

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2022-404-847
[2022] NZHC 1765**

BETWEEN DIRECTOR-GENERAL OF THE
 MINISTRY OF HEALTH
 Plaintiff

AND WAKAMINENGA KAUNIHERA
 HAUORA HEALTH COUNCIL
 First Defendant

 JACQUES IMBEAU
 Second Defendant

 ANNA GOODWIN
 Third Defendant

Continued over

Hearing: 30 June 2022

Appearances: S C Carter for Plaintiff
 Third Defendant in person, and for the First and Second
 Defendants
 Fifth Defendant in person, and for the Fourth Defendant

Judgment: 21 July 2022

JUDGMENT OF PETERS J

This judgment was delivered by Justice Peters on 21 July 2022 at 3 pm
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date:

AND

MĀORI GOVERNMENT OF AOTEAROA
NU TIRENI
Fourth Defendant

GEORGINA JOB
Fifth Defendant

PIRIPI SHEEHAN
Sixth Defendant

[1] This judgment determines an application of 26 May 2022 by the plaintiff, the Director-General of the Ministry of Health, for interim relief against the defendants.

[2] I heard the application in the Duty Judge list on 30 June 2022. Counsel for the plaintiff, Ms Carter, appeared in support of the application. The application is supported by an affidavit affirmed on 26 May 2022 by Ms J I Birdsall, a Principal Adviser at the Ministry of Health. The plaintiff has also filed an undertaking in damages.

[3] Dr Anna Goodwin, the third defendant, appeared for herself and, as I understood it, the first and second defendants.

[4] The fifth defendant, Ms Georgina Job, appeared for herself and the fourth defendant. Ms Job introduced herself as “Arikinui Ripekatangi Georgina Job”. As I understand it, “Arikinui Ripekatangi” is a title (Prime Minister or Deputy Prime Minister) in the fourth defendant.

[5] There was no appearance for the sixth defendant. Dr Goodwin and Ms Job informed me that the sixth defendant hosts the first defendant’s website.

[6] Although the proceedings had been served on each defendant by the time I heard the application, the defendants had not had the papers for long. In a memorandum she filed on 28 June 2022, Ms Job requested an adjournment. As it turned out, however, she and Dr Goodwin understood the issues and were able to enunciate their stance on them. I shall also make orders at the end of this judgment enabling the defendants to apply to set aside.

Background

[7] The plaintiff brings this proceeding in respect of what are said to be breaches of the Fair Trading Act 1986 (“FTA”).

First Defendant

[8] The plaintiff contends that the first defendant, an unincorporated society, has represented and is continuing to represent:

- (a) that it is competent to register people in what are referred to in the statement of claim as the “Represented Professions”, these being medical or health professions including the medical, dental, and pharmacy professions, nursing, midwifery, and so forth;
- (b) that it is competent to provide those so registered with a practising certificate permitting the recipient to practise one or more of the Represented Professions lawfully; and
- (c) that any person so registered, and to whom the first defendant provides such a certificate, is immune from prosecution or censure by competent New Zealand authorities and may only be held to account by the first defendant.

[9] The plaintiff also alleges that the first defendant has purported to issue practising certificates to former health practitioners who are not, or who are no longer, permitted to practise a profession regulated under the Health Practitioners Competence Assurance Act 2003 (“HPCAA”), and that those formerly registered practitioners (formerly registered under the HPCAA that is) are indeed holding themselves out as a member of one or more of the Registered Professions by virtue of registering with and holding a certificate issued by the first defendant.

[10] The plaintiff’s case is that the registration and certification of health practitioners in New Zealand, including in the Registered Professions, is governed exclusively by the HPCAA and authorities appointed under that legislation. The first defendant, and the fourth defendant for that matter, is not such an authority.

[11] As a result of these matters, the plaintiff contends that the first defendant is in breach of ss 9, 11, 13(b) and 13(e) of the FTA. In her proceeding, the plaintiff seeks

a declaration to that effect, an order pursuant to s 41(1)(a) FTA restraining the first defendant from continuing to make those representations or similar, and costs.

Second to Sixth Defendants

[12] The plaintiff's case against the other defendants is that each is or has been directly or indirectly knowingly concerned in, or party to, the first defendant's contravention of ss 9, 11, 13(b) and 13(e) of the FTA. As regards each defendant, the plaintiff has pleaded the capacity in which each has acted or purported to act. In each case, pursuant to s 41(3)(b) of the FTA, the plaintiff seeks an injunction restraining each defendant from continuing in this conduct. The plaintiff also seeks costs.

Evidence

[13] Ms Birdsall's affidavit, to which I referred above, provides prima facie evidence of each of the plaintiff's allegations.

Defendants

[14] Dr Goodwin did not dispute the allegations referred to above. Rather, her submission was that the first defendant is not bound by the provisions of the HPCAA or the FTA but rather has its own jurisdiction, superior to that of the plaintiff or the New Zealand Parliament. The submission was that, as the first defendant is not bound by the FTA or HPCAA, nor are the second and third defendants.

[15] Dr Goodwin filed two documents on the morning of the hearing. One is described as a "Notice of Estoppel" which appears intended to be a statement of defence and counterclaim, and is said to be filed for the first to third and sixth defendants. The second is an invoice for damages claimed by various individuals, many of whom are not parties to the proceeding, but essentially seeking damages for harm to their reputation.

[16] As I have said, Ms Job filed a memorandum on 28 June 2022. As I have also said, in this memorandum Ms Job said she had insufficient time to consider the plaintiff's proceeding and sought an adjournment. I did not grant an adjournment

because Ms Job was able to enunciate her position and that of the fourth defendant, and also because the plaintiff's application raises issues of public safety.

[17] Ms Job's submissions were that the fourth defendant is likewise not subject to the FTA or the HPCAA, and nor is Ms Job. The memorandum should also be treated as a protest to the jurisdiction of the Court.

Discussion

[18] I propose to grant interim relief for these reasons.

[19] The first is that there is clearly a serious issue to be tried. The representations appear to be being made and "certificates" issued. Moreover, the contention that the first and fourth defendants operate under a different and superior jurisdiction is unsustainable. The Court of Appeal addressed a similar contention in its recent decision in *Warahi v Chief Executive of the Department of Corrections*.¹ In [11] of that decision, the Court of Appeal confirmed that Acts of Parliament, such as the HPCAA and FTA, are binding all persons and institutions within the geographical territory of New Zealand, and the Courts of New Zealand are required to uphold them as enacted. The defendants are as much bound as any other individual and body.

[20] That serious issue threshold having been passed, the next matter to consider is the balance of convenience. This plainly lies with the plaintiff. A clear issue as to the health and safety of the public arises. Members of the public may proceed on the basis that a person is authorised or certified to practise when they are not.

[21] To the extent that it is necessary, the plaintiff has, as I have said, given an undertaking in damages and any damage to the defendants can be met by such an award.

Orders

[22] I make orders in terms of [1](a)(i) and (ii) of the plaintiff's interlocutory application for injunction dated 26 May 2022.

¹ *Warahi v Chief Executive of the Department of Corrections* [2022] NZCA 105.

Other directions

[23] The defendants, or any of them, may apply to set aside the interim injunction orders on two weeks' notice. That should be done by filing and serving an application to set aside and an affidavit(s) in support. The plaintiff would then have an opportunity to respond.

[24] As I understood it from Ms Job, she believes that she and the fourth defendant may be subject to orders for substituted service by email. Ms Job is in a rural location with poor internet coverage. It is not clear to me that an order for substituted service has been made against Ms Job but, in any event, for the avoidance of doubt, and pending further order, service of documents on the fourth and fifth defendants is to be effected personally.

[25] This matter is to be called in Duty Judge list at 10 am on 10 August 2022. Further directions will be made at that time. The plaintiff should file a memorandum in advance setting out the directions considered appropriate, and the defendants should do likewise.

[26] Costs are reserved.

Peters J

Solicitors: Te Tari Ture o te Karauna, Crown Law, Wellington
Luke Cunningham Clere, Crown Solicitor, Wellington

Copy for: Defendants