

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2011] NZLCDT 35

LCDT 021/09

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006 and the Law
Practitioners Act 1982

AND

IN THE MATTER OF

THERESE ANNE SISSON
Christchurch, Lawyer

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr M Gough

Mr S Grieve QC

Mr A Lamont

HEARING held at AUCKLAND on 24 November 2011

APPEARANCES

Mr G H Nation for Canterbury Standards Committee

Practitioner in Person

DECISION ON PENALTY
OF NEW ZEALAND LAWYERS AND CONVEYANCERS TRIBUNAL

[1] Ms Sisson appears before the Tribunal following a finding in its decision of 5 July 2011, that she was guilty of two charges of professional misconduct. The Tribunal convened in Christchurch on 13 October for a penalty hearing but because of the seriousness of the situation for Ms Sisson, who faces a request by the New Zealand Law Society that she be struck off the roll of Barristers and Solicitors, we granted a final adjournment. This was dealt with more fully in our decision of 13 October 2011.

[2] Having made it clear that this was absolutely a final adjournment in this much delayed matter, Ms Sisson yet again sought an adjournment of the hearing in order to engage counsel. It was for this purpose that the 13 October hearing had been adjourned.

[3] We rejected that application because we felt unable to rely on Ms Sisson's assurances, that she would indeed engage counsel for any adjourned date, and because she had had ample opportunity to do so.

[4] Ms Sisson had been urged on numerous occasions throughout these proceedings, which had been on foot for two years, to obtain representation. However despite counsel for the Standards Committee indicating that pro bono representation could be arranged, she failed to take sufficient steps to ensure that representation occurred. The adjournment to 24 November had been clearly signalled as a final adjournment and a non-negotiable date. She has been aware since receiving the decision on 5 July that the consequences faced by her were significant but has provided no convincing evidence that she had taken proper steps to obtain representation. The disciplinary process is to be undertaken in an expeditious manner, having regard to the requirements of natural justice and we considered a further adjournment would bring that process into disrepute. There had also been considerable costs incurred to the New Zealand Law Society in the numerous delays encountered because of Ms Sisson's behaviour at previous hearings and in the numerous previous adjournment requests.

[5] It should be noted that because of the Tribunal's concern about Ms Sisson's fitness to practice, at the hearing of 13 October we made an order suspending her from practice pending the penalty hearing.

[6] The penalty hearing proceeded on 24 November at the conclusion of which we made an order striking Ms Sisson from the roll of Barristers and Solicitors, reserving our reasons which are now given in this decision.

Elements of dishonesty and breach of trust

[7] Mr Nation, for the Canterbury Standards Committee ("CSC") pointed to those portions of the substantive decision where the Tribunal had found dishonesty on Ms Sisson's part. He referred to the findings that Ms Sisson had deliberately misled the CSC and that she had breached s.66 of the Legal Services Act 2000 by invoicing her client directly without the approval of the Legal Services Agency ("LSA") or the agreement of the client. Mr Nation relied on the decision of *Bolton v Law Society*¹ and *Parlane v NZLS (Waikato Bay of Plenty Standards Committee No. 2)*.² Mr Nation submitted that where, as in this instance, there was proven dishonesty on the part of a practitioner, striking off is the only option available to the Tribunal.

[8] The Tribunal is, in accordance with the transitional provisions of the Lawyers and Conveyancers Act 2006 ("LCA") bound to impose penalty such as would have been available under the Law Practitioners Act 1982 ("LPA"). Section 112(2)(a) provides the power of strike off. However s.113 LPA provides as follows:

"113 Making of order for striking off role or suspension from practice -

- (1) Where the Tribunal finds a charge against a practitioner under any of the provisions of s.112(1) of this Act proved, it shall not make an order striking his name off the roll unless in its opinion, by reason of his conduct, he is not a fit and proper person to practice as a barrister or solicitor.
- (2) Except by consent, no order shall be made by the Tribunal either striking the name of the practitioner off the roll or suspending a practitioner for practice unless at least five members of the Tribunal are present and vote in favour of the order."

¹ [1994] 2 All E.R 486

² High Court Hamilton, CIV 2010-419-1209

[9] The professional misconduct in this case touched at the very heart of the relationship of trust between solicitor and client. In this matter Ms Sisson preferred her own interests of obtaining a higher reward for her services (and avoiding a direct tax deduction from legal aid payments) over the rights of her client to have her grant of legal aid fully utilised. As recorded in our decision of 5 July, in the course of doing so, Ms Sisson misled and confabulated to whatever extent was required to achieve her ends. We recorded in our decision how she had failed to take responsibility for her actions and instead sought to blame or attack the conduct of others in the course of the defended hearing.

[10] At the penalty hearing Ms Sisson stated that she accepted the findings of misconduct but submitted that this was a lapse which involved “one uncharacteristic isolated situation”. That submission is not only inaccurate but also minimises the seriousness of her conduct in a manner which is worrying in terms of her ability to be entrusted with clients’ affairs in future.

[11] Ms Sisson made submissions to us as to the very damaging effects of the lengthy litigation in which she and her former husband had been engaged for many years with the Department of Inland Revenue. We have no doubt that this litigation did impact seriously on Ms Sisson both personally and professionally in her ability to carry out her work, as did the very sad circumstances concerning her daughter’s illness.

However sympathy towards a practitioner’s circumstances cannot outweigh the obligation of the Tribunal to protect the public. A practitioner must be able to withstand personal pressures in order to continue properly performing his or her obligations to clients or alternatively have the ability to step aside from practice and ensure a client is properly represented by another practitioner.

[12] Ms Sisson accepts that she is so overwhelmed by the various stresses upon her at present (including two sets of bankruptcy proceedings) that she is currently unable to practice. Ms Sisson told us she had taken the opportunity, following the adjournment in October, to obtain a psychological assessment. However, this happened so belatedly that she had only a draft which she was unwilling to provide to the Tribunal at the hearing because, she said, of factual errors. She said she recognises that she needs intense psychological therapy and is unable to cope with

practice at the present time. Obtaining such professional assistance could have been viewed as a step towards rehabilitation that was a mitigating or protective step, but once again Ms Sisson failed to approach it in a proper or timely way and her refusal to show us the report meant no reliance could be placed upon it.

Ms Sisson sought a period of suspension rather than strike off. She provided to the Tribunal a number of references from fellow practitioners and clients attesting to her strong commitment as an advocate and dedication to achieving the best outcome for her client. We accept that Ms Sisson is certainly capable of advocating forcefully for her clients and undertaking good work at times. We understand that this is likely to have been at some cost to her personal life and indeed, she has gone out of her way to assist clients by attending them at home and outside office hours where this has been necessary. That is what makes it so unfortunate that she cannot be relied upon to be consistent in her care of her clients.

[13] Her unwarranted attack on her former client, the complainant in this matter, in the hearing was of serious concern because it not only evidenced a level of self-delusion still present for her, but also suggested expediency over ethics. We accept the submission of Mr Nation:

“... that when under pressure and confronted with a difficult situation, Ms Sisson will resort to dishonesty to try and extricate herself from that situation. That potential creates risks for her clients, for others in the profession she has to deal with, and for the Courts who should be able to rely on her integrity, probity, and trustworthiness.”

Previous offending

[14] Ms Sisson was found guilty of misconduct on 20 August 2008 in failing to honour an undertaking she had given to a building society. In the course of an unsuccessful appeal by Ms Sisson against that decision French J, in her decision of 7 July 2009 referred to findings of the Tribunal that Ms Sisson had failed to be “honest and upfront” with the building society.

[15] Earlier in 2004 Ms Sisson also faced a charge of negligence or incompetence in her professional capacity. This charge was however dismissed but not without some

criticism of Ms Sisson and a hope expressed that she would learn from the experience.

[16] On prompting by Mr Nation, in the course of the penalty hearing Ms Sisson disclosed that she had on a recent occasion been so rude to a District Court Judge that she had been threatened with contempt and had been forced to apologise. While appearing to be somewhat contrite about this incident she also put to the Tribunal that when she takes a stand on behalf of people that her behaviour is often misconstrued. Again there is a failure of personal insight which is of concern.

The additional stresses on Ms Sisson are of course those arising out of the Christchurch earthquake which have seriously impacted on her work premises causing her financial difficulties and emotional strain. Again these are matters which are acknowledged by the Tribunal but cannot override issues of public protection. We have no confidence at the present time that Ms Sisson is able to maintain a clear concept of her professional obligations and have found as a Tribunal of five, unanimously that she is not a fit and proper person at the present time to practice as a barrister and solicitor.

Compensation

[17] We invited the Law Society to provide an assessment of the additional costs which had been incurred by the complainant by having been charged privately rather than at legal aid rates. This was calculated as \$5,888, which Ms Sisson reluctantly accepted. We therefore order that Ms Sisson pay to the complainant the sum of \$5,888.

Costs

Costs are sought by the Law Society. Prior to the two penalty hearings they had amounted to \$32,733; Mr Nation's estimate of the costs at the conclusion of the proceedings was in the order of \$37,000. Ms Sisson did not provide the Tribunal with a full statement of her assets and liabilities and it is clear that a number of areas of her finances are uncertain at present, hinging as they do on the litigation with the Inland Revenue Department. However we do not consider that she is without means

entirely and as such should contribute towards the costs of the profession in dealing with her behaviour. We fix costs against Ms Sisson in the sum of \$20,000.

Strike Off

[18] We repeat the order made in our oral decision of 24 November that the practitioner is to be struck off the roll pursuant to s.112(2)(a) and s.113 of the Law Practitioners Act 1982.

DATED at AUCKLAND this 7th day of December 2011

Judge D F Clarkson
Chairperson