NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2021] NZLCDT 1
LCDT 013/20

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 2** Applicant
AND	**SONYA MARIE VUJNOVICH** Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms J Gray
Mr K Raureti
Prof D Scott
Mr B Stanaway

ON THE PAPERS

DATE OF DECISION 5 February 2021

COUNSEL

Mr P Collins for the Auckland Standards Committee
Mr A Gilchrist for the Practitioner

DECISION OF THE TRIBUNAL ON PENALTY AND NAME SUPPRESSION

Introduction

[1] Ms Vujnovich has admitted one charge of misconduct pursuant to s 9(1) of the Lawyers and Conveyancers Act 2006 (LCA) that she provided regulated services to the public other than in the course of her employment by a lawyer.

[2] This case involves an inadvertent, but serious, technical breach of this somewhat specific category of misconduct. The subsection was clearly enacted for the purpose of protecting the public although it should be emphasised that in this case there were no elements of concern about the public protective aspect, in that the quality of the work itself was not challenged.

[3] This case has also been characterised by the early acceptance of responsibility by the practitioner and cooperation with the disciplinary process which has led to counsel recommending to the Tribunal a modest level of penalty.

[4] The only matter in serious contention, other than the Tribunal's independent assessment of the appropriateness of the agreed penalty, is the issue of whether the practitioner's name ought to be suppressed in any publication of this decision.[1]

Background

[5] Ms Vujnovich was admitted on 25 July 2008. Before that time she had had considerable experience in the law, beginning at the level of secretary and moving to train as a legal executive before finally becoming qualified as a lawyer, and more recently becoming a principal in a law firm.

[6] She is a person whose references indicate she has considerable ability as well as integrity, reliability, and commitment to her clients. Ms Vujnovich is extremely disappointed that she fell into the error which has resulted in this charge and is

[1] Pursuant to s 240 of the LCA.

remorseful about her actions, in not having properly checked and understood her obligations once she was admitted as a qualified lawyer.

[7] Prior to the point of her admission Ms Vujnovich had, as a director of a company, provided services to the public, relating to trust administration. She had checked the legislation previously and it is clear that prior to being a qualified lawyer there was no difficulty in providing these services. She wrongly assumed that following her admission, the position would be the same and between July 2008 and 2015 continued, with the consent of at least two separate employers, to carry on these services in her own time, while being employed as a solicitor.

[8] In June 2018 she was invited to become a principal in another law firm and by this stage had ceased operating the company which had carried out the trust administration services.

[9] Her actions came to light somewhat incidentally, there having been no complaint by any person for whom she had carried out the trust administration services.

Section 9

[10] Section 9 is a particular type of misconduct, not falling within the general or usual misconduct definition under s 7.

[11] In submissions on behalf of the Standards Committee, Mr Collins has pointed out the reasons for this particular consumer protection part of the legislation. Section 9 addresses concerns where an employed lawyer acting outside that employer might, for example, lack supervision by an experienced lawyer, might avoid the trust accounting protections otherwise available, including access to the Lawyers Fidelity Fund. There is also said to be a risk of confusion and potential to mislead the public about the role of in-house lawyers who are only able to provide services to their non-lawyer employer and not to the public in general.

[12] As already indicated, none of these concerns are directly engaged in this matter since there is no challenge to the quality of Ms Vujnovich's work, however that is not to undermine the seriousness of a breach of s 9.

[13] It is clear in this case the breach was entirely unintentional on the part of this practitioner, and indeed the conduct has not occurred since 2015. These matters are certainly mitigatory in terms of penalty and indeed the level of penalty proposed by the Standards Committee, at such a modest level, is reflective of their view of the degree of culpability of this practitioner as being low.

Other Mitigatory Factors

[14] Ms Vujnovich has an otherwise blameless record as a professional who has been in practice for some 12 years.

[15] The Standards Committee accepts that the prosecution itself and the "*stigmatising effect of the misconduct admission and the availability of this decision to the public* …" is a form of punishment in itself.

[16] The Tribunal is certainly conscious of the need to recognise practitioners who promptly accept responsibility for their actions, and negotiate a resolution of disciplinary proceedings in as far as is possible, such as has occurred here. The practitioner is given considerable credit for her approach.

Name Suppression

[17] The practitioner seeks that her name not be published in any report of these proceedings for a number of reasons. While accepting the consumer protection emphasis in the legislation, she points out that in her case there is no need to protect the public and that is accepted by the Standards Committee. She confirms that there is no risk of repetition of the offence (and that is axiomatic from the fact that she is now a principal and not an employee in a law firm).

[18] She points to the breach being not only inadvertent but also historical. Finally, she points to other practitioners sharing her surname and the risk of unfairness to those lawyers of publication of her name.

[19] Her application is supported by an affidavit from one of her partners in her current firm who points to the risk of reputational damage by publication. No specific evidence is adduced in this regard.

[20] We consider that the risk to the practitioner's current firm is slight. The conduct in question ceased some years before she joined that firm and given the low level of culpability and the unintentional technical breach which has occurred in this case the risk of reputational damage even to the practitioner directly ought to be minimal.

[21] In those circumstances we do not consider that the application reaches the threshold necessary to displace the presumption of openness which is accepted in all of the decisions which discuss s 240.

[22] In order for public confidence to be maintained in the profession it is necessary for the disciplinary process relating to its practitioners to be as open and transparent as possible. For this reason, the decisions on suppression demonstrate the Tribunal's and the higher Courts' reluctance to limit publication in any way in the absence of, for example, some serious medical reason.

[23] Although private information, and certainly information concerning complainants, are routinely suppressed, neither of these issues arise in the present matter.

[24] For all of these reasons we decline the application for name suppression.

Penalty

[25] The Tribunal is satisfied, having considered the matter in its entirety, and having regard to its overall context, the practitioner's approach and her clean disciplinary history, that the modest penalties proposed by the Standards Committee and agreed by the practitioner are proper. The only additional matter is in relation to s 257 costs of the Tribunal, which we are obliged to impose on the New Zealand Law Society. We consider the practitioner ought to also reimburse these costs to the New Zealand Law Society as is usual.

Orders

1. The practitioner is formally censured in the following terms:

   Ms Vujnovich, you have accepted that you did, from August 2008 until September 2015, breach the strict terms of s 9(1) of the LCA. You have acknowledged that although you were permitted to undertake this activity prior to your admission as a Barrister and Solicitor of the High Court, following that professional transition your actions contravened the Act. The Tribunal accepts that you are remorseful for your actions and confident that there will be no repetition of these.

   This censure remains on your record permanently.

2. Costs in the order of $5,000 are to be paid by the practitioner to the Standards Committee.

3. The s 257 costs of $914.50 are to be paid by the New Zealand Law Society.

4. The practitioner is to reimburse the New Zealand Law Society for the s 257 costs in full.

5. The application for name suppression is declined.

DATED at AUCKLAND this 5th day of February 2021

Judge DF Clarkson
Chairperson