

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 16

LCDT 005/22 and 012/22

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**GENERAL STANDARDS
COMMITTEE 1 and WAIKATO
BAY OF PLENTY STANDARDS
COMMITTEE 1**
Applicant

AND

JEREMY JAMES McGUIRE
Respondent

CHAIR

Ms D Clarkson

MEMBERS OF TRIBUNAL

Ms N McMahon

Ms M Scholtens KC

Prof D Scott

Dr D Tulloch

HEARING 19 April 2023

HELD AT Tribunals Unit, Wellington

DATE OF DECISION 4 May 2023

COUNSEL

Mr P Collins for the Standards Committee

Mr J McGuire the Respondent Practitioner

DECISION OF THE TRIBUNAL ON LIABILITY

What this is about

[1] In this case the Tribunal had the narrow task of determining whether the admitted conduct (breaches of orders made by Standards Committees) comprised misconduct, or the lesser alternative of unsatisfactory conduct.

[2] The dollar amounts involved are minimal: in the first charge, Mr McGuire was ordered by the Standards Committee to reduce his fee and refund the client \$150.

[3] In the second charge, he was ordered to pay compensation to another client of \$1,919.50.

[4] Costs and fines were also imposed but are not the subject of the charges, despite remaining unpaid.

[5] Mr McGuire adamantly refuses to comply with the Standards Committees' orders because he says he does not agree with them.

What happened before the hearing

[6] During a case management prehearing conference, it became apparent that Mr McGuire wished to argue the merits of each of the Standards Committees' orders, the non-compliance of which was the subject of the charges before the Tribunal.

[7] The Chairperson explained to Mr McGuire that the Tribunal's jurisdiction did not extend to relitigating the subject of the Standards Committees' orders, rather that it was restricted to an examination of the issue of compliance only. This discussion was recorded in a Minute on 28 June 2022, which described the Tribunal processes and the limit to jurisdiction in charges relating to non-compliance with orders.

[8] Mr McGuire then applied for judicial review of the Chairperson's direction, and the Standards Committees' and Legal Complaints Review Officer's (LCRO) respective

decisions in relation to the orders, the non-compliance with which was the focus of the Tribunal.

[9] In a judgment of 20 February 2023, his Honour Palmer J dismissed the application for judicial review in respect of all three (and two other) challenges.

[10] In summarising his reasons, His Honour held:¹

- (a) First, there are charges and complaints that will be heard by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) in April 2023. Their merits relate to Mr McGuire's non-compliance with the previous orders. As long as the previous orders are valid, Mr McGuire cannot relitigate the correctness of those orders in a hearing concerning his non-compliance. The Chair of the Disciplinary Tribunal did not err about this in his [sic] minute of 28 June 2022.

[11] His Honour went on to uphold the validity of the two orders which were the subject of the charges before the Tribunal.

[12] Later in the decision, Palmer J expanded on his earlier summary:

Tribunal jurisdiction

[7] The upcoming Tribunal hearing concerns Mr McGuire's non-compliance with previous orders. Therefore, the relevant facts for the upcoming hearing are those relating to his non-compliance. This is what I understand the Tribunal Chair to be saying in the minute. The Tribunal decisions to which Mr McGuire refers, in support of his submissions, traverse the merits of the charges before the Tribunal. They do not concern non-compliance with a previous order.

[8] If the original orders against Mr McGuire are invalid, having been overturned by the LCRO on appeal or quashed by this Court on judicial review, that would be relevant to non-compliance. Or Mr McGuire may be able to explain his non-compliance in some other way. But Mr McGuire cannot otherwise relitigate the correctness of extant orders in a hearing of subsequent charges. There was no mistake of fact, error of law, breach of legitimate expectation, or breach of natural justice in the Chair's minute. I decline Mr McGuire's application for judicial review of that decision.

[13] Despite this very clear ruling of the High Court, binding upon the parties and the Tribunal, Mr McGuire attempted to address the merits of the original orders both in his evidence and in his submissions. We must put those topics to one side.

¹ *McGuire v Central Standards Committee* [2023] NZHC 242 at [1](a).

[14] The charges which set out the particulars relied on are annexed as Appendix A and B respectively.

[15] Therefore, the issues remaining for determination by the Tribunal are:

1. Does the conduct relating to the non-compliance of the order made on 15 June 2021 (charge 005/22) reach the standard of misconduct?
2. If not, is it unsatisfactory conduct?
3. Does the conduct relating to the non-compliance of the order made on 3 September 2021 (charge 012/22) reach the standard of misconduct?
4. If not, is it unsatisfactory conduct?

Issue 1 – is it misconduct?

[16] Following a complaint by Mr B, the Standards Committee determined on 14 May 2018 that Mr McGuire's standard of advice fell below the expected standard of a reasonably competent lawyer and amounted to unsatisfactory conduct.

[17] On 28 August 2018, the Standards Committee ordered Mr McGuire to be censured, pay a fine of \$5,000 and provide \$1,919.50 in compensation to the complainant.

[18] Mr McGuire sought a review by the LCRO. On 25 March 2020, the LCRO upheld the finding of unsatisfactory conduct against the practitioner. Mr B had also cross-applied to the LCRO seeking a greater award of compensation. However, that was unsuccessful also and therefore the orders made by the Standards Committee remained in force.

[19] For the avoidance of any doubt, we also refer to the decision of Palmer J which addressed the orders arising from the unsatisfactory conduct finding when he stated:²

[31] Even if the LCRO was wrong about Mr McGuire's cross-application, it stated that, of course, success in relation to the unsatisfactory conduct finding

² See above n 1, at [31].

would have caused the penalty and remedy orders to fall away. And it stated that if it had concluded that the conduct determination should be supported but in limited terms that called for re-examination of the nature and extent of the penalty and costs orders, it would have revised those orders. Furthermore, there is no evidence of Mr McGuire making submissions about penalty that called for consideration other than on that basis. Accordingly, any error by the LCRO regarding the cross-application did not make a material difference to its decision. I decline the application on this ground.

[20] Mr McGuire refused to pay the first compensation order and, after communication with the New Zealand Law Society Complaints Service, Mr B was forced to take enforcement action in the District Court to obtain payment of the compensation order.

[21] Mr McGuire applied, *ex parte*, to the District Court for a stay of the enforcement application made by Mr B.

[22] Mr McGuire's application was dismissed in a decision on 30 June 2020.³ In the course of that decision, the judge was critical of the evidence filed by Mr McGuire in support of his application. He referred to a lack of candour, referring to Mr McGuire's statement:⁴

I have no idea why Mr B says I am a judgment debtor for a debt that can be enforced in this Court because I don't have any details of how it was actually incurred.

[23] And, in filing his application, Mr McGuire had not attached the LCRO decision for the judge. The judge pointed out that he only knew of that decision because it had been filed by Mr B in support of his enforcement application. The judge emphasised Mr McGuire's "duty of candour when filing a without notice interlocutory application ...".⁵

[24] And at [16], His Honour said:

In short, Mr McGuire knows what debt Mr B seeks to enforce, and why. He had a duty to disclose all facts relating to that claim, including that the debt Mr B seeks to enforce is a debt established and confirmed through the Law Practitioner's Act [sic] complaints process.

³ *McGuire v Palmerston North District Court and B* [2020] NZDC 12126.

⁴ See above n 3 at [11].

⁵ See above n 3 at [15].

[25] Mr McGuire then sought to recall the judgment. That application was also dismissed.⁶ His Honour Judge Rowe pointed out that Mr McGuire had been required to pay the funds into court to avoid seizure of his property, and that they were now directly payable to Mr B.

[26] In that manner, by means of court order, Mr B received the first compensation ordered in his favour.

[27] That was not the end of the matter however, and Mr McGuire appealed both decisions to the High Court. This appeal was unsuccessful, and his Honour Cooke J endorsed the District Court Judge's comments about the misleading nature of his evidence in support of his application for a stay.⁷

[28] Having been put to all this time and expense in order to obtain payment of a compensation order made in his favour, Mr B made a further complaint against Mr McGuire concerning the practitioner's non-compliance with the first compensation order.

[29] Once again, the Standards Committee made a finding of unsatisfactory conduct because of the delay in paying the first compensation order and made further orders against Mr McGuire that he pay:

(a) Mr B \$1,500 compensation (the second compensation order).

(b) The New Zealand Law Society costs of \$1,000.

[30] The practitioner refused to pay the second compensation order and following an own motion investigation by the Standards Committee in relation to non-payment of the second compensation order, the matter was referred to this Tribunal and forms the substance of charge 012/22.

[31] Mr McGuire admits he did not pay the second compensation order and still appears to dispute the fact that Mr B was entitled to receive the funds paid into court in respect of the first compensation order.

⁶ *McGuire v B* [2020] NZDC 14942 (27 July 2020).

⁷ *McGuire v B* [2021] NZHC 488 (Cooke J, 12 March 2021) at [34].

[32] Mr McGuire makes no excuse for his non-payments other than his disagreement with the Standards Committee orders. He made brief submissions that this ought not to be regarded as misconduct because his disobedience of the Lawyers and Conveyancers Act (LCA)⁸ was neither reckless nor wilful. He stated that he “could not live with himself” if he made the payment sought in both this matter and in the next matter to be discussed.

[33] In addressing the issue of the standard of culpability, Mr Collins, for the Standards Committees, referred the Tribunal to a number of decisions where misconduct had been found following the breach of Standards Committee orders.⁹

[34] Mr Collins also addressed us on a more recent decision of the Tribunal where breach of an order was found at the level of unsatisfactory conduct (the *Kennelly* decision).¹⁰

[35] In the *Kennelly* matter, the practitioner had, on notification of the charge, complied with the Standards Committee order. This is clearly distinguishable from the present case where the practitioner is still steadfast in his refusal to make payments.

[36] Indeed, Mr McGuire himself, in referring to the *Kennelly* decision, submitted that it was distinguishable because “Mr Kennelly admitted wrong, but I have not and do not”.¹¹

[37] Mr McGuire is charged with misconduct under both subsections of s 7(1)(a) – (i) and (ii). The former involves conduct that “... would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable”. Section 7(1)(a)(ii) is concerned with a wilful or reckless contravention of the fundamental obligation of the LCA.¹²

[38] Mr Collins submits that Mr McGuire’s refusal to comply with Standards Committee orders, which have been endorsed by the LCRO, the District Court and the

⁸ s 4(a) of the Lawyers and Conveyancers Act 2006 (the Act) which contains the obligation to uphold the rule of law and facilitate the administration of justice.

⁹ *Auckland Standards Committee 2 v Fox* [2017] NZLCDT 26, *Central Standards Committee 3 v S* [2018] NZLCDT 12, *Auckland Standards Committee 2 v Name Suppressed* [2018] NZLCDT 19 and *Hong v Auckland Standards Committee No 3* NZHC [2014] 2871.

¹⁰ *Auckland Standards Committee 4 v Kennelly* [2021] NZLCDT 8.

¹¹ Submissions of the practitioner (9 April 2023) at [19].

¹² See above n 8.

High Court successively, comprises a contravention of Mr McGuire's "fundamental obligation under s 4 of the Act to uphold the rule of law and to facilitate the administration of justice in Aotearoa New Zealand".¹³

[39] Mr Collins further submits that the "hard-headed and obdurate stance" taken by Mr McGuire has meant that the complainants "...have been put to extraordinary lengths to obtain their entitlement and, even now after the dismissal of the judicial review application, the practitioner refuses to pay".

[40] We agree with Mr Collins' submissions. Indeed, we find that Mr McGuire's mistreatment of his former clients goes beyond putting them to extraordinary trouble and expense.¹⁴ In his affidavit evidence and in his submissions, Mr McGuire directly attacked the integrity and credibility of both complainants.

[41] Furthermore, he required both complainants to appear for cross-examination in a further attempt to impugn their credibility and integrity. Given the narrow confines of the hearing, there was nothing informative they could possibly have added.

[42] Mr McGuire went even further. Shortly before the hearing, he made contact with one of the complainant's estranged family members to let her know about the hearing, once again in an effort to undermine the complainant's credibility. This was arguably a breach of his confidentiality obligations to that complainant.

[43] We cannot see how Mr McGuire's actions can be categorised as anything other than wilful. In the very late stages of the hearing, he indicated that if his current appeal to the Court of Appeal from the judicial review decision was unsuccessful, he would make payment. That is the first time in the five years while this dispute has been on foot that he has made any such offer. We regard the offer with considerable scepticism.

[44] We consider that his refusal to comply with a lawful order made by his professional body does indeed show a wilful breach of his obligations under s 4 of the

¹³ Opening submissions for the Standards Committee at [5.2](b).

¹⁴ The complainant, Mr B, gave a personal address to the Tribunal detailing the stress and cost in pursuing these matters, including many lost days from work for the various court and tribunal appearances which cumulatively had caused him considerable harm.

Act to uphold the rule of law. Mr McGuire appears to regard himself as above the law and correct in his assertions, while everyone else is wrong.

[45] Given the approach he has taken in avoiding payment, defending enforcement proceedings his former client was required to bring, and in persistently attempting to impugn his client's credibility in an attempt to avoid his responsibilities, we also consider he has behaved in a disgraceful and dishonourable manner¹⁵. We find the first charge (005/22) proved to the standard of misconduct.

Issue 2

[46] This issue no longer requires consideration.

Issue 3

[47] On 15 June 2021, the Standards Committee found the practitioner guilty of unsatisfactory conduct and ordered him to reduce his fee and refund \$150 to Ms Y.

[48] Mr McGuire refused to refund the money to Ms Y, who then complained to the Lawyers Complaints Service in October 2021, about the practitioner's non-compliance.

[49] Ms Y had a number of email exchanges with Mr McGuire in which he was rude and condescending to her.

[50] Mr McGuire's attitude is exemplified in one of the emails he sent to the Complaints Service where he said, "The decision is wrong and I fail to understand why I have to apply to review something that I absolutely believe to be wrong..."

[51] The non-compliance hearing was in February 2022 and the Standards Committee determined to refer the matter to the Tribunal. Mr McGuire has continued to deny that he owes the complainant the ordered sum and refuses to pay it.

[52] For all of the reasons enunciated in relation to issue 1 concerning the standard to be established for misconduct, we consider that the Standards Committee has also proved this charge on the balance of probabilities to be established at the level of

¹⁵ Thus finding misconduct by the alternative route also.

misconduct. Again, the obdurate refusal by the practitioner and improper challenges to the order (which he did not seek to have reviewed by the LCRO) characterise his wilful disobedience of it.

Issue 4

[53] This issue does not require consideration.

Summary of decisions

1. We find the practitioner guilty of misconduct on each of the charges laid under reference numbers 005/22 and 012/22. The parties are to confer on whether a penalty hearing can be conducted on the papers or is required to be in person.
2. The Standards Committee is to file its submissions on penalty within 21 days from the date of release of this decision.
3. The practitioner is to file his submissions in response within a further 14 days.
4. The matter will then be determined on the papers or set down for a half day hearing.

DATED at AUCKLAND this 4th day of May 2023

DF Clarkson
Chairperson

Charge Laid by General Standards Committee 1

Dated: 29 March 2022

TO: The Chairperson of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal

AND TO: Jeremy James McGuire, barrister and solicitor, of Palmerston North (the practitioner)

General Standards Committee 1 charges the practitioner with misconduct pursuant to s.7(1)(a)(i)&(ii) of the Lawyers and Conveyancers Act 2006 (the Act) concerning noncompliance with orders the Standards Committee made on 15 June 2021.

Particulars

1. The orders were:
 - (a) That he reduce the fee he charged a client, [REDACTED], for services he provided in connection with the sale of [REDACTED] property, from \$949 to \$799 (both amounts including GST although incorrectly stated in the order as being exclusive of GST), pursuant to s.156(1)(e) of the Act; and
 - (b) That he refund \$150 to [REDACTED], pursuant to s.156(1)(g) of the Act.
2. The practitioner's non-compliance was (and continues to be) contrary to:
 - (a) His duty as a lawyer and as an officer of the court to comply with statutory orders of the Standards Committee, subject only to modification or reversal on review, which did not occur in this case;
 - (b) His fundamental duty to uphold the rule of law and facilitate the administration of justice pursuant to s.4(a) of the Act; and
 - (c) In circumstances of his continuing non-compliance, from 1 July 2021:
 - (i) Rule 10.2 of the *Conduct and Client Care Rules* and the requirement not to engage in conduct that tends to bring the profession into disrepute; and
 - (ii) Rule 10.14 of the *Conduct and Client Care Rules* and the obligation to act in a way that does not obstruct or hinder the regulatory functions of the Law Society.

Dated: 29 March 2022

.....
 P N Collins
 Counsel for General Standards Committee 1

Charge Laid by Waikato Bay of Plenty Standards Committee 1
Dated: 2 June 2022

TO: The Chairperson of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal

AND TO: Jeremy James McGuire, barrister and solicitor, of Palmerston North (the practitioner)

Waikato Bay of Plenty Standards Committee 1 charges the practitioner with misconduct pursuant to s.7(1)(a)(i)&(ii) of the Lawyers and Conveyancers Act 2006 (the Act) concerning his non-compliance with orders it made against the practitioner following a finding of unsatisfactory conduct in file 20548 by Notice of Determination dated 3 September 2021.

Particulars

1. The practitioner was at all relevant times practising as a sole practitioner barrister and solicitor at Palmerston North.
2. On 14 May and 28 August 2018, Central Standards Committee 3 made Determinations of liability and penalty respectively against the practitioner:
 - (a) Finding that he had engaged in unsatisfactory conduct following a complaint by a former client [REDACTED]; and
 - (b) Ordering him to pay compensation to [REDACTED] in the sum of \$1,919.50, pursuant to s.156(1)(d) (the First Compensation Order).
3. The practitioner applied to the Legal Complaints Review Officer to review the unsatisfactory conduct finding. That review application was dismissed, and the Determination of the Standards Committee was confirmed, in a decision dated 25 March 2020.
4. The practitioner did not pay the First Compensation Order and he applied to the District Court at Palmerston North to stay an enforcement application made by [REDACTED] which was the subject of the following judgments:
 - (a) *McGuire v Palmerston North District Court and [REDACTED]* [2020] NZDC 12126 (30 June 2020) dismissing the practitioner's without notice application to stay the enforcement order;
 - (b) *McGuire v [REDACTED]* [2020] NZDC 14942 (27 July 2020) dismissing the practitioner's application to recall the earlier judgment, and inviting [REDACTED] to provide his bank details to the Registrar so that money paid into Court by the practitioner could be paid out to him in satisfaction of the First Compensation Order; and
 - (c) *McGuire v [REDACTED]* [2021] NZHC 488 (Cooke J, 12 March 2021) dismissing the practitioner's appeals against the two District Court judgments.
5. On 6 May 2020 [REDACTED] made a further complaint to the Lawyers Complaints Service concerning the practitioner's non-compliance with the First Compensation Order.
6. [REDACTED] received funds to pay the first compensation order, from money paid into the District Court in the context of the practitioner's stay application which was the subject of the judgment of the District Court on 30 June 2020.

7. On 3 September 2021 Waikato Bay of Plenty Standards Committee 1 determined that the practitioner had engaged in unsatisfactory conduct because of the delay in paying the first compensation order and made orders against him:
 - (a) That he pay compensation of \$1,500 to [REDACTED] pursuant to s.156(1)(d) of the Act (the Second Compensation Order); and
 - (b) That he pay the New Zealand Law Society costs of \$1,000 pursuant to s.156(1)(n) of the Act.

8. The practitioner has not complied with either of those orders (the payment of the second compensation order or the costs order) contrary to:
 - (a) His duty as a lawyer and as an officer of the court to comply with statutory orders of the Standards Committee, subject only to modification or reversal on review, which did not occur in either case;
 - (b) His fundamental duty to uphold the rule of law and facilitate the administration of justice pursuant to s.4(a) of the Act;
 - (c) Rule 10.2 of the *Conduct and Client Care Rules* and the prohibition against engaging in conduct that tends to bring the profession into disrepute; and
 - (d) Rule 10.14 of the *Conduct and Client Care Rules* and the obligation to act in a way that does not obstruct or hinder the regulatory functions of the Law Society.

[REDACTED]

Dated: 2 June 2022

.....
 P N Collins
 Counsel for Waikato Bay of Plenty Standards Committee 1