

CITATION: *Legal Services Commissioner v Woodman*
[2017] QCAT 149

PARTIES: Legal Services Commissioner
(Applicant)
v
Gary Robert Woodman
(Respondent)

APPLICATION NUMBER: OCR137-16

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**

DELIVERED ON: 24 May 2017

DELIVERED AT: Brisbane

ORDERS MADE: **1. The application for a non-publication order is refused.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS
– COMPLAINTS AND DISCIPLINE –
DISCIPLINARY PROCEEDINGS –
APPLICATION FOR NON-PUBLICATION
ORDER – where disciplinary proceedings
brought against respondent by Legal Services
Commissioner – where respondent applied for
non-publication order in relation to any details
of the offences for which the respondent was
convicted in earlier proceedings and in relation
to the current proceedings – where respondent
filed no further material in support – whether
application for non-publication order should be
granted or refused

*Legal Profession Act 2007 (Qld) ss 472, 477,
656D*
*Queensland Civil and Administrative Tribunal
Act 2009 (Qld) ss 7, 32, 66*

Legal Services Commissioner v XBY [2016]
QCAT 102

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

REASONS FOR DECISION

- [1] Mr Woodman made an application for a non-publication order in respect of these proceedings.
- [2] The application was not made subject to the formal requirements of the QCAT Act.
- [3] Instead, Mr Woodman's application was contained in Part D paragraph 3 on page 3 of his Response to the disciplinary application filed by the Legal Services Commissioner.¹
- [4] Mr Woodman's application seeks to:
- "Prohibit the publication, in this discipline application proceeding or any report of it (including in the Discipline register kept by the Applicant pursuant to section 472 of the Legal Profession Act 2007 or by any other means pursuant to the provisions of Part 4.11 of such Act), of any information containing any details of the offences for which the respondent was convicted in the Brisbane District Court on 15 April 2015, and pursuant to section 66(1) of the Queensland Civil and Administrative Tribunal Act 2009, prohibit the publication of any information in any document published by QCAT or the applicant in relation to this proceeding sufficient to identify the respondent's name."*
- [5] On 27 March 2017, the Tribunal received a letter from Mr Woodman which enclosed a letter from his treating psychologist, Dr Smith "for the Tribunal's consideration". Dr Smith states that he is supportive of "any steps to secure the confidentiality of a decision".
- [6] In his letter of 27 March 2017, Mr Woodman also says:
- "Following considerable deliberations on my part and ongoing medical conditions and issues, I have regrettably concluded that I no longer wish to resist the application filed 29 August 2016, [being the disciplinary application] and will not be attending any future hearing dates."*
- [7] On 11 April 2017, a directions hearing for the matter was held. Mr Woodman did not attend the directions hearing.
- [8] On 12 April 2017, the Tribunal directed Mr Woodman to file any evidence and submissions in relation to the non-publication order by 1 May 2017. Mr Woodman was sent those directions by email on 18 April 2017.
- [9] Mr Woodman has not filed any further material in support of his application.

¹ Respondent's Response or counter-application, filed 7 October 2016.

Disposition

- [10] Section 656D of the *Legal Profession Act 2007* (Qld) ('LPA') 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 disciplinary action, the hearing, or an order of the Tribunal.
- [11] Section 66 QCAT Act also deals with non-publication orders and prescribes limitations on the making of any such orders.
- [12] Under section 66(2) QCAT Act, the tribunal may make an order under subsection (1) only if the tribunal considers the order is necessary-
- (a) to avoid interfering with the proper administration of justice; or
 - (b) to avoid endangering the physical or mental health or safety of a person; or
 - (c) to avoid offending public decency or morality; or
 - (d) to avoid the publication of confidential information or information whose publication would be contrary to the public interest; or
 - (e) for any other reason in the interests of justice.
- [13] Section 7(2) of QCAT Act provides that the requirements of an enabling Act, such as the LPA, prevail over the provisions of the QCAT Act to the extent of any inconsistency.
- [14] Section 477 of the LPA deals with general provisions about the disclosure of information.
- [15] Section 477 provides that the provisions of Part 4.11 (Publicising disciplinary action) are subject to any order made by a Tribunal which regulates the disclosure of information.
- [16] However, section 477 also provides for a limitation on non-publication orders. Section 477(2) states that the name and other identifying particulars of the person against whom the disciplinary action was taken, and the law practice who employs or employed the person, and the kind of disciplinary action taken, must be recorded in the disciplinary register and may be otherwise publicised under Part 4.11.
- [17] It follows that it is not possible to make the order sought by Mr Woodman in relation to the publication of his information in the disciplinary register kept by the Legal Services Commissioner pursuant to section 472 LPA.
- [18] In *Legal Services Commissioner v XBY*,² evidence was presented before the Tribunal that publication of the respondent's name and identifying

² [2016] QCAT 102.

details was likely to significantly negatively impact on his mental health and undo what he had achieved over the past few years in improving his mental health.

- [19] In that case, the practitioner conceded it would not be possible for him to contest publication in the discipline register of the disciplinary action taken against him, as provided for by section 477. Instead, the practitioner confined his application to the finding of the Tribunal and the order made.³ In those circumstances, a non-publication order that the information which might enable the practitioner to be identified not be published except to the parties in these proceedings, was made.
- [20] In the present case, Mr Woodman has not filed any further material in support of his application. Mr Woodman does not identify the basis for which a non-publication order should be made in his favour, save for the passing comment of his treating psychologist, Dr Smith.
- [21] Mr Woodman has not shown that his application for a non-publication order fully meets the requirements of section 66(2) QCAT Act. In the circumstances, the Tribunal declines to make a non-publication order.
- [22] Mr Woodman's application for a non-publication order is refused.

³ *Legal Services Commissioner v XBY* [2016] QCAT 102 at [17].