NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2023] NZLCDT 5
LCDT 014/22

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**WAIKATO BAY OF PLENTY STANDARDS COMMITTEE 1** Applicant
AND	**RAMINDERJIT KAUR DHILLON** Respondent

CHAIR
Ms D Clarkson

MEMBERS OF TRIBUNAL
Mr G McKenzie
Ms N McMahon
Prof D Scott
Ms S Stuart

DATE OF HEARING 28 February 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 21 March 2023

COUNSEL
Ms E Mok and Ms A Stuart for the Standards Committee
No appearance for the Respondent Practitioner

DECISION OF THE TRIBUNAL PROVIDING REASONS FOR LIABILITY FINDINGS AND PENALTY DETERMINATION

Introduction and process

[1] Three charges have been brought against a young practitioner who was only in practice for four and a half years before deciding to leave the law, at least temporarily, in mid-2019.

[2] Unfortunately, during her brief time as an employed barrister, Ms Dhillon failed clients who were in the vulnerable position of being overstayers in New Zealand.

[3] Although she engaged with the Standards Committee investigating complaints against her between 2019 and early 2021, by the time the charges reached this Tribunal (in late 2022), Ms Dhillon had disengaged from the process. She had, in 2019, moved to Australia.

[4] We are satisfied that she was formally served, but Ms Dhillon has taken no steps in these proceedings and did not appear at the hearing, despite being advised that she could participate remotely.

[5] The hearing proceeded on a formal proof basis, following which the Tribunal informed counsel that the charges were found to be proven and therefore penalty submissions were presented immediately.

[6] The Tribunal reserved its decision on penalty and on reasons for the liability findings. This decision provides those determinations and reasons.

Issues

[7] The issues to be determined were:

1. Did the failures in Ms Dhillon's duties to her clients amount to a wilful or reckless breach of the rules.[1]

2. Had the practitioner failed to keep records of client files and documents to the standard required, such as to constitute unsatisfactory conduct?[2]

3. Did Ms Dhillon breach s 9(1)[3] providing regulated services beyond the scope of her employment?

Background

[8] Ms Dhillon began employment in January of 2015 in a small barristers' chambers, on a relatively part-time basis, assisting one of the senior barristers with his criminal and civil files.

[9] In addition to that, for several reasons, including her previous work experience, Ms Dhillon had an interest in immigration law. Her employer indicated that he did not have the expertise to supervise her in this field and therefore arranged for another local practitioner to assist with the supervision which Ms Dhillon, as an employee, would require. Unfortunately, apart from attending one hearing with this practitioner, Ms Dhillon did not avail herself of the supervision in relation to her immigration clients, most of whom apparently were referred to her directly.

[10] While she still appeared to receive supervision in relation to the files on which she was assisting her employer, Ms Dhillon became very busy with the immigration work, in respect of which she did not seem to seek assistance.

[11] Because a number of her clients were based in Auckland and the barristers' chambers was in a nearby city, Ms Dhillon elected to take space in serviced premises in Auckland to assist in the process of consulting her clients. Although at that premises the telephone was answered with the name of the chambers of her employer and invoices were issued in the name of the employer, that would appear

[1] Section 7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 (LCA), Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[2] Section 12(a), (b) and/or (c) of the LCA.
[3] Of the LCA.

to be the extent of the chambers' involvement in relation to Ms Dhillon's immigration work.

[12] The three complainants all approached Ms Dhillon in May or June 2018 in relation to their immigration status and each was advised to make a request for a special visa under s 61 of the Immigration Act 2009 to attempt to regularise their respective unlawful status.

[13] It is axiomatic that a request under s 61 is a time sensitive one; and that immigration status is for the client a matter of great personal importance and if not handled promptly can lead to considerable anxiety on the client's part.

[14] This is what happened with Ms Dhillon's clients. The first client, Ms K, was told by Ms Dhillon that she had lodged the s 61 request in June 2018. Ms K sent numerous emails and texts to the practitioner, asking about progress in relation to this request.

[15] On 25 March 2019, Ms Dhillon advised Ms K that she had spoken to an Immigration New Zealand (INZ) employee who indicated that a decision would be made about the request within a month. However, when Ms K directly enquired of INZ, she was told no s 61 request had been filed on her behalf. The request was then submitted by Ms Dhillon on 23 April 2019, after Ms K had made a complaint to the Law Society Complaints Service.

[16] In her responses to the complaint, Ms Dhillon appears to blame difficulties over courier services from her Auckland serviced offices, a response which she maintained for all three complaints.

[17] Similarly, the practitioner told Mr A that the s 61 request had been lodged in June 2018, but when she met with him in January 2019 and he requested information on his file, Ms Dhillon recognised that there was a problem and that this "caused alarm bells to ring" to her because she hadn't had a response from INZ. Mr A engaged a new lawyer in January 2019.

[18] Mr S had also been told his request had been submitted in June 2018 and the practitioner did not follow up or seek confirmation that the request had been received for nine months after the request was lodged.

[19] Mr S repeatedly contacted Ms Dhillon in March 2019, and without a proper response, he engaged an immigration adviser to assist him with the matter. It is noted that Ms Dhillon lodged a "further" request on 10 April 2019, two days after Mr S had engaged another adviser.

[20] In addition to her failure to either lodge or follow up these time-sensitive formal requests, there were other failures on the practitioner's part. In respect of Ms K's matter, the request itself was incomplete and inaccurate. It included information about Ms K's father and his income at a time when he was in fact deceased.

[21] Furthermore, the practitioner repeatedly failed to properly respond to these three clients, either indicating she was too busy or was out of the country or she simply ignored messages.

[22] The communications between Ms Dhillon and her clients do not make happy reading. These are clearly people in desperate need of answers, pleading with her and receiving no satisfactory response.

[23] In responding to the Lawyers Complaints Service, Ms Dhillon acknowledged that she had "failed to proactively ensure the clients files were delivered to Immigration New Zealand and I failed to actively monitor the outcomes of the lodgements". Somewhat concerningly in responses, Ms Dhillon refers to paying insufficient attention to what she refers to as the "administrative" side of the practice. The practitioner appears to misunderstand the nature of the lawyer/client relationship and the obligations to promptly report and respond to client queries as fundamental obligations and not merely an "administrative" duty.

[24] Ms Dhillon also appears to have engaged in poor practices in relation to the safekeeping of client information and documents. In early 2019 when she signalled to her employer that she would be leaving to take up a position in Australia outside of the law, she assured him that all her immigration matters were completed. He requested that the files be available to him in electronic form, at least.

[25] After her departure Mr X, the employer, received complaints from the clients who were seeking return of their documents including two passports and also educational certificates.

[26] It is this lack of care which forms the basis for charge 2. Although Ms Dhillon said that she had stored client information electronically in a manner which was accessible to the chambers practice, it was in fact unable to be located and only 55 documents were found by Mr X, far fewer than would be expected in a series of immigration files.

[27] The practitioner also alleges in her response to the Standards Committee that she left documents in brown manila folders, on departing the chambers. Mr X says that this is certainly not the case. She did leave him a bottle of champagne and a thank you note but there were no files whatsoever located following an extensive search by him and his practice manager. In this respect we prefer the evidence of Mr X who has sworn an affidavit and fully assisted the Complaints Service in attempting to locate the client documents.

[28] Mr X has also, from his own resources, fully reimbursed all the clients affected by Ms Dhillon's actions.

[29] In her correspondence with the Standards Committee, Ms Dhillon apologises to the clients and acknowledges some of her shortcomings. However, we consider the level of insight into her failures is somewhat limited.

[30] It was unfortunate that she did not participate in the proceedings because this meant that the Tribunal had no means of gauging her current position, any rehabilitation efforts she may have undertaken already or indeed, any prospects of rehabilitation which might have been explored with her in terms of re-education, supervision or mentoring.

[31] As a result, as will be seen from our remarks under the heading of penalty, the Tribunal's response to this offending was somewhat limited.

Issue 1:

[32] Having regard to the increasingly anxious enquiries from her clients, we consider Ms Dhillon must have been aware that she was breaching her duty to them in not following up their respective s 61 requests. Indeed, it is not even clear in at least two of the cases whether these were ever lodged until after the complaints emerged. We consider that, viewed in totality, Ms Dhillon's failures did amount to at least a reckless if not wilful breach of the rules.

[33] We accept the Standards Committee submission that there was a breach of r 3 by failing to act competently and in a timely manner and in accordance with her duty to take reasonable care. This also breached r 4.2.

[34] Of even more concern is the misleading and deceptive conduct which is evidenced by her reassurances to Ms K about the progress of her file. That also constitutes a breach of r 11.1 of an obligation not to mislead or deceive. At the same time, in early 2019, Ms Dhillon was assuring her employer that she had completed her immigration work. This was also deceptive and unprofessional conduct.

[35] We find that the charge of misconduct by reckless breach of the rules has been established on the balance of probabilities.

Issue 2:

[36] We consider that the failure to secure and the eventual loss of client documents fell short of the required standard of competence and diligence expected of lawyers (s 12(a)) and therefore we found unsatisfactory conduct to have been established on the balance of probabilities.

Issue 3:

[37] Section 9(1) has not been considered on many occasions but there is a recent decision of the High Court which is of assistance, particularly in reinforcing the need

for and policy behind the enactment of this provision. His Honour Downs J, upholding the Tribunal's findings in the matter of *Brill*,[4] said:

> [39] …section 9(1) means what it says: a lawyer is guilty of misconduct who, being an employee, provides regulated services to the public other than in the course of his or her employment. The section creates a general prohibition against in-house lawyers providing regulated services to the public. It ensures lawyers who provide regulated services to the public are either qualified to do so on their own account or supervised as an employee. Public protection, not privity of contract, is the decisive concern; a point the Tribunal has itself made:
>
> > …section 9 addresses concerns where an employed lawyer acting outside that employer might, for example, lack supervision by an experienced lawyer, might avoid the trust accounting protections otherwise available, including access to the Lawyers' Fidelity Fund. …

[38] There is no doubt that the practitioner was providing regulated services to the three complainants in their immigration cases. Although the documents were sent out on the chambers' letterhead and fees paid through that practice, we accept the Standards Committee submission that provision of these regulated services was outside the scope of Ms Dhillon's employment. This was because she was effectively practising on her own account, without supervision despite Mr X having made it clear that she ought not to do so and that he was unable to supervise her in this particular area of the law.

[39] In her responses, the practitioner said that she "worked on these [immigration] matters autonomously and would seek assistance from colleagues who handled similar matters, and from Immigration New Zealand, as needed".

[40] We accept the evidence of Mr X that by the time Ms Dhillon was operating out of her Auckland-based office in mid-2018, she was not discussing these matters with him.

[41] We consider that the Standards Committee has made out misconduct under s 9(1) in that the practitioner, an employed lawyer, was practising without supervision and offering regulated services to the public.

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[4] *Brill v Auckland Standards Committee 2* [2022] NZHC 3036 at [39].

Penalty

[42] It is well established that the purpose of penalties in professional disciplinary proceedings is not punitive. Rather, it accords with the purposes of the LCA, namely the protection of the public, the upholding of professional standards and of the confidence of the public in the legal profession.

[43] Consideration of penalty begins with an assessment of the seriousness of the conduct.

[44] Having regard to the length of time over which this conduct endured, the serious consequences for the clients who were impacted by the practitioner's failures, and the element of deception towards clients and her former employer Mr X, we consider that the misconduct is at the relatively serious end of the scale.

[45] Given Ms Dhillon's age and inexperience and the fact that the lack of her supervision ought not to fall entirely at her feet, we agree with the Standards Committee counsel that this is not a case which ought to attract strike-off.

[46] We have taken into account what we assess to be some deficits in Ms Dhillon's insight in that, although she acknowledged she ought to have followed up more carefully, her misconception that client service and communication might fall under the heading of "administration" is concerning.

[47] As indicated earlier, because she did not participate in the hearing, we were not able to explore rehabilitative pathways with her. Nor were we able to assess whether she had perhaps matured in the years since these events occurred and/or gained a better understanding of her obligations.

[48] For all of these reasons and because of the serious impact on the clients, we consider that nothing less than a lengthy period of suspension would serve to mark the seriousness of this misconduct and provide the element of deterrence and denunciation also required.

[49] We consider that a period of two years suspension from the date of the hearing, 28 February 2023, is a proper response. We have taken into account cases

where there have been client failures of a similar nature. Counsel put to us the decision of *Thoman* [5] and the decision of *Claver*.[6]

[50] The *Thoman* case was a more serious one, which also involved immigration clients being let down, but had the additional elements of not properly accounting for funds paid to her and having sent an abusive text to one client. This was clearly a more serious situation, and the practitioner was struck off.

[51] In the *Claver* case, although the failings were many and widespread, the practitioner fully engaged with the disciplinary process, taking responsibility for his conduct, providing mitigating circumstances of a personal nature and satisfying the Tribunal that he had taken a number of steps to prevent reoccurrence of the failures of concern. Mr Claver was suspended for a period of 12 months.

[52] We therefore consider a suspension of two years to be a proportionate response to the conduct of Ms Dhillon.

Costs

[53] The Standards Committee have provided the Tribunal with invoices for the costs in respect of this matter in excess of $46,000.

[54] We consider this was somewhat high for a matter which proceeded by way of formal proof and occupied less than half a day of hearing. Although there were a significant number of documents to be presented to the Tribunal, and we understand a significant sifting process, in assessing which charges ought to be laid, we do consider that we ought to reduce the award against the practitioner. We have no knowledge of her current circumstances other than that she resides in Australia. She went there, as we understand it, to undertake fulltime employment but we have no information as to whether she is still gainfully employed. We propose therefore to make some reduction of the costs given the straightforward nature of the hearing.

[5] *Auckland Standards Committee 4 of the New Zealand Law Society v Thoman* [2011] NZLCDT 8.
[6] *Otago Standards Committee v Claver* [2019] NZLCDT 8.

Summary of orders

1. The practitioner is suspended from practice for two years from 28 February 2023, pursuant to ss 242(1)(e) and 244 of the LCA.

2. The practitioner is to pay the Standards Committee costs in the sum of $35,000, pursuant to s 249 of the LCA.

3. The New Zealand Law Society is to pay the Tribunal costs, pursuant to s 257 of the LCA, in the sum of $2,854.

4. The practitioner is to reimburse the New Zealand Law Society for the full Tribunal costs, pursuant to s 249 of the LCA.

DATED at AUCKLAND this 21st day of March 2023

DF Clarkson
Chairperson