

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

[2014] NZLCDT 29

LCDT 003/13

BETWEEN

**THE HAWKE'S BAY LAWYERS
STANDARDS COMMITTEE OF THE
NEW ZEALAND LAW SOCIETY**

Applicant

AND

CATHERINE MARJORIE CLARKSON

Respondent

CHAIR

Judge BJ Kendall (retired)

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr A Lamont

Mr G McKenzie

Mr W Smith

HEARING at WELLINGTON

DATE 30 May 2014

COUNSEL

Mr T Gilbert for the Applicant

Ms C Clarkson, Respondent in person

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

[1] The Tribunal convened in Wellington on 30th May 2014 to consider the appropriate penalty to impose on the respondent, Ms Clarkson.

[2] This hearing followed its decision of 31st January 2014 that she had been guilty of misconduct under s 7(1)(b)(ii) of the Lawyers and Conveyancers Act 2006 for her failure to account for money received on behalf of the PM Trust, and for her conduct in the course of Maori Land Court proceedings. The Tribunal found that Ms Clarkson failed to comply with the Court's directions; failed to attend Court when required; and failed to respond to enquiries and requirements of the Court.

[3] The Tribunal heard submissions from Mr Gilbert on behalf of the applicant. The Respondent filed a submission and made a personal statement to the Tribunal.

[4] The Tribunal retired to consider the orders sought. It announced its unanimous decision that Ms Clarkson was to be struck off the roll of barristers and solicitors and made the following orders:

- (a) Striking off (s 242(1)(c) LCA);
- (b) Costs to the Law Society of \$35,000.00 inclusive of disbursements (s 249(3) LCA);
- (c) Costs of the Tribunal are certified in the sum of \$14,714.00 (s 257);
- (d) Ms Clarkson is to reimburse the Law Society for the Tribunal costs in the sum of \$14,714.00 (s 258(2) LCA).

[5] This decision records the reasons for the penalties imposed.

[6] The background and detail of the charges are set out in the Tribunal's decision of 31st January 2014. The Tribunal found that Ms Clarkson's failure to

account for monies she had received and due to the PM Trust was conduct that was unacceptable from a practitioner. It was conduct that demonstrated that she was not suited to engage in practice as a lawyer. Her conduct raised issues of “*probity and integrity that must put her right to practise in doubt*”.

[7] At para [69] of its decision, the Tribunal described Ms Clarkson’s conduct in relation to the proceedings before the Maori Land Court as being unsuited to engage in practise as a lawyer.

[8] Mr Gilbert referred the Tribunal to the recent comments of the High Court in *Hart v Auckland Standards Committee No 1*¹ about when strike off will be appropriate and the factors relevant to the assessment of whether or not strike off is appropriate including:

- (a) The nature and gravity of the charges proved
- (b) The manner in which the practitioner has responded to the charges
 - (i) Public confidence in the legal profession depends significantly upon practitioners cooperating fully with the investigative phase of the disciplinary process.
 - (ii) Deliberate refusal to comply with a lawful requirement made by a Standards Committee investigating a complaint must be regarded as serious.
 - (iii) Willingness to participate fully in the investigative process and to acknowledge error or wrongdoing may demonstrate insight by the practitioner.
- (c) The practitioner’s previous disciplinary history may also assume considerable importance.

¹ [2013] 3 NZLR 103.

[9] Mr Gilbert has referred to the findings in the substantive decision with particular reference to the finding that Ms Clarkson failed to provide information regarding use of the money she had received and had failed to pay amounts received on behalf of the PM Trust. The amount involved in the charge was \$43,956.16 - a not insubstantial sum.

[10] His submission was that this finding should lead to a strike off because her failure to account in circumstances where there were requests and a Court Order to do so emphasises the nature and gravity of the offending and seriously undermines her integrity and probity.

[11] Mr Gilbert further submitted that Ms Clarkson's conduct in the Maori Land Court was described by the Judge to be "*nothing short of atrocious*".

[12] Counsel referred to the respondent's very poor response to the disciplinary process. He highlighted

- (a) Her objections to the investigation process.
- (b) Her failure to comply with timetables.
- (c) Her failure to engage in the disciplinary process for significant periods.
- (d) Her significant lack of insight into and unwillingness to address, the core issues for determination.

[13] Mr Gilbert further submitted that since 2008, Ms Clarkson has been found guilty of disciplinary breaches on four previous separate occasions. She was found guilty of unsatisfactory conduct in December 2012 because of her failure to comply with a condition attached to the practising certificate which she held. The important aspect of that matter was her failure to take advice in relation to the management of her practice as ordered by the Tribunal.

[14] The Submission was that Ms Clarkson should be struck off because:

- (a) Ms Clarkson's entrenched pattern of disciplinary lapses showed no indication of reform.
- (b) Ms Clarkson had displayed lack of insight and candour, resulting in cause to be concerned that there was little prospect of improvement.
- (c) Her actions denigrated the reputation of the wider profession along with her own.; and
- (d) When her current conduct is viewed in the context of her history, then the central protective purpose which underpins the disciplinary regime requires that she be struck off thereby ensuring that the public is not at continuing risk if she were to remain in the profession.

[15] Ms Clarkson filed a submission on the morning of the hearing. In that document, she was critical of the Maori Land Court proceedings. She also made accusations against others who were either a complainant or involved in the investigation committee.

[16] She finally referred to her depression as the cause of her failures, a theme which she repeated to the Tribunal at the hearing. She advanced this theme as a plea for leniency and against the ultimate sanction of strike off.

[17] The Tribunal has regard to the combined effect of the following factors;

- (a) The nature and gravity of the offending;
- (b) Ms Clarkson's unsatisfactory response and engagement in the investigative and hearing process;
- (c) The history of prior disciplinary matters;
- (d) The ineffectiveness of prior sanctions and of the rehabilitation that had been offered all of which demonstrated Ms Clarkson's lack of insight into the causes and effects of her behaviour and her inability to correct that.

[18] The Tribunal of five members unanimously reached the conclusion that strike off was the only penalty that could reflect the seriousness of Ms Clarkson's misconduct and ensure the future protection of the public.

[19] The Tribunal is aware that Ms Clarkson does not have a current practising certificate and is unemployed, but in making the order for costs that it has, the Tribunal has taken into account the sanction provisions of the Act and that difficulties in making payment relate to recovery rather than assessment of the appropriate penalty.

[20] Ms Clarkson informed the Tribunal that she has in place an arrangement to pay earlier costs. It is up to the Society to make such arrangements as may be agreed on regarding the payment of the costs awarded.

[21] Ms Clarkson expressed concern about her future as a result of being struck off. The Tribunal informed her of her right to apply for reinstatement to the Roll and that she would then have to meet the required criteria.

DATED at Auckland this 11th day of June 2014

BJ Kendall
Chairperson