

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

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

**[2022] NZEmpC 146
EMPC 85/2022**

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

AND IN THE MATTER OF an application to participate at a hearing
by alternative means

BETWEEN SERENITY PILGRIM, ANNA
COURAGE, ROSE STANDTRUE,
CRYSTAL LOYAL, PEARL VALOR
AND VIRGINIA COURAGE
Plaintiffs

AND THE ATTORNEY-GENERAL SUED
ON BEHALF OF THE MINISTRY OF
BUSINESS, INNOVATION AND
EMPLOYMENT, LABOUR
INSPECTORATE
First Defendant

AND HOWARD TEMPLE, FERVENT
STEDFAST, ENOCH UPRIGHT,
SAMUEL VALOR, FAITHFUL
PILGRIM, NOAH HOPEFUL AND
STEPHEN STANDFAST
Second Defendants

Hearing: On the papers

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

Judgment: 18 August 2022

**INTERLOCUTORY JUDGMENT (NO 7)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application to participate at a hearing by alternative means)**

[1] An application has been made by the plaintiffs for leave for two witnesses to participate at the hearing by audio-visual link (AVL), and a third witness to either give evidence via closed circuit television, AVL or behind a screen. The defendants are not opposed to the orders sought. Despite the fact that there is no opposition, the Court must be satisfied that it is appropriate that the orders be made.

[2] The ordinary way for a witness to give evidence in a civil proceeding is orally in a courtroom in the presence of the Judge, the parties and the public.¹ As the Court of Appeal has made clear, there is no presumption in favour of giving evidence in the ordinary way.²

[3] The Court may allow the use of AVL in civil proceedings, including for the appearance of a party and witnesses. Before doing so, it must take into account whether or not the other party consents to the use of AVL and must have regard to the criteria in s 5 of the Courts (Remote Participation) Act 2010.³ The criteria are:⁴

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of the other parties to the proceeding, including –
 - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the Court; and
 - (ii) the level of contact with other participants;

¹ See, for example, High Court Rules 2016, r 9.51; and Evidence Act 2006, s 83.

² *Wealleans v R* [2015] NZCA 353 at [34]; *R v O (CA443/12)* [2012] NZCA 475 at [37]; *V (CA492/2010) v R* [2011] NZCA 525 at [21]; *R v Shone* [2008] NZCA 313 at [28].

³ Courts (Remote Participation) Act 2010, s 7.

⁴ Courts (Remote Participation) Act 2010, s 5.

(d) any other relevant matters.

[4] The two witnesses reside at a distance. As I have said, the defendants do not oppose the application; there is nothing about the nature of the proceedings which suggests that the giving of evidence via AVL would be unsuitable; and appropriate AVL facilities are available. While I have considered the potential impact of AVL on the ability to assess credibility and the reliability of evidence presented, those considerations do not warrant an in-person appearance in this case.⁵

[5] In the circumstances, the application for leave for the two identified witnesses to appear at the hearing and give evidence by AVL is granted.

[6] I am also satisfied that it is appropriate for orders to be made at [1](b) of the application to be made and in light of the personal circumstances identified in the application.⁶ Accordingly the third identified witness may give evidence at hearing either via closed circuit television, or via AVL, or behind a screen. The Registrar is directed to liaise with counsel for the plaintiffs to make the necessary arrangements.

[7] Counsel for the plaintiffs is to ensure that the agreed bundle of documents is available to each of the witnesses when the hearing takes place. The witnesses are also to be provided with a copy of the Court's Guideline for Appearing by Audio-Visual Link.⁷

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

Christina Inglis
Chief Judge

Judgment signed at 3.00 pm on 18 August 2022

⁵ *Deutsche Finance New Zealand Ltd v Commissioner of Inland Revenue* (2007) 18 PRNZ 710 (HC) at [37].

⁶ Noting that the second defendants refute the contents of an affirmation filed in support of the application, and the matters referred to in the application.

⁷ Employment Court 'Guideline for Appearing by Audio-Visual Link' <<https://employmentcourt.govt.nz/>>.