



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

02 April 2025

### **MEDIA RELEASE**

CHRISTINE FLEMING v ATTORNEY-GENERAL AND ANOTHER

(SC 42/2024)

PETER HUMPHREYS v ATTORNEY-GENERAL AND OTHERS

(SC 44/2024)

**Hearing in the Supreme Court Tuesday 29 April – Wednesday 30 April 2025**

### **CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

#### **Background**

These appeals concern the employment status of individuals who care for disabled adult family members in their family homes.

“Employees”, as defined in the Employment Relations Act 2000 (the ERA), receive certain protections, including rights to minimum wage and holiday pay. An employee includes a person who is a “homeworker” — someone “engaged, employed, or contracted” by another person to do work for that person in a residential building.

Ms Fleming provides full-time care for her adult son, Justin Coote, who is a disabled person. She has never been paid by the Ministry of Health to care for Mr Coote, and declined an offer of Family Funded Care (FFC) in 2018. FFC was operated by the Ministry of Health between 2013 and 2020 to provide funding to certain disabled persons to employ their family carer. Ms Fleming declined this offer on the basis that it offered too few hours, and that receiving a supported living payment from Work and Income | Te Hira Tangata was a better financial decision. Since 2021, Ms Fleming has been funded under a different scheme, namely, the Individualised Funding scheme (IF), through which Disability Support Services provides funding for a disabled person to employ their family carer.

Mr Humphreys provides full-time care for his adult daughter, Sian Humphreys, who is a disabled person. Mr Humphreys was funded under the FFC scheme from 2014 to 2020. Mr Humphreys has also been funded under the IF scheme since 2020.

The Employment Court determined Ms Fleming had been engaged as a homeworker by the Ministry of Health since Mr Coote turned 18. The Court of Appeal overturned this decision, finding Ms Fleming was not a “homeworker”, as there was no triggering event which resulted in her being engaged by the Ministry.

The Employment Court found that Mr Humphreys was engaged as a homeworker by the Ministry of Health both during the period when he was funded under FFC, and after that funding ceased in 2020. The Court of Appeal confirmed Mr Humphreys was a homeworker when he was being funded by FFC, and therefore engaged by the Ministry, but not in the period which followed.

Ms Fleming argues that she has been engaged or contracted as a homeworker by the Ministry of Health from 1997, being when the Ministry first became aware of and started overseeing Mr Coote’s care, to the present day. In determining when Ms Fleming is at “work” — to determine what aspects of Mr Coote’s care she should be compensated for as an employee — she argues that a specific test for resident family carers is not necessary, and that the standard test laid out in *Idea Services v Dickson* [2011] NZCA 14 should apply.

Mr Humphreys argues he has been engaged as a homeworker by the Ministry of Health since 2020 when FFC funding ceased.

### **This appeal**

The Supreme Court granted leave to appeal from the decision of the Court of Appeal on 4 October 2024.

In relation to Ms Fleming’s appeal, the approved questions are whether the Court of Appeal was correct to find that she was not “engaged, employed or contracted” as a “homeworker” under the ERA; and as to the test for “work” when work is conducted by homeworkers who work overnight in their home.

In relation to Mr Humphreys appeal, the approved question is whether the Court of Appeal was correct to find that he was not “engaged, employed or contracted” as a “homeworker” under the ERA after August 2020 when FFC funding ceased and he began receiving funding under the IF scheme.

Counsel were asked specifically to address the relevance of the United Nations Convention on the Rights of Persons with Disabilities on the question of what constitutes engagement as a homeworker, and whether the Court of Appeal was correct in its application of *Idea Services Ltd v Dickson* to the appellants in determining the correct test for “work”.

Leave to intervene was granted to Aotearoa Disability Law Incorporated and Te Kāhui Tika Tangata | Human Rights Commission.

### **Viewing of hearing**

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

### **The panel**

The Hon Justice Kós	The Hon Justice Ellen France	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Miller
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Judges as seen from the public gallery

## Counsel

- Christine Fleming (Appellant in SC 42/2024): *P J Dale KC, M A Jeffries and M K Mahuika*
- Peter Humphreys (Appellant in SC 44/2024): *P Cranney*
- Attorney-General (First Respondent in SC 42/2024 and SC 44/2024): *S V McKechnie, B A Heenan, T J Bremner and L J Goodwin*
- Justin James Coote (Second Respondent in SC 42/2024): *L T Meys*
- Sian Jiminez Humphreys (Second Respondent in SC 44/2024): *L T Meys*
- Aotearoa Disability Law Incorporated (Intervener): *S P Pope, K M Dunn and N Y Murray-Ragg*
- Te Kāhui Tika Tangata | Human Rights Commission (Intervener): *M S Timmins and P A Mitskevitch*

## Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

## Enquiries

Any enquiries about the hearing should be directed via email to [supremecourt@justice.govt.nz](mailto:supremecourt@justice.govt.nz). While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2024\] NZCA 92](#) (9 April 2024)

Supreme Court leave decision: [\[2024\] NZSC 132](#) (4 October 2024)

