

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2010] LCDT 11

LCDT 009/09

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**HAWKES BAY STANDARDS
COMMITTEE**

Applicant

AND

GERALD MCKAY

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms A de Ridder

Mr B Stanaway

HEARING at AUCKLAND on 22 June 2010

APPEARANCES

Mr P Collins on behalf of Hawkes Bay Standards Committee

Mr J Upton QC for the respondent, by telephone

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

[1] The Tribunal has met and considered the submissions of Counsel and the evidence filed in support of the application for Interim Suspension. This application is opposed by the respondent and in its stead Mr Upton on behalf of his client has offered a number of undertakings to attempt to provide the sort of protection which is required at this stage of the disposition of the matter.

The allegations in this case are very serious, there's a very large amount of money involved in the Trust account deficit and we are concerned that the respondent Mr McKay has been attending at the practice. We are concerned about the uncertain status of the Attorney, the Schedule 1 Attorney, if that continues we consider that the winding down of Mr McKay's practice may best be carried out by others. In summary we are satisfied that the reasonably stringent test in s 245(2) is met and that it is necessary or desirable that the order be made in the interests of the public and, in this case, also in the financial interests of the firm's clients.

[2] We have considered Mr Upton's adjournment application and the proposed undertakings in the interim. We reject that application for the following reasons:

- (a) Interim Suspension Applications can be made *ex parte*, or without notice, so the legislation clearly contemplates that there will be situations where protection is required so urgently that the practitioner will not have a full opportunity to respond.
- (b) What we have seen by way of Mr McKay's initial response gives us cause for concern.
- (c) We consider that preservation of the practitioner's position and dignity must be secondary to protection of the public and the profession in terms of the

objects of the Act and thus we consider that the Interim Suspension Order must be made today.

DATED at AUCKLAND this day of 2010

Judge D F Clarkson
Chairperson