

NON-PUBLICATION ORDERS IN PLACE FOR NAME OF THE COMPLAINANT AND OTHER CLIENTS MENTIONED IN THE CHARGES AS WELL AS ANY CLIENTS WHOSE NAME MAY EMERGE FROM FURTHER INVESTIGATIONS. THESE ORDERS MADE PURSUANT TO S 240 LAWYERS AND CONVEYANCERS ACT 2006.

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2024] NZLCDT 11  
LCDT 007/24

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE 5**

Applicant

**AND**

**AARON RODNEY NICHOLLS**

Respondent

**CHAIR**

Ms D Clarkson

**MEMBERS OF TRIBUNAL**

Ms N McMahon

Prof D Scott

**DATE OF HEARING** 17 April 2024

**HELD AT** Specialist Courts and Tribunals Centre Auckland

**DATE OF DECISION** 26 April 2024

**COUNSEL**

Mr S McMullan for the Standards Committee

Mr A Nicholls the Respondent Practitioner in person

**REASONS OF THE TRIBUNAL FOR THE MAKING OF AN ORDER  
FOR INTERIM SUSPENSION**

***What this is about***

[1] The Standards Committee brought charges against Mr Nicholls in relation to alleged discrepancies in his trust account. Because these discrepancies indicated the loss of client funds, or at least their unexplained absence, the Standards Committee sought an order suspending Mr Nicholls from practice pending determination of the charges.

[2] Mr Nicholls opposed the application and sought an adjournment, which was declined. Although the proceedings and the months leading up to the charges have clearly been a stressful, perhaps debilitating, time for Mr Nicholls, there was insufficient medical evidence to indicate that he was not able to proceed with this most urgent of hearings.

[3] Our initial view that the [redacted] difficulties claimed by Mr Nicholls did not outweigh the protection of the public and of specific clients, as relied on by the Standards Committee, was reinforced by the fact that Mr Nicholls conducted himself well during the hearing and managed to answer most of the questions put to him by the Tribunal. We did not consider that he was disadvantaged at this stage by the lack of independent representation, although we encouraged him to pursue such. Mr Nicholls was able to draw the attention of the Tribunal to relevant authorities and to argue his case firmly.

***Test for interim suspension***

[4] The jurisdiction of the Tribunal resides in s 245 of the Lawyers and Conveyancers Act 2006 (the Act):

**245 Interim suspension from practice**

- (1) If a charge against a practitioner has been made or referred to the Disciplinary Tribunal, it may,—

- (a) on the application of the party by whom the charge was laid or of its own motion; and
- (b) without any prior notice to the practitioner,—

make an order that the practitioner be suspended from practice as a barrister or as a solicitor or as both, or as a conveyancing practitioner, until the charge has been heard and disposed of.

- (2) The Disciplinary Tribunal may make an order under subsection (1) only if it is satisfied that it is necessary or desirable to do so having regard to—
  - (a) the interests of the public; or
  - (b) the financial interests of any person.
- (3) On the making of an order under subsection (1), or at any time while such an order is in force, the Disciplinary Tribunal may direct that, after the expiration of the period of 14 days beginning with the day on which the order is made, a notice stating the date and effect of the order is to be published in such publications as are specified by the Disciplinary Tribunal.
- (4) The practitioner in respect of whom an interim suspension order is made under this section may, at any time, apply to the Disciplinary Tribunal for the revocation of—
  - (a) the order; or
  - (b) any direction given under subsection (3); or
  - (c) both.
- (5) An application under subsection (4) must be heard within 7 days after the day on which it is received by the Disciplinary Tribunal, and the Disciplinary Tribunal may grant or refuse the application as it thinks fit.
- (6) If an order under subsection (1) is made or revoked by the Disciplinary Tribunal, the Disciplinary Tribunal must forthwith give written notice of the making or revocation of the order to the Registrar-General of Land.
- (7) For the purposes of exercising the Disciplinary Tribunal's powers under this section, the quorum at any sitting of the Disciplinary Tribunal or a division of the Disciplinary Tribunal is, despite section 235(1), the 3-member quorum specified in section 235(5).
- (8) Nothing in this section or in section 236 requires the Disciplinary Tribunal to give a practitioner an opportunity to appear or be heard before the Disciplinary Tribunal makes an order under subsection (1) or gives a direction under subsection (3).

[5] The test is, for obvious reasons, a stringent one. The right to practise and thereby generate an income, ought not to be lightly removed from any lawyer.

[6] The protective purpose of the Act<sup>1</sup> is reinforced in s 245. An order can only be made if we are satisfied that "...it is necessary or desirable to do so having regard to—the interests of the public; or the financial interests of any person...".

[7] The background to this application is set out in the evidence filed to support the charges laid. Much of this is contained in an affidavit from Ms P Chand who was one of the investigators appointed by the Standards Committee to carry out an investigation following a complaint from Mr and Ms V. The investigation is, as yet, incomplete.

[8] To summarise the complaint, in May 2023 Mr and Ms V, following the sale of a property, had deposited significant funds in Mr Nicholls' trust account. The bulk of those funds (\$498,897.25) was to be placed on interest-bearing deposit (IBD) and from time-to-time, Mr and Ms V intended to authorise Mr Nicholls to make payments on their behalf to a builder who they had contracted to build a house for them.

[9] As soon as mid-June 2023, there appears to have been a discrepancy between the amount that Mr Nicholls advised his clients was held in the trust account (\$497,339.12) and the actual amount according to the bank records (\$413,714.12).

[10] In October 2023, Ms V authorised \$170,820 to be paid to the builders. This amount was paid by Mr Nicholls but it would appear that the source of the funds was not the IBD account but rather from other client funds held in Mr Nicholls' trust account. Between December and late January, at which time Mr and Ms V engaged a new lawyer, the clients made several requests for further payments. Having regard to the authorised payments, the balance of funds held for Mr and Ms V as at 26 January 2024 should have been \$328,077.50 before any interest, taxes or fees were accounted for. As at 31 January, the bank records recorded that the IBD account had a balance of \$4,831.88.

[11] The Standards Committee allege that between May 2023 and 17 February 2024, Mr Nicholls made nine unauthorised withdrawals from the account of Mr and Ms V, totalling \$496,700.

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<sup>1</sup> Set out in s 3.

[12] On 6 March 2024, the Standards Committee intervened in the firm's trust account and transferred the balance to a trust account in the name of the Law Society. The total balance in the firm's trust account by that time was \$121,940.75.

[13] Having ignored several approaches by his clients, Mr Nicholls on 14 February 2024, sent their new solicitor a client trust statement. It appears that this document was false and allegedly was created by Mr Nicholls. The statement conflicts in significant and material ways to the statement provided to the investigators by the bank. The details of the differences are set out in the evidence of the investigator. In particular, instead of the expected balance in the region of \$328,000, the bank records showed a remaining deposit for the clients of \$4,812.62.

[14] The practitioner met with the two investigators on 27 March but was unable to answer questions about the movement of funds satisfactorily. He was not able to locate the paper file for the complainant clients. The investigators report that he appeared disorganised and was not functioning well. Mr Nicholls apparently told them towards the end of the meeting that he was suffering from a panic attack.

[15] In his response, filed with the Tribunal following service of the application for interim suspension, Mr Nicholls does little to allay the fears which arise concerning the client funds, as narrated above. Rather he said he was too unwell to answer the allegations fully and had had insufficient time, particularly given the state of his [redacted] (although he acknowledged at the hearing that he was progressing well in regard to his health). Mr Nicholls indicated that he no longer had control of his trust account and was prepared to undertake not to open a further trust account. At the hearing, he indicated a willingness to write to all trading banks in New Zealand so that he would be unable to open a trust account.

[16] That does not allay all the concerns the Standards Committee and the Tribunal hold for the safety of client funds. Nor does it give confidence that a reasonable explanation will be provided in the near future. Given the allegation about the misleading bank statement provided to the complainants, we cannot have confidence that any existing or future clients would be sufficiently protected should Mr Nicholls be allowed to continue in practice.

[17] Thus, it was very clear to the Tribunal that the high standard required for the granting of an order of suspension had been reached; in that suspension is in the specific financial interests of Mr and Ms V and of other clients whose funds may have been similarly mishandled, and in particular, the client from whom the payment of \$170,820 was paid in October. It is also desirable in the public interest and the maintenance of confidence of the public in the integrity of the profession that Mr Nicholls' disciplinary body be seen as responding firmly and decisively in circumstances such as these.

[18] At the hearing it was made clear to Mr Nicholls that at any time, he could apply for the interim suspension order to be discharged, and that such application must be heard within seven days. We would anticipate that such an application might follow the provision of a satisfactory explanation for the movement of funds in the unorthodox manner as has been described, and the alleged difference between the client trust statement provided by Mr Nicholls to the clients and the bank statement obtained from the bank.

[19] The interim order was made suspending Mr Nicholls from practice on 17 April 2024. This order remains in force pending further order or determination and disposition of the charges.

***Directions***

1. Mr Nicholls is to file his formal response and affidavit in reply by 15 May 2024.
2. The Standards Committee may file any response by 29 May 2024.
3. A setting down conference is to be allocated after 30 May 2024.

**DATED** at AUCKLAND this 26<sup>th</sup> day of April 2024

DF Clarkson  
Chairperson