

**IN THE SUPREME COURT OF NEW ZEALAND  
I TE KŌTI MANA NUI O AOTEAROA**

**SC 62/2025**

**BETWEEN Hairland Holdings Ltd**

**Appellant**

**AND The Chief Executive, Ministry of Business  
Innovation and Employment**

**Respondent**

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**AMENDED APPELLANT'S SUBMISSIONS**

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**Counsel certifies that the attached submissions and appendices do not contain suppressed information and are suitable for publication**

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## May it please the Court

### *Summary of Argument*

1. This appeal concerns the scope of [s 161\(1\)\(c\) of the Employment Relations Act 2000](#) (the Act).
2. The most relevant precedents are two decisions of this Court, [FMV](#) and [Gill Pizza](#).<sup>1</sup>
3. The majority in the Court of Appeal erroneously stipulated an employment relationship problem must be connected to an existing employment relationship.
4. The appellant (Hairland) has an employment relationship problem under [s 161\(1\)\(c\)](#).
5. [Section 6\(5\)](#) does not preclude the Employment Relations Authority (“Authority”) hearing the problem.
6. The question for which leave has been granted ought be answered in the negative.

### *Submissions - Introduction*

7. This appeal concerns the scope of [s 161\(1\)\(c\)](#) of the Act which reads:
  - (1) The Authority has exclusive jurisdiction to make determinations about employment relationship problems generally, including—  
...  
(c) matters about whether a person is an employee (not being matters arising on an application under [section 6\(5\)](#)):
8. The majority’s interpretation that [s 161\(1\)\(c\)](#) cannot avail Hairland, is, with respect, incorrect and the interpretation adopted by Judge Smith in the Employment Court and confirmed by Cooke J in the Court of Appeal is instead correct.

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<sup>1</sup> *FMV v TZB* [2021] 1 NZLR 466; *Gill Pizza v A Labour Inspector Ministry of Business Innovation and Employment* [2021] NZSC 184.

*Must an employment relationship problem arise from an existing employment relationship as defined in s 4(2)?*

9. When the majority of the Court of Appeal declared “[i]f there is no employment relationship there can be no employment relationship problem”<sup>2</sup> this proved fatal to Hairland’s case and, with respect, it represents a material error emanating from a wrong application of *FMV*.
10. After traversing the facts and parties’ submissions, the majority turned to the purpose and scheme of the Act<sup>3</sup> and then to *FMV* focussing Williams J’s rephrasing of the introductory words of s 161(1): “[t]he Authority has exclusive jurisdiction to make determinations about any problems relating to or arising out of employment relationships, generally.”<sup>4</sup>
11. Judge Smith’s comment about work context was found to be in error.<sup>5</sup>
12. The majority judgment then set out in full paragraphs [60]-[61] and [92]-[95] from *FMV* concluding that a prerequisite for triggering the Authority’s s 160 jurisdiction was the existence of an employment relationship.<sup>6</sup>
13. The majority’s narrow interpretation of “employment relationship problems” in s 161(1) does not accord with the text in light of its purpose and context.<sup>7</sup> It is a circular argument<sup>8</sup> and the correct

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<sup>2</sup> See para [30]. The finding was repeated at para [50].

<sup>3</sup> At paras [30]-[33].

<sup>4</sup> At para [37].

<sup>5</sup> See para [30] of the Employment Court judgment [2022] NZEmpC 169. The “work context” comment was taken from Williams J in *FMV* at para [93].

<sup>6</sup> At para [37].

<sup>7</sup> Section 10, Legislation Act 2019.

<sup>8</sup> To adopt the description of Cooke J in his dissenting judgment at para [80].

reading of the term is that it is not necessary for there to be an existing employment relationship.

14. In *FMV*, this Court dealt with the issue of collateral proceedings in the High Court and the Authority and ruled that the Authority had exclusive jurisdiction to hear the controversy as an employment relationship problem under s 161(1).
15. The *FMV* passages relied on by the majority at [60]-[61] and [92]-[95] focussed on a connection of the problem to an employment relationship as that term is defined.<sup>9</sup> But, employment status was not at issue in *FMV* and the decision must be read with this in mind.<sup>10</sup> Where status is disputed, the overriding theme of *FMV* is how broadly s 161(1) is to be interpreted rather than the necessary connection to an employment relationship.
16. First, the s 5 (definition of “employment relationship problem”) and the s 161 chapeau are both expressed inclusively.<sup>11</sup> The majority of this Court in *FMV* adjudged a broad wording of the chapeau rather than treating the s 161(1) problems/matters as an exhaustive list.<sup>12</sup>
17. Second, s 161 is to be interpreted broadly and in the context of empowerment, pragmatism, and accessibility.<sup>13</sup>
18. Third, problems listed under s 161(1) are not legal categories; they are factual phenomena without fine or technical distinctions.<sup>14</sup> The examples set out in s 161 are varied in subject matter and form and,

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<sup>9</sup> At para [51] Williams J focussed on the definition of employment relationship at [60] and at para [60] confined s 161(1) problems to those relating to employment relationships.

<sup>10</sup> The passages at [60]-[61] and [92]-[95] only apply in cases connected to an undisputed employment relationship.

<sup>11</sup> *FMV*, Para [67].

<sup>12</sup> In contrast to the approach by William Young J treating what follows the chapeau as an all-encompassing source of jurisdiction (at para [170(a)]).

<sup>13</sup> Para [55]. “Thus, the focus of Part 10 is on practical, specialised, speedy, and informal dispute resolution that is accessible to all parties [footnote excluded]”. See also paras [53]-[59] generally.

<sup>14</sup> Para [61] and later called a universalist approach by William Young J (at para [176]).

of direct relevance, [s 161\(1\)\(c\)](#) itself is not strictly a problem but more in the nature of a response or a solution to a problem.<sup>15</sup>

19. Fourth, the legislative history supports a broad interpretation of [s 161](#).<sup>16</sup>
20. Moreover, the majority's interpretation does not accord with what is the *ratio decidendi* in [FMV](#):<sup>17</sup>

...This necessarily means that if a controversy can be framed in terms of one or more of the examples in [s 161\(1\)\(a\)-\(qd\)](#), it must be brought in the Authority as an employment relationship problem.

21. Plainly, Hairland's controversy can be framed under [s 161\(1\)\(c\)](#).
22. The majority interpretation is inconsistent with several [s 161\(1\)](#) examples which have an implied prerequisite that there is no existing employment relationship, as exhaustively defined in s 4(2), for the Authority to have jurisdiction (noting the majority recognised and distinguished two such exceptions<sup>18</sup>). They are:
  - a. a matter about whether the rules of an incorporated society that wishes to register as a union comply with the provisions of the Act;<sup>19</sup>
  - b. a matter about whether an incorporated society is entitled to be registered;<sup>20</sup> and
  - c. a matter about whether a person is entitled to be a member of a union.<sup>21</sup>

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<sup>15</sup> Para [64]. See also the prescribed form (item 1, Schedule 1 Employment Relations Authority Regulations 2000) referring to "problem or matter".

<sup>16</sup> Paras [68]-[74].

<sup>17</sup> At para [94] (original emphasis, footnotes omitted).

<sup>18</sup> Section 161(1)(c) and (r) – see para [52].

<sup>19</sup> Section 161(1)(h).

<sup>20</sup> Section 161(1)(i).

<sup>21</sup> Section 161(1)(j).

23. Notably, like [s 161\(1\)\(c\)](#), these are all declaratory matters.
24. Similarly, [s 161\(1\)\(s\)](#) extends jurisdiction to Authority determinations made under any other Act. The Screen Industry Workers Act 2022 (which governs workers, not employees, in the screen industry) is an example.<sup>22</sup>
25. There are also other examples where it is foreseeable the dispute is unrelated to an employment relationship. See for example [s 161\(1\)\(k\)](#) where, say, a former member of a union has a dispute over union rules. Or, the recovery of a penalty under [s 161\(1\)\(m\)\(ii\)](#) of a penalty for a non-compliant person (but not an employer).<sup>23</sup>
26. Finally, the wording of [s 161\(1\)\(r\)](#) implies there may be employment relationship problems unconnected to an employment relationship by referring in the alternative to an action related to an interpretation of the Act.<sup>24</sup>
27. The Authority’s jurisdiction is therefore considerably wider than dealing only with problems connected to employment relationships and the majority were wrong to limit an “employment relationship problem” by requiring a connection to an employment relationship.

*If an employment relationship problem extends to problems outside an existing employment relationship is Hairland’s matter an employment relationship problem?*

28. Two of Hairland’s former contractors, represented by a solicitor, complained to the Labour Inspector who carried out an investigation

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<sup>22</sup> Section 72 of which gives the Authority exclusive jurisdiction to make determinations over disputes. Note, however the overlapping jurisdiction conveyed by s 161(4) of the Act.

<sup>23</sup> Section 229A commenced 13 January 2020 (before the Authority determination) but is relevant to the interpretation of s 161(1)(c). The s 229A(2)(d) extension of the definition of “employer” does not apply to s 229A(3) penalty actions as a penalty process is not the exercise of a power in an investigation (s 229A(2)).

<sup>24</sup> And, whatever the merits of this appeal, Hairland would always have had an available action before the Authority over the disputed interpretation of s 161(1)(c) itself.

and made a decision that the complainants were employees. Hairland was advised and there was no statutorily defined process for the Labour Inspector so advising.<sup>25</sup> Hairland disputed the decision and wished to resolve it. It had an employment relationship problem.

29. The majority held the Labour Inspector's decision had no practical effect unless proceedings were brought by her<sup>26</sup> and also that there was no disadvantage to Hairland in waiting.<sup>27</sup> However, the decision by the Labour Inspector represented a significant risk for Hairland's entire business model moving forward.
30. But that, or any other, potential consequence does not matter. Any practical effects of a disputed decision is irrelevant to the Authority's jurisdiction to admit a problem under [s 161](#). All that is needed to trigger jurisdiction in the Authority is a qualifying problem. The threshold for a [s161\(1\)\(c\)](#) problem or matter is an actual problem and, following *FMV*, if the problem can be so framed it must be filed in the Authority.
31. Also, the reliance by the majority on the common law test for exercising declarations<sup>28</sup> with respect, focusses on disposition rather than initial jurisdiction. Under s 3 of the Declaratory Judgments Act 1908 a person has a right to apply to the High Court for a declaration even if the s 10 discretion is later used to deny making any declaration. So too, although the Employment Court has a discretion to decline to make a declaration in an application under [s 6\(5\)](#) it must first admit the claim to be heard.<sup>29</sup>

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<sup>25</sup> The functions of a Labour Inspector include determining whether the provisions of the relevant Acts have been complied with s 223A(a) but not to inviting a response to such a determination.

<sup>26</sup> At para [65].

<sup>27</sup> At para [61]

<sup>28</sup> At para [64], fn 61.

<sup>29</sup> The Employment Court's discretion was relevant to the s 6(5) argument below as discussed by the Court of Appeal in *Labour Inspector (Ministry of Business, Innovation and Employment) v Gill Pizza Ltd* (2021) NZELC ¶79-134 at para [49] and noted by the Supreme Court in *Gill Pizza* at para [32].

32. Moreover, the majority approach also conflates the Authority's special dispositive jurisdiction in declaration matters with that of the courts. If there is jurisdiction, unlike the courts, the Authority is statutorily bound to make a determination on the substantial merits of the case rather than be able to rely on any discretion not to make such a determination.<sup>30</sup>
33. For the above reasons Hairland has a qualifying employment relationship problem.

*Is Hairland's problem nonetheless excluded by s 6(5)?*

34. The plain reading of [ss 161\(1\)\(c\)](#), [s 6\(5\)](#), and 187(f) allows a party to an employment relationship problem to apply to the Authority for a status determination.
35. The majority's finding effectively says a declaration sole application may only be made through the Employment Court under [s 6\(5\)](#). If correct, it means Parliament has extraordinarily deprived a company like Hairland of any remedy without expressly doing so as well as depriving a purported employee from asking the Authority for a status declaration without expressly doing so.
36. Cooke J did not think the Employment Court's in rem jurisdiction called for a restrictive view of [s 161\(1\)\(c\)](#) because there was an overlapping declaratory jurisdiction and there would otherwise be deprivation of a remedy. He also thought [s 6\(2\)](#) expressly contemplated the Authority had jurisdiction and [s 6\(5\)](#) gave the Employment Court a broader jurisdiction to make declaratory orders binding non-parties compared to the Authority's jurisdiction over individual problems. As well, the protective procedural measures in [s 6\(6\)](#) did not take away jurisdiction from the Authority.<sup>31</sup>

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<sup>30</sup> See s 157(1) of the Act.

<sup>31</sup> See paras [81]-[84].

37. This Court's decision in *Gill Pizza* also supports Hairland's position as recognised by Cooke J.<sup>32</sup>
38. *Gill Pizza* concerned a Labour Inspector's action under s 228 where the full Employment Court had decided the carve-out in s 6(5) gave it exclusive jurisdiction to determine employment status. This Court agreed with the Court of Appeal that the Employment Court was wrong. The statutory wording was clear and the legislative history implied that Parliament did not consider it necessary to require all disputes relating to employment status to be channelled into a s 6(5) procedure.<sup>33</sup>
39. While it is accepted in *Gill Pizza* that this Court focussed on status questions incidental to a Labour Inspector's application under s 228, it is a straightforward extension of the case to say declaration only matters fall within s 161(1)(c) provided there is no concurrent s 6(5) application.
40. As this Court said in *Gill Pizza* the references in s 6(5) in both ss 161(12)(c) and 187(f) cannot simply be ignored. There is no reason to depart from the plain meaning of s 161(1)(c) to exclude status matters that are not, in fact, raised under s 6(5).<sup>34</sup>
41. In contrast, the majority read the employee protections in s 6(6) as confirming its view that Hairland's application for a status only declaration was not permitted.<sup>35</sup> In doing so the majority relied on *Gill Pizza*.<sup>36</sup>

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<sup>32</sup> At paras[80]-[82].

<sup>33</sup> Para [63]. Incidentally, see the Court of Appeal obiter comment at para [48] of *Labour Inspector (Ministry of Business, Innovation and Employment) v Gill Pizza Ltd* (2021) NZELC ¶79-134 that even if status were the only live issue between the parties, they would still have to go to the Authority for orders sought under s 228(1) unless the Authority removed the entire matter to the Employment Court under s 178.

<sup>34</sup> At para [49].

<sup>35</sup> See paras [59]-[65]

<sup>36</sup> See para [59].

42. The majority said allowing status to be determined by the Authority absent any other problem would undermine [s 6\(5\)](#) which conferred on the Employment Court exclusive jurisdiction to make declarations as to status. Recognising that *Gill Pizza* found [s 6\(5\)](#) was not a code the majority nevertheless added:<sup>37</sup>

“But the Court expressly differentiated between the specific procedure in [s 6\(5\)](#) for a declaration and an enforcement action in which status arose as a jurisdictional fact to be proved as part of the overall claim.

If Hairland’s argument were correct a worker could be exposed to litigation over their status without their consent. We cannot accept Parliament intended to allow the protection conferred by [s 6\(6\)](#) to be circumvented in the way the Hairland proposes.”

43. The majority also suggested [s 6\(5\) and \(6\)](#) reflected the power imbalance as identified in the Act’s objects.<sup>38</sup>

44. But that approach is to misapprehend the purpose of the [s 6\(5\) and \(6\)](#) protections which were put in place to protect contractors from a class action for employee status. They do not protect purported employees.

45. In the [bill](#) as reported back the Select Committee said (emphasis added):<sup>39</sup>

“...The majority of submitters who opposed clause 6 did so because of the impact that it would have on existing relationships.

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<sup>37</sup> At para [59].

<sup>38</sup> At para [61].

<sup>39</sup> At pp 5-6.

As well clause 154 has been omitted so that only persons who consent to action being taken will be affected by any Court decision”.

46. Note also the origins of subs (5) and (6) were that of a class action.<sup>40</sup>
47. *Gill Pizza* reflected this by setting out the legislative history including questions being raised in Parliament and confirming that history was not consistent with the Employment Court having exclusive jurisdiction over declarations.<sup>41</sup>
48. Hairland’s employment relationship problem is not a class action but an individual party’s response to complaints made by former contractors and a subsequent determination made by the Labour Inspector. Because an employment relationship problem is a jurisdictional prerequisite under [s 161](#) the Authority may not make a declaration about parties in relation to which there is no problem.
49. Note also, in *Gill Pizza* this Court addressed and dismissed Gill Pizza’s submission that there may be non-consented change of status by saying there was an air of unreality to it.<sup>42</sup>
50. Further, as noted by the Court of Appeal in *Gill Pizza*, with a [s 6\(5\)](#) application, any remedy is discretionary.<sup>43</sup> This compares with a [s 161\(1\)\(c\)](#) application which must be determined according to its substantial merits. The respondent’s approach also leads to more complexity, formality, and judicial intervention for both those in Hairland’s position and for any purported employees wanting a declaration.

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<sup>40</sup> The heading to clause 154 of the Bill: “Power of Court to make a declaration that group or class of persons are employees under the Act”.

<sup>41</sup> At paras [55]-[63].

<sup>42</sup> At para [67].

<sup>43</sup> Para [49].

51. Turning finally to the statute’s objects, the Part 10 (Institutions) objects within which [s 161](#) falls are relevant and they support Hairland’s argument.<sup>44</sup> Allowing a party to seek a status declaration in the Authority means such matters are resolved at the lowest level.
52. In reaching its decision the majority referred to the object at [s 3\(a\)\(ii\)](#) of the Act relating to the inequality of bargaining power for employees.<sup>45</sup>
53. But, becoming involved in an Authority proceeding when the person concerned in fact contests employment status is not something a court must protect, at least not at the expense of a plain textual reading. As Cooke J suggests any issues around party vulnerability are case management not jurisdictional issues.<sup>46</sup>
54. Further, in a case where the only contest is about the jurisdictional scope of [s 161\(1\)\(c\)](#) the general objects in [s 3\(a\)](#) have no bearing as the Act is not concerned with inequality generally but inequality in employment relationships – see *Uber*.<sup>47</sup> Necessarily, the question of the scope of the Authority’s jurisdiction under [s 161\(1\)\(c\)](#) precedes the question of the scope of the [s 6](#) status test.

### *Disposition*

55. For the above reasons the question before the Court ought be answered in the negative.

### *Costs*

56. Costs are sought.

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<sup>44</sup> See s 142(d), (fa) and (g) in particular. Note too, the focus of Part 10 (Institutions) is on “practical, specialised, speedy and informal dispute resolution that is accessible to all parties” – see also para [55] *FMV*.

<sup>45</sup> At paras [61]-[62].

<sup>46</sup> At para [90].

<sup>47</sup> *Raiser Operations BV v E Tū Incorporated* [2025] NZSC 162. To avoid the risk of circular reasoning, any s 6 status issues are not enlarged by the s 3 object – see para [88].



## Schedule

### *Narrative of relevant facts*

1. Hairland engaged hairdressers throughout New Zealand under contracts for services. A Labour Inspector received a complaint on behalf of a solicitor representing two of Hairland's former contractors who, despite their contracts for services, alleged they had been engaged as employees.
2. After interviewing several of Hairland's staff the Labour Inspector issued an Investigation Report. The report found the complainants were employees, that there had been a breach of minimum entitlements, and sought a response from Hairland on possible enforcement action including an improvement notice.
3. Hairland disputed the Labour Inspector's finding and filed a Statement of Problem in the Employment Relations Authority (Authority) seeking a declaration that its former contractors were not employees. The Chief Executive claimed the Authority had no jurisdiction.
4. The Chief Executive subsequently filed separate proceedings in the Authority to which Hairland protested jurisdiction.
5. The Authority determined it had no jurisdiction to determine Hairland's application.<sup>48</sup>
6. Hairland challenged the determination to the Employment Court under s 179 of the Act. The Labour Inspector sought to strike out

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<sup>48</sup> [\*Hairland Holdings Ltd v Chief Executive Ministry of Business, Innovation and Employment\* \[2018\] NZERA 196.](#)

Hairland's proceeding and the Employment Court declined to so strike out.<sup>49</sup>

7. The Labour Inspector, after seeking and obtaining leave, appealed to the Court of Appeal under [s 214](#) of the Act.
8. The majority of the Court below comprising Courtney and Katz JJ found that the Authority did not have jurisdiction and struck out Hairland's challenge in the Employment Court.<sup>50</sup>
9. Cooke J dissented finding that as a matter of jurisdiction [s 161\(1\)\(c\)](#) gave the Authority jurisdiction to determine whether the person was an employee on a stand-alone basis.
10. On 1 October 2025 this Court granted Hairland leave to appeal the following question:<sup>51</sup>

Whether the Court of Appeal was correct to allow the appeal on the basis that the Employment Relations Authority does not have jurisdiction to hear an application, brought by a purported employer against the Chief Executive of the Ministry of Business, Innovation and Employment, the Labour Inspector and/or its workers, for a bare declaration that its workers are not employees under [s 6\(1\)](#) of the Employment Relations Act 2000.

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<sup>49</sup> [Hairland Holdings Ltd v Chief Executive of Ministry of Business, Innovation and Employment \[2022\] NZEmpC 169.](#)

<sup>50</sup> [Chief Executive of Ministry of Business, Employment and Innovation v Hairland Holdings Ltd \[2025\] NZCA 219.](#)

<sup>51</sup> [Hairland Holdings Ltd v Chief Executive of Ministry of Business, Employment and Innovation \[2025\] NZSC 129.](#)