



New Zealand  
Health Practitioners  
Disciplinary Tribunal

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**DECISION NO:** 111/Den05/21D

**IN THE MATTER** of the Health Practitioners  
Competence Assurance Act 2003

-AND-

**IN THE MATTER** of a charge laid by the Director of  
Proceedings pursuant to Section  
91(1)(a) of the Act against, **DR A,**  
Dentist, of xx ,

**BEFORE THE HEALTH PRACTITIONERS DISCIPLINARY TRIBUNAL**

**TRIBUNAL:** Dr D B Collins QC (Chairperson)

Dr J Edwards, Dr R East, Dr H Trengrove and Ms W Davis  
(Members)

Ms S D'Ath (Executive Officer)

Ms G Rogers (Stenographer)

## Introduction

- 1 On 9 May the Tribunal dismissed a charge of professional misconduct brought by the Director of Proceedings against Dr A.
- 2 Dr A subsequently applied for orders granting him permanent name suppression. The Director of Proceedings neither consents nor opposes Dr A's application.
- 3 The Tribunal has now considered the submissions filed on behalf of Dr A and the Director of Proceedings and resolved to grant Dr A's application. Accordingly, nothing may be published in association with the Tribunal's decision which names or otherwise identifies Dr A. This order is made pursuant to s.95(2)(d) of the Health Practitioners Competence Assurance Act 2003.

## Relevant Legislation

- 4 The starting point when considering applications for name suppression by health professionals appearing before the Tribunal is s.95(1) and (2) of the Act, which substantially replicates s.106(1) and (2) of the Medical Practitioners Act 1995. Subsections 95(1) and (2) of the Act provide:

“(1) *Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise under this section ...*

(2) *If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by any of the parties or on its own initiative) make 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”.*

- 5 Subsection 95(1) of the Act emphasises the Tribunal's hearings are to be held in public unless the Tribunal, in its discretion applies the powers conferred on the Tribunal by s.95(2) of the Act. Another exception to the presumption that the Tribunal's hearings will be conducted in public can be found in s.97 which creates special protections for witnesses required to give evidence of a sexual, intimate or distressing nature.

6 Whereas s.95(1) of the Act contains a presumption that the Tribunal’s hearings shall be held in public, there is no presumption in s.95(2) of the Act. Where the Tribunal considers an application to suppress the name of any person appearing before the Tribunal, the Tribunal is required to consider whether it is desirable to prohibit publication of the name of the applicant after considering:

6.1 The interests of any person (including the unlimited right of a complainant to privacy); and

6.2 The public interest.

### **Public Interest**

7 The following public interest considerations have been evaluated by the Tribunal when considering Dr A’s application:

7.1 Openness and transparency of the disciplinary process;

7.2 Accountability of the disciplinary process;

7.3 The public interest in knowing the name of a health professional charged with a disciplinary offence;

7.4 The importance of freedom of speech and the right enshrined in s.14 New Zealand Bill of Rights Act 1990<sup>1</sup>;

7.5 The extent to which other dentists may be unfairly impugned if Dr A’s application is granted.

8 Each of these considerations will now be examined by reference to Dr A’s application.

### Openness and Transparency of Disciplinary Proceedings

9 The following cases illustrate the importance of openness in judicial proceedings:

9.1 In *M v Police*<sup>2</sup> Fisher J said:

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<sup>1</sup> “Freedom of expression – everyone has a right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any forum”.

<sup>2</sup> (1991) CRNZ 14

*“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”.*

9.2 In *R v Liddell*<sup>3</sup> the Court of Appeal said:

*“... the starting point must always be the importance in a democracy of ... open judicial proceedings ....”*

9.3 In *Lewis v Wilson & Horton Ltd*<sup>4</sup> the Court of Appeal reaffirmed what it had said in *Liddell*. The Court noted:

*“...the starting point must always be ...the importance of open judicial proceedings ....”*

10 To these leading cases can be added *Scott v Scott*<sup>5</sup> and *Home Office v Harman*<sup>6</sup> where Lords Shaw and Diplock explained the rationale for openness in civil proceedings.

11 The Tribunal appreciates it is neither a criminal nor a civil Court. However, as Frater J noted in *Director of Proceedings v I*<sup>7</sup> when explaining the scope of s.106 of the Medical Practitioners Act:

*“The presumption in s.106(1) of the Act, in fair and public hearings makes it clear that, as in proceedings before the civil and criminal Courts, the starting point in any consideration of the procedure to be followed in medical disciplinary proceedings must also be the principle of open justice.”*

#### Accountability of the Disciplinary Process

12 Closely aligned to the concept of openness and transparency is the need to ensure that the disciplinary process is accountable and that members of the public and profession can have confidence in its processes. This point was noted by Baragwanath J in *Director of Proceedings v Nursing Council*<sup>8</sup> where His Honour drew upon the writings of Jeremy Bentham and Viscount Haldane in *Scott v Scott* to illustrate the importance of accountability in professional disciplinary proceedings.

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<sup>3</sup> [1995] 1 NZLR 538

<sup>4</sup> [2003] 3 NZLR 546

<sup>5</sup> [1913] AC 47

<sup>6</sup> [1982] 1 All ER 532

<sup>7</sup> [2004] NZAR 635

<sup>8</sup> [1999] 3 NZLR 360

Public Interest in Knowing the Identity of a Health Practitioner Charged With a Disciplinary Offence

- 13 There is a well recognised public interest in members of the public, as well as other health professionals knowing the identity of a health professional charged with a disciplinary offence. The interest lies in providing members of the public and other health professionals with information which may influence their decision to consult with and deal with the person who is the subject of the charge.
- 14 The public interest in knowing the identity of a health professional who is the subject of a disciplinary charge was referred to in *Director of Proceedings v Nursing Council* under the heading of “Education and alerting the community to risk”. It was also a factor referred to in *F v Medical Practitioners Disciplinary Tribunal*<sup>9</sup> where the Court, relying on *S v Wellington District Law Society*<sup>10</sup> noted:

“(a) *The public interest is the interest of the public, including members of the profession, who have a right to know about proceedings affecting a practitioner ...*

(c) *In considering the public interest the Tribunal is required to consider the extent to which publication of the proceedings would provide some degree of protection to the public or the profession ...”.*

Importance of Freedom of Speech and the Right Enshrined in s.14 New Zealand Bill of Rights Act 1990

- 15 The public interest in preserving freedom of speech and allowing the media “as surrogates of the public” to report Tribunal proceedings has been approved on a number of occasions by appellate Courts<sup>11</sup>.
- 16 If the media wish to publish reports about the Tribunal’s proceedings and identify Dr A then clearly the importance of freedom of speech enshrined in s.14 New Zealand Bill of Rights Act 1990 is a factor which weighs against Dr A’s application.

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<sup>9</sup> Unreported HC Auckland, AP21-SW01-5 December 01, Laurenson J

<sup>10</sup> [2001] NZAR 465

<sup>11</sup> See for example, *Liddell* and *Lewis* (supra)

### Unfairly Impugning Other Dentists

- 17 A further factor in the public interest is the concern that other dentists may be unfairly impugned if Dr A's name is suppressed. This point has been emphasised on numerous occasions in Criminal Courts where Judges have declined name suppression to avoid suspicion falling on other members of the public.
- 18 The Tribunal will do its best to minimise the risk of unfairness to other dentists in New Zealand by suppressing details of Dr A's place of residence and the region where he practises.

### **Summary of Public Interest Factors**

- 19 The public interest factors identified by the Tribunal weigh against Dr A's application. In particular, the principles of openness, accountability and the "public's right to know" are in the circumstances of this case, grounds for refusing Dr A's application.
- 20 It is however necessary to balance these public interest factors against the interests of Dr A before reaching any conclusion as to whether or not it is desirable to grant Dr A's application.

### **Dr A's Interests**

- 21 The Tribunal has determined Dr A was not guilty of professional misconduct.
- 22 Doctor A is concerned that he will suffer professional harm if his name is now published in association with the charge. He suggests that the fact the charge has not been proven is not sufficient to counter-balance any potential harm to his professional reputation if his name is published at this juncture.
- 23 Of particular concern to Dr A is that a local newspaper photographer photographed Dr A when he was entering one of the Tribunal's hearing rooms. The newspaper was quite entitled to take Dr A's photo but he is concerned that publication of his photo will greatly enhance the damage to his reputation and harm his prospects of furthering his professional studies.
- 24 The Tribunal is sympathetic to Dr A's concerns and believes there is no overwhelming public interest which justifies publication of Dr A's name and photograph in relation to the Tribunal's decision.

25 The Tribunal has accordingly determined that Dr A's name should not be published.  
Nor should anything be published which otherwise identifies Dr A.

**Dated** at Wellington this                      day of June 2006

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**D B Collins QC**  
Chairperson  
Health Practitioners Disciplinary Tribunal