

29 November 2023

Open Letter to the New Zealand Law Society Te Kāhui Ture o Aotearoa

The Auckland Women Lawyers Association (**AWLA**) represents the interests and highlights the issues affecting women in the legal profession. Following the recent release of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal decisions on the liability and penalty in respect to the conduct of Mr Murray Tingey, the AWLA Committee has received correspondence from its members raising concerns about the decisions and expressing a desire to see further steps taken by the Law Society, including appealing the decisions and suppression orders.

The Committee shares the disappointment expressed by its members and wishes to bring these concerns to the attention of the Law Society. The Committee also wishes to express its support for Ms X for making the complaint and participating in the hearings.

In our view there are three significant issues that arise (discussed further below):

1. The manner in which the Tribunal weighed facts in this case in the liability decision demonstrates that further work is required to ensure that the Tribunal has a proper understanding of relationship dynamics at play and the impact on women in cases of this nature;
2. The penalty imposed on Mr Tingey was manifestly inadequate and sends the wrong message to the public and the profession; and
3. The suppression orders in place are unacceptable, unworkable and prevent proper public scrutiny of the decisions

The Liability Decision

It is our respectful view the Tribunal lacked insight into the particular relationship dynamics that existed in this case. AWLA is limited in its ability to comment on the Tribunal's liability decision due to the wide-ranging suppression orders in place. However some of these dynamics included the perceived risk of physical harm to Ms X, the right of Ms X to feel safe in her own private spaces, Mr Tingey's intimidating behaviour when intoxicated, and Mr Tingey's psychological dominance over Ms X (for example, preventing her leaving or arriving at places when he was clearly unwanted).

In the Committee's view, the appropriate starting point was to consider Mr Tingey's conduct towards Ms X, which was wholly inappropriate and repeated. The breakdown of any relationship should never involve assault, breaking and entering that persons house while holding them down and preventing the person from leaving their own house.

The Tribunal placed emphasis on the delay before the complaint was bought and the fact that the events were historical. The Tribunal acknowledges the impact of delay in relation to the frailty of memory, the absence of contemporaneous records, and blurring of memory. Whilst the impact of delay may have been disadvantageous in assessing the facts accurately, we consider that the Tribunal overstated the impact of delay in making both credibility and reliability findings. The impact of delay could have adversely affected both parties equally.

We are concerned that the Tribunal's assessment of the delay will impact future decisions by other women in the same position to bring forward a complaint because they will be concerned that they will not be believed. In reality, given the long-term impacts and traumatic nature of the behaviour concerned, many women simply do not have the strength and/or capability to bring forth a complaint in the immediate aftermath of a difficult relationship. Furthermore (as demonstrated in this case) having to find a new career path and seeking new employment is often a consequence that a woman faces. This takes time and reflection before any decision about a Law Society complaint can seriously be considered. The Tribunal's approach to this aspect of the case may have a chilling effect on other victims of historic inappropriate behaviour in the profession.

The Penalty Decision

It is our view that the penalty imposed on Mr Tingey is manifestly inadequate due to the serious nature of Mr Tingey's conduct. The Tribunal acknowledge that Mr Tingey's conduct was grossly inappropriate, unacceptable and unbecoming.

The Tribunal considered this case unusual. We respectfully disagree. The circumstances that arose in this case are not unusual at all, and there will be many women who have found themselves in very similar positions as Ms X who have not come forward. This decision does not encourage them to do so.

We consider that his conduct brings the whole legal profession into disrepute. We are concerned that the failure to suspend Mr Tingey from practice sends the wrong message to the profession and fails to discourage such unacceptable behaviour within the profession. It may also deter other women with similar experiences to come forth and share their own experiences due to the lack of significant disciplinary action for such behaviours.

Furthermore, the reference to Mr Tingey being "significantly more at risk than Ms X if their affair became public, because he was still married" (para 55(b)) is misguided, outdated and misogynistic. It is also not borne out by subsequent events and the fact that it was Ms X who eventually resigned from the firm and not Mr Tingey.

In order to appropriately recognise the conduct, a strong penalty decision was needed. A practicing lawyer should expect to face suspension for such reprehensible conduct, regardless of the lapse of time.

The Tribunal's decisions, on both liability and penalty accept and perpetuate harmful gender stereotypes. It is disheartening to see that the level of respect and deference afforded to Mr Tingey was not extended to Ms X despite her continuing to pursue a career in the law.

Suppression orders

The committee considers that the wide-ranging suppression orders in this case are wholly out of step with suppression laws in New Zealand, undermine public confidence in the legal profession and are nonsensical. At appendix 2, at paragraph 1.4 of the penalty decision, a host of matters are subject to suppression orders relating to particular allegations made by Ms. X and even the characterisation of Mr Tingey's conduct (for example, being a "pattern" of particular behaviour). The Tribunal states that "we consider that a more accurate picture of the Tribunal's decision would be reflected by non-publication, in any report, of all of the details, contained in the application. There is a risk that reporting unsubstantiated allegations may give undeserved currency." These orders were made despite media presence in the hearings each day and reporting of the allegations during the course of the hearing. Further, this assessment did not weigh other important factors such as the need for open justice, public confidence in the profession or even the ability for Ms X herself to anonymously discuss the unproven allegations in the future.

The practical effect of these suppression orders is that broadly allegations made by Ms X that were proven to the standard of the balance of probabilities may be published by any person but other allegations cannot. However, the two decisions that contain *all of the allegations and the detailed suppression orders* are publicly available via a google search, resulting in the orders being completely ineffective. There are also a raft of allegations on other news websites (due to these suppression orders only being made well after the evidence had been heard and already reported on) that currently exist online which form part of the unproven allegations that were not subject to any take down orders.

Consequently, the decisions and prior news reporting can be read online by any person but no further media articles or full discussion can take place (including by AWLA) on the full allegations despite the information being publicly available online. This prevents robust discussion and a full scrutiny of the decisions. We consider that this is a wholly unsatisfactory position and has far reaching consequences

for other allegations made by women in the future. These suppression orders require reconsideration due to being completely unworkable.

Conclusion

The AWLA committee considers that further scrutiny of the decisions is necessary. If it is the Law Society's view appeals are not warranted (in particular around the suppression orders), we would expect that further consideration be given to a law change that gives better effect to the expectations of the profession and protection of its members, and in particular women.

The Committee would like to reiterate its support for Ms X and all women who have experienced similar behaviour from other practitioners in the legal profession.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Anoushka Bloem'.

Anoushka Bloem

President of the Auckland Women Lawyers' Association (on behalf of the AWLA Committee)