IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV 2012-409-000079
[2013] NZHC 349

	BETWEEN	THERESE ANNE SISSON Appellant
	AND	THE STANDARDS COMMITTEE (2) OF THE CANTERBURY-WESTLAND BRANCH OF THE NEW ZEALAND LAW SOCIETY Respondent

Hearing: 4 February 2013

Court: Panckhurst J
Chisholm J
Whata J

Counsel: R A Peters for Appellant
G H Nation for Respondent

Judgment: 28 February 2013

JUDGMENT OF FULL COURT

A Time is extended and leave to appeal against penalty granted.

B The appeal is dismissed.

C Costs are reserved.

Introduction

[1] On 24 November 2011 the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) made an order that the appellant be struck off the roll of practitioners as it was satisfied that she was not a fit and proper person to practise as a barrister or solicitor. This is an appeal against the striking off order.

Other aspects of the decision, namely that the appellant pay compensation to her former client and a contribution towards the Law Society's costs, were not challenged.

[2] There is a considerable history to the appeal which is outlined in bare detail below. A consequence of that history is that the appellant requires leave to appeal because her penalty appeal is based on a notice of appeal filed quite recently.

The strike off decision

[3] Following a complaint to a Standards Committee of the Canterbury-Westland Branch of the New Zealand Law Society two charges of professional misconduct were laid before the Tribunal. The essence of the first was that in the context of acting for a client, Ms H, in a de facto relationship property claim the appellant 'deducted from monies held for Ms H the sum of $17,454.80 in payment of (legal) costs without seeking or receiving authority to do so from the Legal Services Agency'. The second charge alleged that the appellant deducted the legal costs without Ms H's authority and when the costs were covered by a grant of legal aid, this being to her personal advantage but the client's disadvantage; and that later she misled a Standards Committee by saying that she and Ms H discussed and agreed upon a private retainer in lieu of the legal aid assignment.

[4] The Tribunal heard the misconduct charges on 17-18 May 2011. The appellant represented herself. On 5 July 2011 the Tribunal released a decision in which it found both charges to be proved to the requisite standard. We shall refer to the reasons for these findings shortly. The Tribunal required that submissions on penalty be filed in anticipation of a penalty hearing.

[5] This eventuated on 24 November 2011. At the end of the hearing, Judge Clarkson on behalf of the Tribunal announced its decision that the appellant was struck off, with reasons for that decision to be provided in writing. These were released on 7 December 2011 and we shall refer to them in a moment.

Appeal delay

[6] The appellant filed separate appeals against the misconduct and penalty decisions in August and December 2011, respectively. The filing fee in relation to the former was paid by cheque, but the cheque was dishonoured. Subsequently a deputy registrar issued a notice that the appeal was deemed to be abandoned when payment of the fee had not eventuated. An application for waiver of the filing fee was foreshadowed in relation to penalty appeal, but never filed. A notice purporting to confirm that this appeal had likewise been 'adjudged' to be abandoned was issued in April 2012.

[7] The High Court Fees Regulations 2001 govern payment of filing fees. They do not contain a deemed abandonment provision. The notices to that effect were nullities. The respective files should have been referred to a Judge for judicial direction.

[8] In the event both appeals were called before Chisholm J on 13 June 2012. He made directions to enable applications for leave to appeal out of time, or for reinstatement of the previous notices of appeal, to be heard. In August and October 2012 the time allowed to take steps was enlarged, on the second occasion subject to an unless order with a 16 November 2012 deadline. Such deadline was further enlarged to 30 November. Following ongoing default Chisholm J directed that a conference with counsel be convened. This took place on 18 December 2012, but in the meantime Mr Peters filed a fresh notice of appeal and an application for leave to appeal out of time. A covering letter dated 3 December 2012 recorded that the intended appeal was restricted to "sentence" – in particular the striking off order.

[9] However, by the time of the conference on 18 December 2012 the appellant had instructed counsel that she wished to pursue appeals against both the misconduct findings and penalty (as well as a separate appeal against another decision of the Tribunal on an unrelated matter, which we shall need to mention later).

[10] Chisholm J, in light of the unless order, struck out all applications save for the leave application and its associated notice of appeal on the basis that these were

confined to the appeal against sentence. These became the subject of further directions and were set down for a full Court hearing on 4 February 2013. We shall return to the leave application towards the end of the judgment.

[11] On 14 January 2013 the appellant filed an appeal against Chisholm J's strike out decision. Pending a decision of the Court of Appeal, she sought an adjournment of the 4 February 2013 hearing. Whata J heard the adjournment application on 29 January. It was declined.

Approach to the appeal

[12] The appellant's conduct which was the subject of complaint occurred between late 2004 and July 2008. A complaint was made on 28 August 2008, a few weeks after the Lawyers and Conveyancers Act 2006 came into force. Pursuant to s 351 of that Act the complaint was to be dealt with under the new Act, but 'any penalty imposed in respect of that conduct must be a penalty that could have been imposed ... at the time when that conduct occurred': s 352(1).

[13] Section 112(2) of the Law Practitioners Act 1982 prescribed the available penalties, including a striking off, suspension for up to three years, a prohibition upon the practitioner's ability to practice on her own account, a financial penalty and a censure. An order striking a practitioner's name off the roll could only be made if the Tribunal found a charge against the practitioner proved and was of the opinion that, by reason of that conduct, the practitioner was not a fit and proper person to practice as a barrister or solicitor: s 113(1).

[14] Recent cases show a divergence of view concerning the correct appellate approach in disciplinary cases. Under both the Law Practitioners Act 1982 and the Lawyers and Conveyancers Act 2006, appeals against any order or decision of a disciplinary tribunal are by way of rehearing; s 118(2) and s 253(3)(a), respectively. In *Bhanabhai v Auckland District Law Society*,[1] a full Court (Priestley, Heath and Winkelmann JJ) favoured a divided approach whereby professional misconduct

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[1] *Bhanabhai v Auckland District Law Society* [2009] NZAR 282 (HC).

findings were to be considered afresh, but penalty decisions by reference to the principles that govern the exercise of a discretion. In *Parlane v New Zealand Law Society (Waikato Bay of Plenty Standards Committee (2))*,[2] Cooper J concluded that penalty decisions involved an evaluative exercise, were not discretionary in nature, and that the appellate Court should, therefore, form its own view. But, in *Auckland Standards Committee (1) v Fendall*,[3] Wylie J preferred the approach adopted in *Bhanabhai*. Most recently, in *Hart v Auckland Standards Committee (1) of New Zealand Law Society*,[4] a full Court (Winkelmann, Lang JJ) concluded that, credibility determinations and matters involving technical expertise aside, an appellate Court must come to its own view on the merits of misconduct and penalty decisions without deference to the views of the Tribunal.

[15] This division of opinion flows from the difficulty in applying *Austin, Nichols & Cox Inc v Stichting Lodestar*[5] in the present context. We think it unnecessary to record the reasons advanced in support of the various viewpoints. We prefer the view that both misconduct findings, and the resulting penalty decision, require an assessment of fact and degree and entail a value judgment; such that it is incumbent upon the appellate Court to reach its own view on both aspects. We found the decision of the Supreme Court in *Kacem v Bashir*[6] helpful in arriving at this conclusion.

The factual background

[16] The appellant was retained by Ms H in December 2004 in relation to the relationship property claim. At this time, Ms H was living apart from her former de facto partner in rented accommodation in Christchurch whereas the former home was situated in Invercargill.

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2 *Parlane v New Zealand Law Society (Waikato Bay of Plenty Standards Committee (2))* HC Hamilton CIV 2010-419-1209, 20 December 2010.

3 *Auckland Standards Committee (1) v Fendall* [2012] NZHC 1825.

4 *Hart v Auckland Standards Committee (1) of New Zealand Law Society* [2013] NZHC 83.

5 *Austin, Nichols and Cox Inc v Stichting Lodestar* [2008] 2 NZLR 141 (SC).

6 *Kacem v Bashir* [2011] 2 NZLR 1 (SC) at [32] per Tipping J, for himself, and for Blanchard and McGrath JJ.

[17] An application for legal aid was made to the Legal Services Agency (LSA). On 1 February 2006 the LSA advised that legal aid was granted in the amount of $1,730 in relation to the first steps in the proceeding. Relationship property proceedings were issued in the High Court. In early 2007 the appellant rendered invoices for her services to date, and also sought additional funding. This included funding for a settlement conference scheduled to take place on 27 June 2007. The settlement conference occupied half a day, but did not result in a settlement. A sum of $60,000 was offered to Ms H in settlement of her claim, but this was considered less than her true entitlement.

[18] The day after the settlement conference the appellant received a letter from the LSA confirming that the grant of legal aid remained extant, there having earlier been a threat of withdrawal for failure to provide relevant information. The appellant wrote to the LSA advising that a settlement had not eventuated and the case was proceeding to a hearing with a two day estimate.

[19] The appellant maintained that in the period from late June 2007 to 2 August 2007 she discussed a change to a private retainer with Ms H. Ms H denied throughout the complaint process that any discussion concerning her relinquishing legal aid had occurred. Her recollection was that the level of fees incurred was discussed from time to time, but not a move to a private retainer.

[20] On 4 December 2007 the appellant applied to the High Court for waiver of a setting down and hearing fee of $6,500. The waiver was sought on the basis of the client's status as a beneficiary and supported by a declaration taken by the appellant confirming that Ms H had a grant of legal aid. In addition, a covering letter dated 4 December 2007 from the appellant enclosed a letter from the LSA as further confirmation of the legal aid grant.

[21] A hearing was obtained in the Invercargill High Court commencing on 4 February 2008. Immediately prior to the commencement of the hearing the appellant and Ms H discussed an acceptable settlement figure. A figure of $90,000 was mentioned, but Ms H instructed the appellant to seek $105,000 in final settlement. Minutes before the commencement of the hearing the appellant accepted

a final offer of $90,000 on behalf of her client. Ms H somewhat reluctantly accepted this amount in light of advice that a full hearing would have incurred added costs of about $6,000.

[22] On 28 February 2008 $89,466.50 was paid into the appellant's trust account in settlement of Ms H's claim. Ms H said that she and the appellant discussed the final steps in the process. The appellant said that she would have to prepare a final bill and hold back a sum sufficient to meet a LSA charge. Ms H inquired whether the charge could be written off, but the appellant said that a waiver was most unlikely given the recovery of $90,000. Ms H then inquired about the level of legal fees, and the appellant said around $15,000, but that was 'a bit steep' and she would try to reduce it. A figure of $20,000 was to be held back while payment of legal costs and expenses was finalised. However, only $60,000 was paid into Ms H's account.

[23] This precipitated a deterioration in the solicitor and client relationship. Ms H made a number of inquiries of the appellant, and her receptionist, concerning finalisation of the account and the release of the balance of her funds. Ms H also contacted the LSA and was told that legal costs paid to date were approximately $3,800 and that the LSA was not expecting a final account from the appellant. This reflected advice received from the appellant in which she said there would not be a further invoice and that $4,000 remained in her trust account to cover reimbursement of the LSA.

[24] On 1 April 2008 there was an exchange of e-mails between the appellant and the LSA. It began with an inquiry concerning when the appellant's final invoice would be submitted to the LSA. The appellant responded she was happy to seek an amendment (extension) to cover additional costs, as payments to date covered work to the time of the settlement conference (27 June 2007), and she would discuss an amendment with the agency 'next week' to cover work to the time of the settlement (4 February 2008). No such discussion took place.

[25] On 29 April 2008 the appellant responded to an email from Ms H saying she was in discussion with the LSA concerning an amendment to the grant and that

although her ‘final account has been prepared for some time ... Legal Services have not authorised payment privately of work undertaken by me from June 2007 to (the) fixture’.

[26] After further delay, a final invoice was sent to Ms H on 27 June 2008 in which the appellant charged for her work from 29 June 2007 to the time of the final settlement. The total bill was $17,454.80, additional to the amount of $3,828.10 previously received from the LSA.

[27] On 28 August 2008 Ms H made a complaint to the Canterbury-Westland Branch of the New Zealand Law Society. On 11 March 2009 the appellant attended a meeting with the Standards Committee and was questioned concerning the complaint. On 17 June 2009 the Standards Committee laid professional misconduct charges with the Tribunal.

The misconduct

The essential dispute

[28] Ms H understood that from March 2006 when she was granted legal aid, all of the appellant’s work was to be charged on a legal aid basis. She did not abandon her grant of legal aid. Nor did she accept that following the unsuccessful settlement conference in Invercargill on 27 June 2007 there was a discussion between herself and the appellant concerning a switch to a private retainer. Fees were mentioned from time to time, but in the context of Ms H inquiring about the level of cost, so that she could evaluate any settlement offers.

[29] The appellant, however, maintained that the settlement conference represented something of a watershed in that a significant settlement offer was made. Accordingly, she told Ms H that she would not continue acting on a legal aid basis although, if an acceptable settlement was reached in the short term, her work would be charged on a legal aid basis.

The Tribunal's findings

[30] In its substantive decision the Tribunal first considered charge one, whether the appellant breached s 66 of the Legal Services Act 2000 by deducting $17,454.80 from Ms H's funds without authority from the LSA. It concluded that the appellant understood her obligations under the Act and nonetheless, absent any authority from the LSA, deducted the amount of her final invoice. The Tribunal then said at [47]: '... there is no need to make a finding of credibility ... . However, had this been necessary, we prefer the evidence of Ms H'.

[31] Reading the decision as a whole it is clear that at least seven factors prompted this indication.

- Ms H was judged to be an unsophisticated, but straight forward person, who gave consistent and understandable evidence.

- The appellant, by contrast, when challenged in cross-examination sought to blame others including Ms H, her staff, the LSA and members of the Standards Committee. Her responses gave the impression of 'confabulation, unrealistic straining of content and ex post facto justification'. (See [48]).

- There was no file note, letter or other written material consistent with the change to a private retainer on or about 27 June 2007.

- The appellant did not advise the LSA that Ms H intended to surrender her grant of legal aid.

- In early July 2007 the appellant applied to the LSA for an amendment to the grant to cover a pre-trial conference and the preparation of affidavits.

- On 4 December 2007 the appellant filed an application in the High Court seeking waiver of setting down and hearing fees, on the basis that Ms H was a beneficiary and in receipt of legal aid.

- On 1 April 2008 the appellant e-mailed the LSA concerning a further amendment to the grant to cover her work to the time of the High Court settlement.

In our view the cumulative effect of these matters made the credibility preference inevitable.

[32] The other major finding of the Tribunal concerned the appellant's understanding of s 66. Her evidence was to the effect that legal aid was granted in stages, so that following a grant to a client the practitioner had to seek amendments to the grant to cover each stage of the work. The appellant maintained that at the completion of each stage it was open to the practitioner and the client to agree to a change to a private retainer.

[33] This explanation brought s 66 into relief. It provides:

> **66 Listed providers not to take unauthorised payments**
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> No listed provider may take payments from or in respect of a person to whom services are provided under any scheme unless the payments are authorised by or under this Act, or by the Agency ... .

[34] The Tribunal heard expert evidence from an experienced Family Court practitioner. He said that grants of legal aid were made for a specified purpose, or proceeding. The level of aid, however, was controlled by a requirement to obtain amendments to the grant to cover each step in the proceeding. Thereby, the amount of the grant would increase incrementally as the case progressed. It followed in the expert's view that a legal aid grant did not 'expire' as each step in the proceeding was completed, rather when the claim was finalised.

[35] The Tribunal accepted this evidence, in preference to the appellant's account. Moreover, it viewed the appellant's e-mail to Ms H on 29 April 2008, stating that a final account had been prepared but no authority obtained from the LSA to receive a private payment, as confirmation that the appellant well understood her obligations under the Act.

[36] In its penalty decision the Tribunal noted Mr Nation's submission that the misconduct involved dishonesty, in that the appellant knew she could not deduct fees without the authority of the LSA, but did so; and subsequently that she deliberately misled the Standards Committee in stating that a private retainer was discussed and agreed to. This 'proven dishonesty' was said to make striking off the only available penalty option.

[37] The Tribunal said this:

> [9] The professional misconduct in this case touched at the very heart of the relationship of trust between solicitor and client. In this matter Ms Sisson preferred her own interests of obtaining a higher reward for her services (and avoiding a direct tax deduction from legal aid payments) over the rights of her client to have her grant of legal aid fully utilised. As recorded in our decision of 5 July, in the course of doing so, Ms Sisson misled and confabulated to whatever extent was required to achieve her ends. We recorded in our decision how she had failed to take responsibility for her actions and instead sought to blame or attack the conduct of others in the course of the defended hearing.
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> [10] At the penalty hearing Ms Sisson stated that she accepted the findings of misconduct but submitted that this was a lapse which involved "one uncharacteristic isolated situation". That submission is not only inaccurate but also minimises the seriousness of her conduct in a manner which is worrying in terms of her ability to be entrusted with clients' affairs in future.

Our assessment of the misconduct

[38] The segment of the Tribunal's decision from which we have just quoted is headed 'Elements of dishonesty and breach of trust'. We considered this an apt description of the culpability in this case. There were two elements to the dishonesty. The first was in deducting costs of $17,454.80 when the appellant knew she had no authority to do so, notwithstanding that she was owed fees calculated on a legal aid basis. We shall explore the implications of her actions in a moment.

[39] The second element of dishonesty lay in the answers given to the Standards Committee on 11 March 2009, and thereafter replicated in evidence given to the Tribunal in response to the charges. The appellant fabricated an explanation for her actions, namely that she had discussed a switch to a private retainer and obtained her client's agreement to this course. There were numerous pointers to the fact that this was untrue. Yet, the appellant persisted in this untruth to the very end.

[40] There were three elements to the breach of trust, each identified in the particulars to the charges. First, the appellant obtained an increased fee by virtue of the private retainer subterfuge. She charged for 74.4 hours at $200 per hour plus GST, when had that number of hours been approved by the LSA at legal aid rates the fee would have been $5,888 less.

[41] Secondly, in 2008 legal aid payments made by the LSA to the appellant were subject to a 20% deduction. The deduction was payable to the Department of Inland Revenue on account of a debt due from the appellant. The appellant's short-circuit avoided this deduction.

[42] The third element can be termed the loss of a chance. Legal aid recipients may seek a waiver from a legal aid charge that is otherwise taken by the LSA. The charge ensures that, following a successful outcome to a proceeding, the LSA is reimbursed the funds it has paid throughout the various steps in the proceeding. A charge may be waived where in 'justice and equity' this is appropriate. In its substantive decision the Tribunal found that Ms H, as a beneficiary attempting to re-house two children, was at least deprived of the opportunity to seek a waiver.

[43] The expert evidence before the Tribunal touched on this aspect. The Family Court practitioner said that in his experience clients who received a cash settlement that was earmarked to purchase a house may succeed in having a charge registered against the new property – as opposed to an immediate cash deduction. This, we think, puts matters in perspective. Although Ms H did not give evidence that she was in the throes of acquiring a property against which a charge could have been registered, the appellant's actions nevertheless meant the chance (probably a remote one) to explore the possibility of a waiver was lost.

Was striking off the appropriate penalty?

The test

[44] Striking off is the most serious penalty available to the Tribunal. Under both the old and new Acts the test is whether by reason of misconduct someone is shown to be not a fit and proper person to be a practitioner.

[45] It is well recognised that the jurisdiction of the Tribunal is protective. That is, there is a public interest in the maintenance of high standards given that practitioners must be trustworthy; competent to uphold the ethical obligations to which they are subject. As the Master of the Rolls, Sir Thomas Bingham, said in *Bolton v Law Society*[7] if trustworthiness is not assured:

> ... the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

The basis of the Tribunal's finding

[46] Read as a whole the penalty decision conveys to us that the Tribunal reached its final decision by reference to a range of factors. It may not have seen the misconduct as decisive of the end result; rather it appears that the misconduct in combination with other factors prompted the unanimous view that a striking off was necessary.

[47] Mr Peters submitted that this was not a dishonesty case where striking off was inevitable. He stressed that there are shades of dishonesty and that it is important to assess a person's fitness to practice against the background in which the misconduct occurred. So viewed, he argued that the Tribunal should have imposed a suspension for three years, or made an order preventing the appellant from practicing on her own account.

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7 *Bolton v Law Society* [1994] 2 All ER 486 at 492.

[48] We agree with the Tribunal that the appellant's professional misconduct touched the very heart of the relationship of trust between solicitor and client. It was serious misconduct. Protection of the public required that decisive protective steps were taken. But, on looking at the misconduct in isolation, it was conceivable that a penalty less than striking off could have been imposed.

Previous matters

[49] This was not the appellant's first appearance on disciplinary matters. In August 2008 misconduct in relation to a solicitor's undertaking was established before the then Canterbury Disciplinary Tribunal. The appellant acted for a client in relation to the purchase of a leasehold property. The property was owned by an incorporated society which was about to be wound up, with the result that a number of leases would be converted to freehold titles. The client borrowed $20,000 towards the purchase price. The lender required a mortgage over the freehold title. The appellant assured the lender that a mortgage would be able to be registered promptly and also provided an undertaking that she would 'immediately on receipt of the loan money ... register the mortgage ...'.

[50] In fact the incorporated society was embroiled in litigation concerning the winding up and two years elapsed before a mortgage could be registered. The lender complained about the appellant's failures to reply to inquiries concerning the whereabouts of the mortgage. The appellant represented herself before the Tribunal and contended that the undertaking was qualified by an oral understanding that the mortgage need not be registered until a freehold title became available. This explanation was rejected.

[51] The appellant unsuccessfully challenged the Tribunal's decision by way of judicial review in this Court[8] and on appeal to the Court of Appeal.[9] She also filed a notice of appeal in the High Court against the Tribunal's decision. It was this appeal which she sought to revive in late 2012 (see [9] of this decision). There are obvious

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8 *Sisson v Canterbury District Law Society* HC Christchurch CIV 2008-409-2950, 7 July 2009, French J.

9 *Sisson v Canterbury District Law Society* [2011] NZCA 55.

parallels between that case, and this one. Each involved a failure to meet a fundamental obligation, followed by non-acceptance of the failure and an endeavour to avoid responsibility on the basis of an explanation that lacked credibility.

[52] Mr Nation and the Tribunal also referred to another misconduct charge heard in 2004 which was dismissed, but subject to a comment that it was to be hoped the appellant had learnt from the experience. Attention was also drawn to an incident in the District Court in 2011 when the appellant was required to retract remarks and apologise to a Judge, or risk a contempt finding. We doubt that it was appropriate to rely on either of these events. We have not taken them into account.

Conduct during the hearing process

[53] The Tribunal was also significantly influenced by the manner in which the appellant conducted herself throughout the disciplinary process. We have referred to the Tribunal's comments concerning the appellant's inability to recognise the seriousness of her failings, let alone take responsibility for them (see [37]). The Tribunal also faced successive applications to adjourn hearings which it had convened. On 18 February 2010, for example, the substantive hearing was to proceed at Christchurch, but shortly before 10.00 am the appellant left the hearing room after indicating that she would not appear before the Tribunal on account of its constitution. Even after an adjournment the appellant could not be located, so that the Tribunal had no option but to direct that she file a memorandum setting out her objection to the constitution of the Tribunal. A minute issued by the Chair included the observation that it was 'inappropriate and unprofessional for Ms Sisson to simply walk out of the courtroom shortly before the case is to be called ...'.[10] In the end result it was not until May 2011 that the substantive hearing occurred, and November 2011 before a penalty hearing could be arranged.

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[10] New Zealand Lawyers and Conveyancers Disciplinary Tribunal, Minute of the Chair, D J Mackenzie, 19 February 2010.

[54] A practitioner's conduct in the course of a disciplinary process may influence the final outcome. In *Hart v Auckland Standards Committee (1) of New Zealand Law Society*[11] the full Court (Winkelmann, Lang JJ) said:

> [187] ... Willingness to participate fully in the investigative process, and to acknowledge error or wrongdoing where it has been established, may demonstrate insight by the practitioner into the causes and effects of the wrongdoing. This, coupled with acceptance of responsibility for the misconduct, may indicate that a lesser penalty than striking off is sufficient to protect the public in the future.

We agree with these observations. This is not to treat behaviour in the course of a disciplinary process as aggravating the misconduct. Rather, such behaviour is assessed and brought to account in the evaluation of the likely efficacy of available penalty options. Unfortunately, here the appellant's conduct was not helpful to her cause.

Personal difficulties

[55] The appellant placed considerable reliance on personal mitigating factors before the Tribunal. It is not necessary to go into fine detail, but evidence established that the appellant faced significant personal difficulties during the time she acted for Ms H both in relation to a distressing illness from which her daughter suffered and on account of her involvement in complex and long running litigation involving her then husband, herself and the Inland Revenue Department. This engagement meant the appellant was subject to competing demands.

[56] In addition, the appellant suffered severe disruption in relation to her professional life following the September 2010 and February 2011 earthquakes. She lost both her home and her offices, and had to move to other premises on more than one occasion. In the result the appellant's personal health suffered. She underwent a psychological assessment prior to the penalty hearing, although limited evidence of this was provided to the Tribunal. The appellant also faced insolvency proceedings and was declared bankrupt a few days after the penalty hearing in November 2011.

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[11] *Hart v Auckland Standards Committee (1) of New Zealand Law Society* [2013] NZHC 83.

This cluster of personal problems post-dated the misconduct which founded the charges, but is relevant in assessing the appellant's subsequent conduct.

[57] The Tribunal paid due regard to these matters. Having noted 'the very sad circumstances' concerning her daughter and the 'very damaging effects' of the lengthy litigation, it accepted that these matters 'did impact seriously on (the appellant) both personally and professionally ...'. However, the Tribunal rightly observed that while personal circumstances may be taken into account they cannot predominate in the exercise of a protective jurisdiction.

Personal attributes

[58] The Tribunal was also provided with a number of references from clients and practitioners. Those from former clients paint a consistent picture of a caring, capable and valued advocate, particularly in relation to demanding Family Court cases. Five references from senior colleagues of the appellant make for sobering reading. They were written to the Tribunal shortly before the penalty hearing. Each of the practitioners knew the appellant well through professional conduct over a period of years. One, for example, described the appellant as 'a vivid woman with a strong and caring personality'. The practitioner continued:

> Ms Sisson has her own style of strong advocacy for her clients, many of whom have been discarded by other firms as being too difficult to assist. This has been during a time when she was facing her own personal and professional crises with dignity.

The letter concluded on the note that if the appellant was unable to practice it would be 'a detriment to her clients as well as to the Bar in Christchurch'. The other references are not dissimilar, including expressions of regret that signs of stress affecting the appellant had not evoked a more effective response at the time. We regard these letters of support as insightful, and impressive.

Conclusion

[59] Our evaluation of the case brings us to the same conclusion as was reached by the Tribunal, that striking off was the only appropriate penalty. The professional

misconduct was serious in itself, and the manner of the appellant's participation in the disciplinary process further limited the available penalty options. Had she been able to recognise her wrongdoing, obtain professional help and present a realistic proposal for her rehabilitation while practicing in a supporting environment, an outcome less than striking off may have been appropriate. However, the Tribunal was confronted with a practitioner in a downward spiral, so that protection of the public and the legal profession left but one option. For these reasons the appeal must be dismissed.

[60] Returning to the application for leave to appeal filed on 3 December 2012, we extend time and grant leave. In doing so, we are influenced by the fact that an appeal was filed in time, but ultimately was struck out in circumstances already outlined. In addition, we have taken into account the nature and importance of the decision under appeal, and the appellant's personal circumstances in the recent past.

[61] Costs are reserved, in light of the appellant's present status. If sought, the Standards Committee must file a memorandum within 20 working days, to which the appellant will have 10 working days for a reply.

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