

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2010] NZLCDT 33
LCD 005/2010

IN THE MATTER

of Section 42 of the
Lawyers and Conveyancers Act 2006

AND IN THE MATTER

of an Appeal by **MICHAEL
RICHARD DEXTER GUEST** of
7 Roxburgh Street, Opoho, Dunedin
against a decision of the New
Zealand Law Society dated
26 February 2010 to decline to
issue him a practicing certificate

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr S Grieve QC

Ms T Kennedy

Dr I McAndrew

Mr P Radich

DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL AS TO COSTS

[1] The appellant Mr M R D Guest appealed a decision of the New Zealand Law Society dated 26 February 2010 to decline to issue him a practising certificate as a lawyer.

[2] The appellant was unsuccessful in his appeal. The Law Society, as a consequence, has sought to recover its costs or part of them from the appellant. Submissions have been made by both parties. The costs of the Society were claimed as \$34,200.

[3] Mr Guest resists the order for costs. He refers to the case as a “unique” one. He points to the fact that the Society opposed his application for restoration to the roll of barristers and solicitors in 2009, but that he was successful in that application, thus he contends he was deemed a fit and proper person and thus it was important that the decision of the Law Society which declined the application on the grounds that he was not a fit and proper person, be reviewed.

[4] A further ground of opposing costs advanced by the appellant was that there was non-compliance by the Society with Regulation 7, which reads as follows:

Regulation 7

- (2) However, if the Law Society believes on reasonable grounds that there are or may be grounds for declining or refusing to issue a practising certificate, the Law Society **must** -
- (a) notify the applicant of the reason why the Law Society believes there are or may be grounds for declining or refusing the application; and
 - (b) specify a time, which must be reasonable in the circumstances, within which the applicant may respond to the notice; and

[5] This issue was not pursued at the hearing or at least no time was spent on it by the appellant because clearly there were more pressing matters to be covered.

However it is of concern to the Tribunal that the letter to the appellant dated 23 December simply read:

“Attached is a statement being a summary of the partners’ recollections received from your former employer [*Tauranga firm*].

Can you please forward any comments you may have by 12 January 2009 to be taken into account by the Board when it considers your application.”

[6] We do not consider that this clearly enunciates reasons for belief that there “are or may be grounds for declining or refusing” a practising certificate. It is somewhat concerning to the Tribunal that this is the second occasion that the Tribunal has considered an application under s.42 and on both occasions the Society had been in default of Regulation 7. However regardless of the non-compliance with Regulation 7 the subsequent de novo hearing of this matter by the Tribunal cures any such defect, as held in *H v NZ Law Society*¹.

[7] It also should be noted that Mr Guest conducted this appeal putting to the Tribunal propositions that it found simply untenable in respect of his state of knowledge at the time of the restoration hearing and significant time in the hearing was devoted to these untenable propositions by the appellant.

[8] The Tribunal has carefully weighed the submissions of both parties and consider that an award of costs ought to be made in favour of the Society against Mr Guest in the sum of \$20,000. We would also recommend to the Society that Mr Guest be given some time to meet this award of costs, i.e. three to six months.

Signed at Auckland this 13th day of October 2010

D F Clarkson
Chair

¹ *SNH v New Zealand Law Society*, NZLCDT 5 May 2009 (unreported)