

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2021] NZLCDT 19

LCDT 025/20

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 2**

Applicant

AND

RONALD BRUCE JOHNSON

Respondent

DEPUTY CHAIR

Judge J G Adams

MEMBERS OF TRIBUNAL

Mr G McKenzie

Ms N McMahan

Prof D Scott

Ms S Stuart

DATE OF HEARING 27 May 2021

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 28 May 2021

COUNSEL

Ms E Mok and Mr P O'Boyle for the applicant

Mr A Gilchrist for the respondent

DECISION OF THE TRIBUNAL RE PENALTY

[1] Mr Johnson has admitted a charge of misconduct. The course of conduct comprising his misconduct involves several features.

[2] Mr Johnson controlled a company that was nominally owed a debt, but the true owner of the creditor rights was a trust for whom Mr Johnson did not act. Belatedly, Mr Johnson pursued the debtor. Without approval from the trustees, he agreed to settle the debt at \$90,000 and he then paid \$70,000 of the funds to persons unconnected to the trust. He took some of the remainder as fees. He was dilatory in providing information to the trustees or their representatives. The trustees were obliged to sue him. The legal circumstances were clear, but he defended the action. Even when judgment was entered against him and he had been ordered to pay indemnity costs, Mr Johnson appealed. Only at that point did he accept his wrongdoing and pay the trust \$125,000 to reinstate its position.

[3] The issues in this case are:

- What is the significance of Mr Johnson's previous disciplinary history?
- What is the appropriate penalty?
- What order should be made for costs?

What is the significance of Mr Johnson's previous disciplinary history?

[4] In 2018, Mr Johnson was found guilty on one charge of professional negligence and two charges of misconduct. The professional negligence arose from inadequate advice to unsophisticated trustees who were proposing to buy a property from their lawyer (another practitioner). The misconduct charges arose from trust accounting breaches and failure to manage his trust account properly. On those charges, he was suspended from practice for three months.

[5] Almost all of the conduct comprising the present charges occurred before the disposal of the 2018 charges. We do not deal with the current charge as a subsequent disciplinary charge.

[6] In the context of the current charge, we find that Mr Johnson's practice shortcomings were more pervasive than earlier appeared. The fact of the 2018 hearing informs us better about the range of deficits in his professional performance. Although there is no uplift in penalty arising from the 2018 hearing, the practice context is necessarily more concerning.

What is the appropriate penalty?

[7] Counsel agree that the matter requires a significant penalty. The Standards Committee seeks censure and suspension from practice for up to 12 months. Ms Mok argues that the nature and gravity of the charge require suspension. Mr Gilchrist, whilst admitting that a short period of suspension might be required, argues that the public interest will be better protected if an order is made under s 241(1)(g) prohibiting Mr Johnson from practising on his own account until authorised by the Disciplinary Tribunal to do so. If the penalty was simply suspension, Mr Gilchrist suggests six months.

[8] Mr Johnson is aged 57. He has practised for more than 30 years. His business partner is moving to take on a role with another firm and Mr Johnson is in the course of winding up his practice, closing it on 1 July 2021. His home is owned by a trust. He borrowed funds to settle his civil debt to the trust involved in the charge. He has tax debts.

[9] We agree with the Standards Committee that this charge involves grave failures of Mr Johnson's professional obligations. He failed to act assiduously to promote the interests of the person (trust) who was owed the debt. He failed to keep the trustees informed. He prejudiced the trustees' interests by settling without instructions. He paid the bulk of the money to other persons. He applied some of the funds to his fees without authority. Even when sued, he defended. After judgment was plainly given against him, and the judge commented on his "egregious" behaviour, he appealed. This was an ongoing course of wrong-headed conduct over a long period of time.

[10] The purpose of sanctions is not to punish the practitioner.¹ As the High Court observed in *Fendall*²:

The predominant purposes are to advance the public interest, which includes protection of the public, to maintain professional standards, to impose sanctions on a practitioner for breach of his or her duties, and to provide scope for rehabilitation in appropriate cases.

The purpose to protect the public was stressed by Mr Gilchrist but it is not the only purpose.

[11] None of the cases quoted by counsel are on all fours with this case. Nonetheless, we find this case is less serious than *Campion*³, *Baker*⁴ or *Ellis*⁵, all cases where the practitioner was struck off. In the present case, we do not treat this as a subsequent case. Mr Johnson has expressed remorse since the time he accepted responsibility and paid the Trust, belatedly, what it was owed (that he was responsible for losing).

[12] This is not a case where a compensating order is needed. We agree with Ms Mok that repayment of the loss by Mr Johnson is not a mitigating factor but, rather, the absence of an aggravating factor.

[13] In the course of these charges, Mr Johnson admitted the facts and, early on, he admitted the charge as one of misconduct. This is a mitigating factor.

[14] We also accept that he has contributed to his community, serving on a school board for several years and taking an unpaid part in another charitable foundation. These factors are mitigating factors.

[15] We accept that Mr Johnson has been ashamed and embarrassed by his conduct.

[15] Mr Gilchrist referred us to two cases that highlighted the sanction of an order not to practise on the practitioner's own account until authorised by the Tribunal to do

¹ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97].

² *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825, [2012] 21 PRNZ 279 at [36].

³ *Waikato Bay of Plenty Standards Committee 1 v Champion* [2019] NZLCDT 20.

⁴ *General Standards Committee 2 v Baker* [2019] NZLCDT 1.

⁵ *Auckland Standards Committee 5 v Ellis* [2018] NZLCDT 24; *Auckland Standards Committee 5 v Ellis* [2018] NZLCDT 39.

so: s 243(1)(g). The Court of Appeal, in *L v Canterbury District Law Society*⁶ dismissed the part of the appeal against imposing such a restriction. The practitioner was guilty of 92 charges. His deficits in professional obligations were pervasive. The order was found appropriate to protect the public. To similar effect, Gault J in *Hong v Auckland Standards Committee* 5⁷ dismissed an appeal where the practitioner had been suspended from practice for three months and ordered not to practice on his own account until approved to do so by the Tribunal. That was a case where the practitioner obstructed the Standards Committee in its enquiries.

[16] In this case, we find the course of conduct that constitutes the misconduct is sufficiently grave that a period of suspension is required to properly mark the Tribunal's response and to retain public confidence in the profession. If we were dealing with this by censure and suspension, we would impose 12 months suspension.

[17] We have been persuaded by Mr Gilchrist that keeping the ongoing public interest in the balance introduces sound reason for a s 243(1)(g) order in Mr Johnson's case. This is because we anticipate he will want to return to law and, if he does so, we believe he will need oversight and guidance to avoid repeats of the kinds of matters that have arisen on this and his previous charges.

[18] In the facts and context of this case and this practitioner, we impose a censure, a term of suspension from practice for six months from 1 July 2021, and an order under s 243(1)(g) prohibiting him from practising on his own account, whether in partnership or otherwise, until authorised by the Disciplinary Tribunal to do so, the latter order taking effect from 1 January 2022.

[19] The Standards Committee takes no issue with deferral of the start of suspension to 1 July 2021 to enable Mr Johnson to tidily wind up his practice. This concession also benefits his business partner and staff.

⁶ *L v Canterbury District Law Society* 1 NZLR 467.

⁷ *Hong v Auckland Standards Committee No. 5* [2020] NZHC 744.

What order should be made for costs?

[20] Mr Gilchrist advises that Mr Johnson is under financial pressure. In part, this is because he borrowed money to pay the trust and was then short of funds for tax. The Standards Committee fees exceed \$17,000 which Mr Gilchrist argues is too much to expect Mr Johnson to pay, especially because he has accepted the charge. Effectively, what is sought is that other practitioners should bear this cost.

[21] Although Mr Johnson's financial position may be tight, we see no sound reason to depart from the general rule that the practitioner should bear the ultimate cost of cleaning up what is the consequence of their own default. Legal practice is a privilege and, in this case, like many others, the practitioner has fallen well short of recognising and acting on his proper professional responsibilities. We find that he must pay the Standards Committee costs.

[22] The s 257 costs that the New Zealand Law Society must reimburse the Tribunal are fixed at \$1,645. Mr Johnson must reimburse the New Zealand Law Society in respect of those costs.

Orders:

1. Mr Johnson is censured in terms set out below.
2. Mr Johnson is suspended from practice for six months from 1 July 2021.
3. Mr Johnson is prohibited from practising on his own account, whether in partnership or otherwise, from 1 January 2022 until authorised by the Disciplinary Tribunal to do so.
4. The names of persons and entities involved in the transactions (apart from Mr Johnson) are permanently suppressed, pursuant to s 240.
5. Mr Johnson is to pay the costs of the Standards Committee in the sum of \$17,223.80.

6. The Tribunal s 257 costs payable by the New Zealand Law Society are fixed at \$1,645.00.
7. Mr Johnson is to reimburse the New Zealand Law Society the full Tribunal costs.

Censure:

Ronald Bruce Johnson, you have admitted one charge of misconduct in failing to account to the party properly entitled to receive the proceeds of debt recovery. You failed to report properly to that party, and you paid the funds to persons other than those to whom you should have accounted. These actions bring the legal profession generally into disrepute and you are censured accordingly. This censure remains as part of your permanent record.

DATED at AUCKLAND this 28th day of May 2021

Judge JG Adams
Deputy Chairperson