

Human Rights Review Tribunal Decision – *The Director of Proceedings v Huang*

The Human Rights Review Tribunal, in its decision of 1 December 2003, made a declaration pursuant to s 54(1)(a) of the Health and Disability Commissioner Act 1994 that Wellington acupuncturist David Huang had breached Rights 1(2), 4(2), 6(2) and 7(1) of the Code. In a further decision dated 22 November 2004, the Tribunal declined to make a Restraining Order pursuant to s 54(1)(b), but under s 54(1)(c) awarded compensatory damages to the complainant for humiliation, loss of dignity and injury to feelings, in the amount of \$6500.00. The claim for exemplary damages was declined. The complainant's name has been permanently suppressed, but Mr Huang's application for name suppression was declined.

Breaches of the Code

The complainant had sought treatment from Mr Huang for muscular tension in her back and shoulders and, between 19 March and 9 May 1999, she attended a number of consultations. At the first appointment, she understood that she was required to be naked from the waist up. Upon seeing that she had removed her bra, Mr Huang did not inform her that that was not necessary. At that appointment and subsequent ones, the complainant continued to remove her clothes and her bra for the purpose of treatment. The Tribunal found that Right 1(2) was breached, but observed that because of the fact that she was covered by a towel, it was not satisfied that she had suffered any particular humiliation, loss of dignity or injury to feelings in relation to the breach alone.

During the last two appointments, however, while the complainant was lying on her back, the towel slipped and the complainant's breasts were exposed for a significant period. The Tribunal found that Right 1(2) had further been breached.

In the course of massaging the area of the complainant's breast at the final appointment, the defendant touched the complainant's nipple. While the Tribunal was not satisfied that there was any element of sexual gratification, it found that Mr Huang did not provide the complainant with sufficient information upon which she could make an informed decision as to whether she wanted treatment. Accordingly Rights 4(2), 6(2) and 7(1) were breached for a failure to obtain informed consent.

Restraining Order

The Tribunal was not persuaded that there was any need to frame a restraining order in terms that are so wide that the order says nothing more than that the defendant must comply with the Act and Code. In particular, there was no evidence of any other similar complaint, or that there had been a further breach of the Code. The Tribunal accepted the defendant's evidence that his knowledge of the Code had increased as a result of the case, and there was no reason to be concerned that he was any more likely in future to breach the Code than any other health provider. The delay between the events and the hearing was also a factor. Finally, the Tribunal queried the practical effect of a restraining order should a defendant later breach the Code.