

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 43

LCDT 044/14

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**WELLINGTON STANDARDS
COMMITTEE 2**

Applicant

AND

PAPALI'I TOTI LAGOLAGO

of Wellington, Solicitor

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr A Lamont

Mr K Raureti

Mr B Stanaway

HEARING 29 October 2015

HELD AT Wellington

DATE OF DECISION 27 November 2015

COUNSEL

Ms K Feltham for the Standards Committee

Mr A Beck for the Practitioner

**DECISION OF THE NEW ZEALAND LAWYERS
AND CONVEYANCERS DISCIPLINARY TRIBUNAL
RE REASONS FOR PENALTY DECISION**

[1] In our decision of 13 October 2015 we found Ms Lagolago to be guilty of negligence such as to bring the legal profession into disrepute.

[2] The important background and contextual matters are set out in that decision and we incorporate them into this decision.

[3] While acknowledging the conduct was not at the most serious end of the scale, the Standards Committee sought penalty of three months suspension. They submitted this was justified for three reasons:

1. That the negligence was consistent throughout the period the practitioner represented the Fs;
2. That the Tribunal had found a lack of insight on Ms Lagolago's part; and
3. The devastating effect on the clients, who ultimately lost their home.

[4] Alternatively, a restriction on Ms Lagolago's ability to practice on her own account was sought.

[5] It was emphasised that rehabilitation and assistance for the practitioner were required for public protection. We accept that submission.

[6] For the practitioner, Mr Beck emphasised the difficulties with management of her clients, which the Tribunal had accepted in its decision. He reminded us that no dishonesty or deliberate misconduct was involved.

[7] Mr Beck submitted it was speculative to conclude that, even if more forcefully managed, that the Fs would have been dissuaded from litigation, or would not have suffered a similar outcome.

[8] Mr Beck relied strongly on the recent decision of *Eichelbaum*¹ to submit that suspension was not an automatic consequence of the negligence finding. In that case, despite two findings of misconduct and one of unsatisfactory conduct, the practitioner was not suspended. Mr Beck also referred to the *W*² and *Korver*³ matters, where more serious conduct was involved and 12 and six months suspensions were imposed respectively.

[9] We also note that in *Stirling*,⁴ a negligence finding in relation to a breach of an undertaking did not result in suspension. In both *Stirling* and *Eichelbaum*, the respective practitioners had lengthy unblemished professional records. However we note in *Eichelbaum*, there was a common element with the present matter in that it involved a difficult and at times provocative client (albeit a more informed one than in the present instance).

Aggravating circumstances

[10] In terms of aggravating features, we note that Ms Lagolago has one previous finding of unsatisfactory conduct. This was not for a similar matter and we place little weight on this history.

Mitigating circumstances

[11] We note that in our decision we found Ms Lagolago to be a “... *well motivated and diligent practitioner attempting to do the best job she could for her clients, albeit in a less than competent manner ...*” (on this occasion).

[12] We consider that Ms Lagolago is a practitioner who deserves some support, encouragement and rehabilitation. She is working, as submitted by her counsel, with

¹ *Eichelbaum (or A) v Canterbury-Westland Standards Committee* [2015] NZHC 1896.

² *Southland Standards Committee v W* [2013] NZLCDT 28.

³ *Auckland Standards Committee v Korver* [2011] NZLCDT 22.

⁴ *Auckland Standards Committee v Stirling* [2010] NZLCDT 13.

clients who are financially disadvantaged and she attempts to assist them in ways which accommodate that.

[13] For that reason her financial circumstances are poor and we understand her income to be modest.

Discussion

[14] We accept Mr Beck's submission, relying on the dicta in *Daniels*⁵ which reiterated the principle that while a suspension is punitive, its purpose is protection, both of the public generally and the reputation of the profession. *Daniels* went on to note that the "least restrictive intervention" principle ought to be applied in disciplinary matters.

[15] We do hold some concerns about Ms Lagolago's understanding of her failures to these clients. It may be that she is unable to see past her hard work and personal difficulties with Mrs F. While her defence of the charges is certainly not an aggravating feature, it does remove what could have been a mitigating factor of early acceptance, remorse and/or insight. However, in the absence of evidence that other areas of her practice were of concern, we were reluctant to impose a restriction on her practising on her own account. Certainly, there was evidence that she kept careful records, and applied herself with diligence.

[16] In the course of the hearing the Tribunal inquired whether the practitioner would be prepared to enter into an undertaking restricting areas of her practice in civil litigation. The practitioner has provided an undertaking to the effect that she will not accept instructions in relation to any civil litigation without prior approval of the mentor to whom we now refer.

[17] The Standards Committee, having made careful inquiries, identified a senior practitioner, Mr Frank Handy as a willing mentor for Ms Lagolago. Ms Lagolago has also agreed to mentoring by Mr Handy. At the conclusion of the hearing one of the orders made by us was pursuant to s 156(1)(l) that Ms Lagolago will be mentored by Mr Frank Handy for a period of 12 months, that this is to initially involve at least fortnightly meetings and is to be at the practitioner's cost.

⁵ *Daniels v Complaints Committee No. 2* [2011] 3 NZLR 850.

[18] Having regard to both the undertaking and mentoring arrangement the Tribunal reached the view that public protection did not require the practitioner's suspension.

[19] The financial consequences as a result of this proceeding will be significant to her, including her agreement to reduce the fee to Mr and Mrs F by some \$14,000, which is the amount currently owed by them.

[20] For the above reasons we confirm the following orders:

1. A censure in the following terms:

Ms Lagolago, you are censured. A censure marks the disapproval of this Tribunal on behalf of its members, on behalf of members of the public and members of your profession for your behaviour that has led to your present predicament. It is more than a slap on the wrist. It is a genuine expression of concern about your behaviour that will become part of your disciplinary record. You accepted instructions in a field with which you are not familiar. You failed to recognise the need for competent assistance and pursued a course of action in a way that was severely criticised by the District Court Judge both procedurally and on its merits. You still seem to lack any real insight into your errors and lack of proper judgment. This Tribunal came very close to interfering with your right to practise but has chosen instead to put in place a supervisory regime and a limitation on your areas of practice that will hopefully allow you to reflect on your lack of insight and to continue to practise successfully in the areas of your competence.

2. There will be an order pursuant to s 156(1)(l) that Ms Lagolago will be mentored by Mr Frank Handy for a period of 12 months, initially to involve at least fortnight meetings between practitioner and mentor. These attendances on Mr Handy's part are to be at Ms Lagolago's cost.

3. We record the undertaking provided by Ms Lagolago as follows:

I, Papali'i Toti Lagolago, undertake not to accept instructions in relation to any civil litigation matter without the prior approval of the mentor approved pursuant to the direction of the Tribunal. This undertaking will last for the duration of the mentor's appointment.

4. Pursuant to s 156(1)(e) Ms Lagolago is to reduce her fee to the complainant clients by \$14,000 which represents the unpaid balance of the fees.
5. There will be an order for costs in favour of the Standards Committee in the sum of \$12,000.
6. The s 257 costs are certified at \$16,514.
7. The s 257 costs are to be reimbursed by the practitioner pursuant to s 249.

DATED at AUCKLAND this 27th day of November 2015

Judge D F Clarkson
Chair