BEFORE THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

Decision No.[2010] NZLCDT 26

LCDT 022/09

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **WAIKATO BAY OF PLENTY STANDARDS COMMITTEE**

Applicant

AND **JAMES CHARLES MORRIS PARLANE**

Respondent

Chair
Mr D J Mackenzie

Members
Ms S W Hughes QC
Ms A de Ridder
Mr W Smith
Mr O Vaughan

Hearing at Auckland 13th September 2010

Appearances
Mr P Collins for the Applicant
The Respondent in person

DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL ON PENALTY

Introduction

[1] The Tribunal convened in Auckland on 13 September 2010 to hear submissions on penalty from the Waikato Bay of Plenty Standards Committee and from Mr Parlane.

[2] Mr Parlane had been found guilty on a charge of misconduct in his professional capacity and on a charge of unsatisfactory conduct in his professional capacity, following an earlier hearing of the Tribunal.

[3] The factual background to the charges, and the Tribunal's findings on the misconduct charge, are contained in the Tribunal's decision of 4 June 2010, recorded at [2010] NZLCDT 8. That decision reserved a legal point on the unsatisfactory conduct charge while further submissions were sought, and was the subject of a decision of the Tribunal on that legal point dated 22 July 2010, recorded at [2010] NZLCDT 18.

[4] At the conclusion of the hearing on penalty on 13 September 2010, the Tribunal reserved its position, and advised the parties that it anticipated being able to make a decision later that day, and would deliver its decision to the parties, in writing, as soon as it could. The Tribunal retired, and after deliberation made its decision and requested the Chair to deliver the decision in writing to the parties. This is the Tribunal's decision of 13 September, 2010, now delivered in writing by the Chair pursuant to R.34 Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008.

Background to Penalty Hearing

[5] In respect of the misconduct charge Mr Parlane had been found guilty in respect of conduct noted in five different particulars;

[a] Wrongful refusal to discharge a mortgage given to him personally by a former client, a Mrs R, involving obstruction of another practitioner in her efforts to refinance Mrs R, and using his position as a mortgagee to make demands and seek concessions to which he was not entitled;

[b] Obstructing an investigation by the Standards Committee into the complaint involving Mrs R by failing to produce files and records;

[c] Obstructing the Complaints Committee, and subsequently the Standards Committee, by communicating in an unprofessional and belligerent manner in correspondence with the committee regarding the complaint by Mrs R;

[d] Obstructing the Standards Committee by communicating in an unprofessional and belligerent manner in correspondence with the committee regarding a complaint by a Mr M; and,

[e] Obstructing the Standards Committee by communicating in an unprofessional and belligerent manner in correspondence with the committee regarding a complaint by a Mr D.

[6] In respect of the unsatisfactory conduct charge Mr Parlane was found guilty in respect of conduct involving disrespectful and discourteous comments to a self-represented person in a fencing dispute with a person represented by Mr Parlane. The conduct breached Rule 12 of the Conduct and Client Care Rules 2008.

Penalty Issues

[7] For the Standards Committee, which assumed responsibility for disciplinary matters from the Complaints Committee of the Waikato Bay of Plenty District Law Society under the Lawyers and Conveyancers Act 2006, Mr Collins submitted that there were two themes that arose from Mr Parlane's conduct. First, that Mr Parlane was out of control professionally, and second, that Mr Parlane had no insight into his professional failings, which reinforced the need to protect the public.

[8] Mr Parlane's conduct complained of, which was a continuing course of conduct over an extended period of months, and his views expressed to the Tribunal since, support that submission in the Tribunal's view.

[9] The Tribunal considers the misconduct noted in paragraph 5(a) above to be the most serious. The other instances of Mr Parlane's misconduct are also serious, and serve to reflect Mr Parlane's lack of control and refusal to accept his responsibilities as a member of the legal profession.

[10] We consider Mr Parlane's conduct unacceptable. It was extraordinary behaviour for him to refuse to release the mortgage from Mrs R, where he was the mortgagee, unless, among other things to which he was not entitled, she withdrew her complaint against him to the Law Society and indemnified him for all his costs associated with the complaint. He suggested the sum of $20,000 as an appropriate amount to be held as security for costs.

[11] As noted in the tribunal's substantive decision of 4 June 2010, the intervention of the District Court was required to ensure Mrs R received her discharge of mortgage, and Mr Parlane's various demands were dismissed.

[12] That was a serious issue, with some significant distress and damage to Mrs R, his former client. During his submissions on penalty, at the hearing of 13 September 2010, it was clear to the Tribunal that Mr Parlane had little regard for his conduct in respect of Mrs R, and the difficulties that had caused her.

[13] Instead, Mr Parlane's focus during the penalty hearing was on what he described as the "cheating" and "malicious" intent of the Standards Committee, and Mrs R being "a calculating liar". He said her other witnesses were also liars.

[14] Regarding the particulars relating to his responses to the Standards Committee he said the "informant has asked for it" because of the way it had brought charges. He went on to claim that he was entitled to two million dollars in costs and damages from the Standards Committee for its "malice and wilful dishonesty".

[15] The Tribunal notes that not only did the proven facts on which he was found guilty demonstrate an ongoing inability to understand his responsibilities to the public and to the profession at the time of his conduct, which continued over some months, but at the penalty hearing Mr Parlane did not demonstrate any understanding or insight into his professional failings. His answer to all issues was that everyone else was at fault, including officers of the Standards Committee, counsel for the Standards Committee, the complainants, and the witnesses at the substantive hearing.

[16] The particulars relating to his communications with the Standards Committee refer to conduct continuing in respect of different matters over an extended period. Mr Parlane 's behaviour was not represented by just one isolated response – his unacceptable behaviour was a continuing course of conduct, which supports the submission that Mr Parlane is professionally out of control, and does not care how he deals with such matters. The Tribunal's decision of 4 June 2010, where some of his comments are specifically noted, confirms this observation.

[17] His lack of insight and behaviour demonstrating lack of control continued in his written submissions on penalty, in which Mr Parlane concluded that it was a pity the "*tribunal cannot impose the death penalty on the informants (sic) malicious and evil officers who have touched this file.*" That, together with other factors noted, leaves us with real concern that such a person is practising as a barrister and solicitor of the High Court.

[18] Mr Parlane tried to characterise his written responses to the Standards Committee, which led to the charges against him, as simple name calling in response to what he described as a vindictive Law Society. We do not accept that submission, and note also that Mr Parlane has extended his accusations to all who have been involved in these charges and hearings. This is, we consider, a further reflection of his lack of insight, highlighted again by his response to Mr Collin's submission that Mr Parlane had no insight into the harm he caused and his lack of professionalism. To that submission Mr Parlane said that he did have insight, as was evidenced by his knowledge of, and insight into, Law Society "behaviour".

[19] Mr Parlane said that the language he had used was justified because he was dealing with an institution for which he has no respect, the Waikato Bay of Plenty branch of the Law Society, and an office holder of that branch whom

he claimed was a liar and cheat. In any event he said, it was just "nuisance" offending, not serious misconduct justifying the sanction of striking off which was sought by the Law Society.

[20] This again demonstrates Mr Parlane's lack of insight and professionalism. As well as ignoring the particulars relating to his behaviour with regard to release of Mrs R's mortgage which form part of the misconduct charge, and constitute the most serious issue, it confirms that Mr Parlane does not understand his professional responsibilities. He continues to try to justify his actions with extreme claims against others, and says his behaviour was appropriate in the circumstances.

[21] The Lawyers and Conveyancers Act imposes a regulatory regime on legal practitioners for a number of purposes, and importantly, to maintain public confidence in the provision of legal services, and to protect consumers of those services.[1]

[22] Of concern to the Tribunal is not only the experience of Mrs R, and Mr Parlane's extreme behaviour when responding to various other complaints made against him, but the fact that we can have no confidence that Mr Parlane will not do something similar in future. He has no insight into his professional failings, and continues to make claims that it is the fault of others, and that his actions were justified. Given the conduct of which he has been found guilty, and his continuing view of matters, we consider that Mr Parlane is not a fit and proper person to be a legal practitioner. His conduct has been far below the standard required of a barrister and solicitor of the High Court, and his continuing view of matters is of concern, especially given the need to protect the public.

[23] The unsatisfactory conduct charge on its own is not serious, but when considered in the context of the misconduct charge and the particulars found proven, it reinforces our view of Mr Parlane's inability, or wish, to behave in an appropriate way to members of the public as well as to the regulatory body charged with ensuring appropriate behaviour by members of the Law Society.

[24] The abuse of his position regarding Mrs R, a vulnerable person in the circumstances, whereby Mr Parlane refused to supply a discharge of his mortgage until Mrs R withdrew her complaint to the Law Society and paid costs, for which Mr Parlane said he wanted costs security of up to $20,000, is very serious misconduct. Couple that with the other proven misconduct, its continuing nature, and Mr Parlane's refusal to acknowledge fault, and attribution of fault to all others involved, and a picture emerges of someone who should not be entitled to practise. There is an ongoing risk to the public, and to the profession in terms of its reputation and integrity.

[25] Mr Parlane has a previous disciplinary record. Mr Parlane attempted to explain it away on the basis that the earlier disciplinary decisions were wrong, or that he only withdrew his appeals relating to findings against him in respect of

[1] Section 3 Lawyers and Conveyancers Act 2006

those charges because he did not want to prolong matters. The matters occurred some years ago, and we do not attribute great weight to them, but they also support a view of ongoing risk if Mr Parlane was to remain in practice, as he continues to deny he was at fault in those matters.

[26] In our view Mr Parlane has to be removed from practice to protect the public. We considered suspension from practice for an extended period, but we have no confidence that such a period of suspension would leave Mr Parlane reconsidering his approach to practice and how he may respond to the public and the Law Society in future. The risk that something similar may happen again if he came back to practice after a period of suspension, that risk being based on the factors we have noted, militates against suspension and favours striking off . The Tribunal has no confidence that Mr Parlane recognises his failings and will change his ways.

[27] We agree with Mr Collins' submission that Mr Parlane has been shown to be, and continues to present as, someone who is out of control in a professional sense. Mr Parlane's position is aggravated by his lack of insight and failure to appreciate his misconduct for what it is, together with his claims of justification, based on extreme claims about all others involved.

[28] In the circumstances striking off is the appropriate regulatory response to Mr Parlane's conduct. He has fallen well below the required standards of integrity, probity and trustworthiness, and that response is available.[2]

Orders

[29] In respect of the misconduct charge this tribunal orders that the name of JAMES CHARLES MORRIS PARLANE be struck off the role of barristers and solicitors.

[30] In respect of the unsatisfactory conduct charge we impose no separate sanction, given the order we have made for striking off.

[31] The Standards Committee also sought apologies for those suffering the rudeness and discourtesy noted. As Mr Parlane made it quite clear to the Tribunal at the penalty hearing that he had no interest in apologising, we see little point in making an order that is unlikely to result in any apology. We note that the Standards Committee submission was justified, and we would have ordered an apology if it was likely to have been provided.

Costs

[31] Costs are to be as fixed by the Chair. Any application for costs the Standards Committee considers appropriate is to be filed and served within 14 days of its

[2] Bolton v Law Society [1994] 2 All ER 486, 491-492

receipt of this decision. Mr Parlane is to respond within a further 14 days after he is served with the Standards Committee submissions on costs.

Dated at Wellington this 16th day of September 2010.

_____
D J Mackenzie
Chair