

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2011] NZIACDT 11

Reference No: IACDT 001/10

IN THE MATTER

of a referral under s48 of the Immigration
Advisers Licensing Act 2007

BY

Immigration Advisers Authority
Authority

BETWEEN

CO
Complainant

AND

IBU
Adviser

FOR PUBLICATION COPY

DECISION – PUBLICATION ISSUES

REPRESENTATION:

Adviser

Mr Simon Laurent, of Laurent Law

Date Issued: Monday 4 April 2011

Decision – Publication Issues

The Issue

- [1] A decision was made in this matter on 14 February 2011, in which the complaint was dismissed.
- [2] Counsel for the Adviser has applied for a direction that the decision not be published, or information identifying her be deleted from copies of the published decision.

The Submission

- [3] Counsel for the Adviser submits:
 - [3.1] There are no specific directions in the Act concerning publication of decisions,
 - [3.2] As there is no specific statutory power to publish decisions, decisions cannot be published;
 - [3.3] Alternatively, restrictions on publication may come within the power for the Tribunal to regulate its own procedures under section 49(1).
- [4] Counsel submitted that “procedure” is “the formal steps to be taken in a legal action; the mode of conducting judicial proceedings” (*New Shorter Oxford Dictionary*); and that is different from “the decision itself”. He contends it follows the scope of regulating “procedure” does not extend to directions concerning a decision.
- [5] He also provided a range of material which provided valuable comparisons with the approach of other professional disciplinary bodies (medical and legal professions). Noting, of course, they had their own statutory frameworks, and the comparison was to establish principles.
- [6] Counsel also submitted that in the present case, given the absence of any finding of fault there was a risk of harm to them in the Adviser’s name being published, and no countervailing interest in publication.

Decision

- [7] There is no specific statutory direction concerning the power to direct either publication, or non-publication of decisions.
- [8] However, I do not accept that is indicative of the statute creating a scheme where the Tribunal’s work is subject to secrecy. For a professional disciplinary body in contemporary New Zealand to operate without its decisions being available would be a truly exceptional situation.
- [9] The Court of Appeal in *R v Liddell* [1995] 1 NZLR 538, 546 per Cooke P said in relation to the question of name suppression:
 - “The starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings and the right of the media to report the matter fairly and accurately as ‘surrogates of the public’.”
- [10] While the *Liddell* case dealt with a criminal conviction and attendant publications issues, the principles apply to a professional disciplinary body. The function of a professional disciplinary body is concerned with accountability of members of the profession to the public. Public

confidence in a disciplinary body achieving fair outcomes, and accountability, is not well served by a secret process, and there is nothing in the Act indicating that it does create such a process. For the Tribunal to operate without being open and publicly accountable would not be in the interests of either the public or the profession.

- [11] In my view, publication of the Tribunal's decisions will follow as a matter of course, as there is no prohibition on publication, provided, directions to limit or prohibit publication are a matter within the scope of the Tribunal's power to regulate its own procedure.
- [12] In my view "procedure" does encompass the delivery of decisions, and any directions that may relate to that process. The suggestion procedure stops with the existence of a decision is not a valid. Procedure for the Tribunal continues after the decision on whether a complaint is upheld, with further decisions on penalties if the complaint is upheld. In other jurisdictions enforcement after a determination is part of "procedure". Procedure is a word of wide application, and in the present context intended to cover a range of ancillary matters that arise when the Tribunal exercises its jurisdiction.
- [13] In my view, publication of decisions is a core element of the Tribunal's procedures, and section 49(1) provides the authority to make directions concerning any limits that may be appropriate.
- [14] It is desirable to establish a standard procedure for dealing with publication in cases where a complaint has been dismissed. Having a standard procedure does not remove the need to deal with each case on its own merits, and importantly to consider any application the parties may make in a particular case.
- [15] Where a complaint is dismissed, as an initial position, the Tribunal will generally issue a direction in the decision that information which identifies either the Complainant or the Adviser will be removed, and the decision will be published in that form. That direction will reserve the right for any party to apply to have the decision published.
- [16] That process will not exclude any party making an application for a different order in anticipation of that outcome, or exclude the Tribunal from making a different order in a particular case.
- [17] When a complaint is dismissed, there is no significant public interest in publication of the identity of the Adviser. There is potential harm or embarrassment to an adviser in that uninformed discussion may well result from the fact of a complaint, notwithstanding it being dismissed.
- [18] There will usually be public interest in the nature of the complaint, and the reasons for it being dismissed. It will likely be exceptional when the Tribunal does not consider it is appropriate for its findings of fact, and reasoning to be publicly available. Public access to the reasons why the Tribunal dismisses complaints is as important for open justice as the reasons for upholding complaints.
- [19] Where a complaint is upheld, parties should expect publication of the decision with identifying information to follow as a matter of routine. In any case where that is not appropriate, parties should expect to make an application to restrict publication. It is not necessary or appropriate to deal with the principles for making those decisions in the present proceedings.

Direction

- [20] The decision of 14 February 2011 and the present decision are to be published, in the forms attached, and marked as being for publication.
- [21] The decisions will not be published for at least 10 working days from the issue of this decision.
- [22] Leave is reserved to the parties to apply to have the form of the "for publication" copies amended, if they consider they do not adequately preserve the identity of the parties.

[23] The decisions in their full forms are not to be published.

DATED at WELLINGTON this 4th day of April 2011

G D Pearson
Chair