NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2018] NZLCDT 14

LCDT 022/17 & 040/17

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**CENTRAL STANDARDS COMMITTEE 3** Applicant
AND	**MICHAEL BRIAN MEYRICK** Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr G McKenzie

Ms C Rowe

Mr W Smith

Mr I Williams

HEARING 22 March 2018

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 3 May 2018

COUNSEL

Ms N Copeland for the applicant

The respondent in person

DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING CHARGES

Charge One

[1] On 28 June 2017, the applicant charged the respondent with misconduct for failing to comply with fines and costs orders imposed by the Lawyers Standards Committees and the Legal Complaints Review Officer (LCRO). The respondent was charged in the alternative with unsatisfactory conduct.[1]

Charge Two

[2] On 24 November 2017, the applicant further charged the respondent with misconduct for wilfully or recklessly contravening the regulations in relation to his conduct in making false declarations to the New Zealand Law Society about his compliance with fines and costs orders imposed by Standards Committees and the LCRO. There is an alternative charge of unsatisfactory conduct.[2]

[3] The respondent filed responses denying the charges. He did not file any affidavit evidence to support his denials of the charges. There was a direction that he do so seven days prior to the confirmed hearing date. He did not comply with that direction given at a teleconference on 2 October 2017 and again at a teleconference on 25 January 2018.

[4] The applicant's evidence in respect of Charge One regarding the respondent's failure to comply with fines and costs orders is summarised as follows:

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[1] Lawyers and Conveyancers Act 2006, s 7(1)(a)(1) or s 7(1)(a)(ii).
[2] See above n 1 and r 4 and/or r 8 of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008.

(a) Pecuniary orders were imposed by Standards Committees and the LCRO between December 2010 and December 2016 after various disciplinary findings were made against him.

(b) As at January 2017 the respondent owed a total sum of $35,000.00 to the Law Society.

(c) The respondent failed to make any payments between May 2015 and February 2017 to reduce the debt despite the Law Society communicating with him about the debt on a number of occasions.

(d) Having entered into a payment arrangement with the Law Society, the respondent stopped making payments under the arrangement on 15 April 2015 and did not respond to the Society's requests to resume making payments under the arrangement.

(e) In February 2017, the respondent's employer commenced making weekly payments of $50.00 under an arrangement made with the Law Society. As at 30 June 2017 the debt had been reduced to $33,900.00.

[5] The applicant's evidence in respect of Charge Two of making false declarations is:

(a) On 25 June 2015, in support of the application for the renewal of his practising certificate, the respondent declared that he had complied with, or was complying with, any applicable orders of a Standards Committee, the LCRO and the Disciplinary Tribunal.

(b) At the time of making the declaration the respondent owed the Law Society approximately $32,000.00 in costs and fines and had not made any payments to reduce the sum since 15 April 2015.

(c) On 21 June 2016, in support of the application for the renewal of his practising certificate, the respondent declared that he had complied with, or was complying with, any applicable orders of a Standards Committee, the LCRO and the Disciplinary Tribunal.

(d) At the time of making the declaration the respondent owed the Law Society approximately $32,000.00 in costs and fines and had not made any payments to reduce the sum since 15 April 2015.

[6] The respondent filed an affidavit regarding his financial position on 20 March 2018. He also filed a submission addressing the meaning of 'reckless'. He appeared at the hearing of the charges on 22 March 2018. The respondent addressed the Tribunal stating that he had never seen the affidavits filed in support of the charges.[3] Having been sworn in, the respondent said that he had never seen the charges but had discussed them with the Law Society. He also stated that he had not seen the affidavits filed in support of the charges.[4]

[7] The respondent was challenged about the correctness of his statements. Time was taken up by exchanges between Tribunal members and the respondent on that issue and with the submission from counsel for the applicant that the respondent must have known about the charges.

[8] The Tribunal resolved the issue by giving the respondent the opportunity to read the affidavits and adjourned for that to happen.

[9] When the hearing resumed, the respondent said that he was concerned only with the charge relating to making false declarations.[5] He initially challenged the statement that he had ceased making payments since 15 December 2015 and sought an adjournment to be able to produce evidence to prove that the statement was wrong.

[10] The respondent ultimately accepted that the records showed that payments in reduction of the debt ceased on 15 April 2015 and that he would check his own bank statements.[6]

[11] The respondent submitted that the charge was not made out because he had correctly ticked the boxes on the application form for renewal of practising certificate. When it was pointed out that the respondent was addressing his application for

[3] Notes of evidence page 3, lines 14, 30 & 33.
[4] Notes of evidence page 12, line 10.
[5] Notes of evidence page 16, line 30.
[6] Notes of evidence page 20, line 9 and following.

renewal of practising certificate for the 2017 year and that he had filled in online applications for the two previous years, the respondent demanded copies of those forms.

[12] Counsel for the applicant explained the electronic process for completing such forms as described in the affidavit of Mary Ollivier sworn on 22 November 2017 at paragraphs 2.8, 2.9 and 2.10. The essential feature of the process is that when a practitioner fills in the form and answers 'yes' to all questions the application for renewal is treated as clean and proceeds to the issue of a practising certificate without further enquiry.

[13] Having had explained the technicalities of the process to it and the respondent, the Tribunal declined the respondent's request.[7]

[14] The respondent then required an adjournment which was refused. The respondent answered by saying "*Okay, have a nice day, people. Fair enough. I am wasting my time in here. Your minds are made up in advance. There's nothing I can do about it".* When advised that we would have to proceed in his absence, his response was "*Your Honour, you can do what you like*". He then walked out of the hearing without leave and without completing submission.[8]

Decision

[15] The respondent has not disputed Charge One and has not addressed Charge Two. The Tribunal has considered the evidence in support of the charges and is satisfied that they are proven.

[16] The Tribunal is satisfied that the respondent's repeated failure to comply with the orders for payment was wilful and amounts to misconduct.

[17] The Tribunal is further satisfied that, in making the declarations the subject of Charge Two, the respondent wilfully breached the rules where he knew or ought to

[7] Notes of evidence page 25, lines 21 to 33 and page 26, lines 1 to 3.
[8] Notes of evidence page 27.

have known that what he declared was untrue when seeking to renew his practising certificate in 2015 and 2016. Such conduct amounts to misconduct.

[18] The Tribunal notes its concern about the respondent's lack of respect for the disciplinary process. His response to the Law Society's own motion investigation regarding the false declarations was dismissive and accused the New Zealand Law Society of hounding him.[9]

[19] The respondent's written submissions of 20 March 2018 were particularly vituperative of the Law Society and irrelevant to the subject matter of the charges. Paragraphs 20 to 32 of those submissions are attached as Appendix 1.

[20] The respondent was rude and arrogant to both the Tribunal and the Law Society at the hearing when he was appearing for himself. He displayed a demanding attitude and stated that he was wasting his time before the Tribunal when his demand for an adjournment was refused.[10]

[21] The Tribunal refers these matters back to the Law Society.

[22] Having found the charges proved, the respondent is, by 15 June 2018, to file submissions in respect of penalty and in reply to the applicant's memorandum of 4 April 2018, a copy which was sent to him by email on 4 April 2018.

[23] The Tribunal will consider penalty on the papers unless either counsel or the respondent request a hearing on a date to be fixed.

DATED at AUCKLAND this 3rd day of May 2018

BJ Kendall
Chairperson

[9] See Applicant's BoD at page 35.
[10] Notes of evidence page 27.

Appendix 1

The NZ Law Society

20. I have some comments to make about NZLS. I don't make them lightly. I have no doubt they will be dismissed as irrelevant. That will disappoint me but it will not surprise me. What I have to say is absolutely accurate.

21. The Law Society is a whimpish organization. It is riddled with conflicts. It is become almost unable to regulate itself.

22. NZLS has massive issues to deal with. It has conflicts it is unable to resolve. In the past it has ignored them and will do so in the future. It is an organisation which is supposed to look after my interests as a lawyer. It is an organisation to which I should be able to turn to for advice and assistance. I tried once – more than once – and each time was a disaster. On the first occasion I was ridiculed and I was deeply humiliated. On the second it involved some misconduct by a senior lawyer and I was told to forget it as nothing would come of it. I did pursue it as the lawyer was acting deliberately with a clear conflict of interest to the disadvantage of a particular person. NZLS found nothing remiss to the astonishment of the many who knew about it. I was criticised even though I had no involvement, professional or personal in the matter.

23. There is at present an issue involving a number of young female lawyers alleging sexual misconduct by senior practitioners within a large influential law firm. The NZLS has been told. Its silence is deafening. I am aware from my own sources that at least one of these victims reported the matter to NZLS some time ago. NZLS has been 'investigating' for more than two years. Its investigation has gone nowhere. Had this matter not become public nothing would have happened and this grotesquely serious misconduct would have been allowed quietly to die and be swept under the carpet. Even now with the publicity it is unlikely the NZLS will take any effective action. Why?

a) Those involved are senior practitioners. They are influential. Allegations made against such organisations rarely see the light of day.

b) The firm is one of the most powerful in the country. Last time this firm was involved in a scandal the same thing happened. It was involved in major fraud. Its actions were totally dishonest, and senior partners in the firm were not only aware of the fraud they planned and implemented it. Many citizens and the government were defrauded of large sums. But had it not been for the research and book published by Tony Molloy QC it is unlikely it would ever have been investigated.

c) The Law Society's actions were reprehensible. Eventually, and only long after considerable publicity, it did take some action. Its action was far too late and indecisive. The result was that the NZLS, effectively, was trashed in the Courts. It showed itself incapable.

d) The most significant result of this inquiry was the virtual destruction of Tony Molly's practice for having the temerity to bring this into the open.

24. Of course this is just one of many such examples. A few years ago there was a major trial in New Zealand. The prosecutor was married senior counsel, well known throughout the country. The defence was a capable but junior female lawyer. During the trial, on the pretext of discussing trial issues, the defence lawyer was invited to meet the prosecutor socially. She was subjected to sexual harassment and considerable pressure. The result was a series of meetings in bars and hotels and a series of sexual liaisons which lasted for the duration of the trial. That trial was fundamentally compromised. The defendant was sentenced to a lengthy term of imprisonment.

25. Does the NZLS know about this? Of course. Did the NZLS do anything about this? No. If asked I am sure NZLS would say that the matter was never brought formally to its attention. But it did know and could have acted of its own volition. It does against me. But did not against this practitioner. Why?

26. The practitioner is very senior counsel. He holds a rank that many practitioners would aspire to. He holds a senior position within the NZLS. He is well known to, and friends with, many if not most of those holding senior NZLS posts. He is responsible for providing guidance and input to the formulation of published NZLS ethical standards. Even if the matter was brought formally to NZLS by way of complaint would NZLS take action. NEVER. NZLS looks after its own.

27. If complaint was made the results can be predicted. The complainant would be criticized. The junior defence lawyer would be crucified. The case against the prosecutor would be quietly allowed to die. We can be sure about that. The Russel McVeagh situation is evidence enough.

28. I make these points for a reason. I am aware the Tribunal will dismiss them by saying they are irrelevant and outside its jurisdiction. That in itself is a shame because the Tribunal is probably the only real restraint on the NZLS. But the NZLS has picked on me mercilessly through recent years. It brings charges against me at every opportunity. Most of those charges are trivial and yet I am punished. Nothing I say is ever listened to. It is like standing in front of a wall and speaking to the bricks.

29. There is really no point in my arguing with NZLS. It does not care for me. It does not look after my interests. It is an inadequate and corrupt organization which will take easy options and ignore the hard ones. I am the easy option. It can push me and others like me around. Those with contacts and powerful organisations behind them are vicariously and efficaciously immune.

Summary

30. I have made my points. I suppose the last one to make is that for some action to be reckless it must lead to a consequence. For a charge of reckless discharge of a firearm there must be a consequence of risk to others. Reckless use of a car a risk to other road users. What was the consequence here? Possibly that the NZLS gave me a practicing certificate when I was not entitled to one. But a practicing certificate was issued when NZLS was in possession of all the facts. It had all the facts as it knew them all along – and – I supplied the answer when requested to do so. There was no consequence. So there was no risk. So there was no recklessness.

31. The NZLS has harassed me for years. It charges me in circumstances when it does not charge others. I am the easy target.

32. This prosecution is a classic example.

33. I was not reckless. I cannot have been. And the tests in law do not support the charge.

M.B. Meyrick