LCRO 205/2014

CONCERNING	an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006
AND	
CONCERNING	a determination of the Standards Committee
BETWEEN	**TG** Applicant
AND	**STANDARDS COMMITTEE** Respondent

The names and identifying details of the parties in this decision have been changed.

DECISION

Introduction

[1] Mr TG has applied for a review of a determination by the Standards Committee in which his conduct was found to have been unsatisfactory pursuant to s 12(b) of the Lawyers and Conveyancers Act 2006 (the Act). As a result the Committee imposed a $500 fine and costs of $500, ordered Mr TG to deliver an apology, and take advice from a senior lawyer nominated by the Lawyers Complaints Service with regards to the management of his practice, including ethical issues, within 30 working days of the date of the determination.

[2] The Committee did not consider it necessary to publish details identifying Mr TG, but provided for a copy of the decision to be available to the senior lawyer.

Background

[3] Mr TG attended the Family Court to represent a client at a judicial conference on 23 October 2013 (the proceeding). He says he was there because the Court had appointed a welfare guardian to a patient who was too unwell to take care of himself.

Mr TG's client had nursed the patient, and became his friend. She disagreed with a decision made by the welfare guardian and, on behalf of her friend the patient, sought to challenge the welfare guardian's decision by application to the Court. For Mr TG, it appears the issues in the proceeding overlap with other similar proceedings in which he has been involved as counsel.

[4] The judicial conference Mr TG attended on 23 October was the last in a long court list that day. Along with the presiding Judge, Judge EJ, and the registrar, Mr TG's client, counsel for the patient, the welfare guardian and the DHB all were present in Court when the matter was called. Mr TG wanted the Judge to grant an adjournment. Other counsel opposed.

[5] Mr TG says in anticipation of resistance to his request for a further adjournment, Mr TG had filed a detailed memorandum in Court in advance of the conference, and served that on counsel for the other interested parties. It appears the memorandum had not reached the court file by the time the proceeding was called, and had therefore not been read by the presiding Judge.

[6] When Mr TG stood to address the Court, he was unable to deliver the information the Judge needed to be able to progress the proceeding. Mr TG said at the review hearing that he had copies of his memoranda available on the day, and that if he could re-enact events he would have handed a copy up and invited his Honour to take a brief adjournment to read that through before proceeding. That, however, is not what happened on the day.

[7] With some prompting, Mr TG was able to convey to the Judge the nature of the decision under challenge. He struggled to precisely articulate his request for an adjournment. His Honour indicated he would stand the matter down so he could read Mr TG's memorandum.

[8] There was further miscommunication over how long the Judge would need to take to read the memorandum and the length of the adjournment Mr TG was seeking. As communication broke down further, his Honour directed Mr TG to sit. His Honour repeated his request several times as he rose and vacated the bench, while Mr TG remained standing, and repeated his attempts to speak to the Judge.

[9] Mr TG says opposing counsel also told him to sit, after the Judge had risen and told him to sit as he was going through the door that separates the courtroom from the judges' chambers. Mr TG says he was affronted by what he considered was opposing counsel's unwarranted intervention, and raised his voice in response to that. He says

he was addressing counsel when he raised his voice, and not addressing Judge EJ as he was leaving the courtroom.

[10] The court record says that his Honour adjourned the proceeding, called for security then left the courtroom.

[11] Mr TG accepts that the recording captured him speaking at the same time as Judge EJ, and failing to obey his Honour's repeated direction to be seated as he was standing the proceeding down, rising and leaving the courtroom.

[12] The Judge raised concerns with the New Zealand Law Society (NZLS) over Mr TG's conduct in Court that day.

Standards Committee

[13] The Standards Committee received his Honour's complaint and commenced an own motion investigation pursuant to s 130(c) of the Act. In the course of its inquiry the Committee listened to the "in-Court audio-recording of events" on the day, that had been provided by the Ministry of Justice. The Committee gave notice of its intention to conduct a hearing on the papers, and invited Mr TG to file submissions by 1 July 2014.

[14] The Committee's concerns related to repeated failures by Mr TG to obey instructions from the bench, shouting at his Honour in his capacity as presiding judge, at other counsel present in Court at the time, and at a court security officer.

[15] Mr TG's initial explanation to the Committee was that he had not heard the Judge, and that although he raised his voice, his communication was not aimed at the Judge. Mr TG initially said he was provoked by the circumstances including the Judge's handling of the proceeding in Court, and comments made to him by other counsel.

[16] After receiving the notice of hearing Mr TG says he tendered further submissions to the Committee dated 1 July 2014. The Committee did not receive those submissions because Mr TG sent them to the wrong email address. The Committee was not aware of the further submissions when it considered the matter, but considered the materials available to it within the context of the Act, and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the rules).

[17] In relation to the allegations of ignoring the Judge and shouting at him, the Committee made reference to rules relating to the overriding duty of a lawyer as an

officer of the court,[1] duties on lawyers acting in litigation,[2] the prohibition on lawyers acting in a way that undermines the process of the court or the dignity of the judiciary,[3] and the requirement on lawyers to treat others involved in court processes with respect.[4]

[18] With respect to the allegations of shouting at other counsel and security staff, the Committee considered whether, by his conduct, Mr TG failed to promote and maintain proper standards of professionalism in his dealings, or treated other lawyers with disrespect or discourtesy.

[19] As mentioned above, the Committee made a finding of unsatisfactory conduct pursuant to s 12(b) of the Act, and imposed penalties on Mr TG. However, the unsatisfactory conduct finding related only to the allegations concerning Mr TG's conduct towards Judge EJ.

[20] The Committee took no further action in relation to the other allegations, on the basis that there was insufficient evidence on which to base conclusions.

[21] The Committee imposed the four orders referred to above.

[22] Mr TG has applied for a review.

Review Application

[23] In his review application, Mr TG primarily objected to the unsatisfactory conduct finding. However, he was also concerned about the imposition of financial penalties largely on the basis that he has little income because he says most of the work he does is pro bono.

[24] Mr TG said he was distracted, and repeated his evidence to the Committee that he did not hear the Judge ask him to sit. He referred to the hearing and the effect on him of comments made by his Honour in the course of the hearing. He says the Committee found that he "did not shout during the Court hearing", but if a finding is made on review that he did shout, he considers the Judge should be held partly accountable for his role in provoking his conduct. He said that the evidence did not support some of the allegations made against him, and as the charges the Committee dismissed were baseless, he should not be ordered to pay costs in respect of those.

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[1] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 2.1.
[2] Rule 13.
[3] Rule 13.2.
[4] Rule 13.2.1.

[25] He was also concerned that the Committee had made its decision without considering his further submissions dated 1 July 2014.

Role of LCRO on Review

[26] The role of the Legal Complaints Review Officer (LCRO) on review is to reach her own view of the evidence before her. Where the review is of an exercise of discretion, it is appropriate for the LCRO to exercise particular caution before substituting her own judgement for that of the Standards Committee, without good reason.

Scope of Review

[27] The LCRO has broad powers to conduct her own investigations, including the power to exercise for that purpose all the powers of a standards committee or an investigator, and seek and receive evidence. The statutory power of review is much broader than an appeal, and gives the LCRO discretion as to the approach to be taken on any particular review and the extent of the investigations necessary to conduct that review.

Review Hearing

[28] Mr TG attended a review hearing in [City] on 10 June 2015 with counsel. The Standards Committee indicated that, beyond confirming it had not received certain information, including Mr TG's further submissions dated 1 July 2014, it did not wish to be involved in the review process. The hearing proceeded in the absence of further input from the Committee.

Review Issues

[29] I accept the Committee's finding that the evidence does not support adverse findings regarding conduct towards counsel and court security staff. That part of the decision is confirmed.

[30] The remaining issue relates to Mr TG's failure to maintain proper decorum in Court. The question on review is whether there is good reason to depart from the Committee's decision that Mr TG's conduct was unsatisfactory pursuant to s 12(b).

For the reasons discussed below by a fine margin I have concluded there is good reason to reverse the finding of unsatisfactory conduct. As a consequence the s 156(1) orders fall away.

Discussion

[31] The Committee made a finding of unsatisfactory conduct under s 12(b) of the Act which says:

> In this Act, **unsatisfactory conduct**, in relation to a lawyer or an incorporated law firm, means—
> ...
> (b) conduct of the lawyer ... that occurs at a time when he ... is providing regulated services and is conduct that would be regarded by lawyers of good standing as being unacceptable, including—
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> (i) conduct unbecoming a lawyer or an incorporated law firm; or
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> (ii) unprofessional conduct...

[32] In *BI v CW* the LCRO considered the nature of a finding of unsatisfactory conduct in relation to a fee complaint, the significant stigma associated with any such finding, and the penal consequences, saying relevantly: [5]

> [28] A finding of unsatisfactory conduct ranges from conduct which falls short of a standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer, through to conduct which would be regarded as unacceptable to lawyers of good standing.
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> [29] Section 12(c) of the Lawyers and Conveyancers Act defines unsatisfactory conduct as being conduct which breaches any one or more of the Conduct and Client Care Rules. Those Rules cover the fundamental obligations of lawyers:
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> - to uphold the rule of law and to facilitate the administration of justice in New Zealand:
> - to be independent in providing regulated services to clients:
> - to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients:
> - to protect, subject to overriding duties as officers of the High Court and to duties under any enactment, the interests of clients.

[33] The LCRO referred to discussion about the nature of the finding of unsatisfactory conduct by reference to an article by the former LCRO, Duncan Webb and his description of such a finding as being:[6]

> ... conduct that is not so egregious as to amount to misconduct but is still deserving as being marked out as falling below the standard of behaviour that clients and the public are entitled to expect. It is a professional lapse.

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[5] *BI v CW* LCRO 23/2012 at [28]-[29].
[6] At [34].

[34] With reference to a finding of unsatisfactory conduct for breach of the rules Dr Webb said:[7]

> It is important to note that a breach of the rules will be unsatisfactory regardless of significance. While there is a power under s 137 to dismiss a complaint that is trivial (or frivolous, vexatious or not made in good faith), the starting place must be that any breach of rules is a matter for concern.
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> …
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> Unsatisfactory conduct is clearly a professional standard. Professional consequences flow from a breach of that standard. However, it is fundamentally different from a finding of misconduct. A finding of misconduct has connotations of a serious failure of professional standards.

[35] By contrast:[8]

> ...the [Lawyers and Conveyancers Act] makes it quite clear that a finding of unsatisfactory conduct may be made on the basis of mere negligence of a practitioner (s 12(a)) or an implied unintentional (and minor) contravention of one of the new rules or regulations (s 12(c)).
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> ...
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> It is also perhaps useful to look at the term itself. To mark out conduct as unsatisfactory is hardly a damning condemnation. To state the obvious, lawyers' conduct can either be satisfactory or not. It is suggested that the choice of the only faintly damning description of 'unsatisfactory' indicates that a finding of unsatisfactory conduct is not intended to be an indicator of any kind of egregious conduct, but is rather an indication that the practitioner in question "must try harder".
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> ...
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> the term "unsatisfactory conduct" covers a range of conduct from the mere slip or oversight that is less than satisfactory, to conduct on the border of misconduct that is deserving of serious sanction.

[36] The LCRO then said:[9]

> This discussion by Duncan Webb points out the difficulties which face a lawyer whose conduct is subject to a finding of unsatisfactory conduct. It clearly is not, and is not intended to be, a matter to be dismissed lightly. The range of orders that can be made include some significant penalties. In addition, a finding of unsatisfactory conduct is a black mark against a lawyer's professional record and deserves to be and is, treated seriously.

[37] The LCRO then noted that a lawyer should not necessarily be allowed to buy his or her way out of a complaint by agreeing to reduce a fee.

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[7] At [35]-[36].
[8] At [37]-[39].
[9] At [39].

[38] As counsel for Mr TG submits, "not every infraction requires disciplinary intervention".[10] The District Court accepted in *Perera v Medical Practitioners Disciplinary Tribunal* that:[11]

> In summary, the test for whether a disciplinary finding is merited is a two-staged test based on first, an objective assessment of whether the practitioner departed from acceptable professional standards and secondly, whether the departure was significant enough to attract sanction for the purposes of protecting the public. However, even at the second stage it is not for the Disciplinary Tribunal or the Court to become engaged in a consideration of or take into account subjective consideration of the personal circumstances or knowledge of the particular practitioner. The purpose of the disciplinary procedure is the protection of the public by the maintenance of professional standards. That object could not be met if in every case the Tribunal and the Court was required to take into account subjective considerations relating to the practitioner.

[39] As Mr TG admits his conduct transgressed into the realms of conduct that is not acceptable from counsel in court, meeting the first stage of the test, the question is whether the departure was significant enough to attract sanction for the purposes of protecting the public. It is relevant to note that many of the other matters Mr TG has raised would be relevant to mitigation if his conduct were found to have been unsatisfactory, rather than of assistance in determining the degree to which the conduct departed from appropriate professional standards.

The Evidence

[40] The transcript of the recording tells only part of the story: it does not show who did what when; nor does it assist with the volume or tone of the dialogue. All of these are features of the communication Mr TG accepts "crossed the boundaries of behaviour that should be reasonably expected of a lawyer".[12] It was clear from the transcript, however, that communication in Court had gone off the rails, and that the conduct under consideration had occurred in a very compressed timeframe.

[41] Conduct that can be categorised as acceptable and unacceptable occurs across a wide range. Although his Honour was plainly affronted by Mr TG's conduct, it was not obvious from the transcript how charged the interchange was, how long it had taken (although it was obviously brief), whether Mr TG was talking over the Judge, and whether, if Mr TG's conduct should attract disciplinary consequences, what those should be. It is uncommon for a judge to make a formal complaint about a lawyer. In

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[10] *J v A* LCRO 31/2009.
[11] *Perera v Medical Practitioners Disciplinary Tribunal* DC Whangarei MA94/01, 10 June 2004 at [51].
[12] Submissions KL to LCRO (9 June 2015).

the circumstances, I considered it appropriate to listen to the recording myself in the course of this review.

[42] When I listened to the recording, my initial reaction was that the dialogue, while distinctly unsettling, still did not provide a sufficiently complete picture for me to be able to form a fair and balanced view as to whether the departure was significant enough to attract sanction for the purposes of protecting the public.

[43] If Mr TG was going to lose his temper with anyone, which he plainly did, he should never have done that in court, even less so when a judge was present. However, the audio also suggested Mr TG was vacillating, which supports his claim that he was not sure whether to sit or stand. That is an important point because it is consistent with his assertion that he genuinely did not know what to do, and did not intend any disrespect to the Judge.

[44] There can be no doubt that Mr TG's conduct was not manifestly acceptable. However, based on the information before me on review, the Committee's finding that the conduct should attract any of the sanctions associated with a finding of unsatisfactory conduct, including the stigma associated with a finding of unsatisfactory conduct itself, was not clearly correct, given the overall purpose of protecting the public.

Further Information on Review

[45] The information the Committee lacked when it made its decision was Mr TG's correspondence dated 1 July 2014. I also had the opportunity to hear from Mr TG in person at the review hearing. The combination of those two sources of further information persuade me there is good reason to depart from the Committee's decision.

Mr TG's Correspondence

Letter to New Zealand Law Society 12 March 2014

[46] Mr TG's response to NZLS' inquiry set out the background to his appearance on 23 October 2013. He was extremely defensive of the patient whose rights were central to his involvement. He was highly critical of Court appointed counsel for the patient, who Mr TG considered had done little to assist the patient. He also explained various twists and turns in the litigation that had brought him to Court on that day. He also referred to what he considered to be inappropriate flippancy by Judge EJ.

[47] Mr TG denied shouting at the Judge, referred to the Court's transcript of the proceeding, and described opposing counsel's intervention which he considered exacerbated the situation, and did nothing to assist. Mr TG denied deliberately disobeying the Judge and described people's movements while the recorded dialogue occurred. In particular, he said that he stood because the Judge had stood, and because he wished to address the Judge. He said he was confused between his obligation to stand and what he saw at the time as the Judge's inconsistent direction to sit.

[48] The usual convention is for counsel to stand when addressing the court, and when the judge is retiring. The Family Court has its own particular conventions, but in this case the clear and repeated directions from the Judge was for Mr TG to sit.

[49] Mr TG accepted that he had raised his voice, but said he was addressing other counsel after the Court had adjourned, at a point when Mr TG and his client were leaving the courtroom. He explained his elevated tone by saying he was further away from opposing counsel, and had raised his voice so he could be heard.

[50] He said he had not spoken to the other lawyers who were in Court, nor had he shouted at or sworn at the security officer. He attached an affidavit sworn by his client,[13] which corroborated the latter aspects of his evidence, as well as expressing the client's view of events in Court. She was also critical of what she considered to be inappropriate flippancy by Judge EJ.

[51] I note the client's affidavit was prepared by Mr TG, and am conscious that there is an element of the self-serving to that. Mr TG would have been wiser to have had his client assisted by someone independent. However, her affidavit stands, and I must consider its contents to the extent they are relevant to Mr TG's conduct as matters unfolded, as follows:

> [19] ...I am surprised at how calm my lawyer was.
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> [23] …Judge EJ stood up from his chair and asked about the length of the adjournment. Mr TG stood and tried to answer His Honour's question. Judge EJ would not let Mr TG explain the confusion over the two adjournments at issue (the length of the one I was seeking and the length of the one His Honour was taking). His Honour walked off the rostrum to leave the court. As His Honour was leaving the courtroom none of the lawyers except Mr TG actually stood up …
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> [24] In all the communications between Mr TG and Judge EJ I did not hear Mr TG shout or yell at His Honour.

[13] Affidavit of [HR] (19 March 2014).

> [25] [Opposing counsel] remained seated but started talking during the hearing. I heard Mr TG ask [opposing counsel] to stand up if he wanted to address the Court.… Mr TG did not "threaten" [opposing counsel] at any stage...
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> [26] When Judge EJ left the Courtroom, Mr TG approached me in the public seating area. At this point Mr TG raised his voice to speak to [opposing counsel] who will still positioned at the lawyers table. Mr TG raised an important question in relation to the work [opposing counsel] had done in relation to [the patient] ...

[52] Mr TG's client says that they left the courtroom together, and nothing eventful occurred, except that they were unable to re-enter the courtroom shortly after the brief adjournment.

[53] In his correspondence, Mr TG described his previous disciplinary record in practice in New Zealand and overseas over the course of 20 years as unblemished.

Letter to New Zealand Law Society 1 July 2014

[54] Mr TG referred to his correspondence of 12 March, and his client's affidavit. He again refuted the suggestion that he had sworn at anyone, disputed that he had been escorted off the Court premises and rejected all the allegations, including saying he had not shouted at Judge EJ, but had raised his voice towards opposing counsel.

[55] He repeated his evidence that his refusal to sit down was "not done intentionally or with disrespect to Judge EJ".[14] He referred to an affidavit he understood the Judge had sworn traversing matters on the day which had not been provided to the Committee or to him. He considered the affidavit may have assisted in his defence, although at the review hearing Mr TG's counsel indicated he considered the affidavit would be likely to add little beyond the Judge's opinion of Mr TG's conduct. Given his complaint, this was unlikely to be helpful to his client and he did not seek to pursue Mr TG's request for the Judge's affidavit.

[56] Mr TG expressed the view in correspondence that the allegations did not amount to serious misconduct pursuant to s 7 of the Act. He accepted that unsatisfactory conduct was a possible outcome, but expressed the views that the matter was not suitable for referral to the Disciplinary Tribunal or publication.

[57] Mr TG said:

> If the Committee does make a finding of unsatisfactory conduct then it is submitted that an order in the form of an apology would be appropriate.

[14] Letter TG to NZLS (1 July 2014) at [8].

> Counsel cannot afford a fine, costs et cetera. I am a human rights lawyer and most of my cases are taken on a *pro bono* basis.

Review Hearing

[58] Counsel for Mr TG sought to strike a careful balance between minimising the conduct, and recognising it was wrong. He also said there were four, not five, instructions from the bench, to sit. The last of the five instructions recorded on the audio was given by opposition counsel. He also emphasised the brevity of Mr TG's lack of decorum, and his confusion over convention and direction.

[59] On inquiry, Mr TG said that he had not considered simply sending a letter to the Judge apologising either via NZLS or the Ministry. The suggestion that Mr TG could have apologised to the Judge without being ordered to came as something of a surprise to him. For reasons of etiquette, he said, it was not something he had considered doing. He said he would not have known where to send a written apology, but was immediately very open to the idea, and delivered an apology in the course of the review hearing in the following terms:

> I am very sorry for the actions that I took on the day in question. I did not intend to be disrespectful. I should have sat down when I was told to. I was told multiple times to sit down and I didn't. I am very sorry that I didn't and I am sure it won't happen again because I don't want to go through this whole process again and I unreservedly apologise

[60] After the review hearing Mr TG confirmed through counsel that he was willing for this Office to communicate his apology to his Honour.

[61] He also expressed contrition and remorse for his loss of control and breach of etiquette in Court.

[62] Counsel also sought to engage on a number of procedural matters that are of no real consequence on review. The focus of this review is on whether Mr TG's conduct warrants disciplinary sanction.

Degree

[63] Mr TG's conduct was a breach of the rules[15] and of court etiquette. Although the Committee considered Mr TG had shouted directly at the Judge, it also considered the tone issue was finely balanced.[16] It was his failure to comply with the Judge's

[15] Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[16] Standards Committee decision (5 August 2014) at [17].

direction to sit that was of greatest concern to the Committee, and it did not accept his explanation that he was caught between convention and judicial direction.

[64] The Committee considered his failure to sit when directed undermined the judiciary and was disrespectful of Judge EJ. His failure to maintain decorum in the courtroom was regarded by the lawyers of good standing on the Standards Committee as being unacceptable. I agree. However, I would add that his professional lapse was relatively minor and there is no reason to believe Mr TG acted in bad faith.

[65] I note the Tribunal's comments in *LCRO v Hong:*[17]

> [57] …In questioning of Mr Hong at the hearing by the Tribunal, it was clear that the likelihood of Mr Hong letting his standards slip again in this way was remote. He said that he did not resile from his belief that it was appropriate to raise the matters he had raised, but he had learnt his lesson and would not deal with any such matter in the same way again. He said he was somewhat bewildered that the various processes had taken him to a point where his ability to continue practice was under threat, and he would be careful to ensure he never got into such a position again.
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> [58] We have accepted that there have been failures in acceptable standards in respect of some of the particulars, for the reasons noted, but we do not consider those failures reach the level required by the charge. They are not failings which indicate that Mr Hong's (sic) is not fit to practice. His conduct has been examined within the professional disciplinary context, and while there are aspects that we find proven, overall we do not consider that the public interest is threatened by Mr Hong.

[66] The Tribunal did not consider his breaches had:[18]

> [65] … such a degree of seriousness, having regard to the purposes of the disciplinary regime with its protection of the public interest emphasis. We do not consider that there is a public risk issue in Mr Hong practising. Our view is reinforced by the fact that Mr Hong has clearly learnt his lesson in this unfortunate episode. He made it clear to the Tribunal in questioning that he accepted he had lost his way when he personalised matters and he would be vigilant to ensure that he did not expose himself again to such proceedings. His evidence also noted that in his many years of practice this was his sole indiscretion resulting in disciplinary charges.

[67] Having had the opportunity to hear from Mr TG in person I do not consider that his conduct supports a finding that he is a threat to the public interest. The Judge's complaint related to a single event in Mr TG's practising career. His conduct was such that the Judge sought to mark it out as unsatisfactory. That Judge's complaint will remain part of Mr TG's disciplinary record for the rest of his career, regardless of the outcome of this review.

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[17] *LCRO v Hong* [2013] NZLCDT 9 at [57]-[58].
[18] At [65].

[68] Mr TG says he will never be able to claim an unblemished record again. The complaint, Standards Committee decision and this decision will all form part of his practising history. That information will be available to NZLS in any application Mr TG makes for a practising certificate, as would a finding of unsatisfactory conduct, and as will his acknowledgement of wrongdoing. All of those consequences flow from a brief, but intemperate altercation in a courtroom context.

[69] It is also relevant that the Committee was not aware Mr TG had indicated his willingness to apologise. The value of an apology, freely given, should not be underestimated. Nor should willingness to apologise enable a practitioner to bargain his or her way out of a conduct complaint where disciplinary consequences should properly follow.

Legislative Purposes

[70] In considering how far below the standard Mr TG's conduct fell, it is important to consider the purposes of the Act, including the lawyers' overarching obligation as an officer of the court and to facilitate administration of justice. Disruption of the court by outbursts of temper is inconsistent with those obligations. Nor does disruptive behaviour by lawyers help to recognise the status of the profession. Any breach of court etiquette by counsel is inconsistent with counsels' obligations.

[71] Having said that, there can be few, if any, members of the profession who could say that they have never breached any aspect of court etiquette. In many cases breaches are accepted in hectic courtrooms, many go undetected and unreported and unpunished. It is not possible to draw a bright line between conduct that is satisfactory and conduct which is not.

[72] It is also relevant to consider whether Mr TG's conduct was consistent with the purpose of maintaining public confidence in the provision of legal services, particularly given that representing another person in court is an area of work reserved specifically to lawyers by the Act. Mr TG's client's confidence does not appear to have been undermined. Her evidence is very clearly supportive of him.

[73] Having said that, a lay client is likely to be less sensitive to a breach of etiquette than the Judge or lawyers present. Although a lay person sits as part of every Standards Committee, Committees are predominantly constituted of lawyers. Lawyers are unlikely to extend a similar degree of latitude to that extended by Mr TG client, and it was the lawyer standard in s 12(b) under which the unsatisfactory conduct finding was recorded. I am alert to the need for me to exercise particular caution before

departing from the collective view of the lawyers, and the lay person, who made the determination under review. At this point the further information that the Committee did not have, but should have had, becomes relevant.

[74] Mr TG first suggested he could apologise in his correspondence of 1 July 2014. He sent his correspondence by email on 1 July, and the Committee accepts it did not receive that. Mr TG has produced evidence indicating that although he put in the wrong email address, he did not receive a failure to deliver notice. His evidence is that that failure was related to NZLS' technology, and not as a result of any fault on his part.

[75] I am not in a position to determine the technical aspects of that evidence, but I am satisfied that, in good faith, Mr TG sent the information in time for it to be received and be considered by the Committee. As the Committee was missing the information, it was not aware of Mr TG's suggestion that the matter be addressed by him apologising to the Judge. The Committee plainly agreed with that analysis, because, among the other very modest financial and assistive orders it made under s 156(1), it ordered an apology.

[76] One difficulty with apologies delivered to order can be the element of compulsion that puts the apology's authenticity at risk. An immediate genuine heartfelt apology is likely to be far more compelling. Those are not easy to deliver at the best of times, and harder still to convey to a judge who has left the courtroom. In an ideal world no apology would ever be necessary. In the real world that is not so.

[77] Judging by Mr TG's initial response to the Committee's notice of own motion inquiry, he was not ready to apologise, even five months after the event. Eight months after the event it appears the full reality of his situation was sinking in, and Mr TG was willing to tender an apology. He remains willing to do so.

[78] Mr TG also said he had been in touch with the senior lawyer the Committee had selected for him, although further interaction with that colleague was on hold pending the outcome of this review. As with an apology, there is nothing preventing Mr TG from arranging to have a discussion with that lawyer, or any other senior colleague, himself. He may well find that a productive and worthwhile experience.

[79] Mr TG's evidence strongly suggests that he has taken the opportunity to reflect on his conduct over the past 20 months or so. His reflections included consideration of the drivers for his loss of control, and consideration of how he might avoid a repeat of any similar conduct. At the review hearing he expressly accepted that he had crossed the boundaries of behaviour that should reasonably be expected of a lawyer. On

behalf of Mr TG, counsel submitted that Mr TG had "learned lessons from this unfortunate matter", including that:[19]

> absolute obedience to judicial officers is a fundamental prerequisite to the appearance of counsel in courts.
>
> ...the dignity of the Court must always be maintained. Officers [of the Court] appear not just directly for their clients but represent indirectly the profession and indeed the Court. Proper decorum must be maintained to preserve the image of the profession and justice system.
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> ...passion must be presented in a temperate manner...

[80] Mr TG says he has been in practice as a lawyer since 1995, working for over 10 years in New Zealand, as well as periods spent appearing as an advocate for the courts overseas. He says he has never had a complaint made against him before, and his conduct has never fallen below an appropriate standard as it has here.

[81] Mr TG says he is remorseful, and that he did not intend to insult the Court, or Judge EJ personally.

[82] He says that the circumstances of his breach of etiquette were unique, explicable and his infraction relatively minor. He says he is contrite, apologetic and has learned his lesson such that there will never be a repeat of any such conduct. He says that disciplinary intervention is not called for, and asks that his apology be conveyed to Judge EJ.

[83] I have considered all of the material available on review, including Mr TG's submissions to the Committee dated 1 July 2014 that were not before the Committee. In those submissions Mr TG relevantly says:

(a) He did not shout at Judge EJ;
(b) His failure to abide by the Judge's instructions was not done intentionally or with disrespect to the Judge;
(c) If unsatisfactory conduct is established, the matter should not be referred to the Disciplinary Tribunal for adjudication;
(d) It is appropriate for him to tender an apology to the Judge;
(e) The facts do not warrant publication of details identifying him.

[84] I accept each of those statements as correct.

[85] In circumstances where Mr TG accepts his conduct crossed the boundaries of proper professional conduct by a lawyer in court, and has tendered a meaningful

[19] Above n11, at [6].

apology I consider there is good reason to reverse the Committee's finding of unsatisfactory conduct, and it is reversed on review.

[86] I have exercised particular caution before substituting my own judgement for that of the Standards Committee, and consider the circumstances, in particular the minor degree of the transgression and Mr TG's willingness to apologise constitute good reason. This decision is not binding in any broader sense. In the particular circumstances I consider it is the proper response to the breach of professional standards.

[87] The Registry will provide Mr TG's apology to Judge EJ with Mr TG's consent.

[88] As a consequence of the Standards Committee finding being reversed, the orders made under s 156 fall away, and the review is determined on the basis no further action will be taken on the complaint or matter pursuant to s 152(2)(c) of the Act.

Costs on review

[89] As Mr TG has been successful on review, it would be inappropriate to order him to pay costs under s 210.

[90] Having determined the matter under s 152(2)(c), I have considered whether Mr TG should pay expenses of or incidental to the Standards Committee's proceeding under s 157(2) of the Act. Such an order can be made where the Standards Committee proceedings were justified, and when it is just to do so.

[91] There is no doubt that the Committee's proceedings were justified. However it would not be just to make an order when there is no evidence to suggest there are any particular expenses of or incidental to the Standards Committee proceeding or investigation. I do not consider in the circumstances of this review that the costs order of $500 is a safe basis on which to make an order under s 157(2). There is therefore no basis on which it would be appropriate to make an order under s 157(2) of the Act.

Orders

[92] Under s 211(1)(a) of the Lawyers and Conveyancers Act 2006 the Standards Committee decision is reversed.

[93] Under ss 211(1)(b) and 152(2)(c) of the Lawyers and Conveyancers Act 2006, this review is determined on the basis that this Office will take no further action with regard to the complaint or matter or any issue involved in the complaint or matter.

DATED this 30th day of June 2015

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D Thresher
Legal Complaints Review Officer

In accordance with s 213 of the Lawyers and Conveyancers Act 2006 copies of this decision are to be provided to:

Mr TG as the Applicant
Mr KL as counsel for the Applicant
Standards Committee as the Respondent
The New Zealand Law Society