

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 26

LCDT 030/16

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 2**

Applicant

BRIAN JOHN RICHARD FOX

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr S Grieve QC

Ms C Rowe

Ms S Sage

Mr W Smith

HEARING at the District Court, Auckland, on the papers

DATE 29 September 2017

DATE OF DECISION 29 September 2017

COUNSEL

Mr P Collins for the Applicant

Mr D M Connor for the respondent

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING PENALTY**

[1] The respondent is the subject of three charges alleging misconduct within the meaning of s 7(1)(a)(i) of the Lawyers and Conveyancers Act 2006 (the Act). Those charges alternatively assert unsatisfactory conduct within the meaning of s 12(a) and/or (b) of the Act.

[2] The particulars of the charges are:

- (a) Charge 1 – repeat non-compliance with financial orders – fines and costs – made by the Standards Committee on four separate occasions between 6 August 2012 and 25 June 2015. The fines and costs totalled \$21,082.25. The respondent paid \$2,500.00 in respect of the fines and costs. The balance outstanding and remaining unpaid is \$18,582.25.
- (b) Charge 2 – failure to honour repayment agreements entered into with the New Zealand Law Society on two separate occasions. The repayment agreements were made on 16 October 2015 whereby he agreed to pay \$1,500.00 per month. The second agreement was made on 14 June 2016 whereby he agreed to pay \$1,000.00 per month. No payments were made except for one payment of \$1,000.00.
- (c) Charge 3 – making false declarations in practising certificate renewal applications in the years 2013, 2014 and 2015 which he knew or should have known to be untrue. On each of the three occasions the respondent declared:

“I have complied with or am complying with any applicable orders of a Standards Committee, the Legal Complaints Review Officer and the Disciplinary Tribunal.”

[3] The respondent filed an affidavit dated 10 August 2017 in which he referred to his ill health and his application to the Legal Complaints Review Officer in relation to

another finding of unsatisfactory conduct which is not the subject of Charge 1 and which he stated could result in a reduction of the fines relevant to Charge 1.

[4] In respect of Charge 3 he said that the declarations he made were “*subjective*” and “*...that the matter complained of that were not inserted in the declarations related to “on going” matters between the NZLS and myself, of which NZLS was participating in*”.

[5] Since filing his response, the respondent and the applicant have agreed on terms to dispose of these proceedings subject to the approval of the Tribunal. The agreement is as follows:

- (a) The respondent admits Charge 1 as misconduct under s 7(1)(a)(i) of the Act;
- (b) The respondent admits Charges 2 and 3 as unsatisfactory conduct under s 12(b) of the Act;
- (c) The respondent agrees to a penalty of suspension for a period of 6 months (s 242(1)(e) of the Act);
- (d) The respondent agrees to pay the costs of the applicant in the sum of \$18,000.00 and to refund to the New Zealand Law Society the costs of the Tribunal fixed under s 257 of the Act such sums to be paid by 6 May 2018.
- (e) The respondent is to pay the outstanding fines and costs orders, the subject of Charge 1, in the sum \$18,582.25 not later than 6 May 2018.

[6] The Tribunal has decided to approve the agreement made between the parties. In doing so it has considered and accepted the submissions of the applicant who submitted that:

- (a) Non-compliance with orders of a Standards Committee is a serious matter and repeat non-compliance would properly be seen in terms of misconduct, transcending unsatisfactory conduct;
- (b) Suspension is the realistic disciplinary response to repeat non-compliance with earlier orders. Otherwise there is a tendency for orders to be regarded by the lawyer and the profession (and the public) to be futile, undermining the credibility and authority of the disciplinary body;
- (c) The institutions of professional discipline must be taken seriously and must be respected by the members of the profession. A soundly based public perception of meaningful and enforceable sanctions is essential to the maintenance of confidence in the legal profession.

[7] Counsel has usefully drawn the Tribunal's attention to *Hong v Auckland Standards Committee No 3*¹, *Auckland Standards Committee 4 v Potter*² and to *The Sentencing Guidance of the Bar Tribunals and Adjudication Service (UK)*. In the Hong and Potter matters short periods of suspension were imposed for a failure by each to honour a compliance order.

[8] In this case there are two matters that persuade the Tribunal that the proposed period of suspension is appropriate. The first is the repeat nature of the conduct and failure to engage with the Standards Committee in respect of Charge 1. The second matter is the cumulative effect of Charges 2 and 3 to which the respondent has admitted unsatisfactory conduct.

[9] The Tribunal accordingly makes the following orders by consent:

- (a) The respondent is suspended for a period of 6 months;
- (b) The respondent is to pay the costs of the applicant in the sum of \$18,000.00 by 6 May 2018.

¹ *Hong v Auckland Standards Committee No. 3* [2014] NZHC 2871.

² *Auckland Standards Committee 4 v Potter* [2014] NZLCDT 63.

- (c) The respondent is to refund to the New Zealand Law Society by 6 May 2018 the costs of the Tribunal payable by it pursuant to s 257 of the Act and which are certified in the sum of \$1,052.00.
- (d) The respondent is to pay by 6 May 2018 the outstanding fines and costs (the subject of Charge 1) totalling \$18,582.25.

[10] The parties have not agreed about the commencement date of the suspension order. The applicant submits that the order should commence on 6 October 2017 at 5pm. The respondent seeks that the order should commence at 5pm on 13 October 2017. The matter is left for the Tribunal to decide. The order is to commence at 5pm on 13 October 2017 thus allowing the respondent sufficient time to put his practice in order and to make the necessary arrangements with his attorney.

[11] The interim order suppressing the respondent's name is discharged. There is a permanent order for the non-publication of the names of the complainants or any other persons associated with the particulars of Charge 1.

[12] The respondent is put on notice that non-compliance with the orders for payment of costs and fines is likely to be regarded as a disqualifying factor in any future application for a practising certificate.

DATED at AUCKLAND this 3rd day of October 2017

BJ Kendall
Chairperson