

**BEFORE THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS
APPEALS COUNCIL**

IN THE MATTER OF an appeal against a decision of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants dated 15 March 2018

BETWEEN **HONGYING QIU**, Chartered Accountant of Auckland

Appellant

AND **THE PROFESSIONAL CONDUCT COMMITTEE OF THE NEW
ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS**

FINAL DECISION OF APPEALS COUNCIL

Dated 21 May 2018

Members of the Appeals Council:

Les Taylor QC (Chairman)
Paul Armstrong FCA
Gary Leech FCA

Counsel:

Richard Moon for the Professional Conduct Committee
Hongying Qiu self-represented

Appeals Council Secretariat:

Janene Hick
Email: janene.hick.nzica@charteredaccountantsanz.com



The Appeal

1. This appeal is limited to an appeal against the decision of the Disciplinary Tribunal that the member's name and location be published on the Institute's website and in its magazine, Acuity.

Approach to the appeal

2. The appeal is against the exercise of a discretion as to publication of the member's name and location. In those circumstances we approach the appeal on the basis that, in order to succeed, the appellant must show that the decision of the Disciplinary Tribunal proceeded on a wrong principle, failed to take into account relevant considerations, took into account irrelevant considerations or was plainly wrong.

New evidence submitted on appeal

3. Ms Qiu filed, with her written submissions on appeal, some medical evidence relating to an operation and other tests which had been carried out in December 2015, February 2016 and further follow-up attendances in February, March and September 2016 and September 2017.
4. Mr Moon objected to the introduction of this evidence on the basis that it was not "new evidence" (it was available to Ms Qiu at the time of the Disciplinary Tribunal hearing) and that, in any event, it did not address the impact on Ms Qiu's health of publication of the Disciplinary Tribunal's decision and could not therefore assist in determining the issue on appeal.
5. Ms Qiu stated in the course of the hearing before us that she made a deliberate decision at the time of the hearing before the Disciplinary Tribunal not to produce the evidence which she now seeks to adduce on this appeal. Her reason for that was that the medical evidence was of a sensitive and personal nature which she did not wish to produce to the Disciplinary Tribunal. That was so notwithstanding indications by the Disciplinary Tribunal that it was willing to suppress publication of medical evidence produced by Ms Qiu at the hearing.
6. We decline to grant leave allowing the further medical evidence which Ms Qiu has sought to rely on. It is not "new evidence" and Ms Qiu made a deliberate decision not to adduce it before the Disciplinary Tribunal.
7. In addition, we agree, having read the further medical evidence, that it is of no material assistance in resolving the sole issue in this appeal, namely whether the Disciplinary Tribunal was wrong to order publication of Ms Qiu's name and location.

Although the evidence may be material to explaining the conduct which gave rise to the charges and may also be relevant to penalty, we do not consider evidence of medical procedures and operations in the period up until September 2017 to have any material bearing on the issue for determination in this appeal.

Grounds of appeal

8. Ms Qiu, in her written and oral submissions in support of the appeal, put forward various matters which, in her submission, meant that the public interest in publishing her name and location was outweighed by the effect on her personally (and members of her family) of publication of those details. We summarise those grounds as follows:
 - (a) The conduct which gave rise to the charges (which were admitted by Ms Qiu) was at the lower end of the scale.
 - (b) Publication would bring shame to her, particularly within the Chinese community, and might cause damage to her reputation and therefore her business.
 - (c) She has suffered from bouts of depression as a result of her various health issues and, although she could not say that she would do "something stupid" if her name and location were published, there was a risk that her mental health would be affected including, possibly, suicidal thoughts.
 - (d) She had learned from her mistakes and there was little likelihood that she would repeat the mistakes which gave rise to the charges in this case again.
9. The above grounds of the appeal were raised as arguments against publication of Ms Qiu's name and location in the hearing before the Disciplinary Tribunal. Ms Qiu, in the hearing before us, said that, because she had counsel representing her at the hearing before the Disciplinary Tribunal, she felt unable to make some points which she would have liked to make. She pointed out that her counsel, who was also a friend, had only become involved at a very late stage.
10. Whilst the submissions on the question of publication of name and location were relatively brief, we are satisfied that Ms Qiu had full opportunity to call any evidence she wished to and to make submissions in support of her case. The basic grounds upon which it was argued that publication of name and location should not be ordered were clearly put to the Disciplinary Tribunal.
11. We comment briefly on the grounds put forward by Ms Qiu before us as follows:

- (a) **Conduct at lower end of the scale**---Whilst we accept that the conduct which gave rise to the charges was at the lower end of the scale, it was nonetheless a significant breach of her obligations both to her client and to the Institute when investigating the complaint. The conduct complained of exhibited repeated failures to comply with her obligations both to her former client and to the Professional Conduct Committee.

Ms Qiu had the opportunity to agree to a consent order which, if agreed to, would have meant that her name and location would not have been published. Her failure to comply with the time limit for accepting the terms of the consent order was unexplained and was symptomatic of the dilatory approach adopted by Ms Qiu throughout the process which gave rise to the hearing before the Disciplinary Tribunal. We place no significance on the fact that, if Ms Qiu had accepted the terms of the consent order, publication of her name and location would not have occurred.

- (b) **Effect on Reputation**-- Publication of a practitioner's name inevitably has an effect on the practitioner's reputation. That is not, in itself, a reason for not ordering publication.

Unless there are special circumstances which mean that the detrimental effect of publication would be wholly disproportionate to the nature of the conduct which gave rise to the charges, we do not consider that detrimental effects on the practitioner's reputation is sufficient to outweigh the public interest in publication. We are not satisfied that there is any such disproportionate effect in this case.

- (c) **Effect on Mental Health**-- Ms Qiu's submissions as to the possible effect of publication on her mental health were not supported by any independent evidence. Ms Qiu herself was unable to say what the effect on her would be other than to assert that she was concerned about the effect on her mental health and did not know how she would deal with the effect of publication on her.

Ms Qiu confirmed before us that she was not currently seeking any professional assistance in respect of issues with depression and that, when she felt depressed, her normal practise was self-help and reaching out to friends in order to deal with any issues of depression that she felt from time to time. We would require compelling evidence of a highly prejudicial effect on the member's health (physical or mental) in considering whether the prejudicial effect on the member's health outweighed the public interest in

publication of the member's name and location. There is no such evidence in this case.

- (d) **Ms Qiu has learned from her mistakes** — We accept that Ms Qiu is sorry for the conduct which gave rise to the charges in this case. We also accept that she is unlikely to repeat the same mistakes. We do not, however, regard this as being of any material relevance to the question of whether her name and location should be published. Remorse and genuine learning from mistakes may well go to issues of penalty but, absent some special circumstances, are of little relevance to the question of whether the member's name and location should be published.

Conclusion

12. We have carefully considered the submissions of Ms Qiu and have read the transcript of submissions made at the Disciplinary Tribunal and the decision of the Tribunal. In our view the decision of the Disciplinary Tribunal as to publication was fully open to it on the evidence before it. We do not see any basis upon which the Appeals Council should interfere with that decision. The appeal is dismissed. The order of the Disciplinary Tribunal as to publication of the member's name and location stands.

Costs of the hearing

13. Ms Qiu put forward no reasons why the Appeals Council should depart from its normal practice of awarding full costs of the appeal in the event an appeal was unsuccessful. We therefore order Ms Qiu to pay the full costs of the appeal to the Institute. If there is any issue as to the amount of those costs leave is granted to make further submissions as to the precise amount of the costs.

Dated this 21st day of May 2018.


L J Taylor QC
Chairman
Appeals Council