***NOTE THAT A SUPPRESSION ORDER APPLIES TO CERTAIN INFORMATION, AS SET OUT IN PARAGRAPH [ 27 ]***

**IN THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No: [2012] NZLCDT 18

LCDT 023/11

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| **IN THE MATTER** | of the Lawyers and Conveyancers Act 2006 |
| **AND** | |
| **IN THE MATTER** | of Richard Andrew Peters, Lawyer of Christchurch |

**TRIBUNAL**

**Chair**

Mr D J Mackenzie

**Members**

Mr W Chapman
Mr M Gough
Mr A Lamont
Mr S Walker

**COUNSEL**

Mr H van Schreven, for Canterbury-Westland Standards Committee 2
Mr R Peters, Respondent

**HEARING** at Christchurch on 2 July 2012

**RECORD OF DECISIONS AND REASONS FOR DECISIONS OF THE TRIBUNAL MADE ON 2 JULY 2012**

***Record of Decisions***

[1] The Tribunal certified costs under s 257 Lawyers and Conveyancers Act 2006 at $6,000.

[2] Mr Peters was censured, ordered to pay the Standards Committee's costs of $6,150, and ordered to reimburse the New Zealand Law Society its costs to be paid under s 257 amounting to $6,000.

[3] The Tribunal also made the suppression order noted at paragraph [27].

***Background***

[4] Mr Peters faced a charge of misconduct, and, in the alternative, unsatisfactory conduct. The charges arose from his failure to undertake an appeal when requested to do so by a client in the criminal jurisdiction who had been convicted of sexual offences and sentenced to imprisonment.

[5] Initially Mr Peters denied he was guilty of either misconduct or unsatisfactory conduct, on the basis that he had not accepted any instructions to lodge an appeal on behalf of his client. He said he had taken the view that his mandate for his client from the Legal Services Agency terminated on completion of sentencing and that he was not required to undertake a further mandate and complete an appeal. He did accept that he had been lacking in courtesy in not contacting his client after sentencing.

[6] Mr Peters said that after he was charged he took advice from senior counsel about the matter and reconsidered his position. As a consequence he accepted that when his client had talked of an appeal following sentencing he had effectively been given instructions to act, which he had not followed through. Mr Peters then

pleaded guilty to the alternative charge of unsatisfactory conduct, and that was accepted by the Standards Committee which did not pursue the matter on the basis of misconduct.

***Discussion***

[7] In an affidavit filed with the Tribunal by Mr Peters' client, who was the complainant in this matter, that client said he had "*made it quite clear that I wanted to appeal".* Mr Peters now accepts that his client did indicate that he wished to appeal, and that he wanted Mr Peters to conduct that appeal on his behalf. He also acknowledges that he took no steps regarding an appeal, despite the efforts of the father of his client to have Mr Peters engage on the issue.

[8] Mr Peters' client has now abandoned any attempt to appeal. When his client was visited in prison by Mr Peters during June 2010, after the complaint had been made to the Law Society, the client advised Mr Peters that he was going to instruct an alternative lawyer. No alternative lawyer has taken any appeal forward, and in his affidavit filed with the Tribunal Mr Peters' client confirmed that he had not pursued an appeal. He was released from prison in September 2011 and says that the only point of an appeal at this time would be to expunge his record, his sentence having been served.

[9] In its submissions the Standards Committee said that it viewed the matter as a breach of s 12(a) Lawyers and Conveyancers Act 2006, which notes unsatisfactory conduct as conduct that falls short of the standard of competence and diligence that a member of the public is entitled to expect from a reasonably competent lawyer. In this case, it said, the public would expect a lawyer who had received instructions regarding an appeal to take steps to progress the matter, and Mr Peters' failure to do so meant he fell short of the required standard.

[10] Features of Mr Peters' conduct which the Standards Committee highlighted were: that Mr Peters had failed to maintain contact with his client following sentencing and after an indication of a wish to appeal had been given; that Mr Peters did not see his client until nearly 17 months after sentencing, and that was in

response to the complaint made; and that his client's father had been making considerable effort to have Mr Peters make contact with his son to discuss the appeal to no avail prior to the complaint being made.

[11] The committee did note in mitigation that there was an inference to be drawn that the prospect of the appeal succeeding was limited, that the complainant did not now wish to pursue an appeal, that Mr Peters had no previous adverse professional disciplinary record, and that while initially denying the misconduct charge, Mr Peters came to the conclusion relatively early in the process that he was guilty of unsatisfactory conduct and pleaded on that basis.

[12] In respect of these points we record that we see little mitigation in the matters of likely limited success with an appeal and a decision now by Mr Peters' client not to proceed with any appeal.

[13] The likelihood of success is a matter for discussion between counsel and client, and Mr Peters did not even commence the process of appeal by responding to his client's request and discuss appeal grounds and prospects with his client. It is not for a lawyer to unilaterally decide the merits of a prospective appeal and decide not to take any steps in the matter because of a preliminary conclusion the lawyer may reach on the merits, without any discussion or advice to the client concerned.

[14] The fact that the client subsequently decided not to pursue an appeal, some time after giving up on Mr Peters, does not in any way lessen the conduct of Mr Peters prior to that date. This is especially so when the reason for that decision to abandon the pursuit of an appeal appears to be the effluxion of time with no action on an appeal and the fact that sentence had been served.

[15] We do give Mr Peters some credit for visiting his client in prison after the complaint was made, apologising, and offering to assist with an appeal.

[16] In his submissions Mr Peters stated that while he had pleaded guilty to unsatisfactory conduct, and acknowledged his lack of courtesy to his client in not

contacting him for approximately 17 months after sentencing, he had not believed at the time that he had in fact accepted any instructions to appeal. There was no contact with his client after completion of his mandate to appear at trial and subsequent sentencing because he considered that with the termination of his legal aid assignment his role was complete.

[17] He said that with hindsight and the benefit of advice from senior counsel he now understood that he had had an obligation to continue to assist his client after sentencing, and should have responded to his client's indication of a desire to appeal.

[18] In this particular case, there had been an indication to Mr Peters by his client, immediately after sentencing, that he wished to appeal against his conviction on the serious charges concerned and the resulting sentence of imprisonment. Mr Peters did nothing: he didn't discuss the matter in detail; he didn't advise his client of issues regarding the appeal; and he didn't refer him elsewhere. He just ignored the matter.

***Determinations***

[19] For that failure Mr Peters was censured by the Tribunal, which noted that it was not available to ignore a client's expressed wish to appeal. In this case the matter was compounded by Mr Peters' failure to respond to the father of the complainant who made repeated attempts to contact him regarding the appeal.

[20] The fact that Mr Peters might have had a view of the merits of the appeal was something for advice and discussion with the client. It does not categorise it as a matter to be ignored.

[21] It is important that the public has confidence in the profession. The public is entitled to expect a professional response to instructions and requests from clients; ignoring such matters is unsatisfactory.

[22] We thought long and hard about additional penalty beyond a censure, and the Tribunal records that it considers censure in itself a serious response in this case.

[23] On balance the Tribunal decided not to impose a fine, notwithstanding the Standards Committee's submission that a fine in the order of $8,000 - $10,000 was appropriate. We took the view in this case that it would be unnecessarily punitive in the circumstances, particularly in light of the cost orders to be made and the fact that the Tribunal considers a censure to be the important response in respect of this charge of unsatisfactory conduct.

[24] The Standards Committee incurred costs of $6,150.00. Mr Peters was ordered to pay those costs. The costs were reasonable in quantum, involving a discounted rate of $275 per hour and reflecting time engaged which appeared appropriate.

[25] The Law Society incurred a cost of $6,000 under s 257 of the Act. Mr Peters was ordered to reimburse the NZ Law Society that amount.

[26] The Tribunal takes the view that costs of disciplinary proceedings should fall on the errant practitioner concerned, subject only to reasonableness of quantum and the practitioner not being in such a financial state as to be unable to pay, at least over time if necessary. There was nothing before the Tribunal which indicated anything other than full cost payment and reimbursement should be made by Mr Peters.

[27] The Tribunal also decided, because there is disclosure on the file regarding the name of the victim and detail of the sexual offences against her which resulted in Mr Peters' client being imprisoned, that there should be some publication limitations. Accordingly, the Tribunal ordered that victim's name, and any details that may identify the complainant in the matter for which Mr Peters' client was imprisoned, be suppressed.

**DATED** at AUCKLAND this 9th day of July 2012

D J Mackenzie
Chair