**NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No: [2011] NZLCDT 17

LCD 026/09, 004/09

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| **IN THE MATTER** | of the Law Practitioners Act 1982 |
| **BETWEEN** | **AUCKLAND DISTRICT LAW SOCIETY** |
| | Applicant |
| **AND** | **JOHN DORBU** |
| | Respondent |

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Ms J Gray

Ms C Rowe

Ms M Scholtens QC

Mr W Smith

**ON THE PAPERS** 1 July 2011

**DATE OF DECISION** 6 July 2011

**SUBMISSIONS BY**

Mr H Keyte QC for the Standards Committee

Respondent Mr Dorbu in Person

## DECISION OF THE TRIBUNAL IN RESPECT OF APPLICATION FOR REHEARING OF CHARGE 1 (ON THE PAPERS)

### *Introduction*

[1] The respondent Mr Dorbu sought Judicial Review of a decision of this Tribunal in which 11 charges of 12 were found to be established against him and following which he was struck off the roll of Barristers and Solicitors. The application was unsuccessful in respect of Charges 2, 3, 4, 5, 6, 7, 8, 10, 11 and 12.

[2] However in respect of Charge 1 the application was allowed and the finding set aside. In his decision of 11 May 2011, His Honour Brewer J remitted the charge back to the Tribunal for rehearing. His Honour also noted that, after giving the parties the opportunity to make submissions the Tribunal may choose not to hold a rehearing.

[3] The orders as to penalty were also quashed.

[4] On behalf of the New Zealand Law Society, Mr Keyte QC has sought a rehearing of Charge 1. This is opposed by Mr Dorbu. The Society makes the point that the charge on which the rehearing is sought is a serious charge namely, that the respondent was a party to a conspiracy by unlawful means to deprive the complainant of the benefits of a contract, and thereby was guilty of misconduct in his professional capacity.

[5] The Society goes on to point out that there was no impropriety on behalf of the Law Society in bringing this charge and that the public interest and the interests of justice demanded that this charge be reheard.

[6] Mr Dorbu opposed the rehearing for a number of reasons. First he said it was not in the interests of justice and that His Honour Brewer J, in referring the matter back for rehearing, had also given an indication to the Tribunal that it might elect not to do so. That indication was of course subject to the proviso that such a decision would need to be made having heard submissions from both parties. Mr Dorbu also submits that the effect of the judgment and its reliance on section 50 of the Evidence

Act meant that in order to establish their allegations the Law Society would effectively have to duplicate the *Barge* trial. Next Mr Dorbu submits that the tentative hearing date of such a rehearing would not be until the end of November with a penalty hearing likely not to occur until 2012. He points to the personal difficulty to himself in not having penalty determined prior to that date. He points out that the charges were laid in September 2008 and that the matter had been "like a millstone ... around his neck". Next Mr Dorbu submits that the Law Society has an improper motive in seeking to pursue this charge and finally, he submits that the likelihood of the success of this charge is poor, but that the "relentless pursuit of it would almost definitely cause permanent injury to (him)".

[7] In response to the issue of delay the Society indicated that it would be prepared for a penalty hearing on the remaining charges to take place in advance of the rehearing. The Tribunal has considered this approach and considers it has considerable merit. We accept that this matter is most stressful and debilitating of Mr Dorbu's personal resources and we consider it ought to be given some priority. A penalty hearing is likely to be able to be convened in September, considerably earlier than the 2012 date Mr Dorbu predicted that penalty hearing might occur.

***Decision***

[8] The Tribunal considers that the Society are correct to refer to this matter as a serious charge in which there is a strong public interest component. It is not the Society which was found to have fallen into error by the High Court, but the Tribunal, and this ought not to be visited upon the Society or indeed, the public or the profession represented by the Society.

(1) Thus we consider that the rehearing must be granted and is confirmed for the week of 21 November 2011.

(2) The penalty hearing is to be allocated for whichever of the following dates are available to counsel - 21, 22, 23 September. A half day ought to be sufficient for this hearing; however counsel may consider that a full day ought to be set aside.

[9] In the meantime in terms of a further memorandum filed by Mr Dorbu, the Tribunal makes the following directions:

(1) The respondent is to file all interlocutory applications within 7 days of the date of this decision.

(2) The Law Society is to file any response within a further 7 days.

[10] The Tribunal requests that in its opening submissions the Law Society address the relationship between section 50 of the Evidence Act and section 239 of the Lawyers and Conveyancers Act. We consider it will be of advantage to all concerned if these issues are clarified from the outset. The respondent is then clearly on notice and cannot be taken by surprise in any way.

**DATED** at Auckland this 6th day of July 2011

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Judge D F Clarkson
Chairperson