NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2012] NZLCDT 7

LCDT 015/11

IN THE MATTER of the Lawyers and Conveyancers Act 2006 and the Law Practitioners Act 1982

AND

IN THE MATTER OF **DONNA MARIE TAI TOKERAU DURIE HALL**
of Wellington, Solicitor

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Ms S Gill
Mr M Gough
Ms S Hughes QC
Mr S Walker

HEARING at Wellington 2, 3 April 2012

APPEARANCES
Mr G Turkington for the Standards Committee
Ms H Cull QC for the Practitioner

DECISION OF THE LAWYERS AND CONVEAYNCERS DISCPLINARY TRIBUNAL

[1] The practitioner submits that there is no case to answer to which end she invites the Tribunal to dismiss the charge against her.

[2] The practitioner faces a single charge that she:

> "…with negligence or incompetence in her professional capacity, and that the negligence or incompetence has been of such a degree as to reflect on her fitness to practice or as to bring her profession into disrepute in that:
>
> *(1)* On or about 1 November 2006 until on or about 16 July 2007 she acted for a vendor, Hikuwai Hapu Lands Trust ("Hikuwai") on the one hand, and a purchaser Tauhara Middle 15 Trust ("Tauhara 15") and lender Tauhara Middle 4A 2A Trust, on the other, without the prior informed consent of each party and/or;
> *(2)* She failed to advise each party of the areas of conflict or potential conflict and/or;
> *(3)* She failed to advise the purchaser and lender that each should take independent advice and arrange such advice and/or;
> *(4)* She failed to decline to act further for the purchaser and lender where acting would or would be likely to disadvantage one or both of them."

(Section 241(c) of the Lawyers and Conveyancers Act 2006 and previous rules 1.04 and 1.07 of the Rules of Professional Conduct for Barristers and Solicitors 2006).

Applicable Law

[3] This is of course not a criminal case, the Tribunal considers it is an application to strike out a case on the basis that it discloses no reasonably arguable cause of action. The principles to be applied in such a case are summarised by the Court of Appeal in *Attorney-General v Prince & Gardner*[1] and endorsed by the Supreme Court in *Couch v Attorney-General*.[2] Significantly an application to strike on this basis must proceed only in those cases where the

[1] [1998] 1 NZLR 262.
[2] [2008] 3 NZLR 725.

cause of action is clearly untenable and indeed in *Couch*, Elias CJ and Anderson J held at para 33 that:

"It is inappropriate to strike out a claim summarily unless the court can be certain that it cannot succeed."

[4] The jurisdiction is to be exercised sparingly, and only in clear cases. This requirement reflects the Courts reluctance to terminate a claim short of trial.

What was the practitioner's duty?

[5] Previous Rule 1.07 provides:

> "(1) In the event of a conflict or likely conflict of interest among clients, a practitioner shall forthwith take the following steps:
>
> *(i)* Advise all clients involved of the areas of conflict or potential conflict;
>
> *(ii)* Advise the clients involved that they should take independent advice, and arrange such advice if required;
>
> *(iii)* Decline to act further for any party in the matter where so acting would be likely to disadvantage any of the clients involved."

[6] We were referred to the dicta of the Court of Appeal in *Farrington v Rowe McBride & Partners*[3] at 90 where it was held:

> "A solicitor's loyalty to his client must be undivided. He cannot properly discharge his duties to one whose interests are in opposition to those of another client. If there is a conflict in his responsibilities to one or both he must ensure that he fully discloses the material facts to both clients and obtains their informed consent to his so acting.
>
> > 'No agent who has accepted an employment from one principal can in law accept an engagement inconsistent with his duty to the first principal from a second principal, unless the [agent] makes the fullest disclosure to each principal of his interest, and obtains the consent of each principal to the double employment…'
>
> And there will be some circumstances in which it is impossible, notwithstanding such disclosure, for any solicitor to act fairly and adequately for both."

[3] [1985] 1 NZLR 83.

[7] The Society further referred us to the dicta of *Taylor v Schofield Peterson*[4] where it was held at page 440:

> "It follows, in our view, from Clark Boyce v Mouat that a solicitor must always:
>
> (1) Recognise a conflict of interest, or a real possibility of one;
> (2) Explain to the client what that conflict is;
> (3) Further explain to the client the ramifications of that conflict (for instance, it may be that she could not give advice which ordinarily she would have given);
> (4) Ensure that the client has a proper appreciation of the conflict, and its implications; and
> (5) Obtain the informed consent of that client."

Why does the Practitioner Seek the Strike Out of the Charge?

[8] The practitioner says on the one hand, that no conflict existed as she did not act for Tauhara 15 at the material times when it entered into the agreement to purchase the Landcorp property Tauhara North. She has never disputed that she was the solicitor for Hikuwai.

[9] By way of alternative argument she says in the event that a conflict existed, that that conflict was met and is not actionable because:

9.1 Tauhara 15 received independent legal advice warning of the conflict and Tauhara 15 elected to reject that advice.
9.2 The trustees of Tauhara 15 were experienced trustees.
9.3 There was no loss occasioned by the transaction.
9.4 There is such a commonality of interest as to negate any allegation of conflict.

[10] For completeness the Society's response is as follows:

10.1 A conflict did exist.
10.2 Such conflict was not cured by independent advice, as Ms Hall advised Tauhara 15 that that advice was wrong, she further invited them to reject that advice and gave active advice as to the merits of the transaction purchasing Tauhara North.
10.3 That the level of experience of Trustees did not negate the obligation on the Practitioner to manage any conflict in accordance with the Rules.

[4] [1999] 3 NZLR 434 (HC), per Hammond J.

10.4 There was limited evidence before this Tribunal as to the experience of the trustees. Three of the trustees Messrs Clarke, Wall and Tahau are common to Hikuwai, Tauhara 15 and Tauhara 4A 2A. They are and were conflicted in their duties. The only affidavit evidence before the Tribunal from the trustees was from Mr Clarke and given his self evident conflict, his evidence is regarded with some caution. The Tribunal observes that even the most experienced trustees and directors of companies and otherwise seek legal advice on legal matters. The experience of the recipients of that advice does not derogate from the responsibility of the practitioner giving advice.

10.5 The Society advanced its case on the basis, that Ms Hall is guilty as a fiduciary, and argues that as a fiduciary, no evidence of actual loss is required. In the alternative the Society relies upon the evidence of Messrs Rameka (see paras 40-54, 56) and Allan (see pages 504-510 Bundle) as to loss occasioned.

10.6 As to the claimed commonality of interest, the Society reminded the Tribunal that each is a separate legal entity in any event and dispute the allegation of commonality and ultimately says, that such could not cure a conflict in the circumstances of the case before the Tribunal.

[11] The Tribunal has resolved that it will focus its consideration on whether or not, on the face of it, a conflict existed. The other matters raised by the practitioner amount to positive defences and are not appropriately part of a strike out application.

Evidence

[12] The practitioner has declined to provide a substantive affidavit responding to the Society's case. She did however swear an affidavit on 5 September 2011 in support of her application for interim name suppression, paragraph 5 thereof contained a blanket denial of the charge.

[13] The practitioner advised that she did not require an opportunity to cross-examine any of the witnesses relied upon by the Society. Those witnesses included:

13.1 A substantial affidavit from Ms Ann Rice (Legal Standards Officer), Ms Rice's affidavit provided copies of correspondence and the enquiry file;

13.2 Mr Topia Rameka was appointed in November 2010 by the Maori Land Court to be a trustee in Tauhara 15, he is a beneficial owner in Tauhara 15 and Tauhara Middle 4A 2A; and

13.3 Mr Tony Jensen, a director in the Taupo law firm of Jensen Waymouth Lawyers Limited and had acted for Tauhara 15 and Tauhara 4A 2A for some years prior to him being sacked in favour of Ms Hall in March of 2007.

[14] For Ms Hall seven affidavits were before the Tribunal, two of which were from Mr Peter Clarke, such were dated 16 December 2011 and 29 March 2012.

[15] The Tribunal while assisted by the affidavits, believed that it should look for contemporaneous records of the conduct of the parties. In that regard it is greatly assisted by the bundles of documents prepared by the Society.

[16] In this regard particular note is being paid to the minutes of Tauhara 15 dated 26 July 2006:

> "…Wasn't this the reason D Hall was going to this meeting and the resolution passed by this Trust was 'the Trust support the initiative explained by D Hall to take a position to stop LandCorp selling it's lands…'
> P Clarke then advised that a Memorandum of Understanding needs to be put in place and he read to the trustees the proposed Memorandum of Understanding compiled by Donna Hall… M Allan queried P Clarke if Donna Hall was still funded by Legal Aid as she had phoned him to ask about funding from Lake Taupo Protection Trust. P Clarke advised him that she was also getting funding from the Awhina Group… H Karaitiana wanted it recorded that the resolution passed by Tauhara Middle 15 trustees was nowhere in the report from Martin Taylor."

[17] The minutes from the meeting of Tauhara 15 of 17 October 2006 record inter alia:

> "P Clarke read through a letter received from Donna Hall's office with regard to the latest Memorandum of Understanding prepared by Landcorp… T Jensen arrived at 11.15am and listened whilst M Allan explained the Trust's situation and asked for some legal advice to the Trustees.
>
> T Jensen advised that their legal position was clear. The Trustees are bound by the Trust Order and any action must be seen to have been done prudently and sensibly without risking the Trust capital. If the owners do not see this, the Trustees are personally liable

to pay back funds to the Trust. When looking at investment, especially if dealing with Trusts, security of the funds is paramount to ensure the funds are not lost.

As T Jensen pointed out, there are conflicts of interest within the Trust as three Trustees here today are involved with Hikuwai Lands Committee so they must abstain from voting which leaves F Nicoll, A Paerata and H Karaitiana to vote on this issue.

T Jensen then asked the question "Why is it so hard to find these funds?". There are numerous affluent Trusts around this area, so where are they now to assist with raising the required funds?

A Paerata advised T Jensen that this payment was seen as a loan. T Jensen then queried where the security was and guarantee the Trust would get these funds back…"

[18] The next minutes of moment are those of Tauhara 15 of 28 November 2006.

[19] Recorded as present are Donna Hall and Martin Taylor and include:

"P Clarke wished it noted that he had an appointment at 2pm in Rotorua so would need to leave the meeting early should it proceed past 12 noon.

C Wall immediately passed the meeting on to Donna Hall and Martin Taylor.

D Hall gave an overview of the background of what was occurring and why she was present at the meeting… The Hikuwai Hapu Lands Trust is formally seeking the help from the Tauhara Mountain Lands Trust which she realises is significant but is confident this transaction can be made to work.

D Hall told the Trustees that the possibility of getting the prices pushed down was not an option but as far as she could see, an extension of the time period from 3 years to 5 years for these transactions to occur would be successful.

D Hall then read through the letter from Woodward Law Offices to the meeting.

D Hall explained that one of the main groups who were going to be involved with this transaction, the Awhina group, had pulled out… D Hall advised to Trustees that Landcorp want to sell the lands to Maori in Tuwharetoa area. Tauhara will be the hardest to sell and

because of this fact, the money should come from the Trusts represented around this table.

The land could be redeveloped and there would be enormous potential for large gains on owning this land… D Hall replied that the Hapu in the Hikuwai were the beneficiaries… G Davey then queried who the beneficiaries of the Hikuwai Hapu Lands Trust were and when the transaction goes through, who are benefited. M Taylor answered this by advising that the Hikuwai Hapu Lands Trust was set up with the intention of assisting with this deal going through… D Hall wished it noted that she didn't like asking the Trust to put their land up for risk, but it is a one-off opportunity for the Trust… M Allan stated that the Trustees wanted the land back for spiritual reasons but to him it sounded like they want to buy the land and sell it commercially. The land is limited for farming, this is the reason why Landcorp are selling it. M Allan is confused as to what the motivation of purchasing this land is. The Trust could copy what the Awhina Group did as this is how it is going to be in the competitive market. D Hall said she was very uncomfortable with what M Allan had just said. The land was very important to this Trust and the Trust must stand up and look at this seriously or 'put up and shut up'.

M Taylor stated there were possible subdivision opportunities on some of the land which could be used to fund the holding of the balance of the land. He also advised the Trustees that he and D Hall are looking at the possibility of cancelling easements and rights that Contact have on the land. D Hall reiterated what M Taylor had just said by stating that the Tauhara block is a most profitable block due to the geothermal possibilities. The Trust should go into this deal as one group rather than compete with each other… M Allan advised the Trustees that a valuation will need to be done on the land so that at the owners meeting a value can be stated to owners. The amount the bank will loan to the Trust against the value of the land. There would also need to be legal documents drawn up between Hikuwai Hapu Lands Trust and Tauhara Middle 15 should the loan go through. The Trust solicitor should be asked to comment on this proposal and asked to attend the owners meeting… M Allan asked the Trustees if they would like to view the presentation for the owners before the meeting on 10th December 2006. They all agreed they would like to see it beforehand.

C Wall advised the Trustees that D Hall will explain to the meeting why the Hikuwai Hapu Lands Trust is asking for the money and then the presentation should be viewed.

M Allan then suggested that T Jensen, the Trust's lawyer, should be available so that he can make a legal opinion on the consequences should the deal fall through. He also asked Trustees for authority to obtain a valuation and to discuss funding with the Trust's rural manager."

[20] It was subsequently resolved that Mr Jensen should be requested to attend the meeting.

[21] On 30 November 2006 Mr Jensen wrote to Tauhara 15 advising that the only written material he had seen was a letter written by Ms Hall dated 22 November. That letter is found at page 111 of the Bundle and is a letter addressed to the Tauhara Mountain Trust seeking funding to enable the purchase of Landcorp land. Mr Jensen expressed concern that there was no discernible direct benefit for the Trust beneficiaries and that the Trust land "would probably be placed at serious risk" by this investment. He then went on to express the view that as an Ahu Whenua Trust, that such speculative investments were inappropriate and unacceptable.

[22] Mr Jensen again wrote on 8 December having received a copy of Ms Hall's letter of 1 December addressed to the Tauhara Mountain Trust confirming that his opinion remained unchanged.

[23] On the same date, that is 8 December, Ms Hall wrote to Tauhara Mountain Trustees, in response to advice received by Mr Jensen. In that letter Ms Hall said:

> "(5) We strongly suggest that you ask Tony to reconsider his advice and/or reconsider reading out that advice, which is wrong in parts and redundant in others. If you do read it out, please ensure you read this as a response.
>
> **Conflict of interest among trustees**
>
> (6) It is clear that Charles Wall, Peter Clarke, and John Tahau are interested as Trustees in both sides of this proposed loan transaction. However, once conflict of interest is disclosed it can be waived by the other Trustees. Also, the reality is that conflict of interest is always likely to arise in such close Maori matters. A close look should be taken before automatically assuming that parties should be excluded from voting on matters where there is no direct personal pecuniary interest.
>
> (7) These Trustees have sought a meeting of owners to mitigate that position. In those circumstances, we consider that there is good reason for that conflict to be waived in relation to decisions of the Trust in preparation for the Trustee's meeting. If the owners decide to proceed with finance on the conditional basis

> outlined above, we propose to put the question of conflict to the owners, to determine whether they feel that these trustees should be excluded from future voting…"

[24] Mr Jensen responded to this letter on 8 December:

> "(3) …it is interesting that Donna Hall, in a situation where she is a promoter of a particular proposed investment, considers that it is even appropriate to make comment to a client of another Solicitor as to the accuracy of solicitor/client advice. For the record, I do not accept her assessment.
>
> (4) Even more surprising (from a professional perspective) is the fact that Donna Hall has suggested that the Trust potentially "reconsider reading out that advice". In my view this is attempted interference of a very questionable nature… My role in providing the opinions to the Trust which have been given is confined to that of solicitor-client. Further, I have no vested interest in the success or failure of the proposal."

[25] On 10 December a further hui of Tauhara 15 occurred and Ms Hall and Mr Taylor were again recorded as being in attendance but on this occasion their attendance was recorded as representing Hikuwai.

[26] The meeting proceeded with Ms Hall setting out the proposed purchase of Tauhara North by Tauhara 15 and others. The minutes record:

> "D Hall pointed out to the owners that a loan of $500,000 was serviceable by the Trust and little risk was involved… D Hall advised the owners that a real interest had been expressed in both Tauhara North and Wairakei blocks and Tauhara Middle 15 Trust should give the Hikuwai tribes and Tuwharetoa as a whole, a show that they are supportive of this initiative… D Hall then discussed the additional funds which will be required from the Trust, Tauhara Middle 15 Trust should be able to borrow up to $1,600,000 which can be secured against the Tauhara farm (European title)… D Hall presented the benefits of this proposal to the owners. If the Trust was involved in the proposal, it would mean a return of Tuwharetoa lands and would be a long term economic asset for the future. There are real possibilities for Tauhara blocks and Tauhara Mountain as a geothermal source… D Hall also pointed out that because of the large amounts of lands that will be owned by Tauhara Middle 15 Trust, if they enter into discussions with Taupo District Council regarding rezoning of blocks of land, the Trust will have a

substantial amount of power… D Hall then advised the owners who the other investors in this proposal are… Tauhara Middle 15 Trust must give its support.

Ways in which the Tauhara Middle 15 Trust will help in this proposal is to lend $500,000 and authorise the Trustees to increase the loan to $1,500,000 in total at their discretion. If Tauhara Middle 15 Trust gives its support, this will give mana to the transaction.

D Hall then wished to discuss the alleged conflict of interest. This had been questioned because Chulla Wall, Peter Clarke and John Tahau are also Trustees on the HHLT. This can be seen as a conflict of interest under Pakeha law but this can be waived by the Trustees and owners so that all Trustees of Tauhara Middle 15 can participate in this project. D Hall pointed out that in many Maori and Tauhara situations, this rule will sideline Maori leadership and leave the decision-making to Pakeha.

D Hall expressed her view that the leadership for this proposal needs to have collective support for this to be effective… D Hall replied that no funds were at risk. If the deal falls through, Tauhara Middle 15 Trust's money will be joined with Opepe Trust and Tauhara North 3B and used to buy the Wairakei block… M Allan first gave an overview of the land so the owners knew the details of the land. An extract of a letter by T Jensen, the Trust's solicitor was presented acknowledging his opinion that the request for funding by the HHLT be declined. The transaction was in the solicitor's opinion 'illegal'. A letter from the Trust's bank, BNZ, was then presented… Mr Allan explained that the proposed loan to the HHLT did not comply with the Trust Order, good investment principles and commercial principles in that the Trust was expected to lend money at an interest rate of 1.5% less that it cost to borrow. He would address the issues from an accounting perspective and the owners should listen to the legal advice of Tony Jensen… A Smallman queried if the opinion from T Jensen was a full legal opinion or a personal opinion on D Hall. M Allan then read out the full letter from T Jensen and gave D Hall the opportunity to reply… D Hall advised that the Wairakei block had been chosen as the block to put all funds into as there are already many people ready to purchase this land. D Hall wished M Allan to stop his scare tactics and frightening the Trustees with losing their land… D Hall again reminded the owners that the HHLT was asking for $500,000 and this was a real opportunity for both Tauhara Mountain and Tauhara Farm Trust to join in the bigger picture for geothermal power. D Hall's concern was that the Tauhara Middle 15 Trust would enter into an agreement with Contact Energy as owners of the land but Contact Energy drive the bus. Once this proposal is passed, Tauhara block owners will be able to negotiate with Contact Energy as one large group and not a number of smaller groups… D Hall wrote up resolutions on a piece of paper."

[27] Such resolutions including confirmation of a loan of $500,000.00 to Hikuwai, approving a further $1,000,000.00 at the trustees' discretion and waiving any alleged conflict of interest by the trustees.

[28] At a subsequent meeting of Tauhara 15 on 13 December attended in part by Mr Taylor, Mr Allan the Trust Secretary recommended obtaining further legal advice. The Chairman was directed to obtain an independent legal opinion before signing the documents.

[29] Following a further meeting on 19 December 2006, the Trust advanced funds of $240,000 unsecured to the solicitors acting for Landcorp, in respect of the Hikuwai purchase.

[30] The next document of moment is a Deed of Loan and Understanding and Grant of Right to Purchase between Hikuwai and Tauhara 15. The author of the document is Ms Hall (see page 144 Bundle).

[31] Such document includes:

> "**Independent Advice**
>
> 11.1 The parties acknowledge that they have had equal opportunity to receive independent legal advice as to the effects and implications of this document prior to the signing of this agreement."

[32] The trustees of both Hikuwai and Tauhara 15 then signed this document with Ms Hall as a witness.

[33] One of the trustees of Tauhara 15, Mr Karaitiana declined to sign the necessary mortgage documents. Ms Hall wrote to Mr Karaitiana on 17 January 2007 (page 179 Bundle) advising that she was acting on behalf of Peter Clarke, Charles Wall and John Tahau as trustees and advised, that she had instructions to have him removed as a trustee if he did not sign the document. She further advised Mr Karaitiana, that he should obtain legal advice and that Hikuwai would pay for such advice.

[34] On 5 March 2007 at a meeting of Tauhara 15, Ms Hall was appointed as solicitor for Tauhara 15 in place of Mr Jensen.

[35] On 13 April 2007 while attending a meeting of Tauhara 15 Ms Hall again advised the Trust, that the conflict of interest apparent to Messrs Tahau, Clarke and Wall could be waived as per advice given at the meeting of 10 December.

[36] At a further meeting on 7 June 2007, again with Ms Hall present, the Trust resolved to purchase a 20 per cent interest in the Tauhara North block.

[37] On 28 June 2007 Hikuwai entered into an Agreement for Sale and Purchase to sell the Tauhara North block to Opepe and Tauhara 15.

[38] The backing page to the Agreement for Sale and Purchase which would normally record solicitors acting is missing. It is noted however that in the Client Authority and Instruction for an Electronic Transfer Form made in favour of Elliotts that each of the trustees have had their identity verified by Ms Hall (page 254 Bundle).

[39] It is further noted, that initially Messrs Farquhars were instructed to complete the conveyance but declined to do so in correspondence of 5 July 2007, because of their opinion that the various questions posed by the Maori Land Court should be answered before the transaction was concluded.

[40] Thereafter Messrs Elliotts were instructed to complete the conveyance and they reported to Ms Hall on 19 July 2007 (page 257 Bundle).

Discussion

[41] The Tribunal is conscious that it should exercise its power of strike out sparingly and only in a situation, where there is no evidence which could support the charge. It is intended that the threshold in this regard is of necessity pegged as a low evidential threshold.

[42] In the matters recited above, if accepted by the Tribunal (and in the absence of any evidence to the contrary by the practitioner), there is evidence

which could potentially support a finding, that Ms Hall gave advice to Tauhara 15 as to the advisability of entering into the transaction to purchase the Landcorp land from Hikuwai; the role of the conflicted trustees, and her own role. It is open to the Society to argue (as it does) that the presence of Messrs Jensen, Mr Clarke from Farquhars and Mr Elliott from Elliotts does not exclude Ms Hall from a role as acting for Tauhara 15 at the relevant times. That would appear to be all the more so, given that Tauhara 15 only executed the Agreement for Sale and Purchase after Ms Hall became Tauhara 15's solicitor.

[43] The expectation on the practitioner regarding the need to obtain an informed consent in the face of an ostensible conflict requires a high level of action on the part of the practitioner.

[44] The Tribunal does not consider and has not engaged in an examination of whether the engagement of Mr Clarke of Farquhars, Mr Elliott of Elliotts and the instruction of counsel Mr Taylor met that requirement, as the Tribunal considers that all it need do when facing an application of strike out is to satisfy itself that there is prima facie evidence of a conflict. We consider that there is such prima facie evidence because of:

44.1 Ms Hall's part in various hui with Tauhara 15 when she has arguably given advice as to the advisability of entering the transaction.

44.2 When she wrote to Tauhara 15 directly, disagreeing with Mr Jensen's advice as to conflict.

44.3 Being the solicitor on the record at the time that the Agreement for Sale and Purchase was entered into.

44.4 There being an absence of any other solicitor advising Tauhara 15 on the Agreement for Sale and Purchase (based on the information before the Tribunal), it appears as if Messrs Farquhars and Elliotts have progressed the conveyance following from that agreement but have not advised on the agreement itself.

[45] Whether these matters are sufficient for a finding of guilt is of course a matter for another day. The Tribunal makes clear, that it has reached no final decision in this regard and specifically notes Ms Cull's advice from the practitioner that no final decision has been made as to whether the practitioner will herself give evidence.

[46] All that the Tribunal is required to do at this stage is to decide whether or not there is evidence which prima facie could support the charge brought by the Society. For the reasons given above, the Tribunal does so find, it is a matter for another day as to whether this evidence, together with any evidence which the practitioner may elect to give or call meets the higher burden of proving the charge to the requisite standard.

[47] It is the decision of the Tribunal therefore, that the practitioner's application to have the charge dismissed on the basis that there is no case to answer fails.

[48] The practitioner has indicated a wish to take further advice and to consider an appeal as a result of this decision. That is an option open to the practitioner, but it is expected, that this matter will be progressed in a timely fashion and to that end, the Registrar is requested to convene a conference between the Chair of the Tribunal and counsel so that progress of this matter can be ensured.

DATED at AUCKLAND this 16th day of April 2012

_____

Judge D F Clarkson
Chair