

PERMANENT NAME SUPPRESSION ORDER IN PLACE AS RECORDED IN
PARAGRAPH [9], PURSUANT TO S 240 OF THE LAWYERS AND
CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 15
LCDT 008/21

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 2**
Applicant

AND

R
Respondent

DEPUTY CHAIR

Judge J G Adams

MEMBERS OF TRIBUNAL

Mr G McKenzie
Ms N McMahon
Prof D Scott
Ms S Stuart

HEARING 18 May 2022

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 31 May 2022

COUNSEL

Ms C Paterson and Ms E Mok for the Standards Committee
Mr D Jones QC for the Respondent Practitioner

DECISION OF THE TRIBUNAL RE PENALTY

[1] Proportionality is the key to this decision.

[2] This prosecution had an unfortunate beginning. Uncontested evidence from several witnesses indicates the investigation was over-zealous and at times offensive and inappropriate. Charges of misconduct were precipitately laid against the practitioner ("R") who had a previous disciplinary history. When the matter was understood in its true perspective, R admitted one amended charge of unsatisfactory conduct in relation to minor infractions of the rules.

[3] The minor infractions are these. Firstly, while working as a consultant in the practice of another practitioner, R signed a solicitor's certificate. This had the effect of misrepresenting R's position in the practice. Secondly, R provided engagement letters to clients of the firm which failed to include information on principal aspects of client service, including the name of the firm acting, R's position in the practice, and the exclusions of the practice's indemnity insurance.

[4] It is common ground that these were minor infractions of the rules from which no harm came or was likely to come. Had the matters been appreciated in that light at the outset, they should have been dealt with at Standards Committee level, and without publicity. Instead, R has been put to significant trouble, worry and expense.

[5] In our view, R should be restored to the position R would have been in, had the matter been dealt with appropriately at the beginning.

[6] Counsel attempted to agree on an appropriate penalty. We commend their efforts, but we are not persuaded that a censure or a significant contribution to costs are proportionate responses in this case. Censure is a significant mark of disapproval, not warranted by these minor infractions. Nor do we think R, despite a previous disciplinary history, should contribute more than a small contribution to costs.

[7] We had already granted R interim name suppression. We find no public interest in publication of R's name in relation to these minor infractions. R is not a practitioner in respect of whom the public needs to be warned about these minor infractions. Permanent name suppression is not opposed.

[8] As we observed when we granted interim name suppression:

"The public interest is the standard interest in open processes so the public can have confidence that the Tribunal holds practitioners to account. This case raises no issue of gravity or novelty. Even though R has had a previous disciplinary history, it is only through unbalanced process that this matter has come before the Tribunal."

[9] The charge of unsatisfactory conduct is admitted. Our orders are:

1. R is fined \$1,000, pursuant to ss 156(i) and s 242(1)(a) of the Lawyers and Conveyancers Act 2006 (the Act).
2. R is to pay \$1,000 costs to the Standards Committee, pursuant to s 249 of the Act.
3. R's name, and the names of all other lawyers and clients mentioned in this file are permanently suppressed, pursuant to s 240 of the Act.

[10] The Tribunal costs payable by the New Zealand Law Society, pursuant to s 257 of the Act, are certified in the sum of \$1,472.00.

[11] We appreciate the efforts of both counsel to help us produce a proportionate and just outcome in this case.

DATED at AUCKLAND this 31st day of May 2022

Judge JG Adams
Deputy Chair