

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 8

LCDT 011/19

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**THE CANTERBURY-WESTLAND  
STANDARDS COMMITTEE (NO 1)**

Applicant

**AND**

**KERRY NOBLE WILLIAMS**

Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS**

Mr H Matthews

Mr S Morris

Ms G Phipps

Ms M Scholtens QC

**DATE OF HEARING** 17 February 2020

**HELD AT** Christchurch District Court

**DATE OF DECISION** 28 February 2020

**COUNSEL**

Mr T J McGuigan for the applicant

Mr W J Hamilton for the respondent

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

[1] In our decision of 4 November 2019, we recorded our reasons for finding Mr Williams guilty of one charge of professional misconduct pursuant to s 112(1)(a) of the Law Practitioners Act 1982. The undisputed facts are set out at paragraph [4] of our decision. We also found that Mr Williams' client did not consent to certain payments being made by Mr Williams and that the client did not know to any reasonable extent the details of why those payments were made.

[2] We found that Mr Williams was not acting purely as a trustee but also as a lawyer at all relevant times.<sup>1</sup>

[3] At the hearing on 17 February 2020, counsel for the Committee sought the following penalty:

- (a) That Mr Williams be struck off the roll.
- (b) Payment by Mr Williams of the Committee's costs.
- (c) Reimbursement by Mr Williams of the Tribunal's costs of hearing.

[4] The Committee sought a period of suspension of up to two years in the event that the Tribunal elected not to strike Mr Williams' name off the roll.

[5] The Committee submitted that the following factors applied to the determination of the penalty of strike-off. They were:

- (a) The number and nature of the breaches involved where Mr Williams acted in circumstances where there was a clear conflict of interest and where Mr Williams failed to properly advise his client.

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<sup>1</sup> Liability decision [2019] NZLCDT 33 at [40].

- (b) Significant conflict of interest arising in respect of payments made by Mr Williams to entities in which he was a shareholder and failed to disclose that interest to his client. The result was self-dealing on a reasonably significant scale.
- (c) Breach of trust in that Mr Williams failed to discharge his professional obligations to his client in circumstances where he acted on the instructions of his client's former spouse and put the sole asset of the Trust at risk.
- (d) Financial loss whereby the Trust's sole asset had to be sold at a significant loss because Mr Williams made unauthorised payments to companies which were not beneficiaries of the Trust and were not under the control of his client.

[6] Counsel has referred us to the relevant law and in particular to *Daniels*<sup>2</sup> which emphasised that “*if the purposes of imposing disciplinary sanctions can be achieved short of striking off then it is the lesser alternative that should be adopted as the proportionate response*”.

[7] The submission by the Committee was that strike-off should be imposed when regard is had to the nature and gravity of Mr Williams' conduct. This submission was made notwithstanding an acknowledgement that Mr Williams admitted that his conduct was unbecoming and that he had properly engaged in the investigative and disciplinary process. It emphasised that strike-off was necessary to meet the need for general deterrence of other practitioners and in order to protect the reputation of the profession and maintain public confidence.

[8] Mr Hamilton for Mr Williams informed us that his client accepted that a period of suspension should be imposed. He contended that a period of about twelve months was appropriate. He advanced the following matters in support of that submission:

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<sup>2</sup> *Daniels v Complaints Committee 2 of the Wellington District Law Society* HC WN CIV-2011-485-000227, 8 August 2011.

- (a) That Mr Williams acknowledged his failures to make adequate enquiries.
- (b) There was no element of dishonesty in his conduct.
- (c) That care should be taken in attributing the financial loss solely to Mr Williams. The loss arose from the failure of the companies. The loss occurred because Mr Williams believed that the transactions were in accordance with the wishes of his client. He did not initiate any of the transactions.
- (d) Mr Williams has an otherwise unblemished record over 44 years of legal practice which should be given significant weight.<sup>3</sup>
- (e) The last transaction referred to in the particulars of charge occurred in April 2008, nearly twelve years ago. He has not since then come to the attention of the Tribunal. Such a period of practising without incident can properly be considered.<sup>4</sup>
- (f) Mr Williams has been open in his engagement with the complaints process and in his responses to the Tribunal. He has:
  - (i) provided a detailed and honest account of the background to the transactions in which he had a conflict of interest and, from the outset, admitted the critical facts relating to them;
  - (ii) admitted to a finding of conduct unbecoming; and
  - (iii) presented a defence on the basis of capacity and was supported in that by expert advice.
- (g) That Mr Williams has retired from practice, will not be renewing his practising certificate and the Committee has acknowledged that his risk of reoffending is low.

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<sup>3</sup> *Canterbury/Westland Standards Committee 3 v Johnson* [2018] NZLCDT 21.

<sup>4</sup> *Hawke's Bay Standards Committee v Heaphy* [2014] NZLCDT 78 and *Waikato Bay of Plenty 356 Standards Committee v Fletcher* [2013] NZLCDT 16.

[9] The arguments advanced by Mr Hamilton persuaded us that a period of suspension was the appropriate penalty to impose.

[10] In assessing the period of suspension, we have also taken into account that Mr Williams has expressed a willingness to write an apology to his client. He is prepared to make a contribution of \$15,000 to his client's costs subject to him being able to explore that it can be done without any repercussion to him legally or insurance wise or otherwise.

[11] At the conclusion of the hearing, the Tribunal imposed the following penalty and made orders as to costs:

- (a) Suspension from practice as a barrister, or solicitor, or both, for a period of nine months commencing on 21 February 2020.
- (b) Mr Williams is to pay the costs of the Standards Committee fixed at \$23,157.80.
- (c) Mr Williams is to refund to the New Zealand Law Society the Tribunal s 257 hearing costs which are fixed at \$11,847.00.
- (d) The New Zealand Law Society is to pay the Tribunal s 257 hearing costs which are fixed at \$11,847.00.

[12] We also direct that Mr Williams is to provide to the Tribunal and the New Zealand Law Society a copy of his apology that he is to make to his client.

[13] With respect to costs, Mr Hamilton submitted that the Tribunal consider some discount to reflect that Mr Williams had engaged in the process, admitted the factual position and that Particular 4 of the charge was not proved.

[14] As was said in *Morahan*,<sup>5</sup> “Costs in disciplinary proceedings are subject to their own regime rather than the “general approach to costs in civil proceedings””. There is no rigid formula to be applied. In this case, we have taken into account the totality of the circumstances; that the particular was part only of the overall charge and was properly brought. There is also the public interest factor to be taken into account. We have declined any reduction of the Committee’s costs that Mr Williams is to pay.

**DATED** at AUCKLAND this 28<sup>th</sup> day of February 2020

BJ Kendall  
Chairperson

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<sup>5</sup> *Morahan v Wellington Standards Committee 2* [2018] HC 1229.