(1) ORDER PROHIBITING PUBLICATION OF ALL INFORMATION RELATING TO PLAINTIFF'S MEDICAL CIRCUMSTANCES

(2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON

IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2018] NZHRRT 29**

Reference No. HRRT 047/2016

UNDER	**THE PRIVACY ACT 1993**
BETWEEN	**KIM DOTCOM** **Plaintiff**
AND	**CROWN LAW OFFICE** **First Defendant**

CONT.

AT WELLINGTON

BEFORE:
Mr RPG Haines ONZM QC, Chairperson

REPRESENTATION:
Mr RM Mansfield and Mr SL Cogan for plaintiff
Ms V Casey QC and Ms EM Gattey for defendants

DATE OF HEARING: **Heard on the papers**

DATE OF MINUTE: **28 June 2018**

MINUTE OF CHAIRPERSON RESPONDING TO PLAINTIFF'S URGENT APPLICATION FOR COMPLIANCE ORDERS[1]

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[1] [This decision is to be cited as: *Dotcom v Crown Law Office (Application for Compliance Orders)* [2018] NZHRRT 29. Note publication restrictions.]

AND	**ATTORNEY-GENERAL** **Second Defendant**
AND	**DEPARTMENT OF THE PRIME MINISTER AND CABINET** **Third Defendant**
AND	**IMMIGRATION NEW ZEALAND** **Fourth Defendant**
AND	**MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT** **Fifth Defendant**
AND	**MINISTRY OF FOREIGN AFFAIRS AND TRADE** **Sixth Defendant**
AND	**MINISTRY OF JUSTICE** **Seventh Defendant**
AND	**NEW ZEALAND POLICE** **Eighth Defendant**

Background

[1] By decision in *Dotcom v Crown Law Office* [2018] NZHRRT 7 (26 March 2018) at [255] the Tribunal made the following orders:

> **[255]** For the foregoing reasons the decision of the Tribunal is that it is satisfied on the balance of probabilities that an action of the Crown (represented by the Attorney-General) was an interference with the privacy of Mr Dotcom and
>
> > **[255.1]** A declaration is made under s 85(1)(a) of the Privacy Act 1993 that there was an interference with the privacy of Mr Dotcom by:
> >
> > > **[255.1.1]** The transfer, without legal authority, to the Attorney-General of the information privacy requests made by Mr Dotcom in July 2015. The Attorney-General had no lawful authority, as purported transferee under the Privacy Act 1993, s 39(b)(ii), to refuse the requests on the grounds that they were vexatious and there was no proper basis for that refusal; in the alternative, if the transfers were lawful:
> >
> > > **[255.1.2]** Refusing the information privacy requests on the grounds that they were vexatious when there was no proper basis for that decision.
> >
> > **[255.2]** An order is made under s 85(1)(d) and (e) of the Privacy Act 1993 that the agencies (including the Ministers of the Crown) to which the information privacy requests were sent by Mr Dotcom in the period 17 to 31 July 2015 must comply with those requests subject to the provisions of the Privacy Act 1993 and in particular (but not exclusively) Parts 4 and 5 of that Act. For the purposes of this order the date of receipt of the requests is to be taken to be the fifth working day which follows immediately after the day on which this decision is published to the parties.
> >
> > **[255.3]** Damages of $30,000 are awarded against the Attorney-General under ss 85(1)(c) and 88(1)(b) of the Privacy Act 1993 for the loss of a benefit Mr Dotcom might reasonably have been expected to obtain but for the interference.
> >
> > **[255.4]** Damages of $60,000 are awarded against the Attorney-General under ss 85(1)(c) and 88(1)(c) for loss of dignity and injury to feelings.

[2] From this decision the defendants (hereinafter the Crown) have appealed to the High Court. It is understood that appeal will be heard on 10 to 12 September 2018.

The application

[3] At 4:59pm on Tuesday 26 June 2018 Mr Dotcom filed an urgent application seeking compliance orders and in particular:

> **[3.1]** An unless order that the Crown provide him with the personal information which is the subject of the Tribunal's order in [255.2] above by not later than 31 July 2018.
>
> **[3.2]** Failing that, a declaration that the Crown:
>
> > **[3.2.1]** Is in breach of the Tribunal's orders;
> >
> > **[3.2.2]** Has engaged in abuse of process; and

[3.2.3] Further interfered with Mr Dotcom's privacy.

[3.3] That the Crown file an affidavit or affidavits setting out what (if any) steps have been taken and when to procure information held by former Ministers.

[4] Filed in support of the application is a detailed memorandum dated 26 June 2018 (27 pages) and a 71 page bundle of relevant documents.

[5] Understandably the defendants have not yet filed a response.

Jurisdiction

[6] The immediate issue raised by the application is whether the Tribunal has jurisdiction to make the compliance orders sought.

[7] Apart from the Human Rights Act 1993, s 121 (incorporated into the Privacy Act 1993 by s 89 of that latter Act), there are no statutory provisions by which orders made by the Tribunal can be enforced. Section 121 of the Human Rights Act does not assist in the present case as its application is narrow and confined to the enforcement of interim orders, damages and costs. It provides that on registration of a certified copy of the order in the District Court, such order can be enforced in all respects as if it were an order of the District Court.

[8] It is perhaps for this reason the application by Mr Dotcom is based not on any statutory provision but on an assertion the Tribunal has an inherent jurisdiction to act effectively and to uphold the administration of justice within its jurisdiction, including the prevention of abuse of its processes. Reliance is placed on *Siemer v Solicitor-General* [2013] NZSC 68, [2013] 3 NZLR 441 at [114]. The specific passage relied upon, however, addresses the inherent powers of courts in New Zealand, not of tribunals.

[9] Unlike the High Court, the Tribunal is not a court of general jurisdiction, nor is it possessed of "all judicial jurisdiction that may be necessary to administer the laws of New Zealand" (Senior Courts Act 2016, s 12). It is an inferior tribunal of limited statutory jurisdiction. It has no inherent jurisdiction though inherent powers may exist. See generally *Attorney-General v Otahuhu District Court* [2001] 3 NZLR 740 (CA) at [16]; *Transport Accident Commission v Wellington District Court* [2008] NZAR 595 at [16] (Dobson J) and *Department of Social Welfare v Stewart* [1990] 1 NZLR 697 at 701 (Wylie J).

[10] It follows that before the merits of the urgent application are addressed the Tribunal will need to be satisfied it has jurisdiction to make the orders sought.

The High Court and the enforcement of tribunal orders

[11] Given the urgency said to attach to the present application and further given the substantial doubts surrounding the Tribunal's jurisdiction, it is necessary that the Tribunal draw the attention of the parties to the possibility, if not likelihood, that the appropriate forum for the hearing and determination of the present application is the High Court.

[12] This is because that court has an inherent jurisdiction to uphold the authority of lower courts and tribunals. See *Psychologists Board v Geary* [2013] NZHC 1039, [2013] NZAR 845 at [14] per Collins J.

> **[14]** The High Court's inherent jurisdiction extends to upholding the authority of lower Courts and Tribunals. The following authorities explain the High Court's jurisdiction in the following way:
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> (1) *Quality Pizzas Ltd v Canterbury Hotel Employees Industrial Union*, in which Richardson J explained:[7]
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> > … it is well established that the High Court has inherent jurisdiction to make any order necessary to enable it to act effectively even in respect of matters regulated by rules of Court so long as it does not contravene those rules. Under that inherent jurisdiction (and except as qualified by statute or statutory rule …) the High Court has power to punish for contempt of its processes in order to enable it to act affectively [sic] as a Court. That the jurisdiction extends to the protection of the processes of inferior Courts is also well settled and it is sufficient for present purposes to refer to *Attorney-General v Blundell* [1942] NZLR 287.
>
> (2) *Samleung International Trading Co Ltd v Collector of Customs*, in which Blanchard J said:[8]
>
> > … if the High Court possesses inherent jurisdiction to do a thing which cannot be done by a District Court, then the High Court may use its powers in aid of the District Court.

[13] In his judgment Collins J noted that the Psychologists Board discharged judicial functions. It sat in public, administered oaths, had rules of procedure and it could issue summonses, award costs, punish those who commit a contempt in the face of the tribunal and its decisions could be appealed to the High Court and in exceptional cases the Court of Appeal. So even if technically the Board was not an inferior court, it was a judicial body whose authority and functions may be protected by the High Court exercising its inherent jurisdiction.

[14] In these circumstances Collins J concluded that for reasons of policy, the inherent jurisdiction of the High Court extended to issuing injunctions to prevent breaches of the Board's suppression orders because the Board:

[14.1] Acted to protect the health and safety of members of the public;

[14.2] Acted in the public interest when it enforced standards required of health professionals; and

[14.3] Its ability to perform its important public functions would be comprised if complainants were dissuaded from giving evidence before the Board for fear that sensitive and confidential information about them could not be effectively suppressed.

[15] It can be argued that there are direct parallels with the Human Rights Review Tribunal. The powers of the Psychologists Board as described above are almost the same as the relevant powers of the Tribunal under Part 4 of the Human Rights Act and the Tribunal's jurisdiction is no less important than that of the Board. Prima facie, the decision in *Psychologists Board v Geary* has direct application to the Tribunal.

[16] There are therefore strong indications that the High Court (not the Tribunal) has the necessary jurisdiction to hear and determine the present application made by Mr Dotcom.

Directions

[17] Mr Dotcom will need to give urgent consideration to the forum in which his present application is to be heard and determined. To that end, the following directions are made:

> **[17.1]** By 4pm on Friday 29 June 2018 Mr Dotcom is to notify the Tribunal and the Crown whether his application dated 26 June 2018 is to be pursued before the Tribunal.
>
> **[17.2]** If the application is to be pursued, the Crown must by 4pm on Friday 6 July 2018 file a notice of opposition and supporting memorandum.
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> **[17.3]** An urgent teleconference is then to be convened in the week commencing Monday 9 July 2018 for further case management directions to be given.
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> **[17.4]** Leave is reserved to all parties to make further application should the need arise.

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Mr RPG Haines ONZM QC
Chairperson