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## **MEDIA RELEASE**

### **1-0—New Zealand loses first case before the United Nations Committee Against Torture**

Human Rights Lawyer Dr Tony Ellis welcomes the first victory anyone has achieved before the United Nations Committee Against Torture in *Vogel v New Zealand*.

Since 1989 cases alleging breaches of the **Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment** have been able to be taken to the Torture Committee by individuals after all NZ domestic court remedies have been exhausted.

Regrettably few make use of this important avenue, and this is only the first ever such victory.

John Vogel was the first New Zealander to make an individual complaint about breach of the Convention Against Torture, and his complaint has been upheld. While serving a life sentence for murder, he was ordered to undergo 21 days solitary confinement by a Visiting Justice in April 2000. The maximum penalty permitted by law was 15 days. The confinement resulted after failing a drug test. Rather than giving him treatment for his cannabis addiction and chronic depression, he was unlawfully held in solitary confinement.

He challenged the decision before the High Court in Auckland, and lost. Legal Aid was denied for an appeal to the Court of Appeal, nevertheless he appealed, and won a declaration of a breach of s 23(5) New Zealand Bill of Rights Act (not treated with humanity and respect for his inherent dignity). The Court refused a declaration of a more serious breach of section 9. Section 9 equates to Article 16 of the Torture Convention—cruel, inhuman or degrading treatment or punishment, which do not amount to torture. The Court of Appeal also refused to award compensation.

The Supreme Court refused leave to appeal over the application for compensation.

The Torture Committee found that the solitary confinement was a disproportionate penalty in John Vogel's vulnerable state, and found a breach of Article 16 of the Torture Convention, i.e cruel, inhuman or degrading treatment or punishment which do not amount to torture.

The Committee called for the Government to pay Mr Vogel fair and adequate compensation, including full rehabilitation within 90 days.

The decision has implications for all those held in solitary confinement, whether in prison, of other detention centres such as mental health or similar institutions,

including the 72 prisoners suing the Government for detention in solitary confinement for periods up to 2 years, arising from the *Taunoa v Attorney-General* case.<sup>1</sup>

Dr Ellis said it was regrettable that International Human Rights Law did not receive proper and adequate attention in the Supreme Court, where leave was declined.

Dr Ellis called for a proper and full analysis by Supreme Court Judges when they consider Leave to Appeal Applications, with full attention paid to alleged breaches of International Human Rights Law, not the once-over-lightly approach that prevailed.

This decision of the Torture Committee illustrates to the NZ legal profession, and the public, how important the role of the Committee is in protecting human rights. The Supreme Court was clearly wrong in not protecting Mr Vogel's international human rights. Fortunately for Mr Vogel, the Supreme Court is not the last stop when it comes to human rights law.

The Court of Appeal judgment, noted at Para 31 Mr Vogel's evidence:

32. Solitary does your head in. because I was doing so long in solitary I got transferred from hi-medium to max for most of the time. I think maybe the first day and last two days I was in the cells in the high medium area, but for the rest of it they put me up in max – I think to make the other cell available for others.

33. Sometimes in solitary, there might be someone else in one of the other cells, so you can kinda yell out to them and have someone to talk to for a bit, but because I was in max, there wasn't anyone else while I was there.

...

36. It's pretty stressful in solitary. I actually started talking to myself. Even in a language I didn't understand. The sensory deprivation does that to you. You got a bit mad.

...

41. When I came out of solitary the hair in my nostrils and my whiskers had turned white and grey. When some of my friends who hadn't seen me in the three weeks or so I was in solitary saw me they asked me "what happened to you" because you could just tell that I looked different.

42. Solitary wasn't healthy for me mentally. The only way I can describe it is maddening. I think when I came out I was one or two degrees more mad.

That it takes a Committee with the stature of the UN Committee Against Torture to call for compensation is an indictment of New Zealand's human rights record. We need to improve, and stop detaining anyone in solitary beyond 15 days as currently permitted by s 58 of the Corrections Act, which permits such detention for up to 3 months, and extendable by a Visiting Justice.

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<sup>1</sup> [2007] NZSC 70, [2008] 1 NZLR 429, (2007) 9 HRNZ 104, [2007] 5 LRC 680