

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 109/10  
5140642

BETWEEN

KAREN PIVOTT  
First Applicant

PATRICK O'SULLIVAN  
Second Applicant

A N D

SOUTHLAND ADULT  
LEARNING PROGRAMME  
First Respondent

LITERACY AOTEAROA  
INCORPORATED  
Second Respondent

Member of Authority: James Crichton

Representatives: Patrick O'Sullivan for First and Second Applicant  
Miriam Sinclair, Counsel for First Respondent  
Prudence Kapua, Counsel for Second Respondent

Investigation Meeting: By agreement on the papers

Submissions Received: 19 April 2010 from Applicants  
16 April 2010 from First Respondent  
16 April 2010 from Second Respondent

Determination: 5 May 2010

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**INTERIM DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] In their statement of problem filed in the Authority on 21 December 2009, the applicants (the applicants) claim they were both unjustifiably disadvantaged and unjustifiably constructively dismissed *by the first respondent with the active complicity of the second respondent* and also seeks a determination on two so-called *threshold issues* which are identified as:

- (a) leave to join *all the named parties*; and
- (b) an order for the discovery of documents relevant to the proceeding.

[2] This determination is concerned exclusively with the issue of joinder. Issues to do with discovery of documents (if any) will be dealt with separately. In support of the application for joinder, the applicants filed extensive submissions. On 15 March 2010, I convened a telephone conference of the parties representatives, specifically to deal with the applicants' application to join the second respondent to the proceedings and the second respondents application for strike out. At the telephone conference, all parties agreed that these preliminary issues ought to be dealt with by written submissions. Those written submissions have subsequently been timetabled and are now all to hand.

[3] For the avoidance of doubt, the Authority notes that this present determination is concerned exclusively with proceedings filed in respect to file No. 5140642 and does not in any way consider proceedings filed in file No. 5303465. The latter file which was opened on 23 April 2010 is a separate proceeding in which the first applicant in the present case proceeds against the second respondent in the present case. Although it has been suggested by the applicants that the Authority might contemplate the joinder of that proceeding to the present one, I do not consider that that suggestion would assist the parties at this stage.

[4] The fundamental issue before the Authority then is whether the second respondent Literacy Aoteoroa Incorporated (Literacy Aoteoroa) ought to be part of these proceedings or not. The applicants' contend that they were each of them in an employment relationship with the first respondent the Southland Adult Learning Programme (Southland Adult Learning) and that they each suffered unjustified disadvantage and dismissal personal grievances while in that employment. They say in essence that the second respondent was actively *complicit* in the perpetration of those grievances and that it is in the interest of justice for the Authority to direct that Literacy Aoteoroa be a party to the proceeding.

[5] In their submissions, Literacy Aoteoroa make the point that the basic requirements to support a joinder application are simply not present. The most obvious of those requirements is the existence of a cause of action. It is plain on the evidence before the Authority relating to the employment relationship described in

File 5140642 that there is no cause of action between the applicants on the one hand and Literacy Aotearoa on the other. With no employment relationship between those parties, the Authority simply has no jurisdiction to involve Literacy Aotearoa.

[6] It follows that there is no practical, legal or ethical basis on which Literacy Aotearoa can be joined to these proceedings in the absence of any proper employment basis for their joinder.

[7] As if that is not enough, the submissions for Southland Adult Learning on the issue also contribute to the position by making clear that although Literacy Aotearoa is a funder of Southland Adult Learning, the latter agrees that it is *autonomous* in respect to the Employment Relations Act 2000.

### **Determination**

[8] In the absence of any credible basis for the joinder of Literacy Aotearoa to the present employment proceedings brought by the applicants against their employer Southland Adult Learning Programme I direct that Literacy Aotearoa is to be struck out from the present proceedings and is to not have any further involvement in this matter as a party.

### **Costs**

[9] If Literacy Aotearoa wish to make an application for costs in respect to the legal expense they will have been put to in dealing with this application, I am happy to reserve costs on the basis that the parties are to endeavour to resolve matters themselves but if that is not achieved then I will fix costs on application from Literacy Aotearoa. Should such an application be made I will then determine a timetable for the parties to respond.

James Crichton  
Member of the Employment Relations Authority