

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 4

LCDT 025/19

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**CANTERBURY WESTLAND  
STANDARDS COMMITTEE 2**  
Applicant

**AND**

**DANIEL ROBERT HEALY**  
Practitioner

**CHAIR**

Judge DF Clarkson

**MEMBERS**

Ms S Hughes QC

Mr H Matthews

Ms M Scholtens QC

Prof D Scott

**ON THE PAPERS**

**DATE OF DECISION** 31 January 2020

**COUNSEL**

Mr P Collins for the Standards Committee

Mr M Ferrier for the Practitioner

### **DECISION OF TRIBUNAL ON PENALTY**

[1] Mr Healy has admitted one charge under s 241(d) of the Lawyers and Conveyancers Act 2006 (the Act), that he has been convicted of an offence punishable by imprisonment and the conviction tends to bring his profession into disrepute.

[2] The conviction was entered at the Royal Court of Jersey following a guilty plea by the practitioner on 21 December 2018. It was of a charge of grave and criminal assault, following which the practitioner was sentenced (and has served) 180 hours of community service, ordered to pay compensation to the victim of £5,000, and ordered to pay costs of £1,000.

[3] The assault was couched in such serious terms because the practitioner had a glass in his hand when he struck the victim and thus quite serious injuries were suffered. However, as reflected by the non-custodial sentence, there were significantly mitigating features both in relation to the offending itself, in respect of which the victim had initiated the altercation which took place in a bar when both men were intoxicated, and in relation to the practitioner's own personal circumstances.

[4] In relation to the latter, the practitioner was able to point to 11 glowing character references, a blemish-free conviction history, the ongoing support of his employers as well as considerable steps taken to demonstrate his remorse and rehabilitation by undertaking counselling voluntarily, with the Alcohol and Drug Service in Jersey.

[5] The charge as originally worded included the words that the conviction reflected on the fitness to practise of the lawyer. However, an amendment was sought to remove that reference and the Tribunal endorsed the amended charge.

[6] Mr Healy indicated on that basis he would immediately acknowledge the charge.

[7] Mr Healy has, since his notification of his conviction, which he did voluntarily, been assessed by the Practice Approval Committee (PAC)<sup>1</sup> and granted a current practising certificate. In making this decision the PAC found him to be a fit and proper person to remain a lawyer.

[8] In the penalty submissions, on behalf of the Standards Committee, Mr Collins submitted that the imposition of a censure, a fine in the vicinity of \$10,000, ie: “*at a meaningful level*” and costs ought to be the appropriate penalty in this matter.

[9] In submissions on behalf of the practitioner, Mr Ferrier has suggested that a formal censure is the least restrictive outcome that can be imposed by the Tribunal and would sufficiently mark out the disapproval of the practitioner’s conduct. It is submitted that given the level of fine imposed on him by the criminal justice system in Jersey, that a further fine is unnecessary. In addition, given the level of cooperation of the practitioner, he seeks a reduction in contribution to the costs of the profession in bringing this prosecution.

### ***Seriousness of the Offending***

[10] A conviction for an offence of serious violence will always be considered at the high end of seriousness by the Tribunal. However, as submitted by Mr Ferrier, the Court did not identify any aggravating features of the offending. It is also submitted that it is important that the Court accepted “... *that Mr Healy had no intent to use the glass as a weapon and that he genuinely felt threatened, and reacted instinctively, having attempted to remove himself from the escalating situation.*”<sup>2</sup>

[11] We accept that these particular circumstances do reduce, somewhat, the level of seriousness which might otherwise be attributable to the practitioner’s actions.

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<sup>1</sup> Of the New Zealand Law Society.

<sup>2</sup> Submissions for the practitioner at [5].

***Mitigating Features***

1. Mr Healy has no previous disciplinary history nor other criminal convictions.
2. He reported the conviction promptly and in doing so, provided some reassurance that he remains a reliable practitioner.
3. Since the incident, which took place in mid-2018, he has continued to act for clients without incident or any issues being raised as to his professional conduct.
4. He has complied with all of the terms of his sentence in the criminal jurisdiction.
5. It is accepted, as did the Royal Court of Jersey, that the practitioner's actions were "completely out of character". Notwithstanding his normally low consumption of alcohol, we commend Mr Healy for voluntarily undertaking a six-week course with the Alcohol and Drug Service in Jersey.
6. Mr Healy acknowledged this charge at the earliest opportunity following its quite proper amendment.
7. The references provided to the Royal Court of Jersey have also been provided to the New Zealand Law Society and we note that amongst those is a statement from the practitioner's employer, who notes that there will be disciplinary consequences within the firm, particularly if Mr Healy loses his right to practise, should he be suspended in New Zealand. It is a term of his employment that he held a practising certificate from a qualifying jurisdiction of which New Zealand is one.

***Aggravating Features***

[12] There are none.

### **Similar Cases**

[13] These are addressed in the submissions of both counsel who refer to those cases where a practitioner has been suspended following criminal convictions and also to a number where this did not occur. The two other cases which involve violent offending are *Matheson*<sup>3</sup> and *Dender*.<sup>4</sup> As pointed out by counsel for Mr Healy, both cases involved intentional violent offending in a domestic violence context, which distinguishes them from the present matter.

[14] In the *Matheson* matter the Tribunal took account of significant mitigating and contextual features and in that case the practitioner was censured but not fined or suspended.

[15] Mr Collins, on behalf of the Standards Committee, set out four reasons why suspension is not required to reflect the seriousness of this matter as follows:

1. Mr Healy is not a person from whom the public needs to be protected.
2. Suspension would be “*disproportionately harsh because it would result in the loss of his employment in Jersey*”. As such it would not represent the “*least restrictive outcome*” to be applied according to the authorities.<sup>5</sup>
3. The profession has already acknowledged Mr Healy as a person who is fit and proper to remain a lawyer by the decision of the Practice Approval Committee.
4. “*The public and professional interests in this case will be adequately addressed by a penalty short of suspension.*”

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<sup>3</sup> *Auckland Standards Committee 1 v Matheson* [2015] NZLCDT 4.

<sup>4</sup> *Hawke’s Bay Standards Committee v Dender* [2017] NZLCDT 39.

<sup>5</sup> *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

**Name Suppression**

[16] The practitioner has not made a formal application for name suppression but seeks this in the course of making his submissions to the Tribunal. We do not consider such an order is justified. There is no evidence to suggest that there are medical or other reasons which apply to displace the principle of openness set out in ss 238 and 240 of the Act.

[17] Section 240 provides for restriction on publication if the Tribunal "*is of the opinion that it is proper to do so, having regard to the interest of any person ... and to the public interest ...*" The practitioner is said to be a young man in the earlier stages of his career who has already suffered as a result of the publicity emanating from the criminal proceedings and does not wish to see this repeated.

[18] We see that publication is necessary in order that the public may observe the proper process, particularly since this matter has been dealt with on the papers and not in open court. The fact that the practitioner has already been the subject of publicity is a double-edged sword and it could be said that "*the cat is out of the bag*" in regard to his privacy and reputation.

**Level of Penalty**

[19] We do consider that this matter can be dealt with short of suspension, but we consider that a censure would be an inadequate reflection of the seriousness of the conduct and that there ought to be a meaningful fine. We consider a fine of \$8,000 is a proper level.

**Censure**

[20] We attach as Appendix 1 the terms of the censure which we impose on Mr Healy.

**Costs**

[21] The profession as a whole has incurred the costs of bringing this proceeding as a direct result of the practitioner's conduct. While we have some sympathy for the high costs he has already borne in relation to the criminal proceedings, that is of course a proper consequence for his actions and there ought not to be an unfair burden on his profession as a whole. The practitioner has had the benefit of his cooperation in the sense that the costs have been minimised with the avoidance of a formal hearing but those costs which have been incurred should be paid by the practitioner entirely.

[22] If hardship is caused, it is a matter for the New Zealand Law Society and the practitioner to negotiate a method of payment. There will be an order for costs in favour of the Standards Committee in the sum of \$7,500.

[23] There will be a further order that the New Zealand Law Society pay the costs of the Tribunal in the sum of \$1,165. The practitioner is to refund to the New Zealand Law Society the Tribunal costs in full.

**DATED** at AUCKLAND this 31<sup>st</sup> day of January 2020

Judge DF Clarkson  
Chairperson

### Censure

Mr Healy, on behalf of your profession you are censured for your conduct in relation to your criminal conviction. Your conduct will have seriously risked the reputation of your profession as a whole and as such needs to be marked by a serious response. This censure will become part of your record and remain on it.

You are commended for the steps you have taken in relation to expressions of remorse and addressing the reasons for the offending having occurred. For those reasons this censure does not need to traverse those areas and remains relatively brief.