[2020] IEHC 245

THE HIGH COURT

[2020/45 IA]

BETWEEN

THE MEDICAL COUNCIL

APPLICANT

AND

A MEDICAL PRACTITIONER

RESPONDENT

[REDACTED]

JUDGMENT of Mr. Justice Brian O'Moore delivered on the 26th day of May, 2020.

1. The Intended Applicant is the Medical Council ("the Council"). The Intended Respondent ('the doctor') is a medical doctor registered with the Council. Following an Inquiry under Part 8 of the Medical Practitioners Act 2007 ("the Act of 2007"), the Fitness to Practise Committee of the Council found that certain allegations against the doctor were proven to the requisite standard, concluded that these findings amounted to professional misconduct and recommended that the doctor's registration be cancelled. On foot of this recommendation, the Council decided to cancel the doctor's registration and to prohibit the doctor from applying for the restoration of his registration for a period of ten years. On the expiry of the time period for appealing the decision of the Council, and in the absence of any such appeal by the doctor, the Council now proposes to apply pursuant to section 76 of the Act of 2007 for an Order of this Court confirming the decision of the Council to which I have referred.

2. The current application is for directions that the section 76 hearing take place either *in camera* or in an anonymised fashion.

3. While the Act of 2007 does not provide for a hearing other than in public of an application under section 76, it is firmly established that the Court has a power at common law to hear such a matter either in camera or in an anonymised way. *In Medical Council v. T.M*. [2017] IEHC 548 Kelly P. found that such a power existed, in accordance with the decision of the Supreme Court in *Gilchrist and Rogers v. Sunday Newspapers Ltd* [2017] IESC 18. In Medical Council v. Anonymous [2019] IEHC 109, Kelly P. provided a helpful indication as to how the Court might approach applying the principles set down in *Gilchrist* in the context of an application under section 76 of the Act of 2007. At paragraphs 26 and 27 of the judgment Kelly P. held:-

> "26. This application for an in camera hearing must be viewed in the light of those comments. I must also take into account that the legislature gave consideration in the Act to hearings being conducted by this court otherwise than in public but expressly confined such an ability to applications to suspend under s.60 of the Act. It is thus not unreasonable to conclude that the intention of the legislature by implication was in favour of applications under s.76 being heard in public.
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> 27. In the light of these considerations I now consider the Council's application. I must approach the application with resolute scepticism of its claim which seeks to have me depart from a full hearing in public. I must be sure that the interests involved

are very clear and that the circumstances are pressing. I must be satisfied that there is no other measure sufficient to protect the legitimate interests involved. The interests involved are those of the public, the patients of the doctor and the doctor himself. Nothing more should be permitted than is demonstrated to be necessary to avoid damage to the interests involved."

4. [REDACTED]

5. If the section 76 application is heard in public, there would probably be a material prejudice caused to the doctor in the event that he was subsequently to face trial; that would particularly be the case were the decision of the Council to be confirmed by this Court. [REDACTED]

6. There is the subsidiary consideration that a witness in respect of the doctor's alleged activities requested that her evidence before the Fitness to Practise Committee be heard in private [REDACTED]. Another witness also asked that the same hearing be in private [REDACTED]. However, these considerations are secondary to my concern about the effect of a public hearing on the prosecution of the doctor.

7. I therefore find that the section 76 application should be made otherwise than in public. There remains the question of whether that hearing should be *in camera* or in an anonymised manner.

8. It is clear from the authorities opened to me that the Court should depart from a full hearing in public only to the extent necessary to avoid damage to the countervailing interests, in this case the privacy of the witnesses (inasmuch as this arises) and the compromising of any criminal prosecution.

9. A suitably anonymised hearing could protect the identity of the witnesses. The hearing could proceed on the basis of no use of the doctor's name (or his initials), no identification of persons involved in the alleged incidents which gave rise to the Inquiry, no identification of the premises or the town in which the alleged incidents occurred and no identification of the year in which the alleged incidents happened.

10. However, it would be impossible to disguise the fact that the person involved was a medical practitioner; if he was not, the proceedings under the Medical Practitioners Act would make no sense.

11. [REDACTED].

12. There is one final option, which is that the Council's application under section 76 is heard in public, but that no names are provided and that the nature of the allegations are not described in any detail. That would be the triumph of form over substance. It would not be the administration of justice in public in any meaningful way and would not represent the accommodation in a balanced way of the rights and interests involved.

13. I will make three concluding comments.

14. Firstly, the application to me was made on an *ex parte* basis. There had been difficulties, earlier in the process, in serving the doctor by post; he had not responded to emails, and had not participated in the Inquiry. While I am making an Order that the section 76 application be heard in camera, there will be liberty to apply granted to the doctor should he wish to vary that Order. In providing this facility, I am in no way suggesting that there is any good reason known to me justifying the amendment or setting aside of the Order I now make.

15. Secondly, it will be clear that my Order is based on the possibility of criminal charges being advanced against the doctor. Were this not the case, then I would have directed a hearing in which the identities of two witnesses were protected; the two relevant witnesses are those who sought to have the initial hearings before the Fitness to Practice Committee held in private. [REDACTED] However, if the names of these two witnesses could have remained private (and I am sure this could have been done) then I would have directed an otherwise public hearing of the section 76 application. Consistent with the constitutional requirement that justice be administered in public is the interest that the public has in seeing the provisions of the Medical Practitioners Act 2007 operate in a transparent way. It is unfortunate that the allegations against the doctor in this case will not be ventilated in public, whatever the outcome may be. [REDACTED].

16. Thirdly, this ruling only deals with the listing and hearing of the section 76 application.

17. I will therefore make an Order that the hearing of the intended application by the Council under section 76 of the Medical Practitioners Act 2007 proceed *in camera,* and be listed accordingly. I will reserve the costs of the *ex parte* application to the judge hearing the section 76 application. I will grant liberty to apply in respect of this Order (including my Order as to costs) to the Council and to the doctor.