**NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2021] NZLCDT 16
LCDT 020/20

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| **IN THE MATTER** | of the Lawyers and Conveyancers Act 2006 |
| **BETWEEN** | **NATIONAL STANDARDS COMMITTEE No. 2**<br>Applicant |
| **AND** | **DEBBIE LAURA PAULSON WILSON**<br>Practitioner |

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Ms K King
Ms S Sage
Ms S Stuart
Ms P Walker

**HEARING HELD AT** Specialist Courts and Tribunals Centre, Auckland

**DATE OF HEARING** 27 April 2021

**DATE OF DECISION** 14 May 2021

**COUNSEL**

Ms M Dew QC and Mr J Hansen for the Standards Committee No. 2
No Appearance for the Practitioner
Written Submissions provided by the Practitioner

## DECISION OF THE TRIBUNAL

### *Introduction*

[1] Ms Paulson Wilson faced three charges in the alternative which arose out of her brief but clandestine relationship with a prisoner for whom she had previously acted as an employee lawyer.

[2] From the outset of these proceedings the practitioner, who now resides in Australia, took a responsible approach, and the matter proceeded before the Tribunal in her absence but with the assistance of written submissions she had presented.

[3] We proceeded on the basis that the practitioner acknowledged the accuracy of all the particulars pleaded, that is, she acknowledged the accuracy of all the facts relied on in support of the three alternative charges.

[4] Furthermore, Ms Paulson Wilson admitted misconduct under the second charge, albeit in relation to only three of the five rules pleaded. She further admitted the third alternative charge of negligence, which it has not been necessary to address.

[5] The practitioner denied the first alternative charge of misconduct, which represented disgraceful and dishonourable conduct. In relation to that charge the matter proceeded by way of formal proof, albeit with acknowledgement of all the supporting facts, but with an argument as to the proper level of liability on the basis of those facts.

### *Background*

[6] Ms Paulson Wilson was admitted as a barrister and solicitor on 16 November 2018. She held a practising certificate from April 2019 until June 2020, however had stepped aside from legal practice in November 2019 following the events which led to the charges under consideration.

[7] Ms Paulson Wilson began work with a barrister practising in criminal law in July 2019 and the events which fall for consideration took place in October 2019.

When her conduct was reported by prison authorities to her employer, following a disciplinary process she was dismissed from her employment in November 2019. Thus, it can be seen that she was only three months into her working career when the conduct under consideration occurred.

[8] In early October 2019 Mr Z, Ms Paulson Wilson's employer received a request from a relative of Prisoner X seeking legal advice regarding a possible appeal against conviction and sentence. Mr Z instructed Ms Paulson Wilson to attend upon Prisoner X and obtain his instructions. Her visit occurred on 15 October 2019 but following a review of the file note prepared by Ms Paulson Wilson, Mr Z determined that without any fresh evidence there were no grounds for an appeal. He asked Ms Paulson Wilson to phone Prisoner X to advise him that he was unable to assist him further. Mr Z did not authorise Ms Paulson Wilson to have any further interaction with Prisoner X.

[9] Notwithstanding Mr Z's position of declining to act further, Ms Paulson Wilson and Prisoner X continued, for a brief time to have contact. The prisoner requested that Ms Paulson Wilson's telephone number be approved as a legal contact on 16 October, and on the same date Ms Paulson Wilson confirmed to SERCO staff by email that she was carrying out research into the prisoner's appeal and agreed to her number being approved for further legal discussions. This was false information.

[10] Two days later Prisoner X requested an 0800 number be approved as a social number using "Lucy Pance" as a pseudonym for Ms Paulson Wilson.

[11] On the same date Ms Paulson Wilson confirmed to SERCO that she was "Lucy Pance" when they called the 0800 to verify it. In doing so she was acting dishonestly and deceptively to pursue a covert personal relationship with the prisoner. Six telephone calls were recorded by SERCO between Ms Paulson Wilson and the prisoner. There was a further connection through Instagram.

[12] The topics of conversation revealed by the transcripts of the discussions included:

> "(a) Sexual matters about one another;

(b) Ms Paulson Wilson's plan to deliver chocolate and pens to Prisoner X at their next meeting;

(c) A plan between them to pretend to Ms Paulson Wilson's employer that a fellow prisoner needs to talk to a lawyer in person, to create an opportunity for her to visit the prison and see Prisoner X; and

(d) That Prisoner X had accepted Ms Paulson Wilson's Instagram follow request."[1]

[13] Further conversations occurred in which the prisoner and Ms Paulson Wilson discussed ways of organising for her to visit, use of the "*lawyer phone*" to avoid being monitored by the prison, and the possibility of sexual contact at a future meeting.

[14] On 23 October there was a discussion between them which included information about searches of prisoners with a comment by Ms Paulson Wilson that if she brought him goods he could "*smuggle it back*".

[15] In early November Mr Z was provided reports of these conversations by the prison authorities and he suspended Ms Paulson Wilson from her employment pending an employment disciplinary investigation.

[16] The outcome of that investigation was that Ms Paulson Wilson was dismissed on 15 November 2019 on the grounds of serious misconduct.

***Issues***

1. Is the conduct such as to satisfy the grounds set out in s 7(1)(a)(i) of the Lawyers and Conveyancers Act 2006 (the Act)?

   (b) Did it occur at a time when the practitioner was providing regulated services?

   (c) Was it conduct "… that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable …"?

2. If not disgraceful and dishonourable conduct, was it such as to fall within the definition of s 7(1)(a)(ii), namely a wilful or reckless contravention of Rules 2,

[1] As set out in submissions for the National Standards Committee, paragraph 2.15.

2.4, 5.7, 11.1 and 12 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008?

3. If misconduct is not found under either of the above-named sections, did the practitioner's conduct amount to negligence or incompetence in her professional capacity to such a degree as to reflect on her fitness to practise or as to bring the profession into disrepute?

[17] As a preliminary point, we note that in the decision of *J v Auckland Standards Committee 1,*[2] the Court of Appeal confirmed the correct approach for determining the type of misconduct as follows:

> "The task in each case is to focus on the conduct relied on to support the charge and determine whether it falls within the specified category … if the Tribunal [is] satisfied that J's conduct amounted to misconduct, because it [and is] judged by the Specialist Tribunal to be disgraceful or dishonourable, there [is] no need for it to go further and consider the alternative charges."

**Issue 1 - Charge 1**

[18] The following factors support the finding of Misconduct:

(a) The practitioner admits, in her written submission, that the conduct occurred at a time when she was providing regulated services. We consider this as a proper concession in the light of the High Court's broad interpretation of the category of misconduct, which occurs in the course of professional as opposed to personal activities[3].

(b) Counsel referred to us a number of recent decisions where conduct had been held to be disgraceful and dishonourable. We accept the submission made by Ms Dew QC, on behalf of the National Standards Committee, that s 7(1)(a)(i) is designed to capture a range of conduct, and we would add, conduct in a number of contexts. The particular conduct to which our attention is drawn by counsel are as follows:

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[2] *J v Auckland Standards Committee 1* [2019] NZCA 614, [38].
[3] *Deliu v The National Standards Committee and the Auckland Standards Committee No. 1 of the New Zealand Law Society* [2017] NZHC 2318, Hinton J.

"5.15 The features of this disgraceful and dishonourable misconduct include the following:

(a) The Practitioner's relationship with Prisoner X was inappropriate, of a sexual nature and involved an abuse of the fiduciary relationship between a lawyer and client, NSC Bundle at pp 19, 20 and 25;

(b) The Practitioner abused her privilege as a lawyer to gain access to Prisoner X. This abuse of privilege heightens the seriousness of conduct as it did in *Auckland Standards Committee No 1 v Murray* NZLCDT 88 at [36];

(c) The Practitioner exercised her privilege as a lawyer to obtain phone contact deceptively and dishonestly. She concealed her identity from SERCO authorities when she claimed she was Lucy Pance, NSC Bundle at p 16;

(d) The Practitioner knew her actions were wrong and actively attempted to evade detection by her employer and prison authorities on multiple occasions during October 2019. This included using her position as a lawyer to evade monitoring of non-lawyer conversations and using the 0800-phone number listed under the name Lucy Pance, NSC Bundle at p 22;

(e) The Practitioner conspired to deliver chocolate and pens to Prisoner X in contravention of s 141(1) of the Corrections Act 2004 and conspired to use her position as a lawyer to meet Prisoner X under false pretexts, NSC Bundle at pp 20 and 24; and

(f) This was not a one-off lapse in judgement. The conduct persisted over the course of just over one week in October 2019, until it was detected by the Department of Corrections in late October 2019."

[19] In discussing what constitutes misconduct, the Tribunal recently stated:

> "[81] Lawyers hold a privileged position. Entry to the profession requires the candidate to prove they are fit and proper to be admitted. Honesty is a core value because otherwise "public and judicial confidence in the proper administration of justice will … be undermined."
>
> [82] Integrity and trustworthiness are prerequisites to admission because, without these qualities, the public may lack confidence in the profession as a whole. A candidate in Australia was refused admission because of a lack of "appropriate professional judgement and discretion." In New Zealand, in a case regarding a valuer, "Eichelbaum CJ reviewed the concept of professional misconduct generally and noted that across all professions the key element is whether the practitioner's conduct has shown some degree of unfitness to practise.""[4]

These are comments equally applicable to this matter.

[4] *Auckland Standards Committee 4 v Lynette O'Boyle* [2021] NZLCDT 15.

[20] The most relevant case to which we have been referred is the Tribunal decision in *Murray.*[5] In that matter, which is acknowledged to be at the most serious end of offending of this sort, Ms Murray had been convicted of her actual smuggling of an iPhone, cigarettes and a lighter to a prisoner at Mt Eden Prison when acting as his lawyer. It is acknowledged that the criminal conviction and the approach that the practitioner took to the criminal proceedings, as well as the potentially more sinister nature of the items smuggled, as contrasted with the planned to be smuggled items in the present matter, puts the *Murray* matter in a much more serious light than the present. However, both the Tribunal and the High Court[6] drew attention to the seriousness of conduct of this sort, abusing as it does the practitioner's privilege as a lawyer in relation to accessing prisoners through the degree of trust reposed in them by the Corrections Service. In that matter, as in the present, we considered that the actions involved a breach of the practitioner's obligations to the Corrections Department, to the Criminal Bar, to the wider profession and to the public to behave in a manner worthy of a lawyer in whom such trust is reposed by the prison system.

[21] We agree with the submission of Ms Dew that "… *the cumulative effect of these breaches will inevitably or reasonably be regarded by lawyers of good standing, as disgraceful and dishonourable*."

[22] Accordingly, we find the charge laid under s 7(1)(a)(i) to be proven.

**Issue 2 – Charge 2**

[23] Having found the charge proven at the level of disgraceful and dishonourable it is unnecessary for us to consider the wilful or reckless breach of the five rules pleaded. However, we note that in any event, were we to be wrong about our assessment of the previous issue, that the practitioner accepts that misconduct is established in relation to this second charge. Again, this is a proper concession on her part. We consider that her active participation in the planning with this prisoner of various activities of a sexual, as well as an illegal smuggling nature, put her activities beyond the "naïve" actions, which she acknowledges. The level of wilfulness and knowledge of breach of the rules is apparent from the verbal exchanges between the

[5] *Auckland Standards Committee No 1 v Murray* [2014] NZLCDT 88.
[6] On appeal against the criminal sentence.

prisoner and practitioner, as are recorded in the various transcripts. There are references to her breaking the rules and her awareness of such.

**Issue 3 – Charge 3**

[24] Again, having found Charge 1 proved, this alternative charge need not be addressed.

***Penalty***

[25] There is some common ground between the National Standards Committee and the practitioner in relation to penalty. Specifically, the practitioner agrees that an order should be made that she not be permitted to practise on her own account.

[26] Ms Paulson Wilson also agrees that she should contribute to costs although seeks a 50 percent discount having regard to her personal circumstances as not having worked as a lawyer since these events occurred, and consequent loss of income. We have no affidavit or other sworn document to support that assertion, but we have no reason to doubt that what is set out in Ms Paulson-Wilson's submissions is likely to be accurate and we accept that she has already suffered a penalty of losing her employment and temporarily at least, her legal career.

[27] Where the parties differ is in the length of term of suspension necessary to mark the seriousness of this offending. The Standards Committee seek a suspension of 12 months and Ms Paulson Wilson submits that a period of three months would be more appropriate.

[28] Determining a proportionate penalty having regard to the purposes of penalty, always starts with an assessment of the seriousness of the conduct in question.

***Seriousness of Conduct***

[29] We have no hesitation in declaring this conduct to be at the serious end of the misconduct spectrum. This was conduct which was not only demonstrative of poor judgement and lack of experience. We acknowledge the practitioner was young and she describes herself as "plain stupid".

[30] The sheer stupidity is not the primary issue in considering seriousness, the two more important features of this offending are the breach of the relationship of trust (both with her employer and the Corrections Department) and the degree of deception involved.

[31] Having established the level of seriousness we consider the purposes of penalty. The primary purpose is the protection of the public[7]. Then there is the purpose of the protection of the reputation of the profession. It is in respect of this latter subject, that we note with concern the practitioner's view that she only brought herself into disrepute rather than the profession as a whole. We regard that as showing a significant lack of insight into her role as a lawyer, and as a member of a professional body whose reputation is its most precious asset.[8]

[32] Further purposes of penalty can include the opportunity for rehabilitation, denunciation and deterrence.

[33] In respect of the last, we accept the submission of Ms Dew that there is a need for both specific and general deterrence in relation to this particular conduct and that particular aspect of penalty requires a proportionate but firm response by the Tribunal.

[34] It is submitted for the Standards Committee that in seeking 12 months to mark the seriousness of this misconduct they have already stepped back considerably from the maximum period of suspension available of three years, to take account of the practitioner's youth, inexperience and cooperative approach to the proceedings[9].

***Aggravating and Mitigating Features***

[35] We do not consider there to be any aggravating features in relation to the practitioner's conduct.

[36] As to mitigating features, while account is taken of the fact that this is the practitioner's first offence (in contrast with the *Murray* case), it also must be borne in

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[7] See s 3 Lawyers and Conveyancers Act 2006.
[8] See *Bolton v Law Society* [1994] 2 All ER 486.
[9] In the *Murray* matter, the lawyer was struck off the Roll.

mind that the practitioner had only been working as a lawyer for some three months prior to the offending.

[37] We note that the offending only lasted a period of six days. It is impossible to speculate, so we do not, whether the offending might have continued if it had not been detected.

[38] We accept that the practitioner was young and inexperienced and that she has accepted responsibility at a personal level for her actions.

[39] We remind ourselves of the need to impose the least restrictive outcome.[10]

[40] The *Daniels* decision also emphasise the right of the public to observe the profession's disciplinary bodies providing a firm response to serious misconduct of this sought.

[41] Taking all these factors into account we consider that the appropriate period of suspension of this practitioner is 12 months.

[42] However, we record that the hearing was delayed by some two months because of a Covid-19 Level 3 lock down and we do not consider that the practitioner ought to be penalised by that event. For that reason, we propose to backdate the period of suspension to commence at the date of the earlier scheduled hearing, namely 4 March 2021.

***Costs***

[43] The Standards Committee seek their costs in the sum of $14,000 (actual costs being in excess of $16,000). We considered these costs to be relatively high given the straightforward nature of the charges and the practitioner's early acceptance of responsibility. We also note that the practitioner will be ordered to reimburse the Tribunal costs and it would seem, has suffered some financial hardship during the period when she has voluntarily stood down from practice. For those reasons we consider that she ought to make a contribution to costs for the Standard Committee in the sum of $7,000.

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[10] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

***Orders***

1. There will be an order that Ms Paulson Wilson be suspended from practice as a barrister and solicitor for 12 months from 4 March 2021, pursuant to ss 242(1)(e) and 244 of the Act.

2. By consent, there will be an order prohibiting Ms Paulson Wilson from practising on her own account, whether in partnership or otherwise, until authorised by the Disciplinary Tribunal to do so, pursuant to s 242(1)(h) of the Act.

3. We order costs in the sum of $7,000 in favour of the Standards Committee.

4. The s 257 costs are certified at $2,030, to be paid by the New Zealand Law Society.

5. The practitioner is to reimburse the New Zealand Law Society the full Tribunal costs.

**DATED** at AUCKLAND this 14th day of May 2021

Judge DF Clarkson
Chair