

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2009] NZLCDT 8

LCD 12/2009

IN THE MATTER

of the Law Practitioners Act 1982

BETWEEN

**AUCKLAND DISTRICT LAW
SOCIETY**

AND

**TERESA JANE FRANCIS
DOYLE**

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms S Sage
Mr O Vaughan
Ms B Smith
Mr J Clarke

HEARING at AUCKLAND on 18 May 2009

APPEARANCES

No appearance by or on behalf of respondent
Ms Davenport for the Society

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

Introduction

[1] This afternoon the Tribunal has been considering the case of Teresa Jane Francis Doyle who faces 29 charges that whilst employed by a practitioner was guilty of conduct that would in the case of a practitioner have rendered the practitioner liable to have his or her name struck off the roll for misconduct in his or her professional capacity, in relation to theft of 29 separate sums from various clients of the firm that was then her employer between April 2005 and September 2007 although the precise dates pleaded are 27 May 2005 to 1 August 2007.

[2] These charges were laid in November 2008 but prior to that through her lawyer Ms Doyle had effectively admitted the thefts and had already made repayment to the firm in order that they could reimburse their clients. The total amount involved was \$79,230.00 and we understand that Ms Doyle repaid something in the region of \$78,000.00. So a very significant amount was repaid.

[3] The hearing today therefore really simply has been a sanction hearing and there has been no appearance by Ms Doyle except through written submissions provided by her lawyer Mr Scott whose attendance is excused.

[4] The Society seeks an order finding that the charges are proved and in support has filed affidavit evidence setting out the Society's evidence including the results of an investigation by Mr Mace which took place over a four month period between December 2007 and April 2008 and sets out quite clearly a spreadsheet supporting the charges alleged.

[5] There is a written admission before the Tribunal but it is a conditional admission. However, given the unchallenged affidavit evidence provided by the Society, the Tribunal has no difficulty in making the findings sought and thus the hearing has largely concentrated on the issue of sanction.

[6] The case falls to be considered under the transitional provisions of the Lawyers and Conveyancers Act 2006. Those transitional provisions being contained in ss.352 and 353 of the Act and therefore are determined under the old Act, the Law Practitioners Act 1982.

[7] The Society seeks orders pursuant to s.114(2)(b) of the 1992 Act and has provided the Tribunal with three similar cases as precedents for the making of such orders. In addition the Society seeks, pursuant to ss.112 and 129 an award of costs in respect of the Society's expenses.

[8] Section 114(2) provides that:

“114 Disqualification for employment by practitioner

(1) Where a charge has been made by a District Council or a complaints committee against any person that he, while employed by a practitioner, has been guilty of conduct that would in the case of a practitioner render him liable to have his name struck off the roll, the New Zealand Disciplinary Tribunal shall have power to inquire into the charge.

(2) If after inquiring into the charge the Tribunal is of the opinion that the person charged has been guilty of such conduct, it may if it thinks fit do one or more of the following things:

...

(b) Order that no practitioner shall employ him in connection with the practitioner's practice so long as the order remains in force: ”

[9] The admission and in terms of pre-trial discussions in fact consents to such an order being made. The three cases cited to us were respectively *Cunningham* decided in January 2009, *Thomson* decided in March 2002 and *Cull* decided in March 2002 also and in each case the New Zealand Practitioners Disciplinary Tribunal had no difficulty in making the orders sought under s.114(2)(b). Likewise this Tribunal has no difficulty with the concept that there ought to be an order in those terms and accordingly makes the order now.

[10] Slightly more difficult is the issue of costs which has exercised us in discussions this afternoon. The solicitor for Ms Doyle has asked the Tribunal to make no award of costs and has referred the Tribunal to Ms Doyle's personal circumstances which are now quite poor. Counsel also points out that an admission was made in June 2008, months before the charges were laid. Counsel points out that almost all of the

funds were repaid and this distinguishes this person from the other cases that have been put to us in some respects and so we have balanced the aggravating and mitigating features of this case and considered whether effectively a further penalty by an award of costs should be imposed.

[11] The aggravating part of course is that Ms Doyle committed this offending on a repeated basis over a long period of time and in addition to that she was in a position of trust. So this is very serious offending and that is reflected by the Tribunal's recognition that this of course would have been a striking off offence (had she been a barrister or solicitor) and therefore supports the order under s.114.

[12] Against that however, there was her early admission through her lawyer which did or could have saved significant costs to the Society, early repayment of almost all of the funds and her lost career. This is a career that she had been engaged in for 20 years prior to this offending being detected. And finally, on the face of it, her liabilities do exceed her assets.

[13] Taking all of those matters into account the Tribunal has determined to award costs to the Law Society of \$4,000.00 and that there will be no costs in respect of the Tribunal's own costs.

Delivered at Auckland this 18th day of May 2009

Judge D F Clarkson
Chairperson