IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2022] NZEmpC 77
EMPC 363/2021

IN THE MATTER OF	a declaration under s 6(5) of the Employment Relations Act 2000
BETWEEN	HOSEA COURAGE, DANIEL PILGRIM AND LEVI COURAGE Plaintiffs
AND	THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE First Defendant
AND	HOWARD TEMPLE, FERVENT STEDFAST, ENOCH UPRIGHT, SAMUEL VALOR, FAITHFUL PILGRIM, NOAH HOPEFUL AND STEPHEN STANDFAST Second Defendants
AND	FOREST GOLD HONEY LIMITED AND HARVEST HONEY LIMITED Third Defendants
AND	APETIZA LIMITED Fourth Defendant

Hearing:	21-25 and 28 February and 2-4 March 2022 (Heard at Wellington via Virtual Meeting Room)
Appearances:	B P Henry, D Gates, A Kenwright and S Patterson, counsel for plaintiffs J Catran and A Piaggi, counsel for first defendant S G Wilson, J Hurren and H Rossie, counsel for second, third and fourth defendants R Kirkness, counsel to assist the Court
Judgment:	10 May 2022

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] These proceedings involve a claim by three former members of the Gloriavale Christian Community. They say that they were required to work long hours, and under harsh conditions, from the age of six until they left the Community, and that they were employees. The claim is denied.

[2] Gloriavale (previously known as the Springbank Christian Community) was founded in 1969 by Hopeful Christian. It is currently based in an isolated location on the West Coast of the South Island. Gloriavale is described as a self-sustaining Christian Community, which operates on a specific set of beliefs. Key amongst these is a belief that all things should be "held in common" – no one owns anything, and everyone is expected to contribute to the Community insofar as they are able. As a result, the residents of Gloriavale live what might be referred to as a communal lifestyle. Members do not handle their own finances, nor purchase and manage items for their own daily living.[1]

[3] A complex structure has been set up within Gloriavale, which includes limited liability companies producing various goods for commercial sale. Children work in the Gloriavale businesses from a young age; the Gloriavale defendants sought to characterise such work as "chores". I return to that descriptor later but note at this point that it is clear that work plays a central role in life within the Community. Charity Christian, a Gloriavale resident, described it in the following way:

> I wouldn't call it a requirement to work. We actually all love the idea of working and teaching our children to work…

[4] The plaintiffs, Hosea Courage, Daniel Pilgrim and Levi Courage, were all born into the Community. Each of the plaintiffs' parents had been born and raised there. Hosea Courage, Daniel Pilgrim and Levi Courage left Gloriavale prior to these

[1] Such as food, clothing, laundry, furnishings, personal effects and hygiene.

proceedings being filed. They have applied to the Court for declarations that they were employees during their time at Gloriavale spanning three periods of time – six to 14 years of age; the transitional year (15 years of age); and 16 plus years of age. Each of the plaintiffs has also brought claims against the Labour Inspectorate in relation to the alleged failure to exercise the Inspector's protective statutory duties under the Employment Relations Act 2000.

[5] The current leader of Gloriavale, who is referred to as the Overseeing Shepherd, is Howard Temple. Below him in the hierarchy sit Shepherds, and below them sit Servants. Shepherds are said to be responsible for supervising the spiritual and moral discipline of the Community, with the more practical, day-to-day activities being managed by the Servants. All members of what I will call the leadership group (the Overseeing Shepherd, the Shepherds and the Servants) are, as a matter of principle, male.

[6] The roadmap for life within Gloriavale is a document called "What We Believe". It comprehensively summarises the values and beliefs by which members are expected to abide.[2] "What We Believe" sets out the leaders' interpretation of the teachings of the King James Version of the Bible and requires strict obedience to the leaders at all times and in all things – including work. In this regard, all members of Gloriavale are to:

> … obey the leaders of the Church in all matters concerning his faith and his involvement in the practical life and work of this Community.

[7] The leadership group has set up a complex overlay of commercial and legal structures through which it attempts to give legal effect to the Community's arrangements and to achieve its commercial goals. The formal legal structure of the Gloriavale businesses was said to be made up of the following entities:

- The Christian Church Community Trust (incorporated in 1991 and given charitable status in 2008);

- Christian Partners partnership;

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2 It is referred to as a "living document".

- a nominee company on behalf of Christian Partners to hold the shares in the holding company of Christian Partners;

- a holding company for Christian Partners' assets and businesses that hold shares in the trading companies; and

- various limited liability trading companies to operate Gloriavale's commercial enterprises. These are owned by one or other of the Christian Church Community Trust Inc or the holding company of Christian Partners.

[8] The details of the structure at Gloriavale and the interrelationship between its numerous component entities and various businesses, including in terms of cash-flow, remained somewhat opaque. What is clear is that the structure has evolved over time, including in response to changes in market demand.[3] The businesses currently include a honey making plant and a large-scale dairy farm (which runs in excess of 3,000 cows). What is also clear is that Gloriavale owns, through one entity or another, substantial assets, generally purchased out of funds generated by its commercial endeavours. A relatively recent example is the purchase of a 3.115ha property at Lake Brunner, described in evidence as costing around $10m and having been paid off within three to four years (including through "belt tightening", via a reduced food budget and holiday time).

[9] The mean age of Community members is 12 years, with 30 to 40 children born annually. It is plain that the ready access to child labour (children of adult residents) constitutes a significant factor in the success of the Gloriavale business model. The point was reinforced by Zion Pilgrim, a former leader within Gloriavale and director of numerous Gloriavale businesses. He confirmed that if such labour could not be utilised the leadership group would "definitely have to restructure things", including in terms of finding adult labourers to fill in the gaps.

[10] In what would be their final year of school, children take part in "a transitional education programme". Peter Righteous, who is a school teacher at Gloriavale, a

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[3] For example, the "Wilderness Quest Adventures" tourism hunting business was sold during the first lockdown due to a drop off in demand.

Servant, and the only member of the leadership group to give evidence, described this as elective vocational training conducted in compliance with New Zealand's educational laws and regulations.

[11] Once a male turns around 16 years of age they sign what is called a Deed of Adherence and work as an "Associate Partner". At this point they have not yet attained an appropriate age to become a Partner but are purportedly bound by the terms of a document called the Partnership Agreement. A member becomes a Partner after signing a Declaration of Commitment to Jesus Christ and his Community at Gloriavale (the Declaration), a document in which the signatory agrees to a number of religious and legal propositions underlying their membership of Gloriavale.

[12] Associate Partners and Partners receive payment for their work, referred to in evidence as "drawings" or a share in profits. Payment is made into a nominated account and is automatically paid back out again, and into the Gloriavale shared account.

[13] As I have said, the plaintiffs were born and raised in Gloriavale by parents who had also been born and raised in the Community. The second, third and fourth defendants are all persons and companies associated with Gloriavale. The second defendants are the current Shepherds. The plaintiffs' primary argument is that, at all times, these men were in an employment relationship with the plaintiffs by virtue of the control they exercised over them, the Community, and their access to the necessities of life. In the alternative, the plaintiffs argue that the employer parties were the third and fourth defendants, companies incorporated by Gloriavale in respect of a number of their commercial enterprises. Forest Gold Honey and Harvest Honey Ltd, the third defendants, are apiculture businesses. The fourth defendant, Apetiza Ltd, was involved in the production of pet food.

[14] The breach of duty claim arises out of two inquiries conducted by the Labour Inspector, in 2017 and in 2020/21. The first followed concerns raised by Charities Services, within the Department of Internal Affairs, and led to what Mr Lewis (Labour Inspector) described as a "desk-top" review. He found that one of the strongest arguments against a finding of employment status was that those working at Gloriavale

had agreed, in writing, to "give up all individual rights to their personal assets and income in order to contribute communally." He concluded that people at Gloriavale were not employees and there was accordingly no jurisdiction to proceed to a full investigation.[4]

[15] Mr Lewis was involved in the subsequent inquiry which was led by another Labour Inspector, Ms Crampton. Mr Lewis and Ms Crampton gave evidence. Mr Lewis said that the 2020/21 inquiry followed complaints in the media about working conditions at Gloriavale and a direction from the Minister that the situation needed to be revisited.

[16] In the event, the 2020/21 investigation led to the same conclusion as the earlier one. The report noted that the Labour Inspectors' inquiries were largely focussed on ascertaining the intention of the parties in defining their legal relationship. It recorded that the Labour Inspectors had been provided copies of relevant documentation, including "What We Believe", the Declaration of Commitment, the Deed of Adherence, and Partnership Agreement; referred to a disjunct in accounts between those who had left Gloriavale and those who remained; noted that the majority of current residents spoken to "were happy" and had "willingly signed" the documentation which was said to show an intention to create a relationship other than employment; made the point that the residents had chosen to live a communal way of life; and concluded that those working within Gloriavale were not employees and the Inspectorate had no jurisdiction to pursue any claims.[5]

[17] The Gloriavale defendants deny that the plaintiffs were, at any time, employees of them. The Labour Inspector, through the Attorney-General, denies the allegations against them and says that this Court has no jurisdiction to deal with this aspect of the claim; if the tort claim is to proceed that must occur in the High Court, in light of restrictions on this Court's jurisdiction.

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4 Note that boys in the younger two age brackets had not yet signed the Deed of Adherence. The Labour Inspector's report is silent as to the legal position for these age brackets but it can be inferred that they were also not considered employees.

5 Hannah Crampton and Richard Lewis "The Christian Church Community Trust (Gloriavale) Investigation Report" (23 July 2021). See also Employment New Zealand "Labour Inspectorate concludes inquiry into Gloriavale" (July 2021) <www.employment.govt.nz>.

[18] Four further points are usefully noted by way of background.

[19] First, I agree with a point made by counsel for the Gloriavale defendants, Mr Wilson, that Gloriavale's religious convictions are not on trial in this case. The sole inquiry for this Court is the employment status or otherwise of the three plaintiffs.

[20] Second, in deciding the status issue it is necessary to understand the context within which the plaintiffs undertook work in the Community and its alleged significance in this case. Peter Righteous expressed the view that no-one within Gloriavale is employed because an employer/employee relationship is:

> fundamentally at odds with our Christian principles and the beliefs that we hold so dearly…

And:

> …we do not operate an employee/employer relationship model and to do so would be contrary to our fundamental beliefs and values.

[21] Zion Pilgrim emphasised the importance of context to the status inquiry in the following way:

> I have focused [in my evidence] on the employment relationships that control the plaintiffs but to get a full picture of the extent to which the Overseeing Shepherds and the Shepherds control these young men, it must also be taken into account that the Overseeing Shepherd and Shepherds not only control where and when they worked, where they resided, and what food they ate, but would in their future, decide not only when they could marry but who they could marry. Every aspect of their life was controlled.

[22] Third, this judgment follows a preliminary hearing focussed on the plaintiffs' claim against the Gloriavale defendants that they were employees for the purposes of s 6 of the Employment Relations Act. The claim against the Attorney-General will be dealt with later. However, it is necessary to traverse aspects of the Labour Inspectorate's involvement, and the Gloriavale leadership group's response to it, in order to fully understand the plaintiffs' case and the real nature of the relationship between them (as putative employees) and the Gloriavale defendants (as putative employers).

[23] Fourth, the claim that the plaintiffs were employees of some or all of the Gloriavale defendants raised a number of issues. The focus of argument was squarely on whether each of the plaintiffs was an employee, rather than on the identity of the true employer (if there was one) within the Gloriavale structure. The evidence failed to cast significant light on the complexities of the structure. There are several businesses, a trust, a partnership, nominee companies, a leadership group and an Overseeing Shepherd. None of the listed second defendants gave evidence and nor did any of the current directors of the third and fourth defendant companies. All of this, and the confused factual position that was before the Court, and which only the Gloriavale defendants were in a position to clarify, led to a proposal (to which no party raised an objection) that, in the event the plaintiffs were found to be employees, the identity of the employer within Gloriavale would be dealt with later.[6] I am proceeding on this basis.

[24] Counsel was appointed to assist the Court on the recommendation of the Solicitor-General, and I record my appreciation for Mr Kirkness's assistance.

The facts

[25] It is not uncommon in cases involving a dispute as to employment status for the parties to have differing views about the features of the relationship that existed between them. This case is no exception. Witnesses for the Gloriavale defendants emphasised the so-called voluntary nature of the way in which work is done within the Community, and why it is approached in this way – emphasising its consistency with the principles underpinning what is described as a unique way of life, and the back-drop of residents agreeing to live within this framework. Each of these witnesses currently lives in Gloriavale and has taken the Declaration.

[26] The evidence given on behalf of the Gloriavale defendants stood in contrast to the evidence called on behalf of the plaintiffs. They drew a picture of a highly controlled, authoritarian environment which did not permit dissenting voices and

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[6] Which may, by virtue of s 6(6)(b), require an application for joinder or an opportunity for the proposed employer to be heard.

which corralled obedience through fear. In summary they say that they were born into Gloriavale, were indoctrinated into a way of thinking from birth, knew no other way of life, and could not be said to have voluntarily consented to the work they were required to do by the Gloriavale leadership group, or the conditions under which they worked.

[27] It is necessary to make particular mention of the failure of Mark Christian to give evidence, despite a brief of evidence having been filed in advance of the hearing. Mark Christian is a Servant who was intimately involved with the work placement and supervision of each of the plaintiffs and other children within Gloriavale. The latest trust deed before the Court (dated 11 July 2018) refers to Mark Christian as a Church Leader, signatory and board member of the Christian Church Community Trust. The failure to give evidence remained unexplained. Mark Christian was referred to extensively by the plaintiffs in their evidence and was implicated in a significant number of the events complained about. And while Peter Righteous was able to give general evidence about the Community, its structure and work practices, he lacked detailed knowledge of numerous aspects of Gloriavale's operations, as he readily conceded at various times during questioning.

[28] I was invited by counsel for the plaintiffs, Mr Henry, to draw an adverse inference from the failure of Mark Christian to give evidence and I consider that appropriate in the particular circumstances.[7]

[29] The Overseeing Shepherd, Howard Temple, also featured prominently throughout the evidence, in relation to the very high degree of direction and control he is said to exert within the Community, including in respect of work structure and practices. Howard Temple did not give evidence.

[30] Another member of the leadership team who was referred to extensively in evidence was Fervent Stedfast, the Financial Controller at Gloriavale until very recently, and who is named as a second defendant. Peter Righteous described him as wearing "many hats" – not only as being in charge of the office and general

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7 See, for example, *Ithaca (Custodians) Ltd v Perry Corporation* [2004] 1 NZLR 731 (CA) at [153]-[154]; recently followed in *Rodriguez v Commissioner of Police* [2020] NZCA 589 at [43].

administration, but also taking the lead role in dealing with government departments. The company structure is complex and, as I have said, various aspects of it remained unexplained. Fervent Stedfast did not give evidence.

[31] It is, of course, up to parties to decide what evidence to call. However, the reality is that the absence of key players within Gloriavale has left significant parts of the plaintiffs' case unanswered and large gaps, including (as Ms Catran, counsel for the Attorney-General, observed) in respect of the relationships between the businesses, the Partnership, the Trust, the nominee company, the leadership group and the members.

[32] As at September 2020 the leadership group comprised six Shepherds (Fervent Stedfast, Enoch Upright, Faithful Pilgrim, Noah Hopeful, Samuel Valor and Stephen Standfast), who sat below the Overseeing Shepherd. The six Shepherds, together with the Overseeing Shepherd, are the second defendants. At the time the Servants were Mark Christian, Maranatha Stedfast, Salem Temple, Joshua Disciple, Vigilant Standtrue, Peter Righteous, James Ready, Michael Hope and Zion Pilgrim (who left Gloriavale with his family on 20 September 2020).

[33] All Shepherds and Servants are personally appointed by the Overseeing Shepherd. In practice, the Overseeing Shepherd and his leadership group make all decisions on how the Community operates. Parents played a significantly diminished role in aspects of their children's life and upbringing, as will become apparent.

[34] Each of the plaintiffs gave evidence about the realities of life at Gloriavale, which I broadly accept. It is clear that they exercised little autonomy over what they thought, what they did, who they did it with, where they did it or how they did it. That extended to the way in which work was approached within the Community.

[35] The plaintiffs were brought up to accept, without question, the authority of the Overseeing Shepherd and the leadership group, and to submit absolutely to them. That overarching authority, and the requirement to obey, was routinely reinforced – often publicly. Instances of non-adherence were swiftly and firmly dealt with, including through physical and psychological punishment. One witness said that by the time a

child attained 13-14 years of age they were well conditioned to what they called "a brutal control regime". To avoid punishment, children had learned to submit to the control of the Shepherds and Servants. This, it was said, had the effect of creating lifetime conditioned responses to the Shepherds' and Servants' authority, which played out over the ensuing years.

[36] As children approach the age of majority there is an expectation that they will sign a document referred to as the Commitment.[8] The Commitment confers absolute authority on the Overseeing Shepherd, and requires absolute submission to him and the Shepherds. It was put to various witnesses for the plaintiffs that reference to "submission" in the Commitment simply reflected a requirement that people not "walk with pride." The proposition was rejected. John Ready, for example, gave evidence that it was said many times within the Community that you had no right to have an opinion. His evidence, and the evidence of others, is reinforced by what went on in a leadership meeting with Zion Pilgrim and his family, which I refer to in more detail below.

[37] It was alleged that children were taught that if they did not work they did not eat, and that this was reinforced to the wider group (including other children) in public gatherings. The principle is expressly referred to in "What We Believe":

> Those who will not work hard at what they are capable of doing should not be given anything to eat. No lazy people will be accepted in the Church.

[38] Peter Righteous accepted that the no-work-no-food principle was contained within "What We Believe", but said that it was merely a reminder that the Community, in general, requires work to be done in order for there to be food to eat. The weight of evidence before the Court suggested otherwise.

[39] Hosea Courage gave evidence that his work manager prohibited him from eating dinner one evening because he had not been pulling sticks out of the moss fast enough in the factory. And Daniel Pilgrim gave evidence that he was denied food and

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[8] Faithful Disciple explained that he signed the Commitment when he was 17 years old because it was the expected next step into adulthood and meant that he could be considered for marriage and would be able to get a driver's licence.

made to stand on stage in front of the Community at dinner time, on one occasion when he was around 10 or 11 years old. He said that workplace managers would sometimes tell parents to deny food to their children if they had not been working properly that day. He went on to describe the denial of food as a form of behaviour control which was sometimes tied to work performance and said that public humiliation was a regular occurrence. Faithful Disciple gave evidence that the Shepherds and Servants would often teach "If you do not work, you do not eat," and that the consequence of this was that work was done with the expectation that food, accommodation, clothing and the necessities of life would be provided. He went on to say that the Shepherds had full control over the food supply, and it was used (from his perspective) as a very effective disciplinary technique. John Helpful, who gave evidence on behalf of the Gloriavale defendants, accepted that there were times when children missed out on meals, and said that he had been taught that it was "more important" to obey than do what he wanted.

[40] I accept that there were instances of children being denied food and publicly shamed if they failed to work hard enough (or were perceived to have failed to meet the required standards of behaviour more generally). I have no doubt, and various witnesses confirmed, that this practice sent a very strong message to other children who undertook work within the Gloriavale businesses. The message was intentional and well understood.

[41] Notably, disobedience could also result in attendance at a Shepherds' and Servants' meeting. Witnesses gave evidence as to the nature of these meetings, where the Shepherds and Servants spent a considerable amount of time (hours) berating the person being reprimanded.[9] I infer from the evidence that this was the most feared form of discipline exerted within the Community. Having read the transcript, and listened to extracts of the audio, of such a meeting attended by the Pilgrim family shortly before their departure from the Community, that is not surprising.

[42] I have already referred to the complexity of the structure at Gloriavale. Peter Righteous described the legal structure as consisting of a charitable trust (the Christian

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[9] See, for example, Hosea Courage's evidence as to a five-hour meeting during which the Shepherds and Servants yelled at one of the workers from Value Proteins Ltd.

Church Community Trust), a partnership (Christian Partners partnership), a holding and nominee company and limited liability trading companies. The trading companies included the third defendants (Forest Gold Honey Ltd and Harvest Honey Ltd) and the fourth defendant (Apetiza Ltd). Other companies included Air West Coast Maintenance Ltd, Air West Coast Ltd, Canaan Farming Dairy Ltd, Canaan Farming Deer Ltd, Canaan Farming Engineering Ltd, Caring Midwives Ltd, Haupiri Net Ltd, Value Proteins Ltd, Ocean Harvest International Ltd, Forest Gold and Lake View Moss Ltd (now defunct).

[43] Peter Righteous gave evidence, which I accept, that the legal structure at Gloriavale has developed over time, is designed to give effect to the Community's beliefs and value systems, and that the leadership group has taken advice in respect of various aspects of it. He made it clear that while he had a general understanding of the legal structure, significant aspects of it were handled by others. It is evident that the key person who dealt with the business side of things within Gloriavale throughout the relevant period was Fervent Stedfast. Serenity Valor, who works in the office overseen by Fervent Stedfast, described the hierarchy of decision-making as follows. She reports to Fervent Stedfast; David Stedfast has authority to pay ACC levies and holds the tax agency; Prudent Stedfast has authority to run the labour hire side. The businesses have managers; the managers sit under directors; not all of the businesses are run by Shepherds. The purpose of the trading companies, Serenity Valor confirmed, is to make a profit. Ownership of the commercial enterprises appears to be split between the Christian Church Community Trust and the partnership.

[44] Zion Pilgrim gave direct evidence about his experiences of the company and leadership structure. At the time he left Gloriavale in September 2020, he was a director of eight listed companies. His evidence was that throughout the entire time he was recorded as a director with the Companies Office, no director meetings were held. When it was put to him that meetings of the leadership group (Shepherds and Servants) were in substance director and/or shareholder meetings, he described the proposition as a "pretty big stretch". Rather, he said that the company directors within Gloriavale had no power, and the companies were "shells" with no corporate management system or structure. Zion Pilgrim reinforced evidence given by others,

and which I accept, that the Overseeing Shepherd exercised ultimate control, and had the final say, on all decisions relating to business life within Gloriavale.

Work placement – from six to 12 years of age

[45] Each of the plaintiffs gave evidence that they started work within the Gloriavale businesses around the time they began school. Peter Righteous, who was responsible for organising activities for this age group of boys for about 24 years (from 1994 to around 2018), did not accept that this was so. He undertook this role at the behest of the Overseeing Shepherd. He described the boys as engaging in activities, familial and Community contributions, and household chores.

[46] Because the difference in the evidence largely came down to how the activities were characterised, it is convenient to summarise what the plaintiffs did during this period.

[47] Daniel Pilgrim began working from the age of six in the Community gardens; from the age of seven he worked in the then operational moss factory (known as Lakeview Moss Ltd, now disestablished) and one of the Gloriavale dairy farms. He worked long hours and was required to work hard. He did the morning milking from the age of 13, two or three times a week, typically from 4am to 7am, or 3.30am to 7.30am, for six years. Often he had to do morning and afternoon milkings on Sundays.

[48] Hosea Courage harvested moss from the swamp and then worked in the moss factory, picking out the sticks as the moss travelled along the conveyor belt and on a shaker table.[10] Between six and 12 people worked at the moss factory at any one time – two adults and the rest were children; all were doing the same work. A similar approach was adopted elsewhere. When Hosea was not working in the moss industry he would be put to work in the Community gardens. From nine years of age he worked at the Glen Hopeful dairy farm and later, when he turned 14, he worked at a piggery cleaning out pig sties.

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[10] The moss factory closed in 2012. Peter Righteous accepted in cross-examination that it was likely correct that the boys were provided with no safety equipment; no ear muffs and no safety glasses. The work in the factory was very dusty and required quick hands to undertake the sorting work.

[49] Levi Courage also began working from a young age, consistently with the experience of other boys within the Community. He did morning milkings from around six or seven years of age; worked on a farm and later worked in the honey business. Levi Courage started working at Forest Gold (the honey plant) when he was 14 years old under the supervision of Mark Christian.

[50] Virginia Courage was born into the Community and is Hosea Courage's mother. She gave evidence that she had never heard the word "chores" used within the Community. Rather, the work undertaken by the boys was always referred to as "work." Her evidence is consistent with the descriptor used in the daily work sheet for young boys, prepared by Peter Righteous and pinned to the wall in the communal dining room for children and their parents to view. The purpose of the roster was to enable the boys, and their parents, to know where they had been placed. Next to each boy's name on the roster was the business they had been assigned to "work" at.

[51] While it was alleged that the plaintiffs exercised choice about where they worked, and that it involved consultation with their parents, this was not made out on the evidence. I accept that Peter Righteous tried to accommodate preferences, including from boys and/or their parents. However, he conceded in cross-examination that it was ultimately the interests of the Gloriavale businesses which dictated where labour resources needed to be applied and where they were applied.[11]

[52] Zion Pilgrim (who is Daniel Pilgrim's father) described the reality of the situation from a parent's perspective:[12]

> If a parent was not happy with where their child was assigned to be worked by Peter Righteous as a Servant, they could "theoretically" complain to the Shepherds. *Most of the parents in Gloriavale wouldn't be game to take it that far, as they would be seen as challenging the authority of the leaders*. I was sometimes able to change the roster around for my children but even so, often I was told by Peter Righteous I couldn't change it, *because the Community needed the boys on the job that he had assigned to them to.*

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11 And see John Ready's evidence: "No one at Gloriavale could choose a career or vocation in the Community. The Shepherds decided where everyone was to work, on leaving school the children were instructed to go to work in a specific place or do a certain thing. Some do get to qualify in various trades, but there is no choice as to what area they work in, like the roster you learn not to question where the Shepherds and Servants send your child to work."

12 Emphasis added.

> The structure, as I understood the chain of authority as to what jobs the six-to twelve-year-olds were to do was set by Peter Righteous, a Servant, and could be challenged by going to the Shepherds, but *ultimately the final decision if they dared to challenge management would go to the Overseeing Shepherd as he was the person with absolute pastoral and business management authority.*

[53] I do not overlook the evidence of Charity Christian. She gave evidence that she tends to gently cajole her nieces and nephews to undertake various activities and there is no element of coercion involved. If that is her experience, it was plainly not the experience of the three plaintiffs. Nor was it reflective of the approach commonly applied within Gloriavale, namely that all children who were capable of working were required to work and did work.

[54] While I accept that children within the Gloriavale Community did not spend their entire time working, and that there were some opportunities for play (as some of the witnesses for the Gloriavale defendants pointed out and some of the plaintiffs' witnesses agreed), I was left with the firm impression that these opportunities were limited and very much second to the prevailing work ethos and the way in which it manifested in the three plaintiffs' lives during their time at the Community. The point was reinforced by Serenity Valor, who has lived in the Community for 40 years and who accepted in cross-examination that any person in the Community works the hours the Community needs them to work; and was graphically reflected in Levi Courage's evidence as to the long hours of work required over three days with very little sleep to fill what was referred to as the Vietnam order (jars of honey for the export market).

[55] It will be apparent that I do not accept the Gloriavale defendants' characterisation of work undertaken in this period of the plaintiffs' lives as "chores" which might normally be required of a child by their caregiver. Nor do I accept that the reference to "work" within Gloriavale, in terms of what the plaintiffs did, held some sort of special meaning. It was work as work is commonly understood. It was laborious, often dangerous, required physical exertion over extended periods of time and it was for commercial benefit. The work was not assigned by the plaintiffs' parents, but by the Gloriavale leadership. The plaintiffs' parents were not involved in any meaningful way in decisions about whether the work took place, how long it took place for, where it took place, or when their children would be required to work.

[56] Each of the plaintiffs was subjected to rigorous, sometimes violent, supervision in their work. If they were not working hard enough or fast enough they were hit. On one occasion Hosea Courage was struck six times with a shovel handle, with sufficient force to leave bruising that lasted for several days. Hosea Courage's evidence was consistent with broader evidence before the Court, including Peter Righteous's concession in cross-examination that, until fairly recently, the Gloriavale Community followed the principle that:

> the blueness of the wound cleaneth away the sin.

Work placement – from 12 to 14 years of age

[57] I understood it to be common ground that Mark Christian made decisions in relation to the work placement of older boys from the age of 12 years. As I have said, Mark Christian did not give evidence. While witnesses for the Gloriavale defendants, particularly Peter Righteous, were able to give general evidence about the activities of the boys in this age bracket, their ability to provide direct evidence about the way in which work was assigned and supervised was constrained.

[58] Like Peter Righteous, Mark Christian undertook the work assignment role at the behest of the Overseeing Shepherd.[13] Similarly, it is apparent that Mark Christian rostered the boys to the Gloriavale businesses having regard to business need, and that their placement in particular businesses was prioritised according to where labour was required. Most of the boys worked consistently on a dairy farm in the mornings before school and then worked on jobs assigned to them by Mark Christian after school.

[59] I am satisfied that none of the plaintiffs had a choice as to if and where they worked. By way of example, Mark Christian decided that Levi Courage would work in the honey business. He (Levi) had never expressed an interest in working there and his parents had no say in the matter. He gave evidence that his preference had been to work as a builder but Mark Christian refused to allow it.

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13 Confirmed by Zion Pilgrim in evidence.

[60] Faithful Disciple described his experiences as a parent in the following way:

> I did not feel that I had the ability to make that decision. Certainly not a final decision. I may have been – if, if I was worried about things I may have talked with them, but it certainly would've been asking for permission.

[61] And Zion Pilgrim said:

> I couldn't decide where Daniel would work. It was not within my authority to do that as a parent. You sign it away before you get married.

[62] While I accept that there may have been isolated instances in which parents made a request for their child to be put to work in a particular business,[14] for example to enable them to work closely with relatives, and there may have been times when the request was accommodated, it was the leaders (ultimately the Overseeing Shepherd) who decided who would go where, do what work and when.

Work placement: 15 year olds

[63] When each of the plaintiffs reached 15 years of age they participated in what was referred to as "a transitional education/work experience programme" for 12 months. This programme's official purpose was to provide work experience for students in their final year of study at school (and while they were legally obliged to remain in school). Peter Righteous emphasised that the programme had the consent of the New Zealand Qualifications Authority, and pointed out that Gloriavale received a positive assessment from the Education Review Office in respect the programme during the years each of the three plaintiffs undertook it.

[64] The programme was the first point at which the plaintiffs' work was performed under the auspices of a written agreement. Hosea Courage signed a document called a "Transition Education Agreement", while a more rudimentary "Work Experience Agreement" was signed by Levi Courage. Daniel Pilgrim could not recall signing an Agreement but Peter Righteous gave evidence that all of the boys who participated in the programme, and their parents, did so. I conclude that it is more likely than not that

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[14] For example, Hosea Courage worked with his father at Apetiza. His father was a supervisor at the factory there and in this capacity had some say in Hosea's hours of work.

Daniel Pilgrim signed a Transition Education Agreement, or a Work Experience Agreement, along with his parents.[15]

[65] I return to the Transition Education Agreement below, when considering the employment status of the plaintiffs. However, I note at this point that the Agreement is revealing as to the nature of the programme and the basis on which work was performed under it. The Transition Education Agreement records that the signatory accepts that he understands the tenets and way of life of the Gloriavale Community; acknowledges that he has received all his primary and secondary education "so far"; requests acceptance into the programme; agrees that the programme is for his own benefit and that he will not be an employee or partner, and that he will not be entitled to wages or payment; and agrees to follow all instructions and health and safety protocols, to respect the equipment and workmates, and to be punctual and tidy.

[66] The signatory goes on to acknowledge a number of "benefits" that will be provided to them "without charge" during the programme period, including: accommodation and meals; clothing and footwear; medical and dental expenses; access to musical instruments, video and audio recording equipment, and Community entertainment and events; access to Community facilities; work experience and training; the religious and spiritual life of Gloriavale; and the "security of extended family [and] many friends".

[67] The Transition Education Agreement is signed and dated by the child signatory, with their parents recording their consent below.

[68] Despite the apparently positive reviews from the Education Review Office (the reviews were not before the Court), the evidence disclosed that, in reality, what was termed a work experience programme was simply the transition into full time work within the Gloriavale businesses. It is notable that none of the plaintiffs appear to have received any NCEA credits or any other form of certification while participating in the programme; and Hosea Courage's documentation appears to have been backdated by three months. While Peter Righteous described the year in evidence-in-chief as being

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15 Although the point was not put to his father, Zion Pilgrim.

designed for the student's own education and improvement in work related knowledge and skills, he accepted in cross-examination that the programme did not operate as it was intended. In this regard he explained that they (who I took to mean the leadership group) had wanted children to leave school at 15, and the work transition year was the mechanism for achieving this objective.[16] When the point was put to Zion Pilgrim in cross-examination, he described the work transition year in the following way:

> … at Gloriavale it is massively unstructured and so it's just go and do that job as a normal worker. If it's on a farm, it will be the same farm hours that every other worker in that job does. If it's in a factory, it will be the same work, it will be the same work hours and then while it's all still – yeah you could consider it training but it's still work and it doesn't – I really don't believe, I think you've got to – it's a massive stretch to try and say that qualifies as just work experience because it's actually, it's actually just work and it's full-on work, and it's busy and it's hard and often dangerous and yeah it needs – I think the big point around this is that there – with this environment these people have got rights and they need protecting and that's what hasn't happened and that's what this is all about. It's providing the protection to the individuals that they need because if every employer was good, if every employment situation was good, you wouldn't need employment laws to protect employees and that's why we're here today.

[69] As Peter Righteous confirmed, Mark Christian also oversaw work allocations during this "transition" period. It is apparent that none of the plaintiffs had any real choice about where they worked. Mark Christian told Hosea Courage to work at the pet food factory and he did, from 6am to 6pm, with some time off on Sundays for religious sessions. He had 30 minutes for lunch. During the dairy season he also worked on the dairy farm two mornings a week, getting up at 3am. Hosea Courage said that he would have preferred to work on the dairy farm but:[17]

> If I had disagreed, I knew from what had happened to others I would probably be taken to a Shepherds and Servants meeting.

[70] Daniel Pilgrim gave similar evidence. He said that he had no choice as to whether he could stay at school and was given no choice as to where he worked during his 15th year. He said that Mark Christian made the work decisions and decided where he would work. Daniel Pilgrim worked in the honey business within the Community.

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16 He went on to say in cross-examination that this year they had remodelled the approach and had now done away with the transition year.

17 Hosea Courage gave evidence that his father had wanted him to work at Apetiza and that he may have influenced the decision over his workplace. This evidence must be viewed within the context of evidence as to the limits of parental influence and where the decision-making in fact sat.

[71] Levi Courage gave evidence that Mark Christian told him that he would be working in the honey business and that he was given no choice in the matter. He said that he worked around 50 to 60 hours a week there (six days), although when he started it was around 70 hours a week – the hours varied. For example, during the peak of the honey season there would be a very early start each day (around 3am-4am). He said that children were required to do whatever hours were necessary to get the work done (the Vietnam order was referred to by way of example. Levi Courage described the honey plant as having open conveyors, pallets moved around by forklift truck, and high stacks of glass jars which sometimes fell over and broke). During the seasonal slowdown in the honey business Levi Courage worked with a building team. He says that he enjoyed this work and wanted to do an apprenticeship but Mark Christian refused to allow him to. Rather, he required Levi Courage to return to work in the honey business.

[72] John Helpful, a current Gloriavale resident, gave evidence that, prior to beginning the transitional education/work experience programme, Mark Christian asked him what type of work he would like to do. He said that he was not forced or required to work in any particular place but did say that Mark Christian had encouraged him to "be willing to do whatever the need is". In the event Mark Christian had asked him to work in a number of places throughout the year and John Helpful had willingly done so.

[73] John Helpful's evidence did not shed light on Mark Christian's approach to boys who did not want to work in a particular location, or who did not want to work at all and would have preferred to remain in the classroom. Neither did his evidence support the proposition that boys and/or their parents had an effective choice about work. John Helpful's evidence did, however, shed light more broadly on issues of power and control, which are relevant to the employment status inquiry.

[74] I accept the plaintiffs' evidence as to where they worked, who required them to work there, and the nature of the work they were required to do during what should have been their final year of school. For the avoidance of doubt, I do not accept (insofar as it is relevant to the Court's inquiry) that this period of work can be described as work experience or some sort of learning opportunity offered in the context of

attendance at school. Daniel Pilgrim considered at the time that he had "completely left school and joined the workforce" and confirmed that he did not set foot into a classroom during the year; Hosea Courage understood that he would receive no more education and Levi Courage believed that he had "finished physically sitting in the class and as far as I knew I'd finished school". John Helpful's evidence was to similar effect.

[75] The evidence squarely pointed to the plaintiffs' work during this period being geared towards the utilisation of the 15-year old male work force to meet the commercial needs of the Gloriavale business enterprises.

Associate Partners – 16 + years of age

[76] When each of the plaintiffs reached 16 years of age they became Associate Partners. This appears to have been regarded as a transition into adulthood at Gloriavale. Associate Partners had not yet signed the Declaration of Commitment or had not reached a sufficient age to be a Partner. The process, at least for the three plaintiffs, involved them being approached by Fervent Stedfast, in groupings with other boys, and asked to sign a document called a "Deed of Adherence".

[77] The Deed of Adherence is relatively brief; the version signed by Hosea Courage and Daniel Pilgrim sets out that the new Associate Partner will be bound by the Partnership Agreement "as if he or she had been an original party" and will "observe, perform and keep all the terms, conditions and agreements contained and implied". The version signed by Levi Courage states that the new Associate Partner chooses "as a minor" to be bound by the terms of the Partnership Agreement "in as much as they apply". Unsurprisingly the legal enforceability of the agreements received some focus in submissions given the age of the plaintiffs, the uncertainty of the terms and the evidence around their execution.

[78] The Partnership Agreement established a "Management Committee", defined as "the governing management board of the Partnership appointed in accordance with this Agreement which shall consist of all the Shepherds and Servants".

[79] A key aspect of the Partnership was the provision of "labour hire" services to Gloriavale businesses under an "Agreement to Provide Services", a detailed contract for services document. The Partners (and Associate Partners) recorded their hours on timesheets and their labour was then invoiced by the partnership to the relevant business. The means by which labour hire fees were fixed remained unclear, although Serenity Valor gave evidence that the payment was linked to the minimum wage:

> Q. Okay, and do you know why the differentiation is between $20 and $17, does it relate to people's roles or their –
>
> A. It relates to the law. The law would change the minimum rate.

[80] She went on to explain that:

> A. …each partner is a self-employed contractor and so they are contracting their hours and their time and their expertise to different jobs and to different companies and those companies need to pay for the work the contractors are doing.
>
> Q. But if they were volunteers, they could donate their labour and you wouldn't need to have this [paperwork for 150 partners] at all.
>
> A. No.
>
> Q. So is there a particular reason why they are partners?
>
> A. Because they are self-employed contractors. We are a group of self-employed contractors that join together in a partnership to provide services for the companies.
>
> …
>
> Q. So the labour services that are paid for, is that only the labour of the partners and associate partners?
>
> A. Yes.

[81] Hosea Courage understood, from what Fervent Stedfast told him, that if he signed the Associate Partnership documentation he would get money but the money would go into a bank account from which it would immediately be taken out and put into the Gloriavale sharing account. Hosea Courage was not given an opportunity to take legal advice on the Associate Partnership agreement. One of the documents he signed was a tax form, confirming that Gloriavale would be his tax agent.

[82] Daniel Pilgrim's agreement was backdated from 2 January 2018 to run from 24 October 2016, although he did not know why. He described knowing that he was getting a bank account and knowing that it was not for his use. He recalled Fervent Stedfast running through the Associate Partnership document with a group of about 10 boys, including himself. He said he was given no choice but to sign the document. He explained that:[18]

> … we knew that we actually didn't have a choice. It was expected of us to sign it. *It was all or nothing. To work there, to live there in Gloriavale – you just signed it*. If someone had decided not to sign it, they would probably have been marginalized – their standing within Gloriavale would have been affected.

[83] Levi Courage gave evidence that Fervent Stedfast provided an explanation of the Deed of Adherence and Associate Partnership but that he did not explain it well and he (Levi) did not understand it. He said that he was not offered the opportunity for legal advice. He echoed Daniel Pilgrim's evidence as to the prevailing expectation within Gloriavale in relation to contractual matters: "the reality as a 16 year old who had lived all his life in the Gloriavale Community there was no freedom to object, you just signed and that was as expected".

[84] The point, in terms of the expectation that documents presented by the leadership would be signed without demur, was reinforced by another witness (Sharon Ready) who put it this way:[19]

> As with all members of the Community when we are expected to sign documents it is not a matter of free choice as there is only one expectation: that we sign without complaint. Like all members of the Community, I have no access to anybody who would expect a fee to give advice as I have no access to money. Also, we live in a very isolated Community. *To me, the reality is, whatever the advice we get, we have no choice but to sign or put at risk our ability to live at, and quality of life at Gloriavale*.

[85] Mark Christian decided where each of the plaintiffs worked as Associate Partners. Again, placement was determined having regard to business need and where labour resources ought to be applied. And it is apparent that nothing substantive

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18 Emphasis added.
19 Emphasis added.

changed in respect of the conditions under which the plaintiffs worked when they became Associate Partners.

[86] Daniel Pilgrim was directed to work at the joinery shop making hives for the honey business when he was 15 years old. He worked from 9am to 6pm, six days a week. The work involved operating saws, hand tools and power tools. From 2016 to 2019 Mark Christian directed him to work full time in the Gloriavale hunting business, Wilderness Quest New Zealand. This work involved an average of 60 to 70 hours a week, often finishing between 9pm and 11pm, combined with morning milkings two to three mornings per week. Just prior to leaving Gloriavale, Daniel Pilgrim worked operating machinery, driving diggers and trucks, and fencing on the Gloriavale properties.

[87] Levi Courage continued working in the honey business, as he had done during his transition year, for long hours, Monday to Saturday. And Hosea Courage continued working at the pet food factory, as he had done during his transition year.

[88] Each of the plaintiffs was told to complete timesheets to record their hours of work. Hosea Courage gave evidence that he was told not to record more than eight hours a day and that if he wrote more Fervent Stedfast would ask him to change the figures.

[89] During their time working at Gloriavale, each of the plaintiffs received around six days of holiday a year (although it was reduced from time to time by the leadership group depending on work pressures and/or budgetary constraints); they were required to work long hours, and hard; and there was a distinct reluctance to allow time off work for illness or incapacity.

[90] A broader point of relevance emerged from the evidence in respect of the Associate Partnership documentation. While it is clear that the Gloriavale defendants obtained a significant amount of legal advice and support, including in respect of the drafting of various documents relating to work, the evidence strongly suggested that form and reality diverged. The evidence that directors served no real function in that

role (including in terms of decision-making or the chain of governance), and were irrelevant, is but one example.

[91] I note one further point. While evidence was given that independent legal advice is now given to those signing various documents, it remained unclear how the provision of legal advice (independent or otherwise) might address the underlying dynamics in the ingrained relationships between those in a leadership position and younger members of the Community.

[92] I return to a matter I touched on at the outset, namely the reliance on child labour for the successful operation of the Gloriavale businesses. Serenity Valor accepted that no-one within Gloriavale has been educated to do a job unless it has an identified need within the Community. Levi Courage expressed the view that the Community's commercial operations would seriously suffer but for the utilisation of male children. Given the way in which the male child workforce was deployed by the leadership group I have no doubt this is correct.

[93] Faithful Disciple described the Overseeing Shepherd as having ultimate power over every aspect of both the religious and work life of those in the Community, with the Shepherds acting as "an oligarchy". The point is less graphically made in "What We Believe". It contains clear statements as to who ultimately makes decisions about the allocation of labour within Gloriavale, and how the lines of direction and control operate. It provides that:[20]

> *Where anybody is required to fill any position of responsibility in* the Church, whether it be school teachers in the school, sisters in the kindergarten, men to manage finances or areas of work amongst the men, *or any other position whatsoever, then it is the principal leader who has the authority and the responsibility to make all such appointments.*

And:

> Having expressed his faith in Christ and submission to His will, every person joining this Community must declare … that *he will submit to, be guided by, and obey the leaders of the Church in all matters concerning his ... involvement in the practical life and work of this Community*.

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[20] Emphasis added.

And:

> He should be assured and convinced also, that Christ holds the leader of this Church directly in His hand, and that he can therefore entrust his whole life and faith to the decisions and leadership of this leader.

[94] It is apparent that the identified business needs of the Gloriavale commercial operations dictated what the labour requirements were, and where various children were to be placed, and for how long, in order to meet those requirements. It was also established that these decisions were made by the leadership group, under the oversight, direction and control of the Overseeing Shepherd.

Engagement with external agencies

[95] Evidence was given that residents were told what to say when external agencies visited Gloriavale for inspection purposes, and that Fervent Stedfast took a lead role in reinforcing the messaging. Hosea Courage said that Fervent Stedfast made it clear, on numerous occasions, that if asked, people working at Gloriavale were to say that they were "volunteers". Zion Pilgrim's evidence was to similar effect. He described the Gloriavale leaders as "constantly" teaching people what to say to outsiders, namely that "We're happy", "We're volunteers", "This is God's church" and "God called Hopeful to set up the church." Faithful Disciple described an occasion in late 2020 when WorkSafe officials visited the meal plant where he was working. Fervent Stedfast told those present not to mention the words "Employee", "Employer" or "Wages" and emphasised that they were "not employed by Value Proteins".

[96] Peter Righteous was aware of the Labour Inspectorate visit to Gloriavale in 2021 but says that he was not spoken to. However, he accepted that he had seen instances of "the call going out" when an inspector came to visit and conceded that there may have been some panicking and thinking that "we've got to present things properly." He also accepted that he had heard of instances when young girls who were working in the kitchen were told to go home when an inspection was occurring, and that Fervent Stedfast may have instructed workers to refer to themselves as "volunteers".

[97] The evidence pointed to a practice of ensuring that certain workers were made unavailable to be talked to by officials when they visited, that the lead engagement role was to be untaken by specific people, and others were schooled in how to present to external agencies (including in terms of their work status).

[98] Counsel for the Gloriavale defendants referred in questioning to references in the Labour Inspector's report of 2017 which recorded an observation that workers at Gloriavale appeared to be like "an extended family"[21] and to the Labour Inspector's subsequent descriptor of workers as "happy".[22] Such observations do not materially assist in ascertaining the real nature of the relationship.

[99] First, they are against the weight of evidence which established that members of the Community, including children, were given clear messages as to what they should, and should not, say to external agencies and that this was consistently reinforced by members of the leadership group.

[100] Second, appearances can be deceptive, particularly where there is a significant power imbalance involved in the working relationship. In this regard Virginia Courage said in cross-examination that:

> You know you will get into trouble if someone hears you talking to an outsider and you say the wrong thing.

And:

> This person who's been spoken to knows what it will cost them to tell the truth. And is the cost worth it? These people have the power to take every single thing off you that you love. So you close your mind, you put on your smile, you say hello and you tell them that you're happy.

[101] Faithful Disciple said that during the 2020 visit he was directed to keep himself busy with jobs so that the officials were not able to talk to him. When asked how he remained invisible during the visit he said:

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21 Richard Lewis "Initial Inquiry Report – The Christian Church Community Trust (Gloriavale)" (2017) at 10. Note that the 2017 inquiry was a desk-top review and no residents, or former residents, were talked to. The Labour Inspector concluded that workers at Gloriavale were not employees.

22 Crampton and Lewis, above n 5, at 5.

> So what happened is we have the loyalists, that's how we describe them, as men that immediately put themselves within the vicinity of the inspectors so that they would get interviewed. And you know, we had a whole day's work to do and we couldn't stand around and wait and I was very aware that I was being watched by the shepherd that was there and I really – at that stage, I could not afford more scrutiny from them so I went and worked in the plant. I did try to catch them on their way out but they had one of the loyalists in the vehicle with them, so I thought it best if I didn't.

[102] Loud alarm bells ought, in my view, to have been ringing from even a cursory reading of "What We Believe" and various other documents, including the Deed of Adherence and Partnership Agreement. That is because the documentation makes it very clear where the power lies; that the leadership group holds absolute power and control, including in relation to work, and that members of the Community submit to the leaders; and that members were not to report concerns to external agencies.[23] In this regard "What We Believe" provides that:[24]

> No Christian should ever at any time or for any reason take another Christian to the Law or to the State before the unbelievers.

And:

> *We should not ask anybody outside of the Church to judge any of our Christian brethren and sisters*. If we have a difference with a brother in things pertaining to this life, we should bring the matter before the saints of God in the Church, any of whom should be able to judge the matter, for all of us will one day judge angels. *It is better to suffer wrong and be defrauded than to take a Christian brother to Law before unbelievers. Even if a person leaves the Church, he is still bound in honour to this principle*.

[103] I accept that those conducting work at Gloriavale were taught how to respond to outsiders, that the message was routinely reinforced by the leadership group, and that strict controls were placed around engagement with external agencies.

[104] As I have already observed, the Labour Inspectors gave evidence confirming that they had "What We Believe", and numerous other Gloriavale documents, when carrying out their investigations in 2020/21; and when completing the desk-top review in 2017.

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23 Virginia Courage said that she would never have considered it an option to, for example, ring the Police. Peter Righteous explained that reporting was now encouraged in relation to, for example, sexual offending, although that appears to be a relatively recent change (2021).

24 Emphasis added.

Command and control

[105] Another aspect of the evidence relevant to the broader context of this claim related to the practice of "shunning", although there were differing perspectives on the extent of the practice within Gloriavale. Witnesses for the plaintiffs gave evidence that those who left Gloriavale were cut off from those who remained, including family members, who were prohibited from communicating with them. They say that this practice made leaving and the threat of expulsion for questioning the leadership very real, frightening and significantly off-putting. John Ready, who was expelled from Gloriavale, expressed it this way:

> The Overseeing Shepherd and Shepherds and Servants use the public expulsion and shunning (excluding you from your family) to create fear in those who remain. It is very powerful intimidation.

[106] Serenity Valor had a different perspective. She gave evidence that she is free to talk to family members who have left Gloriavale, that she telephones them and that visits are allowed from time to time. Her experience may reflect the fact that she works within the office and has ready access to a telephone, otherwise restricted within the Gloriavale Community. Use of the practice of shunning as a control mechanism was supported by comments made by members of the leadership group, including the Overseeing Shepherd, during the Pilgrim meeting of Shepherds and Servants which I deal with below.

[107] The controlling features of the way in which work was organised and the conditions under which it was performed are also reflected more generally in various practices adopted within the Community. The evidence was that mail delivery and distribution is centralised within the office; access to telephones is managed; and that passports, marriage certificates and birth certificates are kept in the office which is overseen by Fervent Stedfast. Virginia Courage accepted that she would have been able to go into the office and ask for her birth and marriage certificates, but said that she would have to explain why she wanted them and she would not have been able to force the issue. It remained unclear why individual families could not keep their own

personal legal documents in their own control and care.[25] I infer that it was another limb to the tight control exercised by the leadership group over residents.

A choice to live (and work) at Gloriavale

[108] I understood a major strand of the Gloriavale defendants' case to be that it was the plaintiffs' parents who had chosen to live within Gloriavale. It was open to the plaintiffs' parents to bring their children up in a way they considered appropriate and it was accordingly the parents, not the Overseeing Shepherd, the leadership group or anyone else within the Gloriavale structure, who set the plaintiffs' fate as to the work they did and more generally. It was submitted that the Court must be wary of encroaching into the parental preserve. And, as each of the plaintiffs matured, they were able to exercise their own choice as to whether they stayed or left. Counsel for the Gloriavale defendants referred to this as the "stark choice".

[109] Peter Righteous summarised the position in the following way:

> I, along with all residents of Gloriavale, have chosen to live a sharing communal life and shared faith and value system…We have chosen to deny ourselves and live in a way where we can find God's will and live in daily service to the Lord Jesus. Here, everyone's needs are met. We work to ensure those needs are met and our work and life is structured and organised according to our principles of communal living.

[110] The fact is, however, that Peter Righteous was an adult (23 years old) when he decided to live at Gloriavale and commit to its unique way of life. His position materially differs from the position of children born into the Community.

[111] The stark choice was put to John Ready in cross-examination. He responded:

> So I think of a boat and there's a whole lot of layers and there is a whole lot of oarsmen, on those layers in the boat. And you are told, well you are born at the bottom of that boat, on the bottom floor and you work hard to progress up those floors. And you are told that this boat is the best boat in the world, I mean it is the best place in the world and you believe it, because when you look out through your porthole, you see the ocean and they say, you go out there and you are going to drown. And as a kid mate, as a kid you are like, that makes sense, that makes sense, and so you work hard and work up that layer. But what you are not told is that water outside the boat, it is only knee

[25] A suggestion that they might otherwise get lost appeared strained.

> deep. But you think if you leave that boat, if you leave Gloriavale you are going to drown, you are going to die. And so you row hard. There is no choice; you can't leave that boat. You are in a system where you have to work hard to work up that layer. I hope that kind of gives you a picture of what the psychological trap is that you are born into, you don't have a choice.

[112] Daniel Pilgrim described the existence of choice as:

> There were doors, but they were closed doors.

[113] The doors, and whether they were open or closed, is illustrated by what went on during the course of the Shepherds' and Servants' meeting that I have already referred to a number of times. It is convenient to deal with it, and what I see as its relevance, at this point.

[114] The meeting was summonsed because Zion Pilgrim (who himself had been born into the Community) had raised concerns about the way in which the leadership team was approaching various issues, including sexual offending against children.

[115] Zion Pilgrim had written to the Overseeing Shepherd suggesting that changes be made to the practices for dealing with such matters within the Community. The meeting took around two and half hours and largely consists of members of the leadership group berating Zion Pilgrim for questioning the propriety of what was, and was not, being done.

[116] Peter Righteous (who attended the meeting) described it as "Our last ditch effort to pull them [the Pilgrims] back into the fold". What went on in the meeting, and who said what, is relevant because it covers much more than a faith-based debate.

[117] The transcript of the meeting reflects the very significant power and control exercised by those in the leadership group, particularly the Overseeing Shepherd, over members of the Community in respect of the practical and spiritual aspects of their life; the way in which individuals within the Community are viewed (as being "nothing" and "nobody"); the requirement that there be unquestioning adherence to the direction and control exerted by the leaders; and the climate of fear that existed. Zion Pilgrim described what went on in the meeting as reflective of "the real Gloriavale".

[118] He also gave evidence, which I accept, that the fear of how the Shepherds and Servants operated disciplinary meetings was very real and upsetting for anyone called into one, and that the behaviour reflected in the recording of the meeting he attended with his family was not one-off, "but had been repeated hundreds of times for many other people in similar disciplinary meetings".

[119] The meeting also reinforced other evidence before the Court which pointed to the serious consequences likely to confront a member who could not or would not submit to the Overseeing Shepherd and the Gloriavale leadership, namely expulsion from the Community they had been born and brought up in (and a corresponding propulsion into a world they knew little about, were ill-equipped to live in, and which they had been brought up to believe was wrong and sinful); separation from their loved ones (family and friends); dislocation from a life they were familiar with and were adapted to; and the overarching threat of eternal damnation.

[120] John Ready had his own experience with a Shepherds' and Servants' meeting. His evidence as to what went on in the meeting was not challenged. He described it in the following terms:

> I couldn't begin to explain to this Court the pressure and the fear of being in one of those meetings – you would have to be in one to get the idea. The manipulation is very real: they threatened me with their power to take away everything you hold dear. My wife, my children.
>
> The pressure is to give them total control of your life, they require you to "submit" unconditionally to their power.
>
> Because I wouldn't back down, they escorted me to the Nelson Creek house for eight days to think about my life. I considered my time at the isolation house (solitary confinement) a time of punishment. Being cut off from all contact with family and friends is a hard thing to deal with. All I had to do to get back to my family and friends was to submit to the leadership in every area of my life.

[121] I understood Mr Wilson to submit that this factual scenario simply reflected the "stark choice", the unique way in which residents at Gloriavale have chosen to live their lives, and was of little (if any) relevance to the matters before the Court. I cannot agree. All of this is of contextual relevance, and accordingly relevant to the assessment of employment status, for reasons which I expand on below when discussing the legal framework and its application to the facts of this case.

[122] In response to questions in cross-examination Virginia Courage gave the following evidence:

> A. … a small percentage of people that have returned are young teenagers and I would say a huge part of the fact that they know that they're not going to have their family and they're going to be rejected for the rest of their life, they may never speak to their parents again, they might never find out if they're passed and that's a huge pull. And I would liken it a lot to Stockholm syndrome. It's familiar, they feel secure with a way of life they've experienced and outside that it's scary, there's unknowns and the small percentage of children that have returned, young teens that have returned, I would say they're overwhelmed, they're not supported by their family at all in what they're doing and yeah it's like returning to something that is unpleasant but they feel secure because it's something they know. If they had more time to adjust I would sincerely doubt that they would actually choose that.
>
> Q. But they did make the choice to return?
>
> A. I know some of them were actually pressurised by their families inside to return, coerced like while if you come back, you know, you'll be allowed to see us, you'll be allowed to talk to us, you'll be allowed to see your new baby sister or brother. So I don't know if that's a real choice.

[123] I return to the plaintiffs. Hosea Courage felt trapped in Gloriavale. He was told that he could not leave without the consent of his parents until he turned 18 years of age. He did not want to leave on his own and without his family, as he would be isolated from the world and without access to money. He explained why he wanted to leave in evidence:

> The reason why I wanted to leave was that I felt it was a terrible place, mainly the work hours, but there was a lot of religious enslavement. So, everything that they did revolved around their (the Shepherds') idea of God. So, if you did not obey them, you would be disobeying God. So, if they asked you to do something and you said "No", you would be disobeying God.

[124] He also explained his reaction to the Labour Inspectorate report, concluding that people working in Gloriavale were volunteers:[26]

> We did not have a choice.
>
> Depending on your age, from my experience I was smacked with a shovel handle, denied food, being made sit and watch the others eat. The ultimate, which I was never subjected to, was a Servants and Shepherds meeting where you were yelled at for 5 hours.

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[26] Crampton and Lewis, above n 5, at 6-7.

[125] Daniel Pilgrim summed up the situation as follows:

> [the members of Gloriavale] were always told that if you wanted to live at Gloriavale, and if you wanted to have the benefits of living there and even be with your family, be part of your family, you had to work. All of those things were held over you: if you wanted that, you had to work. If you didn't work and they said you couldn't stay there, it would mean that you would have no monetary support and your family would be cut off from you. You wouldn't be able to speak to your family again. You would lose pretty much everything of the life that you knew. In return for working, I was given nothing other than food and clothes, and the benefit of just being able to live there.
>
> If at 15, I had decided not to work I think I would have had to sneak off the property. It would have been hard. You would be leaving behind your family and everything you had ever known.

[126] Levi Courage said that: "If you weren't serving for them [the Shepherds], you weren't serving the church. So, they basically, their thing was that you have to work for them or you're not part of them which entitles you to nothing." He also said that:

> The environment at the Gloriavale Community was you work, you get feed. Every dinner time there would be teachings by the Shepherds as to what they expected of us, my recollection is these lectures were mainly led by Fervent Stedfast, he taught us from a very young age that the Shepherds expected that we were to "submit" to them and work. The whole Community is the same, the Shepherds require submission to their will, their instructions.

[127] Each of the plaintiffs left Gloriavale before they signed the Declaration of Commitment or became Partners.

Framework for analysis

[128] The present claim is brought under s 6 of the Act. Section 6 confers exclusive jurisdiction on the Court to make a declaration as to whether a person is an employee and (by implication) of whom. It provides that:

> **6 Meaning of employee**
>
> (1) In this Act, unless the context otherwise requires, *employee*—
>
> (a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and
>
> …
>
> (c) excludes a volunteer who—
>
> (i) does not expect to be rewarded for work to be performed as a volunteer; and

(ii) receives no reward for work performed as a volunteer; and

…

(2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.

(3) For the purposes of subsection (2), the court or the Authority—

(a) must consider all relevant matters, including any matters that indicate the intention of the persons; and

(b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.

…

[129] The essence of the Gloriavale defendants' case is that no contract was entered into for the provision of services. Rather the plaintiffs initially carried out chores, then work experience, and later were contributing voluntarily to the Community by working in various endeavours. There was, on the Gloriavale defendants' analysis, no intention to enter into contractual relations; no offer, acceptance or consideration – and accordingly no employment relationship.

[130] Section 6(2) provides that, in determining whether a person is employed by another person under a contract of service, the Court must determine the real nature of the relationship. In assessing the real nature of the relationship, the Court is directed to consider all relevant matters, including any matters that indicate the intention of the parties, and is not to treat as determinative any statement made by the persons describing the nature of their relationship.

[131] Section 6(1)(c) makes it clear that the definition of employee excludes a volunteer who does not expect to be rewarded for work to be performed as a volunteer and receives no reward for work performed as a volunteer. An employer is defined as meaning a person employing any employee.

Strict contractual approach inapt for assessing employment status

[132] I do not accept the applicability of what might be called the strict contractual approach advanced on behalf of the Gloriavale defendants.

[133] It was common ground that this case had a number of unusual features. It is that characteristic which, in my view, requires the Court to return to first principle to answer the question as to whether the plaintiffs were, at any stage, employees of any or all of the Gloriavale defendants. In this regard I do not think it is helpful to try to shoehorn the case into the sort of strict contractual framework that might more comfortably apply in a commercial agreement. In any event, that is not the approach to employment relationships, as the Supreme Court has recently emphasised.[27]

[134] So, while s 6(1)(a) makes it clear that an employment relationship is founded on a contract of service, it is a relational contract involving a very different set of dynamics. That means that a strict contractual focus on identifying the existence and nature of the contract, such as might be adopted in respect of arm's length business partners, is inapt. Rather, the answer to the ultimate question emerges from a fact specific inquiry.

[135] The leading case on s 6 is *Bryson v Three Foot Six Ltd*.[28] Counsel for the Gloriavale defendants submitted that the approach in that case was of limited utility because it was focussed on whether Mr Bryson was an employee or independent contractor. While I agree that was the focus of the inquiry, I disagree as to the applicability of the Supreme Court's approach in this case. The Court has, in the past, applied *Bryson* to a range of working arrangements, including volunteers and labour-hire agencies.[29]

[136] Counsel for the Attorney-General submitted that s 6 requires something of a three-stage test, citing *Bryson* in support[30]: is the real nature of the relationship clear? Is the parties' intention clear? If both questions are answered in the negative the Court may go on to consider the common law tests of control, integration and economic reality. I do not agree that this accurately summarises the Supreme Court's approach.

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27 See *FMV v TZB* [2021] NZSC 102 at [45]-[52].
28 *Bryson v Three Foot Six Ltd (No 2)* [2005] NZSC 34, [2005] 3 NZLR 721, [2005] ERNZ 372.
29 See *Head v Chief Executive of the Inland Revenue Department* [2021] NZEmpC 69, [2021] ERNZ 183; *Below v Salvation Army New Zealand Trust* [2017] NZEmpC 87, [2017] ERNZ 405.
30 *Bryson*, above n 28, at [31]–[32].

[137] *Bryson* confirmed that the proper focus of the inquiry is to review all relevant matters in order to discern the "real nature" of the relationship; exploration of that issue may or may not reveal a contract of service between the parties. While the Supreme Court judgment suggests that the written terms of the agreement (if there is one) should be examined first, there is no suggestion that this should ever be the end of the inquiry; "all relevant matters" should always be considered. And it is clear from both the statute and the case law that the Court's attention (for the purposes of the s 6 inquiry) is to be properly focussed on the real nature of the relationship, not on establishing the terms or basis of the parties' agreement, or what one or the other or both parties might believe the relationship to be, or want it to be.

[138] A similar contractual argument to the one advanced by the Gloriavale defendants was rejected by the full Court in *Prasad v LSG Sky Chefs New Zealand Ltd*.[31] The proposition there was that the elements of contractual formation must be established prior to the Court embarking on the s 6 exercise. The Court emphasised that s 6 drove the required analysis, not the common law on contractual formation. Whether there was an employment relationship was not a question to be answered by contemplation of whether there was a contract and, if so, assessing what kind of contract that was. Such an approach was described as putting the cart before the horse.[32] Rather, the answer was to be ascertained by working backwards. The intention of the parties is clearly a factor, but it does not have any primacy. This was said to be consistent with the explanatory note to the Employment Relations Bill 2000, which made it clear that the Employment Relations Act was designed to provide a better framework for employment relations, and to recognise that employment relationships were not simply contractual, economic exchanges.[33]

[139] In declining leave to appeal against the full Court's decision in *Prasad*, the Court of Appeal described the approach as "entirely orthodox" and not laying down any far-reaching new principles.[34] The Court of Appeal pointed out that, in any case,

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31 *Prasad v LSG Sky Chefs New Zealand Ltd* [2017] NZEmpC 150, [2017] ERNZ 835.
32 At [34].
33 Employment Relations Bill 2000 (8-1) (explanatory note) at 1.
34 *LSG Sky Chefs New Zealand Ltd v Prasad* [2018] NZCA 256 at [23]-[24].

it was well-established that contractual relationships could be inferred by conduct, and the Court will look at the totality of the parties' dealings to determine whether those dealings should be regarded as having resulted in a contract coming into existence.[35]

[140] Finally, I note the recent observations of the Supreme Court of the United Kingdom in *Uber BV v Aslam* on the difficulty with a contract-centred/offer and acceptance approach in assessing whether an employment relationship exists. I respectfully agree with Lord Leggatt's observation that:[36]

> [76] Once this is recognised, it can immediately be seen that it would be inconsistent with the purpose of this legislation to treat the terms of a written contract as the starting point in determining whether an individual falls within the definition of a "worker". To do so would reinstate the mischief which the legislation was enacted to prevent. *It is the very fact that an employer is often in a position to dictate such contract terms and that the individual performing the work has little or no ability to influence those terms that gives rise to the need for statutory protection in the first place.* The efficacy of such protection would be seriously undermined if the putative employer could by the way in which the relationship is characterised in the written contract determine, even prima facie, whether or not the other party is to be classified as a worker.

[141] While *Aslam* involved a different context (both statutorily and in respect of the circumstances of the workers involved), it makes the salient point that the dominant party (the principal/employer) is almost always in a position to dictate the terms of an agreement, including the way it is characterised. That fact remains whether the label is "independent contractor", "volunteer", "chores", "transitional education/work experience programme" or "Associate Partnership". The underlying policy intent of s 6 was to prevent employers avoiding statutory employment protections and standards by use of agreements and arrangements which placed form over substance.[37]

[142] All of this is a long way of saying that whether a contract of service exists may arise inferentially. Conducting an analysis of the common law markers of contractual relations as a precursor to the mandated inquiry under s 6 is unlikely to be helpful and

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35 At [23].

36 *Uber BV v Aslam* [2021] UKSC 5, [2021] WLR 108 (emphasis added). While the different legislative contexts should be noted, including the "worker" category which is not present in New Zealand law, the UK utilises a similar purposive approach in assessing the reality of the relationship.

37 Employment Relations Bill and Related Petitions 2000 (8-2) (select committee report) at 5-6.

may well lead to perverse results. If Parliament had intended such an approach it is likely that s 6 would have been framed very differently. Rather, Parliament mandated a broader, more nuanced, approach. That is reflected in *Bryson's* identification of the range of features that generally exist in employment relationships, including high levels of integration and control by the putative employer over the work (when, where, how, why) undertaken by the putative employee; who is benefiting from the work; and what the economic reality of the relationship is. In short, the Court is concerned with conduct in context.

A presumption against employment status where religious endeavours are involved?

[143] What of cases (as here) which involve a context of intersecting religious beliefs and what can be termed secular law? It was submitted on behalf of the Gloriavale defendants that the way of life, structures and work were all deeply rooted in the way in which members expressed their beliefs and that this raised a presumption against the existence of an employment relationship. I do not agree that one follows the other.

[144] As Peter Righteous pointed out, the spiritual life and the practical life are inextricably intertwined at Gloriavale, and it is clear that the approach to work within Gloriavale is significantly coloured by the Community's faith-based beliefs. That is relevant to understanding the realities of the relationships between the relevant parties, what went on and why, as an integral part of this Court's inquiry. It is not, however, controlling.[38] Judge Corkill made a similar point in *Below v Salvation Army New Zealand Trust*, observing that spiritual purpose is a factor to be assessed along with all of the other factors, and in light of the evidence.[39] If it were otherwise, a presumption would operate to restrict classes of workers from accessing statutory employment protections.[40]

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38 *Mabon v Conference of the Methodist Church of New Zealand* [1998] 3 NZLR 513, [1998] 2 ERNZ 440 (CA); *Below,* above n 29, at [64]-[70].

39 *Below*, above n 29, at [71].

40 See Lord Nicholls Percy at [26]: "The context in which these issues normally arise today is statutory protection for employees. Given this context, in my view it is time to recognise that employment arrangements between a church and its ministers should not lightly be taken as intended to have no legal effect and, in consequences, its ministers denied this protection."

[145] As Lady Hale explained in *Percy v Church of Scotland*:[41]

> But in so far as those authorities [existence of a presumption against ministers of religion being employees] may be explained by a presumed lack of intent to create legal relations between the clergy and their church, I cannot accept that there is any general presumption to that effect. The nature of many professionals' duties these days is such that they must serve higher principles and values than those determined by their employers. But usually there is no conflict between them because their employers have engaged them in order that they should serve those very principles and values. I find it difficult to discern any difference in principle between the duties of the clergy appointed to minister to our spiritual needs, of the doctors appointed to minister to our bodily needs, and the judges appointed to administer the law, in this respect.

[146] Central to the Gloriavale defendants' case was an argument that a finding of employment status would be wholly incompatible with the way in which members of the Gloriavale Community have chosen to live their lives. The difficulties with such an approach were fully canvassed by the High Court of Australia in *Ermogenous v Greek Orthodox Community of SA Inc*.[42] Justice Kirby, in a separate (concurring) judgment, observed that:

> [55] The suggestion that a priest, pastor, rabbi, mullah or minister of religion …, including an archbishop, is by virtue of that status incapable of forming an employment contract with his or her church or religious organisation is but another way of saying that any arrangements made for sustenance and similar benefits with such a person are not ones that the law treats as justiciable. Or that such arrangements are not ones that, of their nature, the parties are taken to have intended would give rise to obligations that may be enforced in a court of law.
>
> …
>
> [66] … Courts here, as elsewhere, will be hesitant to enforce purely spiritual and theological rules. But they will not hesitate to enforce, as arrangements intended to have contractual or other binding force, rules of a proprietorial character concerned with proprietorial rights.
>
> [67] Within this dichotomy, a proved agreement with a body such as the respondent to provide for the necessities of life of a minister of religion … is an arrangement of the second kind. It is not one which, of its character, Australian law will refuse to enforce because the law presumes a lack of intention to enter legal relations or classifies the resulting dispute as non-justiciable.
>
> …

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41 *Percy v Board of National Mission of the Church of Scotland* [2005] UKHL 73, [2006] 2 AC at [151].

42 *Ermogenous v Greek Orthodox Community of SA Inc* [2002] HCA 8, (2002) 209 CLR 95.

> [75] At least some of the more recent decisions of Commonwealth countries outside the United Kingdom reflect this application of a "contemporary lens" [citing the New Zealand Court of Appeal's judgment in *Mabon* by way of example] to the arrangements of a minister of religion with a putative employer. … That trend does not, in my judgment, sustain a broad proposition, still less a general legal rule, that ministers of religion … and those who make arrangements for their necessities cannot intend to enter contractual arrangements because the ministry involved is "spiritual" in character and for that reason is fundamentally incompatible with legal enforceability.

[147] The High Court also drew the following distinction, which has relevance in this case:[43]

> [41] As the Industrial Magistrate recognised, *the respondent was not a "church". Its functions were concerned with more than religious matters.* Its members were not all observant practitioners of the Greek Orthodox faith. Attempts were made to establish an incorporated association that would be the civil law expression of what might be described as the ''church'' as an institution. Those attempts did not succeed.

[148] The fact is that while the Gloriavale Community is faith-based, and faith informs the "practical" life, it deals with more than religious matters. All of this is clearly reflected in the Community's extensive commercial operations, within which the plaintiffs worked.

[149] To draw the threads together, the fact that work practices take place within a religious community with a particular view on how it should operate, and the principles under which it will function, does not mean that those work practices are beyond the reach of the law.[44] The point has particular force where the work practices are applied for the benefit of commercial operations. Nor does it mean that such communities should escape close scrutiny by those with statutory authority to determine what the reality of the situation is, and how it sits with the relevant regulatory framework.

Slavery/forced labour – beyond the jurisdiction of the Employment Court?

[150] During submissions significant focus was given to whether the working conditions (if accepted) amounted to slavery or forced labour, and whether (if they

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43 Emphasis added.
44 New Zealand Bill of Rights Act 1990, s 4.

did) the Court retained jurisdiction to make the declarations sought, or other declarations. I understood the Labour Inspectors involved in this case to suggest in evidence that slave-like working conditions would not be a matter for them – rather it might be something that WorkSafe or the Police might have a role in addressing.

[151] I do not accept that s 6 should be read as carving out this particularly vulnerable group of workers. To do so would, in my view, undermine the objectives of the legislation. And it is notable that while Parliament has expressly excluded certain workers from holding employment status in s 6 (some volunteers; real estate agents; film production workers; share milkers) it has not excluded those working as slaves or in servitude.

[152] The fact that the criminal law provides an offence regime for those dealing in slaves or forced labour does not mean that the employment jurisdiction has no role to play. There are many examples of employment and criminal law operating in tandem in respect of the same set of facts, although workers may prefer to go down one route rather than the other.[45] And it is notable that s 98(1)(b) of the Crimes Act (dealing with slaves) uses the word "employ", suggesting a broad reading is appropriate:

> **98 Dealing in slaves**
>
> (1) Everyone is liable to imprisonment for a term not exceeding 14 years who, within or outside New Zealand,-
>
> …
>
> (b) employs or uses any person as a slave, or permits any person to be so employed or used.

[153] It would be ironic if those suffering from the worst workplace abuses were unable to bring their claims to the Employment Court because the level of abuse (the tail) wagged the dog (a finding of employment status). While such a result might be compatible with a strict contractual approach, it is incompatible with the approach I consider to be consistent with s 6 and the underlying statutory intent.

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[45] Christina Stringer "Worker Exploitation in New Zealand: A Troubling Landscape" (prepared for the Human Trafficking Research Coalition, December 2016).

[154] I note, by way of aside, that in a 2015 report on compliance with international labour conventions ratified by New Zealand, the Ministry of Business, Innovation and Employment stated that compliance with the Forced Labour Convention 1930 is: "dependent on various sanctions against illegal imprisonment or detention, *on the entitlements of employees* as specified in various Acts and collective agreements, and on the absence of legislative provisions that permit forced labour."[46]

[155] In summary, a person working in slave-like conditions may still fall within the definition of employee for the purposes of s 6; the way in which employees have been treated during the course of their employment may well be relevant to remedies in this Court, including by way of penalties, banning orders and compensation for humiliation, loss of dignity and injury to feelings;[47] findings as to whether criminal offending has occurred under the Crimes Act 1961 (dealing in slaves and dealing in people under 18 for engagement in forced labour),[48] are for another Court.

Analysis

[156] It is convenient (as all counsel did in submissions) to divide the plaintiffs' claims into age brackets – six to 14 years (before and after school); 15 years of age (the "transitional" year); and 16 plus.

Work undertaken ages six to 14

[157] Counsel for the Gloriavale defendants, the Attorney-General and counsel assisting the Court all submitted that the plaintiffs were not employees during this timeframe. A number of issues were raised, including whether children could (in light of their age) have the requisite intention to form contractual relations.

[158] It would, in my view, be perverse and contrary to the scheme of the legislation to draw such an inference in circumstances where the governing legislation itself

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46 Ministry of Business, Innovation and Employment "International Labour Conventions Ratified by New Zealand" (June 2015) at 30 (emphasis added).

47 See for example *Labour Inspector v Newzealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525.

48 Crimes Act 1961, ss 98 and 98AA.

implicitly acknowledges that children can enter into employment relationships which are (by their nature) contractual. In this regard the Employment Relations Act places no lower age limit on employee status in s 6(1)(a), in contrast to a number of comparable overseas jurisdictions.[49] This is reinforced by the provisions of the Contract and Commercial Law Act 2017, which expressly state that contracts of service have effect as if the minor were of full age.[50] Indeed it is apparent that rather than impose a generally applicable age limit at which a person can enter into an employment relationship, lower limits have been imposed in particular industries or for particular purposes on a case-by-case basis. By way of example, the Education and Training Act 2020 prohibits the employment of school age children at any time within school hours, or at any other time which would prevent or interfere with attendance at school;[51] the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 place duties on employers to ensure that employees under 15 years of age do not work in areas that are likely to cause them harm;[52] and the Maritime Transport Act 1994 provides that the minimum age of employment on a vessel is 16 years of age.[53]

[159] More generally, assumptions can be dangerous – particularly those rooted in outdated social norms. It is probably fair to say that assumptions in assessing who is and who is not in an employment relationship has had a tendency in the past to disadvantage particular groups of workers, including those who have (for example) been presumed to offer their services for free, or as part and parcel of their traditional "place" in society. In this regard reference can be made to home workers and female caregivers.[54]

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49 See Minimum Age Convention (ILO No 138) (entered into force 19 June 1976), which was ratified by 174 countries but not New Zealand. New Zealand has faced criticism for this: Committee on the Rights of the Child *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: New Zealand* CRC/C/NZL/CO/3-4 (11 April 2011). See also Paul Roth "Child Labour in New Zealand: A job for the nanny state?" (2008) 12 Otago LR 245.

50 Section 92(1)(a).

51 Education and Training Act 2020, s 54.

52 Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, pt 4.

53 Maritime Transport Act 1994, s 26.

54 See Gaëlle Ferrant, Luca Pesando and Keiko Nowacka "Unpaid Care Work: The missing link in the analysis of gender gaps in labour outcomes" (OECD Development Centre, December 2014). See also *Humphreys v Humphreys* [2021] NZEmpC 217 at [66]-[69]; *Fleming v Attorney-General* [2021] NZEmpC 77, [2021] ERNZ 279.

[160] Turning to the Gloriavale defendants' reliance on a judgment of this Court in *Dillon*, where members of a family were held not to be in an employment relationship.[55] *Dillon* is not authority for the proposition that work undertaken within a family context precludes a finding of employment; rather the judgment emphasises the ongoing application of well settled tests to determining the real nature of a relationship.[56] Judge Holden observed that:[57]

> …in circumstances where there is a personal connection between the parties, whether familial, neighbourly or through friendship, and there are tasks undertaken for which some recognition is given, the Court must be careful not to find there is employment where that was not intended and does not reflect the true basis upon which the exchange between the parties occurred. *Each case will need to be carefully considered and determined, in context and on its own facts*.

[161] It is also notable that the facts of *Dillon* are very different from those in this case. *Dillon* involved a close family relationship, consisting of a married couple, their son, and their daughter-in-law. The same considerations that apply to such a familial relationship do not apply equally to a community organisation made up of almost 600 people. In this regard while counsel for the Gloriavale defendants referred to Mr Lewis's observation in his 2017 Labour Inspectorate report that Gloriavale appeared to be like "an extended family,"[58] that does not support the existence of a literal family relationship in a legally significant sense. And when the "extended family" characterisation was put to Sharon Ready in cross-examination she roundly rejected it, saying that it was an exploitative relationship rather than a familial relationship and *if* Gloriavale was one big family it was a patriarchal, authoritarian one. Further, it may be noted that it is not uncommon for companies to refer to their workforce as a "family"[59] but that does not, for obvious reasons, alter the real nature of the relationship.

[162] I have already referred to (and rejected) the submission advanced by the Gloriavale defendants that the work undertaken by the plaintiffs in the first age bracket

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55 *Dillon v Tullycrine Ltd* [2020] NZEmpC 52, [2020] ERNZ 125.
56 At [31]-[38].
57 At [32] (emphasis added).
58 Richard Lewis "Initial Inquiry Report – The Christian Church Community Trust (Gloriavale)" (2017) at 10.
59 Joshua Luna "The Toxic Effects of Branding Your Workplace a 'Family'" (27 October 2021) Harvard Business Review <hbr.org>.

was “chores”. There is, as with anything involving questions of fact and degree, a spectrum. Cases sitting in the middle of the spectrum, in the grey area, are likely to pose difficulties. This case does not sit in the grey area. Pushing it towards the employee-conducted-work end of the spectrum, and away from the family/community chores/activities end of the spectrum, are a range of non-exhaustive factors such as: the commercial nature of the activities performed; the fact that the activities were undertaken to support a commercial purpose; Gloriavale’s commercial businesses accrued the benefits of the plaintiffs’ efforts; the activities were consistently performed over an extended period of time; and the fact that the activities were strenuous, difficult and sometimes dangerous.

[163] Daniel Pilgrim aptly summed up the situation in evidence as follows:

> Q. How do you distinguish between a chore and activity and work, why do you create that distinction, I’d like to understand that?
>
> A. So for instance, when I [was] working in the moss operation, that was a business that was making profit and I was there working as an asset really or as a machine, or as an employee, you know except without a wage, so I was there doing the work physically and I was put in that position and I had to work and I had to have output. That was the only acceptable way.

[164] It was the leadership, operating through Peter Righteous and Mark Christian, which decided what labour resources were required, where each boy’s labour would be applied, the quantities of child labour that would be utilised, and when. There were occasions when a parent may have requested that consideration be given to an alternative placement, or when a boy’s preference for work placement was identified and taken into account, but ultimately it was the leadership which decided what was required in order to effectively and efficiently run its business enterprises and allocated resources accordingly.

[165] The evidence reflected a classic employment situation in the six to 14 age group – workers selected for particular jobs by management; attending specified workplaces at times determined by management; working under the direction and control of management; for the hours required by management; for the benefit of the business endeavour; often in environments of an industrial and/or hazardous nature; at the strict direction and control of those in charge of the business operations;

permitted to take a holiday per year (at a time convenient to the leadership) and limited time off if they were sick (although this was actively discouraged).

[166] As s 6(1)(a) makes plain, an employee works for hire or reward. What was the reward in this case? It is very clear on the evidence that the Gloriavale leadership regarded the provision of food, the necessities of life and the ability to participate in the Community as a reward – the quid-pro-quo for doing work through the three stages of the plaintiffs' working life within the Community (and as expressly reflected in the Transitional Work Agreement). And each of the plaintiffs understood, because it had been made clear to them from a very young age and repeatedly reinforced, that they would receive that reward in exchange for their work. If they did not work they understood that they would be deprived of the benefits they would otherwise receive.

[167] The fact that the plaintiffs were not expecting to be remunerated in the usual sense is not determinative, for reasons set out (albeit in a different legislative context) in *Acosta v Paragon Contractors Corp.* There the United States Court of Appeals, Tenth Circuit found that children who laboured harvesting pecans for an operation run by the Fundamentalist Church of Jesus Christ of Latter-Day Saints were not volunteers simply because there were not expecting to be remunerated.[60] The children were coerced into fulfilling a commercial contract for the benefit of a commercial enterprise by a concern that they would lose access to their families should they refuse to work.

[168] There was no written agreement that described the plaintiffs as having any sort of relationship with any of the defendants while they were in the first age bracket. The Gloriavale leadership had a strong work ethos (those who were able should work, and work hard), and I accept that no party may have subjectively considered themselves to be in an employment relationship at the time. But whether parties subjectively believe that they are, or are not, in an employment relationship is not the pivotal point. The point is what inference (as to the real nature of the relationship) can reasonably be drawn from conduct.[61] The conduct of the parties points to an employment relationship existing while the plaintiffs were in the first age bracket.

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60 *Acosta v Paragon Contractors Corp* 884 F 3d 1225 (10th Cir 2018).

61 See Jeremy Finn, Stephen Todd and Matthew Barber *Law of Contract in New Zealand* (7th ed, LexisNexis, Wellington, 2022) at 40.

[169] I find that the plaintiffs were employees during the first age bracket; they were not doing chores and they were not volunteers. (I return to a discussion about volunteer status when considering the position of the plaintiffs aged 16 plus.)

The transition year

[170] The conclusion I have reached that the plaintiffs were employed during the first age bracket poses obvious difficulties for the arguments advanced by the Gloriavale defendants in respect of the two later periods of work. This is because, while the labelling of the work changed from "chores", to "transitional work experience", to "Associate Partnership", nothing substantively changed. The basis on which work was performed, and the way in which it was delegated and supervised throughout this period, remained strongly indicative of an employment relationship, and the expectations in terms of the hours worked and the effort to be expended increased significantly.

[171] For the purposes of the s 6 analysis, there are two primary differences between the work conducted in this period and during the earlier school years. First, the Gloriavale defendants say that the plaintiffs undertook vocational training as part of an educational program which complied with the applicable regulatory requirements;[62] it had the approval of the NZQA and received no negative comment from the Education Review Office in reviews conducted during this period. Second, there was a documentary overlay to the work relationship, in the form of agreements variously titled the "Transition Education Agreement" or "Work Experience Agreement".

[172] As I have observed, the name given to the umbrella under which the work was performed is of limited relevance, given that the focus is on substance over form. The Court has repeatedly noted that the labelling given to a relationship will not be determinative but will only be a piece of the larger s 6(2) real-nature-of-the-

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[62] It is, for example, generally unlawful for a student to leave school before age 16: Education and Training Act 2020, s 35.

relationship puzzle.[63] Nor, in any event, is the label "vocational training" preclusive of a finding of employee status. There are, for example, prohibitions on employing school-age children within school hours,[64] but any non-compliance with that prohibition would result only in potential liability on the part of the employer and would not affect the employee's entitlements or status.

[173] It is true that the Education Review Office was apparently satisfied with what was being delivered – it is unclear why this is so, or what information it relied on in reaching its conclusions. For present purposes its apparent satisfaction must be viewed with significant caution given the evidence in relation to the rigorous management of Gloriavale's engagement with external agencies, and Peter Righteous's admission in cross-examination that the programme was not operating as it should have been, and that work transition/vocational placements were made where labour was needed within the Gloriavale businesses.

[174] I conclude that the plaintiffs were working full-time during their 15th year and the label assigned to their work did not reflect the reality of what they were doing or why they were doing it.

[175] This leads to the agreements signed by the plaintiffs.

[176] As I have said, Hosea Courage signed a Transition Education Agreement. Levi Courage signed a document called a "Work Experience Agreement." It is likely that Daniel Pilgrim signed an agreement, but it is unclear what its form was.

[177] While the Transition Education Agreement contained an express exclusion of an employment relationship and payment of wages, it set out the duties and responsibilities owed by the signatory in the workplace and listed the benefits to be provided to the signatory by Gloriavale while that work was being undertaken. Relevantly those benefits included the provision of food, accommodation, clothing and the "security of extended family [and] many friends", emphasising the connection between the work to be performed and the benefits being received. In other words,

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63 *Barry v C I Builders Ltd* [2021] NZEmpC 82, [2021] ERNZ 321 at [6].
64 Education and Training Act 2020, s 54.

the Agreement specified the reward to be provided in exchange for labour and specified what the signatory stood to lose and gain in making their "choice" to work.

[178] Both the Transition Education Agreement and the Work Experience Agreement were countersigned by the respective Courage parents, giving consent to Hosea and Levi to enter the programme. That consent must be viewed in light of the evidence I have accepted that their parents had no real choice in the matter. Nor is it, in any event, particularly consequential to the examination of the real nature of the relationship.

[179] The strong features of control and integration present in the school years remained. The work and the expectations became more onerous: all three of the plaintiffs gave evidence that they worked up to (and sometimes in excess of) 70 hours per week during this period. The prevailing ethos was that a Community member would work wherever they were needed. Mark Christian identified what that need was and then decided which of the boys would work there to meet the need. Once placed, they were subject to the control and discipline of whoever ran that particular worksite. None of the plaintiffs set foot in a schoolroom again. The work continued to be done for the same rewards I have already referred to in respect of the first age bracket.

[180] The change in the labelling of the relationship did not change the fundamental nature of it. The real nature of the relationship during the transition programme was one of employment.

16 years +

[181] Following the transitional year the plaintiffs progressed to Associate Partnership. There was, however, an intervening period where Hosea and Levi Courage were neither part of the transitional programme nor Associate Partners.[65] During this time they continued to work where they had worked during their transitional year.

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[65] Hosea Courage turned 16 on 26 August 2018 and became an Associate Partner on 23 November 2018; Levi Courage turned 16 on 7 July 2019 and became an Associate Partner on 30 September 2019; Daniel Pilgrim's agreement records an effective date from 24 October 2016, but the deed was made on 22 January 2018 – no explanation was given for this delay.

[182] The Associate Partnership years were subject to a documentary overlay, being the Deed of Adherence and the Partnership Agreement. This period was effectively a holding position until the plaintiffs were of age to sign the Declaration and become a partner in Christian Partners. By closing submissions it appeared to be accepted that serious questions arose as to whether the Deed of Adherence and the obligations it imported from the Partnership Agreement were in any way enforceable. Paradoxically the arrangements appear to acknowledge the difficulty incumbent in binding minors to such an agreement, while at the same time imposing the terms, conditions and obligations of the Partnership Agreement.

[183] Nonetheless, Mr Wilson submitted that the enforceability of the Agreement did not change the clear intent which the parties displayed in signing their respective Deeds of Adherence. That intention was, in his submission, to subscribe to the communal, sharing nature of the Community and for the plaintiffs to contribute labour to support themselves and the Community in the same way as other adult members working in the commercial enterprises. It was reinforced that this was a fundamental aspect of the Gloriavale's ethos which they had been born into and would have understood well. Becoming an Associate Partner was framed as a rite of passage. More succinctly, I understood the Gloriavale defendants' position to be that the relationship was one of a voluntary nature.

[184] It was not expressly argued that the plaintiffs (when Associate Partners) were volunteers for the purposes of s 6, but I deal with this point for completeness, including because this was the conclusion that the Labour Inspector arrived at. It was also the descriptor that Fervent Stedfast coached workers to use when dealing with external agencies, although I note that in a letter to Charity Services dated 13 November 2015 he advised that: "… the term "volunteers" has no practical or meaningful significance for members of the Community."

Volunteers

[185] Section 6(1)(c) is awkwardly framed, as previous judgments of this Court have noted. It may be read in one of two ways – a "volunteer" is someone who works but does not expect to be rewarded for doing so and receives no reward for the work

performed, or a "volunteer" is an employee if they do expect to be rewarded for the work performed and/or receives a reward for that work. In *Kidd v Beaumont* Chief Judge Colgan concluded that, despite the ambiguous wording of the provision, Parliament intended the former meaning, namely that a "volunteer" (as defined by reference to reward expectations and receipt) is not an employee for the purposes of the Act.[66] I agree that the dual factors of expectation and non-receipt define a volunteer who is therefore not an employee.[67]

[186] The issue as to whether a volunteer does not expect to be rewarded for work performed as a volunteer is a question of fact to be analysed objectively. The natural and ordinary meaning of the language used by the parties in any relevant oral or written documentation is to be considered in context.[68]

[187] A related point might usefully be made which has particular relevance in this case. In adopting a purposive approach to employment law, it has been noted that volunteer status can be justified only if the work is performed for non-economic reasons, and without competing with paid employees. The fact that the same kind of work is usually performed for pay can be an indicator that it is economic in nature, and it also means that unfair competition with paid employees is likely.[69] The work that the plaintiffs were doing fits that description.

[188] I pause to note that there are two separate concepts: doing something "voluntarily" and being a "volunteer" for the purposes of s 6. To clarify – a person may be said to voluntarily work for an employer under an employment agreement; they are free to resign and apply their efforts elsewhere if that is what they choose to do. The fact that they carry out their work voluntarily does not mean they are a volunteer rather than an employee. Nor does the fact that the agreement is entered into voluntarily mean compliance with the laws regulating employment relationships are not applicable. An employee cannot be estopped from asserting their legal

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66 *Kidd v Beaumont* [2016] NZEmpC 158, [2016] ERNZ 257 at [38]-[39].

67 *Brook v MacOwn* [2014] NZEmpC 79, [2014] ERNZ 639 at [18]-[33]; *Kirby v New Zealand China Friendship Society* [2015] NZEmpC 189 at [15].

68 *Kirby*, above n 67, at [14].

69 Guy Davidov *A Purposive Approach to Labour Law* (Oxford, Oxford University Press, 2016) at 204.

entitlements, even where they have led the employer to believe they will accept inferior conditions and the employer has relied on that to their detriment.[70] All of this is made clear in s 238 of the Act, which provides:

> **No contracting out**
>
> The provisions of this Act have effect despite any provision to the contrary in any contract or agreement.

[189] The claim that the plaintiffs were not employees and performed work "voluntarily" during the Associate Partnership phase faces difficulties in light of my earlier factual findings. The work, and the basis on which it was conducted, remained largely unchanged between the transitional period and the Associate Partnership phase, and the intervening period where they were neither in the transitional programme nor an Associate Partner.

[190] I have already dealt at length with the other circumstances surrounding the exchange of food, accommodation, and security within the Community for labour. To the extent that a direct causative link is required, as was submitted, it is well established that reward, for the purposes of s 6, is not restricted to the exchange of money.[71] In addition, during these years the plaintiffs were clearly rewarded for their labour by way of what was called partnership income paid to their account (albeit promptly extracted). I am satisfied that but for the labour provided by the plaintiffs (able bodied males who were capable of working) they would not have been provided with a share of profits and would not have enjoyed the security and benefits of the Community.

[191] I make the general point that the argument that the plaintiffs were working on some sort of voluntary basis does not sit well with the title of "Associate Partner", nor does it sit well with the concept of being in a business partnership more broadly. The plaintiffs were not volunteers – they were plainly not offering to work as a matter of free choice, "without solicitation, compulsion, constraint or influence of another".[72]

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70 See Andrew Stewart *Stewart's Guide to Employment Law* (7th ed, Alexandria, Federation Press, 2021) at [5.17].

71 *Salad Bowl Ltd v Howe-Thornley* [2013] NZEmpC 152, [2013] ERNZ 326.

72 *Acosta*, above n 60, at 1232.

If not volunteers what was the plaintiffs' status?

[192] The plaintiffs were not volunteers for the purposes of s 6(1)(c) but it does not automatically follow that they were employees. Rather, the Court must undergo the usual analysis as to the real nature of the relationship.[73]

[193] The plaintiffs were referred to, including in documentation they signed, as Associate Partners. As has already been said, the intention of the parties and the label applied to a relationship is not determinative; it is a factor to be weighed in the s 6 mix. The weight to be given to the various factors is a question for the trial judge. Here, the intention of the parties reflected in the documentation, and use of the "Associate Partner" label, must be viewed with scepticism. The evidence of the plaintiffs, which I have accepted, is that they did not feel they had any choice but to enter into the arrangement given the consequences which they had been raised to believe would follow. They were, as minors, presented with the "stark choice".

[194] Neither Hosea nor Levi Courage received legal advice before signing the Deed of Adherence, and while Daniel Pilgrim thought he had attended a lawyer's office, the Gloriavale defendants' evidence was that it is not their practice to provide legal advice on the Deed. Rather, and as I have already found, while Fervent Stedfast provided some explanation of the document, none of the plaintiffs understood what they were signing; Daniel Pilgrim's Deed of Adherence appears to have been backdated by 15 months.

[195] As Associate Partners, the plaintiffs were paid a share of the partnership profits. I pause to note that simply because a person is remunerated by means of a share of the profits in a business does not necessarily make them a partner,[74] and nor does it preclude the finding of an employment relationship. The money was paid into the plaintiffs' bank account and, after deductions for tax and ACC, the money was transferred into the Gloriavale shared account. The plaintiffs had no control over these accounts.

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73 *Below*, above n 29, at [79].
74 Partnership Law Act 2019, s 15(1)(b).

[196] Peter Righteous explained that the purpose of making payment to the plaintiffs as Associate Partners was to give them a sense of contribution to, I infer, the running costs of the Community. I pause to note that it might reasonably be assumed, based on the evidence before the Court, that the plaintiffs' contribution via their work (6 days per week) vastly exceeded the costs of providing them with the necessities of life. In this regard Charity Christian's evidence was that weekly food expenditure per person at Gloriavale equated to approximately $26-$27.

[197] Further, Daniel Pilgrim's evidence was that being an Associate Partner had "zero" significance for his practical life but "in theory" made him part of the partnership. He described the Associate Partnership documentation as a mechanism by which the leadership created a paper trail to assist it with its legal position, and that this was openly talked about within the Community (including by Fervent Stedfast). And Levi Courage understood that being an Associate Partner meant that he was "legally allowed to work now."

[198] I have already referred to Hosea Courage's evidence that he was told not to record more than eight hours work a day and that Fervent Stedfast told him to change the figures if they were in excess of eight hours. The point is relevant because eight hours a day bears a striking resemblance to the usual working day. Also relevant is the fact that the payment appears to have been regular, tracked to the hours of work recorded as having been performed, and generally reflected a rate close to the minimum wage provided for under the Minimum Wage Act 1983. The provision of annual holidays (albeit well under the statutory minima provided by the Holidays Act 2003) is also indicative of employment.[75] And when Peter Righteous was asked about the rationale for imposing labour charges, he thought that it may be "some box they're trying to tick for the auditors."

[199] While time recording may be relevant (for charging/tax purposes) for a partner or independent contractor, it is not at all clear why time recording (and the imposition of labour charges) would be necessary or useful when work is being conducted within

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75 Albeit that families were required to take them together.

a communal sharing/religious framework of the sort contended for by the Gloriavale defendants. I infer that there may have been an element of having a bob-each-way – reflecting a recognition of obligations to comply with minimum employment entitlements (including in relation to hours of work and rates of pay) while seeking, via the documentation, to paint the relationship in an alternative way.

[200] As I have said, while the Gloriavale defendants claim that the intention and labelling of the relationship changed at the Associate Partnership point, they do not address the period of time following the transitional year and prior to both Levi and Hosea Courage becoming Associate Partners. In any event, I am not satisfied that there was any change to the fundamental nature of the relationship from the transitional year – the plaintiffs worked where, when and for whom they were told in Gloriavale's commercial and industrial environments; they were fully integrated into the business structure; they did not work for themselves – they worked for the benefit of the Gloriavale businesses; and that was reflected in the economic reality of the relationship.

[201] They carried out the work for reward – in exchange for food, shelter and a continued place in the Gloriavale Community. These findings are further augmented by the way in which a share of profits was paid to accounts in the plaintiffs' names and the fact their labour was charged to third parties. The Associate Partnership model ascribed a convenient (and misleading) label to the plaintiffs, which was designed to bring them within Gloriavale's financial structure.

[202] I have already referred to Serenity Valor's understanding that Associate Partners and Partners were self-employed contractors. I record that in submissions the Gloriavale defendants disavowed reliance on an argument that the plaintiffs were independent contractors at any stage, including the Associate Partner years. Nor did the Gloriavale defendants seek to argue that the plaintiffs were partners rather than employees. It will be apparent from my findings that I would not have accepted that the plaintiffs were independent contractors – in essence, none of them could be said to have been running a business on their own account. It will also be apparent that I would not have accepted that the plaintiffs were partners during this timeframe. At

this stage the plaintiffs were still legally minors, and thus would not have been bound by the Partnership Agreement. More fundamentally the way in which the relationship operated in practice points firmly away from any such conclusion.

Conclusion

[203] Each of the three plaintiffs was an employee in each age bracket referred to above. None of them were volunteers within the meaning of s 6 of the Act.

[204] Insofar as a declaration is sought as to the identity of the employer/employers within the Gloriavale structure, the issue is reserved.

[205] The evidence heard by the Court, some of it uncontested or confirmed by Gloriavale's witnesses, raises serious concerns across a broad range of subjects. In other circumstances, I would have referred my judgment to the relevant government agencies but the presence of the Attorney-General as a party satisfies me that the necessary referrals will be considered and made where appropriate.

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

Christina Inglis
Chief Judge

Judgment signed at 9.00 am on 10 May 2022