

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 301
3456744

BETWEEN VIVIENNE BECK
Applicant

AND HEART OF THE CITY
INCORPORATED
Respondent

Member of Authority: Nicola Craig

Representatives: Bridget Smith and Owen Posthuma, counsel for the applicant
James Warren, counsel for the respondent

Investigation Meeting: 8 May 2026 in Auckland

Submissions (and other material) received: At the investigation meeting and 13 May 2026 from the applicant
At the investigation meeting and 13 May 2026 from the respondent

Date of Determination: 15 May 2026

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] For around 10 years Vivienne (Viv) Beck has been the Chief Executive of Heart of the City Incorporated (Heart of the City or the society), a role with a high public profile.

[2] The society is a business association and is part of the Hōtaka ā-Rohe Whakapiki Pakihi or Business Improvement District (BID) programme run by Auckland Council. The programme is designed to support economic development, enhance security and advocate for the interests of Auckland businesses.

[3] Ms Beck comes to the Authority with an unjustified action to her disadvantage personal grievance, seeking to be reinstated from suspension to her usual role, including

initially by interim order. Heart of the City is opposed to that order because it says there are genuine and reasonable grounds for Ms Beck to be off work on suspension.

The Authority's process

[4] Along with her statement of problem, Ms Beck filed an affidavit and undertaking as to damages. The Authority granted urgency as interim orders were sought. A timetable was agreed with the parties, leading up to an investigation meeting to hear submissions. The parties attended mediation held urgently.

[5] Some significant complications appear to have occurred with the capacity of the society's earlier representatives to comply with the agreed timetable and update the Authority and Ms Beck of that situation. These may need to be explored subsequently. Heart of the City's current representative indicated it was not the society's intention to not meet the requirements and it expresses regret.

[6] The day before the Authority's meeting an unsworn affidavit was provided from Chamanthie Sinhalage, executive committee member (board) of the society, later provided in sworn form. Given the late filing of that, Ms Beck shortly after provided an additional affidavit updating the Authority and replying to the statement in reply but had insufficient time to respond to Ms Sinhalage's affidavit. All agreed that in those circumstances Ms Beck's representative should have some leeway to provide additional comment in submissions.

[7] The Authority's investigation meeting on 8 May 2026 opened with discussion on whether the meeting should proceed in the circumstances outlined above. Both parties preferred to go ahead at that time. Thus submissions were heard. Some additional submissions were received subsequently on the non-publication point discussed below.

[8] In the usual way, I have dealt with this application for interim orders on the basis of untested evidence and submissions. Disputed matters cannot be decided on such evidence.

[9] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

Non-publication order lifted

[10] On Ms Beck's application, an interim non-publication order was made by the Authority's Duty Member, regarding the names and identifying details of the parties.

[11] However, an extensive amount of media publication regarding the situation of Ms Beck and Heart of the City has since occurred, some inaccurate in suggesting Ms Beck was no longer the society's chief executive. Both parties expressed their concern the level of media exposure, but that is the situation we now find ourselves in.

[12] In those circumstances there was some question about the best approach on non-publication. Subsequent to the Authority meeting, Heart of the City proposed a broader non-publication order, including covering information that is already in the public realm such as Ms Beck's suspension/standing down. Ms Beck replied, pointing to her view of the suspension/standing down having been confirmed to the media by the employer (denied by it) along with making other comment about the organisation, whereas various articles indicate Ms Beck's comment had been sought but nothing received. She now considers there is no protection from the interim order and no longer seeks non-publication, asking that the order is withdrawn.

[13] Any allegations of breach of the interim non-publication order will, if necessary, be dealt with at a later time.

[14] The starting point must be the principle of open justice, unless there is a sound reason for departing from that principle, considering the two step test.¹ Ultimately, I conclude that there is little purpose in attempting to prevent further publication regarding Ms Beck and Heart of the City's employment situation. The interim order is lifted.

The issues

[15] All agree that the Authority is permitted under s 127 of the Act to make an order for interim reinstatement pending hearing of a personal grievance. Reinstatement is a primary remedy.²

[16] The issues for determination in this interim application are:

¹ *Erceg v Erceg* [2016] NZSC 135 and *MV v Spiga Ltd* [2024] NZEmpC 147.

² The Act, s 125.

- (a) In terms of the application for an interim order reinstating Ms Beck to her role, is there a serious question to be tried in that she has an arguable case:
- that she has been disadvantaged by unjustifiable actions of HOTC in being suspended; and
 - that she should be permanently reinstated to that role?
- (b) Where does the balance of convenience lie?
- (c) Where, standing back and considering the case, does the overall justice lie until the substantive matter is determined?³

Background

[17] Ms Beck gives evidence of having been employed for 10 years without issue until recently, including receiving positive feedback from previous boards and the awarding of performance related bonuses.

[18] The roles of BIDs such as Heart of the City is to act as a bridge between businesses, government bodies and the community, fostering collaboration and providing essential support resources.

[19] BIDs receive targeted-rate funding paid by property owners and businesses within the BID's areas, received from Council, and may also receive additional funding for special programmes they run, membership or sponsorship fees and donations. An example of work undertaken by BIDs recently is the installation of CCTV cameras across the city, aimed at improving security.

Summary of events from October 2025 onwards

[20] Heart of the City places the start of a breaking down in the relationship between it and Ms Beck being in October 2025 with the committee becoming aware of publicity which it was not anticipating about a business survey. Ms Beck disputes this description, placing tensions being rather more recent.

[21] Later in October 2025 some new committee members are appointed. An issue arises subsequently about the validity of appointments. My descriptions regarding

³ For example, *Brooks Homes Limited v New Tax Refunds Limited* [2013] NZSC 60, *Western Bay of Plenty District Council v McInnes* [2016] NZEmpC 36 and *Humphrey v Canterbury District Health Board, Te Poari Hauora O Waitaha* [2021] NZEmpC 59.

these events should not be taken to indicate any findings on whether a valid process was or was not undertaken.

[22] A new committee chairperson is appointed by email on 9 February 2026, then confirmed at a committee meeting on 25 February. In the meantime a media article is posted, headlined by a negative question regarding Ms Beck's work actions.

[23] The Mayor of Auckland writes to the committee on 10 March 2026 with questions.

[24] On 16 March 2026 Ms Beck writes to the chair, copying in the whole committee, with concerns about her exclusion from meetings and actions regarding board minutes.

[25] On 18 March 2026 Ms Beck, having taken her own legal advice, emails committee members with concerns about the constitutional eligibility and conflicts of interest of the chair, his involvement with the media article and broader concerns about governance. She refers to seeking a working together in good faith for the benefit of the members and the city in general.

[26] To the Authority Ms Beck relies on her reporting obligations in the society's Fraud Policy, with reference in submissions to the background of the fraud conviction of the previous chief executive, before Ms Beck's time. She is also the society's secretary and an officer. Her employer sees the situation as an escalating dispute about who should be in charge, rather than a neutral raising of concerns on technical arrangements.

[27] Ms Beck's letter is acknowledged as received but there is no substantive response immediately forthcoming. On 25 March Ms Beck emails the whole committee again asserting the chair was not in fact a member of Heart of the City, that trust and confidence in the committee had been lost due to lack of timely and appropriate response from the committee and the situation could only be resolved by a special general meeting, to be called at the earliest opportunity. No such meeting has occurred.

[28] Ms Beck has filed evidence from a society member with constitutional questions, with him describing having been approached by other concerned members.

[29] Ms Sinhalage's affidavit refers to informal efforts (to smooth the waters presumably) being made but the only specific reference is to a 4 March meeting. That

was a board meeting day. Ms Beck says she had only one direct meeting with the chair, which may be what Ms Sinhalage is referring to. In this interim context it is hard to get a firm picture of informal efforts at resolution.

[30] For the sake of completeness, I note Ms Sinhalage's evidence that the committee is confident, having received legal advice, that the chair has met the membership requirements. Neither Ms Beck nor the Authority has been provided with written evidence of this legal advice or a full explanation of the rationale behind that conclusion, with a reason for this absence offered from the bar.

Suspension imposed

[31] The committee seeks legal advice on the governance and membership eligibility issues and on the employment issues. Ms Beck is notified of her suspension by letter dated 27 March 2026 from lawyers acting for Heart of the City, not the same firm as is currently representing the society in the Authority. It broadly outlines ten high level concerns the committee has received such as "poor communication", "breakdown of trust and confidence between you and the Committee", "hostile behaviour towards Committee members", and "withholding of information said to be important to the Committee's functions". No further information on each of those topics is included. I note that none of these categories prima facie indicate any financial impropriety.

[32] The letter sets out the committee's view that Ms Beck's continued attendance at work and exercise of the CEO's powers and functions while these matters are assessed, may create material risks. Several risks are listed, largely seemingly aspects of the first risk, namely interference with the investigation.

[33] Although there are fairly long lists of the committee's concerns and the perceived material risks, there appears to be considerable overlap between some of the categories in each list.

[34] The committee is said to recognise there are ordinarily procedural fairness obligations in suspension situations, namely being informed suspension is under consideration and the reasons for that and given an opportunity to comment. However, this is seen as one of the exceptional situations where interim suspension may be imposed immediately where there is a real and substantial concern of consultation allowing undermining of the investigation.

[35] The letter continues that having regard to the seriousness of the matters raised, the seniority of her role, the nature of the relationships involved and the risks identified, the committee has decided interim suspension is necessary with immediate effect. Broad restrictions are imposed including not contacting employees, contractors, suppliers, members or other stakeholders without permission. Remuneration and contractual benefits are to continue.

[36] The letter indicates the committee is considering the appointment of an independent investigator, or another fair process, intended to be advanced as promptly as reasonably practicable.

Subsequent events

[37] Ms Beck lodges her application with the Authority on 9 April 2026.

[38] Despite indication on Ms Beck's behalf by 29 March 2026 letter that the concerns are seen as too generalised and non-specific to be able to respond to, concerns and a personal grievance being raised on 1 April 2026, more specific details are not provided until 10 April 2026. A detailed letter is then sent.

[39] An independent investigator is engaged on 1 May 2026, with the draft terms of reference provided to Ms Beck for comment on 7 May 2026, the day before the Authority's investigation meeting. Late that day the Authority is advised of the change of representative, although the new representative's firm has had involvement in the constitutional questions earlier.

Arguable case regarding unjustified action

[40] Moving now to the first issue of whether Ms Beck has an arguable case that she has been subject to unjustified action by Heart of the City to her disadvantage. An objective examination is required of whether the employer's actions and how it acted were what a fair and reasonable employer could have done in all the circumstances at the time.⁴

[41] Being taken away from work can be disadvantageous to an employee, even being described on occasion as a drastic measure.⁵ But where there are good reasons to

⁴ The Act, s 103A(1) and (2).

⁵ *Birss v Secretary of Justice* [1984] NZCA 21 at p 18.

believe that the employee's continued presence will or may give rise to significant issues a removal may be warranted:

A suspension is not justifiable on the basis of suspicions of misconduct but may be justifiable where the employer has good reason to believe that the employee's continued presence in the workplace will or may give rise to some other significant issue. This would include, for instance, creating adverse impacts on other employees, which should be handled promptly.⁶

[42] Thus on an interim basis, this is not an assessment of whether there will or may ultimately be any findings of misconduct for example, in the investigation, rather the focus is on the removal from work by suspension.

[43] The employment agreement here provides for suspension.

[44] Ms Beck is a long standing employee, who provides evidence of previous positive feedback regarding her performance. By contrast it took the brief period of six weeks from when the new chair was appointed to the time Ms Beck was suspended.

[45] Timing wise, the trigger for Heart of the City's actions appears to have been more generally Ms Beck's raising of the constitutional issues and more specifically her reference to calling a special general meeting. However, it then chose to expand the list of concerns to include other earlier issues. It was not seemingly willing or able to provide sufficient detail as at the time of suspension. The high level concerns are described, for Ms Beck, as being more performance related. That is a fair description of some although others could be seen as more conduct related.

[46] There is some strength in these circumstances to the submission on Ms Beck's behalf that the cart was put before the horse – the suspension was enacted before it was even decided what the allegations against her were. It is challenging to see suspension as warranted when conducted in such a manner.

[47] The parties agree there was no discussion with Ms Beck before she was informed by way of letter from Heart of the City's then lawyers that she was suspended.

[48] Heart of the City's list of grounds for suspension are very largely related to potential impact on the upcoming investigation, along with stakeholder implications. The CEO's role has power but in the absence of more, it is arguable that the grounds

⁶ *Mutonhori v Wairoa District Council* [2025] NZEmpC 44 at [81] (footnotes omitted).

are too speculative. There are no vulnerable parties involved and the investigation is proposed to be handled by an independent investigator who can give appropriate confidentiality instructions to participants.

[49] Having suspended without notice, the pace of the society then pursuing its investigation could be seen as relatively slow. It took two weeks to provide details of the concerns, then three weeks before an independent investigator was appointed and another week to send draft terms of reference for comment. The parties now agree it will likely take at least a further month, and likely longer, to complete the investigation.

[50] Elements of disadvantage relied on by Ms Beck are further detailed in the balance of convenience description below.

[51] There is an acknowledgement by Heart of the City's current representative that Ms Beck has an arguable case, albeit a weak one.

[52] I am satisfied on an interim assessment that Ms Beck has an arguable case that Heart of the City failed to act as a fair and reasonable employer could have done, including the procedural steps outlined in s 103A(3) of the Act, raising concerns and giving an opportunity for response.

Arguable case for permanent reinstatement

[53] In circumstances where it is both practical and reasonable to reinstate, the Authority must provide reinstatement as a primary remedy, noting recent amendments to the Act.⁷

[54] Heart of the City has now provided detailed concerns about Ms Beck's actions. However, focusing on the reasons given for suspension, there is little to establish that the nominated risks make it impractical or unreasonable for her to be reinstated. The society's previous lawyers also communicated on its behalf that the interim suspension is not a disciplinary action and "does not amount to a finding that any allegation is established".

[55] There is some material in Ms Sinhalage's affidavit supporting organisational concerns but Ms Beck needs only establish an arguable case.

⁷ The Act, s 125, and amendments in ss 123B and 123C.

[56] There are steps which Heart of the City could reasonably put in place to reduce difficulties. It could be expected that the committee would arrange for an employment sub-committee (if one does not already exist) or key contact person from the committee who Ms Beck could liaise with, if direct contact with the chair is to be avoided. Ms Beck could be instructed to not discuss the investigation with her colleagues.

[57] A finding of contribution under s 124 of the Act cannot readily be made at this point, with the independent investigation having not yet begun, Ms Beck having not yet come to the point of responding to allegations and the acknowledgement from the previous lawyers of suspension not amounting to a finding that any allegation is established. The hasty taking of suspension action with seemingly no prior attempt at discussion was at least arguably not due to Ms Beck's contribution.

[58] I conclude Ms Beck has an arguable case that permanent reinstatement from suspension is practical and reasonable.

Balance of convenience

[59] I now move on to weigh relevant injury or detriment the parties may suffer if interim reinstatement is granted or declined.

Ms Beck

[60] Firstly, I look at the impact on Ms Beck if she is not reinstated to the workplace.

[61] Ms Beck has been the face of Heart of the City for a long time, committed to the work of the organisation. This has been a high-profile role, of interest to the media. Suspension deprives her of her usual right to work and can be seen as associated with serious wrongdoing.⁸

[62] Her absence from work has been noticed. There has been substantial recent media coverage in several outlets on the circumstances of her and Heart of the City's employment relationship. She is understandably very concerned about the serious potential for damage to her professional reputation. By way of example, an offer of a speaking engagement has been withdrawn.

⁸ *Burgess v Wairarapa Community Law Centre Inc* WEC 54/96, 30 August 1996.

[63] On a personal level the suspension is also impacting Ms Beck – she lives near the CBD and describes being unable to walk around the central city for fear of bumping into someone who asks her about being stood down; media have been at her doorway; and her husband had been approached for comment, according to one article. On the affidavit evidence she has a strong connection to the area and the associated business community.

[64] The potential length of time Ms Beck could be away from her role is not insignificant. By the point of receipt of the draft terms of reference for the investigator, it was already almost six weeks into her suspension. The Authority was advised by the employer's previous representative that the investigation was anticipated to be concluded within two weeks. It is now accepted that was unrealistic. At least a further month, likely somewhat longer, is properly anticipated for the investigation - multiple issues are sought to be explored, at least 15 witnesses and Ms Beck interviewed along with appropriate obligations to provide information to Ms Beck as part of the process. Heart of the City would need to make a decision regarding the suspension after assessing the report.

[65] Early correspondence indicated the suspension would be kept under review but it is not evident whether that has occurred. I accept Ms Sinhalage's affidavit provides an indication that the committee still considers suspension needed.

[66] It is hard to see that damages alone would be an adequate remedy for Ms Beck, where reputational damage in a high profile role is at stake.

Heart of the City

[67] Now I move to considering possible harm or detriment for the society if Ms Beck is reinstated.

[68] The affidavit evidence for Heart of the City largely focuses on the allegations against Ms Beck to be investigated. There is no affidavit evidence from the chair of him having any concerns about working with Ms Beck. Likewise there is no evidence from staff of objections to Ms Beck being reinstated.

[69] It was suggested for the society that Ms Beck had challenged the whole committee. Whilst there are occasional references to the wider committee, the concerns seem primarily focused on the chair.

[70] This is an organisation governed by volunteers who have other jobs and responsibilities, not making it easy to provide a high level of supervision, oversight or the like. This is of significance with a CE role. On the other hand, the absence of all-day interactions in an office means there is potentially less scope for conflict or difficulties. It is clearly not ideal to have a chair and chief executive not working smoothly together. However, in the absence of evidence from the chair, this factor cannot be assessed as overwhelming. Possible alternative arrangements were referred to above.

[71] Wider concerns about the possibility of losing the confidence of stakeholders cannot be disregarded but may be balanced by an understanding that investigative action is being undertaken.

[72] The nature of any interim arrangements that have been put in place to cover the absence of a chief executive are not clear, so this is a neutral factor.

[73] The suggestion of possible interference with the investigation is not much elaborated on and little weight can be placed on it at this stage.

[74] It is not easy to see how damages would be and adequate remedy for the type of detriment which Heart of the City is concerned it could potentially suffer.

Conclusion on the balance

[75] I have given serious consideration to the balance regarding the decision on whether to put a chief executive back into the role. In some instances, factors relating to the nature of the role are significant.⁹

[76] Both parties here have established potential injury or detriment which granting or declining interim reinstatement could bring and which damages would not readily remedy. Ms Beck's injury has already begun whereas Heart of the City's focus is on future possible injuries. Her injury is perhaps less easy to put controls on than that of the society. Ms Beck can be reminded of her obligations to comply with lawful and reasonable instructions from her employer and will be aware that if she is reinstated on an interim basis, her actions are potentially open for scrutiny in the independent

⁹ See for example, *Rasheed v Commissioner of Zayed College for Girls* [2024] NZERA 516 and *SAJ v IGD* [2025] NZERA 397

investigation and by the Authority. By not a wide margin, the balance of convenience weighs in favour of Ms Beck for the interim order sought.

Overall justice

[77] In summary, Ms Beck has an arguable case that Heart of the City unjustifiably suspended her. On the limited information available I rate it as rather stronger than the ‘weak’ categorisation accepted for Heart of the City. But more evidence on the reasons why removal from the workplace was considered necessary could change that. If it proceeds, her case for permanent reinstatement may also alter on the basis of further evidence. The balance of convenience currently favours Ms Beck. Next is the requirement to take a step back and check where the overall justice lies.

[78] Ms Beck’s evidence is that she has scrupulously maintained her obligations not to speak to the wide grouping of people identified in Heart of the City’s suspension instructions and there is no evidence otherwise. Similarly there is no evidence establishing her talking to the media.

[79] Ms Beck has not delayed in pursuing her reinstatement. She is not seeking to halt the investigation or any disciplinary action, which is a rare order to make.¹⁰ Rather she is seeking to be able to return to work in her role during the investigation.

[80] In terms of future Authority investigation, it is currently uncertain whether the Authority would substantively investigate the suspension matter, likely around August subject to party availability, or whether the proceeding may get encompassed with other later events, which could well impact on the timing.

[81] Standing back, I assess that the overall justice does not disturb the arguable case and balance of convenience conclusions. Ms Beck’s application is granted. Heart of the City is ordered to reinstate Ms Beck on an interim basis by allowing her to return to work in her role as Chief Executive Officer.

[82] The parties are required to work together in good faith with the aim of ensuring they have a constructive employment relationship. Further mediation is ordered within in the next five working days after the date of this determination, to assist with

¹⁰ *Ports of Auckland v Findlay* [2017] NZEmpC 45 at [53].

rebuilding the relationship and developing a reintegration programme. Ms Beck is to be permitted to start back at work within three working days after the mediation occurs.

Costs and next steps

[83] Costs are reserved. Either party is to let the Authority know when it wishes to proceed to a substantive determination in this matter.

Nicola Craig
Member of the Employment Relations Authority