

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2014] NZLCDT 53

LCDT 028/13

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006 (under Part 7 of the Act)

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE NO. 5**

Applicant

AND

IAN MELLETT

Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms S Hughes QC

Ms C Rowe

Mr T Simmonds

Mr W Smith

HEARING held at Auckland

DATE OF HEARING 25 July 2014

APPEARANCES

Mr M Hodge for the Standards Committee

Mr C Pidgeon QC for the Practitioner

**DECISION OF NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL
(Decision on Penalty)**

[1] The decision on liability in this matter was delivered on 25 July 2014. That decision addressed a number of matters relevant to penalty and confirmed that we did not intend to suspend the practitioner from practice, having regard to the level of culpability we found, in the light of the medical evidence before us.

[2] However there was one particular outstanding issue which required further submissions. That is the request of the Standards Committee that we make an order that the practitioner not practise on his own account. We have now been provided with a set of undertakings from Joanna Pidgeon, an experienced practitioner who has the complete confidence of the Standards Committee to take over the role formerly held by Mr C K Lyon.

[3] That means she will conduct the Trust account of Mr Mellett's firm and be responsible for all conveyancing transactions through LINZ. We noted during the hearing that Mr Hodge, on behalf of the Standards Committee conceded that there was no evidence of harm to the public in the arrangements which had existed over the preceding year when this role was carried out by Mr Lyon.

[4] We also confirm that the arrangement had been initiated by the practitioner with a view to protection of the public and reassurance of the Law Society given the nature of his illness.

[5] As will be apparent from our liability decision, we consider that the conduct did not reflect any wilful action on the part of the practitioner, although, in relation to Charges 2 and 4 reached the standard of misconduct. The illness, about which we had considerable medical evidence, although not excusing his behaviour, certainly provided an explanation which was relevant as to penalty. This is because we consider that our role in terms of protecting the public, is largely covered by the

undertakings already provided by the practitioner to comply with all medical advice and be monitored on a regular basis by the Society as an additional safeguard.

[6] We considered the practitioner had considerable insight now into his illness and how it had led him to transgress professional responsibility.

[7] In these circumstances, we considered that a period of suspension would be unduly punitive and unnecessary for public protective purposes or indeed for any of the deterrence reasons which would normally feature in consideration of penalty. Deterrence is much less relevant when behaviour is connected with an intermittent mental illness.

[8] It should be recognised that compassionate regard has been given to Mr Mellett because of his illness and the straightforward manner in which he approached the disciplinary process and accepted his shortcomings. However we ought to note that should he appear before the Tribunal again he could not expect such generous treatment to be repeated.

[9] Mr Mellett is a practitioner with considerable energy and ability and, we consider has a good deal of commitment to his clients. Provided that he adheres to the undertakings provided we consider that he will continue to make a worthwhile contribution to the profession. We note that in Ms Pidgeon's undertaking she refers to 12 months from May 2014 and there must be an error therefore in the next date which shows as 2014 rather than 2015. We would expect her undertakings to abide until May 2015.

[10] Thus we confirm that the orders we make are:

Orders

1. Mr Mellett is formally censured.
2. Mr Mellett is to at all times abide by the personal undertakings provided by him to the New Zealand Law Society and to act as required to assist Ms Joanna Pidgeon to maintain her undertakings.

3. There will be no order for costs in respect of the Standards Committee since the practitioner is legally aided.
4. The New Zealand Law Society is to pay the costs of the Tribunal in the sum of \$7,192.

DATED at AUCKLAND this 8th day of September 2014

Judge D F Clarkson
Chair