

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 16

LCDT 002/11, 011/10, 033/14

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**NATIONAL STANDARDS
COMMITTEE AND AUCKLAND
STANDARDS COMMITTEE**

Applicant

AND

EVGENY ORLOV

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr C Lucas

Ms C Rowe

Mr W Smith

Mr I Williams

ON THE PAPERS

DATE OF DECISION 1 May 2015

**DECISION OF NEW ZEALAND LAWYERS
AND CONVEYANCERS DISCIPLINARY TRIBUNAL
AS TO STAY OF PROCEEDINGS AND COSTS**

[1] This decision is to be read together with our interim decision of 5 March 2015.

[2] Following that decision the parties reached a negotiated settlement which encompassed the conditions set out in paragraph [57] of our interim decision. That is, they reached agreement as to the terms upon which Mr Orlov's name would be removed from the Roll of Barristers and Solicitors.

[3] In those circumstances subparagraph (1) of paragraph [59] of our decision became operative. We confirm that the proceedings under LCDT 011/10 and LCDT 002/11 are stayed pending further order of the Tribunal.

[4] Subsequently the Standards Committee advised that the Tribunal's reasoning in the interim decision also applied to the proceedings in LCDT 033/14. It was agreed that those proceedings ought to be similarly stayed and this decision also records that order.

[5] The parties had agreed the position as to costs between them and the Standards Committee did not seek an award of costs against Mr Orlov.

[6] Counsel were subsequently asked to make submissions as to the Tribunal's obligation to order costs against the New Zealand Law Society pursuant to s 257 and also as to any reimbursement of those costs sought.

[7] Mr Hodge, on behalf of the Standards Committee submitted that s 257 "*on its face*" was limited to the hearing of the charge. In this case the substantive hearing will not occur because of the decision as to stay. He submitted that s 249 was "*cast more widely and is apt to cover any costs arising in the course of disciplinary proceeding*".

[8] The power to order reimbursement of the Tribunal costs where charges are brought against a person is a mandatory one. The terms of s 257 are as follows:

257 Reimbursement of costs of hearing

- (1) Except where any regulations made under this Act otherwise provide, where the Disciplinary Tribunal hears a charge against any person,—
- (a) the New Zealand Law Society must, if that person is a lawyer or a former lawyer or an incorporated law firm or former incorporated law firm or an employee or former employee of a lawyer or incorporated law firm, pay into the Crown Bank Account the amount required to reimburse the Crown for the costs of the hearing; and
 - (b) the New Zealand Society of Conveyancers must, if that person is a conveyancing practitioner or a former conveyancing practitioner or an incorporated conveyancing firm or former incorporated conveyancing firm or an employee or former employee of a conveyancing practitioner or incorporated conveyancing firm, pay into the Crown Bank Account the amount required to reimburse the Crown for the costs of the hearing.
- (2) The costs of the hearing—
- (a) include not only out-of-pocket expenses in relation to the hearing but also a reasonable sum in respect of—
 - (i) the remuneration and allowances payable under clause 4 of Schedule 4 to the chairperson, deputy chairperson, and lay members of the Disciplinary Tribunal; and
 - (ii) the costs of the accommodation and the administrative and secretarial services provided to the Disciplinary Tribunal by the Ministry of Justice; but
 - (b) do not include any part of the costs of the hearing that are, under any order made by the Disciplinary Tribunal, recovered by the Tribunal from any other person.
- (3) The amount payable under subsection (1)(a) and the amount payable under subsection (1)(b) are to be fixed in each case by the chairperson of the Disciplinary Tribunal.

[9] This section, newly enacted with the Lawyers and Conveyancers Act 2008, exists as a result of the Partial Costs Recovery Model of the Disciplinary Tribunal. In previous decisions on s 257 awards, the Tribunal has considered that the costs of hearing included all interlocutory hearings and hearings on the papers, in addition to the substantive charges themselves.

[10] Section 257 has not been thought operative in relation to the Tribunal's other areas of jurisdiction such as an appeal against refusal of a practising certificate, or in relation to reinstatement of a practitioner to the Roll. Neither of these categories relates to "Charges" against a practitioner.

[11] We consider that broad interpretation of the words "*hears a charge*" is correct thus, we consider that pursuant to this section the New Zealand Law Society is obliged to reimburse the amount certified by the Chairperson of the Tribunal costs in this matter to date, relating to preparation and hearing of interlocutory proceedings.

[12] If we are incorrect in this interpretation it appears to be accepted by the Standards Committee that the Tribunal would have power to order its costs under s 249(1).

[13] The Standards Committee further submit that in all of their arguments, in terms of the interim decision they were successful in resisting a stay of the proceedings. It was only Mr Orlov's last minute offer as to removal from the Roll that moved the Tribunal to grant the stay. That is correct. Mr Hodge submits that the deed of settlement, although purporting to settle matters of costs at its paragraph 3.3, does not purport to tie the Tribunal's hands in respect of the costs of this stay application.

[14] However the New Zealand Law Society would not seek to recover any costs ordered against Mr Orlov either by way of reimbursement of a s 257 order or an order under s 249 for the Tribunal costs made against him directly.

[15] In all of the circumstances we consider we are obliged to make a s 257 order against the New Zealand Law Society and order is certified in the sum of \$16,004.

[16] We note the only input from Mr Orlov concerning the issue of costs has been to suggest that the deed settled all matters of costs against him and he did not consider that he was obliged to make further submissions.

[17] Given the approach of the New Zealand Law Society to the issue of costs in relation to Mr Orlov and the overall settlement we exercise our discretion against any order for reimbursement of the s 257 costs from Mr Orlov.

Summary of Orders

1. The proceedings under LCDT 002/11, 011/10, 033/14 are stayed pending further order of the Tribunal.
2. There will be an order as to the s 257 costs, against the New Zealand Law Society in the sum of \$16,004.

DATED at AUCKLAND this 1st day of May 2015

Judge D F Clarkson
Chair