

**ORDER FOR SUPPRESSION OF NAMES AS RECORDED IN PARAGRAPH [70](1)(c),
PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.**

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 25

LCDT 011/21

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 3**
Applicant

AND

SANDRINE (SANDI) ANDERSON
Respondent

CHAIR

Ms D Clarkson

MEMBERS OF TRIBUNAL

Mr G McKenzie

Ms M Noble

Ms M Scholtens QC

Prof D Scott

HEARING 21 June 2022

HELD AT Auckland District Court

DATE OF DECISION 22 July 2022

COUNSEL

Ms C Paterson for the Standards Committee

Mr L Taylor QC and Ms E Watt for the Respondent Practitioner

**RESERVED DECISION OF THE TRIBUNAL GIVING REASONS FOR
DECISION AND ORDERS MADE ON 21 JUNE 2022**

Introduction

[1] Ms Anderson made a grave error in judgement at a time when her life was in turmoil and she was not well-functioning in respect of her personal legal affairs.¹

[2] The mistake was so serious that a colleague felt obliged to report it to the Law Society, despite the conduct being significantly historical (now almost 18 years ago).

[3] In fact, Ms Anderson had been in the course of preparing a full self-report of the matter, which had been revived in subsequent civil litigation to which she was a party. The colleague's report was received first.

[4] The investigation led to a charge of misconduct being laid under the previous legislation governing lawyers' conduct, the LPA² (Charge 1), with an alternative of "conduct unbecoming". This charge fell just within the limitation period set out in the LCA.³

[5] From the outset Ms Anderson has accepted that the conduct in question was unacceptable and fell well below her own and expected professional standards and she accepted that she was guilty of conduct unbecoming. She denied that it rose to the level of misconduct, having regard to the important contextual background, and to the fact that it related to her personal conduct, not professional.

[6] It also led to a further charge of misconduct being laid under the LCA (Charge 2). This arose out a series of events in which Ms Anderson was defrauded by a close professional colleague (not a lawyer) and friend. It is not disputed that Ms Anderson was the victim in this situation.

[7] We found Charge 2 to be misconceived and dismissed it.

¹ In contrast to how she was managing her professional duties. This was supported by evidence from the practitioner herself, and a psychological assessment dated 4 March 2019 from a registered psychologist.

² Law Practitioners Act 1982, s 112(1)(a) – misconduct, and s 112(1)(b) – conduct unbecoming.

³ Lawyers and Conveyancers Act 2006.

[8] We made penalty orders in respect of Charge 1 which we found at the level of conduct unbecoming and reserved our reasons, which are now contained in this decision.

Issues

[9] Issues to be determined:

1. Was the admitted conduct in Charge 1 at the level of misconduct or conduct unbecoming?
2. Charge 2 is laid under s 7(1)(a) of the LCA and we were therefore required to determine whether Ms Anderson was providing regulated services to another person. We were required to determine whether Ms V was a client in the transaction. If so, we were then required to determine whether or not Rules⁴ 5 or 5.4 were engaged and complied with, or whether Ms Anderson had satisfied her responsibilities to refer the client for independent advice.
3. Having determined these issues, we were required to consider what was the proportionate penalty to be imposed.

Background

[10] The factual background is largely agreed between the parties. They provided the Tribunal with a Memorandum of Agreed Facts, pursuant to s 9 of the Evidence Act 2006, which we adopt as correctly setting out the background facts.

[11] To summarise, the essential facts with respect to Charge 1 are that, at a time when she had recently separated from her husband,⁵ Ms Anderson was under significant stress, and her health was suffering. In particular, her estranged husband, Mr G, having agreed to move out of the home that they had shared (and which was owned by a trust and separate property in terms of the s 21 Agreement), was

⁴ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

⁵ Ms Anderson had only been married to this man for two years, and they had a contracting out agreement pursuant to s 21 of the Property (Relationships) Act 1976.

reneging on that agreement and refusing to leave. He was also making other deeply concerning threats.

[12] A very successful business client and close friend of Ms Anderson, Mr R (and his then wife) proposed an arrangement whereby his company would purchase the home from Ms Anderson's trust and resell it to her as a means of ensuring that Mr G could not register a notice of claim against the property.

[13] Registering such a claim was a concern for Ms Anderson because she was hoping to use the property as security to raise funds to purchase another property adjacent to her business premises, in respect of which an option to purchase had just arisen.

[14] In subsequent Family Court proceedings, Mr R swore an affidavit in which he acknowledged having proposed this arrangement to assist Ms Anderson, because he could see that she was under enormous stress and that her health was suffering as a result of her ex-husband's actions in refusing to leave the home and making various threats against her.

[15] Ms Anderson gratefully accepted this proposal by Mr R and ensured that on the sale transaction, he was separately represented by another solicitor.⁶

[16] Ms Anderson had suggested that another lawyer act on the purchase by Mr R at the point where she became aware that her ex-husband was refusing to vacate the property. She accepted that there was a conflict arising out of the difficulty, at that point, in providing vacant possession. She suggested delaying the purchase date. However, Mr R insisted on proceeding with the purchase and eventually arranged for the police to remove Ms Anderson's ex-husband from the property in the days following settlement.

[17] There was only an oral agreement for the repurchase of the property by Ms Anderson, which was to be at the same price. That proceeded in stages within a few days of Mr R's company purchasing the property, which occurred on 20 October 2003.

⁶ Mr R was a very experienced and successful businessman who had a number of lawyers representing him, including a lawyer who was effectively his in house counsel, at the time of this and subsequent transactions.

[18] By 24 October 2003, Ms Anderson had paid the first instalment of the repurchase in the sum of \$818,479.47 to Mr R's company.

[19] In early November 2003, Ms Anderson incorporated a further company to be the corporate trustee of a new trust which she also formed, and intended to be the (re)purchaser.

[20] An agreement for the repurchase was prepared and signed by Mr R on behalf of the new corporate trustee company of which he was the sole director and shareholder. However, for some reason this document was never executed by Mr R on behalf of the vendor company.

[21] On 21 November 2003, Ms Anderson paid a second instalment of \$132,000 to Mr R's company as the final payment of the purchase price. She made a further payment of \$2,000 that day for interest in relation to the property transaction.⁷

[22] On 31 October 2003, Ms Anderson had written to the then counsel for her ex-husband, advising that she would be instructing counsel but asking for urgent attention to the need for him to honour his undertaking and vacate the property, which she said had been sold.

[23] In Family Court proceedings in January 2004, the most serious aspect of the conduct occurred. Ms Anderson swore an affidavit in those proceedings explaining that the property had been sold to Mr R's company, but that she had been occupying it as a tenant since November 2003. She went on to state "...in any event, the tenancy of this property is out of my hands as I have no legal interest in it save for my current short term occupancy as a tenant which is soon to end...". In the same document she explained that she had needed to sell the property to raise capital for the purchase of the property near her practice. While this was strictly accurate, it certainly did not provide the whole picture, or properly describe the complicated arrangement of sale and buy-back, which had been largely completed by this time.

[24] At the same time, Ms Anderson filed an affidavit of assets and liabilities. The affidavit purported to list her assets including "any interest to which I am beneficially

⁷ For completeness, Ms Anderson also paid a further \$3,717.21 to Mr R in October 2004, for expenses.

entitled in any property". The affidavit did not refer to her beneficial interest in the property, as a beneficiary of the trust which had an equitable interest by means of the arrangement which had been set up on the oral or unsigned buy-back agreement.

[25] In doing so, Ms Anderson, as she regrettably acknowledges, misled the Court by not disclosing that she was a discretionary beneficiary in respect of a significant item of property. Ms Anderson says that she does not know what she was thinking at the time. She has poor recall of the time in question, not just because of how long ago this occurred, but because of the psychological state she was in. More recently obtained psychological evidence provides, at the very least, a partial explanation for not only her lack of memory but very poor judgement at the time. There was very significant and compelling evidence available to the psychologist, and, in turn, to the Tribunal.

[26] For completeness, we also record that when further proceedings were issued by the ex-husband in 2007, counsel for Ms Anderson wrote to his counsel stating that the property had always been owned by a trust, had been subject to a contracting out agreement and stated that his client had "never had a beneficial interest in the property". Ms Anderson does not recall having seen that letter prior to its being sent, and stated that it was not the practice of that counsel to obtain prior approval before sending out correspondence, thus she was not able to confirm that she had endorsed or failed to correct that letter.

Background in relation to Charge 2

[27] In mid-2008 Ms Anderson had a falling out with Mr R, when he separated from his wife and saw Ms Anderson as taking his wife's side. In July 2008, he resigned as a director of the corporate trustee company which held the title of the disputed property.

[28] Mr R was replaced by Ms V, a trusted friend and professional associate of Ms Anderson. Not long after, Ms V fraudulently borrowed a very large sum using the property which had been the subject of the relationship dispute as security, despite her status as a trustee and consequent fiduciary obligations to the beneficiaries of the trust.

[29] Ms Anderson learned of the mortgaging of this property in April 2009 but was told by Ms V that no funds had been advanced under it and she took no further action at that stage.

[30] In the course of arranging to put the property on the market in April 2010, Ms Anderson, to her horror, discovered that a mortgage facility of \$2.2M (with a priority of \$4.2M) had been obtained in September 2008 by Ms V without authority.

[31] Ms V immediately acknowledged what she had done to Ms Anderson and provided her with a copy of the loan documentation.

[32] In order to protect herself, Ms Anderson prepared a Deed of Trust for Assets in which Ms V acknowledged what she had done, acknowledged that she had misrepresented her position as a bare trustee to the ASB Bank, and that she was solely responsible for the debt.

[33] The evidence disclosed that Ms Anderson invited Ms V on three occasions to obtain independent advice before signing the document. The document was witnessed by a legal executive in the employ of Ms Anderson. Ms V did not give evidence whether she did in fact take independent advice at any time. Indeed, she was not called to support the charge as pleaded, despite the allegation that she had been professionally failed by Ms Anderson.

[34] It was a further two and a half years before Ms Anderson was able to sell the property because it took that long for Ms V to deal with other assets so that she could be in a position to repay the debt that she had fraudulently incurred against it.

Discussion of issues

Issue 1 – level of liability

[35] For particular conduct to be considered as misconduct, it must, in terms of the wording of the LPA, have occurred “in a professional capacity”. The Standards Committee submit that this is the case, and that when making the statements in the affidavit, Ms Anderson could be seen as acting as a lawyer. In particular they emphasise that the letter to her ex-husband’s barrister on 31 October 2003,

requesting that he vacate the property urgently, was on Ms Anderson's letterhead. Ms Anderson herself acknowledged that it was inappropriate to use her letterhead, but points to the fact that she indicated in the letter that she would be engaging counsel and was simply operating under urgency (and in a state of considerable stress, as earlier described) because the sale was due to settle and vacant possession was required.

[36] Ms Anderson was not representing any client in the writing of this letter but rather was representing her own personal legal affairs.

[37] The same can be said of her position when she swore the affidavit, by which time she herself was represented by counsel.

[38] The Tribunal fails to see how she can be seen as having acted in her "professional capacity"⁸ in these matters.

[39] A finding of "conduct unbecoming", as a consequence, does not minimise the seriousness of Ms Anderson's conduct. Nor does she deny the seriousness of her poor judgement in framing the affidavits as she did.

[40] The unchallenged psychological evidence provided by Ms Visser, registered psychologist, explains to a considerable degree why this practitioner, who otherwise sets herself high standards, could have made such a significant error. The matters traversed in that report were not challenged by the Standards Committee and they are deeply personal topics on which we propose to elaborate no further. We also record that the statements made by Ms Anderson to the Court in 2004, inadequate as they were, did not lead to any advantage to her, nor were they likely to.

[41] Ms Anderson, through her counsel and directly to the Tribunal in her evidence, has accepted that her conduct was wrong and "unbecoming of the standards expected of the profession". She states that she is "appalled" in hindsight and expresses considerable embarrassment and regret.

[42] We find that, as accepted by the practitioner, she was guilty of conduct unbecoming of a barrister or solicitor.

⁸ The terminology used in the LPA, this wording is undefined by the Act but was the subject of considerable precedent.

[43] For completeness, we need to address a further aspect of the Standards Committee case under Charge 1, which asserted that Ms Anderson acted for Mr R in relation to the buy-back arrangement in a situation where there was a divergence of interests, specifically in the formation of the H company to be a corporate trustee of the W trust in order to buy back the property as agreed.

[44] There are two points we would make here. The first is that it is difficult to see how the interests of the practitioner and Mr R diverge at this point. It is in his interest to have the funds which he advanced to purchase the property repaid to him at the earliest possible opportunity (which they were). It is in Ms Anderson's interest to make that payment and regain ownership by means of a new trust (the property having previously been held in a trust structure before being sold to Mr R's company). There was, at the time, no dispute about the price. The property was to be bought and sold for the same price, \$950,000. In addition, Ms Anderson reimbursed Mr R's company for costs incurred in relation to the transactions and for rental of the property. We see no clearly discernible divergence of interests here.

[45] However, if we are wrong in that, then Mr R had ample independent advice available to him and of which Ms Anderson expected him to avail himself. As indicated before, he had an in-house lawyer who was at the time undertaking a review of Mr R's company and trust structures, which would have included the new corporate vehicle under which he was the director and sole shareholder to repurchase the property.

[46] For this reason, we do not find that the Standards Committee has established misconduct in Ms Anderson's professional capacity, in relation to this personal transaction where she was representing herself, and considered Mr R to be represented by the other lawyers available to him.

Issue 2 – Charge 2

[47] This charge is laid under s 7(1)(a)(ii) of the LCA. Alternatives of negligence (s 241(c)) or unsatisfactory conduct (s 12(c)) are also pleaded. Ms V, the person who defrauded Ms Anderson in the circumstances under consideration, had, at times been a former client of Ms Anderson. The Standards Committee asserts that because of that, in having Ms V sign the Deed of Trust for Assets (the Deed) that

Ms Anderson wilfully or recklessly breached r 5.⁹ That is the rule whereby the duty to be independent and free from compromising influences or loyalties is set out.

[48] We accepted Ms Anderson's evidence that she did not regard Ms V as her client. She was a close friend and professional associate who had, as is accepted by the Standards Committee, defrauded the practitioner.

[49] We accept the Standards Committee's submission that the interests of Ms V, as set out in the Deed, were clearly divergent from those of Ms Anderson, who was attempting to protect herself and mitigate the possible loss from the fraud which had been committed.

[50] However, we do not consider there is any risk that Ms V would have considered herself as being represented by Ms Anderson in the preparation or execution of this document. Indeed, to allay any possible doubts, there is evidence of three different occasions where Ms Anderson urged Ms V to obtain independent legal advice.

[51] At the hearing, a further document was produced to support, if it were necessary, the assertion that independent advice had been recommended and that is an acknowledgement signed by both Ms V and her husband, recording the advice to obtain independent legal advice, at the time further documents were signed on 29 April 2010, the day after the Deed had been signed.

[52] Ms V was not called as a witness for the Standards Committee. There is no evidence before us that she considered herself to be a client of Ms Anderson in respect of this transaction, following her having defrauded Ms Anderson.

[53] We do not consider that the Standards Committee has established, on the balance of probabilities to the high standard required in respect of a serious charge such as misconduct, that Ms Anderson was providing regulated services to Ms V. Rather we consider that she was acting to protect herself in a personal rather than a professional capacity. Clearly she was cognisant that Ms V's and her own interests did diverge and she acted properly in such circumstances as evidenced by her referrals of Ms V to seek independent legal advice. Those referrals mean that even if

⁹ See above n 4.

we had considered that she had been acting in a professional capacity, we would have found that she had satisfied her obligations under the Conduct and Client Care Rules.¹⁰

[54] With respect, we considered this charge to have been misconceived from the outset, and an unfortunate slur upon the practitioner's conduct, given the serious way in which she was victimised by Ms V, and the patient and tolerant manner in which Ms Anderson chose to extricate herself from her former colleague and friend's fraudulent actions.

[55] Issues as to admissibility of some documents arose. We considered the documents on a provisional basis and indicated that we would rule on admissibility later. Given that they supported what we found to be a misconceived charge, we do not consider it necessary to consider those documents further.

Penalty

[56] The assessment of penalty as usual began with a consideration of the seriousness of the conduct. In this case, as accepted by the practitioner, the conduct in misleading a court by the omission of information is conduct considered to be serious and worthy of a clear response. We emphasise the importance of any counsel's duty of utmost candour to the Court.

[57] However, there are a number of mitigating features and no aggravating features in relation to this conduct, and the practitioner herself.

1. There are the personal and psychological factors surrounding the actual conduct, to which we have referred and which are supported by the psychological evidence adduced. These provided explanation for the unusual drop in what were normally high ethical standards held by Ms Anderson.
2. Perhaps even more importantly, the practitioner acknowledged her wrongdoing from the outset and expressed her regret and shame.

¹⁰ See above n 4.

Indeed, she was on the verge of self-reporting when the complaint was made.

3. The practitioner has participated fully and co-operatively in the disciplinary process.
4. The lapse of time is a relevant factor, in that no conduct of this sort has occurred in the almost 20 years which has passed since 2003 and early 2004 when the events occurred. Current client endorsements cannot be given great weight in matters of this sort but certainly point to the deep trust vested in the practitioner by her many clients.
5. This practitioner has given long service to the profession and her devoted service to her clients is acknowledged by many. She has one previous unsatisfactory conduct finding, so cannot rely on a blemish-free record, but that finding is not relevant to the present matter.
6. To her credit, the practitioner is deeply engaged in serving her community. She serves on charitable trust boards and is involved in a number of activities, including *pro bono* advice and devoting a significant amount of her time and skills to others.

[58] Consistency of penalty is also an important consideration. Both counsel referred us to the Tribunal's recent decision in *Reed*,¹¹ in which we stopped short of imposing a period of suspension, having regard to the remedial and protective steps already taken by that practitioner.

[59] We consider the present case to sit at a less serious level. Even putting to one side the relevant (psychological) contextual matters in this case, the *Reed* misconduct had the additional factor that the information omitted was also in breach of a specific duty imposed on counsel in making a without notice application to the Court.

[60] We considered that this matter could be dealt with, despite its seriousness, by a fine. In addition, there will be an award of costs which will significantly mark the

¹¹ *National Standards Committee v Royal Reed* [2021] NZLCDT 31.

conduct. We do not consider that personal deterrence is required in the case of this practitioner and the extraordinary circumstances surrounding her lapse in judgement do not give rise to a need for general deterrence either.

Costs

[61] The Standards Committee costs are \$35,309.60. They seek their full costs and reimbursement of those of the Tribunal. This is firmly opposed by counsel for the practitioner.

[62] The Tribunal has a broad discretion as to costs; there is no presumption that costs will follow the event.¹² The High Court has held that the fact of the Standards Committee acting in a regulatory function, which has a public interest component, is one relevant factor, but not a determinative one: *“What is required is an evaluative exercise of the discretion provided by the Act”*.¹³

[63] We found that the very historical Charge 1 was as had been admitted by Ms Anderson at an early stage. We found the particular circumstances around the facts - very historic, acting in a personal capacity (the case that it was professional had little merit and in any event the essentially agreed facts did not support the allegation of misconduct in a professional capacity) relevant as to seriousness.

[64] We consider that the medical information should have provided the Standards Committee with better perspective, and ought to have led to more compassionate treatment of the conduct.¹⁴

[65] The charge could have been dealt with at Standards Committee level, as admitted “conduct unbecoming”. We accept Mr Taylor’s submission that this matter was pursued in a manner which could be described as over-zealous. We have no doubt that the Tribunal process has been deeply painful for Ms Anderson, involving as it did the revelation of deeply personal matters. It has also been an extremely expensive exercise for her, which would have been considerably reduced if it had been dealt with at Standards Committee level.

¹² *Lagolago v Wellington Standards Committee 2* [2017] NZHC 3038 at [33].

¹³ Above n 12 at [33].

¹⁴ This is not to suggest that any mental health difficulties ought to be treated in a uniform or less measured way, but this was an extraordinary background which ought to have been given more weight.

[66] Despite her arguments having been successful, Ms Anderson does not seek costs against the Standards Committee, which speaks highly of her ability to take responsibility for her error.

[67] We found Charge 2 to have been misconceived, and this alone ought to lead to a discount in costs, but counsel for the Standards Committee has made no concession in this regard. The Tribunal's costs were certainly increased by the preparation for and hearing of the second charge.

[68] We consider that only a modest award of costs in favour of the Standards Committee is proper, to reflect Mr Taylor's submission that at worst, a short penalty hearing was all that was required once the matter was before the Tribunal.

[69] We also consider that the practitioner's responsibility to meet the Tribunal costs (which is usual following a guilty plea) should also be significantly reduced to reflect our findings as above.

Orders

[70] At the hearing we made the following orders:

1. Pursuant to s 240 of the LCA, an order prohibiting publication of:
 - (a) all medical and psychological information;
 - (b) all personal information of the practitioner not forming the basis of the charges; and
 - (c) all names of private individuals including Mr R, Ms V and Ms Anderson's ex-husband.
2. Imposed a fine of \$5,000 on the practitioner, pursuant to s 156(i) of the LCA.

We now add the following orders:

3. Costs of \$5,000 are awarded in respect of the Standards Committee costs, pursuant to s 249 of the LCA.
4. The Tribunal costs are certified at \$7,125 and are to be paid by the New Zealand Law Society, pursuant to s 257 of the LCA.
5. The practitioner is to reimburse 50 per cent of the s 257 costs to the New Zealand Law Society, namely \$3,562.50, pursuant to s 249 of the LCA.

DATED at AUCKLAND this 22nd day of July 2022

DF Clarkson
Chairperson