

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI**

**[2023] NZEmpC 23
EMPC 85/2022**

IN THE MATTER OF a declaration under s 6(5) of the
Employment Relations Act 2000

AND IN THE MATTER OF applications to attend Gloriavale site visit

BETWEEN SERENITY PILGRIM, ANNA
COURAGE, ROSE STANDTRUE,
CYSTAL LOYAL, PEARL VALOR
AND VIRGINIA COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL SUED
ON BEHALF OF THE MINISTRY OF
BUSINESS, INNOVATION AND
EMPLOYMENT, LABOUR
INSPECTORATE
First Defendant

AND HOWARD TEMPLE, SAMUEL
VALOR, FAITHFUL PILGRIM, NOAH
HOPEFUL AND STEPHEN
STANDFAST
Second Defendants

Hearing: 21 February 2023
(In person and Virtual Meeting Room)

Appearances: BP Henry, D Gates and S Patterson, counsel for plaintiffs
J Catran, K Sagaga and A Piaggi, counsel for first defendant
S Valor, S Standfast and P Righteous, representatives for second
defendants
R Kirkness, counsel to assist the Court
D Nilsson, counsel for TVNZ
R K Stewart, counsel for RNZ
A Leask for NZME
J Naish for Stuff
C Callahan for Newshub

Judgment: 22 February 2023

SERENITY PILGRIM, ANNA COURAGE, ROSE STANDTRUE, CYSTAL LOYAL, PEARL VALOR AND
VIRGINIA COURAGE v THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF
BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE [2023] NZEmpC 23 [22
February 2023]

**INTERLOCUTORY JUDGMENT (NO 27)
OF CHIEF JUDGE CHRISTINA INGLIS**
(Applications by TVNZ/NZME/Stuff/Newshub to attend Gloriavale site visit)

[1] The Court is undertaking a site visit of the Gloriavale Christian Community at Haupiri on Friday 24 February 2023. The purpose of the site visit is to enable the Court to better understand evidence given in these proceedings.¹

[2] Four media organisations (TVNZ, NZME, Stuff Ltd and Newshub) have applied to attend and cover the site visit. This follows a similar application by RNZ which I partially granted, and subject to conditions, on 16 February 2023.² The second defendants (who I will refer to as the Gloriavale defendants) filed memoranda opposing the applications. I heard from the representatives during the course of a hearing, conducted at short notice given the timeframes involved, yesterday afternoon. A number of matters were raised in terms of the Court's power to allow media to attend a site visit; the competing interests involved and how they might be weighed; and the extent to which important concerns identified on behalf of the Gloriavale defendants might best be addressed.

[3] Mr Valor, on behalf of the Gloriavale defendants, reiterated that they wished the Court to visit the site, and considered it important that it have the opportunity to undertake a physical view of the premises to assist in understanding the evidence given in these proceedings. He made the point that the Gloriavale defendants had not anticipated that multiple media organisations would seek to attend the view when agreeing with the plaintiffs' proposal for a site visit. He was concerned that having numerous members of the media attending would likely be off-putting to many of the residents within the Community and may impact on the effectiveness of the visit, in terms of achieving its purpose.

¹ *Pilgrim v Attorney-General (No 20)* [2023] NZEmpC 1.

² *Pilgrim v Attorney-General (No 24)* [2023] NZEmpC 15.

[4] Following argument, and after hearing from the media organisations, Mr Valor indicated that the applications might be dealt with on the basis that limited members of the media attend (one from each organisation), with restrictions put in place on photographing (in line with those imposed in the RNZ judgment); restrictions on the devices used (no camera equipment, cell phones only); and restrictions on filming (outside only). I agree with Mr Kirkness' characterisation of Mr Valor's position as accommodating and fair. I consider that such conditions reflect an appropriate balance in terms of the relevant considerations, including the significant privacy and private property interests at play and the interests of open justice.

[5] A number of matters were raised which I now turn to. The extent to which the Court has the power to allow media to attend the site visit was touched on. The Gloriavale defendants submitted that no power exists. I agree with the submissions advanced by Mr Kirkness and Mr Stewart (counsel for RNZ) as to the existence and source of the Court's power to allow the media to attend. In spite of the lack of express statutory power, the Evidence Act 2006 provides helpful guidance,³ and I am satisfied that, together with the Court's inherent powers, jurisdiction exists for the orders to be made.⁴ The key issue is the exercise of the Court's discretion and the factors to be taken into account.⁵ As I observed in my judgment on the RNZ application, the issue is finely balanced. Important privacy interests are at play. The view will take place on private property that is home to a large number of residents, including each of the Gloriavale defendants and their families. The residents' objection to the presence of media must be given serious consideration.

[6] While I accept that the desirability of consistency of approach across applications is relevant, it cannot (as Mr Valor said) be the tail that wags the dog. Increasing the number of attendees, along with the number of cameras and other recording devices, may well increase the level of interference with the Gloriavale residents' privacy interests engaged in this case. I accept that this is relevant to the

³ Evidence Act 2006, s 82.

⁴ Peter Twist and Chris Foote *Laws of New Zealand Courts* (online ed) at [19]. See also Employment Relations Act 2000, s 189; *Siemer v Solicitor General* [2013] NZSC 68, [2013] 3 NZLR 441 at [114].

⁵ See too *Pilgrim*, above n 2, at [4]-[5].

weighing exercise and relevant to an assessment of what conditions might appropriately be imposed on any attendance that is permitted.

[7] As Mr Stewart pointed out, there are syndication arrangements in place between RNZ (which has approval to attend the site visit) and each of the applicant media organisations. While sharing footage may have gone some way to facilitating open justice, I accept that issues would remain in respect of editorial perspective. Each organisation differs as to their audience base, including being primarily radio or primarily television, and may well make different decisions as to what is newsworthy. I agree with Mr Kirkness that open justice is further promoted by allowing multiple editorial perspectives.

[8] I understood Mr Nilsson, counsel for TVNZ, to argue that the media outlets did not need to apply for leave to attend the site visit because the site visit was merely an extension of the Court hearing, which the media was entitled to attend. This does not sit comfortably with the wording of s 82. I consider that different considerations apply when deciding on whether media attendance at a site visit is appropriate as against attendance at the courtroom.⁶

[9] I agree with Mr Nilsson, and others representing the applicant media organisations, that open justice, which the common law has long recognised as fundamental, is an important consideration. Mr Valor accepts that open justice principles apply. There is plainly a substantial public interest in these proceedings, of which the view will be a part, and, as I observed in the RNZ judgment, I consider that the interests of open justice are served by having a media presence at the view.⁷

[10] I am satisfied that it is in the interests of justice to grant the four media applications, including because of the difficulties that would otherwise arise in terms of editorial discretion if only one media organisation (RNZ) was to attend and share content under current syndication arrangements. However, it remains necessary to ensure that the important privacy issues that have been identified are appropriately

⁶ See *Groome v West Coast Regional Council* [2010] NZEnvC 61 at [13]-[14]; *Re New Zealand King Salmon Co Ltd* [2022] NZEnvC 81 at [7](b).

⁷ *Pilgrim*, above n 2.

addressed. I agree with Mr Kirkness that this will be achieved by imposing the conditions sought on behalf of the Gloriavale defendants. For completeness, while I accept a point made by Mr Nilsson, that there may be interior areas which are less “private” than others, I do not consider it necessary or appropriate to allow filming or photographs to be taken inside the buildings within the Community.

[11] Accordingly:

- (a) only one media representative from each applicant organisation may attend the site visit;
- (b) sound recordings may be taken but only of the commentary that is to be provided during the course of the view;
- (c) film footage and still photographs may be taken but only on phones and only outdoors – no photographs or film footage are to be taken inside the premises; and no other camera or filming devices or equipment are permitted; and
- (d) media representatives are not to converse or engage in any exchange with any person other than a Court official and must at all times strictly comply with any direction of the Court.

[12] The conditions on RNZ imposed in the judgment dated 16 February 2023 are amended to those at [11] above.⁸

[13] Leave is reserved to apply for further directions, as necessary.

Christina Inglis
Chief Judge

Judgment signed at 2.00 pm on 22 February 2023

⁸ *Pilgrim v Attorney-General*, above n 2, at [12].