

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

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

**[2023] NZEmpC 84
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: BP Henry, D Gates and S Patterson, counsel for plaintiffs
J Catran, K Sagaga and A Piaggi, counsel for first defendant
C Pearce and SG Wilson, counsel for second defendants
R Kirkness, counsel to assist the Court

Judgment: 8 June 2023

**INTERLOCUTORY JUDGMENT (NO 33)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to access Court documents)**

Introduction

[1] An application has been made by the Gloriavale Leavers' Support Trust for access to "[a]ll Court documents, including openings, notes of evidence, cross examination, exhibits and closing submissions ... evidence and examination from the plaintiffs, defendants and witnesses" in these proceedings.

[2] I directed that the application be provided to the parties. I understand the plaintiffs to be content to abide the decision of the Court. The second defendants acknowledge that the Trust is entitled to access the formal Court record, and they abide the decision of the Court in respect of the pleadings and the opening and closing submissions. They oppose the Trust having access to the briefs of evidence, notes of evidence, bundles of documents and exhibits. The first defendant abides the decision of the Court but suggests that if access is granted it be subject to conditions.

Discussion

[3] The Trust has explained the basis of its request as follows. It provides support for people who have left the Gloriavale Christian Community and their extended families. It says that access to the documentation would be invaluable to leavers, researchers and those who continue to reside within Gloriavale, "informing future healthy life choices and empowering families in making beneficial decisions for both themselves and their children." It is noted that while members of the Trust attended Court and took notes, they were taken in shorthand; factual and accurate documentation is essential. The Trust submits that it is in the interests of open justice that access be granted, including to support meaningful discourse. The Trust is willing to comply with any publication restrictions imposed by the Court.

[4] I approach this application on the following basis.

[5] 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.¹

[6] 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. A person may ask to access any document under r 11 of the Rules.

[7] The principle of open justice is fundamental. However, 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 encouragement of fair and accurate reporting of, and comment on, court hearings and decisions); and the freedom to seek, receive, and impart information.²

[8] 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 the stage of the proceedings. 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

¹ *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 160 at [4].

² *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, [2019] NZAR 30.

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.³ For the purposes of the Rules, the substantive hearing includes “from the start of that hearing until the court finishes delivering its judgment in the proceeding”.⁴ This means that the Court is still within the substantive hearing stage in relation to this application.

[9] I have previously dealt with two similar applications by the Trust, both of which were declined.⁵ The most recent application came during the substantive hearing. The second defendants say that the landscape remains unchanged. There is strength in that submission.

[10] The briefs of evidence, the notes of evidence, the bundles of documents and the exhibits contain a significant amount of personal and highly sensitive information about individuals, including information which is contested. While briefs of evidence were filed, some witnesses made corrections and amendments to their written briefs at hearing – the point being that the written briefs filed in advance of the hearing may not accurately reflect the evidence given in Court. The material also includes a quantity of evidence that was subject to objection, including on the grounds of relevance, and which was admitted on a provisional basis. Some of the evidence was subject to non-publication orders in this Court, and suppression orders in other Courts. Collating the material which would not otherwise raise a concern would pose challenges for the Court’s administration. And while I acknowledge the Trust’s confirmation that it would abide by any Court imposed restrictions, I consider it desirable, in the broader interests of justice, to take a cautious approach.

[11] I agree with the Trust that, if access to the documents was granted, the principles of open justice would be supported. However those principles have

³ Senior Courts (Access to Court Documents) Rules 2017, r 13.

⁴ Rule 4.

⁵ *Pilgrim v Attorney-General (No 12)* [2022] NZEmpC 154; and *Pilgrim v Attorney-General (No 18)* [2022] NZEmpC 172.

already been met, at least to a certain extent, by Trust representatives attending the hearing, listening to the evidence given in open Court, and taking notes. The principles can also be further supported by providing access to the pleadings and the written opening and closing submissions filed by counsel in these proceedings, which is not actively opposed by the second defendants. I regard such access as being appropriate having regard to the matters I have referred to above but subject to the condition that the documentation is not to be made publicly available. I consider that condition appropriate given the personal, and sensitive, nature of some of the material in those documents.

[12] The Trust is also entitled to access the Court's formal record.

Conclusion

[13] Weighing the above matters, I am not satisfied that an adequate basis has been made out for granting the application insofar as it relates to the notes of evidence, briefs of evidence, bundles of documents and exhibits. The application to access these documents is declined. The application is granted insofar as access is sought to the written opening and closing submissions filed in these proceedings, and the pleadings, subject to the condition that this documentation is not to be made publicly available. The applicant is also entitled to access the formal Court record.

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

Christina Inglis
Chief Judge

Judgment signed at 11.30 am on 8 June 2023