

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2011] NZLCDT 30

LCDT 003/11

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE**

Applicant

AND

JOHN NEIL LAMBORN

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr C Lucas

Ms C Rowe

Mr J Clarke

Mr I Williams

HEARING at AUCKLAND on 27 October 2011

APPEARANCES

Mr R Earwaker and Mr M Treleaven for applicant

Mr P Grace for respondent

**DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS TRIBUNAL**

Introduction

[1] Mr Lamborn has admitted two charges of negligence or incompetence of such a degree or frequency so as to bring the profession into disrepute. These charges arose out of one set of events. Two charges were necessary because the events or the course of conduct straddled a period across the operation of the previous Act. The Law Practitioners Act 1982 and the present Act the Lawyers and Conveyancers Act 2006.

[2] Because this essentially involves duplication we propose to impose penalty as if this were one charge but having regard to the differing penalty provisions between the two statutory regimes.

[3] The background is as follows. The practitioner's wrongdoing has at all times been openly acknowledged by him. It arose from inordinate delays in acting on his instructions from a family law client. Despite regular reminders and requests from her Mr Lamborn did not file her proceedings for some three and a half years by which time they were out of time. The delay caused stress and distress to the client who is the complainant in this matter.

[4] At the time it transpires the practitioner was unwell and not functioning in his usually competent way. Instead of recognising and addressing this he became overwhelmed and failed to take appropriate steps for his client. To his credit he did not attempt to mislead her about his failures but acknowledged them at the time.

[5] As a result of her complaint to the Law Society and these charges Mr Lamborn has reached a settlement with his client and again to his credit we understand he agreed to what was asked of him without any attempt to negotiate.

[6] The Standards Committee seek a brief period of three months suspension to mark the seriousness of Mr Lamborn's behaviour. They do so against a background of four previous findings by Standards Committees against Mr Lamborn of a similar

nature. However what is unusual and significant about this series of five complaints is that it is all contained within a period of two to three years at a time when the medical evidence provided to us indicates Mr Lamborn was not performing at his usual level. Even more importantly this period of poor performance followed a period of 28 years in practice without a single complaint.

[7] Mr Lamborn has produced a testimonial as to his normal competence and diligent performance for clients. There is no question of dishonesty nor any suggestion of personal gain from his negligence. To the contrary it has cost him dearly.

[8] Mr Lamborn has arranged for a colleague to provide support and assistance to him in the future and this has in the course of the hearing developed into a more formal proposal. Thus the element of public protection can be addressed in that way.

[9] Mr Lamborn's counsel has urged against suspension pointing to the unusual circumstances outlined and submitted that 28 years of unblemished record ought to bring considerable credit to his client. The most recent and the leading authority on suspension under the LCA is the decision of the full court of the High Court in *Daniels v The Complaints Committee Number Two of the Wellington District Law Society* delivered on 8 August 2011. In referring to suspension Their Honours had this to say:

"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 or her duties and to provide scope for rehabilitation in appropriate cases.

[10] We have referred to the element of public protection addressed by the future supervision and reports to the Law Society of another practitioner. We accept that the purpose of the maintenance of professional standards imports elements of deterrence and education for the profession as a whole. However in this case we

consider that this purpose of the legislation and of the sanction of suspension can be achieved short of suspension.

[11] We consider the settlement reached with the client imports a real sanction for the practitioner particularly when put together with a significant fine and costs award which will be made. We take account of the practitioner's personal circumstances in that he is not of substantial means and is the sole provider for a large family. We take account of the fact that the charge is not misconduct but slightly lower down the scale of wrongful behaviour therefore should attract a penalty relative to its seriousness. We take account of the responsible approach of Mr Lamborn in reaching a settlement, entering a guilty plea and seeking medical advice.

[12] In terms of publication we do not consider Mr Lamborn has displaced the presumption of openness in s.238. We consider privacy of the complainant must be preserved and of the personal details relating to Mr Lamborn's health and finances but to no further extent is it proper having regard to the interests of any person to prevent publication under s.240.

[13] We make the following orders:

- [a] There will be an order pursuant to s.156(1)(a) of the Lawyers and Conveyancers Act 2006 giving formal effect to the settlement reached;
- [b] There will be fine pursuant to the provisions of s.112 of the Law Practitioners Act and s.242 of the Lawyers and Conveyancers Act 2006 of \$8,000;
- [c] There will be an order under ss.156(1)(l) and 242(1)(a) that Mr Lamborn take advice as to the management of his practice for a period of 24 months. The agreed terms of the management process have been seen and approved by the Tribunal;
- [d] Costs are awarded against Mr Lamborn in favour of the Law Society of \$7,440;

- [e] There will be an order pursuant to s.257 for 50 percent of the Tribunal costs against the Law Society. The full costs of \$3,200 plus 50 percent will be an award of \$1,600;
- [f] There is an order pursuant to s.249 that the practitioner reimburse the New Zealand Law Society for the s.257 costs, that is in the sum of \$1,600;
- [g] There will be an order suppressing the name and details of the complainant and her former partner and of any medical evidence or financial evidence or comment in this judgment as to any of those matters in relation to the practitioner.
- [h] The practitioner is formally censured.

DATED at AUCKLAND this 27th day of October 2011

Judge D F Clarkson
Chairperson