NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2014] NZLCDT 86
LCDT 029/14

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**WAIKATO/BOP LAWYERS' STANDARDS COMMITTEE No. 1** Applicant
AND	**JASON MILES POU** Respondent

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Mr W Chapman
Ms S Gill
Mr P Shaw
Mr B Stanaway

HEARING at Rotorua

DATE OF HEARING 14 November 2014

APPEARANCES
Mr G Hollister-Jones for the Standards Committee
Mr A McIntyre and Mr J McDougall for the Practitioner

REASONS FOR ORDERS MADE
ON 14 NOVEMBER 2014

[1] Mr Pou has admitted one charge that "*having been convicted of an offence punishable by imprisonment and the conviction reflects upon his fitness to practice, or tends to bring the profession into disrepute*."[1]

[2] The conviction in question was for a third drink driving offence and an offence of driving while disqualified.

[3] Following the penalty hearing we made the orders attached, reserving reasons for our decision.

[4] The central issue to be determined, was that of whether the practitioner should be suspended from practice, and if so, for how long.

[5] Other issues related to the burden of costs and an application for final name suppression. The latter application becomes redundant if suspension is imposed, given the mandatory provisions as to Gazette publication contained in s 256 of the Act.

[6] Mr Hollister-Jones for the Standards Committee submitted the starting point was of suspension and that a proper length of suspension ought to be in the region of four to six months from the date of hearing.

[7] The approach to penalty considerations and some further relevant matters are set out in the decision of the full Court in *Hart:*[2]

> [186] The nature and gravity of those charges that have been found proved will generally be important. They are likely to inform the decision to a significant degree because they may point to the fitness of the practitioner to remain in practice. In some cases these factors are determinative, because they will demonstrate conclusively that the practitioner is unfit to continue to practice as a lawyer. Charges involving proven or admitted dishonesty will generally fall within this category.

[1] Section 241(d) of the Lawyers and Conveyancers Act 2008.
[2] *Hart v Auckland Standards Committee No. 1 of the New Zealand Law Society* [2013] NZHC 83 at 186-188.

> In cases involving lesser forms of misconduct, manner in which the practitioner has responded to the charges may also be a significant factor. Willingness to participate fully in the investigative process, and to acknowledge error or wrongdoing where it has been established, may demonstrate insight by the practitioner into the cause and effects of the wrongdoing. This, coupled with acceptance of responsibility for the misconduct, may indicate that a lesser penalty than striking off is sufficient to protect the public in future.
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> [188] For the same reason, the practitioner's previous disciplinary history may assume considerable importance. In some cases the fact that a practitioner has not been guilty of wrongdoing in the past may suggest that the conduct giving rise to the present charges is unlikely to be repeated in the future. This, too, may indicate a lesser penalty will be sufficient to protect the public."

[8] We were also referred to the decision of *Daniels*[3] as to the purposes of suspension.

[9] More specifically we were referred to three relatively recent cases which have been before the Tribunal and related to or had, as elements of the offending, drink driving convictions. These cases were *Beecham,*[4] *Ravelich*[5] and *Taffs.*[6]

[10] In *Beecham*[7] the practitioner was suspended for a period of two years, however had also been convicted of resisting a police officer and obstruction, had behaved very badly when apprehended and showed no insight into her alcoholism. She was seen to be at high risk of reoffending.

[11] In the *Ravelich*[8] matter there was also an element of resisting arrest and failing to remain for an evidential breath test and therefore issues once again of failing to co-operate with police in the lawful execution of their duty. Mr Ravelich had however taken positive steps in the 12 months leading up to the hearing to address his alcohol problem for which he was given credit and suspended for seven months.

[12] In the *Taffs*[9] matter once again there was an element not only of repeated drink driving offending but intentional obstructing including attempts to evade the proper breath testing process. The differentiating feature with Mr Taffs was that his offending was spread out over a long number of years. The further distinguishing

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[3] *Daniels v Complaints Committee No. 2 of the Wellington District Law Society* [2011] NZLR 85.
[4] *Hawkes Bay Standards Committee v Beecham* [2012] NZLCDT 29.
[5] *Auckland Standards Committee No. 1 v Ravelich* [2011] NZLCDT 11.
[6] *Canterbury-Westland Standards Committee v Taffs* [2013] NZLCDT 13.
[7] See footnote 4.
[8] See footnote 5.
[9] See footnote 6.

feature in Mr Taffs' case was the public interest in his returning to practice because of the shortage of lawyers with his skills in the particular region in which he practiced. He received a suspension of three months having regard to those factors.

[13] The Standards Committee points out that Mr Pou's last two convictions were clustered within a relatively short period although it was accepted that he had acknowledged and taken steps to address his offending.

[14] In submissions for the practitioner it was suggested that there was no issue of public protection in relation to this practitioner. It was acknowledged that the reputation of the profession and issues of deterrence were indeed relevant.

[15] The practitioner, both in written material provided to the Tribunal and in his evidence before us, detailed the steps he had taken to address his response in dealing with a stressful period in his life following his marriage breakdown. He assured the Tribunal of his determination to handle his stress in ways other than by resorting to the use of alcohol, and was able to give concrete examples.

[16] His counsel, Mr McIntyre, distinguished the three above cases on the basis of this lawyer's proper response when apprehended. He was fully co-operative with the police, was open and reported his offending to the Law Society, and acknowledged and took responsibility for his behaviour from the outset.

[17] It was submitted that his "*honesty and integrity, trustworthiness and probity is not questioned or relevant to the disciplinary charge …*". Of some concern for the Tribunal in this regard was the failure by the practitioner to refer to a High Court decision which had addressed those very matters in relation to him in 2005. This was a decision which had considered, and granted an application to dispense with a certificate of good character, which had been declined by the District Law Society.

[18] Mr Pou had not advised his counsel of this decision and had not thought it relevant to put before the Tribunal. We consider that this was an important error of judgment when, at the same time, he was promoting his honesty and integrity. However in the end we did not find that we needed to attribute much weight to this error which was not at the heart of the penalty process.

[19] One of the important submissions concerning the length of any suspension which ought to be imposed, although counsel sought to dispense with suspension altogether, was the nature of Mr Pou's current work. We accept that he is practising in a specialised area of work and has been for some years engaged on lengthy and important cases before the Waitangi Tribunal which are simply not able to be passed on at short notice to other counsel.

[20] We accept that Mr Pou, who has recently set up a new firm with a colleague, is in a situation analogous with that of Mr Taff's where the resource of legal expertise in this particular area is sparse. Thus it is in the public interest that his suspension from practice, which we considered inevitable, be kept to the minimum in order that he may properly continue his obligations to his clients. It was this reason, and because of specific hearings which were approaching shortly following the penalty hearing, which persuaded us to defer the commencement of the suspension order.

[21] We also considered the overall assessment of penalty to be on a similar footing to that of Mr Taff's who was disqualified for three months, but without the element of disrespect and disobedience towards the police, we considered that Mr Pou ought to be treated somewhat more leniently.

[22] We have also taken into account mitigating matters such as community contribution which is supported by references provided by the practitioner, and the fact that this practitioner has no previous disciplinary history.

[23] As to suppression, this matter is no longer able to be considered given that we determined that suspension had to be imposed to reflect the seriousness of the offending and the proper response by the Tribunal. Since this has to be notified by Gazette an application for suppression cannot be entertained.

[24] The practitioner did not resist an order for costs and these were imposed on him at the hearing in terms of the orders attached. As to the s 257 costs these are now certified at $2,890. They are to be paid by the New Zealand Law Society and are to be reimbursed by the practitioner to the New Zealand Law Society, pursuant to s 249.

DATED at AUCKLAND this 18th day of December 2014

Judge D F Clarkson
Chair

ORAL ORDERS OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[1] We do consider that this conduct needs to be marked by a period of suspension but given the client and public interest factors involved we are prepared to pare that back if, I can put it that way, to two months.

[2] After consultation with counsel, we fix the start date as 13 December 2014.

[3] We grant leave to come back to us if there needs to be variation of the orders of the Tribunal, (as to starting date).

Orders

1. Formal Censure of the practitioner for the behaviour.

2. Suspension for a period of two months commencing on the 13th of December 2014.

3. In the circumstances of suspension we will not impose a fine but will order the Standards Committee costs of $9,253 against you.

4. The s 257 costs, to be certified, are awarded against the New Zealand Law Society.

5. The second costs order under s 249 is that the practitioner will reimburse those s 257 costs to the New Zealand Law Society.

6. Unfortunately your application for name suppression is declined. Even had we not gone the way of suspension Mr Pou we would not have granted the suppression order in any event, in the circumstances of the need for openness of this process and for public protection.

7. Reasons for this decision are reserved.

DATED at ROTORUA this 14th day of November 2014

Judge D F Clarkson
Chair