ORDER FOR SUPPRESSION OF NAME AND DETAILS WHICH WOULD LEAD TO THE IDENTIFICATION OF THE PRACTITIONER OR HIS FORMER FIRM, PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2023] NZLCDT 26
LCDT 010/22

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**WELLINGTON STANDARDS COMMITTEE 1** Applicant
AND	**MR V** Practitioner

CHAIR
Ms D Clarkson

MEMBERS OF TRIBUNAL
Ms M Noble
Ms G Phipps
Mr K Raureti
Ms L Taylor

On the papers

DATE OF FINAL SUBMISSIONS 18 May 2023

DATE OF DECISION 16 June 2023

COUNSEL
Mr R Moon for the Standards Committee
Mr J Morrison for the Practitioner

DECISION OF THE TRIBUNAL ON PENALTY

What this is about

[1] In its decision of 21 March 2023, the Tribunal found Mr V guilty of negligence,[1] (such as to bring the profession into disrepute).

[2] This decision deals with the proportionate penalty to be imposed on this long-serving practitioner.

Relevant considerations

[3] We adopt the submissions of Mr Moon on penalty principles in which he set out our description of the penalty process in the *Collins* case:[2]

> ***Principles***
>
> [2] The principles underlying imposition of penalty in professional disciplinary cases are now well understood. Overarching the consideration of penalty are the purposes of the legislation[1] which must be implemented by the Tribunal, namely the public protective role and the upholding of professional standards, as set out in s 3(1) of the Act.[2]
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> [3] In addition, the cases have referred to the rehabilitative functions of penalty, principles of general and specific deterrence, and the need for the public to observe that a profession's disciplinary body is providing a significant response to conduct which has fallen well below expected and prescribed standards.
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> [4] However, the Tribunal is also mindful that any penalty imposed must represent the least restrictive intervention necessary to reflect the seriousness of the offending.[3]

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[1] Section 241(c) Lawyers and Conveyancers Act 2006 (the LCA).
[2] *Wellington Standards Committee 2 v Collins* [2023] NZLCDT 3 at [2]–[5].

> [5] The exercise in establishing a proportionate response begins with the assessment of the seriousness of the conduct. There is then a consideration of aggravating and mitigating factors. Finally, there is a need to consider penalties imposed in previous comparable cases, in order to achieve consistency to the extent possible, having regard to the many different context in which offending occurs.

[1] Lawyers and Conveyancers Act 2006.
[2] The purposes of this Act are—
(a) to maintain public confidence in the provision of legal services and conveyancing services:
(b) to protect the consumers of legal services and conveyancing services:
(c) to recognise the status of the legal profession and to establish the new profession of conveyancing practitioner.
[3] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC).

Seriousness

[4] The Standards Committee submit that the offending is at the moderate end of the spectrum of seriousness. In accepting that submission, we took into account the following factors:

- The conduct took place over a long period of time and involved multiple errors.

- The inaccuracies were not trivial.

- Some members observed a lack of responsibility taken by Mr V, or perhaps lack of insight into the seriousness of his conduct. However, this was tempered to some extent by the fact that he self-reported to the New Zealand Law Society.

Aggravating factors

[5] The only aggravating factor is that there is one previous adverse finding of unsatisfactory conduct. We give this little weight because, not only was this seven years ago but the conduct in question related to lack of supervision of an employee whose failure led to the complaint.

Mitigating factors

[6] Mr V has practised as a lawyer for 45 years, during which time he has provided wise counsel to a large number of people. Mr Morrison, on Mr V's behalf, provided the Tribunal with six references supporting the submission that he has been, in other than the two instances where his conduct has been found wanting, a fine and trustworthy lawyer.

[7] During his time in practice, Mr V has generously given his time for community organisations that have required legal advice and contributed his time to the school community and sporting community.

[8] The referees include a former District Court Judge who was able to confirm Mr V's deep involvement in "…church and community activities in a generous and public-spirited way".

[9] The other referees spoke in similar glowing terms, reporting him to be "…well known on [redacted] for his caring legal and extra-legal work, based on his strong Catholic faith".

[10] The conduct was not undertaken for personal gain and, indeed, no personal gain was received.[3]

[11] Mr V has been co-operative in the course of the proceedings and, responsibly, engaged counsel to represent him.

[12] The fees paid as a donation to a charity have been reimbursed to the firm, so he has funded the donation by time and payment of the sum.

Comparable cases

[13] In submissions, Mr Moon referred to four comparable cases of findings of negligence where the respective practitioners had received a censure and fines

[3] Although it has to be noted that the practitioner's son will have received some benefit from Mr V's attendances.

ranging from $4,000 to $10,000. In two of the cases, namely *Collins*[4] and *M*,[5] the practitioners were in similar circumstances to Mr V in the sense that they had, by the time they were penalised, retired from practice after long careers.

Discussion

[14] A lawyer of such seniority is expected to set an example for less experienced lawyers, and in this respect, Mr V has let himself and his profession down.

[15] This is not a case which involves a need for public protection. The practitioner is retired and, indeed, no member of the public was harmed by his conduct in any event.

[16] We do give the mitigating factors in this matter considerable weight. While the view of referees is not normally given the weight in professional disciplinary proceedings that it might receive in other jurisdictions, because of the element of public protection, in this case the references do provide considerable insight into Mr V's altruism. It is clear that for many years he has at times put the community before himself and that is an important part of a lawyer's life, namely sharing the skills and knowledge that as a lawyer he has acquired.

[17] A lawyer who makes such consistent contributions to his community and to those in poorer circumstances, in fact endorses public confidence in the profession and it is for this reason that we give the references, and Mr V's service, considerable weight.

[18] It is unfortunate that this proceeding has occurred in the twilight of Mr V's career, and we do take account of the fact that from the time of his self-report in June 2021 up to the date of the consideration of penalty, he has had approximately 700 days of the matter hanging over him. The process of investigation was protracted and particularly stressful as it included a referral of his conduct to the police.

[19] The case while pleading negligence in the alternative proceeded on the basis of misconduct. This cost should not be borne by the respondent alone.

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[4] Above n 2.
[5] *Waikato Bay of Plenty Standards Committee 2 v M* [2016] NZLCDT 34.

[20] For these reasons we consider that a relatively modest fine, a censure, and a significant contribution to costs is a proportionate penalty for Mr V.

[21] We now turn to consider the application for name suppression.

Name suppression

[22] Suppression is sought in order to protect, not particularly the practitioner himself, but his former firm which bears his name, as does another principal in that firm. That firm has been cooperative with the investigation (as has Mr V).

[23] The application is opposed by the Standards Committee. That is unsurprising given the presumption in favour of publication, and the importance accorded to open justice and transparency in professional disciplinary proceedings.

[24] The firm itself urged the Tribunal to grant the suppression order and drew our attention to not only their cooperation with the investigation but that they had conducted a thorough review of Mr V's practice going back some years in order to be confident that there was no other offending. As well as notifying the New Zealand Law Society, they also notified Mr V's accountant and the Inland Revenue Department. In fact, as a complainant, it would be usual for the Tribunal to grant suppression.

[25] The firm points to the balancing exercise, to be performed by the Tribunal, of weighing the public interest in openness against the likely damage to the firm's reputation.

[26] Mr Morrison further points out that since public protection is not a factor, that ought to tip the balance in favour of suppression. Mr Morrison submits that the decision, even without the practitioner's name, will provide the public with information about the background, the Tribunal's conclusion as to the gravity of the conduct and, in turn, penalty.

[27] Mr V has practised in a small community all of his professional life and his name is well known. His firm has done nothing which ought to bring about a diminution of their reputation. In fact, in reporting as they have, the firm has exposed

itself to the risk of publication. We would not want to deter other firms from providing similar information to the Law Society and to other institutions connected with legal practice, because they might be concerned about blowback.

[28] We consider that in all of these circumstances, the balance has tipped in favour of the private interests of the firm and that, of necessity, that must include suppression of the practitioner's own name. We propose to grant the order for suppression of the practitioner's name and the name of his former firm.

Costs

[29] Mr Morrison submits that Mr V ought to only pay 50 per cent of the costs in this matter. He points out that the prosecution was largely based on intent being established, and in this respect, was unsuccessful in that the outcome was a finding of negligence.

[30] However, we do not consider that 50 per cent of the burden of costs ought to rest with Mr V's profession. We consider a modest reduction of the fees, which are themselves relatively modest, ($14,700) is sufficient to recognise the eventual outcome. We propose to order that Mr V pay $12,500 towards the Standards Committee costs.

Orders

1. Mr V is fined the sum of $8,000.

2. Mr V is censured in terms of the attached censure (Appendix 1).

3. Mr V is to pay $12,500 towards the costs of the Standards Committee, pursuant to s 249 of the LCA.

4. The Tribunal costs are to be paid by the New Zealand Law Society, pursuant to s 257 of the LCA. The certified costs are $7,306.

5. The practitioner, Mr V, is to reimburse the New Zealand Law Society for the full amount of the s 257 costs.

6. There is an order for suppression of name and details which would lead to the identification of the practitioner or his former firm, pursuant to s 240 of the LCA.

DATED at AUCKLAND this 16th day of June 2023

DF Clarkson
Chairperson

Appendix 1

Censure

Mr V, the Tribunal has found you guilty of negligence of such a degree as to bring the profession into disrepute. We found that this amounted to moderately serious conduct and certainly well beyond the level of “unsatisfactory conduct”. In our decision of March 2023, we reminded you that “the rendering of an invoice, requires care and propriety from the person who has taken responsibility for the task…”. Your care was lacking in the instances under consideration.

You are formally censured for your conduct.