

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

**I TE KŌTI TAKE MAHI O AOTEAROA  
TE WHANGANUI-A-TARA**

**[2024] NZEmpC 233  
EMPC 103/2024**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for witness to appear via audio-visual link
BETWEEN	THE CHIEF OF THE NEW ZEALAND DEFENCE FORCE Plaintiff
AND	YFX Defendant

Hearing: On the papers

Appearances: J P A Boyle, counsel for plaintiff  
A Mapu and A De La-cruz, advocates for defendant

Judgment: 27 November 2024

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**INTERLOCUTORY (NO 2) JUDGMENT OF JUDGE K G SMITH  
(Application for witness to appear via audio-visual link)**

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[1] This proceeding is set down to be heard in Wellington on 9–13 and 16 December 2024.

[2] On 27 November 2024, the defendant applied for a witness, Colonel Clare Bennett, to participate in the hearing by audio-visual link (AVL). The grounds for the application are that she resides in Nelson and is on leave during this time.

[3] The plaintiff does not object to the application.

[4] The ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom in the presence of a Judge, the parties and any members of the public who choose to attend.<sup>1</sup>

[5] There is, however, no presumption in favour of giving evidence in the ordinary way.<sup>2</sup> The Court may allow evidence to be given by AVL in civil proceedings. Before such an order is made the Court must have regard to the criteria set out in s 5 of the Courts (Remote Participation) Act 2010.<sup>3</sup> The criteria are:

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of the other parties to the proceeding, including—
  - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Court; and
  - (ii) the level of contact with other participants;
- (d) any other relevant matters.

[6] There is nothing about the nature of the proceeding that would suggest that using AVL is unsuitable. The necessary technology and internet connection are available to the witness and there is no reason to think that hearing this evidence remotely will adversely impact on the plaintiff's rights or the proceeding. There are no factors weighing against granting the application and it is therefore granted.

[7] Registry staff are to arrange for a test to ensure that the equipment to be used is adequate for the Court's purposes.<sup>4</sup> That test will need to be facilitated by Mr Mapu or Ms De La-cruz. They will need to ensure that any documents to be relied on are available for the witness' use during the hearing. They will also need to confirm to the Court that the witness has been provided with a copy of the Court's "Summary of

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<sup>1</sup> See High Court Rules 2016, r 9.51; and Evidence Act 2006, s 83.

<sup>2</sup> *Wealleans v R* [2015] NZCA 353 at [34].

<sup>3</sup> Courts (Remote Participation) Act 2010, s 7.

<sup>4</sup> Employment Court of New Zealand "Guideline for Appearing by Audio-Visual Link, Including in Virtual Hearings" <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)>.

Guidelines for a Witness Giving Evidence by Audio-Visual Link Including in Virtual Hearings”.<sup>5</sup>

[8] There is no issue as to costs.

K G Smith  
Judge

Judgment signed at 4.55 pm on 27 November 2024

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<sup>5</sup> Employment Court of New Zealand “Summary of Guidelines for a Witness Giving Evidence by Audio-Visual Link Including in Virtual Hearings” <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)>.