

**ORDER FOR PERMANENT SUPPRESSION OF NAMES OF CLIENTS AND  
WEALTH MANAGEMENT FIRM AS RECORDED IN PARAGRAPH [21],  
PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.**

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 34

LCDT 004/21, 015/21, 004/22

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 4**

Applicant

**AND**

**NESHIA HOLDAWAY**

Respondent

**DEPUTY CHAIR**

Dr J G Adams

**MEMBERS OF TRIBUNAL**

Mr S Hunter KC

Ms K King

Ms M Noble

Ms P Walker MNZM

**HEARING** 24 August 2022

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

**DATE OF DECISION** 22 September 2022

**COUNSEL**

Mr P Davey for the Standards Committee

Ms N Holdaway the Respondent Practitioner

### **DECISION OF THE TRIBUNAL RE LIABILITY**

[1] The Tribunal has many modes, one of which can be characterised as pastoral. Where a practitioner struggles with practice, it concerns the interests of the public, the profession generally, and the practitioner. This appears to be such a case. By the conclusion of this hearing, we were troubled by our assessment of Ms Holdaway's competence and her apparent lack of appreciation of the charges she faces.

[2] Ms Holdaway faces three sets of charges. The first set relates to two clients. All three sets charge her with misconduct or negligence under s 241(c) of the Lawyers and Conveyancers Act 2006 (the Act) or unsatisfactory conduct, and by refusing to comply with requests by the Standards Committee for information (in one set, relating to two clients, under s 147(2) of the Act).

[3] A striking theme running through all these charges is Ms Holdaway's lack of engagement with her governing body. Whether her disengagement arises from arrogance or from some other reason, we are uncertain. Alongside her disengagement, she has repeatedly claimed unwellness of various kinds that allegedly prevent her from complying with directions or dealing properly with the Standards Committee or the Tribunal. These patterns of avoidance and claimed helplessness concern us. We wonder how a sole practitioner can practise professionally under such persistent disability.

[4] Ms Holdaway filed a bare denial of the charges. She filed no affidavit, despite having ample time to do so. We encouraged her to obtain counsel to represent her. On the day prior to the hearing, she advised she would attend, but would need to take frequent breaks. At the hearing, she said that she did not wish to give evidence or be available for cross-examination. Because of our concern about her functioning, we led her through details of each charge, so she had an opportunity of commenting on the factual foundation of each charge.

[5] Ms Holdaway's blanket answer to the charges is that the s 147 requirements were not "reasonable." Section 147(2)(a)(i), (iv) and (vi) limit the range of items to those reasonably necessary for the purposes of the investigation. Ms Holdaway appears to believe that she should be the arbiter of reasonableness, without any requirement to engage in discussion with the regulator nor to explain why she regards the range as unreasonable.

[6] Her assumption of the gatekeeper role extended to her view that she was entitled to refuse to give effect to a client's direction about payment of money, or to deliver files and documents in response to an authority to do so. In each case she saw herself as having authority to determine the extent (if any) and timing of her performance.

[7] Despite the care we took in drawing her attention to the details of the charges, we are uncertain how well she understood what was going on in the hearing. Several times she said she could not recall certain things. She repeated, from time to time, that she is a busy practitioner who struggles with serious health issues, apparently to persuade us that she should not be troubled with the matters before us.

[8] Both in dealing with the Standards Committee and the Tribunal, Ms Holdaway made much of her alleged health issues but she has provided no cogent medical evidence to verify her assertions. She has complained of eye problems that make it difficult for her to work at the computer. She has complained of post-concussion symptoms, post-traumatic stress disorder, and constant pain from dental or periodontal conditions ("agony"<sup>1</sup>).

[9] More than three months ago, in support of an application for extension of time, Ms Holdaway tendered a letter from a medical practitioner dated 3 May 2022. It contained no substance and, as Deputy Chair, I gave it no weight.<sup>2</sup> Ms Holdaway told us at the hearing that it was difficult to get a doctor's opinion, that she "practically had to beg."<sup>3</sup> She does not want to provide the Tribunal with any detailed medical report because she says her illness is a sensitive matter.<sup>4</sup> We pointed out that such material

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<sup>1</sup> NoE 29 line 8.

<sup>2</sup> Minute 4 May 2022. This details the deficiencies in the document.

<sup>3</sup> NoE 31 line 29.

<sup>4</sup> NoE 31 line 31.

would be suppressed and therefore not available to the public. This made no difference to her stance. Although she advances her unsubstantiated disabling medical conditions as reasons for not complying with directions or preparing for this hearing, she does not accept that it prevents her from continuing her sole practice. This dissonance concerns us.

[10] It appears that she does not take issue with facts alleged by the Standards Committee. What she seems to dispute is that the requirements she has avoided should have any force.

[11] The relevant facts and a sufficient narrative in respect of each charge is set out below. They are not really disputed.

[12] The first charge concerns two unrelated clients: “B” and “N”.

[13] Client B complained that Ms Holdaway had retained the sale proceeds of a farm without his consent, that she had failed to report adequately and that she failed to release his files to his new solicitors. These complaints are not the subject of the charge, but they describe the complaint context within which the Standards Committee became involved. About 4 December 2019, Ms Holdaway was informed of the Standards Committee’s requirement under s 147(2)(a) for her to provide certain classes of documentation. These included files, trust account statements and ledgers, evidence of compliant trust account statements. The message was reinforced by voicemails and emails between 20 January and 10 February 2020. Having been advised the Standards Committee was meeting on 26 February, Ms Holdaway provided some information on the evening of 25 February. By letter of 27 February, she was required to provide the balance of the information. Despite a reminder letter on 4 March, she did not reply. On 24 June 2020, the Standards Committee determined to lay this charge. At this Tribunal hearing, Ms Holdaway was vague about what her file comprised. She seemed uncertain whether it was a physical file or electronic. She said she had looked for a file. She believed the Standards Committee did not need any more documents because, in her view, it was simply about money and the money was secure, in her submission. We find that the Standards Committee requirement was reasonable.

[14] Client N's daughter complained on her mother's behalf in July 2019. N and two adult children (including the daughter who lodged the complaint) were co-trustees. They were concerned that a gifting arrangement (in respect of which Ms Holdaway was instructed in July 2017) had not been actioned. They instructed new lawyers but, on receipt of the authority to uplift, Ms Holdaway sent an invoice (April 2019) and claimed a lien. When the Standards Committee requested her response, Ms Holdaway claimed the complaint was an effort to reduce her fees. On 27 November 2019, the Standards Committee required Ms Holdaway to provide certain information comprising all files, trust account statements and other specific evidence. This was communicated to Ms Holdaway by letter of 15 January 2020. In response to a reminder email of 21 February 2020, Ms Holdaway requested an extension. No formal extension was given because she was already in default but the Standards Committee took no immediate punitive action. On 11 March, the Standards Committee received a redacted deed but no other documentation. It renewed its requirement. Obtaining no response, it set down a hearing for 22 July. On 6 July Ms Holdaway sent an email to say she was struggling with injuries and required an extension. On 22 July 2020 the Standards Committee referred her lack of compliance to provide information to the Tribunal. We find the Standards Committee requirement was reasonable.

[15] The second charge concerned client "T." Client T, an 86-year-old, knew his farm sale settled on 30 April 2020. When the settlement funds were not paid to him promptly, he instructed new lawyers. On 5 May 2020, the new lawyers requested Ms Holdaway to confirm that settlement had occurred and required her to forward all files, documents and deeds in accordance with T's signed authority. Ms Holdaway did not comply with the authority. She took the view that the new solicitors did not need the documents. The new solicitors complained on behalf of their client, T. On 22 May 2020, the Lawyers Complaints Service emailed Ms Holdaway about the complaint. Because of Covid-19 limitations, she was given until 19 June to respond. After a follow-up letter on 6 July, Ms Holdaway wrote: "Due to complications from my earlier injuries (post-concussion symptoms) and a more recent injury which I am struggling with and also as a chronic pain sufferer, I will require an extension of time to be able to respond."<sup>5</sup> She was granted an extension to 17 July. On 20 July she wrote, disputing that T had complained, suggesting he was informed about the situation. She

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<sup>5</sup> Bundle p 93.

suggested that Covid restrictions necessitated delay. T's new lawyers disputed all that, and noted that the conveyancing and financial transactions could be done online. On 22 October 2020, the Committee requested Ms Holdaway to provide her file, her authorities from T to deduct her fees and other specified documentation. Ms Holdaway was granted another extension until 29 January 2021. Despite voicemail messages and email requests, she failed to do so. We find the Standards Committee request was reasonable in the context.

[16] The final charge relates to client "L". Ms Holdaway was instructed to act for L and her Family Trust which had a little over \$400,000 paid into Ms Holdaway's trust account. In August 2020, L telephoned Ms Holdaway and instructed her to pay the funds to a specified and well-known wealth management firm. Ms Holdaway said a trustee resolution was required. Despite paying approximately \$35,000 to L for renovations, Ms Holdaway did not pay out the other funds. At the hearing, Ms Holdaway suggested anti-money laundering checks could take six to eight weeks<sup>6</sup> and this was an impediment. She seemed to think her own privacy would be breached<sup>7</sup> by complying with anti-money laundering requirements. We find these propositions puzzling and concerning. When L instructed her in writing on 27 November and again on 1 December 2020 to pay the funds into L's own account, Ms Holdaway did not comply. On 3 December 2020, L instructed new lawyers who sent an authority to uplift files. Ms Holdaway thereupon paid the funds into the account of the previously identified wealth management firm. L's new lawyers complained on L's behalf on 25 January 2021. On 26 March 2021, Ms Holdaway was requested by the Standards Committee to provide a copy of all files, trust account records and invoices regarding L and her Family Trust pursuant to s 147(2)(a)(i) by 16 April 2021. A letter of 3 May to Ms Holdaway was not answered. The Standards Committee appointed two senior practitioners, Mr Strang and Mr Tolich, to investigate. Mr Tolich telephoned and emailed Ms Holdaway but received no response. At the hearing, Ms Holdaway expressed concern that Mr Tolich had been appointed because she would have preferred a female<sup>8</sup> – although she never told the Standards Committee this. Mr Strang expressed concern about her ability to attend to her practice given her "recent

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<sup>6</sup> NoE 26 line 20.

<sup>7</sup> Bundle p 27 line 19.

<sup>8</sup> Bundle p 28 line 20.

illnesses.”<sup>9</sup> On 28 July 2021, this matter was referred to the Tribunal. We find that the Standards Committee information requests were reasonable.

[17] It is settled law that “Practitioners have a basic professional obligation to co-operate with the Law Society as the profession’s governing body and to provide it with accurate information.”<sup>10</sup> Ms Holdaway’s failures to respond were in each case inexcusably tardy. Where she eventually responded, her response was only partial. We find the magnitude of her failures were flagrant and gross.

[18] We find the charges proved, in each case at the standard of misconduct. We find that these failures to engage properly with her governing body would be regarded by lawyers of good standing as disgraceful.<sup>11</sup> We find that all the relevant events occurred at times when she was providing regulated services or that were not “unconnected with the provision of regulated services”.<sup>12</sup> We are conscious that some of these matters arose when Covid-19 restrictions were in force, but Ms Holdaway was invariably given ample time to comply with the Standards Committee’s requests.

[19] We direct that this matter be set down for penalty hearing as soon as practicable. We emphasise, for Ms Holdaway’s benefit, that we are deeply troubled by her presentation. We urge her, in her own interest, to obtain competent counsel to file evidence and submissions so we can better understand her circumstances.

[20] We direct the Standards Committee to file any evidence and penalty submissions within 14 days of this judgment. We direct Ms Holdaway to file any evidence and penalty submissions within 14 days thereafter.

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<sup>9</sup> Bundle p 172.

<sup>10</sup> *Auckland Standards Committee v Brill* [2022] NZLCDT 3 at [34]. See also *Parlane v New Zealand Law Society (Waikato Bay of Plenty Standards Committee No. 2)* CIV-2010-419-1209 20 December 2010 at [108] and [109]; and *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103 at [208].

<sup>11</sup> Section 7(1)(a)(i).

<sup>12</sup> *Orlov v NZLCDT* [2015] 2 NZLR 606.

[21] We order that names of clients mentioned in the hearing and the file (and the name of Ms L's wealth management firm) are permanently suppressed, pursuant to s 240 of the Act.

**DATED** at AUCKLAND this 22<sup>nd</sup> day of September 2022

Dr JG Adams  
Deputy Chairperson