

- (1) ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESS OR IDENTIFYING PARTICULARS OF THE PLAINTIFFS AND OF THEIR CHILDREN
- (2) ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE TRIBUNAL OR OF THE CHAIRPERSON
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IN THE HUMAN RIGHTS REVIEW TRIBUNAL

[2014] NZHRRT 43

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Reference No. HRRT 007/2014

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN WXY

PLAINTIFFS

AND ATTORNEY-GENERAL IN RESPECT OF THE MINISTRY OF HEALTH

DEFENDANT

AT AUCKLAND

BEFORE:

Mr RPG Haines QC, Chairperson

Ms GJ Goodwin, Member

Mr BK Neeson, Member

REPRESENTATION:

Plaintiffs in person

Ms M Coleman and Mr MJ McKillop for defendant

DATE OF STRIKE OUT DECISION: 25 August 2014

DATE OF NON-PUBLICATION DECISION: 15 September 2014

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## DECISION OF TRIBUNAL GRANTING NON-PUBLICATION ORDER

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[1] On 25 August 2014 the Tribunal delivered a decision in which the statement of claim was struck out.

[2] By email dated 29 August 2014 the plaintiffs asked that non-publication orders be made to prevent the disclosure of the identity of their two children. Although presently

aged 19 and 22, their mental capacity is said to be that of a two to three year old child. Because the plaintiffs have an unusual surname, the identity of their children as persons with disabilities will be simple to deduce. Removal of the decision from the Ministry of Justice website is requested.

**[3]** The Attorney-General opposes removal of the decision from the website but submits the Tribunal should consider anonymising the plaintiffs' name to protect the privacy interests of their children. The Attorney-General submits:

**[3.1]** Although the plaintiffs appear to be genuine, they have brought two unmeritorious applications against the Attorney-General that contain serious allegations of wrongdoing. Publication of a plaintiff's name where an unmeritorious claim is lodged has an important function in discouraging such claims and protecting potential defendants.

**[3.2]** The identities of the plaintiffs' children have been anonymised in the Tribunal's decision. This reflects a cautious approach that appropriately avoids directly identifying a vulnerable non-party with a disability.

**[3.3]** The cumulative effect of the Tribunal's decision is that a person would only be able to identify the children by reference to their relationship with the named plaintiffs.

**[3.4]** However, the law is generally protective of vulnerable persons. Specific reference is made by analogy to ss 11B to 11D of the Family Courts Act 1980. Section 11B creates a presumption that where a vulnerable person is a party to or the subject of proceedings, a report cannot identify that person or any other party to the proceedings.

## **Discussion**

**[4]** The jurisdiction of the Tribunal to make a non-publication order is found in s 107(3) of the Human Rights Act 1993:

- (3) Where the Tribunal is satisfied that it is desirable to do so, the Tribunal may, of its own motion or on the application of any party to the proceedings,—
  - (a) order that any hearing held by it be heard in private, either as to the whole or any portion thereof;
  - (b) make an order prohibiting the publication of any report or account of the evidence or other proceedings in any proceedings before it (whether heard in public or in private) either as to the whole or any portion thereof;
  - (c) make an order prohibiting the publication of the whole or part of any books or documents produced at any hearing of the Tribunal.

**[5]** The granting of name suppression is a discretionary matter for the court or tribunal: *R v Liddell* [1995] 1 NZLR 538 (CA). The starting point when considering suppression orders is the presumption of open judicial proceedings, freedom of speech (as allowed by s 14 of the New Zealand Bill of Rights Act 1990) and the right of the media to report. However, in *Liddell* it was recognised at 547 that the jurisdiction to suppress identity can properly be exercised where the damage caused by publicity would plainly outweigh any genuine public interest. The decision in *Lewis v Wilson & Horton* [2000] 3 NZLR 546 (CA) underlines that in determining whether non-publication orders should be granted, the court or tribunal must identify and weigh the interests of both the public and the individual seeking publication.

**[6]** We agree with the submission by the Attorney-General that on their own, the plaintiffs would not be able to establish a case for non-publication of their names. The

presumption of open judicial proceedings which is found not only in the general law but also in s 107(1) of the Act permits no other conclusion.

[7] Nevertheless, for the reasons given by the Attorney-General we are of the view that the interests of the children, as vulnerable persons with severe disabilities, are to be protected. Their position is analogous to the innocent family members who benefited from a non-publication order in *Liddell* at 546 line 25.

[8] An order is accordingly made prohibiting publication of the names, address, occupation and any other details which might lead to the identification of the plaintiffs or of their children.

### **FORMAL ORDERS**

[9] Pursuant to s 107(3)(b) of the Human Rights Act 1993 the following orders are made:

[9.1] Publication of the names, address, occupation and any other details which might lead to the identification of the plaintiffs or of their children is prohibited.

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

[9.3] The decision of the Tribunal delivered on 25 August 2014 is to be redacted and released for reporting as *WXY v Attorney-General (Strike-Out Application)* [2014] NZHRRT 37. The present decision is to be released for reporting as *WXY v Attorney-General (Non-Publication Order)*.

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**Mr RPG Haines QC**  
Chairperson

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**Ms GJ Goodwin**  
Member

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**Mr BK Neeson**  
Member