

**MEDICAL AND PERSONAL DETAILS OF THIS DECISION ARE TO BE REDACTED
IN ALL PUBLICATIONS OF THE DECISION EXCEPT TO THE PARTIES.**

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2020] NZLCDT 42

LCDT 010/18 and 002/19

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**NELSON LAWYERS STANDARDS
COMMITTEE**

Applicant

AND

CRAIG PETER STEVENSON

Respondent

CHAIR

Judge DF Clarkson

MEMBERS

Ms G Phipps

Ms C Rowe

Mr W Smith

Mr B Stanaway

DATE OF HEARING 14 October 2020

HELD AT Tribunals Hearing Room, Wellington

DATE OF DECISION 15 December 2020

REDACTED VERSION ISSUED 9 April 2021

COUNSEL

Ms J O'Sullivan for the Standards Committee

Mr A Darroch for the Respondent

DECISION OF THE TRIBUNAL AS TO REASONS FOR PENALTY

Introduction

[1] This decision concerns the disposition of two sets of charges laid in 2018 and 2019, which were amended to comprise three charges of misconduct. These three charges and supporting particulars were admitted by Mr Stevenson in December 2019.¹

[2] The hearing was protracted, and a brief procedural history is set out below.

[3] The charges concerned conduct over a 17-month period and was based on the observation of 15 individuals. The practitioner's conduct was closely linked to his alcoholism and to his other serious health problems.

[4] The conduct directly bore on the quality of service provided to clients, as well as interactions with the police and colleagues.

[5] Mr Stevenson has been subject to an interim suspension order since June 2019. This decision considers what penalty ought to be imposed to meet the purposes of the Act, and wider penalty considerations.

History – Procedural

[6] The charges, as originally laid, were defended by the practitioner and two days of evidence was heard in June of 2019. Following the evidence as to events, written expert medical evidence was adduced by Mr Stevenson, and then commented on by an expert engaged on behalf of the Standards Committee.

[7] The rebuttal medical evidence given by Dr McMinn, was only available very shortly before the hearing and identified a number of deficits in the reports provided by Dr Townshend on behalf of Mr Stevenson. In particular, the lack of collateral

¹ The amended charges and particulars are annexed as Appendix 1.

history taken by Dr Townshend and physiological evidence, which would have been available from hospital admissions as well as results of blood and breath alcohol testing undertaken by Mr Stevenson, were not presented by Dr Townshend.

[8] Furthermore, Dr McMinn identified a number of areas where the Tribunal would be assisted by further evidence following assessments which could be undertaken by Mr Stevenson. [Redacted].

[9] Because of this deficit of information, it was determined by the Tribunal that the matter ought to be adjourned part-heard to enable further testing to be undertaken. It should be noted that at this stage the medical evidence had not been tested in cross-examination.

[10] As stated in our decision of 25 June 2019:²

“[18] One of the central issues for the Tribunal to determine in this case is whether the practitioner’s conduct and observed presentation is as a result of his alcoholism (and intoxication at the relevant times), or relates to one or a combination of the other conditions suffered by him and/or medication taken by him.”

[11] The Tribunal agreed that further [redacted] testing needed to be carried out in order for a thorough consideration of the evidence to be completed. It is also noteworthy that Dr McMinn described his concern for the practitioner’s wellbeing and expressed his opinion that practitioners with Mr Stevenson’s symptoms would do well to take time away from work.

[12] The two medical experts, Drs McMinn and Townshend agreed that there was required an absolute minimum period of 28 days alcohol-free but preferably three to six months, for a comprehensive and detailed testing such as the Tribunal sought, in order to be able to assess Mr Stevenson’s fitness for practice.

[13] Having regard to the evidence which had been heard over the two days, the Tribunal granted a (second) application for interim suspension of Mr Stevenson, which was brought by Ms O’Sullivan on behalf of the Standards Committee.

² *Nelson Lawyers Standards Committee v Mr W* [2019] NZLCDT 16 (then subject to interim suppression orders).

[14] The matter was then adjourned part-heard for the further testing to be undertaken.

[15] At this first part of the hearing Mr Stevenson had acknowledged his alcoholism as well as providing the Tribunal with some details of other quite serious health problems suffered by him. He acknowledged that his goal was abstinence, however had not achieved such by mid-2019 although he was attempting to modify his behaviour and reduce his intake significantly. The adjournment was also considered to provide him with the opportunity of demonstrating he could take some significant steps on the path towards sobriety.

[16] During the period of adjournment of the hearing, namely on 27 September 2019, the Court of Appeal released its reasons for decision in an appeal against the conviction of Mr M, one of the clients who had been said to have been adversely affected by Mr Stevenson's impairment while acting as defence counsel in a jury trial in August 2018. The appeal was allowed and a retrial ordered. The Court was clear about the deficiencies of Mr Stevenson's performance, particularly in giving his closing address. It said:

"Having listened to the closing address we are satisfied that it was so deficient, both in content and delivery, that the practical effect was worse than if no closing address was given at all. We say that because its likely effect would have been to alienate jurors and imply the absence of any meritorious defence. Yet, as [16] demonstrates, a coherent defence was entirely capable of being articulated. This closing address failed by a substantial margin to do that."³

[17] Later the Court noted Mr Stevenson's affidavit in which he acknowledged:

"... that he is "a chronic alcoholic" and that he "will need to reduce [his] consumption to zero". He says he has "found this to be a difficult process". However, he also notes that he has had a number of serious health issues over the last 10 years and was diagnosed with epilepsy in 2009. He currently takes medication for epilepsy and says:

My medication and chronic alcoholism means that I often display physical symptoms such as unsteadiness when walking, and shaking or tremors and also slurring of speech at times. These effects are heightened when I am fatigued or stressed or both.

³ *M v R* [2019] NZCA 459.

[27] Mr Stevenson denies being intoxicated during the trial. However, we are satisfied that, for whatever reason, Mr Stevenson was clearly incapacitated when he gave his closing address and it was so defective as to give rise to a miscarriage of justice. In effect, he gave no closing at all.”

[18] The hearing before the Tribunal finally resumed on 16 and 17 December 2019. Disappointingly, the further testing had not taken place. The adjournment had grown to six months, in part because the Tribunal had allowed Mr Stevenson further time to undertake a period of voluntary inpatient treatment, which he did at considerable personal expense. However, we are satisfied that that treatment was sadly lacking and did not provide the path to recovery, which a period of inpatient treatment had achieved some years previously for Mr Stevenson.

[19] Despite this inpatient treatment there was not a sufficiently lengthy period of abstinence to allow the undertaking of further examination.

[20] It was apparent when the hearing resumed Mr Stevenson was much less physically well than he had been six months before.

[21] Counsel then conferred following an indication from Mr Stevenson that he might be prepared to revise his position in respect of the charges faced by him. Leave to amend the charges to a representative charge with four particulars rather than four individual charges was granted, and Mr Stevenson admitted the charges at the level of misconduct.

[22] Following evidence from the practitioner himself, and Drs Townshend and McMinn, the Tribunal was provided with evidence as to impairment, potential rehabilitation pathways for Mr Stevenson, [redacted].

[23] A detailed voluntary undertaking was signed by Mr Stevenson on 17 December 2019.

[24] After further consideration the Tribunal agreed to one final adjournment of the matter to provide Mr Stevenson with the opportunity to attempt to achieve abstinence within three months, so as the further testing could be carried out.

[25] Unfortunately, he was unable to achieve this goal, and in March 2020 counsel sought that the penalty hearing be set down and concluded. The hearing was unable to be held for some months because of the outbreak of Covid-19.

[26] For that hearing two further updating reports were received from Dr Townshend initially recording that, particularly during the Covid-19 lockdown, Mr Stevenson had significantly reduced his alcohol consumption, and had as a result recorded greatly improved liver function test results.

[27] While Mr Stevenson initially was reported as being well engaged with the alcohol and drug addiction services and Dr Townshend in particular, there were concerns around his physical presentation and other aspects.

[28] A third update received shortly before the hearing in October caused the Tribunal considerable concern. Mr Stevenson had "*resumed heavy spirits consumption and consequently the improvements in his health and functioning have reversed*".⁴

[29] There had been numerous attendances at the hospital emergency department and markedly deteriorating liver function test results. Mr Stevenson was advised by the doctor connected with his Alcohol and Drug Treatment (AOD) services of the serious risks he was running with his health, but this only led to Mr Stevenson discontinuing contact with the AOD service.

[30] Finally, although Mr Stevenson was represented by counsel at the penalty hearing, he was considered sufficiently unwell by his general practitioner, to prevent travel to Wellington to attend the hearing. He consented for the hearing to proceed in his absence.

Background

[31] The full particulars of the conduct represented in the three charges are set out in the appendix. In summary, Charge 1 relates to Mr Stevenson's conduct towards a police sergeant in March and again in October 2017. The practitioner made remarks

⁴ Report Dr Phillip Townshend, 7 October 2020.

to the sergeant in relation to charges faced by one of his clients and threatened to "... *besmirch your name like I did (redacted) and take a look at where he is now*". This occurred during a discussion over the client's likely plea.

[32] The trial for this client was due to begin in October 2017 and while waiting outside the courtroom for the trial to begin, the same sergeant noted that Mr Stevenson was unsteady on his feet, smelled of alcohol and appeared to have slightly impaired speech. Following the Court having adjourned Mr Stevenson followed the sergeant out of the court building and across the carpark, constantly talking at him and stating that he would get the sergeant's disciplinary records relating to a particular operation. The sergeant eventually had to confront the practitioner and tell him to go away.

[33] Charge 2 relates to four incidents connected with court appearances. On the first occasion on the day of a Judge Alone trial Mr Stevenson arrived at work apparently intoxicated and was observed after 9.00 am to be asleep at his desk. Mr Stevenson's explanation was that he had had an accident that morning and hurt his head and did not recall attending work that day. That did not accord with the description of his colleague about being asleep at his desk. That event occurred in December 2017 and Mr Stevenson was clearly unable to undertake his responsibilities to his client.

[34] The second incident occurred in late January 2018 when the practitioner was reported to Court staff by the parents of a client, as being intoxicated and therefore unable to effectively represent their adult son or daughter. A Court staff member spoke with Mr Stevenson about this complaint and observed that his words were slurred and he was moving slowly and deliberately. The practitioner denied consuming alcohol that day and referred to a review of prescription medication being due at that time.

[35] The third incident occurred in June 2018 when the practitioner was observed in the police cells as being incoherent, having difficulty filling out his forms due to his hands shaking and being unsteady on his feet. Again the practitioner denied being intoxicated at this time.

[36] The fourth incident occurred in August 2018 when the presiding Judge became concerned at the practitioner's responses while appearing in Court. Mr Stevenson was said to be slow to responding to cues, including directions from the Bench and at times appeared confused, with lengthy pauses between words and apparent inability to form coherent sentences. This conduct accords with that noted by the Court of Appeal in the *M* trial which is the subject of the third charge.

[37] The third charge relates to three days in late August 2018 when a strong odour of alcohol was noted on Mr Stevenson (he says this can linger well beyond consumption of alcohol because of his addiction). The comments of the Court of Appeal in overturning the conviction and ordering a new trial are set out in paragraphs [16] and [17] of this decision and need not be repeated.

[38] The practitioner has accepted that each of these charges is made out at the level of misconduct.

Purposes of Penalty

[39] The purposes of penalty are now well established and begin with the s 3 purposes of the legislation itself, namely:

- (a) to maintain public confidence in the provision of legal services ...
- (b) to protect the consumers of legal services ...

[40] To these purposes need be added the more general purposes of rehabilitation where possible, to preserve the value to the public of a professional's training and experience, and from the practitioner's perspective, his or her livelihood. A further purpose is deterrence, both in a general and specific sense. The Act also makes provision for monetary penalties, and compensation to clients who have suffered losses. Finally, the *Daniels*⁵ decision reminds us the path of the "least restrictive intervention" ought to be followed wherever possible.

⁵ *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850.

Seriousness of the Conduct

[41] The seriousness of the misconduct in this case is at the high end of the spectrum. Although it does not involve dishonesty, which is normally regarded as the most serious of the various sorts of misconduct, Mr Stevenson's conduct, although mitigated by its underlying causes (which will be addressed in another section) is of particular concern because of the serious adverse consequences, both potential and actual for his clients.

[42] The damage to the defendant and prosecution alike, and the wastefulness of public resources cannot be understated. The reputation of the profession has also undoubtedly been harmed.

[43] Likewise, the non-too-subtle implied threat to the police officer is conduct totally unacceptable in any lawyer.

Aggravating Features

[44] Mr Stevenson cannot rely on a clear disciplinary history. There has been a previous finding of unsatisfactory conduct relating to Mr Stevenson's conduct of a similar nature during 2013 and 2014. Once again, this related to suspected alcohol consumption while conducting a trial. Again, there were serious consequences for the client and the Court.

[45] We must also take account of the adverse effects on the criminal justice system of a counsel performing at such a poor level that a conviction had to be set aside and retrial ordered. A Defendant facing criminal charges has been denied sober, effective representation. This will have rightly challenged his confidence in the justice system and defence services. This is unacceptable.

Mitigating Features

[46] It is accepted that the very sad feature of this case is that the practitioner is, as described by his counsel, "in the grips of addiction". Counsel for the Standards Committee concedes that this seriously complicates the assessment of proper

penalty even for such serious charges. The legislation, unlike that for the disciplinary processes for health practitioners, does not have specific provisions for dealing with a practitioner who is impaired in some way.

[47] While noting that strike-off was certainly available for offences at this level of seriousness, the Standards Committee did not actively seek this, but rather sought a period of suspension followed by conditions on practice which would enable proper assessment of Mr Stevenson's fitness to practice at the time that resumption was sought by him. It certainly was recognised that Mr Stevenson's huge struggle with his alcoholism ought to be regarded as a mitigating (and complicating) feature of how his course of conduct was viewed. Mr Stevenson's counsel referred to other cases where practitioners suffering from substance abuse did not have insight, or where their offending was marked by dishonesty.

[48] We accept that Mr Stevenson does have some insight and has made numerous attempts to achieve abstinence from alcohol but simply has been unable to achieve this to date.

[49] It is demonstrated by the procedural history, the Tribunal has provided him with two lengthy opportunities to show that he could be abstinent from alcohol abuse, but thus far he has simply been unable to take advantage of these opportunities.

[50] There are two further matters which can be taken account of in mitigation of penalty. The first is that Mr Stevenson did, albeit at a late stage, admit the charges of misconduct.

[51] The second is that he has already suffered a lengthy period of being suspended from practice. When this matter was first adjourned in June 2019 the Tribunal made an interim order of suspension and thus between that and the final penalty hearing, Mr Stevenson has been unable to practice for 16 months. We consider that there ought to be a credit of approximately 12 months, discounted from any period of suspension which would otherwise be imposed. That takes into account a number of factors including the fact that Mr Stevenson would have been unable to work in any event during his inpatient treatment, the Covid-19 lockdown and having regard to Mr Stevenson's physical health generally.

Decision

[52] It is apparent to the Tribunal and is our unanimous view, that, until he has made some progress in his recovery from his alcohol addiction, Mr Stevenson is not fit to practice at the present time and needs to be suspended from practice.

[53] Furthermore, we do not consider that anything short of a significant period of suspension would be a proportionate response to the serious misconduct which we have described, allowing for aggravating and mitigating features set out above. Indeed serious consideration was given to whether his name should be struck from the register. That his conduct arises from an impairment and his health prognosis parlous has been a significant consideration in determining the appropriate outcome.

[54] The Tribunal has been hampered in its assessment of the practitioner's fitness because of the inability to carry out the further testing intended. It will be necessary for the Practice Approval Committee or its equivalent, should Mr Stevenson reapply for a practising certificate in the future, to have careful regard to the practitioner's health and to the types of undertakings required of him by the Tribunal in the course of these proceedings.

[55] We would consider that the sort of ongoing health testing regime and assessments referred to in the undertakings will need to be continued should Mr Stevenson seek to practice in the future.

[56] Having regard to the period of suspension already served, we confirm the suspension period announced at the hearing on 14 October as 18 months commencing from that date.

Suppression

[57] Mr Stevenson accepts that his name will need to be published, however seeks suppression relating to his private medical information. Although it is accepted that reference will have to be made to alcoholism, for this decision to be understandable, other medical conditions do not concern members of the public and any reference to those are to be suppressed.

Costs

[58] The Tribunal recognises that Mr Stevenson is in fairly parlous circumstances financially, particularly as the result of the expensive recent inpatient treatment which he has undertaken and his lack of income over the past 16 months while he has been suspended. However, the process of reaching the penalty stage of these proceedings has been a lengthy and complicated one and has involved the engagement of expert witnesses by the Standards Committee. We accept that that was a necessary expense and that the costs in all the circumstances are reasonable. We order that Mr Stevenson meet 50 per cent of the Standards Committee costs and 50 per cent of the s 257 Tribunal costs, which will be ordered in due course.

Orders

[59] We confirm the Orders, including those made at the hearing on 14 October 2020:

1. Mr Stevenson will be suspended from practice for a period of 18 months commencing 14 October 2020, pursuant to s 242(1)(e).
2. Prior to being issued with a practising certificate we recommend he be required to show he is fit to resume practice through a cognitive assessment.
3. If and when Mr Stevenson is issued a practising certificate, he will be required to enter into undertakings equivalent to those given to the Tribunal and dated 17 December 2019. In addition, he will be required to obtain a supervisor who through daily contact and observation will be in a position to report to the New Zealand Law Society on a two-monthly basis and immediately should Mr Stevenson lapse in his sobriety, in a manner which is observable during working hours.
4. Mr Stevenson is to pay 50 per cent of the Standards Committee costs under s 249, namely \$23,005.17.

5. The New Zealand Law Society is to pay the s 257 costs of the Tribunal, which are certified at \$26,515.00.
6. Mr Stevenson is to contribute 50 per cent of the s 257 costs by repayment to the New Zealand Law Society, namely \$13,257.50, pursuant to s 249.
7. The Interim suppression order is discharged and in its place the medical and personal details of this decision are to be redacted in all publications of the decision except to the parties, pursuant to s 240. The parties' copies are to be noted as subject to this limited suppression of details.

DATED at AUCKLAND this 15th day of December 2020

Judge DF Clarkson
Chairperson

The Nelson Lawyers Standards Committee (**Committee**) charges Craig Peter Stevenson (**Practitioner**) of Nelson with three disciplinary offences as follows.

Charge 1: Threatening Sergeant X (29 March 2017)

That the Practitioner committed a disciplinary offence as particularised below, which constituted:

- (a) misconduct, in that at a time when the Practitioner was providing regulated legal services, he engaged in conduct that:
 - (i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable,⁶ and/or
 - (ii) consisted of a wilful or reckless contravention of rules 2.7 and/or 13.2 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**),⁷

Charge 2: representative charge of providing regulated services and appearing in Court or attending Court while affected and/or impaired by alcohol on the following occasions or ‘incidents’:

- (i) Incident One (1 December 2017) – Failing to appear;
- (ii) Incident Two (31 January 2018) – Complaint to front counter;
- (iii) Incident Three (11 June 2018) – Police cells; and
- (iv) Incident Four (24 August 2018) – Appearance before Ruth DCJ.

That the Practitioner committed a disciplinary offence as particularised below, which constituted:

- (a) misconduct, in that at a time when the Practitioner was providing regulated legal services, he engaged in conduct that:
 - (i) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable,⁸ and/or
 - (ii) consisted of a wilful or reckless contravention of rule 13.2 of the Rules,⁹

Charge 3: Providing legal services and attending Court while affected and/or impaired by alcohol at a jury trial 22-24 August 2018.

That the Practitioner committed a disciplinary offence as particularised below, which constituted:

- (a) misconduct, in that at a time when the Practitioner was providing regulated legal services, he engaged in conduct that:

⁶ Sections 241(a) and 7(1)(a)(i).

⁷ Sections 241(a) and 7(1)(a)(ii).

⁸ Sections 241(a) and 7(1)(a)(i).

⁹ Sections 241(a) and 7(1)(a)(ii).

- (iii) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable,¹⁰ and/or
- (iv) consisted of a wilful or reckless contravention of rule 13.2 of the Rules,¹¹

The particulars of the charges (facts and matters relied upon) are as follows:

1. At all material times, the Practitioner held a practising certificate as a barrister and solicitor issued under the Lawyers and Conveyancers Act 2006 (**Act**).
2. On the occasions captured by charges two and three:
 - (a) the Practitioner was affected by alcohol and/or impaired as a result of alcohol use.
 - (b) The Practitioner was affected as a result of his recent alcohol consumption and in combination with his medical issues, including issues which result from long-term alcohol consumption.
 - (c) The Practitioner had the appearance of being acutely intoxicated or having the appearance to witnesses of having consumed alcohol within a few hours of their observations, but may have actually consumed alcohol on those occasions the day or days prior.

Threatening Sergeant X (Charge 1)

3. On 29 March 2017 the Practitioner telephoned Sergeant X, a police officer who had witnessed events resulting in fresh charges against one of the Practitioner's clients.
4. The discussion concerned those charges and the defendant's likely plea. During the conversation, the Practitioner said to Sergeant X "[Sergeant X] just so you know I will be seeking all information in your involvement in (redacted)".
5. When the Sergeant asked him how that was relevant, the Practitioner replied "Well because I will be looking to besmirch your name in the courts to discredit you". The Sergeant then asked whether this was a threat. The Practitioner's response was "No but I am going to besmirch your name like I did (redacted) and take a look at where he is now". The Sergeant then advised the Practitioner that all further contact with him should be in writing, and ended the call.
6. The trial of the Practitioner's client was scheduled to begin on 9 October 2017. On 9 October 2017, the Practitioner spoke to Sergeant X while the Sergeant was waiting outside the Nelson District Court courtroom for the trial to begin.
7. The Practitioner was unsteady on his feet, smelled of alcohol, and appeared to have slightly impaired speech.
8. After the Court had adjourned, the Practitioner followed Sergeant X out of the court building and across the carpark. During this time, the Practitioner constantly talked at Sergeant X, saying that he would get the Sergeant's disciplinary records relating to (redacted). The Sergeant eventually confronted the Practitioner and told him to go away.

¹⁰ Sections 241(a) and 7(1)(a)(i).

¹¹ Sections 241(a) and 7(1)(a)(ii).

Charge Two: Providing regulated services, appearing in Court and/or attending Court while affected by alcohol (Incidents 1, 2, 3 and 4)

Charge Two, Incident One – 1 December 2017 (Failing to appear)

9. On 1 December 2017, the Practitioner was scheduled to appear in the Nelson District Court for a Judge-alone trial. The Practitioner had previously indicated to the Police prosecutor that his client might plead guilty to the charges he faced.
10. In the days leading up to 1 December, the Police prosecutor emailed the Practitioner to ask whether he had confirmed his instructions. The Practitioner did not reply to this email.
11. On 1 December, the Practitioner failed to appear when the matter was called, nor was there any explanation for his non-appearance. That morning, the Practitioner had arrived at his office in an intoxicated state. Sometime after 9.00 am, a colleague observed the Practitioner asleep at his desk.

Committee investigation – Charge 2, Incident 1

12. The Committee advised the Practitioner that it had become aware of these incidents and was opening an own-motion investigation on 18 December 2017. The Practitioner replied by letter dated 23 January 2018 as follows:
 - (a) The Practitioner said that his comments to Sergeant X were in the nature of “banter”.
 - (b) With respect to his failure to appear on 1 December, the Practitioner advised that he had had an accident on the morning of 1 December causing an injury to his head, and that as a result he did not attend work that day.
 - (c) He said that he overlooked the trial until he cleared messages on his phone on 2 December.
13. On 24 January 2018, the Practitioner advised that he had apologised to the client whom he was representing on 1 December and that this had been accepted.
14. The Committee wrote to the Practitioner on 20 February 2018, noting that his explanation about the events of 1 December were at odds with the information it had received. The Practitioner was invited to reconsider his response.
15. The Practitioner replied in a further email of 26 February 2018 as follows:
 - (a) The Practitioner clarified that he did not dispute his colleague’s account of his behaviour on 1 December, but did not accept that he had been intoxicated.
 - (b) He described the accident in question as involving a fall while using the external stairs at his home.
 - (c) He acknowledged that he had had issues with alcohol in the past but said that he was receiving treatment.
16. On 6 March 2018, the Committee resolved to set the matter down for a hearing. A Notice of Hearing was sent to the Practitioner on 9 March 2018.

17. On 28 March 2018, the Practitioner wrote to the Committee as follows:
 - (a) In respect of the events of 1 December, he maintained his account as presented in his email of 26 February.
 - (b) In relation to Sergeant X, he conveyed his apologies and confirmed “that I knew I had no grounds to use any potential material suggested against him”.
 - (c) He again characterised the exchange with Sergeant X as “banter”.
18. A hearing on the papers took place on 4 April 2018, and the Committee resolved to refer the matter to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (**Tribunal**). A Notice of Determination was sent to the Practitioner on 9 April 2018.

Charge Two, Incident Two – 31 January 2018 (Complaint to front counter)

19. On 31 January 2018, the Practitioner appeared in the Nelson District Court on a number of matters.
20. During the day, the parents of a client whom the Practitioner was representing complained to court staff that he was unable to effectively represent their (adult) child because of intoxication.
21. A member of court staff then observed the Practitioner appearing in court, and noted that he was slurring his words while making submissions.
22. The court staff member met privately with the Practitioner and:
 - (a) put the complaint and her own observations to him; and
 - (b) the Practitioner denied being intoxicated.
23. The Practitioner eventually agreed to meet with the parents; however, by this time they had left the Court.
24. The court staff member and one of her colleagues then met privately with the Practitioner to discuss the complaint and his health. At that meeting:
 - (a) They again observed that he was slurring his words and appeared to be moving slowly and deliberately.
 - (b) The Practitioner denied having consumed alcohol that day but admitted having consumed a small amount of alcohol the night before.
 - (c) The Practitioner said that he was scheduled to see his doctor to review medication he had been prescribed.

The Committee’s investigation into Charge 2, Incident 2

25. A confidential report regarding the events of 31 January 2018 was made on 6 April 2018.
26. This was referred to the Committee, which resolved to commence an own-motion investigation.

27. The Committee wrote to the Practitioner on 13 April 2018, advising him of the confidential report and inviting him to comment.
28. The Practitioner replied via email on 24 April 2018 as follows:
 - (a) He confirmed that he was aware of “concerns” regarding his “sobriety” on 31 January, but maintained that he had not been intoxicated.
 - (b) He acknowledged a history of issues with alcohol but said that he was receiving support.
29. On 23 May 2018, the Committee wrote to the Practitioner, drawing to his attention information it had received from court staff and inviting him to respond.
30. The Practitioner did so via email on 28 May 2018.
31. In that email, the Practitioner reiterated that he had not been intoxicated and suggested that the parents of his client may have had their view of him “coloured” by their dissatisfaction with the progress of their (adult) child’s case.
32. On 6 June 2018, the Committee resolved to set the matter down for hearing.
33. A Notice of Hearing was sent to the Practitioner on 18 June 2018.
34. On 29 June 2018, the Practitioner sent submissions to the Committee via in which:
 - (a) He again denied that he had been affected by alcohol.
 - (b) He said that he appreciated the concerns that had been expressed but wished “to assure the Standards Committee I have this under control”.
35. At its hearing on the papers on 4 July 2018, the Committee determined to refer the matter to the Tribunal.
36. A Notice of Determination was sent to the Practitioner on 16 July 2018.

Charge Two, Incident Three (11 June 2018) Police Cells

37. On 11 June 2018 the Practitioner attended a client in the Nelson Police cells.
38. The Police officer on duty in the cells spoke to and observed the Practitioner during this time as follows:
 - (a) The Practitioner appeared to have difficulty filling out forms due to the shaking of his hands
 - (b) He was unable to talk in a coherent manner.
 - (c) He almost fell over on two occasions.
39. The Police officer reported that the Practitioner smelled strongly of aftershave and appeared to either be either intoxicated or recovering from heavy intoxication.

The Committee's investigation into Charge 2, Incident 3

40. The New Zealand Police lodged a complaint with the New Zealand Law Society Lawyers Complaints Service on 20 June 2018.
41. This complaint related to the Practitioner's conduct on 11 June 2018. The complaint was referred to the Committee. The Committee wrote to the Practitioner on 20 June 2018 notifying him of the complaint and inviting him to respond.
42. On 29 June 2018, the Practitioner responded via email and denied that he had been intoxicated.
43. On 4 July 2018, the Committee resolved to set the complaint down for hearing. A Notice of Hearing was sent to the Practitioner on 10 July 2018.
44. On 23 July 2018, the Practitioner made further submissions via email, again denying that he had been intoxicated.
45. At its hearing on the papers on 23 July 2018, the Committee determined to refer the complaint to the Tribunal. A Notice of Determination was sent to the Practitioner on 30 July 2018.

Charge Two, Incident Four (24 August 2018) - Appearance before Ruth DCJ

46. On 24 August 2018 the Practitioner appeared before his Honour Judge Ruth in the Nelson District Court.
47. Counsel appearing for the other parties, as well as Judge Ruth, became concerned that the Practitioner was adversely affected by alcohol because of the following behaviour:
 - (a) The Practitioner was slow to respond to cues in court, including directions from the Bench.
 - (b) When addressing the Court, the Practitioner appeared confused, struggled to form coherent sentences, and would take lengthy pauses between words when no pause was required.

The Committee's investigation into Charge Two, Incident Four

48. On 27 August 2018, the Committee received a complaint from (redacted), counsel for the co-defendant of the Practitioner's client.
49. On 28 August 2018, the Committee wrote to the Practitioner to notify him of the complaint and invite him to make written submissions in response.
50. Also on 28 August 2018, the Committee received an account from (redacted), counsel for the Crown at the hearing on 24 August 2018, which supported (redacted) complaint.
51. On 29 August 2018 the Committee provided the Practitioner with a copy of the correspondence received in relation to the complaint. On 30 August 2018 the Practitioner responded to the Committee via email, denying that he had been affected by alcohol at the time of the hearing and attributing the concerns raised by both counsel and the judiciary as being due to "stigma" about his past.

52. On 5 September 2018, the Committee resolved to set the complaint down for hearing. A Notice of Hearing was sent to the Practitioner on 25 September 2018.
53. A hearing was convened on 3 October 2018. At the hearing, the Committee realised that the Practitioner had not been provided with several documents on the file. The hearing was therefore adjourned. The Practitioner was advised of the adjournment and sent the outstanding documents on 4 October 2018.
54. No further submissions were received from the Practitioner. On 9 October 2018, the hearing resumed and the Committee resolved to refer the complaint to the Tribunal. A Notice of Determination was sent to the Practitioner on 10 October 2018.

Charge Three: Appearing in Court while affected by alcohol (M Trial 22-24 August)

55. From 22–24 August 2018, the Practitioner represented B M, the defendant in a jury trial in the Nelson District Court.
56. On 23 August 2018, Mr M smelled “a strong odour of alcohol” during meetings with the Practitioner. The Practitioner was “happy and overconfident” in a manner that contrasted with his previous presentation towards Mr M.
57. On 23–24 August 2018, the Practitioner’s cross-examination and closing submissions departed significantly from his instructions.
58. The Practitioner’s closing submissions were “rambling” and his speech was difficult to understand, with long and unnecessary pauses.
59. On 24 August 2018, when discussing the case with Mr M’s family and later receiving the jury’s verdict, the Practitioner was noticeably intoxicated:
 - (a) The Practitioner smelled strongly of alcohol.
 - (b) The Practitioner was struggling to stand up straight and stumbled through doors.
 - (c) The Practitioner’s speech was difficult to understand.
 - (d) The Practitioner’s hands were shaking.
60. The Practitioner’s conduct of the case was incompetent and the Practitioner was impaired while conducting the case.
61. The closing address:
 - i. was so deficient, both in content and delivery, that the practical effect was worse than if no closing address was given at all;
 - ii. failed to articulate a coherent defence “by a substantial margin”;
 - iii. was difficult to follow, and this was exacerbated by extremely long pauses, not just between sentences or paragraphs, but within the sentences. Furthermore, Mr Stevenson’s speech became somewhat slurred towards the end; and

- iv. had a content that might ordinarily take 15 minutes to deliver but took almost 40 minutes.

- 62. The Practitioner was clearly incapacitated when he gave his closing address and it was so defective as to give rise to a miscarriage of justice. In effect, he gave no closing at all (at paragraph [27]).
- 63. The Court of Appeal granted a conviction on appeal on 8 August 2019 brought by Mr M, on the ground of trial counsel incompetence vis-à-vis the Practitioner's representation of him at the trial. The reasons decision was delivered on 27 September 2019.

The Committee's investigation into Complaint 18099 (Charge 3)

- 64. On 31 August 2018, the Committee received a complaint from Mr M and a letter in support from his mother, (redacted). On 3 September 2018, the Committee notified the Practitioner of the complaint.
- 65. On 12 September 2018, the Practitioner wrote to the Committee, denying that he was intoxicated at any point during the trial but suggesting that he may have been tired, "consistent with early start and the rigours of addresses".
- 66. On 5 September 2018, the Committee resolved to set the complaint down for hearing. A Notice of Hearing was sent to the Practitioner on 25 September 2018. At the hearing on 3 October 2018, the Committee resolved to refer the complaint to the Tribunal.
- 67. On 3 October 2018, after the hearing, the Committee received further submissions from Mr M, confirming his perception that the Practitioner "reeked of alcohol", particularly when receiving the jury's verdict. The Notice of Determination, and the further submissions from Mr M, were sent to the Practitioner on 3 October 2018.

Therefore the Practitioner committed Charge 1 referred to above as follows:

- 68. The Committee refers to the above, and says the Practitioner failed to discharge his professional obligations as follows:
 - (a) In relation to the threats to Sergeant X on 29 March and 9 October 2017:
 - (i) By threatening Sergeant X, the Practitioner breached rule 2.7.
 - (ii) In addition, or in the alternative, the Practitioner's conduct in threatening, or appearing to threaten, Sergeant X would be regarded by lawyers of good standing as being disgraceful or dishonourable.
- 69. The Practitioner's above conduct, either individually or cumulatively, amounted to misconduct under s 241(a) of the Act.

Therefore the Practitioner committed Charge 2 referred to above as follows:

- 70. The Committee refers to the above, and says the Practitioner failed to discharge his professional obligations on the occasions referred to as incidents one to four, on 1 December 2017, 31 January 2018, 11 June 2018 and 24 August 2018, as follows:

- (a) By acting in a way that undermined the processes of the court, the Practitioner breached rule 13.2.
- (b) In addition, or in the alternative, the Practitioner's conduct in failing to appear in court due to the effects of alcohol, and by attending and appearing in Court while affected by alcohol, would be regarded by lawyers of good standing as being disgraceful or dishonourable.
- (c) The Practitioner's above conduct, either individually or cumulatively, amounted to misconduct under s 241(a) of the Act.

Therefore the Practitioner committed Charge 3 referred to above as follows:

71. The Committee refers to the above, and says the Practitioner failed to discharge his professional obligations as follows:
- (a) By acting in a way that undermined the processes of the court or the dignity of the judiciary, the Practitioner breached rule 13.2.
 - (b) In addition, or in the alternative, the Practitioner's conduct in attending court while affected by alcohol would be regarded by lawyers of good standing as being disgraceful or dishonourable.

The Practitioner's above conduct amounted to misconduct under s 241(a) of the Act.