

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 31

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

SUBMISSIONS RECEIVED from the Practitioner 23 October 2012

FURTHER SUBMISSIONS from Standards Committee received 25 October 2012

APPEARANCES

Mr P Collins for the Applicant

Practitioner is Self Represented

DECISION AS TO COSTS

[1] A substantive penalty decision was delivered in respect of the charges to which Ms Beacham had pleaded guilty, on 8 November 2012. We now consider the issue of costs, sought by the Standards Committee. These fall under two heads.

[a] The actual costs incurred by the New Zealand Law Society (“NZLS”) in respect of the investigation and prosecution, which total \$20,300.

[b] In addition there are the costs ordered pursuant to s 257 of the Lawyers and Conveyancers Act 2006 (“LCA”) and which are ordered against the NZLS. Reimbursement of these costs may be sought under s 249 LCA.

[2] In respect of each head the Standards Committee seeks a reasonable contribution to the costs to be made by the practitioner.

[3] Ms Beacham, the practitioner, has filed details of her financial circumstances. Although she is in part time employment her income is low and she has a large student loan and other liabilities to face.

[4] In her submissions in relation to costs Ms Beacham is somewhat critical of the level of costs claimed by the Standards Committee. We do not consider her criticisms to be valid. Ms Beacham did not confirm that she was fully admitting the three charges faced until a little over one day prior to the hearing. The charges had been laid at two separate times, the first in December 2011 and the second and third charges in September 2012.

[5] In respect of the first charge the practitioner denied that the conviction reflected on her fitness to practise but did accept the alternate limb of the charge that her conviction had tended to bring the legal profession into disrepute. In respect of the second set of charges no formal response was ever received. Thus it was necessary to place before the Tribunal the evidence of the seven police witnesses relied on in relation to the second set of charges. This undoubtedly increased the costs for the Standards Committee.

[6] In reply to the practitioner’s declaration of financial means the Society accepts that she has no present means of paying a cost order. We were referred to the

authority of *Kaye v Auckland District Law Society*¹ whereby account must be taken of the practitioner's ability to pay in determining the quantum of cost orders. We also acknowledge that costs ought not to be punitive, but that the *Kaye* decision is authority for jurisdiction to make an award of costs even in the situation where the practitioner is bankrupt.

[7] We accept the submission made on behalf of the Standards Committee that there is a balance to be struck between taking account of the financial circumstances of the practitioner and ensuring that a fair contribution is made to the costs of the prosecution, so that the entire burden does not fall on the legal profession as a whole.

[8] It is mandatory for the Tribunal to order s 257 costs against the New Zealand Law Society, and once again there is no reason why these costs should be borne only by the legal profession. Indeed we consider given the relatively modest level of the Tribunal costs in this matter that they ought to be fully reimbursed by the practitioner. Taking account of all of the above considerations we make the following orders:

- [a] The practitioner is to contribute two-thirds of the Standards Committee costs of \$20,300.00, namely \$13,500.00, pursuant to s 249.
- [b] Pursuant to s 257 the Tribunal costs in the sum of \$4,600.00 are awarded against the New Zealand Law Society.
- [c] The practitioner is to reimburse the New Zealand Law Society in the sum of \$4,600.00 in respect of the s 257 costs, pursuant to s 249.

DATED at AUCKLAND this 21st day of November 2012

Judge D F Clarkson
Chair

¹ [1998] 1 NZLR 151.