

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 31
LCDT 008/17

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WAIKATO BAY OF PLENTY
STANDARDS COMMITTEE 1**
Applicant

AND

JOHN CAMPION
Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms F Freeman

Mr S Grieve QC

Mr C Lucas

Ms C Rowe

HEARING 2 November 2017

HELD AT Auckland Tribunals Centre

DATE OF DECISION 10 November 2017

COUNSEL

Ms S Earl for the Standards Committee

Mr J Campion in Person

DECISION OF THE TRIBUNAL ON LIABILITY AND PENALTY

Introduction

[1] Mr Campion faced one charge of misconduct (s 7(1)(a)(i)) or (ii), or in the alternative, unsatisfactory conduct (s 12(b)). Mr Campion did not dispute the facts pleaded in support of the charges but pointed to ill health and resulting financial difficulties as an explanation for non-payment.

Background

[2] By order of 14 September 2012 the Gisborne Standards Committee ordered that Mr Campion refund fees charged to a client in the sum of \$15,191.57. Mr Campion sought a review of that decision from the Legal Complaints Review Officer (LCRO). The decision from that office was received on 1 March 2016.

[3] When the practitioner did not promptly comply with the order, which had been confirmed by the LCRO, the client requested payment from him on 14 March 2016; she sought payment by 30 April 2016. That request was repeated on 1 May and again was met with no response from the practitioner although he says he had telephone conversations with her. In June 2016 therefore, the client was obliged to instruct a lawyer to seek the enforcement of the refund which had been ordered.

[4] Again Mr Campion did not respond to the formal request but in a telephone conversation said that he would do so by early July. On 14 July Mr Campion repaid \$9,130. On 19 July the client's lawyer emailed Mr Campion to ask why the balance of \$6,061.57 had not been paid, sought its repayment and made reference to the practitioner's professional responsibilities.

[5] In late July the practitioner had another telephone conversation with the lawyer, raised some dispute over the figures but did not respond further. On 5 August 2016 the lawyer made a complaint to the Law Society and on the same day Mr Campion repaid a further \$3,890.

[6] The balance of \$2,171.57 is still outstanding. Mr Champion says that the two payments entirely depleted his capital resources and described to the Tribunal (although not having made it apparent to either his colleague or the Law Society, or the client) that in early 2015 he had had major surgery and had required many weeks, both in hospital and convalescing at home, to recover.

[7] Mr Champion says although he attempted to keep his practice going throughout this time, even working from his hospital bed that, understandably, his work and thus his income suffered. His evidence to the Tribunal is that because other commitments of the practice of a more pressing nature, namely GST, PAYE, rental and practice expenses needed to be covered, that he has simply been unable to make the final payment that is sought.

[8] It is clear that Mr Champion has adopted an ostrich-like approach to this dilemma in which he finds himself.

[9] It is also clear that Mr Champion has not addressed the important professional obligations that he has, to abide an order of his professional body, and as a result has found himself facing a serious charge before the Tribunal, right at the end of his career.

Submissions for the Standards Committee

[10] Ms Earl pointed the Tribunal to those decisions where we have found that non-compliance with a disciplinary order amounts to misconduct, either on the basis that such would be “*regarded by lawyers of good standing as disgraceful or dishonourable*” or that it is a “*wilful or reckless breach of s 4(a) of the Act and Rule 2 of the Rules*”. We note that the High Court has endorsed this approach and that even in *Hong*¹ where the Tribunal’s decision was for other reasons overturned, His Honour Kos J. characterised the practitioner’s conduct in ignoring an order of the Standards Committee as follows: “... *Insolent disregard of the Committee’s determination was deplorable.*”

[11] In response to the Standards Committee submissions on level of culpability, Mr Champion merely raised matters which were more relevant to mitigation of penalty.

¹ *Hong v Auckland Standards Committee No. 3* [2015] NZHC 667 Kos J.

[12] A credible disciplinary regime must uphold orders made by the disciplinary arm of the professional body when they are blatantly breached. There will be few occasions when culpability will be seen as at a lower level than misconduct.

[13] After retiring to consider the matter, the Tribunal found that the conduct was at the level of misconduct and then heard penalty submissions from counsel and from Mr Champion.

Level of Seriousness

[14] Whilst any breach of a Standards Committee order is considered to be serious, we note that in this case the practitioner did at least make a substantial effort to comply with the order as to refund. We consider this does reduce the level of seriousness and takes it away from the starting point penalty which would be one of suspension. Because there was only a little over \$2,000 remaining to be paid it would seem to us to be unduly punitive for the practitioner to be suspended from continuing to earn his livelihood. We also consider it is in a much less serious category than the case of *Fox*² which was recently determined by the Tribunal.

Aggravating Features

[15] While we have sympathy with Mr Champion's health issues (at least from the beginning of 2015) he has known from late 2012 of his potential liability for the amount to be refunded. Despite that, he has for many years failed to prioritise this payment.

[16] He told us that he had neither taken financial advice nor advice from a senior colleague, nor member of the Friends Panel. He described his communication with the Law Society as "upfront" but the reality is that is simply incorrect.

[17] By the time that the order was confirmed by the LCRO in March 2016, Mr Champion had returned to almost fulltime legal practice and had been back at work at some level since May of 2015. The fact is that he prioritised other expenses of his legal practice over this important professional obligation. He did not seek to make any, even a modest, time payment arrangement with either the former client directly or the Law Society.

² *Auckland Standards Committee 2 v BJR Fox* [2017] NZLCDT 26, 29 September 2017.

[18] We consider this failure to communicate and the length of time the default continued, to be an aggravating feature of the offending itself.

[19] The second aggravating feature is his previous disciplinary history in which there are four findings of unsatisfactory conduct against him. Although one relates to the matter at issue there are three others and even in a lengthy career this has to count against Mr Campion. The most serious of these involved a finding that the practitioner had misled the Standards Committee by providing inaccurate information.

Mitigating Features

[20] Whilst we do not propose to provide details of the medical problems faced by Mr Campion, we accept these have been, at times, very serious and challenging for him.

[21] We also accept his evidence that they have considerably impacted on his ability to earn income and to meet significant debts which have arisen.

[22] We offered Mr Campion the opportunity of taking time to provide the Tribunal with testimonials, however he declined that opportunity.

Similar Cases

[23] As we have already indicated, this matter is not regarded by us to be as serious as the breaches of orders demonstrated in the *Fox*³ decision. We have also taken into account the remarks of the High Court in *Hong*.⁴

[24] In addition to the brief comments that we made to Mr Campion at the hearing, we now record the following by way of censure to the practitioner:

Every practitioner has an obligation to cooperate with the disciplinary arm of the New Zealand Law Society. A practitioner has duties imposed by the Lawyers and Conveyancers Act 2006 specifically by s 4 “... *to uphold the rule of law and to facilitate the administration of justice in New Zealand*”. That imports an obligation to comply with those laws and regulations governing the lawyer’s

³ See above n 2 at [8].

⁴ See above n 1 at [12].

conduct and with the lawful directions and orders of any of the profession's disciplinary bodies. In failing to complete the refund ordered against you over five years ago now, you have failed in those obligations. Your lack of remorse and failure to prioritise your professional obligations in this regard do you no credit. You should be aware that any further failures in your professional obligations may well interfere with your future right to practise as a lawyer.

Orders

1. Censure as above in para [24].
2. The costs of the Standards Committee in the sum of \$12,184.41 are awarded against the practitioner.
3. Section 257 costs which are certified at \$1,863.00 are awarded against the New Zealand Law Society.
4. The practitioner is to reimburse the New Zealand Law Society the full s 257 costs.
5. Pursuant to s 156(1)(d) there is an order that the former clients be compensated \$1,161.50 for legal fees incurred by them in attempting to recover the awarded sum.
6. We confirm the Standards Committee order for repayment, for the balance of \$2,171.57 to the former clients.
7. There will be suppression of the former client's name and of the practitioner's medical information. The practitioner's application for suppression of his name is declined.

DATED at AUCKLAND this 10th day of November 2017

Judge D F Clarkson
Chair