

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

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

**[2025] NZEmpC 219
EMPC 451/2024**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application for leave to withdraw as solicitor and counsel
AND IN THE MATTER OF	an application for an adjournment
BETWEEN	VSL Plaintiff
AND	ZSM LIMITED Defendant

Hearing: 6 October 2025
(Heard at Wellington by telephone)

Appearances: A Fechny, advocate for plaintiff
D Browne, counsel for defendant

Judgment: 10 October 2025

**INTERLOCUTORY JUDGMENT (NO 2)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application for leave to withdraw as solicitor and counsel)
(Application for an adjournment)**

Introduction

[1] This judgment deals with two interlocutory matters, namely an application advanced by counsel for the defendant for leave to withdraw and an associated application for an adjournment. The applications are opposed. I heard from the representatives during the course of a telephone conference. I directed that a further

affidavit be filed, and it was agreed that the applications could be dealt with on the papers.

Application for leave to withdraw as solicitor and counsel

[2] While there is no express statutory power relating to the withdrawal of a party's solicitor or counsel, the Employment Court enjoys all of the powers inherent in a court of record,¹ including the power to control its own processes and to prevent any abuse of process.² Such inherent powers "arise as necessary to enable a court to function effectively as a court of judicature".³ Courts have exercised their inherent powers in a broad range of situations, including to control solicitors.⁴ The current application seems to me to fall squarely within the inherent powers of this Court.⁵

[3] As the Employment Relations Act 2000 and the Employment Court Regulations 2000 do not provide any form of procedure for applications of this sort, the Court applies the procedure set out in r 5.41 of the High Court Rules.⁶ Rule 5.41 requires that every application for withdrawal must be made by interlocutory application and must be supported by an affidavit giving the grounds of the application.⁷

[4] Unless the Court directs otherwise, notice of the application and any relevant documents must be served on the party for whom the applicant acted; that notice must also inform the party of the effect that r 5.42 will have on their address for service if

¹ Employment Relations Act 2000, s 186(1).

² See *Hynds Pipe Systems Ltd v Forsyth* [2017] NZEmpC 89, [2017] ERNZ 484 at [9]–[17]; and Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at 901–905.

³ *District Court at Christchurch v McDonald* [2021] NZCA 353, [2021] 3 NZLR 585 at [27].

⁴ Joseph, above n 2, at 902.

⁵ The same conclusion was reached by the District Court within its accident compensation appellate jurisdiction in *MS v Accident Compensation Corp* [2020] NZACC 126 in respect of an advocate who was not a lawyer.

⁶ Applied via reg 6 of the Employment Court Regulations 2000. Note that while r 5.41 of the High Court Rules 2016 is expressed to relate to solicitors, the High Court has indicated that it can permit the withdrawal of other types of counsel by drawing on its inherent jurisdiction: *Burgess v Monk* [2017] NZHC 2618, (2017) 24 PRNZ 712 at [17]–[20]; and *Criffel Deer Ltd v ANZ Bank New Zealand Ltd* [2022] NZHC 2175, at [7] and [10]–[11].

⁷ High Court Rules, r 5.41(4).

the applicant is permitted to withdraw as representative.⁸ These steps have been taken.

[5] The Court must be satisfied that an adequate basis has been established before making an order. That is to ensure that the rights of the affected party are adequately protected and reflects counsel's obligations as an officer of the Court.⁹ As the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 provide, a lawyer has a duty to complete a retainer unless the client discharges them from the engagement, the lawyer and client have agreed that the lawyer will no longer act, or the lawyer terminates the arrangement for good cause.¹⁰ Good cause includes the inability or failure of the client to pay a fee on the agreed basis.¹¹

[6] I directed that Mr Browne was to file (but not serve) a further affidavit detailing the basis on which the arrangement was terminated. I did this to avoid any issue with privilege arising, adopting the approach in *Senior Trust Capital Ltd v Holmes*.¹² The affidavit did not contain any privileged materials and it is directed to be served on the plaintiff.

[7] Having regard to the matters raised in the affidavit, I am satisfied that there is good reason for Mr Browne ceasing to act and grant him leave to withdraw accordingly. The order will come into effect once Mr Browne has served a copy of this order on the defendant company, and has filed an affidavit of service with the Court.¹³

Application for an adjournment

[8] Having granted the application I am satisfied, given the relative proximity to the hearing, that the challenge should be adjourned. Mr Browne submits that it may be desirable to adjourn to the New Year. It is necessary to balance the plaintiff's

⁸ Rule 5.41(5).

⁹ *Burgess v Monk*, above n 6, at [19]–[20]; and *Criffel Deer Ltd v ANZ Bank New Zealand Ltd*, above n 6, at [7].

¹⁰ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 4.2.

¹¹ Rule 4.2.1(b).

¹² *Senior Trust Capital Ltd v Holmes* [2023] NZHC 2001, at [9]–[10].

¹³ High Court Rules, r 5.41(3).

interests. Such a lengthy adjournment would present significant difficulties for the plaintiff, for reasons outlined in Ms Fechney's memorandum and traversed at the telephone conference. Nor, in my view, is such a lengthy adjournment necessary having regard to the particular circumstances. There will be an adjournment to new dates in December, but a further adjournment is highly unlikely.

[9] The dates currently set aside are vacated and the challenge adjourned. The Registrar is to allocate three days of hearing time in Dunedin in December 2025.

[10] Costs are reserved.

Christina Inglis
Chief Judge

Judgment signed at 11.15 am on 10 October 2025