



Employment Court of New Zealand

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Pilgrim v Attorney-General [2022] NZEmpC 166 (9 September 2022)

Last Updated: 14 September 2022

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2022\] NZEmpC 166](#)

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, 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, G La Hood and A Piaggi, counsel for first
defendant P Skelton QC, SG Wilson, J Hurren, C Pearce
and H Rossie, counsel for second defendants
R Kirkness, counsel to assist the Court

Judgment: 9 September 2022

INTERLOCUTORY JUDGMENT (NO 16) OF CHIEF JUDGE CHRISTINA INGLIS

(Application to participate at a hearing by alternative means)

SERENITY PILGRIM, ANNA COURAGE, ROSE STANDTRUE, CRYSTAL LOYAL, PEARL VALOR AND VIRGINIA COURAGE v THE
ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF

BUSINESS, INNOVATION AND EMPLOYMENT, LABOUR INSPECTORATE [\[2022\] NZEmpC 166](#) [9

September 2022]

[1] An application has been made by the plaintiffs for leave for two witnesses to participate at the hearing by audio-visual link (AVL). Leave is sought on the basis that the two witnesses (Anna Courage and Trudy Christian) are young, vulnerable and may be adversely affected if required to give evidence in open Court. It is said, in support of the application, that a previous witness may have been impacted by certain courtroom conduct, a suggestion that counsel for the second defendants firmly rejects. The defendants are otherwise not opposed to the orders sought and are content to abide the decision of the Court. Despite the fact that there is no opposition, the Court must be satisfied that it is appropriate that the orders be made.

[2] The approach to applications of this sort is well established but repeated here for ease of reference. 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 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 –

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](#).

- (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;
- (d) any other relevant matters.

[4] I am satisfied that it is appropriate to grant the application, having regard to the nature of the proceeding, including the intimate nature of the evidence that the witnesses are proposing to give; the defendants' position on the application; the fact that there is nothing to suggest that the giving of evidence via AVL would be unsuitable; and the availability of appropriate secure AVL facilities. 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] 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.⁶

[8] For completeness, if any counsel becomes aware of concerns about courtroom conduct impacting on a witness, those concerns ought to be formally raised in a timely manner and appropriate directions or orders sought.

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

6 Employment Court 'Guideline for Appearing by Audio-Visual Link'

<<https://employmentcourt.govt.nz/>>.

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

Christina Inglis Chief Judge

Judgment signed at 9 am on 9 September 2022

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