

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 4  
LCDT 038/14

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE No. 1**  
Applicant

**AND**

**DUGAL MATHESON**  
of Thames, former Lawyer

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Ms S Hughes QC

Ms C Rowe

Ms M Scholtens QC

Mr W Smith

**HELD** at Specialist Courts and Tribunals Unit

**DATE** 26 February 2015

**DATE OF DECISION** 26 February 2015

**APPEARANCES**

Ms C Paterson for the Standards Committee

Mr D Matheson in person

**DECISION OF NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL ON PENALTY**

[1] This is a matter in which the practitioner Mr Matheson faces one charge of having been convicted of an offence punishable by imprisonment. The charge was amended to simply reflect this charge under s 241(d) and the Standards Committee sought leave to withdraw the second charge of misconduct.

[2] There was also an amendment to the particulars or to the form of the charge, in that the conviction is only pleaded as that being one which brings the profession into disrepute, and the “reflection on fitness to practice” limb part of the subsection was withdrawn and so is not before us. On that basis, Mr Matheson has admitted the charge and I will simply read the particulars which support the charge which has been laid.

[3] The background is, and I read from the particulars:

1. The practitioner is admitted as a barrister and solicitor of the High Court of New Zealand.
2. The practitioner held a practising certificate from 20 August 2010 until 30 June 2012, issued under the Lawyers and Conveyancers Act 2006. The practitioner was employed as a Police prosecutor in Thames throughout that time.
3. On 9 May 2013, the practitioner was found guilty by His Honour Judge Andrée-Wiltens in the Hamilton District Court of one charge of male assaults female pursuant to s 194(b) of the Crimes Act 1961.
4. On 26 July 2013, the practitioner was convicted of that charge and sentenced.
5. On 3 June 2014, after a hearing on 4 April 2014, the High Court dismissed the practitioner’s appeal against conviction in relation to the charge.

[4] Ms Paterson for the Standards Committee reminded us of the purposes of disciplinary proceedings which are primarily for public protection, the maintenance of professional standards with the further purposes of rehabilitation and sanction.

[5] It seems to be common ground that in this matter the primary purpose of these proceedings are the maintenance of professional standards and general deterrence of other practitioners from offending of this nature. A conviction for violence of this sort must of itself bring the profession into disrepute and this is accepted by Mr Matheson in his guilty plea. However, having said that, we do accept Mr Matheson's submission that the publicity surrounding his hearing and the appeal focussed on his previous role as a police prosecutor rather than as a lawyer, so in that respect we take that into account.

[6] It is also common ground that this is not a case where public protection need be a serious concern for the Tribunal. Despite that, Mr Matheson agrees with the submission put forward on behalf of the Standards Committee, that a conviction of this kind in all likelihood will lead to a period of suspension as a proper professional disciplinary response.

[7] Counsel and Mr Matheson had agreed that the range of such suspension would be some three to six months, but we note that the Tribunal is not bound by penalty discussions between the parties and we will say more of that later.

[8] The starting point in considering proper penalty and a proper response on behalf of the professional body, or to demonstrate the seriousness with which the professional body takes these matters, is the conduct itself. This was seen as serious behaviour as found by the District Court Judge, but we note it has a relevant context and we accept that this conviction does not demonstrate a propensity to violence.

[9] We then look at matters of mitigation. We note that Mr Matheson has been fully co-operative throughout the disciplinary process and has not defended this amended charge once the form of it was agreed. Importantly, even before the charge of male assaults female was laid or the complaint made, Mr Matheson had himself sought counselling and completed a "Living Without Violence" programme for his own purposes.

[10] Mr Matheson refers us to the really quite devastating consequences that this conviction has had for him in his life and in his career. He has lost his job in the police force. He had a 15-year career as a police prosecutor and indeed was clearly very senior in that role because he was at one point a national trainer.

[11] He points out that he has travel restrictions and difficulty applying for jobs despite having what he describes as “marketable skill-sets”. He has had a number of refusals, particularly in public sector positions, because of the conviction.

[12] He has completed a significant sentence being 80 hours’ community work and a nine months’ supervision period. He completed his community work sentence in less than three weeks and we are satisfied he has diligently completed the remainder of his sentence, and he has incurred really quite substantial legal fees in respect of the criminal process although he has largely represented himself in the disciplinary setting.

[13] It is clear that he has had a 20-year career in the police force and has a long and previously unblemished career. His references, which are many and impressive, attest to his dedicated public service and we consider he ought to receive considerable credit for that.

[14] Of the people who come before this Tribunal, we would want to say to you Mr Matheson, that you are a person who has a great deal to contribute to the profession in the future.

[15] We have discussed at some length the issue of whether suspension is a proper response or whether any other response would be adequate in the circumstances. For an order for suspension to be made there needs to be unanimity on the Tribunal as to this response and I am able to indicate that there is not a unanimous view that Mr Matheson ought to be suspended.

[16] A majority of the Tribunal, a majority of three members, considered that a very short period of suspension would have been proper to mark the seriousness of the matter and the conviction. However, a minority disagreed with this and, as indicated, it requires a unanimous view and so we are not going to suspend you Mr Matheson.

[17] We impose a formal censure to mark the profession's disapproval of any form of domestic violence. We record your submission to us today that that accords with your own personal view and accords with your view in 15-years of prosecuting domestic violence that you also do not condone these actions.

[18] We do consider that you ought to reimburse the Society for the costs and these ought not to be borne by the profession, rather that you ought to be ordered to pay the costs sought of \$6,700.

[19] Pursuant to s 257 we are obliged to order the hearing costs for the Tribunal against the New Zealand Law Society.

[20] We reserve the issue of contribution to s 257 costs so that Ms Paterson can obtain instructions.

**DATED** at AUCKLAND this 26<sup>th</sup> day of February 2015

Judge D F Clarkson  
Chairperson

**Addendum, consequent on further submissions:**

**Further orders:**

[21] The s 257 Tribunal costs are certified at \$2,052.

[22] No order is sought or made for reimbursement of these costs.

Judge D F Clarkson  
Chair