

**IN THE NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No: [2012] NZLCDT 21

LCDT 020/11 and LCDT 007/12

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**AND**

**IN THE MATTER**

of **STUART FRANCIS POLLARD**,  
Lawyer of Auckland

**TRIBUNAL**

**Chair**

Mr D J Mackenzie

**Members**

Mr W Chapman

Mr M Gough

Mr A Lamont

Mr C Rickett

**COUNSEL**

Mr P Davey, for Auckland Standards Committee 2

Mr K McDonald, for Practitioner

**HEARING** at Auckland on 3 August 2012

**RECORD OF AND REASONS FOR DETERMINATIONS OF THE TRIBUNAL  
MADE ON 3 AUGUST 2012**

***Record of determinations made***

[1] Mr Pollard faced 16 charges of misconduct. He pleaded guilty to all charges. The charges involved elements of dishonesty, debiting fees to which he was not entitled and deliberately misleading a bank regarding professional indemnity insurance.

[2] The matters are fully set out in the charges which Mr Pollard has admitted and in the Summary of Facts filed by the Standards Committee. Mr Pollard has had previous disciplinary matters on which he has been found guilty, involving an improper transfer of an interest in a property, in 1996, and, in 2005, relating to the overdrawing of his trust account.

[3] Considering all the matters before it, the Tribunal reached the unanimous view that Mr Pollard was not a fit and proper person to be a practitioner and that he must be removed from legal practice. Accordingly the Tribunal ordered that Mr Pollard's name be struck off the roll of barristers and solicitors.

[4] The Tribunal's costs were formally certified at \$3,700 under s 257 Lawyers and Conveyancers Act 2006.

[5] As well as the s 257 costs of \$3,700, costs of \$15,600 were incurred by the New Zealand Law Society, a total cost of \$19,300. These costs were sought by the Standards Committee. The Tribunal declined to order any costs against Mr Pollard.

[6] The Tribunal in making the determinations noted above recorded that it would provide further reasons in due course, and these are now set out.

***Striking off***

[7] The misconduct Mr Pollard has admitted involved deducting amounts totalling \$39,500 from an Estate for which he acted, with no proper justification for the deduction. He showed the debit as legal fees, but no legal services he had provided to the Estate justified the fee he debited, and he did not properly issue an invoice.

[8] In respect of a Trust for which he acted, he deducted \$1,971.54 as legal fees for which there was no justification. He did not properly issue an invoice for these fees.

[9] The Standards Committee submitted that Mr Pollard's conduct could only be categorised as dishonest. The Tribunal accepts that submission and notes that there has been a considerable breach of trust by Mr Pollard. He has used his position as sole executor and trustee of an estate to effectively help himself to money in the estate by taking it under the description of legal fees, even though he was well aware no such fees had been incurred by the estate.

[10] His failure to properly issue invoices to the estate appears indicative of a desire to take advantage of his ability to deduct estate funds without any accountability or question by estate beneficiaries, because they would not be aware of what he had done. He has done something similar with the trust money he took.

[11] He also falsely asserted to a bank that he held some required professional indemnity insurance, when in fact he held no such insurance. Of concern is that this was a course of conduct that continued after Mr Pollard had the matter drawn to his attention by a Law Society inspector.

[12] The misleading advice to the bank concerned is more than simple oversight, and goes to the heart of the trust which banking institutions must have in legal practitioners. Mr Pollard's false representations are damaging to the reputation and trust the profession requires so that it may function effectively.

[13] Mr Pollard, as a result of taking funds to which he did not have an entitlement and falsely asserting he had professional indemnity insurance required by a bank, has been dishonest. He has damaged the reputation of the profession. Striking off is the appropriate regulatory response in such circumstances.<sup>1</sup>

[14] The misconduct admitted by Mr Pollard is serious. It involves dishonesty and reflects poorly on the legal profession. We accept Mr Pollard has been unwell, but that does not affect our view that as a consequence of his conduct he has shown that he is not a fit and proper person to practise and that he should be struck off the roll of barristers and solicitors. His conduct was unacceptable, and quite apart from not being entitled to the money he took, his failure to properly invoice indicates some planning to avoid having to account to anyone involved with the trust and estate. The false assertions to the bank occurred on a number of occasions and are compounded by being repeated after an earlier warning. There is no realistic alternative to striking Mr Pollard's name from the roll of barristers and solicitors, something his own counsel reluctantly accepted in his submissions and on instructions from Mr Pollard.

### **Costs**

[15] The Standards Committee sought full reimbursement of its costs and those of the Law Society certified under s 257 Lawyers and Conveyancers Act 2006. Those costs totalled \$19,300 as noted above.

[16] The Tribunal's approach to costs of Standards Committees is that they be reasonable in quantum and that the person ordered to pay the costs must have a reasonable ability to do so.

[17] The normal approach for a Standards Committee is to retain counsel at a rate something less than counsel may normally charge. There is recognition of a contribution to the good of the profession in such an approach. Counsel for the Standards Committee confirmed he was acting at a discounted rate. The Tribunal

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<sup>1</sup> Bolton v Law Society [1994] 2 All ER 486, B v Canterbury Standards Committee No. 1 of the Lawyers Complaints Service of the New Zealand Law Society [2012] NZHC 1274

was satisfied also that the time engaged was reasonable. Accordingly quantum was not an issue for the Tribunal.

[18] Ability to pay is an issue in this case. The Tribunal is mindful of Mr Pollard's financial position. It is also mindful of *Mathias*<sup>2</sup> which was provided by Counsel for the Standards Committee.

[19] The Tribunal spent some time considering what we consider to be quite a vexed issue in this particular case. On the one hand the Tribunal acknowledges that guilty practitioners should pay the costs they cause the profession to incur, but regard must be had to ability to pay.<sup>3</sup> Mr Pollard is bankrupt. He has no present ability to pay and he is unlikely to have any ability to pay, at least in the foreseeable future. He is going to lose what little income he has from his existing employment because of its termination arising from the operation of s 7(2)(b) Lawyers and Conveyancers Act 2006.

[20] Mr Pollard has no assets, and apparently lives on a friend's boat, having lost his home as a result of the break-up of his marriage and his financial position, which is poor. He has had, and still suffers from, mental health issues. He has suffered from alcoholism from which he is attempting to recover. It is clear to the Tribunal that Mr Pollard, who is in his early sixties, will find it difficult to obtain work and consequently his ability to obtain any income is adversely affected.

[21] Mr Pollard has a difficult recovery path in front of him, overcoming his alcoholism and his mental health issues, all at a time when he has no home, no assets, and is going to lose the job he has as a legal assistant given to him in kindness by his legal counsel who wanted to try to help Mr Pollard in his situation. We think there are particular circumstances here, which differentiate him from the situation in *Mathias*,<sup>4</sup> where there would be no value in ordering any costs to be paid by Mr Pollard. He has no ability to pay anything at this time and that is likely to

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<sup>2</sup> Auckland District Law Society v Jonathan Bruce Mathias [2010] NZLCDT 10

<sup>3</sup> See *Kaye v Auckland District Law Society* [1998] 1 NZLR 151 at 157 and *Ellis v Auckland District Law Society* [1998] 1 NZLR 750

<sup>4</sup> *Supra* fn2

remain the case for a long period, if not permanently given his state and age. If Mr Pollard is to have any chance of rehabilitation over time, an order for payment of what, in his situation, amount to relatively substantial costs hanging over him will not assist.

[22] Mr Pollard has had a significant fall from grace. While he cannot continue as a practitioner the Tribunal hopes that he will be able to recover in due course, but does not see any value in ordering costs against him which he has no reasonable prospect of paying now or in the future given his particular circumstances. Such an order would be punitive and may well adversely affect his personal rehabilitation.

### ***Orders Made***

[23] The Tribunal ordered, at the conclusion of the hearing on 3 August 2012, that the name of STUART FRANCIS POLLARD be struck off the roll of barristers and solicitors.

[24] No order was made for costs for the reasons given.

**DATED** at AUCKLAND this 16th day of August 2012

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D J Mackenzie  
Chair