

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 39

LCDT 023/17

UNDER

The Lawyers and Conveyancers
Act 2006

BETWEEN

**HAWKE'S BAY STANDARDS
COMMITTEE**

Applicant

AND

KRIS ANTHONY DENDER

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS

Mr C Lucas

Ms C Rowe

Ms S Sage

Mr W Smith

HEARING 13 December 2017

HELD AT Auckland

DATE OF DECISION 22 December 2017

COUNSEL

Mr McCaughan for the Standards Committee

Mr Wimsett for the Practitioner

DECISION OF TRIBUNAL ON PENALTY

Introduction

[1] Mr Dender admitted one charge under s 241(d) of the Act¹ that:

“Having been convicted of an offence punishable by imprisonment, that conviction reflecting on the Practitioner’s fitness to practice, or tending to bring the profession into disrepute.”

[2] Mr Dender had fully cooperated with the process and counsel had, in advance, submitted a joint memorandum to the Tribunal as to proposed penalty for the charge as admitted.

[3] After considering the submissions of the Standards Committee and of counsel for the respondent, the Tribunal indicated it was prepared to endorse the recommended period of suspension and other penalty orders. We reserved our reasons for decision. This decision sets out those reasons.

Background

[4] Mr Dender pleaded guilty on 15 November 2016 to two serious criminal offences. The first, which related to an incident in February 2016 was a charge of male assaults female. The second, which related to events on 28 April 2016 was a charge of injuring with intent to injure. The victim on both occasions was Mr Dender’s former partner. The first assault was serious enough, involving a punch, but the second assault, which involved strangulation, was even more serious.

[5] Mr Dender was sentenced on 1 February 2017 to nine months home detention with special conditions and a protection order made in favour of the victim.

[6] Mr Dender, to his credit, accepts full responsibility for his offending. He has provided a lengthy affidavit to provide some context to the offending, including medical and psychological reports to corroborate his evidence that, at the time of the offending

¹ Lawyers and Conveyancers Act 2006.

he was unwell mentally and this provides some explanation of his acting in a way which is said to be out of character for him.

[7] Between December 2015 and February 2016 the relationship between Mr Dender and his former partner had deteriorated significantly. Mr Dender had concerns that his partner had formed a relationship with another person. She denied this relationship and although the parties had a trial separation, which Mr Dender initiated, so shocked was he at his own behaviour, it is clear there were mixed signals from the victim to him about their future relationship. The relationship has been described by observers as “toxic”. Mr Dender’s mental health is said to have deteriorated very rapidly around this time.

[8] Both Mr Dender and his former partner were athletes who had for many years trained together. It seems that the victim on occasions would contact Mr Dender, even during the period of their separation, to ask that he train with her. We note that by this time the practitioner’s mental health had deteriorated to such a stage that he had taken sick leave from his work.

[9] After a trip to Auckland to connect with friends and receive some support Mr Dender returned to the Hawke’s Bay and on the occasion of the incident in April he had again been approached by the victim to ask him to spend the day training together, following which she invited him to have dinner at her flat and to stay the night. It was in the early hours of the morning, following some taunting, and Mr Dender finding the victim texting the other man, that he says he completely “lost it” and committed the assault involving strangulation. Fortunately, he stopped in time to prevent serious injury to the victim and left the premises.

[10] He was subsequently arrested and after bail was opposed spent seven days in custody. He breached his bail in a misguided attempt to assist the victim with equipment she needed on an overseas trip he knew she was taking. Once again, he was held in custody. Four days later he was granted electronically monitored bail but committed what is probably fairly categorised as a technical breach of that bail and was rearrested. In total, he spent two weeks in custody, but from that time had no further contact with the victim until his sentence had been completed.

[11] Prior to the second offence, on the advice of friends and family, Mr Dender had sought assistance from Dr Anne Walsh, a psychiatrist in Hawke's Bay. Dr Walsh was clearly concerned about Mr Dender, however we have considered it proper to suppress the details of her report for reasons of Mr Dender's privacy. Mr Dender also began counselling with a psychologist who reported to the Tribunal that, by the time of the penalty hearing, he had attended on her for assessment and therapy sessions on 23 occasions. The psychologist, Dr Farnsworth-Grodd referred to the shame, regret and remorse demonstrated by Mr Dender and to his low mood.

[12] It is clear from the updated report provided to us, that Mr Dender has made considerable progress on resolving his personal problems and is now employed, at least part-time. He provided a number of letters of support to the Tribunal.

Principles to be Applied in Fixing Penalty

[13] Since the purpose of the Act is to safeguard the consumers of legal services and to maintain their confidence in the legal profession, the primary purpose of imposing penalties in professional discipline is to meet those purposes and uphold professional standards, rather than serving a punitive purpose. While denunciation of the practitioner's conduct is an important feature, as is a deterrence, more positive features such as rehabilitation are also taken into account.

[14] The starting point is the seriousness of the conduct.

[15] There was no dispute that this was serious criminal conduct of the sort which inevitably brings the profession into disrepute. As a matter of record, Mr Dender's arrest attracted media interest and his profession as a lawyer was highlighted in the reports. The seriousness of the offending was, of course, dealt with in the criminal proceedings and a significant penalty imposed.

[16] Counsel for the Standards Committee referred us to the only other similar disciplinary decision of the Tribunal, that of *Matheson*.² That was a less serious level of offending as reflected in the sentence imposed on that lawyer, namely 80 hours community work and nine months supervision.

² *Auckland Standards Committee No. 1 v Matheson* [2015] NZLCDT 4.

[17] Each situation must be weighed on its merits. As pointed out by Mr McCaughan this violence occurred in a domestic situation and on two occasions.

[18] We were also referred to the “least restrictive outcome principle” set out in *Daniels*,³ in submitting the appropriate starting point is a lengthy period of suspension.

[19] We were then referred to the aggravating and mitigating features for Mr Dender. The aggravating features put to us were that in September 2002 Mr Dender had an earlier criminal conviction. It was accepted that this was now relatively historic and that the conviction had been disclosed on Mr Dender’s application to be admitted to the Bar and considered by the Practice Approval Committee when issuing a certificate of character in 2015 when Mr Dender was admitted. The second aggravating feature was said to be that the assault occurred while the practitioner had a practising certificate. We do not place much weight on that factor.

[20] In terms of mitigating features, the practitioner immediately informed the Law Society when he was charged with the criminal offending. He pleaded guilty relatively early and also admitted the charges before the Tribunal and was keen to resolve the disciplinary proceedings in a very timely manner. The practitioner provided a full account of his conduct and its background and it was accepted by the Committee that at the time of the offending he was “suffering from extreme depression and anxiety” and that since that time he has engaged with appropriate therapy.

[21] We also note that Mr Dender attended a full 18 week course at SHINE as well as further one-to-one sessions with the instructors there (SHINE is a programme to deal with domestic violence offenders).

[22] We note that the charges were filed on 18 July 2017 and by 8 August 2017 he had, with the assistance of his counsel admitted the charge and negotiated an agreed penalty.

Discussion

[23] We consider that, having regard to the serious nature of the offending but the mitigating features relating to Mr Dender’s own health, the fact that he voluntarily

³ *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

stopped practice as soon as he was arrested some 18 months ago, and that he has been diligent in performing the terms of his sentence and attending therapy to deal with the underlying problems, are all factors which support an order that he be suspended for two years.

[24] We consider that the suspension ought to be backdated to the date when this was agreed with the Standards Committee, because the matter has taken some months to reach a hearing through no fault of the practitioner. When put with the other orders we propose to make, we consider it represents a proportionate response to the seriousness of this conduct, and properly reflects the disapproval of the lawyers' professional body.

[25] The following orders were made at the hearing:

1. A censure was imposed in the terms set out in Appendix I to this decision.
2. The practitioner was suspended for two years commencing 8 August 2017.
3. Costs of \$5,485.00 were awarded to the New Zealand Law Society, s 249.
4. Section 257 costs which are certified in the sum of \$1,946.00 are to be paid by the New Zealand Law Society.
5. Mr Dender is to reimburse the New Zealand Law Society for the full s 257 costs.
6. There is no order for suppression of the victim's name since there has been media coverage which named not only the practitioner but the victim also. However, we direct there is to be no publication of the medical report from Dr Anne Walsh dated 31 August 2016.

DATED at AUCKLAND this 22nd day of December 2017

Judge D F Clarkson
Chair

Censure

Mr Dender, you have acknowledged in a number of ways and in a number of settings that your conduct in offending against Ms Watkinson, was reprehensible and reflected a serious failure on your part in relation to your former partner and towards your profession. While we accept that you have taken steps to ensure this will not reoccur we must impress upon you that, in being offered a period of suspension, not only to mark the seriousness of your offending but also to provide further time for reflection and rehabilitation, you are being offered a final chance to remain within this profession. It is a profession where the standards of personal conduct are held to be high and there will not be tolerance of any repetition by you of serious criminal offending.

You are formally censured.