

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2014] NZLCDT 26

LCDT 032/13

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**NATIONAL STANDARDS
COMMITTEE**

Applicant

AND

TIMOTHY RUSSELL SARAH

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr G McKenzie

Ms C Rowe

Mr W Smith

HEARING at the Auckland District Court

DATE OF HEARING 15 April 2014

APPEARANCES

Mr R McCoubrey for the Standards Committee

No appearance for the respondent

**DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**
(ON PENALTY)

[1] Timothy John Russell Sarah is charged that pursuant to s 241(d) of the Lawyers and Conveyancers Act 2006 having been convicted of an offence punishable by imprisonment which reflects on his fitness to practise or tends to bring the profession into disrepute.

[2] The particulars supporting that charge are that on 6 March 2013 at the High Court at Auckland Mr Sarah pleaded guilty to and was convicted of the following:

- (a) Three charges of supplying a Class A controlled drug namely methamphetamine;
- (b) One charge of possession for supply of a Class A controlled drug namely methamphetamine;
- (c) One charge of dishonestly accessing a computer system, namely the Police National Intelligence Application and thereby obtained property, namely confidential information.

[3] On 3 May 2013 he was sentenced to four years imprisonment by His Honour Justice Toogood.

[4] The practitioner was served with the current charge and the supporting material in October of last year. Since then he has taken no steps in response to the charge and we note that he is still a serving prisoner.

[5] The four years imprisonment to which Mr Sarah was sentenced was the subject of an appeal to the Court of Appeal which was dismissed in September 2013 and we will refer at times to the sentencing notes of His Honour Justice Toogood on 3 May 2013. In sentencing His Honour referred to the lead offence being the charge which has been read as the third charge, that is the dishonest accessing of the Police National Intelligence computer system.

[6] In respect of the charge before us the Standards Committee seek strike-off of the practitioner from the roll of barristers and solicitors. In considering that, we must be satisfied before striking off any practitioner, that he is not and no longer a fit and proper person.

[7] We begin with the seriousness of the offending which is the subject of the charge and which underpinned the convictions. In this respect what was held to be the lead offence is also for the Tribunal the most important one because it involves such a gross breach of trust in a privileged position as a Police prosecutor. That is not to minimise the very serious convictions for dealing in methamphetamine which aggravated the lead offence considerably. But the actions of the practitioner in warning drug associates using information obtained from the Police computer database which was accessed over 80 times is of enormous concern in any practitioner, who is bound in terms of s 4 obligations, under the Lawyers and Conveyancers Act, to uphold the Rule of Law and the administration of justice.

His Honour Justice Toogood described this offending as “deliberate and calculated”. He went on to describe how the practitioner’s offending seriously undermines public confidence in law enforcement, which, we note, in a modern world involves the collection of data about citizens on the basis that those charged with its collection and storage will observe the highest standards of integrity and know that the information will be used only for legitimate purposes. We refer to paragraph 35 of His Honour’s sentencing notes as to the drug dealing which at times occurred during Mr Sarah’s lunch break as a prosecutor.

His Honour had this to say:

“There is no doubt that selling illicit drugs during your lunch break while carrying the important responsibility of prosecuting others for the same thing is breathtaking in its hypocrisy and cynicism”.

[8] Justice Toogood found that the crimes were more reprehensible because Mr Sarah was a lawyer and employed by the Police and further that he had brought both professions into disrepute by his actions.

[9] We have not today had the benefit of submissions for the practitioner because there has been no appearance for him and so we refer to the balancing act which the Tribunal must engage in assessing the issue of fitness.

[10] We address the mitigating features which were raised at the time of sentence. We note that it was accepted that his drug habit had developed apparently as a consequence of post traumatic stress disorder which followed an ugly and disturbing incident involving Mr Sarah in which he was an innocent bystander.

[11] We also note that he has taken steps to deal with his addiction and had engaged at the time of sentence in counselling on an ongoing basis. No doubt this will have been interrupted by his sentence of imprisonment but one hopes that on release he would resume supportive measures necessary to ensure that he does not once again succumb to an addiction.

[12] We note finally that there are no previous disciplinary findings against Mr Sarah.

[13] In the course of making submissions during the sentencing process, counsel for Mr Sarah accepted on behalf of the practitioner that strike-off was inevitable. Clearly that is a realistic assessment of the situation.

[14] As a panel of five we unanimously find that Mr Sarah is not a fit and proper person to remain on the role of barristers and solicitors and we make the following orders:

- (1) Strike off pursuant to s 242(1)(c)
- (2) Costs of the New Zealand Law Society are ordered against Mr Sarah pursuant to s 249 those costs to be approved by the Tribunal. (Now seen and approved).
- (3) Section 257 Tribunal costs are awarded against the New Zealand Law Society. These are certified at \$1,610.
- (4) The practitioner is also to reimburse the s 257 costs to the New Zealand Law Society pursuant to s 249.

DATED at AUCKLAND this 15th day of April 2014

Judge D F Clarkson
Chair