

No. Multiple files (set forth in Appendix 1)

Concerning Part 7 of the Lawyers and Conveyancers Act 2006

And

Concerning complaints by multiple complainants¹ about Stephen Franks and Commercial and Public Law Limited t/a Franks Ogilvie (**Franks Ogilvie**)

Notice of Determination by the National Standards Committee (No 1)

Introduction

1. Mr Franks is a director of Franks Ogilvie, an incorporated law firm in Wellington.
2. The complaints all arise from a 14 February 2025 letter sent by Mr Franks (on Franks Ogilvie letterhead) on behalf of his client, Inflection Point New Zealand, to multiple health care providers and organisations in New Zealand warning of possible future litigation against health professionals who have been involved in providing gender-affirming care (**the Letter**).
3. The Letter has been widely circulated in the media, generating strong reactions and resulting in the Chief Legal Officer of Health New Zealand advising recipients of the Letter that they can continue to provide gender-affirming care based on their best clinical judgement.
4. None of the complainants were direct recipients of the Letter.
5. This Notice of Determination outlines the complaints and all responses from the parties, the Notice of Hearing and submissions received, and considerations by the National Standards Committee (No 1) (**the Standards Committee**) in reaching its determination that Mr Franks and Franks Ogilvie engaged in conduct that amounts to unsatisfactory conduct under s 12(c) of the Lawyers and Conveyancers Act 2006 (**Act**).
6. The Standards Committee is conscious that each complaint, while expressed in varying terms, arises from the Letter, which is in the public domain and canvasses the same issues in terms of potential professional conduct concerns. Therefore, the Standards Committee considered that it was most efficient to include its considerations and findings on all complaints in this one decision.

¹ Refer to Appendix 1

Complaints

7. The complaints, filed between 26 February and 25 March 2025, all raise similar concerns and include allegations that Mr Franks (and, for two of the complaints, Franks Ogilvie):
 - a. Inappropriately threatened legal action against individuals and organisations providing (or assisting in the provision of) lawful gender-affirming care and that such threats were intimidating, vague, inaccurate, misleading, and without legal foundation.
 - b. Caused the recipients of the Letter distress, failed to treat them with integrity, respect and courtesy, and engaged in bullying and harassing behaviour by:
 - i. Including unsubstantiated threats of legal action for providing lawful gender-affirming care;
 - ii. Suggesting the development of a database to track medical professionals providing lawful gender-affirming care; and
 - iii. Using inflammatory language such as “*ideological group-think*” and “*social contagion*”.
 - c. Failed to exercise independent professional judgement for the benefit of his client as the Letter reflects an ideological political stance rather than a genuine and neutral legal analysis of relevant law and how the law potentially applies to the recipients.
 - d. Used his position as a lawyer to further a controversial political stance, which undermines public confidence in the legal profession.
 - e. Issued a Letter that was unprofessional, dishonest, misleading, intimidating, threatening and inconsistent with a lawyer’s obligation to promote and maintain professional standards.

Response

8. On 14 April 2025, Mr Franks (and Franks Ogilvie) filed a single response to all six complaints in which Mr Franks denied breaching any professional obligations and submitted that:
 - a. He acted within his professional obligations to his client, and in accordance with instructions received, by sending the Letter which raised legitimate concerns and noted the potential for legal liability for the health care professionals if duties owed to their patients, including duties to ensure informed consent and provide reasonable care, were breached.
 - b. The Letter served a proper purpose, with a clear statement of the client’s intentions and inviting the recipients to do their own research into the legal propriety of providing

gender-affirming care.

- c. The Letter was written in a respectful tone, made no personal attacks, and did not “*purport to be conclusive*” but rather reflected a reasonable interpretation of the evidence and the law and included a sufficient basis for the assertions made.
- d. He is a reputable lawyer who acted consistently with his duty to advocate for his client which was unaffected by his personal views.
- e. Effective freedom of expression protections requires the legal profession to express its commitment to defend its members who ensure that every voice (regardless of popularity) is heard and represented. The professional disciplinary process should not be misused for the purpose of silencing others.

Complainants’ replies

- 9. All complainants were provided a copy of Mr Franks’ response and given the opportunity to comment. Three of the six complainants submitted a reply between 26 April and 4 May 2025. In summary of the key points, those complainants submitted that:
 - a. In the Letter, Mr Franks (and Franks Ogilvie) use inflammatory and disrespectful language and include inaccurate statements about gender-affirming care and applicable legal/ethical standards.
 - b. The content and context of the Letter is misleading, intimidating, threatening and with the clear intent to dissuade doctors from providing gender-affirming care as evidenced by:
 - i. The inclusion of threats of proposed surveillance; and
 - ii. The lack of specificity as to the legal and ethical obligations alleged to have been breached by the recipients.
 - c. Mr Franks’ (and Franks Ogilvie’s) conduct in issuing warnings of legal liability without sufficient legal foundation has the effect of eroding public confidence in the legal profession by suggesting that legal processes can be “*improperly weaponised*”.
 - d. The right to freedom of expression is fundamental but not absolute and does not override a lawyer’s professional obligations. Likewise, acting on client instructions cannot shield a lawyer from engaging in inappropriate conduct.
 - e. The Letter was an improper use of legal processes and included threats made for an improper purpose.
 - f. Mr Franks’ (and Franks Ogilvie’s) actions are not in keeping with professional standards and tend to bring the legal profession into disrepute as the Letter has been covered

extensively in the media.

Standards Committee's first consideration

10. The Standards Committee first considered the complaints at its meeting on 15 May 2025. The Standards Committee considered all materials provided by the parties and resolved to inquire into the complaints pursuant to s 137(1)(a) of the Act.
11. As a starting point, the Standards Committee considered that Mr Franks was clearly providing regulated services in drafting and sending the Letter as it was on Franks Ogilvie letterhead and stated that it was being sent on behalf of his client and on the client's instructions. The Standards Committee was therefore required to assess Mr Franks' conduct against the standards that apply to all lawyers in the provision of regulated services as set out in the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**Rules**) and as reflected in the definitions of unsatisfactory conduct found in the Act.
12. In reviewing the materials and following consideration of the issues raised in the complaints and the surrounding circumstances, including the identified public interest in the matter, the Standards Committee was of the view that the contents of the Letter, and Mr Franks' role in advising his client and ultimately drafting and sending the Letter, could raise professional conduct concerns. The Standards Committee therefore further resolved to set the matter down for a hearing on the papers pursuant to s 153 of the Act.

Notice of Hearing

13. On 18 June 2025 the Standards Committee issued a Notice of Hearing to the parties identifying and seeking submissions on the Rules that it considered were engaged in the complaints:
 - a. Whether, in drafting and sending the Letter to individuals and organisations providing gender-affirming care, Mr Franks has used, or knowingly assisted his client in using, the law or legal processes for an improper purpose, including for the purpose of causing unnecessary distress to another person's reputation or occupation, in breach of rule 2.3.
 - b. Whether, in making assertions about future legal liability in the manner set forth in the Letter and/or suggesting the development of a database to track medical professionals currently providing gender-affirming care, Mr Franks has threatened, expressly or by implication, to make an accusation against any person for any improper purpose in breach of rule 2.7.
 - c. Whether the Letter reflects Mr Franks' independent professional judgement on his client's behalf, including the provision of objective advice based on his understanding of the relevant (and current) laws, in compliance with rule 5.3.
 - d. Whether Mr Franks has engaged in conduct that tends to bring the profession into disrepute and/or failed to promote and maintain professional standards in contravention

of rules 10 and/or 10.2.

- e. Whether Mr Franks, when acting in a professional capacity, has failed to treat and/or conduct dealings with others with integrity, respect and courtesy in contravention of rules 10.1 and/or 12.
- f. Whether Mr Franks has engaged in conduct that amounts to bullying² and/or harassment,³ which is prohibited under rule 10.3.
- g. Whether Mr Franks has engaged in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of his practice in breach of rule 10.9.
- h. The extent to which any disciplinary concern should be balanced against the right to free speech, as discussed in *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal*⁴ and *Nelson Standards Committee v Grey*.⁵

Submissions from Mr Franks (and Franks Ogilvie)

14. Mr Franks (and Franks Ogilvie) provided submissions to the Notice of Hearing on 2 July 2025. The following is a summary of the key submissions:

No use of legal processes for an improper purpose and not misleading or deceptive – Rules 2.3 and 10.9

- a. Mr Franks submitted that the Letter did not breach rules 2.3 or 10.9 of the Rules as it:
 - i. Clearly sets out his client’s position, including that there are some common practices in the provision of gender-affirming care that are contrary to relevant professional and ethical standards and may breach legal duties.
 - ii. References supporting evidence for his client’s position, which Mr Franks assured himself prior to sending the Letter was sufficient to support the client’s claims.
 - iii. States that his clients intend to support de-transitioners in taking litigation against medical practitioners “*who sent them down harmful pathways*”.
- b. Mr Franks further submitted that warnings of potential liability, such as set forth in the Letter, are common for conduct that medical practitioners may have previously considered to be lawful.

² **Bullying** means repeated and unreasonable behaviour directed towards a person or people that is likely to lead to physical or psychological harm, as defined in rule 1.2 of the Rules.

³ **Harassment** means intimidating, threatening, or degrading behaviour directed towards a person or group that is likely to have a harmful effect on the recipient; and includes repeated behaviour but may be a serious single incident, as defined in rule 1.2 of the Rules.

⁴ *Orlov v New Zealand and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987.

⁵ *Nelson Standards Committee v Grey* [2023] NZLCDT 33.

- c. Whilst acknowledging the complainants' concerns about the impact of the Letter on medical practitioners, Mr Franks submitted that raising awareness of legal and ethical obligations and encouraging medical practitioners to take advice regarding their professional, ethical and legal obligations, is in the best interest of patients.
- d. Mr Franks stated that the Letter and its recipients were not made public by Mr Franks or Franks Ogilvie and therefore there was no attempt to cause embarrassment or affect any of the recipients' reputation, interests, or occupation.

No threats made for an improper purpose – Rule 2.7

- e. Mr Franks submitted that the Letter does not include any express or implied threat and was drafted and sent on his client's instructions for the proper purpose of notifying the recipients of the client's views and its intention to support potential future litigants.
- f. Mr Franks further submitted that issuing standard legal notices that raise concerns about patient care and potential negligence are within the role of legal professionals.

Objective advice – Rule 5.3

- g. Mr Franks submitted that the Letter is not the advice that was given to his client, and there is no evidence to suggest that he did not give objective advice to his client based on his understanding of the relevant law.
- h. Mr Franks further submitted that the Letter is consistent with a general warning of potential liability, and he was acting in accordance with his client's instructions and advocating for his client's position after their consideration of his advice.

Integrity, respect and courtesy – Rules 10.1 and 12

- i. Mr Franks submitted that the Letter is not offensive, aggressive or personal and there is no evidence to support the allegations that the Letter is disrespectful or discourteous to the recipients or others.
- j. Mr Franks further submitted that his overall obligation was to protect and promote the interests of his client, which he has done by engaging in "*robust correspondence*" and presenting his client's "*preferred position in the best light*".⁶

Professional standards – Rules 10 and 10.2

- k. Mr Franks submitted that the Letter reflects his personal commitment to advocate for his clients (which is a lawyer's primary duty) regardless of whether the client's views are "*fashionable*" and therefore embodies the requirement that lawyers promote and maintain

⁶ AA v EL LCRO 187/21.

professional standards.

- l. Mr Franks further submitted that his conduct in drafting and sending the Letter on behalf of his client does not bring the legal profession into disrepute but rather exhibits fearless advocacy of his client's position without reservation or regard for the likelihood of encountering hostility – a necessary role for a lawyer in ensuring everyone has access to justice.

Bullying and harassment – Rule 10.3

- m. Mr Franks submitted that there is no evidence to support the allegation that the Letter amounts to bullying or harassment as defined in s 1.2 of the Rules as:
 - i. None of the complaints were made by recipients of the Letter and therefore there is no evidence to establish that any recipients felt intimidated, threatened or degraded; and
 - ii. Simply advocating for a view that the recipients do not agree with does not amount to harassment and by no means can be construed – in the absence of personal threats or attacks – to reach the threshold of a “*serious incident*” of harassment.

Right to freedom of expression

- n. Mr Franks stated that prior case law (*Orlov* and *Grey*) validates his position about the importance of freedom of expression and safeguarding the ability to express, and assist clients in expressing, unpopular views.
- o. Mr Franks submitted that if the Standards Committee makes an adverse finding against him based fundamentally on objections to the views advanced in the Letter, it will have a chilling effect on lawyers being willing to advocate for clients who hold controversial views.

Unsatisfactory or misconduct

- p. Mr Franks stated that there is no basis consistent with precedent and the functions of lawyer advocacy for a finding of unsatisfactory conduct or referral to the Disciplinary Tribunal:
 - i. The language used in the Letter was not “*inherently extravagant or inflammatory*”.
 - ii. While it is possible that the Letter caused distress to recipients who hold opposing views, none of the recipients are the complainants and further it does not follow that causing distress requires a disciplinary finding.

Publication

- q. Mr Franks submitted that the Standards Committee's determination (including the process and all evidence) should be made public, and he has no issues with the publication of his identity.

Complainants' submissions

15. Three of the six complainants provided submissions on the Notice of Hearing. In summary of the key points, those complainants submitted that:
 - a. Mr Franks has breached each of the Rules set forth in the Notice of Hearing and further has engaged in conduct that could reasonably be regarded by lawyers of good standing as disgraceful or dishonourable that would justify referral to the Disciplinary Tribunal.
 - b. Mr Franks' conduct cannot be protected as freedom of expression as this does not override a lawyer's professional obligations under the Act and Rules.
 - c. The Letter contains inflammatory, threatening, intimidating, inaccurate and misleading statements of fact and law, and it is an abuse of Mr Franks' professional status as a lawyer to achieve an improper purpose.
 - d. The proposal in the Letter to create a database to monitor doctors who provide gender-affirming care can be characterised as harassment and intimidation that has no place in the legal profession and is in breach of rule 10.3.
 - e. Mr Franks failed to adequately research and review the evidence for the claims made in the Letter and therefore he failed to meet his professional obligations under rule 5.3 to provide independent judgement and advice to clients.
 - f. The complainants support publication of the determination, including the identity of Mr Franks.

Standards Committee's deliberations

16. The Standards Committee reviewed all submissions and considered each aspect of the complaints and the surrounding circumstances.

Additional materials provided by a complainant

17. As an initial matter, the Standards Committee reviewed additional materials provided by one of the complainants which included copies, and an analysis, of Mr Franks' social media posts (and reposts). Whilst recognising the complainant's position that this information supported the allegation that Mr Franks did not provide independent and objective advice to his client, the Standards Committee was of the view that the materials were not directly relevant to the specific

conduct at issue, which is limited to the contents of the Letter and Mr Franks' involvement in drafting and sending the Letter.

18. As such, the Standards Committee confirmed that these additional materials would form no part of its decision-making on the complaints and so are not discussed further in this determination.

Use of legal processes for an improper purpose – Rule 2.3

19. The Standards Committee first considered whether, in drafting and sending the Letter on Franks Ogilvie letterhead, Mr Franks breached rule 2.3 which provides that:

“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”.

20. The Standards Committee agreed with Mr Franks that letters warning of potential liability are standard in the legal profession. In confirming its view on this point, it was also clear to the Standards Committee that a Letter sent on behalf of a client and on firm letterhead purporting to affect the legal rights and liabilities of the recipients could reasonably be viewed by the recipients (and the public) as denoting a legal process.
21. The Standards Committee therefore concluded that issuing a letter characterised as a “General Warning” to medical practitioners warning of potential legal liability is the “*use of legal processes*” for purposes of rule 2.3.
22. Having established that the Letter constituted the use of legal processes, the Standards Committee next considered whether the Letter was drafted and sent for an improper purpose.
23. The Legal Complaints Review Officer (**LCRO**) has stated that whether a purpose is proper or improper for purposes of rule 2.3 “*will be determined by an objective appraisal of the facts of each individual case*”.⁷ In finding that a lawyer breached rule 2.3 by filing proceedings in Court (on his client’s instructions) without proper authority to do so, the LCRO has stated that the lawyer acted with an improper purpose by advising his client to proceed illegitimately with the “*improper motive*” of persuading the opposing party to “*fall in with [his client’s] wishes*”. The LCRO further stated that the lawyer’s subjective view that he was acting in the best interests of his client does not serve as an excuse for a lawyer’s conduct that is otherwise in breach of the Rules.⁸
24. With this in mind, to assess the purpose of the Letter and whether it was sent for a proper purpose, the Standards Committee considered the contents, circumstances and context of the Letter.

⁷ *RZ v LB*, LCRO 25/2016 at [42].

⁸ *Id.* at [43] and [44].

25. The Standards Committee noted that the purpose of the Letter as advanced by Mr Franks, was to issue a *“general warning”* to medical practitioners to carry out treatments safely.
26. However, the Standards Committee considered that the Letter was sent to individual medical practitioners and organisations that were specifically identified because they *“practice or have practised in ways that could be encompassed within the general description of gender-affirming healthcare”*. The Standards Committee further noted that although the Letter is framed as a *‘general warning’*, it refers to *“a strong likelihood”* of legal liability for the recipients (as medical providers who provide gender-affirming care), places them on notice that they may be in breach of legal and professional obligations, and advises them to preserve documents as a *“person who may become a party to a legal proceeding”*.
27. In relation to broader context, the mechanisms for patient protection are widely known and medical professionals are already aware of their obligations to provide all services to the highest and safest standard. The Standards Committee noted that medical practitioners are subject to professional liability and consequences in negligence matters, and that they are aware of this and the appropriate forums for such claims, including the Health and Disability Commissioner and/or the Accident Compensation Corporation Treatment Injury process. The Standards Committee also considered that lawyers would be aware of these processes to advance any negligence claims or concerns around patient care. Agencies and authorities such as Health New Zealand, the Medical Council and the Ministry of Health are also ultimately responsible for the oversight of health professionals and the safe provision of health services in New Zealand.
28. On this basis, rather than a *“general warning”* as asserted by Mr Franks, the Standards Committee considered, by a majority, that the purpose of the Letter was to specifically target individual medical professionals and place pressure on them to reconsider and/or refrain from continuing to provide gender-affirming care. In support of this conclusion, the Standards Committee noted that the Letter was sent by a lawyer (on firm letterhead) and included suggestions about retaining documents in anticipation of litigation and the creation of a database to track medical practitioners who provide gender-affirming services, insinuating that litigation is imminent, or may already be on foot.
29. The Standards Committee was, by a majority, of the view that targeting specific medical practitioners and intimating that legal action is imminent is similar to the LCRO case described in paragraph 22 above and amounts to not using legal processes for a *“proper purpose”*, particularly as there were other options available to Mr Franks and his client, including raising their concerns to the various agencies and authorities that are responsible for regulating medical practitioners and health services in New Zealand.
30. The Standards Committee considered that while there was nothing intrinsically improper with Mr Franks being involved with drafting the Letter in keeping with his obligations to his client, it was not necessary for Mr Franks to send the Letter on the client’s behalf. In this regard, the Standards Committee was of the view that Mr Franks (and Franks Ogilvie) would have met their professional obligations (considering the obligations to his client as well as to the wider public

and the legal profession) by advising his client to send the Letter, or a similar letter, under the client's own name.

31. The Standards Committee was also of the view, by a majority, that the dominant purpose for the Letter being sent on Franks Ogilvie letterhead was for the improper motive of lending weight to the views expressed in the Letter, and weight to the implied threat of litigation, and thereby increasing pressure on the recipients to refrain from providing, or continuing to provide, gender-affirming care.
32. The Standards Committee further considered that the Letter included the following general references to liability without identifying any specific and current cause of action:

*"Our clients believes [sic] that it is clear now that some common practices affecting those with gender dysphoria, including the prescription of puberty blockers and masculinising/feminising hormone therapy, and premature irreversible surgery **are contrary to the professional and ethical standards required of health professionals.** We consider that they **may also breach legal duties.** They **may violate patients' rights** to reasonable standards of care, and rights to enough information to enable informed consent." (Emphasis added.)*

33. The Standards Committee regarded references such as this as tentative and speculative whereas any reference to threatened or potential litigation should be grounded in fact (either admitted or positively asserted) and based on the protection of a valid and current legal interest identifiable in the light of such matters of fact.
34. In this regard, the Standards Committee observed that while Mr Franks' client may have its own view on gender-affirming care, it does not have any individual legal interest to protect nor is it raising any concerns on behalf of any individual patient or group directly affected by the type of care discussed in the Letter (noting that the processes for doing so are already established). In the absence of this, it is unclear to the Standards Committee why a lawyer was required to send such correspondence rather than the client directly. Nor is it clear why, where the stated purpose was to give a '*general warning*' and raise underlying concerns about the legality of gender affirming therapies, these were not instead raised with authorities directly responsible for the safe and lawful provision of health services in New Zealand rather than directed to individual health professionals.
35. In making this point, the Standards Committee does not suggest that Inflection Point should not have approached a lawyer at all, as any individual or organisation should feel free to do so. However, the Standards Committee considered that Mr Franks then erred in his own professional obligations by drafting and sending the Letter in the absence of any clear purpose other than to pressure the recipients to reconsider and/or refrain from continuing to provide gender-affirming care. The Standards Committee does not consider that this is a proper purpose for which legal processes should be used. As referred to above, there were other more appropriate avenues for raising concerns about the provision of the relevant treatment, not involving the targeting of individual health providers.

36. For all these reasons, the Standards Committee concluded by a majority decision that Mr Franks used legal processes for an improper purpose in breach of rule 2.3.

Threats for an improper purpose – Rule 2.7

37. The Standards Committee next considered whether Mr Franks' conduct breached rule 2.7 which provides that:

“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”.

38. In considering this issue, the Standards Committee was mindful of the complainants' views that the Letter contained vague threats of legal liability for the performance of lawful medical care.
39. The Standards Committee considered that, while the Letter could reasonably be interpreted by the recipients as containing express or implied threats, the Letter was carefully drafted to avoid making specific accusations or personal attacks, including expressly advising the recipients that the Letter was *“not prompted by particular attention to your practice”* and confirming that no response from the recipients is required.
40. The Standards Committee noted with concern the Letter's reference to the creation of a database to track medical professionals who provide gender-affirming care, how this could reasonably be interpreted by the recipients, and whether it was an inappropriate use of legal processes. However, when considering the same against rule 2.7 this was necessarily balanced with the consideration that that the Letter did not on its face include any specific threat to bring a legal claim at this time or any assertion that the recipients are actually conducting themselves unlawfully; only that they are at risk of doing so by practising in the area of gender-affirming care.
41. The Standards Committee was therefore of the view that, on balance, and considering the specific language used in the Letter, Mr Franks's conduct did not amount to a breach of rule 2.7.

Independent professional judgement – Rule 5.3

42. The Standards Committee next considered the allegation that Mr Franks, in advising his client, did not exercise independent professional judgement as the Letter reflected his personal views rather than objective advice based on his understanding of the law.
43. The Standards Committee noted Mr Franks' submissions that he did not initially share his client's views but, based on his own research into the issues, his personal views became aligned with his client. The Standards Committee considered that there is nothing inherently improper with a lawyer's personal views aligning with a client instruction as long as this does not prevent the lawyer from providing independent and objective advice.

44. While appreciating that the complainants could reasonably conclude that Mr Franks' advice was not independent or objective given that Mr Franks has confirmed his own matching views on gender-affirming care, the Standards Committee is conscious that Mr Franks has stated that he was acting on his client's instructions and following their consideration of his advice. On full review of all material the Standards Committee identified no evidence to the contrary on file.
45. The Standards Committee further considered the statement in the Letter that the content is based on the client's interpretation of the medical evidence on gender-affirming care, and that the Letter appears to reflect the focus of such evidence.
46. The Standards Committee fully considered the complainants' submissions refuting the cited medical evidence and gave significant attention to how such competing, or differently interpreted, evidence engaged a lawyer's obligations to remain objective and to not deliberately advance knowingly false information in any representation of a client.
47. The Standards Committee was clear that it was important for a lawyer to undertake due diligence in checking the facts or arguments informing a client's position, however did not consider that this professional obligation extended to verifying every factual assertion made by a client or to extensively and independently validate all of the client's views. In the Standards Committee's view, requiring checking and verification to such an extent would place an undue burden on lawyers with the potential effect of impeding prompt action on their client's instructions.
48. The Standards Committee noted Mr Franks' position that he did undertake his own research before reaching his view on the appropriateness of his client's instructions, and that he has detailed the steps taken in his submissions. On this basis, the Standards Committee concluded that Mr Franks' conduct did not raise any concerns under rule 5.3.

Professional standards – Rules 10 and/or 10.2

49. The Standards Committee next considered whether Mr Franks' conduct constituted a breach of rules 10 and/or 10.2 of the Rules which provide that:

Rule 10 – “A lawyer must promote and maintain professional standards”.

Rule 10.2 – “A lawyer must not engage in conduct that tends to bring the profession into disrepute”.

50. In considering whether Mr Franks failed to promote and maintain professional standards, the Standards Committee was of the view that, on its face, the Letter is professional and courteous in tone. While the Standards Committee noted as unnecessary and unwise Mr Franks' inclusion in the Letter of the phrases “*ideological group-think*” and “*social contagion*”, the Standards Committee considered that, focussing on the specific language, the use of such terms once only and in the absence of other inflammatory language, does not rise to the level of a breach of rule 10.

51. The Standards Committee further considered that Mr Franks' conduct did not breach rule 10.2. In reaching this conclusion, the Standards Committee considered that, as submitted by Mr Franks, lawyers have a duty to promote and advance unpopular and controversial viewpoints on behalf of their clients to ensure everyone has access to justice.
52. The Standards Committee acknowledged that the Letter generated significant reaction among those who do not agree with the views expressed. However, the Standards Committee considered that it does not follow that Mr Franks' conduct in espousing a controversial view tends in and of itself to bring the profession into disrepute. The Standards Committee acknowledged that when considering whether a lawyer's conduct breached professional obligations, the Lawyers and Conveyancers Disciplinary Tribunal has stated that "*lawyers should not have fewer rights than the average citizen but they do have greater responsibilities in how they exercise them*".⁹
53. The Standards Committee considered that, on balance, and considering that professional standards with respect to the language used in the Letter were maintained, freedom of expression in the circumstances should be preserved.
54. Accordingly, the Standards Committee considered that Mr Franks' conduct did not result in a breach of rules 10 or 10.2.

Integrity, respect and courtesy – rules 10.1 and/or 12

55. The Standards Committee next considered whether Mr Franks' conduct raised concerns under rules 10.1 or 12, which require lawyers acting in a professional capacity to treat others with integrity, respect and courtesy.
56. In considering this issue, the Standards Committee focussed on the specific language of the Letter. The Standards Committee agreed with Mr Franks' submissions that the language used in the Letter was "*robust*" and direct, but that the overall tone was not overtly aggressive or inflammatory when considered from a neutral point of view. The Standards Committee considered that lawyers, in advocating for their clients, often use robust language in their correspondence and that this does not raise professional conduct concerns if the communications are otherwise respectful and courteous.
57. The Standards Committee noted that, as stated previously, it was unwise and unnecessary for Mr Franks to include certain phrases such as "*social contagion*" and "*ideological group-think*" in the Letter; however, the Standards Committee accepted that Mr Franks was genuinely motivated to assist his client in expressing an unpopular view.
58. For these reasons, the Standards Committee was of the view that Mr Franks' conduct did not amount to a breach of rules 10.1 or 12 as the contents of the Letter were not overtly disrespectful

⁹ *Nelson Standards Committee v Grey*, [2023] NZLCDT 33 at [2].

or discourteous and did not devolve into personal attacks of either the recipients or patients who have received gender-affirming care.

59. Although it found no breach of rules 10.1 or 12, the Standards Committee encourages Mr Franks to more carefully consider how his words could be construed in his communications to third parties in the future. The need for such careful consideration is particularly acute if the client's views could be seen as controversial or offensive to members of the public when the recipients of the communication are engaging in lawful conduct.

Bullying and harassment – Rules 10.3(a) and (c)

60. The Standards Committee next considered whether Mr Franks' conduct in drafting and sending the Letter amounted to bullying or harassment in breach of rule 10.3.
61. In considering the definition set forth in the Rules, the Standards Committee was of the view that Mr Franks' conduct did not amount to bullying as the receipt of one letter could not be viewed as repeated and unreasonable behaviour in the absence of evidence of any further contact with the recipients.
62. With respect to whether Mr Franks' conduct amounted to harassment, the Standards Committee was conscious that harassment does not have to be an ongoing pattern of behaviour and can in fact involve one serious single incident. In considering the seriousness of the Letter, particularly how it was received, the Standards Committee noted that the suggestion to the recipients to take legal advice regarding any potential liability led to a direct response from the Chief Legal Officer of Health New Zealand to assure colleagues that there were no legal concerns with clinicians continuing to provide gender-affirming care.
63. The Standards Committee takes the view that any correspondence prompting such a direct response is serious. However, this must be balanced against whether any such incident "*is likely to have a harmful effect on the recipients*". As none of the complainants were direct recipients of the Letter, and noting the swift reassurance from Health New Zealand, the Standards Committee identified no evidence on file of likely harm to the recipients to the extent that would support a finding there had been a breach of this Rule.
64. Having concluded that Mr Franks' conduct did not meet the definition of bullying or harassment as set forth in the Rules, the Standards Committee concluded that there was no breach of rule 10.3.

Misleading or deceptive conduct – Rule 10.9

65. The Standards Committee next considered whether Mr Franks breached rule 10.9 which prohibits a lawyer from engaging in conduct that is, or is likely to be, misleading or deceptive on any aspect of the lawyer's practice.
66. The Standards Committee considered that the Letter was stating a position that, while

controversial and based on disputable evidence, was not inherently wrong in the sense that liability could potentially attach to any medical care delivered without informed consent and/or provided without reasonable care and skill.

67. While recognising the complainants' position that the intent of the Letter was to mislead or deceive the recipients about the current state of the laws surrounding gender-affirming care, the Standards Committee considered that the Letter does not explicitly state that providing such treatment is unlawful. Rather, it asserts that liability could attach if such treatment was not provided with the necessary care. This is not inaccurate, as liability in the appropriate forum can attach to any type of medical care if performed negligently.
68. For all these reasons, the Standards Committee was of the view that Mr Franks' conduct did not breach rule 10.9.

Did Mr Franks' breach of Rule 2.3 amount to unsatisfactory conduct?

69. Noting the view of the Disciplinary Tribunal as outlined at paragraph 52 above around how a lawyer should carefully exercise their fundamental right to freedom of speech and also the fact that a lawyer's primary obligation is to their clients, for the Standards Committee the crux of the matter was not that the Letter included views that may be challenging; rather it was the mechanism through which these views were expressed – a letter from a lawyer which constituted the use of a legal process for an improper purpose.
70. Having determined that Mr Franks (and Franks Ogilvie) breached rule 2.3 (as discussed at paragraphs 19 to 36 above), the Standards Committee next considered whether this breach amounted to unsatisfactory conduct under s 12 of the Act.
71. The Standards Committee has discretion as to whether any rule breaches warrant a formal liability finding of unsatisfactory conduct, noting that not all breaches of the Rules will reach this threshold.¹⁰ In assessing whether such a finding is required, the Standards Committee considered the nature of the conduct and the obligations of the lawyer in terms of rule 2.3.
72. The Standards Committee considered that the obligation for a lawyer to use legal processes only for proper purposes is fundamental to the legal profession and not a Rule that can be accidentally overlooked, or otherwise reasonably misinterpreted as “*low level*” conduct in the nature of a “*technical breach*” on which the Standards Committee may use its discretion to step back from an unsatisfactory conduct finding.¹¹ Further, rule 2.3 recognises the privileges lawyers hold and the potential for significant impact that their actions can have on members of the public, particularly if those privileges are not exercised carefully.
73. While acknowledging that Mr Franks was acting on instructions and advocating for a client who holds a view seen by some as controversial, the Standards Committee did not consider that this

¹⁰ *Keene v LCRO* [2019] NZCA 559.

¹¹ *Wilson v LCRO* [2016] NZHC 2288; *Vosper Realty Limited v The Real Estate Agents Authority* [2017] NZHC 453.

absolved Mr Franks from professional liability in the circumstances. The Standards Committee agreed with Mr Franks that lawyers have an obligation to zealously advocate for their clients, even if (and perhaps particularly when) the views are controversial or unpopular. However, this must always be balanced against a lawyer's professional obligations.

74. The Standards Committee considered that the requirement to only use legal processes for a proper purpose is a cornerstone of the legal profession. By drafting and sending the Letter to the recipients in the specific circumstances, Mr Franks, in the Standards Committee's majority view, so compromised the fundamental nature of this obligation as to warrant a finding of unsatisfactory conduct.

Standards Committee's determination

75. Having determined, by a majority decision, that Mr Franks (and Franks Ogilvie) breached rule 2.3, the Standards Committee determined, pursuant to s 152(2)(b) of the Act, that the conduct constitutes unsatisfactory conduct pursuant to s 12(c) of the Act.

Penalty

76. The Standards Committee next considered the possible penalty orders under s 156 of the Act. The Standards Committee is conscious that all penalty considerations must be tailored to the circumstances of the individual case, balancing the Standards Committee's assessment of the nature and gravity of the conduct with any aggravating or mitigating factors. Further, the Standards Committee noted that any penalty for the purposes of deterrence must be balanced with the well-established primary purpose of professional disciplinary proceedings to provide education to the practitioner and to impose the least punitive penalty orders possible under the circumstances.¹²
77. In the Standards Committee's view, the Letter was carefully and deliberately crafted for the specific purpose of unduly pressuring medical practitioners to cease providing lawful gender-affirming care. The Standards Committee considered that for a lawyer to draft and issue such a Letter is a serious departure from professional expectations requiring a penalty order.
78. The Standards Committee did identify mitigating factors in this case, including that there was no evidence that Mr Franks acted in bad faith. While representing his client in advancing a position that some deem controversial, Mr Franks did not explicitly state that any actual legal action was directly imminent (although this was implied) or otherwise make any statements that were untrue (noting that any cited evidence can be variously interpreted). Further, while the Standards Committee advises caution to Mr Franks in the use of some of the more challenging phrases in the Letter, it did not consider that this had been likely to cause harm to the recipients.
79. While this is a one-off incident and Mr Franks was acting on instructions, the drafting of the Letter was deliberate, for an improper purpose, and has had an impact on the legal profession

¹² *Z v Dental Complaints Assessment Committee* [2008] NZSC 55.

in terms of public interest and a number of complaints. While actions that result in public commentary or complaints are not automatically matters requiring disciplinary sanction, in this case the Standards Committee has found a breach of the Rules and has determined that a censure and fine are required to mark its concern with Mr Franks' conduct.

80. In assessing the level of fine, the Standards Committee was mindful of the fundamental nature of a lawyer's obligations in this area and informed by the *Penalty Guidelines for Standards Committees* for Rule breaches of this type. Noting the one-off nature of the conduct, the totality of the language in the Letter and link to client representation, the Standards Committee did not consider that this matter rose to the level requiring a fine at the higher end of unsatisfactory conduct. Instead, the Standards Committee considered that a fine at the more moderate end of the scale reflected the specifics of this case and so reached the view that a fine of \$3,000 was appropriate.
81. In considering all circumstances, the Standards Committee makes the following orders under section 156 of the Act:
 - a. Censure pursuant to section 156(1)(b) of the Act; and
 - b. A fine of \$3,000.00 pursuant to section 156(1)(i) of the Act.
82. The Standards Committee considered that these penalty orders struck the appropriate balance between the details of this case and the Standards Committee's marking of its concern at the serious nature of the conduct.

Publication and Confidentiality

83. The default position is that Standards Committee decisions remain confidential in accordance with regulation 31 of the Lawyers and Conveyancers Act (Lawyers: Complaints Service and Standards Committees) Regulations 2008 (**Regulations**). Standards Committees can, however, direct such publication of their decisions as considered necessary or desirable in the public interest.
84. The Standards Committee is mindful the Letter, and the fact that complaints have been filed against Mr Franks, is already in the public domain and has generated significant public interest. The Standards Committee also considered that Mr Franks and several complainants have all strongly requested that the determination (including publication of Mr Franks' identity) be made public.
85. The Standards Committee deferred making any direction regarding publication of this determination to seek submissions from the parties on this issue, including submissions on the possibility of publication of the identity of Mr Franks and Franks Ogilvie.
86. Mr Franks and Franks Ogilvie is notified that if the Standards Committee considers that publication of their identity is appropriate, any submissions on publication will also be referred to the New Zealand Law Society Board for the purpose of seeking prior approval for publication

as required by Regulation 30(1).

87. Accordingly, any submissions on publication should address the matters set out in Regulation 30, where appropriate. Regulation 30 provides as follows:

“Publication of Identity

1. *If a Standards Committee makes a censure order pursuant to section 156(1)(b) of the Act, the Standards Committee may, with the prior approval of the Board, direct publication of the identity of the person who is the subject of the censure order.*
2. *When deciding whether to publish the identity of a person who is the subject of a censure order, a Standards Committee and the Board must take into account the public interest and, if appropriate, the impact of publication on the interests and privacy of:*
 - a. *the complainant; and*
 - b. *clients of the censured person; and*
 - c. *relatives of the censured person; and*
 - d. *partners, employers, and associates of the censured person; and*
 - e. *the censured person.”*

88. Mr Franks (and Franks Ogilvie) is further notified that should the Standards Committee ultimately direct publication of their identity, the entire determination (or a summary of the determination) will be published and will be linked to Mr Franks’ and Franks Ogilvie’s name on the Register of Lawyers and the Look Up a Lawyer functions on the New Zealand Law Society website for a period of seven (7) years.

89. The Standards Committee directed that the parties’ submissions on publication be made by **3 November 2025**.

Right to Apply for Review – Legal Complaints Review Officer

You may be able to apply for a review of this determination by the Legal Complaints Review Officer (**LCRO**). On review, the LCRO may:

- a. direct the Standards Committee to reconsider the whole or any part of the matters;
- b. confirm, modify or reverse the determination of the Standards Committee; and/or
- c. exercise any of the powers the Standards Committee could have exercised in relation to these complaints.

Any application for a review of this determination must be lodged with the LCRO within 30 working days after a copy or notice is served on, given to, or otherwise brought to the attention of, the applicant for review. In the absence of proof to the contrary this is presumed to have occurred on the fifth working day after the date of this determination.

An application for review must be on the prescribed form and be accompanied by the prescribed fee of \$67.00. Contact details for the LCRO are:

Postal address:

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

EX 11086, Auckland 1010
(Postal address only, not suitable for courier delivery)

Email: LCRO@justice.govt.nz

For further information about the LCRO and the review process, call 0800 367 6838 (extn 2) or go to: www.justice.govt.nz/tribunals/lawyers-and-conveyancers/lcro/.



Stephanie Harris

Convenor
National Standards Committee (No 1)

Date: 20 October 2025

To: Complainants (as listed in Appendix 1)
[REDACTED] (on behalf of Stephen Franks and Franks Ogilvie)
New Zealand Law Society | Te Kāhui Ture o Aotearoa

APPENDIX 1

File Numbers	Complainants
[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]