

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 8

LCDT 002/12

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**AND**

**IN THE MATTER OF**

**AB**  
of Z City, Barrister

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Mr W Chapman

Ms S Gill

Mr A Lamont

Mr C Rickit

**HEARING** on the papers

**REPRESENTATION**

Ms G Phipps for the Standards Committee

Mr Y Singh for the Practitioner

## **DECISION OF THE TRIBUNAL RE INTERIM NAME SUPPRESSION**

[1] AA, who has admitted four charges of professional misconduct, brought under the Lawyers and Conveyancers Act 2006 (the Act), seeks an order suppressing her name. This is sought in advance of a penalty hearing, which is to be held on 30 April 2012.

[2] The charges include allegations of dishonesty, including forgeries, false declarations, and breach of Duty of Fidelity to the Court.

[3] AA's evidence and submissions set out the following grounds:

- That she has a high public profile, having devoted her career in law and politics to the betterment of Maori, particularly in the Z city region, where she resides, and that her reputation and mana may suffer such detriment that she will be unemployable.
- That she will suffer undue financial detriment as a result, which she contends is a "double jeopardy" following cancellation of her contract with the Legal Services Agency.
- That she has poor health, which will also suffer as a result of publicity.
- That she holds a position on the ABC Board which may be in jeopardy.
- That her family, community and others involved in Treaty of Waitangi litigation will also suffer unduly.
- That she will be unable to effectively convey her true story, whereby she made an error of judgment with the interests of her clients in mind.
- That she poses no risk to the public.

[4] The National Standards Committee submits that the relevant law supports publication in this instance, particularly in the light of the practitioner's admissions.

[5] Further, it points out that practitioners whose offending could be seen as lower down the scale of offending, have had their names published.

[6] Counsel for the Standards Committee states that the ABC Board, of which AA is a member, is a Crown Entity, so that there is a statutory obligation for members to act with integrity and honesty. Such carries with it the implication that AA ought to have disclosed this offending to the Board, and certainly that this Tribunal ought not to be complicit in any avoidance of that disclosure.

### **The Law**

[7] Both counsel accept that the starting point is one of openness; the business of the Tribunal is to be conducted in public.<sup>1</sup>

[8] More specifically, the Tribunal has rejected a practitioner's high profile as a reason for suppression in two recent decisions: *Hart*<sup>2</sup> and *Hill*.<sup>3</sup> The Tribunal's approach in the former (which was followed in the latter) was upheld by each of the three appellate courts which considered it including the Supreme Court.<sup>4</sup> That Court held that high profile did not add anything "*approaching a presumptive entitlement to suppression*", and that the test remains one of balancing the public interest in open justice with the private interests of the individual seeking suppression.

[9] One of the purposes of the Act is to maintain public confidence in the legal profession. As we held in *Hill*,<sup>5</sup> this must involve allowing the public access, at times via the news media, to the workings of the Tribunal in a transparent way.

[10] We note AA's evidence that she has handed in her practising certificate, and in that respect we accept that this case differs from *Hart, Hill and Hall* cases where the practitioners were continuing to practise during the currency of the suppression order sought, thus importing a greater element of required public protection.

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<sup>1</sup> Lawyers and Conveyancers Act 2006, section 240.

<sup>2</sup> *Standards Committee No 1 v Hart* [2011] NZLCDT 5.

<sup>3</sup> *Wellington Standards Committee v Hill* [2011] NZLCDT 23.

<sup>4</sup> *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4.

<sup>5</sup> *Hawkes Bay Standards Committee v Hill* [2010] NZLCDT 28.

[11] We note that AA has not provided us with any evidence which might connect publication of her name with a predictable deterioration in her health. Nor, despite her claim of adverse effect on others, has any other person or organisation sought to demonstrate an interest in suppression.

[12] Particularly in the light of the *Bazley Report*,<sup>6</sup> we consider that the public is entitled to knowledge of steps being taken by the New Zealand Law Society, through its disciplinary powers, to identify and charge practitioners who have abused the legal aid regime.

[13] While we accept that there may be a number of matters in mitigation which will be able to be raised by AA at the penalty hearing, by way of explanation of her actions, we do not consider these matters, or indeed AA's personal circumstances, outweigh the factors in favour of openness. Likewise, a number of matters raised by the practitioner in her submissions, such as rehabilitation, are more properly dealt with at the penalty hearing.

[14] However, we have regard to AA's circumstances in the light of her recent illness, and in relation to her many community connections. For this reason, we are prepared to grant an Interim Suppression Order to lapse on Monday 23 April 2012, one week prior to the hearing. In this way, she will have the opportunity to tell those she wishes to be informed of this matter in her own way.

**DATED** at AUCKLAND this 11<sup>th</sup> day of April 2012

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Judge D F Clarkson  
Chair

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<sup>6</sup> Ministry of Justice *Transforming the Legal Aid System: Final Report and Recommendations* (November 2009).