NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2020] NZLCDT 20

LCDT 013/19

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NATIONAL STANDARDS COMMITTEE 1** Applicant
AND	**JINYUE (PAUL) YOUNG** Practitioner

DEPUTY CHAIR

Judge JG Adams

MEMBERS

Mr S Hunter QC

Ms N McMahon

Ms M Noble

Ms S Stuart

DATE OF HEARING 29 June 2020

HELD AT Auckland District Court

DATE OF DECISION 10 July 2020

COUNSEL

Ms E Mok and Ms C Paterson for the National Standards Committee 1

Mr J Young in Person

REASONS FOR DECISION OF TRIBUNAL

[1] Mr Jinyue (Paul) Young suggests that the complaint made by his former client Mr Z is groundless. He does so by asserting without evidence that the complaint was only made to avoid paying his legal costs. Mr Young says he provided services cheaply for Mr Z who could not pay in advance. His closing oral submission built to the assertion that: "Mr Z should be grateful. I gave him more than he contracted for." In conclusion he submitted that the charges should be struck out as frivolous.

[2] The Standards Committee takes a different view. It notes that Mr Young:

- entered into a written engagement to take on Mr Z's Family Law case;
- without alerting his employer;
- and without having relevant experience or skills to undertake the work to a professionally adequate standard;
- that he obtained no effective guidance or supervision;
- that he failed to keep a proper file; and
- that his client, who has a poor command of English, suffered materially.

[3] The Standards Committee argues that Mr Young's professional responsibilities to Mr Z cannot be reduced by Mr Young's suggestion that he was operating only a limited service to his client, leaving his client responsible for critical decisions in the case.

[4] Mr Young, taking the stance that he is under unfair attack, attacks back. He suggests that this process is tainted by racial bias; that the law firm instructed to represent the Standards Committee, seeks revenge against him personally; and that he has been treated unfairly and disproportionately.

[5] Following the defended hearing, the Tribunal retired to discuss the case. Unanimously agreeing that both charges against Mr Young were proved, we announced that outcome. This decision explains our reasons. Penalty will be addressed at a later hearing.

[6] The charges are:

Charge 1: Negligence or incompetence in his professional capacity of such a degree or so frequent as to reflect on his fitness to practise or as to bring his profession into disrepute (s 241(c) Lawyers and Conveyancers Act 2006 (the Act)).

Alternatively, unsatisfactory conduct under s 12(b) and/or s 12(c) of the Act, for engaging in conduct that fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer, or that breached rr 3, 7, 7.1 and/or 13.3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules).

Charge 2: Unsatisfactory conduct under s 12(b) and/or s 12(c) of the Act, in that the conduct would be regarded by lawyers of good standing as being unacceptable, or was conduct that breached r 2 of the Rules and/or s 4(a) of the Act.

[7] The first charge relates to Mr Young's conduct while acting for Mr Z. The second charge relates to his conduct when attempting to persuade Mr Z to withdraw his complaint to the New Zealand Law Society.

[8] The issues to be determined are:

- Was Mr Z hampered by lack of command of English?
- What were Mr Young's terms of professional engagement with Mr Z?
- Was Mr Young's professional work for Mr Z negligent or incompetent?
- If so, were the defects of such a degree or so frequent as to reflect on his fitness to practise or to bring the legal profession into disrepute?

- Is the alternative to Charge 1 made out?

- Was Mr Young's conduct in attempting to persuade Mr Z to withdraw his complaint, unsatisfactory or in breach of r 2 of the Rules or s 4(a) of the Act? This issue relates to Charge 2.

- Is the case tainted by prejudice or bias?

Was Mr Z hampered by lack of command of English?

[9] Although Cantonese and Mandarin differ orally, both are expressed in the same written characters. Mr Z and Mr Young communicated orally in Cantonese and their written communication was in Chinese (written characters common to both Cantonese and Mandarin). Mr Young confirmed under cross-examination that he emailed Mr Z in Chinese characters.[1]

[10] Mr Z came to New Zealand from China in March 1991 at age 29 years. Under cross-examination he said: "I can't read it [English] but I can understand a bit." He denied he had ever said he was an immigration agent.

[11] Mr Young claims to have agreed to provide only a "limited service" to Mr Z. Details of this proposition are dealt with under paragraphs [17] to [29] of this decision. That proposition would have been incongruent with ordinarily expected professional responsibilities if Mr Z could not read, write, or understand English with sufficient competence to manage his case.

[12] Mr Young swore: "[Mr] Z has never complained to me he did not understand English" and "I often heard him speaking English fluently …".[2] Under cross-examination, Mr Young was referred to p 938 of the Bundle which is the front page of an affidavit of Mr Z in English drafted by Mr Young. Mr Young said: "He [Mr Z] has command of English [sic]." Ms Paterson referred him to the following page where, in the affidavit Mr Young had drafted, Mr Z said: "2. I have no command of English. This affidavit has been translated for me." When tested on this, Mr Young said firstly, "I

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[1] For examples with English translations see Bundle pp 50 – 55; 82 – 85.
[2] Affidavit 3 July 2019, at [5].

think I wrote that." He then said: "I think this is what he [Mr Z] wanted me to write." That affidavit was sworn by Mr Z on 12 January 2017. One week later (19 January 2017) Mr Z swore an "Amended affidavit," also drafted by Mr Young, where paragraph [2] comprised the same words as paragraph [2] of the earlier affidavit. We find that Mr Young must have been aware that Mr Z swore on those occasions that he had no command of English.

[13] Those affidavits of Mr Z were sworn before a Justice of the Peace who was required to attend for cross-examination on his own affidavit in this matter. Mr Young did not provide that witness for cross-examination, advising in his opening that the witness was "reluctant to come." Consequently, his affidavit evidence could not be tested. The Standards Committee case is that Mr Z has insufficient facility with English to manage his Family Law case. Mr Z's affidavit evidence for this Tribunal case was written in Chinese characters and translated into English.[3] When cross-examined by Mr Young at this hearing, Mr Z gave evidence through an interpreter, interpreting between Cantonese and English.

[14] Mr Young's contention that Mr Z had adequate command of English to manage his case with only limited help from Mr Young is inconsistent with Mr Young's evidence that he attended the Family Court at Auckland with Mr Z on 28 February 2017 as a translator. If Mr Z had sufficient command of English, he would not have needed that service. Mr Young charged five hours at $250 per hour, his usual lawyer charge-out rate, for that court attendance.[4] That was a defended hearing where Mr Z unsuccessfully sought dissolution of marriage. Mr Young was at pains before the Tribunal to establish that he had merely attended as translator, and that only when Judge Fleming raised the issue did he go to the Court office and sign a document to establish his standing to represent Mr Z. In her judgment, the judge noted Mr Young's appearance as counsel for Mr Z.

[15] In the absence of Mr Young's Justice of the Peace witness, we can give no weight to that witness's affidavit. Despite Mr Young's submission that Mr Z appeared to understand English in his appearance before the Tribunal, our impression is consistent with Mr Z's evidence that he can understand "a bit." He would be unable

[3] Bundle pp 1113 – 1151.
[4] Bundle pp 35 and 27.

to read, let alone manage the complexities of legal and other documents necessary to properly represent himself in his Family Law matters.

[16] The Tribunal finds that Mr Z was significantly hampered in managing his case by his lack of facility with English language. We find that Mr Young's attempt to suggest otherwise, reflects poorly on Mr Young's credibility. That he would prepare successive documents for swearing by Mr Z (that Mr Z had "no command of English") and then himself give evidence of the exact opposite (that "he has command of English") before the Tribunal demonstrates a casual approach to the solemnity of, and importance of truthfulness in, sworn evidence.

What were Mr Young's terms of professional engagement with Mr Z?

[17] Mr Young, apparently on behalf of his then employer, Avondale Law, entered into a Letter of Engagement dated 12 December 2016 with Mr Z.[5] Both Mr Young and Mr Z signed it. It is in English.

[18] The Letter of Engagement is in these terms:

"Letter of Engagement – Avondale Law

Mr Z
[address]

12 December, 2016

Re: Relationship property dispute

Thank you for instructions on this matter. We are pleased to act for you.

Services to be provided
- Legal advice about relationship property dispute;
- Mediation if necessary;
- Appear in court if necessary.
  complaint to Law Society [handwritten]

Fee:
Pay $250/per hour plus GST to T/A No: [bank account number]

Responsibility for services
The people in our firm who will have the responsibility for the services we provide for you are:
- Parti Marc – Solicitor/Principal

[5] Bundle p 27.

> Material which sets out information (in accordance with the Rules of Conduct and Client Care for Lawyers) together with our Terms of Engagement can be viewed in on our website at www.avondalelaw.co.nz) or you can ask for a hard copy from us. Please do not hesitate to contact us should you require any further information or clarification. We look forward to working with you on this matter.
>
> Yours faithfully
> **AVONDALE LAW**
>
> Jinyue Young
> Barrister and Solicitor [cell phone number]
>
> Accepted by: ___________"

[19] Mr Young asserts that, despite the terms of the written "Letter of Engagement," his retainer was only for a "limited service." His response to these charges stated (among other things):

> "As Z had no money to pay me unless we win the case, to save his cost, I only agreed to draft as he instructed me, and he had to represent himself. Thus he needed to keep his own file."[6]

[20] No written agreement with Mr Z, nor any material from Mr Z, corroborates Mr Young's claim of a limited service. The claim solely relies on Mr Young's own assertions made after the complaint was made.

[21] Against that, documents prepared by Mr Young did consistently represent to the Court and opposing counsel that Mr Z was self-represented.[7] This caused irritation to Ms Jane Connell, an experienced family lawyer who represented Mr Z's wife. In February 2017, Ms Connell concluded a letter to the Family Court Registrar in these terms:

> "We also note we have been dealing with a lawyer representing Mr Z who appears to be preparing the court documents. We have requested he file an address for service and attends the hearing. We have written to him and enclose a copy of our letter and have copied this letter to him."

Ms Connell copied that letter to Mr Z and Jinyue Young.[8]

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[6] Mr Young's Response 31 May 2019.
[7] For example, Bundle p 904; 938.
[8] Connell letter 3 February 2017, Bundle p 948.

[22] Mr Z left his former lawyer, Paul Pang of Integritas Law to come to Mr Young. The Letter of Engagement notes Avondale Law, Mr Young's then employer, as the instructed firm. That firm's Trust Account bank account number is noted in the Letter of Engagement. An odd feature of dealings between Mr Young and Mr Z is that, apart from Mr Young opening a pro forma record, Mr Young failed to alert his principal that he had made a professional engagement with Mr Z. In oral evidence he admitted: "I didn't discuss with Mr Marc [the principal] when I took instructions." Shortly thereafter, he added "My principal is opposed to lawyer appearing in Court." He did not discuss the case with Mr Marc until September 2017, which was after the complaint was made. Shortly thereafter, Mr Marc withdrew his support for Mr Young's application to practise on his own account.

[23] Throughout the period of his retainer, Mr Young:

- always interviewed Mr Z at Mr Young's home;
- kept the collection of documents comprising his file at his home;
- continued to speak of Mr Z as "my client" after ceasing his employment with Avondale Law.

[24] After having left that employment, Mr Young generated a bill[9] at his own home, later refusing to part with his file until his bill was paid. His rendering a bill was at odds with the stance of Mr Marc (principal of Avondale Law) that Avondale Law would not charge because Mr Marc had no knowledge throughout of any such client.[10]

[25] Whatever Mr Young's reason, we find that he kept the fact of his professional engagement with Mr Z from his employer. In large measure, he seems to have behaved as if Mr Z were his personal client, unconnected with his employer's firm for more than the barest formal adherence.

[26] In his affidavit for these proceedings, Mr Z says: "As set out in the letter of engagement … I engaged the Practitioner to provide me with legal advice about the

[9] Bundle p 35.
[10] Bundle p 1023.

Proceedings, engage in mediation and appear in court." He adds: "I understood at all times that the Practitioner was acting as my lawyer when he attended court with me."[11]

[27] On the balance of probabilities, recognising that this is a serious matter for Mr Young, we find that there was no gloss on the written terms of engagement. Mr Z engaged Mr Young to act for him as his lawyer in relation to the matters noted in the letter of engagement and he was entitled to expect that the lawyer would behave competently and professionally. We find that Mr Young accepted those terms as plainly set out in the letter of engagement.

[28] Even if Mr Z had been willing to engage Mr Young on the limited terms suggested by Mr Young, we find in the circumstances of this case it would not have been open to Mr Young to accept the retainer. Mr Z has a poor grasp of English and no experience in dealing with many litigation features that a lawyer would handle. Such matters as understanding the law, presenting his case, knowing what documents are required, what evidentiary material should be advanced, what obligations he had around discovery, how to test the evidence of the opposing side in documentary evidence and in court – all of these are matters which Mr Z could not do as a lay litigant without relevant knowledge or experience, let alone poor English.

[29] Although the letter of engagement noted "relationship property dispute" and did not note "dissolution application," Mr Young's conduct and his bill of costs establish that the scope of his retainer was subsequently extended to that matter too. For the 28 February 2017 dissolution hearing, his charges record five hours preparing a submission (14 February), five hours attending court (28 February), and 30 minutes reporting to the client on 29 February. That is ten and a half hours for which he purported to charge $250 per hour. We find that the scope of retainer extends accordingly.

Was Mr Young's professional work for Mr Z negligent or incompetent?

[30] Broadly, the case for the Standards Committee alleges negligence or incompetence in the following areas:

[11] Bundle p 1147, at [2.2] and [3.1].

- failing to review the file;
- failing to keep a comprehensive file;
- failing to represent Mr Z's case adequately as counsel in court;
- failing to file adequate documentation (especially for interim distribution);
- failing to comply with affidavit requirements for a non-English speaking deponent;
- failing to advise Mr Z adequately about his discovery obligations; and
- that these failings were exacerbated because, knowing he was inexpert, he failed to obtain supervision or failed to pass the file to a competent practitioner.

The Standards Committee submits that Mr Z's interests suffered because of these failings.

[31] Mr Young's case, to the extent that it relies on the proposition that he was only providing a limited service, has already been ruled against. We must assess his performance against normal professional expectations.

Did he review the file adequately and was his file adequate?

[32] Mr Young's bill[12] noted an attendance of one hour 20 minutes on 15 December 2016 to "glance through the files" and another of two hours 30 minutes on 16 December to "glance over the documents and prepare notes." We do not propose to criticise Mr Young's choice of verb. He may have perused and considered written material for almost four hours over those two days. It is impossible to find positively that he did review the material because the file supplied to the Standards Committee contains not a single file note generated by Mr Young other than schedules or draft documents.

[12] Bundle p 35.

[33] Mr Young advised Prestige Law, Mr Z's subsequent lawyer, that his file amounted to about 1,500 pages.[13] What he later delivered to the Standards Committee amounted to 900 pages of unordered material. Some material was duplicated (more than one copy of the same document). When asked to order it, he emailed the Legal Standards Officer: "I could not organize the file in chronological order as it was Mr. Z's file and only he knew about the chronological order. To save his cost, he did not authorize me to read it through."[14] The file contains no note of any meeting with Mr Z, no record of any advice given, no correspondence between Mr Young and his client.

[34] The Tribunal must deal with the material as provided by Mr Young. The file he kept provides no information from which a subsequent lawyer could gauge what review had been made nor what advice was given. There is no record of discussions with his client, nor of instructions given by his client. Simply put, the file is inadequate as a record of the transactions undertaken by Mr Young on his own or in communication with his client. Given that a large part of the work concerned contested relationship property matters, the shortcomings in the file material reflects negligence, or alternatively it reflects incompetence and consequent lack of organisation.

Did he represent Mr Z in court adequately at dissolution or property hearings?

[35] At the dissolution hearing, the essential issue was when the parties started living apart. Ms Connell appeared for Mr Z's wife. Mr Z said they lived apart since 2003. This was always going to be a difficult case for him because his wife said they purchased a house together in 2015 where they lived together. Although he spent much time in China, when in New Zealand he lived at the home they bought, even though sexual relations had ceased.

[36] The decision of Judge Fleming specifically noted that Mr Z's wife "was not cross-examined at all on her evidence."[15] Although Mr Young suggested before us under cross-examination that he thought the judge made a mistake, and that he did

[13] Bundle p 110.
[14] Bundle p 112.
[15] Bundle p 851, at [4].

cross-examine at the dissolution hearing, we prefer the judge's record. Her decision was given on the day of the hearing, therefore fresh. It was a one-issue hearing and failure to test salient aspects of the opposing case would have been at the forefront of the judge's mind. On this point we reject Mr Young's oral evidence that he cross-examined.

[37] Failure to cross-examine the respondent wife in the dissolution hearing was fatal to Mr Z's prospect of success. At that hearing, Mr Z gave his evidence with the assistance of a court interpreter (although Mr Young insisted that he attended to translate for Mr Z and only took up a role as counsel at the judge's request). We find that Mr Young's failure to cross-examine on that occasion was either seriously negligent or, more likely, seriously incompetent.

[38] The other notable court hearing occasion was on 31 May 2017 when Judge Mahon made an interim order for distribution of $250,000 to Mr Z's wife but no distribution to Mr Z. The distribution was ordered from a sum of just over $700,000, sale proceeds from the former family home. The applicant wife applied in writing in November 2016 for (among other things) interim distribution. In his reserved decision giving reasons, Judge Mahon observed:

> "During the course of conferences and submissions, I pointed out to the respondent when he was appearing without legal counsel, that he needed to show a basis for an interim distribution in his favour and the evidence filed by him did not do so. Then when he was represented at the hearing on 4 April 2017, I had the same discussions with his counsel."[16]

The judge went on to say[17] that he was "concerned about the lack of disclosure by the respondent to ensure the applicant is be [sic] fully informed of the way in which the capital assets of the marriage have been disposed of by the respondent." Given Mr Z's language difficulties, Mr Young was remiss in not appearing or arranging representation at the earlier occasion when Judge Mahon expressed concerns. Even if Mr Z failed to understand those concerns, and/or failed to tell Mr Young about them, it was Mr Young's duty to arrange representation.

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[16] Bundle p 841, at [17].
[17] Ibid at [18].

[39] Mr Z did not make a written application for interim distribution in his favour, nor provide evidence sufficient to obtain such a distribution. Only in limited circumstances can a lawyer guarantee success in such an application but Mr Young failed to file a written application or evidence that would provide a basis for a submission to achieve interim distribution. His thought that he could simply make an oral application on the day is further evidence of his lack of competence in this area. His client could not even get off the ground with the representation Mr Young provided in relation to interim distribution. This is another example that we regard as relatively serious incompetence.

Did he file adequate documentation? And did he advise Mr Z adequately about his discovery obligations?

[40] In relation to an application for interim distribution, as noted above, Mr Young failed to file adequate documentation to enable the court to consider one thing that his client wanted.

[41] Even more disquieting is the allegation that he advised Mr Z not to discover his Chinese bank accounts. Mr Z deposed that "The Practitioner advised me that the Chinese bank statements should not be provided to the Court because providing too many bank statements would confuse the court."[18] Because he had not disclosed relevant information, Mr Z's ex-wife's lawyer was granted an order for examination requiring him to give evidence about his assets.[19]

[42] Although Mr Young offers a different version in his written opening submissions, he gave no evidence to refute the allegation that he advised Mr Z not to discover the Chinese bank accounts, nor did he cross-examine Mr Z on this point. In the absence of evidence and cross-examination, we cannot give much weight to Mr Young's unsupported submission that he had said "if he had submitted them, it is not necessary to re-submit them, otherwise the judge would be unhappy to read them again."[20] When cross-examined about this alleged shortcoming, Mr Young did not put in evidence the unsworn comment he had made in his written submission. We

[18] Bundle p 1149 at [3.19].
[19] Bundle p 1150 at [3.20].
[20] Mr Young's opening submissions p 4, at [11(e)].

prefer Mr Z's sworn, untested evidence to Mr Young's unsupported submission and find accordingly.

[43] When Ms Paterson put to Mr Young that he had a professional responsibility concerning this lack of disclosure, Mr Young responded: "What evidence is to be added is entirely up to Mr Z." Ms Paterson asked: "You take no responsibility?" Mr Young replied: "It's totally up to him. I told him to be honest."

[44] In our view, Mr Young sought to offload all responsibility for shortcomings, including failure to disclose truthfully what was relevant by way of discovery, onto Mr Z. We find this behaviour to be unprofessional, negligent and incompetent and, in each case, seriously so. In the course of litigation, clients may not understand the extent of their duty to disclose relevant material. This shortcoming by Mr Young not only let down his client but it was a serious default in his professional duty to the court.

Did he fail to comply with affidavit requirements for non-English speaking deponent?

[45] The Standards Committee criticised Mr Young for drafting and filing affidavits by Mr Z in English rather than in Chinese characters accompanied by an English translation. The affidavits[21] state "I have no command of English. This affidavit has been translated for me."

[46] Mr Young submits the Standards Committee states the legal test incorrectly. He submits that affidavits sworn by Mr Z's wife used a formula similar to his.

[47] A relevant rule is r 160 Family Court Rules 2006. It is identical to r 1.19 District Court Rules 2014, and to Rule 1.15 High Court Rules 2016. Rule 160 Family Court Rules provides:

> **"160 Affidavit in language other than English**
>
> (1) An affidavit in a language other than English (**non-English-language affidavit**) may be filed in a proceeding.
>
> (2) The non-English-language affidavit must be accompanied by an affidavit by an interpreter, to which is exhibited—

[21] Example, Bundle p 939.

> (a) a copy of the non-English-language affidavit; and
> (b) the interpreter's translation of the non-English-language affidavit."

[48] Although the practice advanced by the Standards Committee has received favourable comment by Associate Judge Doogue in *Brown v Cheung*,[22] the Tribunal agrees with Mr Young that the rule is expressed permissively and therefore does not set a mandatory practice. English (or Maori with translation) is the language used by the Court. The rule permits evidence to be filed in another language with an accompanying interpreter's affidavit.

[49] We accept that r 160 does not prevent the filing of an affidavit in English by a non-English speaker where the Court can be satisfied that the deponent means what is said in the affidavit. That can be established by filing an affidavit from the interpreter who can establish their credentials and confirm that the affidavit has been translated to the principal deponent. The formula used by Mr Young fails to identify the interpreter. In fact, Mr Young was the interpreter. In principle, this blurs the line because Mr Young's duty to advance his client's case may inadvertently (or worse, on purpose) result in his drafting material that fails to give an accurate position. It is an unsafe practice.

[50] We are not prepared to rule that the strict interpretation advanced by the Standards Committee is correct. Nonetheless, Mr Young's method of providing a non-English speaking deponent's evidence is negligent or incompetent in failing to provide material that could satisfy the court about the translation.

Should he have obtained supervision or passed the file on?

[51] Mr Young knew that he was inexpert in the relationship property field and in representing clients in court. He says he tried to persuade Mr Z to return to Mr Pang. He says he tried to find another lawyer to take on the matter. There is no record of such attempts in his file.

[52] Mr Young says he asked other lawyers he knew for advice. There is no note in his file recording such conversations. His bill charges 30 minutes on 1 August

[22] *Brown v Cheung* [2016] NZHC 1237, at [45] – [52].

2017 for discussions with two named persons. He mentions another practitioner simply referred to as "'Annie." Regrettably, there is no material in the file that records the subject of any such conversation. Nor is there any professional work he undertook that suggests his performance rose above floundering with a file the complexities of which he failed to understand. If he did get any advice, it did not reflect in his performance.

[53] Although Mr Young claims that he was obliged to accept Mr Z as a client (referring to the "cab rank" principle), his inexperience in this field justified refusing the brief. It was unsafe for him and his client to take it on. By hiding the matter from his employer, he deprived himself of any supervision from that quarter. In our view, he obtained no effective supervision or guidance from any quarter.

If so, were the defects of such a degree or so frequent as to reflect on his fitness to practise or to bring the legal profession into disrepute?

[54] The subject matter of this file concerns one file. Nevertheless, even on this one file, Mr Young's deficits as a professional have accumulated.

[55] His failure to keep an adequate file was an ongoing defect for the almost one year Mr Z was his client. His ability to review progress, to recall meetings with his client, to strategise and plan, were all hampered by the lack of organisation of material and the fact that he kept no notes or correspondence file. These defects meant he must have been hampered in his ability to properly advise his client on an ongoing basis. This persistent defect reflects on his fitness to practise.

[56] Mr Young's shortcomings in representing his client in court demonstrate that he was out of his depth, and that he failed to instruct a competent practitioner or obtain appropriate supervision. The need to test your opponent's case by cross-examination is not an arcane feature. Nor is the requirement to file a written application supported by adequate salient evidence when seeking an order such as interim distribution.

[57] Mr Young's performance must be measured against reasonable minimum standards, not a test of perfection. Lawyers, even experienced lawyers, can make

mistakes. But Mr Young's defects demonstrate a paucity of pertinent skills that reflects on his fitness to practise. Moreover, if the public thought these reflected adequate professional performance, it would bring the legal profession into disrepute.

[58] Mr Young's filing of affidavits by Mr Z without an independent, qualified interpreter, might be forgiven as an oversight of inexperience but it demonstrates a blurring of roles. In an emergency, a non-English speaking deponent may need assistance from, for example, a lawyer who is not at arm's length but if that occurred, it should be brought to the attention of the court. No such circumstance pertained in this case. More serious is Mr Young's advice to Mr Z to suppress relevant documents. Although happening on one occasion it certainly reflects on his fitness to practise and would bring the legal profession into disrepute.

[59] Having examined the material and made findings of fact where necessary, and testing those facts against the statutory tests of s 241(c) of the Act, we find Charge 1 proved.

Is the alternative to Charge 1 made out?

[60] The alternative to Charge 1 is a lesser standard of defect, one of unsatisfactory conduct under s 12(a) and/or s 12(c) of the Act. More particularly, did he engage in conduct that fell short of the standard that a member of the public is entitled to expect of a reasonably competent lawyer, or that breached rr 3, 7, 7.1 and/or 13.3 of the Rules.

[61] The lens for the alternative is that which a member of the public is entitled to expect of a reasonably competent lawyer.

[62] We find that Mr Young's conduct in all matters noted earlier in this judgment (keeping a file, drafting documents, appearing in court and so on) occurred at a time when he was providing regulated services.

[63] In our view, the conduct criticised earlier in this judgment falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer. Failure to review a file properly is a basic

error. Without comprehensive understanding, advice may be misguided. Failure to keep an orderly file is not merely a matter of tidiness, in this case it accompanies a lack of engagement with the material that was relevant to managing and directing the client's affairs. Failures to cross-examine, to file adequate documentation and affidavit evidence for a matter of importance to the client, fall short of the standard a member of the public would expect. Counselling the client to not provide full disclosure falls a long way short of expected standards of candour with the court, and also carries ongoing risks for the client of being later labelled as dishonest. These are all s 12(a) considerations.

[64] Section 12(c) involves conduct consisting of a contravention of the Act, or of any regulations or practice rules made under the Act. The Rules are made under the Act. Rules 3, 7, 7.1 and 13.3 have been cited in the alternative to Charge 1.

[65] Rule 3 provides "In providing regulated services to a client, a lawyer must always act competently and in a timely manner consistent with the terms of the retainer and the duty to take reasonable care." Absent an adequate familiarity with the file, Mr Young could not competently consult with his client about the case.

[66] These r 3 considerations tie in with rr 7, 7.1 and 13.3 which require the lawyer to promptly disclose all relevant information to the client (r 7); to take reasonable steps to ensure that a client understands the nature of the retainer; and must consult with the client about the steps to be taken to implement the client's instructions (r 7.1); and, subject to the lawyer's overriding duty to the court, obtain and follow a client's instructions on significant decisions in respect of the conduct of litigation (r 13.3). Rule 13.3 concludes: "Those instructions should be taken after the client is informed by the lawyer of the nature of the decisions to be made and the consequences of them."

[67] In individual cases, proper compliance with those rules may be affected by urgency or the degree of the client's sophistication in legal matters. Where the client is unsophisticated in legal matters, extra effort must be made by the lawyer to enable the client to understand the position as best as possible. It is a minimum requirement of such attendances that the lawyer must appreciate the available range of decisions

(courses of action), and the consequences of each one. If not, the lawyer cannot properly consult with the client as the client is entitled to expect.

[68] Plainly put, Mr Young was out of his depth throughout this file (dissolution and property) and accordingly he was unable to comply with the requirements of the rules.

[69] Rule 13.3 begins: “Subject to the lawyer’s overriding duty to the court, a lawyer must obtain and follow a client’s instructions …”. When he suggested relevant bank accounts not be discovered, Mr Young infringed that overriding duty. Given his client’s lack of sophistication in such proceedings he encouraged Mr Z to swear and file a false and materially misleading document. This has caused embarrassment and difficulty for Mr Z whose subsequent lawyers have had to try to persuade the court that Mr Z was misled rather than personally dishonest in respect of this matter.

[70] It follows that if we were wrong in finding the first formulation of Charge 1 proved, we would have found the alternative, a charge pitched against a lesser standard, readily proved.

Was Mr Young’s conduct in attempting to persuade Mr Z to withdraw his complaint, unsatisfactory or in breach of r 2 of the Rules or s 4(a) of the Act?

[71] It seems settled law that conduct of a practitioner pursuing payment of fees is treated as falling within the realm of provision of regulated services because it is sufficiently connected with the provision of regulated services.[23]

[72] Mr Young made two requests to Mr Z to withdraw his complaint to the Law Society. A timeline context for these requests is as follows. Mr Z’s subsequent lawyers asked Mr Young for the relevant client file about 1 September 2017. After some exchange of correspondence, Mr Young emailed an invoice on 14 September 2017. It contained no GST number and was silent as to whether the charges were owed to him or his employer.[24] Mr Young’s employment with Avondale Law ended by 10 November 2017.[25]

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[23] *Canterbury Westland Standards Committee 2 v Eichelbaum* [2014] NZLCDT 68.
[24] Bundle p 35.
[25] Bundle p 86.

[73] On or around 20 November 2017, Mr Young sent Mr Z a WeChat message in Chinese script stating:

> "Please withdraw from the Law Society, or do you need to ask a judge if I have been wrong? Or is this your tactic of not paying? If you pissed the judge off you will end up with nothing. I hope we can still negotiate, thanks!
>
> If you have other lawyers please let me know."[26]

Considering that Mr Z's subsequent lawyers had been in communication with Mr Young since about 1 September 2017, his comment about "other lawyers" seems disingenuous.

[74] On 23 November 2017, Mr Young emailed Mr Z's subsequent lawyers from his personal email[27] advising:

> "I have left Avondale Law. Please use this e-mail.
> I am more than happy to send you the file if–
> 1. Mr. Z withdraw the complaint for good;
> 2. Sign the agreement."

The agreement seems to refer to an undertaking Mr Young drafted for Mr Z to sign to absolve Mr Young from wrongdoing.

[75] The Standards Committee submits Mr Young's conduct in trying to persuade Mr Z to withdraw his complaint amounts to unsatisfactory conduct under s 12(b) in that it is conduct that would be regarded by lawyers of good standing as unacceptable. Two general examples of such conduct are conduct unbecoming a lawyer (s 12(b)(i)) and unprofessional conduct (s 12(b)(ii)). That conduct is exacerbated by threatening to withhold the client file and require a document to be signed by the client. We do not accept that Mr Young had a lien on the file as he suggested under cross-examination. That is because Mr Z changed solicitors because he alleged misconduct by Mr Young, a claim we have vindicated. In any case, there is an irony in Mr Young claiming to the Law Society that the file was Mr Z's so that Mr Young himself was not entitled to read it or put it in order while claiming to Mr Z's new lawyers that it was his (Mr Young's) file and would be retained

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[26] Bundle pp 1108, 1109, 1150: at [4.6] affidavit of Mr Z.
[27] Bundle p 72.

pending payment. One remove from that dissonance is that Mr Young, an employee, had kept the fact of this retainer secret from his employer, yet rendered a bill from which, when the circumstances were disclosed, his employer distanced himself.

[76] The Standards Committee also cites s 12(c) of the Act. This provision includes, under the definition of "unsatisfactory conduct," contravention of practice rules under the Act. Rule 2 of the Rules direct a lawyer to uphold the rule of law and facilitate the administration of justice. When a client complains about a lawyer, it behoves the lawyer to stay at arm's length from the client and assist the complaints process. Whether the complaint is found to be justified or not, it is important for lawyers to respect the machinery of that process. It is a discipline that, however irksome in some circumstances, is required of lawyers. Just as society would frown on alleged criminal perpetrators from directly importuning their alleged victims to withdraw complaints, so too must lawyers act with restraint.

[77] Section 4 of the Act likewise reinforces this duty, describing as a fundamental obligation of lawyers the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand. Trying to pressure Mr Z or his subsequent lawyers to have the complaint withdrawn amounts to interference in a process which Mr Young's professional obligations required him to respect.

[78] In our view, lawyers of good standing would regard Mr Young's behaviour in this regard as unacceptable. Moreover, as noted, it breached r 2 of the Rules and s 4 of the Act. Accordingly we find Charge 2 proved in every respect.

Is the case tainted by prejudice or bias?

[79] The day after the Tribunal advised it found both charges proved, Mr Young filed a one-page memorandum. That is irregular because the hearing had finished, and the parties were awaiting this decision giving reasons. Nonetheless, we address it and an allegation of bias against the prosecuting firm raised in Mr Young's closing oral submissions at the hearing.

[80] Mr Young suggested that Meredith Connell might be prejudiced against him because he says he once acted for a client who won a case where Meredith Connell

acted for an opposing party. We find no evidence of such bias. Quite the reverse. When Mr Young ceased cross-examining Mr Z without having put many matters at issue to him, Ms Mok generously invited the Tribunal to remind Mr Young of the need to put his case to the witness. Having been advised, Mr Young asked a few more questions. The prosecution case was advanced in a temperate, courteous manner by both Ms Mok and Ms Paterson. Mr Young suggests that he does not intend to practise and thereby implies that the case is a waste of money. He raised this earlier, and then applied for a practising certificate. But in any case, it is the Standards Committee who instruct Meredith Connell to continue. Mr Young is misdirecting his frustration.

[81] Mr Young's post-hearing complaint that he had not been warned in advance what questions he would face is naïve. It is rare for a person about to be cross-examined to be schooled in advance by opposing counsel. Mr Young's post-hearing comment that it was hard for him to recall matters from three years ago is a matter that the Tribunal encounters often. The matter being one of importance to Mr Young, he ought to have reasonable facility with the material. This issue points up the need for ongoing file notes.

[82] Mr Young's post-hearing suggestion that the charges demonstrate racial bias on the part of the Standards Committee is unsupported by evidence. Mr Young is Chinese. The Tribunal values the diversity of the legal profession in New Zealand. It adds value when clients can find lawyers with whom they are more comfortable. For example, being able to communicate in your first language is valuable. So too is dealing with someone who can better intuit the client's context and needs.

[83] The Bundle in this case exceeds 1,150 pages. Among that material it is evident that Mr Young tends to attack those who cause him concern. He attacked Mr Z's motives, the motives of Mr Z's subsequent lawyers (Prestige Law); he challenged Meredith Connell. He tries to make a point out of Ms Connell being "white," suggesting he is being criticised for behaviour that he thinks is similar to hers.

[84] It would be a sorry matter if we or the Standards Committee approached this case in a racially or ethnically biased manner against Mr Young. Much material he has offered, in the course of this matter from the complaint onwards, constitutes

comparatives, for example alleging he charges less than other lawyers or alleging he gets better results. The material for this case does not suggest to us that the lawyer for Mr Z's wife has fallen short professionally in the ways Mr Young has. Even if it were otherwise, it would be irrelevant to the charges faced by Mr Young. The answers in this case are found within proper focus, not by scattering elsewhere.

[85] In this case, we regard the progress of the complaint, and the eventual charges, directed to holding Mr Young to account in his professional dealings in exactly the same way any other lawyer in New Zealand would be held to account in terms of the Act and its Rules.

[86] Mr Young makes a prediction about what the Standards Committee will seek at the penalty hearing. We choose not to respond to that prediction because it is premature. At this stage, our focus remains on whether he is liable in respect of the charges.

Penalty hearing

[87] Penalty submissions for the Committee shall be filed within 14 days of the date of this decision. The respondent shall file his submissions within a further 14 days. The Case Manager will schedule a half-day penalty hearing.

DATED at AUCKLAND this 10th day of July 2020

Judge JG Adams
Deputy Chair