NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2016] NZLCDT 9

LCDT 001/16

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE NO. 5** Applicant
AND	**SHANE ALAN ROHDE** Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms S Fitzgerald
Ms C Rowe
Ms S Sage
Mr W Smith

HEARING at Auckland District Court

DATE OF HEARING 24 March 2016

DATE OF DECISION 12 April 2016

COUNSEL

Ms R Reed for the Standards Committee
Mr C Patterson for the Respondent

REASONS FOR DECISION ON PENALTY

[1] Shane Rohde admitted a charge that he had been convicted of offences punishable by imprisonment, which reflected on his fitness to practise, or tended to bring his profession into disrepute.

[2] The three convictions relied on were: one for excess breath alcohol in May 2014; and in September 2015 excess breath alcohol as well as dangerous driving.

[3] His behaviour, in attempting to evade the police in the 2015 incident is an aggravating feature. Mr Rohde sped away from the police, and during the brief chase reached speeds of up to 120 kilometres per hour in a suburban area. He refused to identify himself as the driver, having left his car, and thus put his colleague (and employee) who had been in the car, at risk of prosecution also.

[4] While we recognise that exercising his right to silence cannot be questioned in the criminal law context, it cannot always be ignored in the disciplinary context. In this situation, as stated, doing so imperilled a colleague and employee. That is a matter which goes to the overall assessment of fitness to practise.

[5] Although he eventually pleaded guilty, it was not until the day of the trial, six months after the event, so that his colleague and by then former employee, was required to be ready to give evidence against him.

[6] Mr Rohde was sentenced to supervision (with special conditions as to alcohol counselling) and community work.

[7] On the day of his sentencing he attended his first meeting at Alcoholics Anonymous ("AA"). He had, some days previously, been introduced to The Honourable John Banks, who, he says, persuaded him that he had a serious alcohol addiction, which he could not tackle alone, or without a serious intervention.

Issues

[8] The issues for the Tribunal, in assessing penalty, are:

1. Do the public, as consumers, need to be directly protected from Mr Rohde?

2. Having regard to aggravating and mitigating features, and relevant case law, is a penalty less than suspension sufficient to mark the seriousness of Mr Rohde's conduct?

[9] In her submissions for the Standards Committee, Ms Reed pointed out that Mr Rohde's evidence did not include any psychological assessment nor detailed plan as to the support structures within his practise and in relation to his recovery.

[10] In response Mr Rohde filed a further affidavit which annexed a number of references expressing confidence in Mr Rohde as a person and in his recovery from his addiction. We then heard further oral evidence from Mr Rohde who was cross-examined by Ms Reed and answered questions from the Tribunal.

[11] The Tribunal was also addressed by Mr Banks in relation to the steps Mr Rohde had taken towards abstinence and his intensive involvement with him during the first few months of that abstinence.

[12] Specifically, Mr Rohde, since September 2015 has attended seven AA meetings per week. He said that if he misses one day he attends two meetings in a day to compensate. He has had a sponsor with whom he was in constant contact, particularly during times of stress. That sponsor has recently gone overseas but he now has a new sponsor who is also a practitioner, sober for a number of years. Mr Rohde feels well supported by this man as he does by a number of colleagues to whom he has disclosed his problem and within his own practise.

[13] He has a supportive general practitioner and a very supportive family.

[14] There is no evidence that clients of Mr Rohde have been put at risk by his offending or the alcohol problem that led to it. To the contrary we understand that it was a person commending the quality of Mr Rohde's work, to whom he disclosed his troubles and was consequently introduced to Mr Banks for assistance.

[15] We consider that his openness with his firm and other colleagues, and the steps he has taken to safeguard his sobriety are a sufficient safety net. Thus the answer to the question posed in Issue 1 is "No".

Level of Penalty

[16] The Standards Committee sought a short period of suspension of three to six months. The submissions were based largely on the need to reflect the seriousness of the offending, Mr Rohde's disrespect for the law and on the basis of recent decisions of the Tribunal. We propose to address those under the heading of "comparable decisions".

[17] The starting point for any penalty discussion must be the seriousness of the offending.[1] Mr Rohde did not attempt to minimise the seriousness of his offending. That is a proper approach. Infractions of drink-driving law, even at relatively low levels, are serious, as is the dangerous driving involved in the second incident.

Aggravating Features

[18] Mr Rohde's behaviour in attempting to evade the police by speeding off and then departing from his vehicle and refusing to disclose who had been driving must be seen as aggravating features in a disciplinary context. Arising from that, the lack of concern for the position in which he placed his employee and colleague, both at the time and subsequent to the offending, is reprehensible.

Mitigating Features

[19] The Tribunal was very impressed by Mr Rohde's (albeit somewhat belated) committed and determined effort to address his alcoholism. He describes himself as a "devoted" member of AA and has described to us a number of techniques that he has learned and applies on a daily basis.

[20] We considered Mr Rohde was straightforward and open with the Tribunal in discussing his addiction. We accept that Mr Rohde is not only committed to continuing

[1] *Hart v Auckland Standards Committee 1* [2013] 3 NZLR 103.

to receive support from the organisation but is also now playing an active part in contributing to the recovery of others. These are strong mitigating features.

Comparable Cases

[21] We have also considered the authorities referred to by the Standards Committee, in the context of which it is submitted that a short period of suspension is appropriate. Those decisions are *Auckland Standards Committee 1 v Brett Dean Ravelich* [2011] NZLCDT 11; *Hawke's Bay Lawyers Standards Committee v Sacha Maria Beacham* [2012] NZLCDT 29 and *Canterbury-Westland Standards Committee v Douglas James Taffs* [2013] NZLCDT 13.

[22] Ms Reed acknowledged, rightly we consider, that the facts and circumstances in the present case are less serious than those in the *Beacham* decision (where a two year period of suspension was imposed). We consider the facts here are considerably less serious, and quite different. In *Beacham*, the practitioner had been convicted of five separate offences, being three convictions for driving a motor vehicle with excess breath or blood alcohol, and two further convictions, one for resisting a police constable acting in the execution of her duty and one for intentional obstruction of a [separate] police constable acting in the execution of her duty. In addition to those five convictions, charges were also laid by the Standards Committee as a result of the practitioner behaving in an abusive, obstructive and indecent/offensive manner towards police officers (the Tribunal described this as demonstrating a "complete lack of respect" to the police officers). The Tribunal in that case observed that the practitioner had not accepted that she was alcohol dependant and an aggravating factor was the practitioner's assertion of her status as a lawyer in the course of the events.

[23] In *Ravelich*, the practitioner was suspended for a period of five months. We have carefully considered this decision, and in the particular circumstances of this case, consider that this case is also less serious than in *Ravelich* (a point which Ms Reed also acknowledged).

[24] The charges against the practitioner in the *Ravelich* case arose out of eight separate convictions. It is immediately apparent that there were many more convictions in that case than in the present case, over a lengthy period of time. And

while the Tribunal in *Ravelich* did not attach significant weight to the 1989 and 1990 convictions (given the passage of time since they had occurred), or the careless use conviction (given the nature of the offending), it concluded (at [79]) that "there is no doubt that Mr Ravelich has had a troubled time, with numerous criminal convictions going back to 1989". We also observe that all but one of the more recent charges against the practitioner in that case had a common theme of seeking to evade the law. While, on the facts as recounted at para [3] above, Mr Rohde did initially seek to evade the police, he was ultimately not charged with any offence in that regard.

[25] The decision in *Ravelich* does record that the practitioner had taken steps to address his alcohol problems, and had successfully completed an alcohol and drugs programme. The extent and depth/duration of that programme, and whether those steps were comparable to the very considerable steps that Mr Rohde has and continues to take in this case, is not clear.

[26] In the *Taffs* decision, the practitioner had been convicted (for the third time) of driving with excess blood alcohol and also of intentional obstruction of a police constable acting in the execution of his duty. The decision records that, having failed the breath screening test at the roadside, the practitioner was taken to the local police station for an evidential breath test, which he sought to evade (by attempting to leave the building and climb a fence, by disengaging the evidential breath testing machine by disconnecting the cables, and finally by placing coins in his mouth during the procedure of evidential breath testing). There was also an earlier, quite serious conviction, of wilfully attempting to obstruct, prevent, pervert or defeat the course of justice (which had also led to disciplinary charges), together with earlier disciplinary charges of negligence and incompetence (at the lower level).

[27] There was evidence before the Tribunal in the *Taffs* decision that the practitioner had consulted with a psychologist in relation to his use of alcohol, and had attended two sessions with that psychologist and had a further one scheduled. He had also taken other voluntary efforts to make amends to the community for his behaviour (including organising a restorative justice meeting, and a proposal that he provide occasional lectures to community work offenders, although it is not clear whether that was implemented).

[28] Again, we pause to note that in this case, Mr Rohde has quite openly and frankly acknowledged what has been a serious addiction to alcohol, and taken commendable steps to deal with it. In light of these facts, including that Mr Taffs had a number of earlier convictions and disciplinary charges, we also consider that the particular facts of this case justify a less serious penalty.

[29] There is a further decision of the Tribunal which ought to be noted: *Waikato/Bay of Plenty Lawyers' Standards Committee 1 v Pou*[2]. In that matter the lawyer had been convicted of a third drink-driving offence and driving while disqualified. He had behaved responsibly when apprehended. After consideration of the same three cases, and allowing for his obligations to clients in the specialised and (professionally) under-resourced area of law, he was suspended for 2 months. Having regard to the additional conviction in the *Pou* case, and the mitigating features in the present case, we are comfortable that the penalty imposed on Mr Rohde is not inconsistent.

Decision

[30] Having weighed all of these matters the Tribunal, while concerned to demonstrate that the profession and its disciplinary institutions regard this behaviour as extremely serious, considered that in Mr Rohde's case it was not necessary to impose a period of suspension. We did so, mindful of the dictum in *Daniels*[3] that an approach of the least restrictive intervention ought to be adopted (the Court discussed this particularly in the context of whether a suspension is necessary). The answer to Issue 2 must also be "No". We therefore impose the following penalties.

Orders

1. Censure. The following censure was delivered to Mr Rohde in person:

   Your conduct would have been very bad in any citizen, but for a lawyer, with a statutory and ethical obligation to uphold the Rule of Law, it was appalling. Your recklessness and poor judgment put an employee and colleague in harm's way – physically and professionally. While we understand the conduct occurred while you were influenced by alcohol, to

[2] *Waikato/Bay of Plenty Lawyers' Standards Committee 1 v Pou* [2014] NZLCDT 86.
[3] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 2 NZLR 850 (HC).

which you are addicted, we must still denounce it firmly. You are on notice that a rehabilitative approach is unlikely to be repeated.

2. A fine was imposed of $10,000.

3. By consent:

   (a) The costs of the Standards Committee in the sum of $3,806, are awarded against Mr Rohde.

   (b) The s 257 costs are awarded against the New Zealand Law Society in the sum of $1,992.

   (c) Those s 257 costs are to be reimbursed by Mr Rohde to the New Zealand Law Society.

DATED at AUCKLAND this 12th day of April 2016

Judge D F Clarkson
Chair