



MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

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DECISION NO: 262/03/113C

IN THE MATTER of the Medical Practitioners Act
1995

-AND-

IN THE MATTER of a charge laid by a Complaints
Assessment Committee pursuant to
Section 93(1)(b) against
RICHARD WARWICK
GORRINGE former medical
practitioner of Hamilton

BEFORE THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

DECISION OF DR D B COLLINS QC

CONCERNING COMPOSITION OF TRIBUNAL

1. Doctor Gorringer has been charged with professional misconduct by a Complaints Assessment Committee. The charge is to be heard in Hamilton from 15 to 19 December 2003 (inclusive). This is the second hearing of disciplinary charges against Dr Gorringer.
2. The Tribunal appointed to hear the charge includes Miss Moran. Miss Moran has been appointed to Chair the Tribunal scheduled to hear the second charge against Dr Gorringer.
3. Doctor Gorringer has objected to Miss Moran chairing the Tribunal to hear the second charge against him. His objection stems from the fact Miss Moran also chaired a Tribunal which found Dr Gorringer guilty of disgraceful conduct in a professional respect. That Tribunal's decision was delivered on 5 August 2003. A supplementary decision concerning penalty was delivered by the Tribunal on 2 October 2003 (first hearing).
4. In its substantive decision of 5 August 2003 the Tribunal made adverse findings against Dr Gorringer. Those findings included determinations that Dr Gorringer's evidence lacked credibility.
5. Doctor Gorringer's application to have Miss Moran replaced as chairperson of the Tribunal to hear the second charge against him is premised on the basis that there is a reasonable suspicion of bias. That is to say, Dr Gorringer does not allege Miss Moran is actually biased. Dr Gorringer accepts that as a senior and respected lawyer Miss Moran is able to put from her mind evidence and conclusions from the first hearing. However, Dr Gorringer believes there is a case of "apparent bias" against him if Miss Moran chairs the second hearing.
6. The law relating to the test for bias has been recently revisited by the Court of Appeal in *Ngati Tahinga and Ngati Karewa Trust & ors v Attorney General* (CA 163/03, 24 September 2003) and *Erris Promotions Limited & Ors v Commissioner of Inland Revenue* (CA 68/03, 24 July 2003). There is now just one test in relation to apparent and actual bias, namely,

"Would the reasonable and informed observer think that the impartiality of the adjudicator might be/might have been affected?"

7. The test is objective and does not require evidence of any bias on the part of the adjudicator.
8. The Complaints Assessment Committee has not opposed Dr Gorrings application to have Miss Moran disqualified from hearing the second charge. The Complaints Assessment Committee has advised that it will abide with whatever decision is reached by the Chairperson exercising his discretion under s.100(1)(a) of the Medical Practitioners Act 1995.
9. In this instance it is appropriate to exercise extreme caution and accede to Dr Gorrings request. It will be apparent from the preceding sentence that the Chair of the Tribunal has total confidence in Miss Moran's ability to hear the second charge unaffected by anything she heard and concluded in relation to the first charge. However the test for bias imposes a very low threshold. In light of the serious adverse findings previously made against Dr Gorrings, an objective observer may think Miss Moran's impartiality could be affected when considering the second charge.
10. Arrangements have been made for Ms Kapua to now chair the Tribunal which convenes to hear the second charge against Dr Gorrings on 15 December 2003.

DATED at Wellington this 13th day of November 2003

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D B Collins QC

Chair

Medical Practitioners Disciplinary Tribunal