

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-Ā-TARA ROHE**

[2021] NZERA 230
3113454

BETWEEN MIKENSIE WOOLLEY
Applicant

AND THE COSMETIC CLINIC
NAPIER COMPANY LIMITED
Respondent

Member of Authority: Trish MacKinnon

Representatives: Belinda Brans and David Oliver, counsel for the
Applicant
No appearance for the Respondent

Investigation Meeting: 5 March 2021 at Napier

Submissions and further 29 March 2021 from the Applicant
Information Received: None from the Respondent

Date of Determination: 27 May 2021

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Mikensie Woolley claims to have been constructively dismissed by her employer The Cosmetic Clinic Napier Company Limited (TCC Napier or the clinic). She also claims unpaid wages and holiday pay and seeks the imposition of a penalty against TCC Napier for breaching her employment agreement in failing to provide her the agreed hours of work and remuneration.

[2] TCC Napier did not file a statement in reply or take part in a case management conference with the Authority and Ms Woolley. It had been properly informed of the date by

which the statement in reply was required and of the time and date for the case management conference.

The Authority's Investigation

[3] When there was no appearance for TCC Napier at the investigation meeting on 5 March 2021, I delayed the start for approximately 10 minutes while an Authority officer attempted unsuccessfully to make contact with Malcolm Herbert, the current sole director and a 50 percent shareholder of the company. There was no response from Mr Herbert.

[4] A notice of investigation meeting had been sent by courier to the registered office of TCC Napier. Proof of its delivery on 18 November 2020 had been supplied to the Authority by the courier company. As I was satisfied TCC Napier had been properly notified of the date, time and venue of the investigation meeting, I proceeded in its absence, in accordance with clause 12 of Schedule 2 to the Employment Relations Act 2000 (the Act).

[5] In the course of the investigation meeting, Ms Woolley provided evidence under oath and was questioned about all aspects of her employment and the remuneration she had received from TCC Napier. Ms Woolley's father, Mr Tony Woolley, also gave evidence under oath about his knowledge of the matter and his observations of how the experience had affected his daughter.

Background and evidence

[6] Ms Woolley was offered employment with TCC Napier towards the end of her two-year Diploma Course at the Eastern Institute of Technology, Hawke's Bay Campus (EIT) in November 2019. She accepted the offer of a full-time role as a Dermal Technician with TCC Napier and returned her signed individual employment agreement (IEA) on 7 November 2019. Jeanette Duncan who, at that time and until December 2020, was the sole director of the company and is the other 50 percent shareholder, signed the IEA for the employer as franchisee. TCC Napier was a franchise of The Cosmetic Clinic New Zealand Limited (TCCNZ).

[7] Amongst other things, Ms Woolley's IEA provided that she would commence employment on 28 January 2020; would work 76 hours per fortnight; and would be paid \$19 per hour exclusive of KiwiSaver. It included a provision whereby Ms Woolley would serve a trial period of 90 days starting on her first day of employment as set out in Schedule 1 of the

IEA. That schedule stated the commencement date of Ms Woolley's employment as 28 January 2020.

[8] TCC Napier had not commenced operating when Ms Woolley signed the IEA. The clinic was to be located on the ground floor of a hotel then under construction. On 22 December 2019, Ms Woolley received an email from the CEO of TCCNZ (the CEO), who was based in Auckland, informing her there were some delays with the construction of the hotel in which the clinic was to be located. This meant a delay to anticipated training that Ms Woolley was to undertake. Shortly afterwards Ms Woolley participated in a video conference that included the CEO, in the course of which Mr Herbert was introduced to her as Ms Duncan's partner. It was explained to Ms Woolley that Mr Herbert was involved with the construction of the hotel.

[9] In early January 2020 Ms Duncan advised Ms Woolley that matters were progressing well with the clinic. At this time, and in anticipation of commencing employment with TCC Napier on 28 January 2020, Ms Woolley handed in notice of her resignation to the fashion shop at which she had been a part-time retail assistant throughout her studies.

[10] One week before Ms Woolley was due to start work at TCC Napier, Ms Duncan telephoned her advising that the commencement date for her employment was to be extended to April 2020. When questioned by Ms Woolley, Ms Duncan said it was possible the start date could be pushed further out to June or July 2020.

[11] Ms Woolley, who said she was upset and stressed about this change in circumstance, sought advice on her situation and shortly afterwards emailed Ms Duncan and the CEO of TCCNZ explaining that she expected to be paid her wages from 28 January 2020 in accordance with the provisions of her IEA.

[12] On 28 January 2020, Mr Herbert emailed Ms Woolley advising there had been delays in both the construction of the hotel in which the clinic was to be situated, and in the training available. Mr Herbert acknowledged that Ms Woolley would be disappointed by this and said she may wish to agree to extend the start date or, alternatively, the company could pay her one week's notice "*under your contract for the trial period.*"

[13] Ms Woolley responded that she understood her contract provided she could be given one week's notice during her trial period and said she saw that as her only option at that stage,

as she was without an income and employment. Ms Woolley's response referred to having received advice that she was entitled to be paid from the agreed start date plus one week's wages for notice.

[14] Ms Woolley stated in her email that, once her one week's notice had started, noting that might be, for example, from 30 January 2020, she was also entitled to be paid for 28 and 29 January. Mr Herbert's response was to request Ms Woolley's bank account details.

[15] On 30 January 2020, the CEO of TCCNZ telephoned Ms Woolley advising her that what Mr Herbert had written in his email to her was inappropriate, and that she should ignore everything that had been said. The CEO then emailed Ms Woolley advising her he had spoken with Mr Herbert and TCC Napier would like her to start as soon as she was available. He said there were administration tasks that were required to be completed before the opening of the clinic.

[16] Ms Woolley's evidence was that she understood the administration tasks would cover her until the construction of the clinic was completed and she could begin her Dermal Technician duties. She said that, when she agreed to undertake the administration work, her expectation was that the hours would be those in her IEA, that is, 76 hours a fortnight, five days a week.

[17] That did not eventuate. The start date for the administration work was delayed until 11 February 2020 for reasons that remain unclear. Once that work began, it was Ms Woolley's evidence that Ms Duncan provided her only nine hours work over three days from Tuesday 11 to Thursday 13 February 2020. After working approximately three hours on each of those days Ms Duncan sent Ms Woolley home. On Thursday 13 February she told Ms Woolley she had no further work for her at that time.

[18] Ms Woolley contacted the CEO on Thursday, 13 February informing him of her concern that she had been sent home again that day and asking if there was actually any more work for her to do. The CEO advised Ms Woolley he had been struggling to contact either Ms Duncan or Mr Herbert.

[19] On Friday 14 February, Ms Woolley received \$161.71 in her bank account from TCC Napier. She received no payslip or any communication about the deposit.

[20] By Sunday 16 February, Ms Woolley said she had received no further contact from Ms Duncan or Mr Herbert and felt she had no option other than to resign immediately from both her Dermal Technician position and the administration role. She was not being provided with the full-time hours she expected and needed, and the only amount she had received as wages since her agreed start date of 28 January 2020 represented nine hours work which was insufficient to support herself. Ms Woolley said she was receiving no communication about what was happening with the administration work and how it was going to sustain her until the position she had accepted in November 2019 started.

[21] Ms Woolley emailed her resignation to the CEO of TCCNZ, Ms Duncan and Mr Herbert and advised them her reasons for doing so. She referred to reaching out to Ms Duncan who had offered her three hours work a day, four days a week but had sent her home early with no more work to undertake.

[22] In her resignation email Ms Woolley advised she had found the whole process "*drawn out, overwhelming and very stressful both personally and financially*" and said "*the lack of communication and disorganisation (gave her) no confidence to wait out for the undecided opening date of the clinic*". She ended her email by referring to the previous discussion she had had with Mr Herbert over being paid out one week's notice plus the 14 working days since the commencement date specified in her IEA.

[23] The CEO responded that he appreciated the reasoning behind her decision and advised he had not had any contact from either Ms Duncan or Mr Herbert. Neither Ms Duncan nor Mr Herbert responded to her emailed resignation.

[24] Ms Woolley said she heard nothing from Ms Duncan or Mr Herbert until 26 February 2020 when Mr Herbert responded to an email she had sent to them both on 25 February. Ms Woolley's email referred to two previous unanswered emails she had sent them concerning her employment and resignation. She advised Ms Duncan and Mr Herbert that she had applied for mediation.

[25] In his emailed response, Mr Herbert said he found Ms Woolley's attitude "*rather cheeky*". He accused her of money grabbing and said she had given "*...notice under your contract months ago and didn't show up to work.*" He also said that:

About three weeks later you decided you would do some work and wanted a new contract. You had not signed a new contract yet and turned up and did

about nine hours. You were paid an hourly rate as agreed. You were not employed under an employment contract – you were an independent contractor. After working only three hours a day over three days, you got sick of it and gave notice again and didn't show up. You have now been sending emails wanting monies for a notice period and demanded that we attend a mediation with you. We do see [sic] why we have to pay you monies for giving notice when you had already given notice and didn't show up and then worked nine hours as an independent contractor.

[26] Ms Woolley provided a comprehensive response by email to Mr Herbert in which she rejected his description of her as an independent contractor and a money grabber and made it clear she was seeking only what she was believed she was legally entitled to under her IEA. Her email, as with all her previous correspondence with her employer, was respectful and courteous.

[27] After engaging legal representation, Ms Woolley raised a personal grievance for unjustifiable constructive dismissal on 25 March 2020, proposing mediation in the first instance. The employer refused to attend mediation and, as noted earlier, has not engaged with the Authority over the matter.

Issues

[28] The issues for the Authority to determine are:

- (a) Whether Ms Woolley is prevented from bringing a personal grievance for unjustifiable dismissal by the trial period provisions of her IEA;
- (b) If she is not prevented from doing so, whether she was constructively dismissed;
- (c) Whether the employer breached the employment agreement by failing to provide the agreed hours of work and remuneration;
- (d) Whether wages are owing; and
- (e) Whether a penalty should be imposed on the employer?

Effect of trial period provisions

[29] Sections 67A and 67B of the Act set out when an employment agreement containing a trial period may be entered into by an employer and an employee and what the effect of a trial provision is.

[30] Section 67A provides that an employment agreement containing a trial provision may be entered into between a small-to-medium-sized employer and an employee under certain specified conditions. Where the employer dismisses the employee within the specified trial period the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

[31] Section 67B expands upon the effect of a trial period provision. It states that the section applies if a small-to-medium-sized employer terminates an employment agreement containing a trial period provision by giving the employee notice of the termination before the end of the trial period, whether the termination takes effect before, at, or after the end of the trial period. Where the employee's employment is terminated in accordance with that provision the employee is barred from bringing a personal grievance or legal proceedings in respect of the dismissal.

The employment agreement

[32] Ms Woolley's IEA contained a comprehensive trial period provision that provided at clause 3.1:

This Agreement is subject to a trial period. The Employee will serve a trial period of 90 days, starting on the Employee's first day of employment as set out in Schedule 1.

[33] Schedule 1 stated the commencement date for the employment to be 28 January 2020.

[34] It is not necessary to replicate the trial period provision in full but I will highlight two other relevant sub-clauses. The first specified that, if the employer dismissed the employee during the trial period, the employee was not entitled to bring a personal grievance or other legal proceedings in respect of that dismissal. The second provided that, during the trial period, the employer could terminate the employment agreement by providing the employee with one week's notice of termination, in writing.

[35] Ms Brans submits, on behalf of Ms Woolley, that the trial period provision in her IEA is invalid. Her reasoning is that the trial period was specified to begin on Ms Woolley's first day of employment. The IEA stipulated 28 January 2020 as the commencement date for her employment. Ms Woolley did not commence employment on that date, thus invalidating the trial period provision.

[36] Ms Brans further submits that, if the trial period provision is found to be valid at the time Ms Woolley was constructively dismissed, TCC Napier failed to provide notice of dismissal to her in accordance with the terms of the IEA, and as required by s 67B(1) of the Act. Accordingly, s 67B(2) of the Act, which would disentitle Ms Woolley from bringing a personal grievance or other legal proceedings in respect of the dismissal, does not apply.

[37] I accept the submission that the trial period provision of Ms Woolley's IEA was not valid. The IEA did not simply provide that the trial period would commence on Ms Woolley's first day of employment: it stipulated what date that would be. The employer had neither work nor premises available on 28 January 2020 with the result that Ms Woolley did not commence employment on that day.

[38] I have considered whether TCC Napier could argue that Ms Woolley agreed to a variation of the commencement date in accepting a different role in the clinic until she could begin her Dermal Technician role. Clause 32.1 of the IEA contained a provision permitting variation by mutual agreement, with the condition that "*... no variation will be effective or binding on either party unless it is in writing and signed by both Parties*".

[39] I have concluded such an argument could not succeed as there was no agreement made between Ms Woolley and TCC Napier to vary the commencement date for her employment, whether written and signed or not.

[40] Ms Woolley, faced with the choice of accepting a later, uncertain commencement date or being given notice by her employer, initially indicated that being given notice was the more palatable of the two undesirable options. Following the franchisor CEO's intervention, she accepted the offer of carrying out an administrative function with the clinic on a temporary basis until such time as she could begin her Dermal Technician's duties.

[41] In doing so, however, Ms Woolley did not agree to change the commencement date of her employment. In communications with her employer, she consistently expressed her view that the contractual commencement date of her employment was 28 January 2020 and that she was entitled to wages from that date.

[42] In *Smith v Stokes Valley Pharmacy (2009) Ltd* the then Chief Judge observed that sections 67A and 67B removed longstanding employee protections and access to dispute resolution and to justice.¹ The Chief Judge continued:

As such, they should be interpreted strictly and not liberally because they are an exception to the general employee protective scheme of the Act as it otherwise deals with issues of disadvantage in, and dismissals from, employment. Legislation that removes previously available access to courts and tribunals should be strictly interpreted and as having that consequence only to the extent that this is clearly articulated.

[43] While the facts of Ms Woolley's situation differed from those of Ms Smith in *Stokes Valley Pharmacy*, the principle of strict interpretation is applicable. For that reason I find the trial period provision of Ms Woolley's IEA to have been invalidated by the employer's failure to provide her work from the commencement date. As the trial period did not apply, there is no impediment to Ms Woolley bringing a claim of constructive dismissal to the Authority.

Constructive dismissal and breach of employment agreement

[44] It has long been recognised that a resignation by an employee may be found to have been caused by the conduct of an employer. If the conduct is sufficiently serious, the responsibility for terminating the employment relationship will rest with the employer. A resignation in such circumstances will be treated as a constructive dismissal.

[45] At least three categories of employer conduct have been recognised by the Court of Appeal as potentially causing constructive dismissal.² The Court acknowledged this list was not exhaustive but those easily identifiable were where:

- (a) An employer gives an employee a choice of resigning or being dismissed;
- (b) An employer has followed a course of conduct with the deliberate and dominant purpose of coercing an employer to resign; and
- (c) A breach of duty by the employer leads the employee to resign.

[46] Ms Woolley's claim to have been constructively dismissed relates to a breach of duty by TCC Napier. She asserts it fundamentally breached its duty to provide her the agreed hours of work under her employment agreement and by its failure to pay her wages. Ms Brans

¹ [2010] ERNZ 253 at [48].

² *Auckland Shop Employees Union v Woolworths (NZ) Limited* [1985] 2 NZLR 372 (CA) at 374 and 375.

submits that these breaches made the risk of her resignation reasonably foreseeable. Having resigned from her previous employment in reliance on the terms of the IEA she had entered into with TCC Napier, Ms Brans submits Ms Woolley had no option but to resign when the hours of work and wages failed to materialise.

[47] I accept that submission for the reasons that follow.

[48] As previously noted, TCC Napier entered into an IEA with Ms Woolley in November 2019. Among the terms of the IEA were that her employment as a Dermal Technician would start on a specified date and that she would be paid an agreed wage for working an agreed number of hours per week from that date. Ms Woolley was ready and willing to fulfil her obligations under the IEA but TCC Napier failed to fulfil its obligations as the employer, instead providing her with an option of agreeing to change the commencement date or accepting a week's notice of termination of employment.

[49] The intervention of the CEO of the franchisor at that point resulted in Ms Woolley agreeing to undertake administrative tasks for TCC Napier until such time as the clinic opened for business. Mr Herbert's email of 26 February 2020, after the employment relationship had ended, referred to Ms Woolley being an independent contractor while she was working on administrative duties. Ms Woolley corrected Mr Herbert in her response to his email the same day.

[50] Mr Herbert's description of Ms Woolley as an independent contractor was inaccurate. There was no evidence in the documentation provided to the Authority, or in oral evidence from Ms Woolley, to support a claim that her status had changed from that of employee to independent contractor at any time during her brief employment relationship with TCC Napier. I accept that Ms Woolley remained an employee from 28 January 2020 until her employment terminated.

[51] The administrative tasks given to Ms Woolley did not provide the hours that she had expected and fell far short of the full time hours specified in her IEA. Ms Woolley's evidence is that after completing approximately three hours work on each of the three days Ms Duncan asked her to work on 11, 12 and 13 February 2020, Ms Duncan sent her home. On Thursday 13 February, Ms Duncan told Ms Woolley she had nothing else for her to do. When Ms Woolley contacted the CEO of the franchisor that day, he could give her no assurance about the future and said that he had been struggling to contact Ms Duncan or Mr Herbert.

[52] The deposit of \$161.71 into Ms Woolley's bank account the following day, 14 February 2020, without explanation or accompanying payslip undermined Ms Woolley's confidence in her employer's intention to treat her fairly and reasonably and in accordance with the terms and conditions of her IEA. Her assumption that this was payment for the nine hours of work she had completed was later confirmed by Mr Herbert.

[53] While the period between Ms Woolley agreeing to the administrative role until she could begin her duties as a Dermal Technician and her resignation was relatively short, I accept Ms Woolley's evidence that she believed she had no other option. She had made clear to her employer her need for full time work to support herself financially, and she had a legitimate expectation that TCC Napier would provide her with full time work.

[54] Ms Woolley's email of 16 February 2020, which was addressed to the CEO of the franchisor, and to both Ms Duncan and Mr Herbert of TCC Napier, expressed her concern, dismay and exasperation with the situation she had found herself in since being informed of the delay in opening the clinic. She had agreed to undertake administrative tasks to keep her employment going until the clinic was operational, in the expectation she would work the same hours as her IEA provided and receive the same remuneration.

[55] By 16 February 2020 Ms Woolley had been given no idea when her work as a Dermal Technician would commence and had been paid for only nine hours work when, by her reckoning, she was owed wages for 14 days. She had made her employer aware that she expected payment in accordance with the terms agreed in her IEA and the employer had not complied with those terms.

[56] In Ms Woolley's resignation email she also advised her employer, and the CEO of the franchisor, of the personal and financial stress the whole process had caused her. She referred to the lack of communication and disorganisation which had resulted in her losing confidence to carry on waiting for the clinic to open.

[57] In these circumstances I find Ms Woolley's resignation was foreseeable. TCC Napier had breached two basic terms of her employment agreement in failing to provide the agreed hours of work and the agreed remuneration. I regard Ms Woolley's resignation as a constructive, and unjustifiable, dismissal by TCC Napier.

Are wages owing?

[58] Ms Woolley's IEA specified 28 January 2020 as the commencement date for her employment. She did not agree to her employer changing that date when she agreed to undertake temporary administrative duties for TCC Napier while the clinic was being completed.

[59] Ms Woolley was clear in her communications to her employer that she believed she was entitled to wages from 28 January 2020. When she agreed to a temporary change in duties, she did not agree to forego the wages she would have received if her employer had honoured its obligations under the IEA it entered into with her.

[60] I find Ms Woolley is entitled to be paid wages and holiday pay for the period from 28 January 2020, the contractual commencement date of her employment, until 16 February 2020, when she resigned, a total of 14 working days.

[61] Ms Woolley originally calculated the wages owing to her from 28 January to 16 February 2020 to be \$2,183.33 gross. She based that on 14 days' pay, at \$19.00 per hour for a 7.6 hour day plus holiday pay at 8 percent.³ That sum was amended in the course of the Authority's investigation, to take account of the amount of the \$161.71 nett (which IRD documentation confirms to be \$190.00 gross) that had been paid into her account by the employer on 14 February 2020. The sum was also amended to include the KiwiSaver employer contribution of 3%.

[62] Ms Woolley's IEA provided that she would work 76 hours of work per fortnight. That represents 7.6 hours per day based on a five-day working week, at \$19 per hour, exclusive of KiwiSaver.⁴ Clause 9.3 of Ms Woolley's IEA provided that the employer would make KiwiSaver contributions in accordance with the KiwiSaver Act 2006, if she remained a member of the scheme and was not on a contributions holiday.

[63] Ms Woolley was a KiwiSaver member before joining TCC Napier, and that did not change when she commenced employment with the clinic. I agree that the employer

³ In accordance with s 23 Holidays Act 2003.

⁴ In accordance with Schedule 1 of her IEA.

contribution to KiwiSaver should be included in the calculation of wages owing. That amount should be paid to IRD for depositing in Ms Woolley's KiwiSaver account.

[64] My calculation of the total wages, holiday pay and employer KiwiSaver contributions for the period from 28 January to 16 February 2020 differs slightly from Ms Woolley's calculation. I find the gross sum owing to be \$2,037.47, or \$1,978.13 gross plus \$59.34 KiwiSaver contributions.

Remedies and contribution

[65] Ms Woolley seeks compensation of \$15,000 for her personal grievance for unjustified dismissal. In support of this claim, Ms Woolley submits she was a young, newly qualified employee in her first full time position in her chosen profession and was devastated at the loss of that employment.

[66] I am satisfied from the evidence given by Ms Woolley and by her father, that she suffered stress, anxiety, humiliation, loss of dignity and injury to feelings as a result of her personal grievance and I find it appropriate that she is awarded \$12,000 in compensation.

[67] Ms Woolley was unemployed from 16 February until 25 March 2020 at which time she secured fixed-term employment in a different industry. She seeks the reimbursement of five weeks and two days wages, which she has calculated as \$4,210.70 gross, including KiwiSaver, under s 123(1)(b) of the Act. I agree with that calculation and orders will be made accordingly. An additional late claim made by counsel for Ms Woolley for a further loss of a benefit, relating to the KiwiSaver Government contribution Ms Woolley received, is declined.

[68] I am obliged under s 124 of the Act to consider whether, and to what extent, Ms Woolley's actions contributed towards the situation that gave rise to her personal grievance. I find Ms Woolley did not contribute to the situation and there will be no deduction for contribution.

Penalty

[69] Ms Woolley seeks the imposition of a penalty of up to \$20,000 on TCC Napier for breaching the provisions of her IEA. While I have found the employer breached the terms of the employment agreement, those breaches also form the basis of Ms Woolley's personal

grievance for constructive dismissal. I decline to impose a penalty on TCC Napier and find there are no special circumstances that would make it appropriate to do so.⁵

Summary and orders

[70] The trial period provision of Ms Woolley's employment agreement was invalid. She was constructively, and unjustifiably, dismissed from her employment. TCC Napier breached the employment agreement but no penalty will be imposed. Wages are owing from the commencement date of her employment agreement until the date her employment terminated.

[71] Ms Woolley is entitled to remedies for her personal grievance in the form of compensation for the hurt and humiliation she suffered and for lost wages.

[72] The Cosmetic Clinic Napier Company Limited is ordered to pay Ms Woolley:

- (a) \$1,978.13 gross, being arrears of wages pursuant to s 131 of the Act;
- (b) \$59.34 KiwiSaver contributions on the sum in (a) above, to be paid to IRD for depositing in Ms Woolley's KiwiSaver account;
- (c) \$4,210.70 gross, being lost wages and holiday pay resulting from her personal grievance pursuant to s 123(1)(b) of the Act;
- (d) \$126.32 KiwiSaver contributions on the sum at (c) above to be paid to IRD for depositing in Ms Woolley's KiwiSaver account.
- (e) \$12,000 without deduction as compensation pursuant to s 123(1)(c)(i) of the Act.

Costs

[73] Ms Woolley has been legally aided in bringing her application to the Authority for determination. Counsel for Ms Woolley has advised that her total legal aid costs would be \$3,644.43 as calculated on the fixed fee framework of the Legal Services grant schedule. Ms Woolley may be asked by the Legal Services Commissioner to repay some of that amount.

[74] The investigation meeting took somewhat less than half a day to complete. Costs in the Authority are considered in the light of the particular circumstances and are frequently judged against a notional daily tariff, currently set at \$4,500 for the first day. Costs generally follow

⁵ In accordance with *Xu v McIntosh* [2004] 2 ERNZ 448 at [45].

the event, which normally results in a successful party being entitled to a contribution towards its costs from the unsuccessful party.

[75] In this instance, Ms Woolley was successful in her claims and it is appropriate that she receive the benefit of an award of costs. Taking the Authority's daily tariff as a starting point, and the length of the investigation meeting, I find an award of \$1,750 to be appropriate.

[76] The Cosmetic Clinic Napier Company Limited is further ordered to pay \$1,750 to Ms Woolley as a contribution to her legal fees. This order will come into effect only if the Legal Services Commissioner requires Ms Woolley to repay \$1,750 or more of her total legal aid costs. If she is required to repay a lesser sum than \$1,750, the order will be for the lesser sum only.

Trish MacKinnon
Member of the Employment Relations Authority