NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2020] NZLCDT 7

LCDT 014/19

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 1** Applicant
AND	**VICKI POMEROY** Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS

Mr S Hunter

Ms A Kinzett

Ms P Walker

Mr I Williams

DATE OF HEARING 17 December 2019

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 14 February 2020

COUNSEL

Mr J Parry and Ms L Luaitalo for the applicant

The respondent in person

REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING PENALTY

[1] In our decision of 4 October 2019, we recorded our reasons for finding Ms Pomeroy guilty of unsatisfactory conduct for failing to comply with a request made by the Committee to produce for inspection her complete file in relation to Mr H.

[2] We adjourned consideration of penalty so that she could engage with the Law Society in the hope that a plan could be settled to manage her future wellbeing.

[3] At the hearing on 17 December 2019, counsel for the Committee advised us that the New Zealand Law Society wrote to Ms Pomeroy on 30 October 2019 advising her of the various means by which it might be able to assist her and inviting her to engage with it. She did not respond to that letter. A follow up letter was sent on 28 November 2019. During a phone call made to her on 2 December 2019, Ms Pomeroy outlined the steps she intended to take to ensure that she could intend to continue to practise and that she would send an email setting this out in writing. She did not do so.

[4] The Committee sought the following penalty:

(a) Censure.

(b) A fine in the vicinity of $3,000 to $5,000.

(c) Costs pursuant to s 249 of the Lawyers and Conveyancers Act 2006 (Act).

(d) Reimbursement of the hearing costs payable by the New Zealand Law Society pursuant to s 257 of the Act.

[5] Counsel for the Committee referred us to the authorities regarding penalty principles and in particular to the decision in *Auckland Standards Committee 1 v Fendall* [1].

> "The predominant purposes are 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."

[6] The Committee noted that in this case there had been no harm caused to the public. It stressed that the respondent had repeatedly failed to engage with the Committee. The respondent finally provided the client file requested. She did so on the day of the hearing to determine liability. The Committee's submission was that Ms Pomeroy's actions hindered the Committee's ability to carry out its investigative and disciplinary function at the earliest opportunity.

[7] The further submission was that those actions displayed a troubling attitude towards her professional obligations generally.

[8] Ms Pomeroy informed us that she did not have a great deal to add to her position taken at the earlier hearing. She emphasised confidence in her ability to continue her practice. She did not consider she needed help with the running of her practice.

[9] Ms Pomeroy did not provide us with details of her financial position but mentioned that she had to borrow money to continue her practice.

[10] She also emphasised that her conduct was not deliberate.

[11] In reaching our decision on penalty we have taken into account what counsel for the Committee has described as the unusual feature of this case in that the conduct forming the basis of the underlying complaint being investigated by the Committee did not form part of the charge before us. The charge focused on Ms Pomeroy's approach to the investigation of the complaint by the Committee.

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

[12] While we have noted that Ms Pomeroy held an honest belief about her refusal to supply the client file, we found that she had a duty to communicate with her professional body and that her failure to do so was unsatisfactory.

[13] We find that Ms Pomeroy's unsatisfactory conduct is at the lower end of the scale. The conduct was nevertheless not a minor or insignificant breach of Ms Pomeroy's professional obligations. Ms Pomeroy failed to respond to requests from the Committee over a long period. In doing so, she impeded the Society's disciplinary processes which are important to the reputation and functioning of the profession. We consider unsatisfactory conduct of this nature should result in a fine and censure.

[14] At the conclusion of the hearing we imposed the following penalty and made orders as to costs:

1. A fine of $5,000.00.

2. Ms Pomeroy is censured.

3. Ms Pomeroy is to pay the costs of the Standards Committee fixed at $8,000.00.

4. Ms Pomeroy is to refund to the New Zealand Law Society the Tribunal's costs which are fixed at $3,472.00.

5. The New Zealand Law Society are to pay the Tribunal's costs which are fixed at $3,472.00.

Suppression of Name

[15] Ms Pomeroy sought an order for the permanent suppression of her name.

[16] She relied on the following:

(a) The impact that publication of her name would have on any future employment path she may choose to follow.

(b) The likely impact on her ability to heal.

(c) There is no public interest in knowing her name.

(d) There is no need for protection of the public she having ceased to practise.

[17] Counsel for the Committee opposed the continued non-publication of Ms Pomeroy's name. He referred us to the factors that are relevant in assessing whether the presumption in favour of openness is displaced.[2] They are:

(a) Whether the person seeking suppression has been found guilty of the charge, acquittal allowing for a greater possibility of suppression.

(b) The seriousness of the offending, where a truly trivial charge might mean that any particular damage from publication could outweigh the public interest in knowing.

(c) Any adverse impact on the prospects of rehabilitation.

(d) The public interest in knowing the character of the person seeking name suppression.

(e) Circumstances personal to the person seeking suppression that go beyond the normally expected distress, embarrassment, and adverse personal and financial consequences as result of publication. The effects must be disproportionate to the public interest in knowing, if they are to be given weight in displacing the expectation of openness.

[2] *Auckland Standards Committee No 3 v Ram* [2011] NZLCDT 32 citing *Lewis v Wilson & Horton & Others* CA 131/29 29 August 2000.

[18] We declined the order that Ms Pomeroy asked for. We held that the onus is on Ms Pomeroy to justify the continuation of the order for non-publication of her name.[3]

[19] Ms Pomeroy did not support her submissions with evidence as to the impact that publication of her name would have on her health or of any personal circumstance that goes beyond the normally expected issues that arise from a disciplinary investigation.

[20] There is a high threshold to be met before the principle of open justice can be displaced.[4] Ms Pomeroy has not provided the Tribunal with cogent evidence for that to occur.

DATED at AUCKLAND this 14th day of February 2020

BJ Kendall
Chairperson

[3] *A v Canterbury Westland Standards Committee No 2* [2015] NZHC 1896.
[4] *Canterbury Westland Standards Committee 2 v Eichelbaum* [2014] NZLCDT 23.