

- (1) ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS OR IDENTIFYING PARTICULARS OF AGGRIEVED PERSON
- (2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF CHAIRPERSON OR OF THE TRIBUNAL

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2015] NZHRRT 28

Reference No. HRRT 031/2015

UNDER SECTION 50 OF THE HEALTH AND
DISABILITY COMMISSIONER ACT 1994

BETWEEN DIRECTOR OF PROCEEDINGS

PLAINTIFF

AND WILLIAM BUIST

DEFENDANT

AT AUCKLAND

BEFORE:

Mr RPG Haines QC, Chairperson
Dr SJ Hickey MNZM, Member
Ms GJ Goodwin, Member

REPRESENTATION:

Ms N Wills, Director of Proceedings
Ms E Wilson for defendant

DATE OF DECISION: 22 July 2015

DECISION OF TRIBUNAL

[1] These proceedings under s 50 of the Health and Disability Commissioner Act 1994 were filed on 7 July 2015.

[2] Prior to the filing of the proceedings the parties resolved all matters in issue and the Tribunal has now been asked to make a consent declaration. To that end the parties have filed:

[2.1] A Consent Memorandum dated 30 June 2015.

[2.2] An Agreed Summary of Facts, a copy of which is annexed and marked "A".

[3] The Consent Memorandum 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 the following Rights in the Code:
 - (i) Right 4(1);
 - (ii) Right 4(2).
3. In relation to the declaration being sought in paragraph 2(a) above, the parties 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. The parties request that the agreed summary of facts be published by the Tribunal as an addendum to the decision.
4. The defendant consents to the Tribunal making the above declaration 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) Costs.
6. These other aspects of the relief claimed by the plaintiff have been resolved between the parties by negotiated agreement.
7. There is no issue as to costs.
8. The name of the aggrieved person has been anonymised in the agreed summary of facts and an order is sought permanently suppressing the name of the aggrieved person.
9. The defendant does not seek any order prohibiting publication of the defendant's name.

[4] 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 paragraph 2 of the Consent Memorandum.

DECISION

[5] By consent the decision of the Tribunal is that:

[5.1] A declaration is made pursuant to s 54(1)(a) of the Health and Disability Commissioner Act 1994 that the defendant breached the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 in respect of Right 4(1) by failing to provide services to the aggrieved person with reasonable care and skill, and Right 4(2) by failing to provide services to the aggrieved person that complied with legal, professional and ethical standards.

[5.2] A final order is made prohibiting publication of the name, address and any other details which might lead to the identification of the aggrieved person. There is to be no search of the Tribunal file without leave of the Tribunal or of the Chairperson.

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Mr RPG Haines QC
Chairperson

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Dr SJ Hickey MNZM
Member

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Ms GJ Goodwin
Member

