

# SUBMISSION ON THE EMPLOYMENT DISPUTE SYSTEM: EMPLOYMENT COURT PROCEDURE AND REPRESENTATIVE COMPETENCE

BY LAWRENCE ANDERSON (EMPLOYMENT ADVOCATE)

This submission deals with the **Employment Court stage** of the employment dispute system.

The Minister has referred to concerns about employment advocates behaving badly, pushing weak cases, and seeking disproportionate settlements. That can be looked at. But if this review turns into “advocates bad, lawyers good”, then it will miss the real problem.

The real problem is **representatives who do not properly understand employment law, do not understand Employment Court procedure, and then waste everyone’s time and money with procedural applications and allegations that should never have been advanced.**

That problem is not confined to advocates. It includes employment lawyers, barristers, ELINZ members, and anyone else appearing in the employment jurisdiction without properly understanding what they are doing.

MBIE’s consultation is about the whole employment dispute journey, including mediation, the Employment Relations Authority, and the Employment Court. It asks whether the system is efficient, affordable, fair, and proportionate.

This submission focusses on two examples that we took to the Employment Court: **Joyce v Ultimate Siteworks Limited** and **Menzies v Corrigan**.

## JOYCE V ULTIMATE SITEWORKS LIMITED

The Joyce matter should have settled early. Instead, it became bogged down by poor legal understanding, bad procedural choices, and unnecessary interlocutory litigation.

At the Pre-Authority Negotiation stage, the first ELINZ-affiliated advocate for Ultimate Siteworks Limited failed to properly understand the final payslip. He wrongly argued that Mr Joyce had been paid holiday pay twice and had received a windfall, when the final payslip showed a deduction of holiday pay from the final pay.

The Authorities substantive determination:

<https://determinations.era.govt.nz/assets/elawpdf/2023/2023-NZERA-62.pdf>

That same advocate also sought to offset remedies based on an unproven allegation that Mr Joyce had stolen diesel. He also demanded, and was provided with, personal information about Mr Joyce from a subsequent employer, including medical information, without Mr Joyce’s authorisation.

When the Authority decision was challenged in the Employment Court, the same advocate filed an application for security for costs. That application failed. The Court was not satisfied that Mr Joyce would be unable to pay costs, so there was no basis for the order.

Joyce v Ultimate Siteworks Limited [2023] NZEmpC 85:

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2023-NZEmpC-85-Joyce-v-Ultimate-Siteworks-Ltd-Interlocutory-Judgment.pdf>

That was not an isolated problem. Around the same time another ELINZ advocate advanced a similar security for costs argument in another matter, again unsuccessfully. In that case, the issue was initially raised in a Statement of Defence rather than by proper interlocutory application.

Boulton v Food Thingy Ltd t/a Bird the Word [2023] NZEmpC 123:

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2023-NZEmpC-123-Boulton-v-Food-Thingy-Ltd-t-a-Bird-the-Word-Interlocutory-Judgment.pdf>

David Fleming, a barrister and also an ELINZ member at the time, later took over for Ultimate Siteworks. Mr Joyce successfully obtained a stay of the Authority costs award. Mr Fleming then sought to strike out parts of Mr Joyce's challenge, particularly the words "actual (or constructive) dismissal". That should never have been a serious strike-out point. It required Mr Joyce to defend a strike-out application based on ordinary employment law principles about dismissal and constructive dismissal.

Joyce v Ultimate Siteworks Limited [2023] NZEmpC 153:

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2023-NZEmpC-153-Joyce-v-Ultimate-Siteworks-Ltd-Interlocutory-Judgment-No-2.pdf>

Mr Fleming also sought disclosure of documents which, on repeated advice, did not exist. In particular, he appeared to strongly believe that Mr Joyce had made job applications before the date Mr Joyce said he had been dismissed. He was told that this information did not exist. Instead of accepting that, he threatened to seek contempt of Court against Mr Joyce, with similar references made to me. That was the context for the intemperate expletive remark later reported by *The Post*.

The Court's judgment in [2023] NZEmpC 153 recorded at paragraph [2] that the parties should have endeavoured to reach agreement on the issues. I had attempted to do that, unsuccessfully. The amount of time and effort required to defend the partial strike-out application is not obvious from the judgment.

There were also repeated procedural problems. On several occasions Mr Fleming filed interlocutory material by copying me in, instead of first emailing the Court Registrar so the material could be processed and stamped for service. That wasted time. One example was an attempted application seeking sanctions against Mr Joyce by interlocutory application, rather than by filing a proper Statement of Claim in Form 2. The Registrar did not accept that approach.

The eventual substantive judgment dealt with Mr Joyce's challenge and Ultimate Siteworks' compliance/sanctions claim. Neither party ultimately succeeded on their substantive claims, although Mr Joyce was liable for costs because he lost his challenge.

Joyce v Ultimate Siteworks Limited [2024] NZEmpC 64:

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2024-NZEmpC-64-Joyce-v-Ultimate-Siteworks-Ltd.pdf>

Mr Fleming then filed an interlocutory application against me personally seeking contempt of Court. That was later downgraded to Judge Holden addressing acrimonious communications between Mr Fleming and me as a costs/conduct issue.

Joyce v Ultimate Siteworks Limited [2024] NZEmpC 204 (note below link "consent" is Court error):

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2024-NZEmpC-204-Joyce-v-Ultimate-Siteworks-Ltd-consent-judgment-of-Judge-Holden-29-October-2024.pdf>

The important point is that Mr Joyce's costs liability was reduced significantly. Taking into account the failed interlocutory applications and the broader circumstances, his costs liability was reduced from the amount sought of \$24,748 to \$12,614.83.

The media did not show any real interest in the inconvenience, cost, and pressure caused by meritless interlocutory applications or failures to follow correct Employment Court practice. It focused on my reaction. I am strongly of the view that there was fault on both sides by both men in terms of acrimonious behaviour, however I came off second best on that. That is not a fair analysis of what actually caused the litigation to become hostile and expensive.

## MENZIES V CORRIGAN

The Menzies matter is another example of poor procedural understanding turning an employment dispute into a procedural mess.

The Authority first awarded personal grievance remedies to Mr Corrigan against Prime Focus Security Limited, which was in liquidation.

Authority determination:

<https://determinations.era.govt.nz/assets/elawpdf/2023/2023-NZERA-125.pdf>

Costs were then awarded against the company. The Authority awarded \$6,000 for a half-day investigation meeting where the company did not appear, uplifted from the ordinary starting point of \$2,500. The uplift was inadequately explained.

Authority costs determination:

<https://determinations.era.govt.nz/assets/elawpdf/2023/2023-NZERA-253.pdf>

Mr Menzies had not been able to represent the company because a liquidator had been appointed. The liquidator consented to the proceeding but did not defend it. Mr Menzies was also never made aware of the investigation meeting venue and time.

Months later, when the company had not paid Mr Corrigan, Catherine Stewart Barrister filed against Mr Menzies personally seeking compliance. This included reference to Employment Court sanctions, including a jail sentence against Mr Menzies.

At that point, I became involved for Mr Menzies.

Mr Menzies was ordered to take steps to put the company in a position to pay Mr Corrigan. He was also required to personally pay interest on the amount the company had been ordered to pay. Ms Stewart's contention was that Mr Menzies had siphoned funds to avoid payment and had started a phoenix company.

Authority compliance determination:

<https://determinations.era.govt.nz/assets/elawpdf/2024/2024-NZERA-448.pdf>

Mr Menzies was also ordered to personally pay the daily tariff and filing fee for the compliance application, totalling \$4,571.55. Interesting how that was a full day and a lot more effort than the half-day costs issue as mentioned above.

Authority costs determination:

<https://determinations.era.govt.nz/assets/elawpdf/2024/2024-NZERA-556.pdf>

Mr Menzies then challenged the matter in the Employment Court and sought a stay. The thrust of the challenge was that there had been a breach of natural justice by requiring him to pay money connected to an Authority investigation meeting he had not been invited to, and that the Authority's accounting analysis did not support the allegation of siphoning funds or phoenix activity.

Judge Beck accepted that the case raised complex and important issues, including the separate legal personality of the company and the employment jurisdiction's compliance powers. Despite that, the stay was only granted on very onerous conditions. Mr Menzies had to pay \$33,103.91 into the Employment Court registry and pay \$4,571.55 to Mr Corrigan.

Menzies v Corrigan [2025] NZEmpC 22:

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/24-2-2025-NZEmpC-22-Menzies-v-Corrigan.pdf>

For a small business director, that type of condition can make a challenge practically useless. The Court can accept that serious issues exist, but if the condition of proceeding is money the person does not have, the challenge is effectively dead.

Before the stay judgment, Mr Menzies and I became aware that Ms Stewart had communicated and exchanged documents with the liquidator. The liquidator refused to provide the requested information. Ms Stewart also did not give us the courtesy of responding to our request.

Around the same time, Ms Stewart sought to withdraw as counsel. Instead of filing a proper interlocutory application to withdraw in the usual way, she dealt with it casually by email with the Registrar. I called that out. Shortly after, Mr Corrigan, through Daniel Church, filed a change of representation memorandum recording that Mr Corrigan would represent himself.

Another major procedural problem was the attempt to include Employment Court sanctions against Mr Menzies, including a jail sentence, within the Statement of Defence. Counsel later wanted me to agree in joint memoranda that sanctions, including a jail sentence, were issues for the Court. I refused. My position was that the proper course was first compliance in the Authority, and only after non-compliance, a Form 2 proceeding in the Employment Court. The repeated attempts to explain that basic point led to my intemperate remark calling Mr Church a "moron".

Because of the onerous stay conditions, Mr Menzies discontinued the challenge. At that point, a non-party discovery application had already been filed and served on Ms Stewart.

A costs judgment followed.

Menzies v Corrigan [2025] NZEmpC 107:

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2025-NZEmpC-107-Menzies-v-Corrigan-Costs-judgment-of-Judge-Beck-28-May-2025.pdf>

Immediately after that, Ms Stewart sought costs against me personally for the one-page unsworn affidavit and one-page notice of opposition that Ms Stewart had filed in response to the application that I had filed for Mr Menzies in relation to the non-party discovery application. She claimed that the time for research, strategy meetings, and producing those scant documents amounted to around six days, and sought costs against me personally at the self-represented recovery rate of \$500 per day.

That then turned into further affidavits and submissions between Ms Stewart and me. I was personally ordered to pay costs.

Menzies v Corrigan [2025] NZEmpC 186:

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2025-NZEmpC-186-Menzies-v-Corrigan-Costs-judgment-No-2.pdf>

In my view, that judgment does not properly apply the principles for costs against a representative. My submissions were coherent and directed to the relevant principles. Ms Stewart's submissions were unfocused and included a barrage of allegations, including bizarre requests involving the Solicitor-General.

The recent judicial review application and reopening of the Menzies matter shows that these issues were not imaginary. The Solicitor-General was made aware of matters, but not in the way Ms Stewart had sought.

There is more specific information about Catherine Stewart Barrister on this here:

<https://www.andersonlaw.nz/employment-law/articles/daniel-church-linkedin-emails-context>

They did not know how to file a Statement of Defence properly and they also had no idea about how the liquidation process works. There is also evidence of acrimonious behaviour by her Staff Barristers towards me during the Authority process.

## THE REAL ISSUE

These cases show that the problem is not simply "employment advocates".

The problem is representatives, including lawyers and barristers, who do not understand the employment jurisdiction, do not understand proper Court procedure, and then create unnecessary cost and delay.

A bad advocate can waste time. So can a bad lawyer. So can a barrister. So can an ELINZ member. The title does not matter. The damage is the same.

The real cost drivers include:

- failed security for costs applications;
- weak strike-out applications;
- disclosure demands for documents that do not exist;
- threats of contempt;
- wrongly framed compliance and sanctions steps;
- attempts to raise jail or sanctions issues by the wrong procedure;
- non-party discovery fights;
- personal costs applications against representatives; and
- failure to follow basic filing and service practice.

That is what MBIE should be looking at.

## WHAT SHOULD CHANGE

The Employment Court should publish practical guidance on common procedural issues, including:

- security for costs;
- stays of Authority determinations;
- strike-out applications;
- disclosure objections;
- non-party discovery;
- compliance applications;
- sanctions;
- costs against representatives;
- joinder for costs;
- contempt-type allegations; and
- withdrawal or change of representation.

Representatives should also have to identify, before filing interlocutory material:

- the legal basis for the application;
- why the relief is available;
- why the application is proportionate;
- what has been done to resolve the issue without Court involvement; and
- whether the application will delay the substantive hearing.

If they cannot do that, they should not be filing it.

There should also be better early triage. If something is procedurally defective, premature, or filed in the wrong form, it should be stopped early before it grows into another expensive side dispute.

## MANDATORY JUDICIAL SETTLEMENT CONFERENCES

I have recently attended two Judicial Settlement Conferences this year. The first was a horrible experience where the judge and I argued and shouted at each other throughout the whole thing, but the important point is that it did result in a good settlement. That is the way it goes. The second one was more recent and was very pleasant and useful.

The Judicial Settlement Conferences require both parties to consent to it. I submit that parties should be compelled to attend unless there are more than reasonable grounds not to.

## CONCLUSION

If MBIE wants to improve the employment dispute system, it should not fall for the lazy story that the problem is simply “employment advocates”.

The Employment Court stage can become bogged down by representatives who do not understand procedure but file aggressive procedural applications anyway. That causes cost, delay, stress, and hostility. It also makes settlement harder. I am aware that Chief Judge Inglis commented about this extensively at last years ELINZ conference actually.

The fix is not to protect lawyers from competition by attacking advocates.

The fix is to demand better procedural competence from **everyone** appearing in the employment jurisdiction. That includes advocates, lawyers, barristers, ELINZ members, and self-represented parties who repeatedly use the Court.

The system needs better guidance, better triage, better data, and real consequences for representatives who waste everyone’s time with badly conceived procedural nonsense. The acrimonious communications would not have come about if it wasn’t but-for the questionable lack of adherence to practice, procedure and also the lack of reasonableness, particularly by counsel throughout these cases.

*Thank you for taking the time in reading my submissions*

*LAWRENCE ANDERSON (EMPLOYMENT ADVOCATE)*