

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 33

LCDT 002/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER OF

ATARETA POANANGA, of
Gisborne, Barrister

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Ms S Gill

Mr M Gough

Mr C Rickit

HEARING at Wellington on 30 April 2012

FURTHER SUBMISSIONS from the practitioner 7 September and 19 October 2012

REPRESENTATION

Ms G Phipps for the Standards Committee

Mr Y Singh for the Practitioner

DECISION ON PENALTY

[1] In this matter the substantive decision on penalty was delivered on 31 May 2012. At that time we allowed the practitioner further time to provide the Tribunal with evidence of her financial means in respect of the costs order sought by the National Standards Committee (“NSC”). The costs sought by the Standards Committee were the investigation of prosecution costs of \$23,468 as well as reimbursement in respect of the s 257 costs ordered, that is the Tribunal costs, in the sum of \$7,910.

[2] This was a matter where the practitioner’s guilty plea came extremely late in the piece, indeed on the morning of the hearing. We were advised that considerable attempts had been made earlier to reach an agreement as to a statement of facts to be presented to the Tribunal but that the NSC were unsuccessful in achieving this until the eleventh hour. For that reason costs were higher than they might have been, had the practitioner been prepared to face up to the situation at an earlier time. We were advised from the Bar by counsel for the NSC that the costs of Juniors had not been included in the costs sought and a number of administrative tasks had also not been included.

[3] The practitioner initially filed submissions enclosing a table of assets, and liabilities some of which appeared under the heading of Expenses. The asset position at that time totalled [abridged] but against that expenses (which appeared to be on an annual basis and included the Law Society and Tribunal costs), were shown as [abridged]. A number of these expenses included what would appear to be capital amounts (for example, home renovation) or longer term liabilities.

[4] Therefore we found the position somewhat difficult to discern from the details provided. We noted the practitioner’s plea that her ability to meet costs was poor. We also note the practitioner’s plea to suppress details of her financial situation and we direct accordingly that the figures contained in this decision are suppressed. We directed the practitioner to file an affidavit setting out her full financial circumstances with supporting material. This process has taken some time, but we are grateful to

Ms Poananga and her counsel for the time they have taken over this task and for the further detail now provided to the Tribunal. We also understand that Ms Poananga has faced some difficulties in putting together her financial position because of the disappearance of her former assistant with a number of Ms Poananga's records.

[5] In the end, the position can be summarised that the practitioner has a relatively valuable mortgage-free home, and the sale proceeds from a second property. Although she assumes responsibility for other family members, we do not consider that these responsibilities necessarily take priority over her obligations to reimburse the members of her former profession in respect of the costs of her prosecution.

[6] There are in addition, a number of the areas of expenses claimed which one could not reasonably prioritise ahead of this obligation. For example, extremely high insurance costs (some of which might be savings), SKY television, expensive dental work, massage and travel costs, a number of smaller capital items, eye surgery, lawn mowing and other home maintenance tasks such as dry cleaning of furniture, to name some.

[7] In the end we consider that the practitioner does have the means to pay the full amount of the costs sought by the NSC, together with reimbursement of the Tribunal costs. We have taken into account the fact that in other cases the Tribunal has been prepared to reduce costs or order a lower contribution. We note that recently in the *Auckland Standards Committee 2 of the New Zealand Law Society v Anderson*¹ matter, despite the fact that that former practitioner was a beneficiary with supporting children, with no assets; she was ordered to pay a not dissimilar amount.

[8] The orders that we make are as follows:

- (1) Pursuant to s 249 the practitioner is to pay the costs of the National Standards Committee in the sum of \$23,468.
- (2) On 31 May 2012 the New Zealand Law Society was ordered to pay the sum of \$7910 in respect of the Tribunal costs pursuant to s 257.

¹ *Auckland Standards Committee 2 of the New Zealand Law Society v Kristina Gerd Haver Andersen* [2012] NZLCDT 17.

- (3) Pursuant to s 249 we now direct that the practitioner, Ms Poananga is to reimburse the New Zealand Law Society for those costs in the sum of \$7910.

DATED at AUCKLAND this 22nd day of November 2012

Judge D F Clarkson
Chair