**ORDER MADE PURSUANT TO S 240(1)(c) OF THE LAWYERS AND CONVEYANCERS ACT 2006 FOR PERMANENT SUPPRESSION OF NAMES AS SPECIFIED IN PARAGRAPH [40] OF THIS DECISION.**

**NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2021] NZLCDT 27

LCDT 021/20

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| **IN THE MATTER** | of the Lawyers and Conveyancers Act 2006 |
| **BETWEEN** | **AUCKLAND STANDARDS COMMITTEE 4**<br>Applicant |
| **AND** | **LYNETTE O'BOYLE**<br>Practitioner |

**DEPUTY CHAIR**

Judge J G Adams

**MEMBERS OF TRIBUNAL**

Ms A Callinan

Ms N McMahon

Mr S Morris

Ms S Stuart

**DATE OF HEARING** 18 October 2021

**HELD AT** Specialist Courts and Tribunals Centre, Auckland (by way of virtual meeting room)

**DATE OF DECISION** 29 October 2021

**COUNSEL**

Mr L Radich for the Auckland Standards Committee 4

Ms K Davenport QC for the Practitioner

## DECISION OF THE TRIBUNAL RE PENALTY

[1] Ms O'Boyle has practised law for more than 30 years. Her Whangarei practice mainly serves legal aid clients. On 29 April 2021, we made a finding of misconduct against Ms O'Boyle. This hearing is to determine what is generally known as "penalty", namely the orders we make as a consequence of the misconduct finding.

### *The misconduct*

[2] A full discussion of our findings and the context of the misconduct can be read in our 29 April 2021 decision. For the purposes of this penalty decision, a brief summary will suffice. Ms O'Boyle became over-involved in a case. Her client lost day to day care of children to an ex-partner. Ms O'Boyle sent letters respectively to the employer of the ex-partner, to the employer of the ex-partner's partner, and to another employer (because she was unsure of the identity of the ex-partner's partner's employer). Ms O'Boyle copied the letters to the Privacy Commissioner. The letters contained false allegations and unsubstantiated speculation dressed up as fact. We found that the letters were designed to damage the employment relationships of the two victims.

[3] The victims were senior employees for important Government Departments. They were embarrassed by the communications.

[4] Ms O'Boyle compounded her wrongdoing by repeatedly asserting to the Standards Committee that some of her allegations were borne out by evidence in the Family Court case. When the record was shown to prove her wrong, she claimed that when she referred to Notes of Evidence, she simply meant to reference her own handwritten notes, which happened to be wrong.

***Purposes of 'penalty'***

[5] The orders we make at this hearing must serve the purposes of the Lawyers and Conveyancers Act 2006 (the Act). Relevant portions of s 3(1)(a) and (b) of the Act provide:

> **3 Purposes**
>
> (1) The purposes of this Act are—
>
> (a) to maintain public confidence in the provision of legal services … :
>
> (b) to protect the consumers of legal services … :
>
> …

[6] In order to give effect to the purposes of the Act, we interpret the term "consumer" liberally. It can, in proper circumstances, extend to a complainant or adversely affected person who was not a client of the practitioner. Lawyers should conduct themselves in a manner that reflects credit on the profession and instils public confidence.

[7] The Act provides a variety of orders that can be made at penalty hearings. They range from strike-off (for the worst cases), suspension from practice for a period, fine, censure, compensation, orders for education or supervision, and costs.

[8] We were disappointed with the limited approach reflected in the written submissions for the Standards Committee in this case. Those submissions adopted a merely punitive stance, seeking a suspension of five months and costs. Supplementary submissions added (without adjustment to proposed suspension period) a compensatory payment of $20,000 to the client's ex-partner. We considered that such an approach did not adequately address the issues before the Tribunal in relation to Ms O'Boyle's finding of misconduct.

[9] However, we appreciate that penalty orders will have some punitive effect. This was noted in the well-known case of *Daniels v Complaints Committee 2 of the Wellington District Law Society:*[1]

> [22] It is well known that the Disciplinary Tribunal's penalty function does not have as its primary purpose punishment, although orders inevitably will have some such effect. The predominant purposes are to advance the public interest (which include "protection of the public"), to maintain professional standards, to impose sanctions on a practitioner for breach of his/her duties, and to provide scope for rehabilitation in appropriate cases. Tribunals are required to carefully consider alternatives to striking off a practitioner. 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. That is "the least restrictive outcome" principle applicable in criminal sentencing. In the end, however, the test is whether a practitioner is a fit and proper person to continue in practice. If not, striking off should follow. <u>If striking off is not required but the misconduct is serious, then it may be that suspension from practising for a fixed period will be required.</u>
>
> (emphasis added)

[10] Ms Davenport QC promoted a stiff fine as a suitable alternative to suspension. Although we have not been persuaded to this view, her engagement in this penalty process, necessarily seeking the best outcome for her client, was helpful and reflected a more satisfactorily nuanced approach than that of the Standards Committee.

[11] In this penalty case, we pursue more than one goal. It is important for us to mark the level of our disapprobation of the misconduct. Public confidence in the profession requires that bad behaviour by a lawyer will be properly addressed. In addition, as the Standards Committee recognised in its supplementary submission, this is a case where compensation for the victims might go some way towards addressing the need for atonement. Rehabilitation of the practitioner is a viable component of 'penalty' also as we must ensure that Ms O'Boyle does not fall into similar behaviours in future.

[12] Our deliberations have resulted in a suite of orders to provide a composite, balanced response which marks our disapprobation accompanied by rehabilitative and compensatory aspects.

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[1] *Daniels v Complaints Committee 2 of the Wellington District Law Society* HC CIV-2011-485-227, 8 August 2011.

[13] An advantage of the Tribunal makeup is that the rich life and business experience of five people are pooled. Our combined experience focuses on the variety of 'penalty' needs that the case requires. We all heard the evidence and observed Ms O'Boyle in court for a considerable period of time. Having listened carefully to submissions, we have a good sense of what we are dealing with here, and our problem-solving exercise has produced clear goals. Our discussion has developed a package which we consider strikes the right balance between denunciation, compensation and rehabilitation.

***Discussion of penalty components***

[14] We found that Ms O'Boyle willingly participated in the potentially harmful correspondence.[2] We found that she failed to recognise that it was unwise to act on instructions given by a client who was "out for blood."[3] We found that she intended to cause harm to the victims with their employers.[4] We found that she failed to remain within her appropriate professional role and failed to maintain the objectivity that the public should expect from a reasonably competent lawyer.[5]

[15] The misconduct was wrong. It reflected badly on Ms O'Boyle and on the legal profession. Although Ms O'Boyle has not had prior charges, we formed the view that her conduct, both with respect to her client and the Standards Committee involved several adverse events over a considerable period of time, and Ms O'Boyle's manner of dealing with them reveals features of her personality and practice that can be regarded as more than an isolated error. Irrespective of whether this is seen as one or more events, this case requires at least a period of suspension to mark, at an appropriate level, the wrongness of the misconduct, though the misconduct falls short of the standard required to strike off the practitioner.

[16] Ms O'Boyle was under personal strain at the time of her offending, particularly on account of her mother's health and the consequent strain of repetitive travel. It seems clear that Ms O'Boyle finds her work stressful and has not developed healthy ways of managing the stress. She advances her role as a rescuer, particularly in what

[2] Liability decision para [93].
[3] Liability decision para [94].
[4] Liability decision paras [95] et seq.
[5] Liability decision para [94].

she describes as high conflict cases, one who works unremittingly and unrewardingly at the coalface for her clients. But she finds the clients and their problems difficult to bear. This is not a healthy mix.

[17] Were we simply to suspend Ms O'Boyle from practice, we would be leaving the job largely undone. In our view, Ms O'Boyle needs to be challenged about her practice, made to account for her choices, and develop ways of interacting that are professionally appropriate, especially so because she practises in the emotionally charged area of family law. We are concerned about her mode of practice going forward unless she can resolve some of these issues. To do so, in our view, requires professional supervision, not simply oversight by a fellow practitioner. For the same reason we do not consider the attendance by Ms O'Boyle at a course on how best to manage her practice will be meaningful and effective for her. A more targeted, direct intervention is required.

[18] Ms O'Boyle put forward a fellow practitioner as a supervisor for her practice. He had earlier written a letter of support describing himself as Ms O'Boyle's friend (and colleague). He spoke of her practice in glowing terms, for example "Lynette has very good communication skills. She is orally articulate, has good written skills and she is a good listener." We do not assess him as the right person, nor in the right category, to undertake the work she needs to undertake. He will be valuable to her as an informal colleague to whom she can talk. That is a valuable role but not one in which we need to invest.

[19] As we were coming towards the hearing, we issued a Minute, inviting counsel to address rehabilitative supervision. Regrettably, the Standards Committee failed to pursue that at all. Consequently, the hearing occurred without our receiving any advantage to the Standards Committee's forethoughts. We have tailored our orders to ensure that this aspect is properly addressed. In our view it is an important component of our response.

[20] In appropriate cases, rehabilitation will be an important component of the Tribunal's response. In this case, where Ms O'Boyle has been in practice for decades, provoking her to change ingrained habits will be challenging for her, but necessary if we are to have confidence in her ongoing professional engagement with the public.

Having deliberated, since the liability hearing, and during this penalty hearing, on how most effectively to address this challenge, we have resolved to require Ms O'Boyle to undertake professional supervision so we can have confidence in her future conduct.

[21] In the absence of assistance from the Standards Committee on this important limb, we have been obliged to undertake our own search for a suitable supervisor. What we have in mind is a well-briefed professional supervisor who will engage with Ms O'Boyle over an extended course of one-to-one meetings, challenge Ms O'Boyle and hold her to account in relation to observing professional boundaries, enmeshment with clients, and managing personal and professional stresses. To be effective, such supervision needs to be confidential for Ms O'Boyle but the Tribunal has a proper need for regular reports to assure us that Ms O'Boyle continues to engage wholeheartedly in the supervisory work.

[22] Section 156(1)(l) of the Act provides that we may "order the practitioner … to take advice in relation to the management of his, her, or its practice from such persons as are specified in the order." That provision is silent on how the "advice" is to be given or taken. Addressing the practitioner's needs in this case, giving a liberal reading to "advice", we find that professional supervision properly fulfils our requirements. The reciprocity that is involved in receiving advice that is given by another finds expression in professional supervision where the supervisor steers focus so the client can gain (learn) insight. The scope of engagement falls within management of important aspects of Ms O'Boyle's practice.

[23] Following the penalty hearing we have approached Ms Vicki Hirst, a professional supervisor working in the Whangarei area. Ms Hirst has approved the terms we propose. She is well-suited for this role. For ten years she served on the Social Workers Registration Board Complaints and Disciplinary Tribunal, four years as a Member and six years as Chair. She is academically and professionally well-versed in guiding professionals through multiple issues, including the kind that arise in Ms O'Boyle's case.

[24] We reject the proposition that oversight by a fellow practitioner for a period of time would be suitable. This is not a case of a practitioner lacking technical skills or

needing to chat about stresses. This is a case requiring a higher level of challenge, and hard work by the practitioner.

[25] In the penalty hearing, each party advanced different views about Ms O'Boyle's remorse. Although she says she regrets her actions, we do not perceive Ms O'Boyle has any real understanding of the hurt she caused to the victims. In the course of the liability hearing, she tended to blame others, and failed to take responsibility fulsomely herself. Even the offending letters, written on her letterhead and signed by her, she attempted to fix to her client, suggesting that she only wrote them to avoid intolerable pressure placed on her by the client.

[26] It is more than three years since she wrote the offending letters. During that time, Ms O'Boyle has not sent a letter of apology to the victims. We find her expressions of remorse are thin, more related to her embarrassment at the public shame involved in these matters coming to light rather than recognition of her wrong-doing and compassion for those she harmed.

[27] The victims wrote dignified impact statements. They speak of reputational and emotional harm having been suffered. The client's ex-partner had been occupying a more senior role at work, and he had hoped to be permanently appointed with a salary uplift of $20,000. Unsettled by Ms O'Boyle's intervention, he chose to move into the private sector.

[28] His partner (the second victim), had been accused, without any rational foundation, of hacking into the client's internet accounts. She says: "The event, and subsequent fallout, is still painful and raw for me. I engaged mental health professionals and EAP [Employment Assistance Programme] to help to manage my feelings of anxiety, humiliation, paranoia, shame, and the enormous sense of injustice created as a direct result of Lynette's letter to my employer." As she goes on to say: "A lawyer's written word carries significant weight."

[29] We do not accept the Standards Committee submission that a compensatory sum of $20,000 should be paid to the first victim. We cannot find that he suffered a direct loss of that sum. Other factors may have come into play. Nor can we understand

why the first victim should be compensated when the second victim, whose situation was so much more peripheral, should be overlooked.

[30] We are not attracted to an order requiring Ms O'Boyle to write a letter of apology which might be insincere. If she saw fit to do so from a standpoint of compassion and remorse, that would be a different matter. In the round, we take the view that a gesture of atonement, albeit in money form, would be more appropriate. The public might well see this as a wholesome step for Ms O'Boyle. We therefore require her to pay each of the victims the sum of $3,000 (a total of $6,000).

[31] Although we do not have details, we think it likely that Ms O'Boyle's income may produce modest returns on a per hour basis. A fine commensurate with her misconduct would be a heavy burden. In any case, we think that suspension must be a component.

[32] When it comes to fixing the term of suspension, we weigh other components in the balance, namely, supervisory training, compensation and costs. We are minimally responsive to the potential impact on legal aid clients in Whangarei. As Mr Radich observed, there are always collateral inconveniences. We do not curtail the period of suspension much on that account.

[33] We have decided to suspend Ms O'Boyle from the practise of law for a six-week period to straddle the forthcoming holiday period. The timing of this may be seen as an accommodation to Ms O'Boyle that provides a light outcome. That is not so. Suspension is a very public condemnation. Because Ms O'Boyle will also be obliged to pay significant monetary penalties (costs, compensation), she needs to earn a livelihood. We have no doubt that the period of suspension will be keenly felt by Ms O'Boyle.

[34] The misconduct in this case, and the profile of the practitioner, are unique. Comparison with other cases is not of much assistance. Accordingly, we mean no disrespect to counsel by failing to address other cases.

***Orders***

[35] Ms O'Boyle is suspended from practice for a period of six weeks. The period of suspension will commence on Saturday 18 December 2021 and conclude on Saturday 29 January 2022. If Ms O'Boyle's appeal about these disciplinary matters is unlikely to be heard before this period, she may apply on seven days' notice to vary the dates.

[36] Ms O'Boyle must pay each of the two complainants the sum of $3,000 (total of $6,000) by 31 March 2022. Failure to do so on time will attract interest at a daily rate of 10 per cent per annum calculated daily and may be treated as foundation for another charge.

[37] Ms O'Boyle must engage in a course of professional supervision with Ms Vicki Hirst for a minimum of one year and a maximum of two years at Ms O'Boyle's expense (including the reasonable costs of Ms Hirst's briefing for the task). The supervision will be one-to-one, involving sessions of one or two hours at fortnightly intervals for three months, and thereafter at least monthly. The content of the supervision sessions will be confidential to Ms O'Boyle but Ms Hirst must provide three-monthly reports to the Tribunal addressing the level of Ms O'Boyle's engagement with the process. If Ms O'Boyle fails to engage (or fails to continue engagement) satisfactorily, the Tribunal may review these orders and substitute another penalty order. Not earlier than one full year from the commencement of professional supervision, Ms Hirst may terminate the supervision if Ms Hirst is of the view that no useful purpose will be served by continuation.

[38] As part of her briefing, Ms Hirst will be provided with a copy of our liability and penalty decisions. The main purpose of the supervision is to encourage Ms O'Boyle to reflect on her observing professional boundaries, enmeshment with clients, and managing personal and professional stresses, and to steer her towards practising within sound professional boundaries.

[39] Ms O'Boyle must pay the Standards Committee costs of $22,711 and reimburse the New Zealand Law Society for the Tribunal s 257 costs which are certified at $9,268.

***Final suppression orders***

[40] An order is made under s 240(1)(c) of the Act that the names of the complainant, his partner, their respective employers, the Department that was not the complainant's partner's employer to whom Ms O'Boyle wrote, persons referred to in the letters, Ms O'Boyle's client and her client's partner (and his partner), the children and other family members referred to in this New Zealand Law Society file, and Ms O'Boyle's PA are all permanently suppressed.

**DATED** at AUCKLAND this 29th day of October 2021

Judge JG Adams
Deputy Chairperson