BEFORE THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2015] NZLCDT 9

LCDT 037/14

BETWEEN	**THE NATIONAL STANDARDS COMMITTEE OF THE NEW ZEALAND LAW SOCIETY** Applicant
AND	**ANTHONY PAUL BLAIR (also known as PAUL ANTHONY BLAIR)** Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr W Chapman

Ms C Rowe

Mr W Smith

Mr I Williams

HEARING at AUCKLAND

DATE 12 March 2015

DATE OF DECISION 31 March 2015

COUNSEL

Ms R Reed for the Standards Committee

Respondent in person

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

Introduction

[1] The hearing of the Tribunal on 12 March 2015 was one concerning penalty. The practitioner has admitted one charge laid pursuant to s 241(d) of the Lawyers and Conveyancers Act 2006 ("the Act") that having been convicted of offences punishable by imprisonment, such a conviction reflects on his fitness to practise or tends to bring his profession into disrepute.

[2] The respondent having admitted that charge, the Tribunal granted the applicant leave to withdraw the alternative charge of misconduct laid pursuant to s 241(a) of the Act.

[3] At the conclusion of the hearing, the Tribunal reserved its decision.

Background

[4] The respondent was found guilty by a jury in the Hamilton District Court of the two charges he faced being:

a. One count of selling the Class C controlled drug cannabis pursuant to s 6(1)(e) of the Misuse of Drugs Act 1975.

b. One count of possessing the Class C controlled drug cannabis (3 tinnies) for the purpose of sale pursuant to s 6(1)(f) of the Misuse of Drugs Act 1975.

[5] The brief facts leading to the convictions are that the respondent was visiting a friend at a known tinnie house. Whilst there, he answered a knock at the door and, as it transpired, sold one cannabis tinnie for $20.00 to an undercover police officer. At the time of sale he was holding 3 other tinnies in his hand which led to the inference that it was for the purpose of future sale.

The Applicant's Submissions

[6] Counsel for the applicant submitted that the starting point for the Tribunal when considering penalty was that all lawyers who deal in drugs are not fit and proper persons to practise unless that principle is displaced by strong mitigating factors.

[7] She submitted that there were two main considerations for the Tribunal:

a. The misconduct itself including an assessment of the aggravating and mitigating factors of the misconduct.

b. An assessment of the practitioner's fitness to practise in the future which would include considering any previous disciplinary history and overall conduct within the proceedings.[1]

Aggravating features of the misconduct

[8] Counsel submitted the following:

a. The offending can be described as dealing and possession of cannabis for the purpose of such dealing.

b. There was a commercial element to the offending.

c. The charge was much more serious than possession simpliciter as is reflected in the maximum penalty for such an offence being 8 years imprisonment.[2]

d. The category of drug supplied (although not as harmful as Class A and B drugs) does not undermine the primary point that the respondent was a lawyer who dealt in drugs in total disregard for the law and with disrespect for it.

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[1] *Auckland Standards Committee v Thomson* [2014] NZLCDT 38 at [13].
[2] Section 6(2) Misuse of Drugs Act 1975.

Mitigating factors

[9] It is the submission of counsel for the applicant that there are insufficient mitigating features in the respondent's case to weigh against the serious nature of his offending. He cannot rely on an addiction as an explanation for the sale as was the situation in *Wootton*[3] and *Thomson*[4]. The respondent has not explained his behaviour and has not shown whether or not he is at risk of further offending.

The Respondent's submissions

[10] The respondent has argued that a period of suspension is the appropriate penalty in his case and advances the following:

a. He has no history of the consumption of illegal substances, addiction and rehabilitation.

b. That while there was an element of commerciality in his offending, it occurred through a lapse of judgment and amounted to effectively a single transaction into which he allowed himself to be trapped.

c. That he has not reoffended in the four years subsequent to the original offence.

d. That he has not returned to the tinnie house and has ended his association with Ms Flavell who was the occupier of the house.

e. That his good character prior to and subsequent to the offending should be taken into account. He submitted that he has served his community as an advocate in the past and can continue to do so after a period of suspension.

f. That he had been in voluntary suspension since a short time after the events.

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[3] *National Standards Committee v Kelvin Dean Wootton* [2013] NZLCDT 43.
[4] *Auckland Standards Committee v Thomson* [2014] NZLCDT 38.

Discussion

[11] The Tribunal finds that the starting point for the consideration of penalty must be strike-off. It views the respondent's offending seriously. The distinguishing feature is that as a barrister he engaged in the sale of drugs to the public. This fact alone must call into question his fitness to practise. The Class of the drug sold is immaterial to the offending.

[12] The Tribunal notes that the respondent has admitted that he was convicted of the offences under the law.[5] He has not accepted that he has done anything wrong. There has been no expression of remorse for the offending.

[13] The Tribunal notes his inability to comprehend the essential wrong doing. He showed that inability before us by his repetition of bland statements that he must accept the findings of the Court whilst indicating clearly that he maintained the story he gave the Courts and which had not been accepted.

[14] We have had regard to the dictum in *Daniels*[6] which emphasises that if a penalty shot of strike-off can be imposed it ought to be.

[15] The Tribunal has taken the following factors into account when reaching its decision that a penalty short of strike-off can be imposed.

a. The absence of prior or subsequent disciplinary or criminal record.

b. The respondent's otherwise good character and advocacy work that he has carried out in the community.

c. That there is no evidence that this offending has been other than isolated.

[5] Paragraph [17] of his affidavit of 6 March 2015.
[6] *Daniels v Complaints Committee No 2 of the Wellington District Law Society* NZLR 2011 850 (HC) at [22].

Decision

[16] The Tribunal has concluded that the respondent should be suspended from practise. The period of such suspension should reflect the seriousness of the offending.

[17] It therefore has decided unanimously pursuant to s 242(1)(e) of the Act that the respondent is to be suspended from practice for three years effective from 12 March 2015. The period of voluntary suspension has not persuaded us to impose a shorter period of suspension when it is considered that he would likely not have obtained a practising certificate.

Costs

[18] The applicant seeks an order that the respondent pay its costs of $5,100.00.

[19] The respondent asks that no order for costs be made against him. He gave evidence that he receives $309.00 per week supplemented by an allowance of $300.00 per week. He has no assets. His rent is $165.00 per week. His debts total approximately $16,000.00 including a student loan of $12,000.00. The applicant has accepted the respondent's position and will abide by the Tribunal's decision in that regard.

[20] After deliberation, the Tribunal has decided that the respondent should make a contribution to the applicant's cost and the costs of the Tribunal which it fixes at 50% of the total in both respects.

Orders

[21] The Tribunal accordingly makes the following:

a. Suspension of the respondent from practice for three years from 12 March 2015.

b. Payment by the respondent of 50% of the applicants costs of $5,100.00.

c. Refund by the respondent of 50% of the Tribunal's costs pursuant to s 257(3) of the Act which are fixed at $3,191.00.

DATED at AUCKLAND this 31st day of March 2015

BJ Kendall
Chair