NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2011] NZLCDT 11

LCDT 015/10

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**AUCKLAND STANDARDS COMMITTEE 1** Applicant
AND	**BRETT DEAN RAVELICH**, of Auckland, Barrister Respondent

CHAIR

Mr D J Mackenzie

MEMBERS OF THE TRIBUNAL

Mr J Clarke
Mr G Craig
Mr C Lucas
Mr P Shaw

REPRESENTATION

Ms K Davenport and Mr M Treleaven for Auckland Standards Committee 1
Mr J Wiles for Mr Ravelich

HEARING at Auckland on 15 March 2011

DECISION OF THE TRIBUNAL ON CHARGES, PENALTY, AND COSTS

Introduction

[1] Mr Ravelich faced three disciplinary charges, which had been laid by the Auckland Standards Committee in August 2010. The charges arose from a number of criminal convictions that had been recorded against Mr Ravelich over an extended period of time.

[2] Two of the charges related to matters occurring at a time when the Law Practitioners Act 1982 ("the former Act") was in force for matters of professional discipline. That Act was repealed on 1 August 2008, which raised a legal issue relating to the operation of the transitional provisions of the Lawyers and Conveyancers Act 2006, which replaced the Law Practitioners Act. We shall discuss that issue later in this decision.

Disciplinary charges

Charge 1

[3] The first disciplinary charge alleged that Mr Ravelich had been convicted of the offence of resisting arrest in February 2009. That is an offence that may be punished by imprisonment.

[4] That charge was brought under section 241(d) Lawyers and Conveyancers Act 2006, which provides, so far as relevant, that if the Tribunal is satisfied that a person *"…has been convicted of an offence punishable by imprisonment and the conviction reflects on his or her fitness to practise, or tends to bring his or her profession into disrepute…"* the Tribunal may make any of the orders authorised by section 242 of that Act, that being the section containing the various disciplinary sanctions available.

[5] The requirement of the section is two-fold. First, the person concerned must have been convicted of an offence punishable by

imprisonment. Second, the conviction must either reflect on fitness to practise or tend to bring the profession into disrepute.

[6] The first limb will normally be a straight forward matter of formal proof, but the second limb must require the Tribunal to take a view on the seriousness of the conduct which led to the conviction. If such a qualitative exercise was not to be undertaken there would be no point in the second limb, with the mere fact of conviction on an offence punishable by imprisonment being sufficient to prove the disciplinary charge.

[7] As Mr Ravelich has pleaded guilty to this charge, the Tribunal takes the view that both the first and second limbs of the charge are established, without the Tribunal, as part of its substantive decision process, being required to undertake the qualitative assessment of the conduct which would otherwise be necessary. In such a case, the actual nature of the conduct which gives rise to conviction will only be a relevant consideration in deciding what sanction should be imposed.

Charge 2

[8] The second disciplinary charge faced by Mr Ravelich alleged that he had been convicted of the offences of driving with excess breath alcohol, driving with excess blood alcohol, refusing to give a blood specimen, and resisting arrest. All of these offences may be punished by imprisonment.

[9] Mr Ravelich's breath alcohol offence resulted in a conviction in February 1989, and his blood alcohol conviction was in June 1990. The refusal to give a blood specimen resulted in a conviction in May 2008, and the resisting arrest conviction was in April 2008.

[10] As the convictions which form the particulars of this charge all occurred prior to the coming into effect of the Lawyers and Conveyancers Act 2006 on 1 August 2008, this charge refers to the equivalent of section 241(d)

Lawyers and Conveyancers Act, section 112(1)(d) of the Law Practitioners Act 1982.

[11] That section is virtually identical to section 241(d), providing that if the Tribunal "…*is satisfied that the practitioner has been convicted of an offence punishable by imprisonment, and is of the opinion that the conviction reflects on his fitness to practise as a barrister or solicitor, or tends to bring the profession into disrepute…"* the Tribunal may make an order applying any of the sanctions permitted by that section.

Charge 3

[12] The third disciplinary charge Mr Ravelich faced alleged that he was guilty of conduct unbecoming a barrister, as referred to in section 112(1)(b) of the Law Practitioners Act 1982, the disciplinary provision applicable at the time the conduct occurred. This charge arose from his conviction for the offences of careless use of a motor vehicle, excreting in a public place, and failing to remain for an evidential breath test.

[13] The conduct which led to Mr Ravelich being convicted of these offences occurred in February 1995, August 2007, and November 2006 respectively. Unlike the first and second charges, the offences the subject of this third charge, were not matters punishable by imprisonment, resulting in a different charge, that of conduct unbecoming a barrister.

[14] We have treated the date of the conduct for which Mr Ravelich was found guilty of these offences as the relevant date for this third charge, as, unlike the first and second charges, the essential element of this charge is Mr Ravelich's conduct, not the fact of conviction.

Transitional provisions

[15] The second and third disciplinary charges relate to matters arising at a time when the disciplinary provisions applicable were contained in the Law Practitioners Act 1982. That Act was repealed by section 349 of the Lawyers and Conveyancers Act 2006, prior to the disciplinary charges being brought, so the charges were laid and are to be addressed under the Lawyers and Conveyancers Act, which came into force on 1 August 2008.[1]

[16] The transitional provisions of the Lawyers and Conveyancers Act relating to complaints and disciplinary proceedings arising from pre-1 August 2008 conduct are contained in sections 350-361 of that Act. Those transitional provisions provide mechanisms for disposing of disciplinary matters occurring in two situations – proceedings already commenced prior to 1 August 2008, but not completed,[2] and disciplinary proceedings commencing after 1 August 2008, but relating to conduct before that date.[3]

[17] This right to bring disciplinary proceedings under the transitional provisions of the Lawyers and Conveyancers Act for pre-1 August 2008 conduct, was subject to a number of conditions, as would be anticipated where conduct occurring before the commencement of the new disciplinary regime was to be prosecuted under that new regime. Those conditions were set out in section 351 of the Lawyers and Conveyancers Act.

[18] Section 351 provides, so far as relevant;

> "(1) If a lawyer or former lawyer or employee or former employee of a lawyer is alleged to have been guilty, before the commencement of this section, of conduct in respect of which proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982, a complaint about that conduct may be made, after the commencement of this section, to the complaints service established under section 121(1) by the New Zealand Law Society.
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> (2) Despite subsection (1), no person is entitled to make under this Act -

[1] Lawyers and Conveyancers Commencement Order 2008.
[2] Proceedings where to be continued under the Lawyers and Conveyancers Act 2006, sections 353-361.
[3] Lawyers and Conveyancers Act, section 351.

(a) a complaint that has been disposed of under the Law Practitioners Act 1982; or,

(b) a complaint in respect of –

(i) conduct that occurred more than 6 years before the commencement of this section, or

(ii) regulated services that were delivered more than 6 years before the commencement of this section; or,

(iii) a bill of costs that was rendered more than 6 years before the commencement of this section."

[19] As will be observed, the conditions include;

(a) that the conduct alleged to have occurred must have been conduct for which proceedings of a disciplinary nature could have been commenced under the Law Practitioners Act 1982;

(b) that it is not a matter which has been disposed of under that earlier Act;[4] and,

(c) the application of a limitation period of six years from commencement of the section, so that conduct before 1 August 2002 is outside the ambit of the section.

[20] The transitional provisions of the Lawyers and Conveyancers Act[5] also provide that from the Act's commencement no complaint may be made or referred under section 98 of the Law Practitioners Act, and no own motion investigation may be commenced under section 99 of the Law Practitioners Act.

[21] As a consequence, from and including 1 August 2008, conduct occurring prior to that date could not be the subject of new disciplinary proceedings under the Law Practitioners Act 1982, the Act which governed the legal profession at the time of such conduct. Such conduct could only be the subject of disciplinary proceedings commenced under the transitional

[4] See Lawyers and Conveyancers Act 2006, section 351(3) as to what constitutes being "disposed of".
[5] Lawyers and Conveyancers Act 2006, section 350.

provisions of the Lawyers and Conveyancers Act 2006, provided the applicable conditions of those transitional provisions were met.

[22] Counsel for the Standards Committee, in her submissions to the Tribunal, suggested that in addition to the transitional provisions of section 351 of the Lawyers and Conveyancers Act, the second and third charges were able to be brought pursuant to section 19 of the Interpretation Act 1999. That section provides;

> "**19 Effect of repeal on prior offences and breaches of enactments**
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> (1) The repeal of an enactment does not affect a liability to penalty for an offence or for a breach of an enactment committed before the repeal.
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> (2) A repealed enactment continues to have effect as if it had not been repealed for the purposes of –
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> (a) Investigating the offence or breach;
> (b) Commencing or completing proceedings for the offence or breach;
> (c) Imposing a penalty for the offence or breach."

[23] In respect of professional discipline, the Law Practitioners Act 1982 provided only a framework, and established processes, for investigating and hearing such matters. We are not sure that there is an actual "offence" or "breach of enactment" as referred to in the Interpretation Act, in the disciplinary charges Mr Ravelich faces, and they are necessary ingredients in the application of section 19 of the Interpretation Act. We think the better position is to rely on section 351 Lawyers and Conveyancers Act, given that Parliament has expressly provided transitional mechanisms in that new Act, which replaces the Law Practitioners Act.

[24] This brings us to the jurisdictional issue that must be considered in this case, having regard to the purpose of the transitional provisions of the Lawyers and Conveyancers Act.

Jurisdictional Issue

[25] The purpose of the transitional provisions is to ensure there is no hiatus in the application of the disciplinary regime at the time of transition following repeal of the Law Practitioners Act 1982 and the commencement of the Lawyers and Conveyancers Act 2006.

[26] That repeal and commencement was effective 1 August 2008. Prior to that date disciplinary processes could be initiated by complaint or own motion process under the Law Practitioners Act. That dual commencement mechanism was replicated under the new Act. The Lawyers and Conveyancers Act provides similar provisions, ensuring both complaint and own motion procedures are available to commence disciplinary proceedings in respect of conduct occurring after 1 August 2008.

[27] The question which has arisen in this case is whether the transitional provisions of the Lawyers and Conveyancers Act provide for both modes of commencement of disciplinary proceedings (that is, complaint and own motion), where conduct occurring pre-1 August 2008 is the subject of disciplinary proceedings after that date.

[28] Prior to the hearing of the disciplinary charges against him, Mr Ravelich had intimated a guilty plea on all charges to the Standards Committee. The Standards Committee then raised, quite properly, a jurisdictional point which had come to its attention regarding the transitional provisions of the Lawyers and Conveyancers Act 2006, for consideration by counsel for Mr Ravelich.

[29] The point, as it was made at that early stage, was whether there was a threshold jurisdictional issue which affected the consideration of historic particulars supporting some of the charges. The Committee noted that in Charge 2, two of the particulars,[6] and in Charge 3, one of the particulars,[7] were outside the limitation period imposed by the transitional provisions.

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[6] Excess breath/blood alcohol convictions in February 1989 and June 1990.
[7] Careless use of a motor vehicle in February 1995.

[30] This was a reference to section 351(2) of the Lawyers and Conveyancers Act 2006, which notes that complaints may not be made under that Act about conduct occurring more than six years prior to the section's commencement. Effectively, only conduct occurring after 31 July 2002 and before 1 August 2008 may be initiated under the transitional provisions of section 351.

[31] The Committee said that its position was that section 351(2) only applied to complaints, not to own motion matters. It submitted that as this was an own motion matter, not a compliant, the fact that some particulars fell outside the permitted period applicable to "complaints" under section 351(2) did not prevent those particulars from being taken into account by the Tribunal in this case.

[32] The Standards Committee acknowledged that this jurisdictional issue was a point open to debate and interpretation, and indicated that it saw value in the issue being resolved so that it would have guidance in future cases.

[33] As noted, the initial question posed by the Standards Committee regarding jurisdiction was whether section 351(2) barred consideration of particulars outside the six-year permitted period where an own motion matter was involved rather than a complaint.

[34] That submission raised another matter, about which, we discern from her submissions on behalf of the Standards Committee, counsel for the Committee became aware after the initial question of a time limitation had first been raised with counsel for Mr Ravelich.

[35] That matter is: if the only reference in the transitional provisions enabling use of the Lawyers and Conveyancers Act in respect of commencing disciplinary proceedings arising from conduct before its enactment was to matters of complaint, does that indicate a lack of jurisdiction to commence disciplinary proceedings under those transitional provisions by way of own motion investigation?

[36] On the face of it, the special transitional arrangements enabling the use of the Lawyers and Conveyancers Act in respect of such matters of complaint do not extend to own motion matters. Section 351 refers only to complaints, and makes no reference to the alternative of matters initiated by own motion.

[37] Complaints and own motion matters are two distinct processes to commence disciplinary proceedings under the Lawyers and Conveyancers Act, as they were under the former Law Practitioners Act.

[38] A complaint is a specific manner in which the disciplinary process may be initiated under the Lawyers and Conveyancers Act, with "complaint" being a defined term under the Act,[8] specifically linking it to section 132 of that Act.

[39] Disciplinary proceedings may also be initiated under the Lawyers and Conveyancers under a separate own motion regime, as shown by section 130(c) of that Act.

[40] The functions of the Standards Committee are set out in section 130 of the Lawyers and Conveyancers Act, and include the functions specifically shown below:

> (a) to inquire into and investigate complaints made under section 132
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> ...
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> (c) to investigate of its own motion any act, omission, allegation, practice, or other matter that appears to indicate that there may have been misconduct or unsatisfactory conduct on the part of a practitioner or any other person who belongs to any class of persons described in section 121
>
> ...
>
> (f) To lay, and prosecute, charges before the Disciplinary Tribunal.

[41] In the same way as the Law Practitioners Act enabled a charge to be brought after either a complaint or an own motion investigation, the Lawyers

[8] See Lawyers and Conveyancers Act 2006, section 6.

and Conveyancers Act enables charges to be brought following either a complaint, utilising section 132, or an own motion complaint, as noted in section 130(c). As noted, the transitional provisions of section 351 deal only with matters arising from "complaint".

[42] While the two processes, complaint and own motion, are distinct, there is no real difference in process following the complaint or motion. Under section 132, a complaint to the Complaints Service of the Law Society commences the disciplinary process by requiring the complaint to be referred to the appropriate Standards Committee for investigation.[9] Section 137 then sets out the actions available to the Standards Committee on receipt of that complaint. It is empowered to inquire into the complaint, seek negotiation conciliation or mediation between the relevant parties, or to decide to take no further action.

[43] For a Standards Committee to reach a view on the course of action it will follow under section 137 clearly requires the Standards Committee to make sufficient enquiry to form a preliminary view on the merits of the complaint which has been referred to it by the Complaints Service. In an own motion situation under section 130(c), the Standards Committee would no doubt have to make a similar preliminary enquiry to be able to properly reach a view that it should embark on an investigation of the matter coming to its attention.

[44] Once that preliminary threshold is satisfied, the functions and powers of the Standards Committee from that point are the same, whether the disciplinary proceedings have been initiated by complaint or by own motion. The initial process requirements apply to both complaints and inquiries,[10] investigators may be appointed,[11] an inquiry undertaken, and a hearing conducted.[12] The determinations that may be made following a hearing apply

[9] Lawyers and Conveyancers Act 2006, section 135(1).
[10] Lawyer and Conveyancers Act 2006, section 141
[11] Lawyers and Conveyancers Act 2006, section 144
[12] Lawyers and Conveyancers Act 2006, sections 152(1)(a), 152(1)(b) and 153.

equally, whether the proceedings were initiated by a complaint or own motion.[13]

[45] Despite the Law Practitioners Act previously allowing two separate processes to commence disciplinary proceedings (complaint under section 98 or own motion under section 99), and the Lawyers and Conveyancers Act maintaining that provision for two different methods by which proceedings could be initiated,[14] the transitional provisions of section 351 only refer to matters initiated by "complaints" for conduct pre-1 August 2008. There is no reference in section 351 to pre-1 August 2008 conduct in respect of which proceedings are initiated by own motion.

[46] Counsel for the Standards Committee urged on us that we should read into the transitional provisions of section 351(1) of the Lawyers and Conveyancers Act, a reference to own motion matters as well as to complaints. It was submitted that to do so would be in accord with established principles of statutory interpretation, although we note that counsel did not also consider that an own motion reference should also be read into section 351(2), which would then impose a time limit of six years prior to repeal on such own motion matters.

[47] The Standards Committee submitted that section 351(2) should be treated as being limited to complaints. It suggested it should not apply to own motion proceedings. That would then not limit historic particulars outside the limited period being considered by the Tribunal as part of a charge where initiated by own motion.

[48] The Committee emphasised that the scheme of the Act was to separate the modes by which disciplinary proceedings commenced, complaints or own motion. It said that its position, that own motion initiated proceedings should be free from the limitations of section 351(2), was supported by the proposition that such an approach was necessary to ensure

[13] Lawyers and Conveyancers Act 2006, section 152(2).
[14] Such as by written complaint to the Complaints Service under section 132 of the Lawyers and Conveyancers Act 2006, or by own motion as noted in section 130(c) of the same Act.

the purposes of the Lawyers and Conveyancers Act[15] were not prejudiced. That was particularly so regarding the application of the six year limited period it said, as matters of pre-1 August 2008 conduct could not be prosecuted where outside that six-year limit. The Committee suggested that as section 351(2) was silent on own motion matters, the limitations of section 351(2) on complaints should not be implied to such matters.

[49] That of course reaffirmed the question as to whether the non reference to own motion matters anywhere in S.351 meant that a Standards Committee did not have power to commence an own motion matter under the Lawyers and Conveyancers Act for pre 1 August 2008 conduct utilising the transitional provisions of that section.

[50] To overcome this, the committee had submitted that the Tribunal should read into S.351(1) a provision that extended that subsection to include own motion matters as well as complaints. The committee did not also propose that own motion matters also be read into S.351(2), on the basis that would then make such matters subject to the 6 year limit, something the committee argued against.

[51] The Standards Committee submitted that the "reading in" approach was consistent with principles of statutory interpretation, and referred the Tribunal to *McKay v R.*[16]

[52] In *McKay* the Court was concerned with the effect of a Judge not strictly following the sequence of steps mandated for pre-trial mental health inquiries as to fitness to stand trial. The process in that case which was required to be followed was set out in the Criminal Procedures (Mentally Impaired Persons) Act 2003. The Court found that the drafting of some of the processes and procedures could be unworkable in certain situations.

[53] In particular, the suggestion that a literal reading of that Act required that fitness to stand trial issues could only be dealt with after a trial had

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[15] Under section 3 of the Lawyers and Conveyancers Act 2006, the maintenance of public confidence and protection of consumers are particularly important
[16] [2010] 1 NZLR 441 (CA).

commenced was considered so "*absurd"* that it could not have been Parliament's intention when the Act was drafted.[17]

[54] As a consequence the court considered that it was "a plain case where the courts are required to fill in gaps in the statute so as to make the legislation work".[18]

[55] The Court also noted *Northland Milk Vendors Association Inc v Northern Milk Ltd*,[19] where Cooke P said:[20]

> "….. Courts must try to make the Act work while taking care not themselves to usurp the policy-making function, which rightly belongs to Parliament. The Courts can in a sense fill gaps in an Act but only in order to make the Act work as Parliament must have intended…"

[56] In *Northern Milk Vendors* there was no adequate provision in a new Act for transitional arrangements regarding the delivery of milk during an interim period, from enactment to the time of development of a new administrative system to control milk delivery. In those circumstances the Court considered that to observe the spirit of the scheme of the Act it was free to read in some arrangements which largely preserved the status quo, to ensure the efficacy of milk delivery arrangements in the meantime.

[57] In the current matter before this Tribunal, it has been submitted by the Standards Committee that section 351(1) of the Lawyers and Conveyancers Act is such a case as requires the Tribunal to fill a gap, ensuring that the transitional provisions are available for disciplinary process initiated by own motion as well as by complaint. It proposed that the matter be dealt with by reading into section 351(1) a provision that extended the transitional right to commence proceedings under that Act for newly arising matters which occurred pre-1 August 2008, beyond complaints, to own motion matters.

[58] The Standards Committee also suggested that while own motion matters should be read in as included in section 351(1), they should not be

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[17] Ibid, para [91].
[18] Ibid, para [92].
[19] [1988] 1 NZLR 530 (HC).
[20] Ibid p538

included in the time limitations contained in section 351(2), with its six years prior to commencement of that section limit. We do not see a valid basis, if we were to read a power to commence proceedings via own motion into section 351(1) of the Lawyers and Conveyancers Act, for not also reading own motion commenced proceedings into section 351(2), with its time limitations.

[59] Parliament has time limited matters that may be brought under the transitional provisions of section 351. That is indicative of a desire to limit how far back, under the former disciplinary regime operated pursuant to the repealed Law Practitioners Act, the new Act should be allowed to reach. The policy position adopted appears to be that it should not reach back prior to 1 August 2002. It is difficult to discern any rational basis for only applying that policy to some disciplinary proceedings for conduct under the former Act, and not other such proceedings.

[60] For the Standards Committee, it was suggested that the reason was that if the Law Society was to make a discovery late in the piece, it would be prevented from examining such matters in the future if "*outside the six-year term".* That was a situation to be avoided it said, so that matters discovered by the Law Society in the future did not escape prosecution because of the passage of time.

[61] It has to be borne in mind that the six-year limitation is not a moving six years, related to a period prior to the date of discovery of any conduct that should be examined under the disciplinary process. The limitation period is fixed, and has been since the commencement of the Lawyers and Conveyancers Act. It excludes conduct prior to 1 August 2002. That is the relevant date whenever a matter may come to light, whether now or some years in the future.

[62] We discern the intention of Parliament to be that all pre-1 August 2008 conduct, back as far as 1 August 2002, is to be dealt with under the

transitional provisions of section 351, no matter when discovered.[21] There was no specific time limit under the Law Practitioners Act. Nor is there such a limit under the Lawyers and Conveyancers Act for matters arising in the normal course since commencement of that Act. The six-year limitation arises only under the transitional provisions. We consider it reflects a policy decision to close off the former disciplinary regime for matters pre-1 August 2002 from the outset of the commencement of the new regime under the Lawyers and Conveyancers Act. We note also that the Law Society has a discretion regarding the issue of an annual practising certificate, and that may provide an alternative control if historic matters, pre-1 August 2002, were discovered at some time in the future.[22]

[63] For Mr Ravelich, it was submitted that the historic particulars supporting the charges that fell outside the limitation period imposed by section 351(2) for pre-1 August 2008 matters (that is, all pre-1 August 2002 particulars), should be ignored by the Tribunal. It was submitted that to treat the historic particulars as excluded if the proceedings had been initiated by complaint, but included if initiated by own motion, as suggested by the Standards Committee, was perverse and reflected nothing more than a lacuna in the transitional provisions which should be resolved in favour of Mr Ravelich.

[64] Counsel for Mr Ravelich did not specifically address the wider issue of whether the fact that section 351 only referred to complaints may also mean that any pre-1 August 2008 conduct prosecuted under the Lawyers and Conveyancers Act had to be the subject of disciplinary charges which were initiated by complaint rather than own motion.

[65] The Tribunal takes the view that section 351(1) should also allow disciplinary proceedings initiated by own motion. If that position is adopted regarding section 351(1), we also consider that there is no proper basis to not similarly apply the time limitation by extending section 351(2) in the same way

[21] Although we do accept there will be a point where the historical nature of the alleged conduct will need to be considered in the same way as noted in section 138(1)(a) of the Lawyers and Conveyancers Act 2006.
[22] See Lawyers and Conveyancers Act 2006, section 41.

to include own motion matters. Time limits on proceedings should not be dependent on whether those proceedings were initiated by a complaint or an own motion.

[66] We note also that under section 352, unless otherwise by consent, pre-1 August 2008 conduct is to be the subject of the same sanction as would have been available if prosecuted under the Law Practitioners Act.[23]

[67] We see no reason why that sanction limitation should not apply equally to complaints and own motion matters. If we were to read in proceedings that were initiated by own motion to section 351, we would also have to read it into section 352, by extending that sanction requirement to own motion as well as complaint. There should not be a difference in sanction arising from mode of initiation.

[68] In summary, the reasons we consider we can properly read into section 351 a reference to own motion matters are;

(a) The scheme of the Law Practitioners Act and the scheme of the Lawyers and Conveyancers Act both allow disciplinary charges to be initiated by either a complaint being received by the Law Society Complaints Service, or a matter otherwise coming to the Law Society's attention (for example, a report from a Law Society inspector) leading to an own motion commencement by its appropriate Standards Committee. To maintain that consistency of approach, the provisions bridging the transitional period created by the repeal of the former Act and the enactment of the new Act should similarly allow and maintain both processes. Not to do that leaves an

[23] Section 352 Lawyers and Conveyancers Act 2006 provides, so far as relevant;

"(1) If a complaint is made under this Act about conduct that occurred before the commencement of this section, any penalty imposed in respect of that conduct must be a penalty that could have been imposed in respect of that conduct at the time when that conduct occurred."

Section 352(2) goes on to note that penalties available under the Lawyers and Conveyancers Act, but not necessarily under the Law Practitioners Act, may be applied by consent of the person on whom any penalty is imposed.

inexplicable gap in the transitional provisions, which would then be limited to complaints.

(b) There is no substantive difference in the rights or obligations of the person charged, or the processes followed, whether the proceedings arise from an own motion or a complaint.

(c) Established principles of statutory interpretation, as indicated by *McKay*[24] and *Northern Milk,*[25] recognise the necessity of reading in provisions to fill a gap in provisions where an Act does not adequately provide for a situation that should be provided for to enable the legislation to operate effectively.

(d) This is an area of professional discipline, with the relevant legislation focusing on public protection and confidence regarding legal services. In that area, the Tribunal should be cautious in allowing preliminary technical process issues, with no real bearing on the rights of the person charged or the substantive process followed, to preclude the ability of the Tribunal to hear a matter.

[69] The same approach should also be taken with section 352, to ensure consistency of sanction as between matters initiated by complaint and matters initiated by own motion.

[70] We should note that we did consider whether section 136 Lawyers and Conveyancers Act may affect our approach to interpretation of section 351. Under section 136 the Law Society may be a complainant and lodge a complaint under section 132. An argument could be that the Law Society has an avenue, if it receives information about possible misconduct, to make a complaint itself and initiate disciplinary procedures under the transitional provisions other than via own motion.

[24] See n 16 above.
[25] See n 19 above.

[71] We think that a strained interpretation of the operation of the Act. It would be incredibly clumsy to require such a procedure to be followed, and we can discern no reason for the legislature requiring such an approach. It would require the Standards Committee to have received information about possible misconduct, to investigate it at a preliminary level to see if it justified a complaint, to then brief the Law Society and arrange for a formal complaint to be made by the Law Society to the Complaints Service, the Complaints Service would then send it back to the Standards Committee, and the Standards Committee would then be obliged to decide its approach under section 137, effectively repeating its earlier inquiry. That process makes no sense, and we do not consider that section 351 omitted reference to own motion because it was considered such a procedure under section 136 would suffice. Such an approach would be impractical and illogical.

[72] As a consequence we consider that section 351(1) should be read as permitting own motion initiation of disciplinary proceedings as well as initiation via complaint. Section 351(2) should similarly be read as applying to both own motion initiated matters and complaints. There is no reason for allowing own motion matters to bypass the time limit imposed on matters arising under the transitional scheme. Similarly section 352 should be read as applying to all disciplinary proceedings under section 351. It should make no difference in the application of the sanction limitation provisions of section 352 whether the disciplinary proceedings were commenced by way of complaint or own motion.

Summary

[73] Turning now to what that finding on jurisdiction means for the charges against Mr Ravelich;

(a) Charge 1 is unaffected, being an own motion complaint for conduct since commencement of the Lawyers and Conveyancers Act on 1 August 2008, and it is wholly under that Act;

(b) Charges 2 and 3 can be brought following own motion investigations under the transitional provisions of the Lawyers and Conveyancers Act, as we do not consider that Parliament intended that those provisions were to be available for complaints alone, ignoring the own motion processes previously available under the Law Practitioners Act, and replicated in the Lawyers and Conveyancers Act.

(c) With regard to Charge 2, we consider that two of the particulars cannot be considered by the Tribunal for the purposes of proving the charge itself. Particular (a) relates to a conviction for excess breath alcohol in February 1989, and particular (b) relates to a conviction for excess blood alcohol in June 1990. Those dates are both well outside the limitation date imposed by the transitional provisions of section 351(2), that the conduct complained of must have occurred since 31 July 2002.

(d) With regard to Charge 3, we similarly cannot consider particular (a) relating to a conviction for careless use of a motor vehicle in June 1995, for the purpose of proving the charge itself.

[74] While these particulars cannot form part of the allegations in support of the charges because they are outside the cut off date imposed by section 351(2), we take the view that we may have regard to such historical offending when considering the imposition of sanctions for charges proven or admitted. If that was not the case we could not take into account recidivism in appropriate cases, or take a view as to whether there was a propensity shown in convictions which reflected, for example, an anti-authority attitude, tendency for violence or dishonesty, or some other particular issue which could affect the standing of the legal profession, or which indicated a risk issue for a lawyer's clients.

[75] Mr Ravelich has pleaded guilty to all of the charges. He did note the possibility of seeking leave to appeal out of time in respect of some of his convictions, but that process had not commenced at the time of hearing and we place no weight on that submission.

Decision

[76] Mr Ravelich has pleaded guilty to all charges. In doing so he has acknowledged that those convictions within the time limitations of section 351(2), contained in Charges 1 and 2, reflect upon his fitness to practise, or tend to bring the profession into disrepute.

[77] We consider the charges were all validly laid. We find that proceedings relating to pre-1 August 2008 conduct may be commenced under section 351 Lawyers and Conveyancers Act, as if own motion matters were specified in that section along with complaints. Similarly section 352 should be read as including own motion initiated matters, so that no sanction differential arises, simply dependent on the manner in which proceedings were initiated.

[78] Particulars outside the limitation period (imposed by section 351(2) on all transitional disciplinary proceedings, as we have found), are not available as particulars to prove a charge, but may be considered as part of a practitioner's professional history when deciding what sanction should be imposed.

[79] There is no doubt that Mr Ravelich has had a troubled time, with numerous criminal convictions going back to 1989.

[80] In considering penalty we place little weight on the convictions for excess breath/blood alcohol, as they both occurred more than 20 years ago, before Mr Ravelich was admitted. The careless use of a motor vehicle charge in 1995 is also not a matter to which we attribute much weight, given the nature of that offending. Furthermore, we note that these convictions were matters which Mr Ravelich declared to the Law Society at the time he sought

admission to the profession in 2002. The Law Society must have itself decided that the convictions did not prevent Mr Ravelich being accepted as of good character and a fit and proper person to be admitted, although we do accept that those convictions have now been added to by more recent convictions, which might now affect the view that had originally been taken when they were seen in isolation.[26]

[81] In more recent times, 2007-2009, there have been further incidents which indicate behavioural issues inappropriate for a barrister of the High Court. The detail was noted at the beginning of this decision when the particulars of the charges were noted.

[82] We accept that Mr Ravelich may have taken refuge in alcohol as a result of personal issues arising from his mother's ill health and his parlous financial situation, both of which were detailed in his counsel's submissions to the Tribunal. Mr Ravelich has taken steps to address his alcohol problems, and has successfully completed an alcohol and drugs programme.

[83] Taking all matters into account, we consider that Mr Ravelich should be suspended from practise for a period to mark the fact that his behaviour, which has occurred over an extended period and involved multiple convictions, is unacceptable for a legal practitioner and inconsistent with the standards expected.

[84] We consider that Mr Ravelich should have imposed on him a relatively short period of suspension, reflecting the seriousness of the position he has got himself into, particularly with his extended list of offences occurring since 2007. In setting the period of suspension, we take into account a relatively trouble-free period over the last two years, as well as the fact that we heard this matter in mid-March, and Mr Ravelich indicated that he would continue not to practise pending the Tribunal's decision. If Mr Ravelich wishes to re-enter practice at the end of the suspension he will have had the benefit of being able to reflect, in the meantime, on the unacceptability and

[26] For example, see the approach referred to in section 41(4), Lawyers and Conveyancers Act 2006.

inappropriateness of his behaviour. He is an officer of the High Court, and he needs to keep that in mind at all times.

Orders

[85] Accordingly, the Tribunal ORDERS that BRETT DEAN RAVELICH;

(a) Be, and is hereby, censured for his behaviour, which has been inappropriate and unacceptable for a barrister of the High Court;

(b) Is suspended from practise as a barrister or as a solicitor from the date of this decision until, and including, 16 September 2011;

(c) Pay $6,000 to the Standards Committee towards its legal costs; and,

(d) Pay $3,250 to the New Zealand Law Society in partial reimbursement of the Law Society's costs under section 257 Lawyers and Conveyancers Act.

[86] Crown costs of $6,500 are certified under section 257 for payment by the New Zealand Law Society.

Dated at Auckland this 29th day of April 2011.

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D J Mackenzie
Chair