

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2025] NZERA 638
3335800 and 3335860

BETWEEN	JAN FRANCES LOVE and JUDITH CRESTANI Applicants
AND	WHARE MANAAKI INCORPORATED (IN LIQUIDATION) First Respondent
AND	NATIONAL COLLECTIVE OF INDEPENDENT WOMEN'S REFUGES NGA WHARE WHAKARURUHAU O AOTEAROA Intended Second Respondent

Member of Authority:	Geoff O'Sullivan
Representatives:	Andrew Little, counsel for the Applicant Chris Scarrott, counsel for the First Respondent Steph Dyhrberg, counsel for the Second Respondent
Investigation Meeting:	Matters on the papers
Submissions Received:	Up to and including 11 August 2025
Determination:	10 October 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The Applicants have applied to join National Collective of Independent Women's Refuges Nga Whare Whakaruruhau o Aotearoa (National Collective) as a controlling third party to their grievances against Whare Manaaki Incorporated (Whare Manaaki). For some time this matter was put on hold because Whare Manaaki went

into liquidation and accordingly without the liquidator's approval, any action against it could not continue.

[2] This naturally affected any ability to join the National Collective to the proceedings.

[3] However, the liquidator has given approval for the proceedings against Whare Manaaki to continue. This has meant the question of whether the National Collective should be joined as an intended respondent needed to be considered.

[4] Judith Crestani and Jan Love (the applicants) were employed by Whare Manaaki. They have filed personal grievance claims in the Authority against it. They have now lodged an application under s 103B of the Employment Relations Act 2000 (the Act) to join the National Collective as a controlling third party to resolve personal grievances they have raised with Whare Manaaki. The application is on the basis that the National Collective caused or contributed to the personal grievances because Whare Manaaki would not have terminated their employment if not because of the intervention of the National Collective. It is argued Whare Manaaki has exercised control over the applicants. The National Collective denies there is any basis for joining it as a controlling third party to these proceedings.

[5] This determination resolves the issue of whether the National Collective should be joined as a controlling third party to the current proceedings.

The investigation process

[6] By agreement this matter has been dealt with on the basis of affidavit evidence and submissions. The Authority received affidavits from Judith Crestani, Jan Love, Dr Angela Jury, Chief Executive of the National Collective and Justine Pitcher, Secretary of Whare Manaaki.

The issues

[7] The Authority needs to determine the following issues:

- (a) What is the legal framework for considering the application to join a controlling third party?
- (b) Applying that framework, should the National Collective be joined as a controlling third party?

The legal framework

[8] The concept of a controlling third party (CTP) was introduced into the Act on 27 June 2020 by the Employment Relations (Triangular Employment) Amendment Act 2019. The reason for this concept being introduced was to allow for a CTP to be joined to a personal grievance where an employee or employer considers the actions of a CTP caused or contributed to a personal grievance, which allows for remedies to be sought against the CTP.

Section 103B of the Act

[9] S 103B of the Act is concerned with joining a CTP to the personal grievances. S 103B(2) provides that an application to join a controlling third party can be made to the Authority if the situation is as described in s 103B(1). That is, an employee has raised a personal grievance under s 114, applied to the Authority to resolve the grievance with the employee's employer and the personal grievance relates to an action that is alleged to have occurred while the employee was working under the control or direction of a CTP.

[10] S 103B(3) of the Act provides that the Authority must grant the application to join a controlling third party if the Authority is satisfied -

- (a) That the requirement to notify the controlling third party in accordance with s 115A has been complied with; and
- (b) That an arguable case has been made out –
 - (i) That the party to be joined to the proceedings is a controlling third party; and
 - (ii) That the party's actions caused or contributed to the personal grievance.

Section 115A of the Act

[11] S 115A deals with notifying a third party of a personal grievance. An employee complies with the notification requirements for the purposes of s 103B when the employee:

- (a) Considers the actions of the controlling third party caused or contributed to the personal grievance; and

- (b) Notifies the controlling third party of that fact within the 90 day employee notification period.

Section 5 of the Act

[12] A controlling third party is defined in s 5 of the Act as a person -

- (a) Who has a contract or other arrangement with an employer under which an employee of the employer performs work for the benefit of the person; and
- (b) Who exercises, or is entitled to exercise, control or direction over the employee that is similar or substantially similar to the control or direction that an employer exercises, or is entitled to exercise, in relation to the person.

[13] The Court in *Hu v Passion Fresh Limited* described the requirements in relation to considering an application to join a CTP as follows:¹

An application to join a controlling third party must be granted if two things are satisfied. First, that notice to the controlling third party under s 115A has been given. Second, that there is an arguable case the party to be joined is a controlling third party and that the party's actions caused or contributed to the personal grievance.

[14] The assessment made under s 103B(3)(b) is whether an arguable case has been established, it is not a conclusive or final assessment. The arguable case threshold is generally accepted to be a relatively low bar to clear, which involves considering whether “there is a serious question to be tried or, put another way, that the claim is not vexatious or frivolous.”²

[15] There is no argument that the applicants raised their grievances in time with both Whare Manaaki and the National Collective. Accordingly, I proceed on the basis that it is not contested that notice has been given in accordance with s 115A of the Act. The requirement under s 103B(3)(a) is met.

The applicants' affidavits and submissions

[16] Ms Crestani attests that the National Collective operated in a way that was fully integrated with the operations of Whare Manaaki. She attests:

¹ *Hu v Passion Fresh Limited* [2024] NZEmpC 74 at 27.

² *NZ Tax Refunds Limited v Brooks Homes Limited* [2013] NZCA 90 at [12].

- (a) Funding came from the National Collective quarterly and was paid on the basis Whare Manaaki fulfilled its obligations put on it under an outcome agreement with the National Collective. The National Collective could see the work Whare Manaaki did for clients and also reported numbers relating to clients to the National Collective.
- (b) The system Whare Manaaki used to record details about the clients of the service, Recordbase, is a National Collective client management system. She attests the system is used to monitor what individual women's refuge workers are doing through the data each enters into the system.
- (c) A regular communication from the National Collective is sent to all refuge workers nationally to their individual email addresses. They frequently invite staff to training and development opportunities, including training in finance, applying for study grants, joining a mentoring programme, joining advocacy network groups, briefings on research and such like.
- (d) Personal information about each refuge employee is entered into the National Collective's human resource system.
- (e) Each refuge is required to advise the National Collective of new staff and when staff leave. Whare Manaaki must complete an online termination form provided by the National Collective when staff leave.
- (f) All new staff are provided training by the National Collective.
- (g) During their audits National Collective staff meet with staff of each refuge individually without management present. The National Collective staff treat employees of each refuge as if they were under the National Collective control.

[17] Ms Crestani also attests that the outcome agreement between Whare Manaaki and the National Collective directly affects the day to day work of frontline refuge workers. It also allows the National Collective to carry out a service of monitoring review on practices, operation and financial policies, procedures and systems on two days' notice.

[18] Ms Crestani also attests that Whare Manaaki is bound by the constitution of the National Collective. A refuge has to be a member of the National Collective to receive funding.

[19] Ms Love's affidavit supports Ms Crestani's. She says she went to every regional hui of women's refuges and in each one, the National Collective would update on new policies, national developments, requirements for reporting, and issues it wanted addressed.

[20] Counsel for the applicants submits that the Authority must apply the legislation as it is stated, which means applying each of the criteria set out in the Act. Mr Little submits the mischief the legislation is seeking to remedy is that of parties external to the formal employment relationship who, through a contract or other arrangement under which the external party gets to have work performed, exerts influence or control over the formal employment relationship and does so in a way that causes or contributes to harm to the employee.

Affidavits and submissions of Te Whare Manaaki and the National Collective

[21] Dr Jury, the Chief Executive of the National Collective, opposes its joinder. She attests that outcome agreements are contracts it has with independent refuges around Aotearoa which are affiliated members of the society in accordance with its constitution. This includes Whare Manaaki. The National Collective is the purchasing agency and Whare Manaaki is the provider. She notes that the head contract is between the Crown (MSD) and the National Collective.

[22] Her evidence is that refuges such as Whare Manaaki are independently incorporated societies operating under their own constitutions and governance structures. The National Collective does not intervene in the operations of affiliated independent refuges and did not interfere or have a part to play in respect of the applicants' grievances with Whare Manaaki.

[23] Dr Jury acknowledges that the National Collective received a letter of complaint on 13 June 2024 involving Ms Crestani. Terms of reference were provided for an investigation process setting out the matters of concern. The terms of reference did state that the National Collective as the funder was concerned about potential breaches of its policies and procedures in its agreement. Whare Manaaki was required to comply with those documents by virtue of both contractual and membership obligations but this

did not make the National Collective a CTP. It gave no direction to Whare Manaaki about any action in respect to the applicants' employment.

[24] Justine Pitcher, the Secretary of Whare Manaaki, also gives evidence regarding its relationship with the National Collective. Although funding may come through the National Collective, Ms Pitcher states it is not a controlling party of Whare Manaaki.

[25] Further, when the National Collective conducted an investigation pursuant to the outcome agreement, it was an investigation into Whare Manaaki which included examining its use of funding and alleged breaches of the outcome agreement by the National Collective but not into the applicants.

[26] Her evidence is that it was Whare Manaaki which conducted a full investigation into alleged breaches of the applicants' employment obligations and reached a decision to dismiss. She attests that the National Collective was not involved in the decision to dismiss.

Analysis and finding

[27] The applicants are saying that on or about 19 April 2024, Whare Manaaki was put on notice by the National Collective about alleged irregularities within the operation of Whare Manaaki, including allegations of bullying, breach of privacy and concerns about financial management, including a significant transfer of contracted funds to another entity. Those allegations, it is alleged, were directed at the applicants. The applicants say that they were subjected to an investigation in circumstances where the National Collective was exerting control, and the powers of an employer, over them.

[28] S 5 of the Act contains the definition of a CTP. Stepping through the two elements of the definition, the way the applicants' evidence describes the contract or arrangement Whare Manaaki has with the National Collective, this satisfies element (a) of the definition of a CTP in s 5 of the Act; and the extent of control the National Collective had over the applicants as alleged by the applicants, is sufficient to meet the requirements of element (b) of the definition of a CTP in s 5 of the Act.

Conclusion

[29] As referred to above, s 103B(3) of the Act provides that when an arguable case has been made out, if the party to be joined to the proceedings is a controlling third

party and that party's actions have caused or contributed to the personal grievance, the Authority must grant the application to join the controlling third party.

[30] I find that an arguable case has been made out. The assessment is simply that an arguable case has been established. I consider the arguable case relatively weak, but certainly do not see it as vexatious or frivolous.

[31] National Collective of Independent Women's Refuges Nga Whare Whakaruruhau o Aotearoa are joined to the proceedings as a controlling third party.

Next steps

[32] An Authority Officer will contact counsel to arrange a case management conference to discuss next steps in relation to the investigation of Ms Crestani's and Ms Love's personal grievance claims. There will need to be consideration as to whether a direction to mediation is appropriate, as referenced in s 103B(5) of the Act.

Costs

[33] Costs are reserved.

Geoff O'Sullivan
Member of the Employment Relations Authority