

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2021] NZLCDT 9

LCDT 024/20

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 4**
Applicant

AND

GRANT SHAND
Practitioner

DEPUTY CHAIR

Judge J G Adams

MEMBERS OF TRIBUNAL

Ms K King

Ms A Kinzett

Ms S Sage

Ms P Walker

DATE OF HEARING 26 March 2021

HELD AT District Court, Auckland

DATE OF DECISION 31 March 2021

COUNSEL

Ms S Earl for the Auckland Standards Committee

Ms S Cameron for the Practitioner

DECISION OF THE TRIBUNAL RE LIABILITY AND PENALTY

Introduction

[1] Mr Shand failed to provide his file when requested to do so by the Standards Committee and he continued that failure for 18 months despite further urging. He accepts a finding of unsatisfactory conduct. The Standards Committee does not argue that he should be found liable for misconduct.

[2] Both counsel reached a common view before the hearing that the gravity of this conduct should be marked by censure and fine. The main point of discussion in this decision concerns whether, in all the circumstances of this case, particularly Mr Shand's previous disciplinary history, his conduct should be marked by a short period of suspension from practice instead of a fine. We appreciate the work of both counsel in this matter, both in preparation of their cases, and in responding to our concerns.

Fine or suspension?

[3] In December 2018, the Standards Committee requested the file from Mr Shand in context of a complaint from his client. As it happened, the complaint was able to be determined (May 2019) in the absence of the file, but the request for the file remained outstanding. One of the orders made in May 2019 required him to provide a copy of his file to the client. The Standards Committee reminded him in November 2019. He failed to reply. He was reminded again in February 2020. He advised he had engaged an IT firm to look for it. The Standards Committee set down a hearing on the papers. In March 2020, Mr Shand advised that the IT firm were still working on the request.

[4] Neither Mr Shand nor his client filed submissions by the due date (15 May 2020) for the hearing on 24 June 2020. Having been alerted by the Standards Committee, Mr Shand advised he would talk to his lawyer.

[5] On 22 June 2020, Mr Shand provided a Dropbox link to emails recovered by his IT firm. He apologised.

[6] The Standards Committee was unsure whether the Dropbox link contained the entire file. Mr Shand failed to respond to Standards Committee requests. Ultimately the Standards Committee found that Mr Shand had, in the Dropbox material, provided all that was technically possible to comply with the May 2019 order.

[7] Mr Shand's default (so far as the Standards Committee is concerned) runs from the December 2018 request through to June 2020, a total of 18 months. His failure is marked by a pattern of non-engagement and sometimes dilatory response.

[8] Mr Shand's practice, based in Auckland, concentrates on leaky home and Christchurch earthquake claims. It is a busy practice. He deposes that he has employed up to nine solicitors at one time. He opened 1,000 files in eight years. His disciplinary record discloses 11 matters in which he has been fined. In six of those, he was censured.

[9] Ms Cameron made the points that the client's substantive complaint against Mr Shand was able to be resolved without his file and that he instructed his IT firm before disciplinary action was commenced in regard to this discrete matter, not providing his file. She points out that he finally provided what could be retrieved of the file, albeit late. Although sometimes non-responsive to Standards Committee communications, Mr Shand was never rude nor disparaging to the Standards Committee. He apologised to the Standards Committee. His email of 23 June 2020 does so in the following terms:

"In relation to the current file number:

1. I acknowledge that I could have done better with providing the documents to [the client];
2. This is only the second time any one has had an issue with promptness of file provision;
3. I have a track record of complying with orders;

4. I apologise;
5. I have learnt from the process.”

[10] We regard Mr Shand’s disciplinary record as a concerning context to the present matter. The adverse decisions run from August 2011 to 2021. Because of process delays, the spread will be a little more than one decade. Nonetheless, this appears to us to be a significant volume of defaults. Although only one other of his disciplinary cases concerned delay in providing a file, several others disclose lack of attention to matters that are important in providing proper professional care to his clients. These include, for example, failure to follow instructions, failure to competently supervise and manage junior staff, failure to provide client care information. We infer that he is more engaged in the forward momentum of his practice than in completing all the details that make for professional service. We are concerned too, that he may be under the misapprehension that his disciplinary record is representative of a busy practice rather than one that shows a variety of shortcomings. As in the present case, the shortcomings connect to a person who is rightfully aggrieved.

[11] It is not the business of the Tribunal “to punish the practitioner for misbehaviour, although it may have that effect, but to ensure appropriate standards of conduct are maintained...”¹. An important function of the disciplinary process is to serve the purposes of the Lawyers and Conveyancers Act 2006 (Act). The first two purposes, set out in s 3, are:

3 Purposes

- (1) The purposes of this Act are—
 - (a) to maintain public confidence in the provision of legal services and conveyancing services:
 - (b) to protect the consumers of legal services and conveyancing services:

...

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

[12] The general statements of s 3 devolve to individual characters in a case. In this case, Mr Shand's client represents all consumers; Mr Shand represents the legal profession. His client has had an unacceptably long wait for her file, largely because Mr Shand failed to prioritise his duty adequately. We are concerned that censure and fine may not be adequate to motivate Mr Shand to respond to the troublesome demands, albeit warranted, of the Standards Committee. We do not accept that the rising number of adverse disciplinary findings merely marks a busy practice. In our view, it indicates a practice with several aspects of laxity. The frequency of adverse findings is notable.

[13] Accordingly, we have hesitated in considering the appropriate response. In Mr Shand's case, will a penalty other than a short period of suspension from practice ensure he contemplates the gravity of his default? At the end of his failure to prioritise his duty to find and provide the file are victims. His client is one. The Standards Committee, comprised of unpaid fellow professionals, is another. The Committee has here been obliged to pursue him for more than a year to carry out a simple obligation. The New Zealand Law Society employees who support the Standards Committee are paid for by fellow practitioners. Mr Shand has wasted their time. The general interest of the profession in having a good name for compliance and service, is damaged by narratives such as this one. What seems like a small default has many ripples.

Charge and penalty

[14] We do not take issue with the Standards Committee decision not to pursue misconduct.

[15] Nonetheless, we make the point that, where unsatisfactory conduct is made out, the full range of (so-called) penalty options is available. In *Hong*², and in *Auckland Standards Committee 2 v Name Suppressed*³, suspension was ordered for failing to comply with orders. Both cases can be distinguished from the present case because of wilful or deliberate obstruction but precedent alone is not the only guide. Reference to s 3 purposes remain a sound guide. In the present case, the frequency of insufficiently attentive practice constitutes a relevant feature.

² *Hong v Auckland Standards Committee 3* [2014] NZHC 2871.

³ *Auckland Standards Committee 2 v Name Suppressed* [2018] NZDCT 19.

[16] We agree with Ms Cameron's submissions that *Fox*⁴, like *Hong*, is more serious than the present case. We accept the submissions that *Campion*⁵ has both similarities and distinguishing features with regard to this case. *Pomeroy*⁶ likewise. We need not go into detail here because these were not issues in dispute between counsel.

[17] In our view, Mr Shand's ongoing failure to obtain and supply the file is only a little short of obstructive refusal. This factor, coupled with our concerns arising from the context of his previous disciplinary history, raise suspension as a fair prospect. We are concerned that he has not truly appreciated the gravity of what his default has involved for others, nor that he has taken his default to heart despite the formal apology.

[18] In the event, we determine that a balanced result is a finding of unsatisfactory conduct, a fine of \$8,000, costs and a censure.

Orders

[19] We find the charge of unsatisfactory conduct (ss 12 (b) and (c) of the Act is made out.

[20] Mr Shand shall pay a fine of \$8,000.

[21] Mr Shand shall pay the Standards Committee costs in the sum of \$10,332.

[22] The Tribunal section 257 costs which are certified at \$1,120 are awarded against the New Zealand Law Society.

[23] Mr Shand shall reimburse the New Zealand Law Society the full s 257 costs.

[23] The name of Mr Shand's client shall be permanently suppressed.

⁴ *Auckland Standards Committee 2 v Fox* [2017] NZLCDT 26.

⁵ *Waikato Bay of Plenty Standards Committee 1 v Champion* [2017] NZLCDT 31.

⁶ *Auckland Standards Committee 1 v Pomeroy* [2019] NZLCDT 27; and see [2020] NZHC 1986.

Censure

Mr Shand is censured in the following terms:

Mr Shand, your conduct in failing to provide a client file has been found to be unsatisfactory conduct. That conduct was aggravated by the duration of the ongoing default, a period of 18 months. Your failure to prioritise this duty adequately reflects as a shortcoming in your attitude to client care and to disciplinary matters. You should be aware that your mounting disciplinary history attracts ongoing concern about your fitness to practise and to manage a busy practice, whether or not they involve exactly similar issues or not. Your shortcomings in this matter are only a shade short of direct disobedience. Such inattention reduces public confidence in the legal profession.

DATED at AUCKLAND this 31st day of March 2021

Judge JG Adams
Deputy Chairperson