

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 41  
LCDT 036/14

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**CANTERBURY-WESTLAND  
STANDARDS COMMITTEE 3**  
Applicant

**AND**

**DOUGLAS JAMES TAFFS**  
Practitioner

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Mr A Lamont

Mr S Maling

Mr A Marshall

Mr M Gough (Christchurch hearing)

Mr K Raureti (Wellington hearing)

**HELD AT** Christchurch 18 May 2015

Resumed Hearing held at Wellington 29 October 2015

**DATE OF DECISION** 19 November 2015

**COUNSEL**

Ms A Cunninghame for the Standards Committee

Mr J Upton QC for the Practitioner

## **DECISION OF THE TRIBUNAL AS TO LIABILITY AND PENALTY**

### ***Introduction***

[1] Mr Taffs is an experienced barrister, practising in Westport. He has admitted “unsatisfactory conduct” which is one of three alternative charges laid against him by the Canterbury-Westland Standards Committee 3. The conduct complained of is that he failed to comply with various requests for information made by the New Zealand Law Society investigator Mr Strang. Although they have pleaded “unsatisfactory conduct” on one of the charges, the Standards Committee sought to pursue the more serious alternatives, namely misconduct or negligence.

[2] In May of this year evidence was heard from Mr Strang and Mr Taffs. At the conclusion of that hearing it was apparent that still more information was required by Mr Strang from Mr Taffs. Mr Taffs had encountered difficulties in this, partly, because of a change in counsel.

[3] We took the view that if there was still a default on Mr Taffs part, that there was a continuing offence, which was relevant as to the seriousness of the conduct and therefore the need for determination among the three alternatives. Because of the particular circumstances, we considered Mr Taffs ought to have the opportunity of finally meeting his obligations before the meeting was concluded. Thus the matter was adjourned part heard.

[4] Unfortunately, because of the illness of one of the members, the Tribunal resumed the hearing with a new lay member who had familiarised himself with the material, including the evidence from the previous hearing. Mr Taffs waived any objection to this procedure, thus avoiding the need for a full rehearing.

[5] When the hearing resumed, Ms Cunninghame, on behalf of the Standards Committee, advised us that the offence was no longer a continuing one, that Mr Taffs had met his obligations.

[6] However, Ms Cunninghame argued that the conduct could be seen as either “dishonourable”, or as a “reckless” contravention of the regulations and therefore “misconduct”.

[7] We ultimately rejected that submission, and found “unsatisfactory conduct” to have occurred, based on Mr Taffs contravention of the regulations and his professional obligations to cooperate with an investigation into his charging practices.

[8] We found Mr Taffs had certainly, as acknowledged by him, fallen far short of the level of professionalism and responsiveness required. However, for the reasons we now give, we do not consider his behaviour reached the level of obstructiveness or evasion such as to be regarded as “dishonourable” behaviour, and was short of a “reckless” breach.

### ***Background***

[9] On 24 April 2013 the Tribunal suspended Mr Taffs for a period of three months from 2 May 2013 following a finding of misconduct, arising out of a criminal conviction and his deplorable behaviour when apprehended.

[10] Mr Taffs then acknowledged that he had a drink problem and undertook counselling.

[11] Following his suspension, Mr Taffs lost his ‘Legal Aid Provider’ status. Prior to that time he had operated almost exclusively on the basis of Legal Aid work. He worked from home and had no clerical support. His client record systems were, to say the least, not rigorous.

[12] At about the time he had regained his practising certificate and was seeking reinstatement in his Legal Aid Provider status he received the first request from Mr Strang for information. Mr Taffs acknowledges that he had a complete “mental block” and could not face the request for comprehensive information.

[13] It should be noted that during the period of his suspension, that is in late June 2013, the Canterbury-Westland Standards Committee 2 found “unsatisfactory conduct” against Mr Taffs relating to the financial management of his practice. It was

this finding which prompted the inspector to seek bank records, invoices and client files.

[14] Given his lack of clerical support and the pressure he was under, returning to practice after a period of suspension, Mr Taffs made the somewhat unwise promise to Mr Strang that he would provide the files by 20 December.

[15] By early the following year he had provided only about a third of the information and files required.

[16] In the meantime Mr Taffs had received an unexpected visit from a Greymouth colleague who was most concerned at Mr Taffs' mental wellbeing. That practitioner, Mr Bradley, is a former psychologist. After having a discussion with Mr Taffs, Mr Bradley assisted him in regularising his client instructions procedure so that Mr Taffs would properly comply with the Intervention Rule and the obligations including client care letters.

[17] Thus by February 2014, although Mr Taffs had not fully complied with his obligations to the inspector, he had certainly overhauled his systems so that any future irregularities ought not to have occurred.

[18] Mr Taffs has recognised that his disciplinary proceedings need to be concluded before he can reinstate his position with the Legal Services Agency. For this reason, he has been unable to act for clients without private funding arrangements.

[19] During 2014, because of his suspension and lack of Legal Aid work, his income dropped to about 25% of its previous level. In turn, this has meant that he has run into serious difficulties with the Inland Revenue Department. He is currently, with the assistance of an accountant, negotiating arrangements to discharge his tax responsibilities.

[20] In his evidence Mr Taffs has described the support systems he now has in place, personally as well as professionally. There is another colleague in Westport, namely Mr Gomas, who has undertaken to support Mr Taffs in a professional sense, meeting with him regularly.

[21] At the hearing it was agreed that this arrangement could be formalised into a s 156(1)(l) order for supervision of Mr Taffs' practice.

[22] Mr Taffs has strong family support from his three children, each of whom has written to the Tribunal.

[23] In addition to this, Mr Taffs has provided the Tribunal with very impressive references (albeit somewhat dated) in relation to his career and his integrity.

[24] Mr Taffs currently has instructions to represent clients in a number of serious criminal hearings.

### ***Level of seriousness***

[25] There have been a number of cases which have emphasised the importance of a practitioner cooperating fully with his or her disciplinary body when they are undertaking investigations of professional standards.<sup>1</sup>

[26] Mr Taffs does not seek to deny these obligations. He describes himself as *“acutely embarrassed and ashamed by what has happened. I apologise unreservedly for my conduct”*.

[27] It seems to be conceded that the ineffectual response which he provided was due to a psychological crisis at the time, following as it was his suspension, loss of Legal Aid Provider status and consequent loss of income and tax problems. Mr Taffs made a number of promises which he simply did not honour or honoured only partially despite his willingness and, we accept, good intentions. He described himself as being in a “black hole” at the time. We consider that the context and Mr Taffs' psychological state removed the possibility that his inaction was due to a deliberate act or obstructiveness. Whilst we accept Ms Cunninghame's submission that for misconduct to be found there need not be deliberate or bad intention proved, we do consider that in this case Mr Taffs' state of mind was a significant factor.

[28] We accept Mr Taffs' evidence that he promptly acknowledged the shortcomings in his procedures including a breach of the Intervention Rule. He is not charged with

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<sup>1</sup> See *Hart v Auckland Standards Committee 1* [2013] 3 NZLR 102 and *Parlane v Waikato Bay of Plenty Standards Committee 2 Unrep* CIV 2010-419-1209, 20 December 2010, Cooper J.

those breaches and we are satisfied that the systems now in place will ensure no repetition.

[29] Mr Taffs is absolutely adamant (and there is no evidence to the contrary) that he has never taken fees directly from clients who are legally aided. He has at times represented the same client either privately or on a Legal Aid basis at different times.

[30] We accept Mr Upton's submission that this is not a case of:

“... A practitioner deliberately, wilfully and knowingly defying requests by an Inspector. Instead it is more properly to be categorised as muddlement and deferral by a sole practitioner on his own on the West Coast, under real pressure, and in a small town with very few other lawyers available to assist with advice, and too embarrassed to ask for it.”

[31] As indicated in the introduction, we did not find the breach to be at the standard of “reckless”. As soon as the charges were laid Mr Taffs engaged counsel (his former counsel) and thought that he had provided that lawyer with sufficient information to satisfy all of Mr Strang's requirements.

[32] We do not consider that this behaviour fits the description “disgraceful or dishonourable”.

[33] We do consider it ambitious for a sole practitioner with no clerical support, to provide details from all his files for a three year period in a matter of weeks prior to Christmas. That is not to lay any responsibility at Mr Strang's feet and indeed, Mr Taffs himself accepted the request without protest. For these reasons we have found the offending to be at the level of unsatisfactory conduct, as admitted by Mr Taffs. The charges of misconduct and negligence are dismissed respectively.

### ***Penalty***

[34] The Standards Committee sought a suspension of six to 12 months. We understand that was on the basis of a finding of misconduct or negligence. We have found the conduct to be at a lower level. We do not wish to be taken as saying that this conduct is not serious. It most certainly is. And we wish to make it clear that we expect any practitioner, faced with a request from the professional body or delegated inspector such as Mr Strang, to immediately prioritise compliance with any request made.

[35] Having said that there is no dishonesty involved in this offending nor are there any client complaints or indications of clients having been disadvantaged in any way by Mr Taffs' behaviour.

[36] Mr Taffs is 63 years of age and facing a very large tax bill. Suspension is likely to lead to his bankruptcy and the possible end of his career. He is, by all accounts, a competent advocate who seems dedicated to the practice of law and to his clients. We consider that to impose a suspension on him in these circumstances would be a disproportionate outcome for this particular conduct in the context in which it occurred. Nor do we consider it to be in the public interest.

[37] Mr Taffs has put in place support systems, in particular two close colleagues who are able to assist him and thus the risk of reoffending is low. Mr Taffs pleaded guilty to one of the charges at the earliest opportunity and has accepted responsibility and expressed contrition in a plain and straightforward manner.

[38] We are also aware that he is one of a few counsel on the West Coast with significant trial experience, to represent people in trouble. Thus there is a public interest in Mr Taffs being permitted to continue to practice. At the Tribunal's request, counsel negotiated a supervision arrangement whereby Mr Taffs would meet regularly with Mr Gomas on the following basis:

1. Mr Taffs is to be subject to the supervision of Mr M W Gomas of Westport, Solicitor, in the conduct of his practice including in particular his compliance with all New Zealand Law Society Rules and Regulations to the extent they may apply to his practice as a barrister.
2. Mr Taffs is to meet monthly with Mr Gomas.
3. Mr Gomas may conduct a random audit of Mr Taffs files at any reasonable time.
4. Mr Gomas is to report to the Law Society on his supervision of Mr Taffs practice at least every three months.

5. This supervision order is to remain in place for 12 months and is pursuant to s 156(1)(l).

***Summary of Orders***

1. The practitioner is firmly censured for his conduct in not immediately complying with the request of the New Zealand Law Society inspector and in not immediately seeking advice and support in order to comply with that request.
2. The practitioner is to be subject to the supervision arrangement outlined in this decision pursuant to s 156(1)(l).
3. The practitioner is to meet half the costs of the Standards Committee on this prosecution.
4. The s 257 costs are certified at \$8,105.00 and are to be met by the New Zealand Law Society.
5. The practitioner is to reimburse the New Zealand Law Society all of the s 257 costs.

**DATED** at AUCKLAND this 19<sup>th</sup> day of November 2015

Judge D F Clarkson  
Chair