Supreme Court of New Zealand
Te Kōti Mana Nui

14 June 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

B (SC 60/2016) v WAITEMATA DISTRICT HEALTH BOARD

(SC 60/2016) [2017] NZSC 88

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The High Court order prohibiting the publication of the name of the appellant remains in force.

The Waitemata District Health Board (the Board) has a smoke-free policy. No smoking is permitted by staff, patients or visitors inside the Board's premises or in external areas on any of the Board's premises. Patients admitted to Intensive Care Units (ICU) in the Board's mental health units are confined to the unit over the course of their admission and therefore are unable to smoke.

The appellant was an inpatient at the Board's two acute adult inpatient mental health units over a twelve week period in 2012. During this time, he was admitted to the ICU on three occasions for a total period of approximately 11 days. While in the ICU, the appellant was confined to the unit and unable to smoke.

The appellant challenged the Board's smoke-free policy as it applies to patients in the Board's mental health facilities. In the High Court and Court of Appeal the appellant claimed that that policy was inconsistent with legislation controlling the Board and with the New Zealand Bill of Rights Act 1990. The claim was unsuccessful in both the High Court and the Court of Appeal.

85 Lambton Quay, Wellington
P O Box 61 DX SX 11224
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

In this Court, the appellant claimed, first, that the Board was obliged under s 6 of the Smoke-free Environments Act 1990 to establish dedicated smoking rooms in mental health units. Second, the appellant claimed that the Board's smoke-free policy had breached his rights under the Bill of Rights Act, specifically: the right to be treated with humanity and with respect for dignity; the right not to be subjected to cruel or disproportionately severe treatment; the right to be free from discrimination on the basis of disability; and the right to a home or private life, which the appellant argued exists at common law and includes a right to choose to smoke.

The Supreme Court has unanimously rejected the appeal.

First, the Court found that s 6 of the Smoke-free Environments Act does not create any obligation on the Board to provide dedicated smoking rooms in its mental health units. While s 6 allows for dedicated smoking rooms in hospital care institutions, residential disability care institutions and rest homes, the section is permissive and does not impose a positive obligation on the Board to provide such facilities.

Second, the Court found that the Board's smoking policy is not inconsistent with the Bill of Rights. The Court found that the way in which the policy was implemented, following a careful process and with the provision of nicotine replacement therapy, means that the policy does not breach the right to be treated with humanity and respect for dignity or the right not to be subjected to cruel or disproportionately severe treatment. In addition, the policy does not breach the right to be free from discrimination on the basis of disability. The appellant was treated in the same way as all others required, for any reason, to be in the ICU. The treatment arose out of the appropriate operation of the treatment regime for compulsorily detained patients and there was no different treatment on a prohibited ground. Finally, the Court found that there is no existing right to home or private life encompassing the right to choose to smoke whilst confined for short periods in the ICU of a mental health institution.

Contact person:
Kieron McCarron, Supreme Court Registrar (04) 471 6921