

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 26

LCDT 006/20

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**HAWKE'S BAY STANDARDS
COMMITTEE**

Applicant

AND

KERRY-ANN MAREE QUEENIN

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Hon P Heath QC

Mr G McKenzie

Prof D Scott

Ms P Walker

DATE OF HEARING 6 August 2020

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 25 August 2020

COUNSEL

Ms S Earl for the Standards Committee

No Appearance for the Practitioner

RESERVED DECISION OF THE TRIBUNAL ON LIABILITY AND PENALTY

Introduction

[1] Ms Queenin responded to an advertisement for a senior or intermediate lawyer, to practise in a broad range of areas. Mr Z, who interviewed Ms Queenin on 29 August 2018 was looking for a practitioner who could step into his shoes, at times, without supervision. Ms Queenin was offered the position the same day as the interview.

[2] The first charge considered by the Tribunal arose out of alleged misinformation and/or omissions of information during the interview, and in subsequent conversations with Mr Z. Misconduct is pleaded, with two alternatives of negligence and unsatisfactory conduct.

[3] The second charge of unsatisfactory conduct alleges breach of an undertaking given to a Standards Committee some years ago, following another disciplinary inquiry.

Issues

Charge One

1. Was Ms Queenin's conduct such as to be regarded as lawyers of good standing as disgraceful or dishonourable, and therefore misconduct?¹
2. If not, did her actions constitute negligence of such a degree as to bring the profession into disrepute or to reflect on her fitness to practice?²
3. If neither one nor two, would her conduct be regarded by lawyers of good standing as unacceptable, including unbecoming a lawyer, or unprofessional, and therefore unsatisfactory conduct?³

¹ Section 7(1)(a)(i) of the Lawyers and Conveyancers Act 2006 (the Act).

² Section 241(c) of the Act.

³ Section 12(b) of the Act.

Charge Two

4. Did Ms Queenin fail to honour an undertaking to the Standards Committee, and if so, is that conduct unacceptable and unprofessional and therefore “unsatisfactory conduct”?
5. If any of the above questions is answered in the affirmative, what is the appropriate and proportionate penalty to be imposed?

Procedure

[4] The charges were filed in early March 2020. With the intervention of the lockdown due to the COVID-19 pandemic, Ms Queenin was granted an extension for the filing of her response following service. This was filed on 13 May 2020. Ms Queenin initially denied the charges and particulars filed in support.

[5] Ms Queenin participated in a telephone conference in early June and was given a further 21 days to file her affidavit in response. That affidavit was never filed and shortly after this conference Ms Queenin indicated dissatisfaction with the disciplinary process, which she simply requested to be “cancelled”. She further indicated that, despite having been given further time by the Tribunal to engage a lawyer, she had been unable to do so. She indicated that her health was suffering as a result of the proceedings and that she would not further engage in them.

[6] Counsel for the Standards Committee attempted to assist Ms Queenin with a number of suggestions including seeking the assistance of a member of the (Law Society) Friends Panel, the appointment of a McKenzie friend and also raised the issue of the possibility of counsel to assist. The Tribunal issued a further Minute indicating that in relation to Ms Queenin’s health she would need to file some medical evidence particularly relating to her ability to engage in the proceedings.

[7] For completeness we also indicate that Ms Queenin indicated a wish for name suppression but when directed to file an application supported by evidence she declined to do so.

[8] The matter proceeded by way of formal proof. The Tribunal determined that Ms Queenin had waived her right to appear.⁴ In order to mitigate the difficulties caused by her non-participation, the Tribunal required the complainant to be available for cross-examination, and questioned him on a number of aspects of the discussions he had held with Ms Queenin, which underpinned the first charge.

[9] In addition, the Tribunal had before it, through the affidavit of Shona Matheson, for the Standards Committee, the explanations and responses Ms Queenin had provided to the Committee following the complaint against her.

Background

Charge 1

[10] We draw on the contents of submissions made on behalf of the Hawke's Bay Standards Committee to summarise the background:

“At the time of her interview with Mr Z in August 2018, [*Ms Queenin*] had four findings of unsatisfactory conduct made against her (between 4 May 2015 and 20 June 2017).

In respect of three of those findings, various orders were made by the relevant Standards Committee. These included censure, a fine, a supervision and mentoring arrangement, taking advice on the management of her practice, and continuing education.

In a matter unrelated to those disciplinary matters, on 23 May 2018, [*Ms Queenin's*] right to give certifications under s 164A of the Land Transfer Act 1952 were suspended by LINZ,⁵ as a result of a compliance review carried out by them.

[*Ms Queenin*] was advised by email that if she applied for certifying and signing rights in the future, LINZ would require supporting information about supervision arrangements at the firm where she was working. She was therefore required to be practising under supervision and the firm in which she was practising would need to have satisfactory supervision arrangements.”

⁴ *Hart v Auckland Standards Committee No 1* [2013] 3 NZLR 103.

⁵ Land Information New Zealand.

[11] These last matters were confirmed in evidence by Mr Metcalf, senior solicitor at LINZ and Mr Metcalf elaborated that the suspension was because of a missing authority (“A&I”⁶ form) to support certifications she had made.

[12] Mr Metcalf confirmed that Ms Queenin had been advised that “*she would be able to hold certifying and signing rights provided that she was practising under supervision and that the firm in which she was practising had satisfactory supervision arrangements*”.

[13] Evidence was also given by Mr Z who was available to be questioned by Tribunal members at the hearing. Mr Z’s evidence concerning the interview on 29 August was that he had asked Ms Queenin whether she was in “... *good standing with the Law Society ... or words to that effect*”. Mr Z deposes that Ms Queenin’s response was “... *that she had no complaint history with the Law Society, with the exception of a few complaints that came to nothing*”. Asked what Mr Z had thought Ms Queenin had meant by that statement he said he thought “*that the complaints had been disposed of without negative outcome for her*”.

[14] Mr Z had asked a little more about that and the practitioner answered that there had been a complaint involving a woman in Otorohanga for whom she did not act. Mr Z deposes that Ms Queenin “... *gave me the impression that there was nothing to the complaint and that the NZLS had made that determination*”. Mr Z’s evidence was that he was dealing with an apparently senior practitioner whom he thought he could believe.

[15] Furthermore, on 31 August 2018, Ms Queenin entered into an employment contract with Z and Associates (the firm) in which she stated by way of declaration the following:

“The information I have given is true and correct to the best of my knowledge and belief, and I have not left out anything that could affect the decision to employ me.”

[16] Ms Queenin commenced employment with the firm on 17 September 2018.

⁶ Authority and Identification.

[17] On 20 September 2018 Ms Queenin received an email from Mr Metcalf at LINZ which stated:

“... Our Landonline team has advised that you have applied to be added to (the firm) with signing rights.

In order to process the application, we would like to receive information about the supervision arrangements for e-dealing in the firm, particularly with regard to more complicated transactions, such as subdivisions.

If your supervising partner can send us a letter confirming satisfactory arrangements, then we can complete the application for signing rights ...”

[18] On 2 October 2018 Ms Queenin approached Mr Z with a letter addressed to LINZ for him to sign, which set out the supervision arrangements in the firm in respect of eDealings. Mr Z questioned why he needed to sign the letter because he had not been asked to sign a letter like that before. Ms Queenin told him that it was only for complex transactions. She showed Mr Z the email from Mr Metcalf which sought the information concerning the firm’s supervision arrangements. That email did not make any reference to the history leading to the requirement or to Ms Queenin’s previous suspension from eDealings.

[19] Mr Z deposes that since he wished to engage a practitioner who was able to step in without supervision from him at various times, had he been aware of the need for supervision, he would not have regarded Ms Queenin as a suitable candidate.

[20] Mr Z admits to having had some anxiety about the letter but signed it with some brief amendments and did nothing further until 26 November. Then, since the matter was still concerning him, he emailed Mr Metcalf to ask why LINZ had required the letter regarding Ms Queenin.

[21] Mr Z did not receive a response to the letter until late on 5 December. In his email Mr Metcalf referred to the supervision arrangements “... *from an earlier compliance review for Kerry Queenin*”, and invited Mr Z to discuss that with Ms Queenin in the first instance to seek further information.

[22] By that time Mr Z had asked Ms Queenin to attend a review meeting with him and that occurred on 4 December 2018. Mr Z was wishing to clarify the LINZ letter and also Ms Queenin’s complaint history. He acknowledges this was also against a

background of a deteriorating working relationship between himself and Ms Queenin. Indeed Mr Z had engaged a barrister friend to assist him in employment matters regarding Ms Queenin.

[23] Mr Z relates that Ms Queenin gave him two different explanations concerning the LINZ matter, the first that it was due to an error made by her Hamilton Registration Agent. The second explanation, on 5 December, related to the absence of "A&I" and was, after Mr Z had received the further information from Mr Metcalf, which had been copied to Ms Queenin.

[24] Ms Queenin approached Mr Z about the fact that he had queried LINZ directly and offered the explanation about the missing A&I form, saying that it was because "*her ex did a clean out*" of files from her previous practice.

[25] It is Mr Z's evidence that Ms Queenin told him that "*... NZLS had determined that she was not at fault. She declined to provide me with a copy of the NZLS determination*". This is a peculiar explanation from Ms Queenin to give since the LINZ matter did not involve the New Zealand Law Society (NZLS) in any way.

[26] On 6 December Mr Z wrote to Ms Queenin asking for full disclosure about:

- [a] "The LINZ matter;
- [b] The complaint to NZLS made by her ex-partner, that she had mentioned to me earlier that week;
- [c] Any other matters material to her employment which had not been disclosed to me."

[27] Mr Z specifically sought to see determinations of the NZLS.

[28] It is clear that Ms Queenin took considerable umbrage with these requests and declined to provide anything, particularly related to her disciplinary history stating, "*if the law society or any other organisation had issues with me I wouldn't be practicing*".

[29] Ms Queenin still did not reveal the four unsatisfactory conduct findings against her.

[30] Ms Queenin did not provide any further information to Mr Z and declined to attend the employment related meeting set for 11 December. Her employment was terminated by way of a settlement agreement on 13 December 2018.

Charge 2

[31] In relation to Charge 2 the Wellington Standards Committee 2 conducted an own motion investigation of Ms Queenin in relation to 140 dormant balances following the closing of her trust account in the practice Terrace End Law Limited in which she was sole director and shareholder.

[32] Although the Committee made, on 10 December 2015, a finding of unsatisfactory conduct, it advised Ms Queenin that if she were to provide an undertaking to undergo further training in the area of trust account management this may "... *obviate the need for formal orders*".

[33] On 18 December 2015 Ms Queenin wrote to the Lawyers Complaints Service in the following terms:

"I give you **my most sincere undertaking** to take up any extra education or actions which will help you trust me with this current trust account and invite inspection at any time as I am totally confident that this one is much more tightly controlled by me and no one else." (emphasis ours)

[34] In response to that, the Standards Committee wrote to Ms Queenin in March 2016, noting her undertaking of 18 December 2015 and stating that it would be "... *appropriate for [her] to complete the Trust Account Supervisor Training Programme*". She was asked to report back to the Committee when she had registered for and completed the training programme.

[35] Ms Queenin neither registered for nor completed any of the training set out, nor did she contact the Committee concerning her failure to do so.

[36] When contacted in May 2019 by the Hawke's Bay Standards Committee which was investigating the other charge, and having pointed out that her failure to

complete the training might constitute unsatisfactory conduct, Ms Queenin stated that she had completely forgotten to undertake the course. In a letter to the Standards Committee of 13 September 2019 Ms Queenin stated:

“In my letter of 18 December 2015, I did not intend the words “I give you my most sincere undertaking to take up any extra education or actions which will help you trust me ...” to mean I was giving a legal undertaking. I was meaning it as a personal assurance and I did follow through with many studies of papers, webinars and”

Standards Committee Submission on Level of Liability

[37] Ms Earl submitted that in relation to Charge 1 there had been deliberate deception and deliberate misleading by omission to Mr Z, which must meet the standard of disgraceful or dishonourable conduct and thereby constitute misconduct. Ms Earl submitted that of the two omissions the LINZ was the more serious because firstly, the ability to certify was clearly an integral part of the job as advertised and required and secondly, because Ms Queenin induced Mr Z's support for her letter regarding supervision without disclosing to him why the assurances to LINZ were needed.

[38] Alternatively, Ms Earl submitted that if not seen at the level of misconduct most certainly s 241(c) negligence was reached because the practitioner's conduct was a serious error of judgment, so serious as to bring the profession into disrepute.

[39] Ms Earl submitted that the four unsatisfactory conduct findings that Ms Queenin failed to disclose to Mr Z all related to competence and therefore were relevant as to whether she could be employed as a senior practitioner to work on an unsupervised basis. It also reflected issues of protection of the public.

[40] Finally, Ms Earl reminded us that the practitioner had made a false declaration as to both matters, namely the omission of the four unsatisfactory conduct findings against her, and the omission of her LINZ suspension of registration for eDealings and the requirement for supervision.

Discussion - Issue 1

[41] There is no question that the conduct occurred at a time when Ms Queenin was providing regulated services. Section 7(1)(a)(i) defines misconduct as conduct “*that would be reasonably regarded by lawyers of good standing as disgraceful or dishonourable*”.

[42] The task of assessing intention on the part of the practitioner is important in the assessment of level of culpability. It is not assisted by her failure to swear an affidavit or participate in the hearing. However, there are a number of telling pointers about her state of mind which emerge from the evidence. For example the two different explanations given to Mr Z for the LINZ restrictions upon her⁷ raise doubts as to her credibility.

[43] There was also the email Ms Queenin sent to Mr Metcalf, at LINZ on 2 October 2018 asking: “*Does my boss have to know about the checks you will be doing and when will I be free?*” This suggests an intention to be less than open with her employer.

[44] Ms Queenin’s repeated failure to disclose the four unsatisfactory conduct findings against her, even stating in an email to Mr Z on 6 December 2018: “*...there was (sic) no law society issues at all, and so that is all I am obliged to tell you, the information is my private business.*”, demonstrates a determination to conceal this information rather than mere forgetfulness.

[45] There were also statements that she made to the Standards Committee which are misleading. In her letter of 13 September 2019, Ms Queenin stated that: “*I met all my obligations with regard to prior disciplinary proceedings.*” This is patently untrue given her admission that she had not undertaken the course, which is the subject of Charge 2 herein.

[46] In her letter in response to Mr Z’s complaint, she stated to the Standards Committee, in relation to her LINZ status: “*As a result of the the(sic) registrar decided I could continue to retain my e-dealing status but that for complex subdivisions they would require a simple letter from any employer confirming that I would be*

⁷ See [23] above.

supervised for just those transactions. That is exactly what I told (Mr Z) when I asked him to write the letter, which he did". This is clearly a gross distortion of a general suspension from e-dealing, except under supervision.

[47] The statements the practitioner made about her relevant history were misleading, and the Tribunal found it difficult to see this as anything other than deliberate.

[48] We found Mr Z to be a credible witness. He was consistent in his answers and made proper concessions at times. We have no reason to doubt his version of events. Where Mr Z's evidence differs from the unsworn statements of Ms Queenin, we prefer the evidence of Mr Z.

[49] On the balance of probabilities, having regard to the seriousness of the allegations, we consider the Standards Committee has established that the practitioner made a false declaration, and engaged in deceptive omissions, and falsehoods, both at the initial interview, and in subsequent communications with her employer, Mr Z. On the evidence presented, we consider that an inference can readily be drawn that she acted intentionally in so doing. We so find.

[50] While we do not consider the epithet "disgraceful" to be apt, we do consider the conduct for which we find Ms Queenin responsible, to be "dishonourable" as viewed by "lawyers of good standing".

[51] Thus, the answer to Issue 1 is "yes", misconduct is established. We are fortified in this view by considering the description of misconduct adopted in the case of *Complaints Committee (No 1) of the Auckland District Law Society v C*⁸ which endorsed the test for misconduct in *Pillai v Messiter*:⁹

"..the statutory test [misconduct in a professional respect] is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration as a medical practitioner".

⁸ *Complaints Committee (No 1) of the Auckland District Law Society v C* [2008] 3 NZLR 105.

⁹ *Pillai v Messiter* [No 2] (1989) 16 NSWLR 197 (CA).

[52] The decision of *Shahadat v Westland District Law Society*¹⁰ also considered the meaning of “dishonourable”:

““Dishonourable” behaviour on the part of a practitioner may well be different to that which is seen to be “dishonest” in the fraudulent sense. “Dishonest” may carry a connotation of “fraudulent”, whereas “dishonourable” behaviour may cover a wide range of disgraceful, unprincipled, wrongful acts or omissions comprising blatant breaches of duties owing by a professional person”.

[53] We consider that the conduct of the practitioner as found was most certainly a gross breach of her duties as a lawyer, to deal with fellow lawyers in good faith and honestly, and as such was dishonourable. We accept Ms Earl’s submission that there are sound policy reasons for requiring practitioners to give accurate information, even about confidential disciplinary findings, when asked by employers or prospective employers. Such findings bear on questions of competence, and at times, character, and as such, may entail considerations of supervision or training in order to ensure there is no risk to the public.

Issue 2

[54] If we were wrong in our assessment of the intentional nature of Ms Queenin’s conduct, we consider (on the best view of the facts from her perspective) that she gave no proper thought to the seriousness of the issues raised by Mr Z and the need, given her position as a lawyer, to respond honestly and transparently to his question. On this more benevolent approach, Ms Queenin’s conduct amounted to gross negligence of a type that was so serious as to bring the profession into disrepute. Applying the test in *Complaints Committee of the Canterbury District Law Society v W*,¹¹ we consider the public would think less of a profession which viewed such conduct by their members as acceptable.

Issue 3

[55] We consider the conduct goes beyond merely “unacceptable” or “unprofessional”, particularly the making of a false declaration. Thus, “unsatisfactory conduct” would be an inadequate finding.

¹⁰ *Shahadat v Westland District Law Society* [2009] NZAR 661.

¹¹ *Complaints Committee of the Canterbury District Law Society v W* [2009] 1 NZLR 514 (HC).

Issue 4

[56] In relation to Charge 2, we consider that Ms Queenin did indeed breach the undertaking that she sincerely gave. It was given to a Standards Committee which had made a finding of unsatisfactory conduct against her, in a professional context.

[57] For Ms Queenin to suggest it was "... not a legal undertaking" is nonsense and mere sophistry. She was aware that undertaking to undergo further training was in lieu of formal orders or censure. To have so little regard for the professional disciplinary process, to which all lawyers are subject, is most certainly unacceptable conduct in a lawyer. To admit to having forgotten it, without further positive action to remedy the oversight aggravates the conduct.

[58] We find the Standards Committee has established this charge also, to the requisite standard.

Issue 5 - Penalty

[59] Counsel for the Standards Committee submitted that a censure and significant fine would represent the appropriate penalty. Ms Earl submitted that since Ms Queenin was no longer practising, a suspension would be of little effect.

[60] We respectfully disagree that a fine and censure would be a sufficiently serious response to the offending, against a background of previous disciplinary findings.

[61] A further and fifth Unsatisfactory Conduct finding was made against Ms Queenin in December 2019. It was a serious matter - a conflict of interest in a conveyancing transaction involving Ms Queenin's former partner.

[62] Five previous findings are a significantly aggravating feature. Even if the current offending is not at the most serious end of the spectrum of misconduct, "*... To maintain public confidence in the profession, members of the public need to have a*

*general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards”.*¹²

[63] Because she elected not to participate in the hearing, Ms Queenin did not provide any evidence of mitigating factors. The absence of such evidence does not aggravate the conduct. However we can and do find, from the available evidence and the way in which she approached the disciplinary process, that Ms Queenin lacks insight into problematic aspects of her conduct and shows no remorse. In correspondence with the Tribunal, Ms Queenin claimed to be too stressed by the complaint and disciplinary process to fully participate. However, despite an invitation to provide medical evidence of such, she failed to do so.

[64] As affirmed in *Auckland Standards Committee 1 v Fendall*¹³ the purposes of penalty in professional disciplinary matters is not a punitive one, but rather the Tribunal must promote the purposes of the Act¹⁴ to “... *advance the public interest, which includes protection of the public, to maintain professional standards, to impose sanctions on a practitioner for breach of his or her duties, and to provide scope for rehabilitation in appropriate cases*”.

[65] The communications of this practitioner with the Standards Committee, indicate a distinct lack of insight into her actions. She referred to the complaint by Mr Z as “malicious” and “vexatious”. In respect of Charge 2, she denied having intended to give an Undertaking in circumstances which are untenable.

[66] Whatever intentions Ms Queenin has for practice in the future (and she says she regards herself as retired), we consider a short period of suspension will not only better mark the seriousness of the misconduct as found, but also enable her a period of reflection. We therefore have decided to suspend her from practice for three months.

Costs

[67] The Standards Committee has incurred costs in prosecuting this matter in the sum of \$22,315.20. That seems rather high for a matter which proceeded at its first

¹² *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 at [34].

¹³ *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825.

¹⁴ *Lawyers and Conveyancers Act 2006*, s 3.

call on an unopposed basis. We accept that counsel was required to prepare for a defended hearing because, given some inconsistencies in indications by Ms Queenin leading up to the hearing, she may have appeared and wished to defend the matter.

[68] However, we still consider the costs somewhat higher than normal, even allowing for the fact that various pre-trial engagements with Ms Queenin were undertaken by Ms Earl. Taking those matters into consideration, and accepting that the profession ought not to bear the costs of successful prosecutions, we propose to order costs against Ms Queenin in the sum of \$16,000. The practitioner will have to bear the full costs of the Tribunal and we do not have specific evidence of her financial position.

Orders

1. Ms Queenin is suspended from practice for a period of three months from the date of hearing, namely 6 August 2020, s 242(1)(e).
2. Ms Queenin is censured in the terms attached to this decision as Schedule 1.
3. The Standards Committee Costs are awarded against Ms Queenin in the sum of \$16,000, s 249.
4. The Tribunal costs are certified in the sum of \$2,856 and are to be paid by the New Zealand Law Society, s 257.
5. Ms Queenin is to reimburse the New Zealand Law Society for the s 257 Tribunal costs, s 249.
6. The complainant's name and that of his firm are suppressed, s 240.

DATED at AUCKLAND this 25th day of August 2020

Judge DF Clarkson
Chairperson

Censure

Ms Queenin, the Tribunal has found that charges of misconduct and unsatisfactory conduct respectively have been established against you.

The first involves a finding of dishonourable conduct in the manner in which you omitted to inform your prospective and then actual employer of important and relevant matters to your employment. As a profession bound to uphold the highest standards of integrity, and to understand the concept of “the utmost good faith” in dealings with both clients and fellow lawyers, such concealment and obfuscation is viewed negatively. These were not private matters such as you were entitled to keep to yourself.

Should you wish to practice again in future, you will need to be very mindful of how you represent yourself, and your disciplinary history.

In relation to the second matter, you have shown a disregard for the disciplinary processes of your chosen profession. Undertakings are viewed as sacrosanct within the legal profession, and those given to a disciplinary body are particularly important.

This formal censure to mark your conduct will remain on your disciplinary record.