

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2013] NZLCDT 43

LCDT 012/13

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER

of **KELVIN (AKA CALVIN) DEAN
WOOTTON**, former Barrister, of
Auckland

CHAIR

Mr D Mackenzie

MEMBERS OF TRIBUNAL

Mr J Clarke

Mr C Lucas

Mr W Smith

Mr I Williams

HEARING at Auckland on 3 October 2013

APPEARANCES

Mr M Hodge for the Standards Committee

No appearance for the respondent

**RECORD AND REASONS FOR DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Background

[1] Mr Wootton, a legal practitioner, faced a charge laid by the National Standards Committee under s 241(d) Lawyers and Conveyancers Act 2006. The charge alleged that he had been convicted of offences punishable by imprisonment and that the convictions reflected on his fitness to practise or tended to bring his profession into disrepute.

[2] The particulars of the charge stated that on or about 31 August 2012 Mr Wootton was convicted in the Auckland District Court of possessing a Class A controlled drug (methamphetamine), and of possessing a pipe for the purposes of an offence against the Misuse of Drugs Act 1975. Both offences are punishable by imprisonment. Mr Wootton had pleaded guilty to the charges and was fined \$250 on each count.

[3] In correspondence with the Standards Committee, when it was first investigating this matter, Mr Wootton recorded his apologies for his actions and noted background circumstances to the offending, his bankruptcy, and the effects of his offending on him and his family. Pre-sentencing reports showed that he appeared genuinely remorseful, and recorded that he had distanced himself from those persons involved in drugs with whom he had associated, and who had introduced him to drugs.

[4] Mr Wootton did not engage in the disciplinary process after the charge was laid. He did not file the required response to charges¹, nor did he file any affidavit or submissions regarding the charge and penalty.

¹ Regulation 7 Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008.

Formal Proof

[5] Mr Wootton made no appearance at the substantive hearing of this matter by the Tribunal held in Auckland on 3 October 2013. At that hearing the Standards Committee proceeded by way of formal proof to show that the convictions had been entered against Mr Wootton. The Tribunal was satisfied that the convictions had been entered against Mr Wootton, and that the nature of the offending, involving offences under the Misuse of Drugs Act 1975, brought the profession into disrepute. It also raised fitness to practise issues.

[6] At the conclusion of the case for the Standards Committee the Tribunal recorded that it found the charge proven against Mr Wootton. The convictions the subject of the professional charge related to offences punishable by imprisonment, and the involvement of a legal practitioner in such matters brought the profession into disrepute. Mr Wootton's conduct had fallen below what is expected of members of the legal profession, and the public would think less of the profession if his conduct was not treated as unacceptable by the profession.

Penalty

[7] In respect of penalty, the Tribunal noted that Mr Wootton was making some efforts to rehabilitate himself, and that when this matter first arose he surrendered his practising certificate, which meant that, effectively, he had been out of practice for nearly 2 years at the time of the hearing. Mr Wootton had agreed also to undertake a drug testing regime as part of any future re-entry into the profession, and had signed an undertaking to that effect with the Law Society.

[8] Against that, Mr Wootton had not engaged fully in this disciplinary process for whatever reason, and he had brought the profession into disrepute with his convictions. On balance, we considered a relatively short period of suspension was appropriate to mark that his conduct was unacceptable. Taking into account all the circumstances, including Mr Wootton's agreement to cooperate with the Law Society to demonstrate he is drug free when seeking a practising certificate in the future, the Tribunal considered the term of suspension for Mr Wootton should be for one year.

[9] We recorded also that we considered the drug testing regime proposed by the Standards Committee as appropriate. The relevant Law Society committee dealing with any application made by Mr Wootton to seek a practicing certificate at some time in the future should be able to follow that process as part of its re-entry assessment, and as part of its ongoing monitoring assessment for a period following, if it grants any such application. Mr Wootton has consented to such arrangements, as is evidenced by his undertaking dated 1 October 2013, which became available at the hearing and was handed up.

Costs

[10] In respect of costs we took note of the fact that Mr Wootton was in difficult financial circumstances. He had suffered bankruptcy, and he would not work as a lawyer for at least a year as a result of the suspension imposed. There was no evidence that he did not have or could not obtain some other work, and we presume that he will obtain income from employment of some nature. In those circumstances an order for costs was considered appropriate.

[11] The Standards Committee sought \$7,933.91 and reimbursement of costs payable by the Law Society under s 257 Lawyers and Conveyancers Act 2006. Those latter costs were certified at \$2,000.

[12] In the circumstances, and to avoid the imposition of costs being punitive, we gave some discount to Mr Wootton, who should bear some of the costs he has caused. We ordered Mr Wootton to pay \$4,000 towards the Standard Committee's costs, which is approximately 50%, and similarly to pay 50% of the s 257 costs by way of reimbursement of the Law Society, in total, \$5,000.

DETERMINATIONS AND ORDERS MADE

[13] The Tribunal records that it made the following determinations and orders at the conclusion of the hearing on 3 October, 2013:

- (a) The charge against Mr Wootton is proven.
- (b) KELVIN DEAN WOOTTON (sometimes known as CALVIN DEAN WOOTTON) is suspended from practice as a barrister or solicitor, or as both, for a period of one year which shall end at the close of 3 October 2014.
- (c) Mr Wootton is to pay the Standards Committee \$4,000 towards its costs.
- (d) Mr Wootton is to reimburse the New Zealand Law Society \$1,000 of its costs in this matter which were incurred and certified under s 257 Lawyers and Conveyancers Act 2006.
- (e) The Tribunal approves the testing regime proposed on any application for a practising certificate when Mr Wootton seeks to re-enter practice, as set out in Mr Wootton's undertaking to the New Zealand Law Society dated 1 October 2013.

DATED at AUCKLAND this 14th day of October 2013

DJ Mackenzie
Chair