UNDER THE EMPLOYMENT RELATIONS ACT 2000

IN THE EMPLOYMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY

File Number: EMPC 306 / 2024

IN THE MATTER A challenge to a determination of the Employment Relations Authority

AND IN THE MATTER Objection to disclosure

AND IN THE MATTER Non-party discovery

BETWEEN **LEVI KEVIN MENZIES**

[redacted]

Plaintiff

AND **NATHAN PATRICK CORRIGAN**

[redacted]

First Defendant

AND **PRIME FOCUS SECURITY LIMITED (REMOVED FROM REGISTER)**

No contact details

Second Defendant

SUBMISSIONS REGARDING A NON-PARTY APPLICATION FOR COSTS AGAINST A REPRESENTATIVE

Dated this 15 day of May 2025

[redacted]

MAY IT PLEASE THE COURT

Summary

1. These submissions are supported by three accompanying affidavits:

    a. Affidavit of Lawrence Anderson regarding a Non-Party Application for costs against a Representative, dated 15 May 2025.

    b. Affidavit of Levi Kevin Menzies regarding a Non-Party Application for costs against a Representative, dated 15 May 2025.

    c. Affidavit of [redacted] regarding a Non-Party Application for costs against a Representative, dated 13 May 2025.

2. Lawrence Anderson is not a party to the proceeding; there has been no joinder. No proper application has been made for joinder. Notwithstanding, a Non-Party is not in a position to attach another party to a proceeding under s 221(a). That section refers to application of Parties, not Non-Parties. Catherine Stewart Barrister has no position to make such an application.

3. For a representative to be liable to costs in a proceeding, there must first be procedure of joinder following careful consideration by way of hearing and adherence to natural justice principles.[1]

4. Said procedure is illustrated in relevant case history on issue as to whether a representative should be included to the proceeding by way of joinder for costs purposes:

    a. New Zealand Medical Laboratory Workers Union Incorporated v Capital Coast Health Limited (Employment Court).[2]

    b. Harley v McDonald (Privy Council).[3]

[1] Aarts v Barnardos New Zealand [2013] NZEmpC 145 (1 August 2013) at [19]-[44]
[2] New Zealand Medical Laboratory Workers Union Incorporated v Capital Coast Health Limited WEC53/97 [1997] NZEmpC 291; [1998] 2 ERNZ 107 (10 November 1997)

c. Deliu v Chief Executive of the Ministry of Social Development (Court of Appeal).[4]

d. Westpac New Zealand Limited v Fonua (Court of Appeal).[5]

e. Practitioner Y v Foulkes (Court of Appeal).[6]

f. Aarts v Barnardos New Zealand (Employment Court).[7]

g. Noble v Ballooning Carterbury.com Limited (Employment Court).[8]

5. In this Court such applications have been considered in stages because the power to award costs under cl 19 of Schedule 3 to the Act is confined to parties to proceedings. In order, therefore, for an award to be made against the representative of a party, there has had to be recourse to s 221 to first join, as a party, the representative or other person against whom an award might be made. That, in turn, requires the Court to be satisfied that the statutory test for joining someone as a party is made out.[9]

6. Great care is required before a costs order is made against a practitioner. Making of such an order is not suitable for determination without affording the practitioner the opportunity of an oral hearing at which all relevant evidence could be tested.[10]

7. For a representative to be added as a party to a proceeding solely for the purpose of an award of costs against that representative, there must be some extraordinary feature of the litigation which elevates the representative's role beyond that which is played by an effective, even passionate, advocate for a party.[11]

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[3] Harley v McDonald [2001] NZPC 6; [2001] UKPC 18; [2001] 2 AC 678; [2002] 1 NZLR 1; [2001] 2 WLR 1749 (10 April 2001)
[4] Deliu v Chief Executive of the Ministry of Social Development [2012] NZCA 406 (5 September 2012)
[5] Westpac New Zealand Limited v Fonua [2010] NZCA 471
[6] Practitioner Y v Foulkes [2014] NZCA 396 (15 August 2014)
[7] Aarts v Barnardos New Zealand [2013] NZEmpC 145 (1 August 2013)
[8] Noble v Ballooning Canterbury.com Limited [2020] NZEmpC 60 (7 May 2020)
[9] Aarts at [20]
[10] Practitioner Y at [72]
[11] Aarts at [40]

8. the jurisdiction (to make a wasted costs order) should be approached with considerable caution and not applied so as to impinge upon the constitutional position of the advocate and the contribution the advocate is required to make on behalf of the client in the administration of civil justice.[12]

9. The Registrar having amended a costs timetable to include Mr Anderson as allegedly being liable for costs based on a one-line statement seeking costs from a representative personally has undermined what should otherwise be the correct practice and procedure.

10. Mr Anderson was simply instructed by Mr Menzies to file for Non-Party discovery, reasons for which were reasonable and are set out further below with ample detail and in the accompanying affidavits.

11. The test as to whether joinder and costs liability should be ordered is not made out; the tests are not met, that being: whether there has been a "serious dereliction of duty to the Court".[13] Such orders are made only in extraordinary circumstances.[14] A simple mistake or an oversight or a mere error of judgment will not, of itself, be sufficiently serious to fall into that category. Something more is required.[15]

12. Allegations of breach of duty against a practitioner relating to the conduct of a case with the view to making a costs order should be confined strictly to questions which are apt for summary disposal by the court.[16] Cases of that kind are likely to be found in facts within judicial knowledge because the relevant events took place in court or facts that can easily be verified.[17] The allegations, which are speculative, fall outside any events that took place before the Court.

13. Statements made by the writer, in confidence, to a third party (who was writing publicly on Linked-In posts) and statements relating to political and media opinion that were in response to political media statements

[12] Practitioner Y at [39]
[13] Harley v McDonald [2002] 1 NZLR 1 (PC) at [45]–[49]
[14] New Zealand Medical Laboratory Workers Union Inc v Capital Coast Health Ltd [1998] 2 ERNZ 107 (EmpC) and Aarts v Barnardos New Zealand Ltd [2013] NZEmpC 145
[15] Harley v McDonald at [55]
[16] Harley v McDonald [2001] UKPC 18, [2002] 1 NZLR 1 at [50]
[17] Practitioner Y at [36]

made to media about the writer and the industry are not enough and are not enough to establish a connection that creates a liability against the writer in this particular case.

14. Mr Anderson is not liable in any way for costs in this matter.

15. The description of what happened and as to how and why the application for Non-Party disclosure is amply set out below and in the accompanying affidavits.

16. There would not be a case for indemnity costs because there is no egregious behaviour that increased costs. The elements set out in Bradbury v Westpac Banking Corporation are not satisfied to warrant indemnity costs.[18] The Application for Non-Party Discovery was taken in good faith, for good reasons, and was taken given Mr Menzies instructions to Mr Anderson to file for Non-Party Discovery.

17. There would not be a case for costs on costs because there is no reason for Catherine Stewart Barrister to be put to time to seek costs.[19] There is no reason to have to go to extraordinary lengths to seek costs on having only filed a Notice of Opposition to a Non-Party Discovery application that is 0.6 days under allocation 29 2B of the Guideline Scale. Said costs are said to have begun incurring before the interlocutory application was actually served.

Events relating to disclosure applications

18. The information sought was relevant to the substantive matters of the case. Mr Menzies was said by Mr Corrigan's counsel during exchange of pleading by way of Statement(s) of Defence that:

    a. "The First Defendant says that this liquidation was effectively a sham to avoid liability to the First Defendant".[20]

    b. "The Plaintiff transferred moneys away from the Second Defendant in order to avoid liability to the First Defendant".[21]

[18] Bradbury v Westpac Banking Corp [2009] NZCA 234; [2009] 3 NZLR 400; Ben Nevis Forestry Ventures Ltd v Cmr of Inland Revenue [2014] NZCA 348 at [12]
[19] Nisha v LSG Sky Chefs New Zealand Ltd [2018] NZEmpC 33
[20] Second Amended Statement of Defence, para [9]

c. References to allegations that the Plaintiff siphoned funds.[22]

d. Mr Menzies has stolen money from Prime Focus Security Limited (In Liquidation); and

e. Mr Menzies should have attended the first Employment Relations Authority Investigation Meeting involving Mr Corrigan's substantive personal grievance claim.

19. Counsel for Mr Corrigan repeatedly sought to seek a jail sentence against Mr Menzies including in the production of a Second Amended Statement of Defence.

20. Mr Menzies instructed Mr Anderson to seek discovery of relevant documents pertaining to these allegations.

21. At the relevant time of taking steps of seeking discovery as per Mr Menzies instructions:

    a. Mr Corrigan's counsel sought to withdraw representation by filing:

        i. An application to withdraw; accompanied by

        ii. An unsworn affidavit.

    b. Mr Anderson expressed concern of this approach of counsel.

    c. The company Prime Focus Security Limited (In Liquidation) had been de-registered from the companies office.

    d. The Liquidator had previously had her liquidator's licence revoked. This was documented in the media.

    e. A Notice Requiring Disclosure was send to Mr Corrigan and Mr Corrigan's counsel who at the time were acting for Mr Corrigan.

    f. Mr Corrigan produced a Notice of Change of Representation to represent himself; Mr Daniel Church also filed the same notice with the Registrar.

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[21] Second Amended Statement of Defence, para [19](g)
[22] Second Amended Statement of Defence, para [20]

g. There was no response to said Notice Requiring Disclosure; documents were not assembled and provided; there was also not Objection to Notice Requiring Disclosure raised.

22. Mr Anderson sought instructions from Mr Menzies as to options for seeking discovery of the items sought. Mr Menzies instructed Mr Anderson to make an application for Non-Party Disclosure on the basis that:

    a. There was no office of the former Prime Focus Security Limited (In Liquidation), as an entity the company had been de-registered.

    b. The former Liquidator, whom had her licence revoked, did not hold office.

    c. Mr Corrigan, and his counsel at the time did not respond to the Notice Requiring Disclosure.[23]

    d. It appeared to be reasonable based on the contemporaneous email exchanges between counsel and the liquidator that the documents sought for discovery would be held by the office of Mr Corrigan's former counsel.

23. On 24 March 2025 Mr Anderson attempted to serve the Non-Party discovery documents on counsel. Service was rejected.

24. The application was amended such that the office of counsel and not counsel personally were to be the only Non-Party. It was then served by email on or after 25 March 2025.

25. The application has been promptly withdrawn as per the Mr Menzies recent decision to discontinue the matters in full.

[23] Neither did Mr Corrigan did not file for costs on the Stay issue at the time after Mr Corrigan's counsel had vacated from Mr Corrigan's defence in the matter.

Specific relevance of documents sought

26. The object of disclosure under the regulations is that, where appropriate, each party has access to relevant documents of the other party but within limits.[24]

27. A document is relevant if it directly or indirectly supports, or may support, the case to be presented by either party. It is also relevant if it may prove, or disprove, any disputed fact or is referred to in any other relevant document and is relevant.[25]

28. Relevance is dictated by the pleadings.[26] In Airways Corp the Court of Appeal held that the pleadings define the ambit of the proceeding and the issues to which questions of relevance must be related. The Court cautioned that relevance should not be looked at narrowly, but can never be divorced from the issues raised by the pleadings. As was noted in Lawrence v Lock, the pleadings describe the case of each party and identify issues of fact to be resolved.[27]

29. Relevance is a broad concept, as described in regulation 38 of the Employment Court Regulations 2000. A document is relevant if it may prove or disprove any disputed fact, supports or may support the case of the party who possesses it.[28] The pleadings provide a guide as to what is relevant.[29]

30. Mr Corrigan and counsel had asserted strongly that Mr Menzies had stolen money from the company; that it was a sham liquidation; and that Mr Menzies was given the opportunity to attend the first Employment Relations Authority Investigation Meeting regarding the substantive personal grievance but did not.

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[24] Employment Court Regulations 2000, reg 37
[25] Employment Court Regulations 2000, reg 38(1)(a)-(d)
[26] Airways Corp of New Zealand Ltd v Postles [2002] 1 ERNZ 71 (CA) at [5]
[27] Lawrence v Lock [2012] NZEmpC 9 at [14], New Zealand Post Primary Teachers' Assoc v Cambridge High School [2013] NZEmpC 13, (2013) 10 NZELR 580 at [16], Air New Zealand Ltd v Kerr [2013] NZEmpC 141 at [11] and Pyne Gould Corp Ltd v West [2014] NZEmpC 118 at [11]
[28] See ASB Bank Ltd v Nel [2017] NZCA 558, [2017] ERNZ 879 at [17]−[18]
[29] Sawyer v The Vice-Chancellor of Victoria University of Wellington [2018] NZEmpC 25 at [28]

31. Mr Menzies considered that he was not given any notice of said Investigation Meeting, and denies the allegations about stealing money and the liquidation.

32. On this basis, that is why the information was sought for discovery was considered to be relevant.

The documents sought were not subject to privilege

33. There was a suggestion that solicitor-client privilege applied to the documents.[30]

34. Solicitor-client privilege was not invoked given that the documents sought do not involve communications between the First Defendant and Catherine Stewart Barrister, neither was there any legal advice given by Catherine Stewart Barrister in relation to the documentation sought.

35. What was sought was emails and documents between Catherine Stewart Barrister and the Liquidator at the time, and also Employment Relations Authority Investigation Meeting Notices. None of that is legal advice from Catherine Stewart Barrister to Catherine Stewart Barrister's client.

36. As to correspondence between solicitors and third parties, the important distinction is whether communications are for purpose of legal advice, if not, then no privilege attaches to it (G v T [1999] NZFLR 364):

    The extent of legal professional privilege in communications passing between the solicitor and client was considered in Balabel v Air India [1988] 2 All ER 246. In that case Taylor LJ said:

    In my judgment therefore, the test is whether the communication or other document was made confidentially for the purpose of legal advice. Those purposes have to be construed broadly. Privilege obviously attaches to a document conveying legal advice from solicitor to client and to a specific request from the client for such advice. But it does not

[30] "Barbara v Turnbull (1999) 13 PRNZ 166 (HC)" was impossible to find on LexisNexis and NZLII. Further searching uncovered a citation that can be found on LexisNexis is G v T [1999] NZFLR 364 and NZLII does not appear to have a copy of this, or Barbara v Turnbull (HC, Dunedin CP 61/97, 16 March 1999, Master Venning). Perhaps the parties names were subsequently anonymised.

follow that all other communications between them lack privilege. In most solicitor and client relationships, especially where a transaction involves protracted dealings, advice may be required or appropriate on matters great or small at various stages. There will be a continuum of communication and meetings between the solicitor and client. The negotiations for a lease such as occurred in the present case are only one example. Where information is passed by the solicitor or client to the other as part of the continuum aimed at keeping both informed so that advice may be sought and given as required, privilege will attach. A letter from the client containing information may end with such words as "please advise me what I should do". But, even if it does not, there will usually be implied in the relationships an overall expectation that the solicitor will at each stage, whether asked specifically or not, tender appropriate advice. Moreover, legal advice is not confined to telling the client the law, it must include advice as to what should prudently and sensibly be done in the relevant legal context.

The issue of legal professional privilege involving records of communication with third parties has also recently been considered by the Court in Hight v TV3 Network Ltd (1996) 9 PRNZ 651 and by the English Court of Appeal in Parry v News Group Newspapers Ltd (1990) 140 New LJ 1719.

In Hight v TV3 Network Ltd Kerr J considered that notes made by a solicitor of telephone conversations or meetings with or including persons other than the solicitor's clients are privileged if they were made by the solicitor for the purpose of providing confidential legal advice, provided the purpose of making the note was pursuant to a brief which the solicitor had received from his client. If on the other hand the note or notes were made simply to record what was said there being no brief for particular work to be done, then in his view no privilege attached to the note made.

37. Employment Relations Authority Investigation Meeting Notices and Catherine Stewart Barrister requests for documents and communications with said Liquidator at the time was never for any purposes of giving legal advice. There is no privilege attached to it.

Unless Catherine Stewart Barrister can show that its communications were for giving legal advice to Prime Security Focus Limited (In Liquidation) at the time for which the Liquidator had control over. It is difficult to see how the Second Defendant was a client of Catherine Stewart Barrister at the time.

38. We were unable to obtain the information from the former Liquidator; said Liquidator was unresponsive and uncommunicative with the writer at the time said Liquidator held office. The Second Defendant no longer exists, and there is no office for the writer to write to for purposes of requesting information sought; said Liquidator lost her licence and is not in a position to provide the writer with documents that are being requested.

39. The writer had no position to ask the Authority for the Authority's notices at the time given that Mr Menzies, was in no position in control over the Prime Focus Security Limited (In Liquidation) when the first substantive matter was before the Authority. It followed that the Mr Menzies had no authority to request Employment Relations Authority Investigation Meeting Notices for which the Plaintiff was not a party. Nevertheless an attempt was made to obtain said information.

Mr Corrigan and counsels' breach of discovery procedure

40. Even though relevance is not listed in reg 44(3) as a ground for an objection to disclosure, it was held in Snowdon v Radio New Zealand,[31] that the recipient of a notice requiring disclosure may serve a notice of objection to disclosure on the grounds of relevance.[32] The first obligation of the party from whom disclosure is sought is to disclose all relevant documents, it then should raise proper objection to documents on grounds under reg 44.[33] The regulations are not to be construed so strictly that such departures from form result in invalidity.[34]

[31] Snowdon v Radio New Zealand Limited WC15A/05 [2005] NZEmpC 151; [2005] ERNZ 905 (16 December 2005)
[32] Snowdon v Radio New Zealand [2005] ERNZ 905 (EmpC); leave to appeal against that decision was refused in Snowdon v Radio New Zealand Ltd CA 28/06, 23 June 2006
[33] At [55]-[58]
[34] At [61]

41. Mr Corrigan and counsel acting at the time of the Notice Requiring Disclosure having been received by Mr Corrigan and counsel had an obligation at that time to disclose the documents sought, or to raise objections. The failure to do either at the time amounted to breach of said obligations.

42. Failure to raise objection and failure to produce the documents sought amounted to an objection being raised, at without any grounds for justification. It was therefore within reason, and within the principles developed in Snowden that the regulations are not to be construed so strictly that such departures result in invalidity, that the next appropriate step was to seek disclosure through the Court processes that follow.

43. The disclosure applications were therefore brought in good faith and brought reasonably in the circumstances.

This is a reputational attack on the writer, pursued with an improper motive; the costs application is being pursued for an improper motive

44. The writer repeats the contents of the Memoranda on costs for the Plaintiff dated 30 April 2025 and says further.

45. Counsel appear motivated to do another reputational attack on the writer. Counsel share the same office with Mr David Fleming that sought contempt of court against the writer in Joyce v Ultimate Siteworks Limited.

46. Intemperate communications have already been addressed and there is nothing new to admonish the writer about given that the writer was already admonished by the Court in the First Directions Conference and the Stay judgment refers to it as well.

47. In the event that there is reputational comments made by the Court about the writer, the writer strongly requests that the Court records that intemperate language used by the writer is directly related to the deficiencies of counsel when counsel fail to follow practice and procedure which is not difficult to read, learn and follow.

48. The reasonable criticism that the writer highlights in terms of the way counsel dealt with this matter is that:

a. There were repeated references to seeking a jail sentence and other s 140(6) sanctions against Mr Menzies:

    i. In the Authority, which the Authority has no power to order.

    ii. By way of filing a Second Amended Statement of Defence; counsel did not file a claim, Form 2, for compliance for this.

b. Counsel demanding $30,000 plus GST and $30,000 for damages and then $25,000 plus GST and $25,000 for damages and not explaining quantification of these amounts; Mr Menzies was never personally liable for those amounts.

c. Counsel were aggressively pursuing the matter against Mr Menzies, and then Counsel seeking to withdraw from representing Mr Corrigan by filing a scant application with an unsworn affidavit citing Mr Corrigan's inability to pay. It was inexplicable that Mr Corrigan deposed in his affidavit that he has debt [redacted] for legal fees to Catherine Stewart Barrister,[35] but there are no fees paid whatsoever on this file,[36] and Mr Jin Woo Park's unsworn affidavit accompanied with the application for counsel to withdraw refers to the First Defendant's inability to meeting "further" costs of representation.[37]

d. When filing what amounted to an Interlocutory Application to withdraw representation, Counsel emailed the writer their draft application that was rejected by the Registrar. The proper practice is to have that conversation privately with the Registrar and be given a service copy and then email it to the writer. In Joyce v Ultimate Siteworks Mr Fleming also failed to follow the correct process on several occasions.

e. Counsel before being relieved of representing Mr Corrigan by way of Mr Corrigan's notice of change in representation to

[35] Affidavit of Nathan Corrigan dated 18 September 2024, para 5
[36] Costs submissions for First Defendant, Annexed "A", all invoices unpaid
[37] Counsel's application to withdraw representative dated 20 January 2025

represent himself, failing to take any steps in relation to the information sought by Mr Menzies that directly related to allegations brought by Mr Corrigan and Counsel that:

i. Mr Menzies creating a “sham” liquidation and stealing money from Prime Focus Security Limited. Counsel exchanged emails and information with the liquidator. Hence Mr Menzies request for full disclosure of those documents relating to the allegations.

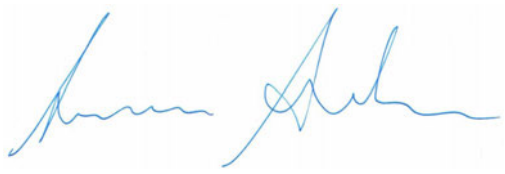
ii. Mr Menzies should have turned up to the first substantive personal grievance Investigation Meeting before the Authority. Hence the request for documents relating to notice.

An email in reply out of courtesy could have been sent but was not.

f. Items recorded in the Memorandum on Costs for the Plaintiff dated 30 April 2025 are also relevant.

g. Counsel who wanted to withdraw and not represent their client, Mr Corrigan, have returned immediately to represent pro bono to try and get money out of Mr Menzies advocate; and to get a trophy of another attempt of trying to ruin said advocate’s reputation publicly.

49. Said failures do cause significant inconvenience and more time required on the matter which can be very frustrating. As conveyed above these things were pointed out to counsel on each occasion who proceeded to ignore the writer’s suggestions at those relevant times.



Lawrence Anderson

Advocate for the Plaintiff