THERE IS A PERMANENT ORDER THAT NAMES AND IDENTIFYING MATERIAL REGARDING MR YANG'S EMPLOYER, ITS PARTNERS, THE CLIENT AND THE COLLECTIONS DIRECTOR, SHALL NOT BE PUBLISHED. THESE ORDERS MADE PURSUANT TO S 240 LAWYERS AND CONVEYANCERS ACT 2006.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2024] NZLCDT 8
LCDT 021/23

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **NATIONAL STANDARDS COMMITTEE 1**
Applicant

AND **JASON YANG**
Respondent

CHAIR
Dr J Adams

MEMBERS OF TRIBUNAL
Mr S Hunter KC
Ms G Phipps
Ms S Stuart
Ms P Walker MNZM

HEARING 8 March 2024

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 27 March 2024

COUNSEL
Mr M Hodge for the Standards Committee
Mr H Waalkens KC and Ms S Courtney for the Respondent Practitioner

DECISION OF TRIBUNAL ON LIABILITY

Under the radar

[1] Mr Yang, a solicitor, acted on a criminal matter without knowledge of his employer, a law firm. He issued an invoice that appeared to be from his employer. When the client did not pay, he brought proceedings in the Disputes Tribunal in his own name, filing documents that had been altered to obscure reference to his employer.[1]

[2] Mr Yang filed a second claim against the client in the Disputes Tribunal seeking a further $4,632.25 – of which $1,265 was for fees that had never been invoiced, and $2,000 of which was for alleged injury to his feelings because the first invoice had not been paid.

[3] The first Mr Yang's employer knew of the matter arose when Mr Yang, in his office, was engaged in a telephone hearing with the Disputes Referee. The Referee, alerted by oddities in the documents, elicited that Mr Yang was an employee. The Referee observed that the employer should be the applicant. At this point, Mr Yang alerted his supervising partner who was only a few metres away.

[4] Mr Yang admits an alternative charge of unsatisfactory conduct but denies the principal charge of misconduct. This hearing is to determine whether the charge of misconduct is established.

Issues

[5] The Standards Committee charges of misconduct rely on two alternative and sufficient propositions:

[1] His employer's bank account details remained on the face of the invoice but all obvious references to the firm, such as the firm's name, had been removed.

(a) Mr Yang's conduct would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable,[2] or

(b) Mr Yang's conduct was wilful or reckless, being conduct that tends to bring the profession into disrepute.[3]

[6] We have found the charge convincingly satisfies the first of those alternatives (s 7(1)(a)(i)) and therefore it is not necessary for us to closely consider Mr Yang's conduct against the second (s 7(1)(a)(ii)). This decision provides our reasons pinned to the following issues:

- Was Mr Yang's conduct undertaken for personal gain?
- If so, would his conduct reasonably be regarded by lawyers of good standing as disgraceful or dishonourable? (At this point, we consider the relevant legal principles.)
- Would Mr Yang's conduct in suing a client for work that had never been invoiced reasonably be regarded by lawyers of good standing as disgraceful or dishonourable?
- Would Mr Yang's conduct in suing a client for alleged pain and suffering caused by the client having failed to pay the bill reasonably be regarded by lawyers of good standing as disgraceful or dishonourable?

Was it for personal gain?

[7] Mr Yang denies this allegation. He asserts that everything he did was for the benefit of his employer.

[8] We must determine the contested issue of fact on the balance of probabilities.[4] It is a grave matter to find against Mr Yang because, if we do, it may be determinative

[2] Section 7(1)(a)(i) Lawyers and Conveyancers Act 2006 (LCA).
[3] Section 7(1)(a)(ii) LCA linked to r 10.2 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.
[4] Section 241 LCA.

of the misconduct issue and, moreover, would involve a finding that we do not believe his evidence on this point. Accordingly, we approach this issue with caution.

[9] Mr Yang first encountered the client at a nightclub. The client was a DJ (Disc jockey). In their conversation, Mr Yang, who operates a nightclub, expressed interest in learning to be a DJ; the client said he had a legal problem. He had been disqualified from driving and was at risk of being further disqualified. Mr Yang suggested he could act to apply for the substitution of a community-based sentence in lieu of further disqualification.

[10] In his first claim to the Disputes Tribunal, Mr Yang had claimed that one of the terms of their agreement was that the client "will provide [Mr Yang] with weekly DJ lessons." Mr Yang agrees he had one such lesson. But, in an unsworn "statement of evidence" provided to the Standards Committee in April 2023, Mr Yang said[5]: "I most certainly did not agree to receive DJ lessons as a form of payment for legal services to [the client]."

[11] The client offered inconsistent accounts about the DJ contra proposition. After Mr Yang had ceased acting for the client, and after Mr Yang made his claims in the Disputes Tribunal, the client wrote to the Disputes Tribunal[6] that Mr Yang had agreed to undertake the work in exchange for receiving DJ lessons. Later, on 22 February 2022, the client wrote a different version,[7] also unsworn, which is exhibited to Mr Yang's affidavit of 19 January 2024. In that version, the client says, "There was a misunderstanding initially as to whether Jason was helping me as a friend and not billing." The client states, in that later statement, "I was always aware of Jason's hourly rate at [the employer] being $195.00 plus GST as he had communicated this to me verbally upon our first discussion about my case."

[12] In that later statement, the client said:

> I recall from my messages that Jason did ask me for my ID and a proof of address on 27/09/20 to begin preparing for my matter.
>
> I subsequently received some documents upon meeting Jason again on 14/10/2020 that I recall may have been a letter of engagement or authority to

[5] Bundle, 35 para [19].
[6] Date unknown but appearing in Bundle, 112- 113; supported by two other witness statements at Bundle 111 and 114.
[7] Bundle, 21.

> act. I was given this document to take home to consider however I misplaced the document before reading it.

[13] It is dissonant that the client, in February 2022, refers to the DJ contra as "a misunderstanding initially" despite having firmly advanced that "misunderstanding" view (and offered two corroborators) in his correspondence with the Disputes Tribunal, after the legal work was over. The client has not sworn an affidavit. We do not need to resolve the dissonant stories about the suggested contra of DJ lessons because the question is immaterial to our findings. The Disputes Tribunal claim was withdrawn by Mr Yang and his employer took no interest in the matter because the client was unknown to them and they had neither authorised, nor consciously undertaken, any work for him.

[14] Mr Yang's first claim in the Disputes Tribunal concerned an invoice for $6,165, although Mr Yang limited his claim to $4,999 in order to pay a lower filing fee. The invoice relates to work done between 29 September 2020 to 27 April 2021. The fee rate, although unstated in the invoice, was obviously calculated at the rate of $220 per hour. The invoice claimed mileage of $90 and office services of $250, neither of which were disbursements known to Mr Yang's employer. The invoice claims $825 for GST which is a figure that cannot be reached by any combination of items in that invoice. [$825 is 15 per cent of $5,500 but the total of fee and disbursements is less than that.]

[15] Mr Yang's supervising partner swore an affidavit which is unchallenged in its entirety. The supervising partner was not required for cross-examination. We find that Mr Yang was properly instructed in the firm's office practices, including those relating to opening of files. During the hearing, Mr Yang admitted he had opened files, or law clerks had undertaken that task on his direction.

[16] Mr Yang did not open a file for the client in Junior Partner, the firm's system. He did not complete AML enquiries. He noted the client as a "prospect" in time records in a manner that did not result in the client entering the firm's Junior Partner billing records. We find he did not alert a partner about the client. In this respect we prefer the unchallenged evidence of the supervising partner to Mr Yang's vague attempts to introduce, at the hearing, a smudging suggestion that he may have said something in passing. The immediate reaction of the supervising partner, and that of the partnership, to the news on 10 February 2022, vehemently suggest Mr Yang had not alerted them to the existence of this client.

[17] Despite not having opened a file in the ordinary way in the firm, and despite not having completed AML enquiries, Mr Yang acted for the client for many months, appearing in court on several occasions. He failed to record the time taken in these appearances. Although Mr Yang, supported by the client's unsworn statement, asserts that the client obtained a letter of engagement earlier, the supervising partner deposes that, upon their office enquiry, they searched Mr Yang's Outlook account at their office and discovered "a document purporting to be a letter of engagement to [the client] created on 10 February 2022. That was the day Mr Yang had the telephone hearing with the Disputes Referee and the day he first told the supervising partner of the client's existence.

[18] In the process of weighing all the evidence, we prefer the inference that Mr Yang generated the letter of engagement long after the work was completed in an endeavour to cover the tracks of his earlier failure to attend to this. We note that some references have been filed about Mr Yang's performance in criminal courts and incidentally to his character. We presume these are tendered in anticipation of the penalty hearing (which was always a necessary step because he has accepted at least unsatisfactory conduct). We do not have regard to those references in this liability decision.

[19] The invoice that was originally sent to the client appeared to be in the standard form used by the employer. It had the firm's name and contact details prominently on the front page (top right). At the end of the invoice (page 2) two lines said "E. & O.E.// [Firm name]". At the foot of the front page were payment instructions, recording the firm's address and bank details. The document was not generated by the firm's Junior Partner means, it was a document engineered by Mr Yang to give the appearance of a like, legitimate invoice.

[20] Had the narrative concluded at that point, we could have found that the balance lay in favour of Mr Yang – that, despite his many failures and shortcomings, the evidence tended to suggest he may have intended the firm should benefit. The next developments should be noted in context of Mr Yang's employment position. During 2021, he completed the Stepping-Up Programme to enable him to practise on his own account. He was well behind on his fees targets at work. He felt socially isolated and overlooked because his office was being used to store files. In correspondence with the Law Society, he complained about his feelings of rejection and isolation. He complained about the air conditioner, that his printer was not working, and other

features of his employment that he felt were unsatisfactory. We find he harboured some resentment and was looking to move before he faced termination or a poor reference.[8]

[21] Against this background, Mr Yang engaged in text communication with the director of a collections firm about the unpaid invoice. Some of the text communication is exhibited to Mr Yang's affidavit of 19 January 2024. The discussion centres on enforcement. Mr Yang describes it as "a little problem" and adds "Done 6k worth of legal work for a guy" "Guy hasn't paid and it's been 4 months." The collections director responds: "Just have to consider that if he goes to law society there could be issues."

[22] Mr Waalkens submitted that these text messages showed Mr Yang was "panicking." We do not draw that inference. Although they evidence that Mr Yang was annoyed that his work had been unpaid, no-one in the firm was aware of the client or the work. The firm was unaware of the invoice because it had not been entered in their billing system. It follows that the firm was unaware that the invoice (of which it had no knowledge) was unpaid.

[23] Mr Yang then issued the first Disputes Tribunal claim in his own name. The documents filed showed no hint of his employer except that the front page of the invoice still showed, at the foot of the front page, the firm's PO Box, DX number and suburb, and the firm's bank account number but there was no notation to alert the Disputes Tribunal to the involvement of the firm. On page 2 of the invoice, the two lines with "E. & O. E." and the Firm's name were expunged as if they had never been there. The method of removal (whether by obscuring, or by tearing portions out and photocopying) had the effect of removing one and a half letters at the end of an email address. That email address was left to show, at its end (proximate to where the block of text showing the firm's name and detail had been) the ending "@gmail.c". Where, on the original,[9] the ending "@gmail.com" had been, only half of the "o" remained, the balance having departed with the final letter "m".[10]

[8] NoE 64, lines 25 - 30
[9] See Bundle 43.
[10] See Bundle 97.

[24] In exactly similar manner, an accompanying letter which had gone to the client with the original invoice was altered to remove, from the top, the references to the firm, and to make the firm's name, immediately before Mr Yang's signature, vanish.[11]

[25] The supervising partner discovered, on Mr Yang's work Outlook account, copies of both the original and the altered documents.[12] Mr Yang cannot explain how they got there. In a long letter to his employers he said[13] that he had been mocking up "blank invoices" for when he would be practising on his own account but this is not a credible explanation for the two versions of this invoice to have been in his Outlook account at work. In re-examination, he said he is "100 percent certain" he did not alter the documents. He says he completed the Disputes Tribunal documents under the guidance of the collections director who was physically present with him when he completed and electronically filed the claim. Mr Yang filed the claim in his own name. he provided his personal bank account as the account for the purpose of the claim. He told the Standards Committee:[14] "The form did not specify that this was the bank details to which a claim would be received. I was not sure why the form required a bank account number or what it would be used for." We do not accept that Mr Yang was naïve about this fact which is inconsistent with his case that he only acted to advance his employer's interest. This detail fits with the Standards Committee submission that he acted for personal gain.

[26] The collections director provided a letter (unsworn) to the Complaints Service[15] which Mr Yang exhibits to his affidavit of 19 January 2024. The letter is in exculpatory terms with regard to Mr Yang. The collections director states "I prepared the [Disputes Tribunal] application in his presence. I filed the claim with my office address and Jason's personal bank details. I had Jason's bank account details already as he was a friend." He then says he received a notice of hearing from the Disputes Tribunal and sent a photo to Jason. He says "I hold responsibility for Jason escalating this matter with [the client]. Jason at no point intended to self-gain from this matter. He was guided by me the entirety of this matter. I believe as we move forward, he will emerge as a better person."

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[11] Compare Bundle 42, with Bundle 96.
[12] Bundle, 55, at [35].
[13] Bundle 13, para 38, letter 25 March 2022
[14] Bundle, 19, Letter 25 August 2022, para 12
[15] Bundle 45–46.

[27] Mr Yang did not provide an affidavit from the collections director who, in a letter to the Law Society, he describes as "my friend".[16] We do not treat it as evidence.

[29] We find that Mr Yang was physically present and involved in the preparation and filing of the claim. We cannot find any coherent explanation for the appearance of both versions of the documents on his work Outlook files unless he was party to their alteration. Only he was potentially to gain from their alterations which removed, to a significant extent, evidence that he was not the person entitled to claim. On their faces, as presented, the letter and invoice to client, could readily have come from Mr Yang personally. In effect, he presented the documents to the Disputes Tribunal, and presented himself to the Disputes Tribunal as if he were the author and entitled party. In other words, he presented as if he were acting on his own behalf.

[30] Although Mr Yang could not be drawn into explicit recollection, we find the reasonable inference is that the Referee noted the absence of client number, the absence of invoice number, and the absence of letterhead. The Referee may also have been alerted by the bizarre claim of $2,000 for injury to feelings, and the lack of invoice for part of the sum claimed in the second claim. We find that only when asked pertinent questions by the Referee did Mr Yang realise he had been driven into the open and must tell his supervising partner in a belated attempt at damage control.

[31] We are firm in our finding that, from the time of preparing the first claim for the Disputes Tribunal, Mr Yang was at pains to act covertly as far as his employer was concerned. The subterfuge of using his friend's address ensured secrecy. That cannot be reconciled with the version that he was doing this for the firm's benefit. His arrangements were designed to cut the firm out. The survival of the firm's bank account and other details on the altered invoice would not alert any ordinary reader to the existence of the employer. We find Mr Yang was party to the alteration of the documents to obscure his firm. We find his claim that all he did was done for his employer is unsustainable considering the facts. It is hard to reconcile his case, that he was acting only for his employer, with his claim for hurt feelings, distinctly personal to him. The only things he can cling to are trivial when set against the force of the opposing narrative.

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[16] Bundle 13, at [35].

[32] We attended closely to Mr Yang while giving evidence. We found him unconvincing. His defence lacked logic and common sense. It lacked credibility. We found no substance to his defence. The Standards Committee's case proved coherent and compelling. After careful deliberation, we find the preponderance of evidence is overwhelming that he conducted himself, in his claims to the Disputes Tribunal, for personal financial gain.

For personal gain: disgraceful or dishonourable?

[33] Authorities[17] warn against using epithets that add a gloss to the plain words of the statute. Many words may be employed to describe Mr Yang's conduct, but we should address squarely the statutory test. Would lawyers of good standing reasonably regard his conduct as disgraceful or dishonourable?

[34] Facts vary from case to case. Mr Hodge made it clear that his submissions cited authorities to elicit principles, not to suggest that the facts in this case were like those. The threshold is substantial. Approving reference is often made to the following passage where Kirby J, in an Australian medical practitioner context observed:[18]

> Departures from elementary and generally accepted standards, of which a medical practitioner could scarcely be heard to say that he or she was ignorant could amount to such professional misconduct...But the statutory test [misconduct in a professional respect] is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse of the privileges which accompany registration as a medical practitioner...

[35] Mr Waalkens advanced the submission that acceptance as unsatisfactory conduct was sufficient. He attempted to frame it as sloppy, thereby suggesting it was a matter of small moment. But Mr Yang's conduct extended well beyond failures to abide by office systems or to provide a client engagement letter in a timely manner, or to complete AML checks within proper time.

[36] We have found Mr Yang took planned steps to pass off the invoice he had created as evidence of a debt he was entitled to collect for his own benefit. He was a

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[17] E.g. *S v New Zealand Law Society* [2012] NZHC 1559.
[18] *Pillai v Messiter [No 2]* (1989) 16 NSWLR 197 at 200 quoted with approval in *S v New Zealand Law Society* [2012] NZHC 1559.

party to materially altering documents to advance that plan. His stratagem breached his employer's trust. His action in suing a client, without knowledge of his employer, put the reputation of the firm at risk. He presented himself to the Disputes Tribunal as entitled to claim on his own account, only changing tack when his circumstances were discovered by the Referee. He has lied to the Tribunal. Any of these pieces of conduct and, unquestionably, their totality, bring into question Mr Yang's fitness to be an enrolled lawyer.

[37] We find that lawyers of good standing would reasonably regard Mr Yang's conduct as disgraceful and dishonourable.

Would Mr Yang's conduct in suing a client for work that had never been invoiced reasonably be regarded by lawyers of good standing as disgraceful or dishonourable?

[38] Even if Mr Yang had been entitled to personally benefit from the legal work he undertook for the client, to sue a client who has not received an invoice breaches his duty of courtesy and trust which he owes to his client. The action was, at least, precipitate, and improper.

[39] We find that this conduct, relating to part of his second Disputes Tribunal claim, would similarly reasonably be regarded by lawyers of good standing as disgraceful and dishonourable.

Would Mr Yang's conduct in suing a client for alleged pain and suffering caused by the client having failed to pay the bill reasonably be regarded by lawyers of good standing as disgraceful or dishonourable?

[40] This claim appears to be punitive or an inventive means of padding out what Mr Yang sought from the client but it had no legal justification. It amounts to an improper use of the legal system (the Disputes Tribunal).

[41] Like the earlier heads of misconduct found in this decision, this conduct was a deliberate departure from accepted standards. Mr Yang did not attempt to argue that he had any such right. We find that this conduct, too, would reasonably be regarded by lawyers of good standing as both disgraceful and dishonourable.

[42] In respect of all the issues noted under s 7(1)(a)(i), we find the charge of misconduct is made out.

[43] Therefore, as mentioned earlier, we do not need to consider the alternative route to finding misconduct argued for the Standards Committee under s 7(1)(a)(ii) but, without going into detail, it is obvious that Mr Yang's conduct on relevant points was wilful, and tended to bring the profession into disrepute. We need not make a final finding on that route.

Non-publication

[44] No application was advanced at the hearing for non-publication of Mr Yang's name. We see no substantial grounds for doing so. We make a permanent order that names and identifying material regarding Mr Yang's employer, its partners, the client and the collections director, shall not be published. These orders made pursuant s 240 LCA.

[45] A date of hearing shall be set for penalty. Without restricting ourselves at that juncture, and despite the gravity of the misconduct in this case, we do not immediately think that strike-off is an inevitable outcome.

DATED at AUCKLAND this 27th day of March 2024

Dr JG Adams
Deputy Chair