NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2012] NZLCDT 17
LCDT 001/11

IN THE MATTER	of the Lawyers and Conveyancers Act 2006
BETWEEN	**THE AUCKLAND STANDARDS COMMITTEE 2 OF THE NEW ZEALAND LAW SOCIETY** Applicant
AND	**KRISTINA GERD HAVER ANDERSEN** Practitioner

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Mr S Maling
Ms C Rowe
Mr T Simmonds
Mr W Smith

HEARING at Auckland on 21 June 2012

APPEARANCES

Mr C Morris and Mr A Hayes for the Auckland Standards Committee No. 2
Mr C Pidgeon QC for the Practitioner

DECISION ON PENALTY

Introduction

[1] The practitioner faced, initially, 10 charges of professional misconduct. At the beginning of the hearing Charges 5 and 7 were withdrawn by leave and the practitioner entered pleas of guilty to the remaining eight charges.

Charges

Charge 1 in relation to AK

[2] In May 2009 the practitioner was acting for herself as trustee, as vendor in relation to the sale and purchase of a property occupied by herself and her then partner ("the conveyance").

[3] On or about 28 May 2009 the practitioner sent a settlement statement (as at 4 June 2009) to Mr K of SK who was acting for the purchasers of the property, the Trustees of the CT. That settlement statement under the letterhead of "Kristina Andersen Employment and Family Lawyer" contained a written undertaking ("the undertaking") that:

> "In consideration of settlement we undertake that:
>
> (a) Auckland Regional Council rates have been or will be paid as above to 3/6/09;
>
> (b) Auckland City Council rates as above have been paid or will be paid;
>
> (c) A special water meter reading has been ordered and will be paid from the proceeds of the sale."

[4] The sale and purchase of the property settled on or about 4 June 2009, but the undertaking to pay Auckland Regional Council ("ARC") and Auckland City Council ("ACC") rates was not honoured then or since. The breach of this undertaking is ongoing.

[5] By email on 30 June 2009, Ms Andersen advised the New Zealand Law Society ("NZLS") as follows:

> "I advise that I will not be renewing my practising certificate at this time and that my practice as a barrister and solicitor will be closed. Please confirm that this advice is sufficient and that my name will not be published in the list of non-renewals."

[6] Despite this notification to the NZLS, and continuing correspondence with Mr K between July and September 2009 about the conveyance, the practitioner did not at any time advise Mr K that she no longer held a practising certificate from 1 July 2009. Email responses from the practitioner to Mr K on 14 and 17 August 2009 did, however, state that ACC and ARC rates had been paid by cheque and that she would follow up on apparently missing mail. She did not do so. When reminded by Mr K again on 17 September 2009 about the non-payment of rates and accumulating penalties, the practitioner responded that Mr K's clients would have to "fix up that part of the penalty themselves."

[7] On 24 September 2009 Ms Andersen advised Mr K that she was bankrupt and that he could make a claim accordingly for the debt for which she admitted she was personally liable.

[8] Rule 10.3 of the Lawyers and Conveyancers Act Rules 2008 states:

> "A lawyer must honour all undertakings, whether written or oral, that he or she gives to any person in the course of practice."

[9] In summary, the charge is that the practitioner breached Rule 10.3 in that she failed to honour such an undertaking. Aggravating factors were that she continued to promise that she would pay (and had in fact paid) the amounts outstanding; that she failed to disclose that she did not hold a current practising certificate; and the late disclosure that she was bankrupt.

Charge 2 in relation to KJ

[10] During April 2009 Mr J approached Ms Andersen for advice on a relationship property matter, having accessed her website www.aucklandlawyer.co.nz where the practitioner described herself as an appropriately qualified lawyer in family

relationship property law. Mr J had an initial (and only) meeting with Ms Andersen on or about 7 April 2009, and paid $150.00 for the meeting, as previously agreed.

[11] On 28 April 2009 the practitioner sent Mr J a client retainer letter which was misdated 14 April 2008, and which recorded engagement on the basis of fees at $350 per hour plus GST and "*a retainer on account of costs is payable of $400*."

[12] Mr J made his first payment of $400.00 by cheque on 29 April 2009 and this was drawn on 19 May 2009.

[13] On 9 June 2009 the practitioner sought authority from Mr J to send out a letter to another Solicitor, Mr N. Following some minor amendments, the letter was agreed by Mr J on 20 July, and a further $400 was paid by direct credit as requested and to the bank account nominated by the practitioner. At the time the practitioner requested this second payment of $400, and confirmed instructions to draft divorce proceedings, Ms Andersen no longer held a practising certificate. In addition, she signed her email requesting agreement to proceed, and funds, as "Kristina Andersen LLB (Hons), CA, BA", omitting the words Barrister and Solicitor which had appeared in previous correspondence.

[14] Following the 20 July exchange of correspondence, Mr J heard nothing from the practitioner, despite sending her emails on 4 September and 1 October 2009 to request a report on developments in the matter. The letter to Mr N was not received and it is unclear whether it was ever sent by Ms Andersen. As far as Mr J is aware, the practitioner did not commence drafting or completing the dissolution proceedings/relationship property matters as instructed, and he had to instruct new lawyers which cost him more money and time.

[15] The practitioner did not at any time issue any invoices for services rendered. Nor has she returned or otherwise accounted for the $950 Mr J paid the practitioner for the provision of those services.

[16] In summary, the charge is that the practitioner breached any or all of ss.110, 111 and 113 of the Act and any or all of Rules 4.2, 4.2.4 and 11.1 in that she failed to complete the work for which she was retained, failed to assist her client find another lawyer, failed to properly account for client money, and engaged in misleading

conduct by holding herself out as capable of acting as a lawyer after her practising certificate had lapsed.

Charge 3 in relation to PS

[17] Mr S sought Ms Andersen's advice in May 2009 about an employment matter. Mr S conducted an internet search for his representation, and contacted Ms Andersen through her website www.aucklandlawyer.co.nz.

[18] Mr S met with the practitioner on 6 May 2009 and instructed her to act for him. There was an initial cost of $150 for this meeting, and the practitioner issued a receipt for this payment from Mr S.

[19] By email dated 6 May 2009 the practitioner offered a "flat fee" of $1,000.00 for her services inclusive of contacting his employer, addressing the personal grievance, seeking to negotiate a resolution, and attending a meeting or half-day mediation (if required). The practitioner requested that payment of $1,000 be made to a nominated X Bank account, and this was done the same day.

[20] On 21 May 2009 the practitioner attended a meeting with Mr S and his employers at his place of employment. At that meeting Mr S's employment was terminated on the grounds of redundancy.

[21] On 22 May 2009 Mr S instructed the practitioner to proceed with the mediation process via the Employment Relations Authority ("ERA"), and paid the further $600 which the practitioner advised would be payable for that.

[22] On 19 June 2009 Mr S contacted the practitioner to request an update on his filing for mediation. He did not receive a reply until 6 July 2009, which was several days after the practitioner had allowed her practising certificate to lapse at her request. The 6 July email said:

> "Awaiting to hear from the ERA. Have you been able to find new employment?"

[23] The email was signed off without the words "Barrister and Solicitor", but her website www.aucklandlawyer.co.nz remained on her stationery. While accepting that the practitioner was not prevented from dealing with an employment matter without

being a practising lawyer, she did not at any time advise her client that her professional status had changed.

[24] Mr S replied to the practitioner that he had not received any offers of employment and that his savings were depleted.

[25] On 14 September 2009 the practitioner advised Mr S that there was a possibility of a mediation date in mid-September but that she would be unable to represent him because she was unwell. She suggested to Mr S that he contact the Mediation service directly if he wished to secure a date at that time.

[26] On 18 November 2009 Mr S contacted the practitioner for a further update and to seek a refund of amounts he had paid to her if she was unable to act for him. By this stage he had paid $1,900 to the practitioner for work up to and including a half day mediation (which she did not attend). No invoices or receipts were issued to Mr S.

[27] The practitioner's response the same day was:

> "I am sorry but I have gone out of business."

[28] In fact the practitioner had filed a Debtors Petition on line on 19 August 2009 and at her own request was adjudicated bankrupt on 8 September 2009. Her email to Mr S about a possible mediation date was therefore sent six days after she had been adjudicated bankrupt.

[29] In summary, the charge is that the practitioner breached any or all of ss.110, 111 and 113 of the Act and any or all of Rules 4.2, 4.2.4, and 11.1 in that she failed to complete the work for which she was retained, failed to assist her client find another lawyer, failed to properly account for client money and engaged in misleading conduct by holding herself out as capable of acting as a lawyer after her practising certificate had lapsed.

Charge 4 in relation to RM

[30] Mr M sought advice from the practitioner in late 2008 about a matrimonial matter. Terms and conditions of retainer were received including an email request on

3 December for a retainer of $1000 to be paid to the practitioner's trust account so that proceedings could be drafted.

[31] On 12 December 2008 Mr M advised that an amount of $275.63 had been paid, and instructed the practitioner to do no further work until the $1000.00 on account of costs had been paid by him.

[32] On 5 March 2009 Mr M confirmed that he wished the practitioner to act for him, and enquired whether it might be possible to pay by instalments as well as from the final settlement. The practitioner responded by email on 6 March 2009 as follows:

> "If you do wish me to act that would be acceptable, however, at this stage I am unable to offer payment at the end (I may be able to later on in the case). If you wish to proceed please advise as the account number for payment has changed."

[33] On 17 March Mr M instructed the practitioner to proceed and requested the new bank account details for what he thought was the practitioner's trust account. Mr M was later advised by the Insolvency Service (after the practitioner was adjudicated bankrupt) that this new account was not in fact the practitioner's trust account but a private account in another person's name. A total of $1000.00 was paid to that account by Mr M, in two tranches: $900.00 on 17 March 2009 and $100 on 20 March 2009. Mr M received no invoices for this $1000 he paid, and is not aware of any completed work which was related to it.

[34] On 3 July 2009 the practitioner advised Mr M that she no longer held a practising certificate and could not act for him. This notification confirms that the practitioner was at this stage conscious of her obligations to advise clients that she had from 1 July 2009 allowed her practising certificate to lapse. It is also inconsistent with the response she provided to the NZLS in relation to Mr J (Complaint No 2) to whom she never disclosed her change of status that:

> "I did not continue to act for him after the certificate's expiry because it would have been illegal."

[35] On receipt of this notification Mr M acknowledged the "uninformative" advice and requested an updated account of what work had been undertaken so that he could brief a new solicitor. Mr M expressed his desire to close matters between them

"*as smoothly as possible without having to go to the law society as has been advised me to do*."

[36] The practitioner's response was as follows:

> "I note your threat.
>
> This information has been sent to you. I have recently moved offices and as soon as further copies can be located this will be forwarded to you again."

[37] The practitioner did not provide Mr M with any proceedings (draft or otherwise) in relation to the matrimonial dispute with his ex-wife, which was the purpose of engaging the practitioner.

[38] In summary, the charge is that the practitioner breached any or all of ss.110, 111 and 113 of the Act and Rule 4.2 and/or Rule 4.2.4 in that she failed to complete the work for which she was retained, failed to find her client another lawyer and failed to properly account for client money.

Charge 6 in relation to KF

[39] Mr F was another of the practitioner's clients who was seeking employment advice, in May 2009 after he had been dismissed from his employment. Mr F was specifically seeking a lawyer to act for him, and this was also the advice of his own lawyer for whom employment law was not an area of expertise. Mr F first saw the practitioner's name and details in the Yellow Pages, but after receiving no response to his telephone message to Ms Andersen, he emailed her at info@worklaw.co.nz.

[40] The practitioner responded on 29 May 2009 from her email address at www.aucklandlawyer.co.nz, requested $150.00 for a meeting to discuss Mr F's case, and signed off as "Barrister and Solicitor". They met on 5 June 2009 and a receipt was issued for the $150.00. Confirming that meeting on 9 June 2009, the practitioner offered to act for Mr F and requested a pre-paid "fixed fee" of $1000.00 to progress matters in a personal grievance claim and seeking to negotiate a settlement and attending a half day meeting or mediation (if required). Mr F paid the $1000.00 by direct credit to the practitioner on 10 June 2009.

[41] On 18 June 2009 a draft letter to Mr F's former employer was prepared by the practitioner stating that she had been instructed by Mr F and attempting to reach a negotiated settlement between the parties. The letter required a reply within 7 days. It is not clear whether this letter was ever sent, or if it was sent, whether any further action was taken on it. In any event the practitioner was paid $1,150.00 for this letter and the initial meeting. No other work was shown to have been done. The next Mr F heard from the practitioner, after several unsuccessful attempts to contact her by telephone and email, was the following brief response on 20 November 2009:

> "Unfortunately I have gone out of business."

[42] The practitioner sent this notification, and only reactively, more than a month after she had been adjudicated bankrupt.

[43] In summary, the charge is that the practitioner breached any or all of ss.110, 111 and 113 of the Act and any or all of Rules 4.2, 4.2.4 and 11.1 in that she failed to complete the work for which she was retained, failed to assist her client find another lawyer, failed to properly account for client money and engaged in misleading conduct by holding herself out as capable of acting as a lawyer after her practising certificate had lapsed.

Charge 8 in relation to AT

[44] Mr T sought assistance with his application for New Zealand permanent residency. He discovered the practitioner through her website www.aucklandlawyer.co.nz where she described herself as specialising (among other things) in immigration matters. Mr T specifically wanted to engage a specialist lawyer because he had been having difficulty dealing with the application himself and because of its importance to him. The practitioner requested Mr T's authorisation to contact the Immigration Service on his behalf, and to otherwise act on the immigration matter. This authorisation was given by email on 20 March 2009.

[45] An entry dated 6 April 2009 on the Immigration Service database records that the practitioner was denied access because there was no live application and no authority letter. A subsequent entry on 16 April records "*Kristina Andersen acts as agent.*"

[46] On 15 April 2009, at the practitioner's request, Mr T confirmed his instructions and transferred to her, on account of her fee of $500.00 plus Immigration New Zealand's filing fee of $400.00. On 5 May 2009 Mr T requested a receipt or acknowledgement of this deposit but none was ever received.

[47] On 24 June 2009 Mr T received a request for further information from the practitioner about his application. Like previous correspondence with Mr T, the practitioner had signed off as "Kristina Andersen Barrister and Solicitor LLB (Hons), CA, BA. In this same letter, the practitioner said she thought the application would receive an early and favourable outcome. Mr T supplied the information requested.

[48] On 29 June 2009 the INZ database records that the practitioner had filed on-line an Expression of Interest ("EOI") on behalf of Mr T. Any EOI application is not accepted or received or becomes live or active until the filing fee has been paid. In effect it is as if the EOI had never been submitted. In any event an EOI was not required. Mr T needed an Indefinite Residency Visa ("IRRV") for which there is no time limit on how long he could stay out of the country. Mr T was unaware anyway that such an application had been filed.

[49] Mr T made a number of enquiries of the practitioner about the progress of his application without any response. It was not until 27 August 2009, after the practitioner was no longer holding a current practising certificate, that she replied as follows:

> "I am currently unwell and will be in touch when I can."

[50] When Mr T made enquiries of the Immigration Service in September 2009 he was told it had no record of ever having received an application on behalf of Mr T from the practitioner. This was confirmed when Mr T accessed his own immigration records. There is no record of any payment of the $400.00 immigration fee by the practitioner.

[51] Mr T wrote to the practitioner on 28 October 2009 requesting an immediate response about the outcome of his application and demanded a refund of the $900.00 he had paid to the practitioner. There was no response. At no time did the practitioner advise Mr T that she no longer held a practising certificate or that she had been adjudicated bankrupt.

[52] In summary, the charge is that the practitioner breached any and all of ss.110, 111 and 113 of the Act and any or all of Rules 4.2, 4.2.4 and 11.1 in that she failed to complete the work for which she was retained, failed to assist her client find another lawyer, failed to properly account for client money and engaged in misleading conduct by holding herself out as capable of acting as a lawyer after her practising certificate had lapsed.

Charge 9 in relation to KL

[53] Another complainant who was seeking assistance with a residency application during 2009 was Ms L.

[54] On 24 June 2009, after a meeting with Ms L who had paid the requested $150 meeting fee, the practitioner accepted instructions in her capacity as a Barrister and Solicitor and advised that her fee for the first stage of the application would be $500.00 plus a disbursement, and that payments could be made by internet banking.

[55] On 28 August 2009, after she no longer held a practising certificate, and some 10 days before being adjudicated bankrupt, the practitioner responded to Ms L's enquiry about progress with her application confirming that she could still assist and requesting Ms L's immigration log-in details. The practitioner signed off above her www.aucklandlawyer.co.nz website, but with the words Barrister and Solicitor omitted.

[56] On 2 September 2009 the practitioner supplied new bank account details to Ms L for payment of her fee. That bank account is not listed in the Statement of Affairs ("SOA") filed with the Official Assignee on 19 August 2009.

[57] On 30 September 2009 and on various dates prior to and after that date, Ms L attempted to contact the practitioner to ascertain the status of her application and the money on account to the practitioner for the legal work, but received no response whatsoever from the practitioner. The $500.00 Ms L paid to the practitioner has not been refunded.

[58] Ms L continued with her online EOI application on INZ around late November 2009 and it was exactly as it had been prior to instructing the practitioner. There had

been no further additions or alterations to it by Ms Andersen or anyone else despite Ms L's provision of login details and password to Ms Andersen. Ms L was granted residency through her own efforts in 2010.

[59] In summary, the charge is that the practitioner breached any or all of ss.110, 111 and 113 of the Act and any or all Rules 4.2, 4.2.4 and 11.1 in that she failed to complete the work for which she was retained, failed to assist her client in finding another lawyer, failed to properly account for client money and engaged in misleading conduct by holding herself out as capable of acting as a lawyer after her practising certificate had expired.

Charge 10 in relation to GR

[60] During February 2009 the practitioner offered to act for Mr R as his lawyer in child custody and Family Trust formation matters. She requested a payment of $150 for the initial meeting, and following the meeting with Mr R and his partner N, the $150 was deposited to the practitioner's account and she confirmed she would act for Mr R, and agreed an hourly rate of $350 for the custody dispute and initial payment of $500.

[61] For the Family trust matter, the practitioner offered a fixed fee of $900.00 and the trust formation work was to commence immediately on receipt of the fee. On 12 February 2009, the latter fee was reduced to $740.00 (including GST and all usual paperwork) if payment could be made by the coming Sunday. This was agreed and paid.

[62] On 2 March 2009 the practitioner advised that the draft Family Trust documents would be ready shortly and requested an additional payment of $500.00 for the custody matter if she was required to act. Mr R agreed and deposited this amount to the practitioner's bank account. No invoices or receipts were received by Mr R.

[63] On 20 March 2009 the practitioner dispatched a letter to Mr R's ex-wife about the shared custody matter.

[64] On 12 May 2009 Mr R emailed the practitioner to receive an update on progress with both matters. In response the practitioner requested a further $500.00 to cover fees in the custody matters and this was paid by Mr R.

[65] Over the following three months Mr R received no response from the practitioner, and no documents he had requested . On 3 September 2009, five days before she was adjudicated bankrupt, the practitioner emailed Mr R as follows:

> "I have been unwell but will be in touch as soon as possible."

[66] Mr R received no response to any further communications with the practitioner until 17 November 2009, after he had advised that he would need to instruct another practitioner and was seeking a refund of payments from Ms Andersen, when Ms Andersen emailed:

> "You will need to contact the insolvency service to discuss a refund, (if any).

[67] In summary, the charge is that the practitioner breached any or all of ss.110, 111 and 113 of the Act and any or all Rules 3.2, 4.2, 4.2.4, 9.3, 9.6 and 11.1 in that she failed to complete the work for which she was retained, failed to assist her client in finding another lawyer, failed to properly account for client money, failed to comply with regulations 9 and 10 of the Lawyers and Conveyancers Act (Trust Account) Regulations 2008, failed to render a final account, and engaged in misleading conduct by holding herself out as capable of acting as a lawyer after her practising certificate had lapsed.

Submissions for the Standards Committee

[68] Mr Morris, appearing for the Standards Committee, sought a penalty of strike off and a contribution to the Society's costs.

[69] As can be seen from the summary of facts, the eight charges represent eight separate complainants, seven of whom were clients of the practitioner and one of whom was a fellow practitioner to whom she had given an undertaking. Mr Morris submitted that faced with the huge financial pressures and personal difficulties during the period in question, Ms Andersen failed to make an "honourable exit" from the profession. Rather he submitted she acted dishonestly in misleading clients about her situation both in respect of her practising certificate and bankruptcy. Mr Morris

submitted that the sheer number of rules and regulations which were breached and the repeated nature of her defaults to her clients mean that striking off is the only proper professional disciplinary response.

[70] Mr Morris referred the Tribunal to the decision of *Bolton v Law Society,*[1] and to the decision of the full Court of the High Court in *Dorbu v NZLS*[2] and the very recent judgment of Williams J in *B v Canterbury Standards Committee No. 1 of the NZLS.*[3]

[71] With respect we consider that the behaviour of the practitioners in the *Dorbu* and *B* cases respectively was far more reprehensible than that of Ms Andersen. Furthermore, neither of those practitioners could be said to have been facing the type of stresses faced by this practitioner.

[72] Mr Morris submitted that there had been a lack of insight, remorse or acknowledgment from the practitioner. Until two days prior to the hearing she had sought to defend all charges. No apology nor means of providing any reparation to the clients whom she had let down was offered.

Submissions for the Practitioner

[73] Mr Pidgeon QC, for Ms Andersen submitted that this was a tragic case. He outlined the enormous pressures upon her in this period in Ms Andersen's life, following her daughter's diagnosis with a life threatening illness. He reminded the Tribunal that until this period she had practised competently for some 20 years.

[74] Mr Pidgeon's submissions drew strongly on the evidence of Dr S who had been engaged by the practitioner around the time that these charges were being investigated and who expressed a view that Ms Andersen had herself, during the relevant period, suffered from serious depression such that it affected her overall professional functioning. Dr S noted that during this period Ms Andersen had remained largely untreated for her illness. Whilst the failure to seek proper treatment is understandable at a human level, that is not a responsible response as a professional who is entrusted with important affairs for members of the public.

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[1] [1994] 2 All ER 486
[2] [2012] NZ HC 564 Auckland, Miller, Andrews and Peters JJ
[3] [2012] NZ HC 1274, 13 June 2012, Williams J

[75] We record that during the period in question, Ms Andersen and her partner were required to "turn their lives upside down" so that Ms Andersen was able to care for the oldest three children and attempt to financially support the family, while her partner stayed at hospital with the youngest, who was receiving intensive treatment for her illness. Ms Andersen apparently spent many hours researching and advocating for her child's treatment, and this resulted in a New Zealand first operation, which thus far appears to have saved the child's life. Additional borrowing during this period and failure to attend to tax matters meant that the practitioner's financial circumstances became completely untenable. It would seem that Ms Andersen's somewhat desperate attempts to maintain some income from her practice (to the detriment of her clients) has led to the circumstances outlined as the basis for those charges.

[76] Sadly, the strain of all of these factors has also resulted in the breakdown of Ms Andersen's personal relationship, and she is now separated from her partner.

[77] Although we note Dr S's comments concerning Ms Andersen's functioning (and his evidence was unchallenged), there are inconsistencies between this diagnosis and her behaviour. An example of this is diverting client funds to a bank account which she had not declared to the Official Assignee on her bankruptcy, a seemingly calculated action.

[78] Mr Pidgeon outlined Ms Andersen's current personal circumstances. She remains a bankrupt having been declared such on 8 September 2009. Her sole income is from a Domestic Purposes Benefit. She is the primary carer of four children including the youngest child who has suffered from very serious illnesses and has had to undergo a number of operations over the past few years. She owns no assets other than those required for her immediate living and therefore has no means of compensating any of the clients who suffered as a result of her defaults. Mr Pidgeon urges the Tribunal to impose the maximum suspension rather than striking her off.

[79] Ms Andersen herself indicates that she does not wish to practice as a lawyer again, and wishes to become a teacher. She says that she is concerned that a strike off might impair her ability to follow this course, however she produced no evidence that this was a likely consequence of her being struck from the roll.

Discussion

[80] The Tribunal has enormous sympathy with the situation in which the practitioner found herself in the years immediately following her daughter's diagnosis and her own descent into poor health. More devastating personal circumstances can hardly be imagined.

[81] As to strike off the principles to be applied are succinctly set out in the *Dorbu* decision (refer footnote 2) at paragraph 35:

> "... the question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing."

[82] The comments about personal mitigating factors are important. Mr Morris put it very aptly when he submitted that because these proceedings are not punitive in nature, rather they are protective, the reverse side of that coin must be that factors personal to the practitioner, in mitigation, must carry less weight. This must logically be so when protection of the public considered. Making assessment about the practitioner's fitness to practice the Tribunal relies on the following factors.

1. Dishonesty

[83] We make a firm finding of dishonesty although, as already indicated, do not find it as wilful and deliberate as in the *Dorbu* or *B* case. It has to be said that the use of funds for purposes other than those for which they have been paid (i.e. the *T* disbursement, which has never been recovered) is a dishonest act or omission. Further, under this heading we consider that the misleading of her clients by firstly not disclosing immediately she had become bankrupt and immediately that she had no practising certificate is inexcusable. The practitioner merely deleted the words "barrister and solicitor" from her correspondence but still had an email address which referred to www.aucklandlawyer.co.nz. All except Mr M believed that the practitioner was at all material times a lawyer. As Mr Morris put it, "her shingle was up, and it never came down."

[84] She had, when failing to renew her practising certificate, held out explicitly to the Law Society that she was closing her practice. Having done this she continued to hold out to clients in that she could act in employment and immigration matters (for which a practising certificate is not needed). In doing so she did not tell the clients, who had come to her because she was a lawyer, that she was no longer practising as a lawyer.

[85] There was also a lack of accountability on Ms Andersen's part in failing to invoice clients in respect of funds paid to her on account of attendances.

[86] Furthermore, there was the instance of instructing a client to pay money into an account other than the trust account which had not been disclosed to the Official Assignee. These funds have never been recovered and have never been repaid to the client.

[87] Finally there was the breach of undertaking to a fellow practitioner and failing to inform him of her bankruptcy. Ms Andersen seems to have taken a particularly cavalier approach to this undertaking. It arose out of a transaction which related to her personal affairs and although it was for a small sum, it is a matter for which she has never taken responsibility, simply saying she has been prevented from paying it by her bankruptcy.

[88] Finally, we were concerned at some of the "ostrich like" behaviour or obfuscation engaged in by the practitioner in respect of files which have been apparently lost and which involved the Law Society in lengthy and expensive searching. Right up until the hearing, material was being disclosed, such as that there had been an old computer, used by Ms Andersen's son, from which she had extracted records which she had previously denied having.

2. Course of conduct

[89] This is not isolated behaviour but was repetitive and pervasive behaviour. It is the same behaviour which was found in a previous disciplinary matter where she was found guilty of unsatisfactory conduct. Although we accept that this conduct occurred around the same time as the conduct which has led to these charges it is simply more of the same failure to act responsibly and honourably towards clients. The

number of rules and regulations transgressed and the number of complainants are clearly a relevant matter.

Mr Morris argued that, just as the practitioner had an honourable entry to the roll, an honourable exit was required.

3. Risk of reoffending

[90] The Tribunal is seriously troubled by the lack of remorse, apology or acknowledgment of real responsibility by Ms Andersen. No acceptance of responsibility was taken until two days before the hearing when a guilty plea was entered and although a credit will certainly be given for that in relation to any costs orders made, her case was advanced almost entirely on the basis that her professional behaviour was explained by her mental condition at the relevant time. This attitude is of real concern when considering the risk of reoffending and the issue of protection of the public.

[91] We note that Dr S's conclusion that there is an extremely low likelihood of reoffending. This remark however was prefaced on Ms Andersen obtaining specialist treatment. She has not done so. She has given financial circumstances as a reason for not doing so. We do not accept that explanation because she could have availed herself of the public health system in order to obtain proper treatment.

4. Reputation of the profession

[92] Because of the nature and scope of the behaviour of the practitioner it is clear that the profession's reputation has been brought into disrepute. Indeed a number of the complainants stated how very let down they felt by the practitioner's behaviour and how they had lost faith in the legal profession as a result. Given her bankruptcy there is no ability for the practitioner to make amends to these complainants.

Decision

[93] It is the unanimous decision of the Tribunal of five that Ms Andersen is no longer a fit and proper person to practise as a barrister and solicitor and her name must be struck from the roll.

Costs

[94] Because of the number of complainants and the difficulty in securing files this has been a lengthy and complicated proceeding for the Law Society. The actual costs incurred are in excess of $53,000. Because of the practitioner's personal circumstances and in particular her bankruptcy the Society seeks a contribution only from in the region of $10,000 to $15,000.

[95] Ms Andersen is legally aided. The Society say that this is one of the exceptional circumstances where an order ought to be made despite her status. Mr Morris also seeks a reimbursement order in respect of the s.257 award against the New Zealand Law Society for the Tribunal's costs. The authority for the proposition that such an order can be made against a bankrupt is contained in the decision of the Tribunal in *Flewitt.*[4]

[96] We do not consider the situation so exceptional as to justify an order of costs against a legally aided person. However we do consider it proper that at some stage Ms Andersen make a contribution to her previous profession in the form of a reimbursement order pursuant to s.249, in respect of the Tribunal costs of the hearing and its reparation.

Orders

[a] There will be an order pursuant to s.244 striking the name of Kristina Gerd Haver Andersen from the Roll of Barristers and Solicitors.

[b] There is an order against the New Zealand Law Society pursuant to s.257 in respect of the costs of the hearing of the costs of the Tribunal in the sum of $9200.

[c] There is an order pursuant to s.249 that the practitioner, Kristina Andersen reimburse the New Zealand Law Society in the sum of $9200 in respect of s.257 costs.

[4] [2010] LCDT 12

DATED at AUCKLAND this 29th day of June 2012

Judge D F Clarkson
Chair