IN THE SUPREME COURT OF NEW ZEALAND

SC 129/2011
[2012] NZSC 4

BETWEEN	BARRY JOHN HART Applicant
AND	THE STANDARDS COMMITTEE (NO 1) OF THE NEW ZEALAND LAW SOCIETY Respondent

Court: Elias CJ, Blanchard and William Young JJ

Counsel: R J Katz QC for Applicant
P N Collins for Respondent

Judgment: 13 February 2012

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B In place of the order made by McGrath J on 21 December 2011 in relation to the searching of court files, we order that the Supreme Court file in relation to the application not be searched without the permission of a Judge.

REASONS

[1] The applicant faces charges (not involving criminal conduct) which are to be dealt with by the Lawyers and Conveyancers Disciplinary Tribunal. In a decision dated 18 March 2011,[1] but not emailed to the applicant until 4 May 2011, the Tribunal rejected an application for an order suppressing publication of the applicant's name. He unfortunately overlooked the email of 4 May and thus did not directly challenge the Tribunal's decision. Instead, and in the context of judicial review proceedings filed just before the scheduled substantive hearing of the

[1] *Standards Committee (No 1) v Hart* [2011] NZLCTD 5.

charges,[2] he sought a suppression and some associated orders directly of the High Court. The application for suppression was rejected by Toogood J in a judgment delivered on 13 December 2011[3] and a subsequent appeal to the Court of Appeal[4] was largely unsuccessful.

[2] The primary basis for the proposed appeal is the contention that the usual open justice approach adopted in cases such as *R v Liddell*[5] should not apply in the case of a professional person with a high public profile facing disciplinary charges, particularly where, as here, criminal offending is not alleged.

[3] A Tribunal or Judge deciding whether to order suppression is exercising a discretion which, in a disciplinary context, must allow for any relevant statutory provisions as well as the more general need to strike a balance between open justice considerations and the interests of the party who seeks suppression. The likely particular impact of publicity on that party will always be relevant, but it is untenable to suggest that professional people of high public profile, such as the applicant, have anything approaching a presumptive entitlement to suppression.[6] The applicant's requests for suppression have been fully and independently considered by both the Tribunal and Toogood J and Toogood J's judgment, in turn, has been reviewed by the Court of Appeal. We see no arguable error in the approach taken in the Court of Appeal. It follows that the application for leave to appeal must be dismissed.

[4] This means that the interim order for suppression made by McGrath J on 21 December 2011 lapses. In place of the order made by McGrath J in relation to the searching of court files generally, we order that the Supreme Court file in relation to the application not be searched without the permission of a Judge. This is to give effect to the orders in favour of the applicant made by the Court of Appeal, which, of

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2 As it turned out, that hearing did not proceed. So the charges against the applicant have yet to be determined.

3 *X v Standards Committee (No 1) of the New Zealand Law Society* HC Auckland CIV-2011-404-7750, 13 December 2011.

4 *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676.

5 *R v Liddell* [1995] 1 NZLR 538 (CA).

6 Compare s 200(3) of the Criminal Procedure Act 2011 which is yet to come into effect.

course, stand. Given the dismissal of the application for leave to appeal, the issues associated with the search of the High Court and Court of Appeal files should be determined by judges of those courts.[7]

Solicitors:
N Cooke, Solicitor, Auckland for Applicant
M Treleaven, New Zealand Law Society, Auckland for Respondent

[7] Toogood J made an order limiting the search of the High Court file. No corresponding order was made in the Court of Appeal.