

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

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

**[2026] NZEmpC 12  
EMPC 395/2024**

IN THE MATTER OF	a declaration under s 6(5) of the Employment Relations Act 2000
AND IN THE MATTER OF	an application for an adjournment
BETWEEN	CG First Plaintiff
AND	OY Second Plaintiff
AND	ZF Third Plaintiff
AND	WT Fourth Plaintiff
AND	QA Fifth Plaintiff
AND	YS Sixth Plaintiff
AND	UJ Seventh Plaintiff
AND	CALENDAR GIRLS NZ LIMITED Defendant

Hearing: On the papers

Appearances: V Campbell, counsel for plaintiffs  
R Thompson, advocate for defendant

Judgment: 29 January 2026

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**INTERLOCUTORY JUDGMENT (NO 3)  
OF CHIEF JUDGE CHRISTINA INGLIS  
(Application for an adjournment)**

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**Background**

[1] These proceedings relate to an application for a declaration of employment status under s 6 of the Employment Relations Act 2000. The proceedings are currently set down for a five-day hearing commencing on Monday 16 February 2026.

[2] Timetabling directions were made a year ago, on 17 February 2025. The plaintiffs were directed to file and serve briefs of evidence eight weeks out from the hearing; the defendant was directed to file and serve briefs of evidence no later than four weeks out from the hearing. The plaintiffs complied with this direction; the defendant has not.

[3] The proceedings were set down eight months ago, namely on 4 June 2025.

[4] On 22 January 2026 an application for an adjournment was filed on behalf of the defendant. It was accompanied by an affidavit sworn by the defendant's representative. The grounds for the application are two-fold. The first ground is that Mr Thompson (advocate for the defendant) has recently suffered a personal bereavement, is not in a position to prepare for and appear at the hearing, and that he has had difficulties finding alternative representation for the company. The second is that Mr Samson, the sole director of the defendant company and primary witness, suffers from a number of disabilities, which mean that he has been unable to prepare his brief of evidence within time and will not be able to prepare adequately for the hearing.

[5] The plaintiffs are strongly opposed to the application.

[6] Given the impending dates for the hearing, I issued a direction that the defendant should file and serve further affidavits, addressing the steps taken to find alternative representation and why it has not been possible to make the necessary

arrangements; and as to the disabilities Mr Samson is said to be suffering from, how such disabilities have impacted his ability to finalise his evidence within time and why those disabilities prevent him from preparing for the hearing.

[7] Two affidavits have now been filed, by Mr Thompson and Mr Samson. Affidavits have also been filed by each of the plaintiffs and their representative. The defendant chose not to file any submissions in support of the application for an adjournment; counsel for the plaintiffs has. The parties were content for the application to be dealt with on the papers.

### **Analysis**

[8] The power to adjourn a hearing is discretionary. An adjournment impacts not only the particular parties but has broader implications in terms of the use of court time and resources, and the administration of justice.

[9] The applying party can be expected to identify good reason why the hearing ought to be adjourned, supported (where necessary) with affidavit evidence. The Court will undertake a balancing exercise, weighing various factors. Of particular relevance in a case such as this is:<sup>1</sup>

- (a) the prejudice likely to be suffered by the defendant if the adjournment is declined;
- (b) the prejudice likely to be suffered by the plaintiffs if the application is granted;
- (c) any delay in bringing the application;
- (d) any third party impact;
- (e) whether the defendant has acted reasonably and done everything practical to avoid the need for an adjournment;

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<sup>1</sup> See, for example, *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 628, at [39].

- (f) the strength of the reasons in support of the application;
- (g) the impact, if any, on the right to a fair trial and the need for a resolution of the proceedings, including the likely impact of further delay on the quality of the evidence;
- (h) considerations of the impact of an adjournment on the use of scarce judicial resource, court time and others who are “waiting in line” for Court dates; and
- (i) where the balance of convenience lies.

[10] Ultimately, the Court will be guided by the overall interests of justice.

*Likely prejudice to the defendant*

[11] As I have said, the defendant relies on two grounds for their application. Both are centred on the potential prejudice it will face if no adjournment is granted and can be condensed into a concern that it will be unable to adequately prepare for and participate in the hearing.

[12] I accept that Mr Thompson is confronting a difficult set of personal circumstances, which are impeding his ability to undertake his representation services for his client. The plaintiffs acknowledge those difficulties, and the personal impact on Mr Thompson.

[13] However, and as was made clear in *ANZ Banking Group (NZ) Ltd v Couchman*,<sup>2</sup> there has been sufficient time to make alternative arrangements and there remains sufficient time to do so given that the hearing is still some 18 days away.

[14] It is notable that the steps taken to make alternative arrangements, as outlined in the affidavit filed in support, involve making only one inquiry of one lawyer. It appears that no other representatives, including any law firms, have been approached.

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<sup>2</sup> *ANZ Banking Group (NZ) Ltd v Couchman* (1992) 6 PRNZ 34 (HC), at 35.

[15] The steps to make alternative arrangements are inadequate in the circumstances and weigh against the application.

[16] Nor do I accept that these proceedings are of such a nature and complexity that alternative arrangements cannot be made within the 18-day timeframe if that is what is required, or what the defendant wishes to do.

[17] As I have said, Mr Samson has sworn an affidavit. He says that he has a long-standing difficulty reading and writing, and limited computer skills; that he has recently separated from his partner; and that he cannot work his way through the 1000 pages in the bundle of documents and briefs of evidence or prepare his brief without the assistance that he had previously received from his partner.

[18] It is fair to say that the plaintiffs, each of whom say that they had interactions with Mr Samson within the workplace, have expressed considerable scepticism about his claims. Sworn affidavits have been filed explaining that they saw him working on his computer and appeared to have no difficulty in either comprehending messages, analysing or searching information, and writing responses; nor was any mention ever made of the issues now referred to in his affidavit.

[19] While Mr Samson refers to what he describes as the extreme difficulty working through the documents for hearing, the reality is that many of them are the company's own documents (which he should be familiar with), and a significant number of the remaining documents have substantial redactions.

[20] It may also be noted that no issues have previously been raised with the Court in respect of the difficulties Mr Samson refers to, despite this being a specific topic for identification at an early case management stage. They were not, for example, identified by his representative as a basis for extra time to be allowed for the preparation of evidence or documentation and nor were they identified as being relevant to the conduct of the hearing, such as requiring his brief of evidence to be taken as read or otherwise being assisted in Court.

[21] The conflict in the affidavit evidence does not however need to be resolved. That is because there are 18 days until hearing, and it can safely be assumed that the difficulties Mr Samson refers to can be mitigated within that timeframe by making alternative arrangements in terms of support and assistance, and via an extension to the timetabling directions for the filing of his brief of evidence (which I return to below). Directions can also be made, if appropriate, as to the way in which Mr Samson gives his evidence in Court, so as to address any difficulties that ought to be accommodated.

[22] The short point is that the prejudice that might otherwise be suffered can be ameliorated. This weighs against an adjournment being an appropriate response in the circumstances.

*Prejudice likely to be suffered by the plaintiffs if adjournment is granted*

[23] The plaintiffs have each sworn affidavits firmly opposed to an adjournment, predominantly on the basis of the impact on them if there are further delays in having their claim heard. Their personal circumstances differ. One plaintiff is scheduled to have surgery in early April, having previously had it postponed. She is concerned that if the hearing is adjourned her surgery will need to be rescheduled. She also makes the point that the hearing, and preparing for it, has put her under significant stress, that she is planning to leave New Zealand and feels as if her life has been “put on hold” for the hearing.

[24] Another plaintiff has given evidence that she has been intending to move overseas but has been unable to do so because of the upcoming hearing; she does not want to continue to defer those plans. Another plaintiff is commencing post graduate study early this year and is concerned about that being interrupted if the hearing is adjourned to new dates. Another plaintiff has been planning an overseas trip in April with her mother, who has been undergoing treatment for cancer, the outcome of which is uncertain. She says that she has found the preparation for the hearing very stressful and difficult for her mental health.

[25] I accept that an adjournment, even one that was fairly brief (if that could otherwise be accommodated by the Court), would likely have a serious negative impact on the plaintiffs. This weighs against the application.

*Delay*

[26] The application is brought at a relatively late stage; that is explicable in terms of the personal difficulties that Mr Thompson is confronting, much less so in respect of Mr Samson's difficulties.

[27] It is also notable that the defendant's evidence was due to be filed by 4pm on 19 January 2026, so well before the application for an adjournment was filed. The point is that if Mr Samson was having difficulties with the preparation of his evidence, and more generally for hearing, they could reasonably have been expected to be raised with the Court at an earlier date.

*Third party impact?*

[28] No issues have been identified in respect of third parties, other than other court users which I deal with below.

*Strength of reasons in support*

[29] I have dealt with what I regard as the strength of the grounds relied on above. While I accept that Mr Thomson's situation is difficult, and beyond his control, there are steps that can reasonably be taken to address the concerns that have been identified.

*Impact on fair trial and resolution of claim*

[30] I do not accept that the defendant's ability to participate in the hearing and be heard in defence of the plaintiffs' claim will be materially impacted if an adjournment is declined, given the points made above.

[31] Further delay in hearing the claim is problematic. It has been on foot for some time. Judgment on the plaintiffs' application for declarations as to employment status will determine whether they can proceed with a claim against the defendant – so mark

a gateway through which they must first pass before taking any further steps. It is undesirable for the proceedings to be unnecessarily delayed.

*Whether the applicant has acted reasonably*

[32] It will be apparent from the above discussion that I am not satisfied that the defendant has taken reasonably practicable steps to avoid the situation they find themselves in. This weighs against an adjournment being granted.<sup>3</sup>

*Broader impacts*

[33] Court time is valuable and this case has been set down for hearing for many months. There is a well-recognised public interest in the efficient use of court resources.<sup>4</sup> The reality is that if the hearing is adjourned alternative dates cannot readily be made available for some considerable time, and (conversely) the ability to fill the vacated hearing dates with another fixture (to make good use of court time) is remote. That means that an adjournment will inevitably negatively impact other court users waiting in line for a fixture. That weighs against an adjournment.

*Balance of convenience/interests of justice*

[34] The balance of convenience weighs against an adjournment, particularly having regard to the steps that can be taken to mitigate the concerns that have been identified on the defendant's behalf. The overall interests of justice follow the balance of convenience.

**Result**

[35] I am not satisfied that good reason has been made out for granting an adjournment, or that it would be in the broader interests of justice to do so. The application for an adjournment is accordingly declined.

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<sup>3</sup> See, for example, *Shanghai Neuhof Trade Co Ltd v Zespri International Ltd* [2019] NZHC 3479, at [15].

<sup>4</sup> See, for example, *Cynet Farms Ltd v ANZ Bank New Zealand Ltd* [2016] NZHC 1945, at [8], approving *Commissioner of Inland Revenue v Patel* [2013] NZHC 477.

[36] I am however prepared to vary the current timetabling orders to provide the defendant with one additional week to file and serve any brief of evidence. That will enable Mr Samson to obtain the support required to complete his brief and for alternative arrangements to be made in respect of representation, if the defendant wishes to be represented at the hearing.

[37] The current timetabling directions are extended. The defendant will have an additional seven days to file and serve any brief of evidence. The plaintiffs may call any evidence strictly in reply at the hearing.

[38] The plaintiffs are entitled to costs, the quantum of which is reserved.

Christina Inglis  
Chief Judge

Judgment signed at 11.45 am on 29 January 2026