MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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NB: PUBLICATION OF THE NAME OF THE DOCTOR AND ANY DETAILS WHICH MAY IDENTIFY THE DOCTOR AS A FORMER XX PRACTITIONER IS PROHIBITED

DECISION NO.: 221/02/97C

IN THE MATTER of the MEDICAL PRACTITIONERS ACT 1995

AND

IN THE MATTER of disciplinary proceedings against D medical practitioner of xx

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING The parties agreed that the Tribunal consider the application and determine it on the basis of the parties' written evidence and submissions

PRESENT: Dr D B Collins QC - Chair

Mrs J Courtney, Dr B D King, Dr U Manukulasuriya, Associate Professor Dame N Restieaux (members)

COUNSEL: Ms K P McDonald QC for Complaints Assessment Committee

Mr A H Waalkens for respondent

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The Application

1. Dr D retired from medical practice at the end of xx[1]. On 19 November 2002 a Complaints Assessment Committee (CAC) charged Dr D with a disciplinary offence under s.109(1)(c) Medical Practitioners Act 1995 ("the Act"). The details of the allegations against Dr D are described in the next paragraph. He has applied for an order prohibiting publication of his name until the Tribunal has determined the charge against him. Dr D's application is made pursuant to s.106(2)(d) of the Act.

The Charge

2. The particulars of the charge state:

> *"The Complaints Assessment Committee pursuant to s.93(1)(b) of the Act charges that Dr D, registered medical practitioner of xx over the period 22*

[1] In an affidavit dated 16 December 2002 Dr D said he retired from medical practice at the end of xx. In an application filed with the Tribunal on 19 December Dr D's counsel said Dr D retired from medical practice on xx. Dr D's counsel has now advised the Tribunal Dr D retired at the end of xx. For present purposes the Tribunal proceeds on the basis Dr D retired at the end of xx.

February 1995 and 28 March 1995 in the course of his management and treatment of his patient …:

1. *Asked questions and made comments of an inappropriate and sexual nature; and*

2. *Performed five internal vaginal examinations in the course of six consultations which was inappropriate and not medically justified; and*

3. *Performed one or more of the internal vaginal examinations in an inappropriate sexual manner; and*

4. *First discussed and then suggested to his patient that he should use on her a 'perineometer' which he had made himself which was inappropriate and for which there was no medical justification; and*

5. *When confronted by his patient on or about 28 March 1995 destroyed or sought to destroy her medical notes; …"*

3. The CAC chose to charge Dr D with "conduct unbecoming a medical practitioner". It is a requirement of that charge that the practitioner's acts constitute conduct unbecoming a practitioner "and that the conduct reflects adversely on the fitness of the practitioner to practise medicine"[2]

4. After Dr D filed his application for name suppression the CAC applied to the Tribunal to amend the charge to one alleging Dr D's conduct amounted to "disgraceful conduct in a professional respect". The Tribunal's decision in relation to that application is being delivered contemporaneously with this decision. The CAC's application has been allowed by the Tribunal.

Summary of Grounds for Name Suppression Application

5. Dr D has filed an application setting out the grounds upon which he applies for suppression of his name pending the Tribunal's determination of the charge against him. Those grounds can be summarised in the following way:

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[2] S.109(1)(c) of the Act

- Dr D denies the allegations. He says: *"I deny the allegations that have been made against me and will be defending the disciplinary proceedings";*

- Any publicity linking Dr D with the charge will in all likelihood cause substantial damage to his "name and reputation";

- Publication of Dr D name in association with the charge is likely to cause considerable distress and harm to Dr D's family;

The Complaints Assessment Committee's Position

6. Ms McDonald QC appears for the CAC. The CAC opposes the name suppression application on two grounds, namely:

- *"The public interest requires that there be publication of Dr D's name";*

- *"No exceptional circumstances sufficient to justify suppression have been disclosed".*

Additional Material

7. When the Tribunal first convened to consider Dr D's application on 9 February the Tribunal was concerned it may not have received all information which might enable it to consider his application. Accordingly the Tribunal issued the following memorandum on 10 February:

> *"The Tribunal wishes to extend to Dr D an opportunity to submit to the Tribunal any medical evidence which <u>may</u> support Dr D's application for name suppression.*
>
> *The Tribunal proposes to defer issuing its decision for 14 days to enable Dr D to provide the Tribunal with any medical evidence that may exist which might support his application.'*

Dr D responded to the Tribunal's request by filing a further memorandum from his counsel and a letter from a general practitioner dated 19 February. That letter reads:

"I have known Dr D for over 40 years as a colleague, partner, friend and patient.

He is highly respected in xx and is highly respected by his colleagues.

He retired from general practice a few years ago and is now xx years old.

He no longer holds a practising certificate and has not done so for several years.

He has had a happy family life and has never had any marital problems.

His health has been good. He was diagnosed as having Myasthenia gravis in February 1995 and has had to take medication for this intermittently. It has not affected his general well being over this time.

In the past two years as a result of a court case hanging over his head, he has had bouts of severe depression with associated insomnia.

As he is now retired I would recommend, for health reasons, that he have name suppression in the up coming court case."

Principles Applicable to Name Suppression

8. In Decision No. 216/02/95C delivered on 26 November 2002 the Tribunal set out the principles applicable to applications by doctors seeking suppression of their name pending determination of charges by the Tribunal. The Tribunal proposes to adopt the language it used in its earlier decision when referring to the principles applicable to Dr D's application.

9. Name suppression applications are notoriously difficult to determine. It is often said that deciding name suppression applications involves a balancing of competing factors . In many respects that is an over simplification of a task that requires careful analysis and evaluation of a matrix of competing considerations.

10. The starting point when considering the principles applicable to name suppression in the medical disciplinary arena is s.106 Medical Practitioners Act 1995. Subsections 106(1) and (2) provide:

> *"(1) Except as provided in this section and in section 107 of this Act, every hearing of the Tribunal shall be held in public.*

> *(2) Where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person (including (again without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any one or more of the following orders: …*
>
> *(d) … an order prohibiting the publication of the name, or any particulars of the affairs, of any person."*

Public Hearing

11. Subsection 106(1) places emphasis on the Tribunal's hearings being held in public unless the Tribunal, in its discretion applies the powers conferred on the Tribunal by s.106(2). Another exception to the presumption that the Tribunal's hearings will be conducted in public can be found in s.107 which creates special protections for complainants where the charge involves a matter of a sexual nature, or where the complainant may give evidence of an intimate or distressing nature.

12. The requirement in s.106(1) that the Tribunal's hearings be held in public mirrors the principle that, except in unusual and rare circumstances, regular Court proceedings are conducted in public. An effect of that principle in our regular Courts is that defendants will rarely receive name suppression. Four cases can be cited to illustrate this point:

- In *M v Police* [3] Fisher J said:

> *"In general the healthy winds of publicity should blow through the workings of the Courts. The public should know what is going on in their public institutions. It is important that justice be seen to be done. That approach will be reinforced if the absence of publicity might cause suspicion to fall on other members of the community, if publicity might lead to the discovery of additional evidence or offences, or if the absence of publicity might present the defendant with an opportunity to re-offend".*

- In *R v Liddell* [4] the Court of Appeal said:

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[3] (1991) 8 CRNZ 14
[4] [1995] 1 NZLR 538

> *"… 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'…. The basic value of freedom to receive and impart information has been re-emphasised by s.14 of the New Zealand Bill of Rights Act 1990 …*
>
> *The room that the legislature has left for judicial discretion in this field means that it would be inappropriate for this Court to lay down any fettering code. What has to be stressed is the prima facie presumption as to reporting is always in favour of openness. Name restrictions as to the victims of sexual crimes are automatic (subject to the possibility in a range of cases of orders to the contrary), and they are permissible for accused or convicted persons. But they are never to be imposed lightly, and in cases of conviction for serious crime the jurisdiction has to be exercised with the utmost caution".*

- In *Lewis v Wilson & Horton Ltd* [5] the Court of Appeal re-affirmed what had been said in *R v Liddell*. The Court noted:

> *"… the starting point must always be the importance of freedom of speech recognised by s.14 of the New Zealand Bill of Rights Act 1990, the importance of open judicial proceedings, and the right of the media to report Court proceedings".*

- Recently, in *Re X*[6] the High Court distilled the relevant principles relating to name suppression applications to a number of propositions including:

> *"The principle of open justice dictates that there should be no restriction on publication except in very special circumstances."*

13. The cases referred to in the preceding paragraphs all involved criminal prosecutions. Apart from *Re X*, the cases cited examine the broad discretion conferred on Courts in criminal cases by s.140 Criminal Justice Act 1985 to suppress the name of an accused or convicted person.[7] It is axiomatic that medical disciplinary hearings are not criminal

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5 [2000] 3 NZLR 546

6 (unreported), HC Wellington M 109/02, 26 July 2002 Hammond J

7 Section 140 Criminal Justice Act provides: Court may prohibit publication of names – (1) Except as otherwise expressly provided in any enactment, a court may make an order prohibiting the publication, in any report or account relating to any proceedings in respect of an offence, of the name, address or occupation of the person accused or convicted of the offence, or of any other person connected with the proceedings, or any particulars likely to lead to any such person's identification.

prosecutions.[8] Nevertheless, guidance can be derived from the criminal law jurisdiction when applying the requirement of public hearings contained in s.106(1) Medical Practitioners Act 1995 to an application for name suppression by a doctor charged with a disciplinary offence.

14. A number of decisions of the Tribunal, and appellate Courts have recognised the importance of the requirement set out in s.106(1) of the Act that hearings of the Tribunal shall be heard in public when the Tribunal considers name suppression applications filed by a doctor. For example: in *Harman v Medical Practitioners Disciplinary Tribunal* [9] the District Court held:

> *"The Tribunal referred in its judgment to the well known statement of principle [in] R v Liddell … That decision is to the effect that the prima facie presumption as to reporting is always in favour of openness and that in considering whether a power to prohibit publication should be exercised the starting point is the importance in the democracy of freedom of speech, open judicial proceedings and the right of the media to report the matter fairly and accurately as 'surrogates of the public'. These freedoms are re-emphasised by s.14 of the New Zealand Bill of Rights Act 1990. In this case that presumption is reinforced by the statutory injunction to the Tribunal that it should hear proceedings in public".*

15. In *F v Medical Practitioners Disciplinary Tribunal* [10] one of the many questions the Court was asked to focus upon concerned the appellant's contention that the Tribunal had mis-directed itself when deciding not to continue an interim name suppression order. It was said the Tribunal had wrongly applied the criminal law presumption of public hearings to the doctor's application to continue suppression of his name. In that case the doctor submitted that the higher public interest of "openness" in criminal hearings should not be automatically transposed to medical disciplinary proceedings. The High Court held there was a fundamental distinction between name suppression in criminal cases and those which arose in a professional disciplinary forum. The Court noted:

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8 *Re A Medical Practitioner* [1959] NZLR 782, *Gurusinghe v Medical Council of New Zealand* [1989] 1 NZLR 139, *Guy v Medical Council of New Zealand* [1995] NZAR 67

9 DC Auckland NP 4275/00, 3 May 2002, J Doogue DCJ

10 Unreported HC Auckland AP 21-SW01, 5 December 2001, Laurenson J

> *"… there is … a fundamental distinction, but on closer examination the impact of this is likely to be more apparent rather than real".*

16. The Court proceeded to say s.106(2) Medical Practitioners Act 1995 required the Tribunal to take into account the interests of the practitioner. The Court said in the context of that case (the practitioner had been found guilty of conduct unbecoming a medical practitioner) the Tribunal should have regard to the possibility:

> *"… that the charges brought against the practitioner might be found to be unfounded or so trivial that a finding of misconduct is not warranted. In such a case the practitioner will continue to practise. Therefore it is reasonable that the right to practise should not be prejudiced by the practitioner being identified in relation to allegations which do not, at the end of the day, have any bearing on his ability to do so.*
>
> *… therefore pending determination of the charges it will usually be quite reasonable in most cases to make interim orders for non-publication of name"* (emphasis added).

The Court proceeded to observe that if a doctor is found liable following a disciplinary hearing then there is a strong expectation the doctor's name will be published.

17. The suggestion in *F* that it would be quite reasonable in most cases to make interim orders for name suppression pending determination of disciplinary charges against a doctor is a clear indication from the High Court that the Tribunal should give favourable consideration to applications for name suppression pending determination of disciplinary charges against the doctor. The observations of the High Court must carry considerable weight.

18. It must be said however that the comments of the learned Judge in *F* were *obiter dicta.* With the greatest of respect and deference to the High Court Judge, the Tribunal believes it must assess each application for name suppression on its merits and faithfully apply the legislative criteria set out in s.106(2) Medical Practitioners Act 1995 when considering name suppression applications.

19. It would be unfortunate if the idea were to gain currency that there is a presumption in favour of name suppression whenever a doctor applies to the Tribunal under s.106(2)(d)

to have their name suppressed pending determination of disciplinary charges. Such a presumption could not be reconciled with the Tribunal's duty to carefully exercise the discretion conferred upon the Tribunal by s.106(2) after applying the criteria specified by Parliament.

S.106(2) Considerations

Interests of any Person

20. In considering whether or not it is desirable to grant an order suppressing publication of a practitioner's name the Tribunal is required to have regard "to the interests of any person" the "interests of any person" include the unfettered interests of a complainant to privacy.

21. Undoubtedly the interests of any person include the interests of Dr D. The Tribunal may also have regard to persons other than the practitioner as well as the complainant. In this case the interests of the practitioner's family have been brought to the Tribunal's attention as factors the Tribunal should take into account in assessing Dr D's name suppression application.

Interests of the Practitioner

22. It has been stressed on behalf of Dr D that the charge he is facing contains significant allegations and that publication of his name in association with the allegations in the notice of charge will likely cause substantial damage to Dr D's reputation. Often applications for name suppression are based in part on a concern that a doctor's practice may be damaged if a doctor's name is published in relation to disciplinary charges[11]. Clearly that concern is not relevant in this case.

23. The Tribunal accepts Dr D's concern that his reputation will be damaged if his name is published in association with the charge. The allegations involve a complaint of sexual misconduct. By any measure the allegations raise serious concerns (regardless of what category the charge is brought under Section 109(1)(a)-(c) of the Act). Any publicity

[11] See for example Decision No. 216/02/95C

linking Dr D's name with the allegations is likely to cause significant damage to Dr D's reputation. Dr D conveys his fears of publicity in the following way:

> *"2. I retired from medical practice at the end of xx and I have not held registration as a medical practitioner in the following years. I notified the Medical Council that I had retired and have not, to the best of my knowledge and belief, been on the medical register since then.*
>
> *3. I will be xx years old next August.*
>
> *4. I practised for 40 years in xx, xx, as a general practitioner, 31 of those years have been a visiting xx to xx Hospital (which was until in or about 1988).*
>
> *5. I have had the odd grizzle or niggle from patients throughout my lifetime of practice as a general practitioner (as I am sure everyone, in practice at some stage has had) but there has been nothing of any seriousness.*
>
> *6. Certainly to the best of my knowledge and belief, I have not been the subject of a formal complaint of any kind – whether to the Medical Council, the HDC, Privacy Commissioner or otherwise.*
>
> *7. I have no convictions and am proud of the good reputation I have enjoyed throughout my life. This includes my reputation as a medical practitioner and as well my reputation in my private life.*
>
> *8. I have never at any time been the subject of complaints that I have acted inappropriately in a sexual manner and the complaint which is the subject of the present disciplinary charge against me is to my knowledge the first of its kind.*
>
> *…*
>
> *10. I have found the experience of being the subject of a disciplinary charge a most upsetting and distressing one. So too has my wife who is aged xx.*
>
> *…*
>
> *12. I cannot adequately express in words the fear I have that my name will become publicised in the media in conjunction with this*

> *disciplinary case. Whilst it has been explained to me the charge is one of conduct unbecoming, the allegations are of a sexual misconduct nature and any publicity would be extremely damaging to me and my family.*
>
> *13. I am desperately concerned that the stigma of this publicity would not be adequately addressed even if the charge were dismissed."*

24. It would be very unfortunate if Dr D's reputation was seriously damaged by reason of his name being associated with serious allegations which at this juncture have not been proven. The Tribunal accepts that it is little consolation to suggest Dr D's reputation will be salvaged if he is acquitted. This concern was acknowledged in the following way by Fisher J in *M v Police:*

> *"… the stigma associated with a serious allegation will rarely be erased by a subsequent acquittal. Consequently when a Court allows publicity which will have serious adverse consequences for an unconvicted defendant, it must do so in the knowledge that it is penalising a potentially innocent person".*

25. The Tribunal is also concerned that Dr D appears to be suffering from 'severe depression' and associated insomnia. This factor was not referred to by Dr D in his affidavit. The Tribunal has not been told anything about the details of Dr D's conditions. No evidence has been given about the treatment (if any) Dr D is receiving. The Tribunal was not impressed by the quality of the information it received about Dr D's medical condition. The Tribunal did not believe the information received greatly assisted the Tribunal in fully understanding the effects publicising Dr D's name might have upon his health.

Interests of the Complainant

26. No submissions have been received which specifically relate to the complainant's personal interests. The complainant's interests have been merged with the submissions to the Tribunal from the CAC. That is to say, the complainant associates herself with the submission that it is in the public interest that Dr D's name not be suppressed and that Dr D has not advanced sufficient reasons to justify an order suppressing his name.

27. The complainant has not yet sought suppression of her name. However, because the matters contained in the notice of charge are of a sexual and personal nature the Tribunal will not identify the complainant in this decision.

Interests of the practitioner's family

28. The interests of Dr D's family can be taken into account in assessing Dr D's application.

29. The evidence before the Tribunal is that Dr D lives in xx. His wife and he have xx children and xx grandchildren. Dr D says:

> *"xx of our children have the same surname as I do and I am concerned that publicity of my name will cause them to worry and also cause them embarrassment. As from the end of this year one of my children will be returning permanently to live in xx with her two children. That child and her two children have the same surname as I do."*

30. The potential damage that may be caused to Dr D's immediate family is a factor the Tribunal takes into account when assessing Dr D's application. The Tribunal sought further information from Dr D about his children. All his children are adults. One lives overseas, one in xx, one in xx and two of his daughters now live in xx (they use the surname D).

31. Also relevant is the stress and anxiety which will be caused to Dr D's wife and their immediate family. Dr D wife is xx. The Tribunal is satisfied publication of Dr D's name in association with the charge could cause distress to Mrs D and the applicant's children. The Tribunal notes however that there is no suggestion members of Dr D's family suffer from any medical condition that might be exacerbated if Dr D's application is declined. Name suppression applications are sometimes based on evidence that publication of a doctor's name will adversely affect the health of an immediate member of their family. No evidence of that nature has been submitted in this case.

Public Interest

32. S.106(2) requires the Tribunal to have regard to the "public interest" when determining whether or not to suppress publication of the name of an applicant.

33. In *S v Wellington District Law Society*[12] the High Court examined the concept of "public interest" in relation to an application to suppress the name of a lawyer subject to disciplinary proceedings. In considering a provision in the Law Practitioners Act 1982 similar to s.106(2) Medical Practitioner's Act 1995, a full bench of the High Court said:

> *"… the public interest to be considered, when determining whether the Tribunal, or on appeal this Court, should make an order prohibiting the publication of the report of the proceedings, requires consideration of the extent to which publication of the proceedings were to provide some degree of protection to the public, the profession or the Court. It is the public interest in that sense that must be weighed against the interests of other persons, including a practitioner, when exercising a discretion whether or not to prohibit publication".*

34. More specifically, in *Re X* Hammond J reiterated the "public interest" considerations stated in a number of criminal cases. His Honour said the following about "public interest":

> *"… public interest in knowing the name of an offender is a very powerful one. In the case of an offender, the absence of publicity may cause suspicion to fall on other members of the public. The publicity may lead to the discovery of additional evidence of offences, and the absence of publicity may allow an offender to re-offend."*

35. The following "public interest" considerations have been evaluated by the Tribunal when considering Dr D's application:

- The public's interest in knowing the name of a doctor accused of a disciplinary offence;

- Accountability and transparency of the disciplinary process;

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[12] [2001] NZAR 465

- The importance of freedom of speech and the right enshrined in s.14 New Zealand Bill of Rights Act 1990 [13];

- The extent to which other doctors may be unfairly implicated if Dr D is not named;

- The possibility that publicity might lead to discovery of additional evidence;

- The extent to which the absence of publicity may allow an opportunity for further alleged offending.

36. Each of these considerations will now be examined by reference to Dr D's application.

Public interest in knowing the name of a doctor accused of a disciplinary offence

37. Prior to the Medical Practitioners Act 1995 coming into force, medical disciplinary proceedings were heard in private. The Medical Practitioners Act 1968 conferred upon the Medical Council and the Medical Practitioners Disciplinary Committee the power to direct that the effects of any orders made by those bodies be published in the New Zealand Medical Journal [14]. That power effectively enabled the Medical Council and Medical Practitioners Disciplinary Committee to publish the name of a doctor after they had determined disciplinary proceedings against the doctor.

38. Section 106 and 107 of the Medical Practitioners Act 1995 reflect Parliament's wish that the Medical Practitioners Disciplinary Tribunal conduct its hearings in public. Furthermore, Parliament determined that unless the grounds for suppression set out in s.106(2) and 107 are established the names of those who appear before the Tribunal are able to be published. When the Medical Practitioners Bill was introduced into Parliament in 1994 the then Minister of Health, the Hon J Shipley said:

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[13] "Freedom of expression – Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form".

[14] S.65 Medical Practitioners Act 1968

> *" A major criticism of the existing disciplinary procedure is that hearings are held in private. In order that justice is seen to be done the Bill provides for hearings to be held in public, except that, after having regard to the interests of any person and to the public interest, the Tribunal may order that part or all of a hearing should be heard in a private session, or indeed, prohibit the publication of any report or account of any part of the hearing or any materials produced at the hearing …. The Tribunal will be able to make an order prohibiting the publication of the name or any particulars of the affairs of any person".*[15] (emphasis added)

These intentions were achieved when sections 106 and 107 were enacted.

39. It is important to note that those who promoted the new legislation were concerned that the public desire to know what was happening in medical disciplinary cases was frustrated by the provisions of the 1968 Act which required disciplinary hearings to be heard in private. Parliament responded to those concerns by enacting sections 106 and 107 Medical Practitioners Act 1995 so as to fulfil the public's wish to know, inter alia, the identity of doctors who appear before the Medical Practitioners Disciplinary Tribunal. Doctors wishing to apply for suppression of their name when they appear before the Tribunal need to appreciate that Parliament clearly expected that the identity of doctors charged with a disciplinary offence before the Tribunal would, generally, be able to be published.

Accountability and Transparency of the Disciplinary Process

40. It is in the public interest, and the interests of the medical profession that the medical disciplinary process be transparent. The desire for transparency in the disciplinary process will be frustrated if the public and profession are denied the opportunity of knowing the identity of doctors who appear before the Tribunal. Associated with transparency is the desirability of ensuring the profession and public have confidence in knowing those who appear before the Tribunal will be held accountable if their conduct justifies a disciplinary finding against them. The requirements of transparency and accountability are factors which tend to counteract suppression of the name of a practitioner who appears before the Tribunal.

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[15] New Zealand Parliamentary Debates vol 544 p 5065

Importance of Freedom of Speech and Section 14 New Zealand Bill of Rights Act 1990

41. The public interest in preserving freedom of speech and the ability of the media 'as surrogates of the public' to report Tribunal proceedings have been stressed on numerous occasions by the Tribunal and appellate courts. The Court of Appeal in *R v Liddell* and *Lewis v Wilson & Horton Limited* stressed:

> *"… the importance in a democracy of freedom of speech, open judicial proceedings and the right of the media to report [proceedings] fairly and accurately as 'surrogates of the public' "*

is an important factor which weighs against suppressing the name of an accused. The same considerations apply to doctors charged with an offence before the Medical Practitioners Disciplinary Tribunal.

Other Doctors May Be Unfairly Impugned

42. A further factor, in the public interest, which doctors seeking name suppression must overcome is the concern that by suppressing the name of a practitioner charged with a disciplinary offence, other doctors may be unfairly suspected of being the doctor charged. This point has been emphasised on a number of occasions in criminal courts where Judges have declined name suppression to avoid suspicion falling on other members of the public.

43. Dr D, although retired, is one of many medical practitioners in xx. The size of the xx medical community is such that it is unlikely any particular doctor will be linked with the charges before the Tribunal if Dr D's name is suppressed. If there is concern other members of the xx medical community will be unfairly suspected of being the doctor charged in this case, then the Tribunal could address that concern by suppressing details of the fact Dr D practices in xx.

Possibility of Disclosure of Additional Evidence

44. A reason sometimes advanced in criminal cases for declining name suppression is that by publishing the name of an accused further evidence may come to hand. Experience has

taught that publicity about alleged sexual offending sometimes results in further evidence of alleged offending being brought to the attention of the authorities. The possibility that such further evidence will be disclosed if a doctor's name is published is a further factor in the public interest against suppressing the identity of a doctor charged before the Tribunal.

45. In the case before the Tribunal the allegations relate to events said to have occurred in early 1995. No other charges have been brought against Dr D. In his affidavit Dr D stresses that aside from this charge he has not been subject to any disciplinary charges or complaints. The CAC has not challenged this evidence

46. The fact there is one charge against Dr D stemming from one complainant and relating to events that are said to have occurred seven years ago are factors the Tribunal must bear in mind when assessing the public interest in relation to Dr D's application.

The Extent to Which the Absence of Publicity May Allow an Opportunity for Further Alleged Offending

47. Name suppression applications are sometimes declined in criminal cases in order to minimise the opportunity for an alleged offender to embark on further alleged offending. This consideration is mentioned by the Tribunal for the sake of completeness. The fact Dr D has retired from medical practice eliminates this concern from the factors the Tribunal must take into account when making its decision.

Tribunal's Decision

48. The Tribunal has not found it easy to determine Dr D's application. In the final analysis the Tribunal has decided to grant Dr D interim name suppression pending determination of the charge. The Tribunal's decision is not unanimous. Two members of the Tribunal do not believe Dr D has advanced sufficient evidence to justify the granting of his application. Three members of the Tribunal are satisfied by the narrowest of margins that there is sufficient information before the Tribunal to grant Dr D's application.

Reasons for the Tribunal's Decision

49. A majority of the Tribunal believes Dr D's age, the fact that he is suffering from "severe depression" and related insomnia are sufficiently exceptional factors to justify the granting of name suppression. Those members of the Tribunal who agree to granting interim name suppression are concerned Dr D may suffer further depression and stress related illness if his application is not granted. They are also concerned that Dr D's existing medical condition could, if exacerbated by publicity, undermine his ability to defend the charge.

50. All members of the Tribunal agree that the quality of the medical information set out in Dr D's general practitioner's report of 19 February is very scant. If it were not for the combined effects of Dr D's age and his existing medical condition the Tribunal would have declined Dr D's application.

Conclusion

51. After weighing all of the interests identified in Dr D's application, the submissions made by the CAC and the public interest considerations identified in this decision the Tribunal believes that in this instance an interim order should be made to suppress Dr D's name pending determination of the charge. The Tribunal also orders that nothing be published at this stage which identifies Dr D as a former xx medical practitioner.

DATED at Wellington this 7th day of March 2003

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D B Collins QC
Chair
Medical Practitioners Disciplinary Tribunal