

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2010] LCDT 12

LCDT 031/09

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE**

Applicant

**AND**

**DAVID FLEWITT**

Respondent

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Ms J Gray

Ms A de Ridder

Ms C Rowe

Mr B Stanaway

**HEARING** at AUCKLAND on 22 June 2010

**APPEARANCES**

Mr M Treleaven on behalf of Auckland Standards Committee

Mr C Pidgeon for the respondent

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

[1] Mr Flewitt faces one charge today brought by the Auckland Standards Committee to which he has at the outset pleaded guilty and this charge of professional misconduct arises from convictions for 17 dishonesty offences and one assault charge. Mr Flewitt pleaded guilty early and acknowledged his offending to both the Police and the Law Society immediately. The total amount involved in the dishonesty offences was not great - it was a little over \$5,000 - but the duration of the offending extended from 2007 until 2009 and took a number of different forms. Mr Flewitt's offending ranged from petrol theft and shoplifting through to the use of the credit cards of associates, Trade Me accounts and at its most serious defrauding the Legal Services Agency and as I've indicated there was also an assault on a Police Officer.

[2] Mr Flewitt reports that he had largely given up work as a practitioner when his offending began and that he was not dishonest towards his clients. He did not attempt to renew his Practising Certificate in 2008. He has openly acknowledged that his offending was all directed towards funding his drug habit. By 2006 he says he had become thoroughly addicted to and a daily user of methamphetamine. He deposes that he used his income and then progressively all his property, including his home, to feed his addiction. He then depleted relationships and became totally reckless to consequences as his dishonesty began. Shortly before he hit rock bottom, which he describes as being his arrest in December of 2008, he had sought help from Community Alcohol and Drug Addiction Services and was beginning to address his addiction.

[3] Some six or so relapses occurred during 2009 but he says that he has now been clean of drugs for over 200 days. Mr Pigeon on behalf of the practitioner refers to the tragedy of this promising lawyer's addiction and its consequences; he has lost

everything - marriage, home and career. Mr Flewitt has a well established support network now to maintain his recovery, as reported by Dr McCormack who has provided the Tribunal with a psychiatric report, but as Dr McCormack points out, Mr Flewitt's recovery is still in its early phases.

[4] The Standards Committee seeks strike off as a penalty for the charge. It points to a number of reasons why this should be so:

- (i) That the practitioner's personal circumstances must be secondary to the need to maintain standards in the profession and in support of that the *Iosefa*<sup>1</sup> decision of this Tribunal is provided.
- (ii) That Mr Flewitt's offending involved repeated acts of premeditated fraud over a two year period. By comparison we are referred to the *Hesketh*<sup>2</sup> decision where less serious conduct and convictions attracted strike off.
- (iii) That the offending brings discredit to the profession and is inconsistent with the level of integrity and probity referred to in such decisions as *Bolton*<sup>3</sup>, and that Mr Flewitt's recovery, although highly commendable is recent.

[5] Mr Pidgeon urges a lengthy suspension with conditions as an alternative sanction. He submits that a sanction of strike off holds insufficient hope to this and other practitioners who might otherwise be prepared to come forward. Mr Pidgeon has provided case law and academic writing from the United Kingdom and the USA where there are sophisticated support mechanisms for practitioners with addictions, which at this stage are either lacking or in their infancy in this country. Mr Flewitt also says that he wishes to assist other lawyers who find themselves addicted to illegal substances. He goes on to say that if suspended he is prepared to undergo drug testing and other conditions imposed upon him before he is reinstated to the practice of law and he is realistic that that would need to be a lengthy suspension.

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<sup>1</sup> *Canterbury District Law Society Complaints (No. 2) Committee v Iosefa* [2009] NZLCDT 5

<sup>2</sup> *Hesketh*, New Zealand Law Practitioners Disciplinary Tribunal, 25 May 1999

<sup>3</sup> *Bolton v Law Society* [1994] 2 All ER 486 (CA)

[6] In terms of jurisdiction there were arguments as to the definition of “lawyer”, which in the definition section is restricted to someone holding a Practising Certificate as a Barrister and Solicitor.

[7] It is submitted by Mr Treleaven on behalf of the Society that this must be more widely interpreted when applying s 242, otherwise the entire purpose of the legislation would be frustrated and it would fail to protect the public because could simply be circumvented by a practitioner surrendering a Practising Certificate and thereby avoiding any sanctions as a consequence of professional misconduct. Mr Pidgeon agrees with Mr Treleaven’s submissions, as does the Tribunal. We consider that certainly the definition must be widened in respect of practitioners and lawyers in terms of the subsections of s 242(1).

[8] We consider that in particular, while not wishing to minimise the other offending, the frauds on the Legal Services Agency must be given considerable weight. They were carried out with careful premeditation; they involved a breach of trust by a practitioner in a system which relies on honesty and integrity. While Mr Flewitt may say that he did not steal from his clients, he still acted dishonestly in his role as a lawyer, not just as an individual citizen. Such offending must be responded to firmly for the purposes of deterrence and maintenance of professional standards. It must be a strong response to restore public confidence in the profession.

[9] Given those considerations we consider that any sanction short of strike off would be inadequate. It is the unanimous view of the five members of the Tribunal that Mr Flewitt at this point is not a fit and proper person to remain on the roll. Having said that we commend Mr Flewitt for his open and co-operative approach and the huge effort involved in becoming drug free. Many other practitioners who have been struck off have been able to redeem themselves and successfully achieve reinstatement. If Mr Flewitt maintains his progress and drug free lifestyle there is no reason why in the future he could not also apply to be reassessed as a fit and proper person to hold a Practising Certificate and to practice the law again. We accept that he has a passion for the law, however there are other pathways within the law where he can pursue this passion in the meantime.

**COSTS**

[10] In terms of costs the Law Society seeks an order for the costs of the Society pursuant to s 249 of \$1,424. We note that Mr Flewitt is Legally Aided but make an order that reflects that were it not for the Legal Aid grant he would be liable to pay that Costs Order. We are obliged to make an order against the Society under s 257, the quantum of that order will be advised to the parties in due course and there will also be an order pursuant to s 249 that the practitioner Mr Flewitt reimburse the Society for the s 257 award, although we accept that his current circumstances might make that somewhat difficult in the short term.

**DATED** at AUCKLAND this 22<sup>nd</sup> day of June 2010

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Judge D F Clarkson  
Chairperson