NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2019] NZLCDT 13

LCDT 003/19

UNDER	The Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE NO. 1** Applicant
AND	**MOHAMMED IDRIS HANIF** Respondent

CHAIR

Judge D F Clarkson

MEMBERS

Mr G McKenzie

Mr S Morris

Ms S Sage

Mr W Smith

DATE OF HEARING 2 May 2019

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 31 May 2019

COUNSEL

Mr P Collins for the Standards Committee

Respondent in person

DECISION OF THE TRIBUNAL

Introduction

[1] The practitioner faced a charge under s 241(d) of the Lawyers and Conveyancers Act 2006 (Act), that he had been convicted of five charges under the Immigration Act 2009. These convictions related to providing information to an immigration officer "knowing it to be false or misleading in a material respect" and carried a maximum penalty of seven years imprisonment or a fine of up to $100,000, or both.

[2] The practitioner had been convicted following a defended hearing in April 2018 and was sentenced, on 21 September 2018 to a term of 10 months home detention, with six months post detention conditions.

[3] The charge was defended by the practitioner and the matter allocated a one-day hearing. The practitioner filed two affidavits in which he challenged the basis for the convictions. He appeared to be under the misapprehension that these proceedings involved a de novo hearing of the merits of the criminal prosecution. However, in the course of answering questions in cross-examination, Mr Hanif admitted the charge and, this change of plea having been clarified by the Tribunal with the practitioner directly, the matter proceeded on a penalty only basis.

Legal Framework

[4] Section 241(d) reads:

> **241 Charges that may brought before Disciplinary Tribunal**
>
> If the Disciplinary Tribunal, after hearing any charge against a person who is a practitioner or former practitioner or an employee or former employee of a practitioner or incorporated firm, is satisfied that it has been proved on the balance of probabilities that the person—
>
> …
>
> (d) has been convicted of an offence punishable by imprisonment and the conviction reflects on his or her fitness to practise, or tends to bring his or her profession into disrepute,—
>
> it may, if it thinks fit, make any 1 or more of the orders authorised by section 242.

[5] The fact of the conviction is, on the evidence, established by a certified copy of the extract of the permanent Court record, a sealed copy of which has been provided to the Tribunal through the affidavit of Mr Hickman, on behalf of the Standards Committee. Further, a decision of His Honour Judge Hikaka,[1] finding Mr Hanif guilty and dated 30 April 2018 was also provided to the Tribunal.

[6] The second two limbs of s 241(d) are therefore the subject of the hearing and were addressed by Mr Collins on behalf of the Standards Committee in his written submissions and in opening.

[7] Mr Hanif, by his statements to the Tribunal, appeared to accept that both limbs (both of the second and third limbs of s 241(d) which are disjunctive in any event), could be said to have been established against him. He accepted that the conviction did reflect on his fitness to practise and he accepted there was a tendency to bring the profession into disrepute.

[8] Following submissions from Mr Collins and from the practitioner as to penalty, the Tribunal retired and considered the proper penalty in this matter. We determined, unanimously as a Tribunal of five members, that the practitioner must be struck from the Roll of barristers and solicitors, since no lesser penalty could suffice to reflect the seriousness of the conduct under consideration.

[9] This order was made at the hearing on 2 May 2019, with reasons and decision as to costs reserved, to be delivered subsequently in writing.

Background

[10] Some detail of the offending is necessary to establish the level of seriousness which is always the starting point for a consideration of proper penalty. The facts are drawn from the submissions of Mr Collins as follows, with the client names redacted for privacy reasons: [2]

> "(a) The practitioner acted for a client named Feroz Ali. Mr Ali had a building company, named "Gibset", involved in commercial and residential construction work doing gib fixing. Mr Ali was also the

[1] *Ministry of Business, Innovation and Employment v Hanif* [2018] NZDC 20076.
[2] Except for the name of Mr Ali, who was convicted of the more serious offences, and whose offending was said to have been facilitated by the practitioner's offending.

subject of a conviction under the Immigration Act, described in the judgement (sic) of Judge Hikaka (at [14]) as "trafficking in human beings by deception". Mr Ali was evidently in the practice of recruiting workers from Fiji and bringing them to New Zealand on a visitor visa, then setting them to work in his business in this country;[3]

(b) The three individuals involved in this case were all from Fiji; a 42 year old fisherman named X, a 39 year-old farmer named Y, and a 25 year old student named Z. Those three individuals all began working for Mr Ali as gib fixers as soon as they arrived in New Zealand, on visitor visas. Z arrived in New Zealand on 15 December 2013, Y on 9 February 2014, and X on 19 May 2014. All were on short term visitor visas at that time and their visas were renewed before they expired. In the case of Z and Y this happened on two occasions (that is, two visa extensions were sought) and X on one occasion;

(c) Shortly before the visas were due to expire, Mr Ali took each of them to the practitioner's legal office in Mangere, Auckland, where the practitioner assisted them in applying for a further or extended visitor visa. In each case, the practitioner submitted an application on behalf of the individual concerned, to Immigration New Zealand, which falsely represented the reason for the extension. The evidence, which was accepted by the Court, was that the practitioner either completed the visa application forms himself or that they were completed by another person, and that he knew them to be false when he submitted them to Immigration New Zealand.

…

2.5 The sentencing Judge's notes also provide a helpful description of the nature of the offending: [4]

[2] The misleading information you provided was with respect to the reasons for those individuals applying for visitor visas. Your part in this process was as a result of your 10 year long knowledge of the principal offender, Mr Feroz Ali, who you described in your evidence as "sort of a client", and that you had known him for about 10 years but did not know his work. Mr Ali, his wife and wife's sister were behind the processes which led to three complainants and a number of others, coming to New Zealand and remaining in New Zealand, working for both Mr Ali and a co-offender, illegally.

[3] The three complainants I heard give evidence were people who had struggled to gather the funds required in order to work in New Zealand; X, a 42 year old crab fisherman, Y, a 39 year old farmer and Z, a 25 year old student. They all responded to advertisements published in Fiji offering work opportunities in New Zealand. In order to meet the cost involved Y and X borrowed large

[3] Mr Ali was evidently the architect of a form of human trafficking operation and was convicted and sentenced to nine years and six months imprisonment.
[4] *Hanif*, above n 1.

> sums of money from relations and from members of their local villages. They were told that a visitor visa would be sufficient for them to get to New Zealand, as it was difficult to get a work visa, but they could get a work visa once they arrived. Z was told he could actually work on a visitor visa.
>
> [4] They were all able to get visitors' visas, arrived, were met at the airport by Mr Ali and his wife, and ended up staying at their home. Their work conditions were poor, their living arrangements were poor, but they had come with the prospect of earning significantly more than they could ever expect to earn in Fiji and their plans were to earn that money and repay the debts they owed in Fiji and also, to better their position once they returned to Fiji.
>
> [5] Their work for the most part involved gib-fixing in the construction industry for Mr Ali. When the time came for their visa status to be renewed, they, at different times, were brought to your offices. They had documentation in support of extended time on a visitor visa and the reasons for extending the time included such things as seeing the mountains, skiing, visiting Rotorua, being with family. One of the documents was mostly filled out by Mr Ali's wife but at all stages you were the one who confirmed what had been written down and you presented that information to the immigration authorities in order to support the application to extend the visitors' visas. You did that notwithstanding that at times the individuals were standing in front of you in work clothes with the name of the employer across the chest, covered in dust and involved in discussions with you and Mr Ali about their work performance and how their work was progressing."

[11] In sentencing Mr Hanif, His Honour Judge Hikaka noted that Mr Hanif had throughout maintained the position that he was actually not at fault and that others had provided false evidence against him. The practitioner had apparently gone as far as to suggest malfeasance on the part of the prosecuting authority.

[12] Furthermore, His Honour noted Mr Hanif's submission that "*there were no adverse consequences, it was a trivial allegation* …", in respect of the gravity of the offending.

[13] His Honour disagreed and found the charges to be serious and justified a starting point of 20 months imprisonment. The relevant features in relation to the offending were:

> "… the direct challenge to the integrity of the immigration system and undermining the attempts to properly control this country's borders, the premeditation of your offending, the number of times it occurred, that is over an eight month period, and the evidence disclosed that there were more incidents

> of manipulation of the system that you were responsible for that have not been represented in the charges."[5]

[14] His Honour went on to refer to an aggravating feature, namely the breach of trust reposed in Mr Hanif as a lawyer by vulnerable applicants seeking visas.

[15] The fact that Mr Hanif cited considerable experience as an immigration lawyer was, in the view of the learned District Court Judge, also an aggravating feature. Apart from previous good character His Honour noted there were no apparent mitigating circumstances because there was no remorse or recognition of the wrongful nature of Mr Hanif's behaviour.

[16] Finally, in concluding sentencing, His Honour referred to the offender Mr Feroz Ali, that Mr Hanif was "*supporting in (his) criminal conduct …*"[6] a person who had committed very serious offending (of human trafficking) which led to an imprisonment term of nine and a half years being imposed.

[17] Therefore, we consider that what is before the Tribunal is a conviction for "high-end" dishonesty offending.

Mitigating Circumstances

[18] As submitted by Mr Collins, until the day of the hearing before us and indeed in the course of hearing, Mr Hanif has continued to deny his responsibility for his offending and therefore cannot avail himself of what would have been the mitigating feature of remorse.

[19] That is important because it also reflects on any confidence that the Tribunal could have in Mr Hanif's ability to be rehabilitated.

[20] It also reflects on the assessment of the risk of re-offending in the future. Without recognition of wrongful conduct, there can be no assurance as to future conduct.

---

[5] *Hanif*, above n 1 at [17].
[6] *Hanif,* above n 1 at [24].

[21] At the hearing Mr Hanif advised us that he had been a practitioner since 1983 and had a clean record. Certainly he is entitled to considerable credit for a long unblemished legal career. However, the information was not entirely correct.

[22] In response Mr Collins referred us to findings of unsatisfactory conduct against the practitioner in November of 2013. Although Mr Collins fairly pointed out that this offending was not in any way comparable with the current matter it is, of course, a blemish on the practitioner's professional history.

[23] We accept he has no previous criminal convictions.

Aggravating Features

[24] In terms of the disciplinary perspective there are no major aggravating features. The fact that the practitioner did not acknowledge the charge until the day of the hearing is not aggravating but rather means he cannot, as earlier stated, rely on an early acknowledgment and remorse as a mitigating feature. The previous disciplinary history is a minor aggravating feature.

Comparable Cases

[25] Mr Collins put to the Tribunal three cases which he submitted were of comparable seriousness.[7]

[26] We consider that the convictions entered against Mr Hanif are certainly of at least similar level of culpability. We accept Mr Collins' submission that dishonesty in dealing with Government officers, directly in connection with the lawyers practice, on a repeated basis, must reflect on his fitness to practise.

Penalty Decision

[27] For the above reasons Mr Collins submitted on behalf of the Standards Committee that any penalty short of striking the practitioner off the Roll would be inadequate to reflect the seriousness of the offending.

---

[7] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88; *Otago Standards Committee v Kelly* [2016] NZLCDT 20; *Hawke's Bay Standards Committee v Hill* [2017] NZLCDT 40.

[28] We accept that submission and, having heard from Mr Hanif, who wished to continue in practice after what he sought as a "short period of suspension", the Tribunal unanimously concluded that the practitioner could no longer be regarded as a fit and proper person to be a practitioner.[8]

[29] We accepted the submission of Mr Collins that:

> "The case for striking off is compelling and no lesser penalty would be an adequate disciplinary response …"

Having regard to:

> "(a) The seriousness of the repeat offending involving dishonesty in the lawyer's practice;
>
> (b) The lack of insight and defiance which shows that the practitioner has not learned any lesson from these events and will continue to pose a risk to the public; and
>
> (c) The fact that the offending occurred as part of wider criminal activity being undertaken by a client of the practitioner."

Costs

[30] The practitioner is in poor financial circumstances. He is in receipt of national superannuation. He has no assets and lives in rented accommodation.

[31] However, it is not appropriate that the legal profession should automatically be put to the costs arising out of the practitioner's criminal conduct. We note that the New Zealand Law Society can make payment arrangements for practitioners in the case of hardship. We also note that the practitioner is currently repaying reparation in respect of his offending and in those circumstances that any order may be difficult for the New Zealand Law Society to enforce. However, that should not necessarily be the primary concern of the Tribunal, which has a wide discretion as to costs, and we propose to make the orders as to costs sought, allowing a discount of approximately 25 per cent in respect of the Standards Committee's costs.

[8] Section 244 of the Act.

Orders

1. We confirm the order striking the practitioner from the Roll of Barristers and Solicitors, ss 242(1)(c) and 244 of the Act, made 2 May 2019.

2. There will be an order in the sum of $7,500 against the practitioner for the Standards Committee costs, s 249 of the Act.

3. There will be an order for the Tribunal costs in the sum of $2,689, against the New Zealand Law Society, s 257 of the Act.

4. There will be an order that the practitioner reimburse in full to the New Zealand Law Society, the Tribunal costs awarded against it under 3 above, s 249 of the Act.

DATED at AUCKLAND this 31st day of May 2019

Judge D F Clarkson
Chair