

IN THE COURT OF FACULTIES

IN THE MATTER OF RICHARD HENRY HILL, A NOTARY PUBLIC

DECISION

1. Richard Henry Hill (“the notary”) is a notary public, authorised to practise as such in New Zealand.

Background

2. In 2016 the notary was found guilty on a charge of criminal breach of trust under section 229 of the Crimes Act 1961, which conviction was upheld on appeal. The breach of trust involved conversion of client funds in the trust account of the notary’s firm, McKay Hill, the trust account having been overdrawn by in excess of \$1 million. The sentencing judge found that the breach of trust involved a degree of premeditation and deliberate avoidance of detection by the filing of false trust account certificates. He was sentenced to eight months’ home detention and 100 hours of community work.

3. On 22 December 2017 the New Zealand Lawyers and Conveyancers Disciplinary Tribunal issued its decision in relation to a charge under section 241(d) of the Lawyers and Conveyancers Act 2006 that “he having been convicted of an offence punishable by imprisonment and the conviction reflects on his fitness to practise or tends to bring the profession into disrepute”. The notary had filed a memorandum with the Tribunal acknowledging that this charge had been made out. As the Tribunal commented: “...as a conviction for dishonesty involving the conversion of client funds, it quite clearly reflects adversely on the practitioner’s fitness to practice” (para [8]).

4. The Tribunal took into account the notary’s protestations that strike-off, the most serious sanction the Tribunal could impose, was not warranted; and that there were mitigating circumstances in that the notary was a full-time carer for his wife who had Alzheimer’s (paras [20] and [21]). However, the Tribunal considered that there were three aggravating features:

“[22] First, the length of time over which the offending occurred, namely 21 months. Secondly,that the breach of trust involved a degree of premeditation and deliberate avoidance of detection, by the filing of false trust account certificates.

[23] Further,...the offending was motivated by personal financial benefit because it enabled the firm to continue running and to pay partner drawings.”

Accordingly, the Tribunal unanimously found that the only proper penalty was to strike the notary from the roll barristers and solicitors of the High Court of New Zealand, holding that “nothing less than strike-off would adequately maintain public confidence in the ability of the profession, and its disciplinary institutions, to protect clients from dishonest dealing with their trust funds in future.” (para [25]).

The position of notaries

5. The notary's criminal offence was committed in his capacity as a solicitor, and not as a notary. Notaries in New Zealand are regulated by the Archbishop of Canterbury, acting through his Master of the Faculties and the Faculty Office in Westminster. Accordingly the Tribunal's decision did not itself have effect to remove the notary from the roll of notaries authorised to practise in New Zealand, nor to prevent his continued practice as a notary.

6. That I have power to remove a notary from the Register is not in dispute. In *Re Champion, a notary public* [1906] P. 86, 93 my predecessor as Master of the Faculties, Sir Lewis Dibdin, who was considering a striking off application, held that he had an inherent power to deal with the roll of notaries public of which he was the custodian, and that for a proper cause, "a cause likely to interfere with the proper discharge of the functions of a notary public", it was competent for him to remove the name of a public notary from the roll. At 94, he described trustworthiness as being "the basis of the position of a notary public". On the facts of *Re Champion* the conduct of the notary was not conduct in the course of the notary's practise as a notary, and thus not conduct in breach of the notarial oath. In two recent instances, *Re Marrache* (4 August 2016), and *Re Box* (17 December 2016) I have removed from the roll notaries who have been found guilty of dishonest criminal conduct, the one in Gibraltar, the other in the United Kingdom, even though the acts were not carried out *qua* notaries.

7. By letter of 25 September 2018 (which appears not to have been received at the time it was sent, but only when copied to the notary more recently), he was informed by the Registrar of the Faculty Office that the Master proposed to strike him off from the roll of notaries unless representations were received from the notary as to why the Master should not take this action. By email of 10 December 2018 the notary has responded that he has always taken his appointment as a notary seriously, but that in the circumstances it "would be of little worth for me to try to persuade you to retain my name on the Register as your mind is already made up". He referred to the events as having "occurred so long ago and after which I continued to practise for many years".

Decision

8. I accept that the criminal conduct took place a long time ago. It is, however, largely because the notary contested the criminal proceedings that the disciplinary proceedings were so long delayed. I do not consider that so long a time has passed that this should influence the appropriate disciplinary consequence. The notary has been given, and not taken, the opportunity to argue that an alternative course should be followed in respect of his future as a notary from that which has been decided upon by the Tribunal in respect of his future in a different legal role.

9. The Court's finding of dishonesty against the notary, upheld by the Court of Appeal, strikes at the heart of the trustworthiness and personal integrity which are fundamental to the role of a notary. The aggravating features referred to in the Tribunal's decision are equally apposite to the sanction of removal from the roll of notaries.

10. Accordingly I order that the name of Richard Henry Hill be struck off from the roll of notaries public authorised to practise in New Zealand.

17 December 2018

CHARLES GEORGE QC
Master of the Faculties