NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2022] NZLCDT 10
LCDT 023/20, 013/21, 014/21, 019/21

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**NATIONAL STANDARDS COMMITTEE (No 1)** Applicant
AND	**QUENTIN STOBART HAINES** Former Practitioner

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Mr I Hunt
Mr F Pereira MNZM
Ms M Scholtens QC
Dr D Tulloch

HEARING 023/20 on 20 April 2021; resumed on 12 May 2021

HELD AT Wellington Tribunals; resumed at Wellington District Court

HEARING 013/21, 014/21, 019/21 on 25, 26, 27 January 2022

HELD AT Wellington District Court

DATE OF DECISION 8 April 2022

COUNSEL
Mr R Moon for the Standards Committee
Ms D Evans for the Practitioner

COMPOSITE DECISION ON LIABILITY
ARISING FROM FOUR SETS OF CHARGES

Introduction and Process

[1] This decision is a composite one, addressing the issues raised in four separate sets of charges, the last three of which were heard together in late January 2022.

[2] The first was heard in April 2021, by the same Tribunal, and by agreement of the parties, the decision from that hearing was reserved pending the hearing of the other three sets of charges.

[3] Lock-down requirements, as a result of Covid-19 delayed the hearing of the final three matters.

[4] The first and second sets of charges ("M1" and "M2") involved the same complainant.

[5] There are common elements in almost all of the charges which allege improper fee charging and fee taking practices, overcharging, conflicts of interest, failures to secure independent advice and other less serious breaches of the Client Care Rules.[1]

[6] We set out the background of the M1 and M2 cases together, but analyse the issues raised by each set of charges separately.

[7] We then consider each of the last two sets of charges relating to complainants R and C, in turn.

Background to M1 and M2 Charges

[8] Mr Haines is a practitioner who was admitted as a Barrister and Solicitor in late 2006, but after a short period travelled overseas and worked outside the law for some years[2]. From September 2011 until March 2017 he worked for Simpson & Co, initially as an unpaid law clerk, and then was as an employed solicitor, from June 2012. At one

[1] Lawyers and Conveyances Act (Lawyers: Conduct and Client Care Rules) 2008.
[2] During the practitioner's bankruptcy.

point he had an agreement with the late Mr Simpson to join him in partnership and indeed he even purchased the premises from which the firm practiced, with financial assistance from Mr Simpson. That agreement did not ultimately reach completion and in April 2017, Mr Haines began practise on his own account.

[9] Mr Haines has an LLM, with a particular interest in insolvency law. During the latter part of 2015 he came into contact with the complainant Mr M, whom he had encountered as a regular attender in bankruptcy court. They became acquainted and Mr Haines agreed to undertake one case in late 2015 for Mr M on a *pro bono* basis (with a view to his then being entrusted with Mr M's other work).

[10] That first engagement was obviously successful because in October 2016 Mr M engaged Simpson & Co, through Mr Haines, to undertake a range of litigation for himself and his associated entities.

[11] From that time until 23 August 2018, at which time Mr Haines exited practice, because of an unrelated matter, Mr Haines spent a great deal of his time (he estimates 20 hours per week) working on Mr M's matters.

[12] It was standard practice at Simpson & Co for a letter of engagement to be provided to the client by their administration services. Mr M denies having received such a letter and Mr Haines is unable to produce a copy of the letter which he says would have been sent by Simpson & Co. A further letter was required when Mr Haines went out to practice on his own account on 1 April 2017. Mr Haines has provided the Tribunal with a copy of that letter but again, Mr M denies that it was ever received by him.

[13] What is noteworthy about the second letter is that although Mr Haines had charged at a rate of $500 per hour as an employee of Simpson & Co (which he says was increased to $600 an hour in the later stages of his employment), the hourly rate set out on the copy of the letter of engagement provided by Mr Haines as a sole practitioner, was $1,000 per hour. Mr M says that had he received a letter setting out that hourly rate he would most certainly have objected to it.

[14] It is Mr M's position that the agreement as to fees between himself and Mr Haines was that the only remuneration Mr Haines would receive would come from any costs awards of successful litigation in which Mr M or his entities were engaged.

[15] Mr M has had ongoing litigation with various bodies corporate in the Wellington area and it was this work, which was described in the letter of engagement, which Mr Haines says was personally delivered to Mr M at his office and place of business in Alicetown, Lower Hutt around 9 April 2017.[3]

[16] Mr Haines says that although he was prepared to extend credit to Mr M, because of his awareness of Mr M's difficult financial circumstances, there was no way that he would have agreed to such a restrictive costs agreement, especially after he went into practice as a sole practitioner.

[17] Mr Haines appears to have had considerable success in staving off bankruptcy for Mr M and moving towards resolving some of the body corporate litigation by having an administrator appointed to the body corporate to reconcile the various levies which were in dispute.

[18] At about the same time Mr Haines began undertaking work formally for Mr M, he was himself having personal and financial difficulties. He had recently separated from his wife and was attempting to retain ownership of the former family home, for himself and his children.

[19] Mr M offered to assist Mr Haines financially by guaranteeing certain loans, as set out in the charges as follows.[4]

> "7. Between December 2016 and April 2017, the Practitioner (either personally or through his family trust) borrowed various sums from finance companies, in particular:
>
> (a) $75,000 from Fico Finance Limited (in December 2016);
>
> (b) $250,000 from Bright Enterprises (in February 2017); and

[3] The work to be undertaken is set out at page 3 of the cost assessor's report, bundle of documents p 74.
[4] Appendix II, para [7].

(c) $250,000 from Fico Finance Limited (in April 2017).

(collectively, **the Loans**)."

[20] These loans were guaranteed by Mr M and/or his trust, the L No.1 Trust (the **Guarantees**).

[21] Mr Haines believed that[5] "… *in addition giving the Guarantees, Mr M (or entities associated with him) would service the Loans in the event the Practitioner became unable to do so*" (the **Servicing Term**).

[22] To complicate matters further, Mr Haines says, and to a certain extent it is accepted by Mr M, that part of the loan advances were in turn advanced by Mr Haines to Mr M. These are referred to in the charges as "The **Advances**".

[23] While the loans and guarantees are documented, they having been arranged with independent third parties, there is no documentation of either the Servicing Term or the Advances.

[24] During 2017, when Mr Haines was undertaking considerable work from Mr M, he was not being paid for this work and fell into default on the Fico Finance Loan. By March 2018, a notice was served under the Property Law Act.

[25] There was a dispute in the evidence as to the nature of the independent advice given concerning the guarantees of the loans. Mr Haines said that Mr M insisted that the documentation be sent to Mr B McDonnell, a lawyer with whom Mr M had an established relationship in conveyancing matters. Mr M says that Mr McDonnell acted for all parties and the evidence of that is Mr McDonnell's witnessing of Mr Haines signature on the loan agreements.

[26] Mr Haines says that he was at all times represented by Mr J Langford in these transactions and Mr Langford's evidence supports that version of events. The Bright Enterprise loan was intended to assist Mr Haines in purchasing his former family home. Unfortunately, deadlines were not met and this particular purchase did not proceed. However, the funds remained drawn down, in Mr Langford's trust account and from

[5] As per charges Appendix II at para [9].

them Mr Haines said he lent Mr M's L No. 1 Trust the sum of $73,000 in March or April 2017.

[27] The second Fico Finance loan was raised in May 2017 for Mr Haines to purchase another property and some funds from the Bright loan were also applied to this purchase. There was also a first mortgage over this property to Basecorp.

[28] In September 2017 Mr M was advanced a further $20,000 from the remaining Bright funds to purchase a boat.

[29] In October 2017 Mr Haines says that Mr M defaulted on payment to Fico Finance which then issued a Property Law Act (PLA) notice against Mr Haines' family trust. Mr Haines says that he loaned a further $10,000 to Mr M in February 2018 to settle a contract when Mr M lacked funds. In early 2018 there was a repayment from Mr M to Mr Haines, the latter says this was $22,600.

[30] Again, none of these transactions were documented.

[31] It is therefore submitted that, without documentation, independent advice cannot properly have been provided to the client, leading to the alleged breaches of Rules 5.1, 5.4, 5.43 and 5.44.

[32] By April 2018 Mr Haines was facing charges under the Prostitution Reform Act 2003 and it was clear that when he pleaded guilty in late June or early July of that year that he would need to retire from practice, at least temporarily. He made an arrangement with the New Zealand Law Society (NZLS) in order to appear in July 2018 for Mr M in the Court of Appeal. He says the outcome of that case was that once again Mr M managed to avoid bankruptcy.

[33] On 22 June 2018 Mr Haines sent a lengthy email to Mr M, copied to Mr B, who is Mr M's brother-in-law, and a trustee of at least one of his trusts and who assists Mr M with documentation because of Mr M's dyslexia. This email[6] set out in considerable detail Mr M's then current situation and Mr Haines' then current situation and made a proposal ("the Cuba Street Proposal") for Mr Haines to purchase from Mr M a property in Cuba Street, again with a complicated financing arrangement

[6] Email Quentin Haines to Mr M and Mr B, 22 June 2018, 4.23pm, BOD 16.

including a proposal of offsetting legal fees in an effort to resolve the developing difficulties between them. The difficulties are described by Mr Haines as follows:

> "Quentin is in default with Fico (which is secured over [Mr M's] properties;
>
> Quentin and [Mr M] have tied our respective fates through the close relationship which now exists, ([Mr M] has provided security for Quentin's house, Quentin has loaned [Mr M] 100K, Quentin and [Mr M] have a fee arrangement which is ongoing);
>
> Quentin has not been paid pursuant to the fee arrangement[7] and as such does not have the cash-flow to support all of his current borrowings;
>
> Quentin's current situation is not maintainable and external income is required; and
>
> Quentin has the capacity to borrow funds where [Mr M's] capacity is limited."

[34] Mr Haines prefaced the proposal with the following: "*You will both require independent advice prior to this proceeding*".

[35] The plan in respect of the Cuba Street proposal is then set out in the email, as follows:

> "The plan:
>
> Quentin purchase the property for 1,350,000 (the valuation sum);
>
> [Mr M] provide vendor finance in the value of the entire purchase price, Quentin to repay [Mr M] the full sum over 12 months by refinancing the property with ANZ at a lower interest rate or by offsetting legal fees by agreement (pursuant to the fee agreement), [Mr M] also to be provided cash on hand to take advantages of other deals that present themselves from time to time;
>
> On settlement Quentin repay [Mr M] the sums required to settle 1 to 6 above;
>
> Quentin repay Fico thus freeing up and releasing the security off [Mr M's] properties; and
>
> Quentin to benefit from the rent of the property thus fixing his cashflow crisis so mortgages can be paid…"

[7] Putting to one side issues relating to the provision of a letter of engagement, this is the first reference to a "fee arrangement".

[36] In a further email, a day later, answering queries by Mr B and Mr M, Mr Haines makes specific reference to the fee arrangement, as he sees it:[8]

> "The Fee Arrangement with [Mr M] is relaxed. The reasons behind this is that [Mr M] is unable to afford fees invoiced on a monthly regular basis. It also provides him with a considerable saving rather then (sic) on an exact time spent basis. For example I spend about 20 hours a week on [Mr M's] work. This over the last couple of years at my highest hourly rate (although not all work done outside Court would warrant this rate) would equate to about 4000 hours at 1K an hour. Clearly I am not going to ever consider charging [Mr M] anything like that amount! If I was rendering invoices [Mr M] would have been billed about 500K at this point. Instead it has been agreed that I will charge [Mr M] when certain milestones are met or when [Mr M] has a windfall that allows him the ability to pay. …
>
> My work is for [Mr M] and all of his associated entities. I have no problem with providing [Mr M] enormous credit so he is able to complete these cases with the assistance that he requires, as long as I am able to meet my financial commitments along the way. [Mr M] needs help and I am happy to help the money will take care of itself in the long term.
>
> The purpose of the proposed transaction is to provide [Mr M] with urgent cash to avoid bankruptcy. It is also to provide a cashflow solution for myself so I have a regular income stream once it is tenanted. It will also get rid of the very expensive Fico loan which is sitting at 13.5% and bring all of my obligations into line as well as provide me with a buffer on the home mortgage with Basecorp/ANZ until refinance of Cuba is complete."

[37] A meeting was subsequently held to discuss the Cuba Street proposal. At that meeting were also a Mr M Kooiman, who gave evidence in January 2022, before the Tribunal but whose evidence is largely sought to be excluded by the Standards Committee. Also present was the mortgage broker who had assisted in the raising of the earlier loans, Mr Slater (who also gave evidence before us). There is some evidence that while Mr M initially agreed to the Cuba Street proposal, he subsequently withdrew from the agreement and it did not proceed[9].

[38] Despite the obvious differences between Mr Haines and his client which would appear by this stage to have been irreconcilable, Mr Haines represented Mr M (apparently at the latter's urging) in the Court of Appeal in July and then on 4 August was part of a meeting to attempt to once again prevent Mr M's bankruptcy.

---

[8] Email Quentin Haines to Mr M and Mr B, 23 June 2018, 5.47 am, BOD 15.

[9] This is disputed and is not a matter which we are required to resolve, although the topics of conversation at the meeting are to some extent relevant in relation to other matters.

[39] The day beforehand, Mr Haines sent an email to Mr M and Mr B[10] in which he said:

> "…I have expended over 4,000 hours (my rate is $1000 per hour) on your work and provided you with considerable credit over the last two years. Over that time I have managed to achieve significant results for you and maintained your solvency notwithstanding your leveraged position and reckless disregard to the payment of your levies in all the BC's you are involved in. Whilst I believe that a number of professionals have mistreated you in the past it does not give you a free pass for all of your conduct in the associated proceedings. I have a clear plan on how to progress your matters…
>
> I have an overdue mortgage payment to Basecorp (due 1 August) of $4,600. I was relying on the promised funds to make that payment.
>
> I now find myself being one of your largest creditors.
>
> The current financial situation has reached an untenable position. I have lost control of my financial autonomy because of the level of credit exposure that I have to you. Whilst I am happy to continue to assist you and offer a significantly discounted fee arrangement, I do require a level of fee protection. If mortgagee action is commenced by Fico there will exist a conflict of interest which will prevent my ability to act for you."

[40] For completeness, we also record that, following the serving of the PLA Notice in March 2018, Mr Haines sought his colleague Mr Langford's help in supervising files for Mr M, because he recognised that a conflict had arisen. However, it is Mr Haines' evidence that Mr M insisted he continue representing him, and Mr Langford confirms that although the "Supervision" arrangement was initiated, that in the end he did not receive any files.

[41] Following that meeting, Mr Haines devised a creditor's proposal.

[42] Part of that proposal included the invoicing to Mr M of outstanding fees owed by Mr M to Mr Haines. Despite having indicated in June in the course of the Cuba Street proposal that the fees, had they been rendered then, would have amounted to approximately $500,000 for more than 4,000 hours work, the invoice rendered to Mr M was for $1,000,000 plus GST. Its narration was short but included a note that the fee was agreed by the client "… *because the actual time spent on these files is more than 4000 hours. To settle all fees this fee has been agreed*."

[10] Email Quentin Haines to Mr M and Mr B 3 August 2018, 10:39pm, BOD 21.

[43] Providing a fee at this level, and thus becoming a million dollar plus creditor, also added to the supportive votes to ensure a creditor's proposal reached the 75 per cent majority to enable the High Court, which was about to consider a Creditors Petition,[11] to approve it.

[44] The Standards Committee allege that the fee was artificially inflated, not just to benefit Mr Haines but also to smooth the pathway of the creditor's proposal, and therefore that it also comprised a misleading of the High Court.

[45] On 21 August, Mr Haines met with Mr M and the trustees of his Trust, including (for part of the meeting) Mr B. Mr Haines recorded the discussion and proposal in a lengthy letter of the same date, stressing the urgency and benefits of a Creditors Proposal.

[46] In this letter, Mr Haines referred again to his unbilled fees, and notes that he has "…*raised with you on several occasions*...". He went on to say "*As part of this process a fair fee is going to need to be agreed even if it is not paid at this point in time (I will prepare a summary of the time spent for you on all matters). You will need my fees for voting purposes as set out below."* Later in the letter Mr Haines stated: "*The creditors that support you will need a total combined debt of 2.1 million in order to have a 75% majority. To achieve this number legitimately I will invoice my legal fees at an agreed rate. This will act as a new debt since the Court of Appeal (so no one accuses anyone of misleading the Court) and will bring the numbers into line."*

[47] This latter message was followed up with an email the next night,[12] recording the various matters agreed, but still not specifying the amount of legal fees to be invoiced. All that was said was: "*5. I will invoice you for ALL legal work done on an agreed fee basis. This will allow QH Law to vote in favour of the proposal with a sizable debt that will guarantee the vote in your favour...".*

[48] The urgency of the situation, and putting together of a significant Creditors Proposal, was not just because of the looming court date, but also because Mr Haines had to hand in his practising certificate the next day, 23 August.

---

[11] On 28 August 2018.
[12] 22 August 2018 at 9.26 pm.

[49] On the morning of the 23 August, Mr Haines met with Mr M at Court at 9.30am. He had issued the invoice to Mr M in the late hours of the previous night. Mr M signed the proposal, which included the agreed fee from Mr Haines' firm, of $1 million plus GST.

[50] Mr Haines had prepared a Memorandum for the Court, in which he explained why he was having to withdraw from representation of Mr M. The Memorandum was accompanied by a Statement of Affairs and Affidavit, sworn by Mr M at Court, before a Deputy Registrar. The schedule of Unsecured Creditors attached to the affidavit includes "QH Law … $1,150,000" and "Quentin Stobart Haines … $93,425.59".[13] Mr M had been sent these documents by email at approximately 7.00 am that day, but says he had not seen the email until later.

[51] Mr M stated in evidence that the exhibits, containing the above figures, were not attached to the affidavit he swore. He alleges that the exhibits were attached later by Mr Haines, and therefore that he did not swear an affidavit in which he approved the fees invoice for $1.15 million. He states this, despite the document itself demonstrating that the exhibit notes were also signed by the Deputy Registrar who took Mr M's oath.

[52] At 10.00 am on 23 August 2018, as pre-arranged with the NZLS, Mr Haines ceased practice.

[53] The High Court was not prepared to endorse the Creditors Proposal and on 28 August, Mr M was adjudicated bankrupt.

[54] Following the complaint against Mr Haines, by Mr M and Mr B, the Standards Committee appointed Mr P McMenamin as Investigator and Costs Assessor, in March 2019. He reported to the Standards Committee in August 2019.

Issues to be Resolved in M1 Charges (LCDT 023/20)

1. **Charge 1** - Did Mr Haines provide Mr M with a letter of engagement, at the time when he commenced practise on his own account? If not, at what level of liability does this fall? If so, did Mr Haines provide updated information on the principal aspects of client service where information

[13] Relating to the advances made to Mr M or his trust from the Bright funds held, as described above.

previously provided in terms of Rule 3.4 had become inaccurate in a material respect, with due expedition, as required by Rule 3.6? If not, at what level of liability does this fall?

2. **Charge 2** - Did the fee of 23 August 2018, of $1 million plus GST represent overcharging for the work carried out under the retainer for Mr M? That is, was it fair and reasonable having regard to the factors set out in Rule 9.1?[14]

3. If it is not fair and reasonable, does the rendering of this invoice, in all the circumstances which existed at the time, represent misconduct, under ss 7(1)(a)(i), (ii) or (iv) of the Lawyers and Conveyancers Act 2006 (the Act)?

4. If not misconduct, is it viewed as unacceptable conduct, or contravention of the rules under s12(b) or (c)?

5. **Charge 3** - Was the fee inflated to achieve a greater voting power in the Creditors Proposal? If so, does that represent misconduct under either ss 7(1)(a)(i) or (ii)? Alternatively, was it unacceptable or in contravention of the rules under s 12(b) or (c)?

Discussion of Issues

Charge 1 – Issue 1

[55] Mr Haines has provided a copy of the letter of engagement he says he hand delivered to Mr M. There is no evidence that he took Mr M through the letter point by point, which might explain why Mr M did not raise any objection to the extraordinarily high hourly rate. It is possible Mr M did not read the letter. On Mr M's version of the fee-charging arrangement struck, no hourly rate would have been relevant.

[56] We note Mr McMenamin points out that *"…it seems improbable that Mr Haines would have gone to the trouble of drafting letters of engagement and then not to have*

[14] See n 1 above.

sent them to the intended recipients when he was engaged in such a substantial amount for work for them."[15]

[57] We do not consider that the Standards Committee has established, on the balance of probabilities, that the letter was not provided to the client. It would appear that the letter, which sets out the nature of the retainer and fee charging practices, is one of the few documents which records the relationship between Mr Haines and Mr M clearly.

[58] However the amended charge alleges that Mr Haines failed to update the information provided to Mr M in terms of Rule 3.4, as required by Rule 3.6, in respect of fees. The Standards Committee submits, on this issue, that the evidence of both Mr Haines and Mr M leads to the conclusion that different payment terms – than those set out in the letter of engagement Mr Haines contends was provided – were agreed, but never recorded in any updated terms of engagement, or at all.

[59] Particulars of the grounds for this submission identify: that although the Simpson & Co engagement letter provided for monthly invoices, a contingent basis for charging soon emerged; that Mr Haines did not explain to Mr M that his hourly rate had doubled, from $500/hour, to $1000/hour; that Mr M considered the fee arrangement was conditional on costs being awarded in his favour, but Mr Haines, who had the opportunity to reject that description of the arrangement, did not do so and instead said that "*I have not raised an invoice for time spent nor am I about to*";[16] Mr Haines accepted that the fee agreement was, from the outset based on "*milestones, windfalls when Mr M had money,"*[17] and he also accepted that it could be described as an "agreement to agree".[18] However there is no evidence that any milestones were ever agreed, still less that any such agreement was recorded in writing; overall, there is no evidence that the varied fee arrangements were ever properly recorded, certainly not in a manner that would have allowed Mr M to provide his agreement.[19]

[60] Mr Moon also noted the contradiction in the assertion that Mr Haines had the right to invoice at any time, with the evidence concerning Mr M's agreement to the fee

---

[15] Report by Investigator dated 7 August 2019, Mr McMenamin
[16] BOD p 20, line 4 and p 19, line 6.
[17] Notes of evidence first hearing, p 97, line 27.
[18] Notes of evidence first hearing, p 98, line 20.
[19] Notes of evidence first hearing, p 98, line 16.

to be rendered, on 23 August 2018. He also points out that Mr M was a person who had particular vulnerabilities, and therefore particular care should have been taken.

[61] We accept those submissions.

[62] While we consider that the conduct described could, as Mr Moon submitted, be described as deliberate or reckless – and therefore subject to a finding of misconduct under either of ss (7)((a)(i) or (ii) of the Act, we consider the appropriate finding is one of breach of s(12)(b) and (c) – this was conduct that would be regarded by lawyers of good standing as being unacceptable (as unprofessional conduct) and a contravention of the Rules. There is a finding of unsatisfactory conduct.

Charge 2 – Issue 2

[63] Dealing first with the contention of Mr M that the arrangement for payment of Mr Haines comprised only the retention of any costs awards ordered in favour of Mr M or his entities, we agree with the comments of Mr McMenamin in his report[20] that when the lawyer/client relationship began, this would have been a highly unusual situation for an employed solicitor to engage in. The letter of engagement from Mr Haines' employer has not been located, but Mr Haines contends it set out an hourly charge out rate of $500 per hour plus GST and disbursements.

[64] The reported comments of Mr M's partner that Mr Haines had confirmed that he would be paid from "*collecting fees from cases he had won*"[21] does not necessarily cut across Mr Haines' own evidence. Mr Haines considered that he would recover from Mr M when he was in a position to pay him or when certain milestones were achieved (the first important one being the reconciliation of the Body Corporate fees said to be owed by Mr M). This would fit with the narrative that as funds became available from successful judgments, that Mr M would be in a position to pay him.

[65] Mr McMenamin points out that with such a highly unusual arrangement as alleged by the client Mr M, if it existed, it ought to have been reduced to writing.[22]

---

[20] Report by Investigator dated, see note 15
[21] See BOD 75.
[22] As we have held it should.

[66] We consider it highly unlikely that Mr Haines would have agreed to such a tenuous arrangement as simply receiving any costs awards, either as an employee or at a time when he was beginning practice as a lawyer on his own account. Mr Haines stated in evidence that Mr M's proposition that he be paid out of costs awards was absurd, because mostly he was defending Mr M from claims brought by others and attempting to minimise costs orders against him. He also pointed out that he would not have advised Mr M to preserve his resources for cases with the most merit, if he were merely acting on a contingency basis.

[67] In this regard we prefer the evidence of Mr Haines over that of Mr M.

[68] It is clear that even after having such a close, and financially intertwined relationship, after Mr M was declared bankrupt, he blamed Mr Haines and has pursued him assiduously.

[69] Our somewhat unfavourable assessment of Mr M's evidence in this regard is, we note, consistent with other judicial comments made about him, although we point out that we reached our view independently of such comments. In one of the pieces of litigation, His Honour Churchman J referred to Mr M and Mr B in the following terms:

> "[49] [Mr B] has clearly acted in concert with his brother-in-law [Mr M], in pursuing the latter's vendetta against the first applicant. (Mr Haines was the first applicant).[23]

[70] We also note Mr McMenamin's view that "… *in relation to the alleged dispatch and receipt of important data, as will be apparent later in this report, there is a denial of receipt by both [Mr M] and his supporters in circumstances where it is advantageous to their claims to do so*".

[71] An example of Mr M's somewhat distorted thinking before this Tribunal occurred when he was questioned about the $20,000 advance that had been made to him to purchase a boat from the funds borrowed in Mr Haines' name. He denied that this meant that this was a loan advance to himself (Mr M).

[72] A further example of Mr M's lack of credibility was in his insistence that the exhibits in the affidavit sworn by him in support of the Creditor's Proposal to the High

[23] *Haines & Ors v [Mr M] & Anor* [2019] NZHC 2169.

Court, were added after he swore the affidavit. For this to have occurred, it would have involved a conspiracy between Mr Haines and a Deputy Registrar of the High Court. We are simply not prepared to entertain this possibility. Similar accusations have been made by Mr M against many other lawyers and indeed, against a High Court Judge, who he claimed to have misrepresented his position in a Minute.

[73] In other litigation, Grice J noted that Mr M was in clear breach of an undertaking to the Court in actions he had undertaken.

[74] In another decision Clark J stated:

> "I accept, unhesitatingly, Mr Gambitsis' judgment that order must be brought to what he described as the "absolute chaos Mr M brings to his business relationships". And that Mr M's performance of his responsibilities of a Trustee "should be the subject of judicial scrutiny."

[75] On balance, we find it much more likely that Mr Haines held back from issuing regular invoices to Mr M because of his inability to pay, and that instead, the complicated support (by Mr M) of Mr Haines' financial arrangements in his personal capacity arose. The terms of engagement set out in Mr Haines' letter have never been adhered to.

[76] We then turn to consider whether the invoice rendered, under pressure in the early hours of 23 August, shortly before Mr Haines ceased practice, was in breach of Rule 9. This rule reads:

> "A lawyer must not charge a client more than a fee that is fair and reasonable for the services provided, having regard to the interests of both client and lawyer and having regard also to the factors set out in rule 9.1."

[77] Rule 9.1 factors are:

> 9.1 The factors to be taken in account in determining the reasonableness of a fee in respect of any service provided by a lawyer to a client include the following:
>
> (a) the time and labour expended:
>
> (b) the skill, specialised knowledge, and responsibility required to perform the services properly:

(c) the importance of the matter to the client and the results achieved:

(d) the urgency and circumstances in which the matter is undertaken and any time limitations imposed, including those imposed by the client:

(e) the degree of risk assumed by the lawyer in undertaking the services, including the amount or value of any property involved:

(f) the complexity of the matter and the difficulty or novelty of the questions involved:

(g) the experience, reputation, and ability of the lawyer:

(h) the possibility that the acceptance of the particular retainer will preclude engagement of the lawyer by other clients:

(i) whether the fee is fixed or conditional (whether in litigation or otherwise):

(j) any quote or estimate of fees given by the lawyer:

(k) any fee agreement (including a conditional fee agreement) entered into between the lawyer and client:

(l) the reasonable costs of running a practice:

(m) the fee customarily charged in the market and locality for similar legal services.

[78] The $1 million fee was said to represent almost two years' work on Mr Haines part. He had purchased the work in progress on Mr M's files from his employer when he transitioned to sole practice in April 2017. In fact, he only paid $20,000 for this work in progress, which he considered just to be a nominal or notional amount and part of the overall tidying up exercise between himself and his former employer. It is not a realistic assessment of the actual value of the work in progress at that stage.

[79] One of the difficulties in assessing the reasonableness of this fee is that Mr Haines did not at any time keep contemporaneous time records. He says that during his employment he adopted the practice of the firm to review the file, note all of the attendances and transactions retrospectively and calculate the time expended on that basis. He says he continued that method in his own new practice. While this practice **may** suffice for very minor matters, when dealing with files of the range of complexity

and importance involved here, we regard this method of time assessment as highly unsatisfactory.

[80] Mr Haines says that he spent over 4,000 hours on Mr M's matters which generally involved him working about 20 hours per week on the M files. He attended Mr M at Mr M's premises[24].

[81] The Court attendances ranged from Tenancy Tribunal level through to Court of Appeal. There were numerous emails and telephone discussions. Mr Haines reported to the Inspector, Mr McMenamin that he made himself available 24 hours a day, seven days a week, every week of the year to Mr M and that some days he received up to 40 phone calls from Mr M.

[82] It is difficult to see how at 20 hours a week 4,000 hours can be achieved in a two year period. Also, as pointed out by Mr McMenamin, it is questionable that 2,000 hours per year were spent, given that the practitioner was ill for two or three weeks in 2017 and was acting for other clients in "*various significant other cases*".

[83] Mr McMenamin points out that there were seven cartons of boxes of Mr M's files made available to him, but "*few of the file notes and memoranda that one might have expected to find in files for these types of proceedings*". Mr McMenamin accepted that the fact that Mr M conducted some parts of proceedings himself and Mr Haines others, would have complicated matters for the practitioner.

[84] Mr Haines also carried out the exercise of using High Court costs scales to assess the value of the Court work undertaken. Mr McMenamin confirms that such time would equate to a little over $345,000 plus GST. That would leave the balance of approximately $655,000 for time spent on non-Court related matters. Mr McMenamin's view was:

> "Standing back and looking at the variety of matters handled for Mr M, the level of complexity, and the demands posed by Mr M's approach to those matters, it is open to the Committee to conclude that the amount of time expended by Mr

[24] Taken at face value, based on the hourly rate Mr Haines claims that Mr M agreed to - $1,000/hour - that would equate to a fee of $4,000,000 plus GST. The mathematics of the hours claimed to have been spent on Mr M's affairs is also problematic – if Mr Haines had worked for 20 hours per week for, say, 50 weeks, that would equate to 1,000 hours per year, which on his account would have meant he would have to have worked four years, and we know that he did not.

> Haines was generally reasonable. But whether it equated to the 4,000 hours claimed by Mr Haines cannot be established objectively with any certainty."

[85] Mr McMenamin went on to analyse the remaining factors under Rule 9.1. In particular the level of skill of the practitioner is relevant here. An hourly rate of $1,000 per hour is an extraordinarily high one. It is charged by a relatively few number of very senior barristers (normally Queens Counsel) who are operating with very high, big-city overheads. At the time Mr Haines was a practitioner of a few years' experience. Although he had a particular interest in the insolvency area and had some successes, he was operating from a home office, in the provinces, and could in no way justify this hourly rate.

[86] In the course of the hearing, we were provided with an article from "Law Talk", 20 July 2016,[25] in which the average hourly rate outside major cities was $253.09 and in small firms $242.13.

[87] We take account of the importance of the litigation to Mr M – at times his bankruptcy was being prevented or at least delayed, thereby giving him time to meet the demands of his creditors. We also accept that he would have been a demanding client who often required the practitioner's urgent attention and work to be done at short notice.

[88] Mr Haines relies on the final assessment of Mr McMenamin, in which he concluded that the Court matters could be assessed at the 1,419.5 hours provided for in the (High Court) Rules, at $500 per hour the total would be $709,750 plus GST. Added to that the non-Court time, which the practitioner said to be 531 hours at $500 per hour, an additional $265,500 plus GST is included. The total of those two amounts is $975,250 plus GST, not too dissimilar from the $1 million plus GST fee invoiced. Mr Haines points to these calculations in support of his defence. We note, however, that the use of $500 per hour, for **every** hour expended, is, in our view, a significant inflation of a "fair and reasonable" charge out rate for a lawyer at this level.

[89] There are further factors to be considered in the assessment of whether the practitioner has overcharged. As part of the discussion around the Cuba Street

[25] Exhibit "1".

proposal, discussed at paragraph [35] above, Mr Haines records[26] that at that point, namely June 2018, he could have expected to render invoices totalling $500,000.

[90] For the invoice to have doubled to $1 million only two months later is difficult to rationalise. This is particularly so in circumstances where the practitioner was acutely aware of the client's dire financial circumstances. We also note that Mr Haines referred to the 4,000 hours figure at that point in June 2018.

[91] Finally, there is the context in which the invoicing took place. That is within the suggested Creditors Proposal, in which Mr Haines was advising that at least $2 million worth of "*friendly*" creditors would need to be found to vote in support of the proposal.

[92] There was a meeting on 22 August 2018 (which was recorded by Mr M, the transcript of which runs to 66 pages) (not objected to by Mr Haines). Relevant to this issue, and to Charge 3, are the following statements made by Mr Haines at this meeting:

> "Because when you look at what this collection of debts is going to look like to give the majorities and everybody else, there's going to be a pool of $2.5 million, say, of paper debt sitting there, okay?
>
> Because you're suddenly counting every single bit of paper, okay, to make sure you've got the voting rights there, so all of [A's] debts, all of [R's] debt…
>
> To make the number as big as bad a number as possible.
>
> So you have a majority, okay. That's why as part of it I'll be filing the $100,000 monies, **I'll be putting in an invoice enough to cover to make sure we get the ratios right, okay?** Don't expect it to be jumped on or paid or anything like that, its there for the voting purposes because you need more votes in your favour, okay?
>
> **And that's what this is about, this is about making sure the deck's stacked in your favour and the downside is minimised.**
>
> **Mr M**: So you are going to put invoices in as well?
>
> **Mr Haines**: Yeah, you need me to get the numbers there. Everybody needs to…
>
> **Mr Haines**: Okay, which is why I said you don't start paying everybody, you bank the money and save it as it comes in and then when you go to that meeting you can say "hey, new proposal everybody, I'm floating it today, the trustee will float it today".

[26] See quote contained at para [36].

Mr M: Mind you with your debt in there it knocks the value of the – knocks the value of Bay –

Mr Haines: Of what they're getting out.

Mr M: Yeah, and also the 120,000 to –

Mr Haines: It works, this is the sensible thing to do, just trust me.

Mr M: I see what you mean.

Ms F: So the only thing he has to pay is the levy to keep up?

Mr M: No, I'm not talking about that, I'm talking about (inaudible) by Quentin putting his fee in there now –

Mr Haines: Exactly….

Mr Haines: …**and I just need to jig the numbers to make sure that we have got that…three quarter majority, to tip it across the line.**

Mr M: Yeah.

Ms F: So this invoice that you're putting into the pool

Mr Haines: Yeah

Ms F: Does [Mr M] have to honour that, or is that some other arrangement you've got for fees or –

Mr Haines: No, that gets treated – that gets treated like everything else, okay? So what will happen is under the official trustee thing, like everybody else you're going to get X number of cents in the dollar; great, wonderful. That money's going to go straight back around, it will go around the merry-go-round back into FICO or (inaudible) on the other side…

Mr Haines: I've never worried about billing fees and I don't sit there, you know, recording time every 5 seconds etc.

Ms F: Because a lawyer would get that hourly rate plus costs awards against –

Mr M: Hundreds of hours the body corp, hundreds of hours.

Mr Haines: The technical – okay, technically there's way back in beyond (inaudible) a letter of engagement. That doesn't matter, okay, lawyers can bill on a whole range of different processes, time spent, results.

Mr M: Agreements.

Mr Haines: Whatever they want to do, okay?

Ms F: Cases is won, yeah.

Mr Haines: **The important aspect for the purpose of this exercise is that we're going to be filing an invoice by agreement for work done. What I'll do is on the invoice we'll just list all the cases we've done and nobody's going to be able to dispute that.**

Ms F: And the trustee can't dispute it and neither can –

Mr Haines: **Because its agreed."** (emphasis added)

[93] There was then a discussion that that invoice to be put into the pool by Mr Haines (for his fees) would be treated alongside other creditors as "…*going to get X number of cents in the dollar* …".[27]

[94] It is noteworthy, as Mr Moon has submitted, that nowhere in the transcript of the discussion on 22 August is there any reference to the level of fee that was in fact rendered – in an invoice sent to Mr M at 3.28 am on the morning of 23 August. This was immediately prior to the drafting and settling of the creditor proposal itself, for presentation to the High Court later that morning, but with no opportunity for Mr M to obtain independent advice, and Mr Haines not suggesting that he should be so advised.

[95] Reading the transcript as a whole, the overwhelming impression is of a fee being set, not with regard to the requirements of Rule 9 and the factors referred to at Rule 9.1, or in the context, as Mr Moon put it, of a "genuine fee setting exercise at the end of a long engagement", but rather with the primary motivation of setting a fee that could be presented in the context of a creditors proposal, and which had the effect of inflating the level of support that proposal would gain.

[96] That impression is also supported by the fact that, as the transcript reflects, Mr Haines clearly told Mr M that he would not have to pay the invoice.

[97] Also in Mr Haines' 21 August 2018 letter setting out the basis and merits of a creditor's proposal to the Court under the heading of "fees", Mr Haines stated:

---

[27] Mr Haines recommendations also included:
1) People advancing Mr M money (even $5) to gain a right to vote, and
2) Finding ways to split one person into multiple votes (e.g., Mr B, Mr B's company, and Mr B's mother get a vote each). In Mr Haines case he would hold 2 votes: One via QH Law for $1.15 million, and One for Quentin Haines for $93,425.59.

> "I have raised with you on several occasions the question of my fees. I have not to date rendered a fee note for your work performed … (reference to one particular piece of work) … I have further not rendered any fee note for any of the other work done for you. As part of this process a fair fee is going to need to be agreed even if it is not paid at this point in time. (I will prepare a summary of time spent for you on all matters). You will need my fees for voting purposes as set out below."

[98] And later in that letter:

> "The creditors that support you will need a total combined debt of 2.1 million in order to have a 75% majority. To achieve this number legitimately I will invoice my legal fees at an agreed rate. This will act as a new debt since the Court of Appeal (so no one accused anyone of misleading the Court) and will bring the numbers into line."

[99] Mr Haines relies on the client's agreement to the fee, as recorded in the Creditor's Proposal and memorandum to the Court. He relies on Rule 9.1(k) but this is subject to Rule 9.2 which states: "*The terms of any fee agreement between a lawyer and client must be fair and reasonable, having regard to the interests of both client and lawyer.*"

[100] Mr Haines points out that rendering a fee had been under discussion for some weeks before he emailed it on 23 August. Certainly, there is the email of Mr M on 4 August, in which he complains about the hourly rate and argues that was not the agreed arrangement. However, the total invoice amount was not stated until the 23 August email, sent in the early hours of that morning.

[101] And, as Mr M pointed out on 4 August: *"… but for you to say you are now my biggest creditor is not just an insult to me but has created a very bad situation and conflict of interest …".* It is common ground that Mr M was not offered independent advice at this point.

[102] We do not consider the invoice is fair and reasonable having regard to both Mr Haines' interests, and those of Mr M. However, it is not the Tribunal's role, in the absence of gross overcharging,[28] to undertake a fee revision simpliciter. We must consider whether the conduct in rendering the invoice amount to that which would be regarded by lawyers of good standing as disgraceful or dishonourable. Alternatively,

[28] Section 7(1)(a)(iv).

we must determine whether the lawyer has breached terms of the Act or rules or regulations made under it.

[103] We consider the practitioner's failure goes beyond the dollar value of the invoice itself. We consider it highly improper to render a fee at such an extraordinary level and to then "spring" it on the client at the 11th hour. Mr Haines' failure to recognise the inherent conflict in becoming such a large creditor, given his client's financial circumstances, aggravates the conduct.

[104] Taking into account the unrecorded arrangements, and improper fee practices involved, including lack of contemporaneous recording, and standing back and assessing the fee having regard to all the factors set out above, we regard the lawyer's conduct in rendering this invoice as "disgraceful and dishonourable", so as to constitute misconduct pursuant to s 7(1)(a)(i) of the Act[29].

[105] Having found misconduct under the first alternative pleaded, we do not need to address the other two heads included under Issues 3, or the lesser alternative under Issue 4.

Charge 3 – Issue 5

[106] On all of the available evidence, we cannot escape the conclusion that the invoice was manipulated to achieve the necessary voting structure to support the Creditors Proposal being promoted by Mr Haines (accepting that he saw the proposal as Mr M's best hope of avoiding bankruptcy).

[107] The use of such phrases as "jig the numbers" and other statements quoted at [92] above, along with the email trails between the practitioner and Mr B and Mr M, discussing the proposal, led us to the view that a breach of Rule 2 has occurred. It reads:

> 2 A lawyer is obliged to uphold the rule of law and to facilitate the administration of justice.

[29] We note that similar concerns were addressed by Grice J in *Haines v M* [2019] NZHC 401, at [12]–[19], and [29]-33], with particular reference to not only the Rules, but also the Lawyers and Conveyancers Act (Trust Account) Regulations 2008, rr 8-10.

2.1 The overriding duty of a lawyer is as an officer of the court.

[108] In his accompanying Memorandum to the High Court, filed with Mr M's Creditors Proposal, Mr Haines explained why he was no longer able to act, expressed his concern that Mr M would be unrepresented, and endorsed the Proposal, which contained a schedule in which QH Law, Mr Haines' firm, was shown as a creditor, in the sum of $1,150,000.

[109] We consider the breach was at least a reckless one, if not wilful. He was aware of the duty not to mislead the Court. That is why he advised Mr M that his invoice needed to be treated as a new debt, because it had not been declared in the recent list of assets and liabilities put before the Court of Appeal by Mr Haines on Mr M's behalf.

[110] We consider the Standards Committee has made out this charge, on the balance of probabilities, having regard to the seriousness of the allegation, to the level of misconduct. This is a wilful or reckless breach of Rules 2 and 2.1, which, pursuant to s 7(1)(a)(ii), constitutes misconduct.

Issues to be determined for the M2 charges (LCDT 013/21)

[111] In considering the Rule breaches alleged, the issues could be framed in a number of ways. Essentially, we have considered, along with the technical aspects of the rules, the following:

1. Did Mr Haines put his client's interests first in accepting guarantees from him?

2. Did Mr Haines ensure his client obtained independent advice in relation to all of the transactions between he and his client, namely the Guarantees, the Servicing Terms, and the Advances?

3. Given Mr M's financial and litigation history, should Mr Haines have foreseen the possibility of default by either of them, and future conflict?

4. Was there a point beyond which the conflict could no longer be resolved by independent advice?

The relevant Rules:

Chapter 5

Independence

5 A lawyer must be independent and free from compromising influences or loyalties when providing services to his or her clients.

Independent judgment and advice

5.1 The relationship between lawyer and client is one of confidence and trust that must never be abused.

…

5.4.3 A lawyer must not enter into any financial, business, or property transaction or relationship with a client if there is a possibility of the relationship of confidence and trust between lawyer and client being compromised.

5.4.4 A lawyer who enters into any financial, business, or property transaction or relationship with a client must advise the client of the right to receive independent advice in respect of the matter and explain to the client that should a conflict of interest arise the lawyer must cease to act for the client on the matter and, without the client's informed consent, on any other matters. This Rule 5.4.4 does not apply where–

(a) the client and the lawyer have a close personal relationship; or

(b) the transaction is a contract for the supply by the client of goods or services in the normal course of the client's business; or

(c) a lawyer subscribes for or otherwise acquires shares in a listed company for which the lawyer's practice acts.

Discussion of the Issues

[112] Although there were a number of contentious areas of evidence, it was signalled by counsel for the Standards Committee in his Opening that he only proposed to rely on the evidence gleaned from Mr Haines' version of events to prove the charges as pleaded. In other words, the Committee saw any disputes of the evidence as not material to the task of determining whether there had been Rule breaches, and the manner of those breaches. However, while the Standards Committee chose to rely on

undisputed matters/evidence, where material issues arose on which there was disputed evidence, findings have been made.

[113] We also note that, in closing, Ms Evans, for Mr Haines, made it clear that there was no dispute as to which Rules were applicable.

[114] We record the following evidence as undisputed:[30]

(a) Mr Haines knew Mr M was in financial difficulty and facing bankruptcy throughout the period 2016 to 2018;

(b) Much of Mr Haines' time, which was considerable, under the retainer, was to assist Mr M in resisting attempts by creditors to bankrupt him;

(c) Mr Haines allowed Mr M to provide guarantees for the practitioner's personal borrowing;

(d) Mr Haines believed Mr M had also agreed to the Servicing Terms;[31]

(e) Mr Haines considered the Advances (from the funds borrowed by Mr Haines) to be loans to Mr M;

(f) There was no documentation of any arrangements regarding the Servicing Terms or the Advances;[32]

(g) The lender insisted on independent advice in relation to the guarantees. This was provided by Mr McDonnell. In fact, somewhat unusually, all of the loan documentation was sent to Mr McDonnell, as the guarantor's lawyer rather than remaining with Mr Langford, the borrower's (Mr Haines') lawyer;[33]

---

[30] We reference para [13] of Mr Moon's opening submissions of 23 December 2021.
[31] The Servicing Terms, in the view of Mr Haines, were that Mr M would meet any of his commitments in servicing the loans were Mr Haines unable to do so at the time.
[32] And these are denied by Mr M.
[33] Mr Haines says this was at Mr M's insistence. This is denied by Mr M who says that Mr McDonnell was acting for Mr Haines (see narration of the background in this decision). There is corroboration of Mr Haines' version about Mr McDonell's role, in the report of the inspector, Mr McMenamin.

(h) Mr Haines confirmed in evidence that he did not discuss with Mr M the potential for conflict, or its consequences, and there is no record of independent advice being offered in relation to the Servicing Terms or the Advances;

(i) PLA notices were served by Fico in April 2018 because the loans were in default;

(j) In April 2018, because of the conflict of interest (between Mr Haines as Borrower in default and Mr M as Guarantor) that the PLA notices plainly created, Mr Haines wrote to Mr M suggesting independent advice. Mr M did not take the opportunity of obtaining such independent advice and asked for Mr Haines to continue representing him;

(k) Although Mr Langford was asked by Mr Haines around the same time to supervise the current litigation files for Mr M, no action was taken to ensure this occurred, because Mr M wished for Mr Haines to continue acting for him;

(l) By 22 June 2018 when Mr Haines made the "Cuba Street proposal", the default on the Fico loan remained extant and the degree of the conflict, and interweaving of his respective interests with Mr M was set out by Mr Haines in the Cuba Street proposal;

(m) By 2 August 2018, Mr Haines had described his position as "untenable" in correspondence with Mr M, thus he was recognising that their interests had totally diverged;

(n) On 21 August 2018 Mr Haines provided written advice to Mr M regarding a Creditor's Proposal and then attended a meeting with Mr M and Mr B to flesh out and explain this proposal.

(o) On Mr M's instructions, Mr Haines prepared and filed the documentation for the Creditors Proposal, including a Memorandum to the Court, explaining that he was unable to represent Mr M further since he was leaving practice on 23 August 2018.

[115] In closing, Mr Moon submitted that the issues for the Tribunal to consider "… *concern the proper application of Rules 5, 5.1, 5.4, 5.4.3 and 5.4.4 to facts that are largely agreed*". We accept that submission. We also accept the summary that "*it is common ground that the financial affairs of Mr M and Mr Haines became increasingly entwined*" as time went on – indeed, Mr Haines acknowledged as much in his emails to Mr M, traversed above.

[116] In fact, the potential for conflict arose within weeks of Mr Haines taking on Mr M's retainer. That retainer, although broad, immediately focused on assisting Mr M to avoid bankruptcy. Notwithstanding his client's position, within weeks, he had added to Mr M's contingent liabilities by having, or at least allowing, his client to enter into the guarantees of Mr Haines' personal indebtedness.

[117] From this point forward we consider that the breach of Rule 5.1 occurred by means of the "*compromising influences or loyalties*", which meant that there could be no assurance that Mr Haines was putting his client's interests ahead of his own as postulated in Issue 1, and as required by the Rules.[34]

[118] The answer to Issue 2 is also self-evident. It must have been foreseeable by Mr Haines, and it was acknowledged in his own evidence, that the servicing and guarantee arrangements, if not immediately posing a conflict, must have posed a definite risk of future conflict.

[119] This is particularly so where it is apparent that Mr Haines did not intend to render regular invoices to Mr M, in order to ensure that his income was maintained to a level where there could be no default of the loan which his client was guaranteeing.[35]

[120] Instead, without documentation to record clear obligations. Mr Haines relied on his understanding that if he was unable to meet the commitments, that Mr M would do so. Mr M denies this arrangement, but it is not necessary for us to make a finding in this regard. Either way, Mr M did not make payments when Mr Haines was unable to do so, either because he could not afford to do so, did not wish to, or had no awareness

[34] See also *Sims v Craig Bell & Bond* [1991] 3 NZLR, 535, at 543 L30 – 544 L22, and the analysis of Grice J in *Haines v M* (supra).
[35] And in fact did not render any invoices until the end of the relationship, as set out under the first set of charges addressed.

that he was supposed to. Thereby the loan fell into default and the potential for conflict crystallised into actual conflict in their respective positions.

[121] Mr Haines' own assertion of this agreement to service the loans and to repay various advances from the loans that he made to Mr M, ought to have alerted him to the fact that there must be a breach of Rule 5.4, and in particular Rules 5.4.3 and 5.4.4. These rules are mandatory on their plain wording.

[122] At the point where the actual default was evident, in March 2018, there was an irreconcilable conflict which could not be cured by the independent advice which Mr Haines suggested to Mr M and which he failed to obtain.

[123] The awareness of both lawyer and client of the extraordinary difficulties which had arisen out of these conflicts is recorded in the Cuba Street proposal of June 2018, and the correspondence between them in early August of 2018. But the fact that Mr Haines felt able to put forward the Cuba Street proposal, even couched by a statement that independent advice would be needed, demonstrates his lack of understanding of the impropriety of his continued involvement.

[124] In his email of 3 August 2018 to Mr M, Mr Haines says:

> "I find myself being one of your largest creditors. The current financial situation has reached an untenable position. I have lost control of my financial autonomy because of the level of credit exposure I have to you. If mortgage action is commenced by Fico there will exist a conflict of interest which will prevent my ability to act for you."

[125] As Mr Moon submitted, concerning the last sentence, "*that horse had well and truly bolted*". But, notwithstanding the failure of the proposal to resolve matters, and the clear falling out between lawyer and client in the August correspondence, Mr Haines continued to act and put forward the comprehensive creditor's proposal of 21 August 2018.

[126] Mr Haines relies on having engaged Mr Langford to represent him independently in relation to the borrowings and guarantees, and Mr McDonnell advising Mr M. But this does not assist him sufficiently because the other, undocumented dealings between him and Mr M were not the subject of independent advice.

[127] The blindingly obvious conflict of interest was only compounded by the rendering of a $1.15 million invoice, a few hours before Mr M signed the Creditors Proposal and filed it with the Court.

[128] We accept the submission of Mr Moon that it was "*Mr Haines' responsibility to ensure Mr M understood not only the obligations (and risks) posed by the transactions but also the potential conflict and any consequences for the professional relationship*". It is certainly conceivable that Mr M, who had already come to be somewhat dependent on Mr Haines' advice, would not have elected to proceed with the guarantee and other arrangements, if he had realised that any difficulty arising out of those arrangements might result in Mr Haines being unable to represent him further – such being just one of the obvious scenarios in which such conflicts would in fact arise.

[129] None of this was explained to Mr M. Furthermore, it would have been impossible for anyone to provide independent advice in relation to the Servicing Term and the Advances, given that these arrangements were undocumented.

[130] Mr Moon, in closing submissions points to an aggravating feature of the transactions which emerged from the evidence of Mr Langford. It would appear that the proceeds of the "*Bright*" loan secured against Mr M's property and initially advanced to purchase a property for the practitioner, were not used for that. Some of these funds went to Mr M it would seem, partly for the purchase of his boat. Much of the loan would appear to have been drawn down by Mr Haines for personal purposes. Thus, when he prepared a statement of his financial affairs for the financial adviser, Mr Slater, in April 2017, his statement that the full $250,000 had been "*lent to clients*" was, on the face of it, untrue.

[131] In summary, we find that Mr Haines recklessly breached the terms of all of the above-mentioned Rules so as to constitute misconduct under s 7(1)(a)(ii). It would be possible also to classify the conduct as disgraceful or dishonourable but having found misconduct under the Rule breach alternative we refrain from making such a finding.

[132] Also having made a finding under the more serious alternative we need not consider the lesser alternative of unsatisfactory conduct.

Complaint by Mr R (LCDT 019/21)

[133] Mr Haines is charged with misconduct under alternatives s 7(1)(a)(i) or (ii) and/or (iv) or in the alternative unsatisfactory conduct pursuant to ss 12(b) or 12(c) of the Act.

Background

[134] The background to this charge arose as follows. Mr Haines was engaged by Mr R in respect of two separate matters. Initially he required assistance in respect of his company, to resist a statutory demand, which was for approximately $31,000.

[135] Mr R is a New Zealander, but resides in Australia. His communication with Mr Haines was mainly by telephone and email. He denies that he received the first letter of engagement which has been produced by Mr Haines and had been sent to Deloitte who were the registered office of the company. Although it was claimed that the letter of engagement was sent to Mr R by email, no covering email has ever been provided for that letter of engagement.

[136] Mr R asserts that if he had received the letter and seen the $1,000 per hour figure quoted as Mr Haines' hourly rate, he would have certainly objected to that as "*completely unaffordable*". He did this very thing in relation to the second retainer.

[137] The attendances concerning this company took place between about March and October of 2017.

[138] In August 2017 Mr R approached Mr Haines to also assist him with his matrimonial matters. This time he accepts that he received a letter of engagement from QH Law, quoting an hourly rate of $1,000, but also with a proposed fixed fee of $50,000 "*half up front and the balance on the conclusion of any High Court hearing or whenever the matter is resolved whichever is the sooner*".

[139] An agreement was reached between Mr Haines and Mr R that he could pay off the initial $25,000 over a three-month period. By the end of March 2018, he had paid Mr Haines the sum of $29,975.

[140] The letter of engagement concerning the matrimonial retainer was sent by email on 15 August 2017.[36] On 19 August 2017, Mr Haines said he sent the composite invoice for $59,000. This invoice refers to both the work for the company in relation to the statutory demand and for the relationship property matter, and shows an agreed fixed fee of a total of $50,000 plus GST and disbursements, thereby making up the $59,000.

[141] Mr R denies having received this invoice and stated that he thought the company work was done on the basis of Mr Haines recovering any costs on a successful application and the application was not successful. It has to be said that this version of the costs arrangement is hauntingly close to the description of the fees arrangement with Mr M. Mr M and Mr R are known to each other, and it was in fact Mr M who referred Mr R to Mr Haines for legal advice.

[142] Mr R acknowledges that the bulk of the work for his company was completed by the end of July 2017 and that he was just awaiting a reserved decision from the court.

[143] Over the next six months Mr R and Mr Haines were in contact, with Mr Haines assuring him that progress was being made with the matrimonial matter, and in March 2018 the property which had been the subject of the dispute was sold. Pending final resolution, each party received an initial distribution of $75,000. Mr R's portion was paid to Mr Langford, who had been engaged to act for the vendor (Mr R and his former partner).

[144] On 12 March Mr Haines and Mr R discussed the settlement of the property matter, and the initial distribution which had been made. Mr Haines requested that he be paid the balance of the fee which Mr R took to mean the other $25,000 or so mentioned in his engagement letter. Mr Haines assured Mr R that the matrimonial work was all but wrapped up and would be finalised shortly. There was an email exchange confirming Mr R's instructions to Mr Langford that $30,005 of the funds held by Mr Langford could be paid to Mr Haines in "*settlement or the balance of my account*".

[36] And here, unlike the position with respect to the letter of engagement concerning the company matter, there is email evidence of provision of the letter of engagement and receipt of same by Mr R.

[145] Mr R had agreed to this on the basis that resolution was imminent and did not check the exact amounts paid or owing. Mr Langford, in accordance with these instructions, sent the amount to Mr Haines. Mr R says he had not seen the invoice until it was produced as part of the complaints process. Since he denies that the company work ought to have incurred a fee (given that it was unsuccessful) he considered that the amounts he had paid between 21 August 2017 and 26 March 2018 were in respect of the matrimonial work, not the company work.

[146] Between April and August 2018 there was intermittent contact between Mr R and Mr Haines, but the expected news of final settlement did not arrive. Mr R concluded that no real progress had been made with the matrimonial work and he instructed a new lawyer to take over the file. That lawyer, Ms Gush, had to do a considerable amount of work to complete the matter. Ms Gush uplifted the file expecting there to be a significant amount of material on it, given the fee quoted of $50,000. She was disappointed to find very little on the file.

[147] Mr Haines has subsequently assessed that he carried out 102 hours in respect of this file, but on Ms Gush's evidence that is certainly not apparent. There were no proceedings filed, and she says that it looked like very little work had been done to resolve the primary issue in order to lead to final distribution. She had to start again effectively, nothing had been put on the Court file to respond to the former wife's s 182 application.[37] The 102 hours which is effectively two-and-a-half weeks fulltime was certainly not apparent to Ms Gush from the documents made available and the full investigation of the Court file.

[148] Mr Fowler QC was called to give evidence about the reasonableness of this fee, and he concluded that it would be "*unsafe to conclude*" that the 102 hours of work had <u>not</u> been done. Mr Fowler certainly considered that $1,000 per hour would have been excessive if it had been charged. But he pointed out that since it was an agreed fee, there was no indication of what had occurred in the eleven months of activity and 102 hours of time expended (although not recorded contemporaneously), he made an assessment that $25,000 would not have been excessive.

[37] Family Proceedings Act.

[149] However, Mr Fowler considered that a $50,000 fee would have been excessive for what was achieved and that would have been approximately $800 per hour. Having regard to the type of work Mr Haines' level of experience and the activity, Mr Fowler had no difficulty with $50,000 being an excessive fee for the matrimonial component.

[150] Mr Fowler was not instructed to assess the company fee and accepts that mixing the two matters in one invoice was problematic.

[151] The reasonableness of this fee was also examined by the Law Society investigator, Mr McMenamin. Mr McMenamin struggled to make this assessment because of the composite nature of the bill. He notes:

> "But the bill is addressed to both Mr R personally and to the company with no apportionment between the two of them. There is absolutely no way of discerning who is really responsible for what portion of that bill. The narration on the bill is confusing and contradictory. It states "*fees as agreed*" but there was no actual fee agreed for the company portion, and the fee agreement for Mr R was for an initial payment of $25,000 plus GST at that stage. The rendering of an invoice on those terms at that time is inexplicable and contrary to basic good practice."

[152] Mr Haines had explained to Mr McMenamin that the bill was prepared in that way on the client's instructions and breaking it down could "… *conceivably compromise the tax positions of Mr R and (the company) as the invoice was issue (sic) this way at Mr R's request*".

[153] Mr McMenamin referred to the hourly rate of $1,000 "*far in excess of what could be considered reasonable for a practitioner of Mr Haines' experience and/or for the nature of the proceedings. … Mr Haines was practising out of a semi-rural address and the costs of running such a practice would have been minimal*."

[154] However, he assessed the 41.2 hours said to have been expended on the statutory demand matter at the rate of $500 per hour, which Mr McMenamin considered generous, and the bill was then calculated at $20,600 plus GST.

[155] In relation to the matrimonial matter, Mr McMenamin also canvassed a number of experienced family specialist practitioners who all were astonished at a charge out rate of $1,000 per hour. The range of hourly rates canvassed were $380 to $420 per

hour plus GST. Mr McMenamin then considered an hourly rate of $400 plus GST "*at the most for a person of Mr Haines' experience for the relationship property work*".

[156] Mr McMenamin's view was that since the matrimonial work had not been completed by Mr Haines, and given the agreed fee arrangement which saw that the second $25,000 was only on completion of the matter, that only $25,000 plus GST would be a fair and reasonable amount for the relationship property retainer.

[157] Mr McMenamin's evidence was not challenged at the hearing.

[158] Mr Haines was cross-examined about this work and agreed that the invoice was for both matters. He accepted that although the company letter of engagement was sent to its registered office that it may not have reached Mr R.

[159] He now accepts that $1,000 per hour is excessive and acknowledges that for most clients he has entered into fixed fee arrangements. That approach on the practitioner's behalf appears to have been reached subsequent to receiving the independent assessment of Mr Fowler QC. Mr Haines says that the letter of engagement was "*clumsily drafted*" but there was an agreement that the $50,000 would be for both matters.

[160] He agreed in evidence that very little, if any, matrimonial work had occurred by the time of the invoice, and that the invoice covered prospective work. It could be said that the invoice "*superseded*" the letter of engagement.

[161] Mr Haines conceded however, that no specific figure had been discussed with Mr R for the company work. There are no emails to the client whatsoever about this work and he agreed there was no evidence of a covering email for the invoice, which one would have expected to have been available from his records.

[162] Mr R conceded that he made his complaint after he had a discussion with Mr M about Mr Haines, after the latter two had fallen out. Finally, Mr R says that he was not aware of Mr Haines leaving practice until October 2018 (two months after Mr Haines ceased practice).

Issues to be Considered under R Matter (LCDT 019/21)

Charge 1

1. Did Mr Haines fail to send his client a letter of engagement?

2. If not, was this a wilful or reckless breach such as to constitute misconduct? Or was it a straight breach, thus amounting to unsatisfactory conduct?

Charge 2

3. In relation to the matrimonial engagement:

   (a) Did Mr Haines receive funds in advance for work which had not yet been done?

   (b) Did Mr Haines pay these funds into his personal bank account before invoicing, rather than paying them into a trust account? If the answer to either of these questions is “yes”:

      (i) Does this amount to disgraceful or dishonourable conduct?

      (ii) If not, is it a wilful or reckless breach of the Act and Rules?

      (iii) If not, is it unsatisfactory conduct?

Charge 3

4. In the composite invoice of August 2017, did Mr Haines overcharge for the matrimonial engagement to an extent that it was:

   (a) Disgraceful or dishonourable (s 7(1)(a)(i)? or

   (b) A wilful or reckless breach of the Rules (s (7)(1)(a)(ii)? or

   (c) Grossly excessive (s 7(1)(a)(iv)?

(d) If not, was his conduct unacceptable, or a breach of the Rules simpliciter so as to constitute unsatisfactory conduct?

Discussion of the Issues

Charge 1 – Issues 1 and 2

[163] While we did not find Mr R to be a particularly balanced witness, he clearly having had an axe to grind with Mr Haines, we accept his evidence about not having received the first letter of engagement.

[164] Given that he immediately responded to the second letter of engagement with an objection to the $1,000 per hour rate set out in it, stating that he could not afford it, we find on balance that he is likely to have had the same reaction had he received the letter of engagement for the first (company) engagement. We note that Mr Haines accepted that it was possible that the first letter of engagement had not been received by the client, there had been no discussion with him about it, and he had no covering email that he could produce to the Tribunal.

[165] We find that no clear terms were established with the client, although we reject the proposition advanced by Mr R at a late stage that the company work was on a contingency fee basis. We reach this view because there is no evidence of such an arrangement, Mr Haines was newly in practice and it seems unlikely he would undertake such contingency work; and, as referred to above, it mirrors the allegation of Mr M, with whom Mr R had discussed Mr Haines.

[166] We find a breach of Rule 3.4 in relation to the provision of information to clients however, we do not consider on this occasion, that to have been a reckless or wilful breach on Mr Haines' part. Given the high hourly rate it was unacceptable and unprofessional conduct for him to have not followed up with the client, thereby meeting a definition of s 12(b) as well as s 12(c), in contravening the Rules.

[167] We therefore make a finding of unsatisfactory conduct rather than misconduct in respect of this charge.

Charge 2 – Issue 3

[168] Since there is no clear evidence as to the arrangement for payment of the company's work, and no fixed fee arrangement, we are not assisted by the composite fees invoice prepared by Mr Haines on 21 August to clarify the matter.

[169] Two large payments arrived from Mr R into Mr Haines' personal bank account within days of the invoice, intended to meet the first part of the fixed fee for the matrimonial retainer. On the balance of probabilities, we find that these were funds paid in advance for work which had not been undertaken, and instead of being held in a trust account[38] were placed into the personal bank account of the practitioner, where he had use of the funds immediately on their receipt, but without having rendered an invoice such as would permit deduction.[39]

[170] Mr Haines argues that, because the work for the company had been completed before the August invoice, these fees cannot be seen as having been taken in advance. However, in the absence of contemporaneous time records and (the intentionally) vague narration and lack of detail in the invoice itself, we do not consider that Mr Haines has successfully rebutted the inference that the funds paid by Mr R were intended to be in respect of the matrimonial retainer first half payment, as agreed just a few days before.

[171] In submissions, counsel for Mr Haines, Ms Evans, asserted that "… *Mr Haines did not charge an hourly rate for any of the work performed for either Mr R or (the company), instead a fixed fee was agreed and charged* …".

[172] The invoice itself refers to the attendances for the company as follows:

> "Statutory Demand pursuant to letter of engagement 4 April 2017 and other litigation and negotiation matters with BC68792."

[173] There is no mention of a fixed fee in that narration, nor was there in the letter of engagement which we have found, on balance, did not reach the client.

---

[38] As required by the Lawyers and Conveyancers Act (Trust Account) Regulations, r 10.
[39] Regulation 9. And see, generally, the analysis of these requirements in *Sims v Craig Bell & Bond* (supra) at p 538 line 12.

[174] There being no evidence of the company fixed fee, and for the reasons set out above as to the intended purpose of the payments made by Mr R, the answer to the questions posed in Issues 3(a) and (b) are both "yes".

[175] We therefore consider the question of whether this amounts to disgraceful and dishonourable conduct. We consider that taking the benefit of fees before carrying out work, even if they are based on a fixed fee agreement, would be regarded by lawyers of good standing as disgraceful or dishonourable.

[176] Even giving Mr Haines the benefit of the doubt that, when taking the R payments, he had in mind the work he had already done for the company; without a specific accounting for the work, that is totally unacceptable. Furthermore, when taking the balance (the $30,005 was later corrected to $29,600) from the interim distribution held by Mr Langford, given how little he had done on the matrimonial retainer, without specific detail and accounting, this was also reprehensible.

[177] While we note the cautious evidence of Mr Fowler, from Ms Gush's evidence of how little had been done,[40] we consider the "hours expended", constructed by Mr Haines retrospectively, are highly unlikely to be accurate.

[178] We therefore find misconduct in respect of Charge 2, under s 7(1)(a)(i). We do not consider that there is any necessity to consider Issues 4(b), the alternatives for misconduct, or the lesser alternative of unsatisfactory conduct.

Charge 3 – Issue 4

[179] Ms Evans submits that as a matter of policy, we ought not to consider the "*overcharging*" charge. She points out that this was originally lodged as a complaint in which it was alleged Mr Haines wrongfully had Mr Langford pay him the $30,005, without the client's instructions. She accepted that, had that been the case, the Tribunal would have had the ability to consider the matter outside the two-year timeframe for fees complaints, which had been passed. We tend to agree with the approach, that, in the absence of other aggravating conduct, the Tribunal is not intended to be a fees reviewer.

[40] Noting she had the practitioner's file and had carefully inspected the Court file.

[180] That argument would not succeed in respect of grossly excessive overcharging, which is one of the limbs of misconduct, under s 7(1)(a)(iv).

[181] However, the evidence does not, in our view, reach the point of grossly excessive charging in this instance.

[182] The expert evidence (Mr McMenamin and Mr Fowler QC) is clear that had the $50,000 total been charged purely in respect of the matrimonial matter then it would have been a gross overcharging and certainly that any application of more than $400 an hour for a practitioner of Mr Haines' experience would have been quite improper. So that the taking of the full fixed fee, without completing the matrimonial retainer, which he did not, would have been improper.

[183] However, that would be to disregard any remuneration for payment for Mr Haines' attendances in the company matter, and we have rejected the notion of a contingency fee.

[184] While the appalling records and invoicing practices adopted by Mr Haines makes the task of assessing how much can properly be regarded as having been for the company work, it is clear that he did expend some considerable time on this work and that ought not to go unrecognised. This charge only seeks to assess the work carried out for the matrimonial work and if it is accepted that he was entitled to the first half of the fixed fee, namely $25,000 plus GST and disbursements, the evidence of the experts being that was <u>not</u> excessive, then the balance retained by Mr Haines cannot be entirely attributed to the matrimonial work.

[185] We do not consider the Standards Committee has established, on the balance of probabilities, that by the end of the retainer, we ought to regard all of the funds paid as having been for the matrimonial retainer only and therefore excessive.

[186] For those reasons we propose to dismiss Charge 3.

Fourth Set of Charges – Mr C Complaint (LCDT 014/21)

Background

[187] This complaint covers periods both when Mr Haines was an employed solicitor with Simpson & Co and later when he commenced practice on his own account. Mr C initially engaged Mr Haines on 5 July 2015 to represent him in obtaining an annulment of his bankruptcy. By September 2015, having refined the scope of the annulment work, Mr C was offered a fixed fee of $120,000 with "*50% payable on acceptance, with the balance being payable on conclusion of the assignment*".

[188] There was a second retainer commencing in July 2015 which related to a potential negligence claim against Mr C's former solicitor. That was governed by a letter of engagement from Simpson & Co dated 5 July 2015.

[189] By July 2016 Mr C's bankruptcy had been successfully annulled. Mr C is clear that he was very pleased with this work which he says was carried out for him by Mr Haines to a high standard, and he has no argument with the fee paid.

[190] He then instructed Mr Haines to progress the negligence work. In order to do so Mr Haines arranged for accounting firm, Deloitte, to calculate a potential quantum for the claim and a brief of evidence. Deloitte accepted that engagement but on the condition that $20,000 would be paid to either them directly or the Simpson & Co trust account prior to them commencing any work.

[191] On 2 August 2016 Mr Haines confirmed to Deloitte in an email that his client accepted their terms of engagement:

> "He is in the process of depositing funds into our trust account. I'm instructed that $10,000 will be deposited in the next day or so and a further $10,000 will be deposited at the end of the month."

[192] Between July 2015 and 31 March 2017, Mr C paid or had funds paid on his behalf, approximately $90,000 to Simpson & Co, based on invoices received.

[193] However, further payments were made by Mr C, in response to requests from Mr Haines, in the period from July 2015 to March 2018. They were paid either in cash or directly into Mr Haines' personal bank account as follows:

(a) In year ended 31 March 2016 approximately $60,000.

(b) In year ended 31 March 2017 approximately $80,000 (Mr Haines says $56,500).

(c) In the year ended 31 March 2018 approximately $110,000 (Mr Haines says $100,611).

[194] These amounts were not represented by any invoices, either from Simpson & Co or QH Law, Mr Haines' firm.

[195] At no time did QH Law (which operated from 1 April 2017) operate a trust account.

[196] No letter of engagement was issued in respect of the negligence work, when Mr Haines took that with him from Simpson & Co to his new firm.

[197] Although Mr C paid $20,000 to Mr Haines between August and October 2016, to cover the Deloitte's fee, none of these funds were placed in the Simpson & Co trust account or otherwise set aside to protect the assurance that had been given to Deloitte by Mr Haines. Nor did Mr Haines inform Deloitte that the funds had not been paid into their trust account. As well as there being no invoices for the payments made by Mr C, set out above, nor were any receipts issued or any accounting given to Mr C for how the funds had been applied (for example, by reference to the progress of the negligence work).

[198] Mr Haines said that there was significant other work that he undertook on behalf of Mr C and also on behalf of their mutual accountant Mr X, and that the work carried out for Mr X absorbed some of those funds.

[199] There is no record of instructions from Mr C to undertake a broader range of work and he denies that this occurred, saying that he attended to most of the work Mr Haines reported in his evidence, himself. Furthermore, Mr C had not authorised at any time that his funds be applied to meet fees arising on behalf of Mr X.

[200] Mr Haines has asserted that in respect of the first fee, the bankruptcy annulment fixed fee of $120,000, that there was an arrangement that would be shared equally

between his firm and himself. Mr C says there was no such arrangement and he had never met the late Mr Simpson, principal in the firm and Mr Haines' employer, in order to make such an arrangement. There is no written record of any such agreed split.

[201] Although Mr C was aware that he was making payments into two different bank accounts he says "*I simply followed Quentin's directions and also paid any invoices I received. I thought both bank accounts were Simpson & Co accounts. I know now the second one was Quentin's personal bank account*."

[202] Mr C thought that Mr Haines was working on his negligence claim from mid-2016 until August 2018 when Mr Haines ceased practice.

[203] Mr C had been impressed with the work Mr Haines had done on his bankruptcy annulment and indeed he and Mr Haines became friends, spending time with each other when Mr C, who resides on an offshore island, was in town, even staying at Mr Haines' home from time to time.

[204] Mr C recounts that about the time that Mr Haines set up his own firm "… *the requests for payment became more frequent (each fortnight or so) and Quentin would ring me up and say something like "look [name], I am strapped, I am in a bad situation, I worked really hard on your file" and would rattle off what he had done*."

[205] Mr C had no reason to doubt that Mr Haines was working hard on the file and so would send the money through, often at $5,000 at a time.

[206] Then towards the end of their relationship, in 2018, Mr Haines sought a loan from his client according to Mr C. "*Quentin rang pleading for a temporary loan of $50K to save his house*".[41] Mr Haines apparently assured him it would be repaid within one to two weeks maximum. No independent legal advice was suggested to Mr C and the urgency of the situation and guaranteed quick repayment was emphasised. Repayment did not occur. Mr Haines denies the existence of any such loan.

[207] Mr C says that at some point he became concerned about the total amount that had been paid with no invoices, receipts or anything in writing concerning the claim. He then became aware that Mr Haines was facing criminal charges and would have to

[41] In his initial complaint Mr C gave a figure of $45,000 for the loan.

stop being his lawyer. He says "*in wrapping up his work for me Quentin confirmed the claim had been filed with the court*", referring to the negligence claim which was the subject of the retainer.

[208] When Mr Haines passed Mr C's file to a new lawyer that lawyer confirmed that it only comprised a few pages and that no negligence claim had been filed.

[209] According to the Standards Committee's case, at some point after 23 August 2018, but before 14 November 2018, Mr Haines offered to refund $55,000 to Mr C but this offer was withdrawn after Mr C made a complaint about Mr Haines to the Police. It is stated that Mr Haines was going to borrow to repay the money, thus the funds had obviously been spent by him. In our view, the position goes beyond a mere offer to repay, given Mr Haines letter to the Lawyers Complaints Service of 14 November 2018.[42]

[210] Mr C made a claim against Mr Simpson's estate and received $72,000 from Simpson & Co's insurers, which included the Deloitte $20,000 that had never been paid to them. Mr C made his complaint to the Law Society.

[211] The police complaint has complicated matters somewhat in that the police advised there was a current investigation (as at their letter of 12 March 2020) and for this reason Mr Haines has, quite understandably, claimed his right to silence in respect of some of the C matters.

[212] Normally, any criminal charges which related to the subject matter being addressed by this Tribunal would have preceded the hearing of these charges, however it would seem that the Police investigation has stalled and we have been asked to expedite this hearing by both counsel.

[42] See discussion at [222] below.

Issues for Determination – C Complaint (LCDT 014/21)

Charge 1 – Issues 1 and 2

1. Did Mr Haines receive client funds directly into his personal account without issuing invoices or receipts?

2. If yes, does this constitute misconduct?

Charge 2 – Issues 3 and 4

3. Did Mr Haines conduct himself appropriately with respect to the “Deloitte funds”?

4. If not, does this constitute misconduct or some other level of culpability?

Charge 3 – Issues 5 to 8

5. Did Mr Haines misuse client funds by applying them to pay for attendances for another client?

6. Did Mr Haines misinform Mr C about the accounts into which his funds were being paid?

7. Did Mr Haines borrow funds from Mr C, and if so, did he ensure independent advice was provided to the client?

8. If any of the above are answered in the affirmative, does that amount to misconduct?

Discussion of Issues

Charge 1 – Issue 1

[213] This charge concerns the period when Mr Haines was an employee of Simpson & Co. The letter of engagement for Mr C in July 2015 set out Mr Haines’ hourly rate and all of the obligations that the firm had to the client. This includes a statement that

"*we maintain a trust account for all funds which we receive from clients (except monies received for payment of our invoices*). …" This engagement was modified by the letter of 7 September 2015 offering a fixed fee of $120,000 plus GST and disbursements. As already indicated, 50 per cent was payable on acceptance and the balance at the conclusion of the assignment. This letter only modified the contract between lawyer and client as to the total amount of the fee to be charged, all other obligations remained in place.

[214] There is no mention in the letter of 50 per cent being payable to Mr Haines directly or indeed any arrangement which would indicate to the client that the firm had any specific arrangement with Mr Haines concerning fees. Mr Haines said he had a private arrangement with Mr Simpson. The latter is unable to verify this because he is now deceased.

[215] The point we make is that the terms of engagement still required funds to be held in trust until invoiced and that the period from July 2015 until 31 March 2017, when the arrangement with Simpson & Co ended, Mr C paid for non-invoiced work between $56,500 (as conceded by Mr Haines) and $140,000 (as pleaded by the Standards Committee). This is in addition to the invoiced amounts paid to Simpson & Co of $90,000 over that same period.

[216] It is common ground that the practitioner issued no receipts for those monies received directly by him. Mr Haines claims that Mr C was well aware that he was paying money into his personal account, however this is denied by Mr C who said he simply paid funds into the account numbers he was given, or those given to his partner who also arranged for the payment of funds at times.

[217] Mr Haines attempted to impugn the credibility of Mr C by reference to previous convictions for dishonesty. We have read the sentencing notes (following a guilty plea) relating to those convictions and we do not consider them to be particularly relevant in assessing the value of Mr C's evidence in the matter before us.

[218] We found that Mr C presented as a balanced and truthful witness, whose evidence was not only backed up by banking records, but also by the offer, later described by Mr Haines himself as an agreement, to repay him $55,000. Where Mr C's evidence differences from Mr Haines' we prefer the evidence of Mr C.

[219] In contrast to Mr M and Mr R, both of whom clearly had significant animosity towards Mr Haines, Mr C was able to express how let down he felt by Mr Haines but also referred to the excellent work that Mr Haines had done for him in respect of the bankruptcy annulment.

[220] He was clearly strung along by Mr Haines for many months, in respect of the negligence retainer, making more and more payments in order to progress that matter, when in fact the practitioner had done very little work on his client's behalf but was clearly in need of cash and therefore making demands of him. During the financial year which represented Mr Haines' first year in practice, Mr C paid him directly about $100,000 without the provision of any invoice or receipt or written progress report about the negligence work.

[221] We also find that these conclusions are supported by what Mr Haines himself said, in responding to the Lawyers Complaints Service, on 14 November 2018[43]. First, with respect to the Deloitte invoice, Mr Haines said:

> "…Mr C completed the letter of engagement on 29 July 2016…and I sent the email to Deloitte on 2 August 2016. I wrote to Deloitte stating "He is in the process of depositing funds into our trust account. I am instructed that the $10,000 will be deposited in the next day or so and a further $10,000 will be deposited at the end of the month"…I was aware that an invoice had been issued by Deloitte (this was probably December 2016 or January 2017). This invoice arrived via post and I would have placed it into the bag to go to the accounts part of Simpson & Co in Paraparaumu. Over the summer break I met with Mr C to discuss this matter. It was at this time that I realised that Simpson & Co was not holding funds for Mr C.
>
> There appears to have been a misunderstanding in communications between Mr C and myself at this point in time. The net results is that funds were never deposited into the Simpson & Co trust account. I again take full responsibility for not following this up. I…did not follow up this issue and it should be expected."

[222] Second, Mr Haines went on to say, in the same letter, that:

> "Over the period to 31 March 2018 Mr C paid a further $100,611. These funds relate to the ongoing professional negligence claim, a review of a criminal conviction defence and possible appeal (handled in the District Court by another lawyer), no appeal was ultimately pursued and mortgagee action and a refinance of the hotel Mr C owned in the Waikato. I have previously agreed to pay $55,000 of this. I am in the process of organising finance to achieve this." (emphasis added)

[223] Reverting to the Deloitte aspect, Mr Haines then said:

---

[43] BOD, MC4, p 48 – 51.

> "Given the sum of money paid to me by Mr C I can understand how he has formed the view that he's paid for the Deloitte invoice. As stated above I take full responsibility for the situation…
>
> In early September 2018, whilst on holiday, Mr O'Connor [Mr Haines' former lawyer] contacted me about the Deloitte invoice noting it had not been paid and stating there was a claim to Simpson & Co's PI insurer. I immediately recognised my errors and offered to settle the matter."

[224] In his concluding comments in the same letter, Mr Haines said:

> "In preparing this response to this complaint it has come to my attention that there have been a number of breaches of the rules. I accept full responsibility for not following up this invoice in a timely manner. The other breaches come [sic] about at a time of considerable personal stress to myself with the breakdown of my marriage. These stresses have in hindsight led to a lack of judgment [sic] on my part…"

[225] Despite having agreed to repay $55,000 to Mr C, which according to his letter dated 14 November 2018 Mr Haines was arranging finance to effect, the evidence is that no such repayment has ever been made. However, as the Standards Committee has submitted, the fact that Mr Haines had agreed to pay $55,000 to Mr C "is clear evidence of overpayment by Mr C".

[226] We view this as a reprehensible abuse of his client's trust.

Issue 2

[227] In circumstances as described above we most certainly consider that this conduct, as established on the balance of probabilities even as conceded by the practitioner himself, would be considered disgraceful and dishonourable conduct by lawyers of good standing.

[228] Equally, it could comprise misconduct under the second alternative pleaded, namely a wilful or reckless disregard of the Rules, particularly those rules which prohibit the lawyer receiving funds on behalf of a client without invoice and without holding in trust.[44]

[44] Rules 9 and 10 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

Charge 2 – Issues 3 and 4

[229] Mr Haines concedes that he fell down in his obligations to Deloitte but says that this was simply because he failed to follow up at a difficult time, when he was leaving Simpson & Co. This would not appear to accord with the timing of the assurance and the payment subsequently made by Mr C to fulfil the obligation to Deloitte, which was some months earlier.

[230] Mr Haines points out that as soon as he learned of this default on his part that he paid the $5,000 insurance excess to the estate of the late Mr Simpson (following Mr C having made a claim against it). It is clear that over the relevant period when the funds ought to be have been paid into Simpson & Co's trust account and set aside for Deloitte, that Mr Haines was receiving the funds into his personal account. As stated, no invoices or receipts were issued for these funds.

[231] Instead of diligently accumulating the funds and forwarding them to Deloitte as he was obliged, Mr Haines received and applied these funds to his own use. We regard this as a fundamental breach of the trust underlying the fiduciary relationship of lawyer and client and also breaches the rule about always placing the client's needs ahead of the lawyer's. We consider this goes well beyond the level of negligence or incompetence set out in s 241(c) of the Act and once again, reaches the standard of misconduct as either disgraceful or dishonourable[45] or a wilful or reckless contravention of the Rules.[46]

Charge 3 – Issue 5

[232] In his response of August 2021 to the charges, Mr Haines admits that while at Simpson & Co he was also retained by Mr and Mrs X "… *to defend various proceedings that were created because of their roles as trustee and accountant for Mr C*". Mr Haines goes on to say, "*Mr C agreed to cover their respective legal fees pursuant to the indemnity principles associated with trustees*". Mr C denies that he gave any authority whatsoever to Mr Haines either when he was at Simpson & Co or subsequently to use funds that had been paid by him to Mr Haines, for attendances on behalf of Mr and Mrs X. Mr Haines has been unable to provide any written authority

[45] Section 7(a)(a)(i).
[46] Section 7(1)(a)(ii).

to support his position. He is obliged in terms of the trust accounting rules to have a written authority in order to pay out from client funds for such a third party purpose.[47]

[233] We are satisfied that the Standards Committee has established on the balance of probabilities, and indeed it is not really denied by Mr Haines (partly because of his claiming his right to silence), that funds were used in this manner. Notwithstanding that right, the absence of any written authority speaks for itself. He has not been able to provide a Client Authority to the Tribunal to support the application of the funds in the manner he asserts.

Issue 6

[234] We reject Mr Haines' evidence that Mr C knew that he was paying funds into his personal account rather than to the Simpson & Co account, or a trust account pending invoicing for attendances. Mr C's straightforward evidence was that he simply had requests from Mr Haines regularly (particularly after he commenced practice on his own account) for the payment of funds and that he paid into the account nominated. We accept Mr C's evidence.

Issue 7

[235] Mr C alleges that the last $45,000 or $50,000 was for a loan advanced to Mr Haines at his urgent request. Given the level of funding that Mr C had already provided to Mr Haines, and having regard to the lack of evidence of work on the negligence file, it could not feasibly be accepted that this was for work undertaken already.

[236] Since we are aware from the proceedings which we have heard concurrently, that Mr Haines was in an extremely perilous position financially at this stage, we consider that Mr C's account of the urgent request for a loan "*to save his house*" is credible. It has not been suggested by anyone that independent advice was provided to Mr C and it is clear that he did not recover the funds advanced, despite Mr Haines' agreement to repay $55,000 at an earlier date.

[47] On Mr Haines' evidence the amount misused in this way was $56,500.

Issue 8

[237] We have answered all three questions under this charge in the affirmative and cumulatively consider that they amount to misconduct as being conduct that lawyers of good standing would regard as disgraceful or dishonourable.

[238] Mr Haines had established a close relationship with his client and on the back of his successful annulment of the client's bankruptcy, retained his complete confidence. To simply keep demanding money so persistently and in such large sums without any proper accounting is utterly disgraceful in any lawyer.

[239] We accept the submission of Mr Moon that, having become friends, there was an increased need for "*clear and transparent arrangements between the two men, recorded in writing*". They were not.

General Comments on Credibility and Conspiracy Allegations

[240] Mr Haines alleged that Mr C, Mr R and Mr M were not only united in their efforts to discredit and harm him professionally, but that they were also involved in a conspiracy to defraud the New Zealand Law Society Fidelity Fund by means of the false claims that they raised in these proceedings. Mr Haines initially relied on supporting evidence of Mr Kooiman and Mr Slater, particularly the former in this regard. We do not consider it necessary or indeed proper for us to comment about the motives of these complainants, because on the admitted facts alone the Tribunal has been able to make findings against Mr Haines.

[241] Many of the allegations were, by the conclusion of the hearing struck from the affidavits of Messrs Slater and Kooiman in any event, by agreement of counsel. Following some questioning of one of the witnesses during the hearing, there was a discussion about admissibility of some of that evidence in relation to consideration of the first set of charges, the evidence of which had closed (in the view of the Standards Committee). Some of this related to the Cuba Street proposal and what had been said at the meeting about that. Since that proposal did not proceed, it has only been considered by the Tribunal in the sense of demonstrating Mr Haines' lack of understanding of conflict merely by making the proposal. Accordingly, we have not given it much weight.

[242] And insofar as the fees arrangement between Mr M and Mr Haines is concerned, we make it clear that, even in the absence of the evidence of those two further witnesses, we have rejected Mr M's account of the fees arrangement[48] as simply not credible.

Further Comments

[243] Although a matter for the penalty hearing to be held, we consider it fair to signal to Mr Haines that we consider that his misleading of Mr C about the extent of work done on the negligence claim is an aggravating feature.

[244] Secondly, although he has not specifically been charged with the conflict of interest in respect of his borrowing from Mr C, we consider that aspect to also be an aggravating feature of his conduct overall in relation to that client.

[245] Thirdly, we consider it to be an aggravating feature that Mr Haines, having clearly agreed to pay $55,000 to Mr C on the basis that he accepted Mr C had overpaid him, and having advised that he was arranging finance for that purpose, has failed to make such payment, because Mr C has made complaints against him.

Summary of Findings

M1 Charges	Charge 1 - Unsatisfactory Conduct Charge 2 - Misconduct Charge 3 - Misconduct
M2 Charge	Misconduct
Mr R Charges	Charge 1 - Unsatisfactory conduct Charge 2 - Misconduct Charge 3 - Dismissed
Mr C Charges	Charge 1 - Misconduct Charge 2 - Misconduct Charge 3 - Misconduct

[48] See [14] ie., that Mr Haines' sole remuneration would be from any costs awards made in favour of Mr M or his associated entities.

Directions

1. The Standards Committee are to file submissions on penalty within 21 days of the date release of this decision.

2. The practitioner is to have a further 21 days to file his submissions as to penalty.

3. Counsel are to liaise with the case officer to fix a suitable time for a half to one-day penalty hearing. That hearing will of course include penalty for the first set of charges, admitted by Mr Haines in 2019, in relation to his criminal offending.

DATED at AUCKLAND this 8th day of April 2022

Judge DF Clarkson
Chairperson

Appendix I

CHARGES (16 October 2020) - M1

Background

1. At all material times Mr Haines (the **Practitioner**) was enrolled as a barrister and solicitor of the High Court of New Zealand, practising in Levin.

2. Between 2011 and 31 March 2017 the Practitioner was employed by Simpson and Co. lawyers and from 1 April 2017 commenced practice on his own account as QH Law.

3. Between late-2015 and August 2018, the Practitioner was engaged to perform legal services for Mr M and his associated entities, including the L No.1 Trust (the **Retainer**).

4. It was a term of the Retainer that the Practitioner would only be remunerated upon certain events occurring (an award of costs in favour of Mr M, or his relevant entity).

5. The Retainer was agreed verbally in late 2015. The Practitioner did not record its terms (or any other aspects of client service) in writing prior to commencing work.

6. By mid-2018, Mr M's financial position had deteriorated significantly and he was facing bankruptcy proceedings. The Practitioner was assisting Mr M in attempts to compromise or otherwise resolve those proceedings.

7. On 23 June 2018, the Practitioner informed a trustee of the L No.1 trust (Mr B) that if he had been rendering invoices under the Retainer "*[Mr M] would have been billed about 500k at this point*".

8. On 22 August 2018, the Practitioner met with Mr M and agreed the Practitioner would, for the first time, issue an invoice for fees arising from the Retainer (the **Variation**). The amount of the proposed invoice was not discussed or agreed.

9. At the time the Variation was agreed Mr M was under considerable financial and emotional pressure. He was not independently advised regarding the consequences of the Variation and was unable to pay any invoice issued pursuant to it.

10. The purpose of the Variation was to crystallise the Practitioner's status as a creditor of Mr M and thereby entitle him to vote on any creditors' compromise and 'guarantee' a favourable vote.

11. On the morning of 23 August 2018, in accordance with the Variation, the Practitioner issued an invoice for fees addressed to Mr M and the Trustees of the L No. 1 Trust in the amount of $1,000,000 plus GST (the **Invoice**) covering all the work performed under the Retainer.

12. The fee charged in the Invoice exceeded a fair and reasonable fee for the work performed.

13. As a result of the inflated fee charged in the Invoice the Practitioner's voting power with respect to any creditors' compromise was, in relative terms, greater than it otherwise would have been.

Charge one: failing to provide mandatory client information

14. The Practitioner failed to record, in writing, the principal aspects of client service prior to commencing work under the Retainer, including the basis upon which fees would be charged *and/or failed to update any such amendment when required*.[49]

15. The failure referred to in paragraph 14 was a breach of Rule 1.6 and/or 3.4 *and 3.6* of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **Rules**) and:
    (a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act);
    (b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act); or
    (c) was negligent or incompetent in his professional capacity to such a degree that it reflects on his fitness to practise or brings the profession into disrepute (under s 241(c) of the Act); or
    (d) would be regarded by lawyers of good standing as being unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act).

Charge two: overcharging

16. The Practitioner charged a fee which exceeded a fair and reasonable amount, having regard (but not limited) to:
    (a) the terms of the Retainer (including its conditional nature);

[49] The italicised amendments at paras 14 and 15 above reflect the charges as amended, on application by the Standards Committee, as advised to the respondent on 18 February 2021.

(b) the estimate of $500,000 provided by the Practitioner on 23 June 2018;

(c) the known financial difficulties the client was facing during the period the services were provided;

(d) the nature of the services being provided (assistance with disputed debts and solvency issues);

(e) the skill, specialised knowledge and responsibility required to perform the service properly;

(f) the experience, reputation or ability of the Practitioner; and/or

(g) the fee customarily charged in the market and locality for similar legal services.

17. The overcharging referred to in paragraph 16 was a breach of Rule 9 of the Rules and:

(a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act);

(b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act);

(c) was the charging of grossly excessive costs for legal work (under s 7(1)(a)(iv) of the Act); or

(d) would be regarded by lawyers of good standing as unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act).

Charge three: overcharging for an ulterior purpose

18. The Practitioner charged a fee exceeding what was fair and reasonable knowing that to do so would enhance his voting power in relation to the creditors' compromise being suggested by Mr M (and increase the chances of it being accepted).

19. The conduct referred to in paragraph 18 was a breach of Rule 2 and/or 2.1 -

2.3 and/or 13.1 of the Rules and/or s 4(a) of the Act and:

(a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act); or

(b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act); or

(c) would be regarded by lawyers of good standing as unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act).

Appendix II

CHARGES (16 APRIL 2021) - M2

Background

1. At all material times Mr Haines (the **Practitioner**) was enrolled as a barrister and solicitor of the High Court of New Zealand, practising in Levin.

2. Between June 2012 and 31 March 2017, the Practitioner was employed as a solicitor by Simpson & Co, lawyers. From 1 April 2017 until August 2018, the Practitioner practiced on his own account as QH Law.

3. Between late 2016 and August 2018, The Practitioner was engaged by Mr M and entities associated with him (the **Clients**) to perform legal services (the **Retainer**).

4. The Retainer involved litigation work in various courts and tribunals on behalf of the Clients.

5. At all material times, Mr M was suffering ongoing financial hardship. Much of the work under the Retainer involved resisting claims for the payment of alleged debts and/or bankruptcy proceedings against Mr M. The Practitioner was actively involved in attempts to compromise or otherwise resolve such matters.

6. The Practitioner believed it was a term of the Retainer that his fees would be paid only when certain milestones were met (such as successful outcomes in the Clients' litigation matters) or when the Clients had funds available to pay a fee.

7. Between December 2016 and April 2017, the Practitioner (either personally or through his family trust) borrowed various sums from finance companies, in particular:

   (a) $75,000 from Fico Finance Limited (in December 2016);

   (b) $250,000 from Bright Enterprises (in February 2017); and

   (c) $250,000 from Fico Finance Limited (in April 2017).

   (collectively, **the Loans**).

8. The Loans were guaranteed by Mr M and/or his trust, the L No.1 Trust (the **Guarantees**), with the Guarantees ultimately being secured against assets of the Trust.

9. The Practitioner believed that, in addition giving the Guarantees, Mr M (or entities associated with him) would service the Loans in the event the Practitioner became unable to do so (the **Servicing Term**).

10. The Practitioner claims to have advanced part of the Loans to Mr M (on terms that were undocumented) (the **Advances**).

11. The Retainer occupied a considerable amount of the Practitioner's time in 2017. Of the clients that transferred from Simpson & Co to QH Law on 1 April of that year, only one engagement was generating regular fees.

12. In March 2018, the Practitioner defaulted on the loan to Fico Finance Limited and a notice was served under the Property Law Act 2007. By July 2018, the Practitioner had also defaulted on the loan to Bright Enterprises.

13. By August 2018, the Practitioner was advising Mr M regarding applications to bankrupt him and, as part of that advice, recommended Mr M pursue a Creditors Proposal.

14. On 23 August 2018, the Practitioner issued an invoice for legal fees under the Retainer, in the amount of $1.15 million (the **Invoice**). The Invoice was included as a debt owed by Mr M within a Creditors Proposal prepared and filed by the Practitioner.

15. Although it is now in dispute, at the time the Practitioner considered the Invoice, including the level of fee, had been agreed with Mr M on 23 August 2018.

16. Later on 23 August 2018, the Practitioner ceased legal practice.

17. On 28 August 2018, Mr M was made bankrupt in the High Court at Wellington.

Charges: Independent judgement and conflicts of Interest

18. The Practitioner's conduct, as outlined above, was in breach of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **Rules)**, in that:
    (a) concluding the Guarantees, Servicing Term and/or Advances, given Mr M's financial circumstances and those of the Practitioner, abused the relationship of trust and confidence that should exist between lawyer and client in breach of Rule 5.1 of the Rules; and/or
    (b) the Guarantees, Servicing Term and/or Advances were transactions that, given Mr M's financial circumstances and those of the Practitioner, had the potential to compromise the relationship of trust and confidence that should exist between lawyer and client and were concluded in breach of Rule 5.4.3 of the Rules; and/or
    (c) the Guarantees, Servicing Term and/or Advances were transactions requiring the Practitioner to explain to Mr M that, should a conflict of interest arise, the Practitioner

would be unable to act under the Retainer without Mr M's informed consent and no such explanations were given in breach of Rule 5.4.4 of the Rules; and/or

(d) the Practitioner continued to advise Mr M under the Retainer, including in relation to applications by creditors to bankrupt him, where there was a conflict of interest (alternatively a risk of a such a conflict) arising from:

i the Guarantees;

ii the Security Term;

iii the Advances; and/or

iv the issuing of the Invoice,

in breach of Rule 5.4 of the Rules.

19. The conduct referred to in paragraph 18:

(a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act);

(b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act); and/or

(c) would be regarded by lawyers of good standing as being unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act),

so as to amount to misconduct or, alternatively, unsatisfactory conduct.

Appendix III

CHARGE (28 JULY 2021) - Mr R

Charge

National Standards Committee 1 (the **Standards Committee**) hereby charges Quentin Stobart Haines (the **Practitioner**) with:

A. Misconduct within the meaning of s 7(1)(a)(i) and/or (ii) and/or (iv) of the Lawyers and Conveyancers Act 2006 (**Act**);

In the alternative:

B. Unsatisfactory conduct within the meaning of s 12(b) and/or s 12(c) of the Act.

Particulars

1. At all material times the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand, practising in Otaki.

2. In April 2017, the Practitioner was engaged by Mr R, on behalf of his company SP Limited (**S**), in relation to a statutory demand that had been served on it (the **S Engagement**).

3. The terms of the S Engagement were concluded verbally, through an intermediary. In relation to fees, Mr R understood S would only pay for the Practitioner's services if and when costs were awarded in favour of S.

4. In August 2017, the Practitioner was engaged by Mr R in relation to the resolution of a relationship property dispute, and the enforcement of relationship property agreement through Court proceedings (the **Matrimonial Engagement**).

5. The terms of the Matrimonial Engagement were recorded in writing. It was agreed the Practitioner would charge a fixed fee for his legal services of $50,000, plus GST and disbursements. The fee was payable in two instalments: $25,000 plus GST on acceptance and the balance payable "*on the conclusion of any High Court hearing or whenever the matter is resolved, whichever is the sooner*".

6. Mr R could not afford to pay the first instalment of the Matrimonial Engagement in one lump

sum but did so over time. Between August 2017 and March 2018, Mr R deposited $29,975 into the Practitioner's personal bank account, as follows:

21.08.17	$10,000
23.08.17	$9,975
08.01.18	$2,000
19.01.18	$2,500
31.01.18	$1,000
31.01.18	$1,000
13.02.18	$500
13.02.18	$500
13.02.18	$1,000

(the **Deposits**).

7. At no time did the Practitioner operate a trust account.

8. On 17 October 2017, the Practitioner filed a Notice of Change of Counsel on behalf of Mr R in respect of proceedings covered by the Matrimonial Engagement. On 31 October 2017, the High Court delivered its decision refusing S's application to set aside the statutory demand.

9. In March 2018, the property at the centre of the relationship property dispute was sold. The distribution of the proceeds of sale remained in dispute. However, each party received an initial distribution of $75,000.

10. The Practitioner instructed the solicitor acting on the sale to pay $30,005 of Mr R's initial distribution into the Practitioner's bank account, being the second instalment of the Practitioner's fee under the Matrimonial Engagement (the **Payment**).

11. At that time no court hearing had been concluded and the issues the subject of the Matrimonial Engagement were unresolved. However, the Practitioner assured Mr R a conclusion to the Matrimonial Engagement was imminent. On 13 March 2018, Mr R approved the Payment on that basis.

12. In August 2018, the Practitioner surrendered his Practising Certificate and ceased legal practice. No court hearing had been concluded and the issues the subject of the Matrimonial Engagement remained unresolved

13. No invoices (or receipts) were issued by the Practitioner in relation to the Deposits or the Payment.

Charge one: failure to provide client information

14. The Practitioner did not provide S with information on the principal aspects of client service in writing before commencing work under the S Engagement.

15. The conduct referred to in paragraph 12 was a breach of Rule 3.4 and/or 9.10 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **Rules**) and:
    (a) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act);
    (b) would be regarded by lawyers of good standing as being unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act),
    so as to amount to misconduct, alternatively, unsatisfactory conduct.

Charge two: receipt of client funds on account

16. The Matrimonial Engagement required payment by Mr R in advance. Amounts were paid to the Practitioner before any significant work was completed and without an invoice being issued in relation to them.

17. The Practitioner received the Deposits into his personal bank account and expended them for his own benefit.

18. The conduct referred to in paragraphs 14 and 15 was a breach of Rule 9.3 of the Rules and:
    (a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act);
    (b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act);
    (c) would be regarded by lawyers of good standing as being unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act),
    so as to amount to misconduct or, alternatively, unsatisfactory conduct.

Charge three: overcharging (Matrimonial Engagement)

18. In relation to the Matrimonial Engagement, the Practitioner charged a fee which exceeded a fair and reasonable amount having regard (but not limited) to:
    (a) the terms of the Matrimonial Engagement (being fixed but contingent upon the matter being resolved);
    (b) the time and labour expended;
    (c) the complexity of the matter;
    (d) the result achieved;
    (e) the skill, specialised knowledge and responsibility required to perform the service

properly;

(f) the experience, reputation or ability of the Practitioner;

(g) the reasonable costs of running a practice;

(h) the fee customarily charged in the market and locality for similar legal services.

19. The overcharging referred to in paragraph 16 was a breach of Rule 9.1 of the Rules and:

(a) would be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act);

(b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act);

(c) was the charging of grossly excessive costs for legal work (under s 7(1)(a)(iv) of the Act); or

(d) would be regarded by lawyers of good standing as unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act),

so as to amount to misconduct or, alternatively, unsatisfactory conduct.

Appendix IV

CHARGES (14 MAY 2021) - Mr C

Background

1. At all material times Mr Haines (the **Practitioner**) was enrolled as a barrister and solicitor of the High Court of New Zealand, practising in Levin.

2. Between June 2012 and 31 March 2017 the Practitioner was employed by Simpson & Co, lawyers, as a solicitor. From 1 April 2017 he commenced practice on his own account as QH Law.

3. On 5 July 2015, Simpson & Co was retained by Mr C to provide legal advice and representation (the **C Engagement**) regarding (a) the potential annulment of his bankruptcy (the **Annulment Work**); and (b) the prospects of a negligence claim against his former lawyer (the **Negligence Work**). The Practitioner was the solicitor acting on behalf of Simpson & Co to deliver both aspects of the C Engagement.

4. The C Engagement was the subject of a signed engagement letter between the parties.

5. On 7 September 2015, Simpson & Co was able to refine the scope of the Annulment Work and offer a fixed fee for its delivery. The fee proposed was $120,000, with "*50% payable on acceptance, with the balance being payable on conclusion of the assignment*". Mr C accepted the offer and engaged Simpson & Co on that basis. Fees for the Negligence Work remained governed by the terms of the engagement letter dated 5 July 2015.

6. By July 2016, the Annulment Work had been completed and Mr C's bankruptcy successfully annulled. Mr C instructed Simpson & Co to progress the Negligence Work.

7. To support the Negligence Work, Simpson & Co arranged for accounting firm Deloitte to provide an initial calculation of potential quantum and a brief of evidence summarising their findings (the **Deloitte Report**).

8. It was a term of the engagement with Deloitte that $20,000 would be paid into either the Deloitte or Simpson & Co trust account prior to Deloitte commencing any work.

9. By email dated 2 August 2016 to Deloitte, the Practitioner confirmed Mr C had accepted the terms of the engagement stating: "*He is in the process of depositing funds into our trust*

account. I am instructed that $10,000 will be deposited in the next day or so and a further $10,000 will be deposited at the end of the month".

10. Between 5 July 2015 and 31 March 2017, Mr C (or persons or entities associated with him) paid approximately $90,000 to Simpson & Co based on invoices received.

11. In addition, between 5 July 2015 and 31 March 2018, Mr C (or persons or entities associated with him) paid various amounts to Mr Haines, either in cash or directly into his personal bank account, totalling:
    (a) in the financial year ended 31 March 2016: approximately $60,000;
    (b) in the financial year ended 31 March 2017: approximately $80,000; and
    (c) in the financial year ended 31 March 2018: approximately $110,000.

    No invoices were ever issued for these amounts, either by Simpson & Co or QH Law.

12. No new letter of engagement was issued by QH Law in respect of the C Engagement when it took over the Negligence Work from Simpson & Co on 1 April 2017. At no time did QH Law operate a trust account.

13. The payments described at paragraph 11 were made in response to requests by Mr Haines for money, including the payment of fees in advance.

14. On 23 August 2018, the Practitioner surrendered his Practising Certificate and ceased practise as a barrister and solicitor. At the time of that cessation, no proceedings had been issued against Mr C's former solicitor and the Negligence Work was incomplete.

Charge one: direct receipt of client funds

15. Between July 2015 and 31 March 2017, the Practitioner received client funds of approximately $140,000 directly into his personal bank account from Mr C (or persons or entities associated with him) on account of fees (including fees in advance):
    (a) whilst an employed solicitor of Simpson & Co;
    (b) contrary to the written terms of the C Engagement;
    (c) without issuing any invoices for such fees; and/or
    (d) without issuing any receipts for such funds.

16. The Practitioner informed Mr C the account he was paying into was a business bank account for Simpson & Co.

17. The conduct referred to in paragraphs 15 and/or 16 was a breach of Rule 9.3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the **Rules**)[50] and:

[50] Rule 9.3 requires compliance with regulations 9 and 10 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008.

(a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act);

(b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act);

(c) was negligent or incompetent in his professional capacity to such a degree that it reflects on his fitness to practise or brings the profession into disrepute (under s 241(c) of the Act); and/or

(d) would be regarded by lawyers of good standing as being unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act),

so as to amount to misconduct, alternatively negligence or incompetence of such a degree or frequency as to reflect on his fitness to practise or as to bring the profession into disrepute or, in the further alternative, unsatisfactory conduct.

Charge two: the Deloitte Report

18. $20,000 of the funds paid by Mr C to the Practitioner during the financial year ended 31 March 2017 were requested by the Practitioner as payment for the Deloitte Report (to meet the requirement that $20,000 be held in the trust account of Simpson & Co, or Deloitte, in relation to that work).

19. Despite the Practitioner's email to Deloitte on 2 August 2016, no funds were deposited into the Simpson & Co trust account during August 2016.

20. Instead, at the Practitioner's request, Mr C deposited funds directly into the Practitioner's personal bank account during August, September and October 2016. Those funds were never remitted to Simpson & Co or otherwise held in trust to meet the fee for the Deloitte Report.

21. The Practitioner:

(a) led Deloitte to believe Mr C would deposit $20,000 into the Simpson & Co trust account by the end of August 2016, without taking any steps to correct that belief when he became aware it was false; and

(b) failed to ensure any of the payments made to him by Mr C were held on trust (by Simpson & Co or otherwise) as required by Deloitte's terms of engagement.

22. The conduct referred to in paragraphs 20 - 21 was a breach of Rules 9.3 and/or 11.1 of the Rules and:

(a) would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable (under s 7(1)(a)(i) of the Act);

(b) consisted of a wilful or reckless contravention of the Rules (under s 7(1)(a)(ii) of the Act);

(c) was negligent or incompetent in his professional capacity to such a degree that it reflects on his fitness to practise or brings the profession into disrepute (under s 241(c) of the Act); and/or

(d) would be regarded by lawyers of good standing as being unacceptable and/or a contravention of the Rules (under s 12(b) and/or s 12(c) of the Act),

so as to amount to misconduct, alternatively negligence or incompetence of such a degree or frequency as to reflect on his fitness to practise or as to bring the profession into disrepute or, in the further alternative, unsatisfactory conduct.

Charge three: misuse of client funds

23. Between July 2016 (when the Annulment Work was completed) and August 2018 (when he ceased practise), the Practitioner received approximately $190,000 from Mr C (or persons or entities associated with him) directly into his personal bank account as fees in advance and, without authority, expended it for his personal benefit.

24. The Practitioner informed Mr C the account he was paying funds into was a business bank account for the law firm concerned (Simpson & Co and later QH Law).

25. The Practitioner agreed to repay $55,000 of the funds referred to in paragraph 23. Despite that assurance, no repayment has been made.

26. The conduct referred to in paragraphs 23 - 25 would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable, and/or consists of a wilful or reckless contravention of Rule 9.3 of the Rules, so as to amount to misconduct under s 7(1)(a)(i) of the Act.