

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

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

**[2022] NZEmpC 154
EMPC 85/2022**

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

AND IN THE MATTER OF an application to access Court documents

BETWEEN SERENITY PILGRIM, ANNA
COURAGE, ROSE STANDTRUE,
CRYSTAL 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
STANDBAST
Second Defendants

Hearing: On the papers

Appearances: B P Henry, D Gates and S Patterson, counsel for plaintiffs
J Catran and A Piaggi, counsel for first defendants
P Skelton QC, S G Wilson, J Hurren and H Rossie, counsel for
second defendants
R Kirkness, counsel to assist the Court

Judgment: 25 August 2022

**INTERLOCUTORY JUDGMENT (NO 12)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application has been made by the Gloriavale Leavers Support Trust for directions from the Court facilitating broad access to the proceedings, including via access to Court documents (such as the notes of evidence as they are produced) and/or attendance at the hearing by way of remote means.

[2] The directions are sought on the basis that it will enable the Trust to provide those in the wider Gloriavale community (those who have left, who remain and the family members of leavers and supporters) with an accurate record of what occurs during the hearing on a daily basis, to facilitate discussion and commentary. Ultimately the application is said to be advanced in the interests of open justice.

[3] I directed that the application be provided to the parties. The plaintiffs have advised that they abide the decision of the Court; the second defendants are opposed to the application except insofar as it relates to the taking of notes during the trial. The first defendant abides the decision of the Court on the application for remote access and opposes the application for access to the notes of evidence on a daily basis and permission to take notes during the trial.

[4] As the Trust makes clear in its application, while a range of possible options have been identified, it is content to abide the decision of the Court in terms of what is considered appropriate in the circumstances.

Analysis

[5] I deal first with the application insofar as it relates to access to documents, namely the notes of evidence as the hearing unfolds and any transcript of the opening submissions and closing submissions. I pause to note that there will be no Court

transcript of submissions made by counsel and so that part of the application can be put to one side. The application for the notes of evidence is prospective, in the sense that they do not yet exist, and will not exist or be held by the Court until the trial gets underway. It has not been suggested that the prospective nature of the application materially alters the analysis that would usually apply.¹

[6] The usual approach has been set out in a number of recent cases but is repeated here for convenience. The Employment Relations Act 2000 does not deal with access to documents held on the Court file, nor do the Employment Court Regulations 2000. The Senior Courts (Access to Court Documents) Rules 2017 (the Rules) have been applied by way of reference to reg 6 of the Regulations and/or by way of helpful analogy.²

[7] The Rules are made under the Senior Courts Act 2016. Section 173 of that Act provides that “[a]ny person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.” Schedule 2 provides that court information includes the formal court record, the court file, information relating to particular cases and electronic records of hearings. As I have said, the notes of evidence do not currently exist but when they do they will be held on the Court file. A person may ask to access any document under r 11 of the Rules.

[8] The principle of open justice is fundamental. The principle may need to be departed from in certain circumstances when it is in the interests of justice to do so. Rule 12 specifies a range of matters that must be considered when determining an application for access. These include the orderly and fair administration of justice; the right to bring and defend civil proceedings without the disclosure of any more information about the private lives of individuals, or matters that are commercially sensitive, than is necessary to satisfy the principle of open justice; the protection of other confidentiality and privacy interests (including those of children and other vulnerable members of the community); the principle of open justice (including the

¹ Senior Courts (Access to Court Documents) Rules 2017. See *Cridge v Studorp Ltd* [2020] NZHC 1836; *Sellman v Slater* [2021] NZHC 349.

² *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

encouragement of fair and accurate reporting of, and comment on, court hearings and decisions); and the freedom to seek, receive, and impart information.³

[9] Rule 13 deals with the approach to balancing the matters to be considered under r 12. The balancing act requires regard to be had to what stage the proceedings are at. So, before the substantive hearing, the protection of confidentiality and privacy interests and the orderly and fair administration of justice may require that access to documents be limited; during the substantive hearing, open justice has greater weight than at other stages of the proceeding and greater weight in relation to documents relied on in the hearing than other documents; after the substantive hearing, open justice has greater weight in relation to documents that have been relied on in a determination than other documents, but the protection of confidentiality and privacy interests has greater weight than would be the case during the substantive hearing.⁴ In this case the application comes before the hearing but in relation to documents which will be generated through the hearing.

[10] I accept that there is an interest in accurate and full reporting of these proceedings, including for the range of people the Trust has identified in its application. The hearing is set down in open Court in Christchurch and members of the Trust, and any interested members of the public, are free to attend the hearing. Such persons are also able to take notes (using pen and paper) during the course of the hearing – no leave is required to do so.⁵ All of this provides a mechanism to achieve the ends identified on behalf of the Trust; in other words I am not satisfied that provision of the notes of evidence on a daily basis is required. And the administrative burden associated with providing such access weighs against the application.

[11] As the Trust points out, in *Courage* the hearing proceeded via remote means and a number of links were made available to facilitate public access. Those facilities

³ *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2] in relation to the principle generally; and, in relation to access to Court documents, see the discussion in *Commissioner of Police v Doyle* [2017] NZHC 3049; and *Berry v Crimson Consulting Ltd* [2017] NZHC 3026 upheld on appeal in *Berry v Crimson Consulting Ltd* [2018] NZCA 460.

⁴ Senior Courts (Access to Court Documents) Rules 2017, r 13.

⁵ Courts of New Zealand “Note taking in court” <courtsfnz.govt.nz>. Leave is required to take notes on an electronic device.

were put in place to deal with restrictions arising in light of COVID-19, with the participation of the parties, witnesses, counsel and the presiding Judge at a distance. I am satisfied that, in the particular circumstances of this case, proceeding with the hearing in open Court, with members of the public able to attend each day and take notes, is sufficient to meet the interests of open justice.

[12] It follows that the Trust may attend the hearing and take notes (using pen and paper) during the course of it (including during the giving of evidence, opening and closing submissions); the hearing will not be accessible for viewing via VMR; and the request for daily copies of the notes of evidence is declined.

[13] Finally, any person attending Court, and taking notes or otherwise, must keep in mind that a number of non-publication orders are currently in place in these proceedings and it is important that all such orders be strictly complied with.⁶

[14] I do not understand any issue of costs to arise.

Christina Inglis
Chief Judge

Judgment signed at 4.50 pm on 25 August 2022

⁶ *Pilgrim v Attorney-General* [2022] NZEmpC 145 at [212].