IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUTAHI

[2022] NZEmpC 138
EMPC 85/2022

IN THE MATTER OF	a declaration under s 6(5) of the Employment Relations Act 2000
AND IN THE MATTER OF	an application for recusal
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, FERVENT STEDFAST, ENOCH UPRIGHT, SAMUEL VALOR, FAITHFUL PILGRIM, NOAH HOPEFUL AND STEPHEN STANDFAST Second Defendants

Hearing:	On the papers
Appearances:	B P Henry, D Gates and S Patterson, counsel for plaintiffs J Catran and A Piaggi, counsel for first defendant P Skelton QC, S G Wilson, J Hurren and H Rossie, counsel for second defendants R Kirkness, counsel to assist the Court
Judgment:	3 August 2022

INTERLOCUTORY JUDGMENT (NO 5)
OF CHIEF JUDGE CHRISTINA INGLIS
(Application for recusal)

[1] The second defendants (who I will refer to as the Gloriavale defendants) seek orders that I recuse myself from these proceedings. The application is essentially advanced on the basis that a fair-minded lay observer may reasonably apprehend that I might be biased when deciding the case in light of the fact that I recently heard and determined a preliminary issue in a related proceeding, namely *Courage v Attorney-General*.[1]

[2] Submissions have been filed in support of the application. Submissions have also been filed on behalf of the plaintiffs, by counsel for the Attorney-General and by counsel appointed to assist the Court. I indicated an intention to deal with the application on the papers, and I proceed on that basis.

[3] I have carefully considered the points raised in support of, and opposition to, the application, and each of the authorities referred to. I accept that there are considerations that go both ways. Ultimately an application such as this, which a party is fully entitled to bring, must be dealt with on its merits, applying the relevant legal test to the particular factual context. Having gone through that exercise I do not consider that the grounds for the application have been sufficiently made out, and the application is accordingly declined. My reasons follow.

The applicable test – apparent bias

[4] Apparent, not actual, bias forms the basis for the application. As noted by counsel for the Gloriavale defendants (Mr Skelton QC), the leading case on apparent bias is *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd*.[2] There

---

1 *Courage v Attorney-General* [2022] NZEmpC 77.

2 *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35. Other cases referred to in submissions, such as *A (SC 106/2015) v R* [2016] NZSC 31; *Minister of Immigration and Multicultural Affairs v Jia* [2001] HC 17, (2001) 205 CLR 507; and *Liteky v United States* 510 US 540 (1994) at 555, relate to instances of alleged actual bias.

it was held that a Judge should be disqualified from deciding a case if a fair-minded lay observer might reasonably apprehend that the Judge might not bring an impartial mind to the resolution of the question the Judge is required to decide.[3] The question is one of possibility, not probability, but the possibility must be real and not remote.[4] A two step-process applies:[5]

> Step 1: Identification of what it is said might lead a Judge to decide a case other than on its legal and factual merits.
>
> Step 2: Articulation of the logical connection between the matter and the feared deviation from the course of deciding the case on its merits.

[5] While a number of authorities are referred to in support of the application,[6] the Gloriavale defendants primarily rely on *Kirby v Centro Properties Ltd (No 2)*.[7] That case set out the law on prejudgment as follows:[8]

> [12] The mere fact that a judge has made a particular finding on a previous occasion does not necessarily give rise to an apprehension of bias. Nevertheless, in some situations previous findings may lead to disqualification and "what kind of findings will lead to relevant apprehension of bias must depend upon their significance and nature".
>
> …
>
> [15] These principles must be carefully applied. It has been said that: "disqualification flows from a reasonable apprehension that the judge might not decide the case impartially, rather than that he will decide the case adversely to a party"….
>
> [16] Needless to say, disqualification of a judge by reason of prejudgment must be "firmly established"… Judges should not accede too readily to recusal by reason of apprehended bias.
>
> [17] To apply these principles in any given case is a matter of judgment and evaluation depending on the exact circumstances. Undoubtedly, the question of an apprehension of bias requires one to focus on the issues that the judge is called upon to decide... No strict approach should be taken in identifying the legal and factual issues. The issues before a judge sought to be

---

3 At [3].
4 At [4].
5 Citing *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.
6 *Livesey v New South Wales Bar Association* (1983) 151 CLR 288; *Inform Group Ltd v Fleet Card (NZ) Ltd* [1989] 3 NZLR 293 (HC); *Inform Group Ltd v Fleet Card (NZ) Ltd* [1989] 3 NZLR 293 (CA).
7 *Kirby v Centro Properties Ltd (No 2)* [2011] FCA 1144, (2011) 202 FCR 439.
8 Citations omitted.

> disqualified may well be different in some respects to those issues determined in the earlier proceeding. At the core of the inquiry is an examination of the legal and factual issues on foot and the extent to which previous findings may, in the eyes of the fair-minded lay observer, impact on the judge's ability to decide the matter other than on its merits.

[6] In order to assess the relevance of *Kirby* to this case it is necessary to understand the facts. The case involved a Federal Court Judge who had heard one proceeding against the company, Centro, brought by the regulator, ASIC. He decided to recuse himself from another case brought against it by other plaintiffs with similar issues. The reason for recusal was explained as follows:[9]

> [60] *I consider the circumstances before me are unusual*. I appreciate that PwC and PwCS were not parties to the *ASIC* proceeding, and no issue of credit of any witness arose in that proceeding. I accept that just because findings are made on the same issue that is subsequently to be considered does not necessarily lead to the conclusion that there is a case of apprehended bias.
>
> [61] The important consideration in my mind which makes this situation "unusual" is that I made numerous factual findings in the *ASIC* proceeding, adverse to the interests of PwC and PwCS in these proceedings. Each of those factual findings are to be contested by PwC and PwCS, and are of individual and cumulative importance and relevance in these proceedings. Even though in some respects the legal issues may differ, the factual findings in dispute are of critical significance in these proceedings. I do not detail the pleadings in these proceedings, but by reference to the pleadings (including the cross-claims) this conclusion is apparent. The context and setting for the consideration of the factual issues to be put into contention by PwC and PwCS in these proceedings are similar to that in the *ASIC* proceeding. The materiality of the facts and evidence the subject of the *ASIC* proceeding are live and relevant to the determination of these proceedings. Hence, prejudgment of these facts and evidence, as a matter of logic, could affect the outcome of these proceedings.
>
> [62] If there were one or two findings of fact that PwC and PwCS wished to dispute contrary to my earlier findings, the position may well have been otherwise — the lay observer may well have understood that the judge in a subsequent proceeding would look at the matter afresh. After all, this is not a situation where fraud has been found (or suggested) to have been committed by PwC or PwCS, or their credit has been in issue. However, the reasonable observer will display some common sense, which will involve him or her standing back and observing the extent of the findings made in the earlier proceeding which are now sought to be agitated. The reasonable lay observer, even if mindful of earlier qualifications made to findings that were made "for the purposes of [that] proceeding" or based on "the evidence … in [the earlier] proceeding", will nevertheless feel that the extent and number of the findings made (now in contention) might influence my decision.

---

9 Emphasis added.

> [63] This is particularly so where a theme extends throughout the judgment of the earlier proceeding, such as "the obviousness of the errors" made by the directors. Whilst I did not attribute a reason for other persons (including PwC or PwCS) falling into error, I did conclude that the errors were obvious. This was an important part of ASIC's case (see eg [566]), which I accepted. It has an important impact upon these proceedings, and how the position of PwC or PwCS is perceived.
>
> [64] It is the number of factual findings now in contention, upon which I reached judgment in the ASIC proceeding, which makes the apprehension in the eyes of the reasonable lay observer more apparent and potentially real. It may be assumed I would be able to make different findings of fact in this proceeding based upon the evidence in this proceeding. However, where there are so many factual findings which are now in contention, the reasonable lay observer might have an apprehension the judge would find it difficult to "start afresh". Other cases, like *Cabcharge and A1 v King QC* [1996] FCA 436, can be distinguished readily, because of the range of contentious legal and factual issues that overlapped between the relevant proceedings were not as significant or extensive as the overlap between the *ASIC* proceeding and these proceedings.

[7] As counsel for the Gloriavale defendants points out, the scenario faced by Middleton J has some similarities to the scenario at issue in these proceedings. That is because some factual findings were made in *Courage* which are adverse to the interests of the Gloriavale defendants. However, Middleton J was faced with an unusual case where he had made an especially large number of factual findings that were in contention in the new proceedings. The point is that not every case where some matters of fact have already been decided can be said to give rise to apparent bias.

Analysis

[8] The Gloriavale defendants identify six factual findings made in *Courage* which are said to be sufficiently significant to meet the threshold:

- The degree of control exercised by the second defendants over the lives of Gloriavale residents.
- The relevance and legal effect of the Commitment and "What We Believe".
- The role of the Gloriavale defendants in allocating work.

- The alleged policy of depriving members of food if they did not work.
- The alleged practice of "shunning".
- The extent to which Gloriavale members could exercise free will to stay at or leave Gloriavale.

[9] I pause to note that counsel to assist and counsel for the Attorney-General submitted that the majority of the factual findings relied on by the Gloriavale defendants related specifically to the *Courage* plaintiffs and do not have any particular bearing on the *Pilgrim* plaintiffs. Counsel for the Gloriavale defendants say that it is not relevant whether the factual findings relied on relate specifically to *Courage* or to Gloriavale as a whole. This is because, they say, the fair-minded observer is not a lawyer and does not read judgments forensically to ascertain the precise meaning of each clause and sentence. In this regard it is argued that the overall impression is equally important.

[10] I do not accept this submission. It sits at odds with the description of the fair-minded observer described in *Saxmere*:[10]

> …before she takes a balanced approach to any information she is given, she will take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment.

[11] So, while the fair-minded observer is not a lawyer, the fair-minded observer *is* capable of reading a text and understanding it in its proper context. And it does not take a lawyer to appreciate that some findings relate specifically to one set of plaintiffs while others are more general.

[12] More generally, and as Judge Holden recently observed in *Halse v Employment Relations Authority*, the fair-minded and informed observer does not assume that because a Judge has taken an adverse view of a previous matter, they will have

---

[10] *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd,* above n 2, at [5], citing *Helow v Secretary of State for the Home Department* [2009] 2 All ER 1031 (HL) at [3].

prejudged, or will not deal fairly with, all future matters involving the same litigant.[11] That suggestion, she said, ignores the force and significance of the judicial oath and, without more, could not possibly meet the test for recusal. She went on to note that Judges are not compelled to rule consistently with a ruling in another case that addressed similar issues, where legal and factual merits of the case before the Judge merits them departing from that prior ruling.[12]

[13] In short, I do not consider the question of recusal should be decided based on what someone might take from a skim-read of the *Courage* judgment.

[14] I turn to deal with each of the factual findings relied on by the Gloriavale defendants in support of the application.

Degree of control

[15] The following passages from *Courage* are cited:

> [34] Each of the plaintiffs gave evidence about the realities of life at Gloriavale, which I broadly accept. It is clear that they exercised little autonomy over what they thought, what they did, who they did it with, where they did it or how they did it. That extended to the way in which work was approached within the Community.
>
> [35] The plaintiffs were brought up to accept, without question, the authority of the Overseeing Shepherd and the leadership group, and to submit absolutely to them. That overarching authority, and the requirement to obey, was routinely reinforced – often publicly. Instances of non-adherence were swiftly and firmly dealt with, including through physical and psychological punishment. One witness said that by the time a child attained 13-14 years of age they were well conditioned to what they called "a brutal control regime". To avoid punishment, children had learned to submit to the control of the Shepherds and Servants. This, it was said, had the effect of creating lifetime conditioned responses to the Shepherds' and Servants' authority, which played out over the ensuing years.
>
> …
>
> [102] Loud alarm bells ought, in my view, to have been ringing from even a cursory reading of "What We Believe" and various other documents, including the Deed of Adherence and Partnership Agreement. That is because the documentation makes it very clear where the power lies; that the leadership group holds absolute power and control, including in relation to work, and that

---

11 *Halse v Employment Relations Authority* [2022] NZEmpC 82 at [15].

12 At [15] and [16], citing *Zuma's Choice Pet Products Ltd v Azumi Ltd* [2017] EWCA Civ 2133; *Stiassny v Siemer* [2013] NZHC 154; and *Taunoa v Attorney-General* [2006] NZSC 94.

> members of the Community submit to the leaders; and that members were not to report concerns to external agencies.

[16] Paragraphs [34] and [35] relate specifically to the *Courage* plaintiffs and what they experienced as the "realities of life at Gloriavale". The following sentences reinforce the point.

[17] I accept that the fair-minded observer might reasonably read [102] as being about Gloriavale in general, particularly in regard to the interpretation of the cited documentation. However, the fair-minded observer would also appreciate that this paragraph was part of a discussion about how members of the community engaged with external agencies. So, read in context, the fair-minded observer would likely consider it is about the power and control over communicating with external agencies such as the Labour Inspector, rather than other aspects of daily life, reinforced by the immediately following paragraph:

> [103] I accept that those conducting work at Gloriavale were taught how to respond to outsiders, that the message was routinely reinforced by the leadership group, and that strict controls were placed around engagement with external agencies.

[18] And the finding as to engagement with external agencies related to a relatively minor aspect of the case as it related to the Gloriavale defendants.

The relevance and legal effect of the Commitment and the "What We Believe" document

[19] As I have already observed, a fair-minded observer would likely regard [102] as being focussed on a narrow part of the s 6 inquiry, namely the impact of those documents on how members of the community interact with external agencies.

Allocation of work

[20] The following passages from *Courage* are cited:

> [51] While it was alleged that the plaintiffs exercised choice about where they worked, and that it involved consultation with their parents, this was not made out on the evidence. I accept that Peter Righteous tried to accommodate preferences, including from boys and/or their parents. However, he conceded

> in cross-examination that it was ultimately the interests of the Gloriavale businesses which dictated where labour resources needed to be applied and where they were applied.
>
> …
>
> [55] It will be apparent that I do not accept the Gloriavale defendants' characterisation of work undertaken in this period of the plaintiffs' lives as "chores" which might normally be required of a child by their caregiver. Nor do I accept that the reference to "work" within Gloriavale, in terms of what the plaintiffs did, held some sort of special meaning. It was work as work is commonly understood. It was laborious, often dangerous, required physical exertion over extended periods of time and it was for commercial benefit. The work was not assigned by the plaintiffs' parents, but by the Gloriavale leadership. The plaintiffs' parents were not involved in any meaningful way in decisions about whether the work took place, how long it took place for, where it took place, or when their children would be required to work.
>
> …
>
> [59] I am satisfied that none of the plaintiffs had a choice as to if and where they worked. By way of example, Mark Christian decided that Levi Courage would work in the honey business. He (Levi) had never expressed an interest in working there and his parents had no say in the matter. He gave evidence that his preference had been to work as a builder but Mark Christian refused to allow it.

[21] A fair-minded observer would likely regard these passages as only related to the *Courage* plaintiffs. In any event, the relevance of these passages is unclear given that the *Pilgrim* pleadings do not appear to allege that they worked within the "business" parts of Gloriavale (the statement of claim alleges that they cooked meals for other members; cleaned community facilities; did laundry for community members and prepared food).

Shunning

[22] The following passages from *Courage* are cited:

> [105] Another aspect of the evidence relevant to the broader context of this claim related to the practice of "shunning", although there were differing perspectives on the extent of the practice within Gloriavale. Witnesses for the plaintiffs gave evidence that those who left Gloriavale were cut off from those who remained, including family members, who were prohibited from communicating with them. They say that this practice made leaving and the threat of expulsion for questioning the leadership very real, frightening and significantly off-putting. John Ready, who was expelled from Gloriavale, expressed it this way: The Overseeing Shepherd and Shepherds and Servants use the public expulsion and shunning (excluding you from your family) to create fear in those who remain. It is very powerful intimidation.

> [106] Serenity Valor had a different perspective. She gave evidence that she is free to talk to family members who have left Gloriavale, that she telephones them and that visits are allowed from time to time. Her experience may reflect the fact that she works within the office and has ready access to a telephone, otherwise restricted within the Gloriavale Community. Use of the practice of shunning as a control mechanism was supported by comments made by members of the leadership group, including the Overseeing Shepherd, during the Pilgrim meeting of Shepherds and Servants which I deal with below.

[23] I agree with counsel for the Gloriavale defendants that the fair-minded observer may read these two paragraphs as relating to Gloriavale as a whole. However, the fair-minded observer would likely conclude that the passages simply summarise the evidence.

Free will to stay or leave

[24] The Gloriavale defendants point to the entire discussion in [108] to [125]. The starting point is the first paragraph:

> [108] I understood a major strand of the Gloriavale defendants' case to be that it was the plaintiffs' parents who had chosen to live within Gloriavale. It was open to the plaintiffs' parents to bring their children up in a way they considered appropriate and it was accordingly the parents, not the Overseeing Shepherd, the leadership group or anyone else within the Gloriavale structure, who set the plaintiffs' fate as to the work they did and more generally. It was submitted that the Court must be wary of encroaching into the parental preserve. And, as each of the plaintiffs matured, they were able to exercise their own choice as to whether they stayed or left. Counsel for the Gloriavale defendants referred to this as the "stark choice".

[25] This paragraph is squarely focussed on the *Courage* plaintiffs, which the fair-minded observer would likely regard as important context for the discussion that follows. The discussion then contrasts the position of a different member, Peter Righteous, from the *Courage* plaintiffs:

> [110] The fact is, however, that Peter Righteous was an adult (23 years old) when he decided to live at Gloriavale and commit to its unique way of life. His position materially differs from the position of children born into the Community.

[26] This would likely be taken as a recognition that the circumstances for each member, and whether they feel free to join or leave, are different – as reinforced at the end of the discussion where the position of each plaintiff was discussed individually.

[27] The middle of the discussion covers a transcript of a Shepherds' and Servants' meeting and makes some findings about the Gloriavale community as a whole:

> [117] The transcript of the meeting reflects the very significant power and control exercised by those in the leadership group, particularly the Overseeing Shepherd, over members of the Community in respect of the practical and spiritual aspects of their life; the way in which individuals within the Community are viewed (as being "nothing" and "nobody"); the requirement that there be unquestioning adherence to the direction and control exerted by the leaders; and the climate of fear that existed. Zion Pilgrim described what went on in the meeting as reflective of "the real Gloriavale".
>
> [118] He also gave evidence, which I accept, that the fear of how the Shepherds and Servants operated disciplinary meetings was very real and upsetting for anyone called into one, and that the behaviour reflected in the recording of the meeting he attended with his family was not one-off, "but had been repeated hundreds of times for many other people in similar disciplinary meetings".
>
> [119] The meeting also reinforced other evidence before the Court which pointed to the serious consequences likely to confront a member who could not or would not submit to the Overseeing Shepherd and the Gloriavale leadership, namely expulsion from the Community they had been born and brought up in (and a corresponding propulsion into a world they knew little about, were ill-equipped to live in, and which they had been brought up to believe was wrong and sinful); separation from their loved ones (family and friends); dislocation from a life they were familiar with and were adapted to; and the overarching threat of eternal damnation.

[28] I accept that the passages contain some significant findings about Gloriavale as a whole and that the same factual context is likely to arise in *Pilgrim*.

Credibility

[29] The second defendants point to the fact that adverse inferences were drawn against the failure of certain people to appear and give evidence and that evidence given by the plaintiffs was accepted. The point is made that a number of the same witnesses will appear in *Pilgrim*, and this may present difficulties in assessing credibility afresh without being influenced by the assessment made in *Courage*.

[30] I do not see much force in the argument when the factual findings relating to witness evidence are viewed in context, and no examples of factual findings which might give rise to concern are referred to. I note too that the plaintiffs and counsel for

the second defendants differ in the current proceedings, and at this stage it is unknown which witnesses will be called by the second defendants.

[31] It will be evident from the foregoing that, while I accept that there are some factual findings made about Gloriavale that will likely be at issue in the *Pilgrim* proceedings,[13] other matters alleged to be findings of fact by the Gloriavale defendants were either not findings at all or related only to the *Courage* plaintiffs.

[32] I do not accept that the nature and scope of the factual findings at issue here places this case on all fours with *Centro*, as submitted by the Gloriavale defendants. The point is highlighted in *Centro* itself:

> [62] If there were one or two findings of fact that PwC and PwCS wished to dispute contrary to my earlier findings, the position may well have been otherwise — the lay observer may well have understood that the judge in a subsequent proceeding would look at the matter afresh.

Extraneous information

[33] The Gloriavale defendants cite two Australian cases concerning extraneous information in support of the application.[14] Again, it is necessary to understand the facts of each case to understand the extent to which they assist in deciding the matters raised in the context of these proceedings. The first is *CNY17 v Minister for Immigration and Border Protection*, which concerned whether the Immigration Assessment Authority's decision was invalid due to apprehended bias. The information provided to the Authority included a large amount of material which was irrelevant and prejudicial, and which meant that there was a risk of subconscious bias even though the Immigration Assessment Authority attempted to put the information aside. The case is not directly useful for present purposes where the alleged issue is that information from one case (*Courage*) might taint another (*Pilgrim)*.

---

13 Namely at [102], touching on the effect of certain Gloriavale documentation, specifically in relation to how members interact with external agencies, and [117]-[119], findings that Gloriavale has significant power and control over its members, and exercised that control via regular meetings with the threat of expulsion from the community.

14 *CNY17 v Minister for Immigration and Border Protection* (2019) 268 CLR 76; and *GetSwift v Webb* [2021] FCAFC 26, (2021) 283 FCR 328.

[34] The case relied on more heavily by the Gloriavale defendants is *GetSwift v Webb*. In that case, there were two claims brought against the company *GetSwift*. One was by a group of investors (*Webb)* and one was by the regulator (*ASIC)*. In both cases there were allegations that *GetSwift* engaged in misleading and deceptive conduct and breached disclosure obligations.

[35] The Judge in question heard the *ASIC* proceeding. Then, in the interests of efficiency, he proposed to hear the *Webb* proceeding before delivering both judgments.[15] This would require him to have the evidence from both hearings in mind simultaneously, but ignore the *ASIC* evidence while writing the *Webb* judgment and ignore the *Webb* evidence while writing the *ASIC* judgment. The Federal Court considered it would be reasonable to apprehend that even a trained judge might struggle with this.

[36] The facts of *GetSwift* materially differ from the current situation. As pointed out by counsel to assist, *Courage* was heard in late February/early March 2022; judgment was delivered on 10 May 2022. The *Pilgrim* hearing is set down to commence in late August 2022. That means that by the time the *Pilgrim* evidence is heard it will have been slightly over three and a half months since the judgment was delivered and closer to six months since the hearing of the evidence itself.

[37] Counsel for the Gloriavale defendants submit that, despite the fact that the evidence in *Courage*/*Pilgrim* is not being heard simultaneously (as in *GetSwift*), the situation is "analogous (if not identical)" because the *Courage* proceedings are not complete, with some issues reserved. While it is true that the proceedings are not complete, there has yet to be a process determined for resolving the remaining issues, and those issues have not come back before the Court in the intervening period.

[38] I am not satisfied that a fair-minded observer would consider that there is any more than a remote risk of the *Courage* evidence contaminating the new *Pilgrim* evidence.

---

[15] It is worth noting that none of the parties in either proceedings agreed that this was a good approach, see *GetSwift v Webb*, above n 14, at [6].

Prejudicial and irrelevant evidence

[39] The Gloriavale defendants identify what might be characterised as a second branch to the extraneous information submission. They say that some of the evidence given in the *Courage* proceeding was prejudicial and irrelevant to the issue in question (namely determination of status for the purposes of s 6 of the Employment Relations Act 2000), and consideration of that evidence in the *Pilgrim* proceedings could itself lead to the apprehension of bias. The evidence can be summarised as follows:

- Allegations of physical abuse of children.
- Allegations of tax and benefit fraud by Gloriavale.
- Allegations of sexual abuse.
- A submission that the Gloriavale community is a sex-based cult that breeds children for sexual predation.
- A submission that the original Overseeing Shepherd was a sex offender cloaking his activities under the guise of Christianity.

[40] While this information is certainly prejudicial and some of it lacks direct, if any, relevance, it is necessary to recognise that a Judge, unlike a jury, is capable of putting aside irrelevant and prejudicial allegations, and is not infrequently called on to do so in this Court. I do not accept that the identified evidence provides a sufficient basis for recusal.

Principle of convenience

[41] For completeness I note that counsel for the plaintiffs referred to the principle of efficiency as a reason against recusal, and counsel for the Attorney-General observed that there may be added efficiency in dealing with both cases together if and when it comes to dealing with those parts of the claims against the Attorney-General.

[42] I agree with Mr Skelton that, as stated in *GetSwift*:[16]

> Whilst a pragmatic or cost-benefit approach to the work of a judge in both managing cases and making decisions is sometimes encouraged, it must be tempered by the rule of law and the importance of upholding confidence in the administration of justice.

[43] I note one further point. The *GetSwift* case concerned a judge of the Federal Court of Australia, a Court with over 50 active judges.[17] There are numerous individuals who have left Gloriavale, and several hundred remain within the community. Section 6 confers on an individual an entitlement to seek a declaration of employment status from the Court. This Court currently comprises five sitting judges. It goes without saying that setting the recusal bar too low could have serious consequences. I have not, however, been required to have regard to this issue in dealing with the application presently before the Court.

Conclusion

[44] The number of factual findings and their significance, when viewed in context, do not warrant recusal. Nor do I accept that there is an appreciable risk of extraneous information tainting the *Pilgrim* judgment, or that irrelevant and prejudicial evidence given during the *Courage* proceeding justifies recusal in the circumstances.

[45] The application for recusal is accordingly dismissed.

[46] Costs are reserved.

Christina Inglis
Chief Judge

Judgment signed at 8.15 am on 3 August 2022

---

16 At [62].
17 Federal Court of Australia "Judges of the Court" <https://www.fedcourt.gov.au>.