

- (1) ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS OR IDENTIFYING PARTICULARS OF NURSE A AND NURSE B
- (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] NZHRRRT 59

Reference No. HRRT 019/2013

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN MARK ANTHONY MCCREATH

PLAINTIFF

AND ATTORNEY-GENERAL

FIRST DEFENDANT

AND NURSE A

SECOND DEFENDANT

AND NURSE B

THIRD DEFENDANT

TRIBUNAL: Rodger Haines QC, Chairperson

REPRESENTATION:

Mr MA McCreath in person

Ms K Laurenson for Attorney-General

Ms A O'Brien for Nurse A and Nurse B

DATE OF DECISION: 17 December 2014

**DECISION OF CHAIRPERSON ON APPLICATION FOR INTERIM ORDERS
PROHIBITING PUBLICATION OF NAME, ADDRESS OR IDENTIFYING
PARTICULARS OF NURSE A AND NURSE B**

Background

[1] When these proceedings were filed on 19 July 2013 Mr McCreath was then a prisoner detained at Christchurch Men's Prison. He alleges that while so detained he was the subject of gender discrimination and his statement of claim cites the Minister of Corrections as first defendant and the Chief Executive of the Department of Corrections

as second defendant. The two nurses responsible, in part, for his treatment (Nurse A and Nurse B) are cited as third and fourth defendants respectively.

[2] By application dated 10 December 2013 Nurse A and Nurse B sought interim non-publication orders pending determination of these proceedings or until further order of the Tribunal. That application was supported by separate affidavits by Nurse A and Nurse B together with a memorandum by Ms O'Brien. By *Minute* dated 20 December 2013 Mr McCreath was directed to file his submissions on that application by 17 January 2014. See the *Minute* at [8.1].

[3] Mr McCreath has filed no such submissions and in fact has taken no steps to progress his case to a hearing. In a letter dated 13 January 2014 he advised the Secretary that he had asked a Wellington lawyer to act on his behalf and that that lawyer was waiting for the outcome of Mr McCreath's legal aid application. By letter dated 4 March 2014 Mr McCreath asked the Secretary to provide him (Mr McCreath) with a copy of his statement of claim as the document had apparently been requested by Legal Aid Services. By letter dated 21 July 2014 he reported that his legal aid application had been declined and that he had requested a review. In his last letter (dated 22 September 2014) to the Secretary Mr McCreath advised that the Legal Aid Tribunal had directed a reconsideration of the legal aid application. Mr McCreath also gave notice that from 29 September 2014 his contact details would change. He provided separate physical and postal addresses in Christchurch.

[4] The fact remains, however, that Mr McCreath has taken no steps to comply with the *Minute* dated 20 December 2013 nor has he taken steps to progress his case to a hearing.

[5] A teleconference was convened this afternoon to determine the way forward. Mr McCreath did not participate in the teleconference. Letters sent to his last given physical and postal addresses have elicited no response from him.

[6] Against this background Ms Laurenson and Ms O'Brien advised that a joint application will be filed seeking to have these proceedings struck out for want of prosecution. That joint application will be filed on or before 23 January 2015.

[7] In the meantime, on behalf of Nurse A and Nurse B, Ms O'Brien requested that the Chairperson grant the interim orders sought by her clients in the application dated 10 December 2013. It is to that application I now turn.

The application for non-publication orders

[8] Section 95(1) of the Human Rights Act 1993 confers on the Chairperson of the Tribunal power to make an interim order if he or she is "satisfied" that it is "necessary" in the "interests of justice" to preserve the position of the parties:

95 Power to make interim order

(1) In respect of any matter in which the Tribunal has jurisdiction under this Act to make any final determination, the Chairperson of the Tribunal shall have power to make an interim order if he or she is 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.

[9] Section 107(3) of the Act further provides:

- (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.

[10] As noted in *Director of Proceedings v Emms* [2013] NZHRRT 5 (25 February 2013) the granting of name suppression is a discretionary matter for the court or tribunal. The starting point is the presumption of open judicial proceedings, freedom of speech and the right of the media to report. However in *R v Liddell* [1995] 1 NZLR 538 (CA) at 547 it was recognised that 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.

[11] In the present case the affidavits by Nurse A and Nurse B establish:

[11.1] They provided immediate and appropriate care to Mr McCreath and appear to have been named as defendants simply because their initials appear in the Controlled Drugs signing sheet as having administered controlled medication to Mr McCreath on 21 April 2012. Their names were provided to him by Corrections staff without their permission and without consulting them.

[11.2] As nurses working within the confines of a men's prison, Nurse A and Nurse B take care to protect their privacy by ensuring they are identified to prisoners only by their first names. This is standard practice for many health professionals but is particularly important in the specific context, given the nature of the working environment.

[12] On the evidence I am satisfied that the interests of Nurse A and Nurse B will be at real risk should a non-publication order not be made. Those interests are their privacy and professional reputation, given that they are working in the environment of a men's prison. The interim order is reasonably necessary in the interests of justice to preserve their position. There are no countervailing public interest factors. The terms of the formal order follow below.

Substitution of Attorney-General as first defendant

[13] As filed, the defendants named by Mr McCreath were the Minister of Corrections (first defendant), the Chief Executive of the Department of Corrections (second defendant), Nurse A (third defendant) and Nurse B (fourth defendant).

[14] However, these being proceedings against the Crown under Part 1A of the Human Rights Act, the Attorney-General is the appropriate representative of the Crown.

[15] The Minister of Corrections and the Chief Executive of the Department of Corrections have applied for an order that they be removed as parties and the Attorney-General substituted in their place. This is a proper application and it is granted. Henceforth the intituling is to be as shown in this present *Minute*.

The way forward

[16] As mentioned, the defendants have foreshadowed a joint application to have these proceedings struck out on the grounds that the long delay shows Mr McCreath has no real intention of pursuing his claim. A timetable for the filing of that application and of

any notice of opposition by Mr McCreath follows. The application will be dealt with on the papers.

FORMAL ORDERS

Non-publication orders

[17] Pursuant to ss 95 and 107(3)(b) of the Human Rights Act 1993 the following orders are made:

[17.1] Publication of the name, address or of any other details which might lead to the identification of Nurse A or Nurse B is prohibited pending further order of the Tribunal or of the Chairperson.

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

Directions

[18] The following directions are made:

[18.1] The Minister of Corrections and the Chief Executive of the Department of Corrections are removed as parties to these proceedings. In their place the Attorney-General is substituted.

[18.2] The joint application by the defendants that these proceedings be struck out is to be filed on or before 5pm on 23 January 2015. If possible, the application is to be served on Mr McCreath. The Secretary is directed to provide Ms Laurenson and Ms O'Brien with the most recent physical and postal addresses given by Mr McCreath in his letter to the Secretary dated 22 September 2014.

[18.3] Any notice of opposition by Mr McCreath is to be filed and served by 5pm on Thursday 5 February 2015.

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

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Mr RPG Haines QC
Chairperson