



Supreme Court of New Zealand

31 August 2007

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**Christopher Hapimana Ben Mark Taunoa & Ors v The Attorney-General
and Anor
SC 6/2006
[2007] NZSC 70**

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 www.courtsofnz.govt.nz.

The Supreme Court has, by majority, declined these appeals by prisoners who claimed that their treatment under an admittedly unlawful regime operated by the Department of Corrections in Auckland Prison between 1998 and 2004 amounted to cruel, degrading, or disproportionately severe treatment in breach of their rights under s 9 of the New Zealand Bill of Rights Act 1990. The appeals did not affect the decisions of the High Court and Court of Appeal that the regime denied the prisoners their right under s 23(5) of the Bill of Rights Act to be treated with humanity and respect for their inherent dignity.

The Court has, also by majority, allowed cross-appeals by the Attorney-General against the level of damages awarded to three of the prisoners for breach of s 23(5).

In subjecting the appellant prisoners to the Behaviour Management Regime (BMR), as is now accepted, the Department of Corrections failed to treat them with humanity and with respect for their inherent dignity, as is required by s 23(5). A majority of the Supreme Court has held that although the treatment of the prisoners was unacceptable by domestic and international human rights standards and resulted in serious breaches of s 23(5), their treatment could not properly be characterised as cruel, degrading or disproportionately severe in terms of s 9. Dissenting, the Chief Justice considered that BMR was properly characterised as an inhuman regime. She would therefore have made declarations of breach of s 9 in relation to all appellants. Blanchard J would have made a declaration of breach of s 9 in relation to the appellant who spent the longest time on BMR (a total of 32 months), on the basis that his treatment over such a long period could properly be characterised as disproportionately severe and, in relation to the clearly unlawful practice of routine strip searching, could also be characterised as degrading.

All members of the Court have accepted that the failure to comply with legislative procedural safeguards before placing prisoners on a regime that was punitive in effect resulted in a denial of natural justice to the prisoners (contrary to s 27(1) of the Bill of Rights Act). However, the Court considered that the complaints raised in relation to s 27(1) were subsumed in and recognised by declarations that BMR was unlawful and breached the prisoners' rights to be treated with humanity.

An award of \$25,000 to one prisoner, who is now accepted to have suffered disproportionately severe treatment (in breach of s 9 of the Bill of Rights Act) because placement on BMR aggravated his already severe psychological disabilities, was not challenged by the Attorney-General. Four members of the Court have concluded, following a review of the domestic and international jurisprudence, that the awards of damages for breach of s 23(5) to three other prisoners, made in the High Court and confirmed by the Court of Appeal, were too high. The Chief Justice would not have made any reduction in the awards. While different Judges in the majority have identified different figures as appropriate in the circumstances of the case, in the result the damages awards have been reduced as follows:

- Mr Taunoa: damages reduced from \$65,000 to \$35,000
- Mr Robinson: damages reduced from \$40,000 to \$20,000
- Mr Kidman: damages reduced from \$8,000 to \$4,000

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545