

**NOTE: This determination contains an order at [17] prohibiting publication of certain information**

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI  
ŌTAUTAHI ROHE**

[2025] NZERA 237  
3329400

BETWEEN DQJ  
Applicant

AND THE COMMISSIONER OF  
INLAND REVENUE  
Respondent

Member of Authority: Lucia Vincent

Representatives: Ashleigh Fechney, advocate for the Applicant  
Susan Hornsby-Geluk, counsel for the Respondent

Investigation Meeting: 15 and 16 April 2025 in Christchurch

Submissions and Information Received: 10 April 2025 from the Applicant  
10 April 2025 from the Respondent

Determination: 1 May 2025

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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**Interim non-publication orders were made**

[1] DQJ applied for a non-publication order when she lodged her application for interim reinstatement on 6 October 2024. Although the Authority declined interim reinstatement, it made an interim order for non-publication regarding DQJ's name and

any details that could identify her, and the contents of the medical report except as referred to in its determination.<sup>1</sup>

[2] DQJ challenged the Authority's determination declining interim reinstatement. Before hearing the challenge, the Employment Court made an interim order prohibiting publication of DQJ's name and identifying details pending further order of the Court.<sup>2</sup> The Employment Court also made an order prohibiting publication of the name and identifying details of three other individuals.<sup>3</sup>

[3] DQJ's challenge succeeded. The Employment Court granted DQJ's application for interim reinstatement pending the outcome of the Authority's substantive investigation.<sup>4</sup>

[4] Before the Authority's investigation meeting for the substantive matter, the Commissioner of Inland Revenue (**IR**) applied for a permanent order prohibiting publication of the names and identifying details of the three individuals subject of an interim order in the Court - a witness and two non-parties.<sup>5</sup> I will continue to refer to the witness as the Team Lead, and the two non-parties as Colleagues A and C.

[5] DQJ did not oppose the order sought.<sup>6</sup>

[6] At the investigation meeting for the substantive matter on 15 April 2025, I said I intended to grant the application on a permanent basis and confirm this in writing.

### **What are the relevant principles for non-publication?**

[7] The Authority may order that the name of any party or witness or other person not be published, subject to any conditions it thinks fit.<sup>7</sup> Exercising this discretion

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<sup>1</sup> *DQJ v The Commissioner of the Inland Revenue Department* [2024] NZERA 723 at [14].

<sup>2</sup> *DQJ v The Commissioner of the Inland Revenue Department* [2024] NZEmpC 245 at [18].

<sup>3</sup> *DQJ v The Commissioner of Inland Revenue* [2025] NZEmpC 9 at [26].

<sup>4</sup> *DQJ v The Commissioner of Inland Revenue* [2025] NZEmpC 10 at [81].

<sup>5</sup> Application and submissions from Mx Hornsby-Geluk dated 10 April 2025.

<sup>6</sup> Email from Ms Fechny to the Authority dated 10 April 2025.

<sup>7</sup> Clause 10, Schedule 2, Employment Relations Act 2000.

should be according to principle. The Employment Court has recently outlined the approach to take.<sup>8</sup>

[8] The starting principle is open justice. The Authority may depart from open justice to the extent necessary to serve the ends of justice or where the administration of justice weighs against full openness.

[9] The Court described a two-step approach to take when considering non-publication. First, there must be reason to believe specific adverse consequences could reasonably be expected to occur from publication. This step focuses on the evidence, with reasonable inferences allowed based on the specific circumstances of the case when considered in context. Second, the Authority must consider whether those consequences justify departing from open justice in the circumstances of the case. This is a weighing exercise that looks at relevant factors.

[10] Relevant factors include the circumstances of the case, the interests of the person or entity applying for the order, the interests of the other party or any third party, the public interest (including the rights of media), any issues of equity and good conscience and tikanga and its principles, values or concepts.

### **What are the grounds for this application?**

[11] Both parties have applied for a non-publication order on a permanent basis. DQJ has applied for an order in relation to herself. IR has applied for an order that relates to the Team Lead and Colleagues A and C.

#### *DQJ*

[12] DQJ previously asked for an order for non-publication regarding her name in these proceedings due to the risk to her mental health and safety should her name be published. She provided a report from a clinical psychologist supporting her application. The report recommended DQJ's name not be published due to concerns about her safety and mental health should publication occur.

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<sup>8</sup> *MW v Spiga Ltd* [2024] NZEmpC 147 at [87] to [96].

[13] Further factors supporting an order being made permanent include the sensitive personal and medical information involved, impact on DQJ of media coverage of the case, and that IR does not oppose the order sought and has made its own application.

[14] I am satisfied it is appropriate to make a permanent order prohibiting publication of DQJ's name and any details that could identify her. There is good reason to expect adverse consequences. The order should also cover the clinical psychologist's report except for what is referred to in any determination or judgement.

*Team Lead and Colleagues A and C*

[15] I am satisfied it is appropriate to make a permanent order prohibiting publication of the names and identifying details for the Team Lead and Colleagues A and C. Identifying the Team Lead and Colleagues A and C has the potential to identify DQJ. On that basis alone, I consider a non-publication order necessary so as not to undermine the order in relation to DQJ.

[16] Further factors supporting an order being made include that:

- (a) There is a reasonable risk the Team Lead and Colleagues A and C will suffer adverse consequences should they be identified for reasons set out in their respective affidavits that include:
  - (i) Feeling anxious and stressed about being identified, including in the media connected to derogatory comments about them;
  - (ii) Concerns about their safety at work that has resulted in also feeling unsafe outside of work; and
  - (iii) Concerns about their reputation and future job prospects due to their association with the case.
- (b) The public has little if any interest in knowing the identity of the Team Lead and Colleagues A and C:
  - (i) The Team Lead and Colleagues A and C are not parties to proceedings; and
  - (ii) Colleagues A and C did not appear as witnesses.

### **Non-Publication Order**

[17] I make an order on a permanent basis prohibiting publication of:

- (a) DQJ's name and any details that might identify her;
- (b) The information contained in the clinical psychologist's report for DQJ except for what is referred to in any determination or judgement; and
- (c) The names and any details that could identify the Team Lead and Colleagues A and C.

[18] No one may search the Authority's file without leave from a Member of the Authority.

### **Costs**

[19] I reserve any issue as to costs.

Lucia Vincent  
Member of the Employment Relations Authority