



## Supreme Court of New Zealand

29 June 2006

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**C v COMPLAINTS ASSESSMENT COMMITTEE  
(SC 27/2005) [2006] NZSC 48**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

The Supreme Court has allowed in part an appeal against a decision of the Court of Appeal concerning a compulsory disclosure of medical records under the Medical Practitioners' Act 1995. It has upheld the Court of Appeal's decision to return the question of disclosure to the Medical Practitioners' Disciplinary Tribunal so that it can determine whether the records contain communications which are privileged under s 32 of the Evidence Amendment Act (No 2) 1980. It has set aside the directions given by the Court of Appeal to the Medical Practitioners' Disciplinary Tribunal about the application of s 32.

The appellant is a medical practitioner charged with disgraceful conduct under the Medical Practitioners' Act 1995. He sought disclosure of medical records made by other practitioners who treated the patient complainant. The Complaints Assessment Committee, the body constituted under the 1995 Act to prosecute charges before the Medical Practitioners' Committee, argued that the records could not be disclosed without the consent of the

patient because of the privilege established by s 32 of the Evidence Amendment Act (No 2) 1980. It provides that a doctor shall not disclose in any civil proceedings communications obtained from a patient without the patient's consent.

In a four to one majority judgment with Justice McGrath dissenting, the court has held that unless the patient consents the communication to the doctor remains privileged even when it is no longer in the doctor's hands. The patient's consent may be express or consent which is inferred from conduct. The court further held that s 35 of the Evidence Amendment Act (No 2), which allows a court or tribunal to excuse production of confidences, cannot be claimed by a patient, but may be available to the Complaints Assessment Committee. The question of disclosure was referred back to the Medical Practitioners' Disciplinary Tribunal for it to consider in light of the directions given by the Supreme Court.

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