SOME NAMES PERMANENTLY SUPPRESSED AS RECORDED AT PARAGRAPH [63], PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 240.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2022] NZLCDT 37
LCDT 016/21

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **WELLINGTON STANDARDS COMMITTEE 2**
Applicant

AND **CHRISTOPHER TENNET**
Respondent

DEPUTY CHAIR
Dr J G Adams

MEMBERS OF TRIBUNAL
Mr H Matthews
Ms G Phipps
Mr K Raureti
Ms M Scholtens KC

HEARING 19 & 20 September 2022

HELD AT Tribunals Unit, Wellington

DATE OF DECISION 26 October 2022

COUNSEL
Mr M J Mortimer-Wang for the Standards Committee
Mr G E Minchin for the Respondent

DECISION OF THE TRIBUNAL RE CHARGE

[1] Mr Tennet faces a charge of misconduct alleging wilful or reckless breach of relevant Rules. The charge has alternatives of negligence under s 241(c) of the Lawyer and Conveyancers Act 2006, and unsatisfactory conduct. The narrative relating to the charge is described in 34 paragraphs of the charge document. Paragraph [35] sets out particular aspects of the charge.

[2] In 2017,[1] Mr Tennet acted in criminal proceedings for client "M." An alcohol and drug assessment of M is central to the charge against Mr Tennet. Following a sentencing indication, the Court ordered[2] an assessment to inform sentencing. Mr Tennet, expressing the view that he could achieve a more lenient sentence than that indicated, persuaded M to obtain a private assessment rather than the routine, free assessment. The charge faced by Mr Tennet arises from subsequent matters relating to that assessment report.

[3] M did not give evidence but, congruent with Mr Tennet's evidence, we find that M was vulnerable. She was a partner of a prominent criminal "C" for whom Mr Tennet had acted. C indicated he would pay her legal expenses. When Mr Tennet first took instructions, M was pregnant[3] and the baby was born by April.[4] Her extensive list of criminal convictions dates from early in her life. Her history and circumstances included prostitution, illicit substance use, excessive alcohol use, violent associates, chaotic social circumstances, and financial dependence on her partner. There were grounds for concern about her cognitive and psychological functioning. Mr Tennet understood that C assaulted her severely around early August, only days before Mr Tennet's conduct (of 15 to 18 August) most pertinent to this charge.

[4] After withdrawal of three particularised items from the Standards Committee charge[5] against Mr Tennet, the remaining particular aspects of the charge targeted

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[1] In this decision, where no year is stipulated, the event occurred in 2017.
[2] On 24 April 2017.
[3] NoE p 117, line 18.
[4] Congruent with M's email 5 April 2017, Bundle p 343.
[5] The withdrawn items were: 35(b)(i) and (ii), and 35(c). This left 35(a), (d), (e) and (f).

three matters: Mr Tennet's 16 August invoice to M for the private assessment report (which falsely stated the cost of the resulting report at $3,450 instead of $1,200[6]); Mr Tennet's 17 August destruction of the copy report (coupled with his failure to inform M, M's new lawyer or the court that the report was completed); and alleged shortcomings of his 15 August memorandum[7] for the court hearing on 18 August. Mr Tennet admits the aspect of the charge relating to the invoice as unsatisfactory conduct but denies all other aspects of the charge.

Invoice

[5] As noted above, Mr Tennet admitted, at the standard of unsatisfactory conduct, the aspect of the charge relating to his false invoice to his client. Our purpose in examining the narrative closely is to determine the gravity of that conduct. Did it amount to misconduct?

[6] A judge in Wellington ordered the AOD assessment. Such a pre-sentence report is available from a court-appointed assessor free of charge. In accordance with usual practice, the Registrar assigned the task to an assessor from a panel of those available to the court. In this case, it was assigned to Mr Brooking.

[7] On 4 June, Mr Brooking asked Mr Tennet for M's telephone number. On 7 June, Mr Tennet responded that he could not provide it without his client's permission. Mr Brooking comments that this was the first time in 17 years that a lawyer had failed to provide such information to him. Although we do not know why, it seems that Mr Tennet had decided to steer his clients away from Mr Brooking. Mr Tennet suggested that M herself wished to avoid Mr Brooking: we do not have sufficient material to make a finding about that, but Mr Tennet's suggestion is incongruous with Mr Brooking's evidence that she later "happily engaged"[8] with Mr Brooking to complete a report after engaging new counsel. Mr Tennet's office manager Mr Hunter had sourced Ms G who worked for a Trust in Palmerston North.

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[6] The assessor had by then been paid $1,000 cash and made no demand of Mr Tennet for more. The nuances around this are discussed later in this decision.
[7] Dated 16 August 2017 for a court hearing on 18 August.
[8] NoE p 61, line 31.

[8] On 7 June, Mr Tennet emailed M.[9] He did not seek permission to give her telephone number to Mr Brooking. He advised her that his office had contacted Ms G, and that Mr Tennet's office manager Mr Hunter would be in touch. He said: "Please ensure that we have money to pay for that: it should be no more than $1,500.00, possibly we are trying to negotiate it down to $1,000 plus GST (which is a very good rate)."

[9] Ms G agreed to undertake the work for $1,200. Mr Hunter told her M would bring that to her in cash. Ms G did not communicate directly with M. All arrangements were made through Mr Tennet's office, generally by Mr Hunter. M failed to attend for an assessment interview on 18 June.

[10] Another appointment was arranged for 26 June. M arrived after 1pm, more than two hours late. Although M did not have the money that Ms G had been led to expect, Ms G noted her distress, and the time she had taken to get to the appointment, and spent three hours interviewing her. Ms G described M as "sobbing and crying and was clearly very fragile."[10]

[11] Early on 27 June, the morning after the assessment interview, by email to Mr Tennet, Ms G said:

> "…. In requesting payment, she [M] stated that Chris [Mr Tennet] was going to pay for the assessment as she was in credit with him. Typically, I would not have seen her as the arrangement for payment was not followed through. However, she did drive 4 hours round-trip. Figured we would maximise the time and was fortunate that my meeting had been cancelled.
>
> I will NOT be producing this report until payment is made. I will leave payment issues between [M] and lawyers involved."

[12] Mr Tennet wrote to M on 20 July[11] to encourage her to pay what was needed to obtain the report. His letter contained these passages:

> As you will know, your sentencing is scheduled for 18th August 2017 at 9.30 am. The Judge has indicated that he requires an alcohol and drug report to assist him.

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[9] Bundle p 263.
[10] Bundle p 122 at [28].
[11] Bundle p 240.

> To this end and after discussion with you it was arranged for you to meet with [Ms G] at [Ms G's employer's: "the Trust"]. You agreed to pay [the Trust] directly and at least twice confirmed that you would have the funds or a cheque with you on the day. Because of our existing relationship with [the Trust] and the fact you are not legally aided were (sic) able to get this done for you at a significantly reduced cost. But, that was on the understanding that you would be paying on the day. You were made aware of this and told us that you understood that.
>
> For whatever reason you missed the first appointment and was (sic) several hours late for the second appointment. These things happen and we understand that, but it has not helped.
>
> You were supposed to come and see me to sort this out, but that has not occurred and you have not responded to e-mails or txts.
>
> It is important for you to understand that it is in your best interests to have the AOD report well ahead of your sentencing, so that we can assist you in addressing any issues that arise from it and if necessary look at treatment options for you. We do not want your sentencing to sneak up on us and be unprepared. It will not be adjourned further.
>
> Therefore could you please make arrangements for payment to be made in full (there is no longer a discount on the table). That can be done as a disbursement through this office.
>
> Please phone the office and make an appointment to come in so we can look at a way forward for you and ensure we are in the best position to help you.
>
> Yours faithfully
>
> C J TENNET
>
> Justice Chambers (sic) [address]

[13] Mr Hunter was dispatched to take cash to Ms G. He gave her an envelope containing $1,000. She drew Mr Hunter's attention to the shortfall of $200. Mr Tennet thought the date of that payment was before he went to Auckland for a long trial. He said that it was "after the 20th of July and by the 2nd or 3rd of August or something."[12]

[14] On 30 July, Ms G exchanged emails with Mr Tennet about information for her report: how much jail time had M done; did she complete any programs[13] in prison. Mr Tennet said he did not know the answer to her queries. During that exchange Ms G commented: "Some questions she just avoided over and over again. Many

[12] NoE p 97, line 33.
[13] Ms G, an American, used American spelling.

inconsistent statements."[14] In oral evidence, Ms G stated that when she did not have information to complete a section of such a report, she would note "Unknown." Thus, the lack of information would not prevent completion of her report to the extent it could be completed.

[15] Following an alleged assault on M by C that created a conflict for Mr Tennet, on 15 August, Mr Tennet filed his memorandum in court for the 18 August sentencing hearing, seeking leave to withdraw.[15] On 16 August he sent his invoice to M by email.[16] The invoice credited her with two sums paid on her behalf (by C, her former partner) totalling $2,500. Mr Tennet charged fees of the same amount. The item "Cost of Alcohol and Drug report from [the Trust]" is charged at $3,450.00. In the result, M apparently owed Mr Tennet $3,450.

[16] Subsequently, M was assigned new counsel and assessed by Mr Brooking.

[17] A critical factor in weighing the gravity of his conduct is determining Mr Tennet's state of mind at the relevant times about the cost of the assessment report. In determining facts, we must apply the civil standard (balance of probabilities) bearing in mind that "the quality of the evidence required to meet that fixed standard may differ in cogency, depending on what is at stake."[17] What is at stake for Mr Tennet is grave and we therefore require cogent certainty before making adverse findings.

[18] Mr Minchin submitted that criminal lawyers deal with messy situations and, therefore, we should not expect what may be ideal practice elsewhere. Mr Tennet suggested he had been misled by the fact (as he contended that he had then understood it) that the Trust (Ms G's employer) generally charged $3,450 for such reports. He also claimed that he never expected M to pay his invoice: all he was doing in presenting a false situation was attempting to get her to respond so he could sort things out.

[19] In support of his claim that he thought the Trust generally charged $3,450, Mr Tennet exhibited[18] two pages that presented as copy printouts of searches of his

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[14] Bundle p 238.
[15] Bundle p 190.
[16] Bundle p 232.
[17] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) at [101] (majority judgment).
[18] Mr Tennet's affidavit 25 August 2022, Exhibit B.

"Practise Account" for payments referencing the Trust. In respect of each of those 20 entries,[19] the names of his clients were redacted. None was less than $2,932.50; it appeared that 14 payments of $3,450 had been made.[20]

[20] Ms G, an American, returned permanently to USA at the end of 2017. She gave evidence by audio visual link. She was the first witness to be cross-examined. She denied that she ever set a rate for this type of work for reports on Mr Tennet's clients. In each case, Mr Hunter told her what rate Legal Aid would pay and the Trust invoiced accordingly. She did not agree that by accepting the rate she was fixing the rate. In the case of M, Mr Hunter told her the rate would be $1,200 and, because M was not legally aided, Ms G would be paid cash by the client. She accepted that arrangement.[21] She said her employer accepted she could undertake this report privately.

[21] Ms G was cross-examined strongly about the rates for reports. She denied that the Trust had scale rates or that the Trust rates had increased. When presented with Exhibit B to Mr Tennet's affidavit, she was perplexed. Of that exhibit, she said "there's a lot of really high numbers there."[22] "The numbers seem very odd."[23] And: "The reason why it doesn't make sense is because I knew approximately how much I brought into [the Trust] because we used that money for learning and development and so I knew about, we had about 10 to $12,000 in total to use for learning and development…"[24] Further: "I would go to the accounting department [of the Trust] because that looks very suspect to me to be honest."[25] A little later she firmly stated: "[The Trust] did not bring in as much money. I can tell you that I would bet my life on that because when I even look at receipts I was the only one doing these legal aid assessments at [the Trust]. …It doesn't make any sense."[26]

[22] Ms Hughson, barrister, was appointed in this matter as an investigator by the Standards Committee. She was the second witness called for cross-examination. She mentioned having corresponded with the Trust. In response to questioning from the Deputy Chair, she produced an email (as Exhibit A)[27] from the Service Manager of the

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[19] Between 3 December 2016 and 9 August 2018.
[20] This counts the $6,900 payment on 20 February 2018 as two payments.
[21] See, e.g., NoE p 19 lines 15 – 28.
[22] NoE p 28, line 16.
[23] NoE p 28, line 19.
[24] NoE p 29, lines 7 – 13.
[25] NoE p 29, line 25.
[26] NoE p 32, lines 9 – 14.
[27] Exhibit A. Email dated 8 August 2018 to Ms Hughson from the Service Manager of the Trust.

Trust. It stated: "Below is a list of all invoice details that have been generated from work completed on legal aid assessments for Chris Tennet and whether or not they have been paid. We are still following up the outstanding account, Chris states our now left CEO said it would be written off and this is certainly not our understanding. …All assessments were completed by [Ms G], apart from the one [specified]." The list comprised seven invoice details ranging from $970.31 to $1,830.23. They total $8,785.16, a mean of $1,255 per report.

[23] Exhibit A had been part of Ms Hughson's interim report to the Standards Committee but it had not been included in the Bundle for this hearing. Whether Mr Tennet had been shown it earlier, we do not know. Exhibit A cannot be reconciled with Mr Tennet's Exhibit B. Ms Hughson's Exhibit A is broadly confirmatory of Ms G's evidence, allowing for the passage of five years since the events. We found Ms G to be a candid, credible witness. Although she had engaged in cheery messaging with Mr Hunter, and she had asked Mr Tennet's comment on some incidental matters, she was wary of them to the point that, when a lunch was proposed by Mr Hunter (for Mr Hunter, Mr Tennet and her), she arranged for her husband to come too. She mentioned that one of her colleagues made a google search of Mr Hunter.

[24] In day one of the hearing, the Deputy Chair pointed out that Mr Tennet had not disclosed any invoices to corroborate his evidence about the cost of reports from the Trust. On the second day, he tendered another document.[28] It comprised simply another presentation of the material in his affidavit's Exhibit B with the addition of client names. The first item ($3,234.39) related to three clients. It would match the first three reports (each at $1,078.13) listed in the Trust email to Ms Hughson. In these proceedings, Mr Tennet never produced any invoice relating to reports to support his claim that he believed they cost $3,450.

[25] At the beginning of the second day of the hearing, Mr Tennet chose not to offer his office manager Mr Hunter for cross-examination. He had formed the view overnight that his office had mis-stated the cost of disbursements to Legal Aid. If his Exhibit B accurately represents payments out, there is a question for Mr Tennet (and perhaps the Police) as to who really was the payee. None of those issues directly affect our consideration of the charge we are dealing with but we find there is no credible basis

[28] Exhibit 1.

upon which Mr Tennet can advance the proposition that such reports cost amounts of the order of $3,450.

[26] Although Mr Hunter was not made available for cross-examination, we can still reference his affidavit. Mr Tennet accepted in cross-examination that we should exercise some scepticism about the Hunter affidavit.[29] We do so but we do not make any finding about the wrongdoing that appears to have been incidentally uncovered. Which person or persons may be clouded by the suspicion of fraud, and what the parameters of that fraud may be, are not matters we are able to determine, nor is it our business to do so.

[27] In determining Mr Tennet's own understanding of Ms G's fee, he is caught by his own correspondence which we find reflects his understanding at the time. His 7 June email to M indicated a range of $1,500 to $1,000. M was instructed, probably by Mr Hunter, to have $1,200 with her in cash to pay. Mr Tennet's letter dated 20 July (but probably written 30 July) reminded M of the arrangement. Mr Tennet accepted in cross-examination that the agreement was for $1,200: "It's 1,200 and, you know, that was a firm figure and that was the figure [M] was supposed to have with her…"[30] We find that Mr Tennet knew that the fee was $1,200 cash.

[28] Mr Tennet's file note of 14 July[31] relates, in the first paragraph, to a discussion with M's family lawyer; and in the second paragraph, to a discussion with M. The second paragraph reads:

> "Call after the Court. The Judge is very interested in the report and wants to see it. [M] is not sure about funding. There is going to be $1,000 coming in now and she will find the other $500.00. Tell her it is being eaten out of my fee. She is committed to getting it. [Family lawyer] wants me to do it today but it will be tomorrow. Talk to [Ms G]. She will start the report. I am not going to do the invoice through my account but I will do it separately."

[29] When asked about the discrepancy between the already agreed $1,200 and the $1,500 implied by his file note, Mr Tennet said that the mistake came from M: "But I'd always understood it [the excess above $1,000] was $200. And given that she'd found

[29] NoE p 108, line 28.
[30] NoE p 95, line 17.
[31] Bundle p 241.

nothing so far, I thought, well, she aims for $1,500, and she turns up with $1,200, I'm a happy man. So, I didn't disabuse her of the $1,200."[32]

[30] Mr Tennet dispatched Mr Hunter with $1,000 cash. He recalls that although he trusted Mr Hunter, he signed his name across the seal of the envelope containing the money. He said "…it was $1,000 and I still had to find $200."[33]

[31] Mr Tennet said he paid the $1,000 with cash that M's partner had given him for M's case. He regarded it as money earmarked for his fees. On that basis, we find he resented feeling obliged to pay it to Ms G because he had expected M to bring the money to Ms G separately. Mr Hunter deposed that when Ms G counted the money and noted the shortfall of $200, she "said something along the lines of "*that will pay my kids tuition."*[34] Mr Tennet recalled having heard of that comment.[35] Although the payment was $200 short, and Ms G had earlier stated that she required payment in advance, she said that: "at the end of the day I [wasn't going to [fuss]] about that."[36]

[32] The fact that Ms G delivered a final signed report on (NZ time) 17 August bears out that statement because she provided the report without any intervening contact with Mr Tennet or Mr Hunter. We find that Mr Hunter reported to Mr Tennet and that Mr Tennet was not left wondering if the report would be finalised. The only thing at issue for him was that he had paid $1,000 which he had not wanted to pay.

[33] Against that background, Mr Tennet gave evidence that he did not know that Ms G was preparing the report. He said: "No, I thought she was happier because it was $1,000 but I still didn't think, I still had $200 to try and hustle from [M] …".[37] Mr Tennet may have intended the verb "hustle" in the sense of "push" or "jostle" but the available denotations extend to "jostling [a person] as a method of robbing him" or "a swindle, racket, a means of deception or fraud."[38] As the narrative continues, all those meanings could apply.

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[32] NoE p 106, lines 19-21.
[33] NoE p 101, line 18.
[34] Hunter affidavit at [34].
[35] NoE p 102 line 10.
[36] NoE p 20, line 26. The words in single square brackets are from the Deputy Chair's handwritten notes; the word in double square brackets is Deputy Chair's recollection.
[37] NoE p 102 lines 20-21.
[38] Oxford English Dictionary.

[34] Mr Tennet explicitly accepted that stating, in his invoice, that the report cost $3,450 was a lie to M.[39] We find that he did so, knowing at the time it was a lie, as a means of attempting to lever money from her. At the time he sent the invoice he knew, not only of her general vulnerability, but also he understood she had been severely assaulted only days prior by the man upon whom she relied for payment of her legal expenses. In addition, Mr Tennet had stressed with her the importance of this report for her case.

[35] On 7 August, Mr Tennet emailed M: "You were going to come to the office today to pay the $3,000 owing. When can we expect to receive this?"[40] Unsurprisingly, M responded "$3000 for what?"

[36] Mr Tennet accepted that his statements about a discount having been removed had no factual basis.[41] He said that "to put it like there was no longer a discount on the table was to sharpen her thinking that she comes in perhaps with what she – what was owed."[42] He accepted it was "intentionally incorrect."[43]

[37] Mr Tennet accepted that, having commissioned an expert report, he had an ethical obligation to pay the report-writer's reasonable fee. He short-paid Ms G, but enough to get the report. We find he lied to his client about the cost of the fee, ultimately in his invoice, as a means towards leveraging funds from her.

[38] Rule 3.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 provides that: "A lawyer must at all times treat a client with respect and courtesy …" Mr Tennet deliberately lied and undertook a deceitful and misleading course of communication with client M about the cost of a report that he had impressed on her was important to her sentencing. He did so at a time when her vulnerability, already significant, was enhanced. We find that he did so as a means of advancing his own pecuniary interests with callous disregard for the circumstances of his client.

[39] We find that, in deliberately lying to his client, he breached fundamental obligations. Those include his obligations to be independent in providing regulated

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[39] NoE p 118, lines 26 – 30.
[40] Bundle pp 236 – 7.
[41] NoE p 108 lines 1 – 15.
[42] NoE p 109, lines 12 – p 110 line 16.
[43] NoE p 110, lines 11 – 13.

services; and to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients.[44] He put his interests before those of his client. It is a breach of Rule 5.1: The relationship between lawyer and client is one of confidence and trust.

[40] We do not accept the extraordinary submission that M had herself breached the requisite trust by failing to give Ms G $1,200 and that, consequently, Mr Tennet was excused from his duty of confidence and trust as a matter of reciprocity. As a matter of law, there is no such available excuse. We find that M's conduct does not mitigate Mr Tennet's deceits.

[41] Mr Tennet, who, at the relevant time, was a seasoned criminal lawyer of about 35 years' experience, said: "I was panicking, because I had an outstanding expert, and I didn't want to use my account as a trust account."[45] We do not accept his evidence that he was panicking. The contention that Mr Tennet, with his experience, would be brought to a state of panic over the difficulties he faced in this matter, is not credible.

[42] M had no way of knowing that the invoice may have been intended as a means of starting a lawyer-client conversation about money. Even if it was intended in that manner, we find it is unacceptable and dishonest behaviour. We find that Mr Tennet's conduct in sending the false invoice is misconduct under s 7 of the Act because it was undertaken when he was providing regulated services, and it is conduct that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable. It is fundamental to the relationship between lawyer and client that the client can trust what their advisor tells them.

[43] Part of Mr Minchin's cross-examination of Ms Hughson aimed at the proposition that the Standards Committee's case was defective because client M had not been interviewed and was not called as a witness. This proposition is misconceived. This case targets Mr Tennet's conduct. It was Mr Brooking who made the complaint when M told him she was being charged over $3,000 for a report that was freely available and, in any case, he thought should have cost about $800. Mr Tennet, who knew M was not a witness for the Standards Committee, did not call her himself. The Standards Committee withdrew those aspects of the charge that could not

[44] Section 4(b) and (c) Lawyers and Conveyancers Act 2006 (the Act).
[45] NoE p 98, lines 5 – 6.

succeed unless M gave evidence contrary to that in Mr Tennet's response. The Standards Committee was under no obligation to call her.

[44] The proven misconduct eats at the fundamental relationship of trust that a client should be able to expect. It is conduct that is at odds with Mr Tennet's fitness to practise law. We find the aspects of the charge described in 35(a), (d) and (e) proved to the standard of misconduct.

Destruction of report

[45] On 17 August, two days after he filed his memorandum for the 18 August hearing asking leave to withdraw, and the day before that hearing, Mr Tennet received Ms G's report as an attachment to her email. Ms G was then back in the USA for a visit of a few days.

[46] In these proceedings, Mr Tennet queried whether the report was final. He would have wanted to discuss its contents with his client before choosing whether to file it. We accept that would be good practice although in these circumstances, expedition was probably also important for M. We accept Ms G's evidence that the report was, as far as she was concerned, final, and that she had signed it.

[47] Mr Tennet said he "shredded" the report. He says he did not open the attachment. He was out of Wellington and instructed Mr Hunter to delete it permanently. In the hearing, he said he used the term "shredding" to include electronic deletion. Mr Tennet's evidence that he did not read the report cannot be reconciled with written submissions made on his behalf to the Standards Committee by the first of his lawyers in this matter, Dr Tony Ellis, where specific findings in Ms G's report are referenced. Those written submissions[46] comment on Mr Tennet's surprise at some of the material in the report. Those submissions referred to it as a "draft report", and submitted that Mr Tennet "would need to fully discuss the draft report" with M. Those submissions too, refer to his having "shredded" the draft. We find that Mr Tennet did read the report.

[48] Mr Tennet suggests he behaved properly in deleting the report because he was no longer acting and he felt it improper to retain personal information about M in those

[46] 14 February 2020 at [47] to [52], Bundle pp 44 – 45.

circumstances. In our view, that was not the proper way to deal with the client's information. We note too that this explanation is at odds with Mr Tennet's contemporaneous behaviour when he actively communicated with Police about disclosure in the case by email on 14 August.[47]

[49] At the time, Mr Tennet knew the identity of M's new lawyer and could have alerted her about the report. He took the view that absent any enquiry from that lawyer, he had no obligation to alert her. Not so. Although Mr Tennet had filed a memorandum seeking leave to withdraw, he was still M's lawyer on the record. He continued to owe his legal and fiduciary duties to M until he was relieved of his role.

[50] Mr Tennet attempted to distinguish his deletion of the copy report from destruction of the report because all he had was a copy. Ms G would have also had a copy. We do not see this as a material distinction. In every sense that mattered to M, she was denied the litigation advantage of the report at a critical point. Because she lacked that knowledge, her case was further adjourned, and she was subjected to another enquiry and assessment, this time from Mr Brooking who was again commissioned to complete it. Mr Brooking was not provided with a copy of the earlier report.

[51] Had M or her new lawyer been able to read the report, even if it may have required corrections or insertion of extra information, M could have avoided a long delay, and she would have avoided duplication of exposure to experts. Mr Tennet could have forwarded the email to M's new lawyer instantly on 17 August.

[52] Mr Tennet admitted that the report belonged to M.[48] By deleting it, in material terms to M, he deprived her of her property. Mr Minchin, after conferring with Mr Tennet, submitted that barristers are not subject to legal obligations regarding private information. We dismiss that submission as vacuous. Mr Tennet's action deprived M of the effective use of her property. We find Mr Tennet was aware of that consequence of his action in deleting it.

[53] Ms G was unaware that Mr Tennet was seeking leave to withdraw or that M had instructed a new lawyer. Understandably, she was taken aback when she received an

[47] Bundle p 233 and p 234.
[48] NoE p 137, line 13.

aggressive message from Mr Brooking who clearly thought she was involved in wrong-doing. Ms G was unaware that her report had not been used, that M was represented by a new lawyer, or that a fresh order had been made to obtain an AOD report – once again, from Mr Brooking. Because her line of communication was to Mr Tennet, she took his advice and did not provide Mr Brooking with the information requested of her.

[54] We find that Mr Tennet's conduct in deleting the report and failing to alert M or her new lawyer about it, were breaches of his duties and the rules in all respects as we have found in respect of the falsely stated invoice. We find this aspect of the charge, too, proved as misconduct.

Memorandum to court

[55] On 15 August 2017, Mr Tennet filed a memorandum in court. It was filed to be read by a judge at the 18 August hearing. By the memorandum, he sought leave to withdraw as counsel for M. Mr Tennet arranged for another barrister to appear in his stead.

[56] The memorandum stated:[49]

> 1. This matter was set for sentence at a time when the writer was away on a trial (but that date was arranged by His Honour Judge Butler). Mr Fraser will be appearing.
>
> 2. Although a drug and alcohol report was called for, the writer had arranged for the [the Trust] to do one privately. Counsel understands that [M] did not see Roger Brooking for that reason.
>
> 3. A conflict of interest has arisen for various reasons, one of which Counsel can address.
>
> 4. Unfortunately the process was report process was ([M] travelling for an assessment) the process was never completed because of inadequate instructions.
>
> 5. If, as Counsel expects, this matter has to be put off for a fresh sentencing date then the Drug and Alcohol report should be 'revived', with respect because it will be very useful to both [M] and the Court.

[49] Bundle p190.

6. Accordingly, Mr Fraser will be seeking leave to withdraw from the appearance.

[57] Ms Baigent, fresh counsel for M, appeared on 18 August and, consequently, Mr Tennet's agent was not called upon to speak at all although he could have done so had he anything to add.

[58] Mr Tennet was conflicted because M had allegedly been assaulted by her partner, another client of Mr Tennet. Whether or not the point was addressed directly in court on 18 August, Mr Tennet was at least inferentially granted leave to withdraw that day because new counsel was given audience for M.

[59] The Standards Committee submits that the memorandum was misleading because it states that the report process "was never completed." Although that would have been the case on 15 August when the memorandum was written and filed, it was no longer true when it was read by the judge on 18 August.

[60] The Standards Committee submits that Mr Tennet had a duty to the court (in addition to his duty to his client) to correct the mistake; in other words, that he should have alerted his agent and Ms Baigent (M's new lawyer) that the report was now available. Mr Tennet only discovered the changed position the day prior but it would have been a short matter to alert his agent and Ms Baigent by email. Because the judge did not know that Ms G's report had been completed, the judge made a fresh order requisitioning a report (again, from Mr Brooking, as it turned out), thereby putting M to the unnecessary distress (and delay) of submitting to a fresh interview about distressing personal matters.

[61] Particular 35(f) alleges that Mr Tennet "misled the Court *by filing* a memorandum …" (emphasis added). If read narrowly, this aspect of the charge cannot stand because the assertion that the report process had not been completed was true at the time the memorandum was filed. Although, in the short window of time available after he received Ms G's report, Mr Tennet could have instructed his agent to correct the message in his memorandum, Mr Mortimer-Wang concedes that this aspect of the charge is his weakest one. He conceded, and we agree, that so far as it impacts on the court, the matter is not of much moment. Its significance is mainly the impact on M, a feature substantially picked up within the particular relating to destruction of the report.

[62] Particular 35(f) was not amended during the hearing. We confine ourselves to the particular as laid. The filing of the memorandum (which was correct at time of filing) did not, in itself, mislead the court. Therefore we dismiss the particular of misleading the court via the uncorrected memorandum.

[63] In the course of the hearing we permanently suppressed the names of M, her partner, the assessor Ms G, and those clients of Mr Tennet who were mentioned or named in documents in the course of the investigation or the hearing. Those orders remain in force, pursuant to s 240 of the Act.

[64] The Standards Committee shall file affidavits and submissions for penalty within 21 days from delivery of this decision. Mr Tennet shall file affidavits and submissions for penalty within 21 days thereafter. The matter shall be set down for a half-day hearing to determine penalty.

DATED at AUCKLAND this 26th day of October 2022

Dr J G Adams
Deputy Chairperson