IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2023] NZEmpC 21
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 for recall of judgment
BETWEEN	SERENITY PILGRIM, ANNA COURAGE, ROSE STANDTRUE, CYSTAL LOYAL, PEARL VALOR AND VIRGINIA COURAGE Plaintiffs
AND	THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE First Defendant
AND	HOWARD TEMPLE, SAMUEL VALOR, FAITHFUL PILGRIM, NOAH HOPEFUL AND STEPHEN STANDFAST Second Defendants

Hearing:	On the papers
Appearances:	BP Henry, D Gates and S Patterson, counsel for plaintiffs J Catran, K Sagaga and A Piaggi, counsel for first defendant S Valor and P Righteous, representatives for second defendants R Kirkness, counsel to assist the Court RK Stewart, counsel for RNZ
Judgment:	21 February 2023

INTERLOCUTORY JUDGMENT (NO 26)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application for recall of judgment)

[1] This judgment resolves the second defendants' application for a recall of the Court's judgment dated 16 February 2023.[1] In that judgment, I partly allowed an application made by RNZ to attend a site visit to the Gloriavale premises, make limited sound recordings and take still photographs.

[2] The second defendants submit that the Court proceeded on an erroneous assumption, namely that it did not understand any party to dispute the existence of a power to make the orders sought and accepted that the Court had a discretion to allow media to attend the site visit. The second defendants say that this was mistaken, and that they did raise the question of a lack of power and the Court failed to address that issue. It is submitted that, because it would be contrary to the interests of justice and the rule of law to allow ultra vires orders to stand, justice requires the judgment to be recalled.

[3] Rule 11.9 of the High Court Rules 2016 allows for High Court judgments to be recalled at any time before they are sealed. The Employment Court too can recall its judgments.[2]

[4] Generally speaking, and subject to rights of appeal, a judgment once delivered must stand for better or worse. A decision to recall will only be made in exceptional circumstances.[3] This reflects the importance of finality in litigation to the administration of justice.[4] There are three established categories of cases in which a judgment may be recalled:[5]

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1 *Pilgrim v Attorney-General (No 24)* [2023] NZEmpC 15.
2 See for example *Waikato District Health Board v New Zealand Nurses Organisation* [2017] NZCA 247; *Gilbert v Attorney-General* [2006] ERNZ 1.
3 *S (SC 39/2017) v R* [2022] NZSC 7 at [3].
4 *Alkazaz v Enterprise IT Ltd (No 11)* [2022] NZEmpC 15 at [2].
5 *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC).

(a) where, since the hearing, there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority;

(b) where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and

(c) where for some other very special reason of justice requires that the judgment be recalled.

[5] The second defendants submit that the circumstances of this case bring it within the third category. As the authorities make clear, the third category is narrow,[6] and cases appropriate for recall on this basis are rare. Beyond that, the Court's decision is discretionary. That discretion is exercised on a case-by-case basis, ultimately depending on the interests of justice.

[6] It has been recognised that failure to consider an issue may constitute a very special reason requiring a recall.[7] However, there is no basis for recall in cases where the Court has considered an issue but has decided either not to deal with it, or to deal with it on a narrower basis than argued. Further, the Court is not obliged in its reasons for judgment to discuss every aspect of argument.[8] And where a party considers that the Court has got the law wrong, for example by exercising a power that it does not possess, it may seek to challenge that decision via the appeal pathway.[9]

[7] I do not consider the judgment reflects a failure to consider an issue. Reference was made to the Court's powers under s 82 of the Evidence Act 2006 and the In-Court Media Guidelines.[10] It was determined that the Court had jurisdiction to allow the media to attend and that it was appropriate, in the circumstances, to do so subject to a number of conditions. The judgment referred to an understanding that no party was

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6 *Zhang v Yu* [2020] NZCA 592 at [9].

7 *Brake v Boote* (1991) 4 PRNZ 86 (HC); *Waikato District Health Board v New Zealand Nurses Organisation* [2017] NZCA 247, [2017] ERNZ 378 at [55].

8 *Lusty v Thorburn* [2021] NZHC 2045 at [6]; citing *R v Nakhla (No 2)* [1974] 1 NZLR 453 (CA) at 456

9 Employment Relations Act 2000, s 214.

10 *Pilgrim*, above n 1, at [4]-[5].

contending the Court did not have the power to allow media to attend the site visit.[11] To the extent that this was a misunderstanding of the second defendants' position, I do not consider that it amounts to the sort of special circumstance that would justify recall of the judgment.

[8] The application for recall is accordingly declined.

[9] Costs are reserved.

Christina Inglis
Chief Judge

Judgment signed at 1.40 pm on 21 February 2023

[11] At [4].