

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

<b>BETWEEN</b>	Sharron Robertson (Applicant)
<b>AND</b>	The Chief Executive of the Department of Labour (Respondent)
<b>REPRESENTATIVES</b>	Applicant In Person Natasha Szeto, Counsel for Respondent
<b>MEMBER OF AUTHORITY</b>	Leon Robinson
<b>CONSIDERATION ON PAPERS</b>	29 June 2006
<b>DATE OF DETERMINATION</b>	30 June 2006

**DETERMINATION OF THE AUTHORITY**

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**By section 68(6)(a) of the *Parental Leave and Employment Protection Act 1987*, the Authority confirms Sharron Robertson's right to exercise her rights and benefits in respect of parental leave payments.**

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## The problem

[1] The applicant Ms Sharron Robertson ("Ms Robertson") applies to the Authority for relief under the *Parental Leave and Employment Protection Act 1987* ("the Act"). Ms Robertson had made application for paid parental leave but that application was declined by the Inland Revenue Department because it was lodged after Ms Robertson had returned to work.

[2] Ms Robertson now asks the Authority to exercise its discretion under the Act in respect of an irregularity so that her application for paid parental leave can be considered.

## The facts

[3] Ms Robertson has been employed as a school teacher at Stanhope Road School, Mt Wellington Auckland for seven years.

[4] Ms Robertson gave birth to her son on 30 August 2005. From that date she took parental leave from her employment. She had intended to return to her employment at the beginning of Term 2 this year on 24 April 2006.

[5] Ms Robertson accepted day-to-day relief work at the school as from 13 February 2006. During the remainder of that term, she worked a total of 28 full days and 2 half days as a reliever.

[6] At the end of February 2006, she learned of paid parental leave entitlements. She made enquiries of the Inland Revenue Department and submitted an application (dated 6 April 2006) for the paid parental leave entitlements on 13 April 2006.

[7] The Inland Revenue Department referred Ms Robertson's application to the Department of Labour ("the Department").

[8] The Department by letter dated 24 April 2006, advised Ms Robertson she was ineligible for paid parental leave because she had returned to work before the period of leave had ended. That advice stated:-

*In this instance, I regret having to confirm that you are **not eligible** for 14 weeks taxpayer funded paid parental leave payments. This decision was reached after talking to you on the 20th of April 2006. Based on our telephone conversation and your application form, it is my understanding that you do not satisfy the eligibility criteria for paid parental leave.*

*This is due to the fact, when the Inland Revenue Department received your application for paid parental leave (13th of April 2006) you had already returned back to work on the 13th of February 2006. Section 71L of the Parental Leave and Employment Protection Act 1987, clearly states that payments cease immediately as soon as the applicant returns back to work even for an hour.*

*Thus section 71L of the Parental Leave and Employment Protection Act 1987 was used to confirm that you are not eligible to receive the 14 weeks taxpayer funded paid parental leave payments.*

[9] Ms Robertson says her principal was unaware of her paid parental leave entitlement. She says she discovered the entitlement through a chance conversation with a newly appointed staff member at the end of February this year. She then made immediate enquiries.

[10] Ms Robertson's Principal Mr Cyril Nevezie says that he had a duty to inform Ms Robertson of her entitlement. He says there is no mention of the entitlements to paid parental leave in the collective employment agreement covering Ms Robertson's employment. He does not recall seeing any advice from the Ministry of Education about the entitlements.

[11] The Department's letter informed Ms Robertson of the Authority's discretion in respect of irregularities. The exercise of that discretion is now the subject of this application. The parties have agreed that the matter should be determined on the papers.

## The merits

[12] Section 71L of the Act does not of itself preclude entitlement. The section is merely descriptive in that it describes the duration of payment. That is all it does. In my view, the Department was actually referring to section 71I of the Act in concluding Ms Robertson was not eligible. That section is as follows:-

*71I Applications for payment*

(1) *An employee [[or self-employed person]] is not entitled to a parental leave payment unless the employee [[or self-employed person]] makes an application for payment in accordance with this section.*

(2) ***The application must—***

(a) ***be made before the date on which the employee [[or self-employed person]] returns to work or the parental leave otherwise ends; and***

(b) *be made in the manner prescribed in regulations; and*

(c) *specify the matters, and be accompanied by the documents, prescribed in regulations; and*

(d) *state whether or not the employee [[or self-employed person]] wishes to transfer all or part of the entitlement under section 71E.*

The emphasis is mine. The references to self-employment are very recent amendments.

[13] Ms Robertson carried out relief work from 13 February 2006. For the remainder of that term, she worked a total of 28 full days and 2 half days as a reliever. It is said that because Ms Robertson made application after that work, she is ineligible for paid leave.

[14] I disagree because in my view, "returns to work" is to be interpreted as synonymous with the end of the period of parental leave. The relief work was not a return to work for the purposes of section 71I because Ms Robertson's "work" is her full time position at Stanhope School. If she had returned to work full-time that would have been a return to work and an end to the period of parental leave. The period of parental leave ended at the commencement of Term 2 and that is when it is correct to say Ms Robertson returned to work. The period of leave is unaffected by the casual relief work she performed.

[15] The casual relief work (typically intermittent) is not sufficient employment for eligibility. It ought not qualify as employment or work for present purposes either.

[16] I am confident that the interpretation I have adopted is that which is properly required to give effect to the objects and purposes of the legislation.

[17] I conclude Ms Robertson's application for paid parental leave submitted to the Inland Revenue Department on 13 April 2006, was made before Ms Robertson returned to work as a full-time teacher on 24 April 2006. There is no irregularity in that situation.

[18] There being no irregularity, Ms Robertson does not require relief from one. Rather, **Ms Robertson is entitled to have the Authority confirm her right to exercise her rights and benefits in respect of parental leave payment and I do so now pursuant to section 68(6)(a) of the *Parental Leave and Employment Protection Act 1987*.**

Leon Robinson

**Member of Employment Relations Authority**