

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2018] NZLCDT 12

LCDT 031/17

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**CENTRAL STANDARDS
COMMITTEE 3**

Applicant

AND

S

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr J Bishop

Mr W Chapman

Mr A Marshall

Ms P Walker

HEARING at the District Court, Wellington

DATE 12 March 2018

DATE OF DECISION 20 April 2018

COUNSEL

Ms J O'Sullivan and Ms R Kos for the applicant

Respondent in person

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

[1] The applicant has charged the respondent with misconduct or in the alternative with unsatisfactory conduct.

[2] The charge arises out of the respondent's failure to pay \$12,000 costs awarded against him in favour of the New Zealand Law Society by the Tribunal in August 2014.

[3] At the conclusion of the hearing, the Tribunal found that the respondent was guilty of misconduct. After hearing from the applicant and the respondent as to penalty, the Tribunal made the following orders:

- (a) An order suspending the respondent from practice as a barrister or solicitor for eight months commencing 12 March 2018.
- (b) An order requiring the respondent to pay the costs of the Standards Committee amounting to \$7,725.06.
- (c) The Tribunal's 257 costs are ordered against the New Zealand Law Society. These are certified in the sum of \$2,269.00.
- (d) Pursuant to s 249, the respondent is to reimburse to the New Zealand Law Society in full, the costs of the Tribunal.

[4] This decision records the reasons for the finding of misconduct and for the penalty imposed.

Background

[5] Following the orders of the Tribunal of August 2014, the respondent failed to comply with those orders and did not engage with the New Zealand Law Society (NZLS).

[6] It was not until April 2016 that he commenced making payments. That was after he had entered into an agreement with NZLS to pay \$50 per week towards meeting the costs order. The respondent paid a total of \$1,200 between 1 April 2016 and 23 December 2016. He paid a further \$200 after the commencement of the Committee's own motion investigation on 23 February 2017. The respondent has not made any payments since.

[7] There is evidence of 29 emails with the respondent between November 2014 and December 2016 relating to non-payment of the costs and failure to honour the agreed repayment schedule. The respondent failed to respond in all but a few instances.

[8] After the commencement of the own motion investigation, email exchanges occurred until July 2017. That general correspondence related to the steps being taken to bring the investigation to the end including a request that the respondent supply a substantive response, statement of financial position and any other relevant information. The respondent did not meet that request.

[9] The respondent did not file a response to charge despite a direction from the Tribunal to do so by 15 December 2017. He filed an affidavit on 9 March 2018 and then appeared on the day of the hearing and presented his arguments. He accepted the factual situation and urged the Tribunal to find that his conduct was unsatisfactory.

[10] In making its finding of misconduct, the Tribunal considered that the respondent failed in the following matters:

- (a) He did not comply with the costs order imposed by the Tribunal in August 2014 in breach of Rule 2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules).
- (b) He did not keep up with the terms of the payment arrangement he made with the NZLS thus being in breach of Rule 2 of the Rules.
- (c) He failed to engage with the Lawyers Complaints Service and the Law Society regarding the making of payments and the own motion investigations in breach of Rule 12 of the Rules.

[11] The respondent's failures are compounded by the lengthy period of time that he failed to engage and by the similarity of his conduct evident in the matter before the Tribunal in 2014 where the respondent admitted a charge of misconduct. Following that admission, a period of suspension was imposed.

[12] The Tribunal considered that a term of eight months' suspension from practise as a barrister or solicitor was the appropriate penalty. This was a matter where specific deterrence was relevant to allow the respondent to reflect on his failure to meet the essential requirement of full compliance and co-operation with the disciplinary and monitoring procedures of the profession.

Non-Publication

[13] The respondent has presented the Tribunal with compelling personal circumstances which have persuaded it to exercise the discretion it has under s 240 of the Lawyers and Conveyancers Act 2006 (Act) to make the following orders:

- (a) An order that the name of the respondent is not to be published except for the statutory requirements to publish required by ss 255(1) and 256(1) of the Act.
- (b) An order prohibiting the publication of the respondent's affidavit sworn and filed on 9 March 2018.

[14] The Tribunal records a finding of misconduct against the respondent and the following orders:

- (a) An order suspending the respondent from practice as a barrister or solicitor for eight months commencing 12 March 2018.
- (b) An order requiring the respondent to pay the costs of the Standards Committee amounting to \$7,725.06.
- (c) The Tribunal s 257 costs are ordered against the New Zealand Law Society, certified in the sum of \$2,269.00.
- (d) Pursuant to s 249, the respondent is to reimburse to the New Zealand Law Society the costs of the Tribunal.

DATED at AUCKLAND this 20th day of April 2018

BJ Kendall
Chairperson