

IN THE COURT OF FACULTIES

IN THE MATTER OF JOHN FRANCIS WALSH, A NOTARY PUBLIC

DECISION

1. John Francis Walsh (“the notary”) is a notary public, authorised to practise as such in Norfolk Island, an External Territory of Australia. He is believed now to be aged 79.

Background

2. On 22 December 2017 Gilmour J, sitting as a judge of the Supreme Court of Norfolk Island, found that the notary (for acts in his capacity as a legal professional, that is acting as a barrister or solicitor) was guilty of professional misconduct and unsatisfactory professional conduct under section 18A of the Legal Profession Act 1993 (NI). On 23 February 2018 the same judge, ordered that his name be removed from the Register of Practitioners of the Supreme Court of Norfolk Island, and that his right of practice on Norfolk Island as a barrister or solicitor be suspended for 10 years, commencing on the date of the Order. The notary’s application for extension of time to appeal was dismissed by Wigney J, sitting as a judge of the Full Court of the Federal Court of Australia (special leave jurisdiction), by Order of 19 July 2018. Inter alia Wigney J held that none of the notary’s proposed grounds of appeal “appeared to have any discernible merit”.

3. Gilmour J found that the notary had knowingly made a number of false representations to various people. Those representations included: a representation to another legal practitioner that it was necessary for him to become a member of the Norfolk Island Bar Association, upon payment of a fine of \$200, as a requirement under the Legal Profession Act for obtaining registration as a legal practitioner on Norfolk Island; a representation that the Norfolk Island Bar Association was a professional body for legal practitioners practising on Norfolk Island; a representation that he held a recognised judicial office as Chief Justice of the International Tribunal of Natural Justice; and a representation that he was a Knight under the Australian or Imperial Honours system, entitling him to use the honorific “Sir”. The judge found that the Norfolk Island Bar Association was in effect nothing more than an informal lunch and drinks club, attended mostly, but not exclusively, by lawyers on Norfolk Island, and not a professional representative body for legal practitioners practising on Norfolk Island. Furthermore, the International Tribunal for Natural Justice was not a judicial body.

4. By letter to me of 15 October 2018 the Registrar of the Supreme Court of Norfolk Island drew my attention to these judicial decisions “for such action as you think fit”, given that the notary, although no longer resident in Norfolk Island, was registered as a notary public by the Faculty Office. There followed investigations to confirm that, as Master of the Faculties, I retained regulatory jurisdiction over the notary, notwithstanding the Norfolk Island Applied Laws Ordinance 2016, and that this had not passed to the Supreme Court of New South Wales, pursuant to the

Norfolk island Applied Laws Ordinance 2016; and thereafter, without success, to establish the present whereabouts of the notary.

The position of notaries

5. The notary's misconduct was committed in his capacity as a barrister or solicitor, and not as a notary. Notaries on Norfolk Island are still regulated by the Archbishop of Canterbury, acting through his Master of the Faculties and the Faculty Office in Westminster. Accordingly, the Supreme Court's decision did not itself have effect to remove the notary from the roll of notaries authorised to practise in Norfolk Island, nor to prevent his continued practice as a notary.

6. That I have power to remove a notary within my regulatory jurisdiction 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 three recent instances, *Re Marrache* (4 August 2016), *Re Box* (17 December 2016) and *Re Hill* (17 December 2018), I have removed from the roll notaries who have been found guilty of dishonest criminal conduct, the first in Gibraltar, the second in the United Kingdom, the third in New Zealand, even though the acts were not carried out *qua* notaries. Although the misconduct in the present case does not involve conviction for a criminal offence, his misconduct was found by the primary judge to have been "dishonest, egregious and of grave impropriety".

7. The last known address of the notary was the Adina Apartment Hotel, 189 Queen Street, Melbourne (para 30 of Wigney J's judgment, setting out part of the notary's affidavit of 18 June 2018). The Faculty Office's investigations in Norfolk Island, in Queensland, and elsewhere, have failed to identify his present whereabouts. Accordingly on 19 September 2019 a formal notification appeared in the Norfolk Islander the local newspaper for Norfolk Island, which read as follows:

"Re: John Francis Patrick Cyril Colclough WALSH of Brannagh, a Notary Public

TAKE NOTICE THAT unless good reason be provided to the Registry, the Faculty Office, 1 The Sanctuary, Westminster, SW1P 3JT, U.K., within 28 days of the date of publication hereof the Master of the Faculties of the Archbishop of Canterbury intends to suspend the above-named Notary Public and to bar him from practising as a Notary Public in the Australian External Territory of Norfolk island for a period of ten years coterminous with his suspension as a barrister and a solicitor practising in the said Norfolk island."

No response has been received by the Faculty Office. Given the prominent role played by the notary within the legal community of Norfolk Island for many years (as evidenced by various references to him on the internet), and the absence of any recent tracing of him elsewhere, I regard this notice as having given the notary a reasonable opportunity to make representations.

Decision

8. So far as reasonably practicable, 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 judge of the Supreme Court of Norfolk Island in respect of his future as a barrister and solicitor.

9. That judge's finding of dishonesty and grave impropriety against the notary, strikes at the heart of the trustworthiness and personal integrity which are fundamental to the role of a notary. The judge (para 41) referred to the notary's age and "considerable experience with legal practice", and said that:

"His complete lack of contrition or any insight into his conduct is of considerable concern and bears on the disposition of this matter. These matters, taken together with the long duration of the respondent's conduct and the other aggravating elements discussed above, render disciplinary action of the kind proposed by the Registrar appropriate.

The making false representations to others is a very serious contravention of the high professional standards required of legal practitioners. The administration of justice depends in large extent on the trust that courts and the public place in those who practise the law".

10. The sanction imposed by Gilmour J was one of 10 years suspension. The responsibilities of a public notary are, if anything, higher than those of even a barrister or solicitor, since in nearly all cases notarial business is concerned international transactions which proceed on the basis of the notary's integrity and good faith. Thus I have given careful consideration to whether, as normally happens, the notary should be struck off., rather than suspended. On the other hand where on the particular facts a regulatory body such as the Supreme Court of Norfolk Island has held that a lesser sanction of temporary suspension is appropriate, I can see no overriding reason to depart from this.

11.. Accordingly I order that John Francis Walsh be suspended and barred from practising as a Notary Public in Norfolk Island for a period of ten years coterminous with his suspension as a barrister or solicitor practising in Norfolk Island, that is until 19 July 2028; and that his entry in the notarial roll be so marked.

3 December 2019

CHARLES GEORGE QC
Master of the Faculties