



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

PO Box 24463, Manners Street, Wellington • New Zealand
13th Floor, Mid City Tower • 139-143 Willis Street, Wellington
Telephone (04) 802 4830 • Fax (04) 802 4831
E-mail mpdt@mpdt.org.nz
Website www.mpdt.org.nz

DECISION NO: 278/03/110D

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of a charge laid by the Director of
Proceedings pursuant to Section 102
of the Act against **THOMAS PAUL
O'FLYNN** medical practitioner of
Invercargill

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

TRIBUNAL: Miss S M Moran (Chair)

Dr F McGrath, Dr C P Malpass, Mrs H White, Dr L F Wilson
(members)

**Order of the Tribunal regarding applications by TVNZ and TV3
regarding media coverage of the proceedings**

Applications

1. Both TVNZ and TV3 have applied for permission for electronic media coverage for the proceedings commencing 29 March 2004.
2. Counsel on behalf of the Director of Proceedings (Ms Kristy McDonald QC) has submitted that if there is to be coverage then it would have to be subject to any suppression orders/confidentiality orders or other orders made by the Tribunal, otherwise she would abide the decision of the Tribunal.
3. Counsel on behalf of Dr O'Flynn (Mr Hugh Rennie QC) has objected to the taking of still photographs and the use of video cameras within the hearing room at any time.
4. Mr Rennie has relied on submissions which he made in relation to a hearing before the Tribunal on 18 February 2004 which dealt with an application by the Southland Times for *permission to take photographs and to occasionally film with a video camera during the hearing against Tom O'Flynn, Psychiatrist, to be heard in Invercargill in April this year.*

Background and earlier application by Southland Times

5. In those submissions, Mr Rennie referred to the hearing in November last year of Dr Fisher and submitted it was apparent that the taking of still photographs and the use of video cameras during that hearing interfered in a material way with the operation of the Tribunal and the provision of a fair hearing and that it affected both the willingness of witnesses to participate and the manner of their participation.
6. Mr Rennie further submitted that in the course of preparation for the present hearing, including contact with potential witnesses, it was apparent that the same concerns exist at this or a greater level.

7. Mr Rennie referred to the New Zealand Bill of Rights Act 1990 which guarantees a fair trial and submitted that it could not be met in this particular case if still photography or video recordings were permitted. He stated it was not necessary to permit the presence of either for there to be a full opportunity for media reporting and coverage of the hearing.
8. Mr Rennie informed the Tribunal that with regard to particular witnesses, including those working in the mental health field, there are issues of health and safety which arise in respect of any proposed visual material.
9. With regard to the application by the Southland Times, the Tribunal, having taken into account counsels' submissions and all relevant matters, decided to decline the newspaper's application to use a video camera during the hearing or take still photographs during the hearing.
10. During the Tribunal's consideration of the application by the Southland Times, the members of the Tribunal apprehended that there might be application by the television broadcasters for coverage of the proceedings which would include the use of video cameras and that if there were such applications and if the same issues were raised and relied on then it would be disposed not to permit any in-hearing photography whether still or video.

Decision

11. (a) Having taken into account the submissions of both counsel and all relevant matters and bearing in mind the view of the Tribunal at the teleconference of 18 February 2004, the applications by TVNZ and TV3 to use a video camera during the hearing (or take still photographs during the hearing) are declined subject to clause 11(b) below.
- (b) By consent, counsel are agreed that TVNZ and TV3 can, if they so wish, use a video camera on the first day of the hearing (29 March) in order to film the Tribunal, the opening statement of counsel for the Director of Proceedings, and the opening statement of counsel for Dr O'Flynn which will immediately follow. This however, does not extend to filming any persons other than the Tribunal, those assisting the Tribunal and counsel for the parties.

- (c) In all other respects, the Guidelines and Voluntary Code of Conduct for Expanded Media Coverage of Court Proceedings issued in May 2000 insofar as they relate to coverage by television shall apply to these proceedings of the Tribunal.

DATED at Wellington this 23rd day of March 2004

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S M Moran

Senior Deputy Chair

Medical Practitioners Disciplinary Tribunal