

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No: [2010] NZLCDT 18

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**WAIKATO BAY OF PLENTY  
STANDARDS COMMITTEE**

Applicant

**AND**

**JAMES PARLANE**

Respondent

**CHAIR:**

Mr D J Mackenzie

**MEMBERS OF TRIBUNAL**

Ms S W Hughes QC

Ms A de Ridder

Ms S Gill

Mr O Vaughan

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**DECISION ON UNSATISFACTORY CONDUCT CHARGE**

Dated: 22 July 2010

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1. When the Tribunal published its decision on 4 June 2010 a decision on the Unsatisfactory Conduct Charge was to occur after receipt of submissions from the Waikato and Bay of Plenty Law Society and Mr Parlane. The Law Society furnished submissions on 16 June 2010, and Mr Parlane has not.
2. The genesis of this charge is a letter written by Mr Parlane to the complainant dated 5 June 2009. We have dealt with the contents of the letter and the standards expected of a solicitor in these circumstances in paragraphs 100 to 104 inclusive of our decision of 4 June 2010.
3. We turn now to addressing the issue of whether the charge is valid given the apparent breach of Section 152 of the Act. Such provides:

***“Power of Standards Committee to determine complaint or matter***

(1) *A Standards Committee may, -*

(a) *After both enquiring into a complaint and conducting a hearing with regard to that complaint; ...make one or more of the determinations described in subsection (2).*

(2) *The determinations that the Standards Committee may make are as follows:*

(a) *A determination that the complaint or matter, or any issue involved in the complaint or matter, be considered by the Disciplinary Tribunal;*

(b) *A determination that there has been unsatisfactory conduct on the part of -*

(i) *A practitioner or former practitioner; or*

(ii) *...*

(c) *A determination that the Standards Committee take no further action with regard to the complaint or matter or any issue involved in the complaint or matter...”*

4. It is common ground that the Standards Committee in error made both a finding that Mr Parlane's conduct was unsatisfactory and at the same time determined that the matter should be considered by the Disciplinary Tribunal.
5. As it happened, Mr Parlane sought review by the Legal Complaints Review Officer. Mr Parlane's right to seek review is enshrined in Section 193 of the Act.
6. The Review Officer's powers on review are set out in Section 211 of the Act and include:

*"The Legal Complaints Review Officer may, on a review under Section 193, do any one or more of the following things:*

- (a) *Confirm, modify, or reverse any decision of a Standards Committee, including any determination, requirement, or order made, or direction given, by the Standards Committee (or by any person on its behalf or with its authority):*
  - (b) *Exercise any of the powers that could have been exercised by the Standards Committee in the proceeding from which the decision was made or the powers were exercised or could have been exercised..."*
7. The Review Officer at paragraph 29 of his decision in exercise of those powers severed the finding that the Complaints Committee had made that Mr Parlane's conduct amounted to unsatisfactory conduct and confirmed the decision to have the matter proceed to a Disciplinary Tribunal for hearing.
  8. It is anticipated by the Act that the Review Officer would review the evidence which was before the Committee before deciding whether to confirm, reverse or modify the determination (see Sections 204, 206(2) and 207). In this instance the Review Officer appears to have focussed solely on the determination itself without examining the evidence or the process followed.
  9. It is clear that a review by the Review Officer operates as a hearing *de novo*, there being no presumption in favour of the decision reached by the Complaints Committee. The Review Officer resolved to modify the Complaints Committee decision by deleting all references to a finding having been made by that Committee and referring the matter instead to the

Disciplinary Tribunal. We think, it would have been preferable for the Review Officer to have reversed the decision and by exercise of the powers reposed in the Committee (Section 211(1)(b)) determined that the matter be considered by the Disciplinary Tribunal. However little turns on the mechanism involved.

10. It is clear, that the Review Officer had the powers of the Committee when sitting in review in any event. An ancillary question arises as to what would have transpired had Mr Parlane not appealed, however the Tribunal reminds itself that the New Zealand Law Society has a power to seek review from the Review Officer in any event (Section 194(2)(d)) to which end the matter would inevitably have come before the Review Officer.
11. In short therefore we find that whilst this matter has been handled in a clumsy fashion; the Review Officer confirmed the decision to refer this matter to the Disciplinary Tribunal and was able to sever the offending portion of the decision leaving the reference to the Tribunal in tact.
12. As we have indicated in our earlier decision but for our reservations regarding the legal process adopted we would have found this charge to be proven.
13. Given that we are now satisfied that this charge was properly before the Disciplinary Tribunal, it follows that we find that the charge has been proven.
14. Accordingly this matter falls to be included with the other charges proven at the penalty hearing to be scheduled.

**DATED** at Wellington this 22<sup>nd</sup> day of July 2010

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**SW Hughes QC**

**Member of the Tribunal**