

NOTE: This determination contains an order prohibiting publication of certain information

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2026] NZERA 101
3342160

BETWEEN	ALMAS (DIAMOND) KAZIMI Applicant
AND	MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Respondent

Member of Authority: Matthew Piper

Representatives: Allan Halse, advocate for the Applicant
Peter Chemis and Jessica Taylor, counsel for the Respondent

Investigation: On the papers

Submissions and other information received: 12 December 2025 from the Applicant
14 November 2025 and 28 January 2026 from the Respondent

Determination: 24 February 2026

DETERMINATION OF THE AUTHORITY

[1] Mr Kazimi has lodged an application for me to recuse myself from investigating the claims he has made against the Ministry of Business Innovation and Employment (MBIE or the Ministry).

[2] On Mr Kazimi's behalf, Mr Halse submits that a fair-minded observer could reasonably apprehend that I might not bring an impartial mind to the case.

[3] I understand from the documents lodged by Mr Halse that Mr Kazimi's application is based on the following:

- (a) That on 13 February 2025 Mr Halse complained to the Minister for Workplace Relations and Safety about my appointment as a Member of the Authority;
- (b) Mr Halse's views of my role in relation to particular matters in which I have previously acted as counsel, including that him and I had "adversarial dealings";
- (c) That I had previously been employed by the solicitors acting for the Ministry, Buddle Findlay, and would therefore have been a former colleague of Mr Chemis;
- (d) That I declined to recuse myself of my own motion after a request from Mr Halse that I do so.

[4] For completeness I note Mr Kazimi's recusal application refers to a further complaint made by Mr Halse to the Chief of the Authority and the Minister for Workplace Relations and Safety on 12 October 2025. I confirm I have considered the content of that complaint and other matters Mr Hales referred to in his submissions to the extent they were relevant to an application of this kind.

[5] Authority Members have an obligation to investigate and determine matters that have been allocated to them. Members do not choose the cases they are allocated and parties cannot select which Member will be allocated to investigate.

[6] Members of the Authority swear an oath to investigate cases impartially and independently. This concept is a cornerstone of appointment to any judicial office and can be presumed by all participants in the judicial process to represent a solemn duty. I was sworn in as a Member on 14 April 2025.

Steps taken to date

[7] On 9 September 2025 an Authority Officer contacted the parties' representatives to set down a case management conference (CMC) in relation to the matter. On 11 September 2025 Mr Halse responded to the request for a CMC saying "CultureShift NZ Ltd expects ERA Member Matthew Piper to recuse himself because we made a formal complaint (for extremely good reason) to the Minister of Workplace Relations and Safety when he was first appointed. We believe that there is no way Member Piper can be unbiased."

[8] On 12 September 2025 the Authority Officer emailed Mr Halse to inform him that his comments had been noted, but that a CMC was to be set down so the matter could progress.

[9] On 6 October 2025 I issued a Minute to the parties indicating that I was unaware of any formal complaint from CultureSafe NZ Limited or its content. I further noted that I had worked for Buddle Findlay between 2015 and 2017, but did not recall ever having worked with Mr Chemis or Ms Taylor who were acting as counsel for the Ministry. I further noted that to the best of my knowledge, I had not advised or acted for the Ministry and that I did not anticipate recusing myself of my own motion.

[10] On 21 October 2025 Mr Kazimi lodged an application for recusal and that his claim be reassigned to another Member to investigate and determine.

[11] On 14 November 2025 the Ministry, in an email from its counsel Ms Taylor, said it would abide the Authority's determination of the matter, but it did not consider there to be a sustainable basis for recusal. Ms Taylor further noted that Mr Chemis, who was based in a different Buddle Findlay office to that in which I worked, did not recall working with me on any substantive matter and that she had joined the firm after I had left. An internal check of the firm's files also confirmed I had not worked on any files relating to the Ministry.

[12] On 12 December 2025 submissions were lodged on Mr Kazimi's behalf in relation to his recusal application. [REDACTED]

[13] On 28 December 2026 Ms Taylor emailed the Authority to provide its view on a number of factual matter referred to in Mr Kazimi's submissions. [REDACTED]

[14] Pursuant to cl 10 of Sch 2 of the Employment Relations Act 2000, I order that the matters referred to in paragraphs [12] and [13] are redacted and are not to be published by any party to avoid interference with matters relating to a different jurisdiction.

Legal test

[15] The Supreme Court’s decision in *Saxmere Company Limited v Wool Board Disestablishment Company Limited* is the leading case on the circumstances in which recusal should occur.¹ In short, it would be appropriate for me to recuse myself if a fair-minded lay observer may reasonably apprehend there is a real and not remote possibility that I might not bring an impartial mind to the resolution of the question before me.

[16] The Supreme Court in *Saxmere* articulated a two-stage test. First, the identification of what is said that might lead a Judge to decide a case other than on its legal and factual merits. Second, there must be “an articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits.”

[17] The standard for recusal is one of real possibility, rather than probability, in which an objective fair-minded lay observer is assumed to be intelligent and not sensitive or suspicious.² Recusal is not appropriate simply because the party making the allegation of bias believes they may get a more favourable outcome from a different decision maker, or wants a different decision maker to be involved.

Do Mr Halse’s complaints mean I should recuse myself?

[18] In *Saxmere* the Supreme Court articulates the attributes of a fair-minded lay observer in the following way³:

The fair-minded lay observer is presumed to be intelligent and to view matters objectively. He or she is neither unduly sensitive or suspicious nor complacent about what may influence the judge’s decision. He or she must be taken to be a non-lawyer but reasonably informed about the workings of our judicial system, as well as about the nature of the issues in the case and about the facts pertaining to the situation which is said to give rise to an appearance or apprehension of bias. Lord Hope of Craighead commented in *Helow v Secretary of State for the Home Department* that:

“before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she

¹ *Saxmere Company Limited v Wool Board Disestablishment Company Limited* [2009] NZSC 72.

² *Halse v Employment Relations Authority* [2022] NZEmpC 82 at [12]-[14].

³ *Saxmere*, above n 1, at [5]

has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment.” [citations omitted from quoted text]

[19] The fair-minded lay observer can be presumed to have a reasonable understanding of the democratic norms surrounding an appointment process applicable to a quasi-judicial role, such as that of a Member of the Authority. Such norms, including those relating to free speech, mean it is not uncommon for there to be comments from members of the public on statutory appointments.

[20] Mr Halse’s 13 February 2025 letter to the Minister for Workplace Relations and Safety was a comment by a member of the public to a Minister regarding a discretion she had exercised.

[21] The notional fair-minded lay observer would presume Members, as judicial officers, are able to appropriately digest any criticism made of them.

[22] There is therefore no foundation for the proposition that Mr Halse’s 13 February 2025 letter to the Minister would affect my ability to impartially investigate and determine Mr Kazimi’s claims.

Mr Halse’ views regarding matters in which I was counsel

[23] Before becoming a Member, I was an employment lawyer. In Mr Kazimi’s application, Mr Halse referred to his view of facts which were said by him to have occurred in a matter where I was counsel.

[24] Confidentiality obligations regarding the circumstances to which Mr Halse refers survive the termination of my relationship with that client. I therefore will not comment further on any specifics.

[25] The thrust of Mr Kazimi’s argument seems to be that my former client’s actions mean a perception is created of me that I am not capable of deciding his case. There is no merit in that argument.

[26] There is no factual connection between the events to which Mr Halse referred and Mr Kazimi’s case. This lack of connection also means no basis is created for a finding that I recuse myself.

[27] Lastly, Mr Halse' suggestion that he had "adversarial" dealings with me while he was representing employees and I an employer is irrelevant irrespective of whether or not it is true or fair.

My employment with Buddle Findlay

[28] Given my employment with Buddle Findlay was more than eight years ago and did not involve any work for the respondent or with either Mr Chemis or Ms Taylor, it does not constitute a reason for recusal.

[29] It is common for lawyers and Authority Members to know or to have worked with one another.

[30] A fair-minded lay observer would recognise that in the circumstances of this case no "real possibility" arises that I might not bring an impartial mind to the resolution of the question I am called on to decide because of my prior employment at Buddle Findlay.

Earlier refusal to recuse not relevant

[31] My earlier refusal to recuse myself after Mr Halse's 11 September 2025 email does not create grounds justifying recusal later.

[32] A fair-minded lay observer would expect me to properly consider any subsequent application for recusal without relying on my earlier decision not to recuse of my own motion.

[33] Each recusal application must be considered on its merits. This determination is the result of those considerations.

Outcome

[34] No grounds for recusal are established. The application is declined.

Costs

[35] Costs are reserved.

Matthew Piper
Member of the Employment Relations Authority