NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2018] NZLCDT 20

LCDT 026/17

UNDER The Lawyers and Conveyancers Act 2006

BETWEEN **NATIONAL STANDARDS COMMITTEE**
Applicant

AND **JINYUE (PAUL) YOUNG**
Practitioner

CHAIR

Judge D F Clarkson

MEMBERS

Ms F Freeman

Ms C Rowe

Ms S Sage

Mr I Williams

HEARING 18 April 2018

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 15 May 2018

COUNSEL

Mr S Waalkens for the Standards Committee

Ms M Donovan for the Practitioner

DECISION OF TRIBUNAL RE PENALTY

Introduction

[1] Mr Young was found guilty of four charges, at different levels of culpability: two were at the level of misconduct, one at negligence at the s 241(c) level, and one at the level of unsatisfactory conduct.

[2] The Standards Committee submitted that the combined effect of the findings led to the position that a proper response, to reflect the purposes of the Act[1], was to strike the practitioner from the Roll of Barristers and Solicitors.

[3] Sensibly, at this late stage, Mr Young instructed counsel to represent him at the penalty hearing. Ms Donovan, submitted that the Tribunal could properly consider a less restrictive outcome, along the lines of 6 months suspension, having regard to the authorities which had considered similar conduct.

[4] The purposes of penalty decisions in the disciplinary context are now well rehearsed. In summary, the focus is not punitive, but rather on the protection of the public and the preservation of the reputation of the legal profession and the upholding of its high standards.

[5] The process begins with an assessment of the seriousness of the conduct which has been found, then considers any aggravating and/or mitigating features, and then proceeds to an overall assessment of the practitioner's fitness.

[6] Comparison with other cases, while necessary to maintain broad consistency, is frequently unhelpful given the very fact-specific nature of these types of proceedings.

Seriousness of the Offending

[7] We have made four findings against the practitioner. The evidence satisfied us that this practitioner demonstrated serious failings in respect of his competence to

[1] Lawyers and Conveyancers Act 2006.

conduct litigation which, as an inexperienced and recently admitted lawyer, he should never have taken on. In addition, his attitude towards colleagues and lack of restraint in communications with and about other lawyers is also deeply flawed and requires remediation on his part.

[8] Mr Young's inability to focus on the central issue and instead be diverted by tangential concerns is hardly unique to him. However, we noted in this practitioner, particular personality traits which appear to make it difficult for him to listen to, or receive advice or direction. That, in itself, causes further concern to the Tribunal.

[9] In relation to the negligence finding, Mr Waalkens submitted:[2]

> "… The Practitioner was repeatedly put on notice by both the High Court and Court of Appeal that the grounds of his application were irrelevant or unsustainable such that his application was "doomed". He was also put on notice that his legal pleadings were wholly inadequate and improper, such that "grave doubts" were raised as to his professional competence … despite such comments from the judiciary, the Practitioner continued with his course of conduct."

[10] We accept that submission and invite Mr Young to reflect on his tendency to ignore such messages over the next few months.

[11] We do note Ms Donovan's submission that Mr Young was unfortunate to meet such a difficult adversary as the complainant, Mr D, on his first foray into litigation. We also consider that his judgment was impaired by his personal relationship with the parties, but that very fact ought to have alerted him to the need to obtain assistance rather than continue with the matter himself.

[12] We accept the submissions of Mr Young's counsel, in relation to the speech offending, that, unlike Mr Deliu[3], Mr Young did not bring in other institutions such as the Human Rights Commission, the Judicial Conduct Commissioner, rather he made his comments in the course of exercising his appeal rights. Ms Donovan submitted, and we accept, that Mr Young did not attempt to express his views in a manner that was designed to oppress the recipient.

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[2] Penalty submissions for Standards Committee, paragraph 4.3.
[3] *Deliu v National Standards Committee* [2017] NZHC 2318.

[13] In terms of the "improper threat" finding, we consider Mr Young was certainly affected by his personal involvement in the subject matter. While we accept that Mr Young's inexperience was a contributing factor, especially in not assessing that he should remain at arm's length from personal matters, we found him to have been reckless in not consulting and abiding by the Rules, or seeking advice from a more experienced lawyer.

[14] In summary, we find the overall level of offending serious and of particular concern, in respect of protection of the public, given the negligence and incompetence findings.

Aggravating Features

[15] We do not find there to be any specific aggravating features in this matter but we will refer to the practitioner's conduct of the proceeding under the heading of "Overall Fitness and Conduct of Proceedings".

Mitigating Features

[16] Ms Donovan referred us to the decision in *Daniels*[4] which states that the mitigating features relevant to disciplinary proceedings include:

(a) Previous good character.

(b) Reputation and references.

(c) Lack of prior disciplinary history.

(d) Acknowledgment of error or wrongdoing.

(e) Expression of remorse or contrition.

(f) Willingness to participate in the complaints' and disciplinary process.

[4] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

(g) Conducting oneself in an appropriate way before the Tribunal during the course of its hearing and subsequently.

[17] Mr Young has provided the Tribunal with statements from grateful clients and supporters attesting to his good character and charitable and generous nature.

[18] Mr Young has not been a solicitor for very long, and has no prior disciplinary proceedings.

[19] With respect to his acknowledgment of error or remorse, sadly insight appeared to be almost totally lacking in this practitioner. One of the difficulties in assessing this aspect is that the litigation which was at the centre of the complaints involved his wife and her company and occasioned very high financial losses to them. Thus, Mr Young held a good deal of animosity towards opposing counsel, seeing this on a much more personal basis than one would hope would normally be the case. Mr Young also held strong views about what he regarded as unethical behaviour of his opponent during the proceedings and found it very difficult to accept that it was he who was now being forced to deal with the consequences and not his opponent.

[20] However, this lack of ability to understand the part he played in contributing to his difficulties is something which greatly concerns the Tribunal in terms of his ongoing functioning. Ms Donovan submits that Mr Young has readily adopted new approaches and suggestions within her firm. She further submits that the cultural struggles to adapt to practice in New Zealand can best be dealt with by supervision which incorporates modelling and mentoring.

Overall Fitness and Conduct of Proceedings

[21] While we accept that Mr Young's conduct was polite and respectful towards the Tribunal (and did not in any way approach the type of conduct which is referred to in the *Parlane*[5] decision, in which the practitioner was struck off), we did hold considerable concerns, having observed Mr Young conduct his own defence in these proceedings, at least up until the penalty stage. We referred in the Liability Decision to his inability to be shaken from certain ideas.

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[5] *Parlane v NZLS (Waikato Bay of Plenty Standards Committee No. 2)* High Court Hamilton, CIV-2010-419-1209, 20 December 2010.

[22] Ms Donovan invited the Tribunal to take account of the practitioner's inexperience and "lack of familiarity with idiomatic English and a different cultural milieu" and submitted that these errors were unlikely to recur.

[23] Ms Donovan submitted that the practitioner had conducted himself well and in a conscientious manner since the events giving rise to the complaint. We note this, and take account of this fact particularly, since that issue was given considerable weight by the High Court in *Deliu*,[6] in relation to much more serious misconduct.

[24] Against this we do note with some concern that even after engaging counsel who filed succinct and cogent submissions on his behalf, Mr Young had sufficient lack of understanding of the process that he subsequently filed his own submissions, some of which still sought to challenge the Tribunal's findings, and relitigate the matter.

[25] For completeness, we record that the complainant, Mr D, filed directly with the Tribunal a "Victim Impact Statement"[7]. There is no provision in the Act for independent representation of the complainant's views, which are properly represented by the Standards Committee. Mr Waalkens did not seek to advance these matters at the hearing and we simply record that we have read and noted the material filed.

Relevant Precedents

[26] We first remind ourselves of *Daniels*[8] and the principle of the "least restrictive intervention" which reflects a proportionate response to the conduct in question.

[27] We note that dishonesty is not a factor in this matter.

[28] In relation to the disparaging comments made by Mr Young, we refer to the *Deliu*[9] decision, which counsel submitted was a more serious case. In that matter there were a total of nine charges proven against Mr Deliu, including six of misconduct. The speech charges in that case were directed against learned High Court and Court of Appeal Judges and were vitriolic and outrageous. Despite that, and despite the negligence charges also found against the practitioner, the High Court

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[6] See note 3.
[7] This statement contained some bizarre allegations, which were in due course countered by the practitioner's wife.
[8] See note 4.
[9] See note 3.

upheld a suspension of 15 months, having regard to the lack of evidence of disciplinary matters in the intervening period, which by that stage amounted to some nine years.

[29] That level of penalty, upheld by the learned High Court Judge, constrains us in this matter. However, it should be said that the High Court was clearly not as worried about the level of competence of that practitioner as we are in respect of this much less experienced practitioner.

[30] Counsel for the Standards Committee referred us to the *Orlov*[10] decision which also involved disgraceful and unjustified comments, made along similar lines as in the *Deliu*[11] matter. Initially, the Tribunal had struck Mr Orlov from the Roll. On appeal, the High Court considered that was a disproportionate response and directed no further penalty since Mr Orlov had already served eight months suspension.

[31] In that case the High Court referred to the offending as only relating to speech, and noted that it was a first offence. Mr Orlov's conduct of the Tribunal proceedings had involved aggravating features such as the release of a scurrilous press statement. But because there was no dishonesty nor incompetence established at that point the Court did not consider there was a high risk involved in granting the practitioner a further chance.

[32] It was submitted by Mr Waalkens that:

> "… The Practitioner's misconduct and negligence in the proceedings, when considered in conjunction with the nature of his conduct in the Tribunal hearing itself, demonstrate that he has a seriously problematic approach to legal practice and has little to no insight into his conduct."

[33] For that reason Mr Waalkens advocated a stronger penalty than had been imposed in *Orlov*[12] or *Deliu.*[13]

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[10] *Orlov v NZLCDT* [2015] 2 NZLR 606.
[11] See note 3.
[12] See note 10.
[13] See note 3.

Discussion

[34] Having regard to the above factors, (in particular the constraints imposed by previous penalty decisions of higher courts), and our concerns as to the practitioner's competence but also taking account that this was a matter in which the practitioner was personally involved and his wife suffered considerable financial loss, we consider a proportionate response is to suspend Mr Young from practice as a lawyer for 15 months.

[35] We consider that period will give him the opportunity of reflecting on his conduct and of undertaking further training and legal education.

[36] At the conclusion of his suspension, we consider that the supervision proposal provided by Mr James Donovan ought to be adhered to. The Standards Committee made comments and suggestions about the supervision proposal. We consider that is a matter for the Practice Approval Committee which will be engaged when Mr Young applies for a further practising certificate. In this instance, we will direct that the proposal and Standards Committee comments on it, together with a copy of this decision are forwarded to the Practice Approval Committee by the Tribunal case manager.

[37] We consider the lack of malicious intent or dishonesty means that this practitioner ought to be given an opportunity to undertake rehabilitation and training rather than be struck off. At his age we accept that it will be difficult for him to retrain in a new career.

[38] The commencement date ought to fairly commence from the time that Mr Young entered into an undertaking not to practise shortly after the liability decision, namely 28 March 2018.

Orders

1. The practitioner is to be suspended from practice under s 242(1)(e) for a period of 15 months commencing 28 March 2018.

2. The practitioner is to pay the Standards Committee costs in the sum of $45,783.80, s 249.

3. The New Zealand Law Society is to pay the costs of the Tribunal which are certified in the sum of $11,760.00, s 257.

4. The practitioner is to reimburse the New Zealand Law Society for the Tribunal costs in full.

5. The Tribunal declines to make any orders as to name suppression further than to direct the anonymisation of the complainant's name.

DATED at AUCKLAND this 15th day of May 2018

Judge D F Clarkson
Chair