THE NAMES OF THE CLIENT, LAWYERS ACTING FOR A PARTY TO OTHER PROCEEDINGS, FIRM NAME AND OTHER ASSOCIATED NAMES ARE PERMANENTLY SUPPRESSED AS RECORDED IN PARAGRAPH [57]. INTERIM SUPPRESSION ORDER OF RESPONDENT'S NAME AND EMPLOYER NAME MADE PERMANENT ON 27 APRIL 2023. ORDERS MADE PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2022] NZLCDT 51

LCDT 006/22

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **AUCKLAND STANDARDS COMMITTEE 1**
Applicant

AND **Ms A**
Respondent

CHAIR

Dr J G Adams

MEMBERS OF TRIBUNAL

Ms K King

Ms N McMahon

Ms M Noble

Ms S Stuart

HEARING 7 & 8 December 2022

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 22 December 2022

COUNSEL

Mr P Collins for the Standards Committee

Mr I Brookie and Ms R van Boheemen for the Respondent Practitioner

DECISION OF THE TRIBUNAL RE LIABILITY

Breaches by inexperienced, poorly supervised practitioner

[1] The purposes[1] of the Lawyers and Conveyancers Act 2006 (the Act) in maintaining public confidence in the provision of legal services, protecting the public, and ensuring the status of the legal profession; are not met unless all lawyers are held accountable for their fundamental obligations. Even inexperienced, poorly supervised practitioners should be held responsible where they breach basic rules of professional conduct.

[2] Nonetheless, disciplinary processes should produce balanced and proportionate results. This is an exercise more of fairness than one of mercy. In this case, Ms A was not only foolish, but ignorant of simple, basic professional conduct rules. Our sympathy for her circumstances does not extend to excusing her of her breaches.

[3] At the outset of the hearing, Ms A faced three charges. Put bluntly, they were, first, cheating in a Trust Account Supervisor's (TAS) examination; secondly, blackmail – making a threat for an improper purpose, namely, to gain advantage in relationship property negotiations; and, thirdly, threatening to use the Law Society complaints process for an improper purpose, namely, to discourage another law firm from complaining about her conduct.

[4] Thanks to the forensic skills of both counsel, our understanding of some material facts was greatly enhanced during the hearing. In this introduction, we mention three such areas. First, a significant part of the first charge fell away. Consequently, some of Ms A's earlier admissions were wrongly made – she had admitted wrongdoing in respect of behaviour that was not wrongful. Secondly, some of Ms A's written material that had been read as admissions, proved to have been misunderstood. Mandarin is her first language. Adjusting for language differences, we gained a proper appreciation of what she meant. Thirdly, we eventually formed the view that, although she had admitted Charge 3 as unsatisfactory conduct, it was more fairly understood as a continuation of the nub of Charge 2. Accordingly, we

[1] Section 3 of the Lawyers and Conveyancers Act 2006.

have not seen fit to make a finding against her on that charge, despite her formal admission.

[5] This decision is organised sequentially under each of the three charges.

Charge 1: Placing prohibited materials on her desk when she sat the TAS exam

[6] Although Charge 1 was settled when Ms A admitted, as unsatisfactory conduct, an agreed, amended, narrower version during the hearing, it is worthwhile, in building a picture of Ms A, to provide a narrative.

[7] Ms A enrolled in the TAS training programme. She was provided with a workbook (loose leaf folder) which contained assessment details and practice exercises. She also received a manual which provides guidance on how to operate a trust account. Ms A was required to sit and pass an exam to obtain the necessary qualification to be a trust account supervisor. The course assessment procedures are set out in the workbook. They say that the TAS exam is a closed book examination with only relevant legislation and rules permitted in the exam. They also say that apart from the permitted materials, candidates may not refer to any other written material during the exam.

[8] Candidates are invited to bring the workbook and the manual to the exam room to assist in a last-minute Question and Answer session prior to the commencement of the exam. They are then instructed to place those materials at their feet during the examination.

[9] Ms A first sat[2] the TAS exam in a large room with many other candidates.

[10] We find it unlikely that Ms A, who was late for her first examination, arriving after the examination proper had begun, had the workbook and manual on her desk during the exam. The exams are closely invigilated, and the materials would be obvious.

[11] Ms A was later required to re-sit some failed modules. The Law Society arranged for her to re-sit under supervision of her then employer, Mr Z. The Law

[2] On 15 April 2021.

Society set out the required exam conditions in its letter to Mr Z on 26 May 2021. These mirrored the exam requirements when Ms A first sat the TAS exam. Specifically, Ms A was permitted to refer to the relevant legislation but apart from that, she was not permitted to refer to any other written material during the exam.

[12] The statements that the workbook and manual should not be taken into the examination room are contradicted in words and practice. Against this background, Ms A cannot be accused of breaking a rule merely by bringing those materials into the exam room when she re-sat the exam.

[13] We find that on the day of her re-sit examination,[3] Ms A brought her materials to work and took them into the interview room where she was later to sit the exam. She undertook some last-minute study, having loose pages from the workbook loose leaf folder spread out on the small desk. There were client files on the desk too. She had lunch at the interview room desk.

[14] When Mr Z brought in the examination papers, we find she pushed the loose workbook materials away. She may have slid some back into the loose leaf folder, unbound. But some loose pages from the workbook remained on her small examination desk. Whether she looked at that material for assistance or not, it was a breach of the rules to have it available in that way and she knew, or should have known, that.

[15] Mr Z left Ms A alone in the interview room for the duration of the exam. When time was up, he returned and picked up her exam papers. He placed them on his own desk in the office room he shared with Ms A, elsewhere on the same floor of the building. He scanned to the marker, the papers he had collected up. Included among them was a page from the workbook. The fact that the workbook page was picked up with the exam papers demonstrates the proximity and availability of prohibited material to Ms A during the exam which she undertook alone in the room in the absence of Mr Z.

[16] Although we wonder whether Ms A gained assistance from the prohibited materials, we do not find her exam answers to be so similar to the workbook, that we can safely find she obtained direct assistance from them. In this respect, we think

Law Society Inspector Mr Strang, in other respects a careful and conscientious witness, later drew an adverse conclusion without sufficient reflection or comparison. Scrutiny of the material available to us in the hearing fails to satisfy us to a point we can positively find that Ms A cheated.

[17] The exam circumstances breached the rules because Ms A had prohibited materials available to her in close proximity, whether she used them or not. Having completed her law degree in New Zealand, she will have experienced closed book examinations. The written instructions forbidding the manual and workbook in the exam are clearly intended to prevent candidates from gaining assistance from them in the exam. That is the obvious purpose of the instructions. We find that Ms A understood, or ought to have understood, that condition to the exam.

[18] Charge 1 was originally framed as breaching conditions of the closed book exam on 28 May 2021 by being in possession of prohibited material. The charge was supported by a narrative of particulars. At the start of the second day of the hearing, Mr Collins, who had completed cross-examination of Ms A on the exam topic, invited the Tribunal to dismiss the charge.

[19] After retiring to consider, we informed counsel that we were not willing to dismiss the charge. In our view of the evidence, on 28 May 2021, Ms A re-sat the exam with loose pages from the course workbook on the small table where she sat the exam. Our view was that the charge should be amended to reflect that evidence. Although the manner in which the original charge was framed partly stated a bald proposition that proved incorrect, the charge targeted impropriety in Ms A's observation of exam conditions. Mr Collins could not have anticipated the precise direction of the evidence that emerged.

[20] Mr Brookie argued that the charge was defective and should not be amended, that it was unfair to change the focus mid-stream. It is not disputed that we have power to amend the charge at any stage of the hearing[4], although we must observe natural justice[5]. Disciplinary processes require that the practitioner be fairly informed

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[3] 28 May 2021.
[4] Regulation 24 Lawyers and Conveyancers Act (Disciplinary Tribunal) Regulations 2008. These expressly empower the Tribunal to "add to the charge if the Tribunal considers it appropriate to do so." Natural justice considerations are expressly noted in reg. 24(2).
[5] Section 236 of the Act.

of the charge and the particulars but subject to fairness, where the focus narrows within the original formulation, we do not think the matter should be dismissed on a technicality. It would be different if there was no substance left to the charge. Unlike criminal proceedings, disciplinary proceedings have an inquisitorial aspect, they are designed for quite different purposes than criminal charges. In this case, we formed a view that Ms A was not prejudiced by the narrowing to the new formulation of Charge 1.

[21] Mr Brookie took the opportunity we offered, for him to talk with his client even though she was still under cross-examination. Subsequently, Mr Brookie advised that an agreed position had been reached. We accepted that position. The amended charge is set out in the following paragraph.

[22] "The practitioner breached the rules of the TAS exam in circumstances where she ought reasonably to have known that her actions constituted a breach, by placing prohibited materials on her desk when she sat the exam." Ms A admitted that charge as unsatisfactory conduct under s 12(c) of the Act.

Charge 2: Making a threat for an improper purpose

[23] Charge 2 alleges blackmail, a breach of r 2.7 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules).[6] The Standards Committee claims the conduct also breaches r 2.3[7] and 2.4.[8] Ms A admits the breach of r 2.7 as unsatisfactory conduct under s 12(c). The Standards Committee, while accepting she was ignorant of the rule, submits that the appropriate level of culpability is misconduct under s 7(1)(a)(i).

[24] Ms A acted for a husband in a relationship property dispute arising out of a short marriage. On the most favourable facts for her client, the relationship was less than three years duration. The wife had withdrawn $130,000 from a joint account. The wife claimed the money derived from one of her parents. There were two

[6] Rule 2.7 provides: "A lawyer must not threaten, expressly or by implication, to make any accusation against a person or to disclose something about any person for any improper purpose".
[7] Rule 2.3 provides: "A lawyer must use legal processes only for proper purposes. A lawyer must not use, or knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation".
[8] Rule 2.4 provides: "A lawyer must not advise a client to engage in conduct that the lawyer knows to be fraudulent or criminal, nor assist any person in an activity that the lawyer knows is fraudulent or criminal. A lawyer must not knowingly assist in the concealment of fraud or crime".

underlying problems. Because it was a relationship of short duration, he was not necessarily entitled to half. Moreover, depending on the provenance of the funds, he may not have been entitled to any of it. In these uncertain circumstances, Ms A's client offered to settle for one-third of that sum.

[25] Against that background, Ms A's client sent her a draft message in Mandarin. It comprised a statement he might make to Immigration New Zealand to suggest his wife had lied in her application to get permanent residence. On 6 July 2020 at 1.13am, Ms A sent an email to the wife's solicitor in these terms:

> Please see the below my client's proposed letter to Immigration NZ, I will suggest your client to negotiate with our client to resolve the matter in an amicable way. If we do not hear from our client by the end of the week, I will have no choice to help our client to prepare an affidavit for the next steps.

The letter was in English and the attachment was in Mandarin, cut and pasted directly from Ms A's client's message. The addressee could be expected to understand both languages.

[26] Ms A now accepts that her letter breached r 2.7. We find her email threatened that she would prepare an affidavit for her client to submit to Immigration New Zealand to the detriment of his estranged wife. We find this was, essentially, blackmail, a threat to disclose material to Immigration New Zealand for the improper purpose of thereby pressuring the wife to settle.

[27] Although we would expect a qualified lawyer, however junior, to have understood what she did was wrong, it seems Ms A had no idea about r 2.7. In her view, she simply obeyed her client's instructions. Her level of ignorance is surprising, At the time, she was nearing 40 years of age; she had previous experience as an early childhood educator; she is a solo mother of a teenager. It is alarming that she completed a law degree and Professional Standards training without gaining an appreciation that blackmail is not only criminal but unethical, even if she was unaware of the letter of r 2.7.

[28] Mr Brookie's submissions, to persuade us that we should find Charge 2 established as unsatisfactory conduct rather than as misconduct, covered what we treat as four areas, namely:

- In similar circumstances a breach of r 2.7 was dealt with as unsatisfactory conduct. He offers two illustrative Legal Complaints Review Officer (LCRO) decisions.

- The breach was not gross because the threatened material was connected to the relationship property dispute.

- Section 7 offers no appropriate category within which her conduct falls.

- There are extenuating factors in this case, namely, inexperience, lack of knowledge of the rule, lack of supervision by her employer.

Precedents

[29] In both *QZ v UJ*[9] and *HTO v AG*[10], the LCRO treated a breach of r 2.7 as unsatisfactory conduct under s 12(c). That category of unsatisfactory conduct is described in these words: "conduct consisting of a contravention of this Act, or of any regulations or practice rules made under this Act that apply to the lawyer … (not being a contravention that amounts to misconduct under section 7)".

[30] In *QZ v UJ* the practitioner acted for a woman who had been sexually harassed by her supervising partner in another law firm. The practitioner threated to alert news media as a lever to encourage early, advantageous resolution. The Standards Committee decision to censure the practitioner and impose a fine of $5,000 was upheld by the LCRO.

[31] In *HTO v AG,* the practitioner acted in a commercial dispute about TV channels. The practitioner requested HTO to disable a website and take other actions. The offending letter stated:

> Our client demands that you undertake the above actions by 30th August 2011 and send us confirmation to that effect with the signed agreement on or before that date. If we do not receive a notification on or before such date, our client instructed us to report this matter to the police commissioner who will immediately cooperate with us to bring this case to justice with maximum effect. Our client may also simultaneously, without any further notice, take an

[9] QZ v UJ LCRO 171/2018 (19 December 2018).
[10] HTO v AG LCRO 8/2014 (16 October 2017).

> action against you for civil proceedings to obtain compensation for the damages our client suffered due to all your illegal actions in breach of the Act.

The Standards Committee had determined to take no further action. The LCRO disagreed and found unsatisfactory conduct. The practitioner was fined $1,000.

[32] In neither of those cases did the LCRO discuss misconduct. It seems that both cases were treated as over-zealous advocacy where the rules were breached. The *HTO* letter bears some similarities to our present case except that the threat is more realised in the attached text from Ms A's client, and the threat of complaint to Immigration New Zealand appears to be more potentially devastating to the wife than the overblown suggestion in *HTO* that the police commissioner would do the practitioner's bidding.

[33] But similar, too, to the present case, is the High Court decision in *Mr A v Canterbury Westland Standards Committee 2*[11]*.* There, the practitioner had been found guilty of misconduct by the Disciplinary Tribunal. He had threatened to issue proceedings to claim fees. He realised his threat by sending proceedings in draft. "The affidavit contained personal references to Mr G's conduct and character which were irrelevant to the claim for fees."[12] The finding of misconduct was upheld. The practitioner in that case was a senior practitioner.

[34] We acknowledge that a breach of r 2.7 may be treated as unsatisfactory conduct or as misconduct. It is an exercise of judgement.

Was the breach connected to the main issue between the parties?

[35] In cross-examination, Ms A clarified that the affidavit mentioned in her email was reference to an affidavit she would prepare to assist her client complain to Immigration New Zealand. We find it odd that Ms A's client advanced an attack on his wife's immigration status in the context of his relationship property dispute because his claim depended upon establishing the relationship. If anything, his attack on her veracity with Immigration New Zealand might have backfired on his claim. In any case, we find no excuse for the threat, plainly made to pressure the wife to settle.

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[11] *Mr A v Canterbury Westland Standards Committee No. 2 of the New Zealand Law Society* [2015] NZHC 1896, Venning J.
[12] See above n 11 at [75].

[36] The dispute concerned relationship property. The threat concerned the wife's immigration status. We cannot discern a connection between the two matters that would excuse introducing the latter into the former dispute. We can imagine that, if the wife's credibility were put in issue, reference to her alleged lack of veracity might be relevant. As it stands, though, there was no proper basis upon which her conduct with Immigration New Zealand was pertinent to the relationship property dispute.

Does Ms A's conduct fall outside section 7?

[37] Section 7(1) provides:

> **7 Misconduct defined in relation to lawyer and incorporated law firm**
>
> (1) In this Act, **misconduct**, in relation to a lawyer or an incorporated law firm,—
>
> (a) means conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct—
>
> (i) that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; or
>
> (ii) that consists of a wilful or reckless contravention of any provision of this Act or of any regulations or practice rules made under this Act that apply to the lawyer or incorporated law firm or of any other Act relating to the provision of regulated services; or
>
> (iii) that consists of a wilful or reckless failure on the part of the lawyer, or, in the case of an incorporated law firm, on the part of a lawyer who is actively involved in the provision by the incorporated law firm of regulated services, to comply with a condition or restriction to which a practising certificate held by the lawyer, or the lawyer so actively involved, is subject; or
>
> (iv) that consists of the charging of grossly excessive costs for legal work carried out by the lawyer or incorporated law firm; and
>
> (b) includes—
>
> (i) conduct of the lawyer or incorporated law firm that is misconduct under subsection (2) or subsection (3); and
>
> (ii) conduct of the lawyer or incorporated law firm which is unconnected with the provision of regulated services by the lawyer or incorporated law firm but which would justify a finding that the lawyer or incorporated law firm is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer or an incorporated law firm.

[38] Mr Collins would have advanced s 7(1)(a)(ii) but for Ms A's evident ignorance of r 2.7. Absent knowledge of the existence of the rule, she can hardly be said to

have “wilfully” contravened. There may be a case for “reckless” contravention on the basis that she has a duty as a practising lawyer to familiarise herself with relevant rules of conduct and that, to fail to do so, might be regarded as “reckless”.

[39] To use an analogy, what would be the position if a recently licensed driver drove in excess of 100 kilometres per hour through city streets, perhaps with a more experienced driver as passenger, making no comment? Ignorance of the law is no excuse, but could the conduct of that inexperienced driver be said to be misconduct? They would know that a motor vehicle is a dangerous machine. They might well be expected to know that there should be speed restrictions. In the present case, Mr Collins preferred to concentrate on s 7(1)(a)(i) which, on its face, suggests no mens rea component.

[40] Mr Brookie had targeted s 7(1)(a)(ii) as fertile ground for a defence based on lack of mens rea. As it transpired, we had tentatively embraced s 7(1)(a)(i) (if misconduct were to be found) after having had time, during a break, to reflect on Mr Collins’ submissions.

[41] We were not persuaded by Mr Brookie’s submission, unsupported by authority, that the categories of misconduct in s 7(1) should be read as a hierarchy. In his submission, the earlier-listed items are graver, and should be read as incorporating characteristics from the later-listed items. Projecting from that submission, he suggested that s 7(1)(a)(i) should be read to require mens rea aspects that figure on the face of s 7(1)(a)(ii). We do not find the provisions should be read with that limiting gloss. It would not be purposive to do so.

Do extenuating factors affect the regard that lawyers of good standing would have to the conduct?

[42] Mr Brookie submitted that misconduct under s 7(1)(a)(i) filters through the screen figured as “conduct…that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable”. In his submission, lawyers of good standing would adjust the threshold of their “regard” for extenuating factors such as Ms A’s inexperience or lack of adequate supervision.

[43] The provision addresses *conduct* rather than the *lawyer* who produces that conduct. It is the *conduct* that bears the pejorative descriptors "*disgraceful or dishonourable*", not the lawyer. Should an inexperienced lawyer's blackmail be regarded as less disgraceful or dishonourable than the identical behaviour of an experienced lawyer? We have difficulty accepting that this should be so where the conduct falls so short of that expected from a competent practitioner. Fitness to practise is brought into question where the practitioner fails to observe ordinary duties because they were unaware that there were such duties. The public is entitled to expect any lawyer to observe minimum standards of professional behaviour.

[44] We accept that there is always the opportunity for such behaviour to be treated as unsatisfactory conduct under the saving words in s 12(c): "… (not being a contravention that amounts to misconduct under section 7)." As the cases already cited in this decision show, blackmail has been found to fall on either side of the line. The cited cases that found breaches of r 2.7 as unsatisfactory conduct did not explain why it was not categorised as misconduct. Those cases are not binding on us whereas the case of *A* is binding and, with respect, seems a sound model. It seems to be a matter of discretion, perhaps a determination of degree, whether the conduct is treated as misconduct or unsatisfactory conduct.

[45] In our view, focusing on the conduct itself, we consider blackmail of the kind that occurred in this case to be pernicious conduct. The introduction of an improper lever to gain advantage in negotiation is unethical and the conduct constitutes a crime. In the present case, even if Ms A was unaware of r 2.7, she should have been aware of the crime. She should have had an ethical sense that the strategy was improper.

[46] It is important not to conflate gravity of liability with penalty. Unsatisfactory conduct can, in some cases, result in strike-off or suspension. Where context and circumstances persuade, misconduct can be treated leniently. The purposes of the Act can sometimes be met by responses that elevate rehabilitation over other penalising responses. For the purposes of this decision, on liability, it is important to correctly categorise the conduct.

[47] In our view, Ms A's conduct in sending the threatening email falls within s 7(1)(a)(i). Sending such an email in the context of her client's case, would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable.

[48] We find her conduct to be misconduct in the context where her evidence made it plain that she did not understand the rule, not that, when she sent the email, she knew what she did was wrong. In her view, she was simply following her client's instructions. Her client had drafted the letter to Immigration, but she chose to accept instructions to forward it and refer to it within her email, so it constituted a threat.

[49] Mr Z gave evidence. He was not generally copied into her correspondence. He took the view that, as long as she was comfortable to undertake work, he was comfortable that she was competent. She had no proactive supervision. Because the email was sent at 1.13am, Mr Z had no opportunity for input. We accept that Ms A, relatively inexperienced, was out of her depth, and was unsupported professionally in her work. Mr Z was found by the Standards Committee to have failed to supervise her adequately. The Standards Committee might have been surprised, as we were, to learn that Ms A subsequently paid Mr Z $4,000 to cover his fine.

[50] We have decided to refrain from making findings against Ms A in respect of alleged breaches of rr 2.3 and 2.4. Rule 2.3 concerns misuse of legal processes. We are satisfied that the essential default in this case is sufficiently captured by r 2.7. Similarly, we do not think Ms A can be characterised as knowingly assisting her client to commit a crime. In our view, the central wrongdoing under Charge 2 is captured by a finding of misconduct arising from her breach of r 2.7.

Charge 3: threatening to use complaints process for improper purpose

[51] The wife's lawyers responded to Ms A's threatening email three days later, on 9 July 2020. Their response was balanced and commendable. It stuck to the legal issues between the parties. It pointed out the breach of r 2.7 and referred Ms A to the Crimes Act definition of blackmail and the provisions of r 2.4.

[52] Ms A countered on 9 July at 11.45pm. She said she had only been following her client's instructions. The wife's lawyers responded on 10 July at 10.27am, explaining her breaches of the rules. Ms A took umbrage. In her reply, almost 45

minutes later, she attacked her colleagues with a threat to report them to the Law Society and to involve the media. After further interchanges, she sent an email from her home email address at 2am on 14 July. It was sent to six addressees. In addition to the opposing lawyers, it was sent (for once) to her employer Mr Z and to her then boyfriend. Her boyfriend was known to the partners of the other law firm as a friend and as someone who worked for Chinese News Media in Auckland.

[53] Ms Z's early morning email of 14 July centred on herself. It reflects that she believed she was being personally bullied by a fellow lawyer. The fellow lawyer's employers were friends of Ms Z and her boyfriend and members of the Chinese community. Her email comprised complaints, pleas for sympathy and attacks.

[54] In a technical sense, the Standards Committee case is largely established, but we agree with Mr Brookie's submission that this behaviour is better framed as a run-on from the Charge 2 conduct. Ms Z believed she was being victimised. She believed she had a case to advance to the Law Society. She feared the criminal allegation: "I suddenly became a guilty party, not an acting lawyer."[13] She feared she would lose her job.

[55] Although she raised the spectre of going to the news media, we find she had no practical plan to do so. Openly copying her boyfriend into her email might be read as an implied threat, even though he was not a reporter. She said he was copied in as her support person although she now accepts that she should not have exposed private material about her client and his wife by doing so. We find she introduced her boyfriend into the correspondence because she relied upon the social relationship between her boyfriend and the partners of the other law firm as a unifying feature. From that social relationship she hoped to persuade them to stop bullying her (as she characterised the situation). We do not find her threat to involve the news media was as real as at first seemed to be the case.

[13] Bundle, 80

[56] The view we take of Charge 3, is that no further action is required. It was an emotive misfire by Ms Z, based upon her misapprehension of her original error. It would be disproportionate to record a finding against her on that charge in the circumstances. We dismiss Charge 3, accordingly.

Summary of findings

[57] We find on the three charges as follows:

1. Ms A admits Charge 1 (as amended) as unsatisfactory conduct under s 12(c).

2. We find Charge 2, a breach of r 2.7, proved as misconduct under s 7(1)(a)(i).

3. We dismiss Charge 3.

Non-publication orders

[58] We make the following non-publication orders pursuant to s 240 of the Lawyers and Conveyancers Act 2006:

1. We permanently suppress the names of Ms A's client, the lawyers acting for the wife (and their firm), their client and Ms A's former boyfriend and organisations with which he was associated.

2. Ms A was refused interim name suppression by the Tribunal, but her name remains suppressed by interim order of the High Court pending appeal. Mr Brookie indicates she may seek final name suppression. We expect her to file such an application no later than 1 February 2023. We make an interim order suppressing her name at least until her application for final name suppression (to be filed by 1 February 2023) can be heard.

3. Mr Z was the subject of a Standards Committee finding of unsatisfactory conduct for failing to supervise Ms A adequately. He was a witness in this hearing. We are not minded to suppress his name of our own motion but we direct that he be served with a copy of this decision. It is open to

the Standards Committee to make an application, or Mr Z might seek to be heard on an application on his own behalf for name suppression. We make an interim order suppressing Mr Z's name until 1 February 2023 and, if an application is filed by the Standards Committee or Mr Z, until it is heard.

Directions

[59] The case will be set down for a half-day penalty hearing. We are especially interested in rehabilitative options.

[60] We suggest that Standards Committee documents relating to penalty might be filed by 10 February 2023; and those for Ms A by 24 February; with a view to a half-day penalty hearing in early March. If this creates difficulties, counsel might confer and either suggest a variation to that timetable or seek a teleconference.

DATED at AUCKLAND this 22nd day of December 2022

Dr JG Adams
Deputy Chair