

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 10

LCDT 004/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER OF (AC) [SOLICITOR]

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr J Clarke

Mr W Smith

Mr I Williams

HEARING on the papers

COUNSEL

Mr D Carden for the Standards Committee

Ms M Dew for the Practitioner

DECISION OF THE TRIBUNAL
AS TO INTERIM SUPPRESSION OF NAME

Introduction

[1] The practitioner seeks an order granting interim suppression of her name and any particulars of her personal affairs pending the hearing of this matter. The practitioner has also applied for permanent name suppression but accepts that this matter will be considered along with matters as to penalty when the Tribunal hears the details of the charges, on 13 June next. The practitioner has admitted one charge of unsatisfactory conduct that is not so gross, wilful or reckless as to amount to misconduct or negligence or incompetence in her professional capacity.

Practitioner's Case

[2] The practitioner submits that her personal circumstances will be adversely impacted by publication of her name and that until these can be fully considered at the hearing of the matter:

- (a) That the Tribunal ought to exercise its discretion in favour of interim suppression.
- (b) That such an order will not prejudice the interests of any person or the public interest.
- (c) That a final order would be rendered nugatory if an interim order was not granted.

[3] The practitioner has filed an affidavit setting out the background to the charge, which involved an error on a solicitor's certificate. Annexed to that affidavit she provides a medical report from a psychiatrist, Dr Mackay. That report discloses some serious concerns relating to the practitioner's health. We do not propose to directly refer to those since they are of a personal nature but they are sufficiently serious to carry some weight in this matter. The practitioner has been under the care of a psychiatrist for some six months now.

Position of the Standards Committee

[4] The Standards Committee of the New Zealand Law Society consent to an order being granted on an interim basis, however reserve their position to oppose a permanent suppression order when the matter is heard in June.

The Law

[5] Under the Lawyers and Conveyancers Act 2006, section 238 prescribes all hearings to be in public, while section 240(1)(c) provides:

240 Restrictions on publication

(1) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:

...

(c) subject to subsection (3), an order prohibiting the publication of the name or any particulars of the affairs of the person charged or any other person.

[6] In a number of decisions, the Tribunal has indicated the presumption of openness of disciplinary processes will not be lightly displaced. This approach has been confirmed by the Court of Appeal and the Supreme Court.¹

Decision

[7] The Tribunal considers in this matter having regard to the presumption of openness and the balancing of the public interests and private interests of the

¹ See *Standards Committee No 1* [2011] NZLCDT 5. See also *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 (CA) and *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4 (SC) confirming that presumption.

practitioner, that the matter is finely balanced. However we are prepared to grant interim suppression until the hearing only on the following basis:

- (a) That this is consented to by the Law Society.
- (b) That it is not to be seen as in any way indicative of the likely success of any further or final suppression application having regard to the weight of authority on this subject.
- (c) That there are serious concerns disclosed in the medical report which may need to be addressed by the practitioner in the interim and she ought to have the opportunity of taking further steps if she wishes to prepare for the event of publication.
- (d) We do not consider the public interest in immediate notification is great given that the practitioner is not currently practising.

Order

[8] There will be an order as to the interim suppression of the practitioner's name and personal details until 13 June 2012.

DATED at AUCKLAND this 3rd day of May 2012

Judge D F Clarkson
Chair