

**ORDER FOR PERMANENT SUPPRESSION OF NAME, MEDICAL AND PERSONAL  
INFORMATION, PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.**

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 1

LCDT 007/22

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**NATIONAL STANDARDS  
COMMITTEE 2**

Applicant

**AND**

**MR Y**

Practitioner

**CHAIR**

Ms D Clarkson

**MEMBERS OF TRIBUNAL**

Mr S Hunter KC

Ms K King

Ms M Noble

Prof D Scott

**HEARING** 18 October 2022

**HELD AT** Specialist Courts and Tribunals Centre, Auckland

**DATE OF FINAL SUBMISSIONS** 16 November 2022

**DATE OF DECISION** 12 January 2023

**COUNSEL**

Ms N Town for the Standards Committee

Mr P Napier and Mr W van Roosmalen for the Practitioner

**DECISION OF THE TRIBUNAL ON REASONS FOR PENALTY AND**  
**DECISION ON FINAL NAME SUPPRESSION**

***Introduction***

[1] Mr Y admitted three charges of misconduct and the factual bases for those charges. He appeared before us for a penalty hearing, the outcome of which was that the issue of non-publication was adjourned part-heard for further evidence to be adduced, while penalty was imposed on the charges.

[2] The lawyer was suspended for six months from 18 October 2022. He then provided undertakings to the Tribunal which can be recorded as protective of the public, but at this point are subject to the interim non-publication order.

***Nature of the offending***

[3] Given the acceptance by Mr Y of the particulars pleaded by the Standards Committee, we adopt the summary in [2.1] of the Standards Committee's penalty submissions as follows:<sup>1</sup>

...

- (a) **Charge One:** On six occasions between February and July 2020, Mr Y altered the details of an email that he had sent himself to make it appear as though the email had been sent to a third party on an earlier date. On two occasions, Mr Y sent these altered emails directly to clients (as well as to his employer). On or about 25 June 2020, Mr Y sent an altered email to a Labour Inspector. On three other occasions, Mr Y sent the altered emails to his employer. [Redacted.]
- (b) **Charge Two:** [Redacted.]
- (c) **Charge Three:** on or about 7 April 2021, Mr Y misled the Committee by stating [redacted.]

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<sup>1</sup> Those matters shown in square brackets will be redacted from any final published copy of this decision.

## **Factors**

[4] The factors which were considered in relation to penalty are as follows:

1. The level of gravity and culpability of the conduct.
2. Aggravating features.
3. Mitigating features.
4. Similar cases.
5. Penalty principles.

### **1: Gravity of the offending**

[5] This is the starting point for assessment of penalty.<sup>2</sup> It is accepted that this is serious misconduct, such that a suspension is a necessary consequence in order to meet the obligations set out in the legislation, and as described in the *Daniels*<sup>3</sup> decision. In that decision, having discussed the purpose of penalty in disciplinary proceedings, it was held that the obligation to ensure public confidence is maintained in the profession is fostered by the public observing that:

...the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards.<sup>4</sup>

[6] This particular misconduct strikes at the heart of professional obligations in at least three different ways:

- (a) The practitioner was dishonest to his clients and colleagues about his failure to undertake certain aspects of his work.
- (b) There was a failure by the practitioner to manage his personal life so that his [redacted] impinged on his professional performance.

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

<sup>3</sup> *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC).

<sup>4</sup> See above n 2 at [34].

- (c) The practitioner provided misleading information to his professional body, an aspect of misconduct, the seriousness of which has been previously well described by the Tribunal.<sup>5</sup>

[7] The culpability level is increased by the fact that the altering of the emails occurred on six occasions. We accept the submission of Ms Town that this was repeated and premeditated deception.

[8] The Standards Committee submits a starting point of 18 months suspension as proper, Mr Napier submitted that 12 months was appropriate, having regard to similar cases.

## ***2: Aggravating features***

[9] There are no aggravating features.

## ***3: Mitigating features***

[10] There are a number of mitigating features. Firstly, the practitioner took responsibility and admitted misconduct at an early stage. He has at no time attempted to minimise the seriousness of his misconduct and has apologised and shown significant remorse for his wrongdoing.

[11] Secondly, the practitioner has no previous disciplinary findings against him. Although he has not been in practice a great number of years, he is still entitled to credit for this clean record.

[12] Thirdly, Mr Y's [redacted] health and his willingness to address his [redacted] with ongoing professional and social supports in place speaks highly of him.

[13] [Redacted].

[14] The Committee is fair in its acceptance of these mitigating features and in its acknowledgement of the "interconnection between" the practitioner's ["redacted] struggles" and ["redacted"].

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<sup>5</sup> *Canterbury Westland Standards Committee v Horsley* [2014] NZLCDT 9.

[15] The protection of the public is, it is submitted by Mr Napier, promoted by his client's regular attendance at [redacted], and an experienced psychologist, (Mr Reeves), as well as the undertakings filed by him confirming that he will continue these interventions and supports as well as submitting to regular [redacted].

[16] We also regard the practitioner's willingness to undertake regular [redacted] as a positive indicator of his determination to address the problems which, at least in part, have led him to this point.<sup>6</sup>

[17] Having regard to his [redacted] the practitioner voluntarily cancelled his practising certificate in December of 2021 and therefore has been out of practice for over nine months. In these circumstances, that positive step is also to his credit.

#### **4: Similar cases**

[18] Counsel referred us to a number of cases where offending of a similar nature had occurred, namely *Pine*,<sup>7</sup> *Latton*,<sup>8</sup> *Jefferies*,<sup>9</sup> *Trogenza*<sup>10</sup> and *Horsley*.<sup>11</sup>

[19] We consider the conduct of the practitioner to be more serious than that of the practitioner in *Latton* who had deceived his client by email twice in relation to having sent a Calderbank letter, backdating the date of such letter. In that case, having regard to the practitioner's health issues, the Tribunal imposed a suspension of one month.

[20] But we consider this offending to be less serious than the *Pine* offending, where a false date was inserted into a Trust Deed and fabricated details on an A&I form were entered. In that matter the Tribunal considered 12 months to be an appropriate length of suspension. However, having regard to the practitioner having been voluntarily out of practice for eight months, only imposed a four month actual suspension by backdating the date of commencement of the suspension.

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<sup>6</sup> We record that we have received a good result for the first of these tests.

<sup>7</sup> *Wellington Standards Committee 1 v Pine* [2015] NZLCDT 24.

<sup>8</sup> *Auckland Standards Committee 1 v Latton* [2017] NZLCDT 14.

<sup>9</sup> *Jefferies v National Standards Committee* [2017] NZHC 1824.

<sup>10</sup> *Auckland Standards Committee 1 v Trogenza* [2016] NZLCDT 31.

<sup>11</sup> *Canterbury Westland Standards Committee v Horsley* [2014] NZLCDT 47.

[21] In relation to the second charge, the *Jefferies* matter, on appeal, resulted in a suspension of four months. We accept Mr Napier's submission that the mitigating features present in this case were not present in *Jefferies* and we note that Mr Jefferies also misled the Police at the time of his arrest.

[22] However, of course, in this case there are the other charges, including the misleading of the Standards Committee.

[23] In that regard, the *Horsley* matter is important but we accept the submission that Mr Horsley's conduct in misleading not only the Law Society, but also the Tribunal, in relation to crucial facts connected with his offending was much more serious than the present, relatively brief misleading of the Standards Committee about a [redacted] which had occurred.

### **5: Other penalty principles**

[24] We note that the *Horsley* decision is also relevant for the discussion on the importance of principles of deterrence in imposing penalty. Clearly the principle of deterrence, both general and specific, is one which has to be at the forefront of the Tribunal's mind in an exercise involving consideration of penalty for admitted charges of this kind. Practitioners as a whole must know, and this practitioner in particular must know, that conduct of this sort will be met by a strong disciplinary response.

[25] We also reminded ourselves of the principle of the least restrictive intervention required to be imposed to meet the purposes of the legislation, namely public protection and upholding of professional standards to maintain public confidence.<sup>12</sup>

### **Conclusion**

[26] Taking account of all of the above matters, and, having regard to the fact that Mr Y had been out of practice for over nine months, we considered that a suspension of six months was proper.

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<sup>12</sup> *Daniels*, see above n 3.

### ***Suppression of name and identifying details***

[27] The practitioner sought and was granted time to provide further evidence in support of his application for final name suppression. This has now been provided, in the form of an affidavit from his treating psychologist, Mr Reeves. His evidence, concerning Mr Y's particular vulnerabilities, together with the evidence of Dr Galpin, satisfy us that this is one of those rare cases where the personal interests of the practitioner outweigh the public interest in knowing the identity of the lawyer.

[28] The evidence of Mr Reeves about the particular nature of [redacted], is that, with the [*“redacted.” Removal of name suppression would likely place a substantial risk of this process unfolding.*] We accept this evidence places this lawyer's interests in a different category from the usual.

[29] We make this determination, mindful of the decision of the High Court in *H and F v Waikato Bay of Plenty Standards Committee 1 of the New Zealand Law Society*<sup>13</sup>, by which we are bound.

[30] After discussing the principles governing name suppression,<sup>14</sup> and of the protective nature of the jurisdiction (not as directly relevant in that case as the lawyer was retiring), the court held that:

“...the uncontradicted evidence of serious adverse consequences to the health of the practitioner decisively tips the balance against publication...”

[31] Given the [redacted] of this lawyer, and noting the need to support him in his positive efforts for rehabilitation, we consider there is clear evidence that the personal interests of Mr Y should prevail in this instance.

[32] There will be an order under s 240 preventing the publication of Mr Y's name and all medical and personal information relating to his health.

[33] The remaining orders made are recorded in our Oral decision of 18 October.

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<sup>13</sup> *H and F v Waikato Bay of Plenty Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 2090.

<sup>14</sup> Section 240(1) LCA: “If the Disciplinary Tribunal is of the opinion that **it is proper** to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make.....(c) an order prohibiting the publication of the name or any particulars of the affairs of the person charged or any other person...” Emphasis added.

**Costs**

[34] We consider that it is proper for Mr Y to bear the costs of this prosecution. We make orders against him for the Standards Committee costs and reimbursement of the Tribunal costs, mindful that the New Zealand Law Society will take account of the practitioner's personal circumstances in reaching arrangements for the payment of those costs.

**Summary of orders**

1. Mr Y is suspended from practice as a barrister or solicitor for six months from 18 October 2022. (Pursuant to ss 242(1)(e) and 244 of the Lawyers and Conveyancers Act 2006 (the Act)).
2. We permanently suppress Mr Y's name, medical and personal information, apart from the publication necessary to give effect to the s 242(1)(e) order. (Pursuant to s 240 of the Act).
3. Mr Y is to pay the costs of the Standards Committee in the sum of \$9,307.61. (Pursuant to s 249 of the Act).
4. The New Zealand Law Society are to pay the Tribunal costs in the sum of \$3,551.00. (Pursuant to s 257 of the Act).
5. Mr Y is to reimburse the New Zealand Law Society for the full sum of the Tribunal costs. (Pursuant to s 249 of the Act).

**DATED** at AUCKLAND this 12<sup>th</sup> day of January 2023

DF Clarkson  
Chairperson