

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 15

LCDT 040/14

BETWEEN

**CANTERBURY WESTLAND
STANDARDS COMMITTEE 3 OF
THE NEW ZEALAND LAW
SOCIETY**

Applicant

AND

PAUL BRIAN CURRIE

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr M Gough

Mr A Lamont

Mr S Maling

HEARING at Christchurch

DATE 23 March 2015

DATE OF DECISION 30 April 2015

COUNSEL

Ms A Cunninghame for the Applicant

Mr M Wallace for the Respondent

**DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL CONCERNING CHARGES AND PENALTY**

[1] The respondent was charged on 21 November 2014 with misconduct and in the alternative with unsatisfactory conduct or negligence in that in the period from 1 October 2013 to September 2013 he:

- a. *Charged Land and Information New Zealand ("LINZ") disbursements to clients as an 'agency fee' when those charges and disbursements were not actually incurred by him or his firm and without his client's knowledge of the nature or extent of the charges incurred; and*
- b. *Charged clients a variable "office expense" above those expenses properly incurred, without his clients' knowledge of the nature or extent of the charges.*

[2] The allegation was that such charges contravened the following Rules made under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008:

- a. **Rule 3.1(a)(sic) but correctly Rule 3.4(a)**

A lawyer must, in advance, provide a client with information in writing on the principal aspects of client service including ... the basis on which fees will be charged ...

- b. **Rule 3.6**

If information provided by a lawyer in terms of rule 3.4 ... becomes inaccurate in a material respect, the lawyer must ensure that the information is updated with due expedition ...

c. **Rule 9**

A lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in rule 9.1.

d. **Rule 11.1**

A lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the lawyer's practice.

[3] The charges arise from the practice adopted by the respondent whereby he charged office expenses as a set percentage of the fee value. He was as well adding an uplift to LINZ disbursements by a method that did not disclose to the clients the fact or extent of the uplift that was being added. He did not set out in his invoices as a separate item the “agency” portion of the charge.

[4] The respondent admitted that he had continued a practice that had been in place when he was an employee of two major Christchurch law firms prior to commencing practise on his own account as a sole practitioner. The method had been disapproved of by the New Zealand Law Society (“NZLS”) for some years. Material had been published to educate practitioners about it. The respondent had failed to heed the advice from the Property Law Section of NZLS and continued to use the outdated system.

[5] The respondent immediately ceased the practice once he had been confronted about it. He has readily admitted the charge of unsatisfactory conduct.

[6] The Committee does not now wish to proceed with the other alternative charges and seeks leave to withdraw them. The Tribunal grants leave to do so.

[7] The Committee and the respondent have agreed on a penalty and seek the approval of the Tribunal.

[8] The matter came before the Tribunal on 23 March 2015 at Christchurch. After discussion with counsel the following penalty was agreed on and approved by the Tribunal. The Tribunal made the following orders:

- a. That the practitioner be censured pursuant to s 156(1)(b) of the Act.
- b. That the practitioner refund, with an explanatory apology, the specific portions of fees charged as an uplift on LINZ disbursements to each of the clients identified in the schedule attached to Mr Strang's report of 18 July 2014, pursuant to s 156(1), such refunds to be made within three months of this order or with such additional time to be agreed upon by counsel if required to facilitate and finance the required refunds. The form of explanatory apology is to be approved by counsel on behalf of the Committee.
- c. That the practitioner undergo practical training or education, at his own cost, pursuant to s 156(1)(m) of the Act in the form of a personal training session with NZLS inspector Mr Strang addressing engagement, reporting to, and charging of fees and disbursement to clients.
- d. That the practitioner pay the costs of the Law Society's counsel and of the Disciplinary Tribunal to be fixed.

[9] The Committee seeks an order that the respondent pay its costs totalling \$9,141.29.

[10] The respondent accepts the inevitability of paying costs. He seeks the Tribunal's determination as to quantum. He submits that the following matters justify an order for a reasonable contribution only to the actual costs of the Committee.

- a. That the Committee has now expressly agreed to the matter being dealt with as unsatisfactory conduct only by the practitioner.

- b. That such was a conclusion that the Committee could have reached for itself without recourse to the Tribunal.
- c. That in that event the costs of the Tribunal process would not have been incurred.
- d. That the practitioner cooperated frankly with the investigation and admitted the charge of unsatisfactory conduct at the first opportunity in the process

[11] The Tribunal has noted that the enquiry involved transactions over a period of twelve months where the total expenses charged were \$31,661.63 being nine per cent of total fees of \$349,017.50. Notwithstanding the submissions of counsel for the respondent, the Tribunal finds that those sums justified the Committee referring the charges to the Tribunal. The early admission of the respondent together with the fact of his frankness and cooperation persuade the Tribunal that the penalty agreed on is an appropriate outcome of the process.

[12] The Tribunal makes the following orders in respect of costs:

- a. The respondent is to pay the Costs of the Committee in the sum of \$9,141.29.
- b. The respondent is pursuant to s 249(3) to refund to the New Zealand Law Society the Tribunal's costs fixed pursuant to s 257 in the sum of \$2,534.

DATED at AUCKLAND this 30th day of April 2015

BJ Kendall
Chairperson