

**Inappropriate sexual behaviour with client
(06HDC15791, 24 September 2007)**

Caregiver ~ Disability services provider ~ Consumer of disability services ~ Sexual impropriety ~ Rights 2, 3, 4(2)

A disability service provider complained about the care provided by one of its caregivers to a client. At 16 years of age he had been assessed to have the intellectual capacity of a 10-year-old boy.

At 26 years of age, the man moved into a flat to live independently. The disability services provider appointed caregivers to teach him the skills needed to live independently. One of the caregivers, whom the man knew from church, began spending time with the young man outside the appointed employment hours. The caregiver suggested that they play games, which led to him introducing a sexual element to the play. The young man believed the caregiver was “his friend” and began to demand more of his time. The caregiver complained to the disability services provider that the young man was too demanding and, upon enquiry, the disability services provider learned of the inappropriate sexual behaviour. The disability services provider dismissed him and made a complaint to the Commissioner.

It was held that as a disability services care provider, the caregiver was responsible for ensuring that an appropriate professional boundary existed between himself and the man. He engaged in games of a sexual nature with the man during the course of their professional relationship, breaching fundamental ethical standards and Right 4(2). By failing to respect the man’s dignity and failing to promote and support his independence, the caregiver breached Right 3. He exploited the professional relationship and violated his fiduciary obligations, breaching Right 2.

The disability service provider was found not directly or vicariously liable for the caregiver’s breaches.

The caregiver was referred to the Director of Proceedings, who issued proceedings before the Human Rights Review Tribunal. The Tribunal made a declaration that the caregiver’s actions were in breach of Rights 1(1), 2, 3, and 4(3). The Tribunal awarded \$20,000 in compensatory damages and \$10,000 in exemplary damages in respect of those breaches. The Tribunal also ordered the caregiver to pay \$10,000 in costs.

Link to HRRT decision:

<http://www.nzlii.org/nz/cases/NZHRRT/2009/2.html>