

## *Director of Proceedings v Fan*

On 25 February 2005 the Human Rights Review Tribunal issued two decisions in respect of two cases (heard together) involving health care services provided by Mr Charlie Fan of Queenstown. Although both complainants' names have been permanently suppressed (and have therefore been referred to below as complainant "A" and "B", respectively), Mr Fan's application for permanent name suppression was declined.

In complaint A, the complainant alleged that in the course of an acupuncture treatment to "bring on" a period, the defendant rubbed her in the genital area. She made specific, detailed allegations about the manner in which he did this. The defendant denied this, but said that the complainant had requested that he check to see whether her period was coming and, although there was no clinical reason to warrant such conduct, he acceded to her wishes and did so, using cotton wool and tweezers. Complainant A likewise denied that she had made this request and, further, gave evidence that she had a cervical stenosis, which meant that the onset of her periods was different from usual.

In complaint B, the complainant went to see the defendant about a problem with tinnitus (ringing in her ears). This had commenced while on her honeymoon following a loud air horn being blown directly into her ear.

The defendant diagnosed the problem as being "deficiency type" tinnitus, (that is, a deficiency of qi in the kidneys) and concluded that it was caused by excess sexual activity. His treatment involved the teaching of breathing exercises as well as a moxibustion treatment close to the complainant's vagina. The complainant's evidence was that she did not understand why he was doing this. When the defendant touched her genitals, the complainant said, "I'm not comfortable with this." Mr Fan then told her to "pretend that he was a woman" and continued with the treatment.

In complaint A, the Tribunal declared that Right 1(2) of the Code had been breached in that the defendant did not provide complainant A with a covering that would have protected her personal privacy while the defendant checked to see whether her period had come, but not the more serious allegation of his having touched her genital area. The Tribunal gave a declaration that the Code had been breached but declined to award damages.

The Tribunal did, however, raise concerns about whether in undertaking an unnecessary examination the defendant had breached the Code, but it did not determine this issue as it was not specifically alleged as a breach in the Statement of Claim.

In complaint B, the Tribunal held that Mr Fan had breached Rights 1(2), 4(2), 5(1), 6(2) and 7(1) of the Code. It ordered Mr Fan to pay \$5,000 in compensatory damages and \$2,000 in exemplary damages. In a subsequent decision, dated 28 June 2005, the defendant has been ordered to pay costs of \$22,000 and attend training in respect of the Code.