

- (1) INTERIM ORDER PROHIBITING PUBLICATION OF NAME AND IDENTIFYING PARTICULARS OF THE PLAINTIFF AND POLICE WITNESS REFERRED TO IN DECISION
- (2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON

IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2019] NZHRRT 30

Reference No. HRRT 017/2017

UNDER THE PRIVACY ACT 1993

BETWEEN MARGARET GREEN

PLAINTIFF

AND NEW ZEALAND POLICE

DEFENDANT

AT AUCKLAND

BEFORE: Ms MA Roche, Co-Chairperson

REPRESENTATION:

Mr D Neild for plaintiff

Mr R May for defendant

DATE OF DECISION ON CONTINUATION

OF INTERIM NAME SUPPRESSION: 7 June 2019

DECISION OF CO-CHAIRPERSON ON CONTINUATION OF INTERIM NAME SUPPRESSION¹

[1] The plaintiff in these proceedings made a rape complaint to the Police in 2015 that did not result in any prosecution. Following a complaint that was referred to the Privacy Commissioner, the plaintiff filed proceedings under the Privacy Act 1993 in the Tribunal against the New Zealand Police.

¹ [This decision is to be cited as *Green v New Zealand Police (Continuation of Interim Name Suppression)* [2019] NZHRRT 30. Due to publication restrictions this decision has been anonymised by the redaction of the true name of the plaintiff.]

[2] There was a dispute between the parties concerning the Tribunal's jurisdiction in respect of aspects of the plaintiff's claim and a decision determining this dispute was issued on 20 March 2019 subject to publication restrictions.

[3] The decision on jurisdiction necessarily referred to the fact that the plaintiff was a rape complainant. It also referred to a Police witness and disclosed that this witness was a friend of the plaintiff's alleged attacker.

[4] At the time the decision on jurisdiction was issued, the plaintiff's position on the issue of name suppression was unknown. In the circumstances, it was appropriate to give her the opportunity to apply for interim orders suppressing her name and details which could lead to her identification. Accordingly, interim orders were made to preserve the position of the plaintiff and a timetable was set for applying for a continuation of the interim name suppression orders and any opposition.

[5] In accordance with this timetable, the plaintiff filed submissions on 12 April 2019 in support of permanent name suppression. These submissions referred to allegations set out in the plaintiff's brief of evidence filed on 7 September 2018. In particular, reference was made to the considerable distress the plaintiff suffered when disclosing her allegations to the Police, to the effect on her of the decision not to prosecute, and to the effect on her of receiving a redacted copy of the Police file. The submissions advised that the plaintiff has since been diagnosed with post-traumatic stress disorder and submitted that the suppression of her name would be a proportionate response that would facilitate avoiding any further trauma to her.

[6] On 13 May 2019, the Police advised the Tribunal that they would not be opposing the plaintiff's application for name suppression.

[7] Section 107 of the Human Rights Act 1993 confers on the Tribunal jurisdiction to make non-publication orders. Consequently, a Chairperson of the Tribunal sitting alone has power under s 95(1) to make such orders on an interim basis if "satisfied that it is necessary in the interests of justice to make the order to preserve the position of the parties pending a final determination of the proceedings".

[8] It has long been recognised by the Tribunal that non-publication orders are often required in sexual harassment proceedings because intimate personal details of the complainant may be divulged, and this may deter the making of complaints and the bringing of proceedings by persons who might otherwise have a justifiable grievance. See for example *BNK v Trainer* [2004] NZHRRT 17 at [15] and [46]–[47] and *Director of Proceedings v Emms* [2013] NZHRRT 5 at [23]. Similar principles apply to rape victims. The interests of justice may require an exception to the fundamental rule of open justice.

[9] It is appropriate for any permanent name suppression order to be made by the Tribunal following the determination of proceedings. For this reason, a permanent name suppression order will not be made at this stage. In the interim, I note that it is difficult to see the public interest in identifying Ms Green. The public interest is more likely to be served by ensuring that rape victims are not deterred in making complaints and bringing proceedings. Accordingly, I determine that the interim orders will continue until the determination of the substantive proceeding at which time the Tribunal will make a final determination in respect of permanent name suppression

INTERIM ORDERS

[10] The following orders are made pursuant to ss 95 and 107 of the Human Rights Act 1993:

[10.1] Publication of the name and of any other details which could lead to the identification of the plaintiff in these proceedings is prohibited pending further order of a Chairperson or of the Tribunal.

[10.2] Publication of the name and any other details which could lead to the identification of any person named or interviewed in the course of the Police investigation into the plaintiff's complaint is prohibited pending further order of a Chairperson or of the Tribunal.

[10.3] There is to be no search of the Tribunal file without leave of a Chairperson or of the Tribunal.

[10.4] Leave is reserved to all parties to make further application should the need arise.

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Ms MA Roche
Co-Chairperson