NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2019] NZLCDT 32

LCDT 012/18 and 013/18

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**WAIKATO BAY OF PLENTY STANDARDS COMMITTEE NO.1** Applicant
AND	**JOHN CAMPION** Practitioner

CHAIR

Judge DF Clarkson

MEMBERS

Mr S Grieve QC

Ms N McMahon

Mr P Shaw

Ms S Stuart

ON THE PAPERS

DATE OF DECISION 17 October 2019

SUBMISSIONS

Mr McCaughan for the Standards Committee

No submission received from the Practitioner

DECISION OF THE TRIBUNAL AS TO PENALTY

Introduction

[1] In our liability decision of 19 July 2019 we directed the parties to file submissions as to penalty within 14 days. Further notice was given on 19 August 2019 to the parties seeking their consent to conduct the hearing on the papers (in order to avoid the need for Mr Campion to travel from Hamilton). The Standards Committee consented to this process. No response was received from Mr Campion.

Penalty Considerations

[2] As stated in *Daniels:*[1]

> "It is well known that the Disciplinary Tribunal's penalty function does not have as its primary purpose punishment, although orders will inevitably have such effect. The predominant purposes are to advance the public interest (which include "protection of the public"), to maintain professional standards, to impose sanctions on a practitioner for breach of his/her duties, and to provide scope for rehabilitation in appropriate cases …"

[3] We accept the Standards Committee submission that in the present case the focus of the Tribunal needs to be on the maintenance of professional standards, denunciation of the practitioner's conduct, and deterrence of other practitioners from similar offending.

Seriousness of the Conduct under Scrutiny

(A) **R Complaint**

[4] In our liability decision we found the practitioner's conduct to be unsatisfactory conduct,[2] in that it was viewed as "unprofessional" and involving an "unacceptable delay".

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[1] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.
[2] Section 12 of the Lawyers and Conveyancers Act 2006 (the Act).

(B) **S Complaint**

[5] This was a much more serious matter which involved findings under the Lawyers and Conveyancers Act 2006 (the Act) and its predecessor the Law Practitioners Act (LPA). In our liability decision[3] we found the professional failures to be "*multiple and very serious*", resulting in expensive rectification being required for the client.

[6] Further, we found the level of serious negligence of the practitioner such as to amount to "… *an indifference to and an abuse of privileges which accompany registration as a legal practitioner*".[4]

[7] We also found the omissions in the level of diligence required and provision of services to the client to be at a level where they could be viewed as either "disgraceful or dishonourable"[5] or a reckless contravention of the Rules of Client Conduct and Care.[6] These errors and omissions extended over many, many years.

[8] In summary we find the offending to be at the high end of misconduct and could only have been worsened by dishonesty of which it fell short.

Aggravating Features

[9] Two sets of proceedings were considered in our liability decision and we consider we are able to consider the cumulative effect albeit that we accept the R complaint to be of a less serious nature.

[10] The primary aggravating feature is the practitioner's previous disciplinary history. In April 2012 Mr Campion was found guilty of unsatisfactory conduct in his failures to administer an estate efficiently and in a timely manner, with numerous oversights including failure to account for assets or properly identify them. In September 2012 Mr Campion was also found to have committed unsatisfactory

[3] *Waikato Bay of Plenty Standards Committee No.1 v John Campion* [2019] NZLCDT 20, at paras [60]-[63].
[4] Paras [61] and [62] references omitted.
[5] Section 7(1)(a)(i) of the Act.
[6] Section 7(1)(a)(ii) of the Act.

conduct in relation to the administration of another estate including his lack of communication with beneficiaries and the level of his fees. In each of these matters the practitioner was fined, censured and ordered to pay costs. In 2014 Mr Campion admitted one charge of unsatisfactory conduct in relation to the administration of an estate again. The Tribunal censured Mr Campion, ordered costs against him and directed him to take advice concerning the management of his practice for 12 months as well as his undertaking to pay $10,000 to the complainants.

[11] In 2017 a further charge was laid against Mr Campion for his failure to refund fees as ordered in the September 2012 decision.

[12] The Tribunal found misconduct proved against Mr Campion but stopped short of imposing a period of suspension at that time; instead once again censuring him and ordering him to pay costs and the outstanding fees.

[13] The Standards Committee submits that the misconduct and previous findings of unsatisfactory conduct are relevant because they relate to the practitioner's administration of trusts and/or estates. It is submitted that this disciplinary history "… *raises serious questions regarding both his competence and his willingness to engage with clients when issues are raised with him*".

[14] Mr Campion is now 80 years of age and does not currently hold a practising certificate.

Mitigation

[15] Because the Tribunal has received no submissions from the practitioner it is difficult to fully address mitigating matters, however there are a number of points that can be made. We accept that the practitioner is now elderly and in poor health at times. We understand that his financial circumstances are also poor.

[16] However, his conduct in the course of these proceedings has in our view deprived him of what could have been mitigating features (remorse and insight) and must be taken into account when considering his overall fitness to practice. We refer

to the supplementary submissions of the Standards Committee where the practitioner's lack of cooperation is noted as follows:

> "… At no stage did the practitioner file any written response or affidavit evidence to the charge, and yet he still expected the Tribunal to be willing to receive oral evidence from him. It is submitted that the practitioner's actions amount to a flagrant disregard of the Tribunal's processes."

Comparison with Similar Cases

[17] The Tribunal has considered some recent decisions involving serious negligence. We considered the failures of Mr Campion to be at a more serious level than those identified in the *Johnson*[7] decision, in which the High Court upheld a suspension of three months for the practitioner. In that matter the practitioner was able to call on 30 years of practice without prior disciplinary findings, in contrast to the present matter. Mr Campion's failures were of a much longer standing nature and involving many more failures than those of Mr Johnson, albeit the Tribunal recorded the level of seriousness in that matter as "high end" negligence.

[18] We also regard Mr Campion's conduct as more concerning than that of Mr Claver.[8] Although that matter involved multiple failures to a number of clients, the practitioner was given credit for a number of significant steps (which were protective of the public) which he had already taken to remedy his defaults. He was suspended for 12 months.

[19] By contrast, we regard Mr Campion's conduct as less serious than that found in the *McKay*[9] decision. Mr McKay's failures were very significant and resulted in his client losing her home. His conduct also involved multiple conflicts of duties. He was struck off the Roll of Barristers and Solicitors.

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[7] *Johnson v Canterbury Westland Standards Committee 3* [2019] NZHC 619, Van Bohemen J, 28 March 2019.
[8] *Otago Standards Committee v Claver* [2019] NZLCDT 8.
[9] *Hawkes Bay Standards Committee v McKay* [2014] NZLCDT 57.

Overall Assessment of Fitness to Practise

[20] We accept the Standards Committee submission that "*given the extent of the practitioner's failings in these two instances, his extensive disciplinary history, and his failure to engage with the disciplinary process, … a suspension is necessary to mark the seriousness of the practitioner's misconduct*".

[21] The Standards Committee seeks a 12-month suspension. We consider that does not go far enough. To properly uphold professional standards and to provide personal and general deterrence and to confirm that the Tribunal will not treat lightly such serious breaches of expected standards, we consider a lengthier period of suspension is required.

[22] We propose to suspend Mr Campion for two years from the date of this decision.

Additional Orders

[23] The Standards Committee also seeks compensatory orders pursuant to s 242(1)(a) and s 156(1)(d) of the Act in the sum of $11,646.38 to the S Trusts Partnership. We consider this is a proper award reflecting the legal fees associated with rectifying the errors in the farms title in relation to the S Complaint.

[24] In addition, contribution to Ms S's legal fees in the sum of $7,500 is also sought. We consider that is also a proper award, contingent only on the provision of invoices to support that claim, by the Standards Committee.

Costs

[25] Because of the practitioner's delays and obstructions in this matter proceeding to hearing and the manner of his giving evidence, the costs have increased to the sum of $34,157.

[26] There is no reason why Mr Campion's profession should bear the costs of his misconduct and his arrogant lack of co-operation with the disciplinary institutions

connected with his profession. For that reason we are prepared to make orders as to costs against Mr Campion in the full amount claimed as well as reimbursement of the s 257 costs which the Tribunal is bound to make against the New Zealand Law Society.

Orders

1. The practitioner is suspended for two years from the date of the issue of this decision, pursuant to s 242(1)(e) of the Act.

2. The practitioner is to pay compensatory orders in the sum of $11,646.38 to the S Trusts Partnership and $7,500 to Ms S (subject to the above proviso), pursuant to ss 242(1)(a) and 156(1)(d) of the Act.

3. The practitioner is to pay the Standards Committee costs in the sum of $34,157, pursuant to s 249 of the Act.

4. The Tribunal costs are certified at $9,392, and are to be paid by the New Zealand Law Society, pursuant to s 257 of the Act.

5. The practitioner is to reimburse to the New Zealand Law Society the s 257 costs in full, pursuant to s 249 of the Act.

DATED at AUCKLAND this 17th day of October 2019

Judge DF Clarkson
Chairperson