

NAMES OF EMPLOYER, SUPERVISING PARTNER AND CLIENTS ARE NOT TO
BE PUBLISHED. THIS NON-PUBLICATION ORDER IS MADE PURSUANT TO
S 240 LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 47
LCDT 015/23

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WAIKATO BAY OF PLENTY
STANDARDS COMMITTEE 1**
Applicant

AND

KATELYN ROSE SILVESTER
Respondent

DEPUTY CHAIR

Dr J Adams

MEMBERS OF TRIBUNAL

Ms K King

Prof D Scott

Ms S Stuart

Ms N Taefi

HEARING 27 October 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 31 October 2023

COUNSEL

Mr E McCaughan for the Standards Committee (by VMR)

No appearance by or for the Respondent Practitioner

DECISION OF TRIBUNAL ON LIABILITY AND PENALTY

[1] Ms Silvester made a detailed response to the Standards Committee investigation¹, admitting that she had altered documents and misled her supervising partner. She disputed that her conduct amounted to misconduct. She apologised for her actions, and expressed her regret, commenting that she had been struggling in her role as a new lawyer. She later acknowledged service of these proceedings but has chosen to take no active part beyond indicating that she did not intend to file any response. This hearing proceeded by formal proof.

[2] We find the following facts have been proved by the evidence filed:

- In 2021 Ms Silvester relied on an amended A&I form for settlement, although the client had not initialled the amendments at the time.
- When asked about the amendments to the A&I form, Ms Silvester lied to her supervising partner by falsely claiming that the client had initialled the amendments prior to settlement.
- Ms Silvester fabricated an email to support this lie.
- In 2022 Ms Silvester certified that the copy of an enduring power of attorney (EPOA) was a true and correct copy without actually sighting the original EPOA.
- The certified copy differed from the original EPOA in a significant respect.

¹ Bundle, 38 – 40.

- When asked about this issue, Ms Silvester lied to her supervising partner again. She claimed that the client had emailed that copy of the EPOA to her. She fabricated an email to support her account.
- Her supervising partner relied on Ms Silvester's claim in his discussions with another law firm regarding the EPOA, and only discovered the truth subsequently.

[3] Although the charge was laid with an alternative of unsatisfactory conduct, we find that misconduct reflects the inevitable gravity for this matter. Altering documents and lying to one's supervising partner would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable: s 7(1)(a)(i) Lawyers and Conveyancers Act (LCA).

[4] The charge is equally proved under s 7(1)(a)(ii) LCA because a number of rules were breached. They include s 4(a) [fundamental obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand]; Rule 2.5 [truthful certification]; Rule 10 [promote and maintain professional standards]; Rule 10.2 [not engage in conduct that tends to bring the profession into disrepute]; and Rule 10.9 [not engage in misleading or deceptive practice].²

[5] Ms Silvester expressed her remorse. She acknowledged she had fallen short of professional standards in her conduct.

[6] She was a junior solicitor who felt anxious to complete matters for her client and please her employer. None of her actions were done to obtain any advantage for her personally other than to conceal her shortcomings. No-one was materially injured or prejudiced by her misconduct except those who were shocked by her deceit.

[7] Honesty and candour are fundamental character traits expected in a lawyer. Ms Silvester's misconduct brings into question her fitness to practise.

[8] Mr McCaughan advanced his submission about penalty in a balanced manner. We agree that the conduct was serious, at odds with that expected in a person

² Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

privileged to be a lawyer. We accept Mr McCaughan's submission that inexperience and anxiety were operative factors.

[9] We also agree with Mr McCaughan that the case of *Latton*³ is the closest comparator. Mr Latton lied that he had sent a Calderbank letter, and altered documents to bolster his story. He was suspended for one month, fined, censured and ordered to pay costs. In a more serious case,⁴ where the practitioner altered six emails and sent misleading emails, the practitioner was suspended for six months.

[10] In this case, Mr McCaughan seeks suspension for one month. Among other things, we must be guided by a response that adequately protects the public interest. Even though Ms Silvester does not have a current practising certificate, her misconduct is such that we cannot countenance a response that did not involve a period of suspension. We find that suspension for one month is an appropriate level at which to pitch our penalty response in all the circumstances of this case.

Orders

[11] We make the following Orders:

1. Ms Silvester is suspended from practice as a barrister or solicitor for a period of one month from the date of this decision (pursuant ss 242(1)(e) and 244 of the LCA).
2. Ms Silvester is censured in the following terms (pursuant ss 156(1)(b) and 242(1)(a) of the LCA):

Ms Silvester, you have been found guilty of misconduct by materially altering documents and lying about it to your employer. Such conduct falls well short of the honesty and candour expected of a person who is privileged to be an enrolled, practising lawyer. This censure remains as a permanent record of your shortcomings in this matter.

³ *Auckland Standards Committee 1 v Latton* [2017] NZLCDT 14.

⁴ *National Standards Committee 2 v Y* [2023] NZLCDT 1.

3. Although we may have no specific jurisdiction to require it, as a support to Ms Silvester and to advance the purposes of the LCA, we expect Ms Silvester to demonstrate her candour by advising any future legal employers up to October 2025, of this decision and her disciplinary history.
4. Ms Silvester is ordered to pay costs of the Standards Committee in the sum of \$8,190 (pursuant s 249 LCA).
5. The New Zealand Law Society are to pay the costs of the Tribunal certified in the sum of \$950 (pursuant s 257 LCA).
6. Ms Silvester is ordered to reimburse the New Zealand Law Society in respect of the s 257 costs for the Tribunal which are certified at \$950 (pursuant s 249 LCA).
7. An order is made preventing the publication of the names of Ms Silvester's employer, her supervising partner, and of the clients involved in her misconduct (pursuant s 240 LCA).

DATED at AUCKLAND this 31st day of October 2023

Dr J G Adams
Deputy Chair