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

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

**[2022] NZEmpC 221**
**EMPC 85/2022**

| | |
|---|---|
| IN THE MATTER OF | a declaration under s 6(5) of the Employment Relations Act 2000 |
| AND IN THE MATTER OF | the appointment of Court expert |
| BETWEEN | SERENITY PILGRIM, ANNA COURAGE, ROSE STANDTRUE, CRYSTAL LOYAL, PEARL VALOR AND VIRGINIA COURAGE<br>Plaintiffs |
| AND | THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE<br>First Defendant |
| AND | HOWARD TEMPLE, SAMUEL VALOR, FAITHFUL PILGRIM, NOAH HOPEFUL AND STEPHEN STANDFAST<br>Second Defendants |

| | |
|---|---|
| Hearing: | On the papers |
| Appearances: | B P Henry, D Gates and S Patterson, counsel for plaintiffs<br>J Catran, G La Hood and A Piaggi, counsel for first defendant<br>P Skelton KC, S G Wilson, J Hurren, C Pearce and H Rossie, counsel for second defendants<br>R Kirkness, counsel to assist the Court |
| Judgment: | 2 December 2022 |

**INTERLOCUTORY JUDGMENT (NO 19)**
**OF CHIEF JUDGE CHRISTINA INGLIS**
**(Appointment of Court expert; Court/expert viewing)**

[1] This judgment deals with issues relating to the appointment of an expert in these proceedings following my judgment of 12 September 2022.[1] In that judgment I concluded that it was appropriate to appoint an expert and directed counsel appointed to assist the Court, Mr Kirkness, to take steps to identify a suitably qualified person and to liaise with counsel for the parties with a view to seeking agreement on the appointment, formulation of the questions on which an opinion would be sought and the documentation to be provided to the expert.

[2] Mr Kirkness has liaised with counsel as directed and has filed a helpful memorandum addressing these issues, setting out the parties' views on the identity of the expert, the questions that might appropriately be put to the expert for their opinion and the documentation to be provided. Communications between counsel have also been put before the Court. Counsel have confirmed that they do not wish to be heard further on these matters, although counsel for the second defendants (who I refer to as the Gloriavale defendants) have filed a memorandum asking that consideration be given to another proposal (the viewing proposal), which I will return to later.

[3] Having considered the matters raised in the material before the Court, together with the background experience of each of the identified experts, I appoint Dr Julie Norris as Court-appointed expert. I am satisfied that Dr Norris has the necessary knowledge and experience to undertake the role, and is otherwise suitable for appointment.

[4] Differing views have been expressed about the approach to be adopted in seeking an expert opinion. The Gloriavale defendants consider that the expert ought to be asked to undertake an individualised assessment of each of the plaintiffs. The

[1] *Pilgrim v The Attorney-General* [2022] NZEmpC 168.

plaintiffs and Attorney-General are agreed that such an approach is not required and that the expert should be asked a set of more broadly focussed questions.

[5] The concern with a non-individualised approach is expressed in counsel's correspondence and can be summarised as follows. Assessing a person's competency to exercise autonomy and/or choice is a highly individualised matter, and requires an individualised assessment. The Gloriavale community is made up of several hundred individuals. To attempt to judge an individual's capacity to exercise autonomy/choice based on assumed characteristics of the community in which the individual was raised invites discrimination based on the grounds of religion, gender or family status based on an assumed stereotype of that community. More specifically, an opinion about what might be the theoretical impact of being raised in a religious community which has assumed characteristics on a hypothetical person's ability to make choices would not be substantially helpful to the Court in determining whether all or any of the plaintiffs in fact had the capacity to exercise choice.

[6] Counsel appointed to assist the Court submits that both approaches are possible but notes that there appear to be two difficulties with the individualised assessment proposal:

- First, each of the plaintiffs has now been living outside the Gloriavale community for a number of years and so any assessment of capacity and competence would be made several years after the relevant events took place (and after several years of living within wider New Zealand society); and

- There are practical difficulties in determining the appropriate limits on the information to be provided to an expert asked to undertake an individualised assessment.

[7] The core issue for the Court in these proceedings is whether each of the plaintiffs was an employee during their time at Gloriavale. As I observed in a minute of 6 September 2022, it had become apparent through the course of these part-heard proceedings that a key issue relates to the extent to which the plaintiffs exercised

"choice" as to working (and living) at Gloriavale, as well as the extent to which they "submitted". The plaintiffs have each given evidence, which has been tested in cross-examination. A number of witnesses (current residents at Gloriavale) have also given evidence on behalf of the Gloriavale defendants – their evidence too has been tested in cross-examination and further witnesses have yet to be heard. Resolving contested issues of fact and/or credibility is for the Court.

[8] I agree that the difficulties highlighted by Mr Kirkness would likely arise if the individualised assessment approach was adopted. I consider that the Court is likely to receive the most valuable assistance if the expert is asked to provide an opinion in respect of the relevant issues in a more broadly focussed manner, directed at the extent to which being born and raised in a community with certain characteristics may impact on the exercise of power and control, choice and submission. I have not overlooked the concerns raised by counsel for the Gloriavale defendants about assumed stereotypes and the need to factor in individual characteristics. No doubt the appointed expert will be alive to such concerns, and they do not, in my view, require an individualised approach.

[9] Counsel have conferred about the questions that the expert might appropriately be asked in the event that the broader approach was considered preferable in the circumstances, and have reached a broad consensus on those questions. I have considered the proposed questions (set out in Mr Kirkness' memorandum at [9], pages 2-4) and agree with them.

[10] Counsel assisting the Court, the Attorney-General and the Gloriavale defendants agree that it is not necessary to provide the expert with documentation specific to the case if the questions as formulated (referred to at [9] above) are adopted. The plaintiffs consider that the expert ought to be provided with relevant versions of the document "What We Believe". As Mr Kirkness notes, the potential difficulty with that is that the expert is provided with some, but not all, materials relating to the Community, and the extent of adherence to What We Believe has been the subject of disputed evidence. In these circumstances I do not consider it helpful or necessary to provide the expert with case specific documentation.

[11] Mr Kirkness is to undertake the necessary liaison with Dr Norris to enable a report to be completed. An estimate of the likely timeframe required for doing so ought to be advised to the Court and counsel.

[12] I return to the viewing proposal. The plaintiffs and the second defendants ask that the Court give consideration to both the Court and the expert undertaking a "view" of Gloriavale. Both parties say that such a viewing is likely to be helpful in better understanding the context in which the plaintiffs lived and worked while resident in the community.

[13] Before reaching a concluded view on the proposal, I invite further memoranda from counsel directed at what assistance the Court, and Dr Norris, could reasonably expect to receive from a viewing, as well as what the parameters and logistics of any "viewing" are proposed to be. Any such memoranda should be filed and served within 10 working days. Mr Kirkness should provide Dr Norris with a copy of any memoranda and invite her views as to whether she perceives there to be any benefit in her viewing Gloriavale.

[14] Leave is reserved to apply on reasonable notice for any further directions or orders.

[15] Costs are reserved.

Christina Inglis
Chief Judge

Judgment signed at 9.15 am on 2 December 2022