

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 24

LCDT 006/15

BETWEEN

**WELLINGTON STANDARDS
COMMITTEE 1 OF THE NEW
ZEALAND LAW SOCIETY**

Applicant

AND

ANDREW CRAIG PINE

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr M Gough

Mr S Maling

Mr A Marshall

Mr K Raureti

HEARING at Wellington Tribunals

DATE 26 June 2015

DATE OF DECISION 15 July 2015

COUNSEL

Mr S Kinsler and Mr P Arnold for the Applicant

Mr J M Morrison for the Respondent

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING PENALTY**

[1] The respondent has admitted one charge of misconduct under s 241(1) of the Lawyers and Conveyancers Act 2006 (the Act) within the meaning of s 7(1)(a)(i) of the Act.

[2] The respondent was a trustee of a family trust (GFT) and while an employed solicitor at the firm of PC he:

- (a) Inserted a false date on the GFT deed;
- (b) Allowed a trust deed to be witnessed improperly, and failed to correct this once he knew of it;
- (c) Allowed the name of another firm of solicitors to appear on the GFT deed when he knew that the firm had not acted in relation to, and were not otherwise connected with, the preparation of the GFT deed;
- (d) Allowed Mr G to sign two Authority & Instruction forms for an electronic transaction for Mrs G without adequately verifying that Mrs G had authorised him to do so under an Enduring Power of Attorney;
- (e) Fabricated witness details on the two Authority & Instruction forms referred to at (d) above;
- (f) Misled his employer as to the accuracy of the GFT deed and two Authority & Instruction forms;
- (g) Failed to obtain legitimate Authority & Instruction forms prior to certifying an electronic mortgage with LINZ contrary to his obligations under Rule 2.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and s 164A of the Land Transfer Act 1952;

- (h) Knowing all of the matters referred to above, provided the GFT deed to C Bank in order to facilitate its loan being secured over a property being transferred to the GFT.

[3] The Tribunal heard submissions from counsel for the applicant and for the respondent on 26 June 2015. It then imposed the following penalty on the respondent:

- (a) Suspension from practise as a barrister and solicitor for 4 months from 26 June 2015;
- (b) Costs in favour of the Law Society of \$6,416.39 pursuant to s 249 of the Act;
- (c) Reimbursement of the costs of the Tribunal pursuant to s 257(3) of the Act.

[4] This decision now sets out the reasons for the penalty that was imposed.

[5] Counsel for the applicant submitted that were it not for the respondent's forthright acknowledgment of fault, early cooperation and candour, it would seek an order of strike-off.

[6] In seeking a period of suspension from practise in the vicinity of 15 months from the date of the Tribunal's judgment, the applicant emphasised the following aggravating features:

- (a) The offending was serious in scale and involved deceiving a range of parties including his employer and LINZ. He took a number of steps in the course of that offending which are set out above in paragraph [2];
- (b) The offending was premeditated and was intended to mislead his employer so that he would not charge a fee in respect of it;

- (c) He breached the trust of his clients, the bank and LINZ who were all entitled to rely on legal practitioners for a high level of integrity, honest and ethical behavior;
- (d) In acting as he did, he caused harm and cost to his clients and undermined the integrity of the profession as a whole.

[7] The applicant submitted that the respondent was entitled to credit for the following mitigating features:

- (a) The practitioner did not intend to, or in fact gain, any benefit from his conduct, but rather was attempting to assist family friends;
- (b) He self reported his offending within two days after being taken to task by his employer and resigned from his position;
- (c) He is a young practitioner of previous good character and has strong prospects of rehabilitation;
- (d) He has taken steps to remedy his conduct by ceasing legal practise. He has contacted the firm of solicitors whose name he used on the GFT deed and has met with the C Bank in attempt to rectify the inconsistencies he created;
- (e) He has strong references from previous employers, university professor in the faculty of law, a practitioner and a senior business person, all of whom speak of his good character and his dedication to the law. His previous employer expressed the hope that he would be able to continue to practise law.

[8] Counsel for the applicant submitted that the applicant is a young man who has made and owned up to a big mistake for which he is sincerely remorseful. He resigned from the practise of law in October 2014 and since then has reflected on his values as a person and on the way he should practise.

[9] He has accepted that his wrongful conduct has required him to pay a price and he has been paying for it:

- (a) He fully confessed all of the particulars of the charge which is an indication of the extent of his remorse;
- (b) He has apologised to the Law Society in writing by letter of 25 November 2014;
- (c) He ceased working as a lawyer on 21 October 2014 and has not sought work in the legal profession since that time;
- (d) He has had to confess his wrongdoing to those persons whose opinion he values and who have provided references for him;
- (e) He has travelled from Brisbane to appear before the Tribunal humiliated and accepting of the penalty to be imposed.

[10] Counsel referred to the mitigating factors acknowledged in the submissions of the applicant. He submitted that the offence occurred in one transaction which had several components to it and was designed to achieve a benefit for one client.

[11] Counsel have referred the Tribunal to the following cases:

- (a) *Wellington Standards Committee No 1 & No 2 v Sawyer*¹
- (b) *Taranaki Standards Committee v Flitcroft*²
- (c) *Auckland Standards Committee 5 v Khan*³

¹ [2013] NZLCDT 42.

² [2012] NZLCDT 36.

³ [2014] NZLCDT 45.

(d) *Waikato/Bay of Plenty Standards Committee 1 v Monckton*⁴

(e) *Otago Standards Committee v Davidson*⁵

[12] In *Sawyer*, there were three counts of misconduct involving forgeries by the practitioner of signatures and a file note. The practitioner narrowly avoided being struck off and received a penalty of suspension for 36 months.

[13] In the other cases referred to, periods of suspension ranged from one month in *Monckton*, three months in *Khan*, six months in *Davidson*, and 15 months (backdated) in *Flitcroft*.

[14] The Tribunal has considered the decisions referred to. It has concluded that the circumstances of the respondent's offending and mitigating factors are more closely aligned to those of the practitioner in *Flitcroft*. It considers that a period of suspension for 12 months is appropriate. The Tribunal has taken into account the mitigating factors recognised by both counsel for the applicant and the respondent. It has given emphasis to the following factors:

- (a) The young age of the respondent and his genuine remorse shown by his appearance before the tribunal; and
- (b) His period of voluntary suspension from practice.

It has therefore decided that the period of suspension should be backdated to take into account the 8 months that have passed since he voluntarily ceased practice.

[15] Accordingly the Tribunal has made the following orders:

- (a) The respondent is suspended from practice as a barrister and solicitor for a period of 4 months from 26 June 2015;

⁴ [2014] NZLCDT 51.

⁵ [2012] NZLCDT 39.

(b) He is to pay the Law Society's costs of \$6,416.39;

(c) He is to refund to the Law Society the Tribunal's costs which are certified at \$3,458.00.

[16] By consent there is an order that the names of the clients of the respondent and of the law firms concerned are not to be published.

DATED at AUCKLAND this 15th day of July 2015

BJ Kendall
Chairperson