

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2013] NZLCDT 14
LCDT 019/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE NO. 3**
Applicant

AND

BRUCE NELSON DAVIDSON
of Auckland, Lawyer

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman
Ms S Hughes QC
Ms C Rowe
Mr W Smith

HEARING at Auckland on 4 April 2013

APPEARANCES

Mr P Davey and Mr M Treleaven for the Standards Committee
Mr C Carruthers QC and Mr D Hurd for the Practitioner

**REASONS FOR PENALTY DECISION OF
NEW ZEALAND LAWYERS AND CONVEYANCERS
DISCIPLINARY TRIBUNAL**

[1] Following the penalty hearing on 4 April 2013 we gave an oral decision imposing a censure and cost orders against the practitioner with reasons for that decision to be delivered in writing. These are the reasons.

[2] We begin by recording our formal censure to Mr Davidson.

Censure

Mr Davidson on 2 September 2011 you pleaded guilty in the High Court to six charges under Section 58(3) of the Securities Act 1978 that between 21 December 2006 and 6 July 2007 you had signed or had signed on your behalf registered prospectuses for Bridgecorp Limited and Bridgecorp Investments Limited that were distributed and included untrue statements. Further on the same date you pleaded guilty to four further offences under the same section of the Act that between 21 December 2006 and 6 July 2007 when a Director of Bridgecorp Limited and Bridgecorp Investments Limited that you distributed advertisements which included untrue statements.

Your pleas of guilty were entered on the basis, that your conduct in this matter was unreasonable but that you were not in fact dishonest and you have categorised your involvement in these matters as the actions of a naïve man trusting those who should not in fact be trusted. The Tribunal considers that you were on notice from at least 2004 when Mr Petricevic attempted to use company funds to purchase a boat for himself, that considerable care and vigilance was required from you. As the company documents make clear, you were an experienced commercial lawyer with approximately 40 years practice at the time that these events arose. The public seeking to invest in these companies would no doubt have been influenced in their decisions to invest and the confidence they felt that could rightfully repose in a member of the legal profession with your credentials and experience. A practitioner with your experience is expected to be insightful, astute and able to hold to account others who fail in their duty to provide requisite information and otherwise conduct the business in an ethical and legal manner. Your response to the criminal charges and to the matters before this Tribunal have been that you are by inclination a man given to being trusting, a man of unimpeachable good character, a man who strives to see the good in others.

These are all fine characteristics but do not negate your fundamental duties as a senior legal practitioner sitting as the Chairman of the Board of the companies in question. You failed the investors in these companies, and your conduct fell below the standard which the public is entitled to expect of persons with your experience and in the position that you held. Your conduct in short was simply not good enough and it is the view of this Tribunal that your failure to press for answers and to hold others accountable amounts to a failure to meet the standards expected of a commercial lawyer of your experience and tends to bring the profession into disrepute and you are censured for that.

Decision as to further penalties

[3] It was submitted on behalf of the Standards Committee that the Tribunal ought to consider a 12-month suspension of Mr Davidson together with a fine of \$25,000 (maximum \$30,000) as well as orders as to costs, which were significant. The costs of the New Zealand Law Society amounted to \$27,864. The Tribunal costs amounted to a further \$11,800.

[4] The Standards Committee made submissions as to aggravating and mitigating factors which the Tribunal could weigh in imposing penalty. We regard a number of the matters advanced as aggravating factors in this disciplinary proceeding to be more pertinent to the criminal offending, for which penalty has already been imposed.

[5] Submissions were also made as to lack of leadership by Mr Davidson and as to the reliance placed by investors on the fact of his distinguished legal career. These are matters which we have addressed in the Censure of Mr Davidson.

[6] The Standards Committee accept, albeit in a somewhat cursory reference, the mitigating effect of the practitioner's service to the profession and "*otherwise unblemished character*". The Standards Committee also accepted that Mr Davidson had not practised for some time and was not intending to engage again in legal practice. Thus it was conceded that any suspension would be of a symbolic nature.

[7] For the practitioner it was submitted that the mere finding against him by the majority of the Tribunal that he had brought the profession into disrepute was of itself "*a crushing blow*".

[8] Counsel referred the Tribunal to the portions of its decision where the practitioner's honesty and integrity was affirmed. We were reminded that we had found that Mr Davidson had, in respect of the criminal proceedings, acted "*... promptly and with honour*".

[9] It was further submitted that the practitioner ought not to be faulted for having defended the proceedings which resulted in a finding by the Tribunal on a 3:2 majority. We accept that submission.

[10] Under the heading of “*mitigating circumstances*” counsel submitted there were three areas to be considered by the Tribunal:

- [a] Mr Davidson’s character and previous record;
- [b] Mr Davidson’s previous contribution to the profession and its reputation;
- [c] Remorse.

[11] We accept the submission that this is the first matter which has been the subject of any complaint about Mr Davidson in 50 years of legal practice. While the Standards Committee has referred the Tribunal to correspondence from another practitioner, disgruntled with an investigation into his own behaviour, seeking that Mr Davidson be investigated, we view that as all part of the current factual matrix and does not constitute of itself a separate complaint. We consider Mr Davidson is entitled to the considerable credit due to any practitioner who has practised for such a lengthy period without any complaint from a member of the public.

[12] In terms of his contribution to the profession the Tribunal was provided with a number of references from leaders of the community. This included leaders of the Judiciary, the Bar, the church and business, as well as from those persons in charitable organisations to which Mr Davidson has devoted an enormous amount of his time and resources.

[13] We accept the submission that the practitioner “... *has given a lifetime of service to the legal profession both in terms of his practise and in the governance of the profession*”. His counsel points out that his charitable activities include “... *attempts to improve the lot of some of society’s most disadvantaged and marginalised*”. We accept the submission that these activities can only have enhanced the reputation of the legal profession when one of its most senior members gives so much back to the community. Once again we consider Mr Davidson is entitled to considerable credit for a life lived well.

[14] As to remorse, counsel reminds the Tribunal that Her Honour Andrews J in sentencing Mr Davidson accepted that he had demonstrated “genuine, *sincere and deep remorse*”. We accept that in his affidavit in the proceedings before us he recorded his dismay at the level of losses to Bridgecorp creditors including investors.

[15] We consider this dismay and remorse was reflected in the very large payment of reparation (\$500,000) which was made by him at the time of sentencing of the criminal charges.

[16] Counsel refers to the qualities described of the practitioner in the references provided to the Tribunal and refers to the impressive nature, not only of the content but for the stature and variety of those who have provided them. We accept that submission. The references described him as “*completely trustworthy*”, “*of unimpeached honesty and integrity*” holding a “... *deep sense of compassion of anyone in need and a commitment to ensure justice and fairness for all*”.

Result

[17] For all of the above reasons we consider that the proper penalty to be imposed, to reflect the seriousness of which the profession regards this matter is the Censure recorded above and to ensure that Mr Davidson meets a fair and proper proportion of the costs of his prosecution to his profession.

[18] In this regard we note that the practitioner was prepared for the penalty hearing to be dealt with on the papers. We note he has been cooperative in respect of these proceedings at all stages. Given the brevity of the hearings and the financial cost which has already been faced by the practitioner we consider that a contribution of 75% of the actual costs of the New Zealand Law Society ought to be ordered against him.

[19] We consider that a similar proportion of reimbursement of the New Zealand Law Society’s costs of the Tribunal under s 257 ought also to be ordered.

Summary of Orders

- [a] Censure;
- [b] Costs of 75% of the Standards Committee costs are awarded against the Practitioner, pursuant to s 249;
- [c] Costs of the Tribunal in the sum of \$11,800 to be paid by the New Zealand Law Society, pursuant to s 257;
- [d] Practitioner to reimburse the New Zealand Law Society in respect of 75% of the Tribunal costs, pursuant to s 249.

DATED at AUCKLAND this 24th day of April 2013

Judge D F Clarkson
Chair