

INFORMATION ABOUT MS HOLDAWAY'S PERSONAL HISTORY OR MEDICAL ISSUES  
EXCEPT THOSE REFERENCED IN THE TRIBUNAL DECISIONS ARE PERMANENTLY  
SUPPRESSED, AS RECORDED IN PARAGRAPH [23] OF THIS DECISION. ORDER MADE  
PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 8  
LCDT 004/21, 015/21, 004/22

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 4**

Applicant

**AND**

**NESHIA HOLDAWAY**

Respondent

**DEPUTY CHAIR**

Dr J G Adams

**MEMBERS OF TRIBUNAL**

Mr S Hunter KC

Ms K King

Ms M Noble

Ms P Walker MNZM

**HEARING** 23 March 2023

**HELD AT** Specialist Courts and Tribunals Centre, Auckland

**DATE OF ORDERS** 23 March 2023

**DATE OF DECISION GIVING REASONS** 6 April 2023

**COUNSEL**

Mr P Davey for the Standards Committee

Ms N Holdaway the Respondent Practitioner

## **DECISION OF THE TRIBUNAL RE PENALTY**

[1] When we found three charges of misconduct proved against Ms Holdaway in September 2022<sup>1</sup>, we remarked: “Where a practitioner struggles with practice, it concerns the interests of the public, the profession generally, and the practitioner. This appears to be such a case.” Ms Holdaway represented herself at that hearing.

[2] When we first came to hear the penalty phase of the matter, we were persuaded by Ms Holdaway’s then counsel to adjourn so “she could file further evidence and assemble a cohesive case”<sup>2</sup>. Nonetheless, our duty “to protect the interests of the public and thereby maintain public confidence in the provision of legal services”<sup>3</sup> caused us to suspend her from practice. We gave a reasoned decision to explain our reasons. It was not done lightly.

[3] Ms Holdaway failed to maintain contact with her counsel. They were granted leave to withdraw on 1 March 2023. Ms Holdaway was once again unrepresented at this penalty hearing where the theme of concern for the public interest has emerged as dominant. After deliberating, we made orders on 23 March 2023 which are set out at the end of this decision. This decision gives our reasons for making those orders.

[4] This decision is organised under the heads:

- (a) What is the problem with Ms Holdaway’s practice?
- (b) Can the public interests and the reputation of the profession be protected by anything less than strike-off?

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<sup>1</sup> *Auckland Standards Committee 4 v Holdaway* [2022] NZLCDT 34, 22 September 2022.

<sup>2</sup> *Auckland Standards Committee 4 v Holdaway* [2022] NZLCDT 49, 22 December 2022, at [2].

<sup>3</sup> *Auckland Standards Committee 4 v Holdaway* [2022] NZLCDT 49, 22 December 2022, at [1].

- (c) Should we order compensation?
- (d) Should we order name suppression?

### **What is the problem?**

[5] The presenting problem arises from Ms Holdaway's almost chronic, repeated failures to engage with her regulatory body about several complaints. Her conduct is described in our September 2022 decision which we need not repeat here. The consequent risk for the general public is described in our December 2022 decision. This decision should be read together with those two written decisions.

[6] The underlying problem is that the regulatory body was significantly hampered by Ms Holdaway's stonewalling. What appeared to be serious departures from conduct that would be expected of a solicitor, especially important in a sole practitioner, were treated dismissively by Ms Holdaway. For example, where, her client having instructed another practitioner, she thought that lawyer had no need of the client's file, she ignored the authority and instruction to send it. In another example, where her client instructed her to deposit money into an investment account, she did not do so for about three months. She treated the Standards Committee's requests for information as unnecessary, and ignored them.

[7] When called to account for her conduct, she recited a number of medical issues and other problems. She seemed unable to acknowledge that her practice was not providing service to clients that they were entitled to expect. In our assessment, this was not an isolated lapse, her practice was erratic and unresponsive.

[8] What causes her problematic behaviour is still a puzzle to us. We commented on her demeanour in our September 2022 decision. We were concerned about her cognition.

[9] She affirmed an affidavit at the commencement of this March 2023 hearing. Among other things, it exhibited an unsigned letter,<sup>4</sup> apparently from her general medical practitioner. Among other things, the letter states:

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<sup>4</sup> We accept the letter as a communication from her general practitioner.

From my several meetings and discussions with Neshia since 14/9/22, my opinion is that Neshia Holdaway is of sound mind and does not have apparent cognitive impairment. It is my opinion that Neshia Holdaway is medically able to practice as a lawyer with reduced hours and frequent breaks (in order to avoid fatigue).

[10] The medical practitioner does not address the neglectful practices noted in our September and December 2022 decisions. The letter does not offer any qualitative information about the reasons for the “several meetings and discussions.” In the face of the evidence we have heard, and the findings we have made, we are unable to give weight to the general practitioner’s opinion as having any bearing on her practice failings. Because it was filed on the morning of the penalty hearing, the Standards Committee has had no opportunity to test this material.

[11] Ms Holdaway has been concerned throughout that information about her circumstances and medical matters should not be available in the public arena. As recorded in our September 2022 decision, we advised her of our practice in suppressing sensitive material<sup>5</sup> (except where it is so material it must be shared), but she has remained unwilling to provide us with relevant material. We have received no information that convincingly explains her conduct.

[12] We remain concerned about her cognition. During the hearing on 23 March 2023, she seemed unable to address the choice between the lesser penalty of suspension with a pathway to give us confidence she could be trusted to practice safely, and the ultimate penalty of strike-off. We took trouble to engage with her on this point so she could have a fair chance of responding. We find that she does not seem to understand our concerns about risk to the public, despite our September and December 2022 decisions.

[13] At the hearing, Ms Holdaway repeatedly referred to the recent Independent Review Report in respect of the Law Society’s complaints system. The Report proposes a new independent regulator to replace the current Standards Committee model. Ms Holdaway seemed to suggest that the report justifies her refusal to respond to various Standards Committee requests. We reject this suggestion. Lawyers owe a

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<sup>5</sup> For example, we suppressed and redacted most of para [15] of our 22 December 2022 decision in order to protect her privacy.

duty to comply with their present regulatory regime. Whether that regime may change in the future is irrelevant.

[14] In some ways, the charges of misconduct could be regarded as secondary charges because they arise from process defaults on her part in investigating substantive complaints by (or on behalf of) clients. The substantive charges (that underpin the process charges we have been dealing with) have been slower wending their way through the disciplinary system. Because Ms Holdaway took the substantive charges on review to the Legal Complaints Review Officer, they have only recently been filed with the Tribunal and have not yet been reached for hearing. We take no heed of them in this decision apart from noting the “secondary” nature of the charges we are dealing with. The critical point, here, is that the charges, secondary though they may be framed, reveal serious practice deficits to which we must respond because the public interest is engaged.

### **Will anything less than strike-off do?**

[15] In the case of *Holland*,<sup>6</sup> the Tribunal said:

[3] Nonetheless, strike-off is the most severe response available to us. It is only available if we are unanimous. We should not, and would prefer not to, strike her off unless it is the least restrictive outcome. The need to impose the least restrictive outcome was explicitly noted in *Daniels*<sup>7</sup>:

Tribunals are required to carefully consider alternatives to striking off a practitioner. If the purposes of imposing disciplinary sanctions can be achieved short of striking off then it is the lesser alternative that should be adopted as the proportionate response. That is “the least restrictive outcome” principle applicable in criminal sentencing. In the end, however, the test is whether a practitioner is a fit and proper person to continue in practice. If not, striking off should follow. If striking off is not required but the misconduct is serious, then it may be that suspension from practising for a fixed period will be required.

[4] In considering strike-off as a real possibility, as the High Court observed:<sup>8</sup> “The ultimate issue is whether the practitioner is not a fit and proper person to practise as a lawyer.”

[16] Ms Holdaway has 18 prior findings of unsatisfactory conduct by the Standards Committee. Those findings, spanning November 2012 to July 2020, mark her out as

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<sup>6</sup> *Auckland Standards Committee 2 v Holland* [2022] NZLCDT 20, at [3]-[4].

<sup>7</sup> *Daniels v Complaints Committee 2 of Wellington District Law Society* HC (Full Bench) CIV-2011-485-227 at [22].

<sup>8</sup> *Hart v Auckland Standards Committee 1* [2013] 3 NZLR 103 at [185].

a problematic practitioner. They include such things as failing to honour an undertaking, overcharging, failure to do things in a timely manner.

[17] She has not presented us with any credible reason why she has behaved (in relation to the discrete charges we are dealing with) as she did. Her cascade of medical concerns do not adequately explain them. We are reluctant to find that her conduct has been the product of arrogance. Given her lack of appreciation about the gravity of her conduct, we think it may be explained by some psychological issue. Her engagement with the Tribunal could be regarded as containing elements of heightened anxiety or even disassociation. We are not qualified to diagnose but we have earnestly searched for reasons to explain behaviour that we have unanimously found worrying. In our perplexity, we have had no real help from Ms Holdaway because she will not speak frankly about what she calls personal matters.

[18] In the absence of understanding what drives her problematic conduct, we cannot devise any curative course of action. We have no means of measuring ways in which she might be encouraged or helped to practise safely.

[19] We find that Ms Holdaway has demonstrated that she is not a fit and proper person to practise as a lawyer. She has not helped us to understand her continued failings towards her clients. In these circumstances, we see no effective option to protect the public interests and to uphold the reputation of the profession other than strike-off. In this unhappy situation, it is the least restrictive course open to us.

### **Should we order compensation?**

[20] In submissions filed two days before the hearing, the Standards Committee advanced two issues in respect of which we might consider compensation.

[21] One client sought \$2,990 for “additional costs incurred in instruction new solicitors.” We have no information how this sum is made up, Ms Holdaway has not had a proper opportunity to respond to it. We are unable to assess the reasonableness of this claim and therefore decline to make an award.

[22] The Standards Committee also states that when Ms Holdaway paid funds from her trust account to an Investment Company, there was a shortfall of \$6,350.77. Once

again, we have no detailed proof, and the claim is late made. The funds may remain in her trust account and therefore be readily recovered. Whatever the situation, we do not have material upon which we are confident to award compensation. No compensation order is made in respect of this item.

## **Suppression**

[23] Our decision and interim order of December 2022 suspending Ms Holdaway from practise were suppressed to protect her reputation pending any possible appeal. That was extended through to 23 March 2023 for pragmatic reasons. That suppression order is to be discharged.

[24] At the hearing on 23 March, Ms Holdaway advanced another application for name suppression. Open justice requires publication in a case like this. We can find no proper basis upon which Ms Holdaway can avoid further the ordinary consequences of a hearing in which she is struck off.

## **Orders**

[25] The orders we made on 23 March 2023 were:

1. All previous suppression orders are discharged. (This does not release information explicitly suppressed in our December 2022 decision.)
2. Ms Holdaway's application for suppression advanced on 23 March 2023 is refused.
3. There is an order permanently suppressing information about Ms Holdaway's personal history or medical issues except those referenced in the Tribunal decisions, pursuant to s 240 of the Lawyers and Conveyancers Act 2006 (the Act).
4. Ms Holdaway's name shall be struck off the roll pursuant to ss 242(1)(c) and 244 of the Act.

5. Ms Holdaway is ordered to pay costs to the Standards Committee in the sum of \$34,792.50, pursuant to s 249 of the Act.
6. Ms Holdaway is ordered to reimburse the New Zealand Law Society for the Tribunal costs payable under s 257 which are certified at \$5,390.00.

**DATED** at AUCKLAND this 6<sup>th</sup> day of April 2023

Dr JG Adams  
Deputy Chairperson