



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

6 AUGUST 2024

MEDIA RELEASE

J, COMPULSORY CARE RECIPIENT BY HIS WELFARE GUARDIAN, T v ATTORNEY GENERAL, DISTRICT COURT AT MANUKAU, FAMILY COURT AT MANUKAU, CARE CO ORDINATOR AND CARE MANAGER

(SC 10/2024) [2024] NZSC 34

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

(SC 11/2024) [2024] NZSC 34

Hearing of the Supreme Court in the Auckland High Court, Tuesday 20 August 2024–Wednesday 21 August 2024

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.

NOTE: PURSUANT TO S 130 OF THE INTELLECTUAL DISABILITY (COMPULSORY CARE AND REHABILITATION) ACT 2003, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/family-court/after-the-family-court/restrictions-on-publishing-information/>

NOTE: NO PUBLICATION OF THE YOUTH COURT PROCEEDINGS REFERRED TO IN THIS JUDGMENT IS PERMITTED UNDER S 438 OF THE ORANGA TAMARIKI ACT 1989, EXCEPT WITH THE LEAVE OF THE COURT THAT HEARD THE PROCEEDINGS, AND WITH THE EXCEPTION OF PUBLICATIONS OF A BONA FIDE PROFESSIONAL OR TECHNICAL NATURE THAT DO NOT INCLUDE THE NAME(S) OR IDENTIFYING PARTICULARS OF ANY CHILD OR YOUNG PERSON, OR THE PARENTS OR GUARDIANS OR ANY PERSON HAVING THE CARE OF THE CHILD OR YOUNG PERSON, OR THE SCHOOL THAT THE CHILD OR YOUNG PERSON WAS OR IS ATTENDING. SEE <http://www.legislation.govt.nz/act/public/1989/0024/latest/DLM155054.html>

Background

This appeal concerns the correct approach to decision-making under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act), and consistency between the compulsory care regime and the New Zealand Bill of Rights Act 1990 (the Bill of Rights).

The appellant, J, is 39 years old and has longstanding diagnoses of autism spectrum disorder and intellectual disability. He lives in a secure healthcare facility pursuant to a compulsory care order (CCO) which was first made in 2006 when J was found unfit to stand trial on two charges of minor criminal offending. His CCO has been extended 10 times, most recently for a period of three years from April 2023, on the basis that J poses a high or very high risk of committing acts of violence if released.

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

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 IDCCR Act and breaches of the New Zealand Bill of Rights Act 1990; and an inquiry under s 102 of the IDCCR Act. Section 102 empowers a High Court judge to conduct an inquiry into whether a care recipient is detained lawfully, and whether a CCO 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 CCO. On 20 December 2023, the Court of Appeal dismissed both appeals.

This appeal

On 18 April 2024, the Supreme Court granted leave to appeal in general terms as to whether the Court of Appeal was correct.

The Court has asked counsel for the parties specifically to address three matters – whether there have been breaches of J's rights under ss 9, 19, 22 and 25(a) of the Bill of Rights; the consequences of any such breaches of the Bill of Rights if found; and the correctness of the approach adopted in *RIDCA Central (Regional Intellectual Disability Care Agency) v VM* [2011] NZCA 659, [2012] 1 NZLR 641. *RIDCA Central (Regional Intellectual Disability Care Agency) v VM* is the leading Court of Appeal authority on decision-making under the IDCCR Act, and requires that such decisions must balance protection of the community against the fundamental rights of a care recipient under the Bill of Rights. Leave to intervene has been granted to IHC and the Human Rights Commission on the human and disability rights issues arising.

The Court will also hear argument, as necessary, on questions relating to this Court's jurisdiction to address aspects of the case.

Viewing of hearing

The courtroom is open to the public.

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
------------------------	---------------------------------	---	-----------------------------	---------------------------

Judges as seen from the public gallery

Counsel

- J, Compulsory Care Recipient by His Welfare Guardian, T (Appellant): *T Ellis and G K Edgeler*
- Attorney General (First Respondent in SC 10/2024): *K Laurenson, M J McKillop and R E R Garvey*
- Care Co-Ordinator (Fourth Respondent in SC 10/2024; Respondent in SC 11/2024): *K Laurenson, M J McKillop and R E R Garvey*
- IHC New Zealand Incorporated (Intervener): *A S Butler KC and D Qui*
- Human Rights Commission (Intervener): *R A Kirkness and D R Haradasa*

Sitting hours

Court will begin at 10.00 am and conclude at 4.00 pm with adjournments taken from 11.30 am to 11.45 am and from 1.00pm to 2.15 pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 660](#) (20 December 2023)

Supreme Court leave decision: [\[2024\] NZSC 34](#) (18 April 2024)