

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2014] NZLCDT 16
LCDT 030/13

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 3**
Applicant

AND

BOON HONG
Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr A Lamont

Mr P Shaw

Mr S Walker

HEARING at Auckland

DATE OF HEARING 2 April 2014

APPEARANCES

Mr P Collins for the Standards Committee

Mr B Hong, the Practitioner

**DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[1] Mr Hong, the tribunal has considered the matter and is able to deliver an oral decision now. In this matter the Practitioner Boon Hong faces two alternate charges based on the same particulars.

Misconduct within the meaning of s.7(1)(a)(i), s.7(1)(a)(ii), or s.7(1)(b)(ii) of the Lawyers and Conveyancers Act 2006 (**Act**).

In the alternative, unsatisfactory conduct within the meaning of s.12(c) of the Act.

The particulars of the charge are as follows:

1. At all material times the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand and held a current practising certificate.
2. On 1 February 2013, following an own motion investigation, the Committee determined that the Practitioner had on 14 May 2009 engaged in unsatisfactory conduct, and ordered that the Practitioner:
 - (a) Be reprimanded;
 - (b) Pay to the New Zealand Law Society (**NZLS**) a fine of \$1000;
 - (c) Pay to the NZLS costs of \$1000; and
 - (d) Undergo practical training or education by attending a Continuing Legal Education Course, namely "Equitable Remedies", on 19 April 2013, and notify the NZLS in writing once he had attended the course.
3. The Committee set out these orders in a determination on 14 February 2013 and sent a copy to the Practitioner at the DX Postal address that appeared on his letterhead.
4. The Practitioner failed to attend "Equitable Remedies" on 19 April 2013.
5. The NZLS contacted the Practitioner on 8 May 2013 to ask him why he had not attended "Equitable Remedies" and to suggest that he attend an upcoming seminar entitled "Tricky Issues in the Life of a Lawyer" on 12 June 2013. The Practitioner said that he did not receive the Committee's determination in time to attend "Equitable Remedies", declined to attend "Tricky Issues in the Life of a Lawyer", and indicated an intention to file with the Legal Complaints Review Office (**LCRO**) an application to review the Committee's determination.

- 6 On 14 May 2013, the NZLS confirmed that the Practitioner had paid neither the fine nor the costs that the Committee had ordered him to pay.
- 7 On 7 June 2013, the Committee met to consider the Practitioner's failure to comply with the orders it had imposed on him, and resolved to commence an own motion inquiry into that failure. On 10 June 2013, the Committee advised the Practitioner that it was commencing such an inquiry and invited him to explain by 20 June 2013 why he had not complied with those orders.
- 8 Three days later, on 13 June 2013, the Practitioner filed with the LCRO an application to review the Committee's determination. In that application the Practitioner stated that he had only received the Committee's determination via email on 2 May 2013 and had not received a copy in the post.
- 9 On 18 June 2013, the LCRO sent to the Practitioner a letter acknowledging receipt of his application, advising him that it would have to consider whether he had complied with the time limits for filing applications for review before it could proceed to consider the merits of his application, and inviting him to provide it with evidence to support his claim that he did not receive the copy of the determination that the Committee had sent to his DX Postal address.
- 10 The Practitioner responded to this letter on the same day, sending to the LCRO a letter outlining a multitude of grounds on which he challenged the Committee's determination.
- 11 On 1 July 2013, the LCRO sent to the Practitioner a letter advising him that he had so far failed to prove to the required standard that he did not receive the copy of the determination that the Committee had sent to his DX Postal address, and inviting him to provide further evidence to support his claim.
- 12 The Practitioner failed to provide such evidence, and on 5 August 2013 the LCRO declined jurisdiction to review the Committee's determination.
- 13 In the meantime, the Committee had determined (on 2 August 2013) that the Practitioner's failure to comply with the orders it had imposed on him should be considered by the Lawyers and Conveyancers Disciplinary Tribunal.
- 14 A lawyer has fundamental obligations to uphold the rule of law and facilitate the administration of justice (s 4 of the Act and r 2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.) The Practitioner has acted contrary to his obligations as a lawyer by failing to comply with the orders of the Committee without good cause."

[2] As can be seen from the charges the misconduct is pleaded under three sub-sections; ss 7(1)(a)(i), 7(1)(a)(ii), and 7(1)(b)(ii). In opening for the Standards Committee, Mr Collins agreed that the last option, that is s 7(1)(b)(ii) was included in a precautionary way, but that the conduct was properly able to be characterised as

subsumed into the category of providing regulated services and thus more appropriately considered under subs 7(1)(a).

[3] That very issue and the definition of “regulated services” was addressed by the Tribunal in *Auckland Standards Committee v Hart*¹, where at paragraphs 44 and 45 the Tribunal accepted the submission of the Standards Committee that “*..it is an incident of professional life and an incident of a particular engagement to provide legal services, that a lawyer might be provided to respond to a complaint or own motion investigation arising out of that*”, and thus in that matter it was found that the conduct fell within the definition of providing regulated services.

[4] In this matter a request from a Standards Committee is not the situation, but rather orders made by a Standards Committee in the course of or following a determination by them in respect of the Practitioner, and we consider the same reasoning applies.

[5] “Unsatisfactory conduct” is pleaded in the alternative, in case the tribunal were not to find the conduct - which has been admitted by the Practitioner - to be sufficiently serious to constitute misconduct.

[6] While admitting the actual conduct, that is the failing to comply with the orders, the defence advanced by the Practitioner relates firstly to delivery of or service on him of the determination and orders, and secondly relates to his disagreement with the Standards Committee determination and consequent orders.

[7] Firstly Mr Hong argued that he had not received the order when it was sent in February of 2013 and therefore he was not in a position to comply with the 30 working days appeal timeframe. There are two points to be made in relation to that. One is that that issue is a matter which has already been determined by the Legal Complaints Review Officer and we have no appellate function from that forum so that determination must stand.

[8] Secondly, if we are incorrect in that view, we would examine the delivery issue as follows: in support of his contention that the determination was not received, Mr Hong described his mail arrangements, and indeed we also have a full affidavit from

¹ *Auckland Standards Committee v Hart* [2012] NZLCDT 20.

the Standards Committee setting out the process by which communications have occurred with Mr Hong in the past, with the Law Society. Indeed what the general practice is for providing copies of determinations, and what occurred at this time when the determination was sent out to Mr Hong at his DX number, the number of which he confirmed to be correct.

[9] Mr Hong says that DX communications are delivered by courier to his door and that sometimes they are left on the floor outside, and that things don't arrive at times. And to reinforce his argument says that had he received it, given that he felt so frustrated when he read the determination, that he would have appealed it. Now that argument might have had some force except that it is significantly undermined by an examination of the actual chronology of the events.

[10] By Mr Hong's account, he was aware of the determination at latest by 2nd of May 2013. On the 9th of May the Society wrote to him offering an alternate educational course to attend in order to comply with the orders. However it was not until the 13th of June that Mr Hong made application for review to the Legal Complaints Review Officer and that was immediately following his having received a letter of 10th June from the Society giving notice that there was a new investigation into his non-compliance with the earlier orders.

[11] So he didn't appeal promptly, as he indicated that he would have, even on what we find to be the second occasion of the determination having been made available to him. We find that delivery has been proved on the balance of probabilities.

[12] Turning to the second limb of the defence, and that is the Practitioner's resistance to the order. The suggestion that a Practitioner's conscience and opinion as to a ruling of his professional body ought to drive his compliance with it is directly at odds with s 4(a) of the Lawyers and Conveyancers Act 2006 which provides the fundamental obligation of lawyers; the first of which is to uphold the rule of law and facilitate the administration of justice in New Zealand.

[13] Failing to comply with orders of his professional body flies in the face of that. In relation to the courses to which Mr Hong was directed, he offered us, in the course of his evidence, two reasons for not attending the latter option when given that

opportunity. One was that he was simply too busy with his clients and the second was that he didn't think it would actually add to his knowledge of the law in that area.

[14] In relation to this type of failure, Mr Collins referred us to the English decision of *Ellis*, where at paragraph 31, Court held:

“As a solicitor bound by the rules he should have complied with the adjudication and dealt timeously both with it and the correspondence which he received. It was open to the tribunal, if not inevitable, to reject his explanations as unsatisfactory and no answer. A challenge to the findings in relation to the first two allegations made by the Law Society is untenable”.

[15] The Practitioner has referred in his evidence to the possibility of judicial review and has even attached a 30 page draft statement of claim. But he says he has been too busy in the 14 months since the Standards Committee determination and the nine months since the LCRO ruling to finalise and file this application. He points to the heavy workload for his clients and the adverse effects this is having on his health. Mr Collins submits that the threat of judicial review proceedings, particularly some 14 months after the determination ought not to permit delay or avoidance of compliance with the orders. We accept the force of that submission.

[16] As indicated earlier, in the *Hart*² matter, the tribunal found that breach of even Standards Committee directions was a serious matter indeed, and this breach of Standards Committee orders consequent upon a determination of unsatisfactory conduct against the practitioner is more serious again. It is certainly, in our view, “disgraceful and dishonourable” to refuse to comply with an order while taking no proper constructive steps to challenge the ruling. It is also a wilful contravention of s 4 and r 2 of the Client Care and Conduct Rules not to comply with the order. In order for the profession to maintain its reputation, its disciplinary processes must be seen to be credible and respected, particularly by members of the legal profession. We consider that this takes it beyond the level of unsatisfactory conduct and find that the Practitioner has been guilty of misconduct under both s 7(1)(a)(i) and (ii).

DATED at AUCKLAND this 2nd day of April 2014

Judge D F Clarkson
Chair

² Above, n 1.