

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 17
LCDT 019/22, 020/22

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WELLINGTON STANDARDS
COMMITTEE 2**

Applicant

AND

ALWYN O'CONNOR

Respondent

DEPUTY CHAIR

Dr J G Adams

MEMBERS OF TRIBUNAL

Ms J Gray

Ms M Scholtens KC

Prof D Scott

Dr D Tulloch

HEARING 1-3 May 2023

HELD AT Tribunals Unit, Wellington

DATE OF DECISION 3 May 2023

COUNSEL

Ms N Pender and Ms N Town for the Standards Committee

Mr G Paine for the Respondent Practitioner

ORAL DECISION RE INTERIM SUSPENSION

[1] Having heard this case over the three day period and attending closely to the witnesses and to the submissions advanced, we've not only found Mr O'Connor guilty in respect of the charges and in the case of each client at the more grave level advanced by the Standards Committee, but having got to that point, we raised with counsel the possibility of this being a case in which we should make an order for interim suspension of Mr O'Connor pursuant to section 245 of the Lawyers and Conveyancers Act 2006.

[2] There are two charges, one in relation to each of the clients involved. The most grave matter was that concerning Mr Coles, where Mr O'Connor fell short of proper conduct in a number of startling ways. Mr Coles was a vulnerable client, socially isolated and having drug use and mental health issues, he was in contact first with Mr O'Connor.

[3] Mr O'Connor acted for him in a number of important events in Mr Coles' life and did so without providing a letter of engagement to clarify the terms of the arrangement. There was the matter of Mr Coles' eviction from his late father's home. There was a sentencing for drug charges, a trial which may have been a week long trial for a domestic violence matter. There were Parole Board hearings whilst Mr Coles was in prison for a little over two years and there was a careless driving charge.

[4] Against the background of his acting for Mr Coles, Mr O'Connor regarded the relationship as one of friendship. He took control of Mr Coles' bank account, which had I think in excess of \$150,000 in it, obtained from the net proceeds of his share in his father's estate I think. Mr O'Connor treated those funds as his own. He accepted the use of those funds and his client's offer - that he use what he needed - without ensuring that his client had independent legal advice. This is a situation in which Mr O'Connor was inevitably in a situation of conflict. He failed to account to his client.

[5] He failed to co-operate properly with the Standards Committee and obfuscated in relation to relevant financial records. He failed to provide sufficient records to the Tribunal which meant that the Standards Committee was obliged to do its best with the partial material he had made available. If I haven't mentioned it already, he failed to account to his client beyond saying that he could work it out from the bank records.

[6] We have found that he lied to us in relation to material matters and in particular we find that he was the person responsible for the various bank withdrawals referred to in the hearing as schedule 2.

[7] The Standards Committee picked up the overture we have made, and applies for an order for interim suspension from practice under section 245.

[8] Mr Paine submits that Mr O'Connor should not be penalised for prejudice in this way in the interim because, in his submission, the most serious charge, that relating to Mr Coles, did not involve his conduct *as a lawyer*. We appreciate the force of that submission in relation to those technical lawyering aspects of for example representing Mr Coles in court or at Parole Board hearings and the like but, as Ms Pender points out, character is an important component of being a fit and proper person to practise. It is a flaw in Mr O'Connor's case that he does not seem to appreciate that the conduct in which he engaged in taking over Mr Coles' money and failing to do those things that he was obliged to do like securing payments into a trust account and accounting properly to his client, were all defaults in his character as a lawyer.

[9] We do not accept that he can continue to advance the view that he is excused from behaving as a lawyer should properly behave and pay heed to the sections of the Act and the rules because he characterises the relationship as one of friendship. This is, in fact, to reinforce the error that got him here in the first place.

[10] We comment that this error on Mr O'Connor's part reinforces our concern about his continuing to practise because his behaviour in respect of both the clients relevant to this hearing has been woefully lax. Accordingly, we are of the view (referring to section 245(2)(a)) that it is necessary or desirable to suspend him from practice as soon as practicable, having regard to the interests of the public. Put another way, our finding of his present orientation based on our assessment of him in the hearing is that he is not currently a fit and proper person to practise.

[11] We make an order suspending him from practice in the interim pending a penalty hearing. The order should be delayed for a short time to enable him to sort out his court obligations. The interim suspension order will take effect from 5pm on Wednesday 10 May provided that we are willing to review that in the light of any affidavit that Mr O'Connor provides to us by tomorrow night, such affidavit being the vehicle for setting out his upcoming court obligations in the near future and his reasons why those cannot be transferred to another practitioner.

[12] Pursuant to section 245(3) the fact of the interim suspension order should not be published generally for a period of 14 days from today. That provision is to safeguard his reputation link to his appeal rights.

[13] On that basis then we adjourn this matter for fixing a date for the penalty hearing and invite counsel to communicate initially with the secretary of the Tribunal as to the likely time required and to allocate a suitable date.

DATED at WELLINGTON this 3rd day of May 2023

Dr JG Adams
Deputy Chair