

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2016] NZLCDT 18

LCDT 011/16

BETWEEN

**AUCKLAND STANDARDS
COMMITTEE 1**

Applicant

AND

MARY FRANCES HACKSHAW

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Ms F Freeman

Mr C Lucas

Ms S Sage

Mr W Smith

HEARING at Specialist Courts and Tribunals Centre, Auckland

DATE 8 July 2016

DATE OF DECISION 8 July 2016

COUNSEL

Ms C Paterson for the Applicant

No appearance of the Respondent

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING
CHARGE AND PENALTY**

[1] The respondent former practitioner is charged with misconduct within the meaning of s 7(1)(a)(1) of the Lawyers and Conveyancers Act 2006 (ACT).

[2] The charge arises out of the respondent's administration of a legacy left by the late JFMcC where it is alleged that she misappropriated \$10,000.00 and accumulated funds held on trust for the benefit of a son of the deceased and or failed to account for those funds, and dealt with them contrary to the terms of the will of JFMcC.

[3] The respondent is charged in the alternative with negligence or incompetence and with a further alternative of unsatisfactory conduct.

[4] The respondent has not engaged with the Lawyers Complaints Service during its investigation. She has not filed a response to the charge. She is understood to be in living in Australia and has not responded to correspondence sent to her at the Australian addresses she had given.

[5] The hearing before the Tribunal has proceeded by way of formal proof. The Tribunal has been mindful of its duty to ensure a fair hearing in the absence of the respondent.¹

[6] The respondent was engaged to administer the estate of JFMcC in 2002. The will of the deceased included a provision that the sum of \$10,000.00 was to be held on trust and that the net annual income from that fund was to be paid to a named son. After the death of that son, the fund and any accrued interest was to be divided equally between the children of that named son.

¹ *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103.

[7] The respondent received the funds on 14 November 2002 which were held in an interest bearing account. She maintained a trust account ledger to record the administration of the funds. The respondent paid the accrued interest to the son each year from June 2004 to June 2009.

[8] Between March 2010 and August 2013 the respondent withdrew funds totalling \$12,001.89. The respondent closed her trust account with the ASB bank on 9 October 2013.

[9] The son of JFMcC has provided evidence primarily by reference to his personal bank statements that he did not receive any of the funds so withdrawn. He confirmed to the Committee that he had no knowledge of nor involvement with any of the transactions after the last payment which he received on 14 August 2009.

[10] The respondent has not provided an explanation for the withdrawals referred to in paragraph 8 and has not responded to enquiries made of her by the Lawyers Complaints Service or by counsel for the Committee since the charge was laid.

[11] The Tribunal accepts the submission of the Committee that the only available inference is that the respondent has deliberately misappropriated the sums for her own purposes.

[12] The Tribunal is satisfied that the respondent's deliberate conduct in misappropriating the funds held in trust meets the threshold for misconduct in that it would be regarded by lawyers of good standing to be "disgraceful or dishonourable". Accordingly the charge is proved.

PENALTY

[13] The solicitor's trust account has been long regarded as sacrosanct such that dealing with its funds for personal use is considered to be at the highest level of professional misconduct and culpability.²

² *Bolton v Law Society* [1994] 2 ALL ER 486, 490.

[14] Strike off is the only response to dishonesty involving the misuse of funds held on behalf of clients.³

[15] An order for strike off can only be made if the Tribunal comprised of five members unanimously agrees that the lawyer is no longer a fit and proper person to be a practitioner.⁴ The Tribunal has unanimously agreed that an order striking the respondent off the roll of Practitioners should be made and now does so.

[16] The applicant seeks an order for \$10,000.00 compensation payable to the estate of JFMcC equivalent to the amount of the legacy which has been misappropriated by the respondent. The Tribunal accepts that such an order is appropriate in the circumstances.

[17] There will also be an order that the respondent pay the costs of the Law Society and as well refund to the society the costs of the Tribunal pursuant to s 257.

Orders

1. Strike off pursuant to s 242(1)(c);
2. Compensation in the sum of \$10,000.00 pursuant to s 156(1)(d);
3. Costs of \$10,518.88 payable to the New Zealand Law Society;
4. Reimburse the New Zealand Law Society the Tribunal's costs of \$1,516.00.

DATED at AUCKLAND this 8th day of July 2016

BJ Kendall
Chairperson

³ *Auckland Standards Committee 5 v Kenneth Yee* [2015] NZLCDT 22.

⁴ Section 244, Lawyers and Conveyancers Act 2006.