

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

WA 59/10
5272558

BETWEEN KARIN KNEDLER
 Applicant

AND CHIEF EXECUTIVE OFFICER
 DEPARTMENT OF
 INTERNAL AFFAIRS
 First Respondent

AND BEVERLEY KIRBELL
 Second Respondent

AND CHIEF EXECUTIVE OFFICER
 DEPARTMENT OF
 WOMEN'S AFFAIRS
 Third Respondent

Member of Authority: G J Wood

Representatives: Gail Irwin, for the Applicant
 Stephen Rogers, for the First Respondent
 Peter Churchman, for the Second Respondent
 Sally McKechnie, for the Third Respondent

Investigation Meeting: By case management conference call held on 6 April
 2010

Determination: 7 April 2010

DETERMINATION OF THE AUTHORITY

[1] On 3 July 2009, Dr Knedler brought a claim against the Chief Executive of the Department of Internal Affairs for unjustified disadvantage, breach of contract and unjustified dismissal. In that application, Internal Affairs was referred to as either *the employer, joint employer* or *third party to an employment agreement* with Dr Knedler.

[2] Internal Affairs denies that it ever employed Dr Knedler, but says instead she was seconded to it from the Ministry of Women's Affairs, the Chief Executive of

which remained her employer throughout, even when she was working in the Office of the Minister of Women's Affairs during her secondment.

[3] On 15 February 2010, Dr Knedler filed what were effectively new proceedings (although described as an amended statement of problem) against not only Internal Affairs, but also the two other present respondents. Ms Kirbell was said, through her actions and behaviours, to have instigated, aided and abetted breaches of the employment agreement of Dr Knedler, and a penalty of \$10,000 was sought.

[4] On behalf of Ms Kirbell, Mr Churchman applied to strike-out the application against her, and for an order for full indemnity costs. This application was opposed by Dr Knedler on the basis that the relationship between Ms Kirbell and the Department of Internal Affairs had ended and Dr Knedler was unsure, on the basis of that, whether that might affect the remedies available to her; and that she wished to pursue a written apology from Ms Kirbell, which although not obtainable in the Authority could be provided in mediation. It was submitted that Dr Knedler's actions were within the time period provided for a penalty and that Ms Kirbell would be required as a witness in any event.

[5] I accept that Ms Kirbell was closely involved in the matters that are the subject of this application, as for some time she acted in effect as Dr Knedler's day-to-day supervisor, while Dr Knedler was on secondment at the Office of the Minister of Women's Affairs. Serious accusations are made by Dr Knedler against her because of her alleged actions while in this position. Thus if there have been any breaches of Dr Knedler's employment agreement, then they could have been incited, instigated, aided or abetted by Ms Kirbell and a penalty may have been available. However, such penalties (which are, in their nature, quasi criminal) must be commenced within 12 months of the earlier of the date when the cause of action first became known to the person bringing the action, or the date when the cause of action should reasonably have become known to them.

[6] In this case, Dr Knedler's employment ended in 2008 (after Dr Knedler had filed a formal complaint against Ms Kirbell earlier that year) yet the penalty proceedings were not filed until 15 February 2010. Simply because Ms Kirbell may have left the employment of Internal Affairs subsequently does not change any cause of action that occurred during Dr Knedler's employment, and thus Dr Knedler must have known of such potential causes of action in 2008. Thus Dr Knedler's action was

brought well beyond the 12 month period provided for, which should be strictly applied in penalty proceedings. I therefore dismiss the application against Ms Kirbell. Costs between Ms Kirbell and Dr Knedler are reserved.

[7] Internal Affairs still maintains that it was never Dr Knedler's employer, but I have directed both it and the Department of Women's Affairs to further mediation, which all remaining parties must attend and attempt in good faith to reach an agreed settlement of their differences.

G J Wood
Member of the Employment Relations Authority