

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 101/10  
5294944

BETWEEN                      MICHAEL SHARPE  
   Applicant

AND                              THE CHIEF OF THE NEW  
   ZEALAND DEFENCE FORCE  
   Respondent

Member of Authority:        K J Anderson

Representatives:             A Sharp, Counsel for Applicant  
   J Holden, Counsel for Respondent

Investigation Meeting:      26 February 2010 at Auckland

Determination:                4 March 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1]     The applicant, Mr Michael Sharpe, seeks an order restraining the respondent, The Chief of the New Zealand Defence Force (“the NZDF”) and all military and civilian personnel holding office through or under him, from continuing with an investigation and/or finalising a decision regarding possible disciplinary action against Mr Sharpe, relating to the alleged acquisition, storage and use of photographic materials by him, until such time as the pending criminal prosecution in the District Court has been completed.

[2]     The Authority has received sworn affidavits with attached relevant documents from Mr Sharpe and Mr Earwaker, Barrister. For the NZDF, the Authority has received relevant documents along with sworn affidavits from Flight Lieutenant Walker, Lieutenant Campbell, Captain Keating, and Warrant Officer Gray, Master-at-Arms. Both parties presented pertinent and helpful written and oral closing

submissions. The totality of the evidence and submissions has been given close consideration, albeit not all specifically referred to in this determination.

## **Background**

[3] Mr Sharpe is a non-enlisted (civilian) staff member with the Royal New Zealand Navy (RNZN). He is employed as the Manager of the Navy Adventure Training Centre (NATC) at HMNZS Philomel, Devonport. As Mr Sharpe is not enlisted or military personnel, his employment relationship falls under the ambit of the Employment Relations Act 2000.

[4] At the material times, in his role as Manager, Mr Sharpe was responsible for the financial management of the NATC cost centre and had delegated authority permitting him to authorise the purchase of equipment up to the value of \$5,000. Mr Sharpe was also provided with a RNZN mobile phone.

[5] The evidence of Flight Lieutenant Walker is that in September 2008, concerns were raised about what appeared to be irregularities with the accounting and disposals processes at the NATC. As a consequence, the then Commanding Officer of HMNZS Philomel, Captain McDougall, ordered an investigation into the purchasing procedures and the financial management of NATC. The investigation, carried out by Lieutenant Commander Casey, identified that a significant amount of camera and photographic equipment had been purchased against the NATC cost centre. It also revealed the existence of a website titled *Tricky-Micky Images Michael Sharpe Photography*. The website referred to “high quality Nikon pro digital cameras and equipment” and included a contact phone number which is Mr Sharpe’s RNZN mobile phone number.

[6] Upon receiving a report from Lieutenant Commander Casey, Captain McDougall ordered that disciplinary action be initiated in accordance with the provisions of the *New Zealand Defence Force Civil Staff Code of Conduct* (“the Code”). Captain McDougall also ordered that the New Zealand Police be contacted as there was a suspicion that Mr Sharpe may have been involved in fraudulent activity. Captain Walker attests that the suspicion was based on Mr Sharpe’s links to the web site, *Tricky-Micky Images Michael Sharpe Photography* and his purchases of cameras

and photographic equipment in his role as NATC Manager. The evidence is that the three cameras and associated photographic equipment, allegedly purchased by Mr Sharpe between 2004 and 2009, had a retail value of \$33,537.

[7] On 15<sup>th</sup> April 2009, Warrant Officer (WO) Gray enquired of Mr Sharpe where the cameras and associated equipment were located. Mr Sharpe indicated that the majority of it was at his home. WO Gray accompanied the Police to Mr Sharpe's home where three cameras and numerous items of associated photographic equipment were located. WO Gray attests that business cards bearing the name; "*Tricky Micky Images*" were also found. Later the same day, a further four items, associated with photography, were handed over to WO Gray by Mr Sharpe. These came from Mr Sharpe's personal locker at NATC. On the same day, Mr Sharpe was arrested by the Police and at the Takapuna Police Station he was informed that it was alleged that he had stolen photographic and recording equipment from the RNZN.

[8] The evidence of Mr Sharpe is that when he attempted to return to the NATC at Devonport he found that he had been "locked out" as his access card had been deactivated and his mobile phone ceased to operate.

[9] On 16<sup>th</sup> April 2009, Mr Sharpe attended a meeting with the then Executive Officer of HMNZS Philomel, Commander Lisa Hunn. He was informed that he was suspended from his employment. This was confirmed by a letter of the same date which informed that:

- a. *It is alleged that you purchased, acquired and used naval stores contrary to the procedures laid down in DFO 52, DFO 77 and DFO 03/2004 and*
- b. *It is alleged that you have procured luxury items of food outside of the current NSS Catering cell food procurement process.<sup>1</sup>*

[10] In the letter, reference is made to the Code and to an investigation being initiated:

*These allegations and the consequences of those allegations being well-founded are of a serious nature. On that basis, I will be initiating an investigation into your alleged inappropriate financial management of CC [cost centre] 31420. At this stage, the investigation will not examine those allegations currently being investigated by the NZ Police.*

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<sup>1</sup> It seems that the second issue has been investigated to the satisfaction of NZDF.

[11] On 5<sup>th</sup> May 2009, an independent investigator, Mr David Carden, was appointed to investigate allegations of misconduct against Mr Sharpe.<sup>2</sup> In a letter from Commander Hunn dated 9<sup>th</sup> September 2009, Mr Sharpe was invited to attend a meeting with Mr Carden on 22 September 2009. In responding to this invitation, via a letter dated 18<sup>th</sup> September 2009, Mr Sharpe's barrister conveyed that Mr Sharpe was prepared to meet with Mr Carden but he was not prepared to discuss any matters relating to the:

*.... cameras/photographic equipment or materials. Those are issues which (as outlined earlier) relate directly to the criminal proceedings and will have to stand over until the completion of the criminal matter to prevent a serious possibility of injustice to Mr Sharpe were he to be obliged to answer those questions. Not only would he be potentially forced into having to disclose his defence to the criminal matter before trial but he may further run the risk of incriminating himself – either of those events would affect his right to a fair criminal trial.*

[12] Commander Hunn responded on 23<sup>rd</sup> September 2009. In her letter she informed that:

*It is acknowledged that Mr Sharpe will not answer questions that you consider may incriminate and/or adversely affect the impending criminal proceedings against him. This will be noted by Mr Carden at the interview.*

Mr Sharpe was subsequently interviewed by Mr Carden and the latter produced a report dated 11<sup>th</sup> December 2009, pertaining to his findings in regard to what appears to be a comprehensive investigation.

[13] According to the *INDICTMENT* issued by the Auckland Crown Solicitor, Mr Sharpe is now charged under section 228(b) of the Crimes Act 1961, with 11 counts of using a document with intent to obtain property, dishonestly and without claim of right. It is alleged that the actions leading to the charges, occurred between April 2004 and March 2009. There is a provisional hearing date of 27<sup>th</sup> May 2010 for the criminal proceedings in the District Court.

[14] In the meantime, in a letter dated 5<sup>th</sup> February 2010, to Mr Ashley Sharp, Barrister for Mr Michael Sharpe, Captain Keating, the current Commanding Officer of HMNZS Philomel, conveyed that:

1. *The RNZN will not proceed with the disciplinary investigation into the allegations against your client, Mr Michael Sharp, that may be closely*

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<sup>2</sup> He was appointed by the Arbitrators' and Mediators' Institute of New Zealand Inc.

*related to the criminal charges brought against Mr Sharpe by the Crown. More specifically, these allegations are that your client has authorised the purchase of a significant amount [sic] camera and photographic related equipment without the appropriate authority.*

2. *Nevertheless, further allegations that may amount to serious misconduct still remain against your client. Those allegations are:*
  - a. *your client was engaged in secondary employment, namely the running of the business “Tricky Micky Images”, without approval in breach of clause 17 of the NZDF Civil Staff Code of Conduct.*
  - b. *your client had in possession at his home and locked in his personal locker at his place of employment a significant amount of valuable equipment that was the property of the NZDF. The possession of NZDF equipment in this manner appears to be a breach of clause 40d. of the NZDF Civil Staff Code of Conduct, namely the unauthorised possession of NZDF property.*
  - c. *your client has used NZDF equipment, namely camera and photographic equipment and an NZDF cell-phone, in the running [sic] this secondary employment. This is a misuse of NZDF property in a breach of clause 40e. of the NZDF Civil Staff Code of Conduct.*
3. *These allegations are separate from those allegations that are related to the criminal prosecution brought by the Crown against your client. It is considered that answering these allegations could in no way prejudice your client’s right to a fair trial, and therefore it is the RNZN’s intention to continue with this matter.*

[15] Mr Sharpe was cautioned that if the allegations, if found to have occurred, may amount to serious misconduct under the Code which could potentially result in his dismissal. He was invited to attend a meeting at 8:00a.m, 11<sup>th</sup> February 2010. As a consequence, Mr Sharpe made an urgent application to the Authority on 8<sup>th</sup> February 2010 for an order to restrain the NZDF from continuing with its investigation of various matters pertaining Mr Sharpe’s alleged actions, until the criminal proceedings are completed. While via a further letter from Captain Keating dated 18<sup>th</sup> February 2010, the NZDF sought to have Mr Sharpe attend another meeting on 2<sup>nd</sup> March 2010, NZDF has undertaken to act with forbearance until the determination of the Authority is issued.

## The Legal Framework

[16] I am helped greatly by the observations made by Goddard CJ in *Russell v Wanganui City College* [1998] 3 ERNZ at p.1082. The observations of Chief Judge Goddard being:

- (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 it's business of being an employer.
- (ii) It is a grave matter for the Court to interfere with this entitlement by some form restraint and to take such 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.

[17] An interim injunction, as sought by Mr Sharpe, 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 the parties believe that it would be reasonable for one of the options to prevail. The Authority has the discretion to grant an injunction but that discretion must be exercised in accordance with well-settled principles.<sup>3</sup> These principles are:

- (a) Is there an arguable case?

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<sup>3</sup> *Tasman Pulp & Paper Co Ltd v NZ (with exceptions) Shipwrights etc Union & Ors* [1991] 1 ERNZ 886, at 894.

- (b) Where does the balance of convenience lie?
- (c) Whether other remedies are available to the applicant?
- (d) What is the overall justice of the case?

[18] The Authority, following earlier precedent of the Employment Court, has generally accepted that the four elements should be applied in the above order, (a)-(d). However, I note that in *Singh v Chief Executive Officer of the Department of Labour* [2005] 1 ERNZ 569, and earlier in *Wackrow v Fonterra Co-operative Group Limited* [2004] 1 ERNZ 350, Shaw J held that the correct order of tests for determining an interim injunction was to ask:

- (i) Whether there was an arguable case.
- (ii) If so, are damages or an alternative remedy available?
- (iii) Where does the balance of convenience lie?
- (iv) Standing back, what is the overall justice of the case?

[19] In *Southern v Ansett New Zealand Ltd* [1999] 1 ERNZ 548 at 559, Palmer J, referred to his earlier decision; *Healthlink South Ltd v National Union of Public Employees (Inc)* unreported, Palmer J, 8 July 1993, CEC 34/93, and *Kendall v Presbyterian Support Services (Northern)* [1992] 2 ERNZ 413, where Travis J observed:

These four elements are not to be applied mechanically and it appears from many decisions of this Court and other Courts exercising the same jurisdiction, that at the end of the day the balance of convenience is the most important and guiding principle. This is confirmed in a decision of the Privy Council in *Eng Mee Yong v Letchumanan* [1980] AC 331, where the Privy Council described the approach as follows, at p 337:

“The guiding principle in granting an interlocutory injunction is the balance of convenience, there is no requirement that before an interlocutory injunction is granted the plaintiff should satisfy the Court that there is a ‘probability,’ a ‘prima facie case’ or a ‘strong prima facie case’ that if the action goes to trial he will succeed; but before any question of balance of convenience can arise the party seeking the injunction must satisfy the court that his claim is neither frivolous nor vexatious; in other words that the evidence before the court discloses that there is a serious question to be tried.”

(i) **Is there an arguable case?**

[20] The right to remain silent is a rule of substantive law derived from s.23(4) of the Bill of Rights Act 1990.<sup>4</sup> While this provision applies to the rights of persons arrested or detained, it was held in *Russell*, at 1082, that the provision must not be looked at in a too narrow way:

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<sup>4</sup> Along with s.25(c) of the same Act: the right to be presumed innocent until proved guilty according to law.

... for if the accused person can be forced to make 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 normal formal disciplinary inquiry by an employer especially a State sector employer.

[21] The argument for Mr Sharpe is that, if he were to participate in the investigation meeting sought by the NZDF, there is a real danger that anything that is said at such a meeting, could be passed to the police and the prosecution and then subsequently used to Mr Sharpe's detriment in the forthcoming criminal proceedings.

[22] On the other hand, the NZDF say that they only wish to put questions to Mr Sharpe regarding four particular matters:

- (i) The possibility that Mr Sharpe was engaged in secondary employment; namely, the existence of evidence relating to "Tricky-Micky Images Michael Sharpe Photography."
- (ii) That Mr Sharpe had unauthorised possession of NZDF property; namely the photography related equipment. Flight Lieutenant Walker attests that the NZDF has agreed not to ask Mr Sharpe questions relating to how the equipment was acquired until after the criminal proceedings are completed.
- (iii) That Mr Sharpe has misused NZDF equipment; namely the cameras and photographic equipment.
- (iv) That Mr Sharpe lied to the investigator, Mr Carden, regarding being engaged in secondary employment in that there is strong *prima facie* evidence that his answers were false.

[23] The NZDF argues that the above alleged actions of Mr Sharpe may involve contravention/s of the Code hence it is entitled to put relevant questions, going solely to those matters, to Mr Sharpe as a function of their investigation. Furthermore, the NZDF argues that even though Mr Sharpe has, in particular, denied that he was engaged in secondary employment, there is "extremely strong" evidence against him to the contrary.

[24] Clearly an employer is entitled to conduct an investigation into the conduct of an employee in the event that a matter or matters of concern arise and indeed is bound to do so as part of the legal obligations that arise in such circumstances. And while the NZDF have accepted that Mr Sharpe has a right to silence in regard to those matters pertaining to the criminal charges, it says that by restricting the subject matter of its investigation to the above four matters, if Mr Sharpe engages in the investigation process, there will be no prejudice arising for him in regard to the criminal proceedings.

[25] I have given the position of the NZDF intense consideration while balancing it against the rights of Mr Sharpe but must conclude that given the subject matter of the criminal charges, relating to the acquiring of the property involved, it seems to me that it would be particularly difficult for proper boundaries to be imposed in order to prevent any possible unfairness or prejudice arising in relation to the criminal matters. By this I mean that, given the apparent nexus between the possession and use of the photographic equipment involved and how it was acquired, even given the best efforts and intentions of the NZDF, it would be very difficult not to stray into those areas involving the criminal proceedings. Therefore, in the round, I find that Mr Sharpe has an arguable case.

(ii) **Given there is an arguable case, are damages or an alternative remedy available?**

[26] Given my following findings as to the balance of convenience and the potential elements of serious detriment for Mr Sharpe, it is unlikely that any alternative remedies are available to him. And, if Mr Sharpe were to answer the likely questions put to him by his employer in an investigation meeting and this led to an injustice which influenced the criminal trial to his detriment, it is difficult to see how any damages could be an adequate remedy when he is facing serious charges which carry maximum penalties up to 7 years imprisonment.

(iii) **Where does the balance of convenience lie?**

[27] Acknowledging previous findings of the Courts (above), as to the importance of the balance of convenience, the Authority, in exercising its discretion to grant or withhold the remedy of an injunction, has to weigh up the inconvenience to the

NZDF, who would have to bear the burden of an injunction until the criminal proceedings involving Mr Sharp are completed, against the relative injury or detriment that Mr Sharpe may incur if a restraint order is refused.

[28] If the restraint order is refused, what injury or detriment is likely to be incurred by Mr Sharpe? Mr Sharpe argues that if he is required to participate in the investigation meeting and answer questions related to the matters as indicated by the NZDF, it is possible that he may be required to disclose information that may subsequently jeopardise his right to a fair trial regarding the criminal proceedings. This is despite the assurance given by the NZDF that the investigation would not be directed to matters before the District Court, and/or any information incidentally gained, would not make its way to the criminal trial.

[29] It seems to me that there is also a further possible detriment. This is that if the evidence against Mr Sharpe, relating to the matters that would be the subject of the investigation meeting, is as persuasive as the NZDF appear to believe, and even if Mr Sharpe maintained his overall right to silence, then a possible outcome could be that he is dismissed from his employment. It is then likely that the reason/s for his dismissal could become public knowledge with some possible influence on the thinking of potential jury members, despite any appropriate caution from the trial Judge. I accept the undertaking given for the NZDF that it would not publicise the outcome of its disciplinary process until after the outcome of the criminal proceedings is known and that the disciplinary process will be conducted by a senior naval officer who has not been involved in the criminal proceedings, but as people experienced in such matters too often discover, despite the best intentions and efforts to maintain confidential information, leaks occur. And, given the nature of the circumstances of this case, there is likely to be some public interest. Furthermore, even if the NZDF was able to ensure that its investigatory meeting and the outcome were kept private and confidential, the powers of the Crown Prosecutor to require disclosure, raises the possible issue of prejudicial material having to be revealed. There is also of course the serious nature of the penalty that may be incurred by Mr Sharpe if he is found guilty of the charges faced, up to 7 years imprisonment. This must also be taken into account as a potential (and substantial) detriment if a fair trial is jeopardised.

[30] Against this is the cost related inconvenience for the NZDF of keeping Mr Sharpe suspended on full pay until the end of May 2010, or possibly longer, given that the trial date is only provisional. But Mr Sharpe has been suspended on full pay now since 16<sup>th</sup> April 2009 and while clearly it is a burden for the NZDF to keep paying Mr Sharpe for a few more months, in comparison to the potential detriment to him if a restraint order is not granted, the balance of convenience clearly falls in favour of Mr Sharpe.

(iv) **What is the overall justice of the case?**

[31] 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 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.

[32] Among other arguments for the NZDF, Ms Holden has presented a novel proposition. This is that s.4[(1A)(b) of the Employment Relations Act 2000:

*“requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative.”*(Emphasis added)

The submission for the NZDF is that the above provision means that when an employee is the subject of an inquiry into misconduct by the employer, the employee is not able to remain silent or contribute only minimally to the employer's inquiry. It is argued therefore, that as a matter of good faith and in order to be “responsive and communicative”, Mr Sharpe is obliged to participate in the proposed investigation. As far as I am aware, this concept has not been tested to date in circumstances similar to these, but it seems to me that the proposition being advanced goes much further than was ever intended for the statutory provision, in that it would not have been intended to, nor should it (in my view) override s.23(4) of the Bill of Rights Act and the well established common law right to silence pertaining to criminal proceedings that are running parallel with an employment investigation.

[33] Ms Holden also referred me to *Harris & Shepherd v Courage (Eastern) Limited* [1982] I.C.R. 530, an English Court of Appeal decision referred to in

*Wackrow v Fonterra Co-operative Group Limited* [2004] 1 ERNZ 350. *Harris & Shepherd* involved two employees charged with theft in circumstances which gave rise to a strong *prima facie* case against the employees where the evidence, in the absence of an explanation, was so strongly indicative of guilt that the Court held that the employer was entitled to dismiss without waiting, even though the employees may have been facing criminal charges in respect of the same matter. In *Harris & Shepherd*, Waller L.J. agreed with the summary arrived at by Slynn J. in the earlier Employment Appeal Tribunal where the latter held that:

"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 judgment 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.

[34] The argument for the NZDF is that there is no dispute that Mr Sharpe was in unauthorized possession of his employer's property, indeed, it is suggested, caught "red handed" and there is a strong presumption of guilt, hence it is essential that Mr Sharpe should be required to give an explanation. I accept there is some substance to this argument for NZDF, albeit these proceedings are "on the papers" and so certain questions as to the substantial matters remain to be determined in due course. But, as I have concluded earlier, given the obvious nexus between the possession and the associated use of the photographic equipment involved and more particularly, how it was acquired, there is a real and not merely a theoretical danger of injustice being visited on Mr Sharpe for the reasons set out earlier in this determination (paragraph 29).

[35] Mr Ashley Sharp raised the matter of s.60(1)(a)(ii) of the Evidence Act 2006, that is, the privilege against self-incrimination. While given my earlier findings it is probably unproductive and unnecessary for me to engage in an analysis of the applicability of this provision, but I will say that I am more inclined towards the submission of Ms Holden that it is not applicable to the circumstances of this case.

[36] Weighing up all of the relevant factors, I find that the overall justice of the case falls marginally in favour of Mr Sharpe.

### **Determination**

[37] I appreciate that the NZDF is quite understandably wishing to progress the long outstanding issues pertaining to the overall conduct of Mr Sharpe which is the subject matter of this determination. I have closely considered the respective merits of the parties positions, as most capably advanced by both Counsel, but in the round, especially having regard to the balance of convenience, I find that it is appropriate that the injunctive restraint sought by Mr Sharpe should be granted.

### **Order of the Authority**

[38] The Chief of the New Zealand Defence Force and all military and civilian personnel holding office through or under him, are restrained from continuing with an investigation and/or finalising a decision regarding possible disciplinary action pertaining to Mr Michael Sharpe, relating to the alleged acquisition, storage and use of photographic equipment and materials by him, until such time as the criminal proceedings against him, to be heard in the District Court, are completed.

### **Costs**

[39] Costs are reserved. The parties are invited to resolve the matter of costs if they can. In the event they cannot, the applicant has 28 days from the date of this determination to file and serve submissions with the Authority. The respondent has a further 14 days to file and serve submissions.

**K J Anderson**  
**Member of the Employment Relations Authority**