



- (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;<sup>1</sup>
- (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:

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<sup>1</sup> *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- (b) the effect of the now repealed pt 4A of the New Zealand Public Health and Disability Act 2000; and

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

<sup>3</sup> *Regan v Gill* [2011] NZCA 607.

<sup>4</sup> *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