

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 4

LCDT 017/20

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**OTAGO STANDARDS
COMMITTEE**

Applicant

AND

QUENTIN DUFF

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr S Hunter QC

Ms K King

Ms A Kinzett

Ms M Noble

HEARING 20 December 2021

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 21 January 2022

COUNSEL

Mr R Moon for the Standards Committee

Mr J Farmer QC and Ms M Taylor-Cyphers for the Practitioner

REASONS FOR PENALTY ORDERS MADE ON 20 DECEMBER 2021

Introduction

[1] In our decision of 2 September 2021 we found Mr Duff guilty of one charge of misconduct, arising out of a business dealing which was unconnected with legal services.¹ At the conclusion of the penalty hearing we made the following orders:

Orders

1. The practitioner was fined \$10,000.00.
2. A censure was imposed which was to be delivered in writing. This is attached as Appendix 1.
3. Mr Duff was to pay the Standards Committee's costs following approval by the Tribunal of the Schedule of Costs to be provided by the Standards Committee. These have now been certified at \$23,575.00.
4. The New Zealand Law Society is to pay the costs of the Tribunal pursuant to s 257. These have now been certified at \$9,345.00.
5. Mr Duff is to reimburse the s 257 costs to the New Zealand Law Society. These have now been certified at \$9,345.00.
6. Reasons for the penalty orders were reserved.

[2] We also recorded the practitioner's undertaking in the following terms:

"I, Quentin Duff, undertake that:

1. I will not commence any Directorship of any entity or be a trustee of any trust other than my own family trust, without prior approval from the Chair of the Lawyers and Conveyancers Disciplinary Tribunal.

¹ Pursuant to s 7(1)(b)(ii) Lawyers and Conveyancers Act 2006 (LCA).

2. In relation to Matai Chambers Limited, I agree to supervision for a period of 12 months by Sumudu Thode of Thode Utting on the accounts of all private files.
3. To retain an accountant at all times to oversee and ensure I fulfil taxation obligations in a timely manner, both personally and on behalf of Matai Chambers Ltd.”

[3] This decision comprises the reserved reasons for the penalty orders.

Process

[4] In determining proper penalty orders to be made against a practitioner, the Tribunal begins with an assessment of the gravity of the misconduct itself.²

[5] We remind ourselves that the purpose of penalty and disciplinary proceedings is a protective not punitive one. The LCA records in s 3 its purposes which include the maintenance of public confidence in the provision of legal services and the protection of consumers of legal services. Both limbs of the protective purposes engage broader penalty principles such as denunciation and deterrence, both general and specific.

[6] The Tribunal considers aggravating and mitigating circumstances, both of the offending and the practitioner. In relation to the latter, because of the protective purposes, the practitioner is not able to avail him or herself of matters in mitigation which would be of assistance in a criminal sentencing context:

“The aim of professional discipline is primarily protective rather than punitive and considerations that can mitigate punishment in a criminal context have less impact in the disciplinary setting.³”

[7] In this case the real issue with which the Tribunal had to grapple was whether a suspension from practice was necessary to mark the seriousness of the findings against Mr Duff and not only denounce his conduct, but send a clear signal to other lawyers that standards of integrity are required in all their business dealings, not just those related to their legal professional practice.

² *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103.

³ *A v National Standards Committee* [2020] NZHC 563.

[8] For the practitioner, Mr Farmer QC submitted that deterrence and denunciation purposes of penalty imposition can be met by means other than removing the practitioner from practice. Indeed, he submits that in terms of the public interest generally and protection of the public, the safeguards put in place by the practitioner will prevent repetition. Furthermore, it is submitted by Mr Farmer, who called evidence from another senior barrister, Dr S Foote QC that the public interest would be better served by the retention of Mr Duff's ability to continue practice. We shall elaborate on this submission further.

Gravity of Offending

[9] Mr Moon has submitted that where any element of dishonesty is found with misconduct, that it is almost inevitable that suspension must follow. Mr Moon submits that this is one of those cases based on the findings of the Tribunal. Mr Moon stresses this is not an issue of the practitioner's competence as a lawyer but submits that Mr Duff's integrity was found wanting.

[10] Observing Mr Duff as he gave evidence at the penalty hearing, these findings have obviously been very hard for him to hear. It seems likely that the combination of his motivation for his actions (to help a friend), and his somewhat casual attitude to the coding of accounts have made it hard to engage with the concept that the result was actual dishonesty; comprised in the collection of errors and actions referred to at paragraph [52] of our decision.⁴

[11] The practitioner is clearly, from the stellar references put before the Tribunal, a legal practitioner of considerable integrity and talent. Where he falls down, is that he has had entrepreneurial urges which have, in the past, led to failed businesses, difficulties with the Inland Revenue Department, and finally these current proceedings.

[12] Having regard to the fact that the conduct concerns private business arrangements rather than client related matters, we do not regard this conduct to be at the most serious end of the scale.

⁴ *Otago Standards Committee v Quentin Duff* [2021] NZLCDT 25.

Aggravating and Mitigating Features

[13] The long delay in putting right the failure to pay GST is an aggravating feature to the offending itself. Mr Duff did not face up to these responsibilities until urged by his counsel to put them right.

[14] In relation to the practitioner there is an aggravating factor of a previous unsatisfactory conduct finding in 2015.

[15] As to mitigating features, it is acknowledged by the Standards Committee that there was no harm to any clients. Secondly, that the practitioner has now paid the full GST which had been owing, together with penalties.

[16] A strong mitigating feature relating to the practitioner himself is that he has handed over all of his accounting responsibilities to his accountant in order to avoid any repetition of the tax problems he has encountered in the past.

[17] Further, he has arranged for another practitioner to supervise him in overseeing the accounts of all private files, that is non legal aid files. We note that the Commissioner of Legal Services undertakes audits in respect of legal aid files and therefore oversight is not required in this regard.

[18] Mr Duff has now finally recognised that he ought, to use his words, "*stick to his knitting*". He told us of his love for the law and for doing the criminal jury trial work which he undertakes, and has somewhat belatedly realised that he ought not to dilute his strengths by undertaking other business activities. To reinforce this he has given the Tribunal the undertakings set out above. We recognise this represents a considerable shift in Mr Duff's thinking and also accept that the disciplinary process has been a painful and chastening experience for him.

References

[19] As noted above, personal circumstances and factors are unable to be given as much weight in the professional disciplinary setting as in the criminal setting. This is because of the protective purpose of the proceedings. It is fair to say that the Tribunal is well used to receiving positive, indeed glowing references, concerning a

practitioner and his or her work for clients, and also from colleagues. These can normally only be given relatively minimal weight.

[20] However, in this case, what is disclosed by the extremely positive references from many senior members of the legal community, is that there are aspects of the practitioner's work, his role within the profession, and his personal attributes which ought to be taken into account, particularly in considering whether he ought to be temporarily removed from practice.

[21] The references describe Mr Duff as one of the very few senior criminal barristers conducting jury trials, and conducting them regularly from the South Auckland Courts. This is a geographical area where much of the work is legally aided and where many of the clients are disadvantaged and facing particularly challenging issues. The references attest to Mr Duff's extraordinary ability with fellow colleagues, whether working with them or on the opposite side. It also describes his positive relationship with the judiciary and his talent in addressing juries.

[22] However, the references go further than that. Mr Duff is renowned for his mentoring of young lawyers including Māori and Pacifica lawyers. He established Matai Chambers in 2017 in order that he could establish a collegial atmosphere for barristers and where young lawyers could be comprehensively mentored. A number of the referees refer to the family-like atmosphere of the Chambers, the adopting of Māori values and Tikanga.

[23] Mr Duff has a different background from many. He came to the law somewhat later in life. Because of that many of the referees point to the diversity of ideas he brings to the table in the roles which he performs within the profession. He, until the release of our findings against him, had been a member of the Council of the New Zealand Bar Association. As described by Dr Foote QC, who came and gave oral evidence in support of Mr Duff at the penalty hearing, he "... *brought diversity of thought, experience and background to the NZBA Council. These qualities will be difficult to replace. The Council is very sorry to lose him.*" The Crown solicitor for Auckland describes Mr Duff's trial conduct as "*exemplary*". He attests to Mr Duff's honesty and integrity as an advocate.

[24] The President of the New Zealand Bar Association, Mr Paul Radich QC, described the significant time which Mr Duff had devoted to the Bar Association's work, stating "... *his judgement and wisdom on difficult matters was often defining*" and that "*his presence around the Counsel table added a great deal to the quality and integrity of its work.*"

[25] A number of lawyers whom Mr Duff has mentored describe the generous time and wisdom which he provided to them.

[26] In summary these are not the usual character references but rather, describe a practitioner who is a real rarity in the profession.

[27] Mr Farmer also submitted that there would be a negative effect on clients should Mr Duff be suspended because he has trials listed for all of 2022, which have been delayed for the past six months, during which jury trials have been suspended due to the COVID-19 Auckland lockdown.

[28] We recognise that the lockdown has seriously impacted on criminal barristers in particular, and that the flow-on effects to complainants, victims and defendants alike are very significant in terms of access to justice. To have to replace such an experienced and skilled advocate at short notice would, we acknowledge, be potentially very detrimental to clients.

[29] These are matters which we have weighed carefully against the need to denounce and deter professional misconduct in a legal professional.

[30] We also weigh the financial penalties which will flow simply from costs orders in this matter against the practitioner. He will be liable for costs in excess of \$25,000 which, against a background of six months of suspended jury trials will have a very significant impact on him.

[31] The Standards Committee put before us a number of other Tribunal decisions, however none were sufficiently analogous to assist us greatly. The charges brought under s 7(1)(b)(ii), as is under consideration here were quite different from those cited.

Fitness to Practise

[32] In the end, as set out in the *Dorbu* decision:⁵

“The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner’s conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. ...”

[33] Notwithstanding the findings in our liability decision our overall assessment of the practitioner is that he is indeed a fit and proper person to practise, and that to prevent him from doing so would risk a serious loss to his clients and employees alike. For those reasons we imposed the penalty orders set out above.

DATED at AUCKLAND this 21st day of January 2022

Judge DF Clarkson
Chair

⁵ *Dorbu v New Zealand Law Society* [2012] NZAR 481.

CENSURE

Mr Duff, in our decision of 2 September 2021, we made a finding of misconduct against you. This misconduct related to your business dealings unconnected with your legal practice.

We are aware of the high standards you set for yourself as a lawyer, and your disappointment that your personal conduct in this business dealing was found to lack integrity. We recognise that you were attempting to assist a friend. We also take into account that you have taken steps to ensure your failing is not repeated.

For these and other reasons set out in our decision of 21 January 2022, we determined not to suspend you from practice.

We deliver this formal censure, which will remain on your permanent record with the New Zealand Law Society, as a denunciation of your conduct, in the absence of suspension.