NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2012] NZLCDT 29
LCDT 024/11
LCDT 024/12

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **HAWKE'S BAY LAWYERS STANDARDS COMMITTEE**
Applicant

AND **SACHA MARIA BEACHAM**
Lawyer of Hastings

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Mr G McKenzie
Mr K Raureti
Mr T Simmonds
Mr W Smith

HEARING at Auckland on 12 October 2012

APPEARANCES
Mr P Collins for the Applicant
Ms S Beacham in person

DECISION OF NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL ON PENALTY

Introduction

[1] The practitioner pleaded guilty to three charges brought by the Hawke's Bay Lawyers Standards Committee.

(a) Charge dated 4 December 2011 in LCDT 24/11:

> Hawke's Bay Lawyers Standards Committee charges Sacha Maria Beacham, Barrister, of Hastings, under s.241(d) of the Lawyers and Conveyancers Act 2006, she having been convicted of an offence punishable by imprisonment and the conviction reflects on her fitness to practise, or tends to bring her profession into disrepute.
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> **Particulars**
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> (a) On 19 August 2011, in the District Court at Auckland, she was convicted and sentenced for an offence against s.56(1) of the Land Transport Act 1998 ("LTA"), namely that she was driving a motor vehicle with excess breath alcohol, in circumstances where she had been convicted on two previous occasions for relevant offences under the LTA, on 27 July 2002 (excess blood alcohol) and 13 October 2007 (excess breath alcohol);
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> (b) Her conviction under s.56(1) LTA was punishable by a term of imprisonment not exceeding two years or a fine not exceeding $6,000, and disqualification from holding or obtaining a driver's licence for more than one year, by reference to s.56(4) LTA.
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> (c) In the event, she was sentenced to a term of disqualification from driving for one year and one day and fined $1,200 and ordered to pay Court costs of $132.89; and
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> (d) The conviction reflects on her fitness to practise and tends to bring the legal profession into disrepute.

(b) Charge 1 in LCDT 24/12, dated 4 September 2012:

> The Hawke's Bay Lawyers' Standards Committee charges Sacha Maria Beacham, formerly a barrister of Hastings, under s.241(d) of the Lawyers and Conveyancers Act 2006; she having been convicted of offences

punishable by imprisonment and those convictions reflect on her fitness to practise, or tend to bring her profession into disrepute.

Particulars

(a) On 22 June 2012, in the District Court at Hastings, she was convicted on two charges under s.23(a) of the Summary Offences Act 1981:

(i) That she resisted a Police Constable acting in the execution of her duty; and

(ii) That she intentionally obstructed a (separate) Police Constable acting in the execution of her duty;

(b) Convictions under s.23(a) of the Summary Offences Act 1981 are punishable by a term of imprisonment not exceeding 3 months or a fine not exceeding $2,000;

(c) In the event, Ms Beacham was fined $200 on each conviction; and

(d) The convictions reflect on her fitness to practice and tends to bring the legal profession into disrepute.

(c) Charge 2 in LCDT 24/12, dated 4 September 2012:

The Hawke's Bay Lawyers' Standards Committee charges Sacha Maria Beacham, formerly a barrister of Hastings, with misconduct, including misconduct under ss.7(1)(b)(ii) & 241(a) of the Lawyers and Conveyancers Act 2006.

Particulars

(a) In the early hours of 31 December 2011, whilst a passenger in a car in which the driver was the subject of Police roadside excess breath alcohol procedures, she was abusive and obstructive towards the Police Officers attending on the driver, to the point where she was restrained and taken into custody, and arrested, which she resisted;

(b) Whilst in custody at the Napier Police Station she continued to conduct herself in an abusive and obstructive manner towards the Police Officers in attendance;

(c) During the course of a Police body search, whilst in custody, she behaved in an indecent and offensive manner towards the Police Officers in attendance; and

> (d) At the time of these events she held a practising certificate as a barrister;
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> And she is thereby guilty of misconduct.

[2] Before the Tribunal was the evidence of seven witnesses. Ms Beacham did not seek to cross examine any of the witnesses.

[3] In the course of the hearing Ms Beacham was cross-examined by counsel for the Standards Committee and questioned by the Tribunal. Submissions were received from both parties and the Tribunal reserved its decision.

Background

[4] The particulars of the offending are set out in the above charges. This practitioner was admitted as a barrister and solicitor on 9 September 2005 and over the past few years has been practising as a barrister sole in the Hawke's Bay region.

[5] Over the past 10 years, she has been convicted on three occasions for drink driving offences. The first of these occurred while she was a student and the second two (the last of which is the subject of Charge 1) have occurred since she was admitted as a practitioner. The only information the practitioner has provided about her alcohol related behaviour is a statement to the Standards Committee which she made on 1 September 2011, supported by a letter from her counsellor. In that statement she acknowledged that:

> "... clearly problematic use of alcohol is an automatic factor of the repeat offending. My offending is also a reflection of not keeping my emotions in check in terms of my personal life ..."

[6] Notwithstanding that acknowledgement and the acknowledgement that alcohol has caused significant problems in her personal life and:

> " ... subsequently in my professional life as a result of having incurred multiple convictions for the same type of offending."

she did not consider herself to be "alcohol dependent". At that time, she stated to the Standards Committee that she had been motivated to seek help and listed

therapeutic intervention she had received including anger management, attendance at Alcoholics Anonymous and cognitive therapy. She went on to say:

> "Since my offending in January 2011 I have made a concerted decision to remove alcohol from my life and maintain abstinence given my use of alcohol ... has had a detrimental impact on my life at all levels...
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> I have refrained from drinking since the incident in January. I intend to remain abstinent with the support of on-going therapy ... I know I will not survive another mistake like this given the extensive penalties I have suffered as a consequence of my offending by virtue of my position as a lawyer, well before I was sentenced at the Auckland District Court."

[7] Later she said to the Committee:

> "I am fully prepared to comply with any reasonable undertaking that the Committee may consider appropriate to address this matter and to provide the Law Society with ongoing reassurance that I am a fit and proper person to continue practising."

[8] Ms Beacham also made the point in that submission to the Standards Committee that her behaviour was completely at odds with her professional behaviour and level of competence. She reminded the Standards Committee that there had never been any complaints against her performance as a practitioner.

[9] Indeed at the hearing Ms Beacham repeated this submission and supplemented it by references from well satisfied clients over recent years.

[10] Unfortunately only a few months following those assurances, Ms Beacham once again offended, as a result of alcohol consumption in a way which is viewed very seriously by the Tribunal. It is this set of circumstances which set out in Charges 2 and 3. The Tribunal has evidence from the five police officers who were involved in observing Ms Beacham's behaviour on the night of 30 December 2011 and early hours of 31 December. Ms Beacham's reoffending involved not only a complete lack of respect to the police officers who were dealing with her but included a prolonged period of abusiveness and incidents of indecent and offensive behaviour towards the police officers.

The Law

> "**7 Misconduct Defined in Relation to Lawyer and Incorporated Law Firm**
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> (1) In this act, **misconduct**, in relation to a lawyer or incorporated law firm, -
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> ...
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> (b) Includes -
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> (i) Conduct of the lawyer or incorporated law firm that has misconduct under subsection (2) or subsection (3); and
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> (ii) Conduct of the lawyer or incorporated law firm which is unconnected with the provision of regulated services by the lawyer or incorporated law firm but which would justify a finding that the lawyer or incorporated law firm is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer or an incorporated law firm."

[11] And s 241:

> "**241 Charges that may be brought before Disciplinary Tribunal**
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> If the Disciplinary Tribunal, after hearing any charge against the person who is a practitioner or former practitioner or an employee or former employee of a practitioner or incorporated firm, is satisfied that it has been proved on the balance of probabilities that the person -
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> (a) Has been guilty or misconduct; or
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> ...
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> (d) Has been convicted of an offence punishable by imprisonment and the conviction reflects on his or her fitness to practise, or tends to bring his or her profession into disrepute, -
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> It may if it thinks fit make any one or more of the orders authorised by s.242."

[12] In submissions to us Mr Collins, for the Standards Committee, had this to say:

> "The concept of "fitness to practice" is not limited to professional competence or conduct generally in the performance of legal work. It includes respect for, and observance of the law and the related notion of respect and trust between the law enforcement agencies and the legal profession, which is essential to the administration of justice."

[13] We entirely accept that submission.

[14] Unsurprisingly, but sadly for Ms Beacham, and for the profession, there has been widespread media publicity about her behaviour, both concerning the drink driving offence and the subsequent obstruction and resisting police charges.

[15] There is no question that her behaviour has reflected on her entire profession. Aggravating behaviour in relation to the 2012 incident was her assertion of her status as a lawyer in the course of the events.

[16] The Standards Committee sought that the practitioner be struck from the roll of barristers and solicitors. It was Mr Collins submission that, in the absence of evidence that the practitioner was seriously engaged in a process of personal reform and rehabilitation, that nothing less would suffice and a period of suspension would not be productively used.

[17] Mr Collins accepted that there was no evidence the practitioner was in any way a risk to the public directly as a lawyer. To the contrary her clients spoke well of her work. However Mr Collins urged the Tribunal to take a broader view of protection of the public, namely that view which encompass the maintenance of the public's confidence in the profession as a whole.

[18] In its obligation to uphold the standards of conduct of the profession, the Tribunal must consider the significant risk of reoffending by this practitioner.

[19] Furthermore Mr Collins submitted that the totality of charges, all alcohol related, led to a submission for strike off. Mr Collins conceded that if the practitioner had been repentant and insightful then a more compassionate approach could have been adopted, such as that which occurred in the *Auckland Standards Committee 1 v Ravelich*[1] case.

[1] *Auckland Standards Committee 1 v Ravelich* [2011] NZLCDT 11.

[20] The *Ravelich* case had very similar characteristics to the present case in that there were two historic drink driving convictions and a conviction for resisting arrest. In that matter the practitioner also had a clearly established alcohol problem.

[21] What distinguishes that case from the present instance is the approach of the practitioner who did everything he could to address the problem of his alcoholism. There were in addition mitigating circumstances of a close relative's death, and the behaviour of that practitioner was not as objectionable as in the current instance. It was assessed by the Tribunal in that matter that the practitioner's ongoing risk was not great, particularly given that he had in the 12 months leading up to hearing, what was referred to as a "relatively trouble free period". Mr Ravelich was censured and suspended for seven months.

[22] Ms Beacham submitted that she had expected to be treated in the same manner as Mr Ravelich, and the seeking of a strike off order had taken her somewhat by surprise.

[23] She did not appear to discern the centrally distinguishing feature between the two cases. The Tribunal was at some pains to provide the practitioner with an opportunity of giving evidence about her alcohol problem. She confirmed that she had not been back to the therapist with whom she had been engaged in 2011 despite what one would consider to be even more serious consequences facing her from the December 2011 incident. She is clearly in denial about her alcohol dependence and that is a matter which must be taken into account by the Tribunal. It is abundantly clear that the practitioner needs further time to reflect on the situation which she faces. Although apologetic and rather sorry for herself in terms of the loss of the career that she declared she loved, the practitioner did still not appear to have reached the point where she was prepared to seek the support that might have satisfied the Tribunal that she could safely engage in practise again.

[24] We do give her credit for moving to Auckland to change her lifestyle, however it is of some concern that she is working part-time in the hospitality industry, where alcohol must be a daily temptation. While we accept her regret and apology as sincere, this does not equate with insight such as to reassure us about rehabilitation

and therefore a lower risk of reoffending. We consider that the practitioner requires a significant period to reflect upon this.

[25] Mr Collins provided the Tribunal with a number of authorites which had considered the situation of a practitioner with alcohol-related problems. Of these, *Ravelich* is the closest in terms of facts and level of seriousness. Counsel also referred us to the decisions of *Daniels* v *Complaints Committee 2 of the Wellington District Law Society*[2] and *Dorbu v New Zealand Law Society*[3] as to the general principles in imposing penalties for professional disciplinary offending. In the former decision, the considerations to be taken into account when considering strike-off or suspension are discussed at paragraphs [22], and [24]:

> "It is well known that the Disciplinary Tribunal's penalty function does not have as its primary purpose punishment, although orders inevitably will have some such effect. The predominant purposes are to advance the public interest (which include "protection of the public"), to maintain professional standards, to impose sanctions on a practitioner for breach of his/her duties, and to provide scope for rehabilitation in appropriate cases. Tribunals are required to carefully consider alternatives to striking off a practitioner. If the purposes of imposing disciplinary sanctions can be achieved short of striking off then it is the lesser alternative that should be adopted as the proportionate response. That is "the least restrictive outcome" principle applicable in criminal sentencing. In the end, however, the test is whether a practitioner is a fit and proper person to continue in practice. If not, striking off should follow. If striking off is not required but the misconduct is serious, then it may be that suspension from practising for a fixed period will be required.
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> ...
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> A suspension is clearly punitive, but its purpose is more than simply punishment. Its primary purpose is to advance the public interest. That includes that of the community and the profession, by recognising that proper professional standards must be upheld, and ensuring there is deterrence, both specific for the practitioner, and in general for all practitioners. It is to ensure that only those who are fit, in the wider sense, to practise are given that privilege. Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession.

[26] The *Dorbu* decision, at [35] repeated the 'least restrictive intervention' concept:

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[2] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC).
[3] *Dorbu v New Zealand Law Society* [2012] NZAR 481 (HC).

> "….Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice…."

[27] The Tribunal views Ms Beacham as a young woman with ability and promise as a lawyer. We have indicated our views as to the work she needs to do on herself before being able to practise again. By a fine margin, we have determined that we should not strike her from the Roll, but rather, impose a relatively lengthy period of Suspension during which time she will have the opportunity to establish her rehabilitation. We consider that the Fitness for Practice Committee of the New Zealand Law Society is likely to closely examine this before issuing her with a further practising certificate.

[28] Orders

(a) The practitioner is suspended from practice for a period of two years from the date of the Penalty hearing. Pursuant to s 242.

(b) She is also Censured for her misconduct.

[29] A decision as to costs will be provided shortly.

DATED at AUCKLAND this 8th day of November 2012

Judge D F Clarkson
Chair