

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 6

LCDT 001/17

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 1**
Applicant

AND

**MARC ADAM ROBERT
CROPPER**
Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms F Freeman

Mr T Simmonds

Mr W Smith

Mr I Williams

HEARING at Specialist Courts & Tribunal Centre, Auckland

DATE OF HEARING 24 March 2017

DATE OF DECISION 7 April 2017

COUNSEL

Mr P Collins for the Standards Committee

Mr P Davey for the Practitioner

DECISION OF TRIBUNAL ON PENALTY

Introduction

[1] Marc Adam Robert Cropper admitted one charge pursuant to s 241(d) of the Lawyers and Conveyancers Act 2016 (“the Act”) that he had been convicted of an offence punishable by imprisonment and the conviction tended to bring his profession into disrepute.

[2] Both counsel, in their written submissions filed prior to the hearing, had submitted that a proportionate penalty included suspension of the practitioner for three months. On the face of it this appeared to the Tribunal to be a relatively lenient approach, however was ultimately adopted by the Tribunal in its oral decision of 24 March. The reasons for, and process of adopting that proposed penalty are set out in this decision.

Background

[3] A brief background is required, particularly to acknowledge the seriousness of the conduct as the starting point in any penalty determination.

[4] On 19 April 2016 Mr Cropper was convicted of three charges of possession of methamphetamine, a Class A controlled drug. He had pleaded guilty to those charges at the earliest possible opportunity. He was sentenced to nine months supervision which included a direction to attend a drug and alcohol programme and fined \$100 on each of the three charges.

[5] At the time of the offending the practitioner was 40 years old and he acknowledges a serious alcohol and substance addiction.

[6] Mr Cropper had practiced law for 16 years, in a specialist area, both in New Zealand and the United Kingdom.

[7] Even before his arrest in August 2015, Mr Cropper had begun to seek assistance in relation to his rehabilitation. From September 2015 to January 2016 he engaged in an intensive outpatient programme and from April to August 2016 he completed the full time programme at Higher Ground. This is a residential treatment programme which is extremely challenging and which many people fail to complete. The practitioner deposes that less than half of the participants complete the full programme.

[8] What was impressive about Mr Cropper's endeavours to address his problems, is that he had sufficient insight to realise there were underlying issues for the addiction itself and he confirms that he has done significant work in addressing these in order to achieve a more successful recovery long term.

[9] Unsurprisingly, as a consequence of his offending, the practitioner resigned his job and he and his family have since then been surviving on a sickness benefit and the kindness of friends and family. Mr Cropper has a stepson aged 14 years and two very young children of his own and supports his partner of six years because she is unable to work in New Zealand.

[10] Mr Cropper continues to attend AA and NA meetings a number of times a week.

[11] It is clear that this offending and the related media attention has had a significant impact on this practitioner and his family. He expresses deep shame and remorse but does not attempt to evade responsibility for his actions.

[12] Mr Cropper assures the Tribunal of his commitment to a drug and alcohol free life. He will need to sell his home and "downscale" in order to repay those who have supported him over the past two years until he can re-establish himself in employment. He recognises that he will have to practise in a broader field of law, because his enquiries have satisfied him he will not be able to obtain employment in his previous field, particularly because that would have involved travel, which may be restricted by his convictions.

Aggravating Features

[13] We do not consider there are any aggravating features such as existed in the *Jefferies*¹ matter, in which the practitioner was suspended for six months for similar offending.

Mitigating Features

[14] In this matter there are significant mitigating features both in the manner in which this practitioner has faced up to the offending, taking responsibility at the earliest opportunity. He was cooperative both in the criminal justice process and in the disciplinary process and acknowledged the charge as soon as it was amended to remove the limb relating to fitness to practice. He has apologised to his profession and his family and, we are satisfied, shows genuine remorse for the huge impact of his offending.

[15] We give this practitioner considerable credit for his actions (not words) in demonstrating insight and determination to address his addiction by the rehabilitative steps that he has taken and continues to take. We are as confident as we can be in these circumstances that he will not pose a risk to clients in the future, and there have been no demonstrated client concerns in the past.

[16] The practitioner has provided a voluntary undertaking to the Law Society that he will undertake random drug testing when sought by them, for a period of two years from the date of issue of any practising certificate.

[17] He has no previous disciplinary history in his 16 years of practice.

Comparison with Other Cases

[18] Mr Collins for the Standards Committee provided us with a very useful table of cases where convictions for drug and alcohol related offending had been considered by the Tribunal previously. While these must be a useful guide for the Tribunal in its task to maintain consistency and predictability of penalty outcomes, it is also accepted by both counsel that the task of assessing penalty is a very individualised process.

¹ *National Standards Committee v Keith Jefferies* [2016] NZLCDT 29.

[19] The decision which most closely bears on the present one is that of *Jefferies* (six months suspension) and we note that this decision is currently under appeal. We accept the submission that the offending in that matter was slightly more serious and that certainly the aggravating features present in that case distinguish it from this, as do the comprehensive and determined steps taken by this lawyer to ensure he thoroughly understands his addiction and remains in recovery.

[20] Nor is Mr Cropper a criminal barrister as was Mr Jefferies, who will continue to appear for clients facing the same charges as did he, a matter which reflects very poorly on the profession.

[21] Deterrence, of course is an important principle to be borne in mind and if that were the only factor, undoubtedly a lengthy period of suspension would have been involved. However it is but one factor among many others.

[22] We bear in mind the comments in two further High Court decisions, namely *Daniels*² and *Davidson*.³ In the latter, which was concerned with very different offending, the starting and final points of the sentencing process were considered to be relevant. Furthermore, it was emphasised that the public is entitled to be clear that a professional disciplinary body will not treat lightly serious criminal offending in its members.

[23] However *Daniels* also emphasised the principle of the least restrictive outcome and in the end we have accepted the joint submission of counsel that a three months suspension is sufficient to reflect a proportionate response to this offending while balancing the other factors, many personal and individual in nature which we are obliged to take into account.

[24] We accept the submission of Mr Collins that:

“Responsible acceptance of the wrongfulness of the conduct, reflected in genuine insight and rehabilitative efforts, is an essential element of the penalty analysis in drug and alcohol-related cases”;

[25] And further:

² *Daniels v Complaints Committee No. 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

³ *Davidson v Auckland Standards Committee No. 3* [2013] NZHC 2315.

“Where the question of fitness does not arise, because the first limb of s.241(d) does not form part of the charge, the penalty must nevertheless be sufficient to maintain public confidence in the profession, and in the discipline of its members; and

The predominant purpose of the Tribunal’s penalty function is to enhance and protect the public interest and to maintain public confidence in the legal profession by ensuring and promoting professional standards.”

Summary of Orders made on 24 March 2017

1. The practitioner is suspended for three months from 24 March 2017.
2. There will be costs awarded in favour of the Standards Committee, at the agreed sum of \$5,000.
3. There will be an order that the New Zealand Law Society pay the costs of the Tribunal, pursuant to s 257, in the sum of \$1,915.
4. There is an order that the practitioner reimburse the New Zealand Law Society for the s 257 costs in full.
5. The name of the practitioner’s former employer is suppressed.

DATED at AUCKLAND this 7th day of April 2017

Judge D F Clarkson
Chair