NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2020] NZLCDT 39
LCDT 007/19, 029/19, 001/20

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 5** Applicant
AND	**MICHAEL RAWIRI TAIA** Respondent

DEPUTY CHAIR
Judge J G Adams

MEMBERS OF TRIBUNAL
Ms K King
Ms A Kinzett
Mr G McKenzie
Prof D Scott

DATE OF HEARING 23 November 2020

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 1 December 2020

COUNSEL
Ms Y Yelavich for the Applicant
No appearance by or for the Respondent

DECISION OF THE TRIBUNAL RE PENALTY

[1] This decision follows a penalty hearing. Mr Taia admitted all three charges. One is unsatisfactory conduct for failing to rectify an e-dealing issue in a timely manner. Another is misconduct by failing to comply with an investigator's request for access to a client's file. The third is misconduct by failing to comply with a costs order.

[2] Mr Taia did not attend the hearing. We have taken his written submissions into account. He does not oppose the Standards Committee submissions on penalty. Nonetheless, we must impose our own assessment and, as it turns out in this case, we impose a slightly shorter period of suspension than that suggested by the Standards Committee.

[3] Mr Taia seeks permanent name suppression. This is the only contentious issue in this case. In this decision, we deal with that application after determining penalty.

The charges

[4] The e-dealing issue extended from September 2014 to October 2019. The first error was not Mr Taia's fault. He acted for the purchaser. The e-dealing should have occurred in October 2014. The vendor died in November 2014 and the complainant lawyer discovered the property was still inconveniently registered in the vendor's name. For some long time the complainant blamed Mr Taia for the e-dealing failure when it was actually the complainant's error. However, the record shows that Mr Taia was dilatory in assisting rectification of the situation. The transaction went through five years late.

[5] In the lawyer interactions, Mr Taia repeatedly promised actions that were not delivered. We find it is fair to say that Mr Taia failed to respond in a timely manner to requests; that he made repeated promises that he failed to deliver on.

[6] On the next charge, Mr Taia was the subject of a complaint. The Standards Committee appointed Ms Lowe to investigate. Her initial attempts to contact Mr Taia by landline, mobile and email were unfruitful. On 26 February 2019, he advised by email that his wife had had surgeries over the previous three months and he would let Ms Lowe know when he was back at work. She wrote again, advising him of his obligations. No reply was received.

[7] Ms Lowe contacted Mr Taia's attorney. The attorney told Ms Lowe on 3 April that Mr Taia promised to drop the files into the attorney's office. Mr Taia failed to do so. The Standards Committee wrote to him on 16 May. They received no response. The charge was filed in December 2019.

[8] The last charge was very much an "own goal." In November 2017, the Standards Committee fined Mr Taia $2,000 for unsatisfactory conduct and ordered costs of $500. Mr Taia has never paid anything towards this debt. He has ignored some requests. He has made promises to pay, promises to begin paying, promises to pay by instalments. The $2,500 remains outstanding.

[9] A common theme running through all three charges is Mr Taia's failure to engage in a timely manner, whether with another practitioner, the Standards Committee, or the Law Society. This default is exacerbated by his multiple prevarications, fobbing off with promises that remain unperformed.

What is the appropriate penalty?

[10] In his written submissions dated 17 November, Mr Taia states that he has "no issue" with paying the $2,500 ordered three years ago but submits he should not start until after the Christmas Break. He states he has "no issue" with making his practice available for inspection, including the file that was particularly sought, "provided that this is done with consideration of my current or future employment restrictions." In context of this history, we cannot accept these as genuine. He has made promises of payment much more specific in the past. Had he truly been prepared to make his practice available, he could have done so before the hearing, thereby demonstrating a fulfilment of the promise.

[11] Mr Taia's failure to attend the hearing was unannounced. He has ceased practising law and says he intends not to practise again. Nonetheless, suspension is an appropriate component of penalty, providing a sufficient mark of concern to reinforce the gravity with which this course of conduct that pays no heed to his professional obligations including the duty to co-operate with complaints procedures and to pay a fine imposed by proper process. He has provided no details of his capital or other financial circumstances. At one time, he informed that he was working on a building site. On recent occasions, he stated he was working for a consultancy business, but his recent memorandum suggests his tenure there may be under question. We have no information on his income or outgoings. The Standards Committee note his current employment but note that he previously had "family, health and financial issues."[1]

[12] Although Mr Taia said he has "no issue" with a period of suspension in the range of 12 months,[2] the Standards Committee, after noting similar cases, suggested nine months[3] as an appropriate cumulative total for the three charges, uplifted by three months because of his previous disciplinary record. Among that record were other instances of dilatory behaviour and poor compliance with supervision.

[13] We have considered the material afresh. The Standards Committee's suggestion of 12 months' suspension is arguable but we note that the current matters, although continuing to demonstrate Mr Taia's refusal to accept discipline or co-operation in those professional dealings under review, are matters of moderate wrongdoing, albeit longstanding. In the e-dealing matter, Mr Taia was not initially at fault, and was harried as if he were at fault until the Standards Committee better understood the origins of the matter. And that transaction, at least, has been resolved, albeit after five years.

[14] We have been greatly assisted by Ms Yelavich's clear and fairly framed submissions in the course of dealing with this case. Ms Yelavich responded generously to our suggestion that nine months' suspension might be a better fit than 12, admitting that it is difficult to pick a period when facts differ so much from case to case.

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[1] Standards Committee submissions 5 Nov 2020, at [6.26].
[2] Submissions 17 Nov 2020, at [2](a)
[3] Standards Committee submissions 5 Nov 2020, at [6.7].

Penalty orders

[15] We deal with Mr Taia on this case by way of censure, nine month's suspension, and costs. Mr Taia shall pay costs of $16,775 incurred by the Law Society for representation. He shall also reimburse the Law Society for the Tribunal costs certified at $2,240 which are, in the first instance, to be paid by the New Zealand Law Society.

Application for name suppression

[16] Mr Taia, who has had previous experience of name publication in disciplinary matters, seeks permanent name suppression. He points to the correct test, in s 240(1), that the Tribunal may do so if it "is of the opinion that it is proper to do so, having regard to the interest of any person … and to the public interest."

[17] The Standards Committee relies on three important judicial statements which we quote. Firstly, in *Daniels v Complaints Committee 2 of the Wellington District Law Society*[4]:

> "Harm to reputation is an inevitable consequence of publication if a professional is the subject of an adverse disciplinary finding but of itself cannot provide sufficient ground for there to be suppression of his name."

[18] Secondly, Rodney Hansen J in *H v Waikato Bay of Plenty Standards Committee 1 of the New Zealand Law Society*[5]:

> "[18] The principles governing name suppression both generally and in the context of disciplinary proceedings are well established. The starting point is the principles of open justice and freedom of expression discussed in R v Liddell. Open justice is a "prima facie presumption" which may be displaced after a consideration of the interests, public and private, which are relevant in the particular case.
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> [19] Sections 238 and 240 reflect this general approach. The Tribunal may grant suppression if it is of the opinion that it is proper to do so having regard to the interest of any person and to the public interest. For this purpose, the public interest encompasses the general importance of upholding freedom of speech and open justice principles and also the particular interests served by

[4] *Daniels v Complaints Committee 2 of the Wellington District Law Society* HC Wellington CIV-2011-485-227, 8 August 2011 at [53].
[5] *H v Waikato Bay of Plenty Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 2090.

> an open and transparent disciplinary process. Full exposure of disciplinary processes enhances public confidence in the profession and helps to protect members of the public against the risk of further misconduct.
>
> [20] In exercising its discretion to order name suppression under s 240, the Tribunal is required to decide whether the personal interests of the practitioner (or others) outweighs the public interest in full disclosure."

[19] And, quoted by Rodney Hansen J, Sir Thomas Bingham MR in *Bolton v Law Society*[6] said:

> "To maintain [the profession's] reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are [disciplined]…a member of the public…is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

[20] We accept Ms Yelavich's submission that, in consequence of these statements, there is a strong presumption that a practitioner's name will be published. It is an ordinary consequence of open process that has reputational benefits for the profession and is a proper course in any event.

[21] We also accept Ms Yelavich's submission that it is inevitable that there will be some adverse consequences for any practitioner whose name is published. The question here is whether Mr Taia can demonstrate that his case must be one where the exception applies.

[22] Mr Taia's submissions[7] set out factors such as the openness of proceedings and the reputation of the legal profession; and lists what he describes as "special circumstances.[8]" In particular, he notes:

- Lifelong impact on his employability.
- Difficulties in finding work after Covid-19.
- That he is not going to practise law again.

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[6] *Bolton v Law* Society [1994] 2 All ER 492.
[7] 20 October 2020 at [4].
[8] 20 October 2020 at [5].

- Long-standing impact on his ability to deliver services to assist community groups and hold positions of authority.

- Stress and hardship on his family.

- "the predetermined manner in which the publication of my name is viewed in the Maori and public sectors".

- The impact on work commenced which is designed to create employment and training opportunities in the Provincial Sector."

[23] Most of Mr Taia's heads of argument are asserted without evidential foundation. Although we can accept that it will likely be an unhappy matter for family members, there is no evidence at all providing an evidential foundation about family impact in this case. His submission invites us to speculate. On another issue, we have no evidence of Mr Taia's engagement with community groups. Nor has he detailed any facts around his suggestion that publication will affect "work commenced." We are in the dark about these matters.

[24] We are told in submissions that his current position is under question because his past disciplinary issues have come to light. This too, is an assertion without evidence.

[25] We are troubled by his submission about "the predetermined manner in which the publication of my name is viewed in the Maori and public sectors." We do not understand precisely what he references as "the Maori and public sectors." What he refers to as "predetermined" is unexplained. The "manner" in which he fears his name will be viewed is similarly unexplained. Absent understanding of these propositions, and without evidence, we are at a loss to give any weight to them. We do not know what Mr Taia means by these words.

[26] At heart, these charges carry a message about distinctive business traits of Mr Taia. If he were to carry on practising law, publication would be strongly desirable so that other practitioners and members of the public could assess those characteristics that emerge. If we suppress these matters from other sectors of the community, it does not speak well of the integrity of the legal profession. That some

of his characteristics have caused problems in his current employment is a factor supporting the relevance of publication rather than the reverse.

[27] We are far from persuaded by Mr Taia's case for name suppression. On the contrary, we think this is a case where the facts should be available. To rule otherwise is to shelter Mr Taia's reputation at the risk to other sectors of the community. To conceal these matters would suggest a lack of candour. We have no wish to hamper his prospects of employment where his employer is apprised of relevant facts but we should not hide relevant material where it ought to be available.

[28] Mr Taia's application for name suppression is refused.

Summary or Orders

[29] The Orders made are as follows:

1. Mr Taia is suspended from practice for a period of nine months, commencing 1 December 2020, pursuant s 242(1)(e) of the Lawyers and Conveyancers Act 2006 (the Act).

2. Censure (delivered in writing below).

3. Mr Taia is to pay the New Zealand Law Society costs in the sum of $16,775.

4. Mr Taia is to reimburse the New Zealand Law Society for the Tribunal costs in the sum of $2,240.

5. The New Zealand Law Society are to pay the costs of the Tribunal certified in the sum of $2,240.

Censure:

Michael Rawiri Taia, you have admitted one charge of unsatisfactory conduct in being dilatory and uncommunicative about completing a conveyancing transaction. You have admitted two charges of misconduct by failing to pay a fine and by failing to provide access to client material in relation to a complaint. By these actions, you have failed to honour your obligations as a practitioner, and you have ignored and avoided disciplinary processes which exist to ensure the good standing of the profession.

You are censured. This censure will remain on your permanent record.

DATED at AUCKLAND this 1st day of December 2020

Judge J G Adams
Deputy Chair