

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 14

LCDT 017/16

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 1**

Applicant

**AND**

**ROBERT JOHN LATTON**

Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS OF TRIBUNAL**

Mr G McKenzie

Ms C Rowe

Mr T Simmonds

Mr W Smith

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

**DATE** 23 May 2017

**DATE OF DECISION** 8 June 2017

**COUNSEL**

Mr P Collins for the applicant

Mr J Billington QC for the respondent

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

[1] The respondent has admitted a charge of misconduct pursuant to s 241(a) of the Lawyers and Conveyancers Act 2006 (the Act).

[2] The charge relates to events between the dates of 29 February 2016 and 3 March 2016. The respondent had been retained by instructing solicitors to act in litigation on behalf of an underwriter client. He had been instructed to send a letter to the opposing party offering terms of settlement (a Calderbank letter). He failed to do so. He then deceived the client in the following respects:

- (a) In email communications on 29 February and 2 March 2016, he represented that he had sent the Calderbank letter to the other party when he had not done so.
- (b) He backdated the Calderbank letter to 26 February 2016 from a version of the letter that had been sent to him by his instructing solicitor with the date 1 March 2016, and showed that backdated letter to the client.
- (c) He attempted to explain the deceit to his client as being a misunderstanding between him and his instructing solicitor which was untrue.

[3] The respondent accepted that those communications with his client were misleading and deceptive concerning an aspect of his service to his client contrary to Rule 11.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 and constituted Misconduct under the Act.

[4] The respondent explained his misconduct as having arisen from *‘underlying issue of low self-esteem which whilst thought to have been related to an earlier depressive illness in 2009 has now been identified as a “problem in its own right”*.

That is the diagnosis that has been given by Dr F a Clinical Psychologist whom the respondent has been consulting regularly since 23 March 2016. The present situation is not dissimilar to that which led to a disciplinary matter in 2010 when he had drafted a statement of claim but did not file it. He reported to the client some nine months later that the proceedings were being progressed. A professional diagnosis at that time described the respondent's conduct as being caused by "*significant major depression*".

[5] The respondent has sworn, that having spent considerable time with his psychologist developing strategies to avoid a repeat of his reactions to situations of the type that have led to the charge, he is confident that there will be no recurrence of such behaviours.

[6] He has informed his clients of the charge and that he has admitted the charge of misconduct. He disclosed to them that he had sent a letter when he had not done so, and that he covered that up by sending a backdated draft letter. He has apologised to his instructing solicitors, the client and to his professional colleagues and as he said to the profession as a whole.

[7] His counsel has argued that he should be given one last chance to redeem himself short of being suspended from practice. He proposes that he will return all files to his instructing solicitors with the exception of one matter which is a large proceeding scheduled to proceed to trial on 18 September 2017. That is a matter involving multiple defendants, is complicated, and in respect of which there is insufficient time to instruct replacement counsel. He has engaged Mr M, a senior barrister and solicitor of 32 years experience, to provide advice in relation to the management of his practice. Mr M has sworn an affidavit in which he sets out the detail of the mentoring programme.

[8] The respondent accepts that he should be fined, censured and pay costs. His counsel has argued against a penalty of suspension from practice for the reasons that have been discussed above and by taking into account the deep-seated psychological root cause for the offending which had not previously been fully recognised by the respondent and those from whom he was receiving treatment.

[9] Counsel for the applicant argues for a period of three months suspension from practice in addition to a fine, censure and costs, having regard to:

- (a) The well established penalty principles and underlying policies in this jurisdiction.
- (b) The approach consistently taken by the Tribunal in other deception cases.
- (c) The fact the respondent has earlier been disciplined because of his dishonesty in his dealings with a client and where leniency was then extended to him.
- (d) There being no mitigating factors.

[10] Counsel submitted that the advancement of the public interest and the upholding of proper professional standards were a relevant consideration to penalty as discussed in *Daniels*<sup>1</sup> where it was said that suspension had the primary purpose of advancing the public interest.

[11] Mr Collins also submitted that deterrence was a significant factor in this case where the respondent had failed in maintaining professional standards. The respondent had shown a repeated incidence of deception such that a forceful message of deterrence was warranted not only for him but for the profession.

[12] Mr Collins further submitted that the reference to psychoanalysis should not influence the Tribunal towards leniency but should, on the contrary give concern about the possibility of repetition.

[13] Mr Collins argued that the mentoring arrangement proposed on behalf of the respondent was not relevant to the admitted misconduct, given that the misconduct was not connected with practice management and would not be averted by mentoring of the kind proposed.

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<sup>1</sup> *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

[14] Mr Collins submitted that a period of three months suspension should be imposed. He acknowledged in his closing submissions that, after having the benefit of all submissions, the Tribunal might consider it appropriate in all the circumstances to impose a shorter period of suspension.

[15] The Tribunal considers that it can give limited credit to the respondent for his underlying condition. He has said that *“My actions were still my own”*.

[16] Having considered that the misconduct is at the lower end of seriousness; the impact of the underlying psychological condition, and the insight the respondent has gained into his functioning, we reach the conclusion that a short period of suspension from practice should be imposed. We fix that at one month.

[17] For the reasons set out above the Tribunal made the following orders at the end of the penalty hearing on 23 May 2017.

- (a) Suspension from practice as a barrister, or a solicitor, or both, for one month commencing 29 May 2017 until 30 June 2017, pursuant to s 242(1)(e).
- (b) A fine of \$7,000.00.
- (c) Censure to be delivered in writing.
- (d) Costs of \$16,900.00 in favour of the Law Society.
- (e) Refund to the Law Society the Costs of the Tribunal which are fixed at \$2,147.00.
- (f) Non-publication of the names of the instructing solicitors, the medical professionals, and the senior barrister and solicitor.
- (g) Non-publication of the medical reports and the report of the senior barrister and solicitor.

[18] The Tribunal records that the respondent has signed an undertaking to The New Zealand Law Society to engage in a mentoring programme on the terms that are set out in that document. The undertaking remains in force for a period of one year from 29 May 2017.

## **CENSURE**

Mr Latton

You have admitted misconduct which serves you no credit being a deceitful reply to the enquiries made of you by your client. The fact that this behaviour is similar to that which you did in 2009 has to be a matter of concern and discredit. Your lack of professionalism casts a shadow on the profession as a whole. You can count yourself fortunate that this Tribunal did not impose a longer period of suspension on you. It has taken into account to a limited extent your underlying psychological condition, but more relevantly that you have taken steps to address that with intensive therapy sessions over an extended period of time.

You are on notice that you cannot escape a more serious penalty should conduct of this kind be repeated.

**DATED** at AUCKLAND this 8<sup>th</sup> day of June 2017

BJ Kendall  
Chairperson