

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2015] NZLCDT 45

LCDT 018/15

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE NO. 3**

Applicant

**AND**

**QUENTIN DUFF** of Auckland, lawyer

Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS OF TRIBUNAL**

Mr J Bishop

Mr W Chapman

Ms P Walker

Mr S Walker

**HEARING** at Tribunals Unit Wellington

**DATE** 19 November 2015

**DATE OF DECISION** 9 December 2015

**COUNSEL**

Mr T J Mackenzie for the Applicant

Ms H Cull QC for the Respondent

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

[1] The respondent has admitted a charge of unsatisfactory conduct by failing to disclose to the Law Society circumstances that might make him not a fit and proper person to hold a practising certificate (s 12(c) of the Lawyers and Conveyancers Act 2006 and in contravention of reg 4(2)(b) of the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008).

[2] The respondent completed an application for a practising certificate on or about 7 August 2014. He declared in that application that he had not been a director of a company that had been put into liquidation in New Zealand.

[3] That declaration was incorrect in that the respondent had been a director of three companies all of which had been put into liquidation. Those companies were Duff Legal Ltd, Brew Coffee Ltd and The Bach Wellington Ltd.

[4] The applicant undertook an own motion investigation. It decided that the respondent had managed the affairs of Duff Legal Ltd at a time when he was providing regulated services and which was conduct that would be regarded by lawyers as unacceptable. It made a finding of unsatisfactory conduct and imposed a fine of \$3,000 plus costs and expenses of \$1,000.

[5] The respondent further admitted that the failure to declare the liquidation of the companies was a breach of professional standards. The applicant determined that this breach should be considered by the Tribunal.

[6] The Tribunal heard submissions from counsel for the applicant and the respondent on 19 November 2015. It retired to consider the matter. It then imposed the following penalty on the respondent:

- (a) Censure.
- (b) Costs of \$5,000 in favour of the Law Society pursuant to s 249 of the Act.
- (c) Reimbursement of the costs of the Tribunal pursuant to s 257(3) of the Act.

[7] This decision now sets out the reasons for the penalty that was imposed.

[8] Counsel for the applicant submitted that the appropriate penalty was that the respondent be censured, fined and ordered to pay costs. He submitted that:

- (a) It was important that an application for a practising certificate be filled out accurately so that the Law Society can properly consider whether the applicant is a fit and proper person to hold a practising certificate.
- (b) The importance of that is highlighted by the fact that applicants are required to sign a declaration at the end of the application that the contents of the application are true and correct.
- (c) The respondent candidly acknowledged the importance of such a requirement.
- (d) The respondent has previously been the subject of a disciplinary sanction in 2005 by the Wellington District Law Society Practitioners' Disciplinary Tribunal under the Act of 1982 for failing to produce files relating to a cost revision. He was censured, fined \$750 and required to pay costs.

[9] Counsel for the respondent submitted that there was an element of double jeopardy because the respondent had already been dealt with by the Standards Committee in the manner set out in para [4] above. She argued that the penalty now being sought was doubling up on that already imposed on the respondent. He had filled out the application for practising certificate in haste and had immediately acknowledged his conduct saying that he could not defend the indefensible.

[10] The signing of a declaration that said the contents of the application referred to were true and correct when some of its contents were in fact not correct is a serious matter. The Tribunal finds that it was reasonable for the applicant to take the view that the matter should come before the Tribunal for determination.

[11] The respondent was, as counsel for the applicant submitted, arguably reckless when completing the application and declaration. The Tribunal accepts that he had not acted dishonestly and that is acknowledged by the applicant.

[12] The Tribunal has found that the conduct of the respondent is deserving of censure primarily because of the seriousness of the matter.

### **Censure**

[13] *Mr Duff, the signing of a declaration in which you state that the matters contained in the application are true and correct when they are not, is viewed seriously when the person who made the declaration is an officer of the court as you are. While it is accepted that you did not intend to act dishonestly, you were nevertheless reckless in signing the declaration. You are deserving of censure.*

[14] The respondent through his counsel has asked the Tribunal to indicate to the Law Society that it need not include this matter as an endorsement on a certificate of standing. The Tribunal notes that Certificates of Standing are a matter for the Society. It does not intend to influence the Society about the matter. The respondent will have a copy of this decision which will help any endorsement of his Certificate of Standing to be considered in context.

[15] The respondent has sought an order for the non-publication of his name (s 240 of the Act). The onus is on the respondent to persuade the Tribunal that it should depart from the presumption in favour of publication of name. The principal argument advanced on his behalf was that, if the Standards Committee had dealt with the matter, rather than the Tribunal, the fact of censure would not have led to publication of his name.

[16] The Tribunal decided to decline the application for non-publication of name. It considered that the respondent's unsatisfactory conduct was serious and that

publication would act as a deterrent to others and serve to maintain professional standards.

### ***Fine***

[17] The respondent did immediately admit unsatisfactory conduct on all aspects of the matters considered by the Standards Committee and was fined and ordered to pay costs as detailed in para [4] of this decision. We have considered that penalty should be taken into account and have decided that we should not impose a fine.

### ***Costs***

[18] The Tribunal has decided that the respondent should make a payment towards the costs of the Law Society given the seriousness of the matter and the view it has that the Standards Committee was entitled to bring the matter before the Tribunal. It has accordingly fixed those costs at \$5,000.

### ***Summary of Orders***

1. Censure.
2. Costs pursuant to s 249 of the Act fixed at \$5,000.
3. Section 257 costs of the Tribunal certified at \$2,011, to be paid by the New Zealand Law Society.
4. The respondent to reimburse the New Zealand Law Society for the s 257 Tribunal costs.

**DATED** at AUCKLAND this 9<sup>th</sup> day of December 2015

BJ Kendall  
Chairperson