

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 366
3218879

	BETWEEN	HTV Applicant
	AND	BSN First Respondent
	AND	CXV Second Respondent
Member of Authority:	Jeremy Lynch	
Representatives:	Alison Bendall, counsel for the Applicant Blair Edwards, counsel for the Respondents	
Investigation Meeting:	On the papers	
Submissions and Other Material Received:	27 April 2026 from the Applicant 9 April 2026 and 5 May 2026 from the Respondents	
Date of Determination:	10 June 2026	

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] HTV is married to CXV. They are now separated. CXV is the sole director of BSN, a limited liability company. Both CXV and HTV are shareholders in BSN.

[2] HTV was employed by BSN. She says she was unjustifiably dismissed and seeks personal grievance and other remedies against BSN, and seeks remedies against CXV in his personal capacity.

[3] Proceedings between CXV and HTV have been filed in the Family Court. The Family Court proceedings are ongoing.

[4] CXV and BSN seek that certain documents provided to the Family Court (the

Family Court documents), be before the Authority as part its investigation into the parties' employment relationship problem.

[5] The Family Court documents comprise a report of lawyer for the child filed in the Family Court at North Shore, an affidavit provided by CXV to the Family Court at North Shore, and a temporary protection order made by the Family Court at North Shore.

[6] HTV says that this would amount to a breach of s 11B of the Family Court Act 1980 (the Family Court Act), and as such the Family Court documents cannot be before the Authority.

[7] This preliminary determination resolves the evidential dispute in respect of the Family Court documents.

The parties' names are anonymised

[8] Given the nature of the Family Court proceedings between HTV and CXV, the anonymisation of the parties' names is appropriate.

[9] A randomly generated string of three letters has been used in this determination to refer to the applicant and the respondents. These letters have no resemblance to the parties' actual names.

The Authority's investigation

[10] The substantive employment relationship problem between the parties is being investigated by another Member of the Authority.

[11] As there is a dispute as to what (if any) of Family Court documents may be before the Authority, and so as to preserve the integrity of the Authority's substantive investigation, this preliminary matter is being investigated by a different Authority Member.

[12] For the Authority's preliminary investigation, sworn of affirmed affidavits were lodged by HTV and CXV, and both parties lodged submissions. In addition, reply submissions were lodged on behalf of CXV.

[13] By consent, this preliminary issue is determined on the papers.

[14] 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.

[15] The Authority has carefully considered all the material provided.

The issue

[16] The issue for preliminary investigation and determination is:

- (a) whether certain documents relating to proceedings before the Family Court may be before the Authority, or whether the provisions of s 11B of the Family Court Act prohibit this?

The Family Court Act 1980

[17] Section 11B of the Family Court Act restricts the publication and dissemination of information relating to family Court proceedings:

11B Publication of reports of proceedings

...

- (3) A person may not, without the leave of the court, publish a report of proceedings in the Family Court that includes identifying information where-
 - (a) a person under the age of 18 years-
 - (i) is the subject of the proceedings; or
 - (ii) is a party to the proceedings; or
 - (iii) is an applicant in the proceedings; or
 - (iv) is referred to in the proceeding; or
 - (b) a vulnerable person-
 - (i) is the subject of the proceedings; or
 - (ii) is a party to the proceedings; or
 - (iii) is an applicant in the proceedings.

[18] The Employment Court in *McNabb v Silver Fern Farms Ltd* considered s 11B of the Family Court Act (as it applies in the employment jurisdiction),¹ and held:

Section 11B(3)(b) [of the Family Court Act] limits publication of reports of proceedings in the Family Court that includes identifying information where a “vulnerable person” is the subject of the proceedings, or a party to the proceedings, or an applicant in the proceedings. In such circumstances, leave of the Family Court to publish the report is required.

¹ *McNabb v Silver Fern Farms Ltd* [2020] NZEmpC 101 at [8].

[19] A “vulnerable person” includes a person who has applied for a protection order under the Family Violence Act 2018, or in respect of whom a protection order has been made under that Act.²

[20] CXV and HTV are the parties to a temporary protection order made by the Family Court at North Shore. As such there can be no dispute that a “vulnerable person” is a party to the Family Court proceeding.

[21] Similarly, given the nature of the material, the Family Court documents include material that is “reports of proceedings”.

[22] Neither respondent has sought leave of the Family Court to provide the Family Court documents to the Authority.

[23] Every person who contravenes s 11B of the Family Court Act commits an offence and is liable on conviction to a term of imprisonment, or a fine.³

Discussion

[24] Despite the Family Court not granting leave for publication to occur, the respondents submit that the Family Court documents should be considered by Authority.

[25] The respondents submit this is because the Family Court documents contain evidence relevant to the matter before the Authority, and as such the Authority has an “objective genuine interest in considering that evidence.”

[26] The respondents further submit that ‘publication’ of the material involves making the Family Court documents known to a broad audience, and that a non-publication order could address any issue as to publication once the Authority had assessed and considered the material.

[27] The respondents further submit that s 160(2) of the Act provides that the Authority may “take into account such evidence and information... it thinks fit”.

[28] Additionally, the respondents submit that:

The issue is whether the Authority, in the exercise of its investigative jurisdiction, may receive and consider evidence which is directly relevant to

² Family Court Act 1980, s 11D(h).

³ Family Court Act 1980, s 11B(6).

the Respondents' defence, where the Authority can make appropriate non-publication and confidentiality directions if necessary.

[29] I do not accept these submissions.

[30] The issue of relevance is not the test in s 11B of the Family Court Act. It is clear that leave of the Family Court is required before any publication may occur.

[31] Parliament has legislated that the public interest in proceedings before the Family Court is shielded from anyone other than those involved in the proceedings. It has also provided for a mechanism by which the Family Court may lift that shield. A genuine interest must be considered in that statutory context.

[32] In *Silver Fern Farms* the Court held that providing certain material as part of discovery was publication and therefore leave of the Family Court was required. The Court held as the entity Silver Fern Farms Limited was not a party to the Family Court proceedings:⁴

...the proceedings involve parties different from and unconnected to the Family Court proceedings. Silver Fern Farms does not have a genuine interest in the Family Court proceedings such that provision to it of the information at issue does not amount to publication.

[33] As such I do not accept the submission that 'publication' involves making the material at issue known to a wide audience. In *Silver Fern Farms* the Court held that the provision of the information to only one party additional to the Family Court proceeding amounted to a prohibited publication.

[34] It is well settled that a company enjoys separate legal personality, entirely distinct from its shareholders and directors. BSN is not a party to the Family Court proceeding and therefore the provision of the Family Court documents to it amounts to publication, prohibited by s 11B of the Family Court Act.

[35] BSN cannot be said to have a genuine interest in the Family Court proceedings between HTV and CXV.

[36] I accept that under s 160(2) of the Act the Authority may take into account a wide variety of evidence. However, without leave being provided as required under s

⁴ Above n 1, at [16].

11B of the Family Court Act, the publication of any report of proceedings is an offence under that Act.

[37] The Family Court is best able to assess and determine any s 11B leave application.

Outcome

[38] The order is granted as sought by HTV. Under s 11B of the Family Court Act, the Family Court documents are not lawfully before the Authority.

Costs

[39] Costs are reserved.

Jeremy Lynch
Member of the Employment Relations Authority