IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2018-404-1141
CIV-2018-404-1150
[2019] NZHC 2268

UNDER	The Lawyers and Conveyancers Act 2006
IN THE MATTER	Of an appeal against a decision of the Lawyers and Conveyancers Disciplinary Tribunal
BETWEEN	JINYUE YOUNG Appellant
AND	NATIONAL STANDARDS COMMITTEE Respondent

Hearing: 23 May 2019, further submissions 8, 13 and 17 June 2019

Counsel: Appellant in person
J Simpson for Respondent

Judgment: 13 September 2019

JUDGMENT OF WHATA J

This judgment was delivered by me on 13 September 2019 at 4.30 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date: ……..

Solicitors: Meredith Connell, Auckland

[1] Mr Young was found guilty of three charges of misconduct, pursuant to s 7 of the Lawyers and Conveyancers Act 2006 (the Act), and one charge of negligence, pursuant to s 241 of the Act.[1] He was suspended from practice for 15 months. The charges were (in summary) that Mr Young:

(a) swore a false affidavit of documents;

(b) threatened to use the complaints process for an improper purpose;

(c) engaged in misconceived and meritless litigation; and

(d) made serious allegations against another party and counsel.

[2] He was also ordered to pay a substantial sum for costs. He sought leave to appeal the misconduct decision out of time. He was given leave to appeal on liability in respect of one charge. Mr Young also appeals against penalty and costs.

Leave decision

[3] Mr Young's appeal was filed out of time. Courtney J declined leave to appeal, save in one respect.[2] The Judge observed that the only proposed ground of appeal that had any merit was that the Tribunal erred in finding that all the charges fell within s 7(1)(a). That subsection relates only to misconduct in the provision of regulated services to any person. As the Tribunal had found that Charge 1 related to conduct that did not involve regulated services for any person, Courtney J observed it was arguable Charge 1 did not fall within the scope of s 7(1). Leave to appeal was therefore granted in terms of Charge 1 only.

Background

[4] As the Tribunal noted, from April 2013, Mr Young was involved in a dispute between his wife's company, King David Ltd (KDL), and Ms Z, the client of Mr D, the complainant. KDL attempted to withdraw from an agreement for sale and purchase

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1 *National Standards Committee v Young* [2017] NZLCDT 41.
2 *Young v National Standards Committee* [2018] NZHC 3047.

of a Hoteo Avenue property (the agreement), which Ms Z alleged was completed. Proceedings were issued for breach of the contract and relief included specific performance. There was a further cause of action against Mr Young personally for "tortious interference with contractual relations".[3]

[5] As part of the discovery process, Mr Young swore an affidavit of documents on 8 December 2014. However, during the hearing in July 2016, Mr D says he became aware of various emails and two faxes that had not been discovered. This allegation forms the basis for Charge 1. Mr Young maintains that he did discover them and/or that they were never in his "possession". He says Mr D in fact took them from his wife's folder. He also claims that he had provided all documents in his possession to Mr J, who was instructed to act for his wife's company, and that Mr J prepared the affidavit on behalf of the company and sent it to Mr Young and to his wife, Ms Ying. I return to Mr Young's claims below at [39].

[6] In any event, it appears that the alleged late discovery of the emails and faxes led to settlement discussions. After negotiations on the morning of the second day of the hearing, a consent memorandum was presented to the Court. A consent order was then made to the effect that the Hoteo Avenue property would be transferred to Ms Z on 13 September 2016.

[7] In the months that followed, Mr Young and Ms Ying set about unwinding the consent order. This did not go well. Palmer J refused to set aside the consent order and imposed on Ms Ying a fine of $10,000 for contempt of court in breaching a court order. Ms Ying had sold the Hoteo Avenue property with a settlement date the day before KDL was required by the consent order to transfer it to Ms Z. While the fine was reduced on appeal, the order for contempt was upheld.[4]

[8] It is these post consent order actions that form the basis of the three further charges. As the Tribunal noted, Charge 3 relates to conduct through the Courts alleged to be incompetent or negligent. Charges two and four relate to misconduct in

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3 At [6].

4 See *Young v Zhang* [2017] NZCA 622 at [62]. *Zhang v King David Investments Ltd* [2016] NZHC 3018.

Mr Young's treatment of professional colleagues by the making of threats (Charge 2) and the making of allegations without clear evidential foundation against the plaintiff in the proceedings and her counsel (Charge 4).[5]

[9] It is unnecessary to say more about these charges on the liability appeal. I will, however, return to the facts of the charges when I come to the penalty appeal.

Tribunal's findings on Charge 1

[10] The Tribunal found that:

> [8] It transpired, during the hearing in July 2016, that various emails and two faxes had not been discovered, having been in the practitioner's possession.

[11] The Tribunal, however, identified that there are problems with Charge 1 in terms of the scope of s 7 of the LCA which relevantly states:

> **7 Misconduct defined in relation to lawyer and incorporated law firm**
>
> (1) In this Act, misconduct, in relation to a lawyer or an incorporated law firm, -
>
> (a) means conduct of a lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct –
>
> (i) that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; …
>
> (b) includes—
>
> (i) conduct of the lawyer or incorporated law firm that is misconduct under subsection (2) or subsection (3); and
>
> (ii) conduct of the lawyer or incorporated law firm which is unconnected with the provision of regulated services by the lawyer or incorporated law firm but which would justify a finding that the lawyer or incorporated law firm is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer or an incorporated law firm.

[12] The Tribunal then observed:

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5 *National Standards Committee v Young*, above n 1 at [17].

> [49] In swearing the affidavit of documents in the proceedings involving his wife's company that is the subject of Charge 1, we note that Mr Young was not providing regulated services for another person, although he was clearly intending to assist his wife's case. However, we have noted that this very point was considered by Her Honour Hinton J in *Deliu* as follows:
>
> > [61] The only problem that seems to arise with fitting under the head of "regulated services" in this context, is whether the reference to legal services involving legal work for any other person means there must be an identifiable person. It seems to me that is not necessary, and if a lawyer is carrying out legal work for their clients generally (i.e. for other people), which Mr Deliu was clearly doing in writing his letters of complaint, then that is "legal services" and therefore "regulated services".
> >
> > [62] The words "at a time" which appear in s 7(1)(a) also support a wider reading of what is covered by the subsection. The subsection does not just say, as it could have done, that occurs when providing regulated services", but rather that occurs at a time when providing regulated services".
>
> [50] We consider that, in preparing the affidavit of documents, although representing himself, the conduct was incidental to provision of regulated services, when considered in the broad sense mandated by *Orlov*.

[13] The Tribunal said that decision gave it the clear direction that the two types of misconduct referred to in s 7 must cover all situations, and that it held:[6]

> … we think this structure supports giving a broad scope of professional misconduct with a consequent limiting of personal misconduct to situations clearly outside the work environment.

[14] The Tribunal stated that:

> [51] The preparation in swearing an affidavit is not the type of personal conduct which has in the past been captured by s 7(1)(b), such as sexual or behavioural misconduct, or what has been referred to as "moral obloquy".

[15] A charge under s 7 was therefore made out according to the Tribunal. The Tribunal also observed, however:

> [53] … If we are wrong in our interpretation of the lawyer's conduct in relation to Charge 1, we accept that the omission of documents, by a very inexperienced lawyer, would not reach the threshold of justifying a finding that he was not a fit and proper person to be a lawyer.

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6 At [50], citing *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987 at [107].

Application for further evidence

[16] Mr Young sought leave to produce a brief of evidence by his wife and a Ms Liu who purports to be an expert on Chinese culture. His wife's proposed evidence refers, discursively and in some detail, to multiple background matters, which it is said will show (among other things):

(a) Mr D gave false evidence in High Court proceedings;

(b) Mr D secretly added a "minus" sign in front of $220,000 on a consent memorandum after every party had signed;

(c) Mr Young and his wife were suffering from jet lag and could not read the illegible handwriting; and

(d) Mr D stole the allegedly non-discovered documents from her file, not Mr Young's file.

[17] Ms Ying also says the following:

> REAA sent me fax letters
>
> In 2014, I complained about agent Irene He at REAA, which sent me two fax letters dated 14/7/2013 (Exhibit 14.1). I sent them to my counsel [Mr J] ("[J]"). [J] could not understand what the faxes mean, thus my husband visited his office and explained to him. [Mr D] complained to NSC that my husband hid this document. As it has nothing to do with him (neither a director nor a shareholder of company) nor was in his possession, thus my husband is not obliged to provide them to the court, but surprisingly he was still convicted.

[18] Mr Young claims his wife was not allowed to give this evidence at the Tribunal hearing.

[19] The evidence from Jian-Ping Liu is to the effect that Chinese commerce is marred by corruption. This is based on her experience of commercial dealings with Chinese in mainland China. Mr Young refers to her as "a democratic supporter from China" and that "she can help the judge know how communist culture (where Mr D and the purchaser Ms Z grew up) tolerates or even encourage deceiving your enemies".

Assessment

[20] I decline to grant leave to adduce the proposed evidence. First, much of Ms Ying's evidence is irrelevant to the remaining issue on appeal. Indeed, much of it appears to be an attempt to relitigate the matters that led to the charges. Second, Ms Ying gave evidence at the Tribunal hearing. Her affidavit evidence produced to the Tribunal did not form part of the record for this Court, so I do not know whether she covered the same material she now wishes to refer to. But even if she did not refer to the matters she now raises, she had the opportunity to do so. Third, the relevant claims made in Ms Ying's affidavit about the allegedly non-discovered documents were in fact made by Mr Young at the Tribunal hearing and, if important to him, these claims should have been adduced through Ms Ying at that hearing.

[21] I do not consider that Jian-Ping Liu's evidence is admissible or cogent expert evidence on Chinese commerce. Her personal experience in commercial dealings in China lacks the requisite independence to qualify as admissible expert evidence. In addition, Ms Liu's evidence is not substantially helpful to me on the key issues on appeal.

The submissions

[22] Mr Young filed four memoranda, one prior to the hearing, dated 2 May 2019, one at the hearing, on 23 May 2019, and two after the hearing, dated 8 June 2019 and 17 June 2019. The last of these memoranda respond to the respondent's submissions about penalty. Many of the matters raised are well beyond the permitted scope of the leave granted to appeal. I record them here, however, for completeness. They also serve as an illustration of Mr Young's mixed abilities as legal counsel.

The 2 May submissions

[23] In the 2 May memorandum, Mr Young submitted that he was the victim, rather than Mr D, and that in relation to Charge 1, Mr D took one of the allegedly non-disclosed documents, per Charge 1, from his wife's folder. The first issue he says is therefore "whose words are more reliable". He submits his words are more reliable for the following reasons:

(a) Mr D misled the High Court about what had been agreed and lied to the Tribunal;

(b) His wife's evidence shows Mr D altered the consent memorandum;

(c) As his wife's evidence shows, Mr D secretly wrote something to the Judge and said to her "to win a case I do anything";

(d) Mr D said the law firm was not smashed, but there was photographic evidence "of smash"; and

(e) Mr D alleged Mr Young threatened to kill him, but the police acquitted him.

[24] Mr Young submitted the second issue was: "whether I was responsible to submit the omitted document?" On this he contended that:

(a) When he signed the affidavit on 8 December 2014, the document was not yet available and when his wife received it from the REAA she sent it to Mr D who did not include it in the common bundle;

(b) When he was sued he was neither a lawyer or a director of his wife's company;

(c) Of the nine allegedly missing documents, only one was in dispute following the hearing; and

(d) Mr D bombarded him with hundreds of documents.

[25] Mr Young's third issue was "whether I should be penalized?" He submitted on this issue that:

(a) But for the offence "of forging evidence to join me", charges one to four would not have happened;

(b) Charge 2 is about the complaints process, and a similar complaint by his firm did not result in sanction;

(c) Charge 3 is simply about mistakes he made, and the penalty is too harsh;

(d) Charge 4 is about his groundless allegations, but he provided compelling evidence; and

(e) The purpose of penalty decisions is not punitive, but protection of the public, but the Tribunal's decision seems punitive, especially compared to the penalty of 15 months' suspension imposed on Mr Deliu for conviction on nine charges.

[26] The fourth issue identified by Mr Young was "whether the cost against me is reasonable?" He says that:

(a) He has spent a lot of time defending the allegations against him;

(b) Most of the allegations are futile and have wasted tremendous time;

(c) Originally there were seven charges, but they were dropped to four;

(d) Only one of the allegedly missing documents was missing and he proved that he was not obliged to submit it; and

(e) He has lost the ability to pay.

[27] The final issue is "whether I should be compensated for the miscarriage of justice?" Mr Young referred to the wrongful conviction of Tyson Redman and his compensation pay-out of $500,000. He noted that Mr Waalkens, for the Committee, wrongfully referred to an irrelevant letter of engagement, and that this was made known to the Tribunal who appeared to have ignored it.

The 23 May 2019 submissions

[28] In further submissions tabled at the hearing, Mr Young repeats his allegation that Mr D altered the consent memorandum in the civil proceedings; the Judge did not allow Ms Ying to give evidence that Mr D stole documents from her; that he provided an affidavit about this, but the Tribunal did not take it seriously. Accordingly, he submits that his wife's new evidence should be admitted. He also refers to the proposed expert evidence. He also queries how his "polite request", per Charge 2, can be improper.

[29] Mr Young also submits by way of response to the Committee's primary submissions:

(a) That he was neither a shareholder or director of his wife's company;

(b) He did not provide any service to his wife;

(c) The facts in *Deliu* and *Orlov* do not apply to his case;

(d) The prosecutor referred to matters that had already been resolved;

(e) Mr D gave false evidence, so the prosecution should cease;

(f) There was collusion between Mr D and Mr J regarding his wife's case and on 7 May 2019 Mr J was convicted;

(g) As to costs, he still has a student loan of $26,040 and, compared to the cost he incurred in the penalty hearing, the costs claimed by the Committee were too high;

(h) Some of the charges against him had been dropped sensibly;

(i) As to his claim to compensation, he says his reputation has been destroyed. Before suspension he earned $50,000 per year. After suspension he earned only $15,000 for translation services; and

(j) His Charge 4 should not be treated as misconduct.

The 8 June submissions

[30] In the 8 June submissions, Mr Young repeats that he is innocent of all charges and compares his case to a case in Taiwan that said that a prisoner should be asked about whether his proposed execution was correct. This prisoner was wrongly executed, and like that prisoner, he was wrongly convicted by the Tribunal. He also said he "rescued" a Mr Deng from imprisonment and that "Deng believed Courtney J made the wrong decision to limit the appeal to Charge 1 only". He also said Mr D is notorious and comes from a communist country.

[31] Mr Young noted that although his suspension will expire on 28 June 2019, he wishes to have a thorough investigation of his wife's case and summon several witnesses. He says Mr D clearly knew the agreement was not binding. He refers to a decision of Palmer J stopping his wife from defending her position. He contends his convictions should be quashed due to the poor credibility of Mr D. He also refers to his Christian teachings.

The 17 June Submissions

[32] In his final memorandum, Mr Young refers to the Committee's submissions on penalty. He maintains he was not responsible for the missing documents and that they were unknown to him at the time he swore the affidavit. He maintains Mr D stole the documents from his wife's folder. He says he "politely" asked Mr Z to remove the caveat. Mr Young also seeks to have the leave decision revisited because of the affidavit evidence that now shows, he says, that Mr D altered documents.

[33] Mr Young says he initially sought six months' supervision and, contrary to the bias of the Tribunal, he is highly respected in the Chinese Community. He also says that he provided evidence of his allegations, but the Tribunal told him he could not relitigate them. He also distinguishes an LCRO case cited by the Committee.

Jurisdiction

[34] While limited in scope, this is an appeal by way of rehearing. On both the conviction and penalty appeals, Mr Young must show material error, but I must come to my own view on the disputed facts and issues.[7] As the full High Court put it in *Orlov*:[8]

> On an appeal of this nature it is appropriate for this Court to reach its own view, albeit giving due regard to the specialist Tribunal's assessment.

Issues

[35] The appeal raises the following key issues:

(a) Did the Tribunal err in finding that Charge 1 fell within s 7(1)(a)?

(b) Is the penalty excessive?

Did the Tribunal err in finding that Charge 1 fell within s 7(1)(a)?

[36] It is helpful to restate Charge 1:

> … [Mr Young] engaged in misconduct by swearing an affidavit of documents confirming that he had discovered all documents he was required to, when in fact there were relevant documents not listed in the affidavit. As such the Tribunal alleges that the Practitioner wilfully or recklessly breached his duty of absolute honesty to the Court and misled the Court, breaching rule 13.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (Rules).

[37] Unhelpfully, the Tribunal did not identify what documents it says were not discovered. It has been necessary to review the evidence to understand what documents this charge might apply to and then to determine whether any proven failure to discover was amenable to charge under s 7(1)(a).

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7 See *Parlane v New Zealand Law Society* HC Hamilton CIV-2010-419-1209, 20 December 2010 at [95]-[96]; *Orlov v New Zealand Lawyers and Conveyancers Tribunal,* above n 6, at [191].

8 At [191] (citations omitted).

Key facts

[38] The central issue in the civil proceedings to which the discovery related was whether KDL had withdrawn authority from the real estate agent to sell before the agreement was presented at around 9.30 pm 14 April 2013. In the affidavit he prepared for the Tribunal hearing, Mr D stated that nine emails from Mr Young to various recipients and two fax records from the real estate agents were not provided to him by Mr Young. Those documents were:

(a) An email from Mr Young to the real estate agent, Glenn Wu, dated 14 April 2013 stating:

> Sorry that I lost control of temper. I am fed up with her. I clearly know my wife has made a decision against her own will. She will regret. But our loss is your gain. Congratulations.

(b) An email from Mr Young to Mr Wu, dated 15 April 2013, regarding reviewing the sale and purchase agreement and stating:

> …you need to remind us for any unusual clause. You also need to give us enough time to read the agreement before pushing us to sign. Otherwise, the agreement can be judged as invalid in the court…I am not prepared to fix the broken around the corner but will fix the loosen water pipe instead…I added the wording on top of the schedule "sell as it is" the other day…we may have to go to tribunal for the bond of Dean as the damage is not enough to be covered by his bond.

(c) A further email from Mr Young to Mr Wu, dated 15 April 2013, regarding the sale and purchase agreement and stating:

> I checked again that my wording of "sold as it is" has been deleted without my permission. You need to discuss this crucial point with me. Right after I had heated argument with my wife, Irene asked me to initial in front of my room and I did not see clearly that is part of my wording. There is a problem here. You need to tell me that you have deleted my wording…

(d) An email from Mr Young to George Song, the property manager, dated 16 April 2013;

(e) An email from Mr Young to Mr Wu, dated 16 April 2013, asking for the phone number and email of "Irene" and discussing a dispute with the tenant at Wintere Road;

(f) An email from Mr Young to Mr Wu, dated 17 April 2013, regarding fixing the shower tray and asking if Ms Z was willing to pay for the repairs;

(g) An email from Mr Young to Mr Wu and the other real estate agent Ms He, dated 17 April 2013, about negotiating withdrawal from the agreement;

(h) An email from Mr Young to his wife, Ms Ying, dated 18 April 2013, about Auckland property prices doubling;

(i) An email from Mr Young to Mr Wu and Ms He, dated 22 April 2013, stating his wife was adamant she would not sell at the agreed price; and

(j) Fax records from the real estate agents from 14 April 2013, showing when the sale and purchase agreements had been faxed.

[39] A mixed picture emerges from my review of the evidence. While giving evidence, Mr Young informed the Tribunal that that documents (a), (b), (c), (e), (g), and (i) had been discovered. Those documents do appear to correspond to documents listed with the affidavit, both by reference to the addressees and the dates. Mr Young was pressed about these documents and maintained steadfastly that he had disclosed them. However, Mr Young did not cross-examine Mr D on this point. Moreover, he simply provided the Committee with the bundle of documents without clearly linking the documents to the discovery list, with the expectation that the Committee would perform this exercise for him. In the result, while there is some doubt as to the cogency of Mr D's evidence and the significance of Mr Young's omissions, the only proper finding is therefore that Mr Young failed to rebut the evidence Mr D gave in his affidavit.

[40] I also find that documents (d) and (h), which Mr Young admitted he did not include with his affidavit, have marginal relevance to the central issue in the proceedings, namely whether authority to sell had been withdrawn. I accept that document (f) was relevant but, if anything, was favourable to Mr Young's case. The relevant email records:

> Dear Glenn and Irene,
>
> The acrylic specialist says that the tray is not repairable. Accordingly, we need to spend a[t] least $1000 to dismantle the walls and replace a new tray. We are not willing to pay if the agreement is valid. Is Mrs [Z] willing to pay for it? Please reply asap? This question does not imply there is no dispute of agreement. We have to move forward pending the resolution of our dispute.
>
> Besides, whether Mrs [Z] accepts the potential tenant?

[41] As to the fax records, the Court copies of these were illegible, but they appear to refer to communication with the real estate agents on the evening of 14 April 2013. I accept therefore they may be relevant. While Mr Young maintained they were not literally in *his* possession at the time of discovery, he was aware of them and, in fact, it appears from his questioning of Mr J that he had discussed them with Mr J prior to completion of the discovery process. Therefore, he should have discovered them or ensured that they were discovered as part of the discovery process. In this regard, he appears to have accepted at the hearing that it was ultimately his responsibility to ensure that all the relevant documents were disclosed.

Ambit of s 7(1)(a)

[42] I turn then to examine whether Mr Young's failure to discover documents was amenable to charge under s7(1)(a). As noted in part at [11], s 7 relevantly states:

> **7 Misconduct defined in relation to lawyer and incorporated law firm**
>
> (1) In this Act, misconduct, in relation to a lawyer or an incorporated law firm,—
>
> (a) means conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services and is conduct—
>
> (i) that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable; or

(ii) that consists of a wilful or reckless contravention of any provision of this Act or of any regulations or practice rules made under this Act that apply to the lawyer or incorporated law firm or of any other Act relating to the provision of regulated services; or

(iii) that consists of a wilful or reckless failure on the part of the lawyer, or, in the case of an incorporated law firm, on the part of a lawyer who is actively involved in the provision by the incorporated law firm of regulated services, to comply with a condition or restriction to which a practising certificate held by the lawyer, or the lawyer so actively involved, is subject; or

(iv) that consists of the charging of grossly excessive costs for legal work carried out by the lawyer or incorporated law firm; and

(b) includes–

(i) conduct of the lawyer or incorporated law firm that is misconduct under subsection (2) or subsection (3); and

(ii) conduct of the lawyer or incorporated law firm which is unconnected with the provision of regulated services by the lawyer or incorporated law firm but which would justify a finding that the lawyer or incorporated law firm is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer or an incorporated law firm.

[43] Mr Simpson submitted that s 7 must be construed to cover all misconduct by a practitioner, including professional and personal misconduct. He submitted that the High Court decision in *Orlov* said that s 7(1)(a) addresses any misconduct connected to regulated services and s 7(1)(b) addresses misconduct unconnected to the provision of professional services. On that authority he further submitted that Mr Young's misconduct was connected to professional services, and thus caught by s 7(1)(a).

[44] Alternatively, Mr Simpson contended that the approach Hinton J took in *Deliu* applied.[9] In that case, he submitted Hinton J emphasised that misconduct "at a time" of providing legal services, including matters incidental to legal work, fell within s 7(1)(a).[10]

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9 *Deliu v National Standards Committee* [2017] NZHC 2318.
10 At [62].

[45] Turning then to those cases, in *Orlov*, the Full High Court stated that s 7(1)(a) is concerned about misconduct in the performance of professional duties while s 7(1)(b) is concerned about personal misconduct in situations "unconnected with the provision of legal services" and "clearly outside the work environment".[11] The Court said that, in short, the two classes covered all potential types of misconduct.[12] It followed, the Court said, that 7(1)(a) must extend to any activity connected to the provision of regulated services.[13]

[46] The High Court found that insofar as Mr Orlov's misconduct related to his personal complaint to the Human Rights Commission, he was not "providing regulated services".[14] But as this conduct was connected to provision of legal services, the Court found that it was nevertheless subject to s7(1)(a) rather than s7(1)(b), which deals only with conduct unconnected to the provision of legal services.

[47] Hinton J also addressed the meaning of "regulated services" in *Deliu*. Hinton J had some difficulty with the reasoning in *Orlov* about extending the scope of s 7(1)(a) to "connected services." Rather, the Judge said:[15]

> [59] In my view, the correct answer here, applying in part the same reasoning by which the Full Court reached its conclusion, is that the conduct at issue was in fact "at a time of provision of regulated services". "Regulated services" means "…legal services". "Legal services" are "services a person carries out by carrying out legal work for any other person". "Legal work" "includes reserved areas of work and any work that is incidental to any of that work". "Reserved areas" means "the work carried out by a person in giving legal advice to any other person in relation to the directions or management of proceedings the person is considering bringing or has decided to bring or appearing as an advocate for any other person".
>
> [60] The definition of "legal work", as noted above, is not limited to "reserved areas". It "includes" reserved areas and any incidental work. When Mr Deliu wrote his letters of complaint and took the other actions regarding Harrison and Randerson JJ, that was "legal work" in the generally understood sense of these words, i.e. work carried out as a lawyer for the benefit of clients. The Tribunal found that Mr Deliu (along with Mr Orlov) was trying to secure an advantage for himself. He was also trying to secure an advantage for his clients. Alternatively, the letters and court proceedings were "legal work" in the sense of work incidental to reserved areas of work, i.e. incidental to giving

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11 *Orlov v New Zealand Lawyers and Conveyancers Tribunal,* above n 6 at [112] and [107].
12 At [102].
13 *Orlov v New Zealand Lawyers and Conveyancers Tribunal,* above n 6 from [105].
14 At [111].
15 *Deliu v National Standards Committee,* above n 9.

> legal advice to his clients generally, appearing as an advocate for them. Either way, the relevant conduct was "regulated services".

[48] Hinton J went on to acknowledge a problem that regulated services involves legal services for "any other person" must mean an identifiable person. But the Judge went on to hold that the phrase "for any other person" included "legal work for clients generally".[16] The Judge was fortified in this view because s 7(1)(a) refers to conduct that occurs "at a time" rather than "when" providing regulated services.

[49] Like Hinton J, I had some intuitive difficulty with the approach taken by the Court in *Orlov*. I found it necessary therefore to re-approach the interpretation of s7(1)(a), in the usual way, by reference to the words used informed by purpose and context.[17] On its face, s 7(1)(a) is directed to conduct by a lawyer "at a time when he or she is providing regulated services". "Regulated services" is defined as follows:

> Regulated services means –
>
> (a) In relation to a lawyer or an incorporated law firm -
>
> (i) legal services; and
>
> (ii) conveyancing services; and
>
> (iii) services that a lawyer provides by undertaking the work of a real estate agent; and
>
> (b) In relation to a conveyancing practitioner or an incorporated conveyancing firm –
>
> (i) conveyancing services; and
>
> (ii) services that a conveyancing practitioner provides by undertaking the work of a real estate agent.

[50] In this case we are concerned with the provision of legal services. "Legal services" is defined as follows:

> **Legal services** means services that a person provides by carrying out legal work for **any other person**.
>
> (emphasis added)

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16 At [61].

17 Interpretation Act 1999, s 5; *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22]-[24]

[51] "Legal work" is then defined as follows:

> **Legal work** includes:
>
> (a) The reserved areas of work;
>
> (b) Advice in relation to any legal or equitable rights or obligations;
>
> (c) The preparation or review of any document that –
>
> (i) Creates, provides evidence of, legal or equitable rights or obligations; or
>
> (ii) Creates, varies, transfers, extinguishes, or charges any legal or equitable title in any property;
>
> (d) Mediation, conciliation, or arbitration services;
>
> (e) Any work that is incidental to any of the work described in paragraphs (a) to (d).

[52] Given the express reference to "any other person" in the definition of "legal services", s 7(1)(a) literally refers, in the present context, to conduct by a lawyer "at a time" when he or she is providing "legal work" for "any other person". Based on this literal construction, Mr Young is not caught by s 7(1)(a) because he was not providing legal work for "any other person".

[53] I turn then to consider this meaning in light of the purposes of the Act. The purposes of the Act are set out in s 3 which states:

> **Purposes**
>
> The purposes of this Act are:
>
> (a) to maintain public confidence in the provision of legal services and conveyancing services:
>
> (b) to protect the consumers of legal services and conveyancing services:
>
> (c) to recognise the status of the legal profession and to establish the new profession of conveyancing practitioner.

[54] The reference to "legal services" at (a) and (b) is presumably as defined in the Act, that is "carrying out legal work for any person".

[55] Subsection (2) of s 3 also states (most relevantly):

> (2) To achieve those purposes, this Act, among other things –
>
> …
>
> …
>
> (d) States the fundamental obligations with which, in the public interest, all lawyers or conveyancing practitioners must comply in providing regulated services.

[56] The fundamental obligations of lawyers are stated in s 4, which states:

> **4 Fundamental obligations of lawyers**
>
> (1) Every lawyer who provides regulated services must, in the course of his or her practice, comply with the following fundamental obligations:
>
> (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.

[57] Taken together, the purposes at s 3 and statement of fundamental obligations at s 4, relevantly seek to maintain public confidence in the provision of "legal services", to protect the consumers of "legal services", and, more generally, to secure compliance with fundamental obligations by a lawyer who, "in the course of his or her legal practice", provides regulated services. It is evident therefore that the literal construction of s7(1)(a) dovetails with the purposes and fundamental obligations just mentioned. That is the words used at s7(1)(a), like the words used to describe the purposes and fundamental obligations, are directed to lawyers who provide "legal work" for "any other person".

[58] However, context is important here. Incompetent lawyers acting for themselves one day are not transformed into competent lawyers the next day because they are acting for a client. An Act directed at maintaining public confidence, consumer protection and recognising the standing of the profession should be construed in a way that is consistent with that direction. This supports the broader construction of s 7(1)(a) favoured by Hinton J, one that is addressed to lawyers (and practitioners) who are incompetently performing legal work for themselves or others, "at a time" when they are providing legal services. Conversely, an interpretation of s7(1)(a) that allows incompetent legal work to go unchecked, is discordant with that direction. I therefore prefer and adopt Hinton J's approach to s7(1)(a).

[59] Returning to the present case, while Mr Young was acting for himself in preparing the affidavit of documents, he was, at that time, a practicing lawyer, albeit only for a few months. By omitting relevant documents, Mr Young failed to meet the standards expected of a competent lawyer. The purposes of the Act were therefore engaged and s 7(1)(a) applied.

[60] The appeal against conviction on Charge 1 is dismissed.

Is the penalty excessive?

Some further background

[61] The background to the remaining charges, which ultimately forms the basis for the penalty, is helpfully set out by the Tribunal in its liability decision.[18] It is an accurate summary. I largely adopt it.

[62] On 9 July, Mr Young wrote to the High Court seeking to withdraw the signatures of himself and his wife from the settlement agreement. He referred it to Venning J, Chief High Court Judge, who responded on 12 July that it was not possible for him to intervene and suggested the practitioner take legal advice. Mr Young then attempted to file an application in the High Court. That was not accepted for filing. In that application, he sought to set aside the consent orders on the following grounds:

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[18] *National Standards Committee v Young*, above n 1 at [18]-[33].

incompetence in the plaintiff's interpreter, fraud or deception on the part of the plaintiff or Mr D, failing to supply a common bundle and that he and his wife had been told an incorrect story about the plaintiff to induce him to sign the original sale and purchase agreement.

[63] Mr Young then filed a notice of appeal in the Court of Appeal seeking to set aside the consent orders. The Court of Appeal issued a minute, questioning jurisdiction. After considering a memorandum filed by Mr Young, the Court of Appeal dismissed the appeal for lack of jurisdiction.

[64] On 12 September, Mr Young's wife breached the consent orders. On 21 September, Mr Young and Ms Ying, received a sealed order reflecting the consent order. In a subsequent memorandum, Mr Young asserted that his wife had been entitled to sell the properties as they had not received a sealed order and Mr D had made up evidence and colluded with Mr J. He also said Duffy J had erased all her negative comments against him.

[65] The matter was called on 26 September, but Mr Young did not appear. Palmer J heard the contempt proceedings on 28 October and 17 November. In the second High Court proceeding, Mr Young and Ms Ying were represented by counsel. Ms Ying was found in contempt. Mr Young was not found in contempt. The Judge said, however, that Mr Young encouraged breach of the consent orders by propagating his extraordinary and irrational theory that the orders were pending. Palmer J also refused to set aside the consent orders.

[66] Mr Young filed an appeal.[19] The Court of Appeal noted that Mr Young and Ms Ying had brought an appeal without consent of the liquidator of KDL. The Court of Appeal was also critical of Mr Young's pleadings, referring to the notice of appeal as "… a prolix mixture of fact, law, submission and accusation".[20]

[67] The Tribunal records that Mr Young, to a large degree, accepted the Standards Committee criticism that the documents drafted by him in all these proceedings were

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19 *King David Investments Ltd (in liq) v Zhang* [2017] NZCA 37.
20 At [13].

"… largely nonsensical and discursive".[21] The Tribunal noted that Mr Young admitted many of the particulars pleaded: that his correspondence and his drafting was incoherent and misconceived, deficient and non-compliant with the rules.[22]

Findings on the remaining charges

[68] As well as Charge 1, the Tribunal also found against Mr Young on two further charges of misconduct, pursuant to s 7(1)(a)(ii) of the Act and one charge of negligence pursuant to s 241 of the Act. The Tribunal considered that it was clear the three further charges all involved conduct carried out in Mr Young's professional capacity:

> [40] Dealing first with the conduct alleged in Charges 2, 3, and 4, which concerned the lawyer's conduct from the time following the making of the consent orders in the High Court relating to the original litigation, we consider that the lawyer was acting in his professional capacity.
>
> [41] From that time, he effectively took over the carriage of the litigation on behalf of his wife in her capacity as director of King David Ltd, and himself. Thus, he was providing regulated services in terms of s 7(1)(a).

[69] The Tribunal therefore concluded that all the charges fell within s 7(1)(a).

Charge 2

[70] Charge 2 alleged that Mr Young breached rr 2.10 and 10 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (the Rules) by threatening to use the complaints process for an improper purpose. This charge arose from an email Mr Young sent to Mr Z, solicitor for the plaintiff, which read as follows:

> Can you please assist your client to remove the caveat by 4.00pm today … otherwise I will complain to the Law Society tonight and you and Jie will be liable for the penalty of $555 a day.

[71] The Tribunal found that the collateral purpose of Mr Young's threat to complain was to pressure the plaintiff to remove the caveat. This improper purpose meant the email crossed the line and became an "improper" threat, thus breaching rr 2.10 and 10.

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21 *National Standards Committee v Young,* above n 1 at [32]-[33].
22 At [33].

Charge 3

[72] Charge 3 alleged that Mr Young was incompetent or negligent by engaging in continued conduct in a misconceived effort to have a consent order set aside. In making its assessment of whether Mr Young's conduct was negligent or incompetent to such a degree as that required by s 241, the Tribunal noted Mr Young's actions included:

(a) failing to understand the binding nature of a consent order;

(b) failing to properly file applications in both the High Court and the Court of Appeal;

(c) failing to express the applications in logical and coherent form and in accordance with the relevant rules; and

(d) repeatedly relying upon grounds that were irrelevant or unsustainable.

[73] The Tribunal, having regard to the comments in *W*[23], found that Mr Young's actions would be regarded as "entirely unacceptable" by members of the public, who are entitled to expect competence in a practitioner – or, at the very least, to expect that an inexperienced practitioner will seek advice from a competent colleague or refuse to undertake such work. The Tribunal was therefore satisfied on the balance of probabilities that Mr Young's conduct was negligent or incompetent or both, to such a degree that it reflected on his fitness to practice or as to bring the profession into disrepute.

Charge 4

[74] Charge 4 alleged that Mr Young breached s 4(a) of the Act and rr 2, 10, 10.1, 13.2, 13.8, and 13.8.1 of the Rules by making various serious allegations against the plaintiff and her counsel in the proceedings without a clear evidential foundation for those allegations.

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[23] *Complaints Committee of the Canterbury District Law Society v W* [2009] 1 NZLR 514 (HC) at [81] and [91].

[75] This charge arose from allegations Mr Young made about the plaintiff and her counsel, and later, his previous counsel and the Judge, when he was seeking to set aside the consent orders. There were three documents that concerned the Tribunal:

(a) Mr Young's application to set aside the consent orders, dated 25 July 2016, in which he referred to Mr D as having made a "false allegation" and producing "fake evidence", as well as a suggestion that Mr D had "mislead the Court";

(b) Mr Young's complaint to the New Zealand Law Society Complaints Service about Mr D, Ms Z's counsel, dated 16 August 2016, in which he repeated his suggestion that Mr D mislead the Court and made further "scurrilous accusations" against Mr D; and

(c) Mr Young's memorandum filed in the High Court, dated 26 September 2016, in which he again suggested D made up evidence and mislead the Court, and also claimed Duffy J had "erased all her negative comments against the second defendant from note of evidence", and that the Chief Judge had directed him to complain to the Misconduct Committee.

[76] The Tribunal stated there were "numerous further examples" of Mr Young making allegations without proper foundation. It noted particularly Mr Young's use of labels such as "fraud or deception" to describe the actions of those who disagreed with his perspective, and his lack of apparent understanding of the difference between disputed facts and deliberate fraud.

[77] The Tribunal found that in making such allegations Mr Young had absolutely no regard to his professional duties pursuant to the Rules, and regarded him as having recklessly breached the Rules, establishing a finding of misconduct.

The penalty decision

[78] In fixing the penalty, the Tribunal found that Mr Young "demonstrated serious failings in respect of his competence to conduct litigation which as an inexperienced and recently admitted lawyer he should never have taken on", and that "his attitude

towards colleagues and lack of restraint in communications with and about other lawyers was "deeply flawed".[24] The Tribunal also noted that Mr Young's particular personality traits appear to "make it difficult for him to listen to, or receive advice or direction".[25]

[79] The Tribunal noted that Mr Young carried on with his conduct despite being put on notice repeatedly by the judiciary that the grounds of his application were irrelevant and unsustainable and that his pleadings were wholly inadequate and improper, such that "grave doubts were raised as to his professional competence".[26]

[80] The Tribunal accepted, however, that unlike Mr Deliu, Mr Young did not bring the judiciary into disrepute and made his comments in the course of exercising his appeal rights and not in a manner designed to oppress the recipient. It also accepted that in terms of the improper threat finding, Mr Young was affected by his personal involvement and his inexperience was a contributing factor.

[81] The Tribunal did not identify any specific aggravating features. As to mitigating factors, it acknowledged statements from grateful clients and supporters as to Mr Young's good character and charitable and generous nature. The Tribunal noted, however, that insight was almost totally lacking. It acknowledged that one of the difficulties in this case was the level of personal connection to the litigation and personal animosity towards Mr D. But it noted that Mr Young's lack of ability to understand the part he played was greatly concerning.

[82] The Tribunal referred to the cases of *Orlov* and *Deliu* as relevant precedents. The Tribunal acknowledged that the case of *Deliu* involved "much more serious misconduct" than in Mr Young's case, but also noted:[27]

> However, it should be said that the High Court was clearly not as worried about the level of competence of that practitioner as we are in respect of this much less experienced practitioner.

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24 *National Standards Committee v Young* [2018] NZLCDT 20 at [7].
25 At [8].
26 At [9]-[10].
27 At [23].

[83] Having regard to the previous penalty decisions and the constraints they imposed on the Tribunal, and their concerns as to Mr Young's competence while acknowledging this was a matter in which Mr Young was personally involved, the Tribunal ordered that Mr Young:

(a) be suspended from practice for a period of 15 months, commencing 28 March 2018;

(b) pay the Standards Committee costs in the sum of $45,783.80; and

(c) reimburse the New Zealand Law Society for the Tribunal costs in full, in the sum of $11,760.00.

[84] The Tribunal did state that the suspension period would give Mr Young "the opportunity of reflecting on his conduct and of undertaking further training and legal education," but did not specifically order further training.[28]

Powers to impose penalty

[85] To understand whether the penalty is excessive it is necessary to understand the scope of the penalty powers available to the Tribunal. The Tribunal has broad powers to impose penalties. They are listed at s 242 of the LCA and relevantly include:

(a) The same orders (per the legislation) that a Standards Committee may make, including (in summary):

(i) An order censuring or reprimanding the practitioner;[29]

(ii) An order requiring the practitioner to apologise to the complainant;[30]

(iii) An order to pay compensation;[31]

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28 At [35].
29 Section 156(1)(b).
30 Section 156(1)(c).
31 Section 156(1)(d).

(iv) An order to reduce or cancel fees;[32]

(v) An order to pay costs;[33]

(vi) An order that the practitioner or undergo practical training or education;[34]

(b) The power to strike off a lawyer;[35]

(c) An order that a lawyer be suspended from practice for such a period not exceeding 36 months, as the Disciplinary Tribunal thinks fit;[36]

(d) A power to impose a penalty not exceeding $30,000.[37]

[86] In supplementary submissions, counsel for the Committee, Ms Paterson and Ms Rose-Davies, helpfully set out the process involved when a suspended lawyer seeks to resume practice. This is relevant to the assessment of the punitive and/or rehabilitative significance of an order to suspend to the practitioner. They noted:

> When a lawyer is suspended by the Tribunal (or the Court as the case may be), the lawyer must deposit his or her current practising certificate (if any) with the society that issued the certificate.
>
> In order to regain a practising certificate, if the lawyer was suspended for less than six months, and their practising certificate did not expire in that period, the lawyer may resume practice by contacting the Law Society at the end of his or her period of suspension.
>
> However, if the lawyer was suspended for six months or more, as in the present case, the lawyer is required to apply for a new practising certificate using the form provided by the Law Society.
>
> The Law Society has released guidance on the process for former lawyers applying to regain their practising certificates after being suspended. This guidance states that the application for a practising certificate may include supporting documentation with the application, such as evidence of rehabilitation, good character, professional development, and any further

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32 Sections 156(1)(e) and (f).
33 Section 156(1)(n) and (o).
34 Sections 242 (1)(a) and 156 (1)(m).
35 Section 242(1)(c).
36 Section 242(1)(e).
37 Section 242(1)(i).

> information, such as steps that have been put in place to ensure that the factors or conduct which led to suspension will not recur.

[87] They also note that when the Law Society receives an application for a practising certificate, it refers the application to the Practice Approval Committee (PAC), a body created by the Law Society which addresses any issues that may arise during applications for a practising certificate. The PAC's powers are then described as follows:

> The only grounds on which the PAC can refuse or decline to issue a practising certificate is if a candidate is not a fit and proper person to hold a practising certificate. The PAC does not have the power to require a candidate to undertake further training when issuing a practising certificate (although evidence of further training/education and rehabilitative steps undertaken by the practitioner can be provided to the PAC by the practitioner).
>
> A practitioner may be considered unfit to practise in the absence of further training or education. However, this is something the applicant would have to address by responding to the PAC in accordance with r 7(2)(c) of the Practice Rules or through an appeal against a decision to decline an application for a practising certificate under s 42 of the Act. The onus is on the applicant to demonstrate his or her fitness to practise.
>
> Neither the PAC nor the Law Society has the ability under the LCA to require an applicant for a practising certificate to undertake further training or education prior to a practising certificate being granted.
>
> Further, it is submitted that it would not be appropriate for the PAC or the Law Society to impose requirements for further training on practitioners at this stage after being suspended, given such practitioners would have already appeared before the Tribunal, which has a range of orders available to them, including orders for further training and or education.

Submissions

[88] Mr Young submitted that the length of the suspension and the costs award were too harsh. He said that it deprived him of his primary means of earning and that the costs award was debilitating, especially as he was in difficult financial circumstances already.

[89] Mr Simpson acknowledged that there was no analogous authority on penalties. He submitted, however, that Mr Young's misconduct was comparable and, in some respects, more concerning than Mr Deliu's misconduct.[38] Mr Deliu received a penalty

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[38] *Deliu v National Standards Committee*, above n 9.

of 15 months' suspension on nine charges involving serious charges of misconduct which undermined confidence in the judiciary and brought the profession into disrepute. This included multiple charges of making false and unsubstantiated allegations about members of the judiciary, conduct unbecoming (he attended a Committee meeting without permission and he refused to leave that meeting), and incompetence. Mr Simpson said the Tribunal was legitimately concerned about Mr Young's incompetence and his lack of appreciation or acknowledgement of his incompetence. A lengthy period of suspension was therefore necessary.

Assessment

[90] As the Full High Court set out in *Daniels*:[39]

> [34] … To maintain public confidence in the profession members of the public need to have a general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards.
>
> [35] The Tribunal recognised this important dimension of "public interest" when referring to the well-known dicta of Sir Thomas Bingham MR in *Bolton v Law Society*:
>
> > In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order for suspension; plainly it is hoped that the experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly be indefinitely by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth.

[91] I also agree with and adopt Hinton J's summary of settled sentencing propositions:[40]

> [163] In *Hart v Auckland Standards Committee 1 of New Zealand Law Society*, the Court cited the above passage from *Dorbu* with approval, and stated what it said were settled propositions, including the following:
>
> (a) The ultimate issue is the fitness and propriety of the professional person concerned. Determination of this issue will always be a matter of assessment having regard to several factors.

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39 *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC) (citations omitted).

40 *Deliu v National Standards Committee,* above n 9.

(b) The nature and gravity of the proved charges will generally be important and in some cases that factor alone will lead to a conclusion of unfitness. Cases involving dishonesty are usually in this category.

(c) However, dishonesty or misconduct of that order is not a necessary prerequisite to a conclusion of unfitness. Cases involving lesser forms of misconduct may still lead to a conclusion of unfitness depending on other factors. Such factors include the way the professional person responded to the complaint or charges, and whether they have demonstrated adequate insight into their offending and taken responsibility. In addition, disciplinary history may well assume considerable importance.

(Citations omitted.)

[92] The Tribunal's assessment of Mr Young's lack of fitness to practice cannot be faulted. The nature and scale of his misconduct, spanning a lengthy period, combined with a lack of awareness of the significance of his own shortcomings, justified suspension for a lengthy period. Particularly concerning is Mr Young's technical incompetence and persistent lack of judgment about the proper conduct of proceedings and in terms of engaging with other counsel. Principles of deterrence and maintenance of public confidence in the profession are fully engaged.

[93] The length of suspension was, nevertheless, harsh. It was considerably longer than Mr Young's period of practice prior to the conduct said to give rise to Charge 1. In this regard, I do not think much assistance is to be gained from the cases cited by the Committee of *Orlov, Deliu* and *Parlane*. They do not set the frame for the potential penalty, beyond the usual assistance they afford in genuinely analogous cases. Messrs Orlov and Deliu's lack of judgment and incompetence is materially different from Mr Young's lack of judgment and incompetence in nature, scale and significance. They were reasonably experienced litigation practitioners whose actions brought the integrity of the judiciary into serious disrepute. Mr Deliu's behaviour was especially egregious, involving persistent attacks on members of the judiciary based on false and/or unsubstantiated allegations about them.

[94] By contrast, Mr Young was a very inexperienced litigation practitioner embroiled in litigation of great personal significance to him. While these factors do not diminish the seriousness of Mr Young's misconduct, they provide an explanation for it and a clear target for re-education and future management.

[95] Mr Parlane's case is markedly different also.[41] His misconduct was directed to a former client. He was struck off because he:

(a) wrongly refused to discharge the mortgage Mrs R granted to him to secure an earlier personal loan;

(b) obstructed Mrs R's solicitor in her attempts to facilitate refinancing and to discharge the mortgage;

(c) relied on his status as mortgagee to demand payments and concessions from Mrs R to which he was not entitled; and

(d) set out to deliberately obstruct the Standards Committee in the actions that it was taking to try to deal with Mrs R's complaint, and also in relation to complaints by two other former clients of Mr Parlane.

[96] As the Tribunal put it in that case, Mr Parlane was "out of control".[42]

[97] For my part, subject to what I say at [100], a lesser period of suspension of, say six to twelve months, combined with an order requiring further practical training and education directed to Mr Young's needs, was available to the Tribunal. In this regard, a sentence of suspension greater than six months carries with it a requirement to be readmitted. The PAC will consider the practitioner's fitness to practice. It is a backstop enabling protection of the public to be achieved. Because of this backstop, the length of suspension can be moderated to better achieve a rehabilitative outcome.

[98] I also note that the Committee does not consider that the PAC can require additional training imposed after the period of suspension has been completed. That lack of power reinforces the need, in cases dealing with inexperienced practitioners like Mr Young, to impose orders to undertake further targeted training and re-education. In addition, a shorter period of suspension (though greater than six months to engage the backstop) combined with educative orders might, in some cases, better

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41 *Parlane v New Zealand Law Society*, above n 7.
42 At [70].

achieve the objectives of the penalty regime, including deterrence, rehabilitation and long-term protection of the public.

[99] Relevantly, also, there is an evident cultural dimension to Mr Young's conduct with which I think many lawyers in New Zealand will be unfamiliar. It appears to me Mr Young brought to the underlying litigation his life experience in commercial dealings in China, which influenced his dealings not only with Mrs Z but with Mr D. While this provides no justification for his conduct in the litigation or subsequently, it helps inform our response to it and where we might target further practical training and education about, among other things, the norms that must be adhered to as practitioners of the law in New Zealand. I also note that Mr Young admitted some of his technical shortcomings, which suggests he is at least open to retraining on these matters. A clear direction from the Tribunal as to the type of training and education needed in this context would then have assisted both Mr Young and the PAC, in terms of his fitness to practice at the end of the period of suspension.

[100] I am not, however, satisfied that the period of suspension of 15 months was manifestly excessive or wrong. Mr Young's conduct, whatever its explanation, clearly reveals an unfitness to practice law, especially litigation. Mr Young's stubborn minimisation of his misconduct, evident still from his submissions before me (see [22]-[33]), emphasises the need for a clear deterrent penalty and ongoing protection of the public. My comments at [97] may well have led to a different result had there been an unqualified acknowledgment of and apology for his misconduct. But there was none. Quite the opposite, Mr Young continues to seek relitigate what had happened.

[101] I note also that Mr Young had already completed the lion's share of his suspension by the time his appeal came to be heard. I understand it has been completed since. There is no utility therefore in revisiting it now. It is worth noting, especially for Mr Young's benefit, and without in any way seeking to trespass into the power of the PAC to readmit Mr Young, re-admission will remain difficult while his training and educational needs are not met.

[102] The appeal against penalty is therefore dismissed.

Appeal against costs

[103] Mr Young's appeal against the cost orders award appears to be largely based on his ongoing and largely misconceived claim that he has done nothing wrong and that he and his wife are the victims. It is also evident to me that Mr Young has added unnecessarily to the costs before the Tribunal by maintaining argument that was either irrelevant or not properly presented. This appeal is therefore dismissed.

Mr J's alleged collusion

[104] At the end of the hearing before me, Mr Young advised that Mr J (Ms Ying's lawyer in the initial litigation) had been censured for professional misconduct in relation to those proceedings. This was said to be relevant to Mr Young's claims that there had been collusion between Mr D and Mr J in those proceedings. It transpired Mr J was censured, but not for his conduct during the proceedings. He was censured for his communications with Mr D about Mr Young and Ms Ying after the proceedings. While clearly a matter of legitimate concern to Mr Young and Ms Ying, and while it in part explains their ongoing sense of injustice, Mr J's behaviour does not bear on the issues before me.

Outcome

[105] The appeal against liability on Charge 1 is dismissed.

[106] The appeal against penalty and costs are dismissed.

Costs

[107] The Committee is entitled to costs. Submissions are to be filed within 15 working days if agreement cannot be reached. Submissions longer than 5 pages will be returned unread.