

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2016] NZLCDT 31

LCDT 005/16

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 1**

Applicant

**AND**

**LISA KATE TREGENZA**

Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS OF TRIBUNAL**

Ms C Rowe

Ms S Sage

Mr T Simmonds

Mr W Smith

**HEARING** at Specialist Courts and Tribunal Centre, Auckland

**DATE** 29 September 2016

**DATE OF DECISION** 6 October 2016

**COUNSEL**

Mr R Marchant for the Standards Committee

Mr J Katz QC for the Respondent

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

[1] The respondent was originally charged with misconduct under s 241(a) of the Lawyers and Conveyancers Act 2006 (Act) and within the meaning of s 7 (1)(a)(i) and/or 7(1)(a)(ii) of the Act and Rule 11.1 Lawyers Conduct and Client Care Rules 2008. The charge was dated 9 March 2016.

[2] The particulars of the charge were:

- (a) On 4 September 2015 the practitioner received from Frost and Sutcliffe Barristers and Solicitors an authority to uplift the file of Lemapu Onosemu.
- (b) The practitioner declined to hand over the file because Mrs Onosemu had approximately \$2,000 of outstanding fees.
- (c) On 9 September 2015 the practitioner received another email expressing urgency to hand over the file and requesting the bill of costs and letter of engagement for work done on Mrs Onosemu's file.
- (d) On 5 October 2015 Mrs Onosemu made a complaint to the Lawyer's Complaints Service alleging that the practitioner had failed to provide a letter of engagement, bill of costs and her file.
- (e) During the course of the enquiry and on or about 5 November 2015 the practitioner wrote to Richard Moss of the New Zealand Law Society and to Frost and Sutcliffe enclosing a letter of instruction dated 21 April 2015 (date).
- (f) The date was false because the letter of engagement was not created until November 2015.

- (g) In doing so the practitioner made a false representation to the New Zealand Law Society and to Frost and Sutcliffe and/or breached Rule 11.1 of the Lawyer's Conduct and Client Care Rules 2008 by falsely representing that a letter of engagement had been created and sent on 21 April 2015 when it had not.

[3] The Tribunal granted the Committee leave to file an amended charge on 19 April 2016.

[4] The amended charge dated 4 August 2016 repeated the original charge of misconduct and added alternative charges of unsatisfactory conduct (s 241(b) of the Act) or negligence/incompetence (s 241(c) of the Act).

[5] The Committee repeated the particulars of charge relied on in support of the original charge.

[6] The parties reached agreement on the appropriate charge and penalty.

[7] The respondent admitted a charge of unsatisfactory conduct and accepted the particulars of charge set out in para [2] above.

[8] In addition to an agreed fine of \$5,000.00, full legal costs and reimbursement to the New Zealand Law Society of the Tribunal's hearing costs, the applicant sought a censure but that was opposed by the respondent.

[9] The Tribunal approved the agreement reached; granted the applicant leave to withdraw the charge of misconduct; and then heard submissions on the question of whether or not the respondent should be censured.

[10] The relevant facts of this matter are that the respondent was engaged by Mrs Onosemu in respect of an agreement for sale and purchase. Subsequently Mrs Onosemu wanted to uplift her file having changed lawyers and having instructed the firm of Frost and Sutcliffe. Mrs Onosemu, later again, complained to the Lawyer's Complaints Service that the respondent had failed to return her file and that the respondent had not treated her new lawyers with courtesy and respect. These

complaints were not upheld, it having been found that the respondent had acted professionally and appropriately.

[11] During the course of the investigation of Mrs Onosemu's complaint, the respondent provided her bill of costs and a letter of engagement dated 21 April 2015 to the Legal Standards Officer of the Early Resolution Service. That was done by letter of 5 November 2015. The respondent copied the material to Frost and Sutcliffe.

[12] The respondent then wrote a letter on 24 November 2015 in which she stated that the letter of engagement dated 21 April 2015 was not prepared until November 2015. She self-reported her conduct which she admitted involved misleading another practitioner and an officer of the Law Society in two respects, by suggesting that a letter of engagement had been sent when it had not and that the letter suggested that it had been sent on 21 April 2015 which was not the case.

[13] Arising out of the above, the Committee commenced an own motion inquiry which resulted in the charges being laid before the Tribunal.

[14] The respondent responded to the inquiry saying that she foolishly regarded the letter of engagement as a mere formality and wrongly thought that it was the only way to rectify the situation. She emphasised that it was not a calculated intention to misrepresent the situation or to mislead. In a further letter to the Lawyer's Complaints Service, the respondent apologised profusely for her "*regrettable mistake*".

[15] Counsel for the applicant submitted that the respondent should be censured because her actions misled both the Law Society and another practitioner. He submitted that she displayed an intention to mislead. The letter of engagement was only created in November 2015 after the Legal Standards Officer asked to see it. His submission was that the only inference that could be drawn from the creation of the letter and the backdating of it, was to suggest or create the impression that it had been generated on 21 April 2015. In doing so she intended to mislead the New Zealand Law Society and the firm of Frost and Sutcliffe.

[16] Counsel submitted that such conduct was not at the lowest end of the range and was deserving of censure by the Tribunal.

[17] Counsel for the respondent submitted:

- (a) That she did not engage in a deliberate act. He submitted that the respondent took advice before writing the letter of engagement in November 2015.
- (b) The detail given in her affidavit of 20 May 2016 should be read as being a fuller explanation of the situation and not as a changing of ground as was submitted by counsel for the applicant.

[18] The Tribunal reached the conclusion that it was not necessary to censure the respondent for the reasons given below. It was not necessary, therefore, to determine the fine point argued by counsel.

[19] The Tribunal took into account the following matters in reaching its decision not to censure the respondent:

- (a) She has had an unblemished career over many years with no disciplinary history.
- (b) She self-reported and promptly acknowledged her error and apologised for it.
- (c) She addressed the Tribunal and has shown genuine remorse.
- (d) She is of good character and is unlikely to offend again.
- (e) There is no element that requires protection of the public as was acknowledged by counsel for the applicant.
- (f) She is a valuable member of the profession as is evidenced by the references provided by her peers who were made fully aware of the charges and the particulars.

[20] In its conclusion the Tribunal has had regard to the remarks of Wylie J in *Auckland Standards Committee No 1 v Fendall*<sup>1</sup> where at para [46] he said:

“As was noted in *Daniels*, matters of good character, reputation, and absence of prior transgressions, count in favour of the practitioner. So does an acknowledgement of error, wrongdoing and expressions of remorse and contrition. Immediate acknowledgement of wrongdoing, apology to a complainant, genuine remorse, contrition and acceptance of responsibility as a proper response to a Law Society inquiry can be seen to be substantial mitigating matters and to justify lenient penalties....”

[21] The Tribunal imposed the following agreed penalties:

1. Fine of \$5,000.00;
2. Costs in favour of the New Zealand Law Society in the sum of \$4,000.00;
3. The practitioner is to reimburse to the New Zealand Law Society the Tribunal s 257 costs certified in the sum of \$1,780.00, pursuant to s 249.

**DATED** at AUCKLAND this 6<sup>th</sup> day of October 2016

BJ Kendall  
Chairperson

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<sup>1</sup> *Auckland Standards Committee 1 v Fendall* (2012) 21 PRNZ 279 at [46].