LP 5/2017

IN THE MATTER	of the Law Practitioners Act 1993-94
AND IN THE MATTER	of a complaint of alleged professional misconduct
BY	**SIMON SNOWBALL** of Gatton, Queensland, Australia, Complainant
AGAINST	**BENJAMIN MARSHALL**, of Rarotonga, Barrister and Solicitor

Date: 26 June 2019

DECISION OF HUGH WILLIAMS, CJ

[WILL0380.dss]

For the reasons set out in this decision, Mr Snowball's complaint against Mr Marshall of professional misconduct is wholly dismissed.

Introduction

[1] This decision deals with a complaint under Part III of the Law Practitioners' Act 1993-94, the part relating to professional misconduct, lodged with the Chief Justice by Mr Simon Snowball of Gatton, Queensland, Australia[1] against Mr Benjamin Marshall, a barrister and solicitor practising in Rarotonga and an Associate of Messrs Little and Matysik PC barristers and solicitors of Rarotonga.

[2] The complaint was lodged pursuant to s 15 which relevantly reads:

> 15. Complaints of professional misconduct – (1) Any complaint by any person about the conduct of a practitioner or an employee of a practitioner in his professional capacity may be made to the Registrar, who shall forthwith forward the complaint, together with such comments as he thinks fit in relation to the complaint, to the Chief Justice.

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[1] With the considerable assistance of Mr Travis Moore, a land agent of Rarotonga.

> (2) Where the Chief Justice receives such a complaint or has reasonable cause to suspect that a practitioner who is or was a member of the [Law] Society has in his professional capacity been –
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> (a) guilty of misconduct; or
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> (b) guilty of conduct unbecoming a barrister and solicitor or a barrister; or
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> (c) negligent or incompetent, and that the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practice as a barrister and solicitor or barrister only, as will tend to bring the profession into disrepute; or
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> (d) convicted of an offence punishable by imprisonment for a term exceeding one year, and is of the opinion that the conviction reflects on his fitness to practice as a barrister and solicitor or barrister only, or tends to bring the profession into disrepute;
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> the Chief Justice shall, unless he is of the opinion on reasonable grounds that the complaint is frivolous or vexatious, require from the practitioner such written explanation, within such time as the Chief Justice thinks fit.

[3] As the complaint was clarified, it appeared it may also allege a breach of clause 17 of the Code of Ethics[2] which reads:

> (a) A practitioner should not represent conflicting interests in any litigation and should only do so in other matters where his clients have had the conflicting interest disclosed to them and they do not object. This also applies to all members of a firm or partnership of practitioners".

Procedural

[4] Mr Snowball's complaint dated 27 June 2017 was not received by the Chief Justice until 3 September 2017[3] and, because the nub of the complaint was unclear, by letter dated 7 September 2017 Mr Snowball was asked to clarify whether the complaint was one of misconduct, conduct unbecoming a barrister or solicitor, or negligence or incompetence of such a degree or frequency as to reflect on Mr

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[2] Appearing in the schedule to the LPA 1993-94 and made binding on Cook Islands lawyers by s 57(1) of the Act.

[3] And then only by redirection from Mr Moore under cover of a letter dated 1 September 2017.

Marshall's fitness to practice and as bringing the Cook Islands' legal profession into disrepute. He was also asked whether he intended to issue civil proceedings.

[5] Mr Snowball replied by letter dated 26 September 2017[4] saying he did not have grounds for a civil suit against Mr Marshall and he was conscious of the fact that, at the time covered by his complaint – 2014-15 – Mr Marshall was an employee of Little & Matysik PC and thus acting under (what was, by the time of the complaint, the late) Mr Little's instructions.

[WILL0587.dss]

[6] Mr Snowball's complaint was referred to Mr Marshall on 6 October 2017 and on 20 November 2017 Mr Matysik, a partner in the firm, responded with a comprehensive description of events as Mr Marshall and the firm saw them, an explanation which was supported by a number of documents.

[7] The reply was referred to Mr Snowball on 4 December 2017 for a response, with that response – and Mr Moore's somewhat more comprehensive response – both being received around 19 January 2018.

[8] The Chief Justice replied dealing with further investigative matters on 23 January 2018 and Mr Marshall provided further information on 8 February 2018.

[9] Messrs Snowball and Moore's responses were referred to Messrs Matysik and Marshall on 13 February 2018 and Mr Marshall's 22 February 2018 response was referred to them on 1 March 2018 with their comments sought on the first second third and fifth bullet points in Mr Marshall's letter. They read:

- The decision to not invite Mr Moore and Theresa Samuel to the Special General Meeting held on 8 August 2015 was made by Maria Crummer and her sisters and communicated by Mr Little. I had no involvement in that decision. Until reading Mr Snowball's and Mr Moore's letters I had no knowledge that Mr Moore had acted for Ms Akaiti Crummer and this was never communicated by Mr Moore.

[4] Again forwarded by Mr Moore on 28 September 2017 after taking legal advice.

- While I am saddened to hear that Ms Akaiti Crummer passed shortly afterwards, I had no reason to question her mental capacity at the SGM. My recollection was the she was attentive and inquisitive at the meeting, which was the one and only time I met Ms Crummer.

- Much is made of the potentially large amount of rental arrears resulting from the YWAM rent reviews that the Crummer sisters were agreeing to forego at the SGM. The truth is that at the time of the meeting on 8 August 2015 I was unaware of the figures involved in the rent review.

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- My ignorance of the particulars of the rent review is unremarkable as the parties were being represented by Ms Tina Browne and Mr Moore. Had I been aware of this report at the SGM I would have brought it to the attention of those present as I did with the other matters discussed.

[10] From that point onwards, unfortunately this complaint – as with a number of others – failed to make much progress, despite several letters from the Chief Justice to the persons involved, over the period to 23 April 2019 when the position was summarised by the Chief Justice and Mr Snowball's views sought as to the Chief Justice's summary of the position in his letter of 6 June 2018 in connection with the bullet points. Nothing having been heard in the interim Mr Snowball was asked whether "you regard the complaint as being satisfactorily concluded having regard to the material provided by Mr Marshall", a request repeated in the Chief Justice's letter of 23 April 2019.

[11] That brought a response from Mr Moore dated 16 May 2019 saying:

> "While Mr Marshall's letter … of 22 February 2018 would, naturally, be protective of his position, Mr Marshall's specific references to circumstances and facts that he was not aware of at the time of the S[pecial] G[eneral Meeting held on 8 August 2015] in Auckland should be accepted".

[12] With that unfortunately protracted history of the complaint in mind, this decision turns to the circumstances of the matter.

Complaint

[13] The concluding paragraphs of Mr Snowball's complaint of 27 June 2017 said his complaint was in two parts:

> "First, my mother, [Mrs Akaiti Snowball[5]] in the final and most vulnerable days of her life was induced to sign a document that she simply could not have known the effect of.
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> "Second, Little & Matysik PC, by its associate Mr Marshall, but for the intervention of Judge Savage, would have deprived the issue of Taero [Mr Snowball's grandmother] of some $500,000 in rental arrears as well as some $1,000,000 in future rentals, all to the benefit of solicitor Mr Short who would pay L[ittle &]M[atysik] PC both for his legal fees and the fees of the owners on the lands.
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> "My mother deserved better."

[14] That summary referred back to the body of the complaint which said:

(a) That Mr Snowball is a landowner in Kaingavai 49C2A and Te Vaimapia 19, Takitumu, Rarotonga, which lands were originally inherited from Uraita Taero to whose ownership her eleven children succeeded but, two having died without issue, Mr Snowball's mother became one of the equal owners and, after her death on 24 October 2015, her interests in the lands were vested in Mr Snowball by succession orders made on 13 April 2016.

(b) By court order made on 5 May 2014 the lands were incorporated under the name The Proprietors of Taero Lands Incorporation. The incorporation was dissolved by Savage J on 21 August 2015 on an application brought by Little and Matysik under No. Land 181/2015.

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[5] Also described in the papers as Mrs Akaiti Crummer, she unfortunately died some 14 weeks after. the SGM.

(c) Land 181/2015 was intituled with the incorporation's name and an application was brought by Mr Moore on 1 May 2015 on behalf of the Incorporation to remove certain persons from the Incorporation's Committee of Management and appoint others to fill the vacancies. But that was met by an application for an injunction dated 25 June 2015 signed by Mr Marshall to restrain the Incorporation from dealing with the lands and any money paid by way of rent and to preclude the Court dealing with the application of 1 May 2015 or any other application concerning the Incorporation and its lands until the Incorporation was wound up. The application was brought in the names of Mr Snowball's four aunts. It omitted mention of Mr Snowball's mother.

(d) In 181/2015 there was also a cross-application, again signed by Mr Marshall, brought in the names of Mr Snowball's four aunts plus his mother, to appoint all five as new members of the Committee of Management of the Taero Lands Incorporation. Additional orders sought were to validate the resolutions of a Meeting of Assembled Owners held in Auckland, New Zealand, on 8 August 2015, liquidate the Incorporation and pay any accumulated rent to the Ministry of Justice. One of the central features of this complaint is whether Mrs Akaiti Crummer's inclusion in that cross application was professional misconduct on Mr Marshall's part.

[15] The complaint was referred to Mr Marshall by letter dated 6 October 2017[6] and he, with Mr Matysik's assistance, replied on 20 November 2017 raising, amongst other things, the delay in the complaint since late 2015 and that:

(a) It was misdirected, as it was the late Mr Little who was responsible for the various court proceedings relating to Te Vaimapia Pt 19, Takitumu;

[6] Not forwarded until 28 October 2017.

(b) That although Little & Matysik acted for Mrs Akaiti Crummer's four sisters, they never acted for Mrs Akaiti Crummer and her inclusion in the court papers was either an error or because her sisters told Little & Matysik that Akaiti Crummer supported their efforts to wind up the Incorporation. The response by Messrs Snowball/Moore was that Little & Matysik acted for a Mr Iaveta Short and Mrs Maria Crummer while Mrs Browne, another practitioner, acted for Youth With A Mission ("YWAM") the current lessee of the land, Little & Matysik was said to be acting for Mr Short as he is related to the Crummer family and has a long history of assisting them on a pro bono basis but was unable to accept instructions personally as he, a long time Cook Islands' practitioner, had ceased to act or practice many years ago.

[16] The reply asserted there were no conflicts of interest. While it was claimed that Messrs Little & Matysik and Mr Marshall were acting for Mrs Akaiti Snowball and Mr Marshall was conflicted by representing landowners and the lessee in rent review proceedings, the firm represented the landowners solely in relation to the winding-up proceedings. The question of the rent reviews arose at the owners' meeting as one of a large number of outstanding issues concerning the Incorporation's lands and the Incorporation itself.

[17] Documents filed with Little & Matysik's reply show Mr Little corresponded only with Mrs Maria Crummer as she was the only sister living in Rarotonga but he encouraged her on a number of occasions to discuss the issue with her siblings before giving instructions. In an email from Mr Little to Mr Moore of 28 April 2015 concerning the four Crummer sisters for whom the firm was acting. Mrs Akaiti Crummer's name was not included. The documents include a notice of opposition to the Incorporation's application in 181/2015 and an affidavit by Maria Crummer in support of the cross application which , amongst other things, exhibited the minutes of the Auckland meeting of the five sisters held on 8 August 2015. Those minutes record Mr Marshall advising the sisters on a number of occasions that the decisions were for them alone and, as far as the present complaint is concerned it is of interest to note that the draft resolution to appoint the new members to the Committee of Management for the Incorporation included only the four sisters at the meeting other

than Mrs Akaiti Crummer but that her name was added in handwriting to the forms electing the new committee because "we also wished for our sister Akaiti to be elected to the Committee of Management so we can all make the decisions together" and that "everyone present strongly agreed to Akaiti also being elected to the Committee of Management."

[18] The minutes also reflect a discussion concerning Mr Short and YWAM and the lease rentals with Mr Marshall saying that "this is not a matter we're dealing with, however we're taking this opportunity to assist Tina Browne in her application for relief against forfeiture".

[19] In that regard, it is pertinent to note the evidence included an affidavit by Mr Short saying a company belonging to his wife and himself, Maruia Holdings Limited, holds a lease of the 9786m^2 on Te Vaimapia Pt Sec 9, Takitumu, for sixty years from 1 May 1974, with a deed of variation dated 2 February 1994 extending the term for a further 20 years to expire on 30 April 2054 but that, by deed of assignment dated 1 July 2003, Maruia assigned its lease to YWAM, a Christian organisation which, Mr Short says, would have been supported by Mrs Uriata Crummer and her late husband. That assignment was not prepared by Little & Matysik. Mr Short has never acted for YWAM.

[20] Little & Matysik's 20 November 2017 response was referred to Messrs Snowball and Moore with the latter filing an 8 page response dated 19 January 2018 detailing why Mr Moore took the view that Little & Matysik's response or that of Mr Marshall was misleading especially as to the persons mentioned involvement with the lands in question. As most of Mr Moore's reply was aimed at demonstrating what he claimed was an association between Mr Short and YWAM, it is unnecessary to deal with the reply in detail but the crux would appear to be in the following passage:

> "Notwithstanding the by and large full explanation [at the SGM] given in 3 of the 4 then extant matters, the owners at the SGM consented to an agreement in the YWAM case that was clearly a long-term advantage to Mr Short of some $1.5m and, conversely, a $1.5m loss of inheritance for all of the owners of the land.

> While Mr Matysik appended to his letter the minute of the SGM, he did not advise your Honour that the landowners at the SGM, and that of course included Mr Snowball's mother Akaiti, were, by design, denied any independent advice whatsoever.
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> Mr Matysik, notwithstanding the intituling of Akaiti Snowball along with Mr Marshall's other clients, says that Mr Marshall was not acting for Akaiti.
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> Prior to the owners being incorporated, agent advised and acted for Akaiti in respect of her lands. Her instructions were only given when she would visit Rarotonga. There was no practical way to communicate with her otherwise, including in the rushed days before the SGM was held.
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> Which is to say, had [Mr Moore] not been locked out of the Court-ordered SGM, it is likely that Akaiti would have sought my advice. As it was, she had no independent advice or even the option for such advice. If Mr Snowball is correct that Mr Marshall was acting for conflicted parties, then his mother was that much more affected by the circumstances.
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> The question must also arise, it is submitted, of whether Mr Marshall, by supporting and endorsing an impediment to the Court-ordered SGM, acted in a way unbecoming of a barrister and solicitor.

[21] Mr Snowball's response of 15 January 2018 echoed Mr Moore's reply by saying:

> Mr Marshall's including my mother as an applicant in the relevant documents filed with the Court cannot, in my view simply be overlooked. More to the point is the fact that my mother at the SGM, whether or not Mr Marshall was acting for her on specific instructions, was denied any possibility of independent advice. Had Mr Moore not been deliberately denied access to the SGM for those owners who were clearly his clients, my mother would have received the benefit of the written and oral submissions of Mr Moore, on the day, at the SGM. My mother had, at one point, instructed Mr Moore in the various matters involving her land titles.
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> If my mother, at the SGM, had been informed of the facts surrounding the YWAM lease review in the same detail as she was informed of the facts surrounding the other 3 leases, would she have surrendered her share of an apparent $500,000 in back rental and future rental estimate of $1,000,000?

My complaint of 27 June 2017 included this sentence:

> This complaint to the Chief Justice is in two parts. First, my mother, in the final and most vulnerable days of her life, was induced to sign a document that she simply could not have known the effect of.

This part of my complaint is independent of any question of conflict of interest on the part of Mr Marshall. Mr Marshall, by his failure to advise the SGM of the financial reality of the YWAM lease review, whether that failure was unintentional or otherwise, mis-informed and mis-led every landowner at the SGM.

I refer to the 'Resolutions of the Incorporated Owners' which is appended to the affidavit of Maria Crummer which in turn is appended to Mr Matysik's letter.

I am of the view that the signature of my mother's shown there is not like any I am used to; she doesn't sign her "A" like that and she doesn't, and has never to my knowledge, signed with "Mrs" at the start of her signature.

I point out to your Honour that it took my mother three tries to get her signature in the right place on the resolution, but she never actually got it in the right place. That, I submit, points to my contention that my mother, who would be deceased in just a few weeks' time, was in a very vulnerable state at the SGM."

Other proceedings

[22] In Land 181/2015, the progress of the file up to 14 August 2015 was earlier reviewed. The application came before Savage J on 16 August 2015[7] with Mr Mason appearing for the Incorporation, Mrs Browne for YWAM and Mr Moore apparently appearing also for the Incorporation, but on the 1 May 2015 application[8]. Mr Moore described some of the contact which had occurred in recent days[9]. The Judge took the view that there were no live proceedings and the matter was adjourned first to 19 and then to 21 August 2015, though a transcript only appears to have been produced for the latter.

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7 The proceeding was described by the Judge on that occasion as a "rolling train wreck".
8 Though he said he needed to redraft the same.
9 Some of which appears to reflect matters raised by Mr Moore in relation to this complaint.

[23] On 21 August 2015 Mrs Browne again appeared for YWAM, Mr Mason appearing, again presumably for the Incorporation, and Mr Marshall appeared for the cross-applicants.

[24] Mr Marshall's submissions were directed to the orderly winding up of the affairs of the Incorporation including negotiating and settling rent reviews because, he submitted, a substantial sum of money for fees had been paid out by the Incorporation and only a small portion paid to the cross-applicants. A discussion between Mr Marshall and the Judge then ensued principally over the form of the order, especially the passage in a draft giving the Committee of Management power to engage solicitors to settle the various extant rent reviews.

[25] The Judge made orders removing the existing Committee of Management and appointing two local lawyers, Messrs Manarangi and Arnold, and a local accountant, Mr Carr, in their place; winding up the Incorporation and giving the Committee power to "negotiate and settle, failing which to engage counsel … to any of the following proceedings to determine capital value/rental reviews" following which a list of seven Land Court proceedings were set out, all of which apparently involved Te Vaimapia Section 19 Takitumu and Kaingavai Section 49C2A. The Committee was given power to "negotiate a settlement of 122/15" which was described as a proceeding arising from failure to obtain confirmation of a lease of 23 August 1994 whereby the landowners of Te Vaimapia Section 19 granted a lease of sixty years to Plantation Holdings Limited. The order contained a number of other provisions including giving the Committee power to approach the Court concerning funds it believed had been distributed in excess of landowners' entitlements.

[26] It is also pertinent to note Land Application 144/2014 which was an application under s 409B of the Cook Islands Act 1915 by the owners of Te Vaimapia Section 19 in respect of an area of land containing 9786m^2 subject to a lease dated 14 May 1974 between Uraiata Taero and Maruia Holdings.

[27] The file contains an assignment of the 14 May 1974 lease dated 1 July 2003 whereby Maruia assigned all its interest in the lease to YWAM, the original term of which was sixty years from 1 May 1974 but the recitals in the assignment note an

extension and variation of the lease dated 2 February 1994 whereby the term of the original lease was extended for a further twenty years from 1 May 2034 so as to expire on 30 April 2054.

[28] File 144/2014 contains a valuation of the 9786m^2 on the basis, as set out in the lease, "calculated on the basis of $5 per centum of the capital value of the said parcel of land after deducting therefrom the value of all improvements effected by the lessee thereon". The valuation cites clause 2(b) of the lease which says "if there shall be no system of government valuation of lands in force in the said island the Capital Value shall be determined by the Land Court in such manner and upon such evidence as the Court shall deem proper".

[29] The valuer had been instructed by Mr Moore to ascertain the capital value of YWAM's land as at 1 May 1999, 2004, 2009 and 2014 and had valued the land at $330,000, $450,000, $600,000 and $695,000 respectively.

[30] File 144/2014 also includes a six page memorandum by Mr Moore in which he, with some force, argues that the formula for determining capital value of Rarotonga land used since 2001[10] is wrong. He argued for a different approach to ascertaining the capital value of such land.

[31] Land Application 144/14 has been adjourned on five occasions and is understood to remain undecided though it is one of the cases which the new Committee of Management of Taero Incorporation is empowered to negotiate and settle in the order made in 181/15 on 21 August 2015. Presumably, if 144/2014 is not settled, Mr Moore will advance his submissions on what he considers is the appropriate means of ascertaining capital value of Rarotonga land when that case comes on for hearing.

Discussion and decision

[32] Although it has been considered necessary to set out a good deal of the background to this complaint, it must immediately be noted that much of what has

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[10] In the matter of *Island Hotels Limited*, Land App.62/99, 14 March 2001, Smith J, p 6.

been recounted is of little or no relevance to Mr Snowball's complaint that Mr Marshall professionally misconducted himself in relation to Mr Snowball's mother.

[33] Confining this decision strictly to the complaint, the following matters appear relevant:

(a) In 181/2015 the applicants for the injunction were four members of the Crummer family not including Akaiti Crummer. It was only in the cross-application of 14 August 2015 that Akaiti Crummer's name was added as a cross-applicant but, given there was no application for joinder, it is doubtful whether Mrs Akaiti Crummer was ever properly joined as a party to 181/15;

(b) Application 144/2014 still appears to be current as is 181/15[11] it would be most unusual to make findings of fact and conclude a disciplinary complaint relating to litigation when that litigation remains on foot as it is for the Court in those live proceedings to make findings of fact and law which are binding on the parties;

(c) Assessing the matter as best as can be done solely from the minutes of the meeting of the five Crummer sisters on 8 August 2015, there is essentially nothing to suggest that Mrs Akaiti Crummer did not understand the matters that were being discussed or was reluctant to put forward her views concerning those issues;

(d) More germane to Mr Snowball's complaint, while the discussions and resolutions of the meeting were wide-ranging, the minutes suggest that Mr Marshall was at pains to emphasise to the five sisters present that the decisions they were taking were for them with his assistance being confined to the legal consequences of their actions.

[34] While it is correct that Mr Marshall produced all the resolutions of the Crummer sisters to the hearing on 19 August 2015, in fact Savage J declined to

[11] At least in the sense that the new Committee of Management has power to revert to the Court.

accept them because they were not unanimous resolutions of all the Crummer sisters so, even if Mr Marshall were to be held in breach of his obligation to Mrs Akaiti Crummer, his efforts were ineffectual as the Judge picked the flaw in the resolutions and declined to accept them.

[35] Mr Snowball and Mr Moore place particular emphasis on Mr Marshall's actions in relation to the five sisters at the meeting approving the resolution concerning the YWAM lease and his presenting the resolution approving what Mr Moore asserts is an undervalue to the Court on 19 August 2015. They say Mrs Akaiti Snowball should have been given the opportunity of taking independent legal advice – or at least, advice from Mr Moore – concerning that matter. This, they assert, gave rise to the two facets of the complaint set out earlier in this decision.

[36] In relation to that:

(a) While it is not difficult to understand Mr Moore's chagrin at being refused the right to attend the SGM only a few days before it took place, the basis of that aspect of the complaint is that the sisters agreed to resolutions concerning the YWAM lease which, in Mr Moore's view, represent a significant undervalue. The answer to that is that, if the YWAM lease resolutions represent an unjustified departure from the correct method of ascertaining the capital value of Rarotonga land, that is a matter which it is still open to Mr Moore to argue in 144/2014 and, in any case, there is no evidence that Mr Marshall was aware of Mr Moore's views on the topic at the time of the SGM and, even if he was, he was not advising the sisters but merely giving them information as to the legal consequences of their actions. This aspect of the matter therefore depends on an acceptance of Mr Moore's view of the correct approach to the assessment of capital value of Rarotonga land and, since that remains undetermined, the complaint cannot succeed, at least at this stage.

(b) While Mr Snowball's complaint is that his mother was "in the final and most vulnerable days of her life", an assertion he supports by

reference to her handwriting and her death a few weeks afterwards, even if it be assumed that Mr Marshall was aware of Mrs Akaiti Crummer's claimed vulnerability, there is no acceptable evidence that she lacked contractual capability. The tone of her discussions and exchanges in the minutes of the meetings strongly suggest otherwise.

[37] To sum all that up, "conducting unbecoming", as it relates to professionals, normally connotes something reprehensible in a professional's private life which reflects on his or her professional life and, in relation to Cook Islands' lawyers, is to be distinguished from the other divisions of professional misconduct in s 15(2). With that the basis of approach to this matter, there is no foundation for a finding that Mr Marshall was guilty of conduct unbecoming him as a lawyer but, even if his actions are considered in the light of all the heads of misconduct in s 15(2) and clause 17 of the Code of Ethics there is equally no basis for any finding against Mr Marshall under any of those heads.

[38] Clients can dispense with the services of their lawyers (or other agents) at any time, and Mrs Akaiti Snowball, by her attendance and participation in the SGM expressed no wish to have Mr Moore continue to advise her. The sisters were united both at the SGM and in the resolutions they passed so there were no conflicting interests between Mrs Akaiti Snowball and her sisters present at the meeting.

[39] And there is no evidence that, even had Mr Moore attended the SGM and explained his different views on the proper assessment of capital value of Rarotonga land to the sisters attending the meeting, it would have dissuaded them from the course they all agreed to take.

[40] Reverting to Mr Snowball's expansion of his complaint[12], as already found, there is, first, no basis for concluding Mr Snowball's mother was induced to sign a document when she was ignorant of its effects. She was making common cause with her sisters, expressed her views robustly, received advice on relevant legal issues but the decision was left to them.

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[12] Set out at [13] above.

[41] Secondly, accepting the second limb of the expansion requires accepting Mr Moore's stance as to the correct approach to Rarotonga valuations – something seemingly still at large – while concluding that it can be professional misconduct for a lawyer to propound a proposition on behalf of clients to a Judge which is not accepted. That cannot be the case, and to do so here, in circumstances where the lawyer's right to appear for one of five applicants is challenged, does not amount to misconduct when all five had a common interest.

[42] Then, turning to the four bullet points in Mr Marshall's 22 February 2018 letter on which Mr Snowball's comment was sought, crucially, Mr Snowball through Mr Moore, now accepts Mr Marshall's explanation. That means he accepts what Mr Marshall says concerning his lack of knowledge of Mr Moore acting for Mrs Akaiti Crummer before 8 August 2015; accepts that 8 August 2015 was the only time Mr Marshall met Mr Snowball's mother and he had no reason on that day to conclude she lacked mental acuity; and accepts he knew nothing of the rent review amounts. Those acknowledgements substantially undermine Mr Snowball's complaint of professional misconduct on Mr Marshall's part.

[43] For all those reasons, the complaint is dismissed.

Hugh Williams, CJ