

CITATION: *Legal Services Commissioner v CBD* [2011] QCAT 401

PARTIES: Legal Services Commissioner
(Applicant)
v
CBD
(Respondent)

APPLICATION NUMBER: OCR255-10

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice Alan Wilson, President**

DELIVERED ON: 22 August 2011

DELIVERED AT: Brisbane

ORDERS MADE: **Prohibit the publication, in this discipline application proceeding or any report of it, of any information containing any details of the offence for which CBD was convicted in a Brisbane District Court in 2010.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – NON PUBLICATION ORDER – where the Legal Services Commissioner has brought disciplinary proceedings against the respondent – where the respondent has applied for a non-publication order concerning anything about the matter which led to the disciplinary proceedings – where the respondent’s primary ground for seeking a non-publication order relates to his mental wellbeing – whether non-publication order appropriate in the circumstances

Legal Profession Act 2007, ss 460, 472, 473, 477, 598, 599, 656D, sch 2
Legal Profession Regulation 2007, cl 90

Queensland Civil and Administrative Tribunal Act 2009, ss 7(2), 66, 32

Legal Services Commissioner v Sing (No 2)
[2007] LPT 005, distinguished

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

REASONS FOR DECISION

- [1] The Commissioner has brought disciplinary proceedings against CBD under the *Legal Profession Act 2007* (LPA). He has applied for a non-publication order concerning anything about the matter which led to the disciplinary proceedings, except for his name and the kind of disciplinary action ultimately taken.
- [2] I directed that his application be dealt with on the papers, without an oral hearing – a procedure open to QCAT under s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).
- [3] A discipline application of the kind brought by the Commissioner can only be heard and decided by a Tribunal comprised of a QCAT Judicial Member who is a Supreme Court Judge, a lay panel Member and a barrister or a solicitor,¹ but s 460 of the LPA permits a disciplinary body to make an interlocutory or interim order before making its final decision about a discipline application. The LPA defines ‘disciplinary body’ in sch 2 to include ‘The Tribunal’, and that term is defined to mean QCAT.
- [4] Orders and decisions pending a final hearing of the discipline application can also, it seems, be made or determined by a QCAT legally qualified Member: s 598(2)(b). In any event this application for a non-publication order does not, therefore, require that a panel be assembled.
- [5] In April 2010 CBD pleaded guilty in the District Court in Brisbane to a criminal offence and was sentenced to imprisonment for twelve months, wholly suspended for two years. The offence had no relationship or connection with his work as a lawyer.
- [6] Part 4.11 of the LPA is headed ‘*Publicising Disciplinary Action*’. In that part s 472 requires the Commissioner to keep a discipline register about disciplinary action taken under the Act all lawyers, and the register must include the full name of each person and particulars of the disciplinary action taken. It also requires that the register must be available for public inspection, including on the internet. Under cl 90 of the *Legal Profession Regulation 2007* some other particulars must also be included in the register, including details of each lawyer’s admission to the legal profession, and date of birth.

¹ LPA, ss 598 and 599.

- [7] Under s 473 the Commission may publicise disciplinary action in any way considered appropriate. Under s 477 that publication may be regulated by a disciplinary body but, whatever limits are placed upon publication or disclosure, the register must still contain the name and identifying particulars of the respondent and the kind of disciplinary action taken.
- [8] Section 656D of the LPA – ‘*prohibited publication about hearing of discipline application*’ – also allows the Tribunal either before, during or immediately after a hearing to make an order prohibiting the publication of information stated in the order that relates to the discipline application, the hearing, or an order of the Tribunal.
- [9] The QCAT Act also gives the Tribunal power to make non-publication orders. Under s 66 the Tribunal may make an order prohibiting the publication of the contents of a document, evidence before the Tribunal, or information that may enable a person who has appeared before the Tribunal to be identified. An order of that kind can only be made if the Tribunal considers it necessary to avoid interfering with the proper administration of justice, offending public decency or morality, avoiding the publication of confidential information or, relevantly for personal purposes, endangering the physical or mental health or safety of a person.
- [10] CBD’s primary ground for seeking a non-publication order relates to his mental wellbeing. His application is supported by a report from a psychiatrist who says that CBD has a moderate mental disorder with depression and anxiety descending, at some times, to major depression and that the publication of detailed information about the matters which lie behind the discipline application would ‘... *raise serious concerns about a deterioration in his psychiatric status, increase the risk of the development of a more severe depressive illness and therefore linked [sic] to an increased risk of suicide*’.
- [11] CBD’s solicitor, in written submissions in support of his application for the order, accepts that s 477 means that his name and other identifying particulars and details of any disciplinary order must appear in the register and be publicised, but contends that it leaves scope for a non-publication order about other details relating to the proceedings. The submissions point out, and the psychiatrist’s report confirms, that the consequences of his conviction have been devastating and there is no practical likelihood of his re-offending (something which was accepted by the Judge who sentenced him).
- [12] The Commission’s submissions rightly point out, however, that QCAT’s power to make a non-publication order under s 66 of its legislation is overridden by s 472(2) of the LPA. This is because the LPA is what is called, in the QCAT legislation, an *Enabling Act* and s 7(2) of the QCAT Act provides that the LPA provisions will prevail over s 66.
- [13] The legislative scheme of the LPA is plainly intended, as the Chief Justice observed in *Legal Services Commissioner v Sing (No 2)*² ‘... *to secure a level of transparency, accountability and independence in the disciplinary process not previously thought to have been present*’.

² [2007] LPT 005.

[14] In *Sing* the respondent had sought an order prohibiting the publication of his name, even though he had been successful in the proceedings and the application against him had been dismissed. The Chief Justice went on to say:

The Tribunal must be very careful not to thwart the achievement of that objective in any way. It would do so here if, by a non-publication or suppression order, it was seen to elevate the practitioner's private interest over the public interest which should rightly predominate.

[15] I respectfully adopt those remarks and accept that it would be a rare case in which the Tribunal would interfere with the legislative scheme. That said the Commissioner has also very fairly indicated that, because of the evidence about CBD's personal circumstances and the risk of serious adverse effects if the nature of the charge which brought him before the District Court is further publicised, it does not oppose the making of a non-publication order in relation to the details of the offence for which he was convicted.

[16] An order of that kind can still satisfy the requirements of the LPA and the register created under it and, also, avert the risk of further harm to CBD. It may also be observed that publication of information about his conviction is, firstly, a matter of public record; and, secondly, that further publication would serve no necessary purpose in these disciplinary proceedings.

[17] I am satisfied, then, that it is appropriate to make an order under s 656D of the LPA prohibiting the publication of information containing any details of the offence for which CBD was convicted in a Brisbane District Court in 2010.