

Medical Practitioners Disciplinary Tribunal

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DECISION NO.: 20/97/13C

IN THE MATTER of the MEDICAL PRACTITIONERS

ACT 1995

AND

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

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

HEARING by telephone conference on the Thursday 13 November and Wednesday 26 November
1997

PRESENT: Mr P J Cartwright - Chairperson

Associate Professor Dame N Restieaux, Dr B J Trenwith

Dr D C Williams, Mrs H White (members)

APPEARANCES: Mr M F McClelland for Complaints Assessment Committee

Mr C J Hodson for respondent

Mr R Caudwell - Secretary

Ms K G Davenport - Legal Assessor

(for first part of call only)

DECISION ON APPLICATION FOR PRIVACY

1.1 **INITIALLY** application was made by counsel on behalf of the CAC, Mr McClelland, for an order that the whole of the hearing by the Medical Practitioners Disciplinary Tribunal of a charge of professional misconduct dated 24 April 1997 against Dr C of xx, be heard in private.

1.2 **THE** grounds of the application were stated to be:

1.2.1 **THAT** it is desirable that the hearing be in private.

1.2.2 **THAT** there is no over-riding public interest in having the hearing held in public.

1.2.3 **APPEARING** in the affidavit of A.

IN her affidavit sworn at xx on 3 November 1997 Mrs A indicated she was the complainant in the hearing of the charge against Dr C. Acknowledging that her medical history will be discussed by her and other witnesses during the hearing, Mrs A explained:

"I would much prefer that these matters were discussed in private because I consider them to be very private matters. As my evidence will address personal matters, I do not want to discuss them in public.

I would be most unhappy about having these matters discussed in public, particularly in a town the size of xx."

1.3 **MR** Hodson, counsel for Dr C, had earlier indicated his support for the application. However no formal submissions have been received from Mr Hodson.

1.4 **THIS** is a formal application pursuant to Section 106 of the Act the relevant parts of which, for the purpose of the application, provide:

"106. Hearings of Tribunal to be in public:

- (1) Except as provided in this section and in Section 107 of this Act, every hearing of the Tribunal shall be 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 (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:
 - (a) An order that the whole or any part of a hearing shall be held in private:
 - (b) An order prohibiting the publication of any report or account of any part of any hearing by the Tribunal, whether held in public or in private:
 - (c) An order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:
 - (d) Subject to subsection (7) of this section, an order prohibiting the publication of the name, or any particulars of the affairs, of any person.
- (3) Every application to the Tribunal for any order under this section shall be heard in private, but the other parties to the proceedings and the complainant (if any) shall be entitled to be present and to make submissions with regard to the application.
- (4)
- (5)

- (6)
- (7)
- (a)
- (b)
- (c)"

1.5 AT the first teleconference hearing on 13 November 1997 Mr Forsey (standing in for Mr McClelland) indicated, subject to a successful outcome to the application, the names of four persons sought by Mrs A to be present at the formal hearing of the charge against Dr C in a support capacity, pursuant to Section 106(4) of the Act. Subsequently Mr McClelland advised the Secretary of the Tribunal the names of three persons whom Mrs A wished to have present at the hearing. It is understood Dr C has no objection to these persons being present during the hearing. In any event this aspect of the application is now somewhat academic, given the order which follows that the hearing will be in public.

1.6 THE reaction by some members of the Tribunal to the application on initial consideration of it during the teleconference call on 13 November 1997, was twofold. First, that it lacked sufficient information on which to make a decision. And secondly, that it was difficult to understand why Mrs A would wish to have the hearing in private in light of the special protections given to complainants under Section 107 of the Act.

1.7 CONSEQUENTLY the teleconference hearing of 13 November 1997 was adjourned to enable further information to be placed before the Tribunal.

1.8 IN a second affidavit sworn by Mrs A in xx on 18 November 1997 she explained, if it was not possible to have the hearing in private, that she would at least like to give her evidence in private and for the Tribunal to make an order prohibiting publication of her name, or of any of the particulars of her affairs. Mrs A elaborated that the prohibition on publication was sought because the nature of the complaint and the personal matters which are to be discussed during the hearing of the charge, are quite embarrassing and distressing for her. Mrs A concluded her second affidavit on this note:

"xx, while a city, is a relatively small place and people are often aware of other people's business. I have told relatively few people about the hearing. While people are aware of the situation with my kidney, as it happened about 3½ years ago, the hearing of the complaint will re-open the issue for me and it is not something I want discussed publicly."

2.0 ORDERS:

2.1 THAT the hearing by the Tribunal of a charge dated 29 September 1997 against Dr C be held in public.

2.2 THAT publication of the name of Mrs A, or of any of the particulars of her affairs, be prohibited.

2.3 THAT this decision not be published beyond the Tribunal, the parties or their counsel in a form which contains any reference to the name or any particulars of the affairs of Mrs A.

3.0 REASONS FOR ORDERS:

3.1 THE Tribunal has interpreted Mrs A's second affidavit as being an acknowledgment by her of the Tribunal's preliminary assessment, that insufficient reasons had been advanced on her behalf to justify the hearing being held in private.

3.2 IN the Tribunal's view the second affidavit sworn by Mrs A substantially reflects her wish to take advantage of the special protections given to complainants under Section 107 of the Act. The Tribunal considers this is entirely appropriate in the circumstances of the complaint which Mrs A has made against Dr C. It will result in Mrs A being able to give her evidence in private, but in the presence of three support persons as specifically requested by her.

3.3 OTHERWISE application of Section 107 of the Act in favour of Mrs A in the circumstances of this particular case, will result in adherence to the presumption of the legislation, that disciplinary charges against doctors shall (emphasis added) be held in public.

DATED at Auckland this 4th day of December 1997.

P J Cartwright

CHAIRPERSON