

Introduction

[1] The applicants have filed judicial review proceedings, primarily directed at the alleged actions and inactions of Labour Inspectors who were involved in investigating and reporting on concerns about work being undertaken within the Gloriavale Christian Community. Those proceedings are set down for hearing in the week commencing 16 March 2026.

[2] As is usual in judicial review proceedings, directions were made for the filing and service of affidavit evidence. Affidavits have been filed by the first and third respondents, including by three Labour Inspectors.

[3] The applicants have applied for leave to cross-examine each of the three Labour Inspectors; that application is opposed by the first and third respondents.

The Employment Court's powers on judicial review

[4] As was observed by the Supreme Court in *Tannadyce Investments Ltd v Commissioner of Inland Revenue*:¹

The courts of higher jurisdiction ... have constitutional responsibility for upholding the values which constitute the rule of law. A central aspect of that role is to ensure that when public officials exercise the powers conferred on them by Parliament, they act within them. Judicial review is the common law means by which the courts hold such officials to account. It provides the public with assurance that public officials are acting within the law in exercising their powers, and are accountable if they depart from doing so.

[5] This Court has powers of judicial review conferred on it under [s 194](#) of the [Employment Relations Act 2000](#). In the absence of any Rules made by the Court in

1. *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [\[2011\] NZSC 158](#), [\[2012\] 2 NZLR 153](#) at [\[3\]](#) (footnotes omitted).

respect of the procedure to be adopted for judicial review applications, [s 212](#) provides the procedural framework to be applied.

[6] [Section 212](#) provides that such applications are to be “regulated by the rules applicable to proceedings founded on ... judicial review in the High Court, as far as they are applicable and will all necessary modifications.” The rules applicable to judicial review proceedings in the High Court include the [Judicial Review Procedure Act 2016](#) and [pt 30](#) of the [High Court Rules 2016](#). There was no suggestion made by any counsel that, in respect of the approach to cross-examination in this Court, the rules applying in the High Court lack applicability or require modification. I proceed on the basis that the same approach applies in determining the current application.

[7] [Section 14\(2\)\(f\)](#) of the [Judicial Review Procedure Act](#) makes it clear that the default position is that evidence will be given by affidavit. That is reflective of a policy concern that judicial review be simple, non-technical and prompt. Cross examination runs the risk of undermining this objective. It is also reflective of what judicial review is all about.²

[8] Judicial review is primarily concerned with an examination of the process by which a statutory power has been, or is being, exercised and whether it is lawful. It is not about the Court considering information afresh and coming to its own view.³

[9] The purpose of judicial review has implications for the way in which evidence is adduced and dealt with. None of this should be taken to suggest that the facts lack importance; the facts are generally pivotal. However, the point is that fact-finding is not usually central to the Court's role in judicial review. Rather, challenges can generally be dealt with on the decision-making record.⁴

[10] As the Courts have consistently confirmed, leave to cross examine is rarely granted. The key question is whether cross-examination is necessary to enable the

2 *Gregory v Psychologists Board* [\[2009\] NZCA 134](#), [\[2009\] NZAR 338](#) at [\[22\]](#).

3. See, for example, *Aorangi School Board of Trustees v Ministry of Education* [\[2009\] NZHC 2270](#); [\[2010\] NZAR 132 \(HC\)](#).

4. See *Wallace v Chief Executive of the Department of Corrections* [\[2023\] NZHC 2248](#) at [\[7\]](#), and the authorities cited therein.

application to be decided properly and fairly. The onus is on the applicant to establish that cross-examination is necessary. That requires the applicant to point with sufficient particularity to a basis on which cross-examination is necessitated. Necessity is informed by the pleadings, and what the Court will be required to decide.

[11] Unsurprisingly, the circumstances in which cross-examination will be regarded as necessary are not closed, and each

case will need to be assessed on its own merits. Examples of where cross-examination has been permitted include where there was a lack of adequate or proper explanation of the impugned decision-making process; where there was a material conflict of affidavit evidence; and where the credibility of a deponent was in issue.⁵

The basis for the application in this case

[12] The applicants focus on three areas that they say cross-examination should be allowed: first, to adequately explain why persons under 18 years of age were excluded from consideration by the Labour Inspectors; second, to resolve conflicts in the material before the Court; third, to explore credibility issues in relation to the deponents.

[13] As Mr Henry points out, there is reference in one of the affidavits to a decision being made by a manager and passed on to one of the Labour Inspectors to exclude under 18-year-olds from the investigative process. The circumstances surrounding that particular decision are not traversed. There are other references within the third respondents' affidavits to operational issues, resourcing constraints and practical issues with seeking to interview people under the age of 18 years. There is, as Mr Henry observes, no additional detail provided in respect of these matters or supporting evidence.

[14] The Crown respondents are under a duty of full and frank disclosure, and to provide the best evidence in these proceedings.⁶ As Ms Boadita-Cormican (counsel

5 *Stratford Racing Club Inc v Adlam* [2008] NZCA 92, [2008] NZAR 329 at [63].

6. See, for example, *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62 at [105], per Elias CJ and Arnold J.

for the first and third respondents) and Mr Kirkness, counsel assisting, observe, the investigation reports prepared by the Labour Inspectors speak for themselves; so too does the Crown Law advice that was provided to the Labour Inspectors and over which privilege has been waived. What was within each of the Labour Inspectors' minds as to who would or would not be covered by the investigative process, and why, is likely to be of little relevance; the focus will be on the decision-making record as it emerges from the documents at the time, and sequencing of events, decisions made and actions taken (and not taken) that are before the Court.⁷

[15] Seeking to illicit such information via cross-examination is not necessary in order to determine the matters in dispute, and nor (given the passage of time) is it likely to be fruitful, a point Ms Mills (one of the deponents) makes in her most recent affidavit. An ex-post facto commentary on what was done and why will not assist the Court, even if it was capable of being reliably offered, given the fact that the actions/inactions complained about occurred a number of years ago.

[16] It is correct, as Mr Henry says, that there is a stark conflict in the evidence of a deponent for the applicants and one of the Labour Inspectors. It relates to an interview that the Labour Inspector (Ms Mills) had with a deponent for the applicants. Ms Mills disputes the deponent's evidence as to what occurred during the interview. She says that, to the best of her recollection, the interview (which took place some four years ago) unfolded in the way described in contemporaneous notes of interview that she annexes to her affidavit. More importantly, resolving the issue will not assist the Court in determining the issues it must be focussed on in the substantive proceedings.

[17] There are also said to be broader conflicts between the statements of Gloriavale leavers and Labour Inspectors, as well as between the 2021 Labour Inspectorate report and the Crown Law advice. For similar reasons, these issues do not make cross-examination necessary.

7. *Taylor v Chief Executive of the Department of Corrections* [2015] NZCA 477, [2015] NZAR 1648 at [33] per Randerson J: "the general rule is that judicial review proceedings are determined on the basis of the material before the decision-maker at the time of the decision."

[18] Mr Henry also submitted, more broadly, that all of the affidavits filed on behalf of the Labour Inspectors are burdened with credibility issues because they were prepared after the Court's decisions on employment status. This, he suggests, means that they were prepared with the benefit of hindsight and allowing cross-examination across the span of the evidence, directed at credibility, is appropriate. The point does not reach the necessity threshold. The weight to be given to various aspects of the evidence can appropriately be addressed in submissions at the substantive hearing. In this regard it may be noted that the Courts have made it clear that limited weight can be given to post facto evidence "given long after the events in question",⁸ and reasons must apply at the time a decision was made, rather than new reasons after the event.⁹

[19] The final broad area for cross-examination was directed at the applicable test under s 6 of the Act and two Gloriavale foundational documents, and the extent to which these were understood and/or applied by the Labour Inspectors. Again, the proposed topic for cross-examination falls short of the necessity threshold. That is because the actions/inactions of the Labour Inspectors are to be gleaned from their reports and other documents before the Court, what they did/did not do and any inferences that ought appropriately to be drawn.

[20] During the course of oral submissions Mr Henry touched on a fourth area for proposed cross-examination, which was couched in terms of clarifying with the Labour Inspectors whether they appreciated what the prosecuting onus was when

they prepared their reports. I understood that submission to be directed at the nature and extent of the Labour Inspector's statutory duties of enforcement in respect of minimum employment standards. Clarification of what the Labour Inspectors believed the applicable legal framework to be, and the proper scope of their decision-making and investigative powers, is not necessary in order to deal with any of the matters raised on the pleadings, and is a matter that can (and no doubt will) be explored in legal submissions.

8. For an example see *Comptroller of Customs v Terminals (NZ) Ltd* [2014] NZCA 598, [2014] 2 NZLR 137 at [118].

9. *Independent Fisheries Ltd v Minister for Canterbury Earthquake Recovery* [2012] NZHC 1810, [2012] ELHNZ 222 at [42].

[21] It will be apparent that I am not satisfied that the grounds have been made out for leave to cross-examine, and I decline to exercise my discretion to order it.

Inferences

[22] In the alternative, Mr Henry submits that if cross-examination is not allowed, it is open to this Court to draw inferences against the deponent where no cross-examination occurs if the inference is clearly justified. I accept, and did not understand the point to be contentious, that it is open to the Court to draw inferences where it is appropriate to do so in judicial review proceedings. That will be a matter for submissions at the substantive hearing.

Result

[23] The application for leave to cross-examine is declined.

[24] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 10.15 am on 25 February 2026

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