NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2010] NZLCDT 37

LCDT 006/10

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NELSON STANDARDS COMMITTEE**
	Applicant
AND	**STEPHEN LAWRENCE DELAMERE WEBB**
	Respondent

CHAIR

Mr D J Mackenzie

MEMBERS OF TRIBUNAL

Mr W Chapman
Mr P Radich
Ms C Rowe
Mr W Smith

HEARING at NELSON on 29 and 30 November 2010

APPEARANCES

Mr P Whiteside on behalf of applicant
Mr P Radich and Ms A Winter on behalf of respondent

THIS IS THE RECORD OF AN ORAL DECISION OF THE TRIBUNAL GIVEN AT THE COMMENCEMENT OF THE HEARING ON 29 NOVEMBER 2010

Preliminary application

[1] This is an application by Mr Webb for the charges against him to be heard in private under s.238 of the Lawyers and Conveyancers Act 2006.

[2] On the 19th of November Mr Webb was granted interim suppression following an application under s.240 of that Act.

[3] The grounds for the application under s.238 to have charges heard in private are effectively the efficacy of the interim suppression order being undermined.

[4] That's based on attention from the practitioner's peers because the hearing is being held in this Court and the risk that word will spread if people are able to come and go in the Courtroom. He says that giving effect to the interim suppression order outweighs the public interest in an open proceeding.

[5] For Mr Webb, Mr Radich has cited a number of cases. *S v Wellington District Law Society* [2001] NZAR 465, *ZX v Medical Practitioners Disciplinary Tribunal* [1997] DCR 638 and the *Director of proceedings v Nurses Council of New Zealand* [1999] 3 NZLR 360.

[6] The *ZX* case, where a private hearing was ordered, involved a medical case canvassing special matters which weighed against a public hearing.

[7] Distinguishing features from Mr Webb's situation include that the complainant also sought a private hearing in that case and the particular nature of complaints involved intimate medical details about the complainant and there was a risk that those personal details would become the subject of public discussion.

[8] We note that the Medical Practitioners Act contains special provisions regarding privacy at hearings that are not replicated in the legal disciplinary regime other than the general powers to hold hearings in private, and I am referring there to ss.106(3) and 107 of the Medical Practitioners Act.

[9] In *S v Wellington District Law Society*, that case dealt with the public interest in publication of an historical decision made to limit the right of a person charged to practise. In our view, that's an entirely different matter to allowing access to the hearing of a charge. In our view, there is an important public interest in charges not being heard in secret and there would have to be very special matters to outweigh that interest as part of the overall balancing exercise between openness and Mr Webb's privacy.

[10] The *Director of Proceedings v Nursing Council* was another case cited. That case confirmed that medical cases may have particular items of a particular nature that require or have more weight where the balancing exercise between privacy and openness is being considered.

[11] Mr Webb has already been granted interim name suppression. As a consequence, his position is largely protected in the interim. He is not exposed to full and free publicity and we would expect anybody attending this Court hearing to observe the suppression order in place.

[12] We are not persuaded that any evidence that we have heard requires us to move to the secrecy extreme by also providing that the hearing will be held in private. There is no basis, in our view, that justifies that approach.

[13] We consider the balancing of the competing interests of freedom of speech, open proceedings and right to report against Mr Webb's privacy interests justified us in making the order for interim suppression pending the conclusion of this hearing but going on to hear the charges themselves in private is an additional step that tips the balance against Mr Webb in this regard.

[14] No case of sufficient weight has been made out to persuade us that it's proper to hold the hearing in private. To do so would require at least evidence of some special matter that should remain private, as in the medical cases referred to by counsel for the applicant or clear evidence that the interim suppression granted is ineffectual and we note that that would be a difficult matter to prove in most circumstances.

[15] No such evidence has been given which persuades us that the balance in this case requires that it should be heard in private. Accordingly, the application is declined and costs are reserved.

DATED at WELLINGTON this 9th day of December 2010

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D J Mackenzie
Chair