IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2023] NZEmpC 105
EMPC 85/2022

IN THE MATTER OF	a declaration under s 6(5) of the Employment Relations Act 2000
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:	29 August-2 September 2022, 5-7 September and 9 September 2022, 19-23 September and 27-30 September 2022, 13-17 February 2023, 27 February-1 March 2023, 20-24 March 2023 and 27-30 March 2023 (Heard at Christchurch) 20-23 February 2023 (Heard at Greymouth)
Appearances:	BP Henry, D Gates and S Patterson, counsel for plaintiffs J Catran, G La Hood and A Piaggi (from 29 August to 30 September 2022), J Catran, A Piaggi and K Sagaga (from 13 February to 30 March 2023), counsel for first defendant P Skelton KC, S G Wilson, C Pearce, J Hurren and H Rossie, counsel for second defendants (from 29 August to 30 September 2022) S Valor, S Standfast and P Righteous, representatives for second defendants (from 13 February to 30 March 2023), with C Pearce, counsel (on 30 March 2023) R Kirkness, counsel to assist the Court
Judgment:	13 July 2023

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] Gloriavale is a Christian community set in an isolated location on the West Coast of the South Island. The Community has limited contact with the outside world and deliberately so.[1] Life in the Community is said to be based strictly on the King James Version of the Bible.

[2] The Community has been in existence for around 53 years.[2] It is made up of approximately 82 family units and 600 people,[3] the majority of whom are children under the age of 18. Community membership has now reached at least third generation.

[3] Serenity Pilgrim, Anna Courage, Rose Standtrue, Crystal Loyal, Pearl Valor and Virginia Courage (the plaintiffs) were all born into the Gloriavale Christian Community. Many of their parents had also been born and raised in the Community. Each of the plaintiffs left the Community at various times between 2017 and 2021.

[4] Gloriavale is a patriarchal community with a strict hierarchy. The Overseeing Shepherd is the principal leader. He is described in Community documentation as a star held in the right hand of the Lord Jesus, the angel of the Church – a messenger. The Overseeing Shepherd is responsible to Christ and Christ alone. He is ordained and appointed by the previous leader who, in turn, ordains and appoints the next Overseeing Shepherd. The future Overseeing Shepherd remains subject to the discipline of the current Overseeing Shepherd during his lifetime. On the current

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1 As confirmed by a witness, and current resident of Gloriavale, Rapture Standtrue. She agreed with the proposition, when it was put to her, that it was fair to say that Gloriavale was specifically designed to facilitate separation from the outside world. The Overseeing Shepherd's evidence was to similar effect.

2 It was originally set up in Springbank in 1969.

3 The number of family units were referred to by the Overseeing Shepherd, Howard Temple. Samuel Valor (a Shepherd within the Community) referred to 90 family units; David Stedfast (another Shepherd within the Community) referred to 87. The precise number of family units and individuals is not material.

Overseeing Shepherd's death his authority over the new leader does not pass to anyone else.[4]

[5] While the Bible is the "complete and final source of and standard for every belief, doctrine and practice of the Christian life,"[5] the Bible is interpreted by the Community's leaders, ultimately (and authoritatively) by the Overseeing Shepherd. The understanding of what the Bible says has been summarised in a document called What We Believe. What We Believe has been amended from time to time (most recently in 2022[6]) to reflect changes in interpretation arrived at by the leaders over time. It is, as the Overseeing Shepherd described in evidence, a living document. The version of What We Believe which is of most relevance to these proceedings is the 2018 version, and it is the one I refer to. Earlier versions are not substantially different in respect of the relevant provisions.

[6] The Overseeing Shepherd is required to diligently seek and find the will of Christ concerning "every person and *every issue in the life of the Church*." This includes the practical life (which includes work) as I will come to. The Overseeing Shepherd has "full responsibility for *all* that happens in the Church".[7]

[7] The Overseeing Shepherd is assisted in his leadership role by a group of subordinate leaders. They are known collectively as the Shepherds and Servants. Each Shepherd and Servant is selected by the Overseeing Shepherd. The Overseeing Shepherd may choose to confer with them, and others, in his decision-making and handling of issues, "seeking always to bring the brethren in perfect unity to an understanding of how the principles of the scripture relate to the practical life within the Church."[8]

[8] All members of the Community are required to obey the leaders "in all things and submit themselves willingly to them as unto the Lord…"[9] The leaders and

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4 The Church at Gloriavale *What We Believe* (3rd ed, The Church at Gloriavale, Moana, 2018) [What We Believe (2018)] at [F.V(3)].
5 At [A(I)].
6 As explained by the Overseeing Shepherd.
7 What We Believe (2018) at [F.V] (emphasis added).
8 At [F.V(4)].
9 At [F.V(9)].

Community members are required to "give account" to the Overseeing Shepherd. The Overseeing Shepherd gives account to no-one but God. In this regard What We Believe records that:[10]

> 16. Since this principal leader … must give account to God for the state of every soul in the Church, and for all the affairs of the Church, then *he must be given the authority by everyone to oversee every aspect of the life of the Church as he sees fit*. He may make any decision on his own or involve as few or as many people as he chooses in making any decision. In it all, he must seek to bring every person in the Church to a perfect unity over every decision, and, as much as possible, to a good understanding of the issues involved.

[9] The Overseeing Shepherd and each of the Shepherds and Servants must be male.

[10] Neville Cooper was the first Overseeing Shepherd. He was one of the original founders of the Community, and later became known as Hopeful Christian. He was largely responsible for authoring the original version of What We Believe, to explain the nature of the Community and its core beliefs.[11] Hopeful Christian was the Overseeing Shepherd during much of the time that these proceedings are concerned with.

[11] Hopeful Christian was sentenced to prison for sex offences against young women within the Gloriavale Community in 1995.[12] He did not pursue an appeal against his convictions. He did pursue an appeal against the sentence that had been imposed. The Court of Appeal dismissed that appeal on grounds set out in a judgment of the Court.[13] It was apparent that this sequence of events, and the details of his offending, came as a surprise to various witnesses residing in Gloriavale. Hopeful Christian returned to his Overseeing Shepherd role after his release from prison and remained Overseeing Shepherd of the Community until his death in 2018.

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10 At [F.V(16)] (emphasis added).

11 Prepared for a trip to Hutterite communities in the USA. Faithful Pilgrim, a former leader within the Community and current resident, described it as codifying/recording the Community's beliefs. Samuel Valor described it as "a snapshot of how we see ourselves operating now and that's been changed over time."

12 Evidence relating to these events was admitted on a provisional basis, notwithstanding the second defendants' objection: *Pilgrim v Attorney-General* [2022] NZEmpC 145, [2022] ERNZ 622. I consider it to be relevant to an understanding of the background factual matrix of the Gloriavale Community and that, while prejudicial, it is appropriate to admit it in the Court's broad discretion, including having regard to the fact that the offending is a matter of public record.

13 *R v Christian* CA594/95, 16 May 1996.

[12] Howard Temple was chosen by Hopeful Christian as his successor. Howard Temple had been a Shepherd within the Community prior to Hopeful Christian's death. Howard Temple's time as Overseeing Shepherd spans some of the time relevant to the plaintiffs' claims. He and four Shepherds (three current and one former) are cited as second defendants. Two other men who were Shepherds during the relevant period have been removed as named defendants (one due to death, the other due to serious illness).

[13] During their time at Gloriavale the plaintiffs carried out work within the Community from a young age (around six), including on what were called duty days. Their involvement in work incrementally increased as they got older. They progressed to working full time on what are known as the Teams as soon as they left school, at around 15 years of age.

[14] The work undertaken on the Teams was structured around four core work types – cooking, cleaning, washing and food preparation. Each Team member was rostered to a particular area and worked under the day-to-day supervision of a Team leader. Up until 2021 there were around 10 females rostered to work on each Team. From this time the numbers dropped to around six to eight full time females. That was because there were insufficient numbers of young women in the Community to maintain the previous resourcing levels.[14] As previous counsel for the Gloriavale leadership acknowledged when putting a proposition to one of the plaintiffs' witnesses:

> … there is no dispute at all that you or the young girls at Gloriavale had to work hard, very, very hard on the Teams.

That was a fair acknowledgment, and one that was amply supported by the evidence.

[15] The buildings at Gloriavale include large hostel blocks. Individual family units reside in private rooms within the hostels, with shared living (including bathroom and small laundry facilities on each floor) and small kitchen spaces. Some distance away from the hostel blocks are very large communal buildings, which house (amongst other things) a commercial sized kitchen with industrial scale equipment, walk-in chillers

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[14] As explained by Sarah Standtrue, a current resident and senior woman within the Gloriavale Community.

and storage rooms; a large sewing room with rows of sewing machines, fabric presses and a large cutting table; a substantial laundry with multiple washing machines and driers, numerous ironing boards, irons and storage units for sorting laundry items; and a large, fully equipped, childcare centre.[15]

[16] Women on the Teams were rostered to work in the main buildings.

[17] The evidence disclosed that none of the plaintiffs were given a choice about whether they worked on the Teams or not. Broadly speaking, that decision had been assigned at birth, having been born female. Nor (as I will come to) did any of the plaintiffs (or their parents) exercise any real choice about which Team they worked on. Rather, the plaintiffs were assigned to a particular Team without any real consultation, and generally became aware of which Team they had been assigned to when they left the Community school, and saw their name written on a roster on a Community notice board in the main building.

[18] In a typical week in 2018, the female workforce in the kitchen produced more than 11,000 meals; the female workforce in the laundry washed at least 17,000 items.[16] The evidence clearly established that the work required to produce these outcomes was unrelenting, grinding, hard, and physically and psychologically demanding.

[19] The Teams were set up to help meet some of the needs of the Community – working in what was referred to as the "Women's Realm". Other needs of the Community were met by various alternative means, including work on dairy farms and manufacturing. The workforce for these endeavours was male. For convenience I will refer to this sphere of work within the Community as the "Men's Realm".

[20] Over the years the leaders have put in place a complex legal structure to support the communal way of living, primarily through a Charitable Trust and a Partnership (Christian Partners). As Samuel Valor (one of the current Shepherds and a named

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15 The facilities – both relating to the hostels and the communal buildings – were viewed by the Court during a site visit. The site visit enhanced the Court's understanding of evidence given in these proceedings.

16 See Gloriavale Christian Community "A Life in Common – The experience of the Gloriavale Christian Community" (2018) at 29, an explanatory booklet produced by the Community and which the Overseeing Shepherd accepted in evidence he would have approved.

second defendant) put it, while the legal structures have adapted and changed over time, the blueprint has remained the same: community of goods and a common purse.

[21] Gloriavale deals with what is known as "the outside world" through a number of commercial businesses. The financial structure for the Community is also complex and until recently was largely dealt with by Fervent Stedfast. Fervent Stedfast was the Community's financial controller, a Shepherd and an influential figure within Gloriavale during the time that is relevant to these proceedings. It is clear that he was intimately involved in the running of the Community and was in charge of office administration. It is equally clear that he had very strong views which translated into the way in which the Community operated more generally. He worked closely with Hopeful Christian and later Howard Temple.

[22] For present purposes it is sufficient to note that money was generated by both the Men's Realm (through the various businesses) and the Women's Realm (including through Working for Families payments from the government). Money from the Women's Realm was generally applied to meet food, clothing, medical and dental costs for Community members. Money from the Men's Realm was generally applied to operating the businesses (referred to as the "external economy") and asset accumulation (the relatively recent purchase of Lake Brunner Station for around $7m is an example[17]). A distinction was drawn between what counsel for Gloriavale referred to in closing as the "internal economy" (which I understood to be domestic work which was said to generate, and be done in exchange for, no income) and the "external economy" (which I understood to refer to activities which did).

[23] While the parties were at odds on a number of matters, which I will return to, it was common ground that Serenity, Anna, Rose, Crystal, Pearl and Virginia each worked on the Teams during their time at Gloriavale and worked very hard while doing so. It is evident that their experience of the work was broadly typical for women working on the Teams.

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[17] Noting that some of the money for this purchase appears to have been sourced from the Sharing Account, into which Working for Families payments from the government are generally transferred by individual mothers within Gloriavale on receipt.

[24] Each of the plaintiffs left the Community between 2017 and 2021. They raised concerns with the Labour Inspector about the working conditions at Gloriavale. The Labour Inspector undertook two investigations; one in 2017 (which was conducted on the papers)[18] and in 2020/2021 (which involved two site visits). Following the site visits, during which the Labour Inspector spoke to some Community members, a report was prepared.[19] The report noted that there was a significant discrepancy between the narratives of those who had left Gloriavale and those who remained. The Labour Inspector concluded that people who worked at Gloriavale were not employees. That led the Labour Inspector to find that there was no jurisdiction to pursue a claim for minimum worker entitlements on behalf of the plaintiffs, or any others working within Gloriavale.

[25] It was the Labour Inspector's conclusion which led to the filing of two sets of proceedings – one on behalf of a number of former male members of Gloriavale (known as the *Courage* proceedings)[20] and one on behalf of a number of former female members of Gloriavale (these proceedings, known as the *Pilgrim* proceedings).

[26] The plaintiffs are suing the Labour Inspectorate, through the Attorney-General, for breach of statutory duty. A declaration of employment status is also sought. It is the second issue – employment status – that this judgment deals with. The claim against the Labour Inspectorate will be dealt with separately.[21]

[27] It is fair to say that the Gloriavale leadership approached the case from the outset as an attack on their religious beliefs and communal way of living. It is worth emphasising that the Court is not concerned with the merits or otherwise of Gloriavale's chosen way of life or its religious underpinnings. The Court's role is confined to determining employment status and whether workers are able to access minimum entitlements and protections, not spiritual issues or matters of religious dogma. If employment status is established, and if a claim for relief is pursued, the

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18 Richard Lewis "Initial Inquiry Report – The Christian Church Community Trust (Gloriavale)" (2017) at 10.

19 Hannah Crampton and Richard Lewis "Investigation Report" (2021).

20 *Courage v Attorney-General* [2022] NZEmpC 77, (2022) 18 NZELR 746.

21 The Attorney-General appeared at these proceedings (though this aspect of the claim was not against him), and took no position on whether the plaintiffs were employees. Rather, he appeared reserving rights.

Court's role will be to assess whether the applicable minimum employment standards were met and, if not, what remedies, including lost remuneration and compensation, ought to be awarded in the plaintiffs' favour. At that stage of the proceedings the Court may also make recommendations concerning actions that should be taken to prevent similar problems recurring.[22] I pause to note that this recommendatory function may be of particular benefit in cases (such as this) which involve a unique framework within which work is undertaken.[23]

[28] Contrary to what I understood to be the lynchpin of the Gloriavale leadership's argument, resolving the plaintiffs' claims is not arrived at by considering whether a declaration of employment status would be incompatible with the Community's chosen way of life, or rights recognised under the New Zealand Bill of Rights Act 1990. Ascertaining the real nature of a relationship for the purposes of s 6 of the Employment Relations Act 2000 requires a contextual assessment of the reality of the relationship. The Community's way of life and religious tenets have contextual relevance, but do not answer the question that I am required to answer, namely whether each of the plaintiffs was an employee.

[29] By way of further general comment, it is important in carrying out the required analysis under s 6 to identify and, if appropriate, challenge long standing assumptions about what may or may not signify volunteer status and employment/non-employment status. Such assumptions include, for example, historical assumptions that ownership of a truck signals entrepreneurialism[24] and that workers enjoy the "freedom" that is said to come with independent contractor status,[25] but also that domestic labour historically performed by women does not constitute employment.[26]

[30] Finally, in opening submissions, Mr Skelton KC, then counsel for the Gloriavale leadership, submitted that if the Court was to find that the plaintiffs were

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22 Section 123(1)(ca).

23 And noting concerns raised by the Overseeing Shepherd in evidence that he had difficulty understanding how an employment relationship, if found, would operate.

24 See, for example Carolyn Sutherland "Judging the Employment Status of Workers: An Analysis of Commonsense Reasoning" (2022) 46 MULR 281 at 317.

25 At 300–302.

26 See Gulnara Shahinian *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences* UN Doc A/HRC/15/20 (18 June 2010) at [18]; *Humphreys v Humphreys* [2021] NZEmpC 217, [2021] ERNZ 1297.

employees it would be misunderstanding its role under s 6. That is because the Court's role is to recognise the real nature of the relationship, not what it thinks the relationship ought to be. I agree with Mr Skelton's summary of the Court's role and the core nature of the inquiry; I do not however agree with his submission that a finding of employment status would reflect a misapplication of the law, for reasons which will become apparent.

The plaintiffs

[31] Serenity Pilgrim was born into the Community in 2002. She started work at around seven to eight years of age helping in the dining room and then worked some afternoons, early mornings and some Sundays. She left school at 14 and began working fulltime on the Teams. Serenity left the Community with her family in 2018.

[32] Pearl Valor was born into the Community in 1990. She left school at 15 and worked fulltime on the Teams from that time. She became a Team Leader at 17. She left the Community with her husband and five children in November 2021.

[33] Rose Standtrue was born into the Community in 1999. She worked from around six years of age helping in the kitchen and laundry. In high school she started working part-time on the Teams. Rose left high school at around 15/16 years of age and worked fulltime on the Teams. Rose left the Community on her own in September 2021.

[34] Virginia Courage was born into the Community (at the time located in Springbank before it moved to its current location in Haupiri) in 1979. She worked fulltime on the Teams from the time she left school at 15. Virginia left the Community in October 2019 with her husband and nine of her children.

[35] Anna Courage was born into the Community in 2000. She worked with her mother (Virginia) in the kitchen from when she was about six. She carried out what was called work experience one day a week during her last year of school, left school at 15 and began working fulltime on the Teams from that time. Anna left the Community on her own in July 2018.

[36] Crystal Loyal was born into the Community in 1995. She worked in the kitchen from when she was about five; from around seven or eight years old she got up early and made toast for the Community breakfast; she worked in the kitchen or laundry after school on days when her mother was on duty. When she was 10-12 she started doing more early mornings, including looking after other people's children. She left school at 14 and started working fulltime on the Teams. Crystal left the Community in 2017 with her husband and two children.

The framework for analysis

[37] Section 6 defines employment status, enabling the Court to declare a worker to be an employee. Such status entitles a worker to access the suite of minimum entitlements contained within the Act and various other Acts, all of which are designed to guard against worker exploitation, having regard to the acknowledged vulnerability of workers and the inherent imbalance of power that has, since time immemorial, underlain labour relations. The suite of entitlements include the minimum rights to meal breaks, holidays, sick leave and minimum pay, the ability to join a union and to bargain collectively.[27] Section 6 is also the gateway that must be passed if the Labour Inspector is to have jurisdiction to exercise the broad suite of protective powers Parliament has conferred on them to safeguard, enforce and maintain conditions of employment, particularly for those who are vulnerable to exploitation.

[38] While the gateway created by s 6 is broad, Parliament has expressly excluded certain categories of workers from passing through it.[28] Those workers include volunteers. It follows that the Labour Inspector has no jurisdiction to seek to enforce minimum worker entitlements in respect of workers falling into this excluded category.

[39] The underlying purpose of s 6 and the statutory entitlements and protections it provides access to are relevant to assessing where the gateposts sit and, more generally, the way in which the provision is to be approached and applied. I explain this in more detail below.

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[27] *E Tu Inc v Rasier Operations BV* [2022] NZEmpC 192, (2022) 11 NZELC 79-155 [*Uber*] at [4].
[28] Sections 6(1)(c), 6(4) and 6(4A).

[40] The Employment Relations Act defines an "employee" as follows:

> **6 Meaning of employee**
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> (1) In this Act, unless the context otherwise requires, **employee**—
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> (a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and
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> (b) includes—
>
> (i) a homeworker; or
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> (ii) a person intending to work; but
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> (c) excludes a volunteer who—
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> (i) does not expect to be rewarded for work to be performed as a volunteer; and
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> (ii) receives no reward for work performed as a volunteer; and
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> …
>
> (2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.
>
> (3) For the purposes of subsection (2), the court or the Authority—
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> (a) must consider all relevant matters, including any matters that indicate the intention of the persons; and
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> (b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.
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> …
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> (5) The court may, on the application of a union, a Labour Inspector, or 1 or more other persons, by order declare whether the person or persons named in the application are—
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> (a) employees under this Act;
>
> (b) or employees or workers within the meaning of any of the Acts specified in section 223(1).
>
> (6) The court must not make an order under subsection (5) in relation to a person unless—
>
> …

(b) the other person who is alleged to be the employer of the person is a party to the application or has an opportunity to be heard on the application.

…

[41] The position adopted by the parties revealed an interpretative tension which can be summarised as follows. Section 6(1) requires the existence of a contract of service. Does that mean the Court must be satisfied that there was a common intention to create legal relations and to enter into an enforceable contract? (what I call the contract-centric approach to s 6). Alternatively, is the Court required to assess the real nature of the relationship having regard to a range of common law indicia (including any matters indicating the intention of the parties) to determine whether a contract of service is deemed to exist? (what I call the relationship-centric/purposive approach to s 6).

[42] The Supreme Court's judgment in *Bryson* is the leading case on s 6, decided almost 20 years ago.[29] The Supreme Court has not had the opportunity to revisit s 6 in the intervening period. The focus of the Court's inquiry was very much on the sort of factors that may be taken as indicating the existence of an employment relationship within a traditional working model which was commonplace at that time. I agree with counsel for the Attorney-General, Ms Catran, that the present case does not sit particularly easily with the common law indicia recognised in *Bryson* of control, integration and economic reality. However, while it is clear that these indicia were considered of particular relevance in that case, I read *Bryson* as supporting a flexible approach to s 6, designed to meet the underlying objectives of the legislation.[30]

[43] Counsel for the Attorney-General and counsel appointed to assist the Court referred to *Uber*, a recent judgment of this Court, as setting out a useful summary of the approach. There it was observed that: [31]

> [15] What is "real" in terms of the nature of a particular working relationship depends on the prism through which the arrangement is viewed. It is possible to adopt a strictly contractual approach to the task, seeking to identify the key characteristics of a commercial contract and, if they are

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29 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721, [2005] 1 ERNZ 372.

30 See also *LSG Sky Chefs New Zealand Ltd v Prasad* [2018] NZCA 256 at [23].

31 *Uber*, above n 27, (footnotes omitted; emphasis added). Note that the Court of Appeal has granted leave to appeal against this judgment: *Rasier Operations BV Ltd v E Tu Inc* [2023] NZCA 216.

> absent, to conclude that no contract of service exists. But such an approach misses the central point. The point is that the rights sought to be asserted by the plaintiffs are created by statute, not by contract. *As one academic has pointed out, if contractual consent is a requirement for an employment right, the right is lost. In New Zealand the point finds explicit legislative endorsement in s 238 of the Act*. It provides that:
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> > **238** No contracting out
> >
> > The provisions of this Act have effect despite any provision to the contrary in any contract or agreement.
>
> [16] In summary, differentiating between workers who are employed and those who are not is not susceptible to a bright line test. Returning to fundamentals is, in my view, particularly helpful when dealing with new and developing ways of working, in the context of the increased fragmentation of workplaces and the growth of atypical working arrangements. *Employment relations legislation calls for an interpretative approach which acknowledges and advances the underlying social purposes of the statute. The Employment Relations Act recognises and protects employment relationships and provides a gateway to the constellation-like suite of minimum standards legislation, via s 6. It is these features which determine the prism through which any particular relationship is to be assessed*.
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> [17] In a nutshell *the question to be asked and answered is whether s 6, construed purposively, was intended to apply to the relationship at issue when viewed realistically*.

[44] Drawing the threads together, determining whether a person is employed under a contract of service does not require the Court to first ascertain whether there was an intention to create a contractual relationship, or a contractual relationship in the nature of a contract of service. Rather it requires the Court to undertake a broad contextual inquiry to ascertain what the real nature of the relationship between the parties was. To do this the Court must have regard to "all relevant factors". The factors that will be relevant may well vary between cases, particularly in cases which do not fall squarely within the traditional mould. Party intention is a mandatory factor to weigh into the mix (as s 6(3)(a) makes clear), but it is not determinative and is to be objectively determined.[32] All of this underscores the key point that ascertaining the true nature of working relationships is not susceptible to conventional contractual analysis, and the task is not to be approached in that way, as recently observed in "The

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[32] One academic has recently expressed the view that it is necessary to recognise worker subordination and dependence as pre-contractual states of affairs that *explain* the contractual forms which working arrangements tend to take, and that the theorization of worker status as something derivative of the nature of the legal relationship brought into being by the parties is problematic, as it undermines the ability of labour law to perform its function, excluding many from its scope: Zoe Adams *The Legal Concept of Work* (Oxford, Oxford University Press, 2022) at 78.

Death of Contract in Determining Employment Status"[33] by reference to the approach adopted by the United Kingdom Supreme Court in *Uber BV v Aslam*.[34]

[45] The Gloriavale leadership submit that the plaintiffs' work was conducted on a wholly voluntary basis, and was an expression of religious commitment to live in a communal setting based on shared values, guided by the King James Version of the Bible. It was argued that they expected no reward and received no reward for their work and there was no intention to create legal relations such as required by s 6. A finding of employment status would, it was said, be incompatible with the real nature of the relationship between the plaintiffs and the Overseeing Shepherd and the other named Gloriavale defendants.[35]

[46] I approach this case on the following basis.

[47] Each of the plaintiffs undertook work (provided services) while working on the Teams at Gloriavale. That is not disputed. Whether the plaintiffs undertook work for reward is in dispute. That issue is relevant to the argument that they fell within the excluded category of volunteers, and thus unable to access the s 6(1) gateway to minimum entitlements and protections, and relevant to the Gloriavale leadership's alternative argument that they did not undertake their work for hire and reward under a contract of service.

[48] The volunteer exclusion in s 6(1)(c) contains two requirements that must both be met if it is to apply – the worker must have no expectation of reward for work performed as a volunteer and must receive no reward for work performed as a volunteer. It follows that if the plaintiffs expected to be rewarded for their work on the Teams or were rewarded for their work on the Teams, the volunteer exclusion does not apply to exclude them from the s 6 gateway. Even if they are not volunteers, it does not immediately follow that they were employees, although whether the plaintiffs were rewarded for their work is relevant to that issue also. As I have said, the existence

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33 Alan Bogg and Michael Ford 'The Death of Contract in Determining Employment Status' (2021) 137 LQR 392.

34 *Uber BV v Aslam* [2021] UKSC 5, [2021] All ER 209.

35 The volunteer status argument was not strongly pursued. Mr Pearce (who appeared as counsel to present closing submissions) accepted, correctly, that if the Court found that the plaintiffs were rewarded for their work, the volunteer status argument fell away.

of a contract of service is to be established by considering "all relevant factors" which point to the "real nature of the relationship". In this case, the context in which work was done within the Community is a factor which is relevant to the assessment; there are a number of others including features of direction and control. If a consideration of all relevant factors points to the real nature of the relationship being one of employment, a contract of service exists.

[49] Ms Catran helpfully drew my attention to recent analysis which supports the proposition that, while evidence of an intention to create legal relations can assist in determining whether a person is a volunteer or employee (for the purposes of the sort of inquiry required by s 6), clear evidence is needed where one party (generally the dominant party) asserts a joint intention to create a truly voluntary working relationship.[36]

[50] I am not sure, and do not need to decide, whether a "clear evidence" threshold appropriately applies, although the underlying point fits comfortably with the objectives of the Act, including to address the inherent imbalance of bargaining power in labour relations. Lord Clarke formulated a similar point in a somewhat different way in respect of the way the Court should view a written agreement with a worker in *Autoclenz Ltd v Belcher*:[37]

> The relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represents what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part.

[51] The same cautionary approach may usefully be employed where one party asserts that the nature of the working relationship is voluntary (in either the s 6(1)(c) or general sense of the word). In this regard it may be noted that Fervent Stedfast described women doing "domestic duties" as "volunteers" who did not get an income when talking to the Labour Inspector during their September 2020 visit to the Community.

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[36] John Duddington *The Church and Employment: A Comparative Analysis of the Legal Status of Clergy and Religious Workers* (Routledge, New York, 2023).

[37] *Autoclenz Ltd v Belcher* [2011] UKSC 41, [2011] 4 All ER 745 at [35].

[52] I accept that, in a case such as this, it is helpful to consider whether the work was done by a worker who genuinely chose to enter into a relationship of the sort described by the dominant party (in this case the Gloriavale leadership).[38] It is relevant to the Gloriavale leadership's voluntary status argument and, more generally, their argument that there was no contract of service. In this case what is required is an assessment of objective intention, informed by the inferences that can be drawn from relevant evidence. That evidence includes the fact that the plaintiffs did not complain about the work they were required to do at the time, appeared to do it willingly and did not expect to be paid money for doing it. Also relevant to the inferences that might reasonably be drawn from the evidence is the fact that each of the plaintiffs worked fulltime, for years on end, doing work assigned to them according to a roster. The necessary assessment requires a fuller appreciation of the facts, to which I now turn.

The facts

[53] As I have already observed, there was no debate that the plaintiffs undertook work while at Gloriavale. I have briefly summarised the nature of their work and when they did it above. However, a number of issues arose in respect of the evidence, and what might appropriately be taken from it, which need to be dealt with.

Differences in narrative

[54] Evidence about the hours and conditions of the work undertaken by women at Gloriavale differed, sometimes markedly, as between those who had left Gloriavale and those who remained. I observe that the divergence in narrative had been identified by the Labour Inspector in the 2021 report, who dealt with it in the following way:[39]

> The majority of people who live and work in Gloriavale advised that they were happy with their situation. They understood what they were agreeing to, they willingly signed the documents and did not believe they were employees.
>
> …
>
> When asked what they considered their employment status to be while at Gloriavale, many of the leaver interviewees described it as either employment or slavery. None of them thought their status was as a partner, self-employed

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38 See for example Sutherland, above n 24, at 302–306.
39 Crampton and Lewis, above n 19, at 5–6.

> contractor or volunteer due to the very low levels of personal control they had over their working lives. This appears to be more a reflection of the lifestyle within the community rather than a reflection of the tests set out in relevant legislation.

[55] Evidential conflicts about the hours and conditions of work may fall to be resolved if employment status is determined, and grievances are pursued, but do not need to be resolved in determining the primary (status) issue. However, I understood the Gloriavale leadership to submit that the differences were relevant to a broader assessment of the plaintiffs' evidence.

[56] It is apparent that for the plaintiffs their time at Gloriavale, and their experience working there, has left deep scars. While I accept that some of the evidence as to the conditions under which the plaintiffs worked was likely coloured by their negative experience and the passage of time, I do not consider that it reflects on the credibility of each of the plaintiffs more generally. I was left with no doubt that they worked extremely hard, and under punishing conditions, during their time on the Teams. And it was clear that other witnesses, who currently reside at Gloriavale, also worked hard on the Teams during the relevant time. A key distinction is that they evidently experienced their work, and life in the Community, in a more positive light.[40] I do not doubt that this too coloured their recollection of events as presented in evidence in Court.

The nature of the plaintiffs' work

[57] Initially the Gloriavale leadership sought to categorise the work undertaken by the plaintiffs as domestic work, appearing to draw a distinction between work in the Women's Realm (supporting family life, so said not to be indicative of an employment relationship) and work in the Men's Realm in the Gloriavale (commercial) businesses. By the close of the case I understood the point to have lost focus, but I deal with it for completeness and because it is a point that appears to be emphasised in one of the Community's foundational documents, What We Believe. There it is stated that "It is not the women's place to be the 'breadwinners' or income earners, but they should

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[40] Dove Stedfast's evidence as to how she viewed her work on the Teams is a useful comparator.

give themselves to caring for people within the context of the Christian home and the close-knit Christian Community."[41]

[58] There is, as s 6 makes clear, no statutory carve out for domestic work. In contrast, Parliament has carved out a limited number of express exceptions – work undertaken by real estate agents, sharemilkers and film industry workers.[42] In any event it seems to me that seeking to draw a distinction between domestic and non-domestic work as an aid to determining employment status is fundamentally flawed and runs the risk of engraining outmoded notions relating to so-called women's work in the law, historically conceived of as primarily domestic in nature and of reduced (sometimes no) economic value. In this regard I agree with a point made by Mr Kirkness, counsel appointed to assist the Court, that labels (such as "commercial" and "domestic") are a dangerous substitute for analysis, and that any attempt to adopt them runs the risk of obfuscating the reality of the relationship.[43]

[59] The point can also be made in the following, alternative, way. It could not seriously be contended that a chef or a cleaner in a hostel could not, by reason of the "domestic" nature of their duties (cooking and cleaning), be an employee. It might seriously be contended that a chef cooking dinner for their family in the family home, or a cleaner cleaning the bathroom of the apartment they live in with their family, is not an employee when undertaking such work. The basic nature of the work remains the same; the context in which it is undertaken differs. I regard the context in which work is undertaken as the pivotal difference, which is of relevance in this case.

[60] Nor do I see it as particularly helpful to differentiate work which generates an externally sourced income and work that does not in determining whether someone is in an employment relationship. By way of illustration, a person may be an employee of a commercial enterprise (such as Fletcher Building); a government department

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41 What We Believe (2018) at [F.IX(3)].

42 Employment Relations Act 2000, ss 6(4) and 6(4A). See also Real Estate Agents Act 2008; Sharemilking Agreements Act 1937; and Screen Industry Workers Act 2022.

43 Citing the point made in *Courage*, above n 20, at [159], and the related point about society's perceptions about the value of work changing of time, and the need for the s 6 analysis to keep pace, made in *Humphreys v Humphreys*, above n 26, at [68]. The point was echoed by counsel for the Attorney-General in closing submissions. Note that *Humphreys* is subject to an appeal in the Court of Appeal: *Director-General of Health v Humphreys* [2022] NZCA 92.

(administering public services); a not-for-profit organisation; a church; a small family business; or a community events centre. The fact that Fletcher Building operates a for-profit business model; a department delivers on policy objectives set by government (on a not-for-profit basis); a church provides spiritual (not-for-profit) support to its parishioners; a family business engages family members to do the work required to generate an income; and a community events centre runs (not-for-profit) activities to build community engagement, is largely beside the point.

[61] In any event, the evidence in this case did not support a clear differentiation between the (internal economy) work of the plaintiffs on the Teams and in the (external economy) commercial side of Gloriavale's operations. For example, the plaintiffs undertook some commercial workplace cleaning, commercial work-related laundering and fed the men who worked in Gloriavale's external economy.[44] More broadly, and as the evidence also disclosed, the work undertaken by women and men at Gloriavale (in both the Women's and Men's Realm) was essential to maintaining the Gloriavale Community operating model.[45]

[62] In summary, I do not regard the fact that the type of work the plaintiffs did on the Teams was of a so-called domestic nature materially assists in determining whether they fell within the excluded volunteer category for the purposes of s 6 or whether they carried out work for hire or reward under a contract of service.

The inter-relationships at Gloriavale

[63] Is the fact that many people are related to each other within Gloriavale relevant to answering either question? The point arises because a number of witnesses for Gloriavale emphasised that they felt as though they were part of one big family and

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44 See too the role of Howard Temple as being the health and safety officer for the kitchen and laundry.

45 See, for example, Zion Pilgrim's evidence as to the way in which the Community works together: "every part of life from the work to the businesses to the finances and everything is just – is just fitting around, it's the flesh that's put on the skeleton of that structure." Virginia Courage's evidence was to similar effect. See too Sharon Ready's evidence – "The single girls are a very, very important part of the sharing life concept and the sharing life concept I likened it to a machine…If there's some clog in there that's broken or something, you know, it won't flow and so the whole concept of that just keeps going around and around". The Overseeing Shepherd accepted the vital nature of the women's work to the Community's operating model.

their work on the Teams was directed at that end.[46] This was a matter which had resonated with the Labour Inspector as pointing away from an employment relationship in the first investigation.[47]

[64] While I accept that some of the witnesses subjectively felt this way, I preferred the Overseeing Shepherd's evidence of the reality of the situation – namely that there were around 82 discrete family units at Gloriavale. In addition, it was telling that he had no trouble drawing a distinction between family and Community life, and (more particularly) the work a woman would do in the hostel supporting her family within the immediate family environment (so analogous to the chef or cleaner at home making meals or cleaning), and the work a woman would be rostered to go and do on the Teams in the Community buildings. Nor did he have any difficulty in accepting that the work done on the Teams, if done outside Gloriavale, would normally be paid work.

[65] The reality of the situation was also highlighted in other evidence of both former and current residents. In this regard Zion Pilgrim, a former resident, leader within the Community and a director of some of the Gloriavale businesses, drew the following distinction:

> Q. And you had an exchange with Mr Skelton about the idea that you … repeated … about this commercial label that you put … I think you agreed with Mr Skelton that what you were conveying was a sense of scale and work load as a distinction between sort of domestic work in the home and what you recall girls doing in the Community, that was your evidence to Mr Skelton wasn't it?
>
> A. Yes that's correct. And a further clarification on that is that those operations were in support of the commercial business operations so things like the laundry, the dirty overalls from the milking shed, from the dairy farms were washed in the laundry by those girls. Same with the clothing – protective clothing from the rendering plant, it was washed in the laundry by those girls in the same rotation, in the same team, in the same cycle as the domestic washing from the households and so as well as a reference to scale on a commercial scale just due to sheer volume, it was also in support for the business.

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46 See, for example, evidence given by Priscilla Stedfast, Treasure Stedfast, Christiana Standtrue and Purity Valor.

47 Lewis, above n 18.

[66] And Sarah Standtrue, a current resident and Team Leader, explained the difference between jobs ("minimal, like very small") done for the family within the hostel and jobs for the Community (work done by Teams outside of the hostel environment), as being both in terms of scale and structure.

[67] Elizabeth Witehira, who is the director of Boarding and Residential Facilities in a school hostel and who was shown photographs of the facilities at Gloriavale in which the plaintiffs worked, described them as aligning with the commercial facilities used by paid staff at the hostel she manages. That evidence was reinforced by other evidence about the size and scale of the equipment in the kitchen, including a re-purposed concrete mixer for making butter for the Community,[48] the volume of food to be processed through the kitchen ("the food comes in on big pallets … it is not always an easy job, it can be tiring and strenuous…"),[49] and information obtained by the Court on the site visit.

[68] I have no difficulty concluding that, when working on the Teams, the plaintiffs were not carrying out work for their individual families or some notional big family.[50]

Why did the plaintiffs work?

[69] Much of the evidence, which was extensive and called by both parties, centred on why the plaintiffs undertook their work on the Teams and the inferences that could be drawn from their apparent willingness to do so. On the one hand it was said (by the Gloriavale leadership) that the evidence underscored the voluntary nature of the plaintiffs' work; on the other hand it was said (by the plaintiffs) that the evidence demonstrated that there was nothing voluntary about it – the plaintiffs had no choice but to do the work they were assigned. A Court appointed expert, Dr Norris, gave evidence directed to the issue of choice, which was broadly helpful in assessing the inferences that might appropriately be drawn in the particular circumstances of this case, and which I return to below. Evidence as to why the plaintiffs undertook the

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48 The process of making the butter, for example, was described by a current resident (Joanna Courage) as including lifting 20 litre buckets of cream into it, starting some mornings at 5.30 or 6am.

49 Per Lovely Stedfast.

50 See too What We Believe (2018), which refers to the family unit and what is meant by that at [F.VIII].

work they did, and what they gained from doing so, was also relevant to the issue of reward – did the plaintiffs undertake their work in the expectation of a reward and were they rewarded for it?

[70] To answer the "why" question, it is necessary to understand the way in which the Gloriavale Community operates. Extensive evidence was called by both the Gloriavale leadership and the plaintiffs, traversing many aspects of day-to-day life, religious belief, and the operational and other structures in place to support a Community of around 600 people.[51] Some of the evidence was of marginal, if any, relevance and I have not found it necessary to have regard to it.[52] I was, however, very much assisted by the extensive evidence given by various leaders within the Community, most particularly the Overseeing Shepherd.

[71] I accept that the Gloriavale leadership conceptualises work done within the Community as being for the benefit of the Community rather than the individual, including individual leaders. That is consistent with the founding principles described by Samuel Valor (community of goods and all things held in common), and other evidence before the Court. I accept too that this goes some way to explaining why the plaintiffs undertook work. It cannot, however, be assumed that, because this is so, the plaintiffs were volunteers and were not employees. I have already noted the dangers of assumptions in the area of labour relations.

[72] The Gloriavale Community has strict rules and practices. The strict rules and practices apply to all aspects of life, including what is called the "practical life". The practical life includes work, as various witnesses accepted.

[73] The strict rules and practices emanate from the Bible but are interpreted, and enforced, by the male leaders. The Overseeing Shepherd is the final arbiter of any interpretative issue, or dispute about the application of the Bible's teachings, in any

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51 The plaintiffs called 19 witnesses; the Gloriavale leadership called 26 witnesses.

52 Numerous objections were raised in respect of the evidence, both pre-trial and during the course of the trial. I have not found it necessary to have regard to a significant amount of evidence in reaching my findings in this case. Where I have had regard to challenged evidence I have explained why I consider it relevant and have decided to admit it.

particular case. Sarah Standtrue encapsulated the position in evidence: "… in submitting to the leaders we are submitting to God."

[74] As I have said, the rules Community members are expected to live by are set out in a foundational document, What We Believe. Another fundamental document is what is known as the Declaration of Commitment. The Commitment is generally taken when a person becomes an adult. It is a standard form document which is signed by the individual, signifying a life-long commitment to Jesus Christ and to the Community. Pearl, Rose, Virginia and Crystal each signed the Commitment.

[75] What We Believe summarises what the leaders consider the Bible teaches, and how this teaching is to be applied in daily religious, and practical, life. Community members do not have input into the contents of the document other than through the leaders, as Faithful Pilgrim (one of the named second defendants, a current resident and a former leader within the Community) confirmed.

[76] The core relationships within the Community are set out in What We Believe and have remained materially unchanged over time, despite several revisions. Each version of What We Believe, including those which applied during the relevant time, record that Community members agree to obey the leaders of the Church in all matters concerning the member's faith and their involvement in the practical life of the Community, including work.

[77] What We Believe must be read as a whole, but contains a number of provisions which are of relevance to the context in which the plaintiffs worked, and the way in which work (who does it, how, why and what) is conceptualized by the Gloriavale leadership, including the following:

> **IX. MAKING PROVISION**
>
> 1…. The local Church will decide how many hours its men should devote each week to making provision.
>
> Those who do not work hard at what they are capable of doing should not be given anything to eat. No lazy people will be accepted in the Church.
>
> …

> 3. It is not the women's place to be the 'breadwinners' or income earners, but they should give themselves to caring for people within the context of the Christian home…
>
> …
>
> 4. Those Christians who have been given the place of master in the work situation should diligently organize, instruct, supervise and lead the other men in work…
>
> 5. Those Christians who work under masters should obey them in all things, whether they be Christians or not. They must not answer them back nor purloin any goods. If their Masters at work are Christians they must not despise them but should rather do them service because they are faithful and beloved brethren.
>
> 6. No Christian may ever join any trade union or in any way exert pressure upon his master or employer to grant him higher wages or better conditions. Rather, he must discuss these things with respect as to one who has the right to say 'yes' or 'no' to him.
>
> …
>
> 10. Whenever a Christian earns or acquires money or possessions, he must not say or consider that these are his own, nor that he or his family have any special right to obtain benefit from them. Rather, as all things are held in common within the Church so that every person may be cared for equally, he should lay down all such money and possessions before the leaders of the Church who will ensure that distribution is made within the Church to every man according as he has need, and also as occasion arises, to those in need outside the Church.
>
> 11. Under the direction of the leaders of the Church, all men of working age in the Church shall join themselves together into whatever form of business organisation is most suitable in their day and situation to allow them to work together in a spirit of harmony, unity and efficiency to provide equally for the needs of every member of the Christian Church and Community.

[78] Before proceeding further, it is necessary to deal with a common thread of evidence given by a number of witnesses for the Gloriavale leadership, namely that What We Believe is considered largely irrelevant in their lives. I was not drawn to this aspect of the evidence. It significantly downplayed the importance of What We Believe and was at odds with how the Overseeing Shepherd himself described the role of the document within the Community when questioned about it.[53] He confirmed that What We Believe is a summary of what the leaders understand scripture to require

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[53] Notably in answer to questions from Mr Kirkness, discussing What We Believe, including the hierarchy of documentation within the Community (What We Believe and the Commitment sitting below the Bible).

Christian life to be, noting that the leaders' understanding can change over time. Nor was the evidence about relevance consistent with the fact that What We Believe has continued to be amended by the male leaders over the years, most recently in 2022 and before that in 2018.

[79] Evidence about the restricted role of What We Believe within the Community also stood in contrast to the cross-references to What We Believe in various other important Community documents, including the Commitment (incorporated in What We Believe in boilerplate form, and not varied or amended before it is signed by an individual) and legal documents, namely the Christian Church Community Trust deeds and the Christian Partners Partnership agreements. Each of these documents acknowledges, and expressly incorporates by way of reference, the rules and practices contained within What We Believe "as amended from time to time".

[80] In summary, it is clear that What We Believe is of central relevance to life (religious and practical, including work) within the Community, and is intended to be so, and I do not accept the evidence that suggested otherwise. And while some provisions in What We Believe have recently changed, it is the version in place during the time the plaintiffs worked on the Teams which is of relevance in these proceedings (most particularly the 2018 version).

[81] Also relevant, in any event, is the acceptance in evidence (including by various current leaders) that any changes to the text of What We Believe take time to translate into changes in attitude and behaviour within the Community. The point is most graphically made by a statement in the 2018 version of What We Believe that departure from the Community puts the person's soul in peril.[54] It is evident that Fervent Stedfast interpretated this as meaning that if anyone left, or broke their Commitment to the Church, they would go to hell. He taught this within the Community during the relevant time, a fact accepted by the Overseeing Shepherd in evidence. And it is particularly notable that the threat of eternal damnation was referred to by a number of the plaintiffs as a significant factor in their "choosing" to remain in the Community,

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[54] At [D(5)].

and continuing to abide by the Community's way of life (including as to work) rather than exercising a "choice" (as the Gloriavale leadership put it) to leave.[55]

[82] Virginia Courage summarised the position as follows:

> Q. [David Stedfast] says: "The reason for this is it's a free choice to live at Gloriavale." Do you want to make a comment on that?
>
> A. I wouldn't consider it a free choice. It's a decision that you have to make and you make the decision with the options that are available to you and the options as you understand it are, if I sign the Commitment, I can now be here with my family. I will also go to heaven, that is something that is taught. If I don't sign the Commitment, I won't be in Gloriavale and I will not have access to my family, my friends, everything that I have known in my life, the people that are important to me. I wouldn't call it a choice. *I would call it a risk assessment.* I would call it a decision that you come to and you say, okay, this is going to be my life because I'm going to get my family, I'm going to get my friends, I'm going to be involved with the people that mean something to me, I'm going to be able to live the life that I'm familiar with.

[83] The Overseeing Shepherd accepted that, while the reference to imperilling the soul has been amended in the most recent version of What We Believe, some members of the Community still hold to the view espoused by Fervent Stedfast. He fairly accepted that the threat to a person's soul is an "incredible" one. And while the reference to salvation was said to have recently been amended in the 2022 version of What We Believe, that version was not before the Court and is not, in any event, relevant to these proceedings. He explained the position as follows:

> Q. [Rose Standtrue's] evidence was that she understood if she left the community her salvation was at risk colloquially if she left she could go to hell. That's what she took out of the teachings.
>
> A. OK.
>
> Q. Do you accept that all the children growing up are actually taught that different words, different language, but they're taught the concept that their afterlife depended on staying in the community?
>
> A. That could have easily been taken out of what was said easily yes.

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[55] See, for example, Pearl Valor's evidence: "Q – at age 20 agreed to live that communal life, you re-committed in 2019 and then in 2021 you have chosen as you're quite entitled to, to go and live the separate individual life with the benefits you see of that. And that's just a choice you make isn't it? A – Under dire circumstances." And Rose Standtrue's evidence in relation to signing her Commitment: "[the leaders] wanted me to realise that once I signed it I could never leave, I could never have my own opinion or disobey the leaders because I would do that to the peril of my own soul, like in other words I would be going to hell if I did anything against what was written in the Commitment."

Q. But it's fair enough to say they could take that out of the teachings?

A. Yes.

[84] I conclude that What We Believe, and the teachings within it, including as to work, were relevant to the time periods at issue in this case, and that they provide useful context to understanding the answer to the "why" question.

[85] Also relevant to the why question, and the context in which work was carried out by each of the plaintiffs, was the fact that they were born into the Community and imbued from birth with well accepted norms as to their place in the Community and the work they would be expected to do as they grew up.[56]

[86] In this regard the plaintiffs knew from an early age that they would work on the Teams, and their early life as girls was primed to that end.[57] The point is, as the Overseeing Shepherd accepted, that all children are prepared for the practical life of work within the Community. He also accepted in cross-examination that all of the plaintiffs were trained for the practical life, and for them that meant work on the Teams. This was reinforced by Temperance Hopeful, a senior woman and current resident within the Community:

Q. But you only educated [the girls in the Community] to the extent necessary for their role in the community is that correct?

A. Oh, yes, well we educated them so that they would, yes, that would be true.

[87] The Overseeing Shepherd went further, accepting that children are educated so that they are not equipped for the outside world, and that part of the leadership strategy is to ensure that children are kept separate from the outside world in order to keep them within the Community. The Overseeing Shepherd also explained the desirability

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56 Noting that Virginia Courage was born at the Springbank Community which later moved to the current location of the Gloriavale Community. The Overseeing Shepherd accepted in cross-examination that the parents were equally educated into the way of the Community.

57 See, for example, What We Believe (2018) at [F.XXI(1)] which provides that it is the general responsibility of the leader to ensure that children "…are being prepared in every necessary way to do everything they will be required to do in the Christian life." Evidence was given that there has been a shift to the Overseeing Shepherd ensuring that parents undertake this role, although Rachel Stedfast accepted that change will take time because "everything is so interconnected."

of keeping the broader congregation away from the outside world, a concept referred to as "Separation" within What We Believe.[58]

[88] The evidence disclosed that each of the plaintiffs began work on the Teams when they were told to do so, they did the work they were assigned, they did the work in the way they were directed to do it and they did it without complaint. Their names were put on a roster and they showed up for work each day for an extended period of time (years) in accordance with the roster. They were expected to show up for work and there were well understood consequences if they failed to do so, as I will come to. More generally, each had been brought up to understand that this was how their lives would unfold, and that they were to do as the male leadership required. Hannah Harrison, a witness for the plaintiffs, described it in the following way:

> A. … I never questioned whether I'd stay in school another year, my life was set out from start to finish and each part of your life is just this series of steps to the next part of your life and for me at the time that [the Teams] was just the next step.
>
> …
>
> Q. How did you know what the steps in your life were?
>
> A. 'Cos they were the same for everyone. You go to preschool, you go to school, you go to high school, you do the transition year, you leave school, go into the workforce, sign your commitment, get married, have kids, it's just what I was taught from a young age was just that is what life was.
>
> …
>
> A. I think it was both formally and informally taught. Formally taught in the Sunday night meetings and the Saturday night meetings at the meal tables but just informally taught in the way that everyone lives out their life within Gloriavale in that order.

[89] The Overseeing Shepherd's evidence was very clear on the issue of who decided what in terms of the work a young woman would do:

> Q. But that's not [the woman's] choice, that's what you're told to go by someone who's in charge of that area?
>
> A. Yes that would be right.

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[58] What We Believe (2018) at [F.I].

Q. It's not a situation where a young woman can go to the sewing, decide that actually on that day she'd prefer to be doing cooking and just walked down and did cooking instead. That would be a decision made for her by the person who's responsible for allocating work?

A. I wouldn't say she can't do it, she can ask.

Q. Right, but that's a different thing. In terms of choice you can choose to do something without asking or you can ask someone and they can give you an answer?

A. Yes.

Q. And it's the latter situation that applies here?

A. Yeah, okay.

Q. I'm asking you is that the case, you're in charge of this community, is that what happens?

A. That is the case, yes.

He went on to confirm that the plaintiffs could have challenged their allotted place in respect of work but if the challenge was repeated they would have to leave the Community.

[90] Virginia Courage worked on the Teams for 20 years before she left the Community with her family. She said that:

> As a female born into Gloriavale I had no choice, it was simply what was ingrained into our upbringing and we could not disagree.

[91] Crystal Loyal put it this way:[59]

> … it's just what we did, just from a young age, that's what you did, you worked and there wasn't a choice. It wasn't, yeah, you just knew that's – you had to be here at this time in the morning and I can remember so clearly one night just sitting on the edge of my bed. I was pregnant with my second child and just crying. I was so tired and I – but I knew I had to get up the next morning at five I think it was and I can remember just so much not wanting to do it, like I just couldn't. *I was so tired but I did it because I had to. I was on the roster the next morning. Someone would come and wake me up. Someone, you know, I would – I had to. It wasn't a choice. It was – that's what I had to do.*

[59] Emphasis added.

[92] Rebekah Kempf (a former resident) explained the situation in cross-examination directed at her evidence-in-chief that: "You could not refuse to do work. If you did you would be confronted by a leader."[60]

> Q. … I suggest to you that it would've been your parent or the female supervisor in your teams that would have spoken to you about any refusal to work not the shepherds and servants, would that be right?
>
> A. Yes but if you then still didn't want to work the leaders would have approached you.

[93] Rose Standtrue neatly summarised the position in oral evidence:[61]

> Q. … you say 'it is understood and expected that all single girls would work full-time on the Teams roster'. What do you mean by that it was understood that all girls would work on the Teams roster?
>
> A. So growing up, you know, that's what will happen as soon as you leave school you'll be sent to work on a team and that's just what we're expecting was going to happen.
>
> Q. And when you say 'understood and expected' is that just a compound way of referring to what you just told me or does the expectation come from somewhere else?
>
> A. You just grow up knowing that that's what will happen when you leave school. That's what's expected of you by the leaders, by your parents, by everyone that you will be going and working on Teams.

[94] The pre-determined position of girls/women in respect of the work they were expected to do within the Community (the expectation being firmly set by the Overseeing Shepherd and the leadership group of subordinate Shepherds and trickled down from there) was echoed by the evidence of current residents. In this regard Rapture Standtrue, a current resident, described the concept of "choice" to work on the Teams in the following way:

> Q. – do you consider that to have made a specific choice that you made to work on the teams as opposed to working somewhere else or not working at all? Was that a choice you made?

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60 The same point was echoed in Trudy Christian's evidence, who observed that the value of working was part of the Community culture and was: "taught from top down: leaders and management, team leaders, parents. We had no choice but do as we were told."

61 See also Anna Courage: "I didn't choose what I got to wear each day. I didn't even choose what job I wanted to do." Virginia Courage: "The expectation is that you're available all the time. Any time the Shepherds say you're needed for something, you didn't have a choice to say, 'Well actually I'm sorry…' You would feel pressured to go to work or find someone to swap with you."

A. It was a choice that I made to do it when it was put to me. I made the choice that I was happy to it it but it wasn't – it didn't happen as are you happy to go and work on the Teams? It was what I was expecting I would do and I did it because I was looking forward to it.

Q. How was it put to you working on the teams?

A. The ladies that organised things – I was already on a team.

…

A. So automatically when I left school I was just on my team more so it wasn't this definite milestone or decision time, it was just right now I'm finished with school and I can be with my team more. So I can't say that I consciously said yes or no. It was part of our circle of life where things move in a direction.

Q. So you knew that you were expected to work more hours on the team that you were already working on when you transitioned from high school to post-high school?

A. Yes.

Q. And it is fair, if I've understood your evidence correctly, to see that process from your perspective, is it fair to see that as part of the choice you're describing in [16] of your brief to do whatever was asked of you willingly?

A. Yes.

Q. Thank you. Did you understand yourself at any point in time where you were asked to do something to have the option of saying that you wanted to do something else instead?

A. I never really thought about it.

Q. And that was because you knew that you'd already chosen to do whatever you were asked to do willingly?

A. Yes. I'd already made that decision.

[95] Dr Norris provided an opinion on the behaviours that might be expected from a person born and raised in what she described as a high cost Community with the characteristics of Gloriavale. I do not discount the possibility (which Dr Norris accepted) that some may have been in a position to substantively exercise choice in Gloriavale, including to do the work that they did. I see adults who have willingly decided to join the Community after experiencing the outside world – the current and previous Overseeing Shepherds are two examples – as being more likely to fall into

that category,[62] and more likely to satisfy the Court that the relationship, insofar as work was concerned, was as described (voluntary).

[96] The line becomes much murkier to draw where a woman, such as each of the plaintiffs, has been born and raised in the Community; kept largely separate from the outside world; and has been trained in strict norms. Dr Norris described this as the "million dollar question". As she observed:

> Q. …How can we tell when these women are exercising agency and a deliberate choice to stay in those religions or how can we tell when they're just subject to undue influence?
>
> A. I guess that's the million dollar question. When it comes back to what I was talking about earlier that there will be some people who – some women who are happy with that situation, they don't want to challenge it, that's the place of society, it's the only thing they've ever known. I think that's, particularly those who have chosen to enter a group, that's a deliberate choice in itself. So those in a first generation – sorry, former, someone who forms the group or choices to enter the group and there is literature around that, it's harder to answer for those who are born into the group or second, third et cetera generation from there because they don't have all the other options that they've been able to consider and weigh up against their circumstances. They're not there for the person who chose to enter the group. They're different. This is the reality. And the same as you cannot traverse all the literature in the world with regards to informed choice. You also cannot sit there and say if we work on a presumption of competence that people choosing to stay, women choosing to be there, they're happy with that, they don't want to challenge that, that that is not a choice, it is a choice. The challenge is more for those who don't know the other choices are there or cannot feel that they can freely make a choice for some of those coercive aspects of potential coercion that I've outlined in my evidence.
>
> Q. …in the world view of these women, some of these women, it is correct to deny the self and to do things you don't want to do for the benefit of the wider community. How do we know when this is the exercise of agency by that woman or where it's the result of undue influence or coercive control?
>
> A. And that's the balance in terms of how much does the nature of the community, the person, is in, effect their ability to make a different decision or express a different decision. I've talked about some of the factors that increase those challenges for women in my evidence. And that's the difficult situation that if you've got somebody who says they're happy in their role who is to say that is incorrect. The issue comes about in terms of where does that influence sit if you're in a male hierarchy that you cannot express something if you would never – cover never even

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[62] Howard Temple gave evidence that he joined the Community at Springbank when he was 30 years old. His wife joined some years later.

consider, so could not freely choose to do something differently because it's just been told to you that you've engrained in you from childhood that that is not your role. Where does that line sit with undue influence if you're told that this is – there's a physical punishment element or a psychological or whatever it might be, that means that your ability to say yes I'm going to do that, where does that cost become too high when you're weighing that against your own circumstances. And that's the challenge any individual will have.

Q. Am I reflecting back correctly that we can assess the sphere of choice or the degree of choice by looking at the strength of the control factors impacting on that person?

A. It comes down to that comment I made around the perception of the choices available, are they freely available or is it actually there is no – there is no choice because there is no option for whatever reason or factors exist to reduce that option.

[97] I understood the Overseeing Shepherd to accept that his choice (to enter into the Community as an adult having experienced the outside world, and to remain, live and work there) was different to the choice (to stay and work or leave) confronting young people born into the Community. He went on to say that:

A. … they haven't experienced life outside and now the choice was to go out there or to stay here, well it can be – they're making a choice without [knowledge], without experience.

Q. And would you agree that there is a particular cost to a person of leaving the only life they've lived, that is a big step for any person to make?

A. That is right.

Q. So if you've lived in a very unique environment and I think it's fair to call Gloriavale a unique environment, to move out of that if it's the only thing you've ever known, that is a big step for a young person to make?

A. Yes that would be correct.

Q. And not every young person is going to have the strength to be able to make that choice?

A. That would be right, yes.

[98] The learned authors of "Consent in Contracts of Employment" explain the concept of free choice in respect of labour relations in a way which largely echoes Dr Norris's opinion:[63]

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63 Maayan Niezna and Guy Davidov "Consent in Contracts of Employment" (2023) MLR 1 at 4.

> Rather than describing the situation in dichotomous terms, it is perhaps accurate to say that there is a spectrum of possibilities between completely free choice and complete coercion, with employment often being closer to coercion compared to many other (notably commercial) contracts.

And:[64]

> … the question of consent [in the labour law context] is not a simple yes or no question, but one of degree and context; the continuum of consent extends between free enthusiastic choice and duress. The choices of wage-labourers, whether they work in fields, factories or offices, can be found along this continuum. In some cases, the coercion is blatant and severe. Workers might be forced to work by violence, confinement to the workplace, threats, debt bondage, or the threat of loss of status resulting in detention and deportation. These extreme situations may be characterised as forced labour, or even servitude or slavery. However, coercion in labour relations is limited to the most extreme situations or to the use of illegal means. "Forced labour" and "free labour" are not binary options, but two ends of a continuum. Most labour relations exist at some point on this continuum, subject to some degree of coercion or unfreedom, but also reflecting some choice.

[99] I have reached the conclusion, based on the evidence before the Court, that the plaintiffs did their work on the Teams, which admittedly benefitted the Community, because that is what they were told to do; what each of them had been trained to accept from birth; and the consequences of not doing what was expected (namely falling "out of unity") were dire and well known – exclusion from the Community, from all that was familiar, from family and friends, and into a world they know little about, were ill equipped to navigate and had been taught to fear.

[100] The limited scope of the choice – to work or not to work, to stay or to go – which was in reality available to young women in the plaintiffs' position, was underscored by material placed before the Court by the Gloriavale leadership. It identified people who had left Gloriavale between the ages of 13 and 20, differentiating them by gender and whether they had left "of their own choice" or with their family. It is notable that three boys left at 15 years of age in comparison to one girl; eight boys left at 16 years of age in comparison to two girls; six boys left at 17 years of age in comparison to one girl. The disparity is striking and reinforced evidence given by the plaintiffs that they essentially felt trapped for a period of time before they left the Community. Howard Temple was asked about this material, and

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64 At 8–9 (footnotes omitted).

the under-representation of young women in the leaver statistics for young people. He fairly acknowledged the sort of impediments that they may face in considering leaving the Community, and its way of life, and noted that he is committed to making a positive change.

[101] The situation that the plaintiffs found themselves in has some parallels with the sort of cultural dynamics not infrequently seen by this Court in migrant worker cases, where the employer (sometimes a migrant worker themselves) exploits (wittingly or otherwise) the willingness of their workers to work in a way that is perhaps accepted elsewhere, though not in New Zealand.[65] In one sense working in this way *is* voluntary – the migrant worker can choose not to take up the position or, having done so, can choose to leave. But the extent of any "choice" is largely illusory and must be seen on a spectrum. The plaintiffs were, I find, close to the no-or-very little real choice end of the spectrum in terms of work.

[102] My conclusions are further reinforced by the fact that Community members such as the plaintiffs were essentially trained to enjoy work from a very young age. Not only were the plaintiffs trained to enjoy work, but the accepted norm, reinforced by the Gloriavale leadership, was that each of the plaintiffs would work willingly and bear any hardship that came with it without complaint ("You were told it was good to suffer. It was good to put your flesh down, and it was good to be tough."[66] "… you were taught not to complain. You were taught that you needed to be happy in denying yourself."[67]) As Rapture Standtrue said:

> If people can grasp that those who choose to live as Christians at Gloriavale, believe the word of God with all their hearts, then they will understand why we choose to deny self and endure hardship.

[103] The plaintiffs understood, because of their upbringing, what their expected role was within the Community in terms of the hierarchy and who would decide the broad nature of the work they would undertake.[68] They knew that they were expected to do

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65 See for example *Labour Inspector v New Zealand Fusion International Ltd* [2019] NZEmpC 181, [2019] ERNZ 525 (*Guan*). See also Education and Workforce Committee "Inquiry into migrant exploitation" (August 2022).

66 Per Virginia Courage.

67 Per Rebekah Kempf.

68 As the Overseeing Shepherd accepted.

as the Overseeing Shepherd asked, either himself or through his delegates (the subordinate leaders; House Mother and Team Leaders) and they did it.[69] The Overseeing Shepherd explained the position as follows:

> Q. So if I understand what you're saying is in that work that young women do for the entire community, working on the teams under the house mother, that work is organised?
>
> A. Yes.
>
> Q. You have to follow rules –
>
> A. Yes.
>
> Q. – when you do it?
>
> A. Yes.
>
> Q. You don't have a choice about whether you do it on any given day, it's expected of you?
>
> A. It's expected of you, yes.
>
> Q. So you could have a reason for not doing it but absent a reason like sickness for example, you need to turn up and do it?
>
> A. You turn up there but then you might [be] asked well look go do this work for a while, for a period of time, part of the day –
>
> Q. But that's not your choice, that's what you're told to go [do] by someone who's in charge of that area?
>
> A. Yes that would be right.
>
> …
>
> Q. … In terms of choice you can choose to do something without asking or you can ask someone and they can give you an answer?
>
> A. Yes.

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[69] See, for example, the evidence of Pearl Valor and Trudy Christian: "You only did further study if that was what the community required of you. I wanted to stay in school and continue my education but at that point in my life, knew only that there was no choice." John Ready: "Unless they were selected to go teaching, childcare or midwifery, girls didn't even have the option of furthering their education beyond the age of about 15." Rose Standtrue gave evidence that she was told by the Overseeing Shepherd that God wanted her to make cheese and that he decided who did what job. Pearl Valor said: "My education wasn't to further my education, it was to contribute to the community and that is the education community members get." Virginia Courage gave evidence of a similar nature. Christiana Standtrue, a current resident, confirmed that senior roles for women in the Community were allocated by the leaders and another current resident, Bithiah Faithful, gave evidence that: "I choose to follow the Bible and it also says, 'obey them that have the rule over you and submit yourselves' to them. I choose to obey the leaders."

Q. And it's the latter situation that applies here?

A. Yeah, okay.

Q. I'm asking you is that the case, you're in charge of this community, is that what happens?

A. That is the case. Yes.

[104] The point (in terms of the chain of decision-making within the Community structure) is expressly made in What We Believe, providing that leadership in the Church is given only to men and that "No woman may teach or preach or usurp authority over any man".[70] Purity Valor, a senior woman living within the Community, confirmed the position:

Q. Who tells you what to think?

A. The Bible tells me what to think.

Q. And who tells you what the Bible says for you to think?

A. Well I can read it in the Bible and if I have questions I can ask guidance from the leadership to understand it more clearly.

Q. But it's the leadership that tells you the interpretation of the Bible which is what you think isn't it?

A. That's the way God has planned it yes.

[105] Temperance Hopeful agreed, when the proposition was put to her, that it is the male leadership who make the decisions, and that if there was a need to start paying wages for work done by the women on the Teams, that would be a decision made by them. And Howard Temple agreed that, as the Overseeing Shepherd, he has responsibility for the women as well as the men.

[106] In summary, the evidence clearly established that none of the plaintiffs made a decision about whether they worked on the Teams or when they started work or where. Those decisions were effectively made for them by the Overseeing Shepherd, through his subordinate leaders and other senior people (including women) within the Community. Each of the plaintiffs was born into the Community and they were taught from birth that they were to submit to male leadership in all aspects of their life,

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70 What We Believe (2018) at [F.V(7)].

including their work. Because that had been deeply engrained from a very young age, including through modelling by other women in the Community, their ostensible voluntary progression to work on the rosters (from helping on duty day and in the kitchen or laundry to working full-time on the Teams) followed as night follows day. As Dr Norris put it:

> [a woman] is likely to struggle to refuse any aspect of the assigned role…due to their lifetime experience living within the values and rules of the community (and their lack of experience living outside those values and rules).

[107] By way of further context, the Overseeing Shepherd explained (and as is reflected in What We Believe[71]), once a person has become a "true Christian" they surrender to the Church, and critical thinking is discouraged. So if, for example, a female member of the Community wanted to continue as an independent individual, that would be unacceptable and they would be obliged to leave the Community. The underlying concept is known within the Community as "unity". Each of the plaintiffs understood the importance of maintaining unity, of not applying critical thinking to their situation and of not acting in a way that could be seen as individualised or at risk of being seen to be "out of unity." In this regard What We Believe taught that:[72]

> It is entirely against the will of Christ for any Christian to persevere in any belief or practice which he knows is contrary to that which is followed in the Church…

And that:

> Submitting ourselves … to our leaders is one of the surest ways of finding God's will in our lives.

[108] The threat of being regarded as "out of unity" clearly played a significant role in the minds of the plaintiffs when it came to their work, and the expectations placed on them in respect of the work they undertook. They understood that, if they departed from the accepted norm and took issue with whether, where, when and how they were to work (in other words, if they did not submit), they would be considered to be "out of unity" and eventually required to leave the Community.[73]

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71 What We Believe (2018) at [F.IV(1)].

72 At [F.IV(2)].

73 See, for example, Pearl Valor's evidence: "A - If I hadn't have signed [the Commitment] they would have kicked me out. Q – Well if you want to be a member of the community at Gloriavale you have to live by the rules of the community. A – I was born there. I didn't join." See too Hannah Harrison's evidence to similar effect.

[109] Unity (and submission to the leadership) was reinforced by the practice of shunning, as the Overseeing Shepherd accepted, and public acts of shaming for various transgressions, which were referenced in evidence.[74] While I accept that shaming may not have been a regular occurrence, the reality is that the impact of it when it did happen was significant. It had lingering, long-term, effects, and was particularly effective in disincentivising behaviour the Overseeing Shepherd and his subordinate leadership team did not approve of.

[110] One example involved a disciplinary meeting convened by the Shepherds and Servants in response to hair cutting by girls within the Community. At the meeting a girl, who had rushed to the meeting so as not to be late, did not have her hair parted in the correct place and had one (not the required two) clips in her hair. Evidence was given that:

> She got stood up in the middle of the floor and Stephen Standfast just yanked her scarf off her head and told her she was a whore and ripped into her because she had one clip in her hair. We were hauled over the coals about hair cutting, then Fervent Stedfast said to […] and I, "Right, we're going to cut all your hair off and shave you, and you will be an example". We looked at each other and thought, "We're going to leave, we're just going to run as fast as we can." It was terrifying, but Hopeful stood up and said, "No."

[111] Stephen Standfast, a senior leader within the Community and the man chosen by Howard Temple as his successor,[75] was questioned about this incident. He accepted that it had occurred and said that he regretted it. While the second defendants objected to this evidence, on the grounds of relevance, I refer to it because it neatly illustrates a number of points about power and control, the nature of relationships within the Community, and the impact of any perceived departure from accepted norms and how the leadership dealt with them during the relevant time, including through fear. Such matters are, in my view, of broader relevance to the matters at issue in these proceedings and help to explain the context in which the plaintiffs worked and why. The evidence is also relevant because it reinforces the position of the Overseeing

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74 See, for example, evidence given by Pearl Valor relating to having to stand up in front of the community and apologise for mistakes in the kitchen. Isaac Pilgrim gave evidence that: "If the girls were late for duties, they often had to stand up at the meal table and publicly apologise...It was public shaming to everyone you'd ever known in your whole life." See also evidence given by Rebekah Kempf and Trudy Christian, and the evidence of Treasure Standfast and Christiana Standtrue.

75 Consistent with the selection processes for the Overseeing Shepherd contained within What We Believe (see [4] above).

Shepherd, exercising definitive decision-making powers in a situation involving a proposed course of action by a senior Shepherd.

[112] A second example involved a former Shepherd and leader in the Community (Zion Pilgrim) who had been looking into other interpretations of the Bible and had raised questions about What We Believe and the leaders' approach to various issues within the Community. The leadership was concerned that Zion Pilgrim had fallen out of unity. What We Believe makes express reference to what will happen where a person falls out of unity, namely that:[76]

> But if he will not receive what the Church says to him and repent of his sin, then he is to be put out of the Church and to be treated by every member of the Church as no longer being a Christian but as being one of the worst of heathen men.

[113] Zion Pilgrim was summonsed to a Shepherds' and Servants' meeting, which he attended with his wife and one of his children. The centrality of What We Believe, the dominance of the leaders over Community members and the conditional basis on which members resided within the Community (namely complying with the leaders' rules or expulsion) are very clearly illustrated by what went on at the meeting. Zion Pilgrim was a senior man within the Community; so in a much less vulnerable position than (for example) the plaintiffs.

[114] The meeting lasted for over two hours, during which time Zion Pilgrim was berated at length and in an overbearing manner, including accusations of his heart being "evil" and "wicked"; his views were not listened to and were equated to "a satanic force that is pitted against the church … working through [him]"; his wife was talked over and told that there is no "place in the Scripture where a woman should be voicing her opinion strongly" and that "I suffer not a woman to teach … but to be in silence"; and he was issued with a very clear ultimatum – to either come back into Gloriavale as "nothing … as nobody" or leave. He and his family chose to leave.

[115] Other evidence given in Court disclosed that being summonsed to a Shepherds' and Servants' meeting was generally feared. Having had the advantage of hearing the

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76 What We Believe (2018) at [F.VII(4)].

audio of what occurred at the meeting the Pilgrim family attended, which was presided over by the current Overseeing Shepherd and involved a number of the second named defendants, it is hardly surprising.

[116] The meeting, and how it unfolded, illuminates the broader context in which the plaintiffs carried out their work within the Community; and sheds light on why they did what they did, without complaint. It amply demonstrates the significant power and control wielded by the Gloriavale leaders, headed by the Overseeing Shepherd, and the way in which opposing thought or action, falling out of unity, was dealt with.

Did the plaintiffs expect to be rewarded for their work and/or were they rewarded for their work?

[117] As I have said, the volunteer exclusion in s 6(1)(c) contains two requirements, both of which must be met before a worker will be excluded from the protections afforded by the gateway provision. If the volunteer exclusion does not apply it does not automatically follow that they were employees. However, working for hire or reward is a requirement that needs to be met in order to come within the definition of employee. Thus the reward issue is relevant to both limbs of the Gloriavale leadership's argument.

[118] The word "reward" (as used in the s 6(1)(c) volunteer exception) is not defined in the Act; nor is the phrase "hire or reward" (as used in the s 6(1)(a) definition of employee). What is clear is that an employee works for either "hire or reward"; a volunteer does not. It is also clear that the word "hire" differs in meaning to "reward", as the use of the word "or" reflects. The phrase has given rise to some discussion in cases decided under s 6 and preceding equivalent provisions.[77] Its meaning has also been reviewed in other contexts, particularly relating to transport service licensing.[78]

[119] In transport licensing cases the courts have tended to draw a clear line between "hire" (said to require specific compensation for carrying passengers or freight,

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77 See for example *MacGillivray v Jones (t/a Tahuna Camp Store)* [1992] 2 ERNZ 382 (EmpC) at 390-391.

78 See for example *Bonham v Zurich General Accident & Liability Insurance Co Ltd* [1945] KB 292 at 300; *Albert v Motor Insurers' Bureau* [1971] 3 WLR 291 (HL) at 1362; and *Cowie v Carruth* [1940] NZLR 667 (SC) at 669.

generally in a payment of money) and "reward" (which is said to mean any valuable consideration, usually in situations where Person A performs a useful service for Person B and Person A is given recompense (reward) for that service). While the recompense provided by Person B must be causally connected to the useful service provided by Person A, it need not be monetary and nor need it equate (in either monetary or non-monetary terms) to the value of the service provided by Person A to Person B.

[120] Returning to s 6, the mere fact that a person does not expect to be rewarded does not make them a volunteer if they are in fact rewarded; and (by the same token) doing work voluntarily does not mean that a person is a volunteer rather than an employee.[79] Equally, it is tolerably clear that not every reward, however trivial, is the sort of thing that Parliament intended to suffice for the purposes of s 6. In this regard Mr Kirkness suggested that a distinction could usefully be drawn between a reward of value, amounting substantially to payment for work done, and trivial "rewards" merely to show appreciation (such as a bunch of flowers). I accept that a distinction of this sort may be useful and that the reward must be causally connected to the work done. I do not think (and did not understand Mr Kirkness to be suggesting) that a direct correlation needs to be established between the assumed "value" of the reward and the assumed "value" of the work to which it relates. Such a gloss would likely lead to perverse incentives and undermine the evident purpose of this aspect of s 6.

[121] In the present case the evidence clearly supports a finding that each of the plaintiffs provided a useful service via their work on the Teams. The point was underscored by Christiana Standtrue (a current resident) in explaining the value of the work the women did on the Teams:

> Q. … the point I was putting to you there was that the community such as it currently is could not really function without the women performing the role they do in the workplace?
>
> A. Yeah. No, I don't think we could function without the women.
>
> Q. Well it's not really without the women sorry, I'm particularly interested in the work they're doing so for example the sewing, the cooking, the cleaning. These types of work – the point I'm putting to you is are necessary for the community to continue working the way it currently

[79] See the discussion in *Courage*, above n 20, at [188].

does. If they were not done the community could not work the way it currently does, is that correct in your view?

A. Yes, I would agree with that.

[122] The evidence satisfies me that the plaintiffs expected to be rewarded for their work while working on the Teams and that they received a reward for their work on the Teams. In this regard, in exchange for their work they expected to be permitted to remain in the Community with their family and friends and continue to lead a life they were familiar with; that they would receive food, shelter, clothing, religious support and guidance; and the promise of spiritual redemption (as against the threat of eternal damnation if they left).[80] It was very clear from evidence given on behalf of the Gloriavale leadership that a high value was placed on these offerings and it is equally clear from the plaintiffs' evidence that they too placed a high value on these things, as reflected in the reluctance of the plaintiffs to leave the Community.

[123] The Overseeing Shepherd summarised the point in evidence:[81]

Q. And so in terms of an expectation about work, how would that relate to a person's life if they are a young woman in the Community who has not yet taken the commitment to the Church, is that expectation still on them?

A. Yes, yes, it is too.

Q. And why is that?

A. *Well because they're there. They're part of the Community.* While they're there. They haven't made the commitment but they are still a member of the Community.

Q. So their choice is the same which is you leave the Community or *if you stay in the Community the expectation is that you will give willingly of time and energy and work to support the Community?*

A. *Yes, yes, that's right. That's right.*

[124] For completeness, I record that counsel for the second defendants referred me to a number of overseas decisions involving religious communities. While none of those decisions are binding, and arise within the context of a different legislative (and

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80 Faithful Pilgrim gave evidence that that the Declaration of Commitment is a template declaration; by which the signatory acknowledges that they are "legally and morally" bound before men and spiritually so that if the Commitment is broken it is done "to the peril of [their] soul".

81 Emphasis added.

common law) framework, I refer to two of them at this point because they are relevant to the issue of reward.

[125] The first is a decision of the New Mexico Court of Appeal in *Joyce v Pecos Benedictine Monastery*.[82] A key finding in that decision related to whether room and board provided by the Monastery to the plaintiff could satisfy the element of payment in the test for whether someone is a "worker". The Court considered that it could in principle, but nevertheless found that based on the evidence before it the lower Court had not erred in its conclusion that room and board had not been provided as payment for the plaintiff's services.

[126] In a similar vein, the United States District Court for the Western District of Michigan found that the Israelite House of David, a commune founded in Michigan in 1903, provided housing, clothing, food and medical care to its members but that this was not contingent upon the work done by them.[83] Those members were therefore not employees.

[127] I read these decisions as requiring a connection between work done and the payment received; and that payment for work done may be in the form of the necessities of life. I have already found that there was a connection between the work done by the plaintiffs and the reward they received, including food, clothing and shelter. Even if these decisions were binding, which they are not, I do not consider that they support the second defendants' position.

[128] Finally, while I do not consider that there needs to be a direct correlation between the value of the work performed and the value of the reward, the evidence nevertheless established such a correlation. It is, of course, difficult to put a price on salvation – but the other benefits that the plaintiffs received in exchange for their work, including food, shelter, and clothing, to my mind meet the threshold.

[129] In summary, I conclude that each of the plaintiffs expected to be rewarded for their work on the Teams and were rewarded for their work on the Teams. It follows

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82 *Joyce v Pecos Benedictine Monastery* 895 P 2d 286 (NM Ct App 1995).
83 *Israelite House of David v United States* 1 58 F Supp 862 (WD Mich 1945).

that they were not volunteers and are thus not excluded from the s 6 "employee" gateway on that basis.

Employment relationship indicia

[130] I now turn to consider whether the plaintiffs undertook their work on the Teams for hire or reward under a contract of service applying the approach I have referred to in light of the facts.

[131] The Supreme Court has made it clear that in determining whether an employment relationship exists a number of factors may be relevant; the factors are not closed when considering what the real nature of the relationship is.[84] Any matters indicating the intention of the parties are relevant, including any written agreement. Intention is to be assessed objectively. The point is relevant in this case because it is tolerably clear that neither the plaintiffs nor the Gloriavale leadership regarded themselves as being in an employment relationship at the relevant time. However, I have no doubt that a reasonably informed objective observer going into the facilities (including the kitchens, laundry and sewing room), seeing the equipment and the general layout and observing the work being done over an extended period of time, would very likely conclude that the relationship had the hallmarks of employment.

[132] I have referred to the ostensible willingness of the plaintiffs to undertake the work they did over a number of years and the very limited choice they exercised in reality. I do not think it is consistent with a purposive approach to conclude that where a worker has very little, or no, substantive choice about whether they work, and continue to work, in such circumstances such as the plaintiffs found themselves in, they cannot be employees. And even if it had been established on the evidence that each of the plaintiffs exercised free choice or an independent decision to carry out work for the Community, that would not be the end of the inquiry, for reasons I have explained in [29] above. A person may wish, or feel obligated, to work for a community or other organisation to provide for or contribute to a perceived greater

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84 *Bryson*, above n 29.

good, but that does not mean that they are not an employee for the purposes of s 6(1)(a).

[133] As will be apparent from my discussion of the facts, the reality is that the plaintiffs worked in line with what was expected of them as a female member of the Community,[85] coupled with a firm expectation that all able-bodied residents (including those in the plaintiffs' position) would work hard and as directed. This was reinforced from the top down. The evidence established that the plaintiffs worked under the strict direction and control of the Overseeing Shepherd, through his subordinate leadership team. The plaintiffs were required to turn up to work as directed (according to a roster) and were told when and where to work, how they were to do their work and for how long they would do it.

[134] The way in which the working relationship operated in practice is consistent with various provisions in What We Believe, which I have already referred to. Those provisions reinforced the significant amount of direction, power and control held by the Overseeing Shepherd (and his subordinate leadership team) in respect of work, the way in which work was to be undertaken and by whom, the hierarchical decision-making structure and its reach within the Community and the expectations on individuals as to work.

[135] The evidence also firmly pointed to the consequences of falling out of unity with the rules (including the work rules) set by the Community leaders (ultimately the Overseeing Shepherd). It was well understood that people who were out of unity, or who were regarded as causing disunity, were isolated and ultimately expelled, as Joanna Courage (a current resident at Gloriavale) explained in response to a question about what would happen if she fell out of unity:[86]

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85 The expectation of working hard is made clear in What We Believe (2018) under the heading "Making Provision". Also made clear is that workers are not to question their masters; are to work willingly and that the leaders decide what work needs to be done and for how long. See too the evidence of Bithiah Faithful, a current resident, who accepted that the plaintiffs worked hard and were tired; Sarah Standtrue accepted that it was never a nine to five job and that there were responsible girls who "would feel the burden" of getting the job done. And the Overseeing Shepherd gave evidence that Community members were expected by the leadership to give willingly of their time and energy, making the point that: "… when they come out of school they're expected to take a place in the workforce, making provision and then carry on that work."

86 Emphasis added.

Q. Based on your experience and the choices that you've been talking about in your evidence, if you make a choice that is contrary to the choice that Gloriavale, the community wants you to make, can you stay or do you need to go?

A. I could stay.

Q. So you'd be out of unity though.

A. Yes.

Q. And that wouldn't matter?

A. It would matter.

Q. In what form would the consequences take them?

A. Well, *the Bible says to people who cause disunity, for us to avoid them and stay away from them and if they don't listen, to put them away and that's what the Bible tells us to do, so we obey the Bible*.

Q. *And is that your understanding of what would happen to you if you were out of unity?*

A. *Yes*.

[136] One of the senior women to give evidence on behalf of the Gloriavale leadership, Priscilla Stedfast, echoed the same point in evidence:

Q. But it's a known outcome as soon as a young girl is born that her lot is to become a worker on the teams, a mother having children, that is what Gloriavale produces for young girls.

A. If they stay at Gloriavale.

Q. And the option is to leave?

A. Yep.

Q. And the option to leave is one where they have to leave behind all their family.

A. Yeah they would leave behind all their family usually.

[137] The evidence reinforces the conclusion I have reached that, had any of the plaintiffs withheld their labour absent good reason[87] (good reason ultimately being determined by the Overseeing Shepherd), they would not have been permitted to stay within the Community. The point highlights the strict control exercised in relation to

[87] For example, Pearl Valor looking after her very sick husband.

the plaintiffs' work. The reasons why they would be ejected from the Community, namely that it would undermine the fabric of the Community to have people living there who were not willing to abide by its rules, does not add anything other than contextual flavour to the s 6 analysis.

[138] I have already referred to the nature and scale of the work undertaken by the plaintiffs on the Teams, akin to working in a large scale hostel. As the Overseeing Shepherd readily accepted, when the proposition was put to him, the work undertaken by the women on the Teams would need to be paid for if it was undertaken outside of Gloriavale. Stephen Standfast also accepted the point when it was put to him in cross-examination. I agree with Ms Catran that the fact that the plaintiffs carried out work on the Teams which would normally be paid work is an indicator of the real nature of the relationship being one of employment.[88]

[139] I also note a point made by Ms Catran, which I agree with, that the absence of an expectation of financial remuneration is not determinative.[89] It may simply reflect a misunderstanding of legal status, or entitlements. Similarly a failure to pay is not determinative. It too may simply reflect a misunderstanding of legal status or entitlements, or a deliberate or unintentional breach of law. The situation in *Guan* provides a useful example.[90] In the present case, and at a minimum, the plaintiffs were fed, clothed and given shelter, which had a financial value and which they would have had to otherwise pay for.

[140] In summary, the plaintiffs worked under the strict direction and control of the Overseeing Shepherd and were subordinate to him. They worked strictly as required, for long hours and for years on end. The nature of the work was akin to working in a large scale hostel, which would otherwise be paid for. The work was essential to the Community's operations. The plaintiffs were rewarded for the work, namely by being able to remain in the Community, and this was understood by all parties. While all of this points to the real nature of the relationship being one of employment, it remains necessary to deal with broader arguments raised on behalf of the Gloriavale leadership.

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88 A point also made in *Courage*, above n 20, at [187].
89 *Acosta v Paragon Contractors Corp* 884 F3d 1225 (10th Cir 2018).
90 *Guan*, above n 65.

Is employment status compatible with the Community's chosen way of life and/or rights recognised under the New Zealand Bill of Rights Act 1990?

[141] As the Court of Appeal observed in *Mabon v Conference of the Methodist Church*:[91]

> Clearly, and reflecting the separation of church and state, Courts must be reluctant to determine what are at heart ecclesiastical disputes where matters of faith or doctrine are at issue. But the Courts will intervene where civil or property rights are involved and can be expected to analyse carefully any argument that conventional incidents of a recognised relationship such as work do not give rise to contractual rights.

[142] Resolving the issues in the present case does not require the Court to venture into matters of faith, or to determine a question of ecclesiastical debate. As Ms Catran pointed out, spiritual control is often central to a religious community but may have no bearing on employment status.[92] And while it is true, as Mr Pearce noted, that s 13 of the New Zealand Bill of Rights Act 1990 protects freedom of thought, conscience and religion, and s 15 protects the right to manifest religion and belief, those recognised rights are subject to reasonable limitations, especially where the religious belief impacts on the rights of others. The right to manifest is subject to the general law,[93] which includes employment laws.

[143] Nor, in any event, do I accept that a finding of employment status would undermine the Community's way of life. It was clear that the Gloriavale leadership has been very adept at making changes to various practices and business structures over time to respond to operational need and applicable legal constraints and requirements, as they have come to understand them to be.[94] All of this is reflected in the way in which the external economy is structured and run, including variations to it over time.

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91 *Mabon v Conference of the Methodist Church of New Zealand* [1998] 3 NZLR 513 (CA) at 523.

92 See for example *Below v The Salvation Army New Zealand Trust* [2017] NZEmpC 87, [2017] ERNZ 405 at [118] – a Salvation Army officer was held to be subject to military discipline, but this high level of control did not give rise to a conclusion of employment status. See also *Acosta* above n 89; *Acosta v Cathedral Buffet Inc* 887 F 3d 761 (6th Cir 2018).

93 *B v Director-General of Social Welfare* [1996] 2 NZLR 134 (CA) at 146; *R v Lee* HC Auckland T10974, 3 December 2001.

94 Samuel Valor noted that the Community has latitude in terms of its business structures.

[144] In this regard the partnership model adopted for the Gloriavale owned and operated businesses involves payments of drawings to individual partners and then payment by each individual partner of their share of the drawings to the Gloriavale Community account.[95] It remained unexplained why that model (payment to each individual partner and then voluntary on-payment to the Community funds) did not pose a threat to the fabric of the Community's way of life, or why a similar model could not be applied in respect of wages paid for other work undertaken in the Community. It also remained unexplained why roles deriving income through government funding (teachers and midwives) did not give rise to the same objections and why the same sort of approach could not apply to work on the Teams.[96]

[145] Further, it was unclear why payment for work done on the Teams might otherwise conflict with the underlying principles and beliefs of the Community given What We Believe expressly refers to paid work being done and the expectations placed on Community members in relation to any payment received. In other words the wording adopted by the leaders in What We Believe suggests that payment for (at least certain) work was anticipated, along with the means by which it could be addressed in a way aligned to the Community's values. The following extracts from What We Believe "Making Provision" clearly illustrate the point:[97]

> **Making Provision**
>
> …
>
> 10. *Whenever a Christian earns or otherwise acquires money or possessions*, he must not say or consider that these are his own, nor that he or his family have any special right to obtain benefit from them. Rather, as all things are held in common within the Church so that every person may be cared for equally, *he should lay down all such money and possessions before the leaders of the Church who will ensure that distribution is made within the Church* to every man according as he has need, and also as occasion arises, to those in need outside the Church.

[146] So, the objection insofar as the Community's chosen way of life and religious beliefs are concerned is not to receiving payment for work done, or objection to a

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95 Virginia Courage was a partner.

96 See, for example, Samuel Valor's evidence and Rachel Stedfast's evidence: "I have no intention of being paid for my work. Like any other ECE service in New Zealand, the Government pays us for working as teachers. I freely give any money I earn to my brothers and sisters in Christian Partners so we can all share the benefit."

97 At [F.IX]. Emphasis added.

Community member being employed as an employee. Rather the objection is to retaining payment for oneself. Again, the Overseeing Shepherd's evidence was helpful in clarifying the issue:

> Q. But [the plaintiffs] were also committing that anything they earn in the future, … depending on what job they get, will go into that common purse aren't they?
>
> A. Yes, as long as they remain members of the Church, that would be true.
>
> Q. Yep. So if they get a job on a farm they get a job in a factory, they do a job outside for some non-member, all of that income goes into that purse?
>
> A. Yes, that would be correct.

And later that:

> Q. But the key point is when you receive something in your capacity as an individual, it is okay to receive it but you need to give it to the community for use for everyone?
>
> A. That's right.
>
> Q. That's the basic logic?
>
> A. Yes, consider nothing your own. The whole thing's common.

[147] Indeed it became apparent, from evidence given by the leaders, that the concern about a finding of employment status was less about incompatibility with religious belief, and more about financial capacity to pay for the work women did on the Teams.[98] I make the obvious point that capacity to pay is not one of the factors Parliament deems relevant to assessing whether a worker is in an employment relationship. There are many organisations which would prefer not to have to pay the people who sustain their operations but that does not weigh in the s 6 assessment of status mix. In any event, it is notable that the evidence before the Court of the

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[98] Howard Temple gave evidence that: "Well there wouldn't be enough money there to pay all of these partners a minimum wage okay? Because I looked through that one time and there's 130 partners, that's just partners. There's many other workers. There's 130 partners. All right, we'll pay workers there a minimum wage. We don't have enough money to pay and (inaudible 12:39:50) partners. That's all the money there would be, they're just – they could only pay 60 of them. Well that would leave all the rest of them with no income right?" Howard Temple also agreed that his comments about ability to pay were focussed on a limited source, namely Christian Partners, and not on an ability to pay more broadly were alternative structures to be adopted. In addition it was apparent from the evidence that the Community provides financial assistance to a Community in India and various other endeavours.

Community's finances, including its extensive acquisition of additional property, does not sit well with a claimed lack of capacity to pay.

[148] I make a further point. The spectre of potential monetary impact on the financial wellbeing of the Community must be seen in context, particularly if payment to women on the Teams was approached in a similar way to payment to the Christian partners – the effect would be circular. Of course, payment to women for their work on the Teams may well have tax implications, such as PAYE, ACC levies and the like, and other potential implications.

[149] In short, I do not accept the second defendants' incompatibility argument; nor do I accept that incompatibility would be a deciding factor in any event.

Overseas authorities on religious communities – employment status

[150] As I have said, I was taken to a number of cases concerning employment status in similar religious communities in other jurisdictions. I am not persuaded that any of these cases, either by themselves or in combination, support a finding in this case that the plaintiffs were not employees. While I have already dealt with two of the cases, in deference to counsel's submissions I explain why I do not consider the remaining cases to be of any real assistance to the analysis required under s 6.

[151] Firstly, the case law is far from being consistent in a particular direction. Ten cases were discussed, three of which resulted in a finding of an employment relationship (which Mr Pearce submitted ought to be distinguished),[99] and one of which resulted in no substantive decision at all.[100] A fifth decision, of the UK Supreme Court, did not need to decide whether the relationship between the parties was one of employment.[101]

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99 *Tony & Susan Alamo Foundation v Secretary of Labor* 471 US 290 (1985); *Acosta v Paragon Contractors* 884 F 3d 1225 (10th Cir 2018); *Tony & Susan Alamo Foundation v Secretary of Labor* 471 US 290 (1985).

100 *Ivantchenko v Sisters of Saint Kosmas Aitolos Greek Orthodox Monastery* [2011] ONSC 6481.

101 *The Catholic Child Welfare Society v Various Claimants* [2012] UKSC 56, [2013] 2 AC 1. The UK Supreme Court considered that the relationship was even closer than that of employee/employer and thus was more than sufficient to attract vicarious liability.

[152] The facts outlined about the operation of the Israelite House of David in particular provide an illustrative contrast. Members could not be expelled under any circumstances by any person, every member had equal access to the common fund, and all members had the right to choose their own occupation to serve the community. I make the obvious point that the Gloriavale Community operated in a different manner, a useful reminder that sweeping statements (such as that members of a religious commune are not employees) are unlikely to be helpful in the context of a determination under s 6.

[153] It is for this reason that I do not put much weight on the remaining two United States cases I was urged to follow by Mr Pearce.[102] Both decisions contained little analysis of the facts, and it is not possible to determine whether the communities in question operated in a similar way to Gloriavale. *Wollman* was not primarily about employment status, reflected in the fact that the Court's conclusions on that point occupied a single paragraph in the judgment. The majority decision in *Blust* comprises four paragraphs and was decided nearly 100 years ago. It does highlight however that, even in 1931, the issue divided the Court. Indeed I respectfully find the Chief Justice's dissenting judgment persuasive, given the focus on the reality of the relationship, who had control, who was serving, and who was benefitting from that service (factors which are reflective of the approach mandated by s 6).

[154] I move to the Australian decision in *Redeemer Baptist School v Glossop*.[103] In this case, a church school wished to bring an action for defamation, which it could only do it if it employed fewer than 10 persons. A key issue was therefore whether the 47 teachers in the school were employees. The New South Wales Supreme Court found, on the facts, that the teachers were volunteers and that they had no intention to form legal relations as employees with the school. They lived in a communal lifestyle and received only a stipend. I have already concluded that the plaintiffs in the present case were not volunteers for the Gloriavale Community when they were undertaking work on the Teams.[104] I note a further distinction. It is clear that the New South Wales Supreme Court was strongly influenced by the fact that the applicants who were

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102 *Blust v Sisters of Mercy* 256 Mich 1, 239 NW 401 (Mich 1931); *Wollman v Poinsett Hutterian Brethren* 844 F Supp 539 (D SD 1994).
103 *Redeemer Baptist School v Glossop* [2006] NSWSC 1201.
104 Above at [130].

arguing for the finding of employment status were not the teachers themselves; the teachers during the proceedings firmly insisted that they were volunteers.[105] As s 6(6) makes clear, the Court in New Zealand may only make a declaration of employment status in relation to a person who is either the applicant or who has consented in writing to another person applying for the order.[106]

[155] Mr Pearce urged me to distinguish three US decisions.[107] I understood the argument to be that there are two primary reasons for a distinction to be made. The first is that they applied a different test to the one I am bound to apply under s 6, namely a test that did not require a contract of service. These cases, it is said, instead applied the "economic reality" test without looking at whether a contract of service existed:[108]

> The employer-employee relationship under the FLSA is tested by "economic reality" rather than "technical concepts." It is not determined by the common law standards relating to master and servant.

[156] I am not persuaded a significant distinction exists. Indeed, and as I have discussed, while s 6 requires the Court to determine whether there is a contract of service, that question must be answered by determining "the real nature of the relationship" between the parties. While there may be some difference between "economic reality" and "real nature of the relationship", as indeed there would be between the tests applied by any other jurisdiction, this is not, in my view, fundamental. In saying that I note that the phrase "economic reality" is far from foreign to the question of employment status in New Zealand.[109]

[157] The second reason to distinguish these cases is said to be that they only concerned members of religious communities who worked for commercial businesses operated by those communities. I have already referred to why I do not consider this to be a particularly helpful distinction. In the context of Gloriavale, I have found that

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105 At [51]-[55].
106 Employment Relations Act 2000, s 6(6).
107 Cited in fn 99.
108 US Dept of Labor *Fact Sheet 13: Employment Relationship Under the Fair Labor Standards Act (FLSA)* <www.dol.gov/>.
109 See for example *Challenge Realty Ltd v Commissioner of Inland Revenue* [1990] 3 NZLR 42 (CA) at 65; *Southern Taxis Ltd v Labour Inspector* [2020] NZEmpC 63, [2020] ERNZ 183 at [101]. See also Gordon Anderson, John Hughes and Dawn Duncan *Employment Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2017) at [5.35]–[5.37].

the work done by the plaintiffs on the Teams contributed to the work of Gloriavale's commercial enterprises, and that a strict division would be arbitrary and fail to properly reflect the reality of the situation.[110]

[158] In short, I do not consider the overseas authorities referred to by the second defendants to be substantially helpful in assessing the plaintiffs' status for the purposes of s 6.

Conclusion: status

[159] The plaintiffs were not volunteers when working on the Teams. They expected to be rewarded for the work they undertook and they were rewarded for their work. They are accordingly not excluded from the gateway to minimum entitlements and protections on this basis.

[160] Ascertaining the real nature of a relationship for the purposes of deciding whether a worker is an employee for the purposes of s 6(1)(a) requires a contextual assessment of the reality of the relationship. The Community's way of life and religious tenets have some contextual relevance, but are not determinative. In any event the evidence disclosed that employment relationships are not incompatible with the Community's beliefs or undermining of them. While I accept that a recognition of employment status may present some issues, notably requiring the application of minimum employment standards to individuals who had previously not been perceived as benefitting from such entitlements, the tail cannot be permitted to wag the dog. And I note that when asked whether the Gloriavale leadership could bring people in from outside to perform the work undertaken by women on the Teams it became clear that no consideration had been given to such an option.

[161] To put it another way, there are some in New Zealand who would prefer, for a variety of reasons, not to regard their workers as employees; some of those reasons are imbedded in deeply held beliefs, including as to the work women should supposedly be prepared to perform for free, and for genuinely held cultural and religious reasons. And it is not unknown for some workers to share those beliefs, and

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110 Above at [59]–[61].

act consistently with them, during the time they carry out work. But a deeply held belief as to whether someone is or should be an employee is not the acid test for determining employment status mandated by the Act. If it was, the protective purpose of the gateway provision, and the minimum worker entitlements and protections which flow from it, would be seriously undermined.

[162] For completeness, it may be possible to view the position in this case in a contract-centric way, if some sort of formal manifestation of intention to enter into contractual relations is required (which I do not accept). The plaintiffs were born and raised in the Community. When they left school they were offered work on the Teams. They could decide to accept the offer and remain in the Community or decline the offer and leave the Community.[111] The terms and conditions on which the work would be undertaken were set out in What We Believe and the Commitment. The plaintiffs understood the basis on which they were to undertake their work and the reward they would receive for their work if they took up the offer. If they failed to continue to meet the terms and conditions under which they worked they would not be rewarded for their work and would be obliged to leave the Community. In other words, the working relationship would come to an end.

[163] I return to what I consider to be the central question. In my view s 6, construed purposively, was intended to apply to the relationships at issue in this case when viewed realistically. I find that each of the plaintiffs was an employee while working on the Teams and make a declaration accordingly.

Employer/s identification – the framework, the facts and next steps

[164] This case has raised difficult issues about who the employer is, not the least because of the complexity of the operational and legal structures that characterise the way in which the Community has been set up. It has taken a lengthy hearing and a significant amount of evidence, including documentary evidence, to shed some light on where the relationship landscape lies. That process of distillation has implications, for reasons I will come to.

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[111] The evidence was that it was not open to the plaintiffs to decline the "offer" while still remaining in the Community.

[165] I first discuss what I see as the relevant framework for assessing who the employer is in a unique case such as this. I then set out some factual findings, many of which reiterate findings that emerge from the analysis of whether the plaintiffs were employees. I then turn to set out the next steps which I consider appropriate.

[166] I agree with Mr Kirkness' submission as to the factors of most significance in cases where the usual features are absent (such as the existence of financial payment structures and written agreements), namely who holds control over the work being done by the employee and whether such control is commonly held when issues arise as to joint employment. The identity of the person responsible for the work being carried out will also be of relevance.

[167] I do not regard financial capacity as particularly helpful in assessing who the employer is. As I have already observed, financial capacity to pay wages is not a factor of relevance in assessing whether a person is employed by another. And, as the Act makes clear, where a named employer has a deficit of assets to meet its obligations, there are a number of procedural routes that can be explored to draw in other entities and individuals involved in a breach of employment standards.[112] As Ms Catran pointed out, the question of who has control over what assets in a case such as this will be relevant to any enforcement action taken by the Labour Inspector.

[168] In this case the documentation (in particular, What We Believe and the Commitment) casts light on where the relationships lie within Gloriavale and the basis for them. As will be apparent from my earlier factual findings, the plaintiffs were told which Team they would work on, when they would work, the tasks they were to perform and the standards they were to meet when undertaking their assigned work. While I accept that the House Mother exercised strong managerial control, and the Team Leaders also exercised day-to-day task orientated supervision over workers on the Teams, the chain of command led up through the male leadership and inexorably to the Overseeing Shepherd, as Howard Temple candidly accepted:

> Q. But at the end of the day you still lead don't you?
>
> A. I still lead.

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[112] Employment Relations Act 2000, s 142W. See also ss 137 – 140.

[169] The hair clip incident referred to above, which involved the conclusive intervention of the Overseeing Shepherd, also graphically illustrates the point.

[170] The chain of control as to who did what work did not materially alter over time, even with changes to the identity of the Overseeing Shepherd and members of the Overseeing Shepherd's subordinate leadership team. The point, in respect of appointments to positions within the Community, is expressly stated in What We Believe:[113]

> 15. Where anybody is required to fill a position of responsibility in the church, whether it be school teachers in the school, sisters in the kindergarten, men to manage the finances or other areas of work amongst men, *or any other position whatsoever it is the principal leader who has the authority and responsibility to make all such appointments*.

[171] The Overseeing Shepherd accepted that this paragraph of What We Believe reflected the reality in practice. This is consistent with evidence he gave in terms of the chain of command for work conducted within Gloriavale more generally:

> Q. – the structure is you have delegated functions to the four shepherds, correct?
>
> A. Delegated functions to the four shepherds? Yeah, I think we do it all together in discussions.
>
> Q. But you don't micromanage them. You let them get on with what they're to do?
>
> A. Yeah, let the managers get on with their work.
>
> Q. And that includes the shepherds. They get on with what you've agreed they're going to do?
>
> A. Yes. So some shepherds are managing businesses, some are not, yes.
>
> Q. And the servants –
>
> A. Yes.
>
> Q. – it's the same?
>
> A. Yes, the same. Some of them are managing business.
>
> Q. So at the meetings you work out what they're to do. You agree it and you're a hands off manager who lets them get on with their job?

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[113] What We Believe (2018) at [F.V(15)] (emphasis added).

A. That would be right.

Q. That's how it works?

A. Yes, that's a fair summary to that, yes.

[172] The point was also highlighted in further evidence when a question was put to him about the role of the House Mother (the senior woman within the Community who the Overseeing Shepherd described as being appointed by the leadership, acting under their delegated authority and who organises the 'household' budget and the workforce in the Women's Realm):

Q. So in that sense you say "Complete autonomy"?

A. Yes.

Q. You mean complete autonomy in how something's run?

A. Yes.

Q. But the authority that that person has –

A. Yes.

Q. – is from the leadership? It's delegated to her by the leadership?

A. Yes, yes. You can put it that way.

[173] The Overseeing Shepherd's evidence was reinforced by evidence given by women currently residing within the Community, including Priscilla Stedfast, who confirmed that, as Team Leader, she could not side-step a decision made by the Overseeing Shepherd in relation to her work and act in a contrary manner.

[174] I have already dealt with issues relating to who the plaintiffs undertook their work for and why. In respect of the employer-identity issue I do not regard it as particularly useful to consider whether the plaintiffs were undertaking their work for the direct benefit of the Overseeing Shepherd or any of his subordinate leadership group, or that it was directed at a perceived communal good. There are, as Mr Kirkness pointed out, analogies with the work undertaken by civil servants, employed to benefit the community they serve rather than the specific organ that signs the employment agreement and pays their wages. Rather it can be said that the state organ

is the employer because it has ultimate responsibility for the communal purpose for which it exists.[114]

[175] In this case it is of particular significance that the Overseeing Shepherd has ultimate responsibility for ensuring that the Community operates in a way that is consistent with his interpretation of the Bible, in all aspects of life (including in respect of the work undertaken by the women) to meet the objectives which he has set and which he has responsibility for ensuring are met. In this regard, What We Believe, the Commitment and the Christian Church Charitable Trust deed (in its current and previous iterations), all underscore the centrality of his role in terms of the hierarchy of decision-making and the chain of control. The Overseeing Shepherd could also, of course, exclude people from the Community if they were perceived to fall out of unity, including if they refused to do as they were told, including work.

[176] The Christian Church Charitable Trust is administered by a Board of Trustees, referred to as "the Board". The membership of the Board is set out at cl 3, and comprises the Overseeing Shepherd (where he wishes to become a Board member), the Overseeing Shepherd's appointed successor (where that person wishes to become a Board member) and at least one and up to six persons appointed by the Overseeing Shepherd, each for a period of three years, renewable. The Trust Deed of 11 July 2018 provides that the Church Leaders (named as Howard Temple, Fervent Stedfast, Enoch Upright, Samuel Valor and Mark Christian) comprise the Board, only some of whom are current Shepherds.

[177] The Trust is required to operate and be administered consistently with "every clause" contained in the declaration of faith in What We Believe (determined by the Overseeing Shepherd) and "must willingly accept in full the guidance, care and authority of the Overseeing Shepherd", together with the subordinate Shepherds in the Community.[115] While control of all assets and funds of the Trust is said to be the responsibility of the Board (cl 14), the point may be said to become circular (for the purposes of assessing where the reality of the employment relationship lies) when the

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114 Or, rather, the chief executive of that State organ. See Public Service Act 2020, s 66.

115 As David Stedfast accepted, provisions of the Trust reflect a deliberate interweaving of the practical and religious life. He also accepted that the Trust operates on a much broader basis than simply spiritual matters.

role of the Overseeing Shepherd and his subordinate leadership group in all areas of Community life, including work, is understood.

[178] I heard extensive evidence and submissions in relation to the complexity of the structure put in place by the Community leaders, which included criticisms of the Christian Church Community Trust and the claimed existence of a constructive trust. The Court's jurisdiction is limited and does not, in my view, extend to making findings as to the existence or validity of trusts.[116]

[179] In the *Courage* proceedings I adjourned determination of the employer-identity issue. Mr Pearce submitted that the Court could not properly make a declaration of employment status in this case without identifying who the employer was. He also made the point that the plaintiffs bore the burden of establishing the identity of their employer. While submissions were advanced on behalf of the second defendants that the plaintiffs were not employees and they were not employers, those submissions focussed on the absence of a contract of service, not the basis on which the named second defendants were being sued or (more broadly) who (if the plaintiffs were found to be employees) the employer was or whether there might be joint employers (as Mr Kirkness submitted there might be).

[180] I agree that the approach of the Court has previously been to place the burden on a putative employee to satisfy the Court of the identity of the employer.[117] I see difficulties with this approach, particularly in cases involving a considerable amount of structural and operational complexity which has put in place (here by the Gloriavale leadership) and which the putative employee has little or no knowledge of.[118]

[181] I understood Mr Henry to argue that a constructive trust existed and the named second defendants effectively controlled the assets of the trust as trustees. Mr Kirkness submitted that if the Court was to find that the plaintiffs were employees it would be open to the Court, on the facts, to make a declaration that the Overseeing

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116 See generally Employment Relations Act 2000, s 187.

117 *Vince Roberts Electrical Ltd v Carroll* [2015] NZEmpC 112, [2015] ERNZ 298; *Colosimo v Parker* (2007) 8 NZELC 98,622 (EmpC) at [25]; *Weston v Fraser* (2008) 5 NZELR 575 (EmpC) at [42]; and *Taylor v von Tunzelmann* EmpC Auckland AC8B/08, 15 October 2008 at [10].

118 See *Uber*, above n 27, at [83]–[90].

Shepherd and the leaders from time to time appointed to those positions, were either individually or collectively the employer - the precise identity for specific points in time could be left for a later date (if grievances were pursued).

[182] I return to the pleadings. The plaintiffs seek a declaration at [4] of their statement of claim that Howard Temple and three current and one previous named individual Shepherds were their employers, sued in their capacity as trustees of the Gloriavale Community assets pursuant to the Declaration of Commitment. The statement of defence (at [5]) pleads that the named second defendants are not trustees in the sense pleaded and nor do they hold assets on behalf of the Community.

[183] Where does all of this lead? Generally speaking it would be regrettable for a worker's claim for employment status to be defeated simply because they have proceeded against, for example, one corporate entity within a complex corporate structure only to find that the evidence discloses that another entity within the same structure was the true employer. I have reservations about whether the Court's hands would be tied to the pleadings in such circumstances. No counsel suggested that they would be but nor did any counsel tackle the pleadings point directly. In the circumstances I consider it appropriate to adjourn determination of the employer identity issue. In particular I wish to provide an opportunity for counsel to be heard on the issue I have identified, including (if the point is contested) the nature and scope of the Court's powers under ss 189 (equity and good conscience jurisdiction) and 221 (conferring power on the Court at any stage of proceedings of its own motion or on the application of any party to make directions, including joinder and the amendment or waiver of defects in proceedings, and disposing of matters before it according to substantial merits and equities).

[184] For completeness, and because it was a point that Mr Pearce emphasised on behalf of his clients, I do not accept the submission that the Court does not have the power, in circumstances such as these, to adjourn determination of an aspect of the relief sought, for the reasons set out in *Courage*.[119]

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[119] *Courage*, above 20, at [23].

Declarations

[185] Declarations are made that Serenity Pilgrim, Anna Courage, Rose Standtrue, Crystal Loyal, Pearl Valor and Virginia Courage were employees while working on the Teams, when resident at Gloriavale.

[186] The question as to who the employer of each of the plaintiffs was during the relevant times is adjourned.

[187] The plaintiffs are entitled to costs, the quantum of which is reserved.

Where to from here?

[188] The Registrar is to convene a telephone directions conference with the representatives, and counsel appointed to assist the Court, in four weeks' time to timetable next steps in these proceedings.

Christina Inglis
Chief Judge

Judgment signed at 8.30 am on 13 July 2023