

CONFIDENTIAL

Worthington v Ibrahim & ORS

Hidden J, NSW Supreme Court

BY BILL MADDEN, SYDNEY

Background

The Plaintiff brought proceedings against two doctors and two hospitals seeking damages for negligence, arising from surgery performed upon the Plaintiff for a hiatus hernia. The surgery resulted in the perforation of the Plaintiff's oesophagus.

The Plaintiff issued a subpoena directed to the Health Care Complaints Commission to produce various documents including documents relating to any complaint (other than that relating to the Plaintiff himself) received by the Health Care Complaints Commission alleging negligence on Dr Ibrahim's part during operative procedures.

Argument

The Health Care Complaints

Commission produced a volume of material before the Registrar. The Registrar declined to grant the Plaintiff access to the files and his decision was affirmed upon review by the Master who formed the view (without examining the file) that he was not satisfied that it had "apparent relevance" to the proceedings. The Master also made reference to privacy considerations and the fact that the Health Care Complaints Commission is a public body having statutory responsibilities.

Findings

The Court was not persuaded by the public policy/privacy arguments, saying that the privacy of the complainants would normally be protected by the obliteration of their names and


any other information which might tend to identify them.

The Court held that the Master had measured apparent relevance by too narrow a test as the file, although not relating to the surgery performed upon the Plaintiff, could lead to further inquiry and possibly provide material admissible as tendency evidence under Section 97 of the Evidence Act 1995. Alternatively it might be a source of material for use in cross-examination.

Comment

The Plaintiff by reason of s30 (4-6) did not seek access to the peer review reports.


Some parts of the medical press have commented adversely on the decision. ■



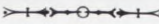
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ASSESSMENTS



DR R. L. THOMSON & ASSOCIATES



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