

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2019] NZLCDT 40

LCDT 004/19

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 5**

Applicant

AND

BOON GUNN HONG

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS

Mr S Hunter

Mr D Scott

Ms P Walker

Mr I Williams

On the Papers

DATE OF DECISION 23 December 2019

COUNSEL

Mr P Collins for the applicant

The respondent in person

**DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL REGARDING PENALTY**

[1] In our decision of 11 October 2019, we recorded our reasons for finding Mr Hong guilty of wilful misconduct. That misconduct consisted of a wilful contravention of the trust accounting regulations where Mr Hong was generally obstructive in preventing a trust account inspector from completing his trust account review. Mr Hong's obstructions comprised:

- (a) refusing the inspector's repeated request for access to trust accounting records;
- (b) refusal to allow the inspector to visit his offices to review the complete files; and
- (c) persistent refusal to allow the inspector access to client files.

[2] The result of those refusals was that the review of Mr Hong's trust account was compromised and frustrated. Mr Hong's position was that his refusals were based on an honest opinion that he had the right to refuse. His argument was precarious in the first instance as he admitted that he had no particular experience in the field and had not previously researched the points. His position was lost entirely when he went as far as refusing to accept the advice of his own expert, Mr Anderson. His obstruction came about when he still refused to accept what the inspector and his own expert were telling him that his opinion about privilege was contrary to accepted law.

[3] The Committee seeks the following penalties:

- (a) suspension for a period of three months under s 242(1)(e) of the Lawyers and Conveyancers Act 2006 (Act);
- (b) an order under s 242(1)(g) of the Act, that Mr Hong be prohibited from practising on his own account until approved to do so by the Tribunal (after

his return from suspension, if he is suspended, or on reasonable notice if he is not); and

(c) costs.

[4] Mr Collins for the Committee has drawn our attention to the established principles in the Tribunal's penal jurisdiction the primary purpose of which is the protection of the public and the maintenance of professional standards.¹

[5] In considering penalty, we have considered the relevant factors as set out in *Hart v Auckland Standards Committee 1 of the New Zealand Law Society*². Those factors are:

(a) the nature and quality of the misconduct found to be established;

(b) previous disciplinary history;

(c) the need for deterrence; and

(d) consideration of any aggravating or mitigating factors.

[6] In respect of suspension, Mr Collins referred us to the enduring principle explained in *Daniels* at paragraph [24]:

A suspension is clearly punitive, but its purpose is more than simply punishment. Its primary purpose is to advance the public interest. That includes that of the community and the profession, by recognising that proper professional standards must be upheld, and ensuring there is deterrence, both specific for the practitioner, and in general for all practitioners. It is to ensure that only those who are fit, in the wider sense, to practise are given that privilege. Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional body will not treat lightly serious breaches of expected standards by a member of the profession.

[7] Mr Collins next referred us to the statement in *Bolton v Law Society*³ which stated that one of the purposes of a limited period of suspension is that "*it is hoped that*

¹ *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 at [22].

² *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* 1 [2013] 3 NZLR 103 at [181]-[189].

³ *Bolton v Law Society* [1994] 2 All ER 486 (CA) at 492.

experience of suspension will make the offender meticulous in his future compliance with the required standards”.

[8] Mr Collins submitted that the following grounds supported the imposition of the penalties which the Committee was asking for. They are:

- (a) the seriousness of Mr Hong’s conduct, shown by wilfulness, in an aspect of legal Practice essential to the integrity of the profession and the maintenance of public confidence;
- (b) Mr Hong’s obdurate attitude indicating lack of insight and, consequently, the risk of recurrence;
- (c) Mr Hong’s prior disciplinary record;
- (d) the need for deterrence; and
- (e) the cumulative effect of those factors which justify the protection of the public.

[9] Mr Collins said that the assessment of penalty required the Tribunal to review *“the entire conduct of the practitioner and transgressions the subject of disciplinary proceedings, and the general behaviour of the practitioner”*.⁴

[10] Mr Hong’s disciplinary record since 1997 comprises:

- (a) two findings under the Law Practitioners Act 1982 being one of misconduct and one of conduct unbecoming;
- (b) six findings of unsatisfactory conduct by Standards Committees or the Legal Complaints Review Officer under the Act;
- (c) a finding of misconduct confirmed by the High Court under the Act.

⁴ Above n 1 at [32].

[11] The penalties imposed on Mr Hong have included three censures and two fines of \$7,500.

[12] Mr Collins' submission is that Mr Hong's disciplinary record discloses that the following important features of his offending render his disciplinary record a relevant ground to support the pleas for suspension, notwithstanding that the charges and circumstances of each event are not on all fours with the present matter. Those features are:

- (a) the span of his career over which they have occurred indicating an enduring tendency to breach professional standards;
- (b) the range of professional irresponsibility showing a disregard for the rules and standards of professionalism across a range of activity; and
- (c) the frequency with which unprofessional conduct has been found to have occurred over the last decade, which suggests a decline in Mr Hong's capacity to maintain professional standards.

[13] Mr Collins has drawn our attention to what he has described as the "disobedience cases" involving misconduct for refusing to comply or co-operate with the lawful requirements of the professional institutions. They are:

- (a) *Auckland Standards Committee 4 v Potter*⁵ where the practitioner was suspended for three months for refusing to co-operate with a trust account inspector over a period of about five months. He was also prohibited from practising on his own account until authorised by the Tribunal.
- (b) *Auckland Standards Committee 2 v Fox*⁶ where the sole practitioner was suspended for six months having admitted (along with other charges) misconduct for repeated non-compliance with financial orders made by a Standards Committee.

⁵ *Auckland Standards Committee 4 v Potter* [2014] NZLCDT 63.

⁶ *Auckland Standards Committee 2 v Fox* [2017] NZLCDT 26.

- (c) The decisions in *Hart*⁷, *Orlov*⁸, and *Sisson*⁹ as authority for the proposition that the deliberate failure by a lawyer to engage with the lawful investigative process of an authorised professional body is seen as a serious departure from professional standards in its own right.

[14] Mr Collins further submitted that general deterrence was a significant factor in this case. He referred to the decisions in *Wislang v Medical Council of New Zealand*¹⁰ and *Canterbury Westland Standards Committee v Horsley*¹¹ as authorities for the position that one of the primary purposes of imposing sanctions for failings of professional standards is to provide a deterrent to other practitioners. He submitted that there was a need arising out of this case to demonstrate to the wider profession the consequences of serious repeat offending in addition to the consequences of obstruction of a trust account inspector performing the lawful functions of the office.

[15] Mr Collins then submitted that the absence of mitigating factors in support of Mr Hong is an important feature of the penalty considerations in this case. He submitted that Mr Hong displayed no evident remorse and insight. He submitted that the opposite was the case. Mr Hong evidenced an obdurate attitude refusing to accept that he had done anything wrong and going so far as to say that he would do the same again in a future trust account inspection. He has no credit available for insight and is a peril to his clients and the public with a high possibility of recurrence. His disciplinary record indicates that he has not learned from past mistakes.

[16] Mr Collins final submission was that an order prohibiting Mr Hong from practising on his own account was warranted in the interests of public protection. He supported that submission by the following factors:

- (a) the pattern of disciplinary findings shows his consistent fall below acceptable standards;

⁷ *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103.

⁸ *Orlov v The New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2015] 2 NZLR 606.

⁹ *Sisson v Standards Committee 2 of the Canterbury-Westland Branch of the New Zealand Law Society* [2013] NZAR 416.

¹⁰ *Wislang v Medical Council of New Zealand* [2002] NZAR 573.

¹¹ *Canterbury Westland Standards Committee v Horsley* [2014] NZLCDT 47.

(b) the connection between his professional decline and apparent deterioration in his personal circumstances evidenced by:

- (i) the fact that he has not conducted a bank transaction in the firm's office or trust account since 2008;
- (ii) his delegation of the management of those aspects of the practice to Ms Chan (his former wife) who is not a qualified lawyer and is described as a "half owner" of the practice over whom he has no authority;¹² and
- (iii) Mr Hong's evidence that he labours under physical and occasional intellectual impairment.

[17] Mr Hong has not addressed the submissions that Mr Collins has made about penalty. Rather, he has held to his views maintained during the hearing and post our judgment on liability. In particular, Mr Hong does not accept our finding that his grounds for refusing to give up his files were legally ineffective. He failed to appreciate the point made to him by the committee representative. He also failed to accept the advice of his own expert Mr Anderson. Mr Hong submitted that he should not be exposed to any penalties or costs and that a censure was the only appropriate penalty.¹³ His final submission was that there should be no penalties imposed or costs awarded against him.¹⁴

[18] Mr Hong has challenged the Committee's costs submitting that counsel had "*grossly overcharged such willful and discriminatorily*". He has accepted that it is for the Tribunal to make an assessment of the costs claimed by the Committee.

[19] The amount claimed is \$35,850.00. This matter generated voluminous documentation including an affidavit filed on behalf of Mr Hong 64 pages in length and containing 305 paragraphs and multiple exhibits. The report from Mr Hong's expert was 39 pages long. Counsel's hourly charge out rate was at the amount regularly

¹² Ms Chan's affidavit at [13]-[14] and [17].

¹³ Mr Hong's submissions on penalty at [14].

¹⁴ Mr Hong's submissions on penalty at [141].

accepted by the Tribunal as appropriate. We do not find that the costs claimed are unreasonable.

[20] We are persuaded by the submissions of Mr Collins that the penalties sought are those that should be imposed in this case. His submissions are comprehensive, careful and supported by authority. We adopt them as our reasons for making the following orders:

- (a) Mr Hong is suspended from practice for a period of three months, pursuant to s 242(1)(e) of the Act.
- (b) An order prohibiting Mr Hong from practising on his own account until approved to do so by this Tribunal, pursuant to s 242(1)(g) of the Act.
- (c) Mr Hong is to pay the costs of the Standards Committee in the sum of \$35,850.00, pursuant to s 249(3) of the Act.
- (d) The Tribunal costs are certified in the sum of \$6,225.00 and are payable by the New Zealand Law Society, pursuant to s 257 of the Act.
- (e) An order requiring Mr Hong to refund to the New Zealand Law Society the costs of the Tribunal payable by it in the sum of \$6,225.00.

[21] The orders for suspension and prohibition from practising on his own account are not to take effect until 1 March 2020 to allow Mr Hong time to pursue his appeal to the High Court or to seek a stay of those orders pending determination of his appeal.

DATED at AUCKLAND this 23rd day of December 2019

BJ Kendall
Chairperson