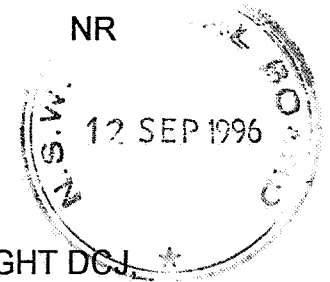


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NATURE OF JURISDICTION: MEDICAL TRIBUNAL OF
NEW SOUTH WALES - KNIGHT DCJ,
DEPUTY CHAIRPERSON

FILE NO/S: CA 40323/95

DELIVERED: 25 JUNE 1996

HEARING DATE: 12 & 13 DECEMBER 1995

PARTIES: **DE SILVA v NSW MEDICAL BOARD**

JUDGMENT OF: PRIESTLEY JA, CLARKE JA, POWELL JA

COUNSEL:

Appellant: J NEIL QC & G PRESTON
Respondent: D J HIGGS SC & R S HOLLO

SOLICITORS:

Appellant: CARROLL & KNUDSON
Respondent: SOLICITOR FOR THE NEW SOUTH
WALES MEDICAL BOARD

CATCHWORDS: Decision of Medical Tribunal - appeal on errors of
law - appeal on factual findings - estoppel in respect
of earlier findings made by tribunals - adequate
reasons for decision - disqualification for ostensible
bias

Sections 39, 63, 64, 90 and 91 of the *Medical
Practice Act 1992* - not competent to practise
medicine - insufficient mental capacity to practise
medicine

EX TEMPORE/RESERVED: RESERVED

ALLOWED/DISMISSED: DISMISSED

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THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

CA 40323/95

PRIESTLEY JA
CLARKE JA
POWELL JA

Tuesday 25 June 1996

DR W J K DE SILVA v NEW SOUTH WALES MEDICAL BOARD

In July 1994, a Professional Standards Committee, established under the Medical Practice Act 1992, found that the appellant, Dr De Silva, was not competent to practise medicine and suffered from an impairment within the meaning of s 39 of the Act. An order was made that the appellant's name be removed from the Register of Medical Practitioners for New South Wales. From that order, the appellant appealed to the Medical Tribunal. The appeal was dealt with by way of re-hearing, the issues being whether the complaints against the appellant were made out and, if so, the appropriate orders to be made. The Tribunal reached the same conclusion and made the same order as the Committee.

Dr De Silva appealed to the Court on the basis that the Medical Tribunal erred in law in; allowing amendments to the complaint and particulars, admitting evidence of and taking into account certain facts, holding that the appellant's condition came within s 39, failing to determine the case in a judicial manner, failing to give adequate reasons for the decision and failing to disqualify itself on the grounds of ostensible bias. The appellant also argued the Tribunal erred in making certain factual findings. The Court dismissed the appeal.

(5) There was neither a failure to give adequate reasons or a failure to accord the appellant a fair hearing or to deliver a judicially reasoned judgment: *Soulemezis v Dudley (Holdings) Pty Limited* [1987] 10 NSWLR 247.

(6) Where a judge has not previously considered the credibility of witnesses, or in any other way pre judged any of the issues with which the hearing is concerned, then, unless there are reasons disassociated from any prior hearing why a judge may be thought to be prejudiced, it is difficult to find a basis upon which it could be held that a person might reasonably apprehend that the judge *was biased*. *The appellant here has not satisfied the test: Australian National Industries Limited v Spedley Securities Limited (In Liq)* [1992] 26 NSWLR 411.

Orders

Appeal dismissed with costs.

THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

CA 40323/95

PRIESTLEY JA
CLARKE JA
POWELL JA

Tuesday, 25 June 1996

DR W J K DE SILVA v NEW SOUTH WALES MEDICAL BOARD

PRIESTLEY JA: I agree with Clarke JA.

THE SUPREME COURT OF
NEW SOUTH WALES
COURT OF APPEAL

CA 40323/95

PRIESTLEY JA
CLARKE JA
POWELL JA

Tuesday 25 June 1996

DR W J K DE SILVA v NEW SOUTH WALES MEDICAL BOARD

JUDGMENT

CLARKE JA: Dr W J K De Silva (the appellant) has appealed from a decision of the medical tribunal dismissing an appeal to it against the findings and recommendations of a professional standards committee and against the order of the Chairperson of the Tribunal made in accordance with such recommendation that the appellant's name be removed from the Register of Medical Practitioners for the State of New South Wales.

The immediate background to the appeal to the Medical Tribunal was as follows:

A Professional Standards Committee was established under the Medical Practice Act 1992 (the Act) to investigate two complaints against the appellant which read:

- (1) That Dr De Silva was not competent to practise medicine within the meaning of s 39 of the Act; and/or
- (2) Dr De Silva suffers from an impairment as referred to in s 39 of the Act.

On 22 July 1994 the Professional Standards Committee found both of the complaints proved, made a finding that the appellant did not have sufficient

4. In holding that the Appellant's paranoid personality disorder together with excitable temperament came within the definition of insufficient mental capacity to practice medicine in s 39 of the Act.
5. Failure to determine the case in a judicial manner in:
 - (a) making findings against the Appellant before considering his case;
 - (b) failing to make any or any adequate assessment of the evidence or demeanour of the Appellant;
6. Failure to give adequate reasons for the decision.
7. In holding that the Appellant's historical and/or current position was that he had never made a mistake in that the evidence was not capable of supporting such a finding.
8. The finding that the Appellant suffers from brief psychotic episodes requiring removal from the Register was not part of the case alleged against him and not foreshadowed as a finding and the Appellant was therefore denied procedural fairness.
9. Finding that in relation to patients in the future the Appellant may well resort to physical violence in that the evidence was not capable of supporting such a finding.
10. Failure to disqualify itself on the grounds of ostensible bias in that:
 - (a) the same members of the Tribunal determined the stay application on 29 and 30 September 1994;
 - (b) the reserved Reasons for Decision of the Tribunal by themselves or combined with (a) show ostensible bias.

Facts

11. The Tribunal erred in making the following findings:
 - (i) That the Appellant lacked sufficient mental capacity to practice medicine within s 39 of the Act;
 - (ii) That the Appellant suffered an impairment within s 39 of the Act;
 - (iii) The findings as to reactions to fellow doctors and medical staff;
 - (iv) The findings as to relations with patients;

Nature of Appeal

An appeal from the Tribunal is provided for in s 90(1) of the Act which reads:

"A person about whom a complaint is referred to the Tribunal, or the complainant, may appeal to the Supreme Court against:

- (a) A decision of the Tribunal with respect to a point of law; or
- (b) The exercise of any power by the Tribunal under Division 4 (Disciplinary Powers of Committees and Tribunal) of Part 4."

By s 91 the Court determining the appeal may dismiss it or make such order as it thinks `proper having regard to the merits of the case and the public welfare, and in doing so may exercise any one or more of the powers of the Tribunal under the Act.

Division 4 of Part 4 of the Act contains a number of sections providing for the powers of, in some instances, the Committee and the Tribunal and, in other instances, either the Committee or the Tribunal. The exercise of these powers is conditioned, pursuant to s 60, upon a finding that the subject matter of a complaint had been proved or, alternatively, the medical practitioner who is the subject of a complaint admitting to it in writing to the relevant body.

The powers granted under s 61, which include the power to caution or reprimand a medical practitioner or to make orders of a supervisory nature, and s 62, which contains a power to fine, may be exercised by either a committee or the Tribunal. Section 63 (1) and (2) contain powers vested solely in a committee. Those sub-sections read:

"63(1) A Committee may recommend that a person be suspended from practising medicine for a specified period or that a person be deregistered if the Committee is satisfied (when it finds one complaint about the person) that the person does not have sufficient physical and mental capacity to practise medicine.

moment whether findings of fact grounding the exercise of the power may be challenged.

The appellant submits that an appeal under s 91(1) against the exercise of a power is an appeal in the fullest sense, ie a hearing de novo or, alternatively, at least an appeal as to the facts governed by the ordinary principles applying to such appeals. Insofar as he perceived that the decision of this Court in *Bannister v Walton* (1993) 30 NSWLR 699 was contrary to that view he challenges that decision. Alternatively he submits that he is entitled to challenge conclusions on a number of factual issues which may not have been strictly relevant to a finding on the complaint but which may have been of significance in determining what was the appropriate order to be made. The decision to which the appellant's counsel referred concerned s 32U of the *Medical Practitioners Act* 1938. However, as subsection (1) of that section is not materially different from s 90(1) of the Act it would seem to me that, subject to *any considerations arising from other substantive provisions in the Act*, the decision is directly in point.

In that case Priestley JA said, at 734:

"The Act gives the Tribunal, not this Court the task of finding the facts in cases such as the present. ... The tribunal in the present case did its task with great thoroughness. This Court's task, in turn, is to consider the appeal against the decision that the complaints against Dr Bannister were proved and decide whether that decision could and should be set aside for error of law, and to consider the appeal against the orders made to see whether, in regard to the complaints found proved, the tribunal acted on some wrong basis such that the orders should be set aside or varied.

On this basis the first questions to consider are whether the Tribunal's factual decisions were affected by any errors with respect to a point of law. I agree with and adopt Mahoney JA's analysis of the submissions alleging such errors. His analysis seems to me to show quite clearly that those submissions should not be accepted.

in substitution, for the evidence received at the enquiry, may be given". The scheme appears to be straightforward. An appeal from the decision of a Committee is to be by way of re-hearing and may constitute a hearing de novo. On the other hand an appeal to this Court from the decision of a Tribunal is regulated much more strictly by s 90. Accordingly, I see no reason to alter the opinion I expressed in Bannister. (See also McBride v Walton, New South Wales Court of Appeal, 15 July 1994, unreported, per Handley JA, p 4.)

It follows from these conclusions that it is not open to the appellant to challenge any of the decisions of fact leading to the ultimate conclusion by the Tribunal that the subject matter of the complaints had been made out. In some instances the Tribunal publishes its finding as to whether the complaint has been proved before embarking upon an enquiry as to the appropriate order to be made. In those circumstances it would seem clear to me that the initial finding could be challenged only on a point of law while a challenge to any additional factual findings made during the subsequent hearing which were relevant only to the enquiry as to the order to be made would be open. Further as Priestley JA

said in Bannister (at 734):

" ... the right of appeal given by s 32U(1)(b) (cf s 90(1)(b)) is limited to a right to appeal against the exercise of the power under s 32R and does not extend to questioning the acceptance by the Tribunal of the facts comprising proof of the complaint."

This conclusion is not unimportant in the present case for virtually all the findings of fact preceded and substantially grounded the finding that the complaints had been proved. The only factual findings which were made subsequent to that conclusion were that the Tribunal was not satisfied that

and by Clause (3) it is said:

"A person is considered to suffer from an impairment if the person suffers from any physical or mental impairment, disability, condition or disorder which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise medicine. Habitual drunkenness or addiction to a deleterious drug is considered to be a physical and mental disorder."

The essence of the complaints was that the appellant suffered from a paranoid personality disorder and/or an obsessive/compulsive disorder and as a consequence was unable to form reasonable relations with colleagues and other medical and para medical professionals, was unable to communicate properly with those persons and lacked patient management skills.

Complaints about the appellant were not new. In 1982 an inquiry was held by the New South Wales Medical Board under s 30 of the Medical Practitioners' Act 1938 for the purpose of considering the capacity of the appellant to practise medicine. The Board then determined that the appellant was competent to practise under certain conditions and he was required to continue to receive treatment from a specialist of his choice, who was required to report to the Board. He was also required to attend for examination by a psychiatrist appointed by the Board.

On 16 February 1983 there was yet a further enquiry under s 30 of the Medical Practitioners' Act 1938 and he was again found to be competent to practise medicine provided that the conditions to which I have referred were complied with.

On 18 August 1987 there was a further enquiry under s 30 of the Medical Practitioners' Act 1938. Again he was found competent to practise medicine and again he was required to comply with essentially the same conditions.

Grounds of Appeal

Ground 1 - Amendment to Complaint and Particulars

I have already recited the relevant particulars in the original complaint. Prior to the hearing of the appeal before the Tribunal fresh particulars described as 'amended particulars' were filed which covered about 12 pages and extended far beyond the original particulars although they continued to include complaints that the appellant suffered an impairment and was not competent to practise medicine. Many of these complaints were withdrawn and although a few survived to be the subject of adverse findings against the appellant his counsel submitted that the wider case had to be fought and that the Tribunal was in error in allowing the complainant to rely upon the amended grounds. In essence Mr Neil QC, senior counsel for the appellant, submitted that the Tribunal committed an error in law in permitting the amendment to the particulars and the admission of consequential evidence relating to allegations not presented before the Professional Standards Committee. In discussion the error of law was described as the allowing of what was, in substance, a new case to be brought before the Tribunal.

My fundamental difficulty with the submission is that, although the complainant asserts that he was forced to contest many claims which were not ultimately pressed, he does not assert that he was unable to deal with the case that was brought nor does he assert that the findings ultimately made were not within the broad ambit of the original complaint. Having regard to cl 3 of Schedule 2 of the Act which allows the bringing of additional complaints and s 87(4) which deals with the admission of fresh evidence on the appeal, and in

Some months after arriving in Australia he consulted Dr C B Degotardi, a specialist psychiatrist, and continued to see him until approximately 1975. ... Thereafter Dr De Silva didn't see a psychiatrist until he saw Dr Shute in December 1981.

In 1975 Dr De Silva was appointed as a Visiting Medical Officer in neurology at Concord General Hospital and retained that appointment until 1978 when he was not reappointed. He also lost his appointment at Lidcombe Hospital in about 1978.

Subsequent in approximately 1978 he was appointed as a Visiting Medical Officer in Neurology at Campbelltown and Camden Hospitals and also at Wollongong Hospital.

The Appellant used to attend neurological meetings at Westmead Hospital and on 14 October 1981 was told by Dr Morris, a neurologist at that hospital, not to speak at any future meetings. This caused great distress to Dr De Silva, and shortly thereafter he damaged his car as a result of this distress.

On 26 October 1981 he indecently exposed himself to three young girls. This charge led to him seeing Dr R M Shute, a consultant psychiatrist, in December 1981.

... Dr De Silva said that he was most extremely distressed by the instruction given to him by Dr Morris and that he couldn't remember his actions in relation to the girls after he had asked their names in the street."

Shortly thereafter the 1982 enquiry was held which culminated in the determination that he could continue to practise subject to the conditions I mentioned. The psychiatrist then nominated by the Board was Dr J Ellard or his nominee.

The further enquiry held in February 1983 concluded that:

- "1. Dr De Silva was in the past and had been for a long period of time subject to psychiatric disturbances;
2. There was evidence that in the past he had had psychotic episodes;
3. For a period of time following an occurrence at the Westmead Centre Dr De Silva's psychiatric disturbance, whatever it was, was such that he was unfit to practise; and

"Reflecting on all the material I have, I think it more probable than not that Dr De Silva has a chronic delusional disorder, but I cannot prove it.

If one accepts that he has, it does not establish that he is incapable of practice, for delusional symptoms can be encapsulated and have very circumscribed effect on a person's behaviour. Nevertheless, in one sense the onus of proof would be to establish that the delusions were as encapsulated as that and having no effect on general behaviour, for generally delusions bespeak considerable psychological disorder.

In short, he has a serious mixed personality disorder and is defensive and hostile. He has no capacity to see that some of his misfortunes are the product of his own behaviour. Once more the structure of his personality disorder is consistent with it being part of a major psychosis.

It seems to me that the probability is that Dr De Silva lacks the mental capacity to practise medicine. To come to the opposite view, the Professional Standards Committee would need to establish to its satisfaction two things. Firstly, it would need to establish that his technical neurology (if I may put it that way) is adequate. To the best of my belief that has never been questioned.

Secondly, it would need to satisfy itself that his personality problems do not substantially impede his communications with patients and further that they do not prejudice his ability to undertake their care, recognising that very often in these days the care of patients involves communication with other medical professionals."

In their written submissions counsel for the appellant point out that objection was unsuccessfully taken to the admission of evidence pre-dating the 1989 enquiry and that it was submitted that the real enquiry was whether or not there had been any change to the situation since 1989 that really warranted the de-registration of the appellant. It was then submitted that the various prior findings, including the one in 1989 in proceedings between the same parties, constituted an estoppel or, alternatively, that the Tribunal ought not to have made findings of fact inconsistent with the findings of a properly constituted prior tribunal. It was then said that the Tribunal should not have made such findings in respect to any events prior to Dr Ellard's report of 14 July 1992, which was the

make him unfit. But they each recognised the prospect that circumstances might change and for this reason imposed the stringent conditions already mentioned. One way of putting the issue with which the Tribunal was concerned, therefore, was whether, having regard to the underlying condition and its effect on the appellant in the past, the situation had now been reached where no longer could it safely be said that he was able to prevent the effects of his disorder intruding into his medical practice. An examination of this question could not properly have been carried out without the full picture and that necessarily included the events of 1989.

Secondly the Tribunal was, in a sense, determining whether there had been deterioration. This once again required knowledge of the situation prior to, and at the time of, the last determination.

Thirdly, in at least one of the Tribunal's decisions, it was recognised that at a stage prior to that determination the appellant had been unfit to practise. This was a finding which makes it obvious that the ultimate determination was extremely limited in its effect so far as any estoppel could operate. In summary, the Tribunal was faced with a difficult question whether by the time of its hearing the effects of the appellant's disorder had (to use a word adopted by counsel for the appellant) spilled over into his medical practice. Such enquiry, to my mind, could not realistically be conducted on any narrow basis but required an investigation into the appellant's underlying disorder and the extent to which it had over many years intruded into his practice in order to determine whether by 1994 the situation had been reached where he was no longer fit to practise.

There is a further, equally fundamental, problem with the appellant's submissions. The appellant does not submit that the ultimate conclusion of the

had written to other practitioners concerning patients and expressed the opinion that the notes revealed that the appellant's disorder was spilling over into his relations with other practitioners. Even the most cursory reading of those notes would show that expression of opinion was totally justified and was relevant. The Tribunal did not, however, take that matter further than the expression of opinion I have set out.

The appellant also complained about the manner in which the Tribunal dealt with an incident at his brother's home in November 1980. That incident occurred a long, long time ago and, according to the appellant, should not have been brought up in the proceedings nor should the Tribunal have made any finding in relation to it. The difficulty with the submission is that the Tribunal merely referred to that particular event in seeking better to understand the way in which the appellant's disorder might affect him. Ultimately all that the Tribunal said about the incident was that it was "yet another example of Dr De Silva's over reaction and indicates the widespread potential effects of his paranoid personality disorder". Many other incidents were referred to by the Tribunal but it is not necessary to advert to them. The appeal is, as I have said, limited to errors of law and the only possible errors identified were encapsulated within the expressions of 'estoppel' and 'procedural fairness'. I have already referred to the difficulty in raising an estoppel in the light of the nature of the complaint and nothing about the way in which the case was contested has demonstrated that the appellant was denied a full opportunity to deal with the various grounds of complaint the subject of evidence before the Tribunal.

While the wide reach of the enquiry necessarily meant that it was lengthy neither that fact nor the existence of the earlier determinations lead to the

The complaint, which is related to the methodology adopted by the Tribunal, was a general one and it did not descend into detail. In short counsel submitted that the lengthy analysis of the particulars of the complaints by the Tribunal as compared with the summary way in which the appellant's own case was dealt with demonstrated a failure fairly to try the issues.

There are, of course, no fixed rules as to the manner in which a court or tribunal expresses its judgment. The Tribunal is bound to give reasons (*Soulemezis v Dudley (Holdings) Pty Limited* [1987] 10 NSWLR 247, particularly at 273). In formulating the reasons it is incumbent upon the Tribunal to make it clear why it is that it reached its conclusion that the order it made should in fact be made. Pausing there, there can be no doubt, in my opinion, that the Tribunal complied with that duty.

Obviously enough a Tribunal should attend to all the evidence given and should reach its conclusions upon the basis of the evidence which it finds acceptable. It is not necessary in every case for the Tribunal to say expressly that it finds the evidence of witness A or witness B to be acceptable. In some cases that might be necessary. In others it may be sufficient if the text of the reasons indicates clearly what evidence is accepted, the effect of that evidence and the conclusion resulting from the acceptance of that evidence. In the way the case was contested before the Tribunal it was, I think, inevitable that it would be necessary for it to traverse in detail the grounds of the complaints against the appellant. The critical issue was not whether he had a disorder. That was accepted although the precise nature of the disorder was in question and was dealt with by the Tribunal. The real conflict between the parties was whether the disorder suffered by the appellant had intruded into his practise of medicine to

The Tribunal considered that this answer demonstrated that what he was alleged to have said to the three doctors was correct and the Tribunal went on to express its view that such an attitude was a dangerous one.

There was clearly evidence to support the Tribunal's conclusion that the appellant said that he had never made a mistake and I find it difficult to understand how it could be suggested that the question and answer did not tend to support the evidence which had been given to the extent that it suggested that he considered himself to be a person who did not make mistakes. Further, the Tribunal was a specialist body which was well placed to reach a conclusion as to what attitudes of a medical practitioner may or may not be dangerous. Again I am unable to find any error of law in this aspect of the Tribunal's judgment.

Ground 8 - The finding that the appellant suffers from brief psychotic episodes requiring removal from the Register was not part of the case alleged against him and not foreshadowed as a finding.

This is a complaint of a denial of procedural fairness. Mr Neil made no oral submissions about this ground. But in his written submissions he pointed out that the Tribunal quoted a lengthy passage under the heading "Associated Features and Disorders" from page 635 of Diagnostic and Statistical Manual of Mental Disorders, 4th ed (DSM-IX), finishing with reference to the statement "Particularly in response to stress individuals with this disorder may experience very brief psychotic episodes (lasting minutes to hours)". He also pointed out that the Tribunal found that the appellant did experience those episodes and was not competent to- practise medicine during them. In addition it stated that it knew of no effective way to protect patients from the appellant during those episodes other than his complete removal from the Register.

and, if it did, whether that power should be exercised. Judge Knight concluded that the Tribunal had no power to grant the application but went on to say that:

"The Tribunal also held, even if it had possessed the power to grant the application, it would not have granted the application."

Following that determination the appellant learned that the Tribunal was to be constituted for the hearing of the appeal in the same way as it had been constituted on the stay application. He sought judicial review from this court, apparently on the basis that he entertained a reasonable apprehension that the Tribunal might not approach the resolution of the appeal with that impartiality which is the hallmark of justice in this country. The grounds of his apprehension were the statements, or some of the statements, made by Judge Knight in his judgment. In particular the following passages were the subject of complaint:

"As the question whether the Tribunal has the power to grant a stay is one of law my decision on it is the decision of the Tribunal (s 154(1)) and requires that the application be refused. However, the Tribunal heard evidence and full argument as to whether the stay ought be granted and in deference to those arguments and in case I am wrong as to the absence of power to grant a stay I will set out my reasons in relation to the question as to whether a stay ought to have been granted.

Furthermore, Dr De Silva knew the nature of the complaints against him and he must be taken to have realised that his behaviour during the course of the enquiry being conducted by a specialist tribunal would be a matter which that tribunal would be likely to take into account. It, therefore, seems to me that there was no procedural unfairness in the committee not specifically drawing Dr De Silva's attention to the fact that it would take his behaviour into account in making its findings.

On the uncontradicted evidence at present before the Tribunal (see para 4 of Dr Ellard's affidavit of 23 September 1994) Dr De Silva is not fit to practise as a medical practitioner. Therefore, I do not accept that to allow Dr De Silva to remain on the Register even for 19 days would involve no or minimal risk to the public but to the contrary to consider on such evidence that his continuing to practise would pose a danger to the public."

not be regarded as having formed any view as to the matters the subject of the ultimate appeal. The determination of those matters will depend on the evidence then placed before the Tribunal."

In the light of those observations the Court declined to interfere and

Kirby P concluded by saying:

It will be for the Tribunal, considering all the circumstances including the apprehension which Dr De Silva has voiced, to decide whether or not it will reconstitute but that is a matter for it and I would not provide the relief to interfere with its determination."

The hearing of the appeal then commenced on 3 April 1995 and at the start the appellant made a submission to the Tribunal that it reconstitute because the Tribunal which heard the stay application was affected by ostensible bias. In his judgment dismissing this application Knight DCJ said:

"Although the Tribunal was required for the purposes of the stay application to determine whether there was a risk to the public if the appellant were to be restored to the Register pending the hearing of the appeal, such determination was made on the evidence then placed before the Tribunal, and that evidence was all one way. There was no evidence placed before the Tribunal on behalf of Dr De Silva, nor was the evidence placed before the Tribunal on behalf of the Board, the subject of challenge by Dr De Silva by way of cross-examination. It would, in my view, have been perverse of the Tribunal to have come to any conclusion other than that which it did on the evidence which was then placed before it.

It is also of importance to note that Dr De Silva gave no oral evidence himself on the stay application. Thus no question arises of any assessment by the Tribunal of Dr De Silva as to his credit nor is there any question of the rejection of evidence placed before the Tribunal on Dr De Silva's behalf as to his mental competence."

His Honour then went on to point out that the hearing before the tribunal was by way of re-hearing with either party having a right to adduce fresh evidence.

The appellant now asks this Court to take the step which he submits the Tribunal should have taken at the commencement of the hearing. Subject to one matter to which I will come, the appellant adds no further reasons to those

issues. The written submissions, which were supplemented by short oral submissions, lacked precision and directed attention to the generality of the reasons rather than their detail. As it seemed to me what Mr Neil was saying was that any objective person reading the reasons would have found that they were so heavily weighted against the appellant that that reader would have concluded that the Tribunal may possibly not have given the appellant a fair trial and may well have set out from the start to dismiss the appeal. In a sense this is a repetition of an earlier ground, but from whatever angle it is considered I would reject it for in my opinion it would not be reasonable to conclude that a reading of the Tribunal's judgment could give rise to a perception of possible bias whether the reader was ignorant of what had gone before or had been informed of all the previous decisions identified in these reasons. I would reject this ground of appeal.

Facts

In this case the Tribunal devoted virtually the whole of its reasons to a consideration of the question whether the complaints had been made out and, if so, whether the appellant was competent to practise. That is not surprising for the nature of the complaints was such that once it had been held that they had been made out, and that the appellant was therefore incompetent to practise, it followed, almost as night follows day, that the appellant's name should be removed from the Register. The jurisdiction exercised by the Tribunal is, as has been said many times, protective of the public and that protection could hardly be provided were the Tribunal to rule that a person who had been found incompetent to practise medicine was to be allowed to remain on the Register.

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

CA 40323/95

PRIESTLEY JA
CLARKE JA
POWELL JA

25 June 1996

DE SILVA v. NEW SOUTH WALES MEDICAL BOARD

JUDGMENT

POWELL JA: I agree with Clarke JA.