NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2019] NZLCDT 29

LCDT 020/19

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**OTAGO STANDARDS COMMITTEE**
	Applicant
AND	**ADAM McARA COPLAND**
	Respondent

CHAIR

Judge DF Clarkson

MEMBERS

Mr W Chapman

Mr W Smith

Mr B Stanaway

Dr D Tulloch

DATE OF HEARING 11 October 2019

HELD AT Tribunals Wellington

DATE OF DECISION 11 October 2019

COUNSEL

Ms N Pender for the Standards Committee

Mr T Mackenzie for the respondent

ORAL DECISION OF THE TRIBUNAL IN RESPECT OF PENALTY

Background

[1] The practitioner Mr Copland was convicted in July of 2018 of an offence of driving with access breath alcohol and was disqualified from driving for six months as part of his sentence. In September of the same year he was charged and subsequently pleaded guilty and convicted of driving while disqualified. Both of those offences carried penalties that include a maximum imprisonment of three months and therefore fit within the s 241(d)[1] offence with which he is charged, that is having been convicted of an offence punishable by imprisonment and the conviction tends to bring his profession into disrepute. Mr Copland has responsibly admitted that charge at the earliest opportunity.

[2] By way of additional background, Mr Copland committed the first offence in Auckland and he is a Queenstown practitioner and he made the decision which he now accepts was unwise, to not tell anyone about the excess breath alcohol charge and his consequent disqualification. He did not tell his family, he did not tell his partners, and it seems that he did not actually report to the Law Society until the second conviction was entered.

[3] Mr Copland was extremely concerned at the time about the stress that telling his wife, who was pregnant, would impose on their family which was already under significant stress being in the throes of building a house and with a family of young children.

[4] Following his second conviction, Mr Copland promptly reported to the Law Society and disclosed all of the history to his family and to his partners. He received a great deal of support. Further to that, he took a month away from his practice to consider his actions and he engaged almost immediately with a clinical psychologist to explore the underlying causes of his conduct, the stresses, his drinking and his lifestyle patterns. He is still seeing that psychologist monthly and he says gaining

[1] Lawyers and Conveyancers Act 2006 (The Act).

considerable benefit from that. That is important information and indeed I propose to quote from a letter that Mr Copland wrote back in September 2018 to the Law Society because the Tribunal is impressed with the level of insight that is shown in the manner that Mr Copland expresses himself. What he said was this:

> I knew at the time all of the above occurred that I was in the wrong and what the consequences would be if I was caught. At the time I also weighed up the potential of being caught against the practical reasons of doing what I was doing as well as the implications of disclosing my behaviour and I made the wrong choices as a result. It is this behaviour that is most concerning to me because I would never advise a client or a friend to make the decisions that I made. I would openly and avidly advise against it. As a result, I have sought guidance from a clinical psychologist Geoff Shirley to assist me in this and other matters.

[5] As I have indicated, we were impressed by the level of insight that that demonstrated, which is relevant because it goes to one of the purposes of penalty, which is rehabilitation of the practitioner.

[6] Mr Copland is a man with a young family and he says at times, leading up to this offending, he was seriously sleep deprived, he was building a house with all the consequent stresses that that imposes and conducting a demanding practice involving frequent travel in the course of his work. Shortly before he was apprehended for driving while disqualified he had said he was compelled to take his car to the airport because transport that he had arranged did not arrive, and he urgently made the decision to flout the Court order. However, his return drive, the next or a couple of days later, when he was apprehended, of course had no such urgency.

[7] In considering penalty, the starting point of course for the Tribunal is the seriousness of the conduct. Section 4 of the Act sets out the obligations of a lawyer and importantly among those obligations, which are fundamental obligations, and expressed as the first one, is to *"uphold the rule of law and facilitate the administration of justice in New Zealand"*. Therefore, any breach of a Court order by a lawyer must be considered as serious, leading to a starting point in terms of penalty, of suspension at least.

[8] The purposes of penalty in the disciplinary framework are not, as in the criminal setting, necessarily inclusive of punishment. The obligation of the Tribunal in considering proper and proportionate penalty is the protection of the public, the protection of the reputation of the legal profession and the upholding of its standards by demonstrating a serious response to conduct which breaches those standards. As well as that, as already indicated, rehabilitation if relevant, and deterrence and denunciation. Deterrence, as submitted by counsel for the Standards Committee, is clearly an important purpose in this matter also.

[9] There are no real aggravating features which require comment other than the fact that there have been two convictions but those can properly be considered under the heading of seriousness of the offending rather than necessarily having to be considered again as aggravating features.

[10] In terms of mitigating features for the practitioner, certainly after the second offence he did everything right. He reported to all of the people who mattered, and he immediately sought help. He took time away from his practice to think about what it was that had got him to where he found himself; and that is often in itself one of the purposes of suspension from practice.

[11] He has cooperated with the disciplinary process, acknowledging the charge at the earliest opportunity and with his counsel preparing an agreed summary of facts. His counsel says this, and his otherwise solid reputation should avoid the need for suspension in this particular case.

[12] Similar cases that the Tribunal has had to consider have been canvassed in the course of submissions by counsel. The two most relevant are the *Pou*[2] decision and the *Rohde*[3] case. Both of which could be said to be the slightly more serious level in that in *Pou* there were three drink driving convictions, as well as driving while disqualified and the practitioner was disqualified for two months, but that was reflective of his particular circumstances in that he practiced in an area of the law which was extremely specialised and there would have been implications for clients and the public, had he been disqualified for a longer period. In the *Rohde* matter, as

[2] *Waikato Bay of Plenty Standards Committee 1* v *Pou* [2014] NZLCDT 86.
[3] *Auckland Standards Committee 5 v Rohde* [2016] NZLCDT 9.

Ms Pender points out, there was not the element of a breach of a Court order and we accept that, although there were other significant aggravating features in that matter and Mr Rohde was in the end not suspended.

[13] Mr Mackenzie on behalf of Mr Copland submitted that his client ought to be able to take heart from the *dicta* of the decision in *Daniels*[4] and it is acknowledged or conceded by the counsel for the Standards Committee that a more lenient penalty can be considered where the factors set out in *Daniels* occur, and I quote from that decision at para [28]:

> Matters of good character, reputation and absence of prior transgressions count in favour of the practitioner so too would acknowledgement of error, wrongdoing, expressions of remorse and contrition. For example, immediate acknowledgement of wrongdoing apology to a complainant, genuine remorse, contrition and acceptance of responsibility as a proper response to the Law Society inquiry can be seen as substantial mitigating matters and justify lenient penalties.

[14] We accept that those factors are present in this case and justify a more merciful approach. Mr Mackenzie made the submission that, the suggested suspension of one to two months which was put by the counsel for the Standards Committee was not a meaningful length. We reject the submission that the Tribunal ought to have some sort of minimum level of disqualification in order to be meaningful; the Tribunal wishes to retain the ability to respond in a flexible way to each different case.

[15] In the end this is clearly a very borderline case which has resulted in the Tribunal reaching different views. The majority of the Tribunal considered that a brief period of suspension was necessary to publicly mark the wilful breach of a Court order by an officer of the Court.

[16] However, there is not a unanimous decision to suspend and of course s 244 of the Act makes it mandatory that the members be unanimous in a decision to suspend. So, Mr Copland you are fortunate today in that you will not be suspended from practice, but to meet the purposes of deterrence and denunciation there must be a significant penalty in terms of a fine and censure.

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

Orders

[17] The orders we are making as follows:

1. You will be fined the sum of $15,000.

2. There is a censure which is delivered now:

   Mr Copland, by offending in the manner in which you have, particularly in respect of the driving while disqualified charge, you have brought your profession into serious disrepute. To your credit you have accepted that and taken steps which are ongoing to address your personal issues. Nevertheless, your behaviour is completely unacceptable, for that you must be censured. A censure is more than mere words, it is a record that will always remain on your file and remind you and others that such behaviour will not be tolerated or go unmarked Mr Copland you are formally censured in these terms.

3. Mr Copland is to meet the Standards Committees costs in full.

4. The Tribunal costs Tribunal are to be certified and to be paid by the New Zealand Law Society (pursuant to s 257 of the Act).

5. Mr Copland is to reimburse the New Zealand Law Society for the s 257 costs.

DATED at WELLINGTON this 11th day of October 2019

Judge DF Clarkson
Chairperson