

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

Decision No: [2011] NZIACDT 13

Reference No: IACDT 0023/10

IN THE MATTER

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

BY

Immigration Advisers Authority
Authority

BETWEEN

CE
Complainant

AND

TFX
Adviser

FOR PUBLICATION COPY

DECISION – PUBLICATION ISSUES

REPRESENTATION:

Adviser

In person

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] The decision has not been published. Since the decision issued, the Tribunal has received applications in unrelated matters where complaints were dismissed by the Tribunal.
- [3] In dealing with the unrelated matters, the Tribunal took a view concerning publication of decisions where complaints have been dismissed.
- [4] As the present decision has not been published, the Tribunal has of its own motion considered issue, and now provides the parties with an opportunity to consider their positions.

Reasoning

- [5] There is no specific statutory direction concerning the power to direct either publication, or non-publication of decisions.
- [6] However, 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.
- [7] The Tribunal proposes to adopt 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.
- [8] 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.
- [9] 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.
- [10] 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.
- [11] 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.
- [12] 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

- [13] To conform with what will be a standard process, the following directions are given:
- [13.1] The decision of 14 February 2011 and the present decision are to be published, in the forms attached and marked as being for publication.
 - [13.2] The decisions will not be published for at least 10 working days from the issue of this decision.
 - [13.3] Leave is reserved to any party to apply to either:
 - [13.3.1] Have the decisions published in full, or
 - [13.3.2] Have the form of the “for publication” copies amended, if they consider they do not adequately preserve the identity of the parties.
 - [13.4] The decisions in their full forms will not be published, unless there is any contrary direction following an application from a party to do so.

DATED at WELLINGTON this 4th day of April 2011

G D Pearson
Chair