NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL

[2013] NZLCDT 13
LCDT 030/12

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **CANTERBURY-WESTLAND STANDARDS COMMITTEE**
Applicant

AND **DOUGLAS JAMES TAFFS**
Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman
Mr M Gough
Mr A Lamont
Mr S Maling

DATE OF HEARING at Christchurch on 25 March 2013

APPEARANCES

Ms M Perpick for the Applicant
Mr P McMenamin for the Respondent

DECISION ON PENALTY

Introduction

[1] Mr Taffs has admitted two charges of misconduct relating to criminal convictions entered against him on 17 October 2011 in the Nelson District Court. The first charge relates to a third excess blood alcohol offence with a blood level of 115 milligrams of alcohol per litre of blood. The second charge was one of intentional obstruction of a police constable acting in the execution of his duty. It was accepted by the admission of the charges that these offences reflected on the practitioner's fitness to practice or tended to bring his profession into disrepute.

[2] The penalties imposed by the District Court for this offending were a fine of $4000 together with Court costs and medical expenses and disqualification from driving for 13 months. In respect of the obstruction charge he was convicted and ordered to pay Court costs (the sentencing was clearly approached globally).

Background facts

[3] On 26 March 2011 Mr Taffs, after playing golf, consumed alcohol at a hotel in Westport. He then made the poor decision to drive home in his car. He was stopped by police and breath tested. Having failed the breath screening test, he was taken to the police station in Westport for an evidential breath test.

[4] He tried to evade this process in three ways. Firstly by attempting to leave the building and climb the fence. Secondly by disengaging the evidential breath testing machine by disconnecting the cables and finally, by placing coins in his mouth during the procedure of evidential breath testing. Mr Taffs takes no issue with the facts as set out, acknowledges that his behaviour was entirely unacceptable and certainly finds it hard to understand why he behaved so foolishly and irrationally.

[5] This behaviour was widely publicised in the media at the time of the offending. In sentencing His Honour Judge Grace said:

> "The tragedy of it is that you are an officer of the Court and, as such, one would have expected you to behave in a more appropriate and proper fashion, and being cooperative with the authorities who were merely trying to do their job with you."

[6] The two previous offences which qualified Mr Taffs for this more serious level of offending are quite some time ago, occurring in 1981 and 1993 respectively.

Submissions of Standards Committee

[7] It was submitted that a third drink-driving offence, albeit over a very long time span, raised the question of whether Mr Taffs had learned from his experiences or had taken steps to remedy his behaviour ("in order to remain a fit and proper person to be a lawyer").

[8] The Tribunal was reminded that this offending is viewed seriously and Ms Perpick submitted that:

> "Committing the offence shows a lack of appreciation of the likely consequences of such actions which is at odds with society's expectations that lawyers will exercise forethought and behave prudently."

[9] Ms Perpick went on to submit that the second charge was even more concerning, while agreeing with Mr Taffs that his behaviour had "a*n element of the ridiculous"*. She went on to submit that it showed "*an underlying disregard for the importance of the legal system, or perhaps a view of being above the law*".

[10] Ms Perpick further submitted:

> "As officers of the Court, it is the duty of lawyers to at all times to instil in the public a respect for the law and an acceptance of due process."

[11] In discussing the concept of "fitness to practise" Ms Perpick referred us to the decision of *Ziems v Prothonotary of the Supreme Court of NSW:*[1]

> "The Bar is no ordinary profession or occupation. These are not empty words nor is it their purpose to express or encourage professional pretentions. They should be understood as a reminder that a Barrister is more than his client's confidant, advisor and advocate, and must therefore possess more than honesty, learning and forensic ability. He is, by virtue of a long tradition, in a relationship with intimate collaboration with Judges, as well as with his fellow

[1] (1957) 97 CLR 279 (HCA).

> members of the Bar, and the high task of endeavouring to make successful the service of the law to the community. It is a delicate relationship and it carries exceptional privileges and exceptional obligations. If a Barrister is found to be for any reason, an unsuitable person to share in the enjoyment of those privileges and in effect of discharge of those responsibilities, he is not a fit and proper person to remain at the bar. Yet it cannot be that every proof which he may give of human frailty so disqualifies him. The ends which he has to serve are lofty indeed, but it is with men and not with paragons that he is required to pursue them. ..."

That case was of course concerned with a much more serious conviction of manslaughter (driving).

[12] Ms Perpick submitted that the convictions in this case:

> "... are concerned with conduct which was destructive of the relationship of mutual trust and respect between the respondent and the institutions of justice, including the Court and his fellow lawyers."

[13] Ms Perpick then referred the Tribunal to a line of cases which had involved drink driving convictions namely *Baledrokadroka*[2]; *Leishman*[3]; *Ravelich*[4] and *Beacham*[5].

Other history

[14] Ms Perpick put before the Tribunal details of earlier disciplinary findings against Mr Taffs and an earlier serious conviction. The disciplinary action was in 1994 and involved two charges of negligence and incompetence (at the lower level) involving trust account procedures and failure to answer correspondence from auditors. Of more concern is the earlier conviction which was confirmed by the Court of Appeal in 1991 of wilfully attempting to obstruct, prevent, pervert or defeat the course of justice.

[15] The background to this conviction is that Mr Taffs had been acting for a person charged with kidnapping and aggravated robbery of a schoolboy. He contacted the complainant's mother (another practitioner) and suggested that her son ought not to give evidence (which Mr Taffs considered would be false evidence) making such comments as that he would "*mince the boy up in Court tomorrow*", that the boy would

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[2] *Waitkato Bay of Plenty District Law Society v Baledrokadrok* [2002] NZAR 197.
[3] *Wellington District Law Society v Leishman* NZLPDT, April 2003.
[4] *Auckland Standards Committee 1 v Ravelich* [2011] NZLCDT 11.
[5] *Hawkes Bay Lawyers Standards Committee v Beacham* [2012] NZLCDT 29.

be publicly humiliated as a liar and homosexual and that it would be "*a shame to crucify your boy while (the accused) walks*".

[16] Mr Taffs was convicted and fined $5000. He appealed to the Court of Appeal and apparently voluntarily ceased practise pending the outcome of the appeal. The Court of Appeal whilst taking a relatively sympathetic approach to Mr Taffs affirmed that he had acted:

> "... in a hasty and ill considered way, for which he has now been appropriately punished, bearing in mind for a period he has had to abstain from practise."

[17] The Court of Appeal although clearly discouraging further disciplinary action certainly did not condone the behaviour. In delivering the Court's judgment Cooke P. had this to say:

> "It would be dangerous to allow a lawyer, perhaps uncritically espousing his client's case to threaten to use legal proceedings to publicly humiliate the adversary. To leave the lawyer free to utter such threats provided only that he genuinely believes his client to be in the right, would savour of transferring the responsibility of judging the case from the Court to the legal representative of the parties."

[18] Counsel for the Standards Committee then discussed the two closest cases, namely *Ravelich* and *Beacham* contrasting the former with the latter in that Mr Ravelich had taken clear steps to address his alcohol problems, having successfully completed an alcohol and drugs program whereas Ms Beacham had been seen by the Tribunal as not having recognised her alcohol problem and thus was subject to a period of suspension considerably longer than that imposed on Mr Ravelich (two years as opposed to six months).

[19] Referring to these decisions, Ms Perpick submitted that Mr Taffs fell into the category of a person who had likewise not recognised his alcohol problem and that a period of suspension in accordance with the *Beacham*[6] decision, of two years, would be appropriate.

[20] Finally the Standards Committee sought an order in respect of the Law Society costs of a little under $8000 as well as reimbursement of the inevitable s 257 costs of the Tribunal.

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[6] Supra n.5.

Submissions for the Practitioner

[21] Before addressing the legal submissions made by Mr McMenamin, we refer to the personal statement of some three-and-a-half pages provided to the Tribunal by Mr Taffs himself. That statement acknowledged the foolishness of his behaviour and expressed deep remorse for the embarrassment it had caused to the profession as well as to himself and his family. Mr Taffs went on to describe the help he had sought in respect of what he saw was an outburst of irrational behaviour (rather than an alcohol fuelled escapade). He has consulted with a psychologist who is the same psychologist who carried out the alcohol and drug assessment for the District Court at the time of sentencing. Mr Taffs has attended two sessions with Dr Adams and has a further one scheduled.

[22] In addition to that he set out the changes he has made in his life in terms of his social drinking, whereby he always uses taxis. This was supported by a statement from the taxi company and also from the Mayor of Westport who confirmed Mr Taff's established behaviour of visiting the hotel on approximately three evenings per week for a couple of hours to have a few drinks with friends before taxiing home.

[23] As part of what he regarded as redemptive action Mr Taffs himself organised a restorative justice meeting, a report from which was shown to the Tribunal at the hearing. In addition, Mr Taffs has proposed that he provide occasional lectures to community work offenders about people who make bad choices and how to move on from that.

[24] Mr Taffs is to be commended for these voluntary efforts to make amends to his community for his behaviour.

[25] On behalf of Mr Taffs, Mr McMenamin took strong issue with submissions for the Standards Committee referring to "*inaccuracies and extravagances*". He began by denying that an offence of "*drunk driving*" is known to New Zealand law, instead stating that his client had been convicted of driving "while the proportion of alcohol in his blood exceeded 80 milligrams of alcohol per litre of blood".

[26] The Tribunal is not impressed with this level of nitpicking or sophistry in a disciplinary context.

[27] Mr McMenamin went on to submit that whilst accepting this was Mr Taff's third conviction for excess breath or blood alcohol, that the prior convictions being 20 years and 32 years old respectively really ought not to be seen as a pattern. Mr McMenamin emphasised that his client had no convictions of any sort in the last 20 years. Furthermore he went on to indicate that a level of 115 milligrams on this occasion as a "*modest level*" unlikely to *"... occasion drunkenness in a man of mature years*". Thus, both Mr McMenamin and his client assert that the extraordinary behaviour at the police station in Westport on the night in question was not fuelled by alcohol. We disagree.

[28] In responding to the suggestion that Mr Taffs had a "*disrespect for the legal system*" Mr McMenamin took strong issue with this assertion, declaring that Mr Taffs had been a "*faithful servant of the law*" for many years. He went on to suggest that no authority had been offered for *"... the proposition that is a duty of lawyers to instil in the public a sense of respect of the law and an acceptance of due process and it must be doubted that such a duty exists*". Mr McMenamin conceded that fitness to practise is not only concerned with professional performance, however was also at pains to persuade the Tribunal as to the high level of skill displayed by his client as a professional working in the Courts and the respect with which he was held by his peers.

[29] Mr McMenamin submitted "*it is extremely doubtful whether the conduct of Mr Taffs brought anybody but himself into disrepute with any member of the public*". He submitted "*Mr Taffs brought himself into dispute not the profession*". This assertion does not sit well with an admission of the charge which was worded to include an acceptance that the profession <u>had</u> been brought into disrepute.

[30] Mr McMenamin submitted there was no evjdence that there had been a destruction of mutual trust and respect between Mr Taffs, the Courts and fellow practitioners. Indeed he pointed to recent appointments as *amicus curiae,* which he submitted demonstrated the Court's confidence in Mr Taff's abilities and integrity.

[31] However Mr McMenamin certainly accepted that Mr Taffs had behaved irresponsibly to the police. We note that Mr Taffs made a written apology to the policeman in question.

[32] Mr McMenamin distinguished the *Beladrokadroka* and *Leishman* cases as much more serious incidences of offending than the present one and went on to submit that *Ravelich* and *Beacham* also could be clearly distinguished from the present instance. The basis for that submission was that in both the *Ravelich* and *Beacham* cases there had been a cluster of recent offending in relation to drink driving, as well as offensive and disrespectful behaviour to the police.

[33] In relation to previous offending it was submitted that the Court of Appeal accepted that Mr Taffs had been attempting to dissuade a complainant from giving perjured evidence and submitted that the law had been less than clear before his own case was decided.

[34] He also referred to the relatively low level of the penalty and the age of the conviction, some 20 years ago.

[35] Mr McMenamin submitted that the "least restrictive outcome" principle referred to in the *Daniels* decision[7] ought to result only in the Tribunal fining and censuring Mr Taffs. It was submitted that this would be sufficient to maintain the public interest and the professional standards for lawyers.

[36] In dealing with the assistance Mr Taffs was receiving from Dr Adams, Mr McMenamin went on to point out that Mr Taffs had been assessed as not meeting the DSM IV criteria for alcohol abuse or dependence. It was accepted that Mr Taffs fell within the range for hazardous drinking but that he was low on the scale. Mr McMenamin was referring to an assessment checklist score which had been administered by Dr Adams, the clinical psychologist, rather than standing back and viewing the practitioner's behaviour as a whole, as must the Tribunal.

[37] Finally, Mr McMenamin submitted that the consequences of suspension would be grave for the practitioner and for the large number of clients who he currently

[7] *Daniels v Complaints Committee No. 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

represents in Westport. He referred to the references which had been provided to the Tribunal which affirmed the lack of availability of criminal barristers in Westport to service the need of the local population.

Discussion

[38] In considering suspension, the full court of the High Court had this to say in *Daniels*[8]*:*

> "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 ... Members of the public are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession"

[39] Section 4 of the Lawyers and Conveyancers Act 2006 sets out Fundamental obligations of lawyers. Section 4(a) is relevant:

> "(a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand."

[40] While this subsection would normally contemplate a practitioner acting in his or her professional capacity, it is broad enough, when linked with the definition of "misconduct" in s 7(1)(b)(ii), and with the provisions of s 241(d), to encompass behaviour in personal capacity. Therefore, we accept the submission of Ms Perpick that Mr Taffs' behaviour in attempting to evade breath testing (while ultimately submitting to a blood test) either suggests disrespect for the legal system, or demonstrates that he was so affected by alcohol as to be seriously impaired in his judgment. The first option causes serious concerns about his current fitness to practice; the latter, which is denied by him, raises questions about his denial of what would appear to be a longstanding problem with alcohol, which has over 30 years, led him intermittently to offend against the law. Either way, the tribunal views Mr Taffs' offending as serious, and demanding of a serious response.

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[8] Supra n.7, at [24].

[41] The following passage from the leading disciplinary authority of *Bolton*[9] expresses the balancing exercise to be carried out by the Tribunal, as set out in *Daniels*[10] and which differs from a criminal sentencing process:

> "Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem bis (sic) reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

And from *Daniels* [11]

> "the real issue is whether this order for suspension was a necessary response for the proven conduct of the appellant having regard not only to the protection of the public from the practitioner but also to the other purposes of suspension"

[42] While we accept the distinguishing feature that the practitioner's convictions are not clustered in the same manner as in the *Beacham* and *Ravelich* cases which also involved disrespectful behaviour towards the Police, we must still give some weight to the fact that the index offence is a third one of its type, and one which without doubt brings the profession into disrepute.

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[9] Bolton v The Law Society [1993] EWCA Civ 32, at para [16].
[10] Supra n.7 at paras [28] onwards.
[11] Supra n.7 at [25].

[43] While taking account of the need for the public to be represented by lawyers, who are in this region of the country scarce, that cannot be an overriding factor.

[44] We consider a short period of suspension is necessary to reflect a proper response to the seriousness of the offending viewed overall. Mr Taffs will be suspended from practice for 3 months from a date commencing 7 days after release of this decision, which will allow him to make other arrangements for existing clients.

Summary of Orders

[a] The Practitioner is suspended for three months, commencing 7 days after the date of the decision, pursuant to s 242(1)(e);

[b] The Practitioner is ordered to pay costs to the New Zealand Law Society in the sum of $7,969, pursuant to s 249;

[c] The New Zealand Law Society is ordered to pay the costs of the Tribunal in the sum of $4,628, pursuant to s 257;

[d] The Practitioner is to reimburse the New Zealand Law Society the sum of $4,628 being the Tribunal s 257 costs, pursuant to s 249;

[e] The interim suppression orders concerning personal matters referred to in the hearing are made final.

DATED at AUCKLAND this 24th day of April 2013

Judge D F Clarkson
Chair