



# Employment Court of New Zealand

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## Humphreys v Humphreys [2020] NZEmpC 214 (2 December 2020)

Last Updated: 7 December 2020

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2020\] NZEmpC 214](#)

EMPC 471/2019

IN THE MATTER OF	proceedings removed from the Employment Relations Authority
BETWEEN	PETER HUMPHREYS Plaintiff
AND	SIAN JIMENEZ HUMPHREYS First Defendant
AND	CHIEF EXECUTIVE OF THE MINISTRY OF HEALTH Second Defendant

Hearing: By telephone conference  
Appearances: P Cranney, counsel for plaintiff  
T Bremner and S Kuper, counsel for second  
defendant  
Judgment: 2 December 2020

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

(Appointment of litigation guardian)

[1] These proceedings were the subject of a telephone conference yesterday. One of the issues which emerged was whether the Court should appoint a litigation guardian for the first defendant, Sian Humphreys. Mr Humphreys, the plaintiff, is Ms Humphreys' father. A litigation guardian was appointed for the adult children in related proceedings.<sup>1</sup>

<sup>1</sup> *Moody v Chamberlain* [\[2019\] NZEmpC 16](#); *Moody v Chamberlain (No 2)* [\[2019\] NZEmpC 26](#).

PETER HUMPHREYS v SIAN JIMENEZ HUMPHREYS & CHIEF EXECUTIVE OF THE MINISTRY OF HEALTH [\[2020\] NZEmpC 214](#) [2 December 2020]

[2] The first plaintiff supports the application; the second defendant is content to abide the decision of the Court.

[3] The [Employment Court Regulations 2000](#) provide that in any case in which no procedure has been provided for, the Court must apply the [High Court Rules 2016](#) (HCR).<sup>2</sup> High Court r 4.30 provides that where a person is incapacitated they must have a litigation guardian unless the Court otherwise directs. A litigation guardian is authorised to conduct proceedings in the name of, and on behalf of, an incapacitated person.<sup>3</sup> A litigation guardian may “do anything in relation to a proceeding that the incapacitated person could do if he or she were not incapacitated,”<sup>4</sup> and is expected to be partisan and to advance the interests of the incapacitated person.<sup>5</sup>

[4] The litigation guardian rules are designed to facilitate access to the Courts where the incapacitated person will be seriously compromised without that help.<sup>6</sup> If the Court is satisfied (on the balance of probabilities) that a person lacks capacity they must be represented by a litigation guardian unless the Court orders otherwise.<sup>7</sup>

[5] While an affidavit setting out the details of the incapacity would generally be required, it is common ground that Ms

Humphreys has Angelman syndrome and has been assessed as having very high needs. In the circumstances, and based on the material before the Court, I am satisfied that an order should be made appointing a litigation guardian to represent her interests.

[6] Mr Meys was appointed as litigation guardian in respect of the incapacitated adult children in the *Chamberlain* proceedings. Mr Cranney suggested that he would be a suitable appointee in this case, given his familiarity with the context of the series of cases involving the Family Funded Care policy.

2 [Employment Court Regulations 2000](#), reg 6(2)(a)(ii).

3 HCR 4.29 (definition of litigation guardian).

4 HCR 4.38 (powers of litigation guardian).

5 *Re Goldman* [\[2016\] NZHC 1010](#), [\[2016\] 3 NZLR 331](#) at [\[33\]](#).

6 *S v Attorney-General (in respect of the Ministry of Health)* [\[2012\] NZHC 661](#) at [\[34\]](#).

7. See *Erwood v Maxted* [\[2008\] NZCA 139](#) at [\[26\]](#); *Corbett v Western* [\[2011\] NZHC 2120](#); [\[2011\] 3 NZLR 41 \(HC\)](#) at [\[98\]](#).

[7] Subject to confirming his willingness to accept the appointment, Mr Meys is appointed litigation guardian to represent Ms Humphreys' interests in these proceedings. Any such appointment would be on the same basis attaching to his appointment as litigation guardian for the defendant adult children in the *Chamberlain* proceedings.

Christina Inglis Chief Judge

Judgment signed at 9.15 am on 2 December 2020

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