NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2020] NZLCDT 36

LCDT 011/20

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NATIONAL STANDARDS COMMITTEE 1** Applicant
AND	**ANDREW NEILL SIMPSON** Respondent

DEPUTY CHAIR

Judge JG Adams

MEMBERS

Ms J Gray

Ms S Hughes QC

Mr S Morris

Mr K Raureti

On the papers

DATE OF DECISION 10 November 2020

COUNSEL

Mr J Kleinbaum for the Standards Committee

Mr A Gilchrist for the Respondent

DECISION OF THE TRIBUNAL RE PENALTY

[1] Mr Simpson admits one charge laid pursuant to s 241(d) of the Lawyers and Conveyancers Act 2006 ("LCA"). The charge relates to his convictions in respect of 13 charges of money laundering under s 243(2) of the Crimes Act 1961. He was sentenced to two years and nine months imprisonment.

[2] Although his offence is grave, the Tribunal's task here is straightforward because Mr Simpson accepts the Standards Committee's submission that the proper disciplinary response in this case is for him to be struck off pursuant to s 242(1)(c) LCA.

[3] We acknowledge Mr Kleinbaum's submissions from which this judgment quotes extensively:

> "3. …Striking off will generally follow any criminal conviction for serious dishonesty in a lawyer's practice, as is the case here.
>
> 4. The Tribunal may only make an order striking the Practitioner's name off the roll if it is satisfied that the Practitioner is no longer a fit and proper person: s244(1) LCA
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> 5. In *Dorbu v New Zealand Law Society* (No 2), the Full Court of the High Court stated the principles relating to striking a practitioner off. The Court said:[1]
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> > "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. Wilful and calculated dishonest normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.""

[1] *Dorbu v New Zealand Law Society* (No 2) [2012] NZHC 564, [2012] NZAR 481 at [35] per Miller, Andrews and Peters JJ.

[4] Mr Kleinbaum referred to "previous examples of lawyers being struck off following their conviction for offenses punishable by imprisonment and reflecting adversely on their fitness to practice or tending to bring the profession into disrepute." They include:

(a) *Otago Standards Committee v Kelly*,[2] involving convictions on charges of aiding and abetting the practitioner's incorporated law firm in committing tax offences, including application of PAYE deductions for a purpose other than payment of tax and knowingly failing to provide a GST return;

(b) *Hawke's Bay Standards Committee v Hill*,[3] involving a conviction under section 229 of the Crimes Act 1961 for criminal breach of trust in relation to the substantial and prolonged overdrawing of the practitioner's trust account; and

(c) *Auckland Standards Committee 1 v Hanif*,[4] involving convictions under section 341(1)(b) of the Immigration Act 2009 for providing information to an immigration officer knowing it was false or misleading in a material respect.

[5] In the present case, as the solicitor employed by members of the criminal enterprise, the Practitioner was the "facilitator of the money laundering operation."[5]

[6] We accept that Mr Simpson's offending is comparable to, if not more serious than, the cases referred to above. He not only used his legal knowledge to facilitate the criminal offending[6] but knew that what he was doing was wrong. Van Bohemen J said:[7]

> "You used your specialist knowledge as a lawyer to advise on structuring the laundering scheme across the multiple trust accounts you set up. You also channelled money through your solicitor's trust account and made deposits into the accounts yourself. You knew what you were doing was dodgy.

[2] *Otago Standards Committee v Kelly* [2016] NZLCDT 20.
[3] *Hawke's Bay Standards Committee v Hill* [2017] NZLDCT 40.
[4] *Auckland Standards Committee 1 v Hanif* [2019] NZLCDT 13.
[5] *R v Daniels & Simpson* [2020] NZHC 275 [25 February 2020].
[6] Sentencing notes at [9].
[7] Ibid.

> Intercepted phone calls reveal that you told one of the others involved in the scheme that if he deposited "nine" at each "drop" it would not get "flagged" by which you clearly meant avoiding the banks' reporting thresholds."

The sentencing judge said, later:[8]

> "In considering the seriousness of your offending, I have regard to the following circumstances. First, you were a key facilitator of the money laundering scheme. You made it work. You set up the trusts through which the funds flowed. Secondly, you made it work because of your position as a lawyer and member of a professional body. You used your professional skill and knowledge and your solicitor's trust fund both to make happen and to lend respectability to an operation laundering large amounts of money obtained from serious drug offending. Thirdly, you did not just set up the legal and administrative arrangements to enable the operation. You took part in it personally and advised others on how to avoid triggering the banks' reporting thresholds. You also set up specific laundering arrangements for the purchase of real estate and capital equipment."

[7] The convictions arising from this offending are all crimes involving dishonesty. As was observed in *Hart v Auckland Standards Committee* 1:[9]

> "The nature and gravity of those charges that have been found proved will generally be important. They are likely to inform the decision to a significant degree because they may point to the fitness of the practitioner to remain in practice. *In some cases these factors are determinative, because they will demonstrate conclusively that the practitioner is unfit to continue practice as a lawyer. Charges involving proven or admitted dishonesty will generally fall within this category.*" (Emphasis added)

[8] We agree with Mr Kleinbaum that the offending in this case falls within the category described above by Winkelmann J. The offending demonstrates that the Practitioner is unfit to continue practice as a lawyer.

[9] The need to maintain the reputation of the profession is also a relevant factor. Sir Thomas Bingham MR for the English Court of Appeal said in *Bolton v Law Society* in respect of the discipline of solicitors:[10]

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[8] Sentencing notes at [39].
[9] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 83, [2013] 3 NZLR 103 at [186] per Winkelmann and Lang JJ.
[10] *Bolton v Law Society* [1994] 1 WLR 512 (CA) at 518; approved in *Complaints Committee of the Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at 172-173 per Heron, Ellis and Gendall JJ.

> "The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

[10] We find that Mr Simpson must be struck off in order to protect the reputation of the profession and in order to maintain public confidence in the integrity of the profession.

[11] There are no aggravating features. We acknowledge that Mr Simpson accepted the charge at the earliest possible stage and co-operated throughout with the Tribunal's disposition of this matter. We note his previous good character and his remorse. Not surprisingly, news media coverage around the criminal conviction of a practitioner who had no prior known tendency to crime, has been extensive. The consequences of his criminal actions have affected his wife and children, among others. Many people provided references for him, puzzled by his criminal offending. Clearly, those aspects of his character that found expression in his criminal behaviour were covert.

[13] The New Zealand Law Society has dealt with this case in-house, and therefore seeks no order for costs but asks that Mr Simpson reimburse the s 257 costs that the New Zealand Law Society must pay the Tribunal.

[14] Mr Simpson asks that any costs be modest. As a sentenced prisoner, he is not working. His counsel has not provided details of his capital position. The s 257 costs will be modest because of Mr Simpson's co-operation with the process. We find no sound reason to require other lawyers to shoulder the financial burden of this necessary process which has been caused by Mr Simpson's actions. Accordingly, we order Mr Simpson to reimburse the s 257 costs to the New Zealand Law Society.

Orders

[15] The Tribunal makes the following orders:

1. We order, pursuant to s 242(1)(c) LCA; that Mr Simpson be struck off the roll.

2. The New Zealand Law Society are to pay the Tribunal s 257 costs which are certified at $386.00.

3. Pursuant to s 249(3) LCA, we order Mr Simpson to reimburse the New Zealand Law Society in respect of the s 257 costs, in the sum of $386.00.

DATED at AUCKLAND this 10th day of November 2020

Judge JG Adams
Deputy Chair