NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2016] NZLCDT 15
LCDT 004/16

UNDER	the Lawyers and Conveyancers Act 2006
IN THE MATTER	of Disciplinary Proceedings under Part 7 of the Act
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 2** Applicant
AND	**BHARAT PARSHOTAM** Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms S Fitzgerald
Ms F Freeman
Ms C Rowe
Mr T Simmonds

HEARING at Specialist Courts & Tribunal Centre, Auckland

DATE OF HEARING 12 May 2016

DATE OF DECISION 1 June 2016

COUNSEL

Ms C Paterson for the Standards Committee
Mr J Billington QC for the Practitioner

DECISION OF THE NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL ON PENALTY

Introduction

[1] This is a case where the Tribunal is unanimous that a period of suspension is required but where it has struggled to assess the appropriate period of suspension to impose on Mr Parshotam for his admitted negligence.

[2] The conduct itself can be assessed and compared with penalties imposed on other practitioners. The difficulty arises because there is a very serious aggravating feature (discussed further below) which is not itself the subject of a charge.

[3] In precisely the same circumstances, namely the practitioner lying to the Standards Committee when accused, another practitioner, Mr Horsley,[1] faced an additional charge of misconduct, which he admitted. That led to a three year suspension, as compared with the two year suspension for the originating (and itself very serious) conduct.

[4] The Tribunal is concerned not to accord unsustainable weight to the aggravating feature. However, we would not wish to see the penalty process in disciplinary proceedings, with its focus on public protection rather than punishment, assuming the more mathematical and precise features of criminal sentencing.

Background

[5] Mr Parshotam, a very experienced and busy practitioner, admitted two charges of negligence or incompetence of such a degree as to reflect on his fitness to practice or as to bring his profession into disrepute.[2]

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[1] *Canterbury Westland Standards Committee v Craig Ronald Horsley* [2014] NZLCDT 47.
[2] Section 241(c) Lawyers and Conveyancers Act 2006 ("the Act").

[6] The charges originally pleaded misconduct, effectively based on reckless contravention of the Rules of Professional Conduct and the Land Transfer Act 1952.[3]

[7] After brief evidence from Mr Parshotam, and submissions for the Standards Committee and for the practitioner (who had previously negotiated an agreed approach), the Tribunal granted leave to withdraw the misconduct charges. We accepted the Standards Committee's submission that in these circumstances "high end" negligence was a proper level of culpability.

Summary of the two complaints

[8] Two complaints by separate clients, Mr and Mrs P and Mrs R, gave rise to the charges. They shared the common element that Mr Parshotam had falsely witnessed documents he had not seen signed by the client. He then falsely certified to LINZ[4] that he had witnessed the signing of loan documents and authority and instruction ("A and I") forms respectively.

[9] In addition, in relation to the P complaint, Mr Parshotam acted for multiple parties in transactions in which there was a risk that he may be unable to discharge his obligations to one or more clients. The full charges as originally pleaded and supporting particulars are annexed to this decision as Appendix I.

Complaint by Mrs R

[10] In the R complaint four documents were falsely witnessed by the practitioner. The consequences of Mr Parshotam failing to witness Mrs R's signature were very serious. Mr R had forged Mrs R's signature on this occasion[5] and she knew nothing of the loan that was secured against their jointly owned property. Subsequently the couple separated after Mrs R discovered her husband's deception.

[11] Mr Parshotam says that he had acted for Mr and Mrs R for many years and completely trusted Mr R. He accepted Mr R's explanation that his wife was too busy at work to attend the practitioner's office and allowed Mr R to take the documents away for signature. On his returning of the documents Mr Parshotam witnessed them and

[3] Section 164A of the Land Transfer Act 1952.
[4] Land Information New Zealand.
[5] We should note that there is no suggestion that Mr Parshotam was involved in or knew of this forgery.

compounded this error by then certifying that he had properly witnessed the signatures. This occurred in early July 2014. Mrs R became aware of this fraud in April 2015 and confronted her husband who admitted his forgery. This apparently followed Mrs R discovering in March of 2015 that their home had been sold without her knowledge. Mrs R instructed new lawyers and sought to obtain files relating to the sale. These were not provided by Mr Parshotam for a significant time.

[12] Mrs R also alerted the solicitors who had acted for the lender, that her signature on the loan agreement had been forged. That solicitor told her that he had been assured by Mr Parshotam that he had advised Mrs R on the guarantee and witnessed her signature, and told her that Mr Parshotam was a practitioner of many years experience and high integrity whom he believed. Thus Mrs R was put in the position of being called a liar, by Mr Parshotam's (misled) colleague. It is troubling that Mr Parshotam was prepared to lie to another solicitor about his own client, and at a time when he was aware that the lender was taking steps to enforce the mortgage over the home.

[13] That solicitor had frequently acted for clients when Mr Parshotam's firm had a conflict of interest and vice versa. Therefore this was a trusted colleague with a longstanding relationship with Mr Parshotam. Mr Parshotam told the Tribunal he had not yet acknowledged to that colleague that he lied to him about his client's improperly witnessed (and forged) signature. He said that he intended to do so.

[14] The denial of his client's valid complaint raises the seriously aggravating feature referred to in the introduction. When she did not receive her files, Mrs R complained about the whole transaction to the New Zealand Law Society ("NZLS"), in early June of 2015. In response to her complaint, Mr Parshotam wrote to the NZLS on 7 August 2015 refuting the complaint. This was not just a bare denial. It was a four-page letter of elaborate deception and blaming of his client.

[15] It should be noted that in the meantime, in late July, Mrs R had withdrawn her complaint (temporarily as it transpired). The Standards Committee had determined to pursue the matter in any event but the withdrawal is noted in the practitioner's response to the NZLS. It is noted because at one stage the other complainants also withdrew their complaint.

[16] In his denial to the NZLS Mr Parshotam said:

> "I deny Mrs R's allegations as outlined in D's letter of 10 June 2015. When I first received a copy of the complaint, I considered immediately firing off a stinging rebuke. However, I was made aware of S and K's relationship breakdown and the emotional turmoil that they have endured recently … That being said, I am still extremely disappointed that I have been dragged into what I consider is a private matter between S and K."

[17] Later he said:

> "I attended on all five parties for signing of the documents on 2 July 2014."

[18] That was a barefaced lie. And later:

> "To my utter disbelief, I received an email from K's father R M on 29 May 2015 alleging that K had never been into my office to sign the loan documents on 2 July 2014 and that she was only made aware of this at our meeting in April 2015…."
>
> ...
>
> "10.2 K did attend at my office with the others to sign these documents on 2 July 2015.
>
> 10.3 I did not "execute a fraudulent mortgage" over her family home. As one of the mortgagors, K authorised the registration of the mortgage by signing the Authority and Instruction form.
>
> 10.4 K was well aware that the trust's property at … was being refinanced and would be subject to a new mortgage
>
> 10.5 …but re-iterate that K signed the documents in question in my presence...
>
> 10.6 I refute that I have not acted in K's best interests …"

[19] And finally he made these comments about his client:

> "14 I have been advised that K has expressed a desire to personally apologize to me for making these allegations and the stress that has caused me …
>
> 15 I do not wish to speculate on K's motivation to make her complaint as I do not believe that will help the parties move on. While this has caused me a great deal of stress … for that reason, I am prepared to let the withdrawn complaint be the end of the matter."

[20] The complainant promptly responded to that letter disagreeing with all of the points made by Mr Parshotam annexing a timesheet demonstrating that she had been at work on the day when she had allegedly signed the mortgage. She also attached a report from a handwriting expert, which assessed the signatures as forged, and confirmed an opinion that the forgery was by her husband.

[21] Some six weeks later, when represented by senior counsel, Mr Parshotam filed an affidavit with the New Zealand Law Society Complaints Service acknowledging the complaint made by Mrs R and sincerely apologising for the misleading response sent by him to the NZLS on 7 August. He professed to have been under severe stress and said he had reacted inappropriately instead of admitting immediately to the NZLS that he had fallen below his own, and prescribed, professional standards.

Complaint by Mr and Mrs P

[22] Mr and Mrs P had complained to the Law Society that (a) Mr Parshotam had acted for multiple parties in relation to the transfer of a property where a clear conflict of interest arose, without having advised them to seek independent advice; and (b) falsely witnessed Mrs P's signature on A and I forms, and falsely certified the execution of the documents, to LINZ.

[23] Mr Parshotam had said, in explanation, that at his first meeting with the multiple parties Mrs P had requested that in future she not be required to attend the office, for religious reasons, and that she would sign the documents and return them for Mr Parshotam to witness. In this case there is no suggestion of a false signature or that Mrs P did not sign the documents.

[24] Mr and Mrs P's complaint was made on 4 May 2015 by lawyers on behalf of Mr and Mrs P.

[25] In a letter in response to that complaint on 6 July 2015 Mr Parshotam, who referred to Mr and Mrs P as "experienced property developers … well aware of the risks, pitfalls and advantages of their actions", acknowledges that it would have been sensible for him to have "… at least obtained waivers in respect of the disputed property … I accept that it could be said that VEL's interest may have been contrary to the transfer to Mr S and that a conflict was evident."

[26] He also acknowledged that Mrs P did not sign the A and I form in his presence.

[27] However in the course of his comments Mr Parshotam said this:

> "Having taken the time to reflect on the complaint, it is clear to me that I made an error when agreeing to the concessionary practice sought by Mrs P at our initial meeting in September 2012. Against my better judgment and usual strict practice, I relented to the request because I was swayed not only by the client, but also the practice adopted by a senior practitioner. It was a **unique** circumstance but one which, in hindsight was unwise." (emphasis ours)

[28] He then said:

> "I sincerely regret making an exception for them to my usual practice."

[29] Finally Mr Parshotam said:

> "I assure you that the departure from my usual practice when it comes to witnessing was unique given this particular set of circumstances and that I will not be granting such a concession again."

[30] This was another blatant lie made at a time when Mr Parshotam knew of the R complaint and his false witnessing of the documents in that matter also. At this point, of course, he had not acknowledged that other lapse to the NZLS, it was some two-and-a-half months later before this occurred.

Level of Seriousness

[31] Ms Paterson, for the Standards Committee, submitted that the conduct subject to the charges was "high end negligence". Mr Billington on behalf of the practitioner accepted that analysis.

[32] We agree with that assessment. Having heard submissions from both counsel we were prepared to accept that Mr Parshotam's actions did not clearly constitute a wilful or reckless breach of the relevant rules, such as to support a finding of misconduct. However, his errors of judgment in respect of the witnessing of signatures, certifying that witnessing and failing to deal appropriately with a clear conflict of interest were serious and multiple. As submitted by Ms Paterson, this is particularly so in falsely certifying to a lender that proper witnessing of documentation had occurred. There are two separate complaints in which the same pattern of

behaviour has occurred, and which undoubtedly bring the profession into disrepute. They are also at a level which reflects on his fitness to practice.

Mitigating Factors

[33] It is accepted that this was not wilful or calculated conduct for personal gain. There was no dishonest purpose.

[34] Mr Billington provided the Tribunal with a number of references filed in support of his client. They speak highly of the lawyer, his position in the community, and his clear devotion to his work.

[35] Mr C Bierre, soon to be admitted into partnership with Mr Parshotam, gave evidence to describe the nature of the practice and Mr Parshotam's *mana*. This clearly is an extraordinarily busy practice (6,500 clients for a small to medium sized firm). The bulk of the clients are drawn from the Hindi and Gujarati communities in the area where Mr Parshotam practices. Until 2015 Mr Parshotam had insufficient legal support for such a busy practice.

[36] Mr Bierre described how the clients regarded Mr Parshotam not only with respect but indeed even reverence. Mr Bierre acknowledged that Mr Parshotam's standing among his community imposes additional obligations for integrity, given how hard it is to challenge someone with such high levels of respect. We accept that Mr Parshotam has taken steps to reorganise his practice in a manner which will mean he is less stressed and can share the load with new partners.

[37] A further mitigating feature which was put forward was Mr Parshotam's acceptance of his negligence and cooperation from relatively early in the proceedings. This is somewhat difficult to attribute significant credit, when it followed immediately upon the seriously aggravating feature of false denials.

[38] Mr Parshotam is also to be given credit for addressing his responses by seeking medical help and counselling support.

Aggravating Features

A. Previous Offending

[39] Mr Parshotam has four previous findings of unsatisfactory conduct against him between March 2010 and November 2013. Four findings against such an experienced practitioner is of concern in itself but two are of particular significance. One, in September 2012 because it has similarities to the current offending. Mr Parshotam witnessed both the donor's and attorney's signatures and was not an independent witness and thus breached the Protection of Personal and Property Rights Act 1988.[6]

[40] The second finding of particular concern was on 21 May 2013 where Mr Parshotam was found to have misled his client by representing that proceedings had been filed when they had not. He was censured and fined.

[41] The latter dishonesty is of concern in the context of the next aggravating feature, but also these findings raise concerns for the Tribunal that Mr Parshotam does not appear to have learned from them or taken advantage of his relatively lenient treatment.

B. Lying to Colleague

[42] When he reassured Mr D about having witnessed Mrs R's signature, Mr Parshotam put his client in the invidious position of having to defend herself and provide proof of the forgery. Not only was this a complete breach of trust towards his client but was also an utterly unprofessional and seriously improper way to deal with a colleague, particularly one with whom he had enjoyed a longstanding relationship. This action could well have formed the subject of a separate charge.

C. Delay in Forwarding Files

[43] The delay in forwarding files of both complainants to their new solicitors is an aggravating feature in our view. Mr Parshotam must have known that both clients had a valid basis for complaint and withholding information from them is an aggravating feature.

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[6] Section 94A(5).

D. Misleading the New Zealand Law Society and its Standards Committee

[44] This is the most serious of the aggravating features. Practitioners are expected to treat their professional body, particularly its disciplinary arm, with the utmost good faith and openness.

[45] As recorded in the Tribunal's decision in *Horsley*:[7]

> "[13] Mr Hodge then referred us to the decisions in *Hart*[8] and *Parlane*[9] respectively, where it was held that failure to comply with lawful requirements of a disciplinary body or cooperate was a serious matter indeed. In *Parlane* it was said:[10]
>
> > "… There must also be a duty to act in a professional, candid and straightforward way in dealing with the Society and its representatives …"
> >
> > And at [109]:
> >
> > "… The purpose of the disciplinary procedures is to protect the public and ensure that there is confidence in the standards and probity met by members of the legal profession. It is therefore axiomatic that practitioners must co-operate with those tasked with dealing with complaints made even if practitioners consider the complaints are without justification …"
>
> [14] Mr Hodge, relying on these dicta submitted that the present instance of knowingly lying to a professional regulatory body was even more serious than non-compliance with its requirement. He submitted that the misleading statement in the formal response to the Tribunal was an aggravating feature of Charge 2.
>
> [15] In summary, Mr Hodge submitted if strike-off were not seen as a proper response then a lengthy period of suspension "*towards or at the maximum period'* was required."

The Tribunal accepted that "knowingly lying" was serious misconduct.

[46] In evidence, the practitioner himself accepted that this is a seriously aggravating feature. Mr Billington also accepted this. Once again, it could also have been the subject of a separate charge and it will be noted that in similar

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[7] Above n 1.
[8] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 83.
[9] *Parlane v New Zealand Law Society (Waikato Bay of Plenty Standards Committee No. 2)* HC Hamilton, CIV-2010-419-1209, 20 December 2010.
[10] At paragraph [108].

circumstances, in the one case where this has occurred, that charge was one of misconduct and carried a penalty of three years suspension (*Horsley)*[11] .

Similar Cases

[47] Counsel referred us to the decisions of *Sharma,*[12] *Sawyer*[13] and *Lester.*[14] The Tribunal has also had regard to a number of other cases where conduct of this level of seriousness has been considered with a broad range of penalties imposed.

[48] Mr Sawyer was sentenced in respect of two admitted misconduct charges and one negligence charge. The misconduct involved forging a client's signature in order to correct an oversight and to save the client from the inconvenience of returning to sign again. The second misconduct and the most serious related to the reconstruction of a file note upon the uplifting of a file. He confessed this serious misjudgement within a few days. The third charge related to negligence which largely arose out of the lawyer undertaking a commercial transaction which was outside his area of expertise.

[49] Because of the dishonesty involved in the changing of the file note together with the forging of the client's signature Mr Sawyer was suspended for three years. This conduct was much more serious than the conduct for which Mr Parshotam has been charged but no personal gain was involved in that matter and there were none of the aggravating features that are present in Mr Parshotam's situation.

[50] In the *Sharma* matter much more serious conduct was under scrutiny because the practitioner in that matter was found to have dishonestly submitted a false solicitors certificate in relation to the mortgage over his personal property in order to refinance it, and this left the bank unsecured for a significant period. There was previous disciplinary history of three adverse findings, though none as serious. In that matter the practitioner was struck off.

[51] In the *Lester* matter there was a more lenient treatment of the practitioner who had acknowledged a charge of misconduct, one of negligence and four unsatisfactory

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[11] Above n 1.
[12] *Auckland Standards Committee No. 2 v Sharma* [2015] NZLCDT 12.
[13] *Wellington Standards Committees No. 1 & No. 2 v Sawyer* [2013] NZLCDT 47.
[14] *Wellington Standards Committee 1 of the New Zealand Law Society v Lester* [2015] NZLCDT 23.

conduct charges. Although a more serious charge was involved, in that matter there were no aggravating features and a number of significant mitigating features in the case of Ms Lester, including that she had a long and unblemished record and a fine and censure was imposed. The Tribunal in that case recorded that the decision not to impose a period of suspension was one reached by a "fine margin".

[52] In the *Korver*[15] decision there were also two charges of negligence as in the present matter. The deficiencies in practice could be seen as more serious than those of Mr Parshotam, and occurred over a two month period. Mr Korver had pleaded guilty and also had a long record of practice, but did not have the aggravating factors of previous disciplinary history or dishonesty with the NZLS. He was suspended for six months.

[53] In the *Khan*[16] matter, the Tribunal noted that the negligence charge found was at the high end, close to misconduct. In this matter the practitioner also had three previous findings of unsatisfactory conduct, two of which involved conflicts of interest. However the practitioner promptly and fully cooperated with the disciplinary process and received credit for that. He was suspended for three months.

[54] Ms *Lagolago*[17] was found guilty on one charge of negligence. The negligence related to her attendances on one piece of litigation but there were very serious consequences for her clients and significant criticism of her approach by the Judge who conducted the hearing. Ms Lagolago was able to call on a previous unblemished record and history of serving a disadvantaged sector of the community and was ultimately not suspended, but fined and censured.

[55] A further recent matter considered by the Tribunal was that of Mr *Grave*[18] who faced one charge of negligence involving multiple conflicts of interest in the administration of an estate. Mr Grave failed to recognise the conflicts of interest and proceeded to rectify earlier errors to assist his client but in a way which ultimately adversely affected another beneficiary. In that matter there was no dishonest intent. That practitioner was able to call on a long and unblemished professional record and he was also fined and censured.

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[15] *Auckland Standards Committee No. 2 v* Korver [2011] NZLCDT 22.
[16] *Auckland Standards Committee 5 v Khan* [2014] NZLCDT 15.
[17] *Wellington Standards Committee 2 v Lagolago* [2015] NZLCDT 43.
[18] *Canterbury Westland Standards Committee No. 1 v Grave* [2016] NZLCDT 8.

[56] Similarly Ms *Monkton*[19] a practitioner who admitted negligence in the manner in which she had attempted to sort out a complicated family transaction was suspended for one month only. This was because she also was able to draw on an unblemished and lengthy professional history and contribution to charitable organisations as mitigating features.

Decision

[57] Taking account of the approach of the Tribunal in these previous decisions can be a difficult exercise, because each case must be assessed on an individual basis and with the focus of public protection rather than punishment in mind.

[58] It has been repeated in many of the disciplinary decisions that personal circumstances and laudatory references of the practitioner carry much less weight in the disciplinary penalty process because of the need to focus on the protection of the public and the protection of the reputation of the profession as a whole. This practitioner has made a number of serious errors, in terms of falsely witnessing documents and then certifying that he had done so, and failing to deal properly with a conflict of interest, that show a disturbing pattern. He has also been shown to have lied in his professional role to colleagues, clients and the disciplinary body of his profession. These actions raise clear questions about his fitness to practice.

[59] As stated in *Bolton*[20] when discussing one of the purposes of suspension or strike-off:

> "…The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A **profession's most valuable asset is its collective reputation and the confidence which that inspires**.

[19] *Waikato Bay of Plenty Standards Committee 1 v Monckton* [2014] NZLCDT 51.
[20] *Bolton v Law Society* [1994] 2 All ER 492.

> Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. … All these matters are relevant and should be considered. But none of them touches the **essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness**. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears, likely to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right**. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."** (emphasis ours).

[60] The higher courts have supported the principle that the manner in which a lawyer approaches the disciplinary proceedings is relevant in making an overall assessment of Fitness, see *Hart*[21] and *Daniels*[22]*.*

[61] Taking account of the serious aggravating factors in respect of Mr Parshotam we consider that a suspension of nine months is warranted. Any lesser period would fail to take account of his previous opportunities to take more care in his practice, and would fail to sanction properly the aggravating features as compared with other lawyers who have been seriously negligent.

Orders

1. The practitioner will be suspended for nine months commencing 1 June 2016.

2. Pursuant to s 249 the practitioner is to pay the costs of the Standards Committee of $10,531.95.

3. The s 257 costs are awarded against the New Zealand Law Society in the sum of $4,197.00.

[21] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103, at [224].
[22] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850, at [30].

4. The s 257 costs are to be reimbursed to the New Zealand Law Society by the practitioner in full.

DATED at AUCKLAND this 1st day of June 2016

Judge D F Clarkson
Chair

APPENDIX I

CHARGES

Charge 1 (R complaint)

Auckland Standards Committee No. 2 (**Committee**) charges Bharat Parshotam (**Practitioner**) with misconduct, in that he wilfully or recklessly contravened:

(a) Rule 2.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**); and

(b) Section 164A of the Land Transfer Act 1952.

Or, alternatively

Negligence or incompetence in his professional capacity, that negligence or incompetence being of such a degree as to reflect on his fitness to practice or as to bring his profession into disrepute: section 241(1)(c) of the Act.

The particulars of the charge are as follows:

1 At all material times the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand and held a current practicing certificate.

2 K R (**Mrs R**) and her husband S R (**Mr R**) are the trustees of the S Trust (**Trust**).

3 The Trust owned a property at [redacted] (**Property**).

4 In or around June 2014, the Practitioner received instructions from Mr R to act for the Trust and to assist with refinancing a mortgage over the Property.

5 The Trust intended to borrow $630,000 from Simpson Dowsett Mackie Lawyers Nominee Company Limited, secured with personal guarantees from Mr and Mrs R and Mr R's parents, G and S R.

6 On 2 July 2014, Mr R, G and S R and Mr R's son, D R, attended the Practitioner's office.

7 Four separate documents were executed on 2 July 2014:

(a) Loan Term Agreement;

(b) Guarantee of Indemnity, with respect to G and S R parents;

(c) Guarantee of Indemnity, with respect to Mr and Mrs R; and

(d) Authority form for electronic transactions,
(together, the **Loan Documents**).

8 At the meeting on 2 July 2014, Mr R told the Practitioner that his wife, Mrs R, could not attend the meeting because she was busy at work. Mr R asked the Practitioner whether he could take the Loan Documents to her, have her sign them, and then bring them back to the Practitioner for the Practitioner witness the documents. The Practitioner agreed.

9 Mr R left the Practitioner's office with the Loan Documents and forged Mrs R's signature and initials on the Loan Documents.

10 Mr R subsequently returned to the Practitioner's office with the Loan Documents bearing the forged signature and initials of Mrs R.

11 The Practitioner signed the Loan Documents, certifying that Mrs R had signed the Loan Documents in his presence. Mrs R was not present when the Practitioner witnessed Mrs R's forged signature.

12 The Practitioner falsely certified to LINZ that he had witnessed Mrs R sign the authority form for electronic transactions.

13 Mrs R did not become aware of the existence of her forged signature of the Loan Documents until April 2015.

14 By falsely witnessing the Loan Documents the Practitioner breached:

(a) Rule 2.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**); and

(b) Section 164A of the Land Transfer Act 1952.

Charge 2 (P complaint)

The Committee further charges the Practitioner with misconduct, in that he wilfully or recklessly contravened:

(a) Rule 6.1 of the Rules;

(b) Rule 2.5 of Rules; and

(b) Section 164A of the Land Transfer Act 1952.

Or, alternatively

Negligence or incompetence in his professional capacity, that negligence or incompetence being of such a degree as to reflect on his fitness to practice or as to bring his profession into disrepute: section 241(1)(c) of the Act.

The particulars of the charge are as follows:

15 Repeats particular 1 of charge 1 above.

16 In 2013, the Practitioner acted for Mr P (**Mr P**), Mrs P (**Mrs P**), and VE Limited (**VEL**) in a conveyancing transaction. Mr and Mrs P are currently the sole directors and shareholders of VEL.

17 In 2013 the shareholders of VEL were Mr and Mrs P, and Mr S.

18 From approximately 2010, VEL undertook a development of 45 residential properties at [redacted] (**FB Properties**).

19 On 23 December 2009, VEL granted a mortgage over each of the FB Properties to Mr and Mrs P and Mr S and his wife (Mrs S) as mortgagees.

20 On 12 March 2013, three of the FB Properties were sold to independent third parties pursuant to agreements for sale and purchase:

(a) 41 [redacted] Avenue;

(b) 45 [redacted] Avenue; and

(c) 47 [redacted] Avenue,

(together the **Undisputed Properties**).

21 On the same date, 43 [redacted] was sold to J Trustee Limited (**JTL**), a company of which the sole directors and shareholders were Mr and Mrs S (**Disputed Property**). There was no base document underlying the transfer of the Disputed Property.

22 Mr S instructed the Practitioner to:

(a) conduct the transfer of both the Disputed Property and the Undisputed Properties;

(b) attend to the discharge of the mortgages; and

(c) prepare the necessary Authority and Instruction (**A&I**) forms in order for all four properties to be transferred.

Acting for all parties in breach of Rule 6.1 of the Rules

23 The Practitioner acted for:

(a) VEL;

(b) JTL;

(c) Mrs and Mrs P; and

(d) Mr and Mrs S

in respect of the discharge of the mortgage and transfer of the Disputed Property.

24 The Practitioner did not investigate the circumstances of the transfer of the Disputed Property or make any enquiries as to whether one or more of the parties would benefit from the transfer of the Disputed Property to the detriment of another party.

25 The Practitioner did not obtain the prior informed consent of all parties to act for them or advise any of the parties to seek independent legal advice in respect of the discharge of mortgage and transfer of the Disputed Property.

26 By acting for all parties in respect of the transfer of the Disputed Property the Practitioner breached Rule 6.1 of the Rules.

Certification of Authority and Instruction Forms

27 The Practitioner prepared the following A&I forms for each of the four properties (eight A&I forms in total):

(a) An A&I form for the discharge of the mortgage in favour of Mr and Mrs P and Mr and Mrs S; and

(b) An A&I form for the transfer of the property from VEL to the purchaser.

28 The A&I forms for the discharge of the mortgages required Mr and Mrs P and Mr and Mrs S to personally execute the form in front of a witness and to provide the required identification in order to verify the identity of the signatory.

29 The A&I forms for the transfer of the properties required Mrs P and Mr S in their capacity as directors of VEL to personally execute the form in front of a witness and to provide the required identification in order to verify the identity of the signatory.

30 The Practitioner certified all eight A&I forms, certifying that:

(a) He had witnessed the signature of Mrs P;

(b) He had sighted the original form of identity, namely a New Zealand driver's licence; and

(c) The photo, name and signature matched the signatory's name and identification provided.

31 In fact Mrs P did not sign the A&I forms in the Practitioner's presence and the Practitioner did not take any steps to verify the identity of the signatory before certifying that he had witnessed Mrs P's signature on the A&I forms.

32 The Practitioner falsely certified to LINZ that he had witnessed Mrs R sign the A&I forms for electronic transactions.

33 By falsely witnessing the Authority and Instruction forms and certifying that reasonable steps had been taken to confirm the identity of the person who gave authority, the Practitioner breached:

(a) Rule 2.5 of the Rules; and

(b) Section 164A of the Land Transfer Act 1952.