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**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 22

LCDT 016/22

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**NATIONAL STANDARDS  
COMMITTEE 2**

Applicant

**AND**

**MURRAY JOHN TINGEY**

Respondent

**CHAIR**

Ms D Clarkson

**MEMBERS OF TRIBUNAL**

Mr I Hunt

Ms M Noble

Ms G Phipps

Prof D Scott

**HEARING** 28 and 29 March 2023

**HELD AT** Specialist Courts and Tribunals Centre, Auckland

**DATE OF DECISION** 17 May 2023

**RELEASED FOLLOWING APPEAL** 10 October 2023

**COUNSEL**

Ms Dew KC and Mr Hansen for the Applicant

Mr Illingworth KC, Ms Fee and Mr Lewis for the Respondent

## **DECISION OF THE TRIBUNAL ON LIABILITY**

### ***What this decision addresses***

[1] This was a hearing relating to a charge of misconduct against Mr Tingey, laid under the Lawyers and Conveyancers Act 2006 (LCA) – Charge 1. Mr Tingey admitted the charge but disputed some of the particulars supporting it. The Tribunal was required to determine which of the particulars had been established to the required standard by the Standards Committee.

[2] Secondly, the hearing was to determine liability for a charge laid under the previous legislation, the Law Practitioners Act 1982 (LPA) – Charge 2, which Mr Tingey denied. We must determine whether Charge 2 reaches the standard of professional misconduct.

### ***The ambit of professional discipline***

[3] This case raises an important central issue: when lawyers are engaged in consensual relationships that break down, to what extent should their conduct be susceptible to professional discipline?

[4] In this case, two lawyers from the same firm had a long-standing covert affair that broke down then resumed more than once.

[5] During the relationship, at different times, Mr Tingey behaved extremely poorly. There is no question that the worst behaviour, in November of 2009, ought to be subject to a disciplinary response. That is accepted by the practitioner himself.

[6] The Tribunal is asked to determine facts surrounding other examples of poor behaviour, which were frightening and distressing for the complainant, but might be

seen as more in the category of harassment<sup>1</sup>, and behaving in a distressed, immature, ill-disciplined, and at times, a bullying way.

[7] While this conduct is certainly unbecoming of a legal practitioner, it would be unrealistic to disregard the high levels of emotion (jealousy, loss and abandonment) that were operating for Mr Tingey and behind the conduct, leading to him acting in such an unacceptable manner.

[8] The issue touches on the proper purposes of professional discipline, as addressed in the more significant cases heard by this Tribunal under the LCA. Sections 3(1)(a) and (b) of the LCA are pertinent to this question. To what extent is it appropriate to invoke a professional disciplinary response in a case like the present, for the purposes of maintaining public confidence in the provision of legal services, or to protect the consumers of legal services?

[9] There is a difference between upholding professional standards which prevent the exploitation of those who are not in a position to protect themselves because of a power imbalance, and the imposition of moralising or infantilising principles which would interfere with the right of adults to freely make relationship decisions.

[10] One of the filters for misconduct is whether the conduct would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable.<sup>2</sup> Those imagined lawyers of good standing are not to be taken as imposing personal moralities; rather, they are assessing conduct that impinges significantly on the professional realm<sup>3</sup> and on the standing of the profession. Another significant filter<sup>4</sup> is whether the conduct brings into question whether the practitioner is a fit and proper person to be a lawyer.

[11] The Tribunal takes notice of the fact that, in any given year, many lawyers are involved in intimate partner breakdowns. Like the rest of the population, sometimes the conduct of lawyers in those heated circumstances is poor. On occasion, they may have behaviour-restraining orders made against them, on a temporary basis. While

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<sup>1</sup> For which there are remedies in both the Family and Civil jurisdiction of the District Court.

<sup>2</sup> Section 7(1)(a)(i) of the LCA.

<sup>3</sup> Which involves good judgement and high ethical standards.

<sup>4</sup> When personal conduct is involved, under s 7(1)(b)(ii).

not tolerating domestic violence in the profession, it is arguable that examination of the surrounding circumstances might better be dealt with in other jurisdictions.

[12] The degree to which a disciplinary process ought to intrude into a lawyer's private life was recently considered in the English courts<sup>5</sup>:

We accept the starting point of these submissions, namely that the requirements to act with integrity and to act so as to maintain public trust in the provision of legal services, are requirements which will, on occasions require the SRA or the Tribunal to adjudicate on a professional person's private life. Common sense dictates that such cases must and will arise. ....The second [issue] concerns the extent to which Principle 2 and Principle 6 may reach into private life and whether, at the level of principle that is consistent with the required fair balance between the public interest and private rights. These are significant matters. It is one thing to accept that any person who exercises a profession may need, for the purposes of the proper regulation of that profession in the public interest, to permit some scrutiny of his private affairs; to suggest that any or all aspects of that person's private life must be subject to regulatory scrutiny is something of an entirely different order.

It is apparent from this quote that it is necessary for regulatory authorities to consider carefully what aspects of private conduct ought to be submitted to disciplinary bodies for scrutiny.

### ***A power imbalance?***

[13] Before describing each disputed incident or aspect of the incident, we address the question of whether there was a power imbalance between this couple, because it has been forcefully urged upon us by counsel for the Standards Committee that there was indeed such an imbalance, and that it is a significant feature of the misconduct under consideration.

[14] In particular, Ms Dew KC heavily relied on what she described as a significant power imbalance between Ms X and Mr Tingey at the inception of the relationship. Putting aside Charge 2, we note that the incidents relied on to support Charge 1 occurred at least three years into the relationship by which time the parties were both [REDACTED] in the law firm. For that reason, the alleged power imbalance at the outset is not strictly relevant to that charge. However, to give a balanced perspective, we do record the situation as it existed when the relationship commenced.

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<sup>5</sup> [2020] EWHC 3231(Admin)QB.

[15] At the outset of the relationship, Mr Tingey and Ms X were both in their thirties and married. Although Mr Tingey was, in the strict legal sense, one of Ms X's employers at this stage<sup>6</sup>, this was not, as was accepted by both parties, the sort of predatory beginning to a relationship that has caused concern in other cases. Neither exploited a vulnerability imposed by or arising from any institutional power imbalance. Ms X was not responsible to Mr Tingey in her work, but to another partner.

[16] Although Mr Tingey had far more experience of legal practice at this point, Ms X came to the firm with exceptional academic achievements to her credit, and with seven years of working in a prestigious and [REDACTED] role. We find that their status, and taking account of their ages, was not so dissimilar as to raise a concern about a power imbalance. Nor did we find other factors, such as control over work, or a domineering manner or influence over direct managers that could have created the perception of a power imbalance and limited the ability to freely choose whether or not to engage in a relationship.

[17] Furthermore, it was Ms X who told the Tribunal she initiated this relationship, after an indication that an approach might be welcomed. It might be said that her initiation of the affair shifted any institutional power imbalance significantly.

[18] It was not suggested that in embarking on the affair with Ms X, Mr Tingey misused any power over her. It seems both were "smitten".

[19] The relationship continued, with its ups and downs and with short periods of separation, for almost five years<sup>7</sup>. The parties regularly met up after firm events and at hotels in Auckland, by mutual arrangement. Later, after Ms X had separated from her husband, they met at her various homes. It seems they communicated daily, if not in person, then by text or phone. Due to the lateness of the complaint the content of these texts was not available to the Tribunal. Both practitioners were married at the start of the relationship. Both were acutely aware that it would be strongly disapproved of by the firm which had a family culture. Therefore, the contact between them had to be conducted with the utmost secrecy. This naturally imposed its own stresses on the relationship.

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<sup>6</sup> He had recently become a partner, and she was an employee.

<sup>7</sup> [REDACTED].

[20] In early [REDACTED] Ms X was [REDACTED]. At this point, had we found that there was any power imbalance earlier, it ceased at the point they had [REDACTED]. We heard evidence about differentials in [REDACTED] on entering [REDACTED], but in other respects there was no hierarchy which affected this relationship. Apart from management designations<sup>8</sup>, they assumed [REDACTED]. The Tribunal explored with Ms X whether she might have had a potential vulnerability due to needing assistance with her first hearing in the High Court, indeed in any Court. Her answers showed this was not a concern for her.

[21] The intimate relationship ended, at Ms X's instigation, more than 12 years ago. There is no criticism of either party for the delay. Indeed the reasons for Ms X bringing what she volunteered is an historic complaint are important, being to act on her duty to speak up. Her evidence was that otherwise she would be "perpetuating the culture of secrecy that has allowed bad behaviour to continue unchecked".<sup>9</sup>

### ***The effects of delay***

[22] It is now 15 years since the events comprising the earliest allegations arose. Ms X did not make her complaint until almost eight years after her resignation from the firm.

[23] Because of the lateness of the complaint, a huge amount of material which might have provided greater insight into the nature of this relationship at various relevant points of time, was simply unavailable. The actual contents of text messages are not available, but the phone records have disclosed that in fact Ms X initiated more communications than Mr Tingey. Had the full content of text messages been available, it would have provided a much more accurate basis for an assessment of contemporaneous events, and of the nature of the relationship itself, insofar as that is relevant to the allegations. The only messages we have in full are those exchanged in 2013, in which Mr Tingey apologised for his actions and sought to make peace between them. This overture was roundly rejected by Ms X.

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<sup>8</sup> Neither held such.

<sup>9</sup> BOD A145.

[24] In addition to this, allowances must be made for the frailty of memory in dealing with matters that are between 12 and 15 years ago. It is well known that in the retelling of events, they can become distorted and obscured. In this case, the witnesses for Ms X have had to retell their story on a number of occasions – in the complaint, to the Law Society appointed investigator, to counsel for the Standards Committee and eventually to the Tribunal.

[25] There can also be a blurring between what one's memory of what one has been told and what actually happened. This was candidly acknowledged as having happened by Mr Y in his evidence.

[26] Where there is room for doubt or hesitancy about details, we have had to resolve those doubts in Mr Tingey's favour. The serious allegations against him require a high standard of proof, on the balance of probabilities<sup>10</sup>.

### ***The Charges***

[27] Against that background, we address the two charges: Charge 1 alleges that cumulative conduct between 2009 and 2011 breached s 7(1)(a)(i) as "disgraceful and dishonourable". The practitioner has admitted this charge. Because Charge 1 has been admitted at the most serious level, we do not need to address the alternative versions of Charge 1<sup>11</sup>.

[28] Charge 2 alleges professional misconduct arising out of an incident in June 2008. No alternatives are pleaded to this charge, and it is denied by the practitioner.

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<sup>10</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55; [2009] 1 NZLR 1 at [104]-[105].

<sup>11</sup> *J v Auckland Standards Committee 1* [2019] NZCA 614 at [38]-[39].

## ***Disputed Facts***

### ***Charge 1***

#### ***Particular 1: Weekend work incident in 2009***

##### *Description*

[29] Mr Tingey and Ms X were both working in the office on a Saturday, on a date unable to be determined (because of the lapse of time), but in 2009. It seems they had temporarily ended the relationship and Mr Tingey asked Ms X about her plans for the evening. Ms X finally told him that she was going on a date with another man at which point Mr Tingey became extremely distressed and demanding of her, over a relatively extended period in her office.

[30] Ms X attempted to leave the office and alleges that Mr Tingey attempted to block her physically, grabbed her handbag and followed her into the lift. He then followed Ms X to her car and got into the passenger seat. Ms X was very upset and asked him to leave a number of times, but he refused, although eventually leaving. Mr Tingey's version is that he only remained a couple of minutes in her car and denies any intention to frighten or cause her distress.

- (a) *The practitioner denies he was angry and insulting towards Ms X and this took place over an extended period in her office.*

We found that Mr Tingey on this occasion was jealous and distressed and as a result behaved in a demanding and controlling manner. This was certainly more than a momentary argument. It was an emotionally fraught situation in which both ended up in tears.

- (b) *The practitioner denies blocking Ms X's exit from the office and grabbing her handbag as she exited.*

We find that Mr Tingey failed to show proper respect for the confined space and circumstances. We find he blocked Ms X's exit but were not satisfied to the requisite standard that he grabbed her handbag, (although this is a minor detail). We accept Ms X's description of the situation, albeit in the distant past.



However, we take account of the fact that the context of this situation was of two people who, according to Ms X's own evidence, still had a chance of a relationship continuing and which, in fact, it did.

- (c) *The practitioner denies remaining in Ms X's car for an extended period, despite repeated requests from Ms X that he leave.*

We find that Mr Tingey did remain after being repeatedly asked to leave, and this continued the pattern of intrusive and, for Ms X, frightening behaviour. Through his counsel, Mr Tingey himself accepted that he "overreacted and failed to control himself as well as he should have done".<sup>12</sup> It was grossly inappropriate to be having this type of discussion in the workplace and to even temporarily prevent Ms X from leaving the situation.

***Particular 2: 14 November 2009, incident at Ms X's apartment***

[31] This is the most serious incident under consideration. It has been acknowledged in full by the practitioner and therefore no findings are required in relation to this event, but it needs to be detailed, given that it is the key source of the admission of, and our finding of, misconduct.

[32] The intimate relationship between the parties had stopped for a period in about early November 2009, prior to the firm's [REDACTED] conference. On 14 November, each attended the conference and clearly a large amount of alcohol was consumed by Mr Tingey. He then asked Ms X if he could accompany her home to her apartment that night and she refused.

[33] After Ms X had returned home, Mr Tingey arrived at the apartment building, gaining access through an external gate. He was highly intoxicated but made his way to her door, banging and asking to be allowed in. Ms X refused him entry and he applied force to the door until it gave way, then entered the apartment.

[34] He grabbed Ms X's phone from her and blocked the hallway. Ms X ran upstairs to her bedroom and Mr Tingey followed her, pulling her down onto the bed next to him.

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<sup>12</sup> Closing submissions for the practitioner at [7.6].

[35] Neighbours had evidently heard the disturbance because the police were called and removed the practitioner from the apartment. Mr Tingey acknowledges that he cannot provide any contrary account of these events, given his level of intoxication at the time.

[36] [REDACTED]  
[REDACTED].

[37] Mr Tingey was contrite and apologised to Ms X for his frightening and disgraceful behaviour. The managing partner of the firm was informed. Counselling was arranged for each of them. The parties resumed their relationship in January 2010, about two months after this incident.

***Particular 3: Work related harassment during 2011***

*(i) 4 – 7 May 2011, recruitment visit*

[38] Despite the fact that both parties notified the managing partner of the firm about the events of November 2009, those events and their ongoing affair, remained secret. The managing partner said that he was not aware that the parties had resumed their relationship in early 2010 following the incident and therefore was also not aware that at the time of the recruitment visit, to which both parties were dispatched by the firm, they had only recently ended their relationship for the final time (in April 2011).

[39] Ms X was worried about how she was going to navigate their ongoing relationship. She had had initial contact with her present partner, but says that because of what Mr Tingey had said to her, she felt she could not allow that relationship to develop. She said in evidence that she was also upset about this.

[40] At the same time, Ms X and Mr Tingey were working on a file together (the A case). It was a file from one of Mr Tingey's major clients and was one of several similar pieces of litigation of which this was the first to be going to trial, therefore was likely to have precedent value. It was also to be Ms X's first time leading a case on her own, in any court. Mr Tingey's clients were apparently somewhat unhappy about how the matter was progressing.

[41] To add to the difficulty of working with Mr Tingey on this file, Ms X had at the same time received new instructions from a very significant client in London and needed to travel there for a week or so. This was to occur right at the time that preparation of the final briefs for the trial of the A case had to be completed. Mr Tingey did not think that Ms X ought to go to London and that she ought to prioritise the work to be carried out on the A case.

[42] A telephone conference was to be held in the A case and in order that they could both attend, during the recruitment visit, Ms X and Mr Tingey agreed to participate in the conference in the hotel room of Ms X.

[43] An argument developed concerning the work priorities. Ms X's decision to travel to London meant that much of the work on the A case was going to have to be carried out by Mr Tingey and more junior team members. In the course of the argument, it is alleged Mr Tingey said words to the effect of, "You need to be nice to me". Ms X took these words to be a threat that unless she resumed their intimate relationship, Mr Tingey would not help her with her difficult work situation. Mr Tingey denies having said those words to Ms X at all.

[44] After the telephone conference had concluded, Mr Tingey discovered he had left his laptop charger in Ms X's room and returned to retrieve it. Ms X said he put his foot in the door and forced his way into her room and that she was left feeling distressed and intimidated.

(a) *The practitioner denies that Ms X told him she did not want him physically near her.*

We find it more likely than not that Ms X told Mr Tingey that she did not want him near her. However, these two adults do not appear to have negotiated behaviour boundaries following the ending of their relationship. Clearly, they ought to have met somewhere larger than a hotel room, and the firm could well afford that. Having said that, we accept that Ms X had a right to work wherever she wished and expect her colleague to respect her boundaries and not invade her private space.

- (b) *The practitioner denies he placed his foot in her door and forced his way into Ms X's room, when he returned following the first visit to her room.*

Mr Tingey is clearly quite a forceful person, and we accept Ms X's evidence about him barging into her room to retrieve his laptop charger. Again, this is an example of somewhat boorish behaviour which could have been avoided in a neutral meeting space.

- (c) *The practitioner denies he said words to the effect, "you need to be nice to me" seeking to resume his personal relationship with Ms X in exchange for his assistance with managing the A file.*

Under cross-examination<sup>13</sup> Ms X was clear that she recalled this expression but not the words before or after. Given the passage of time, it is not surprising that Ms X cannot recall all the exact words used. In evidence it was clear Ms X recalled her reaction to and interpretation of them.

However, given Mr Tingey's denial that he used the words alleged, and his denial of intent, this serious allegation requires clear proof and in this instance we find that lacking.

We find that while Ms X may have assumed the meaning alleged, that would not have been the only inference to be taken from the words, had they been said. There is no doubt that Ms X was in a difficult spot with her work pressures, and Mr Tingey may have been enjoying some schadenfreude in pointing out her need for assistance, but we do not find on the balance of probabilities that anything that was said was necessarily intended to induce sexual contact.

- (d) *Mr Tingey denies Ms X was left distressed and/or intimidated by the incident.*

If Ms X took the meaning from the words that she described, then she is likely to have felt distressed. Of course, that does not assist in the above finding of whether the words were spoken, or, if they were, in the way she said was intended. The evidence of [REDACTED] does not assist, beyond the verification that at this time, Ms X presented as very upset. We have already

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<sup>13</sup> NOE page 49 line 10.

noted her upset about the possible loss of another relationship (with Mr Y) and that she was also under enormous work pressure and unsure how she was going to navigate the ongoing relationship with Mr Tingey.

We do not consider the Standards Committee has established Mr Tingey's intent to the high standard, on the balance of probabilities, required with such a serious allegation.

(ii) *Late May/early June 2011, incident at Ms X's Ponsonby home*

[45] During Ms X's absence in London, Mr Tingey and others had been working on the A file on her behalf. On Ms X's return, Mr Tingey was unable to contact her to discuss the file.

[46] Mr Tingey travelled to Ms X's home without invitation and attempted to gain entry. Ms X refused him entry. Mr Tingey then went around to the rear of the property to gain access through a rear door. When Ms X continued to refuse him entry, Mr Tingey became angry and is alleged to have threatened Ms X in various ways concerning calling her ex-husband, her current partner (and his wife/former wife). It is also alleged that he threatened to destroy Ms X's reputation and career in the law.

[47] When Mr Y<sup>14</sup> revealed his presence in the house, Mr Tingey shouted at him and did not leave until Mr Y threatened to call the police. It is then alleged that Mr Tingey remained outside the home of Ms X in his car for a lengthy period (up to 45 minutes).

(a) *The practitioner denies he persisted in efforts to have Ms X let him enter her home.*

Once again, we were hampered by the time that has elapsed since this incident. There was no certainty by either party as to exactly when it happened. Mr Y, Ms X's current partner, who was present during this incident, was a credible and straightforward witness. However, he too acknowledged being hampered in his recollection because of the number of years that have passed. In one instance,

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<sup>14</sup> The man with whom Ms X had recently entered into a relationship.

he corrected his evidence because he realised that he was remembering what he had been told by Ms X rather than recalling from his own direct knowledge.

We accept that, until he became aware of Mr Y's presence, Mr Tingey was persistent in attempts to enter Ms X's property. That is apparent from him having gone to the rear of the house when not admitted in the front door. We find this allegation proven.

- (b) *The practitioner admits he became angry and shouted at Ms X's partner, but otherwise denies key allegations in para [44] of the Charge, that he became angry and aggressive towards Ms X and threatened her with personal disclosures and threats to destroy Ms X's career as described at [44](a) and (c) of the Charge.*

We do find that Mr Tingey became angry and aggressive. Mr Y was particularly struck by what he said were threats made to Ms X's career, which he said he remembered clearly.

The difficulty is that Ms X did not make a similar assertion that her career was threatened at this time (although she said that occurred on other occasions).

It is trite to note that even honest witnesses can have difficulty, after some time has elapsed, in separating what they have been told from what they actually heard and observed at the time. Demeanour is but one factor in establishing the credibility of a witness. The fact that we found Mr Y to be an honest and straightforward witness is insufficient to displace our concern over the discrepancy between his and Ms X's evidence about what was said. By a fine margin, we find that the allegation that threats were made to Ms X's career have not been established to the requisite standard.

- (c) *The practitioner denies he remained outside Ms X's home for an extended period after being told to leave.*

We consider that, having been warned off the property, it is more likely than not that Mr Tingey, in his agitated state, remained outside the property for some time. We find it unacceptable on its own to go to a colleague's home to berate

her, even though sympathetic to Mr Tingey's concern over her handling of a client's file.

[48] We have detailed the nature of the A file with which Mr Tingey was concerned. He was solicitor on the record in the proceedings. He was also the person to whom the client came with any complaints about the case's progress. This was a very important client to Mr Tingey and it is unsurprising that he was being vigilant over the carriage of these proceedings.

[49] It is also understandable that Ms X felt aggrieved by what she saw as his controlling attitude and lack of confidence in her.

[50] It is against this context that the next group of disputed facts must also be considered.

*(iii) April to June 2011, other harassment of Ms X*

[51] The first particular states "During the period between January to June 2011, the practitioner persistently phoned and texted the complainant including in the evenings for the stated purpose of work related matters."

[52] There is force to the submission on behalf of Mr Tingey that this particular does not amount to an allegation of harassment.

[53] This period, which includes the final and subsequent months of this fraught relationship, also includes the period leading up to Ms X's decision to resign from the firm. It appears from the evidence of Mr Y that there were discussions from the time she returned from London (end of May) until her resignation in mid-June when they discussed her various options, including her leaving the firm to [REDACTED].

[54] It is Ms X's evidence that during this period, which was amended from the originally alleged January to June 2011 period, Mr Tingey made persistent phone calls and texts to her and made threatening comments to her about ruining her reputation and, in particular, in connection with the manner in which she was managing the A file.

[55] It is Ms X's evidence that it was this conduct and the cumulative effect of the events detailed under Charge 1 that led to her resignation from the firm. For his part,

Mr Tingey accepts that the cumulative impact of his conduct from 2009 to mid-2011 **contributed** to Ms X's resignation.

- (a) *The practitioner admits persistently phoning and texting to discuss work related and their relationship over this period, but denies this amounted to harassment of her.*

It is common ground between the parties that the relationship did not end until mid-April 2011. An analysis of the phone records (acknowledging that not all records now exist) shows 109 calls initiated by Mr Tingey, and 156 calls initiated by Ms X. After the end of the relationship there is record of only 2 initiated calls by Mr Tingey, in May.

In short, the telephone records produced do not support the allegation of persistent harassing calls. Under cross-examination Mr Y accepted the phone record did not confirm his perception of the frequency of calls.<sup>15</sup> Under cross-examination Ms X accepted that the June period was an intense time on the A file and that she had "exaggerated" the number of calls in her memory.<sup>16</sup>

Ms X was struck by this discrepancy herself and was unable to offer any explanation for the difference between her perception and the records. It seems likely that the unwanted calls, as they were by this stage, have grown in her memory. The period in question was a time of extreme stress for her. Overall, we reject this allegation as not having been proved on the balance of probabilities. This is an area of the dispute where delay has caused prejudice to Mr Tingey because of the unavailability of records of text messages for example. Because of that, we do not have the rich context of all communications to give a balanced view of what was, at least at some point, a relationship of lovers.

- (b) *The practitioner denies the central Particular 46, of this aspect of the Charge, that between June and August 2011, he made threatening comments to Ms X about her career and reputation.*

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<sup>15</sup> NOE page 38 line 31.

<sup>16</sup> NOE page 87 line 19.



There are examples of Mr Tingey being overbearing and unpleasant (and worse) to Ms X at times when their relationship had broken down. It is clear that at times he was intemperate in his conduct but this is a particularly serious allegation to make and therefore requires a high threshold of proof. Mr Tingey is very strong in his denial of this allegation. It must be noted that he was significantly more at risk than Ms X if their affair became public, because he was still married.

Mr Tingey was clearly very angry about what he saw as Ms X's failures on the A file, and it is quite possible he made threats concerning her management of that but not necessarily as to her career generally. His later apology for his actions in the 2013 text is equally capable of the interpretation he offered in evidence rather than to be taken as corroborating the allegation of a clear threat to damage Ms X's career.

We find that this particular has not been established to the requisite standard.

- (c) *The practitioner does admit that the cumulative impact of his conduct over the period 2009 to June 2011, contributed to Ms X resigning.*

We accept the primary reason for Ms X resigning was Mr Tingey's conduct after the relationship ended. However, we find the weight of evidence also demonstrates that the complainant was hugely stressed by the many difficulties posed by the A case, which was the first she had led. In this regard, Mr Tingey's evidence was corroborated by that of two other partners of the firm who have made statements, Mr P and Mr A.

We consider that with the pressure she was under from the ending of this long, clandestine relationship, which she wished to remain secret, and with the ongoing pressures of the case, and the admitted behaviours of Mr Tingey, that she was sufficiently "ground down" that she could see no other course of action than to leave.

At some level, they both must have known when they began the affair, that if and when it ended, working together might pose insurmountable problems and

that one or the other of them would have to leave the firm. However, that did not happen and was, for a long time, to the considerable detriment of Ms X.

***Charge 2 – June 2008, Tongariro Lodge incident***

[56] In mid-2008, Mr Tingey and Ms X attended a weekend conference held at Tongariro Lodge. [REDACTED]

[57] After dinner (and consuming alcohol), Mr Tingey knocked on Ms X's door, expecting to be invited in, as had occurred on previous similar occasions. Ms X refused him entry. It appears that on this occasion, she was sharing a cabin with another female colleague. Ms X was, naturally, extremely anxious that Mr Tingey's actions, in phoning her a number of times and knocking on the door, would wake her colleague and expose the affair. [REDACTED]

[58] Ms X alleges that Mr Tingey was aggressive, and the incident was intimidating and distressing for her. For his part, Mr Tingey says he was the worse for wear after drinking but denies being aggressive. He denies that the incident lasted as long as alleged, or that he remained outside after being sent on his way.

(a), (b) *The practitioner admits he went to her room, and she refused him entry, but denies he became angry or aggressive towards Ms X after she refused him entry to her room.*

We find that Mr Tingey was drunk and, before he knew Ms X was sharing a room with a colleague, pestered her to admit him, as had occurred on previous occasions.

We do not find that his conduct can, after 15 years, be established to the standard required as angry and aggressive. It can more properly be described as boorish and annoying.

(c) *The practitioner denies he remained outside her room for an extended period despite her making it clear she did not want him to come into the room.*

Again, we do not consider the period he remained outside can be safely established after the 15-year lapse in time. It is certainly understandable that Ms X would have been very upset at the conduct, given her fear of exposure of the relationship which she said in evidence not only affected how her character was perceived, but was also career-threatening.

(d) *The practitioner denies Ms X was left distressed or intimidated by the incident.*

We have no doubt Ms X was distressed, but we consider that it is impossible to separate out her distress over the risk of exposure of the relationship from her upset at his conduct.

[59] This charge was laid under the Law Practitioners Act 1982 (LPA), s 112(a), namely that the practitioner had committed "...misconduct in his professional capacity...".

[60] The authorities demonstrate that a range of conduct may amount to professional misconduct, from actual dishonesty through to serious negligence of a type that evidences an indifference to and an abuse of the privileges which accompany registration as a legal practitioner<sup>17</sup>

While intentional wrongdoing by a practitioner may well be sufficient to constitute professional misconduct, it is not a necessary ingredient of such conduct. The authorities referred to above (and referred to in the Tribunal decision) demonstrate that a range of conduct may amount to professional misconduct, from actual dishonesty through to serious negligence of a type that evidences an indifference to and an abuse of the privileges which accompany registration as a legal practitioner.

[61] We do not consider the drunken boorish behaviour, even as described by Ms X 15 years later, and as unpleasant as it might have been, reaches this level. No doubt it was unsettling for Ms X, [REDACTED], to have the worry of exposure of the affair with Mr Tingey to her colleague, but such a lapse ought not to bring a serious finding of misconduct.

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<sup>17</sup> *Complaints Committee No 1 of the Auckland District Law Society v C* [2008] 3 NZLR 105.

[62] We find that the evidence did not establish, on the balance of probabilities, and having regard to the lapse of time, that the conduct reached the threshold for misconduct.

[63] We note that the conduct might well have satisfied s 112(b), which refers to "...conduct unbecoming a barrister or solicitor...", but this subsection was not pleaded as an alternative.

[64] For these reasons, we dismiss Charge 2.

### ***Seriousness of Misconduct***

[65] As signalled, we regard the 2009 incident of Mr Tingey breaking into Ms X's home by far the most serious incident. He has accepted that. Further consideration of where this sits on the continuum of seriousness of misconduct, having regard to the overall picture and the findings in this decision will take place at the penalty hearing.

### ***Directions***

1. Counsel are to confer with the Tribunal Case Manager as to a suitable date for a one-day hearing on penalty, to take place as soon as possible.
2. Counsel for the Standards Committee to file submissions on penalty 10 days in advance of the hearing date.
3. Counsel for the Respondent practitioner to file submissions four days in advance of the hearing date.

**DATED** at AUCKLAND this 9<sup>th</sup> day of May 2023

D F Clarkson  
Chairperson