. In my opinion the relationship of trust and confidence between NZIS and Mr Singh which is fundamental to the job of B&I officer has irrevocably broken down. Mr Singh can no longer be trusted to carry out his duties in a professional and honest manner. The importance of this is reinforced in the Code of Conduct."

- [15] The position of the Department was communicated to Mr Singh by Ms Mary Anne Thompson, Deputy Secretary – Workforce,<sup>2</sup> via a letter dated 25 November 2004. Ms Thompson conveyed that:

"The employment investigation has found the following breaches of the NZIS Code of Conduct:

- failed to obey all lawful and reasonable employer instructions at work as directed
- dishonesty
- failure to act with integrity

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<sup>2</sup> Ms Thompson has the responsibility for the general management decisions pertaining to the operations of the NZIS.

I consider these breaches to represent serious misconduct.

An Immigration Compliance Officer works in an environment that is at any time potentially contentious. Because of the environment that you are required to work in it is imperative that a high level of trustworthy conduct is maintained. Any official duties must be carried out with honesty, integrity and professionalism. The importance of undertaking your duties in such a manner is reinforced in the Code of Conduct and failure to meet these basic requirements reflects poorly on the Department and brings the Department into disrepute with the Public and other stakeholders.

I believe you have failed to carry out your duties with honesty, integrity and in a trustworthy manner. Accordingly the relationship of trust and confidence, imperative in an employment relationship, has been damaged, in my preliminary view, irreparably.

My preliminary view on disciplinary action is that I consider dismissal is an option open to me.

However, before I make a final decision, I am giving you a final opportunity to provide any comment you may wish to make. Any comments you do make must be received by me by 4pm on 8 December 2004.

You should note that if you choose to provide no comment to me, I will be making a final decision on disciplinary action based on the information I have without your further input. You are advised that you may seek professional advice on this matter.”

- [16] Mr Singh’s lawyers responded on 3 December 2004, seeking an extension of time for Mr Singh to respond.
- [17] The outcome is that this matter has now come before the Authority and Mr Singh remains suspended from his employment, on pay, while the parties await the determination of the Authority.

## **The Legal Framework**

- [18] An injunction is only available for the protection of a legal right or to prevent the infringement of a legal right. It is not a remedy that the Authority can grant or withhold simply because a party believes that it would be reasonable for this to happen. The Authority has the discretion to grant an interim injunction but that discretion must be exercised in accordance with well-settled principles. These principles are:
- (a) Is there an arguable case?
  - (b) If so, where does the balance of convenience lie?
  - (c) If it favours the applicant, is there an adequate alternative remedy available?
  - (d) What is the overall justice of the case?
- [19] (a) Is There an Arguable Case?

Mr Singh is seeking that the Authority issues an order restraining the Department from continuing with disciplinary proceedings against him until such time as the pending criminal charges that he faces have been concluded.

- [20] An employer is entitled to conduct an investigation into the conduct of an employee in the event that a matter of concern arises and indeed is bound to do so as part of the legal obligations that arise in such circumstances. Nonetheless, it appears that the Department have accepted that Mr Singh has a right to silence in regard to those matters pertaining to the criminal charges and have decided not to pursue that line of investigation with Mr Singh. The Department has narrowed its investigation to those matters pertaining to the use of the

Department's vehicle on 6 November 2003 and the false running sheet entry, and Mr Singh's unaccounted for presence in Manakau City.

- [21] On 22 December 2004, Mr Singh made a further statement to the Hamilton Police. The subject matter of this statement is substantially related to the criminal charge allegedly involving the sum of \$1,900. However, Mr Singh also states that he met the person who gave him that alleged sum of money as he was going to be in Auckland dealing with another immigration matter.
- [22] Due to the Authority investigation meeting being agreed to on the same day that Mr Singh made his somewhat belated statement to the Police, and the intervention of the Christmas/New Year holiday break, the Department has not had the opportunity to discuss with Mr Singh what the other immigration matter referred to by Mr Singh in his statement to the Police pertained to. It is my understanding that there is a desire on the part of the Department to discuss this matter with Mr Singh.
- [23] Apart from that matter, I understand the Department to be saying that it has completed its investigation into the conduct of Mr Singh, as it pertains to the use of the Department's vehicle and his presence in Manakau City on 6 November 2003. With the exception of the one matter that I have referred to, that is, Mr Singh being in Manakau City dealing with another immigration matter on 6 November 2003, there seems to be merit in the arguments being advanced for Mr Singh that by exercising his right to remain silent, in order not to incriminate himself in the pending criminal proceedings, he is not be able to respond effectively to anything further that may be put to him by his employer during the investigation process, should it be permitted to continue.
- [24] The presumption being, that a detrimental decision may be made by the Department, in the absence of a response, due to Mr Singh exercising his right to silence. On the other hand, if he does answer any further matters put to him by the Department during the investigation process, then he would effectively be forfeiting his right to silence which may create further jeopardy and/or prejudice as far as the criminal proceedings are concerned.
- [25] The right to remain silent is a rule of substantive law derived from s.23 (4) of the Bill of Rights Act 1990. While s23 (4) applies to the rights of persons arrested or detained, it was held in *Russell v Wanganui City College* [1998] 3 ERNZ 1076, at 1082, that the provision must not be looked at in too narrow a way:  
“... for if the accused person can be forced to make a statement about the subject-matter of the pending criminal proceedings in some other forum, then that would defeat the right to silence and provide the prosecution with ammunition that otherwise would not be available to it. Clearly, such considerations must be available to provide some protection to a person accused of a crime from having to answer to the very subject matter of the charges in earlier civil proceedings. But the matter is not limited to civil proceedings and there is no reason why it should not extend to such a process as a formal disciplinary inquiry by an employer especially a State sector employer”
- [26] However, I can see no good reason why Mr Singh should not answer any questions that the Department may have for him pertaining solely to the other immigration matter that he refers to in his statement to the Police on 22 December 2004. Indeed, it appears to be the position of Mr Singh that were it not for the criminal proceedings that he is facing, and the associated danger of incriminating himself, he would be able to give a valid explanation to the Department concerning his overall conduct. Given the narrow focus that the Department has taken, to date, regarding Mr Singh's actions, it would seem that it could possibly be in Mr Singh's own interests to tell the Department about the other immigration matter that he

was attending to on 6 November 2003 and the associated use of the vehicle. That is certainly something that the Department is obliged to seek an explanation from Mr Singh about and take into consideration as part of its investigation, and this matter is sufficiently distanced from the content of the criminal charges, that the answers to the Department's questions are not likely to infringe his right to silence or impact upon the fairness of the criminal trial.<sup>3</sup>

- [27] However, there is the more serious aspect of the disciplinary proceedings. That is, the apparent possibility that the Department may decide to dismiss Mr Singh and the effect of the dismissal in regard to how it might be viewed in the context of the criminal proceedings. Particularly given that Mr Singh has elected trial by jury, it may possibly be assumed that there is some element of guilt on his part simply because his employer has seen fit to dismiss him.
- [28] I find that submission for Mr Singh to have some merit, particularly given the relatively small population base of Hamilton from which a jury will be drawn and the likely media interest in the criminal proceedings.
- [29] In summary, if it was just on the issue of the rights of Mr Singh in regard to the investigation into his conduct pertaining to the use of the Department's vehicle on 6 November 2003, and trust and confidence issues alone, I would have considerable difficulty finding that he has an arguable case, taking into account of course that it is not my role to establish guilt or innocence on that front, that may have to be decided in another forum.
- [30] However, I accept that Mr Singh has an arguable case in that if he is dismissed from his employment by the Department, there is the possibility that the dismissal could have a prejudicial effect in a trial by jury of the criminal matters. Therefore, I feel bound to find that Mr Singh has an arguable case.

(b) Where Does the Balance of Convenience Lie?

- [31] In *Sotheran v Ansett New Zealand Ltd* [1999] 1 ERNZ 5548, Palmer J referred to *X vY Ltd and NZ Stock Exchange* [1992] 1 ERNZ 863 at pp 872-3, where it was held that:

“If the plaintiff satisfies the Court that he has an arguable case, or in other words that there is a serious issue between himself and one or both of the defendants (there being two defendants in that case), that it is not by itself the end of the enquiry. This is because the remedy of injunction is discretionary. The Court, in the exercise of its discretion to grant or withhold that remedy, has to weigh up the inconvenience to a defendant of having to bear the burden of an injunction before the substantive case is heard when the defendant may well win that case, and against the inconvenience to a plaintiff who may have a just case, of having to bear the detriment of wrongful or unjustifiable action until the case has been heard. Inconvenience in this context has a stronger meaning than colloquially; it means detriment or injury.

The Court puts various matters in the balance in arriving at a position, but having done so it recognises the risk of matters of detail overwhelming considerations of substance. It therefore stands back from the case, having arrived at a decision on the balance of convenience and considers what the overall justice of the case requires it to do.”

- [32] Effectively then, the Authority is required to look at the relative detriment or injury that the parties will incur as a result of the interim injunction being granted or not. If an order of restraint is refused, the Department will presumably, continue with the investigation into the conduct of Mr Singh pertaining to those matters it has been pursuing with him. The final

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<sup>3</sup> See *Wackrow v Fonterra Co-operative Group Ltd*, unreported, 14 May 2004 (AC 32/04), Shaw J.

outcome of that investigation may be that Mr Singh is dismissed. On the other hand, he may retain his employment, but the indications from the Department are that dismissal is a strong possibility.

- [33] If Mr Singh is dismissed and if he believes that the dismissal is unjustified, then he can challenge that by pursuing a personal grievance and if successful, he may be entitled to appropriate remedies, including loss of remuneration. While it has to be taken into account that Mr Singh would be deprived of his income while awaiting the hearing of his grievance, and he has attested to the financial burden that he has, nonetheless, the period of time that would elapse should be relatively short given the current effectiveness of the institutions under the Employment Relations Act 2000.
- [34] On the other hand, if the injunction is granted, Mr Singh would remain on full pay until such time as the criminal proceedings are concluded, or such other time as the Authority sees fit, but given the precedents on this issue, particularly *Sotheran* (above), it seems more likely it would be the former. That would create a detriment or injury for the Department.
- [35] However, Mr Singh has been suspended on full pay for nearly a year now. The substance of that time has been while the Department conducted its investigation into the conduct of Mr Singh. While there has to be a consideration of the cost to the New Zealand tax payer, the balance of convenience, as to the loss of, as compared to the payment of, the wages involved, would have to fall in favour of Mr Singh, particularly given the undertaking of damages has been given by him, albeit his ability to honour such an undertaking, if required to, may be problematic.
- [36] On the overall evidence that I have before me at this point, I find that the balance of convenience is delicately poised, but taking into account the respective resources of the parties, it falls marginally in favour of Mr Singh.

(c) The Availability of Other Remedies

- [37] If the injunction sought by Mr Singh is not granted and the Department, having completed its investigation, decides to dismiss him, Mr Singh has available to him the personal grievance procedures provided by the Employment Relations Act 2000. It is also likely that he would be able to obtain a prompt hearing and hence the remedies available under the Act, if it is determined that he has a grievance, would be available to him.

(d) What is the Overall Justice of the Case?

- [38] Having come this far, the Authority is bound to stand back as it were, from the detail of the case and look at it in a broad or global way. The question becomes: Where does the overall justice of the case lie?  
 “In posing that question for itself, the Court [Authority] may have regard to the strength or weakness of the plaintiff’s [applicant’s] case. In other words, overall justice can be said to be a reality check.” *Melville v Chatham Islands Council* [1999] 2 ERNZ 76 at 102.

- [39] I am also helped greatly by the observations made by Goddard CJ in *Russell* (above at p.1082). While some of the matters I am about to address could perhaps more correctly be seen as going to the balance of convenience, I have chosen to treat them as broad or global issues.

The observations of the Chief Judge follow:

“(i)In the ordinary course of things an employer is entitled to conduct an investigation into the conduct and performance of an employee that is of concern to it and, indeed, bound to do so in the ordinary course of its business of being an employer.

(ii)It is a grave matter for the Court to interfere with this entitlement by some form of prior restraint and to take such a course requires justification on proper grounds.

(iii)It follows that there must be a burden on the employee in that situation to show that it is just and convenient that the employer’s ordinary rights should be interfered with or modified.

(iv)It further follows that an employee cannot be entitled as of right to have an employer’s disciplinary process stayed because of a pending or possible criminal proceeding.

(v)The Court’s task is one of balancing justice between the parties, taking account of all the relevant factors.

(vi)Each case must be judged on its own merits and it would be wrong and undesirable to define in the abstract what are the relevant factors.

(vii)Two factors that it is relevant to take into account where there are pending or possible criminal proceedings are the right of silence and the undesirability of exposing a person to double jeopardy.

(viii)The Court will consider whether there is a real and not merely a theoretical danger of injustice in the criminal proceedings having regard to such factors as the possibility of publicity of the civil proceedings that might reach and influence jurors in the criminal case, the proximity of the criminal hearing, the possibility of a miscarriage of justice by the disclosure of the defence enabling the fabrication of evidence, or interference with the witnesses, the burden of preparing for effectively two sets of proceedings, the effect on the employer against the nature of the employee’s obligations to the employer, and finally the consideration that, in an appropriate case, the proceedings may be allowed to proceed to a certain stage before being stayed.”

[40] Applying the above considerations to the present case, I find as follows:

- (1) That the Department is entitled to conduct an investigation into the conduct of Mr Singh in so far as that conduct relates to the use of the Department’s vehicle, and his presence in Manakau City on 6 November 2003, providing that the questions put to Mr Singh for his response do not have the potential to jeopardise or prejudice him in regard to the criminal proceedings.
- (2) That it would be a grave matter for the Authority to interfere with the Department’s entitlement by restraining the continuation of that investigation and that such a course would require proper grounds for justification.
- (3) The burden rests with Mr Singh to show that it is just and convenient that the ordinary rights of the Department should be interfered with or modified. He is not entitled as of right to have the disciplinary process restrained because of the criminal proceedings that are currently set down.
- (4) There are two particular factors that I should take into account. They are the right of silence and the undesirability of exposing Mr Singh to double jeopardy. Considering firstly the right of silence. On the evidence available, it seems to me that the Department is entitled to question Mr Singh about his presence in Manakau City on 6 November 2003 and the use of the Department’s vehicle. Providing that those questions do not pertain to matters relating to the criminal charges, then Mr Singh would seem to have no good reason not to answer such questions. However, should he elect to maintain the

right to silence, then the Department would have to consider whether the information that they have, without any further contribution from Mr Singh, is sufficiently complete to come to fair and reasonable conclusions.

In regard to that particular point, it is worth repeating the statement of Mr Justice Slynn in *Harris and Shepherd v Courage (Eastern) Ltd* [1982] IRLR 509, as set out in *Sotheran* at pp 571-572:

“It does not seem to the majority of this Tribunal that there is a hard and fast rule that, once a man has been charged, an employer cannot dismiss him for an alleged theft if the employee is advised to say nothing until the trial in the criminal proceedings. There may be cases where fairness requires that the employer should wait. In the judgement of the majority members of this Tribunal, all these circumstances have to be looked at. It is essential that the employer should afford the employee the opportunity of giving his explanation and be made to realise that the employer is contemplating dismissal on the basis of the matters which are explained to the employee. If the employee chooses not to give a statement at that stage, it seems to the majority that the reasonable employer is entitled to consider whether the material which he has is strong enough to justify his dismissal without waiting. If there are doubts, then no doubt it would be fair to wait. On the other hand, if the evidence produced is, in the absence of explanation, sufficiently indicative of guilt, then the employer may be entitled to act.”

[41] Palmer J, in *Sotheran*, saw fit to highlight the “timely admonitions” of Slynn J and I also believe they bear repeating:

“(i) There may be cases where fairness requires that the employer should wait, and

(ii) If the employee chooses not to give a statement at that stage, it seems to the majority that the reasonable employer is entitled to consider whether the material which he has is strong enough to justify dismissal without waiting. *If there are doubts, then no doubt it would be fair to wait.* On the other hand, if the evidence produced is, in the absence of explanation, sufficiently indicative of guilt, then the employer *may be entitled to act.*” [The emphasis was added by Palmer J.]

[42] In regard to the issue of double jeopardy, I can only repeat what I have had to say on the issue of the right to silence but also add that, apart from there being some difference between the misconduct being investigated by the Department and the criminal charges that Mr Singh facing, there are two quite different jurisdictions, different procedures and different standards of proof. *Wellington Road Transport etc IUOW v Fletcher Construction Company Limited* [1983] ACJ 653 at 662

[43] The Authority has to consider whether there is a real and not merely a theoretical danger of injustice in the criminal proceedings, having regard to such factors as the possibility of publicity as to what happens in the employment law setting and whether there may be some subsequent influence on the criminal proceedings and a trial by jury.

[44] I consider that this is a matter of some importance, but I conclude that in itself, that cannot be a deciding factor, particularly given that should Mr Singh feel he has been treated unjustly, he has available to him the personal grievance procedures under the Employment Relations Act and that an outcome should be available to him in the employment jurisdiction prior to the criminal matters being heard. Therefore, overall, I am not able to conclude that there is any real danger of injustice occurring in the criminal proceedings.

[45] I am also cognisant of the findings of the Employment Court in *Wackrow v Fonterra Co-operative Group Limited*, unreported, 14 May 2004 (AC 32/04), *Shaw J*, at paragraph 89:

“The Court may only issue an injunction to prevent actions which are likely to be unlawful or in some other way in breach of Mr Wackrow’s contract of employment.”

Then further, at paragraph 91:

“It is not for the Court to pre-empt any decision properly made by an employer as a result of a disciplinary meeting.”

- [46] Taking all of the above into account, and having considered the comparative strengths and weaknesses of the parties positions I find that the overall justice of the case favours the Department

## **The Determination**

- [47] I find that there is not any anticipated or imminent unlawful action that provides proper grounds or justification to order that the Department be totally restrained from continuing with its investigation into the conduct of Mr Singh or from continuing with disciplinary proceedings.
- [48] Accordingly, I decline to issue an injunction restraining the Department from continuing with its investigation into the conduct of Mr Singh or dismissing him until the criminal proceedings have been concluded. I find that provided the disciplinary proceedings are conducted fairly and reasonably and do not go into those areas involving the criminal charges, then the Department is entitled to continue to conduct its investigation and employ appropriate disciplinary procedures.
- [49] However, the Department is restrained from asking Mr Singh any questions or implementing any disciplinary procedures that would directly bear on or relate to the substance of the criminal charges that he faces, until those proceedings have been concluded.

## **Costs**

- [50] At this point in time, the nature of any substantive proceedings appears somewhat uncertain and it would be prudent to simply reserve the matter of costs for now and allow matters to take their course for a reasonable period. In the meantime, I would invite the parties to endeavour to resolve the matter of costs if they can but if a resolution cannot be arrived at, the parties are invited to make submissions at a time that may be deemed to be appropriate.

**Ken Anderson**  
**Member**  
**Employment Relations Authority**