



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

15 AUGUST 2025

## **MEDIA RELEASE**

J, COMPULSORY CARE RECIPIENT, BY HIS WELFARE GUARDIAN,  
T v ATTORNEY GENERAL AND OTHERS

(SC 10/2024) [2025] NZSC 103

J, COMPULSORY CARE RECIPIENT, BY HIS WELFARE GUARDIAN, T v CARE  
CO-ORDINATOR

(SC 11/2024) [2025] NZSC 103

## **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**

Any report of these proceedings must comply with ss 11B–11D of the Family Court Act 1990.

No publication of the Youth Court proceedings referred to in the judgment is permitted under s 438 of the Oranga Tamariki Act except with the leave of the Court that heard the proceedings, or if the publication is of a genuine professional or technical nature and does not include the name or identifying particulars of any child or young person; their parents or guardians or any other person caring for the child or young person; or the school the child or young person was attending.

## **What this judgment is about**

This judgment concerns the correct approach to the decision to extend a compulsory care order under s 85 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the Act), and consistency between the compulsory care regime and the New Zealand Bill of Rights Act (the Bill of Rights).

## Background

The appellant, J, is 41 years old and is an Autistic person with an intellectual disability as that term is defined in the Act. He lives in a secure healthcare facility pursuant to a compulsory care order first made in 2006 when J was found unfit to stand trial on two charges of minor property-related offending. The compulsory care order has been extended numerous times since 2006, most recently for a period of three years from April 2023, on that basis that J poses a high or very high risk of committing acts of violence if released from care.

J, by his welfare guardian T, has challenged the validity of the compulsory care order's renewal on multiple occasions since 2017, when the Family Court extended the order by 18 months and varied it to a "secure" order, under which J was transferred to a psychiatric hospital. J, by his welfare guardian, T, appealed this extension.

## Lower courts

In the High Court, the judge addressed several matters including J's appeal of the Family Court's 2017 extension decision; an application for judicial review addressing the arbitrary detention of J, the discriminatory nature of the Act and other breaches of the Bill of Rights; and an inquiry under s 102 of the Act. Section 102 empowers a High Court judge to conduct an inquiry into whether a care recipient is detained lawfully, and whether a compulsory care order should continue. On 25 May 2018, the Judge dismissed each of the claims and applications, concluding that J was not unlawfully detained.

The Court of Appeal heard a joint appeal against the High Court judgment, and an appeal against a subsequent decision of the Family Court in 2020 to extend the compulsory care order. On 20 December 2023, the Court of Appeal dismissed both appeals.

The Supreme Court granted leave to appeal. The Court asked counsel to address three matters—the correctness of the approach to the decision to extend a compulsory care order adopted in *RIDCA Central (Regional Intellectual Disability Care Agency) v VM* [2011] NZCA 659, [2012] 1 NZLR 641 [*RIDCA v VM*]; whether there have been breaches of J's rights under ss 9 (the right not to be subject to torture or cruel, degrading or disproportionately severe treatment), 19 (freedom from discrimination), 22 (liberty of the person including the right to be free from arbitrary detention) and 25(a) (the right to a fair trial) of the Bill of Rights; and the consequences of any breaches if found.

## Supreme Court decision

By a majority as to the outcome comprising Winkelmann CJ, Ellen France, Williams and Miller JJ, the Supreme Court has allowed the appeal in part. The Court determined the approach to s 85 of the Act adopted by the Court of Appeal was incorrect. The Family Court, in considering this matter in the context of its review under Part 6 of the Act, is to address J's condition and status in accordance with the approach to s 85 set out by the Supreme Court. Kós J dissented and would have dismissed J's appeal.

### *Ellen France and Miller JJ*

In the first of four sets of reasons given, Ellen France and Miller JJ addressed the correct approach to the decision to extend a compulsory care order under s 85 of the Act. Ellen France and Miller JJ concluded that the decision under s 85 should reflect the Act's specific provisions requiring protection of the care recipient's rights; the requirement in s 6 of the Bill of Rights to adopt an interpretation consistent with the Bill of Rights where possible; and the principle that, where it can be, legislation should be interpreted to give effect to relevant international instruments. Here, the relevant provision of the Bill of Rights is s 22 (the right not to be subject to arbitrary detention) and the international instrument applicable is the Convention on the Rights of Persons with Disabilities.

To give effect to these requirements Ellen France and Miller JJ said that, where satisfied there is sufficient risk of harm to the care recipient or the community, the decision maker must then carry out a proportionality assessment. The purpose of this assessment is to determine whether ongoing detention of the care recipient is proportionate to its legitimate aims—namely, the protection of the health, safety and rights of the care recipient, and the interests of the community.

The care recipient's liberty interests are to be the starting point of this proportionality inquiry. The Family Court must take into account the nature of the original offending that brought the care recipient into the Act's regime, the length of the period for which the care recipient has been detained, and the care recipient's rehabilitative prospects. While the risk of harm is relevant to the proportionality exercise, eventually that risk will be outweighed where the initial offending is comparatively minor, the person has been detained for an extended period, and/or where the prospects of progress in the immediate future are minimal.

Winkelmann CJ, although taking a different view as to the primary purposes of detention under the Act for care recipients in J's category, was content to endorse this approach, which represents the test to be applied when deciding whether to extend a compulsory care order under s 85 of the Act.

Applying this approach to J, Ellen France and Miller JJ concluded the evidence showed there were opportunities to allow for J to be cared for in the community at an earlier point in time, and that failure to release him from care has adversely affected him and contributed to the complexity of his current position. However, as there are, amongst other matters, concerns about the prospects of J's immediate release into the community before supports can be put in place, it was not considered appropriate for this Court to direct that J be released. Final determination of J's circumstances will require updating evidence, to be considered by the Family Court. Ellen France and Miller JJ noted that while a further extension of the order may be needed to allow the necessary steps to be taken before J can be released into the community, these steps need to be taken with considerable haste given the extraordinary period of time J has been detained.

### *Winkelmann CJ*

Winkelmann CJ took a different view as to the primary purposes of detention for care recipients who, like J, have entered compulsory care under s 25(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, considering that community safety was incidental to the primary purpose of the Act: to provide care, rehabilitation and reintegration of the care recipient in response to offending conduct. Winkelmann CJ also took the view that the nature and seriousness of the original offending ought to be significant factors when assessing the proportionality of continued detention.

Although the s 22 right against arbitrary detention was the focus in these reasons, Winkelmann CJ would also have allowed the appeal on the basis that the test from *RIDCA v VM*, as applied to J, was discriminatory for the purposes of s 19 of the Bill of Rights. Ultimately, Winkelmann CJ considered that application of the test set out by *Ellen France* and *Miller JJ* would avoid unlawful discrimination.

### *Williams J*

Williams J, while agreeing with the result, differed from the majority as to the inquiry to be undertaken in determining whether an extension should be made, proposing a different inquiry which emphasised that “care”, and the active obligation of the state in that regard, should be central to the decision. Williams J agreed with the majority that the original offending will always be relevant to this inquiry, and that the care recipient’s prospects of rehabilitation are important, though these matters are approached differently in the care-focused framework. Williams J also noted that his approach would often lead to the same result as that of the majority, but would not inevitably lead to the care recipient’s release.

In briefly addressing the right not to be subject to discrimination, Williams J considered s 85 has a built-in comparator (the maximum sentence for the original offending) such that there is significant overlap between what constitutes arbitrary detention and what cannot be demonstrably justified in anti-discrimination terms. In J’s particular case, a wider consideration of possible comparator groups would be of no additional assistance.

### *Kós J*

In dissent, Kós J would have upheld the decisions of the High Court and Court of Appeal, concluding ultimately that amendment or improvement of J’s current care status and conditions remains a matter for the Family Court as part of its current review. Kós J considered that *RIDCA v VM* was largely correctly decided and applied by the Courts below. Framing the matter as a conflict between J’s rights and the rights of the public, Kós J found that the limits imposed on J’s rights were demonstrably justified. On this basis, J’s detention in care had not been shown to be unlawful, and an order for release would be irresponsible. The relief sought having been denied by the Court, the appeal should have been dismissed.

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