

**NOTE: HIGH COURT ORDER MADE IN [2020] NZHC 373  
PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING  
PARTICULARS OF THE COMPLAINANT REMAINS IN FORCE.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 98/2021  
[2023] NZSC 73**

BETWEEN CHRISTOPHER RYAN  
Appellant

AND HEALTH AND DISABILITY  
COMMISSIONER  
Respondent

Court: Winkelmann CJ, William Young, Glazebrook, O'Regan and  
Ellen France JJ

Counsel: A H Waalkens KC and K M Wills for Appellant  
V E Casey KC for Respondent

Judgment: 26 June 2023

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**JUDGMENT OF THE COURT**

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**The appellant must pay the respondent costs of \$25,000 plus  
usual disbursements.**

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**REASONS**  
(Given by O'Regan J)

[1] In our judgment for this appeal, we reserved costs and asked for submissions from counsel.<sup>1</sup> We have now received and considered those submissions.

[2] The respondent, as the successful party, seeks standard costs for a one-day appeal with two counsel appearing (\$25,000) plus usual disbursements. The appellant

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<sup>1</sup> *Ryan v Health and Disability Commissioner* [2023] NZSC 42 at [103]–[104].

argues that there should be no order for costs. The basis for that submission is that the issues arising in the appeal were finely balanced and complex and of considerable public interest, affecting the entire health profession.<sup>2</sup> In the alternative, the appellant submits that the Court should award reduced costs.

[3] The High Court awarded standard costs to the respondent.<sup>3</sup> In contrast, the Court of Appeal decided that costs should lie where they fell.<sup>4</sup>

[4] We accept the case was finely balanced and the decision will be of considerable interest to the health profession. However, we are not persuaded that it would be appropriate to make no costs award. As the respondent submitted, appeals by this Court are usually of wider public and general importance and often are complex and finely balanced.<sup>5</sup> We see no reason to treat the present appeal differently from most other appeals that come before this Court.

[5] We therefore order that the appellant must pay the respondent costs of \$25,000 plus usual disbursements.

Solicitors:

Wotton + Kearney, Wellington for Appellant

J I King, Office of the Health and Disability Commissioner, Wellington for Respondent

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<sup>2</sup> Citing *West Coast ENT Inc v Buller Coal Ltd* [2013] NZSC 133 at [4].

<sup>3</sup> *Ryan v The Health and Disability Commissioner* [2020] NZHC 373 (Grice J) at [74].

<sup>4</sup> *Ryan v The Health and Disability Commissioner* [2021] NZCA 347 (French, Miller and Clifford JJ) at [99] and [102].

<sup>5</sup> *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2022] NZSC 63 at [5].