

**CONCERNING**

an application for review pursuant to section 193 of the Lawyers and Conveyancers Act 2006

**AND**

**CONCERNING**

a determination of the [North Island] Standards Committee [X]

**BETWEEN**

**JE**

Applicant

**AND**

**AC AND SY**

Respondents

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

**DECISION**

**Introduction**

[1] Mrs JE applied for a review of a decision by the [North Island] Standards Committee No [X] dated 22 August 2012 in which the Committee made findings of unsatisfactory conduct against her, and imposed orders under s 156(1) of the Lawyers and Conveyancers Act 2006 (the Act).

**Background**

[2] Mrs JE's clients were members of a Presbyterian Church congregation (the congregation). The congregation's Presbytery had decided to dissolve it, but that decision did not receive universal support from the congregation. Mrs JE's clients instructed her to challenge the Presbytery's decision by taking an appeal to a Judicial Commission, convened under the Presbyterian Church Book of Order. Mrs JE acted for her clients before, during and after the appeal. They were satisfied with the outcome of

the appeal, and her representation of them. However, in the course of acting for her clients, Mrs JE caused offence to Mr AC and Dr SY.

[3] Mr AC was the congregation's Minister, and Dr SY was a trainee Minister. She also held office for a time as the congregation's treasurer.

[4] Mr AC and Dr SY were involved in events before the appeal, were present at the appeal hearing, and were referred to in correspondence Mrs JE sent to the Presbytery after the appeal was complete and the Commission had released its decision.

[5] It fell to Mr AC, as Minister, to tell the congregation that the Presbytery had decided to dissolve it. Mrs JE's clients were passionately opposed to the dissolution, and in the course of mounting her clients' challenge, the congregation made allegations of dishonesty and misappropriation of funds against Mr AC and Dr SY (the allegations), the repetition of which by Mrs JE is at the root of the complaints against her.

[6] Mr AC and Dr SY were so offended by Mrs JE's conduct that they laid a complaint to the New Zealand Law Society (NZLS). In their complaint they say that by making the allegations, Mrs JE breached her professional obligations to them. They say that she repeated the allegations in correspondence to the Presbytery and its counsel, and in written and oral submissions to the Judicial Commission. Dr SY also says Mrs JE left phone messages in which she threatened Dr SY would be reported to Police. Mr AC and Dr SY say they are deeply offended by the allegations, which they say are baseless. In their view, Mrs JE's conduct fell below the professional standards expected of her as a lawyer.

### **Standards Committee**

[7] The Committee considered the information the parties provided, and considered whether, by her conduct, Mrs JE had:

- (a) made threats, misrepresentations, or unfounded allegations and accusations in breach of her professional obligations;
- (b) harassed the complainants, and adopted a bullying, threatening and unconciliatory approach;
- (c) represented the congregation members in a professional way; and
- (d) been in a position where her interests were in conflict by being a member of the Council of Assembly that had decided to allow the appeal and constituted the Commission and acting for the congregation on the appeal.

[8] The second element of the Committee's inquiry arose from Mrs JE having continued to make enquiries into the financial aspects of the congregation's affairs after the Judicial Commission had delivered its decision.

[9] The third aspect of the Committee's inquiry appears to have arisen from a concern by the Committee that although the complainants were not Mrs JE's clients, it was appropriate to consider whether the complaint raised any concerns that warranted further inquiry being made of Mrs JE's clients.

[10] The fourth issue, relating to a conflict of interest, appears to have arisen from a concern by the Committee that although the complaint was not from the Council of Assembly or the Judicial Commission, it was appropriate to consider whether the complaint disclosed any concerns that warranted further inquiry being made of those bodies.

[11] The Committee recorded the facts it considered relevant, and addressed each of the concerns it had listed by reference to the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules), taking into account the parties' submissions.

[12] Mrs JE's key submission was that her primary duty was to her clients and not to Mr AC and Dr SY. Mrs JE's view was that all of her conduct was appropriate in the circumstances.

[13] Mr AC and Dr SY's view was that Mrs JE's treatment of them fell below the standard of professionalism they expected of her as a lawyer.

[14] The Committee recorded its view that Mrs JE was obliged to balance her obligations to her clients against her obligation to treat Mr AC and Dr SY with "integrity, respect and courtesy",<sup>1</sup> and to advise them, as self-represented persons, of their right to take legal advice, as the relevant rules require.<sup>2</sup> The Committee found that Mrs JE had advanced allegations of fraud against Dr SY without informing her she had the right to take legal advice. Its view was that cumulatively Mrs JE's treatment of Dr SY lacked integrity, respect or courtesy. On that basis it made findings she had breached rules 12 and 12.1,<sup>3</sup> and those breaches constituted unsatisfactory conduct.

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<sup>1</sup> Standards Committee decision (22 August 2012) at [35].

<sup>2</sup> At [44].

<sup>3</sup> At [51] and [52].

[15] The Committee addressed the complaints about the contents of Mrs JE's written and oral submissions with reference to parts of the Judicial Commission's decision it considered relevant.<sup>4</sup> The Committee considered the status of the Commission under the provisions of Chapter 13 of the Rules, which regulates the conduct of "lawyers as officers of the Court", and considered "there would not appear to be any reason why a lawyer would not be expected to meet the obligations and standards expected in the usual case".<sup>5</sup> The Committee also referred to Mrs JE's implied acceptance of rule 13, saying that suggested she accepted that Chapter 13 applied to her conduct before the Judicial Commission,<sup>6</sup> although it was also of the view that some rules would be more appropriate than others.<sup>7</sup>

[16] The Committee considered the rules relating to lawyers' obligations in litigation, in respect of attacks made on persons' reputations,<sup>8</sup> allegations of fraud and other reprehensible conduct made in proceedings,<sup>9</sup> and the need to check the accuracy of allegations made against persons in the course of litigation.<sup>10</sup> The Committee noted that Mrs JE relied on her clients' instructions and various documents as the basis for the comments she had made,<sup>11</sup> and that although Mr AC and Dr SY disputed the congregation's version of the facts, saying it was not supported by the documents they had provided, there was insufficient evidence to support a finding that Mrs JE had breached rule 13.8.1.<sup>12</sup>

[17] However, the Committee was satisfied that before and during the appeal, in making allegations against Mr AC and Dr SY, without checking their accuracy, Mrs JE had breached rule 13.8.2, which regulates lawyers' conduct towards people who are not involved in the proceeding in which the lawyer is acting. The Committee considered Mrs JE's conduct breached rule 13.8.2 and was unsatisfactory.

[18] The Committee considered Mrs JE's correspondence including her reference to potential High Court action after the Commission released its decision on the appeal. Her later comments amplified the allegations made earlier, and included a specific request for details of payments received by Dr SY which, the Committee observed, had

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<sup>4</sup> At [57].

<sup>5</sup> At [61].

<sup>6</sup> At [61].

<sup>7</sup> At [62].

<sup>8</sup> Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 13.8.

<sup>9</sup> Rule 13.8.1.

<sup>10</sup> Rule 13.8.2.

<sup>11</sup> Above n1 at [64]-[66].

<sup>12</sup> At [67]-[72].

been provided after the appeal decision was released.<sup>13</sup> Mr AC and Dr SY said the correspondence was unnecessary, and Mrs JE's persistence constituted harassment.

[19] Mrs JE said that enquiries made in her correspondence were legitimate, and were made pursuant to her instructions from the congregation.

[20] The Committee considered whether the correspondence was for a proper purpose, or was an abuse of process for the purpose of causing unnecessary embarrassment, distress or inconvenience to Mr AC and Dr SY's reputations and occupations. It found that "[the] matter had taken on the flavour of a crusade", and was unable to detect any apparent benefit to Mrs JE's clients.<sup>14</sup> The Committee considered that the "allegations and representations made ... appeared to have been distressing, stressful and embarrassing for [Mr AC and Dr SY]."<sup>15</sup>

[21] The Committee's view was that it was unnecessary for Mrs JE to have persisted in her correspondence on behalf of the congregation, when the Presbytery, Mr AC and Dr SY had made their views clear. The Committee said that there "was no subsequent need for Mrs JE to continue reiterating a view which those parties clearly did not accept. To do so, bordered on harassment". The Committee considered that once those views were established, Mrs JE should have obtained "instructions on what action to take – for example whether to drop the matter, or to take legal action".<sup>16</sup> On that basis the Committee determined that Mrs JE's actions in the period after the appeal "were cumulatively a breach of rule 2.3 and/or rule 12".<sup>17</sup>

[22] The Committee also made a finding that Mrs JE's conduct "in the whole was overly threatening and aggressive, especially when [Mr AC and Dr SY], for a large part of the time, did not have legal representation", and that she had breached the obligation contained in rule 10 to maintain proper standards of professionalism in her dealings with them.<sup>18</sup>

[23] The Committee also considered whether Mrs JE had represented the congregation in a professional way, and considered that as she had secured a successful outcome and there was no complaint from the congregation, it would take no further action in respect of that issue.

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<sup>13</sup> At [75]-[91].

<sup>14</sup> At [86].

<sup>15</sup> At [87].

<sup>16</sup> At [89].

<sup>17</sup> At [90].

<sup>18</sup> At [91].

[24] Finally, the Committee turned its attention to the potential conflict of interest in Mrs JE being a member of the Council of Assembly and acting for the congregation, and decided the circumstances were such that further action was not necessary.

[25] Having made findings that Mrs JE had breached rules 2.3, 10, 12 (twice), 12.1, 13.8.2, and that by doing so, her conduct had been unsatisfactory, pursuant to s 156(1) of the Act the Committee ordered her to:

- (a) Pay a fine of \$2,000 to NZLS (s 156(1)(i));
- (b) Pay costs and expenses of \$1,000 to NZLS (s 156(1)(n)); and
- (c) Provide an unreserved apology in writing to Mr AC and Dr SY (s 156(1)(c)).

[26] The Committee considered and rejected the possibility of publishing Mrs JE's identity.

[27] Mrs JE was dissatisfied with the findings of unsatisfactory conduct and the orders made, and applied for a review.

### **Review Application**

[28] Mrs JE's review application challenges all of the adverse findings made by the Standards Committee and the orders it made. She also asks that costs be paid to her and her firm. In essence she says that the Committee failed to obtain and consider relevant documents, gave insufficient weight to relevant considerations, in particular the primacy of her relationship with her client, and says the Committee was biased in favour of Mr AC and Dr SY, and prejudiced against her and her clients.

### **Role of the LCRO**

[29] 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**

[30] 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**

[31] The parties attended a review hearing in Auckland on 23 July 2014 and were represented by counsel.

### **Review Issues**

#### *Prejudice and Bias*

[32] There is no evidence of bias by the Committee, or prejudice against Mrs JE or her clients as Mrs JE alleges. Those aspects of Mrs JE's review application will receive no further attention on review.

#### *Professionalism and Conflict of Interest*

[33] Having carefully considered all of the information available on review, I have been unable to identify any basis in the complaint for the Committee to have considered Mrs JE's professionalism in representing the congregation, or the potential conflict of interest. The Committee's treatment of both of those matters is in the nature of an own motion enquiry. No such enquiry is recorded as having been made. However, on review Mrs JE's clients have confirmed their support for her, and their satisfaction with the services she provided. There is no evidence of any concerns being raised by the Church. On that basis, the Committee's decision on those aspects of its enquiry are confirmed on review.

#### *Rule 12.1 - Right to take legal advice*

[34] I have also considered whether there is good reason to depart from the Committee's finding that Mrs JE should have informed Dr SY of her right to take legal advice when she first advanced the fraud allegations against her. Mrs JE says she left telephone messages, and that if Dr SY had returned her calls, she would have given her that advice.

[35] The transcripts of the phone calls indicate Mrs JE was enquiring into potentially serious criminal allegations against Dr SY. If Dr SY had called back and made admissions that supported Mrs JE's clients' case, those are likely to have been prejudicial to Dr SY.

[36] The question is, whether in the circumstances, Mrs JE was under a professional obligation to inform Dr SY that she had the right to take legal advice, pursuant to rule 12.1 which says: “When a lawyer knows that a person is self-represented, the lawyer should normally inform that person of the right to take legal advice”.

[37] Mrs JE could not have known whether Dr SY was represented or not, without having spoken to her. However, Mrs JE’s enquiry was linked to establishing whether Dr SY may have been involved in potentially serious criminal offending, and included advice that Police action may follow. There is no reason why Mrs JE’s phone messages could not have included reference to Dr SY’s right to take legal advice. In the circumstances, Mrs JE should have informed Dr SY of her right to take legal advice, before she made any comments to Mrs JE. Her failure to do so constitutes a breach of rule 12.1, so that finding by the Committee is confirmed.

[38] Having found that Mrs JE had breached rule 12.1, s 12(c) of the Act says:

In this Act, unsatisfactory conduct, in relation to a lawyer..., means –

...

(c) conduct consisting of a contravention of... practice rules made under this Act that apply to the lawyer...

[39] Rule 12.1 is a practice rule made under the Act that applies to Mrs JE. In circumstances where Mrs JE’s communication with Dr SY included reference to the possibility of Police action which could have had criminal consequences, Mrs JE’s failure to inform Dr SY of her right to take legal advice falls within the definition of unsatisfactory conduct under s 12(c) of the Act. The Committee’s decision is therefore confirmed in that respect, subject to an amendment to record that the finding of unsatisfactory conduct is made under s 12(c).

#### *Issues Considered on Review*

[40] The primary focus of this review is on whether Mrs JE went beyond the bounds of professional propriety in acting for her clients. That question is at the heart of the Committee’s findings that Mrs JE breached rules 2.3, 10, 12 and 13.8.2. Those matters are addressed in greater detail below.

#### **The Act**

[41] In considering Mrs JE’s conduct, it is important to note the purposes of the Act set out in s 3, because the conduct under consideration touches on all three. The purposes of the Act are:



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

[42] The fundamental obligations of lawyers are set out in s 4 of the Act which provides:

Every lawyer who provides regulated services must, in the course of his or her practice, comply with the following fundamental obligations:

- (a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand:
- (b) the obligation to be independent in providing regulated services to his or her clients:
- (c) the obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients:
- (d) the obligation to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any enactment, the interests of his or her clients.

[43] Those provisions establish the statutory context within which to consider the conduct of lawyers, and help to inform the application of the Rules and professional standards.

## **The Rules**

[44] In addition to the statutory obligation on a lawyer which includes protecting the interests of his or her clients, and acting in accordance with fiduciary duties and duties of care owed to his or her clients, the Rules set the minimum standards that lawyers must observe, and provide a reference point for discipline within the profession. The relevant rules are:<sup>19</sup>

- 2.3 A lawyer must use legal processes only for proper purposes. A lawyer must not use, or knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation.
- 10 A lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings.
- 12 A lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect, and courtesy.
- 13.8.2 Allegations should not be made against persons not involved in the proceeding unless they are necessary to the conduct of the litigation and reasonable steps are taken to ensure the accuracy of the allegations and, where appropriate, the protection of the privacy of those persons.

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<sup>19</sup> Lawyers and Conveyancers Act (Lawyers: Conduct Complaint Care) Rules 2008, Preface.

## **Analysis of the issues**

[45] As mentioned above, a lawyer has an overarching duty to the Court and the administration of justice, and subject to that owes duties primarily to his or her client. For that reason, general obligations to third parties are necessarily limited, and include rule 12 which says: “A lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect and courtesy”.

### *Rule 12 - Integrity, respect and courtesy*

#### Dr SY – Phone Calls, Letters and Visit before Appeal to Judicial Commission

[46] Dr SY says that, shortly after Mrs JE became involved, Dr SY felt threatened in her own home, and pursued by Mrs JE’s correspondence and phone messages. In particular she says she was unsettled by a visit she received from members of the congregation when they went to her home, and delivered a letter from Mrs JE.

[47] The Committee considered:<sup>20</sup>

...the various contacts made with Ms SY, and the impact they had on Ms SY in that through fear she had moved from her home. While each contact individually may not have been a breach of Rule 12, the Committee determined that when taken cumulatively, the result was that Mrs JE had breached Rule 12. This was unsatisfactory conduct.

[48] The Committee did not specify whether Mrs JE’s dealings with Dr SY before the appeal lacked integrity, respect or courtesy, individually or in combination.

[49] Although Dr SY says she found being visited by Mrs JE’s clients alarming, there is no evidence to support a finding that Mrs JE’s clients visited Dr SY at home at Mrs JE’s behest. I have therefore disregarded the effect of those visits on Dr SY, for the purposes of determining this aspect of the complaint against Mrs JE.

[50] The telephone calls and letters in which Mrs JE requested church finance records, according to her clients’ instructions, were held by Dr SY in her capacity as treasurer. Mrs JE’s clients’ case rested in part on their view that Mr AC and Dr SY had mismanaged the congregation’s finances. Without seeing the relevant records, Mrs JE could not ascertain the extent of the alleged mismanagement, or adequately defend her clients’ position.

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<sup>20</sup> Above n 1 at [52].

[51] There is nothing in the tone or content of the letters or telephone messages that supports a finding that Mrs JE's conduct lacked integrity, respect or courtesy. The telephone messages are discussed above in relation to the breach of rule 12.1. There is nothing in the content of the telephone messages that is threatening or bullying. The transcripts simply disclose requests by Mrs JE for responses to allegations the congregation had instructed Mrs JE to put, albeit that Mrs JE referred to her clients' intention to report the matter to Police, and her advice to them in that regard.

[52] Taking into account her instructions from her clients, the proximity of the appeal hearing date and the potential relevance of the matters Mrs JE was pursuing, it is difficult to see how she could have put the allegations more respectfully or courteously, while still complying with her duties to her clients. She could not apply for discovery orders in the Judicial Commission proceedings because the Book of Order does not provide for that. There is no reason to believe a discovery application could properly have been made. Her investigative options were severely limited.

[53] In the circumstances, I consider there is good reason to depart from the Committee's finding that Mrs JE breached rule 12 in her various contacts with Dr SY before the appeal. She had an obligation to act on her clients' instructions. The evidence does not support a finding that her inquiries lacked integrity, respect or courtesy in the circumstances. That part of the decision resulting in a finding of unsatisfactory conduct based on a breach of rule 12 is therefore reversed on review.

#### Mr AC and Dr SY – Correspondence after Judicial Commission's Decision

[54] Mr AC and Dr SY say they were harassed by Mrs JE's persistence in sending letters to the Presbytery's legal counsel in which she continued to repeat the allegations, despite Mr AC and Dr SY having already answered the allegations.<sup>21</sup>

[55] Mrs JE says that up to 20 July 2014 [sic] her instructions from the Board of Managers was to "seek justice against AC (sic) and SY", and that she "advised them against it", and encouraged her clients to focus on being able to show the Commission it could function as a congregation.<sup>22</sup> Her clients confirm that they received the advice she gave them, but remained aggrieved.<sup>23</sup> It appears her clients rejected that advice, because the letters she sent during August 2010 continue to press for records in support of Mr AC and Dr SY's responses on her clients' instructions, which suggests they had not relinquished the prospect that they might initiate an application to the High Court.

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<sup>21</sup> Complaint AC and SY to NZLS (undated).

<sup>22</sup> Affidavit of Mrs JE (22 July 2014) at [44] and [45].

<sup>23</sup> Affidavit of PL, (21 July 2014) at [16] and [17]; Affidavit of ZI (22 July 2014) at [12] and [13]; Submissions FD (22 July 2014) at [46].

[56] In essence, the Committee's view was that the sum of Mrs JE's correspondence after the appeal went beyond the threshold of promoting her clients' interests, and was "overly aggressive". The Committee's view was that it was "unclear what continued benefit would have been gained for Mrs JE's clients. The matter had taken on the flavour of a crusade"<sup>24</sup> and that once Mr AC, Dr SY and the Presbytery had made their views known to Mrs JE, there was "no subsequent need for Mrs JE to continue reiterating a view which those parties clearly did not accept" and that to do so "bordered on harassment". The Committee expressed the view that the point had been reached where Mrs JE "needed to gain instructions on what action to take – for example, whether to drop the matter, or to take legal action".<sup>25</sup>

[57] To ascertain whether the Committee's view is well founded, it is necessary to consider the correspondence individually and in totality.

[58] Mrs JE's correspondence after the Judicial Commission released its decision starts on 11 June 2010. In her first letter to the Presbytery she invites the Presbytery to agree not to again consider dissolving the congregation before five years has passed, which is a substantial extension to the 12 month period imposed on the Presbytery by the Commission. She invites the Presbytery to pay her clients' costs. She also repeated her requests for information relating to the allegations, and concludes "[w]e trust that we can solve the issues raised herein without the need for the Congregation to take these issues to the High Court".

[59] Two things are apparent from that letter. First, Mrs JE's clients did not consider the Judicial Commission had left the congregation with a secure future. Second, Mrs JE's clients had received advice that the option of High Court proceedings may be open to them. It is relevant to note that there is nothing inappropriate about the tone, language or content of that letter.

[60] The Presbytery responded saying it did not consent to the extension sought, and would not pay Mrs JE's clients' costs. It said it would provide the information requested with respect to the allegations, and shortly after the Presbytery provided information about payments made to Dr SY.

[61] In her response dated 6 July 2010 Mrs JE continued to advocate for her clients, attempting to persuade the Presbytery to contribute to their legal costs, requesting more detailed information relating to the allegations, and support from the Presbytery to enable the congregation to have a viable future. Mrs JE was again critical of Mr AC and

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<sup>24</sup> Above n 1 at [86].

<sup>25</sup> At [89].

Dr SY, but made no explicit mention of proceedings, aside from a general reference to her clients taking steps to recover costs “by whatever avenues are available”.

[62] Mrs JE says on 20 July she advised her clients against pursuing Mr AC and Dr SY. However, the Presbytery then instructed lawyers, who sent an interim response to Mrs JE on 23 July 2010, and a more detailed response on 9 August 2010. The latter dealt with the allegations against Mr AC and Dr SY, confirming that the Presbytery rejected any wrongdoing by them, and saying that Mrs JE had “re-published these allegations” in her letter of 6 July 2010 to the Presbytery.<sup>26</sup> The Presbytery’s lawyers then refer to the allegations as “defamatory and inflammatory” and say that they were “formally raised for the first time at the hearing of the Judicial Commission on 23 April 2010, both orally by PL and in writing through the affidavits you attempted to file”, and lists the deponents of the affidavits referred to.

[63] This letter is significant in three respects. First, because it highlights the Presbytery’s view that, before the appeal to the Judicial Commission, the allegations were made only informally, rather than as part of any formal process involving the Presbytery and Mrs JE’s clients.

[64] Second, it confirms that none of the affidavits put before the Judicial Commission were sworn by Mrs JE. This is relevant because it supports Mrs JE’s position that she only mentioned the allegations to the Commission in her submissions, in which she relied on evidence provided by others. In a professional sense, for a lawyer, it is both commonplace and proper to rely on evidence when making submissions on law.

[65] While Mr AC and Dr SY absolutely refute the allegations, Mrs JE was under a duty to her clients to act on their instructions, which in this case was the evidence of their beliefs. There is nothing improper in Mrs JE having relied on her clients’ evidence of their beliefs to support the submissions she made on behalf of her clients as their lawyer and appointed Speaker to the Judicial Commission. As mentioned above, the allegations were necessary to her clients’ case and the steps she could reasonably take to test them were limited.

[66] The third respect in which this letter is significant is that it is the Presbytery’s lawyer who first suggests rules 13.8, 13.8.1 and 13.8.2 are relevant to the Judicial Commission’s proceeding. He then refutes the allegations, and explains that, if necessary, Mr AC and Dr SY “are prepared to instruct their own counsel and pursue their remedies against those persons who persist in defaming them”. The Presbytery’s

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<sup>26</sup> QM and GB to JE (9 August 2010).

lawyer does not name names. He then says that the Presbytery is taking what he describes as a “firm stance”, because it has a “duty of oversight to Mr AC and Dr SY”.

[67] Evidently the Presbytery’s lawyer was not instructed by Mr AC and Dr SY personally in respect of the allegations. His comments can therefore be taken to be reasonably objective in the context of their complaint that Mrs JE, rather than her clients, made the allegations to the Judicial Commission. As mentioned above, Mrs JE’s submissions to the Judicial Commission, relying on her clients’ evidence of their sworn beliefs, were not improper in the circumstances of the appeal to the Judicial Commission.

[68] It is worth noting at this point that it was the Presbytery’s lawyer’s view that rules 13.8, 13.8.1 and 13.8.2 were relevant to Mrs JE’s conduct before the Judicial Commission. The Presbytery’s lawyer’s comments appear to have kindled Mrs JE’s defence to that aspect of her professional conduct. The reference to those rules was picked up by the Committee, became the subject of a finding of unsatisfactory conduct for a breach of rule 13.8.2, and was then the focus of submissions by the parties in the course of this review. I will return to that aspect of this review later in this decision.

[69] The Committee’s finding that Mrs JE’s correspondence after the Judicial Commission’s decision lacked integrity, respect and courtesy towards Mr AC and Dr SY was based on its view that the sum of her correspondence was “overly aggressive”. I have carefully examined all of that correspondence, including her letters of 11 June and 6 July 2010, and the letters Mrs JE then wrote to the Presbytery’s lawyers on 10 and 24 August, on her clients’ instructions, but against her advice, to establish whether there are good grounds for the Committee to have formed that view.

[70] In the latter letters Mrs JE continued to seek evidence from the Presbytery that related to the allegations, and formally requested copies of resolutions to address the allegations, which Mrs JE describes as a “live issue” that “must be resolved”.<sup>27</sup> The Presbytery’s lawyers responded to her letters, apparently without providing further documentation. While Mrs JE requested urgent responses, imposed deadlines which passed without consequence, and complained about the Presbytery delaying in providing responses, she did not repeat the threat of High Court action by her clients against the Presbytery that she had first made in her letter of 11 June 2010, nor is there any evidence on review of any such action having been taken.

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<sup>27</sup> Letter JE to QM and GB (24 August 2010).

[71] The next correspondence, dated 31 August 2010, was from five members of the congregation who wrote to Mrs JE under “[place name] Presbyterian Church” letterhead saying:

We the parish of [place name] Presbyterian Church agree and wish to continue with the proceedings in regards to the future of our church.

We ask that you please continue to act on our behalf in writing a letter to the Presbyterian Church of Aotearoa (PCANZ) seeking a new moderator. We specifically request to have Reverend [...] be appointed into this position.

We thank you in advance for your work.

[72] The letter was signed off by the Session Clerk, the Treasurer and three Elders. It is not clear what “proceedings” they were referring to because the appeal to the Judicial Commission was over, and there is no evidence of any other proceeding having been commenced. The only evidence relating to “proceedings” were the earlier references to threatened High Court action over a breach of trust by Presbytery and attempts to recover costs. Neither threat appears to have been reiterated or carried out.

[73] The day after the five congregation members signed the letter to Mrs JE, the Presbytery’s lawyers wrote to her enquiring whether her firm was instructed by all or part of the congregation.<sup>28</sup>

[74] Mrs JE replied to the Presbytery’s lawyers the same day explaining that the congregation wanted to move forward, consistently with the Judicial Commission’s decision, and wanted the Presbytery to appoint a named Moderator of its choice, to lead the congregation. Mrs JE also repeated her request for evidence to support the Presbytery’s position on the allegations, saying that:<sup>29</sup>

[The] matter needs to be resolved, as the Congregation are aggrieved by the actions of the Ministers involved, unless there is justification that can be shown, justifying what AC and SY did. Please answer the questions.

[75] Mrs JE also wrote separately to the Presbytery’s lawyers challenging that firm’s role in impugning her authority to act for the congregation as a whole. There was no mention of Mr AC or Dr SY in that letter. The firm replied, rejecting Mrs JE’s assertions in language best described as conciliatory.

[76] Mrs JE wrote to the firm again on 6 September 2010, enclosing a copy of a signed authority for her to act. The authority was dated the previous day, and carried the signatures of fifteen signatories, some of whom had signed the 31 August authority.

<sup>28</sup> Letter QM and GB to JE (1 September 2010).

<sup>29</sup> Letter JE to QM and GB (1 September 2010).

[77] There appears to have been some dialogue at this stage in which mediation was mooted, because on 15 September 2010, Mrs JE wrote to the Presbytery's lawyers saying that she and her clients agreed to attend mediation, and listing the issues she and they wanted to discuss. These included the allegations relating to Mr AC and Dr SY, and matters of a more personal nature to Mrs JE arising from her involvement in the congregation's dispute with the Presbytery.

[78] The parties were unable to agree on the basis for mediation, during September 2010, and in due course the complaint was laid that is the subject of this review.

[79] It is clear from copies of the authorities provided to Mrs JE by various members of the congregation that she was in receipt of instructions from clients. Whether she represented the whole congregation or not is something of a side issue, because clearly she was instructed by members of the congregation, and her clients say she carried out their instructions. Evidently the Presbytery's lawyer's responses were not satisfactory to Mrs JE's clients, and they would not be satisfied until they saw evidence that supported the Presbytery's assertions.

[80] As the congregation remained under threat following the Judicial Commission's decision, and had only secured a stay for 12 months, it is possible to see some benefit to Mrs JE's clients in maintaining what pressure they could on the Presbytery, if only so they could feel like they were at least fighting to keep their church community.

[81] There is no evidence from Mrs JE's client's that explains what they considered the benefit was, so to some extent the Committee's conclusion that it was "unclear what continued benefit would have been gained for Mrs JE's clients" is correct. However it is not a logical basis for the conclusion that the absence of evidence of any benefit means there was no benefit, or that the clients could see no benefit. That is an unsafe assumption for the Committee to have made.

[82] The situation became difficult for Mrs JE when her authority to act for the whole of the congregation came under challenge. Her correspondence shows she saw that was an attack on her professionalism as a lawyer, and on her personally. Her response was to divide her correspondence with the Presbytery's lawyers into two categories: correspondence to the Presbytery as the firm's client, and correspondence to the partners of the firm itself.

[83] From that point it would have been difficult for Mrs JE to maintain her objectivity, and I note the presence of correspondence from alternate counsel instructed to act for the congregation in the proposed mediation begins about that time. There is, therefore, some support for the Committee's observation that the "matter had taken on the flavour



of a crusade"<sup>30</sup> after her integrity came under challenge, but by that stage Mrs JE was no longer representing the congregation.

[84] Having closely scrutinised Mrs JE's correspondence sent after the appeal, it does not show individually or overall, a lack of integrity, respect or courtesy towards Mr AC or Dr SY. There is no reason to believe that Mrs JE's clients had any real intention of commencing legal proceedings against the Presbytery. If nothing else, funding appears to have been an issue for them. The only pressure Mrs JE could assert on the Presbytery, on what can be seen of her clients' instructions, was by continuing to request information to satisfy her clients concerns so that they could move beyond their past concerns, and focus on the future of the congregation. Had Mrs JE been acting without instructions, it is possible that her conduct could have "bordered on harassment". In the circumstances, however, that is not a conclusion that can safely be drawn.

[85] Although this Office is generally hesitant to depart from views formed by committees, constituted as they are by experienced practitioners and lay persons, in this case I do not consider that close scrutiny of the evidence supports the Committee's view that the point had been reached where Mrs JE "needed to gain instructions on what action to take – for example, whether to drop the matter, or to take legal action".<sup>31</sup> The conclusions that the evidence supports are that her instructions were to persist, she did as she was instructed, and if she had not done so, she would have failed to meet her obligations to her clients.

[86] While there can be a fine line between the legitimate pursuit of a client's objectives, and taking a step too far, it is important to take a robust approach to complaints laid against lawyers by third parties. On this occasion the evidence does not support a finding that Mrs JE's correspondence after the appeal was lacking in integrity, respect or courtesy towards Mr AC or Dr SY.

[87] In the circumstances the second finding that Mrs JE breached rule 12 is reversed on review, as is the related finding that her conduct was unsatisfactory.

*Breach of Rule 2.3 – Legal processes for proper purposes; Not to cause unnecessary embarrassment, distress, or inconvenience to reputation, interests or occupation*

[88] In addition to the finding (reversed on review) that Mrs JE's conduct after the Judicial Commission had released its decision was in breach of rule 12, the Committee formed the view that Mrs JE had used the law and/or threats of legal action for improper

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<sup>30</sup> Above n 1 at [86].

purposes, having the cumulative effect of causing unnecessary distress and embarrassment to Mr AC and Dr SY's reputations and occupations. That finding was based on the Committee's view of her correspondence with the Presbytery and its lawyer, and is unsafe for the same reasons as the breach of rule 12 relating to the same correspondence.

[89] The Committee recorded its view that:

...over the entire period, the allegations and representations made against [Mr AC and Dr SY] appeared to have been distressing, stressful and embarrassing for them. In their roles in the Church, it is expected that they will be held to a high standard. Allegations of fraud, deceit, and dishonesty go to the heart of their employment.

[90] The evidence does not support a finding that Mrs JE's correspondence was for an improper purpose. Nor does it support a finding that she intended to cause unnecessary embarrassment, distress, or inconvenience to Mr AC or Dr SY's reputation, interests, or occupation. The evidence supports a finding that Mrs JE was focussed on her primary purpose and that any side-effects on the reputation, interests and occupation of the other parties were as a consequence of her taking reasonable steps to test her clients' instructions. The finding that Mrs JE breached rule 2.3 is also reversed on review, as is the finding that her conduct was unsatisfactory in that regard.

*Breach of Rule 13.8.2 – Allegations necessary to the conduct of the litigation, reasonable steps to ensure their accuracy and protection of privacy*

[91] Mr AC and Dr SY say that they were not "persons involved in the proceeding". They say the allegations are inaccurate, and that the appeal to the Judicial Commission took place in a public forum, in which Mrs JE disrespected their privacy.

[92] Mrs JE's position is that it was necessary for her to put the allegations as part of her clients' case to the Judicial Commission. The congregation's case relied in part on Mrs JE's clients challenging the position the Presbytery put to its governing body that the congregation lacked the capacity to manage its finances. The congregation's point was that the Presbytery's appointees lacked capacity, not the congregation. Mrs JE's position is that continuing her enquiries represented her best endeavours to test the accuracy of the allegations, and that there was no breach of privacy.

[93] The Committee first considered whether Chapter 13 of the Rules applies to proceedings of the Judicial Commission. It recognised Mrs JE's first duty was to the court concerned, and then to her clients. It turned its mind to the "status of the Judicial Commission of the General Assembly of the Presbyterians Church as a 'Court'", and

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<sup>31</sup> At [89].

considered the definition of “a court or tribunal before which a lawyer may appear”.<sup>32</sup> The Committee noted that Mrs JE had been nominated as a speaker by her clients to appear before the Judicial Commission, and that the Judicial Commission was governed by the Presbyterian Church Book of Order. The Committee considered the situation was “analogous to litigation” and recorded its view that:

...there would not appear to be any reason why a lawyer would not be expected to meet the obligations and standards expected in the usual case. Mrs JE herself has relied upon Rule 13, which would seem to imply an acceptance that Chapter 13 would be applicable.

[94] On that basis the Committee proceeded to consider Mrs JE’s conduct in the context of Chapter 13, acknowledging that “some rules would be more appropriate to the situation than others”.<sup>33</sup>

[95] The Committee concluded that Mrs JE had not breached rules 13.8 and 13.8.1, but had breached rule 13.8.2.<sup>34</sup> In reaching that conclusion the Committee referred to Mrs JE’s response to the complaint, which addressed the allegations referred to in her submissions, and her assertion that she had not made any allegations that were not supported by her clients’ evidence. It also took into account Mr AC and Dr SY’s view that the allegations Mrs JE made were contrary to the documentary evidence that she had access to, challenged the evidence of Mrs JE’s clients, highlighted Dr SY’s achievements for the congregation, and noted that the parties had different views.

[96] The Committee said:<sup>35</sup>

...Unfortunately, it was not clear to the Committee what evidence had been supplied to [Mrs JE] before the hearing. However, the documents provided with the complaint suggest it was after the Judicial Commission decision in June 2010 before disclosure of all payments made to Ms SY was provided to her. This confirms that she may not have had this information at the time her allegations about payment amounts were made. This concerned the Committee.

The Committee also expressed concern at whether Mrs JE had credible evidence to support certain allegations made. For example, the allegation of conspiracy, the claim that Mr AC did not go to [place name] parish with clean hands (and intended to close the parish from the start in order to give the properties to his friends at [second place name]) and the allegation that [place name] congregation was simply used as a convenient stepping stone for Ms SY.

Despite its concerns above, overall, the Committee did not consider that it had sufficient information before it to properly and fairly evaluate whether or not Mrs JE had good or reasonable grounds at the hearing time to make the allegations. Therefore, the Committee could not make a finding of unsatisfactory conduct against Mrs JE in respect of rule 13.8.1....

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<sup>32</sup> At [59].

<sup>33</sup> At [60]-[62].

<sup>34</sup> At [63]-[74].

<sup>35</sup> At [70]-[72].

[97] The Committee then considered rule 13.8.2 in the context of the parties' evidence of events at the Judicial Commission hearing, and paragraphs 25 and 28 of the Commission's decision, which say:

The notice of appeal filed by the Parish did not raise the issues pursued by the Parish at the hearing concerning Rev AC and Rev SY. Accordingly, those persons had no opportunity to respond to the allegations against them.

...

The Commission also observes that some of the submissions made by the Parish against individuals who have acted on behalf of the Presbytery were unnecessary. While cathartic for the speakers and/or the Parish, there could have been more consideration for those who would receive them.

[98] On that basis, the Committee concluded that "Mrs JE breached rule 13.8.2, which is unsatisfactory conduct".<sup>36</sup>

## Discussion

### *Committee's Reliance on Judicial Commissions Observations*

[99] The first point to note arising from the Committee's reliance on the Commission's decision is that Mrs JE had not been instructed when the notice of appeal was drafted or lodged. The notice of appeal supplied by Mr AC and Dr SY is noted as having been received by the Clerk of Presbytery on 1 September 2009, and appears to have been lodged by "OT, Appointed Chairperson on behalf of the Interim Moderator". The notice of appeal records that the congregation had voted unanimously to appeal, sets out the main ground of appeal and outcomes sought. It then says "the past failure of the Parish as presented to Presbytery should not be labelled as the fault of the [sector] of the Parish alone", and refers to the congregation's future intention to move in a different direction from the "ministerial leadership of the church over past years...".<sup>37</sup>

[100] The notice of appeal therefore clearly signalled past ministerial leadership, including that of Mr AC, was relevant to its appeal.

[101] Mr AC and Dr SY provided copies of Mrs JE's correspondence to the [place name] congregation dated 22 October 2009. Her correspondence confirms her instructions, terms of engagement, and fees. An authority for Mrs JE to act, dated 25 October 2009 and was signed by members of the [place name] congregation.

[102] There is a logical difficulty in holding Mrs JE professionally responsible for the consequences of her clients filing the notice of appeal. There is no evidence to suggest Mrs JE could have lodged an amended notice of appeal. Nor is there any reason to

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<sup>36</sup> At [74].

<sup>37</sup> Notice of Appeal (undated).

believe she was professionally responsible for ensuring that Mr AC and Dr SY had an opportunity to respond to the allegations Mrs JE's clients made against them within the Commission's process. The Committee's reliance on that aspect of the Commission's decision is unsafe.

[103] It is also relevant to note that the Commission's observations about the submissions do not refer specifically to Mrs JE, who was not the only speaker for the congregation. The Commission's observations refer to only "some of the submissions made by the Parish" being unnecessary, and "cathartic for the speakers and/or the Parish". Although there were only two speakers for the Parish, one of whom was Mrs JE, that single general observation by the Commission does not provide a sufficient basis to support an unsatisfactory conduct finding being made against Mrs JE on the basis that she breached rule 13.8.2.

#### *Applicability of Chapter 13*

[104] The applicability of rules 13, 13.8.1 and 13.8.2 to Mrs JE's conduct had first been raised in correspondence from the Presbytery's lawyer to Mrs JE. The Presbytery's lawyer apparently considered those rules may apply to Mrs JE's conduct before the Judicial Commission.<sup>38</sup>

[105] The substance of Mr AC and Dr SY's complaint to NZLS refers to their status as "other parties" in the matter of the congregation's appeal.<sup>39</sup> At the review hearing they distinguished their personal interests in making the complaint from those of the Presbytery. They left it open to NZLS to decide how to approach the conduct issues they had raised, making no reference to any particular rules.

[106] Rule 13 was mentioned once by Mrs JE in her correspondence with NZLS.

[107] No mention was made of rules 13.8.1, 13.8.2, or Chapter 13 more broadly by either party in correspondence before the Committee issued the notice of hearing, which also contains no specific reference to Chapter 13.<sup>40</sup>

[108] Submissions filed by Mrs JE's firm in response to the notice of hearing described the Judicial Commission as a "tribunal",<sup>41</sup> and submit that Mrs JE's view was that she needed "significant backing for the allegation", which led her to obtain evidence in the form of a sworn affidavit. Those submissions also do not address Chapter 13 in any detail.

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<sup>38</sup> Above n 26.

<sup>39</sup> Above n 21.

<sup>40</sup> Notice of Hearing (15 March 2012).

<sup>41</sup> Letter JE Law Partnership to NZLS (30 March 2012) at [1a].

[109] Mrs JE also filed her own submissions. Those contain no reference to Chapter 13.<sup>42</sup>

[110] The Committee then received an agenda note referring to suggested rules, which included reference to Chapter 13, arising from Mrs JE's letter of 7 February 2012. The agenda note suggested the Committee could consider whether rules in that Chapter applied to the Judicial Commission hearing which "could be treated akin to a court proceeding", and suggesting that if the Committee formed that view "other litigation rules may apply".<sup>43</sup>

[111] The Committee then discussed the application of Chapter 13 to the Judicial Commissions proceeding, concluded those rules did apply, and formed the view that Mrs JE's conduct breached rule 13.8.2 and constituted unsatisfactory conduct under the Act.

[112] Before forming that view, the Committee did not receive any submissions from the parties on whether Chapter 13 generally should apply, or on rule 13.8.2 in particular. Instead, it formed the view that because Mrs JE had "relied upon rule 13" the Committee could imply that Mrs JE accepted that the Chapter applied.

[113] It was not safe to base an adverse conduct finding on that assumption. As mentioned above, the applicability of Chapter 13 became the focus of submissions by counsel for both of the parties in the course of this review. None of those submissions were before the Committee. In the circumstances it is appropriate to reverse the finding that Mrs JE breached rule 13.8.2.

[114] That leaves the question of how to deal with that aspect of the decision.

#### *Referral Back*

[115] I have considered whether to refer the issue back to the Committee to reconsider pursuant to s 209(1)(a) of the Act. I have decided not to for the following reasons.

[116] Although it was clear at the review hearing that Mr AC and Dr SY remain aggrieved and offended by Mrs JE's conduct towards them, it should be clear to them from this decision that her conduct as a lawyer was not deficient. The reason for this is linked to the distinction between personal morality and the professional ethics imposed on lawyers by the Act and the Rules.

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<sup>42</sup> Letter JE to NZLS (30 March 2012).

<sup>43</sup> Agenda Note (10 May 2012).

[117] Mrs JE's evidence at the review hearing indicated that she felt a strong sense of conflict between her own sense of personal morality, and her obligations to her clients as a lawyer. The position Mrs JE finds herself in was discussed more generally by Dr Webb in his book on professional legal ethics for lawyers where he says:<sup>44</sup>

The professional rules of lawyers demand that they act in a way which in normal life would be considered wrong. While such problems may arise in other areas (such as a doctor's duty of confidence) they arise most frequently for lawyers whose tasks as advocate and advisor frequently place them in difficult situations. The role of a lawyer then is strongly differentiated in the sense that there is a strong divide between the conduct expected of them as lawyers and the conduct expected of them as ordinary citizens.

[118] Any further enquiry by a committee would relate to the applicability of a rule relating to conduct that was not clearly wrong given the professional obligations that were incumbent on Mrs JE. The conduct in question occurred some years ago in the context of a dispute that was regulated by the Presbyterian Church's Book of Order. The Judicial Commission's process is different in important respects from the process of litigation before a Court or Tribunal. Resolving that question in the present circumstances is not a proper or efficient use of the resources of this Office or the Standards Committee.

[119] The parts of the decision that relate to Mrs JE having breached rule 13.8.2 is therefore reversed on review. The Committee is not directed to reconsider and determine that part of the decision.

*Breach of Rule 10 – Proper Standards of Professionalism*

[120] On the basis of its findings against Mrs JE with respect to her conduct before during and after the Judicial Commission's decision, the Committee "made an overall assessment of Mrs JE's conduct over the entire period", saying that although she:

...was obliged to protect and promote her clients' interests, and act in accordance with client instructions, that must also be tempered by obligations to conduct dealings with others with integrity, respect and courtesy. Her conduct in the whole was overly threatening and aggressive, especially when [Mr AC and Dr SY], for a large part of the time, did not have legal representation.

[121] The information available on review does not support a finding that Mrs JE failed to promote and maintain proper standards of professionalism in her dealings with Mr AC and Dr SY. The only evidence of any contact between Mrs JE and Dr SY before the Judicial Commission hearing occurred when she left phone messages for Dr SY. There was no direct contact.

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<sup>44</sup> Duncan Webb *Ethics, Professional Responsibility and the Lawyer*, (2nd ed, Lexis Nexis, Wellington, 2006) at 40.

[122] The point at which Mrs JE should have informed Dr SY of her right to take legal advice has been addressed by the finding of unsatisfactory conduct recorded above.

[123] Both Mr AC and Dr SY were in attendance at the Judicial Commission hearing, but there is no evidence that Mrs JE made any direct approach to either of them. Their complaints relate to submissions she made to the Commission, rather than any dealings directly with them. Those matters have also been dealt with above, with no adverse findings having been made against Mrs JE.

[124] Aside from those two occasions, there is no evidence of any dealing between Mrs JE, Mr AC and Dr SY. Mrs JE's dealings were in correspondence with the Presbytery, and then it's lawyer. There is insufficient evidence to support a finding that Mrs JE failed to promote and maintain proper standards of professionalism in her dealings with Mr AC or Dr SY. Whilst her evidence is that she found her position personally uncomfortable, she did her job as a lawyer. It would be inappropriate to penalise her for her persistence in carrying out her clients' instructions, despite the perhaps inevitable offence that would cause to Mr AC and Dr SY's sensitivities.

[125] Given the comments above relating to Mrs JE's conduct overall, the finding that she breached rule 10, and the associated finding of unsatisfactory conduct, are reversed on review.

### **Outcome**

[126] The findings of unsatisfactory conduct based on breaches of rules 2.3, 10, 12 on two occasions, and 13.8.2 are reversed on review.

[127] The breach of rule 12.1 and associated finding of unsatisfactory conduct pursuant to s 12(c) are confirmed on review.

### **Orders**

[128] The Committee imposed a \$2,000 fine and ordered Mrs JE to pay costs of \$1,000 to NZLS.

[129] Mrs JE was also ordered to provide an unreserved apology in writing to Mr AC and Dr SY.

[130] The Committee did not consider publication was appropriate.



[131] As a single finding of unsatisfactory conduct has been recorded against Mrs JE for her breach of rule 12.1, confirming the Committee's finding in that regard on review, it is appropriate to adjust the orders made to reflect the outcome.

[132] The order made under s 156(1)(i) of the Act requiring Mrs JE to pay a fine of \$2,000 is amended. The amount of the fine is reduced to \$500. That sum is proportionate to the nature and circumstances of the finding. It will punish Mrs JE, deter future breaches, and is therefore consistent with the purposes of orders made in a disciplinary context.<sup>45</sup>

[133] The order made under section 156(1)(n) of the Act requiring Mrs JE to pay a contribution towards the Standards Committee's costs is amended to reflect the findings on review. Pursuant to s 156(1)(n) of the Act Mrs JE is ordered to pay \$500 costs and expenses of and incidental to the Standards Committee enquiry.

[134] The order that Mrs JE apologise to Mr AC and Dr SY, made under s 156(1)(c), is reversed. Mrs JE tendered an apology voluntarily in the course of this review. That apology was rejected. No purpose would be served by ordering her to apologise again.

### **Costs on review**

[135] Pursuant to s 210 of the Act, the LCRO has discretion to order the payment of costs and expenses. That power is exercised in general accordance with the LCRO's Costs Orders Guidelines.

[136] There is no reason to order Mr AC or Dr SY to pay costs on review. They did not apply for a review. The finding of unsatisfactory conduct confirmed against Mrs JE recognises the validity of the complaint particularly by Dr SY. It is also apparent from Mr AC and Dr SY's evidence that they were offended by Mrs JE's conduct, albeit their offence was not a result of any deficiency in Mrs JE's professional conduct.

[137] Mrs JE was broadly successful on review in her challenge to the Committee's decision, subject to the finding that she had breached rule 12.1. Although it is open to me to order her to pay costs on review, in all the circumstances I do not consider that appropriate.

[138] No costs orders are made on review.

### **Decision**

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<sup>45</sup> *Wislang v Medical Council of New Zealand* [2002] NZAR 573.

Pursuant to s 211 of the Lawyers and Conveyancers Act 2006 the decision of the Standards Committee is:

- a. Confirmed with respect to the finding that Mrs JE breached rule 12.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, and that breach constitutes unsatisfactory conduct pursuant to section 12(c) of the Act;
- b. Reversed with respect to the findings of unsatisfactory conduct for breaches of rules 2.3, 10, 12 on two occasions, and 13.8.2; and
- c. Amended to record orders that Mrs JE pay a fine of \$500 and costs and expenses of \$500 to NZLS.

**DATED** this 17<sup>th</sup> day of February 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:

Ms JE as the Applicant  
Mr AC and Dr SY as the Respondents  
Mr FD as the Applicant's Representative  
Mr RB as the Respondents' Representative  
Mr JE as a Related Person  
[North Island] Standards Committee [X]  
New Zealand Law Society