

**Reference No. HRRT 024/2011**

**UNDER SECTION 50 OF THE HEALTH AND  
DISABILITY COMMISSIONER ACT 1994**

**BETWEEN DIRECTOR OF PROCEEDINGS**

**PLAINTIFF**

**AND TAIKURA TRUST**

**DEFENDANT**

**AT AUCKLAND**

**Mr RPG Haines QC, Chairperson**  
**Mr GJ Cook JP, Member**  
**Dr S Hickey, Member**

**Aaron Martin, Director of Proceedings**  
**Duncan McGill for Taikura Trust**

**DATE OF DECISION: 22 March 2012**

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**DECISION OF TRIBUNAL**

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**[1]** These proceedings under s 50 of the Health and Disability Commissioner Act 1994 were commenced on 22 August 2011. At telephone conferences held on 24 November 2011 and 20 December 2011 timetable directions were given to ensure that the case would be ready for hearing at Auckland on 7 May 2012.

**[2]** By application dated 27 January 2012 the Director of Proceedings sought a final order prohibiting the publication of the name, occupation and identifying details of the aggrieved person.

**[3]** The plaintiff and defendant have since settled the proceedings and on 6 March 2012 filed with the Tribunal the following documents on a consent basis:

**[3.1]** Joint Memorandum of Counsel Seeking Declaration dated 17 February 2012.

**[3.2]** Agreed Summary of Facts.

**[4]** The Joint Memorandum of Counsel is in the following terms:

**MAY IT PLEASE THE TRIBUNAL**

1. The plaintiff and defendant have agreed upon a summary of facts, a signed copy of which is filed with this memorandum.
2. The plaintiff requests that the Tribunal exercise its jurisdiction in respect of the following matters:
  - (a) A declaration pursuant to s 54(1)(a) of the Health and Disability Commissioner Act 1994 ("the Act") that the defendant has breached the Health and Disability Commissioner (Code of Health and Disability Services Consumers Rights) Regulations 1996 ("the Code") in respect of Right 3 by failing to provide services to the aggrieved person in a manner that respected the dignity and independence of the aggrieved person, Right 4(1) by failing to provide services to the aggrieved person with reasonable care and skill, and Right 4(5) by failing to co-operate with other providers to ensure quality and continuity of services.
3. In relation to the declaration being sought in paragraph 2(a) above, counsel respectfully refer to the Agreed Summary of Facts. The parties are agreed that it is not necessary for the Tribunal to consider any other evidence for the purpose of making the declarations sought.
4. The defendant consents to the Tribunal making the above declarations based on the facts set out in the Agreed Summary of Facts.
5. In the Statement of Claim the plaintiff also sought the following relief:
  - a. Damages pursuant to s 57(1)(b);
  - b. Damages pursuant to s 57(1)(c);
  - c. Damages pursuant to s 57(1)(d);
  - d. Such other relief as the Tribunal thinks fit pursuant to s 54(1)(e); and
  - e. Costs.
6. These other aspects of the relief claimed by the plaintiffs have been resolved between the parties by negotiated agreement. The defendant has paid a compensatory sum to the aggrieved person's estate to be held on trust for the benefit of her daughter.
7. There is no issue as to costs.
8. The plaintiff seeks a final order prohibiting publication of the name of the aggrieved person in this matter ... The defendant consents to such a final order being granted.
9. The defendant does not seek any order prohibiting publication of the defendant's name or of the name of any director or employee or agent of the defendant.

**[5]** Having perused the Agreed Summary of Facts the Tribunal is satisfied on the balance of probabilities that an action of the defendant was in breach of the Health and Disability Commissioner (Code of Health and Disability Services Consumers Rights) Regulations 1996 and that a declaration should be made in the terms sought by the parties in paragraphs 2 and 8 of the Joint Memorandum of Counsel.

**DECISION**

**[6]** By consent the decision of the Tribunal is that:

**[6.1]** A declaration is made pursuant to s 54(1)(a) of the Health and Disability Commissioner Act 1994 that the defendant has breached the Health and

Disability Commissioner Code of Health and Disability Services Consumer Rights Regs 1996 in respect of Right 3 by failing to provide services to the aggrieved person in a manner that respected the dignity and independence of the aggrieved person, Right 4(1) by failing to provide services to the aggrieved person with reasonable care and skill, and Right 4(5) by failing to co-operate with other providers to ensure quality and continuity of services.

**[6.2]** A final order is made prohibiting publication of the name, occupation or any details which may lead to the identification of the aggrieved person in these proceedings.

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**Mr RPG Haines QC**  
**Chairperson**

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**Mr G Cook JP**  
**Member**

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**Dr S Hickey**  
**Member**