

**ORDERS MADE PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006 FOR SUPPRESSION OF NAMES OF COMPLAINANTS, VICTIMS (INCLUDING BANK), NEW ZEALAND LAW SOCIETY EMPLOYEES AND CONTENTS OF MEDICAL AFFIDAVITS AS SPECIFIED IN PARAGRAPH [20] OF THIS DECISION.**

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2021] NZLCDT 26

LCDT 005/21

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 2**

Applicant

**AND**

**JESSE SEANG TY NGUY**

Practitioner

**DEPUTY CHAIR**

Judge J G Adams

**MEMBERS OF TRIBUNAL**

Mr G McKenzie

Ms N McMahan

Prof D Scott

Ms S Stuart

**DATE OF HEARING** 18 October 2021

**HELD AT** Specialist Courts and Tribunals Centre, Auckland (by way of virtual meeting room)

**DATE OF DECISION** 18 October 2021

**DATE OF REASONS** 21 October 2021

**COUNSEL**

Mr P Collins for the Auckland Standards Committee

No appearance by or for the Practitioner

**DECISION OF THE TRIBUNAL RE LIABILITY ON ADDITIONAL CHARGE  
AND PENALTY ON BOTH CHARGES**

***Introduction***

[1] Mr Nguy admits as misconduct the primary charge of misappropriating trust funds in excess of \$1million. In consequence, he accepts that he will inevitably be struck off the roll of barristers and solicitors.

[2] Mr Nguy has not admitted the additional charge that he obstructed and frustrated the investigative processes of the Standards Committee in default of his professional obligations. His counsel Mr Jones QC advised (in written submissions dated 7 October): "...from this point his instructions are that he will not engage in the process further. The stress involved is too much. No submissions will be filed on penalty, he will not attend the penalty hearing in person and he does not wish counsel to appear for him at any such hearing either." Although Mr Jones QC advised that he (Mr Jones QC) would attend, if required, we did not require him to do so. Mr Nguy was invited to attend the virtual hearing but did not do so.

[3] Mr Jones QC's written submissions were accompanied by affidavits sworn by Mr Nguy's general medical practitioner and his psychiatrist. The medical opinions suggest he is prone to anxiety and depression. The psychiatrist says that Mr Nguy has been stressed in relation to these disciplinary processes. This is not surprising, as they concern Mr Nguy's deliberate acts of dishonesty involving large sums of money. It is common for practitioners to feel stressed by disciplinary processes, especially at the more grave level like this case.

[4] Mr Nguy offered co-operation at the early stages of the case although that co-operation did not materialise. Mr Collins refers to his earlier counsel's letter of 9 February 2021.<sup>1</sup> We agree with Mr Collins's submission (in relation to the charge of obstruction) that there is nothing in the medical affidavits or in Mr Jones QC's

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<sup>1</sup> Mr Collins submissions 14 October 2021, para [3.9].

submissions to show that Mr Nguy was under a disability to the point of being unable to organise disclosure of files and records. In fact, Mr Nguy was, at the relevant time, able to respond to Mr Collins coherently in his request for documents (11 February 2021), complain about the Law Society investigator (15 March 2021) and give instructions to appeal against early publication of the interim suspension order.

[5] Mr Nguy sought to avoid compulsory strike-off by earlier inviting the New Zealand Law Society to remove him from the roll on the basis that being a lawyer was stressful, even medically perilous, for him. He was unsuccessful. On balance, considering the medical evidence against other indicators of Mr Nguy's competence, we find his proposition that he is unable to participate in these proceedings is self-serving and cynical. We reject the proposition that Mr Nguy is medically unfit to participate.

[6] The Tribunal's tasks in this hearing are:

- to determine liability on the obstruction charge and, if made out, to categorise it as misconduct or unsatisfactory conduct;
- to fix penalty on the charges.

***Is the obstruction charge proved?***

[7] The evidence in support of the obstruction charge is neatly and comprehensively tabulated in the chronology forming part of Mr Collins's submissions (14 October). The investigators, the practitioner's attorney, and employees of the New Zealand Law Society were properly appointed. Mr Nguy had a professional obligation to assist them, to provide documents and files. He failed or neglected to do so. This constituted an ongoing failure, against repeated requests. The relevant defaults ran from 9 February 2021 to 2 June 2021.

[8] The evidence supporting this charge is not answered by Mr Nguy.

[9] Mr Jones QC wonders why, in circumstances where Mr Nguy was bound to be struck off, the additional charge was brought. Bringing the charge sends a message, both to the community at large and to the legal community, that these obstructive

behaviours are serious and worthy of notice. The targeted conduct is a breach of the practitioner's duties. Dealing with obstructive behaviour wastes money and time which puts other practitioners to unnecessary expense. These are not trivial defaults and cannot simply be ignored.

[10] We find the charge is satisfactorily established.

***Is the obstruction misconduct?***

[11] The investigative functions of the New Zealand Law Society are set out in s 147(2) of the Lawyers and Conveyancers Act 2006 (the Act). Mr Nguy was under a professional obligation to provide relevant material as requested from time to time. Instead of fulfilling his obligations, as Mr Collins submits: "From the time of the suspension order on 2 March 2021 he withdrew any meaningful co-operation and allowed matters to take their course in the hands of ill-prepared staff."<sup>2</sup> We find accordingly.

[12] We do not find that Mr Nguy's sensitivity to the disciplinary processes exonerates him for the ongoing failure to provide relevant files and information. His obstruction extended to obstructing his attorney (after Mr Nguy was suspended from practice on 2 March 2021); a member of his staff refusing to hand over the required information and files to persons she considered not authorised to receive them (26 March 2021); other ongoing failures and obstructions. None of this course of conduct is explained or excused by any mental stress Mr Nguy may have suffered.

[13] Not only were the obstructive behaviours breaches of Mr Nguy's obligations under, for example, s 147(2) of the Act but they also amount to conduct that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) of the Act. Putting it simply, Mr Nguy failed to help those charged with cleaning up his mess, thereby adding to the burden of the New Zealand Law Society and all other lawyers who contribute to that enterprise. This was a course of behaviour that we find to have been deliberate obstruction. The plain facts of this case bring the behaviour within the purview of misconduct.

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<sup>2</sup> Mr Collins submissions 14 October 2021, para [3.12].

[14] We find that Mr Nguy's obstructive behaviours amount to the serious level of misconduct.

***What are appropriate penalties?***

[15] Mr Nguy was subject to two earlier findings of unsatisfactory conduct, one on 26 January 2012 and one on 25 October 2016. Even without that prior history, the stark facts and amount of default in the present case would require strike-off. Mr Nguy accepts that outcome on the first charge.

[16] Accordingly, on the first charge of misconduct we made an order at the conclusion of the hearing striking the name of the practitioner off the roll. This decision provides our reasons for having done so.

[17] His obstructive behaviour, the subject of the additional charge, exacerbates the first charge but it has a stand-alone feature too. A censure that remains part of Mr Nguy's permanent record is an appropriate mark of that additional wrongdoing.

***Costs***

[18] That Mr Nguy may be in difficult financial circumstances is insufficient reason in a case like this to ward off or ameliorate costs orders.

[19] Mr Nguy is ordered to pay the Standards Committee costs and also reimburse the New Zealand Law Society for the costs payable under s 257 of the Lawyers and Conveyancers Act 2006 (the Act).

***Suppression orders***

[20] The names of complainants, victims (including any bank) and New Zealand Law Society employees are permanently suppressed. The contents of the medical affidavits are suppressed to preserve Mr Nguy's privacy. These orders are made pursuant to s 240 of the Act.

**Summary of Penalty Orders made**

1. Mr Nguy is struck off the Roll, pursuant to ss 242(1)(c) and 244 of the Act.
2. Censure, as set out below, pursuant to s 156(1)(b) of the Act.
3. Mr Nguy is to pay the Standards Committee costs in the sum of \$41,359.87, pursuant to s 249 of the Act.
4. The New Zealand Law Society are to pay the Tribunal costs in the sum of \$3,294, pursuant to s 257 of the Act.
5. Mr Nguy is to reimburse the New Zealand Law Society for the Tribunal s 257 costs in full, pursuant to s 249 of the Act.

**Censure**

**Jesse Seang Ty Nguy**, your conduct in obstructing, by action and inaction, the investigative processes of the New Zealand Law Society amounts to professional misconduct. That behaviour increased the time and cost for those obliged to address your grievous dishonesty. Your callous obstructive behaviour demonstrated contempt for those proper processes and for your fellow practitioners who bear the consequent financial and reputation burden. This censure remains as a permanent record of this shortcoming on your part.

**DATED** at AUCKLAND this 21<sup>st</sup> day of October 2021

Judge JG Adams  
Deputy Chairperson