

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

Decision No: [2012] NZLCDT 22

LCDT 006/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

AND

IN THE MATTER

of **PETER JAMES McCLINTOCK**,
of Whangaparoa

TRIBUNAL

Chair

Judge D F Clarkson

Members

Mr W Chapman

Mr M Gough

Mr A Lamont

Mr C Rickett

COUNSEL

Ms C Meehan, for Auckland Standards Committee 3

Mr P McClintock, Respondent

HEARING at Auckland on 2 August 2012

DECISION

[1] Today's hearing is brought in respect of charges brought against Peter James McClintock a former practice manager in the firm of McElroys in Auckland. Mr McClintock was last year convicted of a number of serious charges in the Criminal Court resulting from him defrauding that firm of a sum which was stated to be in sentencing \$374,000. Mr McClintock was a trusted employee of the firm for 14 years.

[2] The charge before the Tribunal, which has been amended, is one in which an employee if he had been a Legal Practitioner was guilty of misconduct, such as would have led to a striking off of the roll of barristers and solicitors.

[3] Mr McClintock has accepted that charge and that charge refers to an amount of \$367,396.82 so we are bound by the sum particularised in that charge.

[4] While not wishing to criticise the firm itself, which has clearly suffered considerably as a result of Mr McClintock's actions, the situation provides a salutary lesson to other firms to ensure careful checks and balances are in place and proper internal controls exist.

[5] Mr McClintock has from the outset acknowledged that he would accept the charge brought against him and would consent to an order under s 242(1)(h) that no practitioner or incorporated firm employ him in connection with the practitioner's or incorporated firms practice so long as the order remains in force. By consent we make an order in those terms.

[6] The real issue in contention today has been that of costs. Under s 249 the Standards Committee seek an order in the sum of \$3,976.00 being the costs of the investigation and bringing this proceeding before the Tribunal.

[7] It is accepted by Mr McClintock that it was necessary for a formal order to be made preventing his re-employment although he had indicated from the outset he would not seek such employment but Mr McClintock challenges the quantum and indeed the process of framing charges generally which he refers to as "litigious".

[8] We accept Ms Meechan's submission that the Society has a statutory obligation to properly frame charges appropriate to this Jurisdiction which of course is different in its purposes from the Criminal Jurisdiction. So this was not merely a 'cutting and pasting' exercise from the Police complaint.

[9] We find the quantum of costs sought from the society reasonable.

[10] The other significant issue is Mr McClintock's ability to pay. He has filed a declaration confirming that he has no assets. He is not a beneficiary or a trustee of any family trust. He lives however in a home which is owned by a trust while he serves his term of home detention and he is supported by his wife who is in employment.

[11] Ms Meechan referred us to the recent Tribunal decision in *Auckland Standards Committee 2 of the New Zealand Law Society v Kristina Gerd Haver Andersen*¹ where a practitioner in far poorer circumstances and indeed bankrupt, on a domestic purposes benefit and supporting four children had costs of some \$9,200.00 ordered against her. We accept that by comparison Mr McClintock is in a much better position to meet costs.

[12] A further order is sought in respect of s 257 costs. Section 257 makes it mandatory for the New Zealand Law Society to pay the costs of this Tribunal in relation to the hearing. The quantum of that award is \$1,400.00 and we make such an order against the Society. That quantum has been significantly reduced by slotting this hearing in just prior to another matter and thereby avoiding airfare and associated expenses for Tribunal members. It is also significantly modest as are the Law Society costs.

[13] We consider that it is proper that this be reimbursed by Mr McClintock also and not subsidised by practitioners.

¹ [2012] NZLCDT 17.

[14] Therefore there will be an order pursuant to s 249 that the s 257 costs awarded against the society be reimbursed by Mr McClintock in addition to the Law Society costs of \$3976.00.

[15] No suppression order has been sought in respect of the victim firm in this matter therefore no order is made.

DATED at AUCKLAND this 24th day of August 2012

Judge D F Clarkson
Chair