



**Supreme Court of New Zealand
Te Kōti Mana Nui**

7 August 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**JANET ELSIE LOWE v DIRECTOR-GENERAL OF HEALTH,
MINISTRY OF HEALTH AND CHIEF EXECUTIVE, CAPITAL AND
COAST DISTRICT HEALTH BOARD**

(SC 97/2016) [2017] NZSC 115

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The Ministry of Health and District Health Boards (DHBs) operate a scheme called Carer Support. The scheme provides respite for primary carers of disabled or elderly people by enabling them to obtain the services of relief carers. Under the scheme, the Ministry or DHB reimburses the primary carer for some or all of the amount paid to the relief carer or, alternatively, pays the relief carer directly. The appellant, Ms Lowe, has provided relief care for at least three different families pursuant to the Carer Support scheme. In some cases she was paid directly by the Ministry or DHB, in others she was paid by the primary carer, who was then reimbursed by the Ministry or DHB.

The question for determination in the appeal was whether Ms Lowe, as a relief carer, came within the definition of “homeworker” in s 5 of the Employment Relations Act 2000 (the ERA). If she did, then she would be an “employee” of the Ministry and/or the relevant DHB under s 6(1)(b) of the ERA and the Ministry and the DHB would owe her certain employment obligations in relation to the minimum wage, holidays and the like.

In the Supreme Court and in the Courts below Ms Lowe argued that she was a homeworker because she was engaged by the Ministry and/or DHB to do relief care (relieving the primary carer) in a dwellinghouse and that this was work for the Ministry or the DHB in the course of their trade or business. The Employment Relations Authority found she was not a homeworker. Ms Lowe challenged this in the Employment Court, and a full Court found in her favour. That decision was, in turn, reversed by the Court of Appeal.

The Supreme Court has, by a majority comprising William Young, Arnold and O'Regan JJ, dismissed Ms Lowe's appeal and upheld the Court of Appeal's finding that she was not a homeworker, and was therefore not an employee of the Ministry or the DHB. However, the reasons for this conclusion varied.

Arnold and O'Regan JJ held that Ms Lowe was not a homeworker because the Ministry and the DHB did not engage her to do work for them. They said engagement requires that an event occurs which creates a relationship between the hirer and the person being engaged. That relationship was lacking in this case, because neither the Ministry nor the DHB have a role in selecting relief carers under the Carer Support scheme.

William Young J held that Ms Lowe was not a homeworker because her provision of relief care was not in the course of the Ministry or the DHB's trade or business and the relief care work she carried out was not "for" the Ministry or the DHB.

The conclusion reached by the majority meant it was not necessary for them to decide whether the work done by Ms Lowe and other relief carers was work "in a dwellinghouse". However, Arnold and O'Regan JJ observed that it was distinctly arguable that this requirement was not met.

Elias CJ and Glazebrook J dissented. They would have held that Ms Lowe was employed, engaged or contracted by the Ministry or the DHB to provide relief care to disabled or elderly persons, as one of the services provided to disabled or elderly persons to enable them to remain in the community. In the alternative, they would have held that Ms Lowe's services were secured by the primary carers as the agents of the Ministry/DHB. They would have held that, as Ms Lowe provided this care in the houses of the disabled clients, she was contracted to provide work in a dwellinghouse and, as a result, met the definition of homeworker.

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