

PERMANENT NON-PUBLICATION ORDERS IN PLACE FOR THE NAME OF MR O,
THE COMPLAINANT, THEIR ASSOCIATED COMPANIES, OTHER PERSONS
INVOLVED IN THOSE ENTITIES, THE NAMES OF VENUES AND LOCATIONS. THESE
ORDERS MADE PURSUANT TO S 240 LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2024] NZLCDT 3

LCDT 011/23

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WAIKATO BAY OF PLENTY
STANDARDS COMMITTEE 2**

Applicant

AND

Mr O
Practitioner

DEPUTY CHAIR

Dr J Adams

MEMBERS OF TRIBUNAL

Mr G McKenzie

Ms M Noble

Ms S Sage

Ms P Walker MNZM

DATE OF HEARING 24 January 2024

HELD AT Remote Hearing

DATE OF DECISION 9 February 2024

COUNSEL

Mr E McCaughan for the Standards Committee

Mr J MacGillivray for the Respondent Practitioner

DECISION OF THE TRIBUNAL RE LIABILITY AND PENALTY

[1] This decision gives reasons for the orders we made on the day of the hearing. The orders are recorded in paragraph [17] of this decision.

[2] Mr O admits the charge of unsatisfactory conduct. Nonetheless, the gravity of his conduct is modest. We are surprised the Standards Committee escalated this matter to the Tribunal. To understand the conduct, we must describe the context.

[3] Mr O was one of three partners in a partnership that owned a commercial building. The complainant's company leased that building where it operated a bar.

[4] Adjoining the bar is a strip of land owned by the local District Council, leased to the landlord partnership. The complainant's business used the strip of land when customers spilled out of the bar. Another member of the landlord partnership wrote a document appearing to confer a license to the complainant to use that land. Later, this became contentious because the complainant refused to pay rent for that use. Difficulties compounded when the member of the landlord partnership who had written the apparent authority to use the strip of land opened a bar next door in occasional competition with the complainant.

[5] The complainant's liquor license came up for renewal. Police opposed renewal because of alleged incidents and rowdiness.

[6] Against this background, Mr O wrote two emails to the local District Council. The emails, written on his legal letterhead, stated that he acted for the landlords. The emails stated that the complainant had no legal right to use the strip of land. Although Mr O was free to write these letters in his personal capacity, it is common ground that, by using letterhead, and by stating he acted for the landlords, he gave a misleading impression that he was writing as the legal representative of the landlord, not as an interested person in his own right. Moreover, he stated the legal position as if it were fact rather than communicating that the position was contentious, and that the

complainant took a different view. These misleading features breach rule 10.9.¹ As a matter of courtesy, he accepts that he should have sent a copy of the emails to the complainant or his representative (a breach of rule 10.1).² We accept his actions were not unrelated to the provision of regulated services.

[7] Mr O has practised for over 43 years with only one minor disciplinary matter, some years ago, for being slow in forwarding a file pursuant to an authority to uplift.

[8] The issues we considered were:

- should Mr O be censured?;
- should Mr O be required to contribute to the complainant's costs in relation to the liquor licensing issue?;
- should we order non-disclosure including name suppression; and
- costs

Censure?

[9] This depends on gravity. Censure becomes weakened if used routinely. We do not approve of Mr O's conduct, but it does not warrant harsh criticism or sharp rebuke.³ The entry of the adverse decision is sufficient in this case.

Contribution to complainant's costs?

[10] The Standards Committee submits that the emails triggered reconsideration by the Licensing Committee but that is speculative and at odds with the detailed reasoning of the Licensing Committee. The Licensing Committee refused to renew the license because of the matters raised by Police. In its detailed decision, only brief, passing mention is made of the use of the strip of land. We find that none of the practitioner's actions proved material to the liquor licensing application.

¹ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

² See above n 1.

³ See *B v Auckland Standards Committee* [High Court CIV-2010-404-8451]; *Auckland Standards Committee v Gardner* [2017] NZLCDT 18.

[11] Mr O was entitled, in his personal capacity, to raise the contentious point with the Licensing Committee. There is no evidence that the complainant was put to extra cost because of the way Mr O raised the matter. We decline to speculate. We are not persuaded that any order of this kind is merited, nor what a proper amount might be if it were so.

Non-publication?

[12] We accept that, had this matter been dealt with, appropriately, at Standards Committee level, Mr O's name would not have been published. That is not a complete case because the default position in Tribunal cases is to enable open justice.

[13] There is evidence that the complainant, who has referred to Mr O in uncomplimentary terms in correspondence, harbours resentment.

[14] Mr O plans to retire next year. There is no risk to the public involved in this case.

[15] We assess the public interest in this case to be minimal. Mr O's departure from best professional practise was isolated and immaterial to the complainant's interests. We find the balance falls in favour of non-disclosure, details of which appear in the order.

Costs

[16] Before the hearing began, Mr O agreed to pay 70 per cent of the Standards Committee's costs. However, when we discovered that the Standards Committee had incurred legal costs in excess of \$20,000, we were unable to countenance making an order of what we consider to be a disproportionate sum, given the modest parameters of the matter. We have determined to require Mr O to contribute \$7,000 to the costs of the Standards Committee, and to reimburse the New Zealand Law Society in respect of the Tribunal costs payable under s 257 Lawyers and Conveyancers Act 2006 (the Act).

Orders

[17] The orders we made on the day of the hearing are:

1. Mr O is ordered to apologise to the complainant for:
 - (a) failing to clarify that the position he advanced in his emails was contentious, and
 - (b) failing to clarify that the complainant took a contrary view, and
 - (c) for his discourtesy in failing to copy those emails to the complainant.
2. A permanent non-publication order is made in relation to the name of the Mr O, the complainant, their associated companies; other persons involved in those entities, the names of venues and locations. (s 240 of the Act)
3. Mr O is ordered to pay a contribution of \$7,000 to the costs of the Standards Committee. (s 249 of the Act)
4. The New Zealand Law Society shall pay the costs of the Tribunal, certified in the sum of \$2,194. (s 257 of the Act)
5. Mr O shall reimburse the New Zealand Law Society for the full amount Tribunal costs. The amount yet to be certified. (s 249 of the Act)

DATED at AUCKLAND this 9th day of February 2024

Dr J G Adams
Deputy Chair