

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 16
LCDT 016/11

IN THE MATTER

of the Lawyers and
Conveyancers Act 2006

BETWEEN

**THE STANDARDS
COMMITTEE 1 OF THE
CANTERBURY-WESTLAND
BRANCH OF THE NEW
ZEALAND LAW SOCIETY**
Applicant

AND

JANICE ELLEN WILLIAMS
Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms T Kennedy

Dr I McAndrew

Mr P Radich

Mr S Walker

HEARING at Christchurch on 18 June 2012

APPEARANCES

Mr G Nation for the Standards Committee

Mr J Eaton for the Practitioner

DECISION ON PENALTY

Introduction

[1] Ms Williams has admitted five charges of misconduct in her professional capacity. The charges are annexed as appendix 1 to this decision. The misconduct complained of is that on five separate occasions between 28 June 2002 and 26 February 2008 she was responsible for the making of an invoice from her firm to either of her family trust or her property owning company. These invoices were provided to the X Bank leaving that bank to believe such fees had been incurred by the two entities and resulting in payments being made to the entities, as to a refund for legal fees, totalling \$2304.79.

[2] Ms Williams was admitted as a barrister and solicitor in 1989 and thus was an experienced practitioner at the time this offending occurred. At the time she was a partner in a firm, however on detection of the offending, immediately resigned her partnership and voluntarily surrendered her practising certificate.

[3] As a result of the payments received by her Ms Williams was charged in the criminal jurisdiction of the District Court and initially found guilty in respect of five charges of false accounting laid under s.260 of the Crimes Act 1961.

[4] That conviction was overturned on appeal to the High Court. However the findings, in particular as to Ms Williams's credibility, were not disturbed.

[5] Following negotiations between counsel the original charges were amended so as to remove the wording "*... so as to deceive X Bank into believing such fees had been incurred ...*" to replace with the words "*... leading the X Bank into believing such fees had been incurred*". Following the amendment of each charge to the new wording the practitioner admitted the charges. She has at all times denied a dishonest intent in the matter.

[6] In its submissions on penalty the Standards Committee sought a Censure, Fine and Award of Costs against Ms Williams. While the Tribunal does not consider itself necessarily bound by the level of the penalty sought, we do consider ourselves bound by nature of the amendment to the charges, where the element of intentionally misleading the bank has been removed.

Procedure

[7] Shortly after these matters were uncovered in 2008 Ms Williams swore an affidavit of her own volition, having had legal advice, but without the benefit of any of her files for reference. In that affidavit she acknowledges that she made “... *serious errors which may draw me into the realms of professional misconduct ...*”. She referred to her investment company which had been involved in some of the property transactions as her “*alter-ego*”. She acknowledged that the invoices raised were not put through the firm’s books, and that there were GST and tax implications arising out of that. She went on to say:

“I should also say that I did not think through the implications to my firm of creating an invoice to send to the X Bank. I, as did many of my clients, always regarded the subsidy as a “bonus” or “present”. I did not put it through the firm books, not to deceive the firm, but to avoid the problem of having to write off the accounts. When I first did this (and I cannot remember for sure) I may have regarded it as a resourceful way of dealing with the issue. At the time I did not regard it as dishonest as I saw no loss to the bank (as they were keen to pay such amounts) and I saw no loss to my firm, which did not expect to be paid, except for the disbursements which I am sure were paid by my company or me. Having created the system on one occasion my staff merely repeated it on others ...”

[8] And later:

“I now realise what I did was wrong.”

[9] This acknowledgment seemed to be entirely at odds with the then vigorous defence of the criminal proceedings right through to appeal. That defence appears to have been conducted on the basis that Ms Williams did not have direct knowledge, or knowledge that she could recall, of the actual transactions and invoices, but that as a professional she took responsibility for her employee’s actions.

[10] Because of the apparent conflict between these two approaches, at the outset of the penalty hearing the Tribunal asked to hear from Ms Williams on oath, to attempt to understand her true position. This occurred, and it should be noted it had been entirely without warning to Ms Williams or her counsel, and thus her testimony to us was completely unprepared. That had not been a deliberate tactic on the Tribunal's part, but arose as a result of a preliminary discussion of the submissions which had been received prior to the hearing. It seemed to the Tribunal that before the penalty could be determined, these factual matters really required resolution.

[11] In her evidence before us Ms Williams indicated that she had thought the funds going into the bank accounts controlled by her simply related to disbursements, although acknowledged that in some cases the amounts were simply too high for this to be realistic. She maintained that she simply had not turned her mind to whether it was fees or disbursements which were being reimbursed. She said that the only invoice that she had arranged was the one where her handwritten note on a compliment slip was found and that the others were done by staff members. Under cross-examination by Mr Nation for the Standards Committee Ms Williams was unable to explain the gradual increase in the figures claimed. She said she did not know at the time, but acknowledged that it was her responsibility to have known. She accepted that the implications of the email trail between herself and the bank officer suggested knowledge on her part "on the face of it". She was really unable to explain the different approach in her affidavit of June 2008 other than that she had been completely working from memory and was feeling incredibly guilty at the time.

Submissions for the practitioner

[12] It was to this last matter that Mr Eaton drew our attention concerning the affidavit. He said that at the time that was sworn Ms Williams was riddled with guilt, had made a self-referral to the Law Society and was in very poor emotional shape. He submitted that it was quite a different matter when she was charged with a crime, at which point she was entitled to take a much closer examination of her actual involvement. He conceded that a defensive stance had been taken throughout the protracted criminal proceedings, but that Ms Williams had always been prepared to take responsibility in a professional sense.

[13] Mr Eaton referred us to the very positive references from persons of high repute including three Judges and Mrs Williams' current employers. There were repeated references to her ability as a lawyer, her commitment to her work and her clients, and her general integrity.

[14] There are other matters of relevance also referred to us by Ms Williams' counsel concerning serious health difficulties that she has personally encountered over the past few years and the health problems of other close family members for whom she has taken responsibility.

[15] Finally we note that the practitioner, in surrendering her practising certificate and retiring from a partnership has taken a significant drop in income, to less than a third of her previous income. We accept that that in itself is a substantial penalty.

Submissions for the Society

[16] As indicated the Society has not sought suspension or strike off. The reasons suspension is not sought is that the maximum suspension which is available (sentencing being under the Law Practitioners Act 1982, pursuant to the transitional provisions of the Lawyers and Conveyancers Act 2008 ("LCA") is three years. Because of the protracted nature of the criminal proceedings and also because of some health difficulties, this matter has taken some four years to come to hearing.

[17] Thus, the Law Society quite properly recognises, as does the Tribunal, that more than the maximum period of suspension has effectively been served informally already. What Mr Nation also points to however is that the charges do not disclose a mere isolated lapse of judgment. This behaviour was repeated over a six-year period, many of which predate the 2007 health problems, which are referred to by some of the referees as being relevant.

[18] Furthermore, despite the amended charges, Mr Nation considered that the Tribunal was able to place some weight on the findings of credibility of Moran DCJ in the District Court. We accept this is the case. Had the matter been defended we would have been obliged to make our own assessment of credibility fresh. Because the matter was not defended and because the findings of credibility still stand, albeit

under a different legal framework, we consider that they do indeed still carry some weight, particularly in relation to the “disconnect” between the two approaches taken by Ms Williams, referred to earlier under the heading of ***Procedure***.

Penalty

[19] We indicated orally, at the conclusion of the hearing, that we proposed to follow the recommendations as to penalty sought by the Law Society and by the Practitioner.

[20] Despite the Tribunal’s reservations about Ms Williams’ degree of knowledge and our concern that she has still not accepted full personal responsibility, as opposed to professional responsibility as a supervisor, we consider that any further punishment would be disproportionate. The fact is that untrue invoices relating to a lawyer’s own affairs were presented and a benefit derived thereby. We have considered the authorities, including recent decisions of the Tribunal in similar circumstances. We also note what we consider to be a very pertinent comment of Ms Williams current employer, namely that she has learned a salutary lesson as a result of what she has gone through over the past four years. We consider this to be a safeguard against future offending. We also weigh in the balance her very difficult personal circumstances, her current financial circumstances as a moderate income earner and the primary parent for her daughter.

Orders

[21] Pursuant to s.352 LCA and s.112 LPA 1982 Ms Williams is:

- [a] To be censured.
- [b] Fined the sum of \$4000.
- [c] Ordered to pay costs of \$11,000 plus GST in respect of the New Zealand Law Society costs.
- [d] All identifying details of the complainants are suppressed under s.240 LCA.

Original decision of 29 June 2012 recalled and reissued in terms of Minute of 8 October 2012

Judge D F Clarkson
Chair

ANNEXURE 1**AMENDED CHARGES LAID BY LAWYERS STANDARDS COMMITTEE (1) OF
CANTERBURY-WESTLAND BRANCH OF THE NEW ZEALAND LAW SOCIETY
AGAINST FORMER PRACTITIONER****CHARGE ONE**

The Standards Committee (1) of the Canterbury-Westland Branch of the New Zealand Law Society charges **JANICE ELLEN WILLIAMS** of Timaru, Law Clerk with misconduct in her professional capacity in that on or about 28 June 2002 she was responsible for the making of an invoice for professional fees for \$938.25 from her employer, ABC, to herself and for providing it to the X Bank leading the X Bank into believing such fees had been incurred by the PF Family Trust of which Janice Ellen Williams was a trustee and making a payment of \$250.00 to the account of PF Family Trust in respect of that invoice which payment was received by the PF Family Trust.

The particulars of the charge are that:

1. Janice Ellen Williams arranged for the legal firm of which she was then an employee, ABC, to act for a trust settled by her and of which she was a trustee called the PF Family Trust in arranging mortgage finance from X Bank to complete the purchase of a property at 191 Otipua Road, Timaru.
2. The X Bank had a practice of subsidising or contributing towards the legal fees incurred by its customers when mortgage funds were borrowed from it.
3. On 28 June 2002 Janice Ellen Williams prepared or caused to be prepared an invoice purporting to be from ABC to herself for \$938.25 which she or someone on her behalf sent to the X Bank. She did not process the invoice through the accounting records of ABC so no liability ever arose for the PF Family Trust to pay the said sum of \$938.25 to ABC.

4. On 28 June 2002 X Bank paid into the X bank account of the PF Family Trust the sum of \$250.00 as a contribution to the legal fees of \$938.25 thought to have been incurred by the said trust.
5. Janice Ellen Williams knew the invoice for \$938.25 was false in that ABC were not in fact billing the PF Family Trust for the costs set out in that invoice.

CHARGE TWO

The Standards Committee (1) of the Canterbury-Westland Branch of the New Zealand Law Society charges **JANICE ELLEN WILLIAMS** of Timaru, Law Clerk with misconduct in her professional capacity in that on or about 9 October 2002 she was responsible for the making of an invoice for disbursement for \$254.79 from her employer, ABC, to herself and for providing it to the X Bank leading the X Bank into believing such disbursements had been incurred by the PF Family Trust and making a payment of \$254.79 to the account of the PF Family Trust in respect of that invoice which payment was received by the said PF Family Trust.

The particulars of the charge are that:

1. Janice Ellen Williams arranged for the legal firm of which she was then an employee, ABC, to act for a trust she controlled called the PF Family Trust in arranging mortgage finance from X Bank to complete the purchase of a property at 3A Park Lane, Timaru.
2. The X Bank had a practice of subsidising or contributing towards the legal fees incurred by its customers when mortgage funds were borrowed from it.
3. On 9 October 2010 (sic) Janice Ellen Williams prepared or caused to be prepared an invoice purporting to be from ABC to herself for \$254.79 which she or someone on her behalf sent to the X Bank. She did not process the invoice through the accounting records of ABC so no liability ever arose for the PF Family Trust to pay the said sum of \$254.79 to ABC.

4. On 14 October 2002 X Bank paid into the X bank account of the PF Family Trust the sum of \$254.79 as payment for the disbursements of \$254.79 thought to have been incurred by the said PF Family Trust.
5. Janice Ellen Williams knew the invoice for \$254.79 was false in that ABC were not in fact billing the PF Family Trust for the disbursements totalling this amount as set out in that invoice.

CHARGE THREE

The Standards Committee (1) of the Canterbury-Westland Branch of the New Zealand Law Society charges **JANICE ELLEN WILLIAMS** of Timaru, Law Clerk with misconduct in her professional capacity in that on or about 10 December 2003 she was responsible for the making of an invoice for professional fees for \$1,138.75 from her firm, ABC, to X Bank and for providing it to the X Bank leading the X Bank into believing such fees had been incurred by PF Investments Limited and making a payment of \$500.00 to the account of the PF Investments Limited in respect of that invoice which payment was received by the said PF Investments Limited.

The particulars of the charge are that:

1. Janice Ellen Williams arranged for the legal firm of which she was then a partner, ABC, to act for a company she controlled called PF Investments Limited in arranging mortgage finance from X Bank to complete the purchase of a property at 329 Brockley Road, Timaru.
2. The X Bank had a practice of subsidising or contributing towards the legal fees incurred by its customers when mortgage funds were borrowed from it.
3. On 10 December 2003 Janice Ellen Williams prepared or caused to be prepared an invoice purporting to be from ABC to X Bank for \$1,138.75 which she or someone on her behalf sent to the X Bank. She did not process the invoice through the accounting records of ABC so no liability ever arose for PF Investments Limited to pay the said sum of \$1,138.75 to ABC.

4. On 11 December 2003 X Bank paid into the X bank account of the PF Investments Limited the sum of \$500 as a contribution to the legal fees of \$1,138.75 thought to have been incurred by the said company.
5. Janice Ellen Williams knew the invoice for \$1,138.75 was false in that ABC were not in fact billing PF Investments Limited for the costs set out in that invoice.

CHARGE FOUR

The Standards Committee (1) of the Canterbury-Westland Branch of the New Zealand Law Society charges **JANICE ELLEN WILLIAMS** of Timaru, Law Clerk with misconduct in her professional capacity in that on or about 9 November 2006 she was responsible for the making of an invoice for professional fees for \$894.75 from her firm, ABC, to PF Investments Limited and for providing it to the X Bank leading the X Bank into believing such fees had been incurred by the PF Investments Limited and making a payment of \$700.00 to the account of the PF Investments Limited in respect of that invoice which payment was received by the said PF Investments Limited.

The particulars of the charge are that:

1. Janice Ellen Williams arranged for the legal firm of which she was then a partner, ABC, to act for a company she controlled called PF Investments Limited in arranging mortgage finance from X Bank to complete the purchase of a property at Unit 4, 77 Gloucester Street, Christchurch.
2. The X Bank had a practice of subsidising or contributing towards the legal fees incurred by its customers when mortgage funds were borrowed from it.
3. On 9 November 2006 Janice Ellen Williams prepared or caused to be prepared an invoice purporting to be from ABC to PF Investments Limited for \$894.75 which she or someone on her behalf sent to the X Bank. She did not process the invoice through the accounting records of ABC so no liability ever arose for PF Investments Limited to pay the said sum of \$894.75 to ABC.

4. On 10 November 2006 X Bank paid into the X bank account of the PF Investments Limited the sum of \$700.00 as a contribution to the legal fees of \$894.75 thought to have been incurred by the said company.
5. Janice Ellen Williams knew the invoice for \$894.75 was false in that ABC were not in fact billing PF Investments Limited for the costs set out in that invoice.

CHARGE FIVE

The Standards Committee (1) of the Canterbury-Westland Branch of the New Zealand Law Society charges **JANICE ELLEN WILLIAMS** of Timaru, Law Clerk with misconduct in her professional capacity in that on or about 26 February 2008 she was responsible for the making of an invoice for professional fees for \$676.43 from her firm, ABC, to PF Investments Limited and for providing it to the X Bank leading the X Bank into believing such fees had been incurred by PF Investments Limited and making a payment of \$600.00 to the account of the PF Investments Limited in respect of that invoice which payment was received by the said PF Investments Limited.

The particulars of the charge are that:

1. Janice Ellen Williams arranged for the legal firm of which she was then a partner, ABC, to act for a company she controlled called PF Investments Limited in arranging mortgage finance from X Bank to complete the purchase of a property at 33C Cranmer Square, Christchurch.
2. The X Bank had a practice of subsidising or contributing towards the legal fees incurred by its customers when mortgage funds were borrowed from it.
3. On 26 February 2008 Janice Ellen Williams prepared or caused to be prepared an invoice purporting to be from ABC to PF Investments Limited for \$676.43 which she or someone on her behalf sent to the X Bank. She did not process the invoice through the accounting records of ABC so no liability ever arose for PF Investments Limited to pay the said sum of \$676.43 to ABC.

4. On 26 February 2008 X Bank paid into the X bank account of the PF Investments Limited the sum of \$600.00 as a contribution to the legal fees of \$676.43 thought to have been incurred by the said company.
5. Janice Ellen Williams knew the invoice for \$676.43 was false in that ABC were not in fact billing PF Investments Limited for the costs set out in that invoice.