PERMANENT SUPPRESSION ORDERS ARE LISTED IN APPENDIX 2 OF THIS DECISION. THESE ORDERS ARE MADE PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006.

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2022] NZLCDT 2
LCDT 022/20

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **NATIONAL STANDARDS COMMITTEE No. 1**
Applicant

AND **JAMES DESMOND K GARDNER-HOPKINS**
Practitioner

CHAIR
Judge D F Clarkson

MEMBERS OF TRIBUNAL
Hon P Heath QC
Ms M Noble
Ms G Phipps
Prof D Scott

HEARING HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF HEARING 9 December 2021

DATE OF DECISION 13 January 2022

COUNSEL
Mr D La Hood and Mr T Bain for the Standards Committee
Mr J Long and Mr R Langdana for the Practitioner

DECISION OF THE TRIBUNAL ON PENALTY

Introduction

[1] In our decision of 24 June 2021 we found the practitioner guilty of six charges of misconduct. Five of these involved intimate non-consensual touching of four different young women, the sixth engaging in consensual sexual activity with a fifth young woman.

[2] This decision considers the proportionate and fair penalty to be imposed, six years after the events in question. Necessarily, it involves an examination of whether Mr Gardner-Hopkins, who we found to have been unfit at that time to engage in practice as a lawyer, has made sufficient changes in himself and his lifestyle to remain on the Roll of Barristers and Solicitors.

[3] It then considers alternatives, including removal temporarily from practice, as a consequence of his actions.

[4] The view we reach is after following the established steps for a professional disciplinary penalty fixing process.

Process

[5] The exercise begins with a consideration with the seriousness of the conduct.[1]

[6] The Tribunal then considers any aggravating or mitigating features, both in relation to the practitioner and to the conduct itself.

[7] We then apply general penalty principles such as deterrence – specific and general; consistency; and the principle of the least restrictive outcome.[2] These principles are applied by the Tribunal having regard to the purposes of the legislation.[3]

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[1] *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] 3 NZLR 103.
[2] *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC).
[3] Lawyers and Conveyancers Act 2006 (LCA) s 3.

[8] Finally, we note that in a case where strike-off or suspension is considered, the purposes of those penalties are reviewed and applied.[4]

1. Seriousness

[9] The seriousness of the facts as found by us was not disputed. They were acknowledged to be serious misconduct. There were six incidents of exploitative sexual contact with five different women which took place at two work events. The background, namely a practitioner who conceded that, for reasons which we referred to in our liability decision, he had set out to get drunk, at least on the first of those occasions, is one of the features which must be carefully considered.

[10] Where counsel differ is in the comparison of the level of seriousness of this case and the other two cases of sexual misconduct previously considered by the Tribunal, both of which involved clients rather than staff members. Those decisions are *Daniels*[5] and *Horsley*[6] respectively. We discuss this comparison further under the heading of consistency.

[11] It is submitted for the Standards Committee that for conduct at this level, and having found "unfitness" at the time, the starting point for penalty must be that of strike-off. We accept that submission.

2. Aggravating Features

[12] In relation to the offending itself the aggravating features are the number of repetitions on the first occasion – five instances of indecent touching in relation to four different women.

[13] A further aggravating feature is the power imbalance, particularly in relation to the second incident which, albeit consensual, was a more serious and protracted one involving the most junior member [redacted].

[14] In our liability decision, we outlined the position of these young women, who considered their summer clerkship to be a three month-long job interview, and the

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[4] *Bolton v Law Society* [1994] 2 All ER 492 (CA).
[5] See n 2 above.
[6] *Canterbury Westlands Standards Committee v Horsley* [2014] NZLCDT 47.

vulnerable position that placed them in, in relation to a partner in the firm who they believed held a position of power over them in the firm and in their future career prospects.

[15] The "incalculable impact" on the women victimised was emphasised by Mr La Hood. As one of them explained during the liability hearing, the fact that they were not safe from a partner, led to a feeling that they could not be safe anywhere in the workplace. The effect on these young women's careers was far reaching. Some left the profession altogether, whilst others changed to different areas of the law.

[16] Counsel for the Standards Committee also drew our attention to the finding that this type of conduct was not isolated. After referring to the Tribunal's finding that Mr Gardner-Hopkins had a "*pattern of failing to observe boundaries with females after he had consumed alcohol*", Mr La Hood noted that there was evidence that his behaviour was not dependent on the consumption of alcohol. Reference was made to the evidence of other women employees who had given evidence of a sexualised culture within the practitioner's team.

[17] Mr Gardner-Hopkins himself acknowledged, at the penalty hearing, that he now accepted that the laddish culture, inappropriate comments, that he "*led and fostered was inappropriate*". Mr Gardner-Hopkins stated that he had worked on this and does not behave like that now. He said that he would never again manage a team like that "…*almost like a social club*". He also produced a number of references from men and women alike attesting to his respectful and polite behaviour around women over more recent years.

[18] While we will take account of that level of insight and modified behaviour under the heading of mitigation, we do have to accept that, at the time of the offending, this conduct could not be considered entirely out of character.

[19] There are no aggravating features relating to the practitioner himself other than his intent to get drunk on the night of the firm's Christmas party, which we have already taken account of under the heading of seriousness.

[20] Mr Gardner-Hopkins has no previous disciplinary findings against him.

3. Mitigating Features

A. Consequences already incurred

[21] We take account of the very significant consequences which arose for Mr Gardner-Hopkins, particularly out of the sixth incident (in respect of which he initially misled his partners). We make no further comment about that at this point because it was covered in the liability decision. It has to be acknowledged that removal from a prestigious and lucrative partnership is a very significant consequence for any practitioner. Mr Gardner-Hopkins had described himself as "a Russell McVeagh lifer", and as a consequence of his conduct has lost that status and future, which was very important to him.

[22] As well as a significant drop in income, thus a financial consequence, we accept that there has been a significant reputational and emotional toll on the practitioner. The enormous public interest and publicity surrounding this case, for over three years, has meant that, despite suppression orders, Mr Gardner-Hopkins has had the ignominy of being the "face of" sexual harassment in the legal profession. He acknowledges that he only has himself to blame for that, but has lost many professional associations, clients and been "uninvited" from professional events. He has, it would seem almost entirely lost the collegial support of his profession, over a long period. Over COVID-19 lockdown periods, his professional isolation has increased.

[23] We do accept that the law is a stressful and challenging profession at the best of times, and to practise without support of colleagues is a high price to pay. We also noted in our liability decision that the practitioner lost the mentorship of senior colleagues due to their taking positions elsewhere. Isolation poses a risk to a lawyer who is learning good habits and connecting with a mentor and seeking more collegial support will need to be a priority for him in future. Later in this decision we propose measures that could be put in place to ensure he has good support and a reconnection with the profession. In this way, we consider that his risk of repeating his actions will be reduced, and the public can be confident that there are the means to monitor his rehabilitation.

[24] Counsel for Mr Gardner-Hopkins referred to the significance of what has been a hugely stressful, public hearing for this practitioner, compared with other lawyers who have behaved equally badly without the public shaming and cost of a full disciplinary hearing. Later in our decision, under "Consistency" we discuss one of those cases.

[25] While such inconsistency in disciplinary response will naturally be felt by the practitioner, we cannot allow the natural sympathy we might have for his position to influence our determination of a proportionate penalty in this case, and a proper setting of professional standards.

B. Changes made/future risk

[26] We record that, during the penalty hearing, Mr Gardner-Hopkins accepted the Tribunal's findings and directly apologised to the victims for the conduct as found.

[27] Mr Gardner-Hopkins directly, and through his counsel, submits that his life and the way he conducts himself bears no resemblance in 2021 to his younger self's conduct in the later stages of 2015. He is now a barrister practising alone. His marriage failed, following the revelations of his conduct in relation to the firm party incident, which emerged in 2018. He has re-partnered and now has a young baby and he says necessarily his priorities are completely different and he has achieved a greater work/life balance. We accept his evidence that he has taken the mantle of parenthood seriously, and presently has significant daily responsibilities for his baby daughter. That, in itself, is a protective factor in our view.

[28] Importantly, he says, and his therapist Dr Freeman-Brown, confirms[7] that he has significantly reduced his alcohol intake to meet the Ministry of Health, healthy drinking guidelines.[8]

[29] We consider this to be a necessary adjustment in his life and one which will need to be monitored at least in the short term.

[30] We also consider that, from Mr Gardner-Hopkins' own most recent evidence at the penalty hearing, and from the evidence of Dr Freeman-Brown about changes in

[7] Although only on Mr Gardner-Hopkins self-report.
[8] This is also confirmed in the references from professional associates provided to us.

his attitude towards the offending from about June this year, that the disciplinary hearing process has had a strong effect on him, particularly in coming to understand the enormous impact of his actions upon the complainants.

[31] Dr Freeman-Brown, who has worked with Mr Gardner-Hopkins as a psychologist for approximately six months following the revelation of the conduct and the beginning of the Law Society investigation in 2018, and then for the last 12 months while these proceedings have been on foot, described a man who was somewhat avoidant of hard issues and, when she first spoke with him in 2018, had appeared to minimise his responsibility for the events which are under scrutiny. He was not strongly motivated at that time to address the issues he had around alcohol use.

[32] However, by this year Dr Freeman-Brown considered that the practitioner had achieved what she described as "*early remission of problematic drinking*" and had come to accept that he was the "*master of his own misfortune*". She described to us the psychological factors that she considered had led to his past conduct, and she opined that for Mr Gardner-Hopkins, going through a disciplinary hearing was important in seeing the impact of that conduct. There was to be a planned transition to an Auckland psychologist to continue psychological support, face to face, and monitoring of his lowered alcohol use.

[33] All of these relatively recent changes speak well of Mr Gardner-Hopkins but they must be viewed in the context that they have occurred, that is within the threat of losing his right to practice, and that they would appear to have occurred very belatedly, and recently[9].

[34] Dr Freeman-Brown concludes her report by the observation that there is "*still considerable work to be done to address the practitioner's deeper core psychological issues*".

[35] It is acknowledged by Mr Gardner-Hopkins that further therapeutic interventions are required, and that will involve professional support for some time into the future, perhaps up to two years.

[9] Although we accept his lifestyle changes and increased family responsibilities occurred earlier, at least two years ago.

[36] He asserts, however, that in the meantime he is not a risk to anyone and has produced evidence from Ms Shayne Mathieson in support of that proposition. Ms Mathieson is a professional who works specifically in the area of workplace culture and working relationships. She coaches people who are accused of inappropriate or abrasive behaviour in workplaces and has approximately 30 years of experience in this area.

[37] While we accept the Standards Committee submission that she is not, for example, a forensic psychiatrist who may be qualified to make specific risk assessments about future sexual misconduct,[10] we found her evidence helpful, recognising she is a professional who specialises in and has significant experience in this field.

[38] We accept his counsel's submission that "...the Practitioner has implemented strategies to ensure he does not put himself into situations where his behaviour may depart from the standards he expects from himself". A factor that was significantly unhelpful to his case was that the nature of his engagement in counselling was consistent with a continued strategy of avoidance rather than facing his conduct and actively working on his deeper psychological issues.

[39] In summary, we consider that Mr Gardner-Hopkins has, albeit belatedly, and with a little less enthusiasm than we might have wanted to see, taken positive steps to reflect, face up to and deal with the factors which led him to this point.

[40] We also record that no further complaints have been received about Mr Gardner-Hopkins' conduct over the past six years while this matter has been pending.

C. Financial position

[41] It is submitted by Mr Long, on behalf of the practitioner, that his client's financial position is parlous and the inability to practise law will lead to his "financial ruin". This notion is resisted by the Standards Committee who point to the relatively high living expenses per month claimed by Mr Gardner-Hopkins and his family.

[10] However fraught such assessments might be in any event.

[42] At the hearing, the practitioner updated the Tribunal about his large debt to the Inland Revenue Department which he had considerably reduced. This is to his credit. It is clear from his ongoing tax liabilities that he still has derived a high income over recent years and while he says that he lives much more modestly than he did when a partner in Russell McVeagh (for instance he no longer owns his own home, but rents a two-bedroom one), we consider that his plight is not as dire as suggested.

[43] In evidence Mr Gardner-Hopkins confirmed that there were professional roles within the Resource Management area which he could undertake without the need for a practising certificate. He had also made preliminary inquiries with a recruitment consultant. It would be surprising if a man of his talents could not obtain gainful employment were he to be prohibited from practising law. We acknowledge that he is fully responsible for the support of his partner and young child.

[44] Mr Gardner-Hopkins concedes that his past financial management has been poor, that he and his former wife lived beyond their means and further, that his generosity in the relationship property division had left him in his present position, with debts rather than assets. That is unfortunate, but cannot be a significant factor in the overall assessment.

[45] Further, the cases make it clear that a practitioner's personal circumstances, whatever sympathy there may be for those, cannot be the defining feature in a penalty decision, in a legislative framework designed for protective purposes.[11]

General Penalty Principles

[46] We remind ourselves, as did counsel, that the purposes of disciplinary processes are protective not punitive. As submitted by Mr La Hood, the point is not punishment, but so that all will understand that this conduct will not be tolerated.

A. Protective not punitive

[47] There are two limbs to the protective principle,[12] firstly there is the general protection of the public as consumers of legal services but secondly, there is the principle of the protection of the reputation of the profession. As noted in many

[11] *A v National Standards Committee* [2020] NZHC 563 at [95]-[96].
[12] Enunciated in s 3 LCA.

cases, the reputation of the profession is its most valuable asset. There is no doubt that this practitioner has caused the reputation of his profession considerable harm.

B. Principle of deterrence

[48] Mr Long encapsulated this principle, and included the previous one in the following terms:

> "General deterrence goes to the need to protect the reputation of the legal profession in the eyes of the public. Specific deterrence goes to the need to protect individuals from the risk that a practitioner reoffends."

[49] We have referred indirectly to specific deterrence above, when considering the mitigating feature of steps taken to effect change in himself by the practitioner already.

[50] Mr La Hood urges us to weigh heavily the principle of general deterrence, incorporating as it does in professional disciplinary matters, the concept of denunciation. He submitted:

> "Denunciation is necessary not just to maintain the public's confidence in the profession, but to reinforce to current and aspiring lawyers that sexual assault and/or sexual exploitation will not be tolerated – that there is real accountability for such misbehaviour, and that the effect on victims will not be minimised."

[51] For this reason, and because the Tribunal found at the time of the offending it regarded Mr Gardner-Hopkins as not a fit and proper person to be a lawyer, we have accepted that strike-off must be the starting point in the Tribunal's penalty considerations. Strike-off would certainly send the strongest deterrent message to fellow practitioners. However, there are other principles to be weighed against that.

[52] Mr Long submitted that to a considerable extent general deterrence had been dealt with by the profession itself, in introducing the new set of rules to the Code of Conduct and Client Care. These rules clearly define conduct which could be classed as harassment and placed positive reporting obligations upon all practitioners. Mr Long points out that this case was the catalyst for the promulgation of such rules and the thorough reports which preceded the rule change.[13]

[13] The reports are cited in our Liability Decision *National Standards Committee No. 1 v Gardner-Hopkins* [2021] NZLCDT 21.

[53] While Mr Long is correct in his submission that this case may have had an impact on practitioners' awareness of this area of misconduct, that cannot be a reason for this Tribunal paying less attention to the principle of general deterrence in imposing penalty in the present matter.

C. The principle of consistency in imposition of penalty

[54] It is accepted by both counsel that every case must be assessed on its merits and given the hugely divergent range of contexts in which professional misconduct comes to be examined, it is very difficult to find cases which specifically mirror each other. The two other cases of sexual misconduct which have been considered by this Tribunal (and in one case on appeal by a Full Bench of the High Court) are *Daniels*[14] and *Horsley*.[15] Each of those cases resulted in a three-year suspension of the practitioner.

[55] Mr La Hood submitted that the present case was more serious than each of them, so that if strike-off were not to be the outcome of this case, then a very lengthy period of suspension ought to be imposed.

[56] Mr La Hood points to the fact that there were six incidents in the present case, whereas each of the two former cases involved one victim only.

[57] Mr Long points to the fact that the two earlier cases both involved an egregious breach of a fiduciary duty to a client. In Mr Daniels case, he had sexual intercourse with a client who was vulnerable, impoverished, a victim of family violence and who he represented in matters concerning the custody of her children as well as criminal charges.

[58] In the case of Mr Horsley, he had initially acted for the client with whom he formed a sexual relationship, when she was only 16 and in the Youth Court (although the relationship started later). She was also a vulnerable young woman with many life difficulties. There was also the aggravating factor of Mr Horsley having initially lied to the Standards Committee and misled his colleagues about the relationship.

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[14] See n 2 above.
[15] See n 6 above.

[59] Mr Long points to the fact that both of these cases involved a context of lengthy relationships with dependent and vulnerable clients and therefore ought to be viewed as more serious than the present case, despite the acknowledged seriousness of this misconduct.

[60] We accept Mr Long's assessment and submission and consider that despite the very serious nature of the misconduct, which we have found, it does fall at a level somewhat below that of *Horsley* or *Daniels*. One significant factor was that the conduct of the practitioner occurred on two occasions within days of each other and was in respect of each victim shorter in duration.

[61] We also note that from the practitioner's perspective, these proceedings have occurred against the background of other practitioners, who have conducted themselves in similarly reprehensible ways, having been dealt with at Standards Committee level, with much lesser consequences and away from the public eye. The particular case which was put to us,[16] a Standards Committee decision which resulted in a lawyer, who had behaved in a similar fashion to Mr Gardner-Hopkins, being fined $12,500 with a finding of Unsatisfactory Conduct, departs considerably from our view of the gravity of such conduct, and is in our view plainly wrong. The Tribunal is not bound by these lesser penalties, but in seeking to achieve overall justice, we do not entirely ignore them.

D. The purposes of strike-off and suspension

[62] We set out the frequently quoted judgment from the leading case of *Bolton v Law Society*:[17]

> "In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth."

[16] ZTUVK, a Standards Committee decision of 25 October 2018.
[17] *Bolton v Law Society* [1994] 2 All ER 492 (CA).

[63] In the past we have referred to suspension as offering the opportunity for reflection and rehabilitation of a practitioner. We consider that is an apt and important purpose in the present case. Although Mr Gardner-Hopkins engaged with a psychologist in 2018 that contact was relatively short and for specific purposes at that time.

[64] The more recently acquired insight by the practitioner (following the disciplinary hearing in May 2021) and his acceptance of the Tribunal's findings, has not yet resulted in him engaging and completing the work with a psychologist.[18] Indeed, at the time of the hearing he had not initiated a therapeutic relationship as recommended. This said, we recognise the impact of COVID-19 lockdowns and the lack of therapeutic services available. We consider that a period of suspension can be well utilised by the practitioner to complete the psychological work which he has accepted he needs.

[65] The *Daniels* decision noted at [34]:[19]

> "… Whereas breaches of professional standards may reflect upon the wider group of the whole profession, and will arise if the public should see a sanction as inadequate to reflect the gravity of the proven conduct. The public are entitled to scrutinise the manner in which a profession disciplines its members, because it is the profession with which the public must have confidence if it is to properly provide the necessary service. To maintain public confidence in the profession members of the public need to have a general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards."

[66] This statement was made in the context that anything short of suspension would not properly have reflected the misconduct found against Mr Daniels. We consider that the comments are equally apt in this matter.

[67] Although Mr Long urged us to impose a penalty short of suspension, noting that a censure remains on the practitioner's record and is taken as a serious matter, we consider that nothing short of a significant period of suspension will suffice to mark the seriousness of the misconduct, the harm to victims in this matter and the considerable work still required in therapy. Having said that, we move to consider the next principle of penalty. We also note the importance of considering

[18] With an almost two-year gap until he began seeing his current psychologist again in late 2020.
[19] See n 2 above.

rehabilitation as a proper rationale for suspension. Four areas of risk have been identified that contribute to the conduct found:

1. Problematic alcohol consumption practices.

2. Poor understanding of professional boundaries.

3. Loss of mentorship.

4. Failure to prioritise therapeutic needs and personal support.

[68] At the end of any period of suspension, it will be for Mr Gardner-Hopkins to satisfy the Practice Approval Committee (PAC) that he has undertaken appropriate treatment/therapeutic interventions to mitigate any risks that might remain from the four areas of concern that we have identified. In our view, without such evidence, it is extremely doubtful that a practising certificate would be reissued.

[69] We have given considerable thought to whether it is appropriate for us to make any detailed comments on the nature of the issues that the PAC may wish to consider. On balance, we have concluded that it is in Mr Gardner-Hopkins' best interests for us to suggest a potential pathway for him to achieve reintegration into the profession. It is clear to us that his abilities as a lawyer generally, and as an advocate in particular, are such that it will be beneficial to the public if he were readmitted to the profession in a rehabilitated state as soon as practicable after the period of suspension expires.

[70] We emphasise that we cannot (and do not attempt to) bind the PAC in exercising its functions. It will need to make decisions based on the circumstances disclosed to it at the time of any application. However, as the evidence presently stands, there are a number of obvious points that will require consideration. In Appendix 1 to this decision, we set out the types of conditions that might be imposed, or undertakings sought, to ensure the public is protected from the risk of similar behaviour being repeated if Mr Gardner-Hopkins were to receive a practising certificate. The points that we cover are intended to address the four areas of risk that we have already identified.

E. Principle of the least restrictive outcome

[71] This was a principle which was also stated in the *Daniels* decision.[20] It is a principle that urges us to pull back from strike-off or suspension for the maximum term, if the purposes of the penalty (namely protection of the public and the profession's reputation, general deterrence and denunciation as primary factors), can be achieved short of these outcomes. We have weighed this principle and consider that, having regard to the lapse in time,[21] and the cases discussed above, we can stop short of either strike-off or the maximum suspension period.[22]

Decision

[72] This practitioner has an unblemished disciplinary record prior to this time. Taking account of the initial steps that he has personally taken to address the psychological factors discussed during the hearing and his misuse of alcohol, the professional consequences already suffered by him and the consistency principle, in relation to earlier cases of sexual misconduct, we consider that a suspension of two years is a proportionate and proper penalty.

[73] We also note that Mr Gardner-Hopkins will face considerable financial penalties as a result of bearing the costs of these proceedings which have been lengthy and complicated and that he will do so, in the context of not being able to practice as a lawyer.

[74] The practitioner initially asked for a three months deferral of any suspension imposed in order that he could complete obligations to clients, some of which had already been delayed because of the COVID-19 lockdown consequences.

[75] Although we are not prepared to provide such a long lead-in, we note that Mr Gardner-Hopkins is representing a charitable trust in the High Court on what we understand to be a pro bono basis on 2 and 3 February 2022. We consider that those clients would be seriously disadvantaged and likely unable to obtain alternative

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[20] See n 2 above.
[21] While investigations seem to have started in 2018, the charges were not filed with the Tribunal until November 2020, we are unable to explain the delays involved earlier, but the Auckland lockdowns have delayed by some months the ability to hold a penalty hearing.
[22] We must also give weight to the principle that maximum penalties must be reserved for the most serious of cases.

representation (particularly on a pro bono basis) were he unable to represent them. For that reason we propose to commence the suspension from 7 February 2022.

Costs

[76] The practitioner, quite properly, did not strongly resist bearing the costs of this matter. There was a five-day hearing because he chose to defend the matter and some interlocutory rulings were taken on appeal. The Standards Committee has not included costs for those appeals where they have been unsuccessful. The Standard Committee's costs claimed are $64,630.15. These are to be paid by the practitioner. In addition, there will be an order that the s 257 costs which are ordered against the New Zealand Law Society are also to be met by the practitioner. The New Zealand Law Society will clearly need to consider an arrangement for payment over a period of time in relation to these costs.

Censure

> Mr Gardner-Hopkins, the Tribunal has found you guilty of six charges of professional misconduct relating to your sexual harassment of five young women.
>
> Your conduct has brought shame on yourself and disrepute to your profession.
>
> You are censured accordingly.
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> Your recent acceptance and apology go some way to restoring confidence in you as a member of the profession. It will be for you to continue to monitor your behaviour and rehabilitate yourself with your colleagues. You have acknowledged the work to be done, but have expressed confidence in the changes made and to be made.
>
> You will undoubtedly be aware of how close you came to losing your career entirely. Any further misconduct would almost certainly lead to your removal from the legal profession.

This formal censure to mark your conduct will remain on your disciplinary record.

Orders

1. There will be an order under s 242(1)(e) and s 244 that the practitioner be suspended from practice for two years from 7 February 2022.

2. A censure is delivered to the practitioner in the terms set out above.

3. The practitioner is to meet the costs of the Standards Committee in the sum of $64,630.15, pursuant to s 249.

4. The New Zealand Law Society is to pay the costs of the Tribunal pursuant to s 257 in the sum of $43,378.00.

5. The practitioner is to reimburse the New Zealand Law Society for the full s 257 costs.

6. We confirm the Interim suppression orders made at the end of the Penalty hearing as final orders, this is set out as Appendix 2.

DATED at AUCKLAND this 13th day of January 2022

Judge D F Clarkson
Chair

Appendix 1

Behavioural concerns for consideration by the PAC

Mr Gardner-Hopkins has been found guilty of six charges of professional misconduct relating to intimate non-consensual touching of four young women and consensual sexual activity with a fifth young woman. Four areas of risk have been identified that contribute to this conduct:

1. Problematic alcohol consumption practices.

2. Poor understanding of professional boundaries.

3. Loss of mentorship.

4. Failure to prioritise therapeutic needs and personal support.

The later factor is now likely to be exacerbated due Mr Gardner-Hopkins reportedly losing membership of professional associations and collegial networks as a result of the conduct leading to the bringing of these charges. Professional isolation is a recognised risk factor in professional practice.

For the purposes of these suggestions the following terms mean:

Information	A copy of the Tribunal decisions on liability and penalty, these conditions and the evidence of Dr Freeman-Brown and Ms Shayne Matheson.
Mentor	A lawyer approved by the Law Society who is a senior member of the legal profession and someone in whom he can confide and receive support and guidance. That person is to be regularly on site at the place of work of Mr Gardner-Hopkins.

Therapist	A registered clinical psychologist and or psychiatrist with expertise in: (a) Addressing adherence to moderate or nil alcohol consumption and problematic drinking practices. (b) Awareness of and adherence to professional boundaries. (c) Assessing and addressing risk to public or personal safety.

To assist the PAC, Mr Gardner-Hopkins might wish:

(a) To secure a mentor and therapist prior to any application to the PAC, and to provide each of them with such information as they may need to assist him in a meaningful way to prepare an application.

(b) To consider proposing ways in which the mentor and therapist can provide continuing assistance after his return to practice.

(c) To ensure that full reports are available to the PAC from the therapist addressing the time at which he commenced working with him or her, the agreed treatment plan and his compliance with that, together with comments from the therapist explaining how the four risks we have identified have been mitigated during the period of suspension.

(d) To inform the PAC of the extent to which it would be desirable for the therapist to report to the Law Society on further interactions, after the date on which a practising certificate is reissued.

(e) To advise the PAC of the desirability of continuing work with a mentor for a period of time after resuming practice as a lawyer and the frequency that any such meetings should be held. This should include the desirability of the mentor assisting reintegration into the profession

generally, for example by attending professional functions with him for a specified period of time.

We would envisage that Mr Gardner-Hopkins will be released from post-commencement conditions after six months, provided the therapist and the mentor provide satisfactory reports to the Law Society to support removal of the conditions. To enable the Law Society to do that it is likely to be involved in monitoring compliance generally.

We would expect Mr Gardner-Hopkins to meet all the expenses associated with the compliance and monitoring of conditions of the type described.

Appendix 2

PERMANENT SUPPRESSION ORDERS

The Tribunal has made the following permanent suppression orders, pursuant to s 240 of the Lawyers and Conveyancers Act 2006:

1. The evidence of Dr Freeman-Brown is permanently suppressed.

2. The evidence that Mr Gardner-Hopkins gave about his partner's medical problems and his partner's name are permanently suppressed.

3. The personal details Mr Gardner-Hopkins shared about his father's death are permanently suppressed.

4. The names and identifying details of the complainants (including K) are permanently suppressed.

5. All previous orders made for the protection of the complainants, and the witnesses who gave oral evidence, are made permanent.

6. The oral evidence which the practitioner gave about the incident with K (charge 6) is permanently suppressed.