

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2010] NZLCDT 36

LCDT 012/10

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006 and the Law Practitioners  
Act 1982

**BETWEEN**

**TARANAKI STANDARDS  
COMMITTEE**  
Applicant

**AND**

**RICHARD JAMES FLITCROFT**  
Respondent

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Ms S Gill

Mr S Grieve QC

Mr C Rickit

Mr P Shaw

**HEARING** at NEW PLYMOUTH on 23 November 2010

**DATE OF DECISION** at Auckland on 20 December 2010

**APPEARANCES**

Mr P Collins for applicant

Mr B Squire QC for respondent

**DECISION OF NEW ZEALAND LAWYERS  
AND CONVEYANCERS TRIBUNAL**

***Introduction***

[1] Richard James Flitcroft has admitted five charges of misconduct in his professional capacity, in each case concerning the forgery of the signature of one of the partners in his employer firm.

[2] A penalty hearing was held before the Tribunal in New Plymouth on 23 November 2010. At the conclusion of that hearing the Tribunal made orders as to penalty, however reserved its reasons as well as the issue of costs, to be the subject of further submissions.

[3] The reasons for decision are now set out.

***Background***

[4] Mr Flitcroft is a 32-year-old practitioner who was admitted to the Bar on 13 May 2004. He has only had one legal employer, the complainant in this matter. He was employed in a small branch office of the firm from August 2004, having worked for the firm sometime previously in their main office. On 1 January 2007 he became an associate of the firm, reflecting their confidence and trust in him. His employment with that firm ceased in late December 2009 as a result of the circumstances which gave rise to the five charges. He has not practised since that time and formally relinquished his practising certificate on 14 February 2010 pending this hearing. He practised in the area of rural and domestic conveyancing and commercial work and was described as a “competent intermediate level lawyer, capable of working without supervision”.

[5] In early November of 2009 Mr Flitcroft’s secretary brought to the attention of his supervising partner the completion of a solicitor’s certificate in which Mr Flitcroft had forged the partner’s name. The partner challenged Mr Flitcroft with this and he

immediately acknowledged that he had signed the documents in his employer's name. He was reprimanded and undertook not to repeat this action in the future.

[6] Subsequently, it was discovered that there were in fact other instances of Mr Flitcroft having signed the partner's name prior to the November instance. Mr Flitcroft again immediately acknowledged these and indeed volunteered information about other occasions when he may well have used the partner's signature.

[7] It needs to be emphasised at this stage that on all occasions there was no element of personal gain. Mr Flitcroft's sole motive in completing the forgeries was to enable the various transactions to take place. In pointing this out his counsel was careful not to minimise the seriousness of the misconduct. Mr Flitcroft accepts unreservedly that his actions constituted a serious lapse of judgment on his part and accepts sole responsibility.

[8] The hearing on penalty included a disputed facts hearing in relation to office practices in the employer firm. It was suggested that Mr Flitcroft had been, if not encouraged in his sloppiness, at least had been somewhat misled by his employer having adopted less than scrupulous practices concerning solicitor's certificates and trust account cheques.

[9] It was accepted that on occasion certificates were signed by the responsible partner before being absolutely completed; in respect of, for example, insurance details. This was done on the understanding that the staff member handling the transaction would ensure that all details were attended to so that the certificate was absolutely correct on its face before being submitted to the financial institution concerned.

[10] In addition to there being no personal gain, it is clear that all of the transactions were legitimate, and in some instances it would seem that there was a degree of urgency in submitting the certificate. However, the firm clearly had in place arrangements for other partners to be available for the signing of the certificates, should the supervising partner for Mr Flitcroft be absent from the office.

And of course there was always the ability to use scanned or faxed documents; indeed he did at times avail himself of this course, so it is not as if he was left without any options in order to allow a transaction to proceed.

[11] Finally, it should be noted that no person, either lending institutions or clients, have suffered any loss as a result of Mr Flitcroft's actions.

### ***Personal Circumstances***

[12] As a result of surrendering his practising certificate Mr Flitcroft has been unemployed for almost a year and has received little or no income over that period: his wife has supported them. He is a young man who has purchased a home and wishes to remain living and working in the area in which his offending took place and accepts that he has to "front up to his misconduct". He is still in the early stages of his career in the law, and wishes to resume it.

### ***Sentencing in Similar Cases***

[13] Both counsel referred us to authorities where this sort of offending had previously been considered by both Standards Committees and the Tribunal's predecessor Tribunal. These cases considered forgeries (or an electronic equivalent), in the absence of personal gain.

- (i) *ADLS Complaints Committee 1 x Hornabrook*.<sup>1</sup> In this case the Tribunal referred to the well-known authority of *Bolton v Law Society* [1994] 2 All ER 486, 491 which emphasises the high standard of integrity, trustworthiness and probity required of solicitors. Having done so, it suspended the practitioner for four months.
- (ii) *Auckland s 357 Standards Committee v T* (published to the Auckland Legal Profession only, in August 2009), the practitioner was censured on four charges and fined a total of \$5000 and costs of \$5800.
- (iii) An unidentified lawyer who had committed the electronic equivalent of forgery was in 2010 censured by the Standards Committee and ordered to pay a fine of \$1300 together with \$12,000 in costs.

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<sup>1</sup> NZLPDT 17 June 2004.

- (iv) On a further matter with an unnamed practitioner in Hawkes Bay the local Disciplinary Tribunal censured and imposed a fine of \$2000 and costs.

[14] For the Standards Committee Mr Collins submitted that the Tribunal should take a much more serious view of what is essentially the crime of forgery and that the penalties to which reference has been made were unduly lenient. The Committee sought the imposition of one year's suspension of Mr Flitcroft from practice from the date of hearing.

***Aggravating Features:***

- (a) The repeated nature of the offending - there were five instances and Mr Flitcroft conceded that there may have been between one and three further occasions when he forged the partner's signature.
- (b) Whilst it might have been inconvenient for Mr Flitcroft to have obtained another partner's signature it was by no means impossible and indeed he accepts that it was sloppiness that led to his actions.
- (c) The documents were submitted to commercial institutions, banks and the Companies Office, who rely on practitioners for a very high level of integrity, thus there has been harm to the reputation to the legal profession in general and to this firm in particular.
- (d) As an associate of the firm Mr Flitcroft had accepted a level of seniority and trust which was breached by him on these occasions.

***Mitigating Features:***

- (a) The absence of any element of gain or corrupt motive on Mr Flitcroft's part.
- (b) His immediate admission of his actions and co-operation with the investigation generally.

- (c) That he is a young lawyer who is entitled to a second chance having made mistakes.
- (d) The lack of any adverse outcome or consequences for either the clients or financial institutions concerned.

### ***Decision***

[15] The Tribunal considered that Mr Flitcroft had effectively, given his inability to gain employment in his profession, already suffered a period of voluntary suspension, but we considered that such serious conduct, involving as it did a breach of trust of his employer and the lowering of the reputation of the profession, would mandate a suspension of around 15 months. However we were prepared to take the 11 months since his loss of employment into account, and suspended him for four months from the date of the hearing.

### ***Suppression***

[16] At the hearing we suppressed the name of the firm and each of the partners who had been involved and were deponents in the proceedings, as well as of the clients and financial institutions involved. Further, we consider that the name of the practitioner in the second case quoted above ought to be suppressed since this has only been published to the Auckland profession.

[17] We did not consider that Mr Flitcroft's name ought to be suppressed and consider it important, in terms of the protection of the public and of the reputation of the profession as a whole, that his identity be known, albeit noting that he has taken responsibility for his actions and deserves a further chance as a practitioner.

### ***Costs***

[18] Costs are sought by the Standards Committee in the sum of \$24,117.50. In respect of these costs submissions are to be filed by the practitioner by 15 December.

[19] The hearing costs of the Tribunal are fixed at \$6,600. Pursuant to s.257 there will be an order that the New Zealand Law Society is to reimburse the Crown for the costs of the hearing in the sum of \$6,600.

[20] Submissions are sought from both parties by 15 December as to the contribution of the practitioner to those s.257 costs.

**DATED** at AUCKLAND this 20<sup>th</sup> day of December 2010

Judge D F Clarkson  
Chair