

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2010] NZLCDT 17

LCDT 001/10 and 010/09

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEE**

Applicant

**AND**

**RICHARD MARTIN**

Respondent

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Mr W Chapman

Ms S Cole

Ms S Gill

Mr W Smith

**HEARING** at AUCKLAND on 19 July 2010

**APPEARANCES**

Mr R Earwaker and Mr M Treleaven on behalf of applicant

Mr D Jones QC (withdrew before hearing began), respondent did not appear

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

***Introduction***

[1] This morning when the Tribunal convened we were met with an adjournment application from Mr Jones QC who appeared for Mr Martin, the respondent practitioner in this matter.

[2] Mr Martin had some time ago admitted certain of the charges before us and denied others and took the view in making the adjournment application that he wished to pursue certain other matters in his defence. No other real reason was advanced for the adjournment. The matter had been agreed to proceed by way of formal proof today at a pre-trial conference approximately three months ago.

[3] Mr Martin himself did not appear with Mr Jones and no real reason was given why the matter ought not to proceed today as scheduled. Accordingly the Tribunal declined to grant the adjournment, then gave Mr Jones the opportunity of arranging for his client to attend, at which stage Mr Jones sought and was given leave to withdraw as counsel for Mr Martin.

[4] Mr Martin's non appearance today continues a very longstanding pattern of avoidance and non compliance with directions and with the complaints and disciplinary process. He has failed on most occasions to respond to complaints forwarded to him by the Law Society. He has failed to file anything but the barest response to the charges. Despite being directed over three months ago to file an affidavit and a declaration as to his financial means he has not done so and thus we are left without details of his position in order to make our determinations and have had to do so in the absence of that.

[5] In failing to appear he has treated the Tribunal with contempt and disrespect and as indicated, in advancing his adjournment application, Mr Jones was not even put in a position where he could advance any proper reason why his client was absent.

[6] Moving on to consider the substance of the matter, there are two sets of charges, 12 laid in September 2008 and a further nine laid in January 2010. Mr Martin has admitted charges one to eight of the September charges and denied charges nine to 12. Further he has admitted charge one of the January 2010 charges and denied charges two to nine. Thus the only charges admitted were those directed related to or arising out of the criminal charges. These charges are namely nine charges of using a document for pecuniary advantage, and were the subject of a conviction of Mr Martin in September 2009. Mr Martin was sentenced in September 2009 to five month's home detention as a result.

[7] His admissions to the above charges are therefore not seen by the Tribunal as forming any real concession.

### ***Denied Charges***

[8] The remaining charges have been the subject of a formal proof hearing this morning whereby Mr Earwaker for the Society and Mr Treleaven have taken the Tribunal through the affidavits sworn by Mr Laubscher the former Professional Standards Director of the Auckland branch of the Society, and in addition we have been referred to affidavits from three of the complainants who have also sought compensation and a further affidavit from Mr T the Chief Operating Officer of the law firm who were also a complainant in this matter.

[9] Dealing with each denied charge in turn.

### **Charge 9**

[10] In charge nine of the September 2008 charges it was alleged that on a date unknown or dates prior to 3 August 2007 that he dishonestly and without claim of right took files from the offices of his former employer legal firm with an intent to permanently deprive that firm of their interest in the property. This charge is supported by the affidavit as I have indicated of Mr T who identifies the particular files by name and is able to point to how the firm is able to point to a proper record of the opening of each file and deposes to there being, after a thorough search, no ability to locate the physical files any longer.

[11] This evidence is uncontested. There has been no response by Mr Martin to these allegations and on the balance of probabilities we find that Mr Martin took them and thus this charge is proved.

### **Charge 10**

[12] Charge 10 is that between August 2005 and February 2006 Mr Martin failed to comply with Rule 1.01 of the Rules of Professional Conduct by abusing a relationship of trust and confidence between practitioner and client by misrepresenting that he had carried out instructions when he had not. This misrepresentation was carried out to a representative of the client who can be known as Ms K.

[13] Again the affidavit of Mr Laubscher supports the allegations in this matter and provides proof of the particulars set out in particulars 10.01, 10.02, 10.03 and 10.04 within the charges which are read into the record:

- 10.1 He falsely advised D S that he had submitted residence application for Ms K to the New Zealand Immigration Service;

- 10.2 He falsely advised D S that the residence application for Ms K had been approved in principle so as to obtain from her the sum of \$20,000 for fees;
- 10.3 He falsely advised DS that the residence application had subsequently been declined and that he had sent an appeal to the Minister of Immigration to intervene in the case;
- 10.4 He falsely advised DS that he was awaiting correspondence from the Minister of Immigration.

[14] Having heard from the Law Society in respect of this complaint Mr Martin initially indicated that he would respond but has not done so at any stage. Again this evidence is uncontested and we find this charge proved.

### **Charge 12**

[15] That charge links through to charge 12 which is that of a breach of Rule 6.01 of the Rules of Professional Conduct by misleading a fellow practitioner who later acted for the client Ms K and further by indicating that a file would be forwarded for Ms K to the solicitor Mr M and failing to do so. Again Mr Laubscher's evidence provides the basis for the establishment of this charge that Mr M the solicitor was indeed misled and that Mr Martin failed to forward the client's file to him as he had promised. We find that charge also proved.

### **Charge 11**

[16] Moving back to charge 11. This involved another set of clients and requires a slightly longer explanation. It also alleges a failure to comply with Rule 1.01 by abusing the relationship of trust between Mr and Mrs M (and their representatives in New Zealand) and solicitor. It was represented that a long term business visa application had been lodged and was being processed when in fact it had not.

[17] The representatives of Mr and Mrs M had, following the initial meeting with Mr Martin, on a number of occasions sought reassurance that the application had been lodged and was being processed. In the course of both the inquiry and subsequent complaint, and in responses to the subsequent complaint both directly to his employers and through his then counsel, Mr Pigeon, Mr Martin we are satisfied, lied about the lodging of his application. He is also alleged to have had a conflict of interest in respect of these clients and have been guilty of a breach of confidence of lawyer, client privilege. The latter is not pleaded in the particulars and we do not propose to make a finding on that. But what is clear is that when confronted in October 2006 with the fact that Immigration Service did not appear to have received an application which he had represented had been lodged in July 2006, Mr Martin said that he had instructed administration staff to send it at that date and that he was of the honest belief that it had been sent and he then resubmitted it on 3 October.

[18] While that was initially accepted to have been the case a later search following Mr Martin's departure from the firm then employing him, uncovered through its computer records evidence of the fact that the letter which had the date July 2006 purportedly enclosing the application, was identical with the letter which had emanated on 3 October. The records of the computer system were able to establish that both letters had been created on the same date namely 3 October but one had been backdated in an effort by Mr Martin to cover up his negligence and his lies. We find this charge proved.

### **2010 Charges**

[19] Moving now to consider the more recent charges laid by the Standards Committee Number One of the New Zealand Law Society.

#### **Charge 1**

[20] Charge one is that of having been convicted of nine charges already referred to and is the one which is admitted by Mr Martin.

#### **Charges 2 and 3**

[21] Charge two is that between October 2008 and 24 November 2008 Mr Martin continued to apply for and obtain a practicing certificate after having agreed to surrender his practicing certificate.

[22] The sequence of events which covers this charge and the next, charge three, are that on 25 September 2008 Mr Martin was served with the earlier set of charges with which we have just dealt. He agreed through his counsel to surrender his practicing certificate; that occurred about 6 October. He further agreed not to apply to renew that practicing certificate until the disciplinary charges were determined.

[23] By application dated 25 September, coincidentally perhaps, the date that he had been served with the charges, Mr Martin either applied or had applied for a practicing certificate from the New Zealand Society. That application required a disclosure about any matter which might affect his continuing eligibility and no such disclosure was made.

[24] Subsequently Mr Martin was issued a practicing certificate by the New Zealand Society which did not seem to be aware of the surrendering of his certificate to the Auckland District Law Society and from the time he received that in November 2008 until February 2009 after this was discovered by the Society and a demand made in January for him to return it, he retained this practicing certificate and indeed as further charges indicate, relied upon it and represented that he was able to practice in relation to that certificate.

[25] Even if, as Mr Martin indicated at an early stage through his counsel when written to about the New Zealand certificate, he had already applied for the further practicing certificate before being served with disciplinary proceedings, his failure to surrender it forthwith, in compliance with his counsel's undertaking of 6 October clearly breaches his obligations to the Society and we find charges two and three proved.

#### **Charge 4**

[26] Charge four alleges misleading or deceptive conduct by Mr Martin in breach of Rule 11.1 of the Conduct and Client Care Rules by deceiving Immigration New Zealand or misleading them to believe that he was entitled to practice as a lawyer after he had surrendered his practicing certificate.

[27] The evidence which is provided through the affidavit again of Mr Laubscher demonstrates that between 2 February 2009 and 6 May 2009, after both practicing certificates had now been surrendered Mr Martin corresponded with Immigration New Zealand on behalf of Richard Martin Immigration Limited describing himself as solicitor. Furthermore he forwarded by email attachment on 4 May, a copy of the New Zealand Law Society practicing certificate (that had been surrendered) to Immigration New Zealand in order to satisfy their enquiries. Thus we find ample evidence to sustain charge four.

#### **Charge 5**

[28] Charge five is in relation to the same Rule 11.1 and alleges misleading or deceptive conduct in relation to the public by indicating that he was entitled to practice as a lawyer after he had surrendered his certificate. This relates to information that was still on the website for Richard Martin Immigration Limited, which promoted Mr Martin as *"an experienced solicitor who provides up to date advice on all policies and regulations relating to the entry into New Zealand of anyone who must have a visa or permit"*. He further promoted himself as *"an immigration law specialist who will be happy to advise you on the appropriate visa or permit and file your application and complete all immigration legal formalities on your behalf"*. Once again we find this charge to have been proved to the required standard on the balance of probabilities.

#### **Charges 6, 7, 8 and 9**

[29] The remaining four charges, charges six, seven, eight and nine all relate to breaches of Rule 5.1 of the Conduct and Client Care Rules by abusing the relationship of confidence and trust between lawyer and client. Charges six and seven relate to Ms L and her company whereby Mr Martin failed to follow instructions. He failed to file the work applications which were sought and this resulted in Ms L and her company incurring significant legal costs and significant costs in terms of the searching for employees in China and the costs relating to that in order to supply

supporting documents which were no longer able to be used because they had expired, because Mr Martin had not performed the services which he had undertaken. When Immigration New Zealand were approached they found that no applications had in fact been lodged as promised.

[30] Mr Martin has sought to challenge certain aspects of this complainant's evidence. However the response from Ms L casts considerable doubt on his responses and furthermore his offer to pay her \$3,000 to withdraw her claim significantly diminishes the strength if any, of his claims against her. We find these charges proved.

[31] The next charge, charge eight relates to again a breach of Rule 5.1 in the course of representing Mr S and processing an expression of interest and a work application for that client. In the course of acting for this client Mr Martin failed to advise Mr S that Immigration New Zealand had declined the expression of interest submitted and failed to respond to requests by Mr S for information and in relation to a work permit application that he had been instructed to file. He falsely advised both Mr S and his agent that the expression of interest and work permit applications were being processed and ignored emails and numerous calls that were made to him by the client and the client's representative. As a result some months later the client was served with a removal order by Immigration New Zealand. This unsurprisingly was not only hugely disruptive and distressing for the client, but also led to considerable financial loss on his part. No explanation has been provided by Mr Martin as to his defaults in relation to this client and this client similarly seeks compensation for his losses. This evidence clearly proves this charge also.

[32] The final charge is of a similar vein and is lodged by a complaint by Mr and Mrs S. Mr Martin is further charged as to a breach of Rule 5.1 by failing to represent and misrepresenting the position in terms of their application for residency. Mr and Mrs S also had been attempting to make contact with Mr Martin, unsuccessfully. Mr Martin indicated that they were not to lodge any permits directly because he was dealing with their case through the Associate Minister of Immigration and when they sought evidence of this action they did not receive any response. Again in relation to this charge no information or response has been received from Mr Martin and therefore the evidence is unchallenged. These complainants have not sought compensation. The charge, 9, is found to be proved.

### ***Further Comments on Mr Martin***

[33] The Tribunal wishes to make comment on Mr Martin's behaviour insofar as it relates to these various complainants. Other than the law firm, we regard the complainants as particularly vulnerable because the instructions in question related to immigration matters. Thus, the clients were either not in New Zealand and were reliant on Mr Martin from afar; or were in a new country with a limited grasp of English or New Zealand law and again almost totally dependent on the lawyer representing them to preserve their legal status and financial position. To let down

such vulnerable clients is particularly egregious in our view. There is also the further aggravating feature that Mr Martin offered one of the complainants the sum of \$3,000 to withdraw the complaint.

[34] We also wish to comment on the level of deception and dishonesty revealed by these 21 charges and Mr Martin's character.

[35] The first matter relates to the admitted charges under the s.228(b) of the Crimes Act and we refer to the sentencing notes of Her Honour Judge Sinclair when dealing with Mr Martin on 21 September 2009.

[36] Her Honour makes reference under the heading of 'gravity of the offending' to the following:

- (a) Firstly the amount stolen from his employers was not insignificant. It was \$17,850.
- (b) Secondly this involved a breach of trust both in respect of the employers and to the clients to whom Mr Martin had an obligation to properly account for their funds.
- (c) And thirdly the offending occurred over a 16 month period and on nine separate occasions with clear premeditation.
- (d) We note that Her Honour was not persuaded by a late expression of remorse which she saw as self serving and we note also that the guilty pleas came very late in the piece.

[37] The second matter to which we wish to draw attention is that in the course of that sentencing process Mr Martin's counsel submitted that he was a person of good character. That led to an affidavit being filed in regard to Mr Martin's character which in turn led to a Disputed Facts hearing. At that hearing it emerged that Mr Martin had been dismissed from employment in a previous firm in London after that firm, which was an immigration consultancy, discovered discrepancies in its receipts of almost \$20,000. Mr Martin repaid funds of \$19,900 to the firm and was dismissed for serious misconduct.

[38] Thirdly we note that the charges relating to the misuse of his surrendered practicing certificates and his status, that is charges two to five of the 2010 charges, involve yet further deception in the course of disciplinary proceedings and while awaiting trial on dishonesty charges.

[39] Fourthly in relation to charge 11 of the September 2008 , both in the course of covering up his failure to carry out instructions and in answering to the complaint, Mr Martin acted deceptively by having a letter to Immigration New Zealand backdated and by attempting to blame administration staff.



[40] Mr Martin has, in the view of the Tribunal, established himself as entirely untrustworthy and unreliable. We find unanimously that he is not a fit and proper person to remain on the roll of barristers and solicitors.

[41] The orders that we now make are as follows:

- (a) Striking Mr Martin's name from the roll of Barristers and Solicitors of the High Court and although charges under both sets of proceedings justify these we propose to make the order under the 2006 Act namely s.242(1)(c).
- (b) We make an order pursuant to s.112(2)(f) of the Law Practitioners Act 1982 that Mr Martin pay compensation to Mr and Mrs Mackie of the maximum allowable under that Act of \$5,000.
- (c) We make an order pursuant to s.242(1)(a) of the Lawyers and Conveyancers Act 2006 and s.156(1)(d) of that Act that Mr Martin pay compensation to the following:
  - (i) Ms L for herself and Angel Fashions Limited \$8,849.38.
  - (ii) Mrs S the sum of \$9,074.
- (d) Pursuant to s.249 costs are awarded against Mr Martin in favour of the New Zealand Law Society in the sum of \$18,229.50.
- (e) We make an order pursuant to s.257 that the New Zealand Law Society pay costs to the Tribunal to a maximum of two thirds of the costs of Tribunal being those costs attributable to the charges dealt with under the 2006 Act. Those costs are to be quantified in an addendum to this decision.
- (f) There will be a further order pursuant to s.249 against Mr Martin that he pay to the New Zealand Law Society a sum in full reimbursement of the s.257 order.
- (g) There will be suppression order that the names of all complainants, the law firm employer and other professional representing the complainants be suppressed and referred to by initials only.

**DATED** at AUCKLAND this 19th day of July 2010

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Judge D F Clarkson  
Chair