

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 5

LCDT 015/16

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**STANDARDS COMMITTEE 3 OF
THE CANTERBURY/WESTLAND
BRANCH OF THE NEW ZEALAND
LAW SOCIETY**

Applicant

AND

STEPHEN JOSEPH WOULFE

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms A Callinan

Mr W Chapman

Ms C Rowe

Mr P Shaw

HEARING at Auckland

DATE OF HEARING 28 February 2017

DATE OF DECISION 16 March 2017

COUNSEL

Mr D Webb for the Standards Committee

Ms P Fee and Mr J Cochrane for the Practitioner

**PENALTY DECISION OF
THE LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL**

Introduction

[1] The practitioner, Mr Woulfe, has admitted the charge of negligence or incompetence in his professional capacity to such a degree as to reflect on his fitness to practice or as to bring his profession into disrepute.

[2] This charge was admitted after discussions between the parties which resulted in the two alternatives originally pleaded, namely misconduct and unsatisfactory conduct, being withdrawn on the practitioner's indication of a plea. The Tribunal, having considered all the material before it, approved that amendment on the basis that we considered that negligence or incompetence was the appropriate level of liability to reflect this practitioner's conduct. On that basis the hearing proceeded as a penalty hearing only.

[3] Counsel prepared an agreed statement of facts, however such did not fully accord with its description in that it contains phrases such as "the complainant alleges" and "the former practitioner says ...".

[4] Thus, Mr Woulfe, who appeared by Skype connection because he now lives in Rarotonga, was sworn and answered questions from both counsel and members of the Tribunal. Submissions were then heard from counsel for the Standards Committee, Mr Webb, and Ms Fee and Mr Cochrane respectively for the practitioner.

Background and Context

[5] We adopt the brief summary contained in submissions for the Standards Committee as follows:

- “3. The conduct related to certifications by Mr Woulfe of documents relating to the discharge of certain mortgages and registration of new mortgages over properties owned by Ballarat Limited (**Ballarat**) in 2009. The complainants, M & R, were shareholders of Ballarat with a fraudster, Lindsay Smith. They had no knowledge of the secured finance lending which was arranged by Mr Smith and only became aware of this at a later date. The signature of M (as director/shareholder of Ballarat) on the Authority and Instruction form

(A & I) prepared and executed by Mr Woulfe is not that of M and is a forgery. Even so, Mr Woulfe provided the Signatory Identification by executing a certificate stating that he had:

- (a) witnessed the signatory(s) sign the form;
 - (b) had sighted the original copy(s) of identification;
 - (c) had attached a copy of the ID(s) used; and
 - (d) the photos, names and signatures all match the identification provided.
4. Those documents were used in a financing transaction under which Mr Lindsay Smith (another director/shareholder of Ballarat) defrauded the company of funds for the benefit of a trust related to himself. The overall effect of the fraud was to deprive the other shareholders (the complainant and his wife - M & R) of the value of the shares in the company and cause them considerable loss. The company (which was a property development company) ultimately failed.”

[6] The further context which is relevant is that Mr Woulfe had acted for Ballarat from its incorporation in 2005, that he had known Mr Smith, who was an accountant, since 2003. Mr Smith had been the primary point of contact for Ballarat throughout all of the transactions which Mr Woulfe had handled prior to the one which falls to be considered. Mr Woulfe trusted Mr Smith. Furthermore, the 2009 lending facility did not require guarantees from the complainants, as had occurred on at least one previous occasion.

[7] Mr Woulfe’s evidence is that he only intended to certify that he had witnessed Mr Smith’s signature on the A & I form, and had sent the form, along with the certified copy of the copy of the driver’s licence and other documents to Mr Smith to take away for M’s signature, intending that another lawyer would witness those.

[8] Mr Woulfe says his failure was in not noticing that M’s signature had appeared on the document after it was returned to him but without independent certification so that the A & I document now read as if Mr Woulfe was certifying the document as having been witnessed himself as set out in the facts above. Mr Woulfe also accepts he was “sloppy” in how the certification on his standard form stamp on the driver’s licence copy was worded.

[9] As a result of the transaction proceeding, the lender advanced to Ballarat some \$264,000, all of these funds were advanced to a trust associated with Mr Smith. The Trust then used those funds to repay loan advances made to it.

[10] The complainants were 50% shareholders in Ballarat and effectively lost half of these funds, indeed the final outcome was that the property development failed as did the company and the complainants full loss was in excess of \$700,000. Thus the consequences for the complainants, who are a retired couple, have been catastrophic.

Principles in Addressing Penalty

[11] As recorded, in many previous decisions, the starting point for any penalty decision is the seriousness of the conduct in question.

[12] Mr Woulfe accepts that the accuracy of certified copies of documents and particularly of A & I forms forming part of conveyancing transactions are "*central to the proper working of finance and conveyancing transactions, and that it is critical that participants in that industry can rely on the accuracy of statements and certifications made by lawyers*".

[13] Counsel for Mr Woulfe submitted that the appropriate level of penalty to reflect the seriousness of this offending in all of the circumstances was a censure and costs.

[14] Counsel for the Standards Committee supported this approach and submitted that such was also an appropriate penalty, having regard to the conduct, and in comparison with a number of earlier decisions of the Tribunal.

[15] It is accepted that Mr Woulfe was no part of the scheme to defraud which had been devised by Mr Smith. It is noted that Mr Smith was subsequently convicted for this fraud.

[16] We consider that this negligence, while not at the most serious level, is still of serious concern having regard to the crucial role that such certifications play in a conveyancing practice. It is crucial to the profession's reputation and functioning that lending institutions have full confidence, not only in a lawyer's honesty, but of his or her standards of diligence and care.

[17] Having determined the level of seriousness, we consider aggravating and mitigating features. We then apply the principles of penalty, to these circumstances. Finally, we consider previous decisions relating to similar conduct, with a view to consistency, bearing in mind the individual nature of penalty hearings.

Aggravating features

[18] The catastrophic losses of the complainants are clearly an aggravating feature. The complainants have obtained a judgment against Mr Smith of over \$400,000 but he is a bankrupt. The Ballarat Company has been wound up.

[19] While we accepted the joint submission of counsel that the causative link to this practitioner was not sufficiently clear for us to make any award as to compensation, his part in the mayhem visited upon the complainants by a fraudster cannot be totally minimised.

[20] Secondly, in the transaction concerned, Mr Woulfe acted for all of the entities concerned, including the entity which benefitted from the funds obtained, to the detriment of the company in which the complainants had invested.

[21] This arguable conflict, is not the subject of a charge, but is clearly an aggravating feature.

Mitigating features

[22] Mr Woulfe, who has been in practice since 2003 has an unblemished disciplinary record. He must be given significant credit for this.

[23] In addition Mr Woulfe has removed himself from practice and handed in his practising certificate. He currently states that he has no wish to practice law in the future.

[24] Finally, Mr Woulfe has been cooperative with the disciplinary process and has agreed to meet the Standards Committee costs to the level of \$10,000 together with the Tribunal costs.

Principles of Penalty and Relevant Precedents

[25] Counsel referred us to a number of decisions. We begin with the leading authority on penalty, *Daniels*.¹ Having set out the “least restrictive outcome” principle in relation to the most serious sanction of strike-off, the Court moved to consider the purposes of suspension. At paragraph [24] it had this to say:

“A suspension is clearly punitive, but its purpose is more than simply punishment. Its primary purpose is to advance the public interest. That includes that of the community and the profession, by recognising that proper professional standards must be upheld, and ensuring there is deterrence, both specific for the practitioner, and in general for all practitioners. It is to ensure that only those who are fit, in the wider sense, to practise are given that privilege. Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession.”

[26] It was urged upon us by both opposing counsel that the protection of the public was not a significant factor in this case because Mr Woulfe is no longer practising. As to that *Daniels* had this to say:²

“It will not always follow that a practitioner by disposing of his practice and undertaking not to practise can avoid or pre-empt an order for suspension. The consideration of whether to suspend or not requires wider consideration of all the circumstances. The real issue is whether this order for suspension was an appropriate and necessary response for the proven misconduct of the appellant having regard not only to the protection of the public from the practitioner but also to the other purposes of suspension.”

[27] We consider that, in the present matter, both general and specific deterrence are required to be given significant weight. The protective purpose of suspension, although noting the practitioner’s assurance about his future intentions, must also encompass the upholding of professional standards generally. The absolutely central nature of this certification process to the land registration system and the role of lawyers means that a casual approach to it, particularly where such disastrous consequences ensue, must be marked by a strong response by the Tribunal. In this regard we do not consider censure to be sufficiently proportionate.

[28] There are a range of penalties available to the Tribunal to achieve a proportionate and nuanced outcome for each individual fact situation and practitioner, because these are so variable an individualised approach is required.

¹ *Daniels v Complaints Committee of Wellington District Law Society* [2011] NZLR [850].

² At paragraph [25].

[29] Both counsel submitted that a fine was not a suitable penalty for Mr Woulfe because of his impecunious financial circumstances. Although there is authority to support the imposition of a monetary penalty or costs order, even on a person who is bankrupt, we consider that a fine in these particular circumstances would be unduly punitive. Punishment is not the focus of disciplinary proceedings.

[30] We consider that the appropriate penalty is a short period of suspension, particularly as a deterrent measure, both in a general and specific sense.

[31] We consider that Mr Woulfe's situation is less serious than that of either Mr Parshotam³ who received nine months suspension, or Mr Khan⁴ who was suspended for three months. Both of those practitioners had previous disciplinary histories.

[32] Weighing all of the present circumstances including the consequences for the complainants and the degree of carelessness involved in this case we consider that a period of suspension of two months is appropriate.

Censure

[33] We also consider that it is important to impose a censure upon Mr Woulfe and we do so in the following terms:

Mr Woulfe, the ability to practise law is hard won and is a privilege. Lawyers in New Zealand are particularly privileged in that they are in a unique position of being able to change the Land Title Register subject to compliance with strict criteria. That compliance is a responsibility that flows from the privilege. It is a responsibility that in this case you entirely abdicated. You have acknowledged this by your guilty plea to the amended charges. Such a failure cannot go unmarked by this Tribunal, which has a responsibility to the public and to the legal profession to provide protections from such behaviour.

Mr Woulfe, the censure will remain always on your record. That will demonstrate to other lawyers such behaviour will not be tolerated. It will demonstrate to the public at large and in particular, the complainants in

³ *Auckland Standards Committee 2 v Parshotam* [2016] NZLCDT 15.

⁴ *Auckland Standards Committee 5 v Khan* [2014] NZLCDT 15.

this matter, that this Tribunal will not tolerate this behaviour from lawyers generally. In doing so it may go a small way to restoring, in the complainants, some faith in the legal system that your unacceptable behaviour must have tarnished.

You are censured accordingly.

Compensation

[34] We accept the joint submission of counsel that this is not a proper case for compensation, which in any event would be limited to \$25,000. As indicated in similar decisions, where there is some complexity over the nexus between the practitioner's failures and the losses sustained to the complainants, we take the view that such complexities are better resolved in the civil jurisdiction.

Costs

[35] The parties have agreed that Mr Woulfe is to contribute the sum of \$10,000 to the Standards Committee costs and we are prepared to endorse that agreement.

[36] However Mr Woulfe will be required to reimburse the New Zealand Law Society the full costs of the Tribunal.

Orders

1. Censure in the terms set out in paragraph [33].
2. Mr Woulfe will be suspended from obtaining a practising certificate for a period of two months from the date of this decision.
3. Mr Woulfe is to contribute to the Standards Committee costs the sum of \$10,000.
4. Section 257 costs in the sum of \$5,066 are ordered against the New Zealand Law Society in respect of the Tribunal costs.

5. Mr Woulfe is to reimburse the full s 257 costs to the New Zealand Law Society.

DATED at AUCKLAND this 16th day of March 2017

Judge D F Clarkson
Chair