

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

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

**[2025] NZEmpC 279
EMPC 381/2024**

IN THE MATTER OF an application for declaration for
breach of minimum employment
standards

AND IN THE MATTER OF an application to waive privilege

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT
Plaintiff

AND HOWARD TEMPLE
First Defendant

AND SAMUEL VALOR
Second Defendant

AND FAITHFUL PILGRIM
Third Defendant

AND NOAH HOPEFUL
Fourth Defendant

AND STEPHEN STANDFAST
Fifth Defendant

EMPC 382/2024

IN THE MATTER OF an application for declaration for
breach of minimum employment
standards

AND IN THE MATTER OF an application to waive privilege

BETWEEN A LABOUR INSPECTOR OF THE
MINISTRY OF BUSINESS,
INNOVATION AND
EMPLOYMENT
Plaintiff

AND HOWARD TEMPLE
First Defendant

AND SAMUEL VALOR
Second Defendant

AND FAITHFUL PILGRIM
Third Defendant

AND NOAH HOPEFUL
Fourth Defendant

AND STEPHEN STANDFAST
Fifth Defendant

EMPC 111/2025

IN THE MATTER OF personal grievances heard by the
Employment Court

AND IN THE MATTER OF an application to waive privilege

BETWEEN SERENITY PILGRIM
First Plaintiff

AND ANNA COURAGE
Second Plaintiff

AND ROSE STANDTRUE
Third Plaintiff

AND CRYSTAL LOYAL
Fourth Plaintiff

AND PEARL VALOR
Fifth Plaintiff

AND VIRGINIA COURAGE
Sixth Plaintiff

AND THE OVERSEEING SHEPHERD,
HOWARD TEMPLE (AND HIS
SUCCESSOR, STEPHEN
STANDFAST)
Defendant

- (a) two applications by the Labour Inspector in EMPC 381/2024 and EMPC 382/2024 against the leaders of the Gloriavale Christian Community seeking declarations and remedies for alleged breaches of employment standards in relation to ex-members of Gloriavale (who I shall refer to as the Courage (male) and Pilgrim (female) plaintiffs);
- (b) an application for judicial review brought by the Courage and Pilgrim plaintiffs in EMPC 363/2021 and EMPC 85/2022, against the Attorney-General, the Overseeing Shepherd and the two Labour Inspectors for alleged failures to properly exercise their statutory powers; and
- (c) proceedings in EMPC 111/2025 and EMPC 112/2025, against the Overseeing Shepherd brought by the Courage and Pilgrim plaintiffs, seeking remedies in respect of alleged personal grievances, breaches of contract and minimum entitlements.

The five proceedings follow judgments of the Court finding that the Courage and Pilgrim plaintiffs were employees during their time working within Gloriavale and that the employer was the Overseeing Shepherd.

[2] Preliminary issues arose in relation to both the Labour Inspectors' action (EMPC 381/2024 and EMPC 382/2024) against the Gloriavale defendants, and the Courage and Pilgrim plaintiffs' action (EMPC 111/2025 and EMPC 112/2025) against the Overseeing Shepherd. The Gloriavale defendants and the Overseeing Shepherd sought orders from the Court that the Labour Inspectors' action was time barred and could not proceed, and that aspects of the Courage and Pilgrim plaintiffs' claims were also time barred. I heard argument in respect of this, and other preliminary issues, during the course of an interlocutory hearing on 26 and 27 November 2025.

[3] During the course of the first day of the hearing a question arose regarding legal privilege. Counsel for the Labour Inspector, in oral submissions, referred to advice received from Crown Law in 2021 regarding the employment status of individuals at Gloriavale. The Gloriavale defendants and the Courage and Pilgrim plaintiffs submit that privilege in that legal advice has been waived. The Labour

Inspector opposes this, arguing that the reference was merely to the existence of advice, not its substance. It is also submitted that reliance on the advice was expressly withdrawn on the second day of the hearing.

[4] The issue for determination is whether the Labour Inspector has, by conduct, waived privilege in the Crown Law advice. For the reasons set out below, I find that privilege has been waived.

Background

[5] As I have said, the Labour Inspector has brought proceedings against the Gloriavale defendants, seeking declarations and remedies for breaches of employment standards. A central issue in those proceedings is whether, as the defendants submit, the Labour Inspector's claims are time-barred. Under the Employment Relations Act 2000 (the Act), the Labour Inspector must apply for a penalty within 12 months after the date when the breach of employment standards became known to it, or should reasonably have become known to it.¹

[6] In earlier related proceedings the Labour Inspector had filed an affidavit dated 23 December 2021. Annexed to that affidavit is an "Investigation Report" of the Labour Inspectorate dated 23 July 2021.

[7] Page 7 of the 2021 report, states:

Advice received from Crown Law supports the view that members of the Gloriavale community cannot presently be considered to be employees.

[8] During oral submissions on 26 November 2025, counsel for the Labour Inspector stated that the advice contained the conclusion that the workers "were not employees" and that the Labour Inspector would not have been able to act contrary to that advice. On 27 November 2025, counsel advised the Court that the Attorney-General did not consent to the waiver of privilege in the Crown Law advice and sought to withdraw the earlier submission.

¹ Employment Relations Act 2000, s 142I.

[9] Counsel for the Gloriavale defendants and counsel for the Courage and Pilgrim plaintiffs submit that privilege has been waived and the Crown Law advice should be disclosed in full to them.

Applicable Principles

[10] The Employment Court exercises its jurisdiction, including in respect of the admission of evidence and information, in equity and good conscience. Equity and good conscience have been described as the twin guiding pillars.² Nevertheless, the Evidence Act 2006, and the principles contained within it, will be considered, as it contains a useful framework for deciding on issues of privilege and waiver.

[11] Section 65 of the Evidence Act deals with waiver of privilege. It reflects the common law of privilege. Section 54 of the Act provides that a person who obtains professional legal services from a legal adviser has a privilege in respect of any communication between the person and the legal adviser if the communication was intended to be confidential and made in the course of and for the purpose of the person requesting or obtaining professional legal services from the legal adviser, or the legal adviser giving such services to the person.

[12] As s 65(1) makes clear, a person who has a privilege may waive that privilege either expressly or impliedly. Waiver can occur in a number of ways. In this regard s 65(2) provides that a person waives privilege if they voluntarily disclose any “significant part” of the privileged communication in circumstances inconsistent with a claim of confidentiality.

[13] The test for waiver is objective. It requires an assessment of whether the party’s conduct is inconsistent with the maintenance of the privilege.³ The overriding consideration is fairness: a party cannot rely on the favourable conclusion of legal advice to advance their case while withholding the reasoning that supports it.⁴

² Employment Relations Act 2000, s 189. See *Lyttelton Port Company Ltd v Pender* [2019] NZEmpC 86, [2019] ERNZ 224, at [48]-[61].

³ *Ophthalmological Society of New Zealand Inc v Commerce Commission* [2003] 2 NZLR 145 (CA).

⁴ *Astrazeneca Ltd v Commerce Commission* (2008) 12 TCLR 116 (HC), at [39].

Analysis

Disclosure of a “significant part”

[14] The Labour Inspector argues that the reference in the 2021 Report and the oral submission amounted only to a disclosure of the existence of the advice, or a “bare conclusion”, and not its substance. I do not accept that submission.

[15] The statement in the 2021 Report that Crown Law advice “supports the view” that members “cannot presently be considered to be employees” is a clear disclosure of the advice’s conclusion. As acknowledged in *Bete Fog Nozzle Inc v Delavan Ltd*, disclosure of a bare conclusion may constitute a “significant part” of the advice.⁵ By explicitly stating that the Crown’s legal advisers agreed with the Inspectorate’s finding, the Labour Inspector has disclosed the substance of the advice.

[16] The Labour Inspector seeks to rely on *Houghton v Saunders*, where references to a lawyer’s recommendation to sue were held not to waive privilege.⁶ However, in that case, the references were general and made largely to prospective claimants rather than to influence the Court.⁷ This highlights that the determinative question is reliance and fairness, which I now turn to.

Reliance and fairness

[17] The disclosure of a significant part of privileged advice does not automatically result in a waiver of the whole. The Court must assess whether the disclosure occurred in circumstances that are inconsistent with the maintenance of confidentiality, such that it would be unfair to withhold the remainder of the document. As emphasised in *Ophthalmological Society*,⁸ this requires a close analysis of the particular context: what is the issue in relation to the privilege, and how does the evidence relate to that issue?

⁵ *Bete Fog Nozzle Inc v Delavan Ltd* (2008) 19 PRNZ 439 (HC), at [23]. Privilege was not waived in that case for other reasons.

⁶ *Houghton v Saunders* (2009) 19 PRNZ 476 (HC).

⁷ At [56]-[57].

⁸ *Ophthalmological Society of New Zealand Inc*, above n 3.

[18] In relation to the 2021 Report by itself, Mr Skelton KC, counsel for the Gloriavale defendants, accepts that the reference to the Crown Law advice does not amount to waiver. I agree. The reference in the report does not place reliance on the legal advice such that there is any unfairness on the other parties if the legal advice is withheld. However, the same cannot be said for the oral submission made in Court.

[19] In this case, the context is the limitation period. The Gloriavale defendants argue that the Labour Inspector is time-barred from its claims against them because the relevant breaches were known, or should have been known, following Labour Inspectorate investigations in 2017 and 2021. The Labour Inspector resists this by arguing that the delay was reasonable or that the cause of action had not yet occurred.

[20] It is in this specific context that counsel for the Labour Inspector submitted that the Inspector “would not have been able to act contrary” to the Crown Law advice. This was not a passive historical observation but an active assertion of reliance. The Labour Inspector, through counsel, voluntarily and in open Court, deployed the existence and conclusion of the legal advice to justify a state of mind and a course of conduct, namely the decision not to bring proceedings in 2021.

[21] Unlike *Houghton*, it would be inconsistent and unfair (and contrary to the guiding principles of equity and good conscience) to allow the Labour Inspector to maintain privilege over the reasons for the advice. To do so would allow the Labour Inspector to use the advice as a sword to justify the delay (said to have been contributed to by attempts by the Gloriavale defendants to conceal from the Labour Inspectorate what was going on within the Gloriavale Community) while simultaneously asserting privilege as a shield against scrutiny of that justification.

[22] The Labour Inspector’s submission is that the cause of action against the Gloriavale defendants did not arise until the Court delivered its judgments in *Courage* and *Pilgrim*, so the advice it received in 2021 is not a relevant factor. The question for limitation purposes, however, is when the Labour Inspector should have reasonably become aware of the existence of a breach of employment standards. The Labour Inspector had the power to initiate proceedings in 2021 but elected not to do so. It appears, from counsel’s submission in Court, that the Crown Law advice was a factor

influencing that decision. Consequently, it is linked to the central issue of the Labour Inspector's delay and whether it can be justified for the purposes of resolving the question as to when the clock started to tick for limitation purposes.

[23] The principle against "cherry-picking" applies here. As held in *Nea Karteria Maritime Co Ltd v Atlantic & Great Lakes Steamship Corporation*, where a party chooses to deploy a fragment of privileged material, fairness requires that the opposing party be given the opportunity to satisfy themselves that they have the whole picture.⁹ By asserting that the advice influenced the Labour Inspector's decision-making, they have injected the substance of the advice into the proceedings. Fairness requires that the defendants be permitted to view the advice to understand the factual and legal basis upon which that conclusion was reached.

[24] An application of well-established common law principles and the twin principles of equity and good conscience point firmly toward the privilege having been waived. This is subject to the discussion below on whether the submission was withdrawn and whether the Labour Inspector had legal authority to waive the privilege.

Withdrawal of submission - effective?

[25] Counsel for the Labour Inspector sought to withdraw the submission that the Crown Law advice was an influential factor in the Labour Inspector's decision-making. It is argued that, as such, there is no reliance on the privileged information and thus no waiver.

[26] In support of this position, the Labour Inspector relies on *Capital + Merchant Finance Ltd v Perpetual Trust Ltd*. In that case, the High Court permitted a party to amend briefs of evidence to remove references to privileged materials before the briefs were read in court.¹⁰ The Labour Inspector submits that an analogy can be drawn to purporting to withdraw its oral submission the day after it was made.

⁹ *Nea Karteria Maritime Co Ltd v Atlantic & Great Lakes Steamship Corp (No 2)* [1981] Com LR 138, at 139. See also *Ophthalmological Society of New Zealand Inc*, above n 3, at [20].

¹⁰ *Capital + Merchant Finance Ltd v Perpetual Trust Ltd* [2015] NZHC 1233.

[27] I am not drawn to the analogy. The decision in *Capital + Merchant Finance Ltd* turned on the fact that service of a brief is merely an indication of evidence to be given in the future. The Court considered that privilege is not waived until the evidence is “actually given”.¹¹ Consequently, it was open to the party to edit the brief prior to trial to maintain privilege. The disclosure in this case materially differs.

[28] The distinction is important. Once the information has been disclosed in open court, the confidentiality that underpins the privilege is destroyed. As the Privy Council has put it, “privilege entitles one to refuse to let the cat out of the bag; once it is out of the bag, however, privilege cannot help to put it back”.¹² While the Privy Council made an exception in that case, to allow “the cat to be put back into the bag”, that was predicated on the disclosure being made on confidential terms for a limited purpose. The Labour Inspector’s disclosure was general, not limited in this way.

[29] Further, while a party may withdraw a legal submission, they cannot retroactively erase the disclosure of the factual basis for that submission once it has been revealed to the Court and to the opposing parties.¹³ As I have said, it appears from the submission that the Labour Inspector’s decision not to act in 2021 was driven by the content of the Crown Law advice. That revelation goes to the heart of the factual dispute. The attempted withdrawal does not undo what has been done.

Authority to waive privilege

[30] The Labour Inspector further submits that privilege in Crown Law advice belongs to the Crown and can only be waived with the express approval of the Attorney-General. It is submitted that because no such approval was given, counsel’s oral statements cannot constitute a valid waiver.

[31] The Labour Inspector argues that this is supported by the Cabinet Manual.¹⁴ However, the Cabinet Manual sets out administrative expectations for Ministers and

¹¹ At [20].

¹² *B v Auckland District Law Society* [2003] UKPC 38, [2004] 1 NZLR 326, at [68].

¹³ *B*, above n 12, at [67]-[68].

¹⁴ The Department of the Prime Minister and Cabinet *Cabinet Manual – Legal advice and legal professional privilege* <www.dpmc.govt.nz>.

government departments regarding the management of legal advice. While paragraph 4.71 creates an internal obligation to seek approval from the Attorney-General before releasing advice, a breach of this protocol does not immunise the Crown from the ordinary rules of evidence and procedure in this Court.

[32] The Cabinet Manual itself recognises this. Paragraph 4.68(b) explicitly warns that implied waiver may occur “even if the client did not intend this”, particularly where, as here, partial disclosure may lead to injustice. As the Manual notes, in such cases, “a court would be likely to find there had been implied waiver”.

[33] The Labour Inspector also seeks to rely on *Capital + Merchant Finance Ltd.*¹⁵ In that case, the High Court noted:¹⁶

[23] ... to the extent that Mr Stewart does divulge the content of at least some such communications, *it is arguable that such disclosures have been made without CMF’s approval or authority.* Consistently with this position, counsel for CMF has advised the court that if CMF’s briefs (in their current form) will potentially result in a waiver of privilege, *the briefs will be edited prior to trial to remove the offending material.*

[34] I understand this to mean that, because the brief had not yet been read out in court, the client still had the chance to “assert” their lack of authority by withdrawing the brief. I do not read the judgment as authority for the proposition that waiver is ineffective merely because it was not expressly authorised.

Result

[35] For the reasons set out above, I find that the privilege in the 2021 Crown Law advice has been waived.

[36] The Labour Inspector is directed to disclose the 2021 Crown Law advice to the Gloriavale defendants and the Courage and Pilgrim plaintiffs within five working days. A copy must also be provided to counsel appointed to assist the Court. The five working day timeframe will enable the Labour Inspector to take the necessary steps to seek leave to appeal these orders if considered appropriate.

¹⁵ *Capital + Merchant Finance Ltd v Perpetual Trust Ltd*, above n 10.

¹⁶ Emphasis added.

[37] It is appropriate that, once the Crown Law advice is disclosed, the parties have an opportunity to file supplementary submissions on the limitations issue. Any such submissions are to be strictly limited to the relevance and effect of the Crown Law advice.

[38] Submissions are to be filed and served by the Gloriavale defendants and Courage and Pilgrim plaintiffs no later than 4 pm on 30 January 2026; by the Labour Inspector no later than 4 pm on 6 February 2026; by counsel appointed to assist the Court no later than 4 pm on 13 February 2026; and anything strictly in reply no later than 4 pm on 20 February 2026.

[39] The Gloriavale defendants and the Courage and Pilgrim plaintiffs are entitled to costs, the quantum of which is reserved.

Christina Inglis
Chief Judge

Judgment signed at 12.30 pm on 19 December 2025