COURT OF APPEAL OF NEW ZEALAND

TE KŌTI PĪRA O AOTEAROA

Monday 4 May 2015 at 2.15 pm

MEDIA RELEASE AND SUMMARY

ATTORNEY-GENERAL ON BEHALF OF THE MINISTRY OF HEALTH v MARGARET SPENCER and THE HUMAN RIGHTS REVIEW TRIBUNAL (CA736/2013) [2015] NZCA 143

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 www.courtsofnz.govt.nz.

The Court of Appeal (Justice Harrison, Justice French and Justice Cooper) has dismissed the Ministry of Health's appeal against a decision of Justice Winkelmann, the Chief High Court Judge, granting Mrs Spencer a review of the Ministry's refusal of her application for payment of a disability support allowance up until May 2013 for the lifelong care she had provided for her adult son Paul.

In earlier litigation, known as the *Atkinson* case, the Human Rights Review Tribunal decided that the Ministry's blanket policy of not paying parents and spouses for care they provided was unlawful because it discriminated against them on the ground of family status. The High Court, followed by a five-judge panel of the Court of Appeal, agreed.

The Ministry relied on two further developments to justify its refusal of Mrs Spencer's application for payment following the *Atkinson* litigation. First, it said the Tribunal had "suspended" its original decision in the *Atkinson* case, which meant it could keep applying the *Atkinson* policy to Mrs Spencer. Second, in response to the *Atkinson* litigation, Parliament sitting under urgency amended the New Zealand Public Health and Disability Act 2000 by inserting a new part, called "Part 4A". The Ministry said Part 4A now makes the *Atkinson* policy lawful with backdating effect and bars Mrs Spencer from issuing her own proceedings or from joining the remaining *Atkinson* proceedings.

The Court of Appeal decided that the Ministry was wrong on both points. First, the Court of Appeal dismissed the Ministry's challenge to the Tribunal's declaration of unlawfulness and its reliance on the suspension order. The Court of Appeal decided that the Tribunal's decision that the *Atkinson* policy was unlawful applied to the Ministry in every subsequent and similar case, not just to those people involved in the *Atkinson* case. The Court also said that the Ministry had misunderstood the Tribunal's suspension order. That order only temporarily suspended the practical effects of its ruling that the *Atkinson* policy was unlawful. It did not and could not suspend or change the fact that the policy was unlawful.

Second, the Court of Appeal rejected the Ministry's argument that Parliament's addition of Part 4A into the Act overrides the *Atkinson* decisions, now making the *Atkinson* policy lawful. The Court said that an important aspect of Part 4A's meaning depended on whether the *Atkinson* policy fit the description of a "family care policy". The Court decided that it did not fall within that specially defined description. Part 4A stated that a family care policy was something that permitted payment to parents or spouses in certain cases, but the *Atkinson* policy absolutely prohibited payment to that category of family members. If Parliament had intended to take away people's rights by inserting Part 4A, it had to do so with very clear words. None of the words, purpose or history of Part 4A retrospectively made lawful the *Atkinson* policy as it was applied before Part 4A was enacted. Finally, the Court held that Part 4A did not prevent Mrs Spencer from applying to join what future litigation remained in the *Atkinson* proceedings.

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