



# Employment Court of New Zealand

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## Butt v Attorney-General [2023] NZEmpC 43 (17 March 2023)

Last Updated: 22 March 2023

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2023\] NZEmpC 43](#)

EMPC 417/2022

IN THE MATTER OF an application for a declaration under [s 6\(5\)](#) of the [Employment Relations Act 2000](#)

AND IN THE MATTER OF an application for stay of proceedings  
BETWEEN SUSHILA DEVI BUTT  
First Plaintiff

AND ARTHUR ROYD WILSON BUTT  
Second Plaintiff

AND THE ATTORNEY-GENERAL SUED ON  
BEHALF OF THE MINISTRY OF  
HEALTH  
First Defendant

AND THE ATTORNEY-GENERAL SUED ON  
BEHALF OF THE MINISTER OF  
HEALTH  
Second Defendant

Hearing: On the papers

Appearances: A Till, counsel for plaintiffs  
W Aldred and O Wilkinson, counsel for  
defendants

Judgment: 17 March 2023

INTERLOCUTORY JUDGMENT OF JUDGE KATHRYN BECK

(Application for stay of proceedings)

[1] The defendants have applied to the Court for orders:

SUSHILA DEVI BUTT v THE ATTORNEY-GENERAL SUED ON BEHALF OF THE MINISTRY OF HEALTH [\[2023\] NZEmpC 43](#) [17 March 2023]

(a) staying these proceedings until the Court of Appeal's determination of the appeals in *Attorney-General v Fleming* (file CA371/2021) and *Humphreys v Humphreys* (file CA742/2021);

(b) striking out the defendants and adding "Attorney-General" as a defendant; and

(c) costs.

[2] The grounds on which orders [1](a) and (c) above are sought are that:

(a) the plaintiffs are employed to care for their adult disabled children;

- (b) there are similar proceedings currently before the Courts;1
- (c) there are common issues of fact or law which will be determined in the similar proceedings; and
- (d) the Court should exercise its discretion to stay these proceedings.

[3] The grounds on which order [1](b) above is sought are that:

- (a) these proceedings were brought against officers of the Crown;
- (b) responsibility for this litigation and for provision of Disability Support Services has now shifted to Whaikaha – Ministry of Disabled People; and
- (c) the Attorney-General was named in some of the parallel proceedings.

[4] In support of the application for a stay, the defendants rely on:

1. *Fleming v Attorney-General* [2021] NZECmpC 77; *Humphreys v Humphreys* [2021] NZEmpC 86.

(a) [section 14\(5\)](#) of the [Crown Proceedings Act 1950](#), reg 6(2)(a)(ii) of the [Employment Court Regulations 2000](#) and rr 4.56 and 10.12 of the [High Court Rules 2016](#);

(b) the affidavit of Amanda Jane Bleckmann dated 16 December 2022; and

(c) the judgments in *Amalgamated Finance Ltd v Wyness*,<sup>2</sup> *Regan v Gill*<sup>3</sup>

and *100 Investments Ltd v Walker*.<sup>4</sup>

*Substitution of Attorney-General*

[5] The plaintiffs consent to the substitution of the Attorney-General for the currently named defendants. It is appropriate to do so, and the substitution is ordered accordingly.

*Stay of proceedings*

[6] The plaintiffs do not oppose the stay of the proceedings.

[7] The proceedings currently before the Court of Appeal, *Attorney-General v Fleming* and *Humphreys v Humphreys*, deal with common questions of fact or law.

[8] The Court of Appeal has already part-heard appeals of those judgments in November 2022.

[9] The issues of fact or law that are likely to be determined by the appeals include:

(a) whether family carers employed under either Funded Family Care or Individualised Funding are employed by the Crown;

(b) the effect of the now repealed [pt 4A](#) of the [New Zealand Public Health and Disability Act 2000](#); and

2 *Amalgamated Finance Ltd v Wyness* HC Wellington CP156/86, 19 February 1987.

3 *Regan v Gill* [2011] NZCA 607.

4 *100 Investments Ltd v Walker* [2022] NZHC 1379.

(c) what entitlements family carers are entitled to.

[10] These are all issues that will need to be determined in the current proceedings.

[11] The results of the *Fleming* and *Humphreys* appeals are likely to be determinative of substantial issues to be resolved in these proceedings. I agree that both parties would incur unnecessary expenses and it would be a potential waste of judicial resources if these proceedings were to proceed prior to the delivery of the Court of Appeal's judgments.

[12] Accordingly, these proceedings are stayed until the Court of Appeal's determination of the appeals in *Attorney-General v Fleming* and *Humphreys v Humphreys*.

[13] Once the Court of Appeal has issued its judgments on the *Fleming* and *Humphreys* appeals, counsel should advise the Court of their respective positions, after which a directions conference will be convened if necessary.

[14] Costs are reserved.

Kathryn Beck Judge

Judgment signed at 3.30 pm on 17 March 2023

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