



THE COMPLAINTS REVIEW TRIBUNAL REGULATIONS 1996

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 19th day of August 1996

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 144 of the Human Rights Act 1993, and, in respect of regulation 13 of these regulations, section 12 (4) of the Department of Justice (Restructuring) Act 1995, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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| 1. Title and commencement | 8. Conduct of proceedings |
| 2. Interpretation | 9. Meeting of parties |
| 3. Fair, speedy, and effective determination of proceedings | 10. Time and place of hearing |
| 4. Commencement of proceedings | 11. Hearing |
| 5. Power of Tribunal to determine that proceedings have been commenced | 12. Tribunal's decision |
| 6. Notice of proceedings | 13. Consequential amendment to Fifth Schedule to Department of Justice (Restructuring) Act 1995 |
| 7. Filing and service of statement of reply | 14. Revocation |

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Complaints Review Tribunal Regulations 1996.

(2) These regulations shall come into force on the 19th day of September 1996.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“The Act” means the Human Rights Act 1993:

“Chairperson” means the Chairperson of the Tribunal; and includes a Deputy Chairperson who is for the time being acting, pursuant to section 102 of the Act, for the Chairperson of the Tribunal:

“Director of Proceedings” means the person for the time being designated under section 15 (1) of the Health and Disability Commissioner Act 1994 as the Director of Proceedings:

“Health and Disability Commissioner” means the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994:

“Privacy Commissioner” means the Privacy Commissioner under the Privacy Act 1993:

“Proceedings” means proceedings under—

(a) Section 83 of the Act; or

(b) Section 82 or section 83 of the Privacy Act 1993; or

(c) Section 50 or section 51 of the Health and Disability Commissioner Act 1994:

“Proceedings Commissioner” means the Proceedings Commissioner appointed under section 7 (1) (d) of the Act:

“Secretary” means the officer of the Department for Courts who is for the time being acting as secretary of the Tribunal:

“Tribunal” means the Complaints Review Tribunal continued by section 93 of the Act.

(2) In these regulations, a reference to “the Chairperson” shall be read as a reference to either Chairperson where there are 2 Chairpersons of the Tribunal.

(3) Expressions not defined in these regulations but defined in the Act have, in these regulations, the meanings so defined.

3. Fair, speedy, and effective determination of proceedings—

These regulations shall be so construed as to best secure the speedy, fair, and just determination of proceedings before the Tribunal.

4. Commencement of proceedings—(1) All proceedings shall be commenced by the filing, in the office of the Tribunals Division of the Department for Courts in Wellington, of a form prescribed or approved for the purpose by the Tribunal and provided by the chief executive of the Department for Courts.

(2) The form filed under subclause (1) of this regulation shall be completed and filed by or on behalf of,—

(a) In the case of proceedings brought under section 83 of the Act,—

(i) The Proceedings Commissioner; or

(ii) Where the complainant or the aggrieved person brings the proceedings in accordance with section 83 (4) of the Act, the complainant or the aggrieved person; or

(iii) Where the person against whom a complaint was made or to whom an investigation related brings the proceedings in accordance with section 83 (5) of the Act, the person against whom a complaint was made or to whom an investigation related:

- (b) In the case of proceedings brought under section 82 of the Privacy Act 1993, the Proceedings Commissioner:
- (c) In the case of proceedings brought under section 50 of the Health and Disability Commissioner Act 1994, the Director of Proceedings:
- (d) In the case of proceedings brought under section 83 of the Privacy Act 1993, or under section 51 of the Health and Disability Commissioner Act 1994, the aggrieved person.

5. Power of Tribunal to determine that proceedings have been commenced—(1) Notwithstanding regulation 4 of these regulations, the Tribunal may determine that proceedings under section 83 of the Act have been commenced by any application (irrespective of its form and the manner in which it was completed or given to the Tribunal) made in writing by or on behalf of,—

- (a) The Proceedings Commissioner; or
- (b) Where the complainant or the aggrieved person is entitled to bring proceedings in accordance with section 83 (4) of the Act, the complainant or the aggrieved person; or
- (c) Where the person against whom a complaint was made or to whom an investigation related is entitled to bring proceedings in accordance with section 83 (5) of the Act, the person against whom a complaint was made or to whom an investigation related.

(2) Notwithstanding regulation 4 of these regulations, the Tribunal may determine that proceedings under section 82 or section 83 of the Privacy Act 1993 have been commenced by any application (irrespective of its form and the manner in which it was completed or given to the Tribunal) made in writing by or on behalf of,—

- (a) In the case of proceedings under section 82 of that Act, the Proceedings Commissioner; or
- (b) Where the aggrieved person is entitled to bring proceedings under section 83 of that Act, the aggrieved person.

(3) Notwithstanding regulation 4 of these regulations, the Tribunal may determine that proceedings under section 50 or section 51 of the Health and Disability Commissioner Act 1994 have been commenced by any application (irrespective of its form and the manner in which it was completed or given to the Tribunal) made in writing by or on behalf of,—

- (a) In the case of proceedings under section 50 of that Act, the Director of Proceedings; or
- (b) Where the aggrieved person is entitled to bring proceedings under section 51 of that Act, the aggrieved person.

6. Notice of proceedings—As soon as practicable after proceedings have been commenced, the Secretary shall,—

- (a) Refer the proceedings to the Chairperson for determination by the Tribunal; and
- (b) Cause to be served on the defendant a notice—
 - (i) Informing the defendant of the proceedings; and
 - (ii) Stating the place for the filing of a statement of reply and the time within which the statement of reply is required to be filed, in accordance with these regulations; and
 - (iii) Warning the defendant that, if the statement of reply is not filed within the required time, the Tribunal or the

Chairperson may proceed at once to fix a time and place for the hearing of the proceedings; and

(iv) Warning the defendant that, if the defendant fails to file a statement of reply or does not file a statement of reply within the required time, the Tribunal may refuse to hear the defendant; and

(c) Where the complainant or aggrieved person is the plaintiff,—

(i) In the case of proceedings under section 83 (4) of the Act, cause to be served on the Proceedings Commissioner a notice informing the Proceedings Commissioner of the proceedings:

(ii) In the case of proceedings under section 83 of the Privacy Act 1993, cause to be served on the Proceedings Commissioner and the Privacy Commissioner a notice informing those Commissioners of the proceedings:

(iii) In the case of proceedings under section 51 of the Health and Disability Commissioner Act 1994, cause to be served on the Director of Proceedings and the Health and Disability Commissioner a notice informing them of the proceedings; and

(d) Where, in the case of proceedings under section 83 (5) of the Act, the person against whom a complaint was made or to whom an investigation related is the plaintiff, cause to be served on the Proceedings Commissioner a notice informing the Proceedings Commissioner of the proceedings.

7. Filing and service of statement of reply—(1) Subject to subclause (2) of this regulation, a defendant who intends to defend the proceedings—

(a) Shall, within 30 days after the day on which the notice of proceedings is served on the defendant, file in the office of the Tribunals Division of the Department for Courts in Wellington a statement of reply to the plaintiff's claim; and

(b) Shall serve a copy of the statement of reply on the plaintiff and any other party.

(2) The Chairperson may, on the application of the applicant in proceedings involving an alleged breach of information privacy principle 6 of the Privacy Act 1993, abridge the time for the filing of a statement of reply in those proceedings if the Chairperson is satisfied that the urgency of the case so requires.

8. Conduct of proceedings—(1) Subject to the Act or, as the case requires, the Privacy Act 1993 or the Health and Disability Commissioner Act 1994, and subject to these regulations, the Chairperson may, subject to any decision of the Tribunal, give all such directions and do all such things as are necessary or expedient for the speedy, fair, and just hearing and determination of any proceedings.

(2) Without limiting subclause (1) of this regulation, the Chairperson may direct that proceedings under section 83 of the Act shall be heard and determined in conjunction with proceedings under section 82 or section 83 of the Privacy Act 1993, in any case where both proceedings relate to the same defendant (whether or not either or both of those proceedings also relate to any other person) and the right to relief is alleged to arise out of the same transaction or series of transactions.

(3) Without limiting subclause (1) of this regulation, the Chairperson may direct that proceedings under section 83 of the Act shall be heard and

determined in conjunction with proceedings under section 50 or section 51 of the Health and Disability Commissioner Act 1994, in any case where both proceedings relate to the same defendant (whether or not either or both of those proceedings also relate to any other person) and the right to relief is alleged to arise out of the same transaction or series of transactions.

(4) Without limiting subclause (1) of this regulation, the Chairperson may direct that proceedings under section 82 or section 83 of the Privacy Act 1993 shall be heard and determined in conjunction with proceedings under section 50 or section 51 of the Health and Disability Commissioner Act 1994, in any case where both proceedings relate to the same defendant (whether or not either or both of those proceedings also relate to any other person) and the right to relief is alleged to arise out of the same transaction or series of transactions.

(5) Without limiting subclause (1) of this regulation, the Chairperson may direct that proceedings under section 83 of the Act shall be heard and determined in conjunction with proceedings under section 82 or section 83 of the Privacy Act 1993 and proceedings under section 50 or section 51 of the Health and Disability Commissioner Act 1994, in any case where all of the proceedings relate to the same defendant (whether or not any or all of those proceedings also relate to any other person) and the right to relief is alleged to arise out of the same transaction or series of transactions.

9. Meeting of parties—(1) Before the hearing of any proceedings, the Chairperson may convene a meeting of the parties to the proceedings.

(2) Any person who has a right to appear in those proceedings pursuant to section 84 of the Act or, as the case requires, section 86 of the Privacy Act 1993 or section 50 of the Health and Disability Commissioner Act 1994 may also attend the meeting.

(3) The Chairperson shall preside over every meeting convened pursuant to subclause (1) of this regulation.

(4) The purposes of the meeting shall be—

(a) To ascertain, if possible, the issues in dispute between the parties to the proceedings:

(b) To determine whether or not the issuing of any direction under regulation 8 of these regulations is necessary or desirable:

(c) To ascertain, if possible, a suitable time and place for the hearing of the proceedings.

(5) A record shall be made of any decision made at the meeting, and a copy of the record shall be provided to the parties to the proceedings, and to those persons who have a right to attend the meeting pursuant to subclause (2) of this regulation.

10. Time and place of hearing—(1) The Tribunal or the Chairperson shall fix a time and place for the hearing of the proceedings.

(2) The Secretary shall cause a notice specifying the time and place fixed under subclause (1) of this regulation to be served on,—

(a) The plaintiff; and

(b) The defendant; and

(c) In the case of proceedings under section 83 of the Act, the Proceedings Commissioner, where the complainant or the aggrieved person, or the person against whom a complaint was made or to whom an investigation related, is the plaintiff; and

- (d) In the case of proceedings under section 83 of the Privacy Act 1993, the Proceedings Commissioner and the Privacy Commissioner; and
- (e) In the case of proceedings under section 51 of the Health and Disability Commissioner Act 1994, the Director of Proceedings and the Health and Disability Commissioner.

11. Hearing—(1) At the hearing the persons who have a right to appear or who are allowed to appear before the Tribunal shall, subject to subclause (4) of this regulation, each be given an opportunity to be heard.

(2) The persons who have a right to appear or who are allowed to appear before the Tribunal may call evidence and may cross-examine any witness.

(3) If the plaintiff or the defendant or both fail to appear before the Tribunal at the time and place appointed, the Tribunal may nevertheless, upon proof of service of notice of the hearing, proceed to determine the proceedings.

(4) Notwithstanding subclause (1) of this regulation, where the defendant fails to file a statement of reply or does not file a statement of reply within the required time, the Tribunal may refuse to hear the defendant.

12. Tribunal's decision—(1) A copy of the decision of the Tribunal shall be given to,—

- (a) The plaintiff; and
- (b) The defendant; and
- (c) Every other person (being a person who had a right to appear or was allowed to appear before the Tribunal) who so appeared; and
- (d) In the case of proceedings under section 83 of the Act, the Proceedings Commissioner, where the complainant or the aggrieved person, or the person against whom a complaint was made or to whom an investigation related, is the plaintiff; and
- (e) In the case of proceedings under section 83 of the Privacy Act 1993, the Proceedings Commissioner and the Privacy Commissioner; and
- (f) In the case of proceedings under section 51 of the Health and Disability Commissioner Act 1994, the Director of Proceedings and the Health and Disability Commissioner.

(2) Each copy of the decision shall contain or have attached to it a statement informing the parties of the right to appeal to the High Court, and the procedure for exercising that right.

13. Consequential amendment to Fifth Schedule to Department of Justice (Restructuring) Act 1995—The Fifth Schedule to the Department of Justice (Restructuring) Act 1995 is hereby amended by revoking the item relating to the Complaints Review Tribunal Regulations (No. 2) 1993.

14. Revocation—The Complaints Review Tribunal Regulations (No. 2) 1993* are hereby consequentially revoked.

MARIE SHROFF,
Clerk of the Executive Council.

*S.R. 1993/392

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 19 September 1996, update the Complaints Review Tribunal Regulations (No. 2) 1993 as a consequence of the coming into force on 1 July 1996 of Part IV of the Health and Disability Commissioner Act 1994.

The regulations prescribe procedural requirements in respect of the hearing by the Complaints Review Tribunal of civil proceedings under section 83 of the Human Rights Act 1993, of proceedings under sections 82 and 83 of the Privacy Act 1993, and of proceedings under sections 50 and 51 of the Health and Disability Commissioner Act 1994.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 22 August 1996.

These regulations are administered in the Ministry of Justice.