

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2024] NZLCDT 2

LCDT 023/23

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**CANTERBURY WESTLAND  
STANDARDS COMMITTEE 1**  
Applicant

**AND**

**CHRISTOPHER BRADLEIGH  
PERSSON**  
Respondent

**CHAIR**

Ms D Clarkson

**MEMBERS OF TRIBUNAL**

Mr G McKenzie

Ms M Noble

Ms S Sage

Ms P Walker MNZM

**HEARING** 14 December 2023

**HELD AT** Remote hearing by MS Teams

**DATE OF DECISION** 9 February 2024

**DATE OF REISSUED DECISION** 21 February 2024

**COUNSEL**

Ms N Town for the Standards Committee

Mr N Till KC for the Respondent Practitioner

### **DECISION OF THE TRIBUNAL ON PENALTY**

[1] On 20 December 2023, the Tribunal suspended Mr Persson for nine months, commencing immediately. Costs orders and reasons for the suspension order were reserved. This decision provides those reasons and orders.

[2] Mr Persson admitted one charge under s 241(d),<sup>1</sup> consequent on his conviction for 33 charges of knowingly failing to file tax and GST returns with intent to evade payment. He was sentenced to five months home detention.

[3] The offending arose because Mr Persson failed to file any GST returns, pay GST or submit income tax returns after 2010.

[4] The summary of facts in the District Court recorded that over a 10 year period, Mr Persson had evaded a minimum of \$224,850 of GST and income tax.

[5] By the time of his sentencing, Mr Persson had paid to the Inland Revenue Department (IRD) a total sum of \$226,461.67 including \$29,700 which had been paid in 2013.

[6] At the time of the Tribunal hearing, it was unclear what further payment was going to be sought from Mr Persson by way of penalties, but he deposed to us that it could be as much as \$168,637.

[7] Mr Persson's offending has been punished – the purpose of disciplinary penalty orders are not to further punish him but to properly reflect the disapprobation of the

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<sup>1</sup> Lawyers and Conveyancers Act 2006 (LCA).

profession, and to demonstrate to the public that the profession will “...not treat lightly serious breaches of expected standards by...” its members.<sup>2</sup>

[8] Other purposes of penalty determinations include deterrence, public protection, and rehabilitation.

### ***Process***

[9] The Tribunal must begin with an assessment of the level of seriousness of the offending. It then considers aggravating and mitigating features relating to this lawyer and this offending. In assessing proportionate penalty it reviews outcomes of similar cases. The principles and purposes of sanctions must underlie any determination. Specifically, the purposes of the LCA include upholding professional standards, and the confidence of the public in the legal profession.

### ***Seriousness***

[10] In earlier cases, such as *Davidson*,<sup>3</sup> the level of penalty imposed by the criminal courts is considered a highly relevant starting point. In *Davidson*, the practitioner had been sentenced to nine months home detention, the maximum hours of community service and considerable reparation. The High Court, later imposing disciplinary penalty, suspended Mr Davidson for nine months.

[11] In this case, a sentence of five months home detention demonstrates the seriousness of Mr Persson’s offending. We consider that guides us.

### ***Aggravating features***

1. The length of the offending (10 years) and the number of charges (33) are aggravating features.

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<sup>2</sup> *Daniels v Wellington Complaints Committee* 2 [2011] 3 NZLR 850, at [24].

<sup>3</sup> *Davidson v Auckland Standards Committee* 3 [2013] NZHC 2315.

2. Mr Persson's repeated failure to keep promises to the IRD to file returns and pay his taxes is reprehensible and an aggravating feature, particularly for a lawyer.
3. Mr Persson's approach to his tax problems was one of avoidance, which we also regard as a disturbing reaction in a lawyer. Although he had the funds available to make any payments that were due, he made no responses to the 70 approaches made by the IRD.
4. The size of the default – \$224,850.
5. That Mr Persson claimed a wage subsidy during the COVID-19 pandemic, despite being so enormously in debt to the taxpayer, we also regard as an aggravating factor.
6. Mr Persson was previously convicted of failing to file returns in 2006 and we note that he committed further offences even after the charges had been laid against him.
7. Mr Persson's disciplinary record of three previous unsatisfactory conduct findings is also an aggravating feature.

### ***Mitigating features***

1. Once the disciplinary process was begun, Mr Persson engaged in the process and accepted the charge at the earliest opportunity.
2. We accept that he indicated a degree of remorse for his offending and for the damage done to the reputation of the profession.
3. Mr Persson repaid the full tax assessed promptly.
4. While personal references do not usually carry great weight with the Tribunal, because public protection outweighs private interests, the references provided to us speak to Mr Persson's integrity as counsel, and that he puts his clients' needs first, living modestly. We accept that his

practice was largely one based on criminal legal aid assignments, which is a demanding and at times unrewarding area of the law, and one in which many practitioners are reluctant to engage.

5. Finally, we note Mr Persson's explanation of the circumstances leading to his default, namely the earthquakes which disrupted him professionally and personally and he says led to his "burying his head in the sand". We also note in Mr Persson's evidence that at the time there were significant changes in the legal aid system which caused many practitioners some difficulty. Mr Persson did not seek medical assistance at the time but has subsequently been diagnosed with depression. He now acknowledges he should have sought medical help earlier. The one rider we would place on this final mitigating factor is that the first conviction for failing to file returns in 2006 preceded the earthquakes and the subsequent disruption.

### ***Purposes of suspension***

[12] We refer to the *Daniels* decision:<sup>4</sup>

[24] 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.

[13] Mr Persson has voluntarily removed himself from practice since February 2022. Mr Till concedes that voluntary retirement does not of itself assist a practitioner to avoid suspension. This is confirmed also in the *Daniels* decision.<sup>5</sup>

[14] Mr Till does, however, rely on the later part of paragraph [25] of that decision where it is said:

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<sup>4</sup> See above n 2.

<sup>5</sup> See above n 2 at [25].

... The real issue is whether this order for suspension was an appropriate and necessary response for the proven misconduct of the appellant having regard not only to the protection of the public from the practitioner but also to the other purposes of suspension.

[15] It was Mr Till's submission that suspension in this case was not "necessary". However, it must be remembered that necessity relates to the overall response and the public's view of that, not just whether the practitioner poses a direct risk to the public. We accept that the public protection purpose of suspension is not engaged in respect of Mr Persson, particularly since he has now retired.

[16] We are also mindful that we must not repunish Mr Persson for the offences for which he has already served a sentence. Furthermore, the *Daniels* decision also reminds us to make the least restrictive intervention to achieve the purposes of penalty. So there is a delicate balancing act to be undertaken.

[17] Ms Town for the Standards Committee refers us to the decision of *Davidson*<sup>6</sup> to support the proposition that only suspension will provide a satisfactory response to offending at this level. In that case, Mr Davidson was suspended on appeal for a period of nine months. By way of comparison, the nature of the offending was different and, in that case, Mr Davidson had been sentenced to nine months home detention, 200 hours of community work and reparation of \$500,000. Although it was conceded by Ms Town that the *Davidson* case had more serious features than the present, it is also the case that the mitigating features in *Davidson* were more powerful and there were not the aggravating features which we have listed above.

[18] Two of the other relevant cases which were cited were *Whale*<sup>7</sup> and *Kelly*.<sup>8</sup>

[19] We regard those cases as significantly more serious than the matter before us. In Mr Whale's case, he had been found to have had a close involvement with the untrue statements which were contained in prospectuses and advertisements. In the case of Ms Kelly, there were elements of her offending (tax evasion) which involved elements of dishonesty. Furthermore, she had failed to return to New Zealand for her trial on the criminal matters, having relied on her status as an officer of the court to be granted

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<sup>6</sup> See above n 3.

<sup>7</sup> *Auckland Standards Committee 1 v Whale* [2014] NZLCDT 22.

<sup>8</sup> *Otago Standards Committee v Kelly* [2016] NZLCDT 20.

permission to travel overseas. Neither did she engage in the disciplinary proceedings and in her case, the Tribunal considered strike off was the appropriate penalty.

[20] Furthermore, the *Choi*<sup>9</sup> and *Revell*<sup>10</sup> cases also involved elements of dishonesty which are not present in the current matter. In Mr Revell's case, there was a second charge relating to misuse of trust account funds. Mr Choi was suspended for a little under six months and Mr Revell was struck off.

### **Conclusion**

[21] Taking into account the seriousness of the offending, the aggravating and mitigating features and previous disciplinary penalties imposed for similar offending, the Tribunal reached the view that a period of suspension of nine months was necessary to provide a responsible and proportionate response to Mr Persson's offending. The Tribunal is unanimous in this decision.

### **Costs**

[22] The Standards Committee costs are \$4,640. These are modest and take account of Mr Persson's cooperation.

[23] However, the Tribunal considers that the cost of these proceedings ought not to rest with the profession but rather with the practitioner and there will be full reimbursement of the Standards Committee costs and of the Tribunal costs which are awarded against the New Zealand Law Society.

### **Orders**

1. Mr Persson is suspended from practice as a barrister or solicitor for a period of nine months, commencing from 20 December 2023 (pursuant to ss 242(1)(e) and 244 of the LCA).

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<sup>9</sup> *Auckland Standards Committee 1 v Choi* [2021] NZLCDT 20.

<sup>10</sup> *Waikato Bay of Plenty Standards Committee 2 v Revell* [2022] NZLCDT 54.

2. Mr Persson is to pay the costs of the Standards Committee in the sum of \$4,640 (pursuant to s 249 of the LCA).
3. The New Zealand Law Society is to pay the Tribunal costs in the sum of \$3,022 (pursuant to s 257 of the LCA).
4. Mr Persson is to reimburse the New Zealand Law Society in full, for the Tribunal costs (pursuant to s 249 of the LCA).

**DATED** at AUCKLAND this 9<sup>th</sup> day of February 2024

DF Clarkson  
Chairperson