

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No: [2011] NZLCDT 23
LCDT 015/11

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006 and the Law
Practitioners Act 1982

AND

IN THE MATTER OF

**DONNA MARIE TAI TOKERAU
DURIE HALL**
of Wellington, Solicitor

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms S Gill

Ms J Gray

Ms S Hughes QC

Dr I McAndrew

HEARING by telephone 8 September 2011

FURTHER SUBMISSIONS 13 September 2011

APPEARANCES

Mr Turkington for Standards Committee

Ms Cull QC for the Practitioner

**DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS TRIBUNAL ON INTERIM NAME SUPPRESSION**

[1] Donna Hall has sought an order from this Tribunal suppressing her name pending hearing of the charge brought against her by the Wellington Standards Committee No. 2. That application is made pursuant to s.240(1)(c) of the Lawyers and Conveyancers Act 2006:

s 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:
 - (a) an order prohibiting the publication of any report or account of any part of any proceedings before it, whether held in public or in private:
 - (b) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:
 - (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.

[2] The Act makes clear that the Tribunal's business is intended to be conducted in public (s.238(1)):

s 238 Hearings to be in public

- (1) Except as provided in subsections (2) and (3) and section 240, every hearing of the Disciplinary Tribunal must be held in public.
- (2) 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 hold a hearing or part of a hearing in private.
- (3) The Disciplinary Tribunal may, in any case, deliberate in private as to its decision or as to any question arising in the course of a hearing.

[3] But in s.240, above, reserves to the Tribunal an ability to make an order prohibiting the publication of the name of a practitioner charged. If the conditions in s.240(1) are met.

[4] Ms Hall has advanced her application on three bases:

- (i) That she intends to vigorously defend the charge.

- (ii) That as a high profile lawyer she will suffer unfair prejudice, beyond that of any other practitioner charged.
- (iii) That publicity will improperly interfere with elections to be held within related Maori Incorporations. This appears to be advanced in relation to a Mr Peter Clarke. The Tribunal does not know or understand what part, if any, Mr Clarke has in the matter before the Tribunal.

[5] For Ms Hall to succeed she must persuade this Tribunal on a balance of probabilities that it is proper to accede to her application, balancing public interests against Ms Hall's interests. In undertaking that balancing exercise the Tribunal must have regard to the purposes of the Act, which are:

Purposes

1. The purposes of this Act are –
 - a. to maintain public confidence in the provision of legal services and conveyancing services:
 - b. to protect the consumers of legal services and conveyancing services:
 - c. to recognise the status of the legal profession and to establish the new profession of conveyancing practitioner.
2. To achieve those purposes, this Act, among other things, -
 - a. reforms the law relating to lawyers:
 - b. provides for a more responsive regulatory regime in relation to lawyers and conveyancers:
 - c. enables conveyancing to be carried out both –
 - i. by lawyers; and
 - ii. by conveyancing practitioners:
 - d. states the fundamental obligations with which, in the public interest, all lawyers and all conveyancing practitioners must comply in providing regulated services:
 - e. repeals the Law Practitioners Act 1982.

[6] The Tribunal takes the view that the first two grounds advanced by Ms Hall cannot be a basis for the grant of such an application. This Tribunal expects all who challenge charges brought before it to vigorously defend the charge or charges faced.

[7] Similarly, it is difficult to see how the profile of the practitioner of itself provides a basis for suppression. It is for the Applicant to put before the Tribunal evidence of how the practitioner might be unfairly affected by publication. Ms Hall's evidence lacks particulars and support from those who might be expected to support her, for example Mr Clarke.

[8] A similar submission (as to high profile and seniority) was rejected by the Tribunal in *Standards Committee No.1 v B Hart*.¹ In referring to the decision of *Hill v Hawkes Bay Standards Committee*,² it had this to say:

The Tribunal considers public confidence in the provision of legal services is maintained by the ability of the public to access and scrutinise information about disciplinary proceedings and the workings of the disciplinary process. The legislation was enacted, with a clear consumer focus, to reform the oversight of the provision of legal services.

For these reasons, although reached by a different route, we agree with the Society's submission that a presumption of "openness" is implicit and in the absence of a body of case law specifically relating to s 240 and s 238, we adopt the principles expressed in *R v Liddell* by the Court of Appeal relating to s 140 of the Criminal Justice Act 1985, as principles that best support the purposes of the Act:

"In considering whether the powers given by s 140 should be exercised, 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 latter fairly and accurately as "surrogates of the public."

"Departures from the principles are necessary at times to avoid prejudice in pending trials."

"What has to be stressed is that the prima facie presumption as to report is always in favour of openness."

[9] Of significance to the Tribunal is the fact that Ms Hall's name has already appeared in a published judgment which dealt with the background circumstances of this charge. Surprisingly, neither this, nor the newspaper and other media articles which have reported Ms Hall's name (NZ Herald, the Dominion, NZ Legal News, Property Chat) were referred to in Ms Hall's initial application. Obviously pre-existing publicity is relevant to such an application. See *Hill v Hawkes Bay Standards*

¹ unreported, NZLCDT 5/11

² unreported NZLCDT 28/11

Committee (supra), although it is acknowledged that in that case there was also a concern about the accuracy of the reporting.

[10] Ms Hall fairly complains that some of the publicity has arisen in breach of the Act. It is not clear, however, to what extent information is sourced from her unsuccessful attempt to review the Standards Committee decision to lay a charge, or from the legitimately public decision of His Honour Judge Harvey of 30 July 2008. In that decision Ms Hall's role is discussed, and mention is made of a complaint to the New Zealand Law Society.

[11] While the Tribunal accepts that breach of confidentiality must not be endorsed, it is rather difficult to untangle the alleged breaches from the legitimate source.

[12] We stress that the Tribunal is not relying on what was held or commented on by the Learned Judge in the Maori Land Court decision, as referred to in Ms Cull's submissions, rather the fact that Ms Hall's name was clearly mentioned in that decision.

The Decision

[13] Having read Ms Hall's affidavit, Memoranda from Ms Cull QC and Mr Turkington, the Tribunal declines the application made. In short, Ms Hall has failed to persuade the Tribunal that there are grounds for over-riding the presumption of openness or that the expectation for publicity should be displaced in this case. That position (which would have been the case had there been no publicity) is strengthened by the existence of legitimate publicity. The Tribunal expressly sets to one side those publications made in apparent breach of s.188 of the Lawyers and Conveyancers Act 2006. The Tribunal makes no finding in this regard.

DATED at AUCKLAND this 21st day of September 2011

Judge D F Clarkson
Chairperson