

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 12

LCDT 016/19

**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**

Ms J Gray

Mr G McKenzie

Prof D Scott

Ms S Stuart

**DATE OF HEARING** 19 March 2020

**HELD AT** Specialist Courts and Tribunals Centre, Auckland

**DATE OF DECISION** 29 April 2020

**COUNSEL**

Mr P Collins for the applicant

The respondent in person

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

[1] In our decision of 5 February 2020, we recorded our reasons for finding Mr Hong guilty of three charges of misconduct for breaches of numerous rules applicable to him at the time. He was found to have breached the following rules:

- (a) Rules 1.03, 1.04 and 1.07 of the Rules of Professional Conduct for Barristers and Solicitors, involving conduct before 1 August 2008.
- (b) Rules 5, 5.1, 5.2, 5.4, 5.4.2, 5.4.3, 5.4.4, 5.4.5, 6 and 6.1 of the Conduct and Client Care Rules, and s 4(d) of the Lawyers and Conveyancers Act (Act), for conduct occurring on or after 1 August 2008.

[2] The breaches of the Rules arise out of Mr Hong's dealings with his clients D K, J D, and the CL Trust (Trust):

- (a) The Trust entered into an agreement to purchase a property in September 2005 which it was unable to complete because of adverse caveats. Subsequently, in mid-2006, Mr Hong proposed a solution which involved his personal involvement with a substantial financial input. Mr K described the proposal as a joint venture.
- (b) The Trust paid a deposit of \$40,000 on the property, and later a further sum of \$5,000 to be held by Mr Hong if needed for an increased deposit. Mr Hong paid the balance of \$590,000 to complete settlement on 1 August 2006. Transfer of the title did not take place until 31 July 2008.
- (c) Mr Hong transferred title to the property into the joint names of a trustee, Ms D, and himself at a time when he had ceased to be a trustee of the trust. A week later he transferred the title into the sole ownership of a company under his exclusive control (BGH Trusteeship Limited).

- (d) Between 4 August 2011 and 12 December 2012, Mr Hong registered further transfers of the title, first to Nominees and Trustees Limited, another company under his sole control, and then to himself personally. He then registered a mortgage to ASB which was intended to secure lending to meet his own financial obligations.
- (e) Mr Hong's actions described in (c) and (d) were done without advice or explanation to his clients.
- (f) Mr Hong remains the sole legal owner of the property which is subject to a caveat by Mr K.
- (g) Mr Hong has treated Mr K as a tenant whom he unsuccessfully sought to have evicted in 2014. Mr Hong denies any responsibility to Mr K and Ms D. Their dispute with him is entrenched and unresolved to this day.

### ***The submissions for the Committee***

[3] The primary submission of Mr Collins for the Standards Committee is that the substance of the misconduct findings is that Mr Hong betrayed his clients, under the guise of a benevolent financial rescue package. In doing so, he not only failed in his obligation to protect their interests but in fact caused harm to their interests. Mr Collins argued that this case is a textbook example of the reason for the existence of rules prohibiting lawyers' personal financial dealings with their clients, and the rules intended to ensure the essential quality of independence in the lawyer and client relationship.

[4] The Committee seeks the following penalties:

- (a) An order that Mr Hong be struck off the roll under s 242(1)(c) of the Act.
- (b) An order that Mr Hong pay full costs.
- (c) An order that Mr Hong refund to the Law Society the full costs payable by the Law Society under s 257 of the Act.

- (d) An order that Mr Hong pay compensation to Mr K.

[5] The Standards Committee's submissions in support of the penalty it seeks are:

- (a) The findings of misconduct are at a very serious level.
- (b) Mr Hong's lack of insight and remorse is such that he continues to pose a risk to his clients and to the public.
- (c) Mr Hong's past disciplinary history is poor and is characterised by a marked decline in his observance of professional standards in the last decade, over a 30-year career.

[6] 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.<sup>1</sup>

[7] He has drawn our attention to the enduring principle to be applied when considering striking off which was set out by the High Court in *Dorbu v New Zealand Law Society*.<sup>2</sup>

The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending.

[8] In considering the penalty of striking off, we have considered the relevant factors as set out in *Hart v Auckland Standards Committee 1 of the New Zealand Law Society*.<sup>3</sup> Those factors are:

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

<sup>2</sup> *Dorbu v New Zealand Law Society* [2012] NZAR 481 at [35] (HC).

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

- (a) The nature and quality of the misconduct found to be established.
- (b) Previous disciplinary history.
- (c) Any evidence of remorse or insight.
- (d) The need for deterrence.
- (e) Consideration of any aggravating or mitigating factors.

***Seriousness of breaches and lack of insight***

[9] Mr Collins submitted that a feature of this case was that Mr Hong paid no attention to his professional responsibilities, or the professional rules, at any time during his dealings with Mr K and Ms D. He persisted in denying that he was subject to any professional responsibilities or rules at all. The submission was that Mr Hong was practising outside the legitimate controls and standards of his profession. He maintained that his activities were carried out under the umbrella of his Benevolence on the Conscience Loan Fund which absolved him of any relevant professional responsibilities. He regarded the financial commitment he made to settle the purchase of the property as a matter of charity, not engaging any professional rules.<sup>4</sup>

[10] Mr Collins submitted that Mr Hong was inconsistent in his evidence that he did in fact expect to gain from his arrangement with Mr K and Ms D. He drew our attention to the taxation judgment of the High Court that the evidence Mr Hong gave to the Taxation Review Authority about his Benevolence on the Conscience Loan Fund included evidence that he intended to be paid “*a bonus once he got them out of their dilemma*”. Mr Hong did agree under cross-examination that the Taxation Review Authority had characterised his loan fund correctly. Mr Collins submitted that the Tribunal is entitled to see the “joint venture arrangement” as an investment by Mr Hong in what he perceived at the time to be a valuable and appreciating property.

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<sup>4</sup> Transcript p 72 lines 19-26.

[11] Mr Collins emphasised that Mr Hong arranged the transfer of the property to BGH Trusteeship Limited, a company under his exclusive control, within a week of having transferred the property to himself and Ms D (even then, after he had ceased to be a trustee of the Trust). He pointed out that all of this activity occurred in the absence of any advice to Ms D or Mr K or with any recommendation that they seek independent advice. Mr Hong agreed that the transfer was intended to give him the unrestrained power to sell the property if he so chose.<sup>5</sup>

[12] Mr Collins summarised the seriousness of Mr Hong's conduct, lack of insight and remorse by making the following points:

- (a) It was difficult to envisage a more compromising situation involving a lawyer entering into a personal transaction with clients where he had an eye to personal profit.
- (b) The absence of any advice to the clients about the arrangement; the perils they might face; and the absence of any recommendation that they seek independent advice or an explanation by Mr Hong why that would be a wise thing to do.
- (c) That viewing the transactions in their totality Mr Hong committed an egregious breach of the rules and of the established principles and standards.

### ***Prior disciplinary record***

[13] Mr Collins submitted that Mr Hong's disciplinary record is an important factor in the assessment of penalty as being an indicator that striking off is the only effective means of ensuring protection of the public in future.

[14] Mr Hong was admitted in 1990. His first disciplinary matter occurred in 1997. Since then he has been disciplined on 10 further occasions including this matter, seven of which have been adverse findings made since January 2016.

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<sup>5</sup> Transcript p 66 lines 2-18.

[15] 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 (LCRO) under the Lawyers and Conveyancers Act 2006.
- (c) Two findings of misconduct under the 2006 Act by the Tribunal, both of which have been confirmed by the High Court on appeal.

[16] Mr Hong has been subject to the following penalties:

- (a) Censure (twice).
- (b) Fines of \$500, \$1,500, \$1,000 and \$7,500 (twice).
- (c) Orders to take advice on his practice (twice).
- (d) An order to rectify an error.
- (e) An order to pay compensation.
- (f) The recent order for suspension and prohibition on practising on his own account.

[17] Mr Collins has submitted that it is reasonable to conclude that Mr Hong has not learned from the chastening experience of those sanctions.

[18] Mr Collins further submitted that, in the present penalty context, the current order for suspension must stand unless and until varied or reversed by the High Court. He further submitted that the case for striking off in respect of this matter was compelling even if the 2019 findings and penalties of this Tribunal are excluded from the analysis.

[19] Mr Collins submitted that the important features of Mr Hong's disciplinary record are:

- (a) The span of his career over which they have occurred which indicates an enduring tendency to breach professional standards.
- (b) The range of categories of professional irresponsibility for which discipline has been imposed including:
  - i. unprofessional dealings with others;
  - ii. breach of an undertaking;
  - iii. misrepresentation about liability insurance cover;
  - iv. breach of trust accounting reporting standards;
  - v. communicating directly with a party known to be represented by a lawyer;
  - vi. undue delay with and failure to complete a retainer; and
  - vii. obstructing the inspectorate.

[20] Mr Collins submitted that the theme was one of disregard for the rules and standards of professionalism across a range of activity consistent with Mr Hong's denial of any breach of professional standards in this case.

[21] Mr Collins then submitted that the frequency of findings of unprofessional conduct was a striking feature of Mr Hong's disciplinary record. Such findings having occurred over the last decade indicate a decline in Mr Hong's ability to maintain professional standards. He has displayed no capacity to reform or improve through experience, maturity, and the chastening effect of the earlier disciplinary findings.



## **Deterrence**

[22] Mr Collins submitted that general deterrence is a significant factor in this case. He emphasised that a warning to the profession was warranted to uphold professional standards, the reputation of the profession and to protect the public.<sup>6</sup> Mr Collins referred to the decision of *Legal Services Commissioner v Nomekos*<sup>7</sup> where specific and general deterrence were explained:

[24] Specific deterrence, for example, requires consideration of the likelihood of the practitioner reoffending, whether because of:

A lack of insight into what occurred;

A lack of remorse about what occurred;

A history of offending conduct as opposed to a one-off explicable departure from otherwise high standards of conduct; or

Other matters indicating that a particular sanction is required to deter the practitioner from reoffending or, conversely, that rehabilitation has taken place.

[25] General deterrence requires consideration of whether there is a need to signal to other members of the profession that adverse consequences will follow such conduct, and thereby deter them from the same conduct, in the interests of maintaining professional standards and public confidence in the profession.

[23] Mr Collins has submitted that this present case includes all of the factors warranting specific and general deterrence in the interest of public protection and the maintenance of confidence in the legal profession and its disciplinary institutions.

## **Absence of mitigating factors**

[24] Mr Collins submitted that there are no mitigating factors:

(a) Mr Hong has not accepted that he has done anything wrong.

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<sup>6</sup> *Canterbury Westland Standards Committee v Horsley* [2014] NZLCDT 47.

<sup>7</sup> *Legal Services Commissioner v Nomekos* [2014] VCAT 251.

- (b) Consistently with that attitude, he has not taken any steps to mitigate the harm he has caused his former clients.

### ***Compensation***

[25] Mr Collins seeks an order that Mr Hong pay a sum to Mr K pursuant to s 156 of the Act to compensate him for the emotional harm he has suffered. It is pure compensation in respect of a case that stands out for an award. Mr K is a victim. He has been living with an unresolved situation for 12 years causing him stress and anxiety including that caused by Mr Hong's unsuccessful attempt to have him evicted from the property.

### ***Costs***

[26] Mr Collins seeks full costs. He submitted that this case has been a major exercise in getting to the bottom of all the circumstances. He has submitted that the profession should not be burdened with the costs of these proceedings. He also seeks the usual order that Mr Hong refund to the Law Society the Tribunal's costs which are payable by the Law Society.

### ***Concluding submissions***

[27] Mr Collins submitted that the only realistic penalty option available to the Tribunal was to strike Mr Hong off the roll. He submitted that all the factors in *Hart*<sup>8</sup> have been met:

- (a) The misconduct established against Mr Hong is at a very serious level.
- (b) Mr Hong has a poor disciplinary history which may be taken as an indicator that striking off is the only effective means of ensuring the protection of the public in the future.
- (c) Mr Hong has not learned from past lessons.

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<sup>8</sup> See above n 3.

- (d) Mr Hong is not remorseful and is lacking insight into his professional failings.
- (e) There is a clear need for deterrence.
- (f) There are no mitigating factors.

***Mr Hong's response to the Committee's submissions***

[28] Mr Hong has filed submissions on penalty and costs. The submissions are 19-pages. Mr Hong refers to the submissions that Mr Collins has made about penalty but he concentrates on explaining his conduct arising out of each of the points that Mr Collins has made. Essentially, Mr Hong has held to his views maintained during the hearing and subsequently post our judgment on liability. His primary position continues to be that "*the rules did not apply to my financial assistance to the Ks under the circumstances*".<sup>9</sup>

[29] Mr Hong submitted that his disciplinary history was not relevant to the question of penalty because he has not been sanctioned on the same subject matter and none of his previous disciplinary matters had been the same as the facts or issues which are the subject of this proceeding.

[30] Mr Hong further submitted that there was no need for deterrence for the reason that there had been no repeat of any of the issues for which he had been disciplined in the past. He stated that there was not likely to be any concern for the future because his Benevolence on the Conscience Loan Fund had made its last advance. He was not prepared to make any further advances from the fund because human kind could not be trusted when it comes to money.<sup>10</sup>

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<sup>9</sup> Paragraphs [20], [30] and [55] of the submissions.

<sup>10</sup> Paragraph [91] of the submissions.

[31] Mr Hong further stated that he had nothing to be remorseful over. He was not ashamed of his financial assistance to the K's. He said that he adhered to a higher conscience and, not having breached that, he had no need to be remorseful.<sup>11</sup>

[32] Mr Hong's overall submission was that no penalty should be imposed. He submitted that a fine and censure would be an appropriate penalty if one had to be imposed. He averred that the K's had taken advantage, to his detriment, of his oversight in not getting them "*to take so called independent advice*".<sup>12</sup>

[33] Mr Hong said that he did not worry too much about compensation. He said that compensation should relate to the actual loss but went on to say that his loss was greater. He stated that his stress was greater than the K's.

[34] Mr Hong submitted that he did not have the income to pay the Committee's costs that Mr Collins was seeking.

### ***Committee's submissions in reply***

[35] Mr Collins submitted that Mr Hong had not addressed the question of penalty but had attempted to relitigate the issues that had come before the Tribunal at the hearing of the charges.

[36] He submitted that Mr Hong's submission about his disciplinary history which he made at paragraph [56] of his submission was a double-edged sword. He submitted that the wide variety of matters exhibited by that history was a strong reason for supporting the imposition of strike-off.

[37] On the question of costs, Mr Collins response was that Mr Hong had not established impecuniosity. He said that the evidence before the Tribunal has shown that Mr Hong had previously made loans and had free flowing resources. He submitted that the costs sought were not excessive given the complexity of the matter before the Tribunal and that Mr Hong had not advanced "*some other reason*" why the costs should be reduced.

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<sup>11</sup> Paragraph [97]-[101] of the submissions.

<sup>12</sup> Paragraph [19] of the submissions.

[38] The costs claimed are \$29,450.00. This matter generated voluminous documentation including a USB disc created by Mr Hong. We accept that Mr Collins was engaged in detailed examination of documents in order to clarify the matter. His hourly charge out rate was at the amount regularly accepted by the Tribunal as appropriate. We do not find that the costs claimed are unreasonable.

### ***Decision***

[39] We are persuaded by the submissions of Mr Collins that the penalty of strike-off should be imposed. His submissions are comprehensive, careful and supported by authority. We adopt them as our reasons for the orders that we make. In doing so we have been mindful of the requirement to consider whether a lesser penalty will suffice.<sup>13</sup> We do not find that to be the case. We endorse Mr Collins submission that it is difficult to envisage a more compromising situation involving a lawyer entering into a personal transaction with his clients.

[40] We have determined that Mr K should be compensated for the emotional harm he has suffered. The relevant factors in that consideration have been the number of years over which this matter has spanned, and the stress caused to him by the unsuccessful efforts that Mr Hong took to evict him from the property. We have been told that Ms D has not sought compensation even though she has been made aware of her right to do so.

### ***Orders***

[41] The orders which the Tribunal now makes are:

- (a) Striking the name of Mr Hong off the roll of Barristers and Solicitors (s 242(1)(c) of the Act).
- (b) Mr Hong is to pay the costs of the Law Society totalling \$29,450.00.

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<sup>13</sup> *Dorbu v New Zealand Law Society* [2012] NZAR 481 at 35 (HC).

- (c) The Tribunal costs are certified in the sum of \$6,923.00 and are payable by the New Zealand Law Society.
- (d) Mr Hong is to refund to the New Zealand Law Society the costs of the Tribunal payable by it in the sum of \$6,923.00.
- (e) Mr Hong is to pay \$8,000.00 to Mr K as compensation (s 156(1)(d) of the Act).

[42] The order for strike-off is not to take effect until 1 June 2020 which is the date upon which Mr Hong's current order suspending him from practice expires.

**DATED** at AUCKLAND this 29<sup>th</sup> day of April 2020

BJ Kendall  
Chairperson