

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2011] NZLCDT 12

LCDT 011/10

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE**

Applicant

AND

EVGENY ORLOV

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms S Hughes QC

Ms J Gray

Mr W Smith

Ms C Rowe

HEARING at AUCKLAND on 15 April 2011

APPEARANCES

Mr W Pyke for the applicant

Mr E Orlov in person

ORAL DECISION OF NEW ZEALAND LAWYERS
AND CONVEYANCERS TRIBUNAL

[1] The Tribunal has reached a view and we propose that I now give an oral decision to record the Tribunal's view which will be transcribed and provided in writing subsequently, subject to any editing of course that is required as the result of it being an oral decision.

[2] Mr Orlov faces 13 charges brought by the Auckland Standards Committee and three of those are in the alternative. He seeks an interim stay of the hearing of those charges pending the outcome of judicial review proceedings which have been brought by him in the High Court at Auckland. Those proceedings were in fact filed by Mr Orlov in advance, I think by some three weeks of these charges being filed and served by the Law Society, and the High Court review proceedings seek to challenge the determinations, as I understand it, of the Standards Committee to bring the charges to the Tribunal. In particular Mr Orlov relies on an argument that it would be an abuse of process for these charges to be considered by the Tribunal in advance of his review proceedings and relies on the minority, a judgment of the Chief Justice in *Z v the Dental Complaints Assessment Committee*¹ where Her Honour refers to the public interest in the same issue not being litigated over again.

[3] The application is opposed by Mr Pyke, however Mr Pyke takes a somewhat pragmatic approach to the situation and proposes that the Tribunal consider a number of options other than simply refusing the application. He concedes that other approaches might be to allow the application but to a fixed date rather than until the determination of the High Court proceedings, or alternatively to grant the matter by way of an adjournment rather than a stay of proceedings, again to a fixed date so that the High Court proceedings can be kept under close scrutiny. The reason for the Standards Committee opposing, or at least asking for that refinement of any order to be made by the Tribunal, is that there is a concern that if there is simply an indefinite interim stay of these proceedings that there will then be no incentive for Mr Orlov to actively prosecute his High Court proceedings in the meantime.

¹ [2009] 1 NZLR 1 (SC).

[4] In the *Z* case and in other cases cited by counsel, there has really been a situation of disciplinary proceedings running either alongside or following criminal or civil proceedings. This case is somewhat different from that in that it is the process leading up to the laying of these charges which is itself under challenge in the concurrent proceedings, but furthermore the majority in the *Z* case make it clear that it is not considered to be a double jeopardy or abuse of process to bring proceedings in a disciplinary as well as a criminal setting. For example, and thus there can be parallel or duplicate proceedings provided they are not of the same nature – and I refer to the *Z* decision at paragraph [126]. But further, the decision, and including in the minority decision of His Honour Anderson J, the difference in purposes between disciplinary and criminal proceedings is emphasised. And Anderson J goes on to comment at 152 *“I see no reason why the completion of an enquiry in a particular forum for one purpose should preclude an enquiry in a different forum for another purpose”*.

[5] We do not accept that the two processes in fact involve strict duplication, there may be a crossover of evidence but the focus in the High Court proceedings is one of process leading up to the charges being laid. The focus in the Tribunal will be on whether the charges, or some of them, are substantiated by the evidence.

[6] The situation is somewhat complicated by the fact that further more serious charges are apparently to be laid by the Law Society against Mr Orlov. These are likely to be filed and served within the next two to three weeks, and the process leading up to this decision to lay further charges is also the subject of challenge by Mr Orlov in his review proceedings. With the later charges being filed, there is likely to be a consolidation application for all charges to be considered at once. This all means that the current charge is unlikely to be heard by the Tribunal by late this year or even into the New Year, thus it is likely that the review proceedings will have been concluded before the charges are considered.

[7] While we do not consider the applicant has made out his argument that it would be an abuse of process to proceed, a majority of the Tribunal considers that the High Court proceedings ought in this case to precede the Tribunal hearing. This is not to suggest that such will be a proper approach in all cases. The Tribunal has a statutory duty to ensure it determines disciplinary proceedings in an expeditious manner, however it also has a duty to observe the principles of natural justice. We

consider this will be achieved if the applicant Mr Orlov has an opportunity of diligently pursuing his review application in this instance.

[8] We propose to decline the stay application but grant an adjournment to 13 September on terms as follows:-

- (i) That both parties expeditiously advance the High Court review proceedings.
- (ii) In the event that any unnecessary delay occurs in these proceedings the Society has leave to apply to the Tribunal for further orders or directions to progress the matter to hearing.
- (iii) Mr Orlov is to provide the Tribunal with any judicial minutes or directions in the High Court proceedings and its judgment in due course.
- (iv) The Law Society is to file any further charges by 13 May next.

[9] Finally the issue of costs is reserved.

DATED at AUCKLAND this 15th day of April of 2011

Judge D F Clarkson
Chairperson