

IN THE MATTER of The New Zealand Registered Architects Act 2005 ("Act")
and The New Zealand Registered Architects Rules 2006
("Rules")

BETWEEN **THE NEW ZEALAND REGISTERED ARCHITECTS BOARD**

AND (Deleted), Registered Architect (deleted))

DATE OF HEARING: 29 June 2016

VENUE: (deleted)

BOARD MEMBERS PRESENT FOR THE DISCIPLINARY HEARING

- Warwick Bell (Chair)
- Louise Wright
- Euan Mac Kellar

The Board members above form a quorum in accordance with section 29 of the schedule to the Registered Architects Act 2005.

COUNSEL FOR NZRAB: Matthew McClelland QC

COUNSEL FOR THE ARCHITECT: Sarah-Jane Neville,
Ellis Gould Lawyers

LEGAL ASSESSOR TO DISCIPLINARY HEARING: Terry Sissons

OTHER PERSONS PRESENT:

- Andrew Symonds, Clerk of the Hearing & Executive Officer New Zealand Registered Architects Board (NZRAB)
- Theresa Murray, Stenographer
- (Deleted)
- (Deleted)
- (Deleted)

RELEVANT SECTIONS OF THE REGISTERED ARCHITECTS ACT 2005:

Sections 24 – 26

RELEVANT RULES FROM THE REGISTERED ARCHITECTS RULES 2006:

Rules 49 and 72 – 78

DECISION OF THE BOARD

The Charge

1. (Deleted) is charged with a breach of Rule 49 of the Registered Architects Rules 2006 in that:

During the period June 2014 – June 2015 (deleted) provided architectural services to the clients including the concept, design and documentation for renovations and alterations to the clients' property at (deleted) ("the project"), in breach of Rule 49 of the Code of Minimum Standards of Ethical Conduct for Registered Architects 2006 ("the Code").

2. At all material times (deleted) was a New Zealand registered architect residing in Auckland
3. Leave was granted to amend the original Notice of Complaint dated 1 April 2016 by the deletion of the reference to a breach of Rule 54 of the Code.
4. The Notice of Complaint as amended was taken as read and (deleted) denied the charge.

Particulars taken from the Notice of Complaint

5. At a meeting on 16 June 2014 the clients advised (deleted) that their budget for the project was \$150,000.
6. By letter dated 19 June 2014 (deleted) summarised the clients' brief and noted:
"A budget figure of \$150,000 has been mentioned over the email prior to meeting. I believe this figure will struggle to deliver your brief and at first glance think a number in the +\$200,000k would be more realistic".
7. Based on (deleted)'s letter of 19 June 2014 the clients advised him that their budget for the project would be \$200,000.
8. At no time throughout the period that (deleted) provided architectural services to the clients was there any discussion with (deleted) about increasing the budget.

9. At no time did (deleted) advise the clients that they were exceeding their budget of \$200,000, or that when providing architectural services he was not taking into account and/or working within their budget of \$200,000.
10. On 23 December 2014 resource consent was granted and in April 2015 building consent was granted.
11. The clients obtained two quotes from two separate building companies both of which were well in excess of the project budget of \$200,000, the first being for approximately \$707,000 and the second being approximately \$556,000.
12. Because the two quotes were well in excess of the clients' budget of \$200,000 they could not proceed with the works designed by (deleted).
13. In providing architectural services to the clients (deleted) failed to adequately identify the terms of the clients' budget including:
 - Whether the clients' budget was GST inclusive or exclusive
 - Whether the clients' budget was the building budget or the project budget
 - Clarification from the clients as to the details of their budget
 - When advising the clients of a budget figure of +\$200,000k failed to identify whether that was GST inclusive or exclusive.
14. Given the tight budget provided by the clients (deleted) failed to manage or manage appropriately the project and the clients' expectations as to what could be achieved within their budget.
15. In the course of providing architectural services (deleted) failed either:
 - (i) to ensure that the design was reasonably within the clients' budget of \$200,000; or
 - (ii) draw to the clients attention that the design would exceed significantly the clients' budget of \$200,000; or
 - (iii) otherwise manage the clients' expectations.

Clause 49 the Code and Section 25 of the Act

16. Clause 49 provides:

"Standards related to client

49 Care and diligence

A registered architect must perform his or her professional work with due care and diligence."

17. Section 25(1)(b) of the Act provides:

"25. Grounds for discipline of registered architects

(i) *The Board may (in relation to a matter raised by a complaint or by its own inquiries) take any of the actions referred to in section 26 if it is satisfied that -*

...

(b) *A registered architect has breached the Code of Ethics contained in the Rules; or*

The Evidence Produced in Relation to the Complaint

18. The following information was produced and presented:

1. Bundle of Documents as prepared by Mr McClelland.
2. Bundle of Documents as prepared by Ms Neville.
3. Statement of Evidence of (deleted)
4. Statement of Evidence of (deleted)
5. Statement of Evidence of (deleted).
6. Bundle of 'Drawings' tabled by (deleted) representing the different drawings at various stages including the Resource Consent application set and Building Consent application inclusive of Specification cover sheet and index.
7. Affidavit of (deleted) dated 31st August 2016.
8. Affidavit of (deleted) in response to item 12.

Submissions as to Grounds for Discipline

19. The following submissions were received:

1. Opening Submissions of Counsel on Behalf of New Zealand Registered Architects Board (the Board).
2. Opening Submissions of Counsel for (deleted) plus annexures.
3. Closing submission of Counsel on Behalf of New Zealand Registered Architects Board (the Board).
4. Closing submission of Counsel for (deleted).

20. Mr McClelland submitted in opening that the burden of proof is on the Board; and that it is for the Board to establish the complaint against (deleted) and to provide evidence that proves the facts on which the complaint is based.

21. He further submitted that in professional disciplinary cases the appropriate standard of proof, is proof to the satisfaction of the tribunal on the balance of probabilities; and that:

"The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal."

22. Mr McClelland noted in relation to Rule 49: Care and Diligence, that neither the Act nor the Code defines due care and diligence. He also noted NZRAB's Disciplinary Committee in its decision in CS at 4.3 – 4.4 recorded that counsel for the Board noted:

"...that neither the Act nor the Code set out possible definitions for 'due care and diligence'; and proposed that in this case the legislation, Rules, the Code, and agreements for services would help to define what was expected of an architect in CS's position".

23. While the phrase "due care and diligence" appears in various pieces of legislation and Codes of Conduct for various professions it has not been judicially defined. In that absence he noted several other definitions including in the Boardworks International Chapter "*Those inescapable Directors' Duties*" under the heading "*Acting with due care and diligence*":

"Whereas it would be clear when a director had breached any of the previous duties, whether or not a director acted with due care and diligence is a matter of judgement. In essence this duty focuses on the amount of skill, experience, expertise and integrity brought by the director to his or her role.

The statutory duty of care and diligence requires that a director must exercise their duty and responsibilities of care and diligence in the same manner as would any reasonable person who was a director of an organisation in similar circumstances or who held an office holder position similar to that held by the alleged offender. The test then would be whether or not the person acted in a reasonable manner given their knowledge and the expectations held of any person in the same position."

24. He also drew attention to the UK Court of Appeal decision in *HMRC v Kearney* [2010] S.T.C. 1137 where Arden, LJ explained the test for "*due care and diligence*" in the following terms

[27] ... lack of care means lack of concern, whereas diligence means a failure to apply oneself to the issue ... it is not possible to define all the circumstances that will meet the second condition [being the requirement to exercise due care and diligence]. In part what is due care and diligence in any set of circumstances will depend on the obligations of the person being considered”.

25. Mr McClelland submitted that credibility may be an issue for the Board to consider, highlighting findings made by the Health Practitioners Disciplinary Tribunal in *Dawson*, Decision No. 300/Nur09/13P at paragraphs 19-21, in particular:

“20. What is involved in any test for ‘credibility’ was articulated by a Canadian Appellate Court (in *Farynia v Chorny* [1952] 2 DLR 354 (BCCA)) to be that the real test of the truth of the story of a witness must be at harmony with the preponderance of the probabilities which are practical, and which an informed person would readily recognise as reasonable in that place and in those conditions.

21. So, the Tribunal, where relevant, must consider such factors as:

- 21.1 The witness’ manner and demeanour when giving evidence.
- 21.2 Issues of potential bias – to what extent was evidence given from a position of self-interest.
- 21.3 Internal consistency – in other words was the evidence of the witness consistent throughout, either during the hearing itself, or with regard to previous statements.
- 21.4 External consistency – in other words, was the evidence of the witness consistent with that given by other witnesses.
- 21.5 Whether non-advantageous concessions were freely tendered.”.

26. Ms Neville, Counsel for (deleted), submitted in regard to the particulars in paragraph 15 (iii) “otherwise manage the clients’ expectations” that this must relate solely to the issue of the claimed budget of \$200,000. The Board agrees with this.

27. She concurred with Mr McClelland’s opening submissions in relation to the relevant legal principles and added “*The test for determining whether a registered architect has performed his or her professional work with due care and diligence must be judged at the time the work was done by the architect and not with the benefit of hindsight.*” and that “*The test as to whether there has been due care and diligence does not require that a registered architect has taken every possible step required. That would be unworkable in many busy architectural practices...*”.

28. Ms Neville highlighted a passage from Jackson & Powell on Professional Liability (seventh edition), where the learned authors, in considering the formulation of the

standard of skill and care where allegations arise in respect of professional negligence, say:

"It is therefore suggested that the standard of skill and care which a professional person is required to exercise may be defined as follows: that degree of skill and care which is ordinarily exercised by reasonably competent members of the profession, who have the same rank and profess the same specialisation (if any) as the defendant." (para 2 – 133, page 79).

29. The Board has applied those legal principles in its deliberations.

Deliberations as to the Relevant Facts

30. On the matter of the contract for services between Mr and Mrs (deleted) (the clients) and (deleted) of (deleted), the Board sighted the exchange of correspondence on this matter, both letter and emails. While the clients responded to (deleted)'s correspondence on offer of service and fees, no evidence was provided that the clients formally accepted (deleted)'s services in writing. Nevertheless the Board is satisfied the parties entered into an agreement for the provision of Architects services.

31. The question is whether that agreement included a term that the clients would manage the cost and procurement responsibility as claimed by (deleted) in his letter to Mr Symonds NZRAB 20th July 2015 and confirmed in evidence.

32. This particularly includes the matter that the clients verbally agreed not to engage (deleted) *"in 'full service' but that they would manage the cost and procurement responsibility."* (Letter (deleted) to Symonds NZRAB 20th July 2015).

33. (Deleted)'s letter of offer of architectural services clearly records the brief, advises on budget, sets out fee options and stages. It raises managing the cost of the project and explains

"When speaking of budget figures it is important to remember that this is intimately entwined with the brief and subsequent design. Managing this during the entire process is very important. There are good tools for monitoring the budget / estimated costs across the various design stages, such as commissioning a quantity surveyor or working closely with a main contractor. When required we can discuss this in detail."

It does not explain the concept or significance of obtaining a preliminary estimate of cost or equivalent, nor does it explain the service deliverables in a substantive breakdown for the project stages.

34. While these topics, along with the types of services a Quantity Surveyor can provide, may have been discussed by (deleted) with the clients, there was no written evidence provided of this. The Board is satisfied on the balance of probabilities that (deleted) did discuss cost matters, however, regardless of this, that they did not fully understand these matters to enable them to satisfactorily take responsibility for such tasks.
35. On the matter of the budget the Board heard conflicting evidence of what (deleted) and (deleted) understood the budget for the project. It is agreed the original budget set by the clients of \$150,000 was inclusive of all project costs including fees and GST though (deleted) did not clarify that in his correspondence.
36. (Deleted) subsequently proposed a budget of '+\$200,000' in his original offer of service this being inclusive of all project costs and GST. The Board is satisfied on the balance of probabilities that the clients' understood the budget figure on their engagement of (deleted) to be \$200,000 notwithstanding there was no written evidence provided that this amended figure was agreed to by the clients or subsequently increased by them.
37. The Board is also satisfied that (deleted)'s understanding of '+\$200,000' was a budget figure in the range of \$200,000 to \$300,000 inclusive of all project costs and GST. (Deleted) also provided an explanation that his interpretation of '+\$200,000' as the project progressed was in the same range as (deleted)'s. The Board, for the purposes of this complaint, determines the budget of the project by both parties through the design stage was in the range of \$200,000 to \$300,000 inclusive of all project costs including consultant and consent fees and GST.
38. On the matter of whether the figure of '+\$200,000' suggested by (deleted) was achievable, the Board discussed and agreed with (deleted) that, based on a plan (SK014_01) prepared by (deleted) showing the extent of work covered by the initial brief, the estimated cost of works, based on rates said to include for consultant and consent fees, would be in the order of \$245,000 excl. GST or \$281,750 incl. GST. The Board noted in addition to these figures it would have been necessary to add a contingency of 5 - 10% which gives an estimated cost at the time of engagement at

the top end or in excess of the budget range of \$200,000 to \$300,000. The Board considers that, based on a minimum contingency of 5%, and conservatively allowing a variance either way of 10%, the brief was never going to be achieved for less than \$266,000 inclusive of GST and fees; and the figure of +\$200,000 was therefore misleading and led the clients into a false sense of understanding that their brief could be achieved for the money they wished to spend.

39. At meetings prior to the first concept plan being provided there was both email and verbal discussion that the clients were keen to receive suggestions that they had not thought of. The clients also raised several other brief requirements. The Board is satisfied this was the case.
40. (Deleted) provided his initial concept plan which included a new master bedroom extension, another extension to the children's wing, extensive rearrangement of internal walls (in addition to those in the original brief), and new decking. This scope was significantly in excess of the original brief and would have had significant cost implications. It could not have been achieved within the budget range of \$200,000 to \$300,000 and would have been well beyond. There is no evidence provided that (deleted) alerted the clients to the cost implications of the scope of works shown.
41. On the matter of 'budget responsibility' the Board heard conflicting evidence as to the extent that this was to be undertaken by the clients. (Deleted) in his evidence stated with reference to the first meeting *"We then discussed the process and tools they could use to better gauge the cost of build, such as engaging a QS and getting a main contractor(s) input in the process early on"* however while his letter of 19 June 2014 notes this again similarly in paragraph 5, the paragraph does not refer to the client and ends *'When required we can discuss this in detail'*. The Board notes this paragraph does not imply that the clients need to undertake this and they could have assumed that (deleted) was responsible for this aspect. He also stated in his evidence *"The (deleted) declined to use my service for costing and budget issues."* but there is no record of this.
42. Subsequently when the (deleted) did not accept (deleted)'s original fee structure he responded with an alternative fee in his email of 11 July 2014. This email makes no reference to budget responsibility or costing matters. (Deleted) noted in his evidence that the (deleted): *'...agreed to obtain costings for the renovation work from builders or a quantity surveyor. This was noted in (deleted)'s email to us of September 2014'*. He went on to state: *'by way of explanation (deleted) asked us to*

discuss this plan with some builders, but we didn't realise that he is handing budget responsibility to us.'

43. In regard to the clients obtaining 'costings' for the building works during the design stages there is limited evidence of this in correspondence, however the clients gave testimony of their on-going discussions with several builders, one in particular, though all builders were hesitant to provide a price until the 'plans' were finalised. While the clients also increased the scope of work e.g. accommodating a spa pool on the deck and other aspects, they also gave instructions to reduce some aspects in attempt to reduce cost e.g. not extending the children's wing of the house.
44. There were some on-going discussions regarding cost matters between (deleted) and the clients' subsequent to Drawing SK002 being provided on particular items and features from mid-October 2014 until mid-December 2014, being the period of design development and finalisation of Resource Consent documents. (Deleted) did enquire of the clients about cost as evidenced in an email of 29 October 2014 *"I assume you have been working on the build cost and happy on that front? Let me know if you need any further info to aid this process."* to which (deleted) replied same day *"Yes happy on the price front, got a pretty good idea on cost"*. However the effect of these discussions and the above enquiry would have been in the absence of a written provisional estimate of cost from a builder or QS.
45. It is apparent to the Board that there was a significant disconnect between (deleted) and the clients as to what constituted budget responsibility. Based on the evidence given on the various exchanges between the (deleted) and (deleted) in regard to cost, on the balance of probabilities, the Board is satisfied that the (deleted) were endeavouring to obtain costs for the renovation work but this did not constitute budget responsibility, that being a matter which both the client and architect should collectively manage in undertaking their respective agreed deliverables for a project. The Board notes it was unfortunate the project deliverables were not clearly recorded and, if they had been, the issues concerning the project may have been avoided.
46. The Board notes too that, while the design drawings provided by (deleted) included plans and elevations, they were not annotated with any material specifications, did not include any architectural sections, and neither was an outline specification supplied. While (deleted)'s counsel noted that the (deleted) *"failed to provide relevant documents and to provide information about their costing."*, the Board is satisfied on

the balance of probabilities that the clients were conscious of cost matters and attempting to monitor costs against the budget but did not have sufficient information for them to obtain a provisional estimate of cost from a builder or quantity surveyor, regardless of a builder being prepared to furnish such an estimate, nor would the clients have known what to ask for in regard to additional information for this purpose.

47. On the matter of (deleted)'s first invoice for work undertaken evidence was given that after (deleted) advised he would issue an invoice in the week starting Monday 13 October 2014, the clients requested an invoice on 22 October 2014, and then following on at least two further occasions. (Deleted) subsequently provided the first invoice on 23 November 2014, a period of at least 5 weeks later. The Board notes that the consultants' costs are a significant percentage of the project cost and such a delay in providing an invoice compromises the clients' ability to monitor costs against their budget.
48. On the matter of the cost of the project, after final pricing submissions had been received from two builders, there was a variance in the figures being referred to by the clients, (deleted) and respective counsel in different documents, including the clients' original complaint to the NZRAB.
49. The project cost was a total of the builder's price, estimates for items not included in those prices, contingency and the clients' other costs including consultant and consent fees. For the items not included the clients had estimated these at \$178,000 while the second and cheapest builder 'PWC' suggested a cost of \$138,000 (including original allowance for flooring) for this scope. It is unclear whether this figure is inclusive of GST or not.
50. To provide understanding of an approximate project cost the Board determines the following to be a realistic assessment of the project cost incl. GST:
- | | |
|--|-----------------------------|
| 1. PWC quoted construction cost | \$328,524* |
| 2. Add landscaping, painting and electrical allowance difference from LNB quote | \$ 60,505 |
| 3. Estimates of items not included in both quotes | \$138,000 (assume incl GST) |
| 4. Approximate allowance for consultant and consent fees to date | \$ 30,000** |
| 5. Allowance for fees during construction at 30%*** of 8.75%**** of construction costs | <u>\$ 13,835</u> |

Subtotal	\$570,864
6. Contingency recommended by PWC	\$ 50,000 - \$60,000
Total	\$620,864

* the other builders cost was significantly higher.

** approximate figure noted by (deleted)

*** 25-30% is an industry accepted norm and is greater than the 10% for administration and observation nominated by (deleted) which the Board considers is too light.

**** (Deleted) in his Offer of Service to the clients dated 19th June 2014 states his *'overall fee is generally calculated on a percentage basis, a full service fee for you equates to 8.75% of the final construction costs (discounted from 10.5%)'*.

51. In establishing this figure for the project cost at the time the clients made the decision to not proceed with construction of the project the Board has determined that the value of the work was more than double the agreed project budget range of \$200,000 to \$300,000.

52. Evidence was given (deleted) prepared the Building Consent application without consultation with the (deleted). If the (deleted) were responsible for monitoring the project budget costs then (deleted) should have consulted with them in regard to the value of construction to be included in the Building Consent application.

Deliberations as to Care & Diligence

53. The Board is of the opinion that where a client agrees to obtain an estimate(s) of cost at stages of a project, from either a quantity surveyor or alternatively a builder(s) and/or managing the procurement/pricing phase, this does not absolve an architect from taking due care and exercising diligence in ensuring that the concept designs are reasonably within the clients' expectations, as reflected in the agreed budget, or advise them that they are not. Nor does it absolve an architect from taking due care and exercising diligence in ensuring that on-going design development is not significantly exceeding the clients' budget. While obtaining cost estimates is a deliverable that can be transferred to the client, managing the clients' expectations in regard to budget cannot be.

54. On these matters the Board identifies a number of aspects of service a reasonably competent registered architect must undertake in providing architects services and managing a client's expectation in regard to budget, including but not limited to:

1. Establishing the scope of the clients budget and whether it is inclusive of all project costs including various fees and GST;

2. Advising how realistic the clients budget figure is and if suggesting a revised budget figure ensuring that figure is realistic;
3. Ensuring subsequent and revised figures clearly define what is or is not included;
4. Ensuring clients understand the types of cost estimates available and the margins of error for these;
5. Provide sufficient information, in the form of an outline specification or notations on drawings, that would enable an estimate of cost appropriate to the design stage;
6. Advising that a project budget should include a contingency for unforeseen items;
7. Provide a concept / preliminary design that will be reasonably achieved for the budget, or where proposals extend the original scope of work advise the likely budget implications;
8. Providing cost information including consultant costs expended in a timely manner and promptly when requested;
9. When project cost information is provided for other parties i.e. consultants or Building Consent application, ensuring that information is accurate and well informed.

55. (Deleted) has shown a lack of concern, or failed to apply himself to the following aspects:

1. Not clearly establishing if the initial budget of \$150,000 was inclusive of all project costs including various fees and GST;
2. Recommending an increase in budget for the initial brief where he provided a figure at the low end of the range that was never going to be achievable for the scope of work;
3. Not clearly establishing if the increased budget of +\$200,000 was inclusive of all project costs including various fees and GST;
4. Not satisfactorily ensuring the clients' understood a provisional estimate of cost or its significance;
5. Not providing sufficient information in the form of an outline specification or notations on drawings that would enable the clients' to obtain a satisfactory provisional estimate of cost;
6. Not advising the clients that their budget should include a contingency;
7. Providing concept plans that extended the original scope of work without advising the likely increased cost and budget implications;

8. Not providing his first invoice in a prompt and timely manner when requested by the client;
9. At Building Consent stage failing to discuss and agree with (deleted) the construction value to be included in the Building Consent application form.

56. While any one to two of these aspects might have been considered oversights with minimal implications, in total, the Board considers these aspects amount to a lack of due care and diligence. Therefore the Board is satisfied on the balance of probabilities that, in the course of providing architectural services, (deleted) failed:

- (i) to ensure that the design was reasonably within the clients' budget of \$200,000 (to \$300,000); and
- (ii) to draw to the clients' attention that the design would exceed significantly the clients' budget of \$200,000 (to \$300,000); and
- (iii) to otherwise manage the clients' expectations (in regard to budget).

57. The Board finds the charge against (deleted) proved.

Submissions as to Penalty, Costs and Publication of Architects name

58. The following submissions were received:

1. Submissions of Counsel on Behalf of New Zealand Registered Architects Board.
2. Submissions of Counsel for (deleted).
3. Declaration as to Financial Means for (deleted).

59. Mr McClelland submitted that in considering penalty the Board must take into account the reasons for its decision. Furthermore that the findings against (deleted) do not justify or necessitate an order of cancellation or suspension. However it is submitted that an order that (deleted) be censured would be appropriate, as would an order pursuant to s. 26(1)(f) of the Act that he pay a fine. Also that the Board give consideration whether there should be any conditions as to employment or supervision.

60. On the matter of costs Mr McClelland noted past decisions of the Board in regard to level of costs to be recompensed. He submitted that it is not considered appropriate that there be an order pursuant to s. 25(5)(b) for publication of name.

61. Ms Neville on behalf of (deleted) submitted on the various penalties Mr McClelland had referred to and that this was (deleted)'s first offence and his conduct is "*at the lower end of the spectrum*". She submitted publication of name was not necessary.

62. At the request of the Board (deleted) made a declaration as to his financial means.

Deliberation and Decision of the Board as to Penalty

63. The Board considered the available penalties as set out in s26 of the Act which include:

- (i) cancellation of registration;
- (ii) suspension;
- (iii) censure;
- (iv) the imposition of conditions;
- (v) a requirement that the registered architect undertake training;
- (vi) a fine not exceeding \$10,000.

64. The Board viewed (deleted)'s lack of concern and failure to apply himself to the aspects highlighted in cl.55 above as serious having had a significant impact on his client. Having considered the submission of both Mr McClelland and Ms Neville the Board considered the available penalties and formed the view that:

- (i) s.26(1)(a) cancel registration – the offence was not sufficient to warrant this penalty;
- (ii) s.26(1)(b) suspend registration – the offence was not sufficient to warrant this penalty;
- (iii) s.26(1)(c) censure – the offence was not 'at the low level of the spectrum' it having significant impact on (deleted)'s clients and therefore that censure is warranted and should be imposed;
- (iv) s.26(1)(d) impose conditions – the offence was not sufficient to warrant any conditions being imposed;
- (v) s.26(1)(e) training – the offence was not sufficient to warrant further training;
- (vi) s.26(1)(f) fine - the Board is of the opinion that a fine is warranted and that it should be set at \$2000.

65. With respect to costs and expenses of the complaint, total costs incurred by the NZRAB amounted to \$58351.76 excl. GST. The Board accepted (delete)'s financial circumstances warranted some leniency with a modest reduction from the 50% of costs submitted by Mr McClelland. The Board awards costs and expenses of, and incidental to, the hearing and inquiry by the Board of 40%, being a figure of \$23,340.69 excl. GST (\$26,841.79 incl. GST) against (deleted) under s.26(4) of the Act and that as required under s.27 of the Act that amount be paid with 60 days of notice being given.

66. With respect to publication, the Board agreed the circumstances of (delete)'s offence did not warrant publication of name.

67. The Board has voted on the above findings and imposition of penalties, costs and non-publication of name and this is separately recorded in a Board minute as attachment 1.

DATED at Wellington this 6th day of February 2017.

A handwritten signature in black ink, appearing to read 'Warwick Bell'.

Warwick Bell
Chairperson