

BEFORE HER MAJESTY
QUEEN ELIZABETH THE SECOND
IN COUNCIL

Appeal Number **3 / 2003**

UNDER New Zealand (Appeals to the Privy Council)
Order 1910

AND Judicial Committee (General Appellate Jurisdiction)
Rules 1982

IN THE MATTER OF a decision, numbered CA 174/01, of the 4th March
2002, of the Court of Appeal of New Zealand

BETWEEN MILES ROGER WISLANG
Appellant

AND MEDICAL COUNCIL OF NEW ZEALAND
First Respondent

AND MEDICAL PRACTITIONERS DISCIPLINARY
TRIBUNAL
Second Respondent

AND COMPLAINTS ASSESSMENT COMMITTEE
OF THE MEDICAL COUNCIL OF
NEW ZEALAND
Third Respondent

PETITION OF APPEAL

Dated 25th July 2003

brought by Miles Roger Wislang, appellant-in-person,
whose address and address for service is
38 Glengarry Avenue, Manly, Whangaparaoa,
Auckland, New Zealand

PETITION OF APPEAL

Your humble subject Miles Roger Wislang, unemployed medical practitioner of 38 Glengarry Avenue, Manly, Whangaparaoa, New Zealand, prays that Your Most Excellent Majesty may, upon the recommendation of the honourable Lord Justices of the Judicial Committee of Your Majesty's Privy Council, by Order in Council graciously set aside or vary the judgment numbered CA 174/01, dated 4th March 2002, of the Court of Appeal of New Zealand, which judgment has refused me judicial review of decisions of the Medical Practitioners Disciplinary Tribunal and the Medical Council of New Zealand.

The principal steps in the proceedings leading up to this appeal, from the commencement thereof down to the admission of this appeal, in chronological order as conducted before

1. The Complaints Assessment Committee of the
Medical Council of New Zealand
2. The Medical Practitioners Disciplinary Tribunal
3. The Medical Council of New Zealand
4. The High Court of New Zealand
5. The Court of Appeal of New Zealand

are as follows.

1. Proceedings before the Complaints Assessment Committee

- 1.1 By letter of 16 September 1998 I was informed by the Medical Council of New Zealand (“the Council”) that a patient of mine had, under s83 of the Medical Practitioners Act 1995 (“the Act”), made a complaint to the Council claiming incompetence and lack of informed consent in respect of surgical treatment I had carried out for him, beginning in 1996, and that at material times I had not been the holder of a current practising certificate.
- 1.2 The complaint was referred by the Council to its Complaints Assessment Committee (“the Committee”) which, after hearing me in person on 23 February 1999, determined the complaint.
- 1.3 The Committee found that in respect of the competence and informed consent issues, the complaint was unsustainable. However, at the hearing by the Committee, I admitted my default in respect of non-renewal of my practising certificate.
- 1.4 On 21 May 1999 the Committee laid, under s 102 of the Act, a charge against me before the Medical Practitioners Disciplinary Tribunal (“the Tribunal”), of practising without a practising certificate. The charge included the statement that, under the Act, such practicing amounted to professional misconduct.

2. Proceedings before the Medical Practitioners Disciplinary Tribunal

- 2.1 On being informed of the charge against me I pleaded guilty to it, and requested that the Tribunal allow me to make written and/or oral submissions in respect of penalty.
- 2.2 The Tribunal accepted my guilty plea and requested me to make oral submissions as to penalty at a hearing it set down for 16 September 1999.

- 2.3 On 4 September 1999, whilst awaiting the hearing for determination of penalty, I was informed by the Tribunal that counsel for the Committee, who was to have prosecuted the charge I had pleaded guilty to, had laid an “amended charge” against me which claimed a further breach under the Act consequential to my having practised without a practicing certificate.
- 2.4 Pre-hearing, I entered no plea to the amended charge.
- 2.5 By its letter, the Tribunal also informed me that it had deferred the hearing set down for 16 September 1999 until 7 October 1999 to give me time to consider and perhaps seek counsel concerning the amended charge.
- 2.6 The hearing of 7 October 1999, at which I represented myself, was adjourned after the taking of submissions and evidence on its first day, with the Tribunal imposing a temporary suspension of my medical registration pending resumption of the hearing on 11 November 1999.
- 2.7 During the adjournment of the hearing, I made written submissions to the Tribunal that the amended charge it was entertaining was an invalid one. After taking a legal assessor’s opinion on the matter, before the resumed hearing of 11 November 1999 the Tribunal dropped the amended charge and restored the original charge to which I had pleaded guilty.
- 2.8. At the conclusion of the resumed hearing the Tribunal delivered an oral decision including the penalties of censure, a fine of \$8,500 and a two month suspension of my medical registration, and an award of costs against me in the proportion of 35 percent of the costs, as then not yet assessed, of the proceedings before the Committee and the Tribunal.
- 2.9 On 16 November 1999 the Tribunal issued the first of its two written decisions in the proceedings, an Interim Decision which simply confirmed the oral decision of the Tribunal.

- 2.10 On 10 December 1999 the Tribunal issued its Supplementary Decision which included the Tribunal's reasons and the calculated sum of the costs of the proceedings.
- 2.11 The Supplementary Decision claimed, as reason for suspension of my medical registration, a finding that I had demonstrated to the Tribunal "lack of insight, judgment and overall ability to organise [my] affairs".
- 2.12 Soon after issuing its Supplementary Decision, the Tribunal permanently published it in full on its official internet website.

3. Proceedings before the Medical Council of New Zealand

- 3.1 During the one-month adjournment of the hearing of the Tribunal, and again within a few days of the issuing of the Supplementary Decision of the Tribunal, the Council faxed advisory notifications of the suspension of my medical registration to all of the medical registration bodies of Great Britain, Ireland, Australia and South Africa, and to five statutory health regulatory agencies in New Zealand.
- 3.2 None of the advisory notifications by the Council cited the correct charge against me, of practicing without a practicing certificate amounting to professional misconduct, occasioning my suspension; but all of the notifications stated, incorrectly, that the suspension of my medical registration was in relation to a charge of "disgraceful conduct in a professional respect".
- 3.3 On 26 August 1999 I had applied to the Council for a practicing certificate for the year then current. On 6 March 2000 the Council informed me that the practicing certificate it would issue me with would be subject to certain conditions appearing on it.

- 3.4 Under the provisions of s53(2)(c) of the Act, I objected in writing to the placing of the proposed conditions on my practicing certificate. Oral and further written submissions against the imposing of the conditions were made by myself personally and through my counsel at a hearing before the Council on 10 August 2000.
- 3.5 The written decision of the Council, dated 20 September 2000, confirmed the imposing of the conditions on the practicing certificate the Council intended to issue, and endorsed the finding claimed by the Tribunal that I lacked insight and judgment and ability to organise my affairs.
- 3.6 In its decision the Council claimed to have additionally found by its hearing of me that my “knowledge and skills of procedures and communication and [my] attitudes is [*sic*] not of an acceptable level”.
- 3.7 Neither in their decision nor later did either the Tribunal or the Council recommend or require that I undergo review of my competence, provided for by Part V of the Act, or medical assessment of my fitness to practice, provided for by Part VII of the Act.

4. Proceedings in the High Court of New Zealand

- 4.1 On 5 February 2001 counsel on my behalf filed, in the High Court at Wellington, proceedings seeking judicial review of the decisions of the Tribunal and the Medical Council.
- 4.2 Following a full hearing on 7 and 8 June 2001, by decision CP 219/00 of Wild J, dated 21 June 2001, the High Court dismissed my application for judicial review.

5. Proceedings in the Court of Appeal of New Zealand

- 5.1 On 19 July 2001 I appealed to the Court of Appeal against the dismissal of my judicial review proceedings in the High Court. The appeal was heard on 19 and 20 February 2002.
- 5.2 By judgment CA 174/01 dated 4 March 2002, of Richardson P, Blanchard and Tipping JJ, the appeal was dismissed with costs of \$10,000 and reasonable disbursements being awarded against me.
- 5.3 On 21 March 2002 I filed notice of motion in the Court of Appeal for conditional leave to appeal to Her Majesty's Privy Council.
- 5.4 Upon a hearing of the motion on 24 April 2002, by judgment CA 174/01 dated 29 April 2002, of Richardson P, Keith and Blanchard JJ, the Court granted conditional leave to appeal, subject to the usual conditions.
- 5.5 Following the lodging of security for costs and the preparation and certification of a copy of the Record, leave to appeal was made final by judgment of Blanchard J on 18 October 2002, as certified by the registrar of the Court on 22 October 2002.

Signed by

Miles Wislang
(appellant-in-person)

at Auckland, New Zealand

on this 25th day of July 2003.