NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2020] NZLCDT 3
LCDT 016/18 and 009/19

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 1** Applicant
AND	**BRETT DEAN RAVELICH** Practitioner

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Mr W Chapman
Ms S Hughes QC
Mr W Smith
Ms S Stuart

DATE OF HEARING 23 July 2019

HELD AT Auckland Specialist Courts and Tribunals Centre

DATE OF DECISION 22 January 2020

COUNSEL
Mr P Collins and Mr J Kleinbaum for the Standards Committee
Mr J Wiles for the Practitioner

RESERVED DECISION OF THE TRIBUNAL

Introduction

[1] Mr Ravelich faces four charges. Three were laid in 2018 and related to his conduct connected with the running of licensed premises and his interactions with the relevant regulatory authorities.

[2] The remaining charge, laid in 2019, arose out of the manner in which the practitioner approached the other party in personal litigation.

[3] By consent, both sets of proceedings were heard together.

Issues

[4] The issues to be determined are:

1. Does the conduct alleged in Charges 1 to 3 inclusive of the 2018 proceedings constitute personal or professional conduct?

2. If the latter, should the Tribunal grant the application to amend, to include allegations framed under s 7(1)(b)(ii) of the Lawyers and Conveyancers Act 2006 (LCA)?

3. If the amended charges are allowed, has Charge 1 been established to the requisite standard, i.e. is it conduct which demonstrates he is not a fit and proper person to be a lawyer?

4. Similarly, has Charge 2 been established to the same standard? If so, are there elements of duplication in the two charges?

5. Has Charge 3 been established to the requisite standard?

6. If not, has there been a breach of Rule 5.5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules) as to conflicting business interests, such as to establish unsatisfactory conduct?

7. Is the conduct alleged under the 2019 charge professional or personal?

8. If professional, was it disgraceful and dishonourable?

9. If the conduct was personal, did it reach the higher standard of unfitness to practise?

Procedural

[5] Following the hearing, in which there had been considerable discussion of the personal/professional role boundaries, both counsel had the opportunity of filing further submissions. In submissions in reply to those of Mr Wiles, Mr Collins, for the Standards Committee conceded that in relation to Charges 1 and 2 of the 2018 charges, "… *concerning the evidence the practitioner gave to the ARLA and the adverse findings of that body, relate to conduct which was unconnected with the provision of regulated services*".

[6] In the course of the hearing Mr Collins had submitted that, should the Tribunal consider the charges properly fell within the definition of "*unconnected with the provision of regulated services*" that he sought an amendment to Charges 1 and 2 to include consideration of s 7(1)(b)(ii).

[7] Given that this matter had been thoroughly canvassed at the hearing and we could detect no prejudice to the practitioner, the Tribunal has determined that such an amendment ought to be allowed.

[8] That answers the question posed in Issues 1 and 2, insofar as Charges 1 and 2 are concerned. The conduct under consideration is personal, or "unconnected with the provision of legal services".

[9] A further concession by the Standards Committee, in the reply submissions, following the evidence, was that in respect of Charge 3 (conflicting business

interests) contrary to Rule 5.5 the level of culpability could properly be considered as unsatisfactory conduct. We consider that is a proper concession and propose to consider whether culpability has been established at that level in terms of Issue 5 set out above.

Background

[10] During the relevant period, which was 2015 to 2017 Mr Ravelich held a practising certificate as a Barrister Sole. At the same time as practising as a lawyer, Mr Ravelich, who was in very poor financial circumstances at the time, had another role in the liquor industry and held a Manager's Certificate which had been granted on 3 July 2016. Mr Ravelich had stepped in for his friend Mr Y who had been declared bankrupt and therefore prohibited from holding such a licence.

[11] Mr Ravelich had been appointed a director of Mr Y's company, which operated a bar, in November 2015, although he says he had forgotten the directorship appointment, and simply thought of himself as the Bar Manager.

[12] Mr Ravelich says he saw himself as operating the bar and controlling such matters as compliance with the Sale of Liquor Act to exclude intoxicated or underage people but did not see himself as having any financial responsibilities to the company.

[13] Between November 2015 and October 2016 Constable Miklos, a member of the Alcohol Harm Prevention Unit (the Unit) investigated several breaches of the Sale of Liquor Act in relation to the nightclub/bar operated by the company "A B Limited". This is the company in which Mr Y was a director and sole shareholder, and to which Mr Ravelich had been appointed a director in November 2015.

[14] In the course of the investigation, two graduated response model meetings (GRMM) were held to assist in resolving the issues and ensuring future compliance by the company. Both Mr Ravelich and Mr Y attended these meetings.

[15] On 1 July 2016 Mr Ravelich was granted the Manager's Certificate and at the GRMM held on 6 July 2016 Mr Ravelich was advised by Constable Miklos that he was obliged to notify the Police and the local Licensing Committee of his appointment

as a Manager within two working days of the appointment. Mr Ravelich indicated he would send such a notification as soon as possible. However, this was only received on or after 5 August 2016. Somewhat oddly, the notice stated that Mr Ravelich was appointed as new Duty Manager from "05/08/2016".

[16] As a result of the investigation, Constable Miklos instituted proceedings against A B nightclub, at which it was represented by Mr Wiles (not Mr Ravelich). The matters which related to Mr Ravelich's defaults concerned his failure to notify his appointment as Duty Manager, his failure to notify the Authority of directorship changes and allegedly "*acting as a front for Mr Y who, as an undischarged bankrupt, was unable to manage the business*".

[17] The matter proceeded to hearing before the Alcohol Regulatory and Licensing Authority (ARLA). Mr Ravelich filed a written brief of evidence in advance and also appeared for cross-examination and oral evidence.

[18] In its decision ARLA found that Mr Ravelich had misled it, in particular in relation to his timing of the notice concerning his appointment as Manager; the nature of his involvement at the GRMM; the element of control he exercised over A B Limited; and whether he acted as a front for Mr Y.

[19] In his brief of evidence, Mr Ravelich had stated that he had posted the notification of appointment as Manager 10 days after the meeting with Constable Miklos and that he "imagined it took another 10 days to get through the post and to be receipted by the Police on 5 August 2016".[1]

[20] The difficulty that that evidence posed for Mr Ravelich, was that he had clearly signed and dated the notification on 5 August. His evidence to ARLA was that he must have made a mistake about the number of days it took to get there. That was based on his misconception that it had been received on 5 August, however we have not seen evidence as to the actual date of receipt, which must have been some date after 5 August.

[1] In fact there was no receipt noted by the Police on 5 August 2016, this was a misconception on Mr Ravelich's part, which undoubtedly led to some confusion at the hearing.

[21] In any event, Mr Ravelich's evidence about having posted it 10 days after the 6 July 2016 meeting was clearly an error but ARLA found it to be deliberately misleading. It is this aspect with which these proceedings are concerned, rather than the delay itself, which is not a matter of great concern for the Tribunal, that being a matter for ARLA to be concerned about. There were also technical matters which Mr Ravelich had raised with the Police and with ARLA about whether he had been a temporary Manager for periods not exceeding 48 hours. It seems that confused his thinking about the notification that was required in these circumstances.

[22] Because of Mr Ravelich's evidence to ARLA about the date he thought he had posted the notice, which conflicted with the date on which he had signed it, ARLA did not find his explanation to be credible.[2]

[23] The second area of evidence that ARLA did not find credible on the part of the practitioner was his denial of his status as a director of the company.

[24] Again, the evidence of Constable Miklos is important in this regard. It needs to be remembered that both Mr Ravelich and Mr Y had stated that at all times it had been obvious to the Police that Mr Y was still involved in running the company after he had been declared bankrupt. All of the circumstances surrounding this dispute were complicated by the fact that Mr Y had appealed his bankruptcy adjudication and the judgment of the Court of Appeal on the appeal was not delivered until February 2016.

[25] Mr Ravelich's brief of evidence stated "*The business was run collectively between (Mr Y), VT, and myself. Whilst I was duty manager director at no point in time whilst I was the duty manager of the premises was I under supervision or control of Mr Y in regards to management of the premises. I was exclusively able to run the place how I thought was appropriate*". He went on to state that he had, however, only accompanied Mr Y to the GRMM.

[2] Para [77] decision of ARLA, [2017] NZARLA PH 89-92, 20 March 2017.

[26] Constable Miklos was able to produce a text received from Mr Ravelich on Friday 19 August 2016 "*Hi Sebastian I just want to confirm with police that I am not a consented director of A B Limited and have never acted in any capacity as a director of this company nor been responsible for cash or funds associated with the sale of liquor under this licence … regards Brett Ravelich*". This was repeated in an email to Constable Miklos on 23 August 2016 "*I can confirm I have not ever signed a consent to be a director of A B Limited … I can confirm I have not ever been in control of the financial management of A B Limited …*" and later "*I remain as a notified duty manager and act only in this capacity pursuant to the Sale of Liquor Act*".

[27] If this was a deliberate act of misleading the Constable, it was a particularly bold and ill-advised one, since it was so easily disproved by brief reference to the Companies Register, as Mr Ravelich must have known.

[28] The final concern about Mr Ravelich's role and conduct before ARLA related to his denial that he acted as a front person for Mr Y. Mr Ravelich's evidence was that he was simply trying to help a friend. He stated that his lack of participation at the GRMM "*surely must have indicated the level of my involvement in the company as a director to the Police and must have also informed the Police about Mr Y's involvement. I considered any issues of compliance which were required under the Insolvency Act were matters between Mr Y and the Official Assignee*".

[29] Mr Ravelich also refers to conversations with a representative of the Official Assignee about what was happening practically at A B Limited so that they were aware about funds which might be forthcoming. Again, the findings of ARLA on this matter are clear. "… *By his own admission he was not in control of the company. Whether intentionally or not, Mr Ravelich could only be regarded as, in effect, a front for Mr Y who was in control*".[3]

[30] In his evidence before the Tribunal, Mr Ravelich detailed that in 2015 he was himself emerging from three years in bankruptcy. He was assisted by Mr Wiles to obtain a Practising Certificate again. He had worked as a barman for Mr Y during 2015 and lived on the nightclub premises, or else lived in a campervan in very poor circumstances. He described these circumstances as a reason for his failure to have documents, for example a copy of his consent to act as a director for the company.

[31] It was not until mid-2015 that Mr Ravelich says he was once again approved by Legal Services to be a 'provider' and began to do some more work as a criminal barrister and began to improve his life circumstances.

[32] Because Mr Y had helped Mr Ravelich when he was "down" Mr Ravelich was willing to help him to continue the running of the business. He did not see himself as acting as a front because both the Police and the Official Assignee knew. He did not consider he was doing anything wrong, because he was not hiding anything. He described the nightclub as running itself, that staff had been there for 20 years, another person, Ms T, did the finances, and Mr Ravelich had the manager's certificate, as he saw it, to help out. He accepts that, although he did not accept the findings of ARLA, no steps were taken to appeal because he had no funds and wanted to move on.[4]

2019 matter

[33] In relation to the remaining charge, the 2019 proceedings, Mr M, the complainant and the practitioner had been friends since 2005, again during a period when Mr Ravelich was personally struggling, in particular in relation to allegations made by the Legal Services Agency (LSA), which he said were later corrected.

[34] Mr Ravelich confirmed that it had taken him many years to obtain an apology and a refund of some $39,000 from the LSA. During this time, he says that he leant on Mr M, and they opened a bar together in late 2010. Subsequently, they fell out and their disagreement resulted in litigation which spanned a number of years (approximately 2011 to 2018) and included three sets of proceedings, which Mr Ravelich says never came to hearings. At the beginning of this litigation Mr M, who is now aged 84, was in his mid-70s.

[35] The allegations in this charge are that Mr Ravelich contacted Mr M directly at times when he knew that Mr M was represented by a solicitor and by counsel. This allegedly occurred by emails, and by delivering documents personally to Mr M's home.

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[3] See above n 2 at para [91].
[4] We note that the ARLA decision was equivocal as to whether Mr Ravelich's actions, as a 'front' were intentional, see note 4 above.

[36] In addition, there are allegations, which were accepted at the hearing, that Mr Ravelich sent Mr M greeting cards on a number of occasions, which are alleged to have included disparaging and intimidating references relevant to the litigation. Further, Mr Ravelich is alleged "through the agency of others at his direction" to have made intimidating telephone calls and visits to Mr M's home.

[37] In evidence, Mr Ravelich conceded that the very latest he could say he was clearly advised of counsel acting was 11 February 2015, when he received an email from Mr M's counsel spelling this out in no uncertain terms and referring to an earlier promise by Mr Ravelich not to contact his client directly. Despite that he sent a letter to Mr M, attaching an affidavit, on 23 September 2016. Then in October or November of 2017, having issued further proceedings, Mr Ravelich accompanied a process server to Mr M's home to serve the documents, in the course of which there was an altercation between Mr M and the process server.

[38] It is alleged by the Standards Committee that the "… *cumulative effect of this conduct was to establish a pattern of harassment of Mr M constituting a breach of Rules 10 and 10.2, ascending to a level of seriousness which would be regarded by lawyers of good standing as disgraceful or dishonourable"* and that consisted of wilful or reckless contravention of the Rules.

Issues 1 and 2

[39] As indicated under the heading "Procedural", it was common ground by the conclusion of submissions that the conduct in Charges 1 to 3 ought properly to be considered within the framework of conduct that is "… unconnected with the provision of regulated services by the lawyer or incorporated law firm …".[5] This imports the higher threshold that the conduct "… would justify a finding that the lawyer … is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer …".[6]

[40] Apart from his description of his chaotic lifestyle at the time "… *I was living in a suitcase, I had no computer, I was using an internet café downstairs to try and work. I had no funds to print documents. I didn't have copies of anything* …",

[5] Section 7(1)(b)(ii).
[6] See above n 5.

Mr Ravelich was really unable to provide a satisfactory explanation for the three misleading statements which are the subjects of Charges 1 and 2. There were two statements made to ARLA and one to Constable Miklos which was repeated.

[41] Mr Ravelich was adamant however that it was never his intention to mislead the authority about the date of the notice that he was late in sending. He says "*I was trying my best to give the evidence that I could recall"*, having not remembered the particular dates.

[42] Addressing the pleaded particulars in turn, we consider the particular pleaded as 1.5(a) to have been established but not at a wilful or deliberate level. We consider the practitioner's performance before ARLA was muddled and somewhat incompetent but not such as to invoke a finding that he deliberately breached his obligations under s 4(a) of the LCA.[7]

[43] While the wording of s 4 suggests that it only regulates lawyers while performing their professional roles, referring to "… in the course of his or her practice …" the Tribunal considers that an assessment of "fit and proper" must necessarily import a level of conduct which encompasses the fundamental obligations of lawyers in a broader sense.

[44] In relation to particular (b) which concerned his having forgotten having signed a consent to be a director of A B Limited, again we consider it incredibly poor practice and sloppiness for a lawyer, giving evidence to a regulatory authority, to be so casual about his legal status in relation to a company. It fell well short of his obligations to conduct himself responsibly before a judicial authority.

[45] Particular (c), we consider much less serious. The practitioner had said he had no involvement in conversations at the GRM meetings held with the Police, when in fact he had approximately one per cent, as conceded later.

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[7] Section 4(a): **Fundamental obligations of lawyers**
Every lawyer who provides regulated services must in the course of his or her practice comply with the following fundamental obligations:
(a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand; …

[46] In relation to particular (d), it is clear that ARLA disbelieved the practitioner's denial that he was working as a front for Mr Y, but that they were equivocal as to his level of intentional wrongdoing.

[47] We consider that it is a very serious matter for a lawyer to provide a means of facilitating a bankrupt to continue to run a business in a highly regulated industry, where character and solvency are important.

[48] The fact that the Police and the Official Assignee were said to have known of Mr Y's continuing involvement is not sufficient to provide a great deal of comfort of itself. Although that evidence was not challenged, it is somewhat analogous to the practitioner saying that "everyone is doing it so it cannot be that wrong".

[49] As a lawyer, and an officer of the court, he cannot hide behind these beliefs or justify his role by saying he was simply trying to help a friend. He ought to have looked at the matter objectively and known that it was wrong.

[50] However, we have to determine whether cumulatively, these errors of the practitioner meet the higher threshold under s 7(1)(b)(ii) of demonstrating that the practitioner "is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer". We find, by a fine margin, that it does not meet this threshold.

[51] Mr Collins submitted that if the conduct did not reach the threshold for misconduct, that we ought to find "unsatisfactory conduct" pursuant to s 12(c).

[52] While subsections (a) and (b) of s 12 refer to conduct "... that occurs at a time when (the lawyer) is providing regulated services ...", subsection (c) has no such reference. Thus, we accept the submission that the subsection can apply to conduct "unconnected with the provision of legal services". The section uses the word "or" in a disjunctive manner, so that each subsection can stand alone.

[53] We find that Mr Ravelich breached his obligations, as a lawyer, under s 4(a) to uphold the Rule of Law and the administration of justice in his dealings with the Police and his conduct in the ARLA proceedings.

[54] Rule 13.1 is also engaged, whereby a lawyer has a duty of absolute fidelity to the court. "Court" encompasses other judicial authorities, and Mr Ravelich's casual attitude, in his evidence to ARLA, is at least at the level of unsatisfactory conduct.

Issue 4

[55] Charge 2 relies on the same particulars as Charge 1. We have considered whether the charges might constitute a duplication. Charge 2 imported the additional element of bringing the legal professional into disrepute.

[56] We consider that with this additional element, the charge is not bad for duplicity but again we do not consider that, given the inability to establish the practitioner's positive intention as opposed to carelessness or a cavalier attitude, that once again by a fine margin it does not reach the standard of "not a fit and proper person", therefore falls short of a finding of misconduct.

[57] The adverse findings made by ARLA are sufficient to establish a breach of s 4(a), and Rules 2 and 2.1, and therefore a finding of unsatisfactory conduct, however, because the same facts and particulars are relied upon, we indicate that at penalty stage we may be persuaded to view the two charges together.

Issue 5 – Charge 3

[58] This charge concerned an allegation that the practitioner had conflicting business interests contrary to Rule 5.5 which states:

> **"Conflicting business interests**
>
> A lawyer must not engage in a business or professional activity other than the practice of law where the business or professional activity would or could reasonably be expected to compromise the discharge of the lawyer's professional obligations."

[59] We did not consider that there was sufficient evidence to make out this charge on the balance of probabilities. It is conceded that the business activities were ones which the practitioner was lawfully able to undertake. We also note that ARLA found definitively that the control of the running of the (A B) company rested solely with Mr Y.

[60] The Standards Committee has conceded in relation to Charges 1 and 2 that the practitioner was not providing regulated services in relation to his activities with A B Limited and as a bar manager. There was no evidence adduced to suggest that his practice as a lawyer was in any way crossing over into these other areas of business interest, given that A B Limited was represented by Mr Wiles. Apart from the handing over of a business card to Constable Miklos on one occasion, we did not consider there was evidence of a cross over or conduct that is not covered by the previous two charges, sufficient to establish this charge to the standard required on the balance of probabilities. Accordingly Charge 3 is dismissed.

2019 charges

[61] Counsel disagree on whether this conduct also ought to fall in the professional or personal categorisation.

[62] While Mr Ravelich points to the fact that some of the conduct occurred during times when he was not holding a practising certificate, we also note that much of the conduct occurred while he did. We consider that, on the authorities of *A*[8] and *Deliu,*[9] that Mr Ravelich's conduct in relation to the litigation with Mr M was not "unconnected with the provision of regulated services" so as to fall within s 7(1)(b)(ii) as did the above charges.

[63] As established in *Orlov*[10] the High Court has confirmed that there is to be no gap between the two categories of professional and personal conduct. In the *A* decision above,[11] at para [60] the High Court, in endorsing comments of the High Court of Australia concerning the line between professional and personal misconduct had this to say:

> "While s 7(1)(a) refers to conduct "that occurs at a time when the lawyer is providing regulated services" it does not require there to be a subsisting lawyer/client relationship with a particular client."

[8] *A (Eichelbaum) v Canterbury Westland Standards Committee No. 2 of the New Zealand Law Society* [2015] NZHC 1896, 12 August 2015, Venning J.
[9] *Deliu v National Standards Committee and Standards Committee No. 1 of the New Zealand Law Society* [2017] NZHC 2318, 25 September 2017, Hinton J.
[10] *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2015] 2 NZLR 606.
[11] See above n 8.

[64] In the *Deliu* matter Her Honour Hinton J refers to the problem of fitting with the definition of legal services, which involves the provision of legal services "for any other person" because this means "… *there must be an identifiable person. It seems to me that is not necessary, and if a lawyer is carrying out legal work for their clients generally (ie for other people), which Mr Deliu was clearly doing in writing his letters of complaint, then it is "legal services" and therefore regulated services."*[12]

[65] In the present case Mr Ravelich was representing himself. It is Mr Collins' submission "*that these events cannot be said to be unconnected with the provision of regulated services for the following reasons:*

> (a) They all related to the conduct of litigation in which the practitioner relied on his knowledge and experience as a lawyer in responding to proceedings and advancing a counterclaim which he would otherwise have had to instruct a lawyer to do for him;
>
> (b) His actions involved a level of sophistication and knowledge of the law and procedure consistent with a lawyer providing regulated services …"

[66] Mr Collins went on to give examples of this, such as: threatening to lodge a counterclaim against Mr M once Mr Ravelich was discharged from bankruptcy, and on another occasion after a ruling of Lang J, putting forward his particular interpretation of the statute of limitations. Mr Collins submits that in this respect the practitioner's activities "resembled the provision of regulated services and could realistically be said to be "not unconnected" with the provision of regulated services.

[67] They were however not provided "to another person". Mr Collins addresses this issue arising out of the *Deliu* authority and submits "*… that the "other person" requirement should not prevent a finding that the lawyer is engaged in activity which is connected with the provision of regulated services when the lawyer is acting for him or herself in litigation. That is a form of legal work and is professional in nature*".[13]

[68] The Standards Committee further relied upon the authority of *Hong.*[14] In that case, and in the High Court on appeal, the Tribunal and High Court respectively were

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[12] See above n 9.
[13] Submissions of Standards Committee in reply 27 August 2019, at [3.10](d).
[14] *Legal Complaints Review Officer v Hong* [2015] NZLCDT 27.

satisfied that "…*the conduct of the practitioner, acting for himself in litigation, was regulated services misconduct under s 7(1)(a)(i).*"[15]

[69] It would be, in the Tribunal's view, wrong to allow a practitioner to escape a charge of misconduct on a narrow reading basis, when he is using all of his skills and knowledge as a lawyer against another person. The higher courts have consistently taken a broad approach to interpretation of the LCA's definition of professional conduct, bearing in mind the purpose of the legislation to protect members of the public who are consumers of legal services.

[70] For that reason we are prepared to adopt a purposive interpretation of the definition of professional conduct, bearing in mind that conduct must be assessed to be in one category or another,[16] in the manner submitted by Mr Collins, and we accept his submission that this charge ought to be considered under s 7(1)(a)(i) and (ii).

[71] However, if we are wrong in that assessment, we wish to make it clear that in respect of the six instances cited, the majority[17] of the Tribunal found the conduct of the practitioner to Mr M was so unacceptable that we would in any event consider that it reached the higher threshold for a finding of misconduct under s 7(1)(b)(ii).[18]

[72] The instances we refer to are set out in the reply submissions of Mr Collins as follows:

> "(a) On 17 May 2012 when he communicated directly with Mr M by email concerning a case management conference at the High Court. The content of the email was objectively intimidating from the perspective of a lay person like Mr M;
>
> (a) When he sent a Christmas card to Mr M in 2014 which included menacing narrative concerning his anticipated proceedings after being discharged from bankruptcy;
>
> (b) Similarly the Christmas card in 2015;
>
> (c) His personal attendance at Mr M's home on or shortly before 10 February 2015;

[15] See above n 14 at [3.8].
[16] Per *Orlov*, see above n 10.
[17] One member considered the conduct to be at the level of unsatisfactory conduct.
[18] Relating to non-professional or personal conduct.

(d) His letter to Mr M on 23 September 2016 attaching copies of affidavits of service; and

(e) His use of a process server to serve Mr M directly in November 2017."[19]

[73] We are satisfied from the evidence that on all of these occasions the practitioner was well aware that Mr Lloyd was acting as counsel for Mr M and that it ought to be through him that all communications were conveyed.[20]

[74] Furthermore, his conduct was intimidating and reprehensible. We accept there was an abusive and vitriolic email to the practitioner, which he attributes to Mr M, but it is not clear that can decisively be shown to have emanated from Mr M, and we disagree with the submission of Mr Wiles on Mr Ravelich's behalf that the messages were "very mild and restrained responses to that email".

[75] If the matter is considered under s 7(1)(a)(i) and (ii) the majority of the Tribunal considers that either subsection would be established. The conduct would be considered as disgraceful or dishonourable or as a reckless contravention of the provisions of the Act pleaded, namely Rules 10 and 10.2 and 10.2.1.

[76] Were the conduct to be considered under s 7(1)(b)(ii), the practitioner's conduct in regard to Mr M and the proceedings "would justify a finding that (he) is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer …".[21]

[77] That finding does not presuppose that the practitioner is currently not fit and proper to continue in practice.

[78] These findings constitute answers to Issues 8 and 9.

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[19] See above n 13 at [3.3].
[20] We consider Mr Ravelich ought to have been aware of Mr M's representation from a much earlier date than Feb 2015 as conceded by him, having corresponded with counsel from 2011.
[21] Again by the majority of the Tribunal.

Decision

[79] In summary:

2018 proceedings

(a) We find the charges proved at the level of unsatisfactory conduct for Charges 1 and 2.

(b) We dismiss Charge 3.

2019 proceedings

(c) We find the charge established at the level of misconduct under s 7(1)(a)(i) and (ii) or alternatively if we are wrong in respect of our interpretation of the professional/personal we find the charge established again at the level of misconduct within the meaning of s 7(1)(b)(ii).

Directions

[80] (1) Counsel for the Standards Committee is to file submissions on penalty within 21 days of the date of this decision.

(2) Counsel for the practitioner is to file submissions on penalty within a further 21 days.

DATED at AUCKLAND this 22nd day of January 2020

Judge D F Clarkson
Chair