

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2019] NZLCDT 9

LCDT 017/18

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**NATIONAL STANDARDS COMMITTEE
OF THE NEW ZEALAND LAW SOCIETY**
Applicant

AND

GANG CHEN (AKA RICHARD CHEN)
Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS

Ms N McMahon

Ms C Rowe

Ms S Stuart

Mr I Williams

DATE OF HEARING 3 April 2019

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 17 May 2019

COUNSEL

Mr R J A Marchant for the applicant

Mr S Wimsett for the respondent

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

[1] The applicant has charged Mr Chen that he has been convicted of an offence punishable by imprisonment and that the conviction reflects on his fitness to practise or tends to bring his profession into disrepute. (s 241(d) of the Lawyers and Conveyancers Act 2006).

[2] Mr Chen has accepted the charge.

Background

[3] Mr Chen was convicted in the High Court at Auckland after a Judge-alone trial before Katz J of nine charges of obtaining credit by deception and a representative charge of corruptly paying secret commissions. The offending related to a mortgage fraud scheme in which Mr Chen acted as solicitor for the vendor, the purchaser and the lending banks.

[4] Katz J described the offending as being conducted on a massive scale, highly sophisticated, involving 110 transactions and approximately \$54 million in funds obtained from the lending banks by deception. Mr Chen was not convicted in respect of all the transactions but was involved in what the judge described as a significant number of transactions which was calculated fraudulent offending committed over a lengthy period of time and on a massive scale.

[5] Katz J went on to say that Mr Chen's offending was a gross breach of trust in his capacity as a solicitor which required denunciation in the strongest terms along with a strongly deterrent sentence.

[6] Mr Chen received a sentence of six years imprisonment with a minimum period of imprisonment of three years imprisonment.

Penalty

[7] Mr Marchant for the applicant submitted that an order striking Mr Chen's name off the roll of barristers and solicitors should be made pursuant to s 242(1)(c) of the Lawyers and Conveyancers Act 2006 (the Act).

[8] He referred to the serious, sustained and premeditated conduct of Mr Chen.

[9] He drew our attention to the concern expressed by Katz J about Mr Chen's risk of reoffending where she noted the following factors:

- (a) his limited insight into his offending;
- (b) his lack of remorse;
- (c) his attempt to justify his offending and blaming of others;
- (d) his lack of understanding that his conduct affected others and yet stating that he knew his actions were illegal; and
- (e) his reported display of a high sense of entitlement.¹

[10] Mr Marchant further submitted that Mr Chen should be struck off in order to protect the reputation of the profession and in order to maintain public confidence in the integrity of the profession.

[11] Mr Marchant referred us to the well-known decisions of *Dorbu v New Zealand Law Society*², *Hart v Auckland Standards Committee 1 of the New Zealand Law Society*³, *Bristol and West Building Society v Mothew*⁴, and *Bolton v Law Society*⁵ to which we have had regard in the context of the applications to strike-off.

¹ Sentencing Notes of Katz J at [81].

² *Dorbu v New Zealand Law Society* [2012] NZHC 564.

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

⁴ *Bristol and West Building Society v Mothew* [1997] 2 WLR 436 (CA).

⁵ *Bolton v Law Society* [1994] 1 WLR 512 (CA).

[12] Mr Wimsett advised the Tribunal that he had instructions from Mr Chen not to actively oppose the application for strike-off or any aspect of the case. He said that Mr Chen told him that he “knows the inevitable”.

[13] 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.⁶ After considering the facts and submissions of the applicant along with the non-opposition of Mr Chen, the Tribunal accepted that an order for strike-off was appropriate.

[14] At the conclusion of the hearing, the Tribunal made the following orders:

1. Strike-off the roll of barristers and solicitors pursuant to s 242(1)(c) of the Act.
2. Mr Chen to pay to the New Zealand Law Society its costs of \$8,000.00, pursuant to s 249(3) of the Act.
3. The Tribunal costs payable by the New Zealand Law Society are certified in the sum of \$849.00, pursuant to s 257 of the Act.
4. Mr Chen to refund to the New Zealand Law Society the Tribunal’s costs in full, in the sum of \$849.00, pursuant to s 249(3) of the Act.

[15] This decision records the reasons for the orders that the Tribunal has made.

DATED at AUCKLAND this 17th day of May 2019

BJ Kendall
Chairperson

⁶ Section 244, Lawyers and Conveyancers Act 2006.