NOTE SUPPRESSION ORDER RECORDED AT PARAGRAPH [54] WHICH RELATES TO REDACTIONS

NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2012] NZLCDT 37
LCDT 019/09, 020/09

IN THE MATTER of the Lawyers and Conveyancers Act 2006

AND

IN THE MATTER OF **CATHERINE MARJORIE CLARKSON**, Lawyer, formerly of of Hastings, now of Wellington

CHAIR
D J Mackenzie

MEMBERS OF TRIBUNAL
Mr W Chapman
Mr J Clarke
Mr C Rickit
Mr W Smith

HEARING at Wellington on 6 November 2012

REPRESENTATION
Mr R Fowler, for the Standards Committee
Ms C Clarkson, Respondent in Person

RESERVED DECISION OF THE TRIBUNAL ON PENALTY, COSTS, AND SUPPRESSION

Introduction

[1] In September 2009, a series of misconduct charges was laid against Ms Clarkson by the Hawke's Bay Lawyers Standards Committee. The charges related to Ms Clarkson's failure to undertake various requirements imposed on her by various professional disciplinary bodies. In all, Ms Clarkson faced a total of seven misconduct charges arising from her various failures to comply.

[2] The requirements had been imposed on Ms Clarkson by: order of the Hawke's Bay Law Practitioners Disciplinary Tribunal ("HBLPDT"), in respect of a complaint against Ms Clarkson heard by it in August 2008; by order of the Hawke's Bay s 357 Standards Committee ("357 Committee"),[1] in respect of a complaint against Ms Clarkson heard by it in April 2009; and, by resolutions of the Hawke's Bay Lawyers Standards Committee made under s 141(b) and (c) Lawyers and Conveyancers Act 2006.

[3] Four misconduct charges were laid against Ms Clarkson by the Hawke's Bay Lawyers Standards Committee on 4 September 2009.[2] In summary the charges were:

(a) Failing to comply with an order (made by HBLPDT on 7 September 2008) to take practice management advice from a Mr D Quilliam for a period of 12 months;

(b) Failure to comply with an order (made by HBLPDT on 7 September 2008) to provide it with certain reports regarding her practice during a period ended 31 August 2009;

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1 A committee operating under the transitional provisions of ss 353 and 357 Lawyers and Conveyancers Act 2006.

2 Tribunal matter LCDT 020/09.

(c) Failure to appear before the Hawke's Bay Lawyers Standards Committee on 5 March 2009 (as required by it pursuant to s 140(b) Lawyers and Conveyancers Act 2006 on 17 February 2009) to explain her failure to make the reports referred to above in (b) regarding her practice;

(d) Failure to provide to the Hawke's Bay Lawyers Standards Committee on 5 March 2009 (as required by it pursuant to s 140 (c) Lawyers and Conveyancers Act 2006 on 17 February 2009) a report referred to above in (b) regarding her practice.

[4] Three further misconduct charges were laid against Ms Clarkson by the Hawke's Bay Lawyers Standards Committee, also on 4 September 2009.[3] They may be summarised as:

(a) Failing to comply with an order (made by the 357 Committee on 4 May 2009) to take practice management advice from Mr D Quilliam during a period ended 30 April 2010;

(b) Failing to comply with an order (made by the 357 Committee on 4 May 2009) to provide the Hawke's Bay Standards Committee with certain reports on her practice during the period ended 31 May 2010;

(c) Failing to comply with an order (made by the 357 Committee on 4 May 2009) to provide an apology to a former client.

Background

[5] Bringing these charges to hearing has been a long process. In part that has arisen as a result of the Hawke's Bay Lawyers Standards Committee awaiting the completion of some mentoring assistance Ms Clarkson sought from Mr B Webby, a barrister in Hastings. There was also some time taken up in iteration between the

[3] Tribunal matter LCDT 019/09.

Standards Committee and Ms Clarkson to ascertain if some mutually acceptable disposition of the charges could be found.

[6] Ms Clarkson's then counsel, Mr R Lithgow QC, was seeking a rehabilitative solution for Ms Clarkson, and matters were adjourned, with the consent of the Standards Committee, to give Ms Clarkson time to complete required reports, obtain mentoring assistance, and finalise an apology she was required to make. The parties indicated to the Tribunal that they hoped that if all went well the only issues the Tribunal may have to hear argument on would be name suppression and an indemnity regarding costs payable to the Crown by the Law Society under s 257 Lawyers and Conveyancers Act 2006.

[7] Matters did not proceed as the parties had anticipated. At a telephone conference on 12 March 2012 Ms Clarkson indicated that she would defend all the charges as originally laid, as she was unsure of the outcome if some charges were withdrawn (as the Committee was proposing), and she was to admit some lesser charges. At this stage Ms Clarkson no longer had Mr Lithgow QC acting for her and was self-represented. Because there were issues regarding availability of some witnesses who would be involved in a defended hearing, the matter could not be set down at the time, and further delay ensued while witness and counsel availability were considered.

[8] As it turned out, that delay had an unexpected result. Ms Clarkson had the opportunity to reconsider the matter after taking some further advice, and indicated that she was prepared to revert to the original suggestion that some charges would be withdrawn, lesser charges would be substituted by amendment of some existing charges and admitted, and some costs would be agreed. Only name suppression and indemnity for s 257 costs would remain to be argued, if the Tribunal accepted the position the parties were prepared to adopt.

[9] As a consequence, at a telephone conference on 7 August 2012, the parties were directed to file a joint memorandum setting out their proposals for consideration by the Tribunal. That memorandum was duly filed on 7 September 2012, and the matter was set down for hearing in Wellington on 6 November 2012.

[10] At the hearing of 6 November 2012, the Standards Committee, in accordance with the provisions of the joint memorandum, sought leave to withdraw the misconduct charges referred to at paragraph 3(b), (c), and (d) above, and at paragraph 4(b) and (c) above. It also sought leave to amend the misconduct charges referred to in paragraphs 3(a) and 4(a) above to charges of unsatisfactory conduct. Leave was granted, with Ms Clarkson confirming her consent to amendment and admitting two charges as amended. Accordingly the Tribunal was left to consider matters of penalty, costs, and name suppression.

[11] The charges remaining before the Tribunal, admitted by Ms Clarkson, were:

(a) Unsatisfactory conduct, being conduct consisting of a failure to comply with a condition to which a practising certificate held by her was subject (Lawyers and Conveyancers Act 2006 sections 241(b) and 12). This charge related to Ms Clarkson's failure to take advice in relation to the management of her practice, as ordered by HBLPDT on 7 September 2008, from Mr Quilliam for 12 months from the date of that order.

(b) Unsatisfactory conduct, being conduct consisting of a failure to comply with a condition to which a practising certificate held by her was subject (Lawyers and Conveyancers Act 2006 sections 241(b) and 12). This charge related to Ms Clarkson's failure to take advice in relation to the management of her practice, as ordered by the 357 Committee on 4 May 2009, from Mr Quilliam for a period ended 30 April 2010.

[12] In the joint memorandum filed with the Tribunal, the Standards Committee indicated that it sought no penalty. It did seek some costs. First, it sought costs of $5,000 from Ms Clarkson. Second, it sought an indemnity from Ms Clarkson for costs incurred by the New Zealand Law Society under s 257 Lawyers and Conveyancers Act 2006. The Tribunal had certified costs under s 257 at $3,600.

[13] Ms Clarkson opposed any costs order against her, which surprised the Tribunal given that in the joint memorandum she had agreed to pay the Standards Committee costs claimed of $5,000. In response to a question from the Tribunal about this change of position on costs, Ms Clarkson said that she accepted she had agreed to pay the costs of $5,000 when the joint memorandum filed with the Tribunal was signed at the end of August this year, but said that in the intervening period her financial circumstances had changed. She went on to say that she accepted that on the basis of her "*word*" she may have to pay these costs.

Penalty

[14] Dealing with penalty, the Tribunal accepts the position of the Standards Committee that no specific penalty is required in the circumstances of this case. Ms Clarkson has now completed her mentoring, provided practice reports, and tendered the required apology to a former client, so the objectives of the original orders with which Ms Clarkson had failed to comply have been largely achieved.

[15] Applying a penalty now would not contribute anything to the purposes of the Lawyers and Conveyancers Act 2006 beyond what has been achieved by the proceedings to date. Ms Clarkson will have benefitted from her mentoring and refreshed organisational approach to practice, and the Tribunal does not consider that applying a sanction is necessary. The Standards Committee also takes a similar view, and seeks no penalty.

[16] Ms Clarkson stated that she was seeking a "*discharge without conviction*" in respect of the two unsatisfactory conduct charges she has admitted, and made submissions on that proposal to the Tribunal.

[17] Ms Clarkson claimed that she should be discharged without conviction because the charges were of insufficient gravity to be dealt with by this Tribunal. That overlooks that some charges against her have been withdrawn and some charges have been reduced, as a consequence of subsequent actions and arrangements undertaken and agreed since the charges were laid, and following her completion of various obligations previously outstanding. The charges were validly

laid and were an appropriate response to the circumstances alleged at the time the proceedings commenced.

[18] We agree with submissions made on behalf of the Standards Committee, to the effect that because parts of the proceedings commenced before the Tribunal are subsequently withdrawn, or amended to a lesser charge, the remaining proceedings do not thereby become inappropriate for the Tribunal to continue dealing with, on the basis that they are too insignificant. If that was the case, there would be a risk every time a lesser charge substitution was sought (or where an admission to a lesser charge was accepted, where charges were laid in the alternative) that the proceedings then remaining extant should also no longer proceed before the Tribunal. That is not a proposition the Tribunal could accept, and would lead to the nonsensical result of terminating all the remaining proceedings in such a case, without any determination at all.

[19] Ms Clarkson also submitted that the Tribunal should discharge her without conviction because the consequences of her "*conviction"* would outweigh the need "*to convict".* Ms Clarkson cited the statutory principles in the Sentencing Act 2002 as supporting her position. She submitted that as the charges she faced related to her failure to comply with orders made (she used the word "*contempt*"), and that the purpose of laying the charges was to obtain her compliance with the orders, as she had now complied a discharge without conviction was appropriate.

[20] In support of this position she noted that the charges were "*old*," having been laid in September 2009, and that she had complied with the orders by October 2010. The delays in getting this matter to hearing meant that there was little value in the Tribunal recording the charges against her as proven, especially as the matters the subject of the charges have now been the subject of her compliance, Ms Clarkson submitted.

[21] We do not consider the passage of time in this case renders the matters trivial as Ms Clarkson suggests, and in any event we do not see how the consequences of recording the two unsatisfactory charges against Ms Clarkson could be properly said to be out of proportion to the gravity of the charges. We

accept the submission of the Standards Committee that the regime of the Sentencing Act, dealing with discharge without conviction in criminal matters, has no place in the professional disciplinary regime. That is because there is no statutory power allowing the Tribunal to follow such a course, and also, because we consider that in the professional disciplinary environment, finding conduct which is shown to be conduct of a type that is proscribed could not be said to constitute a matter where the consequences of such a finding against a practitioner could ever be said to be disproportionate to the gravity of the professional disciplinary charge found proven against the practitioner. This jurisdiction is quite different from the criminal jurisdiction.

[22] Ms Clarkson also made a number of submissions regarding the fact that the charges transcended two statutes with two different purposes and that supported her claim for a discharge without conviction she said. Her submissions in this regard were not easy to follow. She said that because her breach of the orders made under the Law Practitioners Act 1982 occurred after that Act had been repealed, the Standards Committee should have considered whether it should proceed against her under the Lawyers and Conveyancers Act 2006, utilising "own motion" procedures, or whether it was "*a continuation of a matter within the transitional provisions of the Law Practitioners Act 1982".*[4]

[23] Ms Clarkson suggested that because the Law Practitioners Act 1982 did not have the "*public risk"* emphasis of the Lawyers and Conveyancers Act 2006, it would be unfair of the Tribunal to place significant weight on the necessity "*to convict"* based solely on that public risk. The legislative intentions between the two Acts, she said, were significantly different and consequently the disciplinary approach at the time the complaints were made must be recognised as different to that applicable at the time these charges were heard. Flowing from this position, Ms Clarkson submitted that the consequences of conviction outweighed the gravity of the charges.

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[4] There are no applicable transitional provisions in the Law Practitioners Act 1982, so we take this as a reference to the transitional provisions in the Lawyers and Conveyancers Act 2006 which provides that proceedings commenced and not disposed of under the Law Practitioners Act 1982 are to be completed under that Act.

[24] We do not see any validity or rational basis for that position. The charges all arose from conduct post the introduction of the Lawyers and Conveyancers Act 2006 on 1 August 2008. Ms Clarkson's conduct occurred at a time when the Lawyers and Conveyancers Act 2006 was in force, the proceedings were commenced and investigated under that Act, and charges were laid under that Act. The failure to perform the various requirements, and consequential breaches of orders and obligations by Ms Clarkson, has no status as an incomplete transitional matter which would require the continued application of the Law Practitioners Act 1982.

[25] The proceedings against Ms Clarkson brought under the Law Practitioners Act 1982 had been disposed of and were complete. Non performance of the requirements imposed in relation to those proceedings was conduct involving a matter to be addressed under the Lawyers and Conveyancers Act 2006. That is the statute applicable to Ms Clarkson's conduct in breaching the various requirements, and the subsequent progression of the charges we are now addressing under the Lawyers and Conveyancers Act 2006 is appropriate.

[26] In her next submission, Ms Clarkson suggested that the Tribunal should re-examine the processes and procedures applied under the Law Practitioners Act 1982 under which the original orders she had failed to observe arose. We reject that absolutely – the Tribunal is not concerned with the previous proceedings under the Law Practitioners Act 1982, which have been completed and which resulted in orders breached by Ms Clarkson. This Tribunal is only interested in the fact of the orders and Ms Clarkson's conduct in respect of those orders in dealing with these charges.

[27] Ms Clarkson also submitted that the Tribunal should take into account that she had intended to appeal the determinations that resulted in the orders she subsequently breached. She said that she had an honest belief that an appeal would be lodged by her counsel, and that she had not deliberately defied the requirement to perform the orders. It was only when she was served with the charges now before us that she realised her appeal had not been lodged, she said. We have some difficulty reconciling that position with the established facts.

[28] For example, the affidavits filed with the Tribunal show that Ms Clarkson completed a practice report in late December 2008, some 3 months after the orders had been made against her by HBLPDT. She communicated with the Standards Committee at that time regarding what she was required to do to properly comply with the orders. In February 2009, some 5 months after the orders had been made, Ms Clarkson acknowledged in writing to the Standards Committee that she understood an investigation into her non-performance of the orders was to commence, and she noted that she then understood the format required for her required reports, and that she had spoken to Mr Quilliam about the meetings required by the orders. No comment was made by Ms Clarkson to the Standards Committee during various contacts that an appeal had been lodged, and of course no appeal was ever lodged. In these circumstances we do not think Ms Clarkson can properly say that she did not perform the orders because she thought an appeal had been lodged. During this period she was continually indicating she intended to comply, but in the end she simply failed to do so.

[29] Ms Clarkson's next ground in support of her request for a discharge without conviction was that once she was served with the charges she took advice and agreed to perform the various requirements. She considered the obligations placed on her to be onerous and disproportionate to the complaints which had led to the requirements. The issue for this Tribunal is Ms Clarkson's non-compliance, which she has admitted in respect of the remaining charges against her, not a review of the requirements imposed at an earlier disciplinary hearing by other bodies. Whether Ms Clarkson considered them unduly onerous or disproportionate is not relevant to our enquiry, apart from possibly indicating a reason for Ms Clarkson's non performance.

[30] We will not grant Ms Clarkson's request for a discharge without conviction. We see no merit in the application. Because of the nature of this jurisdiction, if conduct is found to have occurred which is proscribed by the various standards imposed on practitioners, we do not consider that a "discharge without conviction" would be an appropriate response. We doubt the Tribunal has jurisdiction, where a practitioner's conduct has been found to have failed to meet a required standard, to not record that disciplinary finding against the practitioner. Even if the Tribunal did

have such a power, we see no basis for such an order, and in this case Ms Clarkson's application for a discharge without conviction has no substance.

Name Suppression

[31] Ms Clarkson applied for name suppression. In her application she set out the grounds for her application. One of Ms Clarkson's grounds was that it was not in the public interest to know her identity as the public was not at risk if her identity was suppressed. She said that non-compliance with the original disciplinary requirements imposed on her were not matters which directly affected a member of the public.

[32] Similarly she said that it was not in the interests of the profession to know her identity and that the profession was not at risk if her identity was suppressed. Ms Clarkson suggested that the harm to her of publication outweighed satisfying the curiosity of members of the profession as to who the practitioner was, which she submitted was the only value to members of the profession.

[33] [redacted].

[34] Finally, Ms Clarkson submitted that the hearing had been conducted solely for the purpose of "*naming and shaming*" her, which was an abuse of process. She made this submission on the basis that the charges as laid could not have been sustained, and that there was no compelling need to bring the matter before the Tribunal.

[35] The Standards Committee opposed suppression of Ms Clarkson's name, saying that there was a need for openness in proceedings and public accountability. It said the public had a right to know, and that so far as the profession was concerned there was a deterrent value in publication. The medical report contained nothing sufficient to displace the public interest in open judicial proceedings and public accountability. The Committee said that it rejected Ms Clarkson's claim regarding the purpose of the proceedings brought against her, saying it could not perceive any valid basis for such a claim.

[36] The Tribunal has power to order suppression of name and identifying particulars under s 240 Lawyers and Conveyancers Act 2006. The exercise of that discretion has been considered on numerous occasions by the Tribunal, applying the principles attaching to suppression as established by judicial precedent in New Zealand.

[37] In *R v Liddell* [5] the discretion to suppress was held by the Court of Appeal not to be the subject of any code or legislative prescription. Instead, when considering an application for suppression, a balancing exercise is to be undertaken, weighing the public interest in knowing against the private interests of the person seeking the suppression. The starting point was said to be the importance of freedom of speech recognised by s 14 New Zealand Bill of Rights Act 1990, the importance of open judicial proceedings, and the right of the media to report court proceedings.[6] This principle was reaffirmed in the Court of Appeal in *Muir v Commissioner of Inland Revenue,*[7] where the Court held that the open justice principle was equally applicable to civil cases.

[38] Factors it is usual to take into account in considering name suppression were noted by the Court of Appeal in *Lewis v Wilson & Horton Limited & Others*[8] included:

(a) Whether the person seeking suppression has been found guilty of the charge, acquittal allowing a greater possibility of suppression;

(b) The seriousness of the offending, where a truly trivial charge might mean that any particular damage from publication could outweigh the public interest in knowing;

(c) Any adverse impact on the prospects of rehabilitation;

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5 *R v Liddell* [1995] 1 NZLR 538.
6 Ibid, 546-7.
7 *Muir v Commissioner of Inland Revenue* (2004) 17 PRNZ 365 (CA) at [29].
8 *Lewis v Wilson & Horton Limited & Others* CA 131/00, 29 August 2000, at [41] and [42].

(d) The public interest in knowing the character of the person seeking name suppression;

(e) Circumstances personal to the person seeking suppression, that person's family or co-workers, and impact on financial and professional interests that take matters beyond normally expected distress, embarrassment, and adverse personal and financial consequences. The effects must be disproportionate to the public interest in knowing, if they are to be given weight in displacing the expectation of openness.

[39] In this case, when weighing up Ms Clarkson's suppression application and considering the factors set out above, we note that: Ms Clarkson admits the charges; the charges are not serious, but on the other hand they are not trivial, representing charges relating to a failure to comply with lawful requirements imposed on her arising from previous professional disciplinary matters; there is a rehabilitative aspect to this matter, but this consideration is a factor usually considered in relation to persons convicted in the criminal environment, and in any event we do not consider refusal to suppress will disrupt Ms Clarkson's refreshed approach to practice following her mentoring and associated matters; and the personal impact of publication on Ms Clarkson (she has submitted some medical evidence regarding the effects on her of publication) does not demonstrate any compelling point in favour of suppression.

[40] [redacted]. On the other hand, he notes that as at the time of his report, July 2012, Ms Clarkson had recovered, and of course the charges have subsequently been varied significantly from the original position, with five charges of misconduct being withdrawn and the remaining two charges being reduced to unsatisfactory conduct, which Ms Clarkson has admitted. No penalty is sought by the Standards Committee. The resolution of charges in that way, with Ms Clarkson's agreement, means that she is now dealing with an entirely different situation to the stress of the charges earlier in the process, and she now knows the outcome of the charges.

[41] In respect of Ms Clarkson's ground that the proceedings were an abuse of process designed to *"name and shame"* her, we give that ground no weight at all, and reject her claim. The fact of the matter is that Ms Clarkson failed to comply with the orders made following the original complaints. Until the Standards Committee took a stand, and commenced the disciplinary processes which resulted in the charges for non-compliance with the requirements imposed as a result of those complaints, Ms Clarkson was not addressing matters as she had been required to do. The requirements were imposed on her to help overcome issues which may have contributed to the original complaints, and it was in the public interest that Ms Clarkson performed those orders. We do not consider there is any basis for this claim by Ms Clarkson.

[42] In this professional disciplinary jurisdiction, and having regard to the express purposes of the Lawyers and Conveyancers Act 2006 with its requirements to maintain public confidence in the provision of legal services and to protect the consumers of those services,[9] there would need to be a strong case for any suppression which prevented an open and transparent disciplinary process. The question we have to weigh up is whether Ms Clarkson has made out a case of sufficient weight to displace the normal requirements of openness in the Tribunal's processes.

[43] On balance, we do not consider that she has made out such a case. The medical report was a matter which we considered carefully, but we have reached the conclusion that it does not outweigh the requirement for openness. [redacted]. Of course the proceedings have now been resolved, by the withdrawal of five charges of misconduct and the amendment of the two remaining misconduct charges to charges of unsatisfactory conduct, with Ms Clarkson's consent. No penalty is sought nor is one to be imposed. The circumstances now are quite different to those when Ms Clarkson [redacted], and we do not consider the vulnerability referred to dictates a suppression requirement.

[44] At the hearing on 6 November 2012 the Tribunal reserved its decision on all matters and gave Ms Clarkson interim suppression of her name and identifying

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[9] Section 3 Lawyers and Conveyancers Act 2006.

particulars. It also permanently suppressed her medical report and details of that report. At the time of granting interim name suppression the Tribunal confirmed to Ms Clarkson that the grant was only to protect her position until the Tribunal had the opportunity to consider all matters before it, and that the interim grant should not be taken as indicating a final outcome of her application. Having now considered all the matters raised, the case for permanent name suppression is not made out in our view.

Costs

[45] Ms Clarkson had agreed to pay the Standards Committee the sum of $5,000 towards its costs. This was confirmed in the joint memorandum filed by the parties, as noted at the beginning of this determination. Ms Clarkson objected to paying these costs as the Committee had incurred these costs, she said, only as a consequence of its insistence on taking the charges to hearing, something she claimed was unnecessary. The Committee did not consider that a withdrawal of all the charges was appropriate, instead reaching an understanding on the modified approach to the charges as noted above, to which Ms Clarkson agreed. It was entitled to take that approach if it wished, and should not be criticised by Ms Clarkson for deciding to proceed in that way to deal with her defaults.

[46] Counsel for the Committee advised the Tribunal at the hearing that the $5,000 incurred in costs was significantly less than its total costs. That amount reflected costs up to the time the possibility of complete withdrawal of all charges, subsequent to a successful completion of all outstanding matters by Ms Clarkson, was considered. No further costs accrued against the Standards Committee, in respect of fees incurred after it decided to proceed with amended charges, were in fact being sought from Ms Clarkson counsel for the Committee advised.

[47] In those circumstances Ms Clarkson's concern about costs being unduly increased because of what she described as an unnecessary hearing is undermined. In any event, the Committee was entitled to bring the charges, and it reached an agreement to adjust the charges against Ms Clarkson, and Ms Clarkson agreed to pay $5,000 towards its costs.

[48] The policy of the Tribunal is to place the burden of costs in disciplinary proceedings on errant practitioners, subject of course to being satisfied as to quantum and ability to pay. The Tribunal does not consider that the profession should bear the direct costs of a practitioner guilty of conduct in breach of professional standards and obligations. The profession incurs considerable indirect professional disciplinary costs in operating the Complaints Service and organisational structures required to ensure professional standards are set and observed, and direct costs incurred in successfully prosecuting charges should, subject to what we have said above, be met by the practitioner charged.

[49] Ms Clarkson is in employment, evidently as a contractor to the Crown, undertaking some legal research on matters for the Attorney General's office. There was no evidence from her regarding inability to pay costs, either from income or capital.

[50] Ms Clarkson should pay the Standards Committee costs of $5,000. That constituted a reduced amount, as the Committee was prepared not to seek any costs incurred since it made a decision to prosecute amended charges as distinct from a possible approach involving agreement to withdraw all charges if Ms Clarkson first performed all outstanding matters to its satisfaction. As noted above, proceeding to prosecute charges before the Tribunal was a course that was open to the Committee. In recognition of the alternative approach it could have adopted the Committee did not seek costs accruing from the time it made the decision to continue to a hearing of the charges, albeit the charges were at a different level following amendments and withdrawals.

[51] In those circumstances we think it fair that the parties also share the liability of the New Zealand Law Society arising from the hearing, in a way that reflects that recognition by the Standards Committee that it should be awarded less than its full costs in proceeding with the hearing. In that case Ms Clarkson should reimburse the New Zealand Law Society 50% of the amount incurred by it under s 257 Lawyers and Conveyancers Act 2006 in reimbursing the Crown's Tribunal costs related to this hearing.

[52] The Tribunal's costs were certified at the hearing, under s 257 Lawyers and Conveyancers Act 2006, at $3,600.

Orders

[53] Ms Clarkson is ordered to pay the Standards Committee $5,000 as a contribution towards its costs, and $1,800 as a contribution towards the New Zealand Law Society costs it has incurred under s 257.

[54] Permanent name suppression is declined. The existing interim order will expire one month after the date of this determination. More time than normal before such expiry is allowed in this case given the impending holiday break and the ability of Ms Clarkson to access the Courts should she wish to take this suppression matter further. The medical report on Ms Clarkson, and commentary regarding Ms Clarkson's health and personal issues in paragraphs [33], [40] and [43] are permanently suppressed.

[55] An admission of the two amended charges remaining after withdrawal of all other charges was made at the hearing by Ms Clarkson. The charges admitted are recorded against Ms Clarkson and her application for a discharge is declined.

DATED at AUCKLAND this 19th day of December 2012

D J Mackenzie
Chair