NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2023] NZLCDT 46
LCDT 007/23

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NATIONAL STANDARDS COMMITTEE 1** Applicant
AND	**UMAR ABDUL KUDDUS** 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 F Nizam for the Standards Committee
Mr U Kuddus the Respondent Practitioner, in person

DECISION OF TRIBUNAL ON PENALTY

[1] Mr Kuddus admits a charge of misconduct under s 7(1)(a) Lawyers and Conveyancers Act 2006 (the Act). On 17 September 2021, when Auckland was under Covid 19 lockdown, he crossed the border, implicitly purporting that he was required to do so for priority court proceedings. On social media, he boasted about his exploit.

[2] At the time, Mr Kuddus was providing regulated services. He went to Hamilton to attend a financial assessment hearing before a registrar, a minor event, where his purpose was to ask questions of a judgment debtor about the debtor's ability to pay. He had already been granted approval to attend the event by telephone.

[3] Mr Kuddus accepts that his unlawful conduct would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable. We agree. The issues we must decide are: what is the gravity of his conduct and, what orders should we make, taking into account his circumstances?

What is the gravity of his conduct?

[4] It is a lawyer's duty to uphold the law. The context of his breach was, at the time, highly sensitised. Enforced lockdown of Auckland caused wide distress. For example: people were unable to be with their loved ones who were dying; whanau could not be visited. The general populace was acutely conscious that free movement, in ordinary times taken for granted, was withheld.

[5] Mr Kuddus does not wholeheartedly accept that he wilfully broke the law. Having pleaded guilty at the criminal hearing on 15 July 2022, he there attempted to distance himself from "intentional" failure to comply. The judge gave him time to consider changing his plea and, after having taken time, he maintained his guilty plea and was sentenced on the accepted basis that he intentionally broke the law.

[6] In this disciplinary proceeding, his submissions state that he had "the mistaken belief that I was acting in accordance with the law."[1] In the disciplinary forum, the standard of proof is on the balance of probabilities. Against his stance are the following:

- his guilty plea to the criminal charge, explicitly taken after he had time to reconsider the issue of intentionality;
- his knowledge that there were restrictions; his receipt of letters from the Law Society clarifying the position and repeating advice from the Chief Justice (also available on Ministry of Justice website);
- his determination to travel despite having obtained prior approval to attend by telephone; the trivial purpose and event in Hamilton;
- his two Facebook posts (one of which explicitly referenced a notorious case where a lawyer accompanied her partner to Wanaka in breach of the lockdown);
- his subsequent lying to another practitioner to suggest he had been permitted by a judge to travel[2].

[7] We find Mr Kuddus chose to breach the restriction. We are not impressed with his lack of candour by continuing to suggest he did not appreciate he was breaking the law. In the hearing, he acknowledged that his Facebook boasts would have seemed like a smack in the face to compliant members of the public who were, say, prevented from attending their dying loved ones. His Facebook comment referencing the "Wanaka" event which drew a huge public reaction indicates that he was aware that his conduct would be offensive to many people who were obedient to difficult restrictions.

[8] Mr Kuddus argues that his breach does not reflect on his fitness to practise and did not bring the profession into disrepute. The latter assertion is belied by his

[1] Mr Kuddus submissions 28 September 2023, at [4].
[2] Bundle 32.

experience once the story broke. He says litigants in person criticised him in court because of this conduct; he was obliged to stand down from a Muslim Trust because people made representations to the Trust about him; his former university refused to award a mooting shield that he had donated because it was not prepared to have the event associated with his name. His offending is inextricably linked to the practice of law because he used his status as a lawyer to commit the offence. By trading on that status, he implicated his fellow practitioners.

[9] Lawyers should demonstrate candour and, generally, sound judgement. Had Mr Kuddus looked beyond his group of friends to the likely response of the community at large, one would hope this foolish conduct would never have been attempted. Although he has made some progress, albeit only the day before this hearing, two years after the event, by admitting misconduct, he should reflect on his fitness to practice. His conduct brings it into question.

What orders should we make?

[10] This question requires us to weigh the gravity of the conduct within its context, including matters pertinent to Mr Kuddus himself.

[11] Other precedents cited arise in differing circumstances, none quite like this one. We have regard to the precedents, but this case is not readily circumscribed by them.

[12] Mr Kuddus is a relatively young practitioner with only four years' experience at the time of the conduct. He has not been the subject of any upheld complaint. That he has not had any adverse disciplinary findings is the absence of an aggravating factor rather than the presence of a mitigating factor. Most lawyers at his stage of experience can claim that they have not been subject to any upheld complaint.

[13] What concerns us is his character trait in breaking the law in a manner that he should have known would offend many people. His hubris in placing himself above his fellow citizens (and fellow lawyers), necessarily brings his fitness to practice into question. It is equivocal whether his boasts on social media were flagrant boasts about law-breaking. He held out that he was entitled to cross the border, although we have found he knew he was breaking the law. His boasts, even if not openly admitting he

was breaking the law, must be read in the light of our finding that he knew he was doing so.

[14] He has been chastened by a criminal conviction, by having to give up his position as trustee of a Muslim Trust, by his university disassociating itself from the shield he had endowed, and by the jibes of litigants.

[15] [Redacted].

[16] He asks us not to suspend him from practice because that will adversely affect his income-earning ability.

[17] Ms Nizam points out that his engagement with this disciplinary process has been poor. He only engaged with the Tribunal process shortly before the hearing. He did not file an affidavit. Undoubtedly, his poor engagement has caused the Standards Committee costs to rise.

[18] Although he told us, at the hearing, that he was remorseful, we are inclined to agree with the criminal hearing judge, that he was remorseful about being caught and brought to account. We are not persuaded, even now, that he appreciates how offensive (to the general public) his conduct was. He is undoubtedly embarrassed but fails to appreciate that the conduct itself, and his subsequent avoidance of its moment, bring into question his wisdom, judgement and candour, all features that a person who is fit and proper to have the privileges of an enrolled lawyer should have.

[19] That he used his status as a lawyer to unlawfully cross the boundary brings his conduct beyond a point where it can adequately be dealt with by way, for example, of a fine and censure. The general public will not be satisfied by such a response. Nor will the reputation of the profession be mollified, in these circumstances, by the flagrant way he broke this law and brought the profession into disrepute.

[20] Mr Kuddus mentioned in the criminal hearing that he made charitable donations and contributed to the Muslim community. Similar to the judge in the criminal hearing, we observe that these make little effect on the stark features of his misconduct.

[21] Among salient features in this case is the need for deterrence, to show the legal community that this sort of flagrant misconduct will not be tolerated or minimised, although our intervention should be the "least restrictive."[3]

[22] Our response in this case is guided by the oft-quoted words[4]:

> A suspension is clearly punitive, but its purpose is more than simply punishment. Its primary purpose is to advance the public interest. That includes that of the community and the profession, by recognising that proper professional standards must be upheld, and ensuring there is deterrence, both specific for the practitioner and in general for all practitioners. It is to ensure that only those who are fit, in the wider sense, to practise are given that privilege. Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession.

[23] We find that nothing short of a period of suspension is a proportionate response. It will enable Mr Kuddus to reflect further on his misconduct and, hopefully, decide to behave in a proper fashion henceforth. The suspension need not be a long period. We do not doubt he has skills as an advocate but his general lack of engagement in this process, his lack of candour or acceptance of his wrongdoing, and its gravity, mean that, even if he were able to pay a fine, it would not be a sufficient marker of the event. Accordingly, we made the orders, set out below, at the conclusion of the hearing. This decision gives our reasons for having done so.

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[3] *Ellis v Standards Committee 5* [2019] NZHC 1384; *National Standards Committee (No 1) of the New Zealand Law Society v Gardner-Hopkins* [2022] 3 NZLR 452.

[4] From *Daniels v Complaints Committee of the Wellington District Law Society* [2011] 3 NZLR 850 at [24].

Summary of orders

1. The substance of paragraph [15] of this decision shall not be published except in copies sent to the parties, pursuant to s 240 of the Act.

2. Mr Kuddus is suspended from practice as a barrister or solicitor, for a period of six weeks beginning 30 October 2023, pursuant to ss 242(1)(e) and 244 of the Act.

3. Mr Kuddus is censured, in the terms set out below, pursuant to ss 156(1)(b) and 242(1)(a) of the Act.

4. Mr Kuddus is to pay the costs of the Standards Committee in the sum of $28,547.87, pursuant to s 249 of the Act.

5. The New Zealand Law Society to pay the Tribunal costs in the sum of $1,583, pursuant to s 257 of the Act.

6. Mr Kuddus is to reimburse the New Zealand Law Society in full, for the Tribunal costs, pursuant to s 249 of the Act.

Censure: Mr Kuddus, you have rightly admitted a charge of misconduct. Your unlawful conduct in crossing the Auckland lockdown restriction brought your profession into disrepute because you used your status as a lawyer to do so. Boasting about it on social media exacerbated your misconduct. For these matters, you are censured. This censure remains a permanent mark on your professional record.

DATED at AUCKLAND this 13th day of October 2023

Dr J G Adams
Deputy Chair