

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2011] NZLCDT 3

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 OF TRIBUNAL**

Ms S W Hughes QC  
Ms A de Ridder  
Mr W Smith  
Mr W Chapman

**HEARING** at AUCKLAND on 13 September 2010

**APPEARANCES**

Mr P Collins on behalf of the applicant  
Respondent in person

**COSTS DETERMINATION AND SECTION 257 CERTIFICATION**

***Introduction***

[1] In the Tribunal's September 2010 decision to strike Mr Parlane off the roll of barristers and solicitors<sup>1</sup>, the Tribunal requested submissions on costs from the Standards Committee and Mr Parlane.

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<sup>1</sup> [2010] NZLCDT 26

[2] As Mr Parlane appealed the Tribunal's decision to strike him off, there has been some delay in finalising a determination regarding costs. The Tribunal considered that the appeal against striking off should be determined before it made a decision as to costs.

[3] In late December 2010 the High Court determined the appeal, upholding the decision of the Tribunal that Mr Parlane should be struck off.<sup>2</sup>

[4] For the Standards Committee, costs and expenses of \$69,964.93 were sought under s.249 Lawyers and Conveyancers Act 2006. Of this amount, \$2,546.18 was claimed in respect of costs and expenses of the Standards Committee investigation, and \$67,418.75 for legal costs and expenses incurred in prosecuting the charges.

[5] With its submissions on costs the Standards Committee filed two schedules giving some detail of the legal costs and expenses incurred. The Tribunal required the Standards Committee to provide more detail regarding legal costs and expenses.

[6] As a minimum the Standards Committee was asked to show the principal tasks and work undertaken, and the times engaged on such matters<sup>3</sup>. The committee responded with copies of invoices, showing hours worked and providing recitals as to work undertaken. That met the Tribunal's requirement for further and better detail of costs and expenses.

### ***Position of Standards Committee***

[7] The Standards Committee seeks all or a substantial part of its costs and expenses of \$69,964.93, scheduled as part of its submissions. It says that a substantial order should be made against Mr Parlane in respect of these costs, at or near indemnity level, because:

- [a] Mr Parlane adopted an obstructive approach to the proceedings, whereby he simply denied everything, with no attempt to engage constructively with the Standards Committee in responding to the charges. This resulted in the proceedings being more costly and difficult than they needed to be said the committee;
- [b] So far as the misconduct particular relating to a family trust was concerned, the simple act of Mr Parlane producing relevant documents and explanations to the Standards Committee at an early stage of its investigation would likely have meant this particular would not have formed part of the charge the committee said;
- [c] It was also submitted that Mr Parlane adopted an obstructive attitude in dealing with counsel for the Standards Committee, refusing to enter discussion or to correspond in a constructive way, instead attacking committee officers and counsel in a personal way in correspondence and documents;
- [d] The Standards Committee also noted that Mr Parlane had been found guilty on a majority of the particulars, including the most serious in the circumstances, his refusal to provide a release of mortgage.

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<sup>2</sup> Decision of Cooper J dated 20<sup>th</sup> December 2010 (CIV-2010-419-1209 Hamilton HC).

<sup>3</sup> Minute of the Tribunal dated 11 October 2010

### ***Mr Parlane's response***

[8] Mr Parlane lodged a number of written submissions in reply to the claim against him for costs. In his first submission he claimed that he had been diagnosed with depression as a result of the “*ongoing bullying*” he had suffered at the hands of the Law Society, and noted that he had been recently identified as an untreated mental health case.

[9] No evidence was provided to the Tribunal at the time of either the hearing of the charges, or the penalty hearing, regarding the existence of any mental health issues, or the likely affect of any such issues. The question had not been raised at all by Mr Parlane. The only information the Tribunal has about the now claimed mental health issue is as a result of statements made by Mr Parlane in his recent submissions on costs, and from reading the High Court decision on Mr Parlane's appeal against the penalty imposed by the Tribunal.

[10] That decision referred to a letter from a clinical psychologist which was read by the High Court in the course of hearing Mr Parlane's appeal against being struck off the roll. The letter stated that at the time of examination (late September and early October 2010) Mr Parlane was depressed and may suffer from Asperger's syndrome. While not objecting to the letter being read by the High Court at the appeal hearing (there was no sworn evidence on this issue), counsel for the Standards Committee submitted that Mr Parlane's claim that mental health issues caused his conduct was a “*refuge of convenience*” and invited the court to doubt its sincerity.

[11] The High Court subsequently rejected the suggestion that Mr Parlane's claimed mental health issues should result in the decision to strike Mr Parlane off the roll being altered, noting that the real issue was the conduct that had occurred and the imposition of an appropriate penalty having regard to the purposes of the Act.

[12] Mr Parlane also submitted to us that the Standards Committee had been “*profligate and high handed*” in the way it had brought the prosecution without any attempt to minimise costs. He considered there had been a failure to warn him of the risk of his liability for costs, and, in any event, he submitted, the claim was excessive.

[13] In respect of those particulars that had not been proven, or which were found not to contribute to a finding of misconduct, Mr Parlane said he should not be liable for any costs.

[14] Mr Parlane did not accept that he had been difficult and obstructive, and that he was responsible, by his actions and approach, for contributing to costs beyond what might otherwise have arisen.

[15] Mr Parlane suggested the matter should have been dealt with by some form of settlement early on in proceedings, but instead the committee was “*simply intent on racking up as much cost as possible*”, he said. It was unreasonable and unfair, claimed Mr Parlane, for the committee not to attempt to negotiate anything with him, instead simply moving to prosecution of charges.

[16] Finally, Mr Parlane noted that his ability to earn income had been removed by the striking off, and that he was effectively unemployable because of mental health issues. He submitted that should be a factor in determining the committee's ability to recover all of its costs from him.

***Are indemnity costs warranted?***

[17] We accept the submissions made by the Standards Committee, to the effect that in these proceedings Mr Parlane has been obstructive. The record shows that he has unnecessarily compounded matters with his attitude, including unwarranted and continuing personal attacks on Law Society representatives, and his refusal to show a defence to the trust issue from the outset, during investigation.

[18] The character and detail of Mr Parlane's approach to the misconduct charge is well documented in our substantive decision<sup>4</sup> and in our decision on penalty<sup>5</sup>. It is also noted by Cooper J in his decision on Mr Parlane's appeal against penalty.<sup>6</sup>

[19] Mr Parlane has continued this style of approach in his submissions on costs, variously claiming that the Law Society is guilty of "*bullying*"; that counsel for the Law Society has lied to the Tribunal; that an officer of the Standards Committee is guilty of dishonesty and cheating; that the Standards Committee is "*evil*"; that its witnesses lied to the Tribunal; and, that the costs claimed are duplications of inflated costs that are "*dishonest lies ...*"

[20] To us, this confirms Mr Parlane's lack of a constructive approach to the proceedings, which contributed to the level of time, and as a result, cost, incurred by the Standards Committee.

[21] In its substantive decision on the misconduct charge, the Tribunal found five of the eight particulars supporting that charge proven.

[22] The Tribunal also found a charge of unsatisfactory conduct, brought at the same time, proven.

[23] In respect of the misconduct charge three of the particulars were either not proven or found not to contribute to a finding of misconduct. That part of the case against Mr Parlane relating to the existence of a trust proceeded only because of Mr Parlane's decision not to properly advise the Standards Committee of the true position at the outset, as demonstrated by the matters that came out from him at the hearing of the charges. The two other particulars, which were proven, but which did not contribute to the misconduct finding, were not significant matters, and would not have added greatly to the costs. In any event, we consider the inclusion of all of these particulars was justified in the circumstances.<sup>7</sup>

[24] We consider Mr Parlane's claims that he should have been warned of a potential liability for costs, and that the Standards Committee should have negotiated some form of settlement with him, unrealistic and unsupportable in view of the charges against him and his conduct in these proceedings.

[25] In the circumstances, we consider there are grounds to order full reimbursement of the reasonable costs and expenses of the investigation and prosecution which the Standards Committee seeks from Mr Parlane. Mr Parlane's approach to the investigation

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<sup>4</sup> [2010] NZLCDT 8

<sup>5</sup> [2010] NZLCDT 26

<sup>6</sup> Supra, at paragraph 3 of this costs determination

<sup>7</sup> Section 249(3) Lawyers and Conveyancers Act 2006 is relevant here.

and proceedings justifies costs at a level akin to indemnity costs. He has been obstructive and vexatious in the way he has approached the disciplinary proceedings and levelled serious accusations at all involved.

### ***Costs claimed by the Standards Committee***

[26] An issue for the Tribunal before making any such order is whether the amount of costs and expenses being sought by the Standards Committee, a total amount of \$69,964.93, is reasonable. This requires consideration of tasks undertaken, time engaged, and hourly rate charged, as well as expenses incurred.

[27] The Standards Committee's own expenses of initial investigation were \$2,546.18, and are set out in a Schedule filed with the Tribunal on 6 October 2010. We consider those expenses reasonable.

[28] Following the decision to lay charges, the Standards Committee retained counsel to finalise the charges, brief evidence and finalise affidavits, prepare and lay charges and supporting material, and to represent the committee before the Tribunal. There was also a formal review, relating to the investigation and preliminary findings, which was argued before the Legal Complaints Review Officer ("LCRO").

[29] The Standards Committee lodged a Schedule with the Tribunal on 6 October 2010 (later supported by the further and better details filed with the Tribunal, as noted<sup>8</sup>), showing its legal fees and expenses totalling \$67,418.75

[30] We consider the hourly rate of \$300 per hour plus GST charged by counsel for the Standards Committee is reasonable, given the nature and importance of defended disciplinary matters, and the need to utilise experienced counsel.

[31] The time engaged is significant, a total of approximately 196.5 hours. We have broken that into two parts. Time up to the completion of the two day hearing of the charges, comprised 170 hours, and time post completion of the hearing of the charges, comprised 26.5 hours. The latter time of 26.5 hours is the aggregate of time in the invoices lodged by the Standards Committee post the invoice of 29 March 2010.

[32] In reviewing the reasonableness of the 170 hours up to conclusion of the hearing of the charges, we have taken into account the tasks that had to be performed in this case, and, by analogy, what would be considered reasonable time under the District Court Rules for similar preparation, ending in a two day hearing in a civil fixture. We have not attempted to rigorously apply those Rules, but have simply looked at them to see what variation may exist between time that may have been considered reasonable in civil proceedings involving analogous tasks, and the actual time here up to the completion of the hearing of the charges.

[33] On that basis, and having regard to the nature of these proceedings which were made quite time-consuming as a result of the stance taken by Mr Parlane, we consider that 150 hours is a reasonable allowance for counsel's time up to the completion of the hearing of charges. That reduction of 20 hours involves a discount of approximately 3 days. The discount takes into account that the issues in this case, while time-consuming

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<sup>8</sup> Supra, at paragraphs 5 and 6 of this costs determination

for the reasons noted, were not complex, and also has some regard to the time that would have been reasonable in civil proceedings with analogous tasks, using band C.<sup>9</sup>

[34] We note also that the invoice of 26 November 2009, contributing to the 170 hour total, is largely related to the LCRO matter. As Mr Parlane was ordered to pay the Law Society costs of \$900 for that matter, his existing payment obligation to reimburse those legal costs should be taken into account by the Tribunal in any order it now makes for costs which include the LCRO matter.

[35] Time accruing after the hearing of the charges totals 26.5 hours, and relates to a number of matters, including responding to "*Mr Parlane's multi-headed application*". We understand that to be a reference to Mr Parlane's applications of 9 July 2010, assigned case number LCDT 023/10. We consider these applications, which were dealt with at a telephone conference with the Chair<sup>10</sup>, to be separate matters which did not involve a hearing by the Tribunal.

[36] Those applications are not something to be dealt with under s.249 Lawyers and Conveyancers Act 2006 as part of the current costs decision related to charges brought under LCDT 022/09 heard by the Tribunal. As a consequence, we do not accept the full nine hours stated on the invoice of 28 July 2010 which includes recitals related to legal work on the various separate applications. Legal work regarding the Unsatisfactory Conduct charge is the only time on that invoice which is relevant for current purposes. Accordingly, of the post 29 March 2010 invoices totalling 26.5 hours, we take account of only 22 hours, deducting 4.5 hours of the time on the invoice for nine hours work dated 28 July 2010 as a reasonable allowance for dealing with the various applications under LCDT 023/10.

[37] We also note a calculation error in the invoice of 28 July 2010. Nine hours at \$300 per hour is \$2,700, not \$3,600. While some of the other invoices do not calculate hours x rate entirely accurately, they involve only small amounts, and some favour Mr Parlane. Given the nature of costing and the overall result being insignificant, we have not altered amounts in these other invoices, but in the invoice of 28 July 2010, \$900 is too great a discrepancy. That invoice will be treated as representing a fee of \$2,700, being the nine hours stated x \$300.

[38] As a consequence, we consider that an amount of \$57,237.50 for the Standard's Committee's legal fees is reasonable. This figure for legal fees is calculated as follows;

Legal costs claimed (excluding GST and disbursements)	59,590.00
Less	
• Reduction from 170 hours to 150 hours @ \$300 per hour (per paragraphs 32 and 33)	6,000.00
• amount overstated on 28 July 2010 invoice (per paragraph 37)	900.00
• 4.5 hours @ \$300 per hour attributable to separate matters (per paragraphs 35 and 36)	<u>1,350.00</u>
	<u>8,250.00</u>
	51,340.00

<sup>9</sup> We consider Band C (comparatively large amount of time considered reasonable), the appropriate comparator in the circumstances.

<sup>10</sup> See Minute of 21 July 2010

Plus GST	6,417.50	
Plus disbursements	<u>380.00</u>	
		<u>6,797.50</u>
		<u>58,137.50</u>
Less LCRO costs previously ordered (per paragraph 34)		<u>900.00</u>
	Total	<u>57,237.50</u>

[39] Accordingly, the total amount of costs and expenses the Tribunal will consider in deciding on an order for payment by Mr Parlane of costs and expenses sought by the Standard's Committee under s.249, is an amount of \$59,783.68. That comprises investigation expenses of \$2,546.18, and legal fees and expenses of \$57,237.50. Having reached this conclusion on quantum of costs and expenses allowable, and noting its view on the indemnity costs issue, the final issue for the Tribunal is Mr Parlane's position.

### ***Mr Parlane's position***

[40] We note that Mr Parlane's ability to earn as a lawyer has been affected by the order striking him off the roll, which means he can no longer continue his career as a barrister and solicitor. We note also the possibility of a mental health condition he claims is currently affecting him and his employment prospects.

[41] Mr Parlane says he is unemployable. At the time of his submission he noted that he had no income, but no doubt he will obtain employment of some type in due course to gain some income.

[42] Mr Parlane made no comment in his submissions on his capital position. He advised the Tribunal of a number of investment assets he had during the hearing on penalty. There has been nothing provided in his submissions suggesting that was incorrect. Neither has Mr Parlane suggested that he does not have capital assets which could be used or realised to obtain capital.

[43] We have decided that in all the circumstances an order for costs should be made against Mr Parlane, and at a level reflecting indemnity costs. He has been found guilty of misconduct of such a degree that striking off was appropriate. Mr Parlane has put the Law Society to significant cost and expense, and it is reasonable that he bears a good proportion of that total cost.

### ***Order for costs***

[44] Pursuant to s.249 Lawyers and Conveyancers Act 2006, Mr Parlane is ordered to pay costs of \$59,783 to the New Zealand Law Society for the Standards Committee's costs and expenses.

[45] We encourage Mr Parlane to negotiate a repayment timetable with the Society, if he is able to satisfy the Society that prompt repayment in full is not practical at this time as a result of his loss of income, lack of available capital, or inability to readily realise or utilise assets to meet his obligation to the Law Society. While it is a matter for the Society, we would hope that if it is satisfied as to Mr Parlane's financial position and lack of present ability to pay in full, it would give him a reasonable period to meet his obligation to pay the costs ordered.

***Other matters***

[46] As we finalised this decision the Tribunal received a letter from Mr Parlane dated 3 March 2011. In that letter Mr Parlane made various allegations against Law Society representatives and claimed he had suffered certain injustices. He asked that the behaviour of some Law Society representatives be investigated by the Tribunal.

[47] We do not consider that any grounds have been made out by Mr Parlane which would justify such action by the Tribunal, and, in any event, we do not consider that the Tribunal would have jurisdiction to begin any such separate enquiry.

[48] Throughout this process we have encouraged Mr Parlane to seek legal assistance. He has consistently refused. If Mr Parlane considers he has some unresolved rights, he should take advice as to how he might best deal with his concerns in a proper way, although we record that there is nothing in what we have seen or heard that leads us to believe there is any such matter to successfully pursue. In the end Mr Parlane must make his own decision about such matters, but some independent expert perspective may assist him in coming to an appropriate conclusion.

***Section 257 certification***

[49] Under s.257 Lawyers and Conveyancers Act 2006, where the Tribunal hears a charge against a lawyer, the Law Society is required to reimburse the Crown for the costs of the hearing as certified by the Chair. Notwithstanding some of the conduct alleged in the particulars supporting the misconduct charge pre-dated the Act, nevertheless the Crown is entitled to full reimbursement under s.257 for the Tribunal's costs and expenses where the charges are laid and heard under the 2006 Act. We note also that the proven matters supporting the misconduct finding arose from Mr Parlane's conduct post the commencement of that Act on 1 August 2008. Costs are certified at \$30,245 under S.257, comprising \$21,420 for the substantive proceedings and \$8,825 for the penalty phase.

[50] It is possible for the Tribunal to order, pursuant to s.249, that all or part of these costs incurred under s.257 be reimbursed to the Law Society by the person charged in the relevant proceedings. We make no such order against Mr Parlane, because in his circumstances that would be unduly harsh, and also the Standards Committee has made no such application, an approach we think appropriate in this case. We note this so that Mr Parlane is aware that he has received some concession in this costs determination.

**DATED** at WELLINGTON this 11<sup>th</sup> day of March 2011

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D J Mackenzie  
Chair