

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2010] NZLCDT 13

LCDT 017/09

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE**

Applicant

AND

JOHN STIRLING

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms S Sage

Mr J Clarke

Mr O Vaughan

Mr I McAndrew

HEARING at AUCKLAND on 9 June 2010

APPEARANCES

David Carden for applicant

John Katz QC for defendant

**DECISION ON PENALTY OF NEW ZEALAND LAWYERS AND
CONVEYANCERS TRIBUNAL**

Introduction

[1] Mr Stirling appears for a penalty hearing on the one charge of misconduct in his professional capacity which we found proven and as set out with all of the background details in our decision of 5 May 2010.

[2] In terms of penalty Mr Carden for the Society has raised suspension as an available penalty. However he concedes that the breach by Mr Stirling is certainly less serious than that which occurred in the *Bhannabhai* decision which is certainly the leading New Zealand case on suspension and Mr Bhannabhai was not of course, suspended.

[3] Mr Carden did not strongly press for suspension. The statement is often made that one of the primary purposes of disciplinary proceedings is protection of the public. That is axiomatic, and part of that protection involves imposing a sanction that will cause the practitioner to reflect on his or her default and manner of practice. As submitted by Mr Katz any sanction must however be proportionate to the breach or default of the practitioner.

[4] We have regard to the references provided to support the practitioner and the fact that this is his first appearance of a disciplinary nature in 22 years of practice. Indeed, we record that this is the first complaint ever made against Mr Stirling. Thus we find that the practitioner's default is of an isolated nature and that he is otherwise of good character. We also accept his evidence that the disciplinary process of itself has had a very significant impact on him, such as to deter any future lapses.

[5] We consider that a proportionate penalty is to censure the practitioner pursuant to s.112(2)(e) and we now do so.

[6] Mr Stirling you have deposed as to feeling devastated by the Tribunal's finding and have recorded the emotional impact on you so we do not consider more needs to be said in respect of censure.

[7] In relation to costs the Society seeks full costs incurred of \$36,346. The costs of the Society and its counsel are not challenged by Mr Stirling's counsel. But he raises the issue that the Society's expert witness's charges were three times that of Mr Stirling's expert witness and at a little under \$10,000 seem very high in comparison with those of counsel for the Society, Mr Carden. We agree that there should be some reduction to reflect this and fix costs pursuant to s.112(2)(g) at \$31,000.

Publication

[8] The practitioner seeks suppression of his name under s.111(2)(d). We must have regard to the interests of the public and the profession as a whole. There is a presumption of openness in disciplinary matters. Of course, excluding the identity of complainants, this hearing has been held in public with no suppression orders in force to date.

[9] The practitioner submits that publication of his name, although not supported by any medical or related factors, will have a significant impact on his partners because of the size and profile of their practice. We have weighed this against the rights of the profession and the public to know of defaults of this nature.

[10] For these reasons and because of the importance of undertakings to legal practice and to clients which was, quite properly, acknowledged by Mr Stirling throughout the hearing, we decline to suppress the practitioner's name. However we make no recommendation pursuant to s.134.

[11] There will be interim suppression order pursuant to s.112(2)(d) as to the practitioner's name and his firm. That is due to expire in 14 days unless confirmed by the High Court.

DATED at AUCKLAND this 9th day of June 2010

Judge D F Clarkson

Chairperson

LCDT 017-09-Penalty.doc(aw)