

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2013] NZLCDT 34

LCDT 014/11

**IN THE MATTER**

of the Lawyers and  
Conveyancers Act 2006

**BETWEEN**

**CANTERBURY-WESTLAND  
STANDARDS COMMITTEE**

Applicant

**AND**

**TIM BAN CHOON TEE**

Respondent

**MEMBERS OF TRIBUNAL**

Mr D Mackenzie (Chair)

Mr W Chapman

Mr M Gough

Mr A Lamont

Mr S Walker

**HEARING** at CHRISTCHURCH on 30 July 2013

**APPEARANCES**

Mr G Nation, for the Standards Committee

No appearance for the Respondent

## **RECORD OF AND REASONS FOR DECISION ON PENALTY AND COSTS**

### ***Introduction***

[1] The Tribunal heard three professional misconduct charges against Mr Tee on 27 March 2013. At the conclusion of that hearing the Tribunal found all of the charges proven and indicated that it would issue a full determination setting out its reasons for that finding in due course.

[2] The Tribunal's record of, and reasons for, its substantive determination was issued on 5 April 2013.<sup>1</sup>

[3] A penalty hearing was held in Christchurch on 30 July 2013, at which the Standards Committee was represented, but there was no appearance for Mr Tee. Written submissions on costs and penalty had been received prior to the hearing from both the Standards Committee and from Mr Tee.

[4] After considering all submissions from the parties, written and oral from the Standards Committee, and written from Mr Tee, the Tribunal unanimously reached the view that Mr Tee, by reason of his conduct, was not a fit and proper person to be a lawyer. The Tribunal ordered that the name of TIM BAN CHOON TEE be struck off the roll of barristers and solicitors, and noted that it would provide its full reasons in due course. It also made orders regarding costs and cancellation and refund of a certain amount charged as fees by Mr Tee to one of the complainants. Those matters are set out later in this record and reasons for the determinations made.

### ***Position of the Standards Committee***

[5] In its submissions the Standards Committee sought striking off as the only penalty appropriate in the circumstances.

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<sup>1</sup> *Canterbury-Westland Standards Committee v Tee* [2013] NZLCDT 12.

[6] The Committee noted that the Tribunal had found that Mr Tee's conduct marked a significant and unacceptable departure from required standards. It submitted that Mr Tee had taken advantage of vulnerable clients for personal financial gain, displaying a persistent and deliberate pattern involving abuse of a client's trust and confidence in him as a practitioner.

[7] In respect of the borrowing of \$52,000 from a client by Mr Tee, the subject of the first charge against him, Court proceedings had had to be initiated and a judgment obtained against Mr Tee the Committee said, noting that the judgment remained unsatisfied.

[8] The sum of \$1,400 paid to Mr Tee by a client, in anticipation of immigration work to be undertaken by Mr Tee, was transferred from that client's trust account to Mr Tee's office account with no clear basis for doing so and with no transparency. The amount was utilised for Mr Tee's own purposes, and it was only the intervention of the client's newly instructed lawyers that enabled the client to obtain his money from Mr Tee. The taking in this way was aggravated by the fact that it appeared no work had been undertaken by Mr Tee for the client concerned, the Standards Committee submitted.

[9] The sum of \$10,000 required by Mr Tee from another client for immigration work had "evaporated" the Standards Committee submitted, and there was no evidence of any work being undertaken by Mr Tee to justify such a charge, which was unsupported by any bill of costs or trust account record or receipt. The Committee submitted that Mr Tee's action in trying to obtain from the client a further \$50,000 to cover costs and fees indicated the true nature of what he was doing, which it described as cynical, greedy, and exploitative.

[10] Mr Tee's continual refusal to engage properly in the disciplinary process as noted in the Tribunal's record of its substantive determinations on the charges<sup>2</sup>, and his non appearance (either by counsel or in person) at the substantive hearing or the penalty hearing, were relevant features for the Tribunal to consider in imposing penalty the Standards Committee submitted.

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<sup>2</sup> Above, n 1, and in particular at Annex A.

[11] The Committee also noted that Mr Tee had previously been the subject of professional disciplinary action in relation to Trust Account irregularities, and that the matters at the heart of those offences involved similar conduct by Mr Tee, applying client funds for his own business purposes without the knowledge of the client.

[12] It was submitted by the Committee that all these matters, the conduct itself, Mr Tee's failure to engage in the disciplinary process, and his prior conduct, indicated strike-off was the appropriate penalty to ensure public protection.

### ***Submissions for Mr Tee***

[13] For Mr Tee, submissions had been filed in response to those filed and relied on by the Standards Committee. As noted, there was no appearance for Mr Tee at the penalty hearing, only the written submissions lodged on his behalf.

[14] The Tribunal considered the submissions filed for Mr Tee, noting the inclusion of a submission that while, as evidence, the unsworn draft of Mr Tee's evidence brief had no probative value it had some value as a submission on penalty. We have reviewed the brief and consider it has no value for either purpose. It deals largely with disputed facts, or argues matters of defence contrary to the Tribunal's findings at the substantive hearing.

[15] It was submitted for Mr Tee that the complaints the subject of the charges represented just three persons out of many hundreds of persons for whom Mr Tee had successfully acted. This was said to answer the submission by the Standards Committee that there was a persistent and deliberate pattern of conduct by Mr Tee.

[16] We see no merit in this submission for Mr Tee. The fact that only three complaints have arisen from the many matters said to have been handled by Mr Tee is irrelevant in considering whether his conduct has fallen below the required standard in respect of the instances the subject of the complaints. It is the persistent and deliberate pattern emerging from the conduct the subject of the charges which is relevant.

[17] It was also submitted for Mr Tee that closure of his trust account and the resulting transfer of balances to his business account was not theft or misappropriation, and that the transfer had been required “by the Society”.

[18] With regard to the first part of this submission, that there was no theft or misappropriation, the Tribunal’s findings on this charge were at [31] and [32] of its substantive decision<sup>3</sup>. The evidence showed that Mr Tee had used the funds in his trust account for his own purposes by transferring them to his business account rather than to another trust account which was available. He did not appear to have done any work justifying the taking of the funds, and he had not rendered any fee regarding such funds to the client concerned. The funds were eventually recovered by Mr Tee’s client when other lawyers became involved and sought return of the funds on behalf of the client.

[19] With regard to the second part of this submission, that the transfer had been required by the Law Society, there was no evidence to support such claim, and a review of the evidence relating to Law Society involvement<sup>4</sup> makes it clear that characterising the arrangement as “required” is incorrect.

[20] Other submissions made for Mr Tee raise matters contrary to the evidence found proven at the substantive hearing and appear to ignore findings made against Mr Tee by the Tribunal<sup>5</sup>.

[21] It was also submitted that despite the adverse findings against Mr Tee the conduct “cannot be classified as inappropriate behaviour”. The Tribunal has some difficulty reconciling that submission with its findings of professional misconduct against Mr Tee.

[22] For Mr Tee it was also submitted that he had not taken advantage of vulnerable clients, as claimed by the Standards Committee. We do not accept that

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<sup>3</sup> Above, n 1.

<sup>4</sup> Affidavit of Philip Michael Strang dated 15 June 2011 filed in support of the charges.

<sup>5</sup> For example, that Mr Tee did not receive \$10,000 the subject of the third charge proven against him, that the borrowing of \$52,000 the subject of the first charge proven against him was not as it appeared, and that \$1,400 the subject of the second charge was not a matter of misappropriation, merely a technical breach caused by the Law Society’s insistence that his trust account be closed.

as accurate. He took advantage of clients who were seeking immigration-related assistance. They relied on him as a lawyer to assist them in an unfamiliar environment. They were at a significant disadvantage in a foreign country, endeavouring to obtain local assistance. Mr Tee not only failed them by not providing the work he was to undertake for them, he took their money with no proper accountability or record.

[23] So far as the borrowing of \$52,000 was concerned, the important issue here was that there was no independent advice suggested. It may well have been Mr Tee's status as a lawyer that secured him the unsecured advance which now remains unpaid. This simply highlights the need for independent advice for clients asked to lend to their lawyer, which was the key issue in respect of the charge relating to this matter.

[24] Submissions were made regarding difficulties Mr Tee had faced, including the loss of his father and personal health issues. Mr Tee had also experienced personal and financial problems, which, it was submitted, resulted in his bankruptcy. We have taken these matters into account, but they do not displace the public protection imperatives of the jurisdiction.

[25] It was noted in the submissions for Mr Tee that he had returned to Malaysia and was now working as a partner in a large accountancy firm, and that he was "getting his life back in order." It was submitted that Mr Tee now accepted that his conduct, in the way he responded to the charges, was not what it should have been. It was said that Mr Tee had found the proceedings difficult to deal with on both an emotional and professional basis. Notwithstanding this recognition by Mr Tee, the submissions then went on to deny there was theft or misappropriation, claim that some taking of client funds was simply a technical issue, question witness integrity, and suggest that matters found by the Tribunal to be proven were not accurate. That confirms a failure by Mr Tee to recognise his professional responsibilities and duties.

## **Discussion**

[26] There has been misconduct, and there are also elements of dishonesty. Mr Tee continues to fail to recognise his professional failures. His reaction to the disciplinary process has been to substantially ignore requirements placed on him and to fail to address issues which needed to be dealt with as part of the process. He continues to deny facts found proven.

[27] The Tribunal's jurisdiction involves public protection<sup>6</sup>, and removal from practice is required in circumstances such as those found against Mr Tee, involving significant and unacceptable departures from required standards.

[28] He has prejudiced his solicitor/client relationship by taking personal advantage of a loan arrangement without giving his client the opportunity for independent advice. Matters have been aggravated by his failure to repay the loan when due and there is an unsatisfied judgment of the Court for repayment of the loan.

[29] He has allowed trust funds to be used for personal purposes, and fails to recognise that what he did is a misappropriation. He attempts to classify it as a technical breach, and blames the Law Society for causing it. This demonstrates a high level of misunderstanding of his professional obligations and accountability.

[30] Taking \$10,000 from a client, with no proper trust accounting, and claiming it was taken as a fee, a matter not supported by the evidence but in any event improperly taken without a bill of costs, a lack of transparency, and no evidence of adequate work to justify the fee, is a serious matter.

[31] The taking of the \$10,000, justified as "fees" is of concern because it reflects conduct lacking probity and integrity. We have considerable disquiet about his attempt to extract a further \$50,000 from his client, which she wisely refused.

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<sup>6</sup> Section 3(1)(a) and (b) Lawyers and Conveyancers Act 2006; and see *Sisson v The Standards Committee (2) of the Canterbury-Westland Branch of the New Zealand Law Society* [2013] NZHC 349 at [45].

[32] The taking of the \$1,400 is at least reflective of reckless disregard for proper trust account management, if not actual dishonesty which is supported by his refusal to repay until other lawyers became involved for his former client.

[33] The conduct represents a continuing pattern, first noted with earlier professional conduct issues of a similar nature found against Mr Tee, over the period concerned. There is a clear lack of insight by Mr Tee into what is required by the professional standards imposed on him.

[34] Mr Tee has not discharged his duties with the integrity, probity, and trustworthiness required of lawyers, and when the three separate instances of conduct are taken together, they indicate in our view that he is not a fit and proper person to practise as a lawyer. The offending is serious, and given what we have said about it and Mr Tee personally we consider that he must be struck off the roll to protect the public. There is a risk of reoffending if Mr Tee was to again practise in New Zealand and for that reason we do not consider suspension or some other penalty sufficient.

[35] Removal from practice is required because of the need to protect the public and preserve the reputation of the legal profession. This recognises the abuse of the fundamental solicitor/client relationship that has occurred, the failures in integrity and probity, Mr Tee's personal gain at the expense of clients, and his failure to recognise his conduct for what it was.<sup>7</sup>

### **Costs**

[36] Costs under s 257 Lawyers and Conveyancers Act 2006 were certified at \$9,500 at the hearing of 30 July 2013.

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<sup>7</sup> All matters relevant to a conclusion that striking off is required – see *Guest v Complaints Committee 2001 of the Otago District Law Society* HC Wellington AP34/02, 29 July 2002; *Bolton v Law Society* [1994] 2 All ER 486; *Auckland Standards Committee No.1 v Barry John Hart* [2012] NZLCDT (upheld by the High Court in *Hart v Auckland Standards Committee 1 of New Zealand Law Society* [2013] NZHC 83, and *Dorbu v The New Zealand Law Society* [2012] NZHC 564.



[37] For the Standards Committee, costs and disbursements related to the investigation and prosecution of Mr Tee totalling \$11,122 were sought.

[38] In the submissions for Mr Tee, no comment was made regarding costs. Nevertheless, we proceed on the basis that Mr Tee did not accept that he should pay costs.

[39] There was no evidence before us as to inadequacy of assets or income to allow payment of any costs order by Mr Tee. We accept that mention was made of Mr Tee's bankruptcy in New Zealand, but we have no knowledge of when he might be discharged from that bankruptcy, nor do we have any information regarding Mr Tee's off-shore assets and liabilities, now that he is resident in Malaysia, which might have assisted in assessing any inability to meet a costs order. For Mr Tee it was indicated that he now works as a partner in a large accountancy firm in Malaysia.

[40] The fees claimed by the Standards Committee were not unreasonable, and we consider that Mr Tee should bear the cost of his conduct, rather than it falling on the profession as a whole. He is a partner in a professional firm in Malaysia and as such should, even if some time is required, be in a position to meet costs at some point.

### **Orders**

[41] Orders were made at the conclusion of the hearing on 30 July 2013 as follows:

- [a] The name of TIM BAN CHOON TEE shall be struck off the roll of barristers and solicitors.
- [b] Costs of \$11,122 are to be paid by Tim Ban Choon Tee to the Canterbury-Westland Standards Committee.
- [c] Costs of \$9,500, to be paid by the New Zealand Law Society pursuant to s 257 Lawyers and Conveyancers Act 2006, are to be reimbursed to the Society by Tim Ban Choon Tee.

- [d] The amount of \$10,000 claimed as fees by Tim Ban Choon Tee from Ms G is to be cancelled, and he is to refund that amount to her.

***Other matters***

[42] The Tribunal declined a request from the Standards Committee to order compensation of \$52,000 in respect of the loan taken by Mr Tee from a client and remaining unpaid. It declined for two reasons; first, the Tribunal does not have jurisdiction to order such an amount (as Mr Nation for the Standards Committee accepted at the hearing); and second, the lender has a judgment from the Court for the full amount owing which makes ordering such compensation superfluous in any event.

[43] The names of the complainants and any identifying details are permanently suppressed, save as may be required to facilitate Ms G pursuing her right to the refund of \$10,000 from Mr Tee if required.

[44] Ms G's name shall be redacted from any published copy of this record and reasons for determination, save as permitted by s 240(3) Lawyers and Conveyancers Act 2006.

**DATED** at AUCKLAND this 9<sup>th</sup> day of August 2013

D J Mackenzie  
Chair