NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2017] NZLCDT 40
LCDT 013/10

UNDER The Lawyers and Conveyancers Act 2006

BETWEEN **HAWKE'S BAY STANDARDS COMMITTEE**
Applicant

AND **RICHARD HENRY HILL**
Respondent

CHAIR
Judge D F Clarkson

MEMBERS
Mr C Lucas
Ms C Rowe
Ms S Sage
Mr W Smith

HEARING 13 December 2017

HELD AT Auckland

DATE OF DECISION 22 December 2017

COUNSEL
Mr P Collins for the Standards Committee
No Appearance for the Practitioner

DECISION OF TRIBUNAL

Introduction and Background

[1] This decision brings to a close the very lengthy proceedings relating to Richard Hill. They were initiated in 2010 when seven charges of misconduct were laid against Mr Hill under both the Law Practitioners Act 1982 ("LPA") and the Lawyers and Conveyancers Act 2006 ("LCA"). These charges, in turn, followed the intervention of the New Zealand Law Society to take over the management of the trust account of Mr Hill's firm, McKay Hill, after it was discovered that the trust account was overdrawn by in excess of $1 million.

[2] The progress of the disciplinary proceedings was suspended at an early stage because it appeared that Mr Hill (along with his former partner Mr McKay) was being investigated by the police and/or serious fraud unit, with a view to criminal charges being laid. The proceedings were formally stayed in November 2010. This stay was reviewed in late 2013, however by that stage the criminal proceedings had still not been heard. In the end it took six years for the criminal charge against Mr Hill to be determined, resulting in a finding of 'guilty' on a charge of criminal breach of trust. A further year passed before Mr Hill's appeal rights had been exercised, and his appeal against conviction and sentence was dismissed by the Court of Appeal.

[3] Upon his conviction, in September 2016 a fresh charge was laid under s 241(d) of the LCA. Namely "he having been convicted of an offence punishable by imprisonment and the conviction reflects on his fitness to practise or tends to bring his profession into disrepute." The conviction was that of the criminal breach of trust under s 229 of the Crimes Act 1961.

[4] Following the Court of Appeal decision, Mr Squire QC, on behalf of Mr Hill, filed a memorandum with the Tribunal acknowledging that this most recent charge had been made out. The memorandum signalled that Mr Hill wished to minimise his further exposure to costs and would not be appearing at any penalty hearing nor engaging counsel to appear on his behalf.

[5] The memorandum confirmed that Mr Hill had been sentenced to eight months' home detention and 100 hours community work for his offending. Further submissions were made concerning the limited period that had been found for the offending and noting that at the trial the finding of "conversion" (as opposed to theft) was relevant in assessing Mr Hill's culpability. Mr Hill in that memorandum undertook not to seek a practising certificate in future and expressed the view that there was "little utility" in the Standards Committee pursuing the 2010 disciplinary charges.

[6] These issues were considered by the Standards Committee who, on 8 August 2017, filed a memorandum with the Tribunal seeking to withdraw the 2010 charges, and to pursue the single 2016 charge relating to the criminal conviction.

[7] The reasons for withdrawal should properly be recorded, given the nature and seriousness of the original charges. The reasons, which were accepted by the Tribunal are that:

1. A subsequent and very serious charge had been filed and admitted.

2. It was realistic to expect that that charge alone could expect to support a penalty of strike-off given that it was "*concerned with a crime of dishonesty in the operation of a trust account*".[1]

3. "*The breadth and complexity of a hearing involving the 2010 charges, even on an undefended basis, is no longer justified by any disciplinary objective. The scale and cost for the Standards Committee, and the Tribunal itself, would be out of proportion to any public or professional interest that would be served by doing so*."[2]

Submissions concerning Striking Off

On that basis the 2010 charges were withdrawn with the leave of the Tribunal at the hearing on 13 December 2017, subject to consideration of costs.

Submissions for the Standards Committee

[8] Counsel submitted that even if we were not satisfied that the charge had been admitted (which we were, having regard to the memorandum from senior counsel) that

[1] Submissions of P Collins, counsel for the Hawke's Bay Standards Committee, at 1.2(c).
[2] See note 1 at 1.2(d).

the elements of s 241(d) had been made out. We accept that submission. The conviction was punishable by imprisonment. And as a conviction for dishonesty, involving the conversion of client funds, it quite clearly reflects adversely on the practitioner's fitness to practice.

[9] We move to consider the submission that we should strike-off Mr Hill, which is the most serious sanction that this Tribunal can impose.

[10] We were referred to the decisions of *Iosefa*,[3] *Watt*,[4] *Murray*[5] and *Kelly*.[6] The first two matters had been considered by His Honour Judge Crosbie, at Mr Hill's sentencing. His Honour found that Mr Hill's conduct was worse than that of either Mr Watt or Mr Iosefa. His Honour said[7]:

> "[35] … Your offending involved greater fluctuating amounts. It was systematic, it was systemic, and it was sustained for over a considerable period of time with some effort taken to avoid detention."

[11] Mr Collins submitted that Mr Hill's offending satisfied the standard required for strike-off,[8] namely that he is not a fit and proper person to be a practitioner.

[12] Mr Collins referred us to the comment of the District Court Judge in finding against the practitioner "in forceful terms". His evidence was rejected as self-serving and revisionist and His Honour found him[9]:

> "[193] To neither be a credible nor reliable witness on the issue of knowledge and operation of the trust account and [I] reject his evidence on the issue."

[13] Judge Crosbie went on to detail the many portions of the evidence on which he based his findings stating at [194][10]:

> "(c) Mr Hill's evidence was given in a manner that appeared designed to cast him in the most favourable light, that is, an honest but negligent practitioner, but not a dishonest one. Apart from conceding that he would have operated differently with the benefit of hindsight, Mr Hill made few other concessions when they were due …"

And later at:

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[3] *Canterbury District Law Society Complaints Committee No. 2 v Iosefa* [2009] NZLCDT 5.
[4] *R v Watt* CA131/06, 17 October 2016.
[5] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88.
[6] *Otago Standards Committee v Kelly* [2016] NZLCDT 20.
[7] *R v RH Hill* [2016] NZDC 13968.
[8] Section 224 LCA.
[9] *R v RH Hill* [2016] NZDC 11841.
[10] See above n 9.

> "(d) I find it both implausible and inconceivable that an experienced practitioner, let alone a firm's TAP, would be unaware of, or not make an inquiry about, the FIRMS.1 balance with transactions of this volume. The FIRMS.1 balance directly impacts the balance of the total trust account at bank. This hands-off approach by Mr Hill contributes to a negative assessment of his credibility."

[14] These findings on credibility were upheld by the Court of Appeal.

Mitigating Circumstances

[15] As submitted by Mr Collins, while Mr Hill's defence and protestations of innocence in the criminal proceedings were his absolute right, they carry consequences in the professional disciplinary setting, by removing a possible mitigating feature.

[16] In *Daniels*[11] the Court held:

> "To maintain innocence, which carries with it denial and absence of remorse, relates to absence of potential mitigation but not as a matter of aggravation. But there may be behaviour which detracts from positive character features advanced in mitigation."

And

> "[32] A tribunal, when determining ultimate fitness to remain in practise, whether limited by suspension, or by striking off, is entitled to review the entire conduct of the practitioner and transgressions the subject of the disciplinary proceedings, and the general behaviour of the practitioner. It cannot regard poor behaviour as justifying more severe penalties, but it is the obvious absence of a mitigating factor and relevant to balancing matters of character."

And further at [36]:

> "We do not consider the Tribunal erred in the manner in which it approached its task. It was justified in expressing disquiet about the lack of remorse of the appellant, which remains apparent from his affidavit and statements. He appears to maintain regret only simply because his only error was putting himself in the position where (impliedly) false allegations could be made against him."

[17] The position is exactly the same with Mr Hill. Mr Collins submitted:

> "A consequence for a lawyer, having denied culpability in the criminal jurisdiction by pleading ignorance and blaming others, is that the lawyer cannot claim insight and remorse in any meaningful way when that lawyer comes to be judged by his or her profession. In this case, the persistent denials are particularly telling of an experienced solicitor, where he pleaded ignorance of the trust account

[11] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] [3] NZLR 850 at [31]-[36].

> imbalance over a 21 month period and unthinkingly signed trust account compliance certificates which were put in front of him, all while he was the firm's Trust Account Partner."[12]

[18] It was the contention of the Standards Committee that a key part of the consideration for strike-off related to insight and (we apprehend) any prospect of safe rehabilitation:

> "…the practitioner cannot say that he has insight into his failings in the events that were the subject of the criminal charge, and that he no longer poses a risk to clients or the public."[13]

We accept that submission.

[19] In an email to the Tribunal, addressing penalty, despite the findings against him in the criminal justice system, Mr Hill continued to proclaim his innocence and the unfairness meted out to him. He suggested that although strike-off was likely that he did not "… *necessarily accept that is a fair or just outcome for this case that has been a stress on me and my family for 7 and a half years*". While in one breath talking about his respect and regard for the law, Mr Hill went on to say "*I find the profession to be unreasonably hard on its own even to the point of vindictiveness no matter what the law may be. I have a deep feeling of injustice and unfairness from this case* …"

[20] However, more relevantly, Mr Hill pointed out that in relation to the breaches over the period in question relating to his criminal conviction "… *there were no victims suffering any loss of their trust money*".

[21] Mr Hill also referred to his personal circumstances, which are mitigating features in our view. He is the full-time carer for his wife who has Alzheimer's. He also refers to his depleted financial situation, since he is unable to work. We note his house, which is owned by a trust, has a value of $910,000. Mr Hill declared other assets as at August 2017 of about $180,000 but he states that these are being diminished by living costs.

Aggravating Features

[22] Firstly, the length of time over which the offending occurred, namely 21 months. Secondly, we note what the sentencing judge found, and Mr Collins has further

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[12] See above n 1 at 5.2.
[13] See above n 1 at 5.3.

emphasised to us, that the breach of trust involved a degree of premeditation and deliberate avoidance of detection, by the filing of false trust account certificates.

[23] Further, we accept the submission that the offending was motivated by personal financial benefit because it enabled the firm to continue running and to pay partner drawings.

Decision

[24] We found unanimously, as a panel of five members, that the only proper penalty to reflect the seriousness of Mr Hill's offending was to strike him from the roll. Nothing less would respond to the total breach of client trust and professional responsibility which brings this into the most serious category of professional offending. We considered Mr Hill no longer to be a fit and proper person to be a lawyer.

[25] We consider that nothing less than strike-off would adequately maintain public confidence in the ability of the profession, and its disciplinary institutions, to protect clients from dishonest dealing with their trust funds in future.

[26] The Tribunal made an oral order striking Mr Hill off the Roll, at the hearing on 13 December 2017.

Costs

[27] Mr Collins submitted that costs ought to be awarded on both the 2010 charges, which have been withdrawn and the 2016 charge, and, recognising the practitioner's financial situation, a "substantial contribution towards both categories of costs" was sought.

[28] The costs incurred in respect of the 2010 charges have been identified as $54,275.00 and for the 2016 charges $17,050.00 (a total of $71,325.00).

[29] We consider that the practitioner ought to contribute the sum of $40,000.00 towards the 2010 charges and the full $17,050.00 in relation to the 2016 charge. In addition to that we consider that he ought to reimburse the New Zealand Law Society for the s 257 costs, which are certified at $8,016.00.

Orders

1. Pursuant to s 242(1)(c) Richard Henry Hill is to be struck from the Roll of Barristers and Solicitors.

2. Mr Hill is to pay towards the New Zealand Law Society costs the sum of $57,050.00.

3. The New Zealand Law Society is to pay the Tribunal costs in the sum of $8,016.00 pursuant to s 257.

4. Mr Hill is to reimburse the New Zealand Law Society for the s 257 costs in full.

DATED at AUCKLAND this 22nd day of December 2017

Judge D F Clarkson
Chair