

satisfy the High Court that he is “a fit and proper person”.¹ This requirement, which is prescribed in the Lawyers and Conveyancers Act 2006 (the Act), must be satisfied by those who wish to be admitted as a barrister and solicitor of the High Court.²

[2] Mr Lincoln completed a law degree at the University of Canterbury in 2017. At the time he was 55 years old. After he completed his professional examinations, he applied to the Canterbury-Westland branch of the New Zealand Law Society (the Law Society) for a certificate of character to enable him to file an application for admission as a barrister and solicitor.³ The Law Society commenced inquiries, but before it could reach a decision on whether or not to issue a certificate of character, Mr Lincoln applied to the High Court for admission as a barrister and solicitor. The Law Society opposed his application.⁴

[3] The Law Society’s opposition to Mr Lincoln’s application was based upon its concern that he has an enduring “frailty” of character that renders him not a fit and proper person to be admitted as a barrister and solicitor.⁵

[4] Dunningham J agreed with the Law Society’s assessment. Her conclusions were based on evidence that:

- (a) In September 2015, Mr Lincoln was arrested on firearms offences and resisting a police officer in the execution of his duty. Those charges were dismissed in July 2017.⁶ Thereafter, Mr Lincoln commenced a campaign against one of the police officers, which included civil and criminal proceedings as well as making disparaging and abusive comments on Facebook about the police officer. Mr Lincoln also sent an intimidating message to the police officer’s wife.
- (b) Mr Lincoln’s pattern of behaviour in 2017 was consistent with his aggressive and unreasonable attitude towards a senior police officer in

¹ *Lincoln v New Zealand Law Society* [2018] NZHC 3050 at [76]–[77].

² Lawyers and Conveyancers Act 2006, ss 49(2)(b), 51 and 55.

³ Lawyers and Conveyancers (Lawyers: Admission) Rules 2008, r 5(1)(b).

⁴ Rule 6(4).

⁵ *Lincoln v New Zealand Law Society*, above n 1, at [50].

⁶ *Police v Lincoln* [2017] NZDC 14511, [2017] DCR 795.

1993, who had revoked Mr Lincoln's firearms licence over concerns about his personality.

[5] Mr Lincoln's appeal is advanced on two broad grounds:

- (a) The High Court Judge erred by not considering that Mr Lincoln would, if admitted, be required to practise under supervision for at least three years before he could practise on his account.
- (b) Dunningham J therefore erred when finding that Mr Lincoln had an enduring frailty of character and not a fit and proper person to be admitted as a barrister and solicitor.

Background

[6] It is convenient to start our narrative of the background by referring to events that occurred in 1993. We acknowledge that those matters are ancient and by themselves would not have provided a basis for preventing Mr Lincoln from being admitted as a barrister and solicitor. The events that occurred in 1993 are, however, important in understanding the concerns about Mr Lincoln's defects of character.

[7] Mr Lincoln has had a long-term interest in firearms. In 1993 he became embroiled in a dispute with the police when his firearms licence was revoked because of concerns about what the police considered to be his violent and aggressive behaviour. These concerns arose in the context of Mr Lincoln being charged with various offences following the breakup of his relationship with a former girlfriend. Those charges were ultimately dismissed when the former girlfriend decided not to return to New Zealand to give evidence against Mr Lincoln.

[8] Mr Lincoln challenged the decision to revoke his firearms licence. That led to a hearing in the District Court. Mr Lincoln's former girlfriend did give evidence at that hearing. The judgment of the District Court sets out in detail the basis of the concerns harboured by the police at that time, which included the aggressive way

in which Mr Lincoln endeavoured to get the charges against him dropped.⁷ The judgment also sets out extracts from letters written by Mr Lincoln after the District Commander decided to revoke his firearms licence. The following extracts provide an accurate flavour of the correspondence:

- (a) In a letter of 27 July to the Police Complaints Authority, Mr Lincoln accused the District Commander of fabricating the grounds for revoking his licence and that other police officers had persisted in “obnoxious behaviour” and had made threats against him.
- (b) In a letter of 29 July to the Police Commissioner (the Commissioner), Mr Lincoln said that the District Commander was a “lunatic” and that the Commissioner had a responsibility to control the District Commander.
- (c) In a letter of 12 August to the Commissioner, Mr Lincoln said “some serious questions must be raised about [the District Commander’s] inane ramblings ... perhaps I should apply for special leave from the Minister of Justice to obtain a non-molestation [order] against [him]”.
- (d) On the same day, Mr Lincoln wrote to the District Commander saying:

I wish you would settle on some climax of your almost daily attempts at harassment and intimidation, it is tiring having to continually revise upward, and re-draft the claim in respect to damages ...

The first sign of mental unsoundness (having one eye closed) is obviously [a]ffecting you. You are a sick man ... - you need help.

[9] The judgment records the basis of the Court’s conclusion Mr Lincoln responded in a “grossly exaggerated” way when he disputed decisions that he disagreed with. The District Court Judge made findings that Mr Lincoln was not

⁷ As noted in by the High Court in *Lincoln v New Zealand Law Society*, above n 1, at [48], while the Court has been provided with a copy of the decision, a reference number for citation is not available.

a credible witness and that he was capable of “bizarre interpretations of events”. The District Court Judge concluded the District Commander had reached the correct decision when revoking Mr Lincoln’s firearm licence.

[10] In due course Mr Lincoln either obtained another firearms licence or had his original licence reinstated.

[11] Mr Lincoln’s interest in firearms led him to being involved in establishing the National Shooters’ Association (NSA) in 2009, which is a firearms’ advocacy organisation. Mr Lincoln explains the NSA was modelled in part upon the National Rifle Association of the United States to be aggressive and uncompromising in its advocacy of firearms issues. Mr Lincoln and the NSA had some success in seeking declarations over the way the police were classifying some firearms and in other litigation concerning firearm issues.⁸

[12] At the time of the events that were the focus of the judgment of Dunningham J, Mr Lincoln’s firearms licence had a “E” endorsement, which allowed him to possess military-style semi-automatic weapons.

[13] On 17 September 2015, Mr Lincoln was taking a Heckler & Koch SL8 (SL8) semi-automatic rifle from his home in Timaru to a gunsmith in Christchurch. He stopped on the way to purchase petrol and later to use a toilet. On both occasions he removed the SL8 from his car and took it with him. He did not wish to risk leaving such a weapon unattended in his locked car. Two people who saw Mr Lincoln carrying the SL8 contacted the police.

[14] The events that then transpired involved Senior Constable Manning, aided by two other officers, performing an “armed stop” of Mr Lincoln’s car north of Dunsandel. There was an issue as to whether or not Mr Lincoln obstructed Senior Constable Manning from carrying out his duties. While this was happening, Sergeant Sutherland entered Mr Lincoln’s home in Timaru and conducted a search. Mr Lincoln was arrested at Dunsandel and taken to the Ashburton Police

⁸ *Lincoln v Police* HC Palmerston North CIV-2009-454-473, 1 March 2010; and *Lincoln v Commissioner of Police* [2013] NZHC 1813.

Station. He was examined by a mental health assessor and then interviewed by Constable O'Reilly. He was granted police bail at about 4.00 pm, with a condition he surrender any firearms in his possession to the police. He was driven back to Dunsandel to collect his car. In the meantime, Timaru Police were asked by Ashburton Police to enter and conduct a further search of Mr Lincoln's home.

[15] Mr Lincoln drove home to Timaru. He arrived there at about 6.30 pm where he met Sergeant Manson. Mr Lincoln told Sergeant Manson that he would not surrender any firearms in his possession. She stated that she considered he was mentally unfit to have possession of firearms at that time, and that she would search and seize any firearms at the address. Mr Lincoln then discovered that someone had been into his home that day. He complained he had been the subject of burglary. When asked to do so, he assisted the police to open the gun safe in his house stating however, that he believed the police were acting unlawfully. He started filming the police officers while they moved about his home. Sergeant Manson instructed him to stop filming and to remain quiet while she discharged her responsibilities. The police seized from Mr Lincoln's property, a Hatsan shotgun and a Panther DPMS rifle.

[16] Mr Lincoln was charged with obstructing Senior Constable Manning in the execution of his duty, unlawfully possessing and carrying the SL8 and unlawful possession of two other semi-automatic guns, the Hatsan shotgun and the DPMS rifle. Judge Maze heard and dismissed the SL8 charges in June 2017 as the police offered no evidence and dismissed the remainder of the charges in July 2017.⁹ In a subsequent costs judgment, Judge Maze criticised aspects of the police conduct.¹⁰ She awarded Mr Lincoln \$11,255.38 in costs.

[17] In late 2017, Mr Lincoln commenced civil proceedings against Senior Constable Manning. He arranged to film the service of those proceedings on the policeman at his home.

⁹ *Police v Lincoln*, above n 6, at [7] and [75].

¹⁰ *Lincoln v Police* [2017] NZDC 23625.

[18] According to Mr Lincoln, his decision to commence civil proceedings against Senior Constable Manning was a response to what he believed was a campaign of harassment against him by the police.

[19] After serving the proceedings on Senior Constable Manning, Mr Lincoln placed a post on the NSA Facebook page that said:¹¹

The criminal offender, JAMES ANDREW MANNING who works for the NZ police gets a fraction of his comeuppance.

Normally these videos remain undisclosed because they are proof of service records only. But in this case the video is made public because James Andrew Manning is a violent and dishonest criminal offender who remains at large.

Manning's offending includes assault and battery, kidnapping, perjury, attempting to pervert the course of justice and various offences under the Criminal Procedure Act.

The public need to be aware that this offender is at large in our community and in spite of his offending, remains a serving member of police.

He lives at [...] and works at Lincoln police station.

This is his Facebook page [...].

and this is his wife's Facebook page:

[...]

The public are warned that this offender is dangerous, unpredictable and should not be approached. If engaging with him, make sure you have a camera recording.

(personal details contained in the original post are omitted)

[20] The Facebook post we have referred to at [19] contained a link to the video of Mr Lincoln serving the civil proceedings on Senior Constable Manning. At about the time the Facebook post was created, Mr Lincoln sent the following message to Senior Constable Manning's wife through the Facebook Messenger service:

When the for sale sign goes up on your home and the receivers come in, remember that your husband is the one to blame. While you're struggling to make ends meet for your kids, he will probably be serving time in a nice cold prison cell for assault, kidnapping and perjury.

How did you ever wind up marrying a lowlife scumbag thug?

¹¹ *Lincoln v New Zealand Law Society*, above n 1, at [19].

[21] The civil proceedings Mr Lincoln commenced against Senior Constable Manning and others were settled on a confidential basis in May 2018. The following month, Mr Lincoln sent an apology to Mrs Manning via her husband’s lawyer in which he acknowledged that he had “used Mrs Manning instrumentally to achieve ends aimed at her husband”. He accepted that it was wrong of him to do so and he apologised.

[22] In July 2018, Mr Lincoln continued his campaign against Senior Constable Manning by presenting charging documents to the District Court at Christchurch, relating to the events of 17 September 2015. After a defended hearing, Judge Garland directed that the charging documents not be accepted for filing.¹² In reaching this decision, Judge Garland said that Mr Lincoln was attempting to bring the charges in order to “humiliate, embarrass or otherwise extract revenge on Mr Manning”.¹³ Judge Garland noted that the Facebook message sent to Mrs Manning and the posting of the video showing the service of the civil proceedings on Senior Constable Manning demonstrated that Mr Lincoln had a desire to embarrass or humiliate the police officer. Judge Garland said in his judgment that:¹⁴

Mr Lincoln’s attempt to use the criminal law to extract revenge for the perceived wrongs he has suffered is misguided. It would tarnish the integrity of the Court to accept these charging documents for filing.

New evidence

[23] It is convenient to complete our narrative of the facts by dealing at this stage with the Law Society’s application to adduce new evidence in opposition to Mr Lincoln’s appeal.

[24] There are two categories of new evidence that the Law Society has applied to produce. The first is correspondence between Mr Lincoln and the Crown Solicitor in Timaru, Mr McRae. That correspondence comprised:

¹² *Lincoln v Manning* [2018] NZDC 20025.

¹³ At [70].

¹⁴ At [80].

- (a) A letter of 2 May 2017 from Mr Lincoln to Mr McRae, containing a threat to bring a private criminal prosecution against him, and to pursue civil proceedings against the Crown if Mr McRae continued to prosecute the criminal charges, which were in due course dismissed by Judge Maze.
- (b) An email from Mr Lincoln to Mr McRae sent on 15 May 2017 in which he again, threatened Mr McRae with a private criminal prosecution for “conspiring to prosecute” Mr Lincoln.
- (c) An email from Mr Lincoln to Mr McRae sent on 29 July 2019 in which he demanded, amongst other matters, an explanation from Mr McRae as to why he should not be prosecuted for deliberately abusing his powers as the Crown Solicitor in pursuing the criminal prosecutions against Mr Lincoln. Mr Lincoln told Mr McRae that his reply, or lack of reply, would be referred to this Court, and that Mr McRae might be summonsed to appear before us as a witness.

[25] The second source of new evidence is correspondence between Mr Lincoln and Mr Mackenzie, who was counsel for the police officers whom Mr Lincoln endeavoured to prosecute. Mr Mackenzie also acted for police officers, including Senior Constable Manning in the civil proceedings commenced by Mr Lincoln that were settled in May 2018. Mr Lincoln accused Mr Mackenzie of various serious matters, including deceiving the High Court, lying to Judge Garland and defaming Mr Lincoln. In addition to making these allegations Mr Lincoln threatened to commence disciplinary proceedings against Mr Mackenzie.

[26] The Law Society contends that this new evidence is relevant in two respects:

- (a) In a fourth affidavit he filed in the High Court, Mr Lincoln said that he had not behaved in any way as he did towards the Mannings in the previous 25 years. The Law Society says in fact Mr Lincoln was, both before and after he was threatening and abusing the Mannings, making similar threats against Mr McRae and Mr Mackenzie.

- (b) The letter and emails sent by Mr Lincoln to Mr McRae and Mr Mackenzie demonstrates that he continues to respond in an aggressive and unbalanced way when he disputes decisions made against him by persons in authority, including lawyers acting against him.

[27] The first two sets of correspondence from Mr Lincoln to Mr McRae that we have referred to at [24] predated the hearing in the High Court and are therefore not “fresh”. That correspondence was brought to the Law Society’s attention after Dunningham J delivered her judgment and following some publicity and discussions by lawyers about the judgment. The email sent on 29 July 2019 and the correspondence sent to Mr Mackenzie were written after the High Court hearing and are therefore “fresh”.

[28] Mr McKenzie, counsel for Mr Lincoln, opposed the Law Society’s application to adduce new evidence, on the basis that the earlier communications to Mr McRae could have been obtained with reasonable diligence before the High Court hearing. It was also suggested that none of the letters or emails sent by Mr Lincoln provides evidence that assists us in determining the appeal. That is to say, it was submitted that none of the correspondence has the requisite degree of cogency.

[29] The principles that govern the admissibility of further evidence on appeal are well settled.¹⁵ The primary issue is whether the proposed new evidence is credible and cogent and whether there is a reasonable explanation for its late production.

[30] We are satisfied the new evidence is both credible and cogent. Notwithstanding the opposition expressed in Mr Lincoln’s affidavit filed in response to the new evidence, the letters and emails speak for themselves and they do assist in determining whether the High Court correctly concluded Mr Lincoln has an “enduring frailty of character” that renders him not a fit and proper person to be admitted as a barrister and solicitor. We accept that the first two communications from Mr Lincoln to Mr McRae might have been discovered earlier, but there is nothing before us to

¹⁵ Court of Appeal (Civil) Rules 2005, r 45; *Erceg v Balenia Ltd* [2008] NZCA 535 at [15]; and *Patrick v Bank of New Zealand* [2018] NZCA 122 at [13].

suggest that the Law Society was aware of Mr Lincoln’s threats against Mr McRae before the hearing in the High Court. In these circumstances, we are satisfied we should allow the Law Society to produce all of the new evidence.

Legal principles

[31] Under s 52 of the Act, the High Court must make an order admitting a candidate as a barrister and solicitor if the Court is satisfied that the candidate has obtained the qualifications for admission prescribed by the New Zealand Council of Legal Education and is a “fit and proper person”.

[32] Section 55 of the Act provides statutory guidance for assessing whether or not a candidate is a fit and proper person to be admitted. Included in the criteria set out in s 55 is whether the candidate is a person “of good character”. The Law Society says Mr Lincoln has a serious and enduring defect of character and is therefore not a “fit and proper person” to be admitted as a barrister and solicitor.

[33] An assessment of whether or not a candidate is a fit and proper person must be made in the context of the fundamental obligations of lawyers set out in s 4 of the Act:

4 Fundamental obligations of lawyers

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

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

[34] In *Stanley v New Zealand Law Society*, this Court analysed a series of cases concerning assessments of candidates who wished to be admitted as barristers and

solicitors.¹⁶ A similar exercise had previously been undertaken by Wylie J in *Brown v New Zealand Law Society*.¹⁷ The following principles are particularly pertinent to Mr Lincoln’s circumstances:

- (a) The Court should not lightly prevent a candidate being admitted when they have achieved the qualifications prescribed by the New Zealand Council for Legal Education.¹⁸
- (b) A candidate for admission is not to be punished for past wrongdoing.¹⁹
- (c) An assessment of the candidate’s fitness to be admitted as a barrister and solicitor must focus on protecting the public and the profession.
- (d) The assessment must be prospective. It requires an evaluation of the candidate at the time of their application and the risks, if any, they pose in the future to society and the profession’s reputation.²⁰
- (e) The concept of a fit and proper person incorporates standards of integrity,²¹ and “moral rectitude of character”.²²
- (f) Where a candidate has been involved in some past indiscretion the Court must be satisfied that the “frailty or defect of character” indicated by the earlier behaviour can be safely regarded as “spent”.²³

¹⁶ *Stanley v New Zealand Law Society* [2019] NZCA 119, [2019] NZAR 1001.

¹⁷ *Brown v New Zealand Law Society* [2018] NZHC 1263, [2018] NZAR 1192.

¹⁸ *Harder v Auckland District Law Society* [1983] NZLR 15 (CA) at 17; *Brown v New Zealand Law Society*, above n 17, at [39(a)].

¹⁹ *Re Lundon* [1926] NZLR 656 (CA) at 658; and *Stanley v New Zealand Law Society*, above n 16, at [29].

²⁰ *Stanley v New Zealand Law Society*, above n 16, at [29], [33] and [48]–[53]; and *Brown v New Zealand Law Society*, above n 17, at [39(b)].

²¹ *New Zealand Law Society v Mitchell* [2010] NZCA 498, [2011] NZAR 81 at [24]–[25]; and *Brown v New Zealand Law Society*, above n 17, at [39(d)].

²² *Re Lundon*, above n 19, at 658; *Stanley v New Zealand Law Society*, above n 16, at [29]; and *Brown v New Zealand Law Society*, above n 17, at [39(c)].

²³ *Re Owen* [2005] 2 NZLR 536 (HC) at [35]; and *Brown v New Zealand Law Society*, above n 17, at [39(e)].

- (g) The Court is required to make an objective judgement based on all relevant evidence when assessing the ability of the candidate to comply with the fundamental obligations imposed upon all lawyers.²⁴

[35] Mr Lincoln's appeal is a general appeal. We are therefore required to make our own assessment of the merits of his case.²⁵

Analysis

[36] We are satisfied Mr Lincoln suffers from a longstanding and enduring defect in his character that causes him to react in an aggressive, threatening and wholly unbalanced way against those whom he perceives have wrongly challenged him. This defect in his character was very evident as long ago as 1993, when Mr Lincoln became embroiled in a dispute with his former partner, and then with police officers who revoked his firearms licence because of well founded concerns about his violent and aggressive behaviour.

[37] Unfortunately, these defects in Mr Lincoln's character have not diminished with the passage of time. His relentless pursuit of Senior Constable Manning and Mrs Manning was very disturbing and closely mirrored the conduct that resulted in the District Court being very critical of Mr Lincoln in its 1994 judgment.

[38] In assessing whether Mr Lincoln's enduring defect of character should preclude him from being admitted as a barrister and solicitor, we have considered how these defects of character would impact upon his ability to practise as a barrister and solicitor. We have had particular regard to Mr Lincoln's ability to uphold the rule of law and to facilitate the administration of justice, which is the first of the fundamental obligations imposed upon a lawyer by s 4 of the Act. This requirement imposes a number of duties upon a lawyer, which are amplified in the Conduct and Client Care Rules issued by the Law Society. Those rules provide:²⁶

²⁴ *Stanley v New Zealand Law Society*, above n 16, at [31].

²⁵ *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.

²⁶ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

(a) Rule 2.3:

A lawyer must use legal processes only for proper purposes. A lawyer must not use, or knowingly assist in using, the law or legal processes for the purpose of causing unnecessary embarrassment, distress, or inconvenience to another person's reputation, interests, or occupation.

(b) Rule 2.7:

A lawyer must not threaten, expressly or by implication, to make any accusation against a person or to disclose something about any person for any improper purpose.

(c) Rule 2.10:

A lawyer must not use, or threaten to use, the complaints or disciplinary process for an improper purpose.

(d) Rules 10 and 10.1:

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

A lawyer must treat other lawyers with respect and courtesy.

(e) Rule 12:

A lawyer must, when acting in a professional capacity, conduct dealings with others, including self-represented persons, with integrity, respect, and courtesy.

(f) Rule 13:

The overriding duty of a lawyer acting in litigation is to the court concerned. Subject to this, the lawyer has a duty to act in the best interests of his or her client without regard for the personal interests of the lawyer.

(g) Rules 13.2 and 13.2.1:

A lawyer must not act in a way that undermines the processes of the court or the dignity of the judiciary.

A lawyer must treat others involved in court processes with respect.

[39] Mr Lincoln's threats against Senior Constable Manning, Mrs Manning, Mr McRae and Mr Mackenzie involved multiple breaches of the duties we have set out at [38]. A lawyer who conducted him or herself in the way that Mr Lincoln did would inevitably face serious disciplinary consequences.

[40] We have borne in mind that if Mr Lincoln were admitted as a barrister and solicitor he would be required to practise under supervision for at least three years before he could practise on his own account.²⁷ We understand from the evidence that Mr Lincoln proposes to practise in chambers under the supervision of a Mr Starling.

[41] We accept that in some instances, the requirement that a newly admitted lawyer practise under supervision may ameliorate any lingering concerns about his or her fitness to be admitted as a barrister and solicitor. There are, however, two reasons why this consideration does not persuade us that Mr Lincoln's appeal should be allowed:

- (a) All candidates for admission must satisfy the "fit and proper person" criterion. In our assessment, Mr Lincoln currently falls well short of meeting that standard. Supervision may assuage concerns in a finely balanced assessment of the suitability of a candidate for admission. The evidence before us demonstrates, however, Mr Lincoln is well below the cusp of being a fit and proper person.
- (b) Mr Lincoln's defect of character is so profound and enduring, we would require convincing evidence before we could be satisfied that supervision would provide sufficient protection for the community and the profession if he were admitted as a barrister and solicitor. We would expect that evidence to include assessments from suitably qualified health professionals who could provide assurances that Mr Lincoln's aggressive and unbalanced attitude can be managed through supervision. There is no evidence of that nature before us.

Conclusion

[42] We are satisfied that Dunningham J correctly concluded that Mr Lincoln is not a fit and proper person to be admitted as a barrister and solicitor. His defect of character is profound and very disconcerting.

²⁷ Lawyers and Conveyancers Act, s 30; and Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008, regs 3(1) and 12(3).

[43] Mr Lincoln may be able to persuade the Law Society, with appropriate additional evidence, that he is able to address the concerns that we have set out in this judgment. At this stage, however, the evidence clearly establishes that he does not satisfy the requirements to be admitted as a barrister and solicitor.

Result

[44] The respondent's application to adduce further evidence is granted.

[45] The appeal is dismissed.

[46] The Law Society is entitled to costs on a standard band A basis, plus disbursements.

Solicitors:
SB Law, Christchurch for Appellant
New Zealand Law Society, Wellington for Respondent