

No.	ZTUVK
Concerning	Part 7 of the Lawyers and Conveyancers Act 2006
And	
Concerning	an Own Motion Investigation by the Standards Committee concerning Mr X dated 16 March 2018

Notice of Determination by Standards Committee

Introduction

1. This determination concerns sexual harassment by a partner in a law firm towards two of that law firm's employees (one was a lawyer and the other was a non-lawyer).
2. The determination raises the broad issue of the jurisdiction of Standards Committees to consider and address conduct by a lawyer that occurs within a social setting within a law firm rather than when the lawyer was engaging in the direct provision of regulated services to a client.

Facts

3. The conduct, which was accepted by Mr X, involved two incidents when Mr X was a partner in [a firm].
4. The first incident occurred during the course of 'Friday night drinks' held on the firm's premises. At a time when he was intoxicated, Mr X touched the leg of a female solicitor seated near him and said, "You are very attractive." The female solicitor was upset and removed herself from the situation.
5. The female solicitor did not want to lay a formal complaint but wanted the incident to be known by the partners of the firm so that Mr X could be spoken to and advised that his behaviour was unacceptable. Discussions followed between Mr X and senior lawyers at the firm including: the female solicitor's supervising partner, an employment partner, and the managing partner. Mr X did not deny the incidents had taken place but advised he had no recollection of them, which was understood to mean that he had suffered an alcohol-induced memory loss or blackout. Mr X was rebuked by the firm and warned against any further conduct of the same nature. He was also told that he should not attend staff drinks functions in the near future.
6. The next event occurred at the firm's end-of-year party, held at an external venue. On this occasion, Mr X directed unwanted attention towards a non-lawyer female employee of the firm. He approached the employee on the dance floor and pinched her bottom, leaving a bruise.
7. Mr X was told to stop, but he pinched her bottom again later in the evening. After the bus ride back from the function venue, he also propositioned the employee, asking her, "Are you coming

with me”? Mr X was visibly intoxicated during these events, slurring his speech and walking unsteadily.

8. During the course of the same evening, and in relation towards the same employee, Mr X grabbed the employee’s wrist and forcibly squeezed her hand against his groin while saying “this is for you”. The employee immediately withdrew her hand, and a male colleague intervened to remove Mr X from the situation.
9. This second incident was reported by the employee on the [following Monday].
10. Mr X met with [the firm’s partners] as part of an internal disciplinary process. As with the first incident, Mr X did not deny the events but said he had no recollection of them. This was again understood to mean that he had suffered an alcohol-induced memory loss or blackout.
11. Mr X was suspended on [the day it was reported] and [the next day], the partners passed an extraordinary resolution to remove him from the partnership. Mr X subsequently elected to resign¹. His resignation took effect [four months later], although he did not return to the office following his suspension.
12. The firm reported Mr X’s conduct to the New Zealand Law Society and advised the employees involved in both incidents were supported appropriately throughout.
13. Mr X was also offered counselling and support.

Procedure

14. Following receipt of the report, the Standards Committee (**Committee**) commenced an own motion investigation into Mr X’s conduct pursuant to section 130(c) of the Lawyers and Conveyancers Act 2006 (**Act**).
15. The two employees were invited to provide information to the Committee during the course of its investigation.
16. By counsel, the employee in the first incident said she did not wish to provide any additional information but confirmed she was satisfied with the way that the firm dealt with the events.
17. The employee in the second incident provided further information to the Committee. By counsel, she described the firm’s level of support and understanding as “an outstanding example of how an incident of this nature should be dealt with in an employment setting”.

Mr X’s response

18. Mr X accepted the essential facts, as set out above, in relation to both incidents. He did so immediately. He subsequently provided submissions and affidavit evidence in support.
19. Mr X was and is ashamed, remorseful, and does not seek to excuse or minimise his conduct. He resigned from the firm immediately and has taken a number of actions to make sure there is no repeat of his conduct. This includes addressing difficulties in his personal life. Mr X has also taken time out from the law as part of this process.

¹ Mr X says he promptly resigned from the partnership.

20. In responding to the Committee Mr X explained he had experienced an intense personal crisis at around this time. This had had a profound impact on his wellbeing and mental health. In particular, he had been feeling very down, and experiencing panic attacks. He is receiving treatment from a clinical psychologist.
21. Mr X submitted that his conduct did not occur at a time when he was providing regulated services but amounts to “unsatisfactory conduct” pursuant to section 12(c) of the Act, specifically because it breached rules 10², 10.1³ and 11⁴ of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**). Mr X also submitted that his conduct, while unsatisfactory and warranting a disciplinary response, does not amount to “misconduct” pursuant to section 7 of the Act.

Did Mr X’s conduct occur “at a time when he was providing regulated services”?

22. The Committee first needs to determine whether Mr X’s conduct occurred at a time when he was providing regulated services.
23. The Act only provides for disciplinary consequences to be imposed on practitioners against whom a finding of misconduct or unsatisfactory conduct is made. Misconduct is defined in section 7 of the Act and unsatisfactory conduct is defined in section 12 of the Act.
24. Section 7(1)(a)(i) of the Act relevantly defines as misconduct “conduct of the lawyer ... that occurs at a time when he ... is providing regulated services⁵ and is conduct that would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable”. It also includes within “misconduct”, under section 7(1)(b)(ii), “conduct of the lawyer ... which is unconnected with the provision of regulated services by the lawyer ... but which would justify a finding that the lawyer ... is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer”.
25. Section 12 defines “unsatisfactory conduct” as limited to four separate circumstances. One⁶ is limited to failure by a lawyer to comply with a condition or restriction to which his or her practising certificate is subject. Two others⁷ are limited to “conduct of the lawyer ... that occurs at a time when he ... is providing regulated services” and, under section 12(b), is also “conduct that would be regarded by lawyers of good standing as being unacceptable”. The last⁸ contains no reference to the provision of regulated services and instead captures “conduct consisting of a contravention of this Act, or of any regulations or practice rules made under this Act that apply to the lawyer”.
26. The phrase “conduct of the lawyer ... that occurs at a time when he ... is providing regulated services” has been broadly construed in decisions of the High Court, and New Zealand Lawyers and Conveyancers Disciplinary Tribunal (**Disciplinary Tribunal**), as extending to a lawyer’s conduct

² ‘Professional dealings’.

³ ‘Respect and courtesy’.

⁴ ‘Proper professional practice’.

⁵ “Regulated services” is defined in section 6.

⁶ Section 12(d).

⁷ Sections 12(a) and (b).

⁸ Section 12(c).

that is connected with the provision of regulated services⁹. While those decisions concerned section 7 of the Act, the Committee considers the analysis contained therein applies equally to the same words when used in section 12 of the Act.

27. The judgment of the Full Court in *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal*¹⁰ is a leading authority regarding the application of the critical phrase (“conduct of the lawyer ... that occurs at a time when he ... is providing regulated services”) in the disciplinary context. The case involved various statements made by lawyer Mr Orlov against a High Court Judge in various forums.

28. Relevantly, the High Court said (emphasis added):

[97] Section 7(1)(a) covers professional misconduct (not the statutory term) and describes it as:

... conduct of the lawyer or incorporated law firm that occurs at a time when he or she or it is providing regulated services ...

[98] Such conduct will be misconduct if the conduct was such that lawyers of good standing would regard it as “disgraceful or dishonourable”.

[99] Section 7(1)(b)(ii) covers the alternative, namely:

... conduct of the lawyer or incorporated law firm *which is unconnected with* the provision of regulated services by the lawyer or incorporated law firm.

[100] This conduct will be misconduct if it, by its nature, would support a conclusion that the practitioner is no longer a fit and proper person or is otherwise unsuited to engage in the practice of law.

[101] Regulated services are defined as the provision of legal work, a concept that is also defined in reasonably predictable terms. The structure of the charges in this case was to treat the documents filed by Mr Orlov as part of court proceedings as coming within professional misconduct, but to see the complaint letters as being “unconnected” to the provision of legal services and therefore falling within s 7(1)(b)(ii). The Disciplinary Tribunal agreed with this analysis.

[102] **We first accept the conclusion drawn by the Disciplinary Tribunal that the two paragraphs together must cover all conduct. There cannot be a gap.**

[103] In terms of defining the scope of each alternative, the Disciplinary Tribunal was reluctant to draw firm lines, citing from a decision of the High Court of Australia:

The dividing line between personal misconduct and professional misconduct is often unclear. Professional misconduct does not simply mean misconduct by a professional person. At the same time, even though conduct is not engaged in directly in the course of professional practice, it may be so

⁹ See *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987; *Deliu v National Standards Committee* [2017] NZHC 2318; and *Auckland Standards Committee 1 v Fendall* [2018] NZLCDT 26. See too *Canterbury Westland Standards Committee 2 v Eichelbaum* [2014] NZLCDT 68 and *A v Canterbury Westland Standards Committee 2* [2015] NZHC 1896.

¹⁰ [2014] NZHC 1987.

connected to such practice as to amount to professional misconduct. Furthermore, even where it does not involve professional misconduct, a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not a fit and proper person to practice . . .

...

[106] We consider the Act's definitions continue to maintain the distinction between professional and personal misconduct. The latter involves moral obloquy. **It is conduct unconnected to being a lawyer which nevertheless by its nature, despite being unrelated to the practitioner's job,** is so inconsistent with the standards required of membership of the profession that it requires a conclusion that the practitioner is no longer a fit and proper person to practice law.

[107] The test of "fit and proper" person remains the touchstone for whether a lawyer is to be struck off. It is the assessment that is to be undertaken following a finding of professional misconduct under s 7(1)(a)(i). In other words it is recognised that misconduct in the performance of professional duties may lead to a conclusion of unfitness, but not necessarily. By contrast, with personal misconduct, the fit and proper person inquiry is an element of the actual offence. This in effect recognises that personal conduct unrelated to work must be of a nature which in itself justifies a conclusion that the practitioner is not a fit and proper person. **We think this structure supports giving a broad scope to professional misconduct with a consequent limiting of personal misconduct to situations clearly outside the work environment.**

...

[112] However, it is necessary to return to the proposition that the two definitions in ss 7(1)(a)(i) and 7(1)(b)(i) cover the entire field. Mr Orlov's conduct will come under s 7(1)(b)(i) only if it is not the provision of regulated services (which it is not) and if it is unconnected with the provision of legal services. It is this aspect of the definitions that we consider is crucial. Whilst not regulated services, the conduct is very much connected with the provision of such services and therefore comes within the s 7(1)(a)(i) limb of professional misconduct.

29. This approach has recently been affirmed by the Disciplinary Tribunal¹¹, which said that:

. . . we repeat, as held in *Orlov* and *Deliu*, that the Act did not intend there to be any gap between the two categories [professional misconduct and personal misconduct] and the conduct must fall within one or other. Further, *Orlov* is authority for a broad interpretation of the "professional" category, leaving s 7(1)(b) for purely personal actions.

30. The approach in *Orlov* has been applied, by both the Disciplinary Tribunal and the High Court, as equally applying to section 12(b) of the Act. In *Canterbury Westland Standards Committee 2 v Eichelbaum*¹², one of the disciplinary charges was that the practitioner breached rule 2.3 of the Rules by issuing an improper statutory demand seeking payment for services rendered. In this regard the Disciplinary Tribunal said:

[29] We have no doubt that in each of the instances alleged in these charges, the practitioner's conduct was clearly "connected with" the provision of legal services . . .

¹¹ *Auckland Standards Committee 1 v Fendall* [2018] NZLCDT 26 at [44].

¹² [2014] NZLCDT 68.

[30] Similarly, conduct which has arisen in attempts to recover his costs for his services, legal and otherwise, are also so intermingled as to be indistinguishable and must be seen as connected with the provision of legal services.

[31] Thus we find that the proper section to be applied to each of the charges is s 7(1)(a)(i). That leads to the proposition that it is not necessary for the conduct to be such as to reflect on the practitioner's fitness to practise in order to be established as misconduct.

31. In upholding the Disciplinary Tribunal's finding that the practitioner's issuing of the statutory demand amounted to unsatisfactory conduct pursuant to section 12(b) of the Act for breach of rule 2.3 (even though the issuing of the statutory demand did not occur at a time when the practitioner was providing regulated services) the High Court said (emphasis added)¹³:

[60] There is a further point. While s 7(1)(a) refers to conduct "that occurs at a time when the lawyer is providing regulated services" it does not require there to be a subsisting lawyer/client relationship with a particular client. It could also obviously relate to the practitioner's actions in seeking the recovery of a fee after the services have been terminated. Mr Carruthers accepted that a practitioner's attempts to recover fees for regulated services could come within s 7(1)(a) even if the attempts followed the termination of the services. That must be correct. Strictly the regulated services have ended, but the recovery of the fee is in connection with regulated services. It will be sufficient if at the material time the lawyer is engaged in the provision of legal services and the conduct complained of is connected to those services.

[61] The emphasis in s 7(1)(b)(ii) is on conduct which is unconnected with regulated services. It cannot be said that the appellant's conduct in this case, which was directed at obtaining payment for the legal (and other) work he had done for Mr G and J was unconnected with the provision by him of legal services . . .

[62] I am satisfied that the conduct referred to in the charges before the Tribunal falls to be considered under s 7(1)(a) as connected to, and arising out of the provision of regulated services.

. . .

[70] I agree with the Tribunal's conclusion that the appellant used the statutory demand procedure improperly. The demand would inevitably have been set aside. However, the conduct does not amount to disgraceful or dishonourable conduct under s 7(1)(a)(i) and, while it was a contravention of r 2.3, that was mitigated by the appellant's withdrawal of the demand after seven days. **The conduct is properly categorised as unsatisfactory conduct, being unprofessional conduct under s 12(b)(ii) of the Act.**

32. The Committee (by a majority) considers that Mr X's conduct occurred at a time when he was providing regulated services, as that phrase has been construed in the decisions cited above. While not as directly connected with the provision of regulated services as the conduct which was the subject of the above decisions, Mr X's conduct was not conduct "unconnected to being a lawyer" or "clearly outside the work environment". It occurred at social events organised by his law firm, one on the firm's premises and the other offsite with transport arranged by the firm, and attended by employees of the firm. All attendees at the functions were present because they worked for a law firm which provided regulated services. The functions were plainly intended to assist the functioning of the firm's law practice by building good and supportive internal relations, rewarding staff for their efforts and enhancing job satisfaction and staff retention.

¹³ *A v Canterbury Westland Standards Committee 2* [2015] NZHC 1896.

33. A minority of the members of the Committee consider Mr X's conduct did not occur at a time when he was providing regulated services. Even taking account of the broad interpretation given to that phrase by the High Court and the Disciplinary Tribunal, the minority considers there is an insufficient nexus between Mr X's conduct and Mr X's provision of legal work for any other person¹⁴. The minority members consider that lawyers attending firm social events are not directly or indirectly providing regulated services.
34. On the basis of the reasoning of the majority of the Committee, Mr X's conduct may be considered under section 7(1)(a) - misconduct on the basis that the conduct "would reasonably be regarded by lawyers of good standing as disgraceful or dishonourable" – or under section 12(b) – unsatisfactory conduct on the basis that the conduct "would be regarded by lawyers of good standing as being unacceptable". The application of those sections is discussed at paragraphs 53 to 59 below.
35. If the Committee is wrong on this point, and Mr X's conduct did not occur "at a time when he ... is providing regulated services", such that sections 7(1)(a) and 12(b) of the Act do not apply and/or is conduct which would not justify a finding that he is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer (which the Committee addresses in paragraph 58 below), disciplinary jurisdiction under the Act would be limited to section 12(c), requiring a finding of a breach of the Act, the regulations or the Rules.

Did Mr X's conduct occur during the course of his lawyer's dealings?

36. Independently of the conclusion reached by the Committee recorded at paragraph 34 above, the Committee addresses whether the conduct also amounts to a breach of the Rules.
37. As the Legal Complaints Review Officer has recognised¹⁵, a lawyer can be guilty of unsatisfactory conduct (pursuant to section 12(c) of the Act) as a result of a breach of the Rules, even in circumstances where the conduct did not occur at a time when the lawyer concerned was providing regulated services. In such cases, whether a Rule has been breached depends on the apparent scope of the Rule, not all of which are limited to the provision of regulated services.
38. The Committee considers that the Rules potentially applicable to Mr X's conduct are rules 10 and 10.1. Rules 10 and 10.1 are found within Chapter 10, which is headed 'Professional dealings', and state:

Chapter 10
Professional dealings

- 10** A lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings.

Respect and courtesy

- 10.1** A lawyer must treat other lawyers with respect and courtesy.

¹⁴ See definitions of "regulated services", "legal services" and "legal work" in section 6 of the Act.

¹⁵ *EA v ABO* (LCRO 237/2010).

39. The issue for the Committee is whether rules 10 and 10.1 apply to Mr X's admitted conduct towards two employees (one a lawyer and one a non-lawyer).
40. The Interpretation Act 1999 provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose¹⁶. The purposes of the Act are set out in section 3, namely:
- (a) to maintain public confidence in the provision of legal services;
 - (b) to protect the consumers of legal services; and
 - (c) to recognise the status of the legal profession.
41. The Rules are stated as being based on the fundamental obligations of lawyers set out in section 4 of the Act. Those fundamental obligations are:
- (a) to uphold the rule of law and to facilitate the administration of justice in New Zealand;
 - (b) to be independent in providing regulated services to his or her clients;
 - (c) to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients; and
 - (d) 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.
42. The Rules set the minimum standards that lawyers must observe and are a starting point for determining whether a lawyer has breached the standards expected of members of the profession¹⁷. The Committee notes the broad focus of Chapter 10 – lawyers' professional dealings with others. Chapter 10 is concerned with the manner in which lawyers engage with others, including but not limited to¹⁸ other lawyers and other lawyers' clients.
43. In contrast, Chapter 6 of the former *Rules of Professional Conduct for Barristers and Solicitors*¹⁹ (**former Rules**) was entitled 'Relations Between Practitioners' and had a narrower scope, similar to that of rule 10.1 of the current Rules. Rule 6.01 of the former Rules stated:

Chapter 6

Relations Between Practitioners

6.01 Rule

A practitioner must promote and maintain proper standards of professionalism in relations with other practitioners.

¹⁶ Section 5.

¹⁷ *Preface* to the Rules.

¹⁸ See, for example, rule 10.8 of the Rules.

¹⁹ 7th edition (consolidated), 2006.

44. On its face, rule 10 of the Rules can be regarded as intending to apply to a broader class of persons than the former rule 6.01 and the current rule 10.1. Rule 6.01 of the former Rules was limited to relations between lawyers ('practitioners') whereas rule 10 has no such restriction.
45. The Committee considers that "professional dealings" (the heading of Chapter 10 of the Rules) and "lawyer's dealings" (the words used in rule 10) are not limited to "the provision of regulated services". If it had been intended by the drafters of the Rules that Chapter 10 would be confined to circumstances where a lawyer is providing regulated services, one would have expected Chapter 10 to say so expressly (as is the case with Chapter 3 – "In providing regulated services to a client, a lawyer must . . ." and Chapter 6 – "In acting for a client, a lawyer must . . ."). As the Privy Council said in *Reid v Reid*²⁰:
- . . . Finally, their Lordships have in mind what was said by Lord Mersey in *Thompson v Gold & Co* [1910] AC 409, 420:
- "It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do".
46. In light of the text of rule 10 of the Rules, the Rule is not confined in its application to situations where a lawyer is providing regulated services. The Committee considers that "lawyer's dealings" are broader than "regulated services" and that rule 10 can apply in every circumstance in which a lawyer is expected to act with "proper standards of professionalism". The Rule applies whenever a practitioner is acting in a sufficiently professional role, irrespective of whether the lawyer is engaged in providing regulated services at the time.
47. A majority of the members of the Committee consider that the scope of the Rule extends to the "business of law" and that "lawyer's dealings" is broad enough to include a lawyer's dealings with his or her clients, fellow partners or directors, fellow employees, suppliers and others on a range of matters relating to the business of the law practice, including such things as staff recruitment and training.
48. A minority of the members of the Committee consider that Rule 10 applies only to practitioners when acting in a professional role (although not necessarily when providing regulated services) and that not all matters relating to the business of law necessarily involve "proper standards of professionalism". That minority of members consider that lawyers attending firm social events are not engaged in "lawyer's dealings" or "professional dealings" and that neither rule 10 nor rule 10.1 apply in the particular circumstances.
49. Interpreting rule 10 of the Rules in the manner adopted by the majority would allow a Standards Committee to provide a proportionate response to a lawyer's conduct, when it occurred at a time when the lawyer was not providing regulated services. It would mean that, in such cases, the Standards Committee would not be limited to referring the matter to the Disciplinary Tribunal for suspected personal misconduct pursuant to section 7(1)(b)(ii) of the Act or taking no further action pursuant to s 138 of the Act.

²⁰ (1982) 1 NZFLR 193 at 196.

50. Where lawyers are found to have breached their duty to maintain proper standards of professionalism in their dealings (rule 10), it is a matter for a Standards Committee in each case to make an assessment of the lawyer's conduct and determine whether the lawyer's conduct warrants a disciplinary response. The setting, timing and seriousness of the conduct will be factors in determining whether the Rules are engaged and whether they have been breached in the particular circumstances.
51. In some cases, and taking all the circumstances into account, it may be appropriate for a Standards Committee to take no further action on the basis of one of the grounds specified in section 138(1) of the Act (e.g. that a complainant had or has an adequate alternative remedy, or in light of the elapse of time between the conduct complained of and the date when a complaint was made). In other cases, it will be appropriate for a Standards Committee to impose a disciplinary response for a lawyer's breach of r 10 of the Rules, notwithstanding that the lawyer's conduct occurred at a time when the lawyer was not providing regulated services²¹.

Unsatisfactory conduct

52. For the following reasons, the Committee unanimously determines that Mr X's conduct amounts to unsatisfactory conduct. The Committee is divided on the reasons for its unanimous determination²².
53. A majority of the members of the Committee are of the view that Mr X's conduct occurred "at a time when he was providing regulated services", as that phrase has been construed in the decisions cited earlier. The Committee is satisfied that Mr X's conduct would be regarded by lawyers of good standing as being unacceptable (amounting to unsatisfactory conduct under section 12(b)) but, for the reasons given below, does not consider that it is sufficiently serious to amount to conduct which would be regarded by lawyers of good standing as disgraceful or dishonourable (misconduct under section 7(1)(a)(i)), justifying a referral to the Disciplinary Tribunal.
54. Furthermore, a majority of the members of the Committee are of the view that his conduct was in breach of rule 10 of the Rules, being a failure to promote and maintain proper standards of professionalism in his dealings as a lawyer.
55. In relation to incident one²³ (Mr X's conduct towards a fellow lawyer), and for the same reasons leading to the determination Mr X breached rule 10, the Committee by majority also determines Mr X breached rule 10.1 by failing to treat another lawyer with respect and courtesy. Given Mr X's conceded conduct towards the employee lawyer, and in light of paragraphs 36 to 46 above, the Committee's finding of breach of rule 10.1 is self-explanatory.
56. For the reasons outlined at paragraph 48 above as to the non-applicability of Rule 10, a minority of members consider rule 10.1 does not apply in the particular circumstances.

²¹ See also section 7(1)(b)(ii) of the Act, which defines misconduct as being conduct of the lawyer which is unconnected with the provision of regulated services by the lawyer but which would justify a finding that the lawyer is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer.

²² See paragraphs 32, 33, 47 and 48 above.

²³ See paragraph 4 above.

57. Given the Committee's majority determination that Mr X breached rules 10 and 10.1 of the Rules, it did not consider it necessary to determine whether or not Mr X also breached rule 11 of the Rules.
58. The breach of rules 10 and 10.1 was sufficiently serious as to amount to unsatisfactory conduct under section 12(c) but the conduct was not sufficiently serious as to justify a finding that Mr X is not a fit and proper person or is otherwise unsuited to engage in practice as a lawyer (misconduct under section 7(1)(b)(ii)).
59. Both findings are reached in reliance on the same matters, namely:
- (a) Mr X sexually harassed²⁴ two employees, by inappropriately touching them and by making inappropriate sexual comments to them;
 - (b) Mr X allowed himself to become so heavily intoxicated that he had no recollection of the incidents and his unacceptable behaviour towards both employees;
 - (c) Mr X accepts his conduct is unsatisfactory; and
 - (d) Mr X accepts his conduct was wilful, and his intoxication did not obviate intent.
60. Both incidents arose during the course of social work events arranged by Mr X's firm and, in the case of the first incident, it took place on the firm's premises.

Mitigating factors

61. The Committee determines Mr X's conduct was unsatisfactory either under section 12(b) or under section 12(c) of the Act (the latter being in breach of rules 10 and 10.1 of the Rules). The Committee does not consider in the circumstances that the matter justifies a charge of misconduct before the Disciplinary Tribunal pursuant to section 7(1) of the Act. In reaching this conclusion the Committee takes the following mitigating matters into account:
- (a) Mr X has taken full responsibility for his actions, including promptly resigning from the firm at which he was a partner at the time of the conduct, and not disputing the alleged conduct before the Committee;
 - (b) Mr X has shown significant contrition and remorse;
 - (c) Mr X has taken, and is taking, a number of positive steps to help ensure there is no repeat of the behaviour (including seeking treatment from a mental health specialist);
 - (d) the two employees concerned have indicated they are satisfied with the way the firm dealt with the matter internally;

²⁴ The Committee adopts the definition of "sexual harassment" in section 62 of the Human Rights Act 1993.

- (e) Mr X has no prior disciplinary history with the Law Society;
- (f) while such conduct is clearly unacceptable, it does not reach the level to warrant a disciplinary charge of misconduct, and nor does the conduct justify Mr X's removal from the profession (or suspension from practice); and
- (g) some recognition must be given to the steps Mr X has taken to address his failings.

Penalty

- 62. Having determined Mr X's actions amount to unsatisfactory conduct, the Committee orders that Mr X be censured for his unsatisfactory conduct pursuant to section 156(1)(b) of the Act.
- 63. The Committee also orders Mr X to pay to the New Zealand Law Society, within 14 days of the expiration of the period for lodging a review with the LCRO, or within 14 days of the determination of any LCRO review, if one is sought and the orders imposed are upheld:
 - (a) A fine of \$12,500.00 pursuant to section 156(1)(i) of the Act. This fine (being over 80% of the statutory maximum of \$15,000.00) reflects the seriousness of Mr X's conduct, which involved both verbal and physical elements.
 - (b) Costs of \$2,500.00 pursuant to section 156(1)(n) of the Act.

Publication

- 64. The default position is that decisions of Standards Committees remain confidential to the parties concerned. This is the position pursuant to regulation 31 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008. Standards Committees can, however, direct such publication of their decisions under section 152 of the Act as the Standards Committee considers necessary or desirable in the public interest.
- 65. The Committee considers there is a public interest in the publication of a summary of this determination, to reiterate the seriousness with which Standards Committees take reported instances of sexual harassment by lawyers.
- 66. The Committee therefore directs the anonymised publication of a summary of this determination as the New Zealand Law Society considers appropriate. The Committee's direction is made pursuant to section 142(2) of the Act.
- 67. The Law Society's anonymised publication is to avoid revealing Mr X's identity as the lawyer concerned, as well as the name of his former firm.

Right to Apply for Review – Legal Complaints Review Officer

- 68. You may be able to apply for a review of this decision or determination by the LCRO. On

review, the LCRO may:

- a. direct the Standards Committee to reconsider the whole or any part of the complaint;
- b. confirm, modify or reverse the decision of the Standards Committee; and/or
- c. exercise any of the powers that could have been exercised by the Standards Committee in relation to this complaint.

69. If you want to apply for a review of this decision or determination you must lodge your application with the LCRO within 30 working days. The 30 working days start once you have become aware of this notice. Unless there is evidence suggesting otherwise it is assumed you have become aware of this notice on the fifth working day after the date of this decision or determination.

70. If you received this decision or determination by email, please call the LCRO on the number below to confirm when the 30 working days start.

71. An application for review must be on the prescribed form and be accompanied by the prescribed fee of \$50.00. Please forward your application to the LCRO at:

Level 6
Auckland District Court
69 Albert Street
Auckland 1010
(physical address, suitable for courier
and hand delivery only)

DX Box CX 10072
(Postal address only, not suitable for
courier delivery)

Or per email: lcro@justice.govt.nz

For further information about the LCRO and the review process, call 0800 367 6838 (extn 2) or go to: www.justice.govt.nz/tribunals/legal-complaints-review-officer/contact-us.

Date: 25 October 2018

To:

Mr X, by counsel

To [the firm] by counsel, as a related entity

New Zealand Law Society