

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2017] NZLCDT 35

LCDT 020/16 and 025/17

**BETWEEN**

**AUCKLAND STANDARDS  
COMMITTEES 3 and 4**

Applicant

**ANTHONY DAVID BANBROOK**

Respondent

**CHAIR**

Judge BJ Kendall (retired)

**MEMBERS OF TRIBUNAL**

Ms F Freeman

Mr G McKenzie

Ms C Rowe

Mr I Williams

**HEARING** at Chorus House, Auckland

**DATE** 2 November 2017

**DATE OF DECISION** 2 November 2017

**DATE OF REASONS** 30 November 2017

**COUNSEL**

M J Hodge for the Applicants

No appearance of the respondent

**REASONS FOR THE DECISION OF THE NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL CONCERNING  
CHARGES AND PENALTY**

[1] The respondent faces the following charges:

- (a) One charge of misconduct brought by Auckland Standards Committee No 3 (**ASC3**) under proceeding number LCDT 020/16, alleging disgraceful or dishonourable conduct (s 7 (1)(a)(i) of the Lawyers and Conveyancers Act 2006. (**Act**), and/ or conduct that consists of a wilful or reckless failure on the part of the lawyer to comply with a condition or restriction to which a practising certificate held by the lawyer is subject (s 7(1)(a)(iii) of the Act).
  
- (b) Four charges of misconduct brought by Auckland Standards Committee No 4 (**ASC4**) under proceeding number LCDT 025/17. The charges allege misconduct which are summarised as follows:
  - i. Breaching a number of his obligations to his client CB (complainant). (s 7(1)(a)(ii) of the Act).
  
  - ii. Placing improper pressure on the complainant to withdraw her complaint and not advising her to seek independent legal advice. (s 7(1)(a)(i) or s 7(1)(a)(ii) of the Act).
  
  - iii. Practising as a barrister and solicitor in contravention of a suspension order. (s 7(1)(a)(i) of the Act).
  
  - iv. Failing to provide a copy of his file to the Legal Complaints Service in contravention of a request made under s 147 of the Act.

[2] Full details of the charges and particulars of the charges are attached as Appendix A.

[3] The respondent has filed no responses to the charges. A brief history of the opportunities given to the respondent to respond to the charges is:

- (a) Following the decision of the LCRO confirming the Standards Committee's decision in respect of charge ASC3, the respondent was required to file his response to charge by 10 November 2016. He did not do so.
- (b) The charge was set down for a formal proof hearing on 19 December 2016. The Tribunal adjourned the hearing on that day to allow the respondent to provide evidence of his health and the manner in which it may impact on his ability to participate in the proceedings, such evidence to be provided by 27 January 2017.
- (c) The Tribunal then fixed 8 February as the date by which a response to charge was to be filed and set 23 February 2017 as the date for hearing of the charge.
- (d) The Tribunal further adjourned the hearing on 23 February to allow the opportunity for it to be provided with further information about the respondent and his health.
- (e) Having previously imposed an interim suspension order on the respondent, the Tribunal ordered that the order should remain in force until 1 July 2017 which was the date of expiry of the respondent's Practising Certificate.
- (f) The respondent was served with the charges under LCDT 025/17 (ASC4) on 19 July 2017. He did not file a response to them and had not engaged further regarding charge ASC3.

- (g) On 7 September 2017, the charges were set down for hearing and were then set down for a hearing to take place on 2 November 2017. Notice of the hearing was sent to the respondent on 2 October 2017. Confirmation of the venue for the 2 November date of hearing was sent to the respondent on 31 October 2017.

[4] The hearing of the charges proceeded by way of formal proof on 2 November 2017.

### **The Charge under proceeding LCDT 020/16 (ASC3)**

[5] The Tribunal has considered the affidavit evidence of Sarah Elizabeth Te'o, Clifton Killip Lyon and Nicole Jayne Prosser.

[6] The background fact to the charge is that the respondent was suspended from practice as a barrister and solicitor for seven months by order of the Tribunal with effect from 15 July 2014 to 14 February 2015.

[7] The evidence establishes that during the period of his suspension order the respondent, who was at the time of his suspension, counsel for the plaintiff in proceedings CIV-2013-404-3606, provided services in respect of those proceedings including:

- (a) On or around 13 August 2014, he drafted statements of evidence for Rhonda Nichols and Nicole Prosser and edited the statement of evidence of Rhonda Nichols on or around 18 October 2014.
- (b) On or around 2 October 2014, he drafted a memorandum to be filed in Court which he emailed to the instructing solicitor Ms Prosser.
- (c) On or around 16 October 2014, he drafted opening submissions and prepared bundles of documents which he emailed to Mr Lyon who was counsel for the plaintiff in place of the respondent.

- (d) Between 20 October 2014 and 7 November 2014, he drafted an amended statement of claim and submissions to accompany the amended statement of claim. The evidence of Mr Lyon is that he agreed that the respondent would prepare the amended pleadings and submissions in support of the application to amend.
- (e) On or around 4 February 2015, he drafted a memorandum in relation to costs which he emailed to Ms Prosser the instructing solicitor for the plaintiff.

[8] The respondent has not challenged the evidence of the deponents Te'o, Lyon and Prosser.

[9] The Tribunal is satisfied that the services carried out by the respondent were regulated services within the meaning of the Act in that it was legal work directly related to proceedings in the High Court for which the respondent took responsibility for preparing amended pleadings, submissions and memoranda.

[10] Counsel for the applicant put the position effectively when he submitted

Section 7(2) provides that a lawyer or incorporated law firm is guilty of misconduct if, without the consent of the High Court or Disciplinary Tribunal, they knowingly employ or permit to act as a clerk or otherwise, in relation to the provision of regulated services, any person who is under suspension from practice. Whilst that creates liability on the person engaging the suspended practitioner, the clear effect of this provision is that the suspended lawyer is not permitted to do any legal work during the period of their suspension, whether or not that work would require a practising certificate. It would be an odd result, to say the least, if a suspended lawyer cannot be employed by another lawyer, but is free to operate on their own account without the supervision and safeguards of working for an employer.

[11] The Tribunal accordingly finds the charge proved.

#### **The charges under proceeding LCDT 025/17 (ASC4)**

[12] The Tribunal has considered the affidavit evidence of the complainant sworn on 14 July 2107 and of John Christie, Legal Standards Officer, sworn on 6 July 2017.

[13] The evidence of the witnesses supporting the particulars of the charges is set out in the submissions of counsel for the applicant and is referenced below.

#### Charge one

Between 2011 to 2013, the practitioner acted for the Complainant in a relationship property matter against her former husband in the matter of CFB v ACB FAM-2010-044-002591, filed in the Family Court of New Zealand (Auckland Registry). The Practitioner's retainer subsisted throughout this period. The matter proceeded to a hearing on 6 May 2013 in the Family Court at Auckland (hearing). Judge D A Burns delivered an oral judgment that same day (Judgment). The Practitioner's retainer required him to do one of the following: attend the hearing, instruct an agent to attend the hearing, or attend the hearing and seek leave to withdraw as counsel on the basis that he did not have sufficient instructions. The Practitioner did none of these three things.

In its Judgment, the Court dismissed the Complainant's application for a declaration that she had a relationship property interest, and ordered her to pay her former husband \$11,000 for sums owing, as well as \$5,000 in costs. Subsequent to the hearing the Practitioner did not advise the Complainant what had happened at the hearing. The Complainant contacted the practitioner about the decision in February 2016. The Practitioner advised her that she could appeal the decision, and requested that she pay him a \$4,000 retainer for her service, which she duly paid.

The evidence establishes that during this period, the Practitioner breached a number of his obligations to his client/the Complainant in that:

- (a) He did not pay to the Ministry of Justice \$6,000 in monies owed by the Complainant for outstanding parking fines despite having received from her \$6,000 in monies, and instructions to make payment of the \$6,000 to the Ministry of Justice

The Complainant states in her affidavit that at or about the time she instructed the Practitioner she informed the Practitioner over the phone that she had outstanding fines payable to the Ministry of Justice and, because she was overseas at the time and it would be difficult for her to make payment, he offered to pay the fines for her if she sent him the money.

She says that on the understanding the Practitioner would pay her fines, she paid him \$3,000 on 20 August 2011, \$2,000 on 8 September 2011, and \$1,000 on 23 September 2011. These payments were made by deposits into his bank account. She sent him a number of emails on the relevant dates confirming payment to him of monies for the fines, all of which have the subject heading "re: payment of arrears of fines". Despite this, the Ministry of

Justice never received the payments from the Practitioner, and she continues to pay off the fines by instalments. She says the Practitioner informed her in late 2011 that he had kept the \$6,000 and put it towards his fees relating to the proceeding. It is submitted that it can be inferred from the evidence that the sums of monies that she paid him was for him to pay her outstanding parking fines, and that the Practitioner did not follow her instructions.

- (b) He did not appear at the hearing on 6 May 2013/instruct an agent to appear on his behalf/seek leave to withdraw as counsel. He also failed in his obligations as an officer of the Court in not filing a memorandum within seven days of the hearing setting out why he had not attended

As evidenced by the Judgment dated 6 May 2013, the Practitioner did not attend the hearing, instruct an agent to appear on his behalf, or seek leave to withdraw as counsel. The Court at paragraph 13 of its Judgment ordered the Practitioner to file a memorandum within seven days (i.e. by 13 May 2013) setting out why he had failed to attend the hearing. In a memorandum prepared by the Practitioner dated 5 June 2013 (i.e. approximately one month later and outside the Court ordered timeframe), the Practitioner stated that his non-appearance was the result of a genuine mistake and that he had attended the Family Court at North Shore for the purpose of applying to withdraw as Counsel, but after some delay was advised that the hearing had been allocated to the Auckland Family Court and by that time he was too late to travel to and attend the hearing.

- (c) He did not, subsequent to the hearing, inform her of its outcome

The Complainant says that following the hearing the Practitioner never contacted her to advise what had happened. She says she found out about the result of the hearing indirectly, through someone who knew her ex-husband, and that she tried to contact the Practitioner a number of times in 2013 and in 2014 to discuss the hearing but was unable to make contact with him. It can be inferred from the evidence that he did not inform her of the outcome of the hearing.

- (d) In advising her in 2016 that she could appeal the Judgment, which was issued over three years prior, the Practitioner failed to advise her of the formidable obstacles against bringing an appeal so long out of time

Having made a formal complaint to the NZLS about the Practitioner on or about 25 January 2016 (which she subsequently withdrew in light of further communications with the Practitioner), the Practitioner said to her on or about this time that he would be able to appeal the Judgment, and that there was a good chance of success. The Practitioner asked her to pay him \$4,000 in

advance in order for him to act on the appeal, which she did. This payment is evidenced by a letter dated 7 June 2016 from the Practitioner to her stated to be a retainer for his attendances in relation to the appeal, as well as a payment slip confirming that the payment of \$4,000 had been received into his personal account on 13 July 2016. He also suggested that she move back to New Zealand from Australia so that she could attend the appeal hearings, which she did

- (e) The Practitioner did not file an appeal despite her instructions and his agreeing to do so, and did not refund the \$4,000 in fees paid as requested despite having not provided the regulated services for which she had instructed him

As set out above, the Complainant paid the Practitioner \$4,000 to act on her appeal. She also moved back to New Zealand from Australia on his suggestion, so that she could attend the appeal hearings. Despite this, there is no evidence to suggest that the Practitioner filed an appeal. The Complainant sent the Practitioner a number of emails between 1 August and 6 December 2016 relating to the appeal, eventually requesting a refund of fees, which she never received.

- (f) He did not maintain regular contact with the complainant and/or respond to enquiries from her in a timely manner

Following her payment of \$4,000 in around July 2016 to act for her, the Complainant emailed the Practitioner on 1 August, 18 August, 24 August, 7 September, and 6 October 2016 in relation to the appeal, referring to her attempts to contact him and requesting that he contact her. The evidence establishes that the Practitioner did not reply to her emails. As evidenced by the Complainant's email to the Practitioner on 6 December 2016, he finally spoke to her a week prior to that email and organised a meeting at his offices on 2 December 2016, however he failed to attend the meeting, leaving her waiting outside his office for over 45 minutes.

## Charge two

Charge two alleges that on one or more occasions between early December 2016 and late January 2017 the Practitioner placed improper pressure on the Complainant to withdraw her complaint and did not advise her to seek independent advice, in breach of rules 2.2, 3, and 5.11.

Specifically, on or about 8 September 2016, the Complainant made a further complaint to the NZLS about the Practitioner's conduct. Following this:

- (a) On or about 29 September 2016 the LCS informed the Practitioner of the complaint and requested his response. Having received no response, the LCS contacted the Practitioner on 26 October 2016 and 12 December 2016 again seeking his response.
- (b) On or about 22 December 2016 the Practitioner telephoned Mr Christie at the NZLS and stated that the Complainant no longer wanted to proceed with her complaint. In a phone call later that day the Complainant informed Mr Christie that the Practitioner's statement was not correct.
- (c) On 28 December 2016, the Complainant met the Practitioner at his office:
- (i) The Complainant states that despite her requests he refused to refund the \$4,000 in fees she had paid him, tried to persuade her to withdraw the complaint, advised her that he would advance her appeal, and requested she pay him further funds for her appeal. He told her that her claim would be a new claim against her ex-husband for unjust enrichment and that she needed to pay further funds so that he could do a valuation of the property.
  - (ii) The Practitioner gave the Complainant a handwritten letter addressed to NZLS that he had prepared requesting that her complaint against him be withdrawn, signed off 'CB'. He asked her to provide the letter to the NZLS, which she did.
  - (iii) The Complainant also recorded on her iPhone a video of the first part of the meeting. She says she made the recording as she did not trust him, and did not inform him that she was making the recording. The following statements from the transcript are noted:  
  
CB ... So what's going to happen next now?  
  
AB What's going to happen next is that we're going to get rid of these pests from the Law Society right that you started up with your complaint. Now what I've done, hopefully you can read this, it's a bit scratchy, but it's um, just a draft. What I'm going to do is put this in an envelope which you can take with you. Can you read that?
- (d) Between 13 and 24 January 2017 the Practitioner telephoned the Complainant on multiple occasions and left a number of messages on her phone trying to get her to withdraw her complaint. The Practitioner's multiple phone calls to the Complainant are evidenced by screen-shots she took of his phone number.

### Charge three

Charge three alleges that during the period of a suspension order and in contravention of the suspension order the Practitioner practised as a barrister and solicitor and provided regulated services.

On 19 December 2016, the Tribunal ordered that the Practitioner be suspended from practise until 23 February 2017. This suspension order was extended on 23 February 2017 for a further period of 90 days. Despite this and as set out in some detail above at paragraph 3.10(c), on or about 28 December 2016 the Practitioner met with the complainant, advised her how he proposed to advance her appeal, and requested further funds to advance her appeal.

As at 28 December 2016 and as outlined in ASC3's opening submissions dated 12 December 2016, the Practitioner was already facing a misconduct charge under the 020/16 proceedings for contravening a separate suspension order for the period 15 July 2014 to 14 February 2015, in that he practised as a barrister and solicitor during that period.

Despite knowing of the suspension order and that he should not be practising as a barrister and solicitor, in his meeting with the Complainant on 28 December 2016 the Practitioner acted as a barrister and solicitor.

### Charge four

Charge four alleges that the Practitioner did not provide a copy of his file to the LCS, in contravention of its request under s 147 of the Act. Of note:

- (a) On 12 December 2016, the LCS wrote to the Practitioner inviting him pursuant to s 147(2)(a) of the Act to provide a copy of his file in respect of the complainant by 27 January 2017. He did not.
- (b) On 15 March 2017, the LCS wrote to the Practitioner requesting that he provide by 31 March 2017 a written explanation as to his apparent failure to comply with its request pursuant to s 147 of the Act that he provide a copy of his file. The Practitioner did not.

[14] The respondent has not challenged the evidence of the complainant and John Christie. The Tribunal finds the charges proved to the requisite standard.

### Penalty

[15] Counsel for the applicant submitted that the only available conclusion is that strike-off will uphold the reputation and standards of the legal profession in this case.

He advanced the following reasons:

- (a) In respect of the charge in the LCDT 020/16 proceedings, the respondent acted in clear disregard of the order suspending him from practice as a barrister and solicitor and attempted to conceal the true nature of the legal work he was undertaking.
- (b) His conduct relating to charges two and four of the LCDT 025/17 proceedings is even more serious given that it all occurred subsequent to the issue of the charge in the LCDT 020/16 proceedings.
- (c) Placing pressure on the complainant to withdraw her complaint against him illustrated a serious disregard for the standards of professionalism required of a lawyer.
- (d) The attitude of the respondent to the suspension order whereby he made a conscious decision not to comply with it.
- (e) Both the deterrent and public interest of a suspension order are effectively subverted if the respondent is able to continue practice as a barrister and solicitor.

[16] The Tribunal agrees with and accepts those reasons. The Tribunal finds that there are additional matters which reinforce the submissions of the applicant.

[17] The Tribunal notes that, in respect of charge one, the respondent kept for himself money paid to him by the complainant for fines owed to the Ministry of Justice. That was clearly dishonest behaviour.

[18] The respondent has a disciplinary history. There was a finding of conduct unbecoming a barrister and solicitor in 1991. Then, from 2010 to 2016, there were four findings of unsatisfactory conduct along with a conviction of an offence punishable by imprisonment.

[19] The Tribunal was unanimous in its decision that the respondent's name be struck off the roll and ordered accordingly.

[20] This is a case where the complainant should be paid compensation for the loss she suffered at the hands of the respondent when he failed to pay her fines to the Ministry of Justice and kept the money to his own benefit in a situation where he had done nothing to assist her. The total sum involved is \$10,000.00. The Tribunal made an order under s 156(1)(d) of the Act that the respondent pay the complainant that sum.

[21] The costs of the applicant in respect of both proceedings total \$56,349.20. Those costs are reasonable when additional attendances are considered. There were the steps taken to obtain interim suspension orders. Additional attendances were necessary to establish the capability of the respondent of engaging in the proceedings. It was found that the respondent chose not to engage. There was an order made for the total costs submitted by the applicant.

[22] The Tribunal acknowledges the efforts made by Mr Lyon to assist it with information about the respondent and to encourage his participation in the proceedings.

[23] The Tribunal, at the conclusion of the hearing, made the following orders:

- (a) Striking off the name of the respondent from the roll.
- (b) Compensation in favour of the complainant in the sum of \$10,000.00 payable by the respondent.
- (c) Costs payable by the respondent to the applicant totalling \$56,349.20.
- (d) An order that the respondent refund to the New Zealand Law Society the costs of the Tribunal payable by it which are certified to be \$3,516.00.
- (e) An order prohibiting the publication of the name of the complainant.

**DATED** at AUCKLAND this 30<sup>th</sup> day of November 2017

BJ Kendall  
Chairperson

**Charge (LCDT 020/16)**

Auckland Standards Committee 3 (**Committee**) hereby charges Anthony David Banbrook (**Practitioner**) with:

**Charge:** Misconduct within the meaning of s 7(1)(a)(i) and/or s 7(1)(a)(iii) of the Lawyers and Conveyancers Act 2006 (**Act**);

**The particulars of the charge are as follows:**

- 1 At all material times the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand.
- 2 On 1 July 2014, the New Zealand Lawyers and Conveyancers Disciplinary Tribunal found the Practitioner guilty of a charge brought pursuant to s 241(d) of the Act and made an order (among others) that:
 

The practitioner is suspended from practice as a barrister and solicitor for a period of seven months commencing 14 days after the release of this decision. (**Suspension Order**)
- 3 The Suspension Order took effect from 15 July 2014 to 14 February 2015 (inclusive).
- 4 Prior to the Suspension Order, the Practitioner was counsel acting for the plaintiff in the matter of *Rhonda Marie Nichols v Racey Constructions Pty Ltd and David Geoffrey Punter* CIV-2013-404-3606, filed in the High Court of New Zealand (Auckland registry).
- 5 During the period of the Suspension Order, and in contravention of that order, the Practitioner practised as a barrister and solicitor. The Practitioner provided regulated services during the period of the Suspension Order in respect of the above matter, including:
  - (a) On or around 13 August 2014, drafted statements of evidence for Rhonda Nichols and Nicole Prosser, and on or around 18 October 2014 edited the statement of evidence of Rhonda Nichols;
  - (b) On or around 2 October 2014, drafted a memorandum to be filed in Court;
  - (c) On or around 16 October 2014, drafted opening submissions;
  - (d) On or around 16 October 2014, prepared bundles of documents;
  - (e) Between 20 October 2014 and 7 November 2014, drafted an amended Statement of Claim;
  - (f) Between 20 October 2014 and 7 November 2014, drafted submissions to accompany the amended Statement of Claim;
  - (g) On or around 4 February 2014, drafted a memorandum in relation to costs.

## Charges (LCDT 025/17)

Auckland Standards Committee 4 (**Committee**) hereby charges Anthony Banbrook (**the Practitioner**) with:

**Charge 1:** Misconduct within the meaning of s7(1)(a)(ii) of the Lawyers and Conveyancers Act 2006 (**Act**) in that the Practitioner wilfully or recklessly contravened s110 of the Act and rules 3, 3.2, 4.2, 7, 7.1, 11.1, and 13 of the Act and/or the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**).

### Particulars

- 6 At all material times the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand, practising as a barrister.
- 7 Between 2011 to 2013, the Practitioner acted for CB (**Complainant**) in a relationship property matter against her former husband. His retainer subsisted throughout this period.
- 8 The matter proceeded to a hearing on 6 May 2013 in the Family Court at Auckland (**Hearing**). The Practitioner's retainer required him to do one of the following: (a) attend the hearing; (b) instruct an agent to attend the hearing; or (c) attend the hearing and seek leave to withdraw as counsel on the basis that he did not have sufficient instructions. The Practitioner did none of these three things.
- 9 The court issued a decision that same day dismissing the Complainant's application for a declaration that she had a relationship property interest, and ordering her to pay her former husband \$11,000 for sums owing, as well as \$5,000 in costs (**Decision**).
- 10 Subsequent to the Hearing the Practitioner did not advise the Complainant what had happened at the Hearing.
- 11 The Complainant did not find out precisely what happened at the hearing until around January 2016 when she managed to obtain a copy of the Decision.
- 12 The Complainant contacted the Practitioner about the Decision in February 2016. The Practitioner advised her that she could appeal the Decision, and requested that she pay him a \$4,000 retainer for his services, which she duly paid.
- 13 The Practitioner breached his obligations to his client in that he:
  - (a) did not pay to the Ministry of Justice \$6,000 in monies owed by the Complainant for outstanding parking fines, despite having received from her \$6,000 in monies, and instructions to make payment of the \$6,000 to the Ministry of Justice (s110, r 3);
  - (b) did not appear at the Hearing on 6 May 2013, or instruct an agent to appear on his behalf, or seek leave to withdraw as counsel (r 3);
  - (c) did not, subsequent to the Hearing, inform the Complainant of its outcome (rr 7, 7.1);

- (d) in advising her in 2016 that she could appeal the Decision, which was issued over three years prior, failed to advise her of the formidable obstacles against bringing an appeal so long out of time (rr 3, 11.1);
  - (e) did not file an appeal despite her instructions and his agreeing to do so, and did not refund the \$4,000 in fees paid as requested despite having not provided the regulated services for which she had instructed him (rr 3, 4.2, 11.1); and
  - (f) did not maintain regular contact with the Complainant and/or respond to inquiries from her in a timely manner (rr 3, 3.2).
- 14 The Practitioner also failed in his obligations as an officer of the court in that he did not, as ordered by the court, file a memorandum within seven days of the Hearing setting out why he had not attended it (r 13).

**Charge 2:** Misconduct within the meaning of s 7(1)(a)(i) or s 7(1)(a)(ii) of the Act.

**Particulars**

The Committee repeats paragraphs 1 to 9 above and says further:

- 15 On or about 24 January 2016 the Complainant made a complaint to the NZLS about the Practitioners' conduct.
- 16 In February 2016 the Practitioner asked the Complainant to write to the NZLS withdrawing her complaint, which she did.
- 17 On or about 8 September 2016 the Complainant made a further complaint to the NZLS about his conduct.
- 18 On or about 22 December 2016 the Practitioner telephoned the NZLS and said that the complainant had agreed to withdraw the complaint, when she had not.
- 19 On 28 December 2016 the Practitioner met with the Complainant, refused to refund the \$4,000 in fees, tried to persuade her to withdraw the complaint, advised her how he would advance her appeal, and requested further funds to pay for her appeal.
- 20 On or about 28 December 2016 the Practitioner prepared a handwritten letter in the Complainant's name to the NZLS requesting that her complaint against him be withdrawn, and asked her to provide the letter to the NZLS.
- 21 Between 13 and 24 January 2017 the Practitioner telephoned the Complainant on multiple occasions trying to get her to withdraw the complaint.
- 22 On at least one or more occasions between early December 2016 and late January 2017 the Practitioner:
  - (a) placed improper pressure on the Complainant to withdraw her complaint (rr 2.2, 3); and
  - (b) did not advise the Complainant to seek independent advice (r 5.11).

**Charge 3:** Misconduct within the meaning of s 7(1)(a)(i) of the Act.

**Particulars**

The Committee repeats paragraphs 1 to 9 and 10 to 17 above and says further:

- 23 On 19 December 2016, the New Zealand Lawyers and Conveyancers Tribunal ordered that the Practitioner be suspended from practice until 23 February 2017.
- 24 On 23 February 2017 the suspension order was extended for a further period of 90 days.
- 25 During the period of the suspension order, and in contravention of the suspension order, the Practitioner practised as a barrister and solicitor.
- 26 The Practitioner provided regulated services during the period of the suspension order in that on or about 28 December 2016 he met with the Complainant, advised her how he proposed to advance her appeal, and requested further funds to advance her appeal.

**Charge 4:** Misconduct within the meaning of s 7(1)(a)(ii) of the Act.

**Particulars**

The Committee repeats paragraphs 1 to 9 and 10 to 17 above and says further:

- 27 On 12 December 2016, the Complaints Service wrote to the Practitioner, inviting him pursuant to s 147(2)(a) of the Act to provide a copy of his file in respect of the Complainant by 27 January 2017.
- 28 The Practitioner did not supply a copy of the file by 27 January 2017.
- 29 On 15 March 2017, the Complaints Service wrote to the Practitioner requesting that he provide by 31 March 2017 a written explanation as to his apparent failure to comply with its request pursuant to s147 of the Act that he provide a copy of his file.
- 30 At its meeting on 26 April 2017, the Committee resolved to set the matter down for a hearing on the papers and resolved that the Practitioner be invited to make submissions.
- 31 On 5 May 2017, the Complaints Service wrote to the Practitioner by letter and enclosed a copy of the Notice of Hearing informing him that the Committee has set the matter down for a hearing and inviting him to provide submissions by 19 May 2017.
- 32 In contravention of its request under s147 of the Act, and from 15 March 2017 onwards, the Practitioner had not provided a copy of his file to the Complaints Service.

In the event the misconduct allegations in charges 1 to 4 are not proven, it is alleged in the alternative for each charge that the Practitioner's conduct amounts to negligence or incompetence in his professional capacity pursuant to s 241(c) of the Act or in the further alternative, unsatisfactory conduct pursuant to s241(b) of the Act.