

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2014] NZLCDT 9

LCDT 004/13

**IN THE MATTER**

of the Lawyers and Conveyancers  
Act 2006

**BETWEEN**

**CANTERBURY WESTLAND  
STANDARDS COMMITTEE**  
Applicant

**AND**

**CRAIG RONALD HORSLEY**  
Practitioner

**CHAIR**

Judge D F Clarkson

**MEMBERS OF TRIBUNAL**

Mr J Clarke

Mr S Grieve QC

Ms C Rowe

Mr I Williams

**HEARING** at the Auckland District Court

**DATE OF HEARING** 14 November 2013 & 18 February 2014

**APPEARANCES**

Mr M Hodge for the Standards Committee

Mr J Billington QC for the Practitioner

**DECISION OF NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**  
**(AS TO CHARGES)**

***Introduction and Procedure***

[1] The practitioner faced two charges of misconduct. The second charge was admitted by him and is set out as follows:

Misconduct within the meaning of ss 7(1)(a)(i) and/or 7(1)(a)(ii) and or 7(1)(b)(ii) of the Lawyers and Conveyancers Act 2006 (Act)

The particulars of the charge are as follows:

1. The Committee decided of its own motion to investigate the allegation that there may have been misconduct or unsatisfactory conduct on the part of the Practitioner.
2. On 23 November 2011, Malcolm Ellis of the Law Society on behalf of the Committee wrote to Mr Horsley seeking a written explanation of the allegation that he entered into a personal relationship with Ms S.
3. The Practitioner stated in a personal statement signed and dated 7 December 2011, "I had not had (nor have had) a personal intimate relationship with Ms S". This statement was, to the Practitioner's knowledge, false and:
  - (a) is conduct that occurred at a time the practitioner was providing regulated services and is conduct that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; and/or
  - (b) is conduct that occurred at a time the practitioner was providing regulated services and is conduct that contravened Rule 11.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (misleading or deceptive conduct); and/or
  - (c) is conduct unconnected with the provision of regulated services but which would justify a finding that he is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer;
  - (d) is conduct otherwise amounting to misconduct.

[2] The first charge, which is set out below was denied by the practitioner. In its amended form it reads as follows:

Misconduct within the meaning of ss 7(1)(a)(i) and/or 7(1)(a)(ii) and or 7(1)(b)(ii) of the Lawyers and Conveyancers Act 2006 (Act)

The particulars of the charge are as follows:

1. At all material times the Practitioner was enrolled as a barrister and solicitor of the High Court of New Zealand and held a current practising certificate.
2. He was a partner in the firm of Adams and Horsley, Barristers and Solicitors, of Tauranga.
3. Between on or about 24 June 2010 and 12 August 2010 the Practitioner provided regulated services to Ms S while in an intimate personal relationship with Ms S which:
  - (a) Is conduct that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; and/or
  - (b) Is conduct that wilfully and recklessly contravened Rule 5 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (a lawyer must be independent and free from compromising influences or loyalties when providing services to his or her clients).

[3] The amendment came about following the evidence on 14 November and in the course of submissions by the Standards Committee and for the practitioner. The Tribunal was concerned that the somewhat narrower manner in which the particulars were initially pleaded, with specific reference to Rule 5.7 did not reflect a purposive interpretation of the umbrella rule; that is Rule 5, concerning a practitioner's independence "from compromising influences or loyalties".

[4] The Tribunal thus amended the charge to plead Rule 5 more broadly and allowed an adjournment for the practitioner to call further evidence in order that he not be disadvantaged by such a late amendment.

[5] The practitioner filed a further affidavit and although there was exception taken to one paragraph, no further cross-examination occurred because the matters had already been canvassed in the earlier cross-examination.

[6] On 18 February submissions were heard in respect of the amended charge and evidence. The Tribunal reserved its decision and adjourned the matter to a penalty hearing (in relation to at least the second charge) on 21 March.

### **Background**

The facts in this matter are:

[7] Mr Horsley first met Ms S on 30 April 2008 when he appeared for her in the Youth Court in Tauranga on behalf of his then wife and business partner, who was Youth Court Advocate. Ms S was then 16 years old.

[8] Mr Horsley subsequently acted for Ms S on a number of criminal matters in the Youth Court over a period of two and a half years.

[9] Mr Horsley recollects in his first affidavit<sup>1</sup> that Ms S contacted him intermittently from 2008 when she needed a lawyer, and that one of those contacts was by telephone in January 2010 about a drink driving matter. In the circumstances of it being her first such offence, he suggested she ought to seek the assistance of the Duty Solicitor at Court, which she did. It is worth adding at this point that Mr Horsley was quite adamant that “people” like Ms S who contacted him intermittently, primarily through his legal aid practice, were not current clients. He said they were former clients, even though he accepted that he did actually give these people legal advice.<sup>2</sup>

[10] Mr Horsley could not recall any significant contact with Ms S between that call in January 2010 and a period of weeks leading up to 22 June 2010 when he said Ms S contacted him out of the blue to see whether he wanted to meet for a cup of coffee. There followed what Mr Horsley described as an exchange of texts of an increasingly flirtatious nature with Ms S, culminating in the events of 22 June and following. In the context of a discussion about the probable date of the contact about a cup of coffee, Mr Horsley said (and he has maintained what he believed to be her status at the time): “*She may be a client of mine again in the future. But at this particular day, April 2010, no she is not a client of mine.*”<sup>3</sup> He accepted

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<sup>1</sup> First Affidavit of Craig Horsley dated 15 August 2013 para 37.

<sup>2</sup> Transcript 14 November 2013 pg 30.

<sup>3</sup> Transcript 14 November 2013 pg 35.

nevertheless, that having acted for Ms S on a number of occasions over a period of years, Ms S would have seen him as her lawyer.<sup>4</sup>

[11] On 22 June 2010 Mr Horsley invited Ms S to stay the night with him on 23 June at his motel in Rotorua where he was conducting a trial. On 24 June Ms S left Rotorua to return to Tauranga while Mr Horsley remained in Rotorua for his trial. That evening Mr Horsley received a telephone call from the Tokoroa Police Station to say that Ms S had been involved in a car accident in Tokoroa, and had been arrested. She was facing charges of careless driving, driving while disqualified, and driving with excess breath alcohol. Mr Horsley drove to Tokoroa to collect Ms S and she returned to Rotorua where they spent the night together. 23 June 2010 is the date Mr Horsley identifies as the time he had commenced having an intimate relationship with Ms S.<sup>5</sup>

[12] At the conclusion of Mr Horsley's trial, he and Ms S returned to Tauranga together. Mr Horsley discussed the drink driving charges with Ms S and says in his Second Affidavit<sup>6</sup> that:

“S was very keen for me to represent her if the charges came across to Tauranga because she had trust and confidence in me, both as a lawyer and personally and therefore believed that I would be better able to look after her interests than other lawyers' might.”

[13] Mr Horsley accepted under cross-examination<sup>7</sup> that in having that conversation he gave Ms S legal advice, but continued to maintain that Ms S was not a client. Mr Horsley arranged for the Tokoroa charges Ms S faced to be transferred to the Tauranga Court on the basis of intimated guilty pleas. Mr Horsley then appeared with Ms S in Court on 7 July, 14 July and sentencing on 28 July when Ms S was disqualified from driving for 6 months and fined \$870.00

[14] Subsequently and up until 12 August 2010 Mr Horsley acted for Ms S on further charges of wilful damage, drinking in a liquor ban area, and trespass (x2), although he maintains there was little activity on these charges. During which time he continued an intimate personal relationship with her. Also during this period Mr

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<sup>4</sup> Transcript 14 November 2013 pg 32.

<sup>5</sup> First Affidavit of Craig Horsley dated 15 August 2013 para 39.

<sup>6</sup> Second Affidavit of Craig Horsley dated 29 November 2013.

<sup>7</sup> Transcript 14 November 2013 pg 30.

Horsley accompanied Ms S to a consultation with her doctor in relation to her alcohol use; to a meeting with her Probation Officer to map out a plan to assist her; and to visit her grandmother to whose home she moved for a period following her being trespassed from the house in which she was living.

[15] The meeting with the Probation Officer happened during July 2010, and is we believe an important factor to take into account because a Probation Report for someone facing sentencing is relevant material for the Judge to take into account. It would have been helpful for the Court to know what personal support Ms S might have, including any personal relationship she was in at the time. Mr Horsley chose not to disclose the nature of his personal relationship with Ms S because he had not at that time told his wife and family about his extra-marital affair.

[16] It can be argued, and was argued for Mr Horsley, that because of his personal knowledge of Ms S's behaviour and circumstances he was well placed to advise on possible options for Ms S, and there is no doubt that Mr Horsley provided considerable personal support to Ms S which may well have been advantageous to her. On the other hand, there was at a least a possibility at a very early stage that Mr Horsley's personal and professional obligations to Ms S were so intertwined as to present serious ethical issues for him as a Practitioner, which is what in fact came to pass.

[17] When asked under cross-examination how he described his relationship with Ms S to the Probation Officer, Mr Horsley said this: *I didn't say at the time that I was in a relationship with her, but I did indicate that I was there on a two-fold basis, it was not only as her lawyer but as a person who was trying to support her and cared about her.*<sup>8</sup> Mr Horsley accepted that the Probation Officer would have assumed that he was a lawyer acting for Ms S.

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<sup>8</sup> Transcript 14 November 2013 pg 66.

[18] On 12 August 2010 Ms S appeared in the Tauranga Court on the charges referred to in paragraph 15 above. Mr Horsley had arranged for Ms S to be represented by an Associate in his firm, Ms W, because Mr Horsley was involved in another matter at the Court that day. Ms W had no prior knowledge of Mr Horsley's personal relationship with Ms S, because Mr Horsley had not advised her of this. When Mr Horsley arrived at Court, he saw and approached Ms S and Ms W in the foyer. There followed a confrontation with Ms S during which she became very agitated, verbally abusive and shouted that she was pregnant and that Mr Horsley was the father of her child. Mr Horsley left the Court, and terminated the lawyer/client relationship. The personal relationship continues to this day.

[19] Mr Horsley says in his first affidavit<sup>9</sup> that he made a decision on that day that he could not continue to represent Ms S on the few outstanding charges because it was clear that she no longer had his trust and confidence as her lawyer, and nor could he be seen to be objectively representing her interests given her emotional state and their relationship. What is difficult to comprehend is how long it took Mr Horsley to reach this conclusion. An alternative view is that he made a conscious decision to turn a blind eye to the consequences of his embarking on the affair with Ms S who was then 18 years old, and known by him to be "highly vulnerable"<sup>10</sup>. Mr Horsley tried to obfuscate this issue by stating that she did not "spiral out of control" until the few weeks leading up to the 12 August confrontation at court.

[20] During cross-examination, when apparently rationalising his entitlement to enter the personal relationship, Mr Horsley said "*She was a former client, that's what she was.*"<sup>11</sup> He went on to say that, while not having a conversation with himself about it, he viewed any potential ethical risks in the light of Ms S not being a client of his. This does not appear to be a credible statement for the Practitioner to have made in all the circumstances.

[21] On 16 August 2010<sup>12</sup> Mr Horsley handed his files for Ms S to another barrister, who was apparently a trusted colleague. It is accepted by Mr Billington that Mr Horsley's letter to that barrister is a piece of contemporaneous evidence which illustrates his state of mind at the time, and in particular his determination to keep

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<sup>9</sup> First Affidavit of Craig Horsley dated 15 August 2013 para 92.

<sup>10</sup> Transcript 14 November 2013 pg 41-42 and pg 43 line 30.

<sup>11</sup> Transcript 14 November 2013 pg 40.

<sup>12</sup> Letter to counsel dated 16 August 2010, page 98 of Standards Committee bundle.

secret from her the nature of his personal relationship with Ms S. In the letter he discloses Ms S's "*significant mental health issues as well as drug and alcohol issues*" and that "*S's personal life has continued to spiral out of control.*" This was not information Mr Horsley had just discovered. He had known this for some time.

[22] The following excerpts from that letter demonstrate that in handing over his file and effectively seeking a professional favour from a colleague, Mr Horsley was prepared to mislead her about the nature of his personal relationship with Ms S by distancing himself from her, and attempting to keep the communication a secret from her.

The letter also suggested his wife was supportive of his actions towards Ms S, when in fact she did not know that he was in an intimate personal relationship with Ms S.

"On the morning of Sunday 8 August 2010 I received a telephone call from the Police in relation to her being taken into custody for trespass. I do not know whether or not she was formally charged for this.

Given my background involvement with her (and after speaking with Rachael) I went into town to find her. She was, quite simply, dishevelled, cold and pathetic. I took her to her grandparents at Te Puke. This seemed to be the only place that could possibly be called a safe haven for her. I understand she has since been trespassed from there also.

(Ms S) subsequently appeared in Court on the recent matters on the 12 August 2010. There was a frightful confrontation at Court that day (in relation to me) which I will come onto shortly. It was as a result of that (and the background) that we deemed it necessary and appropriate that I no longer have any direct involvement with S's case ...

The reason for seeking a reassignment of this file is because of the view that S has of my relationship with her. She has become increasingly needy and demanding and fixated. **Indeed, she is making regular accusations of an intimate relationship – along with other threats ...**

There are various matters set out in this letter which, I am sure you will understand, it is preferable that S is not aware of but I mentioned in order to provide you with as much detail background information as possible ...

Again I apologise for the hospital pass but recognise that S needs somebody who can be sympathetic and supportive (as well as firm and controlling)."

(Emphasis added).



[23] This letter was not provided to the client, who may well have been disturbed at its contents, blaming as they did her mental health on allegations made by her, which were in fact true. We note the letter post-dates the pleaded professional relationship, but it forms part of the overall matrix of facts to be taken into account.

[24] On 23 November 2011 the Standards Committee of the New Zealand Law Society (“NZLS”) wrote to Mr Horsley to advise him of its own motion investigation of an allegation that he had entered into a personal intimate relationship with his client Ms S; and that given Ms S’s age and vulnerability with drug and alcohol dependency and mental health problems, the allegations raised serious issues for both Ms S and Mr Horsley. Mr Horsley was asked a series of questions, including whether he was the father of Ms S’s child. In a statement to the NZLS dated 31 October 2011<sup>13</sup> Mr Horsley said he was not the father of the child; and in a Statement dated 7 December 2011<sup>14</sup> he said “*at no time have I ever entered into a personal intimate relationship with Ms S.*”

[25] On 20 May 2012 Mr Billington on instructions from Mr Horsley wrote to the Legal Standards Officer advising that Mr Horsley had entered into an intimate personal relationship with Ms S in or about November 2010, and that Ms S was not a client of Mr Horsley during the period of the intimate personal relationship. In fact as we know from the chronology above, the intimate personal relationship began much earlier on or even before 23 June 2010, depending on how “intimate personal relationship” is defined.

[26] As mentioned above, Mr Horsley has subsequently admitted the second charge in relation to providing a false statement to the NZLS.

[27] It is noteworthy that in his first formal Response to the charges, filed with this Tribunal, he also misled the Tribunal by stating that the relationship did not start until November 2010.

[28] On or around 7 December 2011, during the period of the NZLS enquiries of Mr Horsley, Judge Harding, Liaison Judge for the Youth Court in Tauranga, had received a letter from Youth Aid which alleged that Mr Horsley had had a relationship

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<sup>13</sup> Statement of Craig Horsley dated 31 October 2011: NZLS Bundle page 20-21.

<sup>14</sup> Statement of Craig Horsley dated 7 December 2011 para 45: NZLS Bundle page 29.

with a person while that person was a Youth Court client, and that Mr Horsley was also her lawyer as a Youth Advocate. His Honour wrote to Mr Horsley seeking his comment, and subsequently met with Mr Horsley in Chambers. Mr Horsley's evidence<sup>15</sup> is that during the discussion with His Honour the Judge indicated that, given the information he had been given, some kind of review or investigation would follow, and that he (Mr Horsley) told His Honour that he did not want to cause anybody any difficulties and would resign. Mr Horsley said he may have told Judge Harding that he hadn't done anything wrong, and he thought he had said in his letter to the Judge "*Look I deny the allegations.*" Mr Horsley added that the Judge didn't want to know the detail. Mr Horsley resigned as Youth Advocate on 7 December 2011.

[29] Mr Horsley says in his first affidavit that in August 2012 after the confrontation in the Court his wife asked him whether or not he had had or was having a relationship with Ms S. He denied any prior or ongoing relationship with Ms S. Mr Horsley says he did this to try to protect his marriage and his family.<sup>16</sup>

[30] Mr Horsley managed to maintain secrecy around his personal relationship with Ms S until the Sunday Star Times ran the first of its articles about it in February 2012, causing great shock to his wife and family. Mr Horsley separated from his wife in September 2012, and resigned from his partnership in the Legal firm they shared in July 2013. He had not only misled his family about the relationship but also, as is clear from the narrative above, he had misled professional colleagues and the Probation Service (and ultimately the Court) in order to keep the relationship secret. It is apparent that his responses to Judge Harding were also less than fulsome.

### ***Elements of misconduct charge***

[31] Section 4 of the Lawyers and Conveyancers Act 2006 ("the Act") sets out fundamental obligations of lawyers.

#### **4 Fundamental obligations of lawyers**

Every lawyer who provides regulated services must, in the course of his or her practice, comply with the following fundamental obligations:

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<sup>15</sup> Transcript 14 November 2013 pg 70.

<sup>16</sup> First Affidavit of Craig Horsley dated 15 August 2013 para 119.

- (a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand;
- (b) the obligation to be independent in providing regulated services to his or her clients:
- (c) the obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients:
- (d) the obligation to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any enactment, the interests of his or her clients.

[32] Subparagraphs (b), (c) and (d) are all brought into focus in the context of these proceedings. The charge also pleads a breach of Rule 5 of the Conduct and Client Care Rules made pursuant to the Act “that a lawyer must be free from compromising influences or loyalties when providing services for his or her clients”. It provides as follows:

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

[33] It is proper that these obligations are featured in such an early and prominent part of the Act because it is central to confidence in the legal profession that lawyers are able to be thoroughly relied upon for the integrity and independence in regulating their clients and in putting their client’s interests ahead of those of the practitioner. This is trite law which has featured in all of the professional disciplinary decisions relating to issues of integrity and independence<sup>17</sup> from *Bolton* down to the present day. As was said in *Bolton* a member of the public must be able to trust a lawyer “to the ends of the earth”.

[34] Mr Hodge for the Standards Committee submits that there were “red flags” everywhere for this practitioner to observe the potential for conflict between his own interests and having an intimate relationship with Ms S and with keeping that fact secret, as against her interests in being independently and fearlessly represented by her lawyer.

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<sup>17</sup> *Bolton v the Law Society* [1994] 2 All ER 486.

[35] Indeed, under cross-examination<sup>18</sup> Mr Horsley acknowledged that ethical difficulties arose particularly when acting for this young client in a sentencing matter. As set out in the background there were matters concerning this offender's personal relationships which may have been relevant to the sentencing process, which simply could not be disclosed by the practitioner for fear of disruption of his own personal circumstances.

[36] By continuing to act for Ms S after he had entered into a relationship with her Mr Horsley put her and himself at risk. He was obliged to mislead or withhold information from colleagues, his partner, the Court and the Youth Court Liaison Judge.

[37] In addition to that he failed to consider the ramifications for the profession as a whole of publication of his affair with a young client whom he had previously represented in the Youth Court.

[38] Mr Billington submitted on behalf of Mr Horsley that the practitioner ably represented Ms S in the sentencing process and that the outcome achieved was no less than could have been hoped for. That in itself is not challenged, however very soon after that process it was clear that the client had entirely lost confidence in the practitioner, as demonstrated by the events that took place in the foyer of the District Court on 12 August 2010. It was then necessary for her remaining criminal matters to be referred to another lawyer, in the course of which the practitioner dishonourably used information about his client's mental health to discredit her to her new lawyer in an attempt to exonerate himself.

[39] Throughout the hearing Mr Billington drew the Tribunal's attention in considerable detail to the particular nature of the retainer to support the submission that the retainer was properly carried out and not affected by the intimate relationship. Mr Billington further submitted that because of this, the practitioner's conduct would not be regarded by lawyers of good standing as disgraceful or dishonourable.

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<sup>18</sup> Transcript 14 November 2013 pg 44-45.

[40] We considered that a much broader view of the conduct of this practitioner overall must be taken to satisfy the test of whether a fully informed practitioner of good standing would consider this conduct to be disgraceful or dishonourable. This is a practitioner who was well aware of the vulnerability of a youthful client in terms of her age, offending history, drug and alcohol abuse and living on the streets. Despite this, over a period of weeks he decided to enter into a relationship with her and initiated a sexual relationship in secret. Following that he acted for her in a number of criminal matters, initially driving-related and arising out of a traffic accident which she had had after returning from spending the night with him in another city.

[41] The outburst from the client which finally awoke the practitioner to his ethical difficulties was the inevitable outcome of a professional relationship which was wrong from the outset.

[42] We have no difficulty in finding that lawyers of good standing, informed of all relevant circumstances including the successful completion of part of the retainer which resulted from the drink-driving and related charges and the subsequent activities which led to the client's total loss of confidence in Mr Horsley would consider this conduct to be disgraceful or dishonourable. Ms S needed a lawyer in whom she could have complete trust who had no interests of his own in conflict with hers.

[43] We refer here to Mr Horsley's "desperate need" to keep the relationship secret. We accept the submission of counsel for the Standards Committee that personal relationships give rise to fears, doubts, disagreements and conflict and that this was demonstrated on 12 August at Court. The subsequent handover letter serves, as conceded by his counsel, to establish the practitioner's contemporaneous state of mind. We are satisfied that that state of mind put his own interests well ahead of those of his client's even if he was not prepared to acknowledge that to himself.

***Wilful and reckless breach of Rule 5***

[44] If we are incorrect in finding that the disgraceful or dishonourable particular of the charge has been established we consider that in any event the Standards Committee has established wilful and reckless contravention of Rule 5. It is noted that the words "wilfully and recklessly" were inserted by agreement at the

commencement of the hearing on 18 February. It was accepted that without that addition the charge would necessarily be one of unsatisfactory conduct pursuant to s 12(c) of the Act, rather than “misconduct” as alleged.

[45] We were referred to by Mr Hodge to the well-known decision of *Pillai v Messiter*.<sup>19</sup> In a well quoted passage Kirby P said when discussing what was required to achieve a standard of misconduct:

“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.”

[46] This has of course been adopted in relation to legal practitioners in a number of decisions. Mr Hodge points to the conscious decision to enter into the relationship and the conscious decision to act as Ms S’s lawyer from the time of the motor vehicle accident on 24 June 2010. Mr Hodge submitted that the practitioner’s behaviour was a clear departure from elementary professional and ethical standards. He submitted this was not an arcane rule but a fundamental concept recognising that risks exist where this mixture of relationships occurs. It is undoubtedly the basis for the more detailed description of Rule 5 set out in Rule 5.7. That Rule could not be directly applied to this practitioner because he entered into the relationship with the client one day before resuming as her lawyer.

[47] Whilst it could also be argued that given she continued to regard him as her lawyer and had contacted him over a number of years when in trouble, we consider that the umbrella rule quoted above is sufficient to capture the circumstances of this practitioner’s behaviour. We accept at the very least this is a reckless disregard of the privileges of professional obligation in the *Pillai v Messiter* sense. Thus we would have found under the alternate Charge 3(b), on the balance of probabilities, taking account of the seriousness of the allegations and the undisputed nature of the evidence.

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<sup>19</sup> (1989) 16 NSWLR 197 (Kirby P).

***Decision***

[48] We find the practitioner guilty of misconduct in respect of the first charge.

[49] He has admitted misconduct under the second charge. A penalty hearing is to be scheduled. The Standards Committee is to provide submissions on penalty 10 days in advance of the hearing date and the practitioner 5 days in advance.

**DATED** at AUCKLAND this 19<sup>th</sup> day of March 2014

Judge D F Clarkson  
Chair

**Addendum**

This is the reissued version of a decision which was recalled to correct minor typographical errors and an ambiguous statement in paragraph [25].