

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 34  
LCDT 005/12

**IN THE MATTER**

of the Lawyers and  
Conveyancers Act 2006

**AND**

**IN THE MATTER OF**

**NICOLA TAWHARA**, of  
Wellington

**CHAIR**

D J Mackenzie

**MEMBERS OF TRIBUNAL**

Mr W Chapman

Mr J Clarke

Mr C Rickit

Mr W Smith

**HEARING** at Wellington on 7 November 2012

**REPRESENTATION**

Ms G Phipps for the Standards Committee

No appearance for Respondent

**REASONS FOR A DETERMINATION ON CHARGES AND PENALTY MADE ON**  
**7 NOVEMBER 2012**

[1] Ms Tawhara faced two charges of misconduct (in the alternative unsatisfactory conduct) as an employee of a practitioner. The charges arose as a result of two separate instances of misappropriation of money received from clients of her employers who were legal practitioners.

[2] The Tribunal convened to hear the charges, in Wellington, on 7 November 2012. Ms Tawhara did not appear, so the Tribunal, after confirming service of the Notice of Hearing on Ms Tawhara,<sup>1</sup> proceeded to hear the charges by way of formal proof. This was based on matters contained in the affidavit of Ann Marie Rice dated 8 February 2012 filed with the Tribunal. That affidavit included an exhibit comprising a letter of admission and apology from Ms Tawhara.

[3] Ms Tawhara was alleged to have taken the sum of \$190 paid by a client of her employers for costs incurred by the client regarding a will. She was also alleged to have taken the sum of \$135.50 paid by other clients of her employers for costs and disbursements regarding a mortgage for those clients.

[4] Ms Rice's evidence showed that in September 2010 Ms Tawhara's employers wrote to the New Zealand Law Society regarding the misappropriation of funds by Ms Tawhara. It was alleged that clients of Ms Tawhara's employers had paid \$135.50, in cash, to settle a legal bill. The payment had been given to Ms Tawhara who had written "Paid" on the clients' copy of the bill and signed her name. She did not complete a trust account receipt, nor was the amount banked to her employers' trust account.

[5] The records of Ms Tawhara's employers also showed that numerous accounts rendered had been sent in respect of the bill which appeared to be unpaid

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<sup>1</sup> In addition to a formal affidavit of service from Mr W Anderson, Ms A Rice, a Legal Standards Officer of the New Zealand Law Society Complaints Service, confirmed that she had communicated with Ms Tawhara regarding the time and place of the hearing the day prior to the hearing.

in the absence of a trust receipt. When the clients advised that they had actually given Ms Tawhara cash in payment of the account, Ms Tawhara was confronted by her employers and she admitted she had taken the funds.

[6] As a consequence of the notification made to the Law Society by Ms Tawhara's employers, an inspector of the Society visited Ms Tawhara's employers' office to investigate, and interview Ms Tawhara regarding the misappropriation of the \$135.50. That review confirmed the detail reported by her employers, including that the client concerned had not received any of the accounts rendered issued regarding non payment of the account. The office systems were such that it was likely that the accounts rendered had been removed from the mailbag before posting. The investigation also found that Ms Tawhara also attempted to deceive anyone investigating the non payment by falsely representing by notation on the original invoice that instalment payments had been proposed by the clients.

[7] Ms Tawhara acknowledged to the Law Society inspector that she had taken the funds and also confirmed that there were no other such matters.

[8] Following this visit by the Law Society inspector, Ms Tawhara's employers found and reported to the Law Society a second instance of a client paying in cash and no formal receipt being issued. This was the amount of \$190 referred to above. This debt had not been actively pursued by Ms Tawhara's employers because an email had been received promising payment at a later date. Investigations showed that the email had been sent by Ms Tawhara in an attempt to disguise the misappropriation. Ms Tawhara was again interviewed by her employers, but she offered no explanation and simply nodded when asked if the facts of this latest allegation of misappropriation were correct.

[9] When the Standards Committee wrote to Ms Tawhara to advise that it was investigating the misappropriations, Ms Tawhara wrote back apologising for her actions.

[10] Ms Tawhara wrote to Ms Rice saying she apologising for her actions for going down "*this path once again...*" and that her actions had caused her to

relinquish her employment and *“take responsibility for what I did”*. She noted in her letter to Ms Rice that she had *“paid the price of being dishonest”*. The Tribunal was satisfied that her admission, together with the other material available to it, allowed the Tribunal to find the conduct proven, and that consequently Ms Tawhara is guilty of misconduct as an employee.

[11] Section 11 Lawyers and Conveyancers Act 2006 requires that for an employee to be guilty of misconduct there must have been conduct in the course of employment that would have rendered a practitioner liable to have his or her name struck off the roll. Here there are multiple instances of dishonesty, not just the taking of two separate amounts on different occasions, but an attempt to cover up the misappropriation by false notations, a fraudulent email, and interference with office mailing systems involving accounts rendered.

[12] These misappropriations follow earlier dishonesty found against her in April 2009, when Ms Tawhara was found to have delayed banking clients' cash payment of fees, using the funds for her own purposes, and attempting to make up the shortfall from later cash receipts that were also not banked.

[13] In these circumstances we had no doubt that if Ms Tawhara was a practitioner against whom this conduct had been proved, removal of her name from the roll would have followed.

[14] So far as penalty was concerned, counsel for the Standards Committee noted that conduct involving theft and associated deception amounted to serious misconduct. It was a significant breach of trust by a person employed as an office administrator, involving attempts to hide the dishonesty. It was the second time Ms Tawhara had misappropriated money, having taken \$300 in client cash payments in August 2008.

[15] The Tribunal determined at the hearing (with full determination with reasons noted as to follow) that Ms Tawhara, as a result of her conduct, must be excluded from operating in the legal environment. Ms Tawhara had been given the opportunity of resigning after the allegations surfaced, and she had done that, so

she was no longer working for the legal practitioners who had employed her. Public protection and confidence in the profession require that a person with her record not be permitted to work in a practice or incorporated firm, so we made an order to that effect at the conclusion of the hearing.

[16] The Tribunal ordered that pursuant to s 242(1)(h)(ii) Lawyers and Conveyancers Act 2006 NICOLA TAWHARA is not to be employed by any practitioner or incorporated firm in connection with the practitioner's or incorporated firm's practice so long as this order remains in force.

[17] So far as costs are concerned, the Tribunal certified costs under s 257 Lawyers and Conveyancers Act 2006 at \$1,200. The Standards Committee costs were \$3,025.

[18] Ms Tawhara was ordered to pay costs to the Standards Committee of \$3,025, and to reimburse the New Zealand Law Society the sum of \$1,200 it must pay the Crown under s 257.

[19] The Tribunal requested that the New Zealand Law Society do everything reasonably necessary to draw the profession's attention to the order made preventing Ms Tawhara's employment. The Tribunal will of course arrange for publication in the Gazette pursuant to s 256(1)(a)(iv) Lawyers and Conveyancers Act 2006, in due course.

**DATED** at AUCKLAND this 23<sup>rd</sup> day of November 2012

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D J Mackenzie  
Chair