NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2020] NZLCDT 34
LCDT 018/19

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NATIONAL STANDARDS COMMITTEE 1** Applicant
AND	**RICHARD ANDREW PETERS** Practitioner

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Mr S Hunter QC
Ms G Phipps
Dr D Tulloch
Ms P Walker

ON THE PAPERS

DATE OF DECISION 27 October 2020

COUNSEL
Mr H van Schreven for the National Standards Committee
Mr C Ruane for the Practitioner

DECISION OF THE TRIBUNAL ON PENALTY

Introduction

[1] In its decision of 20 December 2019, the Tribunal found Mr Peters guilty of one charge of misconduct, in that he recklessly breached his duty of confidentiality to a client whom he had represented as Duty Solicitor. We also found that the breach incorporated a breach of s 4 of the Act of the obligation to "*uphold the rule of law and to facilitate the administration of justice in New Zealand*". And, to "*act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients*".

[2] At the same time the decision was released we made an order suppressing publication of the decision, out of an abundance of caution, in order to preserve the fair trial rights of the accused whom Mr Peters had previously represented.

[3] Now that there has been a guilty plea entered in that case,[1] the defendant sentenced, and the appeal rights expired, that earlier decision can be released concurrently with the present decision.

The Standards Committee Submissions

[4] The Standards Committee submits that the seriousness of this misconduct ought to be met by a short period of suspension of the practitioner. Counsel cites the comments in *Daniels*[2] on the purposes of suspension. In that case the full Court stated:

> "… 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 disciplinary body will not lightly treat serious breaches of expected standards by a member of the profession."

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[1] *R v Tarrant* [2020] NZHC 2192, Mander J. 21 August 2020.
[2] *Daniels v Complaints Committee 2 of Wellington District Law Society* [2011] 3 NZLR 855 at [24].

[5] Fairly, counsel pointed to the "*least restrictive outcome*" principle also enunciated in the *Daniels* decision.

Aggravating Features

[6] Mr van Schreven, for the Standards Committee submitted that the following aggravating features were present - we note them with our comments in italics:

1. The warning given by the District Court Judge about the care needed to avoid any risk of "imperilling the trial itself".[3] *We accept this ought to have made the practitioner hyper-alert to the dangers of any comments to the media.*

2. The lack of any instruction from the client to the practitioner to authorise him to speak to the media on the client's behalf or in any other capacity. *The Tribunal sees this all forming part of the elements of the offence rather than aggravating it.*

3. The practitioner's engagement with Radio New Zealand having declined something like 30 previous approaches from news media. *It was unfortunate that the practitioner succumbed to the temptation of an interview, having resisted so many others.*

4. The risk that speaking to one media outlet would spread through other media sources given the nature of the reporting on the hearing. *We accept that, which was apparent from the in-court discussions with the judge before the first appearance.*

5. The practitioner's initial response that he did not believe he had infringed any rules (because he thought all information was in the public domain). *We consider this to be more a missed opportunity for mitigation, than an aggravating feature.*

[3] *Police v Tarrant* 16 March 2019 CRI-2019-009-002468, Judge P R Keller, at page 2.

6. The breach of confidence to the client in making the statements. *We consider the last matter to be taken account of in assessing, as we have the seriousness of the conduct rather than as an aggravating feature.*

[7] In addition, we note the practitioner has, in a long career, had one previous finding of unsatisfactory conduct against him.

Mitigating Features

[8] The Standards Committee accept that as mitigating features:

1. The fact the breach of the rules was not wilful or intentional; and

2. That his initial comments to the press after the Court appearance (that is the first breach of confidence) occurred "… *in the context of the intense public interest and the pressure placed on him by the pursuit of comment from him by the media*".

Submissions for the Respondent

[9] Mr Ruane, on behalf of Mr Peters emphasises the limited nature of the breach and the lack of intentionality. He reiterated the Tribunal's comments that the situation was a "… *highly unusual and possibly overwhelming situation*". Mr Ruane raises the following mitigating features in addition to those listed above:

1. There was no complaint from the client himself, even after the Tribunal's decision was made available to him (and to the Crown).

2. Importantly, the practitioner's comments will have had little or no effect on the trial. Because the client pleaded guilty, no risk of jury influence arose. Certainly, we have no evidence of any influence on the decision maker in this matter.

[10] Mr Peters has expressed remorse and we accept such as entirely genuine. He recognises that he should not have made the comments either to the Otago Daily Times in Court or later to Radio New Zealand. We accept his assurance that he is well aware of his responsibilities and will not repeat his mistakes.

[11] In terms of the practitioner's personal circumstances he is aged 67 and of relatively modest circumstances. Furthermore, he has a dependent son who lives with him. Any suspension from practice will create a significant burden for him. The Tribunal received a supportive and helpful statement from Mr Peters' employer.

Discussion

[12] Having regard to the above matters the Tribunal has considered whether a brief period of suspension is necessary to mark the seriousness of this practitioner's error.

[13] It is noteworthy that a member of the public complained about the professional breach involved and thus it is axiomatic that the practitioner has put the reputation of the profession at risk, at least in a limited sense.

[14] A further purpose for suspension might be the general deterrence of other lawyers from breaching client confidence in a similar manner. We consider this particular lapse in professional standards is well understood by lawyers and that there is no indication that general deterrence is needed.

[15] As pointed out by his counsel, the publication of Mr Peters name will have a somewhat punitive and salutary effect. Mr Ruane also points us to the principle of the 'least restrictive outcome' enunciated in *Daniels*. Having regard to that principle and the fact that the practitioner has a finding of misconduct against his record and will suffer the embarrassment of the publication of his name in connection with a case which has aroused enormous public interest, we consider that a censure and costs order are appropriate to recognise the professional breach.

Orders

1. There will be a censure of the practitioner in the following terms.

   Censure

   Mr Peters, as you are now acutely aware, you have breached a fundamental duty of lawyers to "protect and hold in strict confidence all information concerning a client".

   Members of the public must be able to speak with their lawyers with complete confidence and trust that their communications and presentation will remain private. Lawyers must be able to hold to their obligations of confidentiality even in stressful and difficult circumstances. We accept that you now recognise your error of judgment, but this censure remains as a permanent record on your file and an ongoing reminder of your obligations.

2. There will be an order that the practitioner pay the costs of the Standards Committee in the sum of $8,281.25, s 249.

3. There will be an order that the New Zealand Law Society pay the Tribunal costs pursuant to s 257 in the sum of $4,727.00.

4. There will be an order that the practitioner reimburse the New Zealand Law Society for the s 257 Tribunal costs in full.

5. The interim suppression order made in respect of the decision of 20 December 2019 and subsequent proceedings is now discharged.

DATED at AUCKLAND this 27th day of October 2020

Judge DF Clarkson
Chairperson