

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 20

LCDT 016/21

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WELLINGTON STANDARDS
COMMITTEE 2**

Applicant

AND

CHRISTOPHER TENNET

Respondent

DEPUTY CHAIR

Dr J G Adams

MEMBERS OF TRIBUNAL

Mr H Matthews

Ms G Phipps

Mr K Raureti

Ms M Scholtens KC

HEARING 3 March 2023

HELD AT Tribunals Unit, Wellington

DATE OF DECISION 17 May 2023

COUNSEL

Mr M J Mortimer-Wang for the Standards Committee

Mr W C Pyke for the Respondent

DECISION OF THE TRIBUNAL RE PENALTY

[1] Mr Tennet falsely overstated, in a bill, the cost of a report on his client's substance use at \$3,450 when he had only incurred cost of \$1,000. Then, when he received the report electronically, he deleted it and failed to alert the client or her subsequent lawyer. At the hearing, Mr Tennet, who had taken a combative approach to his defence, finally admitted that the representation in the bill was a lie. The lie was also embedded in surrounding communications he had with the client. This was not an invoicing, clerical or office error. It was not conduct influenced by any other person. This was Mr Tennet's own, deliberate conduct.¹

[2] Mr Tennet is a seasoned criminal lawyer who has served as duty solicitor, mentored younger lawyers, and served on committees and charitable bodies. He was formerly a member of an Ethics Committee. His misconduct seems puzzling. He struggled to advance a sound reason for it. His many referees seemed puzzled too. Many could not believe it; some thought his conduct must have been influenced by another person.

[3] To reach a balanced response, we must consider:

- what caused the misconduct;
- the gravity of the conduct;
- aggravating circumstances; and
- mitigating circumstances.

¹ See our liability decision [2022] NZLCDT 37, especially at [27].

What caused the misconduct?

[4] Mr Tennet's misconduct, both in rendering a dishonest bill and in destroying his client's property in the report, seems difficult to reconcile with his depth of experience, his public service in the many ways recorded in his curriculum vitae, his mentorship of younger lawyers, and his reputation with his referees of generosity. His misconduct in this case appears to be at complete odds with other reported behaviours. We have deliberated on this question for months since the liability hearing in September 2022. After the penalty hearing, Mr Tennet requested and obtained leave to obtain and file a specialist report.

[5] We reject the unconvincing gloss that Mr Tennet tendered at the liability hearing – that he sent the bill merely as a means of engaging the client in discussion. His misconduct was aggravated because he knew she was vulnerable, impecunious, and had recently been beaten by her partner, a man for whom Mr Tennet had formerly acted.

[6] At the end of his evidence at the penalty hearing, Mr Tennet asked us to hear additional evidence that he felt might assist us in determining why he had done what he did. That evidence attempted to suggest his conduct was caused by an unhappy personal relationship. We do not find that proposition convincing. In our view, Mr Tennet was then casting about to find a reason or excuse for his behaviour that we could latch on to. We have found a simpler reason that fits with other factors.

[7] We did wonder whether he may have suffered some cognitive impairment because his behaviour in this case fits with his other disciplinary history, all of which is within recent years. But the report from consultative psychiatrist Dr Romans² effectively rules out cognitive deterioration.

[8] Mr Tennet's proposition, or perhaps gesture, that he may have been affected by an unhappy personal relationship is further weakened by Dr Roman's opinion that he does not suffer from Post Traumatic Stress Disorder.

[9] We take sympathetic notice of the many referees who spoke about his willing assistance and his skill and knowledge of criminal law. We take sympathetic notice of

² 20 April 2023, filed by Mr Tennet's counsel.

reports of his generosity (for example, buying a rehabilitating client a computer to assist her with studies). We note representations from clients who express their confidence and faith in him – the trusting kind of relationship that one expects from a lawyer. Sadly his behaviour in this case so cruelly undercut that standard. Nevertheless our assessment of these acts must reconcile with these positive facets, the sides of him that several others have seen – in some cases, for many years.

[10] We have also considered Mr Tennet’s previous disciplinary history. In 2021, he was censured and fined \$1,000 for failing to follow instructions and advance in a timely manner a proceeding for a serving prisoner. The client was vulnerable by reason of his incarceration. In 2021, he was censured and fined \$2,000 for harassing correspondence with Department of Corrections staff. In 2022, he was censured again, and fined \$3,000 and ordered to apologise for personal attacks on an employee of Legal Aid Services. The Legal Complaints Review Officer (LCRO) reviewed the decision and increased the fine to \$10,000. In doing so, the LCRO characterised the severity and duration of the offensive behaviour as “prolonged bullying”.

[11] We find that, at least in recent years, Mr Tennet, although capable of generous behaviour and showing a kindly face to peers, has acted in ways that are contrary to those that reflect a fit and proper person having the privileges of being a lawyer. Those on whom his antipathy or neglect have fallen can be described as persons he might regard as his inferiors. We discern his behaviour in the present case to be aligned with that in the Corrections and Legal Aid matters, and probably that involving the prisoner.

[12] In short, we find his misconduct in the present case was self-indulgent pique. He was annoyed with his client and failed to regulate his responses. Hence the false bill that, along with associated communications about this constituted a breach of trust; and the wilful destruction of the report which caused her to go through the whole exercise again, albeit via the free process provided by the State.

[13] We note Dr Romans thinks Mr Tennet may suffer from an extent of ADHD but, if that is correct, it does not explain why he has produced a series of destructive behaviours in recent years whereas he apparently did not before. We find he hit out at those he thought he could hurt with impunity.

Gravity of the misconduct

[14] We accept the submission of Mr Mortimer-Wang that the combination of behaviours in this case - behaviours that so fundamentally breached the fiduciary client-lawyer relationship and breached the trust the client should expect to have in her lawyer - bring strike-off into play. These behaviours are not consonant with Mr Tennet being a fit and proper person to practise as a lawyer.

[15] Against that, we note his many years of service as a lawyer and as a contributor to his community, both legal and extra-legal. We note the facets revealed by the numerous, carefully written references. The referees have read our liability decision. It is apparent that the references are individually written. They have had considerable impact on the orders we make. We have decided that Mr Tennet should be offered the opportunity of redemption.

[16] We have determined on a suite of orders: censure, supervision, and suspension. We shall explain these in more detail below. Were it not for the impact of his referees, we would have regarded the appropriate term of suspension (within that suite of orders) as 15 months. Taking into account the mitigating features, we reduce this to 12 months. That is a suitable period to mark the gravity of his conduct, to require him to reflect and recalibrate his approach to clients and those with whom he comes into contact in his work.

Aggravating circumstances

[17] We have already noted and taken into account the aggravating features, including the vulnerability of this client, and the resultant imbalance of power. That she thought the bill was intended at face value reflects in her complaint to the person who eventually completed her report, the complainant.

Mitigating circumstances

[18] The client never paid the bill and therefore suffered no financial loss. It is possible that Mr Tennet did not expect her to pay it because she had no means. This is of small moment because his actions were toxic of the relationship of trust she was entitled to expect in her lawyer.

[19] We have already noted his years of good service and his generally good reputation with many who have not seen the side of him displayed in cases like the present.

Discussion

[20] Section 3 of the Lawyers and Conveyancers Act 2006 (LCA) guides much of the Tribunal's work. We must be alive to public confidence in the provision of legal services. We must protect consumers. Where a seasoned practitioner behaves arrogantly and dishonestly in dealing with a client, as here, the matter cannot be taken lightly. Mr Tennet knows this. His default is consequently embarrassing for him.

[21] The usual principles apply. The orders should be the minimum necessary to achieve proper purposes. Punishment is not the aim of the orders although orders will often have that effect.³ Deterrence of other practitioners can be a feature.

[22] Although Mr Tennet has already been censured three times, a censure here sends a message to other practitioners, and the public, that the Tribunal heralds these serious defaults from proper standards of practice.

[23] We do not regard a fine as a sensible component in this case. The gravity of the misconduct requires suspension as a major component of our penalty response. Mr Tennet has a recent fine of \$10,000 imposed by the Legal Complaints Review Officer (LCRO). He will have to pay costs, both to reimburse the Standards Committee and to indemnify the New Zealand Law Society (NZLS) in respect of the Tribunal costs. Because Mr Tennet took a combative approach until Mr Pyke took over his representation, the costs are much higher than might have been the case had Mr Tennet acknowledged what was revealed (and admitted by him) at the liability hearing.

[24] Mr Pyke proposed supervision as a component. We make it plain that we do not regard either aspect of misconduct in this case to have been slips about handling money or slack office practice. The defaults fall squarely within the realm of ethical standards. We wish to do our best to ensure that Mr Tennet's return to legal practice

³ *Dorbu v NZ Law Society (No 2)* [2012] NZAR 481; *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850; *Hart v Auckland Standards Committee 1* [2013] 3 NZLR 103.

will direct him to remember proper standards of client interaction. For that reason, we have devised two components, one by a senior practitioner and the other by a suitable therapist – to work in combination.

[25] We do not agree that supervision by practitioners who are friends or former mentees of Mr Tennet will be effective. The supervision must be by someone of standing who can be at arms-length.

Orders

[26] The Tribunal make the following orders:

1. Mr Tennet is censured in terms set out in Appendix 1 to this decision.
2. Mr Tennet is suspended from practice as a barrister or as a solicitor for a period of 12 months commencing at 6pm on 22 June 2023 (pursuant to ss 242(1)(e) and 244 of the LCA). This period takes into account a number of matters which, on balance, we consider it in the public interest that Mr Tennet is permitted to continue to act for that limited period.
3. On return to practice, Mr Tennet shall be supervised as set out below by a senior practitioner who is accepted as appropriate by the Tribunal on recommendation of the New Zealand Law Society (the supervisor). This order and the terms that follow are made under s 156(1)(l) of the LCA. The terms of his supervision are as follows:
 - (i) He is to have eight consecutive weekly meetings with his supervisor followed by meetings no less than monthly on four consecutive occasions (the meetings).
 - (ii) In those meetings he will:
 - (a) Disclose any occasions where he has encountered situations where he has had to make decisions that require a knowledge of ethics and seek the supervisor's feedback on his response and/or any letters he has written regarding the situation.

- (b) Discuss two files chosen at random by the supervisor to reflect on his decision making, any emotional frustrations he may have experienced associated with the files and how he could improve on his practice.
 - (iii) He is to attend all courses on ethics, professional behaviour and self management offered by CLE or the Bar Association unless the supervisor is satisfied that such a course will not assist him.
 - (iv) The supervisor shall provide a report to the Tribunal after each meeting detailing attendance at the meeting, topics covered, courses attended (or if not attended explaining why not), insights shown by Mr Tennet and identifying if there are any issues of concern and if so how those concerns will be addressed.
 - (v) Mr Tennet is to answer any questions and provide all information that the supervisor may require of him.
 - (vi) The supervisor shall promptly report any significant irregularities to the New Zealand Law Society.
 - (vii) Mr Tennet shall pay fees and other reasonable costs incurred to the supervisor at the Crown Solicitors senior rate.
4. In addition, the Tribunal orders under s 165(1)(m) LCA that Mr Tennet shall meet with Dr Romans or a person she recommends, at a frequency and duration as Dr Romans recommends but at least monthly, to address his past behaviours of failure to show professional respect and learn strategies to avoid a repetition. The compulsion attached to this condition shall endure for at least four months and not more than 12 months Mr Tennet shall pay all reasonable fees of the therapist.
 5. Mr Tennet shall pay costs to the Standards Committee in the sum of \$40,798.40.
 6. The New Zealand Law Society shall pay the Tribunal s 257 costs which are certified in sum of \$12,182.00.

7. Mr Tennet shall reimburse the New Zealand Law Society for the s 257 Tribunal costs in full.

DATED at AUCKLAND this 17th day of May 2023

Dr J G Adams
Deputy Chairperson

Censure

Mr Tennet, you have been found guilty of two charges of misconduct by sending a false invoice and dealing with a client's property in a report so the client had no advantage of it. These actions represent a significant failure in upholding the standards of fidelity and truthfulness that a client is entitled to expect in their lawyer. Such failures bring the legal profession into disrepute. Accordingly, you are censured, and this censure will remain as a permanent mark on your professional record.