

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 15

LCDT 014/17

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 1**

Applicant

**AND**

**RODNEY JAMES HOOKER**

Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS**

Ms A Callinan

Mr S Grieve QC

Dr I McAndrew

Ms C Rowe

**ON THE PAPERS**

**DATE OF DECISION** 29 May 2020

**COUNSEL**

Mr R McCoubrey for the applicant

Mr J Billington QC for the respondent

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

***Introduction***

[1] In its decision on Penalty, the Tribunal reserved the question of costs.

[2] The Standards Committee seeks payment of its costs amounting to \$55,988.80.

[3] The respondent challenges that amount.

[4] The first point that Mr Billington QC has made on behalf of the respondent is that the amount claimed by the Standards Committee includes a GST component which should be excluded with the result that the true sum is \$54,476.80.

[5] Mr Billington is mistaken in making that assertion. The Committee's note of its costs and expenses dated 5 March 2020 and presented to the Tribunal records a total fee of \$55,988.80 exclusive of GST and disbursements.

[6] The second point made by Mr Billington is that the costs claimed include an amount related to Mr Hooker's application to the Legal Complaints Review Officer (LCRO) and should be excluded from the amount claimed. The Standards Committee accepts that the sum of \$2,313 should be deducted from the amount of costs it seeks. The amount in question before the Tribunal is therefore \$53,675.80.

[7] Mr Billington's submission is that, while the hourly rate charged by the Committee is reasonable, the amount of time spent on the matter is excessive and therefore unreasonable.

[8] In making that submission, Mr Billington has invited the Tribunal to consider the cost schedule and time allowances in the High Court for civil matters which he submits are more complex than cases before the Tribunal. Using that schedule, his submission is that the High Court Rules would allow for costs totalling \$23,175.

[9] Mr Billington sought to make a further comparison with the Crown Solicitors Regulations which allow up to 10 hours for reviewing and laying the charge. Up to a further 10 hours is allowed for preparation for a hearing with a further period of up to 7 hours for a sentencing/penalty hearing. He submitted that a total time of 30 hours would thus be allowed under the regulations.

[10] Mr Billington submitted that the High Court Rules and the charging regime for Crown prosecutions demonstrate that the costs claimed by the Committee are by comparison excessive.

[11] Mr Billington submitted that additional factors militate against a significant award:

- (a) Mr Hooker's suspension from practice for three months will result in a loss to him and his firm in excess of \$100,000.
- (b) The imposition of a costs order in the sum sought by the Committee has the effect in monetary terms of increasing the period of suspension by 50 per cent so that the cost to Mr Hooker and his firm exceeds \$150,000.
- (c) Mr Hooker has no ability to pay the sum asked for since his legal practice is his sole source of income.

[12] Mr Billington has drawn our attention to the wide discretion the Tribunal has as to whether to make a costs order and if so, what sum should be ordered.<sup>1</sup> His submission is that by applying a comparison to the High Court Rules Cost regime a reasonable costs award in this matter would be \$25,000 if a generous time allowance was applied. He stated that Mr Hooker would accept a costs order in that sum.

### ***The Committee's Response***

[13] Mr McCoubrey for the Committee submitted that the only question is whether the costs figure is reasonable. That involves an evaluation of the final figure and does

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<sup>1</sup> *Lagolago v Wellington Standards Committee 2* [2018] NZCA 406 at [20].

not require a line by line analysis of who did what, at what stage and at what hourly rate.

[14] Mr McCoubrey's submission is that the costs sought by the Committee are reasonable having regard to the fact that the proceeding was keenly contested at every stage and involved a great amount of detail. That is a fact which has a costs consequence.

[15] Mr McCoubrey further submitted that:

- (a) The Tribunal is a standards-setting professional Tribunal whose approach to costs is not the same as is the case in an adversarial commercial dispute.
- (b) The Tribunal is not subject to the Schedule to the High Court Rules as to costs. In cases before the Tribunal, the costs are borne by the profession if it does not recover its costs in a case in which it is successful. There is no reason why this should be the result here.
- (c) A cost order is a financial consequence and is not a financial penalty in the same way that an order for suspension is not a financial penalty.
- (d) The ability of the practitioner to bear the financial loss to his practice and a costs order in the sum sought is a separate argument distinct from the question of whether the costs sought are reasonable.
- (e) While the Tribunal may take into account the financial circumstance of the practitioner in setting the level of the costs, there is no evidence of Mr Hooker's position beyond an assertion put forward by his counsel.
- (f) It is implicit in Mr Hooker's acceptance of a cost order of \$25,000 that he can bear the revenue consequences of suspension.
- (g) It is open to the practitioner to negotiate with the New Zealand Law Society a payment arrangement if he has financial difficulties.

**Decision**

[16] We have considered the submissions that have been made for the practitioner and for the Committee. In doing so, we have concluded that an order for costs payable by the practitioner to the Committee should be made in the sum of \$53,675.80. Our reasons for doing so are:

- (a) The Tribunal has a wide discretion available to it on the question of costs.
- (b) The matter before the Tribunal was complex involving volumes of documents, a hearing of 1.5 days and subsequent Penalty hearing.
- (c) The hourly rate charged by the counsel for the Committee was reasonable, noting that it was lower than hourly rates that the Tribunal has considered in other cases.
- (d) That it is rare for the profession to be required to pay the costs of the Committee if it fails to receive an order for payment of its full costs, by a respondent.
- (e) That there is no evidence of an inability by the practitioner to pay the costs other than an assertion that it would be difficult for him to do so.

[17] Accordingly the Tribunal orders that Mr Hooker is to pay the Committee's costs totalling \$53,675.80.

[18] There is also an order under s 249 of the Lawyers and Conveyancers Act 2006 (Act) that Mr Hooker is to refund to the New Zealand Law Society the costs of the Tribunal which are certified pursuant to s 257 of the Act. The s 257 costs, payable by the New Zealand Law Society in the first instance, are certified in the sum of \$12,430.

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

BJ Kendall  
Chairperson