

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 45

LCDT 012/23

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 2**

Applicant

AND

MARIE ELIZABETH DEVOY

Respondent

DEPUTY CHAIR

Dr J Adams

MEMBERS OF TRIBUNAL

Mr G McKenzie

Prof D Scott

Ms N Taefi

Ms P Walker MNZM

HEARING 29 September 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 13 October 2023

COUNSEL

Ms N Town for the Standards Committee

No appearance by or for the Respondent Practitioner

DECISION OF TRIBUNAL ON LIABILITY AND PENALTY

[1] Ms Devoy has ceased practice as a lawyer. She does not hold a practising certificate. She has not responded formally to the charge of misconduct. The day before the hearing, she advised that she would not be available because she was “rostered on with a very unwell relative.” No adjournment was given.

[2] This case proceeds by formal proof. It is a straightforward case. Ms Devoy’s ability to practice safely seems to have been failing in recent times, evidenced by some adverse disciplinary findings. In this case, she disobeyed decisions of the Standards Committee. She has simply failed to respond. Understandably, the Standards Committee has escalated the matter to the Tribunal. Unless there is a good reason why not, we should stand behind the Standards Committee.

[3] We must consider liability and penalty. Ms Devoy has filed no response, no affidavit, no submissions.

Liability

[4] Ms Devoy was a, or the, principal of City Law. A former conveyancing client asked, in October 2017, for his file to be sent to another lawyer. It has never, not even now, been sent.

[5] On 7 July 2022, the Standards Committee ordered Ms Devoy to send the file to another named law firm; to confirm she had done so, and to explain why the delay had occurred. She was also fined \$1500 and ordered to pay costs of \$1000. They have never been paid.

[6] Ms Devoy has never disputed the orders, nor taken issue with her duty to provide the file. In these ways, her passive disobedience differs from cases in which practitioners advanced reasons for not complying.

[7] We find that lawyers of good standing would regard her failure to provide the file (over a period of 6 years) and to disobey the orders of the Standards Committee as disgraceful or dishonourable. We find the charge of misconduct is made out.

Penalty

[8] Ms Devoy has four previous findings of unsatisfactory conduct. These were from 2014 (breach of undertaking); 2020 (failure to act in a timely manner); and 2023 (two instances of failing to respond to requests from a client). As the Standards Committee submits, she appears to have developed an inability or indifference about responding to requests from clients of the Standards Committee in a timely manner, if at all. She does not seem defiant, merely non-responsive where she has a professional duty to respond.

[9] We have had regard to several precedents¹ but, as noted, Ms Devoy's non-responsive behaviour is unusual; it is troubling.

[10] Ms Devoy wrote an email to the New Zealand Law Society dated 6 February 2023 referring to unspecified health and social difficulties. The nub of the letter states "Work has suffered as a result of the writer's health. It can require huge effort to function at times."² Although this email message is not detailed or corroborated, it fits with the events that Ms Devoy's ability to provide reliable professional services has suffered.

[11] The default is long-standing with no sign that she will ever comply. Our duty must be to reinforce the orders of the Standards Committee and ensure that, if Ms Devoy ever seeks to practise again, her capacity to do so should be checked. Moreover, her performance of duties under existing orders should be monitored, should she apply to practise. Accordingly, we re-make an order of the Standards Committee, requiring her to deliver the client's file.

¹ E.g. *Parlane v New Zealand Law Society* 1 [2013] NZLR 103 at [208]; *General Standards Committee 1 and Waikato Bay of Plenty Standards Committee 1 v McGuire* [2023] NZLCDT 16; *Auckland Standards Committee 4 v Kennelly* [2021] NZLCDT 8; *Auckland Standards Committee 4 v Potter* [2014] NZLCDT 63; *Hong v Auckland Standards Committee No. 3* [2014] NZHC 2871; *Auckland Standards Committee 2 v Fox* [2017] NZLCDT 26.

² Bundle, 64.

[12] We recommend, if Ms Devoy later seeks a practising certificate, the Practice Advisory Committee should consider her performance of her obligations under the Standards Committee orders and these orders.

[13] We make the following orders:

1. Ms Devoy is suspended from practice as a barrister or solicitor for six months, from the date of this decision (pursuant to ss 242(1)(e) and 244 of the Lawyers and Conveyancers Act 2006 (the Act)).
2. Ms Devoy is not to practice on her own account until authorised by the Disciplinary Tribunal to do so (pursuant to s 242(1)(g) of the Act).
3. Ms Devoy shall forthwith deliver the file of the client [redacted] to Neilsons, solicitors (pursuant so s 156(1)(h)(i) of the Act).
4. Ms Devoy shall pay the Standards Committee costs in the sum of \$6,967.40 (pursuant to s 249 of the Act).
5. The New Zealand Law Society shall pay the Tribunal costs certified in the sum of \$933 (pursuant to s 257 of the Act).
6. Ms Devoy shall reimburse the New Zealand Law Society in full for the Tribunal s 257 costs (pursuant to s 249 of the Act).

DATED at AUCKLAND this 13th day of October 2023

Dr J G Adams
Deputy Chair