

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 42/2024  
[2024] NZSC 132

BETWEEN CHRISTINE FLEMING  
Applicant

AND ATTORNEY-GENERAL  
First Respondent

JUSTIN JAMES COOTE  
Second Respondent

SC 44/2024

BETWEEN PETER HUMPHREYS  
Applicant

AND ATTORNEY-GENERAL  
Respondent

Court: Winkelmann CJ, Ellen France and Kós JJ

Counsel: P J Dale KC and M A Jeffries for Applicant in SC 42/2024  
P Cranney for Applicant in SC 44/2024  
S V McKechnie, B A Heenan and T J Bremner for First  
Respondent in SC 42/2024 and Respondent in SC 44/2024

Judgment: 4 October 2024

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**JUDGMENT OF THE COURT**

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- A** The application for leave to appeal by Ms Fleming is granted in part to the extent described below (*Attorney-General v Fleming* [2024] NZCA 92).
- B** The approved questions are whether the Court of Appeal was correct:
- (i) to determine that Ms Fleming was not “engaged, employed or contracted” by the Ministry of Health | Manatū Hauora as a “homeworker” under s 5 of the Employment Relations Act 2000; and

- (ii) as to the test for “work” when work is conducted by homeworkers who work overnight in their home.
- C The application for leave to appeal by Mr Humphreys is granted (*Attorney-General v Fleming* [2024] NZCA 92).
- D The approved question is whether the Court of Appeal was correct to determine that Mr Humphreys was not “engaged, employed or contracted” by the Ministry of Health | Manatū Hauora as a “homeworker” under s 5 of the Employment Relations Act 2000 for the period from August 2020 onwards when in receipt of funding under the Individualised Funding scheme.
- E Counsel in both appeals are asked to address the matters set out at [1]–[2] below.
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## REASONS

[1] In addressing the question of what constitutes engagement as a homeworker under s 5 of the Employment Relations Act 2000, the parties are asked to provide submissions on the relevance of the United Nations Convention on the Rights of Persons with Disabilities (the Convention) to that question, and whether the Court of Appeal was correct in its approach to that issue.<sup>1</sup> We interpolate here that this formulation of these two issues is sufficient to address Ms Fleming’s proposed ground relating to the Convention and so we say no more about it.

[2] The parties’ submissions on the correct test for “work” should consider the application of *Idea Services Ltd v Dickson* to the applicants and whether the Court of Appeal was correct in its approach on this issue.<sup>2</sup>

[3] The application for leave by Ms Fleming raises a number of other grounds for leave including as to the effect of Part 4A of the New Zealand Public Health and Disability Act 2000 on the recovery of arrears and holiday pay; the effect of the s 88 notice (issued under the New Zealand Public Health and Disability Act) and the

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<sup>1</sup> *Attorney-General v Fleming* [2024] NZCA 92, [2024] 2 NZLR 245 (French, Brown and Courtney JJ); and see Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008).

<sup>2</sup> *Idea Services Ltd v Dickson* [2011] NZCA 14, [2011] 2 NZLR 522.

Ministry of Health | Manatū Hauora Operational Policy; and the potential to claim penalties under the Employment Relations Act.

[4] In opposing leave, the Attorney-General submitted that if leave to appeal is granted on the question of whether Ms Fleming was a “homeworker”, leave was appropriately granted on the question of the correct test for “work” but that, otherwise, Ms Fleming’s proposed appeal “stands or falls” on the question of whether she was a homeworker. We agree that is the key question and accept the Attorney-General’s submissions that the other matters Ms Fleming sought to raise are either encompassed within the two questions on which leave is granted, or, if they arise for consideration in Ms Fleming’s case, are without reasonable prospects of success. We need only add that we see the proposed grounds relating to the effect of Part 4A of the New Zealand Public Health and Disability Act and as to penalties as in the latter category.

[5] The Registrar is directed to set both matters down for hearing together.

Solicitors:

M A Jeffries, Auckland for Applicant in SC 42/2024

Oakley Moran, Wellington for Applicant in SC 44/2024

Simpson Grierson, Wellington for First Respondent in SC 42/2024 and Respondent in SC 44/2024