SOME NAMES PERMANENTLY SUPPRESSED AS RECORDED IN PARAGRAPH [29], PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2022] NZLCDT 16
LCDT 010/21

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **AUCKLAND STANDARDS COMMITTEE 5**
Applicant

AND **CRAIG STUHLMANN**
Respondent

DEPUTY CHAIR
Judge J G Adams

MEMBERS OF TRIBUNAL
Mr G McKenzie
Ms N McMahon
Prof D Scott
Ms S Stuart

HEARING 2 March 2022 and 18 May 2022

DATE OF DECISION 2 June 2022

COUNSEL
Ms E Mok for the Standards Committee
Mr A Gilchrist for the Respondent Practitioner

DECISION OF THE TRIBUNAL RE PENALTY

[1] This hearing is to determine what orders we should make in response to the admitted charge of misconduct. The common tasks of assessing the gravity of the conduct, fitting the penalty to the profile of the practitioner, yet responding adequately to the need to reassure the public, all figure in this decision.

[2] How long should we suspend Mr Stuhlmann from practise? Among other issues, this is the one that bites most in this case.

[3] Reflecting the purposes of the Lawyers and Conveyancers Act 2006 (the Act),[1] the Tribunal's role involves maintaining public confidence, protecting consumers, and recognising the status of the legal profession (and conveyancers). Fitting the appropriate response to the conduct in any case is nuanced work. Principles and binding precedents must be observed. The wisdom offered by similar Tribunal decisions is always of great assistance. Eventually, our penalty response must fit, in the round, the particular circumstances, weighing the public interests and those relating to the conduct and the practitioner.

What was the conduct?

[4] Mr Stuhlmann registered an easement[2] with Land Information New Zealand (LINZ) without first obtaining authority and instructions to do so from all the owners of the affected land. In doing so, he falsely certified that he had such authority. When required to support his certificate, he attempted to avoid his dilemma by repeatedly fobbing LINZ off. He attempted to remedy his default after the event but was unable to obtain authority from all the affected owners. His prevarication continued for two years[3] while LINZ pursued the matter until the Registrar-General revoked his right to sign and certify electronic instruments via Landonline.

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[1] Section 3.
[2] On 5 April 2017.
[3] From 18 April 2017 until 2 May 2019.

[5] Mr Stuhlmann failed to disclose his default to his then other legal partner. That firm then merged with another firm. He failed to disclose his default to that firm. After his e-dealing rights were revoked, he managed his conveyancing dealings by channelling them through another member of the firm who was unaware of the problem.

[6] Mr Stuhlmann never told his client about this matter, or the bank which held a mortgage over the property. The affected property has since been on sold.

What is the gravity of the conduct?

[7] Mr Stuhlmann was eager to register a transfer and a mortgage over the land. His first attempt to register was rejected. The very next day he resubmitted the dealing, falsely certificating his authority to achieve registration. We have no evidence upon which to doubt, and therefore accept, his evidence[4] that this is the only occasion on which he has erred in this way.

[8] We understand that Mr Stuhlmann, when called upon his falsity, and realising his exposure, was horrified, ashamed and embarrassed. In his subsequent behaviour, right up to the first occasion on which this hearing began five years later, he behaved like a possum in the headlights, almost freezing. Nonetheless, despite the submission that this was a "one-off", we regard the subsequent course of conduct (acts and omissions) over several years whereby he failed on several occasions to behave with candour to LINZ, his client, the bank and his firm(s), as a course that perpetuated the wrongdoing. His correspondence with LINZ was deliberately misleading, suggesting or implying that he could produce the authorities. In terms of s 7(1)(a)(i), that conduct would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable.

[9] In support of our finding that Mr Stuhlmann's conduct amounts to misconduct we quote directly from, and adopt, Ms Mok's submissions from paras [3.4] to [3.8]:

> 3.4 Section 7(1)(a)(i) of the Act provides that a lawyer is guilty of misconduct if the lawyer, at a time when he or she is providing regulated services,[5]

[4] Stuhlmann affidavit 24 March 2022, para [8].
[5] The practitioner's conduct in the present case in providing legal and conveyancing services plainly constitutes the provision of regulated services, as that term is defined in s 6 of the Act.

engages in conduct that would "reasonably be regarded by lawyers of good standing as disgraceful or dishonourable".

3.5 In the decision of *S v New Zealand Law Society*, Winkelmann J summarised the law in relation to a finding of misconduct for disgraceful or dishonourable conduct as follows:[6]

> In …*Auckland District Law Society v C* a Full Court of this Court commented that expressions such as "disgraceful" and "dishonourable" describe the seriousness of the misconduct but reveal little of the type of conduct intended to be caught by the expression professional misconduct. The Court held that the essential characteristics of conduct that will amount to professional misconduct are well described in *Re A (Barrister and Solicitor of Auckland)* and in particular in the passages set out there from *Pillai v Messiter*.

3.6 In *Re A*, the High Court endorsed the following passage from *Corpus Juris Secundum* (applied in *Pillai v Messiter*):[7]

> Both in law and in ordinary speech the term 'misconduct' usually implies an act done wilfully with a wrong intention, and conveys the idea of intentional wrongdoing. The term implies fault beyond the error of judgment; a wrongful intention, and not a mere error of judgment; ... Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences.

3.7 As noted by the High Court in *Auckland District Law Society v C*, professional misconduct does not solely consist of "intentional wrongdoing"; rather "a range of conduct may amount to professional misconduct, from actual dishonesty through to serious negligence of a type that evidences an indifference to and an abuse of the privileges which accompany registration as a legal practitioner".[8]

3.8 The term "dishonourable" was also specifically considered in the decision of *Shahadat v Westland District Law Society*, where the High Court held that:[9]

> "Dishonourable" behaviour on the part of a practitioner may well be different to that which is seemed to be "dishonest" in the fraudulent sense. "Dishonest" may carry a connotation of "fraudulent", whereas "dishonourable" behaviour may cover a wide range of disgraceful, unprincipled, wrongful acts or admissions comprising blatant breaches of duties owing by a professional person.

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[6] *S v New Zealand Law Society (Auckland Standards Committee No 2)* HC Auckland CIV-2011-404-3044, 1 June 2012 at [22]. Citations omitted.
[7] *Re A* HC Auckland AP 59-SW01, 10 December 2001 at [50].
[8] *Auckland District Law Society v C* [2008] 3 NZLR 105 (HC) at [31] and [33], citing *Pillai v Messiter [No 2]* (1989) 16 NSWLR 197.
[9] *Shahadat v Westland District Law Society* [2009] NZAR 661 (HC), at 31, cited in *National Standards Committee v Orlov* [2013] NZLCDT 45 at [159].

[10] Honesty and candour are hallmarks of legal professional conduct. Mr Stuhlmann's conduct, both in his original falsity and in his ongoing attempts to fob off responsibility, undermines the profession's reputation for probity. Thus, his conduct is corrosive to the general reputation of lawyers. It requires condemnation and sufficient penalty to uphold public confidence and to deter other practitioners.

[11] We accept Ms Mok's submission that the misconduct was moderately serious.

Assessment of Mr Stuhlmann

[12] Our earliest assessment of Mr Stuhlmann's profile was hampered by his lack of engagement. At the hearing on 2 March 2022, we discovered that neither his partners nor his wife had any idea he was facing disciplinary action. In relation to these charges, he was isolated and clearly miserable. At that point, it seemed possible that he faced suspension of up to 12 months, a serious proposition for which he had not prepared himself. We offered him an adjournment so he could be properly represented. In doing so, we suspected he was in a different category from those who are generally disorganised or uncaring. Mr Stuhlmann has a busy conveyancing practice, and he has demonstrated that he can organise himself in other settings. Mr Gilchrist has ensured Mr Stuhlmann's case is properly advanced.

[13] We find that:

- Mr Stuhlmann's false certification was not part of a pattern of behaviour.
- He has been thoroughly ashamed and regretful since required to account for his falsity.
- He is unlikely to err in this way again.
- Nevertheless, his tendency to avoid responsibility and to withhold information is a risk feature for his practise of law.
- His obfuscations were the product of his ongoing denial and his inability to take responsibility.

- He minimised his conduct by characterising it as “one-off”.

- He failed to admit the effect of his behaviour on the reputation of the profession generally.

- He described ongoing e-dealing practices as “supervision” when the lawyer attending to this had no knowledge of Mr Stuhlmann’s wrong-doing, let alone his loss of authority to sign and certify dealings on Landonline.

- He was in business with another partner at the point of the original misconduct. He did not want to disappoint or upset his partner, who had been in poor health and was retiring.

- He saw no need to advise his new partners, hoping the matter would resolve without embarrassment to him.

- Now that his partners are aware of the problem, they are able to take some protective steps.

[14] We accept that Mr Stuhlmann has experienced five years of regret. That he remained relatively (effectively) inert about confronting the problem in a useful manner until March 2022, indicates his heightened level of grief. He knows full well he did a wrong thing. Nonetheless, that does not give us confidence in how he might behave in the event of another error that exposed his shortcoming.

[15] Mr Stuhlmann has had one prior adverse disciplinary finding from a Standards Committee, albeit of a different and more minor kind. On that occasion, he significantly failed to respond properly to correspondence, a repeat of his default to avoidance.

[16] Because he still seeks to minimise the behaviour, we cannot accept that Mr Stuhlmann appreciates the gravity of his offending to the extent we do. Against that, we accept he has suffered regret. We find he is unlikely to offend in this way again.

What penalty should we impose?

[17] This is familiar penalty territory. The question is where, in the field, should we pitch the penalty response for Mr Stuhlmann?

[18] Ms Mok's submissions contained sound backgrounding. We quote and adopt paras [4.3] to [4.9] of her submissions.

> 4.3 The Tribunal will be well familiar with the purposes of imposing disciplinary sanctions. This was outlined in the Supreme Court's decision in *Z v Dental Complaints Assessment Committee*, where the majority of the Court stated that:[10]
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> > …the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure appropriate standards of conduct are maintained in the occupation concerned.
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> 4.4 The High Court in *Auckland Standards Committee 1 v Fendall* described the purposes of disciplinary proceedings brought against a legal practitioner in the following way:[11]
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> > 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.
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> 4.5 A full bench of the High Court further observed in *Daniels v Complaints Committee 2 of the Wellington District Law Society* that:[12]
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> > The public are entitled to scrutinise the manner in which a profession disciplines its members, because it is the profession with which the public must have confidence if it is to properly provide the necessary service. To maintain public confidence in the profession members of the public need to have a general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards.
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> 4.6 The High Court in *Daniels* also made the following observations regarding the aggravating and mitigating factors relevant to assessing the appropriate penalty:
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> > [28] It is not the case, on the conventional criminal sentencing principles, that defending proceedings with vigour and "pulling no punches", is an aggravating feature so as to increase any penalty to be imposed. The starting point is fixed according to the gravity of

[10] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97].
[11] *Auckland Standards Committee 1 v Fendall* [2012] NZHC 1825, (2012) 21 PRNZ 279 at [36].
[12] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC) at [34].

> the misconduct, and culpability of the practitioner for the particular breach of standards. Thereafter, a balancing exercise is required to factor in mitigating circumstances and considerations of a practitioner. Obviously, matters of good character, reputation and absence of prior transgressions count in favour of the practitioner. So, too would acknowledgment of error, wrongdoing and expressions of remorse and contrition. For example, immediate acknowledgment of wrongdoing, apology to a complainant, genuine remorse, contrition, and acceptance of responsibility as a proper response to the Law Society inquiry, can be seen to be substantial mitigating matters and justify lenient penalties...
>
> [29] On the other side of the coin, absence of remorse, failure to accept responsibility, showing no insight into misbehaviour, are matters which, whilst not aggravating, nevertheless may touch upon issues such as a person's fitness to practise and good character and otherwise.

4.7 Where the Tribunal finds that a practitioner's actions amount to misconduct, or serious negligence or incompetence under s 241(c), it may make any of the orders set out in s 242 of the Act. Relevant to the present case is the Tribunal's ability to suspend a practitioner from practice for a period not exceeding 36 months (s 242(1)(e)).

4.8 The High Court in *Daniels* made the following observations regarding the purposes of a suspension order:

> [24] A suspension is clearly punitive, but its purpose is more than simply punishment. Its primary purpose is to advance the public interest. That includes that of the community and the profession, by recognising that proper professional standards must be upheld, and ensuring there is deterrence, both specific for the practitioner, and in general for all practitioners. It is to ensure that only those who are fit, in the wider sense, to practise are given that privilege. Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession.
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> [25] It will not always follow that a practitioner by disposing of his practice and undertaking not to practise can avoid or pre-empt an order for suspension. The consideration of whether to suspend or not requires wider consideration of all the circumstances…

4.9 In *Hooker v Auckland Standards Committee*, Gwyn J affirmed that suspension may be the appropriate outcome even in circumstances where the practitioner does not pose an ongoing risk to the public:[13]

> [36] I accept that a period of suspension may be appropriate - and consistent with the principles set out in *Daniels* - even where the case is not advanced as one where the practitioner poses a risk to the public. There was no suggestion of such a risk here. But the

[13] *Hooker v Auckland Standards Committee* [2020] NZHC 2547.

> broader public interest (recognising that proper professional standards must be upheld) and specific and general deterrence, provides a sufficient basis for the outcome arrived at by the Tribunal.

[19] As with Gwyn J in *Hooker*, this is a case where the broader public interest requires suspension. In our view, Mr Stuhlmann should be required to undergo suspension for a period. In part, that will be required for deterrence and to uphold public confidence but, in part it provides him with a punishment that alerts him to the need to reflect on his conduct. It is not only the original falsity but his poor manner of responding that concerns us, looking to the future. Although we do not order it, we think Mr Stuhlmann would do well to undertake personal counselling to explore the reasons why he responds unproductively in situations where his reputation is called to account. To do so will require him to explore his vulnerability, both in family and business relationships. We consider it would be a sound investment for him and for those who care for him, personally and in business.

[20] Several decisions by other compositions of this Tribunal offer guidance. We were offered six such decisions. Although the penalties ranged from strike-off[14] to censure and fine,[15] the two cases most like this case involved suspension. One of them (*Evans)* included censure.

[21] In *Evans,*[16] the practitioner was censured and suspended for 12 months. There were two charges of misconduct involving discretely different wilfully dishonest documents. A false declaration was used to obtain transmission of a deceased's property to the executor. Probate had not been granted. A false certificate was presented to LINZ for an allied purpose. The practitioner had three previous disciplinary decisions that involved dishonesty or breaches of trust accounting rules. These circumstances are graver than in the present case.

[22] In *Hylan,*[17] the practitioner certified a separation agreement where he knew its contents were false. He exhibited a lack of probity and integrity at the liability hearing. He was suspended for nine months.

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[14] *Auckland Standards Committee No. 2 v Sharma* [2015] NZLCDT 12.
[15] E.g. *Auckland Standards Committee v ABC* [2012] NZLCDT 14*; Wellington Standards Committee 2 v Harper* [2020] NZLCDT 29*; Wellington Standards Committee 2 v Austin* [2016] NZLCDT 33.
[16] *Southland Standards Committee of the New Zealand Law Society v Evans* [2011] NZLCDT 38.
[17] *Auckland Standards Committee No. 5 v Hylan* [2014] NZLCDT 31.

[23] The cases which resulted in censure and fine, but no suspension, were relatively technical or minor. They are not truly comparable to this case.

[24] Cases do not line up on all fours. We have conscientiously debated the salient features of this case, remembering those matters noted at the beginning of this decision. We are conscious of our need to send a signal to the public that this sort of misconduct will be treated seriously. We see a need to uphold the integrity of the LINZ processes and to uphold the reputation of the legal profession.

[25] In this case, where Mr Stuhlmann deliberately proffered a false certificate, however much he may have regretted it later, we believe a censure is appropriate. His misconduct deserves a mark on his permanent record.

[26] Although he is not, in our view, a danger to the public, a substantial period of suspension is called for. Suspension adversely affects other people such as family, law partners and staff. Nonetheless, misconduct of this kind requires a strong sanction.

[27] We fix the period of suspension lower than was the result in both *Evans* and *Hylan*, not for one linear reason, but assessing our penalty response "in the round." This Tribunal panel combines a range of wisdom and experience. After engaging in robust discussion, we came to this determination. It is an outcome supported by the whole panel on the facts of this case, as we see them.

[28] On the day of the hearing, we adjourned, and, after discussion, we were able to indicate our decision on the main points, namely, censure, suspension for five months (from a date within one month to provide sufficient time for Mr Stuhlmann to organise his practice and hand over files so as not to disadvantage clients or his firm) and full costs, including reimbursement of s 257 costs. The full suite of orders is tidily recorded, below.

Orders

[29] Accordingly, our orders (including those announced orally shortly after the hearing) are:

1. Mr Stuhlmann is censured in the terms set out below. (Pursuant to ss 156(1)(b) and 242(1)(a) of the Act).

2. Mr Stuhlmann is suspended from practice for five months. The suspension will commence on 18 June 2022. (Pursuant to ss 242(1)(e) and s 244 of the Act).

3. Mr Stuhlmann will pay the Standards Committee costs of $10,100.40. (Pursuant to s 249 of the Act).

4. The New Zealand Law Society will pay the Tribunal costs which are certified at $2,143.00. (Pursuant to s 257 of the Act).

5. Mr Stuhlmann will reimburse the New Zealand Law Society in full, for the Tribunal s 257 costs. (Pursuant to s 249 of the Act).

6. The names of persons other than Mr Stuhlmann, are permanently suppressed. (Pursuant to s 240 of the Act).

Censure:

Mr Stuhlmann: You falsely signed and certified to LINZ that you were authorised to present a certain electronic dealing. When called to account, you failed to respond with candour. Moreover, you concealed that wrong-doing, and the fact of this charge, from your business partners. These misconducts bring the reputation of the legal profession into disrepute. Accordingly, you are censured.

DATED at AUCKLAND this 2nd day of June 2022

Judge JG Adams
Deputy Chair