

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2022] NZLCDT 42

LCDT 003/22

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**NATIONAL STANDARDS  
COMMITTEE (No 1)**  
Applicant

**AND**

**RICHARD DEAN PALMER**  
Practitioner

**CHAIR**

Ms D Clarkson

**MEMBERS OF TRIBUNAL**

Ms S Hughes KC

Mr G McKenzie

Prof D Scott

Ms S Stuart

**HEARING** 19 – 21 September 2022

**HELD AT** Christchurch District Court

**DATE OF DECISION** 10 November 2022

**COUNSEL**

Ms S Carter and Ms N Town for the Standards Committee

Ms P Fee and Ms M Kilham for the Practitioner

## **DECISION OF THE TRIBUNAL ON LIABILITY**

### ***Introduction***

[1] This case concerns allegations of inappropriate conduct which broadly fall under the heading of “sexual harassment”, as well as allegations of intoxication while working as a lawyer.

[2] The conduct, some of which is admitted, spanned three years from February 2015 to February 2018, during which the practitioner, Mr Palmer, was a senior consultant to two firms.

[3] The five complainants included three young women who were very junior in the profession, and two more senior women.

[4] The focus of the hearing was to determine whether some of the incidents had occurred, and as to the level of seriousness of the established conduct.

[5] There was no challenge to the notion that the conduct occurred in a professional setting.<sup>1</sup>

[6] The issues to be determined by the Tribunal are:

### ***Issue 1***

- (a) Have the Standards Committee established, on the balance of probabilities, the conduct particularised in each of the first five charges?
- (b) In each case of Charges 1 – 4, does the conduct reach the level of misconduct, characterised as disgraceful and dishonourable under s 7(1)(a)(i) of the Act?

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<sup>1</sup> So s 7(1)(b)(ii) of the Lawyers and Conveyancers Act 2006 (the Act) was not considered. This was a proper approach to take, having regard to the contextual similarities between this case and the Gardner-Hopkins case, *National Standards Committee 1 v Gardner-Hopkins* [2021] NZLCDT 21 (without assuming similarities at a deeper level).

- (c) Did Charge 5 reach the standard of unsatisfactory conduct, either pursuant to s 12(b) or s 12(c) of the Act?

## ***Issue 2***

[7] If, individually, the first five charges did not reach the standard of misconduct, did a view of them cumulatively reach that level?

## ***Issue 3***

[8] If one or more of the charges reach the misconduct level, is Charge 6 rendered a duplication and therefore redundant.

## ***Background***

[9] In this section we propose to briefly background the practitioner's career and reference some events which are at least of peripheral relevance to these proceedings.

[10] However, we propose to background the alleged events relating to each of the charges under the heading of discussion of that charge, and will deal with the charges in chronological order.

[11] Mr Palmer is a lawyer of over 41 years' experience. His legal work is highly spoken of and he is described as having a friendly and outgoing personality.

[12] Mr Palmer says that he has always been interested in mentoring and supporting younger members of the profession, particularly those who appear to be struggling and perhaps "left behind" or overlooked in the setting of a large legal firm. This view of himself is corroborated by some other lawyers who have been the beneficiaries of his mentoring and guidance.

[13] After a short stint in Wellington, Mr Palmer joined the firm of Duncan Cotterill in Christchurch in 1984 and remained there until 2009. Prior to his departure, he had clearly held a very senior position in the firm, and at one point was managing partner. Mr Palmer left that firm, he says on "good terms" and with "an unblemished record" in 2009 to take up a position at Anderson Lloyd Christchurch. He remained at Anderson Lloyd until early 2015, but had already given notice of his departure under a "no-fault"

termination provision at the time of the incident which gave rise to charge. This incident was raised by Anderson Lloyd as an employment issue.

[14] Although accepting that some of his conduct in relation to the February 2015 incident was “unwise”, Mr Palmer regards the event as providing a “happy coincidence” for the firm in relation to the employment dispute, which was subsequently resolved in a confidential settlement. We make no comment on that assertion, since the firm itself has not had the opportunity of responding to it. We simply note that we regard the steps taken at Anderson Lloyd to address what had happened between Mr Palmer and the two summer clerks involved, were proper, and the reason the Tribunal has not sought comment from the firm is that no criticism of that firm is made by this Tribunal.

[15] Mr Palmer then returned to Duncan Cotterill as a consultant in March 2015, and remained there until June 2018 where he was again the subject of an employment investigation which relates to the events, the subject of Charges 1, 2, 4 and 5. Mr Palmer subsequently raised a personal grievance in relation to a final warning, with the firm which was ultimately resolved.

[16] Again, this Tribunal makes no criticism of the firm involved who commenced a formal independent investigation, having issued a final warning to Mr Palmer on 31 August 2017. Duncan Cotterill also made a confidential report to the Law Society in September 2018, which led the Standards Committee to commence an investigation of its own motion.

[17] An investigator was appointed by the Standards Committee and numerous people were interviewed, including the complainants in relation to the present charges.

[18] In the course of the investigation, the 2015 incident emerged and ultimately the own motion investigation was extended to include those matters which form the subject of Charge 3.

[19] Mr Palmer commenced practice as a consultant with his current firm in July 2018 and has been there since that time without any further concerns being raised.

## ***Discussion of charges<sup>2</sup>***

### ***Charge 3***

[20] Towards the end of his time at Anderson Lloyd, Mr Palmer arranged to take two summer clerks to lunch. He says it was their last week and he wished to thank them for their contribution to the firm.

[21] Although there were a number of restaurants in close proximity to the firm, Mr Palmer took the two young women in his car to a café or restaurant on the outskirts of the city. One of the clerks, who we shall call Ms D, stated that the fact that they were travelling with Mr Palmer in his car felt like he had more control over the situation and their movements.<sup>3</sup> Mr Palmer was aware it was a BYO restaurant and carried with him two bottles of wine for the occasion.

[22] The immediate superiors of the clerks in the firm were aware that the lunch was taking place, but the young women only expected it to be the normal one hour or perhaps a slightly extended lunch. After what might have been expected to be a normal lunch duration, the young women began to receive text messages from members of the firm asking after their whereabouts, and both young women became anxious about getting back to the office.

[23] However, Mr Palmer then took them to another venue which was a bar and café, where they describe him purchasing some “strong liquor”. Ms E said she had one sip and poured the rest of it into the bushes because she had started to feel she’d drunk too much, given the wine consumed during the lunch. It appears both young women may well have disposed of one of the spirit drinks in this way. Mr Palmer did not notice this.

[24] Some time after that, Mr Palmer drove the two young women back to the office carpark but instead of them going back up to the office, which is what they had intended and hoped (it has to be remembered that as summer clerks they were intent on making

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<sup>2</sup> We have dealt with the charges in chronological order.

<sup>3</sup> This was an awareness that seemed to increase the discomfort of the young woman. NOE p 192.

a good impression in the hopes of obtaining employment as graduates), Mr Palmer steered them off in another direction down New Regent Street to have another drink.

[25] At various times when one of the young women raised the fact that they were being contacted by the office, (and indeed Mr Palmer himself was contacted by the office to enquire about their whereabouts), Mr Palmer simply reassured them that they could blame him and he would take responsibility for their being out late.

[26] There are various versions of how this was expressed. The two female witnesses were somewhat concerned because this message was, according to them, delivered in terms that were disparaging of the people who had contacted them from the office and they felt that they were somehow being drawn into disagreements between Mr Palmer and other senior members of the firm, which was a very awkward situation for them.

[27] Enroute to the bar where Mr Palmer intended to take them for yet another drink, was an adult sex shop. Apparently, this shop had been the subject of some newspaper coverage when other local businesses had objected to its opening. Mr Palmer said that he was simply curious about how they were doing in the light of that publicity, so headed into the shop (with the summer clerks in tow), where he began a conversation with the shop assistant.

[28] What happened in the shop is again the subject of some dispute. One of the female witnesses said that while chatting with the shop assistant, Mr Palmer was also picking up various items from the shelves and asking for explanations about them and showing them to the young women. The other witness cannot recall if this happened and Mr Palmer strongly denies it.

[29] What is not disputed is that having chatted for at least five minutes with the shop assistant and having brought the young women into this venue, which they say they felt very uncomfortable (and “weird”) about, Mr Palmer obtained business cards from the assistant and handed one to each young woman.

[30] After proceeding on to a final venue to buy further alcoholic drinks, the young women were returned to the office at approximately 5 pm. Both were very upset by not only how the afternoon had progressed, but the fact that they would be thought

badly of for coming back to the office so late, and a little the worse for wear. At least one of them was to assist in a hearing the following day for which she knew she was needed at the office, to assist with preparations.

[31] We note that Ms E, the witness who raised the handling of items in the sex shop, had not done so in her earlier statement to the Law Society investigator and this was the first time that the particular action had been raised. For that reason, we do not propose to give weight to that aspect of her evidence.

[32] However, in all other respects, both witnesses were clear and credible, despite the fact that this incident was now some seven years in the past. They admitted struggling with the detail but had no difficulty recalling the discomfort they had felt from feeling obliged to go along with whatever Mr Palmer was suggesting because of the power imbalance between them as summer clerks and him as a senior member of the firm.

[33] We regard Mr Palmer's apparent lack of awareness of this dynamic as reprehensible. When we add in that he also plied them with liquor, having taken them to a venue where it was not easy for them to "escape", that he then insisted on further alcohol intake at two further venues and that he embarked on the highly inappropriate activity of taking them into an adult sex shop, we definitely consider that his behaviour would be considered by right-thinking members of the profession as disgraceful and dishonourable.

[34] It reaches that standard even without adding the further dynamic, into which the clerks were inevitably drawn, of the clear underlying conflict between himself and other members of the firm who were attempting to secure the return of the young women to their workplace, when Mr Palmer wished to continue entertaining them.

[35] We are not prepared to accept Mr Palmer's assessment of the visit to the sex shop as merely "unwise", and prefer as stated as above to regard such behaviour as disgraceful and dishonourable.

[36] We note that two days after the summer clerk lunch, Anderson Lloyd notified Mr Palmer that the lunch would be investigated and suspended him from being in the office during the investigation period.

[37] We consider that the Standards Committee has made out misconduct to the level required, in respect of Charge 3.

### ***Charge 1***

[38] On 12 May 2017, Mr Palmer hosted a client lunch at which Ms A was present. A large amount of alcohol was consumed in the course of the lunch and Ms A says that Mr Palmer was intoxicated, although he denies this. Ms A described how Mr Palmer lent into her, and not in a way in which he was simply attempting to hear her. Rather she felt it was an invasion of her personal space which made her feel uncomfortable. She describes Mr Palmer as having patted her on the knee a number of times and also stroked her on the hair and shoulder.

[39] Ms A went to the bathroom in order to be able to change seats and returned to a different seating position, following which Mr Palmer moved to sit next to her. He contends, through his counsel, that the move was just a normal way of socialising rather than following Ms A to her position. We found that explanation implausible.

[40] Mr Palmer denies touching Ms A in the manner alleged because he says he does not do that to women without consent and therefore would not have on this occasion.

[41] Ms A was a careful and credible witness. At the time she had approximately seven to nine years' experience and so was at an intermediate solicitor level. She was fair in her description of the touching, likening it to something that a father might do, but not appropriate as between a senior colleague and employee. She said it made her feel particularly uncomfortable.

[42] We were addressed in the hearing as to the definition of "indecenty". However, we are not making a finding of such. What we find is that the touching was overly familiar, unconsented and unwelcome. Mr Palmer accepted that the conduct was unconsented and that if we found it had occurred, it would meet his own definition of inappropriate conduct.

[43] She described Mr Palmer's intoxication as demonstrated by his being slightly wobbly on his feet, being flushed and slurring. She was concerned about getting into

the car with him (she was the designated driver) because she "... didn't know if he would try something." She confirmed that he did not. When asked in cross-examination whether her concern about getting into the car with him might well have been influenced by office gossip or tittle tattle about Mr Palmer around young women, she said that it was not, because she did not hold the same concerns about driving him to the lunch. Her concerns arose after his actions towards her during the lunch.

[44] Ms A had a minimal amount of alcohol and we consider that her recollection of this lunch is likely to be vastly superior to that of Mr Palmer, given the amount of alcohol consumed by the group as a whole (seven people but with three acting as drivers). Evidence before us made plain that there were four bottles of wine consumed and additional rounds of drinks were purchased.

[45] Evidence was also called from Mr Z who appeared on a Summons and was a client of the firm - he saw nothing of concern in Mr Palmer's behaviour towards Ms A, however, he simply may not have been observing at the points where the events occurred, or his vision may have been obscured.

[46] Having regard to her level of sobriety, and our observations of her as a credible and careful witness, we do not hesitate to prefer Ms A's evidence over that of Mr Palmer in connection with the inappropriate touching which made her feel so uncomfortable.

[47] We consider that touching a junior female colleague on her knee, leg or her shoulder a number of times and stroking her hair goes well beyond the bounds of merely unacceptable conduct and again reaches the standard of disgraceful and dishonourable conduct, as viewed by lawyers of good standing.

[48] Therefore, we find that the level of culpability of misconduct has been reached in respect of this charge also.

## ***Charge 2***

[49] Charge 2 relates to a lengthy series of emails which took place between May and July 2017. In the course of this email chain, Mr Palmer made numerous requests to a first-year solicitor, to have coffee with him and subsequently sought to persuade

her to have dinner with him outside of work hours. This included a suggestion for dinner on a Saturday night where he explained that he was free because he was “batching”. That email was sent at 9 pm on Friday, 12 May. That is the very day that the lunch, where so much alcohol was consumed (Charge 1), was held.

[50] It is alleged that the contents of some of the emails contained sexual innuendo and inappropriate references. Mr Palmer refers to these as jokes which were attempts at humour that had fallen flat. Mr Palmer was at pains to point out the background which led to the initial invitation to meet with this young woman, who we shall call Ms X, is relevant and demonstrates his good intentions.

[51] Ms X had not found her time at the firm satisfying, and during the time Mr Palmer was sending these emails, she decided to leave law and pursue a career in another profession.

[52] Mr Palmer describes the situation as an example of his efforts to support and mentor a young lawyer. He states he was told by another more senior lawyer that Ms X was struggling to find her place in the firm and to be given sufficient work. He gave her a piece of work and commented favourably on her performance to the partners to whom she was responsible. He says catching up with her socially, away from the firm was to further his encouragement of her, and that it was her suggestion that they meet out of hours. After he learned she was leaving the law altogether, he says he still wanted to take her for a meal to bolster her self-esteem.

[53] The level of persistence of Mr Palmer’s attempts to secure a dinner with Ms X, as demonstrated by the emails themselves, show once again a lack of insight or disregard of the power imbalance between the practitioner and a junior female staff member. Adding to that were the inappropriate comments within the emails, for example:<sup>4</sup>

L, I really would like to meet to say a few things before you go. Over dinner for preference. I promise not to bite. Well not hard. Do you have any time soon? I am batching at the moment so could do 13/7 to 17/7 inclusive. Cheers

[54] We accept that Ms X’s attempts to be polite by offering alternative times did create some confusion from Mr Palmer’s perspective. However, given the number and

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<sup>4</sup> Bundle of documents, at p 188.

variety of excuses used to avoid the meeting or date by Ms X, only the most persistent or unaware correspondent could fail to sense her discomfort and reluctance. The invitation to a Saturday night dinner, in which Mr Palmer revealed himself to be “batching,” is difficult to interpret other than a “date” invitation and goes well beyond acceptable boundaries between senior and junior (reluctant) staff members. Once again, Mr Palmer, upon reflection, now concedes that suggesting a one-on-one dinner with a junior female colleague “could be seen as unwise”.<sup>5</sup>

[55] At the point when Ms X was known by Mr Palmer to be leaving the profession entirely, his justification for having a meal with her became thin to the point of non-existent.

[56] Ms X was so bothered by the email chain that she shared her concern with colleagues – at one point asking advice as to how to handle the invitations.

[57] Although she did not wish to complain formally, she provided the email chain (of three months’ duration by then) to the human resources officer who conducted her exit interview. In turn, that person was also sufficiently concerned about the email chain to pass it to the human resources manager.

[58] In evidence, Ms X confirmed that it had “definitely not” been her suggestion that she meet with Mr Palmer outside working hours. She stated that this was “categorically” untrue and pointed to the fact that she had tried to divert to a coffee meeting within work hours.

[59] What is also of concern to the Tribunal is that this email chain continued, despite a meeting having occurred between Mr Palmer and two of the senior partners at his firm on 18 May 2017, where they raised with him the issue of alcohol in the workplace. Specifically, they asked him to agree that if he drank heavily at lunch time, he would not return to the office. They also had raised with him concerns that had been expressed by other partners about Mr Palmer’s treatment of young female colleagues and what was seen as a propensity to invite those colleagues out to lunch or coffee. Although the conduct complained of was not specifically outlined to Mr Palmer, it was

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<sup>5</sup> Opening submissions for the practitioner, at [22].

certainly made sufficiently clear to him, that he responded by asking “Should I apologise to anyone?”

[60] Following the email chain being forwarded to the human resources manager, Mr Palmer was given notice of a disciplinary hearing by Duncan Cotterill.

[61] Mr Palmer engaged counsel who, and as far as we can gauge on Mr Palmer’s instructions, wrote to Ms X requesting that she meet with them to share her version of events.

[62] This letter which, unsurprisingly, Ms X found extremely threatening, was followed up by a reminder letter which contained a specific request that she might be summonsed to appear before the Employment Relations Authority. This approach does appear to underline Mr Palmer’s lack of sensitivity and insight into her position.

[63] Viewed overall, having regard to the persistent nature of the communications and the unnecessary innuendos – which we reject as just “jokey” – the fact that Mr Palmer emailed at night after heavily drinking at lunch time and coming after a warning as to his conduct towards young women, we consider that this conduct crosses the boundary from “unacceptable” or “conduct unbecoming” into the disgraceful and dishonourable category.

#### ***Charge 4***

[64] Charge 4 occurs out of allegations concerning Mr Palmer’s conduct at the Duncan Cotterill Christmas party in December 2017.

[65] Mr Palmer acknowledges he was intoxicated. In the course of the evening, he attempted to dance with and place his arms around Ms Y on a number of occasions, to what she felt was a pestering level. Finally, in the course of dancing, Ms Y said that Mr Palmer’s hand moved below the tight-fitting slip that was underneath her dress covering her partly-exposed back, and thereby touched her skin.

[66] The touching was unwelcome and Mr Palmer had been observed by another partner (Mr W) to have been pestering Ms Y throughout this latter part of the evening, in which a small group had moved to another venue following the Christmas party.

[67] Because of this conduct (unwelcome touching), Ms Y who is, and was at the time, a relatively senior practitioner and regarded herself as a friend of Mr Palmer, dealt with the situation by leaving the party. As she left, one of the other partners who had observed the conduct, asked her if she was alright and she indicated that she was able to deal with the matter in her own way.

[68] Ms Y was an impressive, poised and clear witness. She was extremely fair when it was put to her that the touch on her back underneath her slip might well have been an accidental one, in the course of “messy dancing”. Ms Y conceded that this may well have been the case.

[69] For this reason, we do not consider the Standards Committee has made out this charge on the balance of probabilities to the level that a serious charge of improper touching requires.

[70] Therefore, we dismiss Charge 4.

### ***Charge 5***

[71] In February 2018, Ms A again attended a lunch with the same client as was involved in the Charge 1 issues.

[72] Once again, a significant, although unspecified, amount of alcohol was consumed.

[73] Mr Palmer points out that there was also a substantial meal consumed in the course of this lunch, he denies that he was intoxicated and says that he drove sensibly and safely back to the office. The last matter was corroborated by Ms A.

[74] As pointed out by Mr Palmer’s counsel, no accurate assessment, such as evidential breath or blood testing, is available to support this charge.

[75] Ms A alleges that when she went to discuss a matter with Mr Palmer later that day, she found him incoherent and unable to sensibly discuss work with her.

[76] Counsel for Mr Palmer points out that he did not conduct any “substantial legal work” according to his timesheet. Three rather minor matters were attended to.

[77] We do not consider that the Standards Committee has established the elements of misconduct or indeed, unsatisfactory conduct on the part of the practitioner, in respect of this charge. While we found Ms A to be a credible witness, given the seriousness of the charge, we are not prepared, on the observation of one person, to say that this meets the standard of proof. This is particularly since there is no indication of any harm done to clients or other evidence of impaired performance.

[78] For these reasons, we dismiss Charge 5.

### ***Charge 6***

[79] This is the omnibus charge about which we have posed the questions in issues 2 and 3. Since we have found the Charges 1, 2 and 3 proved to the standard of misconduct, we are of the view that to consider the cumulative effect, at least prior to the penalty phase, would involve duplication of charges. Thus, we propose to treat Charge 6 as redundant.

[80] However, we reserve the right, at penalty stage, to consider the totality of the offending and any pattern of conduct which we consider emerges from that.

### **General Comments**

[81] The evidence of the five complainants in this matter make plain the vulnerability of junior staff who are acutely aware of the need to be seen in a positive light by prospective or actual employers to enable progress within the law. Almost all of the witnesses we heard expressed extreme anxiety about the potential negative effects these complaints might have on their future prospects. Despite their fears all maintained a determined effort to avoid over egging the evidence – all conceded that Mr Palmer may not have intended offence. They are to be commended for their careful evidence.

***Directions***

1. The Standards Committee is to file its submissions on penalty within 14 days of the date of this decision.
2. The respondent practitioner is to file his penalty submissions within a further 14 days thereafter.
3. The case manager is, in consultation with counsel and Tribunal members, to allocate a half day fixture for a penalty hearing.

**DATED** at AUCKLAND this 10<sup>th</sup> day of November 2022

DF Clarkson  
Chairperson