NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2012] NZLCDT 12

LCDT 002/12

IN THE MATTER of the Lawyers and Conveyancers Act 2006

AND

IN THE MATTER OF **ATARETA POANANGA**, of Gisborne, Barrister

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Ms S Gill

Mr M Gough

Mr C Rickit

HEARING at Wellington on 30 April 2012

REPRESENTATION

Ms G Phipps for the Standards Committee

Mr Y Singh for the Practitioner

REASONS FOR DECISION AS TO STRIKE OFF

Introduction

[1] Ms Poananga ("the Practitioner") has admitted four charges relating to her conduct as a Barrister. The charges were each laid in the alternative and it is not entirely clear which alternatives she acknowledged. However she was absolutely clear at the penalty hearing that the charges were accepted and indeed accepted an Agreed Statement of Facts the day before the hearing.

[2] For the sake of clarity, the Lawyers and Conveyancers Disciplinary Tribunal ("Tribunal") finds that the evidence establishes professional misconduct rather than the lesser alternatives pleaded.

Charges

[3] The charges are as follows[1]:

> **CHARGE 1: Duty of Fidelity to the Court - [Mr A]**
>
> The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct or **ALTERNATIVELY** negligence or incompetence in her professional capacity in that negligence or incompetence has been of such a degree or so frequent as to reflect on her fitness to practise or as to bring her profession into disrepute.
>
> **CHARGE 2: Duty of Fidelity to the Court - Mr [B]**
>
> The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct or **ALTERNATIVELY** negligence or incompetence in her professional capacity in that negligence or incompetence has been of such a degree or so frequent as to reflect on her fitness to practise or as to bring her profession into disrepute.
>
> **CHARGE 3: Forgery**
>
> The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct in her professional capacity in

[1] Amended Disciplinary Charges Laid by the Wellington Lawyers Standard Committee, Dated: 30 April 2012.

that she prepared and submitted legal aid applications for claimants before the Waitangi Tribunal in circumstances where she forged the signature of each claimant and/or witnessed those forged signatures.

CHARGE 4: False Declaration

The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct or **ALTERNATIVELY** negligence or incompetence in her professional capacity in that negligence or incompetence has been of such a degree or so frequent as to reflect on her fitness to practise or as to bring her profession into disrepute.

[4] The full particulars in respect of each charge are lengthy and the full text of charges, together with particulars, is appended as a Schedule to this decision.

[5] The Agreed Statement of Facts are as follows[2]:

1. Atareta Poananga ("the practitioner") is a barrister, practising in Gisborne.

Past Practice

2. At all material times the practitioner was based in Gisborne and was contracted to work for [Law] Chambers, a chambers situated in Auckland.

3. The barristers in [Law] Chambers specialise in carrying out Treaty of Waitangi work.

4. The practitioner had instructions to act on a number of Treaty of Waitangi claims including [claim X].

5. At all material times, a senior practitioner in the chambers was approved as lead provider for legal aid, the practitioner was a secondary provider.

6. As a secondary provider, the expectation was that the practitioner carried out the day-to-day work under the supervision of a lead provider.

7. A copy of the practitioner's curriculum vitae is numbered 42 and is on page 139 of the Bundle of Documents.

[2] Agreed Statement of Facts

Claims

8. On 13 December 2006, by amendment to the Treaty of Waitangi Act, a limitation was imposed in respect of the filing of historical Treaty claims. In effect this meant that after 1 September 2008, no Maori might submit a new claim to the Waitangi Tribunal.

9. This deadline created a significant workload for practitioners working in this area in order to ensure that claimants' claims were filed in time.

10. In the chambers in which the practitioner practised, they went from 80 to 350 active claims in the 2008 year.

11. As part of arranging instructions and filing a claim, documents were signed by claimants, including:

    11.1. an Authority to Act; and

    11.2. a Legal Aid application.

Completion of Legal Aid applications

12. It was the usual practice in the chambers for the secondary provider to arrange to have the legal aid form filled out by the claimant. The secondary provider (or another suitably qualified person) then attested and dated the signature of the claimant after he or she (the claimant) had signed. They did so as a witness to the claimant's signature. Thereafter the application was taken to the lead provider who signed as the lead provider.

13. The form contains a declaration that must be taken by a solicitor of the High Court or Justice of the Peace. The declaration requires the claimant to declare that:

> *"The statements and representations [they] have made and the information [they] have given in this application are true and complete to the best of [their] knowledge".*

14. The form also contains an acknowledgement by each applicant that states:

> *"I make this application as a member of the Waitangi Tribunal claimant group detailed in this application.*
>
> *If I knowingly make any false statement or representations I commit an offence under section 110 of the Legal Services Act 2000.*
>
> *I have received a completed copy of this application form from my lawyer."*

15. The Ministry (and former LSA) regards these declarations as an important part of ensuring that Waitangi claims are appropriately verified. They also provide a

check on the veracity of information given and consequently the appropriate use of tax-payer funds.

Instructions

16. At all material times, the practitioner represented that she had instructions to act for Mr [A] and Mr [B]. This representation was made in an affidavit ("the representation affidavit") prepared by the practitioner dated 6 March 2010.

17. This was also represented in an email dated 6 March 2010 in which the practitioner states *"This took a long time to get the signatures"*, referring to the representation affidavit.

Charge 1, Particular 1 – Duty of Fidelity to the Court – [Mr A]

18. On or about 22 March 2101 (sic) the practitioner prepared and filed a memorandum dated 22 March 2010 in which it was stated:

> *"Mr [A] gave confirmation to me that I act for him in the [WAI(1)] claim on 10 February 2010 at Whangarei."*

19. The practitioner did not, as represented, meet in Whangarei with Mr [A] but says he did express a wish to her that she represent him.

Charge 1, Particular 2

20. On or around 9 August 2010, the practitioner prepared and filed a document titled "Memorandum of Counsel". This document was exactly the same as the representation affidavit save for the intituling being changed to read "Memorandum of Counsel Concerning Representation of [the WAI(1) claim] dated 9 August 2010".

21. The memorandum contains what is represented to be the signature of Mr [A]. The practitioner admits that:

    21.1. at that time she was not authorised to represent Mr [A]; and

    21.2. she had not met with Mr [A]; and

    21.3. it was the practitioner's personal assistant who placed Mr [A]'s electronic signature where Mr [A] should have placed his signature The practitioner says this was done despite her telling her personal assistant not to.

Charge 2 – Duty of Fidelity to the Court – Mr [B]

22. The practitioner acknowledges that she placed in her own hand Mr [B]'s signature where Mr [B] should have placed his signature on his legal aid application dated 20 August 2008 and that she subsequently prepared and filed an affidavit dated 13 November 2009 containing a statement from Mr [B] his application *"signed by myself",* knowing that this statement was untrue.

Charge 3 - Forgery

23. In respect of the documents that are the subject of the charges before the New Zealand Lawyers and Conveyancers Disciplinary Tribunal, it was the duty of the practitioner to attend to the execution of the Authority to Act documents. The practitioner placed in her own hand the signature of the persons named below on the following Authority to Act documents:

    23.1 [C] dated 28 July 2009 (sic) (Charge 3, Particular 1).

    23.2 [D] dated 28 August 2008 (Charge 3, Particular 18).

    23.3 [E] dated 6 October 2010 (Charge 3, Particular 19).

Charge 3 – Legal Aid Applications

24. The practitioner submitted the following legal aid applications to the Legal Aid Agency in circumstances where she placed the signature of the following named persons on each form, she says after getting their instructions to do so:

    24.1 [F], application dated 30 July 2008, said to have been declared at Whakatane (Particular 2).

    24.2 [E], application dated 30 July 2008, said to have been declared at Te Teko (Particular 3).

    24.3 [C], application dated 3 August 2008, said to have been declared at Cape Runaway (Particular 4).

    24.4 [G], application dated 3 August 2008, said to have been declared at Cape Runaway (Particular 5).

    24.5 [H], application dated 3 August 2008, said to have been declared at Te Araroa (Particular 6).

    24.6 [B], application dated 20 August 2008, said to have been declared at Gisborne (Particular 7).

    24.7 [I], application dated 20 August 2008 (Particular 8).

    24.8 [G], application dated 20 August 2008, said to have been declared at Auckland (Particular 9).

    24.9 [J], application dated 23 August 2008, said to have been declared at Hamilton (Particular 10).

    24.10 [K], application dated 23 August 2008, said to have been declared at Gisborne (Particular 11).

    24.11 [E], application dated 23 August 2008, said to have been declared at Whakatane (Particular 12).

24.12 [L], application dated 24 August 2008. There is no reference to the place at which the declaration was said to have been made (Particular 13).

24.13 [M] application dated 28 August 2008, said to have been declared at Auckland (Particular 14).

24.14 [N] application dated 28 August 2008, said to have been declared at Auckland (Particular 15).

24.15 [O], application dated 28 August 2008. There is no reference to the place at which the declaration was said to have been made (Particular 16).

24.16 [D], application dated 28 August 2008, said to have been declared at Hastings (Particular 17).

24.17 [P] (also known as [Q]), application dated 11 November 2009, said to have been declared at Wellington (Particular 20).

Charge 4 – Statutory Declaration

25. Each of the legal aid applications contained a statutory declaration. The practitioner acknowledges that the declarations were signed in circumstances where she knew the declaration was false in that she knew that it was she who had signed the documents and not the claimants. The Claimant says she believed signing the declaration in this way was consistent with her instructions.

26. The practitioner acknowledges that this occurred in respect of the applications referred to in paragraph 24 above.

27. The practitioner has at all times cooperated with the investigation of this matter and has admitted the charges.

Submissions by National Standards Committee (NSC)

[6] Counsel for the NSC, Ms Phipps, submitted that the conduct was so serious that it could only attract the most serious of sanctions – namely that the Practitioner be struck off the roll of Barristers and Solicitors.

[7] Ms Phipps conceded that this is a penalty of last resort and that the principles applied in *Daniels v Complaints Committee 2 of the Wellington District Law Society*[3] require that the least restrictive penalty be applied: that if suspension will suffice to properly reflect the seriousness of the offending, then that is the sanction that ought to be imposed. However, their Honours said:

[3] [2011] 3 NZLR 850.

> "[22] 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.
>
> ...
>
> "[24] ... 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."

[8] Ms Phipps went on to refer us to *Bolton v Law Society*[4], and in particular the following quote at page 491:

> "In most cases the order of the Tribunal will be primarily directed to one or other, or both, of two purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order for suspension; plainly it is hoped that the experience of suspension will make offender meticulous in his future compliance with required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all; to maintain the reputation of the solicitor's profession as one in which every member, of whatever standing, may be trusted to the ends of the earth."

[9] Ms Phipps pointed to a number of mitigating features that might be relevant. We consider the relevant mitigating factors include good character, reputation, absence of prior transgressions, and eventual acceptance of facts and indication at a relatively early stage of a guilty plea.

[10] Ms Phipps then went on to point out factors that could be called aggravating or those matters which would reflect on her fitness to practise including: absence of remorse; failure to accept responsibility, and showing no insight into her behaviour. (These were all matters referred to in the *Daniels* decision.)

[11] Ms Phipps referred us to previous decisions of the Tribunal where there had been a similar type of offending, namely *Taranaki Standards Committee v Flitcroft*[5] and *Auckland Standards Committee v Comeskey*[6]. We accept that both cases were distinguishable and less serious than the present case. In *Flitcroft, the* Tribunal was impressed by the early acceptance of full responsibility and the absence of any

[4] (1994) 2 All ER 486.
[5] [2010] NZLCDT 36.
[6] [2010] NZLCDT 19.

personal gain, and recognised some internal firm organisational matters specific to that case. In *Comeskey,* the behaviour was of negligence or incompetence rather than misconduct, which is the level of the present case.

Aggravating features

[12] Ms Phipps submitted that this is a clear case of dishonesty. She submitted that the misleading documentation submitted to the Waitangi Tribunal was not a situation of a lawyer in Court being in any way taken by surprise. The documentation was prepared and filed in circumstances where the Practitioner was aware that there was an issue about representation. Furthermore, the misrepresentation was repeated in a later memorandum. To bolster this claim the memorandum was submitted with a document purporting to contain the signature of the client whom the Practitioner claimed to represent. That signature was applied by the Practitioner's personal assistant.

[13] The repeated nature of the conduct is clearly aggravating. There are 20 separate incidents of forgery established in which the Practitioner placed her signature in place of that of her client. In relation to the declarations the Practitioner then took the declaration as if there had been a client present to make the necessary affirmation required in order for her to fulfil her duties as a lawyer taking a statutory declaration. Ms Phipps submitted that this amounts to blatant dishonesty rather than disorganisation or incompetence.

[14] In her opening submissions Ms Phipps quoted from the report *Transforming the Legal Aid System (2009)* ("the Bazley Report)[7] to emphasise how the conduct of a minority of lawyers can have far reaching implications for other lawyers who provide legal aid services. Ms Phipps submitted that the Tribunal must emphasise the importance of the obligations on lawyers acting as legal aid service providers and that failure to uphold these obligations, not only to their clients but to the legal services agency, will be treated very seriously. She submitted that this is crucial to

[7] Dame Margaret Bazley *Transforming the Legal Aid System: Final Report and Recommendations (2009).*

maintain public confidence in the provision of legal services funded by, and accountable to, the public.

[15] Finally, Ms Phipps submitted that it appeared that the Practitioner did not appreciate the inherent seriousness of her wrongdoing, even at the stage of the penalty hearing.

Mitigating circumstances acknowledged by the NSC

[16] The Practitioner did eventually sign an agreed statement of facts; however, this was some five to six months after it was first provided to her and this resulted in a great deal of further work needing to be undertaken in the interim.

[17] Secondly, the Practitioner, although of mature years was relatively junior in terms of her experience in the legal profession.

[18] Finally, the Practitioner has an unblemished disciplinary record to date.

Submissions for the Practitioner

[19] Mr Singh, counsel for the Practitioner, submitted that his client had always intended to admit the charges despite only recently signing the agreed statement of facts, which had been provided when she was represented by different counsel. He also indicated that she had always intended to return her practising certificate, although it was clear from the tenor of her submissions at the hearing that she wished to continue as a legal practitioner.

[20] The Tribunal had questioned Mr Singh about whether the Practitioner had advised the District Health Board, of which she was a member, of the charges faced by her. It was acknowledged at the hearing that although the Practitioner had referred to “some difficulties with the Law Society”, she had not told the Health Board that she admitted serious charges of this kind.

[21] The Practitioner indicated through her counsel that she apologised to the Tribunal; that she would undertake whatever training was required and that she would be happy to have a mentor. She had not worked in the 18 months since her

contract with the Legal Services Agency had been cancelled and the charges subsequently laid.

[22] Mr Singh pointed out on behalf of his client that she had not practised for some years after gaining her qualification and her only real legal experience was as a barrister with the chambers to which she was attached in Auckland. However, the Practitioner made it clear that she did not reside in Auckland, rather in Gisborne, and rather than being provided with any form of any full-time supervision she only attended the regular chambers meetings. Her only experience was in the area of Waitangi Tribunal claims which was said to be a relatively narrow area in scope and an area of practice which was not necessarily sought after. Her counsel submitted that her primary concern was to help her people, and that no harm had been caused to anyone as a result of her offending.

[23] The Practitioner made statements in the course of the investigation describing the extreme pressure under which she felt as the deadline for the filing of claims under the Treaty of Waitangi approached. She indicated the two-year lead in period was not long enough. Further, because of the isolated location of most of her clients, she was required to travel to them to take instructions and to have forms completed, and that they would not come to her. She met her own travel expenses and said that she was responsible for around 35 claims covering much of the North Island. She indicated that she had been authorised to place her signature on the applications by some of the clients, some of whom were connected to her as whānau.

[24] The Practitioner and her supporters told the Tribunal that the clients, whose names had been forged, would be “horrified” at how the Practitioner was being treated as a result of her actions.

[25] Effectively, counsel was raising cultural factors as mitigating factors that ought to excuse or reduce the seriousness of her offending.

Medical evidence

[26] In the weeks leading up to the hearing, and following an interim decision of the Tribunal which initially would have only suppressed the Practitioner's name until 23 April for the reasons given in that decision, a medical certificate was provided by counsel for the Practitioner. Due to privacy considerations, we do not propose to go into the details of that certificate save as to comment that it was equivocal in its expression, that it raised questions about her capacity to instruct her counsel, and may have had some implications concerning the offending itself.

[27] Because of these factors, NSC required that the Practitioner obtain a second opinion and a full neuropsychological assessment as had been suggested in the medical certificate. This was carried out at very short notice in the days leading up to the hearing.

[28] On the morning of the hearing, the Practitioner's counsel was initially reluctant to disclose the contents of that report to the NSC or the Tribunal. The reasons soon became apparent. After reflection, the Practitioner gave permission for the Tribunal and the NSC to read the assessment and a covering email. A very thorough clinical neuropsychological assessment had clearly been carried out along with the administration of a number of tests as to cognitive functioning.

[29] The conclusion of the experienced neuro-psychologist who carried out this report, Mr Schnabel, was that the testing results which indicated extreme impairment for cognitive functioning ought to be discarded. His assessment was that the Practitioner's reasoning abilities on clinical presentation suggested no cognitive impairment which would either preclude her from engaging in legal or disciplinary activities or in any way restrict her daily living, ability to fulfil vocational roles, or otherwise impair her capacity.

[30] However, Mr Schnabel went on to point out that the criteria for Malingering Neurocognitive Dysfunction were met. Due to his concerns about this finding, Mr Schnabel took the precaution of having an anonymous and rigorous neuropsychological peer review undertaken before the report was provided. The peer reviewer endorsed the report, the findings and the interpretation. Put in lay

terms, the Practitioner attempted to skew the results of her tests in order to assist her in these disciplinary proceedings.

Discussion

[31] The offending occurred in the context of Treaty claims where the Practitioner's clients were widely dispersed geographically, and in the context of the expectation under tikanga Māori[8] that the Practitioner visit the clients rather than the other way around. The Tribunal accepts that, as a practitioner of tikanga, and that as a result of her mana among these clients, the Practitioner came under a high level of work and financial pressure.

[32] However, the Practitioner is not unique in being a lawyer, of Māori descent, providing regulated services under pressure, or providing services to various Māori clients with whom common whakapapa is shared.

[33] Neither, in the opinion of the Tribunal, are there any unique circumstances in the dealings of the Practitioner that gave her no alternative other than to commit acts of forgery, by making false documents with the intent that they should be acted upon as genuine.

[34] Despite the impression that the Practitioner (and her supporters) appear to have had, it was not within the power of the Practitioner's clients, to legitimise forgery and false attestation simply by saying that they were happy for the Practitioner to sign for them. The deeds were done; they could not be undone by any retrospective action on the part of the clients or the Practitioner.

[35] That the Practitioner was unable to find a legitimate method of dealing with the problems she faced in respect to obtaining the necessary signatures and authorities from her clients is, on its own, a strong indication of her struggle to meet the level of competency required of a law practitioner.

[36] The Tribunal gained the impression (from submissions in mitigation on behalf of, and by, the Practitioner) that the Practitioner and her supporters, in claiming that

[8] tikanga Māori – refers to Māori customary values and practices.

the signatures 'forged' by the Practitioner were not attempts to imitate the genuine signatures of the respective persons, believed she had therefore not committed forgery. However, it is important to note that the legal definition of 'forgery' is variously:

> 'Making a false document, knowing it to be false, with the intent that it be shall be used or acted upon as genuine.'[9]
>
> 1. The act of fraudulently making a false document or altering a real one to be used as if genuine.
>
> 2. A false or altered document made to look genuine by someone with the intent to deceive.'[10]

[37] Furthermore, while some clients might find it acceptable for a lawyer to forge their signatures on a legal aid application and then falsify a statutory declaration in order to obtain funding for claims, the Tribunal does not accept such as a mitigating feature. There must be stringent qualifications around the granting of taxpayer funded legal services. It is not for clients to tolerate laxness or deceptive behaviour when public money is being dispensed. It does not assist the Practitioner that her clients purportedly endorsed her repeated breaches of the stringent standard of conduct required of lawyers in the role which she occupied.

[38] Notwithstanding our acceptance that her primary motivation was to assist her clients, based on what the Practitioner stated on oath at the hearing, we considered that she was still in denial or minimising the level of dishonesty of her behaviour which would ultimately have led to her financial gain (through the payment of her fees).

[39] We return to the *Daniels*[11] decision where the court stated:

> "[27[In considering penalties a Disciplinary Tribunal's considerations may be wider than those of a sentencing Judge in criminal matters, because it is dealing with professional standards and conduct.
>
> ...

[9] Peter Spiller *Butterworths New Zealand Law Dictionary* (6th ed LexisNexis, Wellington, 2005);.s.256 Crimes Act 1961.

[10] Bryan A. Garner *Blacks Law Dictionary* (9th ed, West, 2009).

[11] Above n 1.

> [29] ... Absence of remorse, failure to accept responsibility, showing no insight into misbehaviour, are matters which, whilst not aggravating nevertheless may touch upon issues such as a person's fitness to practice and good character or otherwise.
>
> [30] If a practitioner engaged, for example, in disreputable correspondence for the Complaints Committee or Disciplinary Tribunal, or conducted himself in a belligerent way in which he responded to legitimate complaints made to a Law Society Complaints Committee, a Tribunal may take a dim or adverse view of his overall behaviour. The practitioner cannot expect that to be a factor that is ignored in the exercise of the Tribunal's powers. That is because character - good or bad - may be very relevant when sanctions or penalties may come to be imposed.
>
> ...
>
> [32] A Tribunal, when determining ultimate fitness to remain in practice, whether limited by suspension, or by striking off, is entitled to review the entire conduct of the practitioner and transgressions the subject of the disciplinary proceedings, and the general behaviour of the practitioner. It cannot regard poor behaviour as justifying more severe penalties, but it is the obvious absence of the mitigating factor and relevant to balancing matters of character."

[40] These comments are apposite when considering the manner in which the Practitioner has conducted herself in respect of these proceedings. Whilst appearing to acknowledge responsibility by ultimately deciding not to defend the proceedings, she has at the same time, embarked on a pattern of deceptive behaviour (during the neuropsychological tests) which reflected the behaviour that was the subject matter of the charges themselves.

[41] We consider the lack of integrity demonstrated by the misconduct in this matter, particularly when accompanied by failure to recognise it as such, means that strike off is the only proper response in order to protect the public and the reputation of the profession. We reach this view unanimously as a Tribunal of five members.

[42] Unfortunately, the Practitioner's behaviour around the medical assessment did not reflect well on her fitness to be a legal practitioner. We find that she is not a fit and proper person to be a practitioner and make an order striking her off pursuant to section 242(1)(c) of the Lawyers and Conveyancers Act 2006 ("the LCA").

Costs

[43] We have allowed the Practitioner time to provide the Tribunal with evidence of her financial means in respect to the costs order sought by the NSC of $23,468.

[44] In respect of costs of the Tribunal under section 257 of the LCA, we make an order against the New Zealand Law Society for reimbursement of the costs of the Tribunal for the hearing in the sum of $7910. We reserve our decision as to any contribution to be made to these costs by the Practitioner.

DATED at AUCKLAND this 31st day of May 2012

_____
Judge D F Clarkson
Chair

Schedule

BEFORE THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

IN THE MATTER OF The Lawyers and Conveyancers Act 2006

A N D

IN THE MATTER OF **ATARETA POANANGA,** Barrister

AMENDED DISCIPLINARY CHARGES LAID BY THE WELLINGTON LAWYERS STANDARD COMMITTEE

DATED: 30 APRIL 2012

National Standards Committee
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CHARGE 1: Duty of Fidelity to the Court – [Mr A]

The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct or **ALTERNATIVELY** negligence or incompetence in her professional capacity in that negligence or incompetence has been of such a degree or so frequent as to reflect on her fitness to practise or as to bring her profession into disrepute.

Particulars:

1. While working as a barrister for legally-aided Treaty claimants she prepared a memorandum dated 22 March 2010 which was subsequently filed in the Waitangi Tribunal (Claim No [WAI(1)]) in which she stated:

   "Mr [A] gave confirmation to me that I act for him in the [WAI(1)] claim on 10 February 2010 at Whangarei."

   in circumstances where:

   1.1 that statement was untrue; and/or

   1.2 she knew it to be untrue.

2. She subsequently prepared and filed a Memorandum dated 9 August 2010 in proceedings WAI(2) and WAI(1) in which she told the Tribunal that she represented claimants who included Mr [A] and stated:

   "Counsel has confirmed their representations by meetings and signatures that are attached as follows."

   In circumstances where she had:

   2.1 not met with Mr [A]; and/or

   2.2. had no authority to represent him; and/or

   2.3 her personal assistant had forged his signature on that document.

CHARGE 2: Duty of Fidelity to the Court – Mr [B]

The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct or **ALTERNATIVELY** negligence or incompetence in her professional capacity in that negligence or incompetence has been of such a degree or so frequent as to reflect on her fitness to practise or as to bring her profession into disrepute.

Particulars

1. On or around 13 November 2009, in the claim WAI(1), she prepared and filed an affidavit containing a statement by Mr [B] that the legal aid application was *"signed by myself"* in circumstances where:

    1.1 the statement was untrue; and/or

    1.2 she knew that statement to be untrue; and/or

    1.3 she had forged the signature of Mr [B].

CHARGE 3: Forgery

The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct in her professional capacity in that she prepared and submitted legal aid applications for claimants before the Waitangi Tribunal in circumstances where she forged the signature of each claimant and/or witnessed those forged signatures.

Particulars

1. She forged the signature of [C] on a document headed "Authority to Act and Confirmation of Instructions" dated 28 July 2008.

2. She forged the signature of [F] on an application for legal aid dated 30 July 2008, said to have been declared at Whakatane;

3. She forged the signature of [E] on an application for legal aid dated 30 July 2008, said to have been declared at Te Teko.

4. She forged the signature of [C] on an application for legal aid dated 3 August 2008, said to have been declared at Cape Runaway.

5. She forged the signature of [G] on an application for legal aid dated 3 August 2008, said to have been declared at Cape Runaway.

6. She forged the signature of [H] on an application for legal aid dated 3 August 2008, said to have been declared at Te Araroa.

7. She forged the signature of [B] on an application for legal aid dated 20 August 2008, said to have been declared at Gisborne.

8. She forged the signature of [I] on an application for legal aid dated 20 August 2008.

9. She forged the signature of [G] on an application for legal aid dated 20 August 2008, said to have been declared at Auckland.

10. She forged the signature of [J] on an application for legal aid dated 23 August 2008, said to have been declared at Hamilton.

11. She forged the signature of [K] on an application for legal aid dated 23 August 2008, said to have been declared at Gisborne.

12. She forged the signature of [E] on an application for legal aid dated 23 August 2008, said to have been declared at Whakatane.

13. She forged the signature of [L] on an application for legal aid dated 24 August 2008, there is no reference to the place at which the declaration was said to have been made.

14. She forged the signature of [M] on an application for legal aid dated 28 August 2008, said to have been declared at Auckland.

15. She forged the signature of [N] on an application for legal aid dated 28 August 2008, said to have been declared at Auckland.

16. She forged the signature of [O] on an application for legal aid dated 28 August 2008, there is no reference to the place at which the declaration was said to have been made.

17. She forged the signature of [D] on an application for legal aid dated 28 August 2008, said to have been declared at Hastings.

18. She forged the signature of [D] on a document headed "Authority to Act and Confirmation of Instructions" dated 28 August 2008.

19. She forged the signature of [E] on a document headed "Authority to Act and Confirmation of Instructions" dated 6 October 2010.

20. She forged the signature of [P] (also known as [Q]) on an application for legal aid dated 11 November 2009, said to have been declared at Wellington.

CHARGE 4: False Declaration

The National Standards Committee charges Atareta Poananga, Barrister, of Gisborne, with misconduct or **ALTERNATIVELY** unsatisfactory conduct that is not so gross, wilful, or reckless as to amount to misconduct or **ALTERNATIVELY** negligence or incompetence in her professional capacity in that negligence or incompetence has been of such a degree or so frequent as to reflect on her fitness to practise or as to bring her profession into disrepute.

Particulars

1. Each Legal Aid Application Form contained a declaration that provided:

   "I declare the statements and representations I have made and the information I have given in this application are true and complete to the best of my knowledge."

   The form then had a place for the signature of the Legal Aid applicant to be put and then a place for the signature of the person taking the declaration.

That on 17 occasions she falsely completed a declaration knowing it to be false in that her declaration witnessed the forged signatures detailed in Charge 3 (paragraphs 2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,20).

Affidavits Accompanying this Notice

This charge is supported by evidence given in the affidavits of Paul David Bryers (sic) filed herewith.

Address for Service

The address for service is at the Wellington Office of the New Zealand Law Society.

_____ _____

Paul Collins Date
Convenor
National Standards Committee