NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2021] NZLCDT 31
LCDT 019/20

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NATIONAL STANDARDS COMMITTEE 1** Applicant
AND	**ROYAL REED** Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms K King
Ms M Noble
Ms M Scholtens QC
Prof D Scott

HEARING 12 November 2021

HELD BY Virtual Hearing (VMR)

DATE OF DECISION 2 December 2021

COUNSEL

Mr G Burston and Ms K Kensington for the Standards Committee
Ms R Reed QC and Ms S Cameron for the Respondent Practitioner

REASONS FOR PENALTY DECISION OF THE TRIBUNAL

Introduction

[1] In our decision of 27 July 2021 we found Mrs Reed guilty of one charge of misconduct relating to her failure to disclose relevant information to the High Court when making a without notice application for a freezing order. This decision provides reasons for the penalties imposed by us at the hearing on 12 November 2021.

[2] The key aspect of the hearing was whether, over four years after the misconduct, it was necessary to suspend Mrs Reed from practice to reflect the seriousness of the offending.

Manner of Assessment of Proportionate Penalty

[3] The exercise begins with consideration of the seriousness of the conduct.[1]

[4] The Tribunal then considers mitigating and aggravating features of both the practitioner and the conduct.

[5] Application of general principles of penalty such as deterrence, consistency and least restrictive outcome[2] are considered and applied in relation to the purposes of the legislation.[3]

[6] In a case where suspension is considered, the purposes of that penalty (indeed the general removal of a practitioner from practice) are reviewed and applied.[4]

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[1] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103.
[2] *Daniels v Complaints Committee of the Wellington District Law Society* [2011] 3 NZLR 850.
[3] Lawyers and Conveyancers Act 2006 (LCA), s 3.
[4] *Bolton v Law Society* [1994] 2 All ER 492 (CA).

Seriousness

[7] It is accepted that the misconduct is serious. As submitted by Mr Burston for the Standards Committee, "the duty of candour to the Court is one of the foremost duties on a practitioner". It is accepted that there was a one-off reckless breach of that rule and the absolute requirement not to mislead or deceive the Court. In our decision we expressed the view that it was difficult to avoid a conclusion of "forum shopping".

[8] Relevant to the level of seriousness, is that we stopped short of finding deliberate omission. Also relevant is that this was a one-off reckless breach rather than a course of conduct.

[9] In discussing analysis of seriousness, then moving into the wider contextual issues, the full Court of the High Court noted in *Hart*:

> [186] The nature and gravity of those charges that have been found proved will generally be important. They are likely to inform the decision to a significant degree because they may point to the fitness of the practitioner to remain in practice. In some cases these factors are determinative, because they will demonstrate conclusively that the practitioner is unfit to continue to practice as a lawyer. Charges involving proven or admitted dishonesty will generally fall within this category.
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> [187] In cases involving lesser forms of misconduct, the manner in which the practitioner has responded to the charges may also be a significant factor. Willingness to participate fully in the investigative process, and to acknowledge error or wrongdoing where it has been established, may demonstrate insight by the practitioner into the causes and effects of the wrongdoing. This, coupled with acceptance of responsibility for the misconduct, may indicate that a lesser penalty than striking off is sufficient to protect the public in the future.
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> [188] For the same reason, the practitioner's previous disciplinary history may also assume considerable importance. In some cases, the fact that a practitioner has not been guilty of wrongdoings in the past may suggest that the conduct giving rise to the present charges is unlikely to be repeated in the future. This, too, may indicate that a lesser penalty will be sufficient to protect the public.

Aggravating Features

[10] There are no aggravating features in this matter. The practitioner has no previous disciplinary history.

Mitigating Features

[11] There are a number of mitigating features in relation to the practitioner which are addressed in her counsel's penalty submissions.

[12] In Oral submissions, counsel for the Standards Committee graciously acknowledged the many impressive references and testimonials filed, as well as Mrs Reed's own reflections on her conduct, and her contributions to the legal and broader community. It was also acknowledged that the practitioner had already addressed a number of the concerns which would normally have arisen for consideration in a penalty process.

[13] We accept there have been significant consequences which have already flowed from Mrs Reed's own determination to prevent any repetition of her professional failures. She acted to do so at an early stage of the proceedings, having received the criticism of the High Court, and indeed as we understand it, even before the Standards Committee began its investigation or at least in the early stages of that.

[14] Mrs Reed recognised that her sole practice had grown at such a rate that she was no longer able to cope with the pressures of her professional duties, including supervision of her staff members, and also uphold the high standards which she had set for herself, and which are required by her profession.

[15] With that in mind, she made inquiries as to possible mergers with larger firms. She was put in touch with the partners of Meredith Connell, one of the country's most well-established and respected legal practices. Negotiations led to a merger of the firms and Mrs Reed was admitted as a partner of Meredith Connell. As part of the merger process Mrs Reed disclosed the Standards Committee investigation, acknowledging her professional failings. A support structure was put in place for Mrs Reed's team and herself with supervision by senior partners from Meredith Connell and guidance in the areas of law in which Mrs Reed's team practised.

[16] We are satisfied, having received affidavit evidence from Mr Haszard, managing partner of Meredith Connell as to the professional and pastoral support put in place for Mrs Reed's firm members to support the merger, that there is no risk of repetition of this misconduct in the future. We note that the conduct is now over four years ago, with no further concerns arising.

[17] We also note that Meredith Connell were not associated with Mrs Reed at the time this conduct occurred but have supported her through the disciplinary process and she has the full confidence of the partners. Testimonials from both Mr Haszard and Mr Dickey, Crown Solicitor at Auckland, were part of the references provided to the Tribunal.

[18] In taking these steps, at such an early stage, the practitioner has satisfied one of the main aims of the disciplinary process which is, protection of the public and maintenance of professional standards.

[19] We accept that it was a considerable wrench for Mrs Reed to change the nature of the firm which she had established and grown so successfully. We accept the submission of her counsel that it "… indicates a level of insightfulness … and determination to ensure some of the issues do not arise again …". We accept it demonstrates Mrs Reed's commitment to her professional obligations and "… reflects favourably on her accountability and responsibility."

[20] In this regard we also make reference to the letter of apology which was written to the Tribunal in which the practitioner fully accepted the finding of the Tribunal on liability at the level of misconduct and took responsibility for her actions. She describes how she saw herself as falling into error through maintaining an unsustainable workload and how she had sought the assistance of senior members of the profession to ensure a level of mentoring and support that would prevent reoccurrence.

[21] On a more personal level Mrs Reed described the guilt and stress she had suffered, and the harm she had brought to her family as a result of her involvement in the disciplinary process. We also take account of the considerable financial cost of the proceedings to Mrs Reed, in that she has incurred legal costs of around $100,000

and will face the Standards Committee costs of $37,000 and the Tribunal costs which are assessed as in excess of $9,000.

[22] The Tribunal has received many letters of apology and contrition from practitioners over the years. The letter from Mrs Reed distinguished itself, firstly by her total acceptance of the Tribunal's decision and acceptance of responsibility; and secondly, by the obviously genuine expressions of her personal responses contained in it.

[23] The practitioner's community involvement and pro bono contributions, not only to the Asian community in Auckland, but to the wider community also is notable. Through the many references received from a variety of business leaders and professional people, a picture emerged of a woman who, despite growing a busy practice, and having considerable family responsibilities, gave generously of her time and skills to the community. She did this in a number of ways and it is unnecessary to specify them for the purposes of this decision, but we are satisfied that her "giving back" has done the legal profession considerable credit and in due course provides her with a strong mitigating feature in relation to this penalty process.

[24] As a result of her community commitments it is clear that Mrs Reed has a very high profile, particularly amongst the New Zealand Chinese community. As such we are well aware that the weight of shame carried by her for the acceptance of her professional errors is considerable. The Tribunal views Mrs Reed's decision not to seek a final suppression order to attempt to restrict that reputational damage, as a very encouraging indicator of her level of insight.

[25] We are also aware that the practitioner is particularly concerned about the reputational damage to her new partnership, despite the fact that they were unconnected with the professional failings found.

[26] It is interesting to note that the high level of remorse and insight demonstrated by Mrs Reed by the conclusion of the proceedings appeared to us to exemplify the disciplinary process operating well to educate a practitioner. The genuine understanding demonstrated by her letter showed us that Mrs Reed had grown through the process.

[27] Whereas early on she had tended to minimise her conduct, (for example referring to the original Family Court Judge being wrong and attempting to justify the omissions), her demeanour at the hearing demonstrated a growing awareness and concern about her conduct. While she had earlier recognised that her manner of practising was unsustainable, we sensed she had not focused on the seriousness of her breach of her duty as an Officer of the Court sufficiently. For that reason, she had only acknowledged the offending at the level of unsatisfactory conduct.

[28] We observed a practitioner highly motivated to overcome the challenge of passing through the disciplinary system. Her statement that she would assist others to learn from her experience was impressive. To use her own words:

> "I intend to use this disciplinary experience to help the girls [*young women in one of the organisations she supports*] understand that we all make mistakes and hopefully, that we do not need to be defined by those mistakes, but by what we learn from them, the changes we make to address them and the responsibility we take for them."

[29] As stated in the *Hart*[5] decision, as set out in paragraph [9] above, the manner in which the practitioner has responded to the charges may be a significant factor. In this case we consider the practitioner's conduct in the proceedings to be a significantly positive feature, particularly in the latter stages.

General Penalty Principles

[30] We remind ourselves, in fixing a proportionate penalty, of the following general penalty considerations:

1. The principle of the **least restrictive outcome** set out in the *Daniels* decision.[6]

2. **The principle of deterrence,** both specific and general.

[31] By the conclusion of the hearing we consider it fair to say that there was an acceptance that, given the significant steps taken by her in response to her

[5] See above n 1 at para [187].
[6] See above n 2.

misconduct, there was no further need for specific deterrence for Mrs Reed. It was accepted that the support system in place for her with the excellent resources available to her and her team, and her awareness of the risks that may arise when carrying a relentless and heavy workload, would ensure no repetition of this conduct.

[32] However, the Standards Committee submitted that for the purposes of general deterrence it was necessary that a period of suspension, albeit brief, should be imposed to mark the seriousness of the breach of the duty of candour.

[33] It is that submission which required the most careful consideration of the Tribunal. As set out in the *Daniels* decision:[7]

> "… To maintain public confidence in the profession members of the public need to have a general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards."

[34] In weighing that important principle, it is also necessary to consider the purposes of Suspension.

3. **The purposes of Suspension**.

[35] Beginning with the decision in *Bolton*[8] two purposes were identified – first prevention of repetition of the offence:

> "One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that the experience of suspension will make the offender meticulous in his future compliance with the required standards …. The second purpose is the most fundamental of all; to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.".

This is the application of the principles of general and specific deterrence, the former of which we have found to be unnecessary. The second principle embodies one of the core purposes of the LCA, to uphold professional standards and the public's confidence in the profession.

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[7] See above n 2 at para [34].
[8] *Bolton v Law Society* [1994] 2 All ER 492 (CA).

[36] It is expressed in more modern terms in *Daniels*[9] at paragraph [24]:

> "A suspension is clearly punitive, but its purpose is more than simply punishment. Its primary purpose is to advance the public interest. That includes that of the community and the profession, by recognising that proper professional standards must be upheld, and ensuring there is deterrence, both specific for the practitioner, and in general for all practitioners. It is to ensure that only those who are fit, in the wider sense, to practise are given that privilege. Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession. "

[37] Subsequent decisions of the Tribunal and higher courts have confirmed that a period of reflection and respite, recovery from illness, and for retraining, are other reasons to impose a period of suspension. Given the factors we have set out above, we do not consider these are applicable reasons in this matter.

4. **The principle of consistency with other similar decisions.**

[38] This can be a difficult task to achieve, given the enormously varied contexts in which misconduct occurs. In this matter, we are grateful to Ms R Reed QC for her distillation of the principles in some of the cases cited to us where suspension was not imposed, despite serious misconduct having occurred. She submitted that, in the absence of dishonesty, suspension did not necessarily flow from a finding of misconduct. The features of an isolated incident and remedial conduct are also important in this regard.

[39] In both the *Horne*[10] and the *Jones*[11] cases, a penalty short of suspension was imposed. We accept the submission that they "...involved examples of serious errors of judgment ..." found to be misconduct.

Ms Reed QC submitted that:

> "…Publication of that finding [misconduct] will forever tarnish Mrs Reed's professional standing and reputation. It is a very serious repercussion in (sic) of itself without any additional penalty. In these circumstances the least restrictive penalty means that a suspension is neither required not appropriate,

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[9] See above n 2.
[10] *Canterbury District Law Society v Horne* [2009] NZLCDT 4.
[11] *Wellington Standards Committee 2 of the New Zealand Law Society v Jones* [2014] NZLCDT 52.

> particularly where Mrs Reed has taken steps to remove the possibility of similar conduct occurring again."

[40] The Tribunal accepts the submission that this is a case where suspension can be avoided, taking account of the penalty principles set out above, in particular that of imposing the least restrictive outcome.

Censure

[41] Both counsel accepted that a Censure was an important response for the purposes of general deterrence (Mr Burston), "…carrying with it a public reckoning that any practitioner will record and be motivated to avoid." (Ms Reed). We accept the submission that a Censure is no hollow penalty, particularly in the terms we now deliver and attach as an Appendix to this decision.

Fine

[42] Because of the seriousness of the misconduct, we consider that, in the absence of suspension, we must mark it with another significant penalty in the form of a fine. We do this in order to provide further general deterrence to other practitioners who may consider a slipshod or thoughtless approach is acceptable.

Orders

[43] We confirm the orders made on 12 November as follows:

1. Censure to be delivered in writing (see Appendix).

2. A fine of $15,000.00.

3. Mrs Reed is to pay the costs of the Standards Committee in the sum of $37,037.31.

4. The New Zealand Law Society are to pay the Tribunal costs. These are certified in the sum of $11,674.00.

5. Mrs Reed is to reimburse the New Zealand Law Society for the full Tribunal costs. These are certified in the sum of $11,674.00.

[44] The interim name suppression order made on 14 April 2021 is now discharged.

DATED at AUCKLAND this 2nd day of December 2021

Judge DF Clarkson
Chairperson

Appendix

Censure

Mrs Reed, an important aspect of the application of the Rule of Law is the unwritten contract between counsel admitted to the Bar, and the Bench.[12] To function effectively the Bench must be able to have absolute confidence in a member of the Bar to abide by his or her obligations as an officer of the court. The unique nature of the relationship has been described as:

> "…in a relationship of intimate collaboration with the Judges, as well as with his fellow members of the Bar, in the high task of endeavouring to make successful the service of the law to the community. It is a delicate relationship, and it carries exceptional privileges and exceptional obligations …"

These obligations are consistent with the obligation "… to … uphold the Rule of Law and facilitate the administration of justice in New Zealand", contained in s 4(a) LCA.

The normal rules of Natural Justice require a decision-maker to hear from all parties before making a determination. In circumstances where this does not occur, such as in a without notice application, the Court is utterly dependent on the Duty of Candour[13] owed by counsel to the court. As you have accepted, you failed in this duty to the court by omitting information that, had the court known of it, would have meant that your application would have failed and no freezing order would have been made.

We also stress that the impression of forum shopping, no matter how it arose, is one which does the profession no credit, and should be scrupulously avoided by counsel.

Your recognition of your failures on this single occasion is commendable and is reflected in the penalty imposed on you.

This Censure is a salutary reminder to all busy practitioners of the need to be vigilant over professional standards.

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[12] See the decision of *Zeims v Prothonotory of the Supreme Court of NSW* (1957) 97 CLR 279.
[13] Spelt out in Rule 32.2(a) of the High Court Rules 2016, refer paragraph [26] of the Liability Decision in this matter.