

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No: [2009] NZLCDT 1

LCDT 05/09

**COMPLAINTS COMMITTEE NO. 2
OF THE AUCKLAND DISTRICT LAW SOCIETY**

v

CHRISTOPHER PATRICK COMESKEY

Hearing: 10 February 2009

Chair: Judge D F Clarkson

Members of
Tribunal: Ms S Sage
Mr O Vaughan
Mr J Clarke
Mr W Smith

Judgment: 10 February 2009

DECISION OF THE TRIBUNAL

[1] This hearing was conducted by telephone pursuant to regulation 33(c) of the Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008. It arises out of the application by Mr Comeskey who currently faces a charge laid by the New Zealand Law Society on 18 December 2008.

[2] The application by Mr Comeskey by his counsel Mr Soondram seeks name suppression together with an order suppressing any other identifying details and the

nature of the charge before the Tribunal. That application is opposed by the New Zealand Law Society, by counsel Mr Billington QC.

[3] The grounds put forward by Mr Comeskey will be that:

- (1) He will be denying the charge;
- (2) He will be prejudiced should publicity be given prior to the disposition of the matter; and
- (3) His legal practice will be adversely affected.

[4] The New Zealand Law Society oppose on three broad grounds:

- (1) That there is no basis for denial of the charge;
- (2) That the matter has already been subject to Court and media publication; and
- (3) In the circumstances the suppression of the proceedings before the Tribunal will not be in the public interest.

[5] The charge itself is subject to the transitional provisions of s.353 of the Lawyers and Conveyancers Act 2006 (“the Act”) in that the investigation and inquiry was commenced prior to the commencement of the Act. The application before the Tribunal today however has been made since the commencement of the Act. In these circumstances the Tribunal considers the provisions of s.238 and s.240 of the Act. In any event those provisions are very similar to the provisions contained in s.111 of the Law Practitioners Act 1982 which governs the completion of the primary proceedings against Mr Comeskey which as at 1 February 2009 will be heard by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (“the Tribunal”).

[6] In support of his application Mr Comeskey points to the interest of a particular journalist who writes for a Sunday newspaper and has indicated that he

will be publishing a story concerning Mr Comeskey and the proceedings before the Tribunal. Mr Comeskey points to the fact that he will be defending the proceedings and in his memorandum in reply to the opposition memorandum filed by the New Zealand Law Society, states through his counsel that he never knowingly or intentionally misled the Court, that being the matter which is the subject of the charge.

[7] In support of their opposition to suppression counsel for the New Zealand Law Society quotes from the Court of Appeal judgment in which the Court stated on two occasions in the course of the judgment that Mr Comeskey misled them. Further Mr Billington QC quotes from the Dominion Post article of Thursday, 13 March 2008, which reported this judgment and in particular the comments the Court had made about Mr Comeskey's behaviour. The file before the Tribunal exhibits a copy of that article which is entitled "Comeskey Court Work 'Misleading'".

[8] The fact that there has already been publication of the substance of the charge specifically linked to Mr Comeskey's name with, I might add, a photograph of him significantly weakens the application for suppression of name and details of charge at this point.

[9] In his memorandum Mr Soondram points to the fact that what has not yet been publicised is the fact that Mr Comeskey faces a charge before the Tribunal in relation to this behaviour.

[10] The Tribunal has given careful consideration in particular to the last matter. Section 238 of the Act and s.111 of the Law Practitioners Act 1992 begin with the presumption that, as with most judicial processes, hearings are to be in public, thus openness of justice is to apply. It is the view of the Tribunal that in order to consider withholding such information from the public there need to be very strong grounds indeed. We do not consider that the grounds disclosed in Mr Comeskey's affidavit or submissions met this test and that on balance it is in the public interest that this information be made available except as to the detail of the yet untested evidence before the Tribunal.

[11] In other words the Tribunal considers that only Mr Comeskey's name and the charge, which is that:

“He breached Rule 8.01 of the Rules of Professional Conduct for Barristers and Solicitors and his overriding duty to the Court by attempting to mislead the Court during the Court of Appeal hearing of *The Queen v Xiao Hui Huang CA 577-07, (2008) NZCA 46.*”

[12] All other details relating to the charge are to be suppressed pending the hearing of this matter.

Ruling

[13] The application is declined as to name and details of charge but granted in respect of supporting material provided to the Tribunal by way of evidence.

Judge D F Clarkson, Chair
New Zealand Lawyers and
Conveyancers Disciplinary Tribunal
on behalf of the Tribunal.