



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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28 APRIL 2023

**MEDIA RELEASE**

CHRISTOPHER RYAN v HEALTH AND DISABILITY COMMISSIONER

(SC 98/2021)[2023] NZSC 42

**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](http://www.courtsofnz.govt.nz).

**Suppression**

The High Court order made in [2020] NZHC 373 prohibiting publication of the names or identifying particulars of the complainant remains in force.

**Background**

The appellant, Dr Ryan, is a general practitioner at the Moore Street Medical Centre (the Medical Centre). In 2016, another general practitioner at the Medical Centre, Dr Sparks, saw one of Dr Ryan’s patients while Dr Ryan was on leave. Dr Sparks prescribed the patient medication from a class of antibiotics to which she had a documented allergy. The patient suffered an allergic reaction and was admitted to hospital.

She subsequently made a complaint to the Health and Disability Commissioner (the Commissioner) against Dr Sparks. The Commissioner found that Dr Sparks had breached the Code of Health and Disability Services Consumers’ Rights (the Code). The Commissioner also found that the Medical Centre (that is, Dr Ryan and Dr Sparks, trading as the Medical Centre) did not directly breach the Code but that it was liable for Dr Sparks’ breaches under s 72 of the Health and Disability Commissioner Act 1994 (the HDC Act). Dr Ryan commenced judicial review proceedings against the decision of the Commissioner to hold the Medical Centre liable.

**Procedural history**

The High Court found that Dr Sparks was an agent of the Medical Centre and that he had acted within the Medical Centre’s implied authority when he breached the Code. He was therefore liable under s 72(3) of the HDC Act.

On appeal, the Court of Appeal considered that holding the Medical Centre liable under s 72(3) (for the actions of an agent) was problematic in this case. Nevertheless, Dr Sparks was acting as a member of the Medical Centre when he breached the Code and was thus liable under s 72(4).

The Supreme Court granted Dr Ryan leave to appeal on the question of whether the Court of Appeal was correct to uphold the finding of liability under s 72 of the HDC Act.

### **Supreme Court decision**

The Supreme Court has, by a 4-1 majority, dismissed the appeal and held that the Medical Centre was liable for Dr Sparks' error by virtue of s 72(3) which provides that:

Anything done or omitted by a person as the agent of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, unless it is done or omitted without that employing authority's express or implied authority, precedent or subsequent.

The Court unanimously found that the Medical Centre was a partnership. It held that to act as an agent of an employing authority, a person must carry out, on behalf of the employing authority, the work that satisfies an obligation of the employing authority to provide the relevant service. Additionally or alternatively, where the person said to be an agent is a partner of the employing authority, that person will be acting as an agent if he or she satisfies s 8 of the Partnership Act 1908 (the law in force at the time of the prescription error). Section 8 states that an agent is a partner of the partnership for the purpose of the business of the partnership. It goes on to provide that the acts of every partner in carrying on the usual business of the firm bind the firm.

A combination of factors demonstrated that the Medical Centre partnership business encompassed the provision of medical services by Dr Ryan and Dr Sparks. For example, the Medical Centre business was presented to the public as a single medical services provider, the services were provided to the public under the Medical Centre's name and the doctors did not have complete autonomous control over their clinical practices. Applying the non-technical definition, Dr Sparks, when undertaking the consultation with the complainant, was satisfying an obligation of the Medical Centre to provide medical services to the complainant. Applying the Partnership Act analysis, Dr Sparks, when undertaking that consultation, was carrying on the usual business of the partnership. On either analysis, Dr Sparks was acting as an agent of the Medical Centre for the purpose of s 72(3) when he breached the Code.

Next, the majority held that the phrase "unless the act or omission occurred without the employing authority's express or implied authority, precedent or subsequent" (the without authority proviso) meant that the employing authority would be liable if their agent breached the Code in the course of performing the functions they were authorised to do. This interpretation was consistent with analogous decisions in England and Wales and the right-protective focus of the HDC Act. The alternative interpretation of requiring the employing authority to authorise the particular breach of the Act would render s 72 ineffective and unnecessary in light of Part 4 of the Act.

William Young J, dissenting, considered that the effect of the without authority proviso was to exclude liability unless the agent had the authority of the employing authority to do the wrongful act alleged. He argued that, on the majority's approach, the words in the without authority proviso may as well not be there. The majority's approach was inconsistent with what Parliament seemed to have intended and would produce anomalous outcomes, with the Medical Centre having greater exposure to liability in respect of the actions of agents than the actions of employees. Based on his interpretation of the proviso, William Young J would have allowed the appeal. He considered that s 72 warranted reconsideration by Parliament.

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