

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2011] NZLCDT 13

LCDT 006/10

IN THE MATTER

of the Lawyers and
Conveyancers Act 2006

BETWEEN

**NELSON STANDARDS
COMMITTEE**

Applicant

AND

**STEPHEN LAWRENCE
DELAMERE WEBB** of Nelson,
Lawyer

Respondent

CHAIR

Mr D J Mackenzie

MEMBERS OF THE TRIBUNAL

Mr W Chapman
Mr Peter Radich
Ms C Rowe
Mr W Smith

REPRESENTATION

Mr P Whiteside for the Nelson Standards Committee
Mr Paul Radich for Mr Webb

HEARING on the papers

DECISION OF THE TRIBUNAL ON PENALTY, COSTS, AND SUPPRESSION

Introduction

[1] Mr Webb faced three charges of misconduct laid by the Nelson Standards Committee. The charges were heard in Nelson on 29 and 30 November 2010. In its reserved decision,¹ the Tribunal dismissed two of the charges and found a third charge proven.

[2] The detail of the charge of misconduct proven against Mr Webb was set out in the Tribunal's decision.² In general terms, it involved non-disclosure to a client³ that the "house-sitters" who were to benefit from rent free accommodation, and whom Mr Webb had arranged to place in a property owned by an estate being administered by that client, were in fact his parents.

[3] The Tribunal requested written submissions on penalty and costs. Both parties have now provided those and have also confirmed that they wish the matters to be dealt with on the papers.

[4] Mr Webb had been granted interim name suppression until the substantive matter was decided.⁴ In its substantive decision, the Tribunal ordered that interim suppression was to lapse. On receipt of that decision counsel for Mr Webb lodged an application for continuation of suppression. Pending a hearing on that matter the Tribunal continued interim suppression, but the proposed hearing was adjourned sine die due to special circumstances.⁵

[5] The application for continuation of suppression is now to be considered by the Tribunal along with penalty and costs matters. Both counsel have indicated that this issue may also be dealt with on the papers.

¹ [2011] NZLCDT 2

² Ibid at paragraphs [6] to [9] and at [22] to [24]

³ Mr Webb's client was a UK firm of solicitors, Milford and Dormer who were acting in the estate of a person having some NZ assets.

⁴ Interim order dated 19 November 2010

⁵ The earthquake of 22 February 2011 which struck Christchurch, affecting some Tribunal members and counsel for the Standards Committee

Discussion – Penalty and Costs

[6] Despite Mr Webb claiming that the non-disclosure was just an oversight, and a failure to properly manage a conflict issue, he was found by the Tribunal to have made a deliberate decision to suppress the fact that his parents were involved when communicating with his client.

[7] The Tribunal considered that, in all the circumstances in evidence before them, and having seen Mr Webb give his evidence and respond to cross-examination, his non-disclosure was a deliberate departure from accepted standards which involved an element of deceit in the solicitor-client relationship. It represented a form of dishonesty.

[8] The deliberate non-disclosure by Mr Webb to his client of the involvement of his parents in the house-sitting arrangement he was putting in place for his client, is a matter which strikes at the heart of the solicitor-client relationship. It also represents a breach of one of the fundamental obligations placed on legal practitioners by the Lawyers and Conveyancers Act 2006, relating to the obligation to be independent when providing legal services.⁶

[9] As we noted in our substantive decision, every lawyer is aware of the issue of potential conflict of interest and the need to avoid situations of conflict. Not only did Mr Webb not avoid the conflict, he created it and then concealed it from his client. That raises issues of integrity as well as fulfilment of professional duty.

[10] There has been an extended period during which Mr Webb's deceit continued, which meant the dishonesty was of a continuing nature, with Mr Webb maintaining his deceit despite the opportunity to raise the fact of his parents' involvement at any time, and indeed, on occasions where it might have been expected.⁷

[11] Counsel for Mr Webb submitted that Mr Webb's defence of the non-disclosure charge proceeded on the basis that Mr Webb accepted there was no

⁶ Lawyers and Conveyancers Act 2006, section 4(b).

⁷ See *Nelson Standards Committee v Webb* [2011] NZLCDT 2, at para [60] (substantive decision).

evidence of disclosure, that it was acknowledged to be poor practice and improper, and that while Mr Webb accepted responsibility for his conduct, it was not misconduct.

[12] While we accept those points were made by counsel in his submissions, we take the view that Mr Webb's acts and omissions in the course of the conduct under scrutiny, the evidence, and Mr Webb's answers in cross-examination, to represent Mr Webb's true position.

[13] In that regard, and as noted in our substantive decision,⁸ Mr Webb told the Standards Committee during its initial investigation that he had emailed Milford and Dormer with information that his parents were to be the house-sitters; he maintained that position when giving evidence to the Tribunal, but, when pressed, accepted he may have been mistaken. He said in an affidavit filed with the Tribunal that he had advised Milford and Dormer of his parents' involvement by telephone and when cross-examined about that evidence, he developed some supporting scenarios before finally accepting there had been no such telephone call. That does not sit comfortably with Mr Webb's claimed position that he accepted from the outset of these proceedings, that he had some uncertainty about whether or not he had disclosed his parents' involvement.

[14] The nature of the offending in this case, involving deceit and a breach of a fundamental obligation, coupled with the public protection purposes of professional discipline and the need to preserve the integrity of the profession to ensure continuing public confidence in the provision of legal services, in our view requires that Mr Webb should not be free to practise on his own account. If he was to practise law that would mean that he was required to do so in a professional environment which provided some oversight and supervision of his activities.

[15] A submission made on behalf of Mr Webb suggested that a rehabilitative approach should be followed, with orders under section 156(1)(j)-(m) being made. Counsel for the Standards Committee opposed such an approach, pointing out that the issue here was not related to a matter involving a need for

⁸ Ibid, para [58](c).

practice management supervision or practical training or education, where such orders may be appropriate. Here, he submitted, there were issues of integrity and honesty.

[16] We agree. This situation involving Mr Webb involves a need for an entirely different regulatory response. Protection of the public and preservation of confidence in the provision of legal services are the key issues.⁹ We are not satisfied that the approach suggested as appropriate by counsel for Mr Webb would adequately fulfil those objectives, and some of the orders suggested are not appropriate in the circumstances in any event.

[17] Counsel for the Standards Committee sought an order under section 156(1)(d) Lawyers and Conveyancers Act,¹⁰ to compensate the estate concerned for lost rental that would have been payable under a market rental arrangement if there had been no rent-free house-sitting arrangement.

[18] We decline to make such an order as the loss of rental suffered by the estate did not arise out of any act or omission on which Mr Webb has been found guilty of misconduct. His misconduct was non-disclosure of his parents' involvement and that itself did not lead to loss of income.

[19] Milford and Dormer, the solicitors acting for the estate, originally considered the house-sitting arrangement to be worthwhile as it gave some benefits to the estate, and they approved the scheme. The misconduct element was Mr Webb's deliberate decision not to tell them that the house-sitters were his parents, but that did not change the arrangements in any substantive way from what had been portrayed by Mr Webb in his contacts with his client, Milford and Dormer, and to which they had agreed.

⁹ See Lawyers and Conveyancers Act 2006, section 3.

¹⁰ Lawyers and Conveyancers Act 2006, section 156(1)(d) provides that where a person has suffered loss by reason of any act or omission of the practitioner found guilty, the practitioner may be ordered to pay compensation to that person.

[20] Counsel for the Standards Committee also sought an order under section 156(1)(o) of the Act¹¹ of £763.75, representing costs incurred in respect of the complaint. We agree that such an order would be appropriate in this case.

[21] Counsel for Mr Webb submitted that it was inappropriate to order such payment on the basis that costs and expenses incurred by Milford and Dormer in relation to the complaint were not properly chargeable to their client's estate. The Tribunal's view is that Milford and Dormer incurred the costs as a result of making a complaint about Mr Webb's conduct, and they are entitled to have those costs met under section 156(1)(o) of the Act. There is no suggestion that a double payment will be received by Milford and Dormer, and we expect that appropriate arrangements will be made by Milford and Dormer to ensure that Mr Webb's payment is used to meet their costs and expenses arising from the complaint against Mr Webb.

[22] The legal fees and expenses incurred by the Standards Committee amount to \$24,872.55, and indemnity costs are sought. Mr Webb must meet some of those costs, but there is no proper basis to order indemnity costs. The charges were defended, and two of the three charges were dismissed, although we do consider, having regard to the provisions of section 249(3) of the Act, that bringing the charges was justified.

Suppression

[23] The Tribunal granted Mr Webb interim name suppression after deciding that on balance Mr Webb's right to privacy outweighed the public interest in the right to openness and freedom of speech.

[24] A matter which carried weight was that the charges were denied, and there was a presumption of innocence that meant the damage to reputation and family could be a disproportionate burden in the event the charges were not proven.

¹¹ Lawyers and Conveyancers Act 2006, section 156(1)(o) provides that a practitioner may be ordered to pay to a complainant any costs or expenses incurred by the complainant in respect of any inquiry, investigation or hearing.

[25] With the Tribunal's finding of misconduct, the balance in favour of Mr Webb's privacy was altered, and suppression was to cease as a consequence. For Mr Webb, it was sought to continue interim suppression on the basis that an application for permanent suppression would be made, to be considered in conjunction with penalty submissions that proposed rehabilitative orders.

[26] By Minute of 18 February 2011, the Tribunal proposed that further and better detail of the matters supporting continuing interim suppression be provided and argued at a hearing to be convened shortly thereafter. The earthquake of 22 February 2011 meant that the hearing did not occur. The matter is now being dealt with on the papers as an application for permanent suppression, as previously noted.

[27] For Mr Webb, three principal grounds were put forward in support of his application. First, the fact that publication of Mr Webb's name would hinder his employment prospects in a small city. This would affect his earning ability, and the support of his family. Second, that if "rehabilitative" orders were to be made under section 156(1)(j)-(m) of the Act, publication of his name would hinder rehabilitation. Third, that publication was a disproportionate response where his dishonesty did not amount to dishonesty in the fraudulent sense of the word.

[28] Dealing with each point;

- (a) The Tribunal takes the view that a prospective employer is entitled to know about this matter. In his submissions, counsel for Mr Webb noted examples of loss of opportunities by Mr Webb, for work in the profession, after the disciplinary charges had become known. These examples were said to support the proposition that suppression was appropriate to avoid such loss of opportunity. The Tribunal takes the view that the examples highlight the point we make – a prospective employer/partner is entitled to know, to be able to make an informed decision, as should Mr Webb's future clients.

- (b) “Rehabilitative” orders will not be made as they are not appropriate in this case as noted above,¹² and in that case, suppression is not a matter affected by penalty.
- (c) While the dishonesty did not amount to fraud, the Tribunal did note that it comprised deceit and that it went to the heart of the solicitor-client relationship. In those circumstances we do not consider our comment that there was no fraud is supportive of the proposition that name publication is a disproportionate response.

[29] In the view of the Tribunal there is nothing before it which outweighs the public’s right to know about this matter of professional discipline. The importance of freedom of speech, open judicial proceedings and the right of the media to report, represent a starting point. None of the submissions made for Mr Webb change our view that, on balance, name suppression should not continue.

[30] For the purposes of section 257 of the Act, Crown costs in this matter, payable by the New Zealand Law Society, are certified at \$24,800.

Orders

[31] Accordingly, in respect of penalty and costs, the Tribunal orders that STEPHEN LAWRENCE DELAMERE WEBB;

- (a) Be, and is hereby, censured. Preservation of independence, avoidance of conflict, and complete honesty in the solicitor-client relationship are absolute requirements for a barrister and solicitor, and Mr Webb has failed to observe those requirements in this case, and in a manner that showed a continuing disregard for his professional obligations over some months;
- (b) May not practise on his own account, whether in partnership or otherwise, until authorised by this Tribunal to do so;

¹² See paras [15] and [16] above.

- (c) Pay the sum of \$16,400 towards the costs and disbursements of the Standards Committee;
- (d) Pay the New Zealand Law Society \$10,000 towards the Crown costs it has incurred under section 257 Lawyers and Conveyancers Act 2006; and,
- (e) Pay, via the Standards Committee for it to pass on to Milford and Dormer, £763.75, to reimburse costs and expenses incurred in respect of the complaint.

[32] In respect of suppression, the Tribunal dismisses the application for permanent name suppression, and orders that the current interim name suppression shall lapse at 2pm on 6th May 2011.

Dated at Auckland the 2nd day of May 2011

D J Mackenzie
Chair