THE PERMANENT SUPPRESSION ORDERS MADE BY THE TRIBUNAL PURSUANT TO S 240 OF THE LAWYERS AND CONVEYANCERS ACT 2006 IN ITS PENALTY DECISION OF 13 JANUARY 2022 ARE CONFIRMED.

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2022-404-000094
[2022] NZHC 1709

BETWEEN	NATIONAL STANDARDS COMMITTEE (NO 1) OF THE NEW ZEALAND LAW SOCIETY Appellant
AND	JAMES DESMOND K GARDNER-HOPKINS Respondent

Hearing: 30-31 May 2022

Court: Venning, Ellis and Hinton JJ

Appearances: D La Hood and T G Bain for Appellant
J Long and R Langdana for Respondent

Judgment: 20 July 2022

JUDGMENT OF THE COURT

This judgment was delivered by me on 20 July 2022 at 3.30 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar / Deputy Registrar

Date…………

Solicitors: Luke Cunningham Clere, Wellington
DK Law Limited, Auckland
Counsel: J Long/R Langdana, Auckland

Introduction

[1] Mr Gardner-Hopkins is a former partner in the law firm Russell McVeagh. At the time material to this judgment he was the manager of the firm's Environmental Planning and Natural Resources Team in Wellington.

[2] On 24 June 2021 the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) found Mr Gardner-Hopkins guilty of six charges of misconduct.[1] Five involved intimate non-consensual touching of four different young women who had been employed as summer clerks at the firm. The sixth involved consensual sexual activity with a fifth young woman, also a summer clerk.

[3] In its penalty decision delivered on 13 January 2022 the Tribunal censured Mr Gardner-Hopkins and suspended him from practice for two years from 7 February 2022.[2] The Tribunal also made orders for payment of the costs incurred by the Standards Committee, the Tribunal and the New Zealand Law Society.

[4] The Standards Committee appeals against the penalty decision. The Standards Committee says Mr Gardner-Hopkins should have been struck off or at the least, suspended for the maximum period of three years.

[5] Mr Gardner-Hopkins has cross-appealed. He says the Tribunal should have imposed a shorter suspension than two years.

Background: liability decision

[6] The conduct the Tribunal found proved against Mr Gardner-Hopkins occurred on two occasions. The first occasion was the Russell McVeagh end-of-year Christmas function on 18 December 2015 in Wellington. Charges one to five (involving four of the young women) arose out of Mr Gardner-Hopkins' behaviour at that function.

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1 *National Standards Committee No. 1 v Gardner-Hopkins* [2021] NZLCDT 21, LCDT 022/20 [the liability decision]. It was unnecessary to consider a seventh charge which was laid as an alternative.

2 *National Standards Committee No. 1 v Gardner-Hopkins* [2022] NZLCDT 2, LCDT 022/20 [the penalty decision under appeal].

Charge six arose out of a second function at Mr Gardner-Hopkins' home for members of his environmental law team on 21 December 2015.

[7] In brief, in its liability decision, the Tribunal made the following findings on the charges.

[8] Charge 1 — the Tribunal accepted the evidence of Ms A:[3]

> We find it established that Mr Gardner-Hopkins, approached Ms A with no usual courtesies such as introducing himself, asking her name or in other ways treating her as a person and immediately embarked on physical invasion, to use the term used by Ms A, namely placing his hand below Ms A's hip, on or below her underwear line, he then instructed her to drink alcohol "scull the drink" and then nuzzled into her face. …

[9] Charge 2 — the Tribunal also found Ms B to be a clear and credible witness. The core finding of the Tribunal was that Mr Gardner-Hopkins:[4]

> … made no attempt to relate to her as a person, showed little to no respect for her, put his arm around her waist, pulled her away from her group, and facing towards her, repeatedly leaned in to put his mouth near her ear. Finally, he moved his hands up and down her body until one came into contact with her breast.

[10] Charge 3 — the Tribunal found Ms C an equally persuasive and careful witness. It accepted her evidence that:[5]

> … the touching of her bottom was not an inoffensive brushing or jostling, but that [Mr Gardner-Hopkins'] hand continued to move on it, after the initial touch. The touching did not stop there but after having both hands around Ms C's waist, one of Mr Gardner-Hopkins hands moved up under one of her breasts in a motion that she described as caressing.

[11] Charge 4 — the Tribunal similarly accepted the evidence of Ms D and found Mr Gardner-Hopkins had put his arm around her in a tight clasp, moved his hand on her bottom for some five seconds and then kissed her on the cheek.[6]

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3 The liability decision, above n 1, at [117].
4 At [121].
5 At [124].
6 At [127].

[12] Charge 5 — the Tribunal found the core features of this charge well established and serious.[7] While outside the venue waiting for taxis Ms B said Mr Gardner-Hopkins put his arm on her waist and pulled her so she was facing him. She had been wearing a white t-shirt and red wine had been spilled on it. Both she and Ms A, who was observing, described how he traced the red wine stain on her top across to her breast with his hand. Ms B said he let his hand stay there asking her "what happened here"? Ms B says Mr Gardner-Hopkins then tried to get into the taxi with her, asking her a number of times to go home with him or if he could go home with her or to a nightclub called El Horno. Other witnesses who were present were so concerned about the safety of Ms B that they intervened to prevent Mr Gardner-Hopkins entering the taxi with her.

[13] Charge 6 — Mr Gardner-Hopkins admitted the facts of charge 6. Mr Gardner-Hopkins' house where the team function was held had, on its lowest floor, an indoor heated swimming pool and sauna. By the late hours of the party the numbers had dwindled and those present were using the pool and sauna. They were also drinking whiskey. At some point while in the sauna together, Mr Gardner-Hopkins and Ms K, who worked closely with him, began kissing and intimate touching. The intimacy was observed by at least one other person. [REDACTED] The Tribunal said that it was not necessary to record in detail what occurred. It was sufficient to say that the behaviour "evidenced a prolonged and intimate interaction at a level that can fairly be described as only just short of sexual intercourse".

[14] Ms K did not give evidence before the Tribunal. Although Mr Gardner-Hopkins accepted the incident with Ms K occurred, he said the kissing and sexual contact had been initiated by Ms K and, after some time, was brought to an end by him.

[15] The Tribunal found that Mr Gardner-Hopkins' conduct justified a finding that Mr Gardner-Hopkins was not, at the relevant time, a fit and proper person, or was otherwise unsuitable to engage in practice as a lawyer. It went on to explain:

> [172] This view is based on our assessment that the five incidents of touching were not accidental (it is not contended that Incident 6 was accidental

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7 At [129].

> touching). This decision affirms what has always been the case, namely that indecent, unconsented or unwelcome touch by a lawyer on another, breaches the standards of conduct expected of a member of the profession. Intimate non-consensual touch connected with the workplace, on someone that the lawyer has power over, has always been unacceptable.
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> [173] This is the case whether the lawyer intentionally touches the subordinate, or has failed to self-manage to the extent that the lawyer's conduct is inappropriately disinhibited. The profession expects of its members that those who work with lawyers are respected and safe. A basic behaviour expected of lawyers towards those they work with is that they are respectful and do not abuse their position of power. There is no place for objectification of women or indeed any person, by those in the profession of law.

Penalty decision

Seriousness

[16] By the time of the penalty hearing, Mr Gardner-Hopkins had acknowledged that his actions amounted to serious misconduct. The Tribunal agreed, noting there had been six instances of exploitative sexual conduct, with five different women at two work events. Mr Gardner-Hopkins had set out to get drunk, at least on the first occasion. The Tribunal accepted the Standards Committee's submission that the starting point for penalty must be strike-off.[8]

Aggravating features

[17] The Tribunal considered the aggravating features to be the number of repetitions on the first occasion in relation to four different women, and the power imbalance, particularly in relation to the sixth charge. The "incalculable" impact on the young women was noted. The Tribunal also appears to have accepted that the conduct could not be said to be entirely out of character for Mr Gardner-Hopkins.

[18] The Tribunal accepted there were no personal aggravating features, "other than his intent to get drunk on the night of the firm's Christmas party", which it had taken account of when assessing "seriousness". It noted that Mr Gardner-Hopkins had no previous disciplinary record.

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8 Penalty decision, above n 2, at [11].

Mitigating features – consequences already incurred

[19] In mitigation the Tribunal first took account of the "very significant consequences" Mr Gardner-Hopkins had already experienced. He had been removed from partnership in Russell McVeagh and had suffered a loss in status and income. He had also suffered significant reputational and emotional loss. The Tribunal also accepted that the law was a stressful and challenging profession and he had been left ostracised and isolated.

Mitigating features – changes made/future risk

[20] The Tribunal noted that Mr Gardner-Hopkins now accepted the Tribunal's findings and had directly apologised to the victims for the conduct.

[21] It also acknowledged the steps Mr Gardner-Hopkins had taken to address his conduct. It referred to the work Mr Gardner-Hopkins was undertaking with his therapist Dr Freeman-Brown, and noted he had significantly reduced his alcohol intake. The Tribunal also referred to the statement of evidence of Ms Shayne Mathieson, who works in the area of workplace culture. She considered that Mr Gardner-Hopkins was not a risk to anyone at present. The Tribunal considered her evidence "helpful".

[22] In summary, the Tribunal accepted that Mr Gardner-Hopkins had, "albeit belatedly, and with a little less enthusiasm than we might have wanted to see", taken positive steps to reflect, face up to and deal with the factors which had led to the conduct in question.

Mitigating features – financial position

[23] The Tribunal did not consider Mr Gardner-Hopkins' financial position to be as dire as suggested and noted that given the protective responses of the legislation, sympathy for the practitioner's personal circumstances could not be a defining feature.

General penalty principles

[24] The Tribunal then referred to the principles it considered were relevant to determining penalty:

(a) the purpose of disciplinary proceedings should not be punitive but protective (of both the public and of the profession's reputation);

(b) general deterrence;

(c) the desirability of consistent penalties, by reference to other cases, particularly the cases of *Daniels* and *Horsley*;[9]

(d) the purposes of strike-off and suspension, by reference to the decision of *Bolton v Law Society*;[10] and

(e) the least restrictive outcome.[11]

[25] In the context of its discussion of the fourth of these principles, the Tribunal said that, notwithstanding Mr Long's submissions to the contrary, nothing short of a significant period of suspension sufficed to mark the seriousness of the misconduct, the harm to victims in this matter and the considerable therapeutic work still required.[12] It also noted the importance of considering "rehabilitation as a proper rationale for suspension" and that, in Mr Gardner-Hopkins' case, four areas of relevant risk had been identified:

(a) problematic alcohol consumption practices;

(b) poor understanding of professional boundaries;

(c) loss of mentorship; and

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9 *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850 (HC); and *Canterbury Westlands Standard Committee v Horsley* [2014] NZLCDT 47.

10 *Bolton v Law Society* [1994] 1 WLR 512 (CA).

11 As discussed in the *Daniels'* decision.

12 At [67].

(d) failure to prioritise therapeutic needs and personal support.

[26] It noted that at the end of the suspension period, it would be for Mr Gardner-Hopkins to satisfy the Practice Approval Committee (PAC):

> … that he has undertaken appropriate treatment/therapeutic interventions to mitigate any risks that might remain from the four areas of concern that we have identified.

[27] The Tribunal expressly recorded that:

> In our view, without such evidence, it is extremely doubtful that a practising certificate would be reissued.

[28] In an appendix to the decision the Tribunal set out the types of conditions it thought might later be imposed, or undertakings sought by the PAC, to protect the public from the risk of similar behaviour in future, in light of the four risk areas just noted.

Decision

[29] Having regard to all these matters, the Tribunal concluded that a suspension of two years was the proportionate and proper penalty. As we have said, it also censured Mr Gardner-Hopkins and ordered him to pay costs.

Preliminary matters

Approach to the appeal

[30] Both the Standards Committee and Mr Gardner-Hopkins approached the appeal and cross-appeal on the basis that, as an appeal under s 253(2)(b) of the Lawyers and Conveyancers Act 2006 (the Act), the appeal is to be treated as a general appeal rather than an appeal against a discretion. In particular, they both referred to the recent decision of the Court in *Hong v Auckland Standards Committee No 5*.[13] In that case the Court said:[14]

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13 *Hong v Auckland Standards Committee No 5* [2020] NZHC 1599; and, contrast, *Emmerson v A Professional Conduct Committee* [2017] NZHC 2847 at [96].

14 *Hong v Auckland Standards Committee No 5*, above n 13 (citations omitted).

> [54] An appeal to this Court under s 253 of the Act from a decision of the Tribunal must be by way of rehearing. Whether the appeal is against a finding of misconduct or against penalty (with the exception of costs) the appeal is a general appeal.
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> [55] The appellate court considers the merits of the case afresh. It must be persuaded that the decision under appeal is wrong but the weight the appellate court gives to the reasoning of the court or tribunal below is a matter for the appellate court's assessment. The appellate court may consider it appropriate to give due regard to a specialist tribunal's assessment.
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> [56] The parties to the appeal are entitled to judgment in accordance with the opinion of the appellate court, even where that opinion is an assessment of fact and degree and entails a value judgment. If the appellate court's opinion is different from the conclusion of the court or tribunal below, then the decision under appeal is wrong in the only sense that matters, even if it was a conclusion on which minds might reasonably differ.

[31] We agree that is the appropriate approach.

Fresh evidence

[32] Mr Gardner-Hopkins sought to adduce fresh evidence on his cross-appeal. The evidence was from Sarah Bramhall, a consultant psychologist, who has been treating Mr Gardner-Hopkins since March this year, (although he initially contacted her in December 2021, after the penalty hearing but before the penalty decision was issued). Ms Bramhall gave evidence as to Mr Gardner-Hopkins' present treatment needs and the progress that he has made.

[33] The Standards Committee objected to the admission of the fresh evidence.

[34] The High Court Rules 2016 apply to the appeal.[15] The rule relating to further evidence on appeals is r 20.16. Leave may be granted to admit further evidence on the appeal only if there are special reasons for hearing the evidence. Rule 20.16(3) provides that a special reason can be that the evidence relates to matters that have arisen after the date of the decision appealed against and that are or may be relevant to the determination of the appeal. The interests of justice are also a relevant consideration.[16]

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15 Lawyers and Conveyancers Act 2006, s 253(3).
16 *B v A* [2020] NZHC 580.

[35] The Court provisionally admitted the evidence and Ms Bramhall was cross-examined by Mr La Hood.

[36] After consideration of the principles and the evidence, we accept Ms Bramhall's evidence is both cogent and material. It is relevant to the issues that the Court must consider, namely whether by reason of his conduct in 2015 and taking account of subsequent circumstances, Mr Gardner-Hopkins remains unfit to practise as a lawyer. We therefore admit it for the purposes of the appeal.

Points on appeal

[37] In its notice of appeal the Standards Committee says the Tribunal erred by concluding Mr Gardner-Hopkins was, by the time of the penalty decision, a fit and proper person to carry on practice as a barrister and solicitor and hence strike-off was not an appropriate outcome. In particular:

(a) the Tribunal placed insufficient weight on the expert evidence of Dr Jane Freeman-Brown to the effect Mr Gardner-Hopkins had not yet taken sufficient steps to address the drivers of his misconduct;

(b) the Tribunal placed undue weight on Mr Gardner-Hopkins' claimed efforts to address his alcohol consumption;

(c) the Tribunal wrongly placed weight on the opinion evidence of Shayne Mathieson as to the risk Mr Gardner-Hopkins posed;

(d) the Tribunal's acknowledgement that "further therapeutic interventions are required, and that will involve professional support for some time into the future" was inconsistent with the conclusion Mr Gardner-Hopkins was now a fit and proper person;

(e) the Tribunal erred in law by concluding, contrary to Court of Appeal authority that it was required to "give weight to the principle that maximum penalties must be reserved for the most serious of cases";

(f) the Tribunal erred in its assessment of the seriousness of the misconduct;

(g) the Tribunal wrongly took into account plainly incorrect decisions by Standards Committees in other cases of sexual impropriety; and

(h) the Tribunal placed undue weight on the claimed mitigating factors.

[38] For the above reasons the Standards Committee says the appeal should be allowed and Mr Gardner-Hopkins struck off.

[39] In the alternative, the Standards Committee says the Tribunal erred in concluding that a period of suspension less than the statutory maximum of three years was sufficient to achieve the purposes of the Act.

Points on cross-appeal

[40] In his cross-appeal Mr Gardner-Hopkins says the Tribunal erred by:

(a) considering his admission that he went to the Christmas party intending to get drunk was a feature that went to the seriousness of the conduct;

(b) accepting that the evidence about the culture in his team, the power imbalance, (without explicit exploitation) and the offending not being entirely out of character, were aggravating features;

(c) giving no or no sufficient weight to the accepted consensual nature of the interactions that occurred between him and Ms K;

(d) incorrectly assessing his financial circumstances, and his likely ability to find alternative work during any period of suspension;

(e) failing to give any or sufficient weight to mitigating features of his conduct and the post-conduct period; and

(f) in its application of the "least restrictive" outcome principle.

[41] Mr Long submitted the errors could be grouped into three categories:

(a) Error 1 — the Tribunal's assessment of Mr Gardner-Hopkins' conduct. The Tribunal was influenced by irrelevant considerations, and failed to take account of relevant considerations;

(b) Error 2 — the Tribunal's assessment of the consequences to Mr Gardner-Hopkins; and

(c) Error 3 — the Tribunal's assessment of the risk Mr Gardner-Hopkins now posed.

Relevant law

[42] Section 242(1)(c) of the Lawyers and Conveyancers Act 2006 (the Act) provides that if a person is found guilty of misconduct the Tribunal may order their name be struck off the roll. Section 244(1) confirms that a strike-off order may not be made unless, in the Tribunal's opinion, the practitioner is, by reason of the conduct, not a fit and proper person to be a practitioner.

[43] While a finding that by reason of the conduct the practitioner is not a fit and proper person is a qualifying requirement for an order for strike-off, such a finding does not automatically lead to an order for strike-off. Whether to strike-off or not remains a discretionary decision for the Tribunal under s 242(1)(c).

[44] The competing arguments by the Standards Committee and Mr Gardner-Hopkins are to be considered against the purpose of the penalties provided for in the Act.

[45] In *Bolton v Law Society*, the Court of Appeal of England and Wales noted that penalties in this context are primarily directed to one or other or both of two purposes:[17]

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

[46] The importance that standard setting plays in terms of public confidence in members of the profession was discussed by a Full Court of this Court in *Daniels v Complaints Committee 2 of the Wellington District Law Society*:[18]

> [34] In considering sanctions to be imposed upon an errant practitioner, a disciplinary tribunal is required to view in total the fitness of a practitioner to practise, whether in the short or long term. Criminal proceedings of course reflect badly upon the individual offender, whereas breaches of professional standards may reflect upon the wider group of the whole profession, and will arise if the public should see a sanction as inadequate to reflect the gravity of the proven conduct. The public are entitled to scrutinise the manner in which a profession disciplines its members, because it is the profession with which the public must have confidence if it is to properly provide the necessary service. To maintain public confidence in the profession members of the public need to have a general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards.

[47] In *Hart v Auckland Standards Committee 1 of the New Zealand Law Society*, the Full Court accepted that the nature and gravity of the charges will generally be important and will likely inform the decision to a significant degree because they may point to the fitness of the practitioner to remain in practice.[19] In some cases they may be determinative. In cases involving lesser forms of misconduct, the manner in which the practitioner responds to the charges may also be a significant factor as may previous disciplinary history.

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17 *Bolton v Law Society*, above n 10, at 518.

18 *Daniels v Complaints Committee 2 of the Wellington District Law Society*, above n 9.

19 *Hart v Auckland Standards Committee 1 of the New Zealand Law Society* [2013] NZHC 83, [2013] 3 NZLR 103 at [186]–[187].

[48] In *Ellis v Auckland Standards Committee 5*, the Court referred to the above decisions noting that the penalty was to be the "least restrictive" and that the following were relevant considerations:[20]

(a) the nature and quality of the misconduct established;

(b) previous disciplinary history;

(c) any evidence of remorse or insight;

(d) the need for deterrence; and

(e) any aggravating or mitigating features.

[49] In *New Zealand Law Society v Stanley*, the Supreme Court considered what was required to meet the standard of being a "fit and proper person" in the context of an opposed application for admission by Mr Stanley, who had previous criminal convictions.[21] The Court summarised the relevant principles as follows:[22]

> (a) The purpose of the fit and proper person standard is to ensure that those admitted to the profession are persons who can be entrusted to meet the duties and obligations imposed on those who practise as lawyers.
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> (b) Reflecting the statutory scheme, the assessment focusses on the need to protect the public and to maintain public confidence in the profession.
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> (c) The evaluation of whether an applicant meets the standard is a forward looking exercise. The Court must assess at the time of the application the risk of future misconduct or of harm to the profession. The evaluation is accordingly a protective one. Punishment for past conduct has no place.
>
> (d) The concept of a fit and proper person in s 55 involves consideration of whether the applicant is honest, trustworthy and a person of integrity.
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> (e) When assessing past convictions, the Court must consider whether that past conduct remains relevant. The inquiry is a fact-specific one and the Court must look at all of the evidence in the round and make

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20 *Ellis v Auckland Standards Committee 5* [2019] NZHC 1384 at [21].
21 *New Zealand Law Society v Stanley* [2020] NZSC 83, [2020] 1 NZLR 50.
22 At [54].

a judgement as to the present ability of the applicant to meet his or her duties and obligations as a lawyer.

(f) The fit and proper person standard is necessarily a high one, although the Court should not lightly deprive someone who is otherwise qualified from the opportunity to practise law.

(g) Finally, the onus of showing that the standard is met is on the applicant. Applications are unlikely to turn on fine questions of onus.

[50] In determining whether to make a strike-off order the Tribunal (and this Court on appeal) will look at the nature and circumstances of the misconduct, the practitioner's past history, and the steps the practitioner has taken and is taking to ensure that such conduct does not occur again. In some cases, it will be apparent the practitioner is not able or willing to change or address his or her behaviour sufficiently so they will remain unfit to practise law.

Discussion

[51] In our assessment of the merits of the matters raised by the appeal and cross-appeal we largely adopt the same headings (addressed in the same order) as did the Tribunal.

Seriousness

[52] In its liability decision the Tribunal found Mr Gardner-Hopkins' conduct to be disgraceful or dishonourable under s 7(1)(i) or at least a reckless breach of r 12 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 falling under s 7(1)(a)(ii) of the Act.[23]

[53] Mr La Hood submitted that Mr Gardner-Hopkins had effectively been found liable for sexual assault and sexual exploitation. Having found the misconduct was serious enough that the starting point was strike-off, the Tribunal erred by not imposing that penalty. Further, it erred by noting it was required to give weight to the principle that maximum penalties must be reserved for the most serious of cases.[24] He referred to cases in a sentencing context where the Court of Appeal has emphasised

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23 The liability decision, above n 1.

24 Penalty decision under appeal, above n 2, at n 22.

that it is always possible to imagine a hypothetical worse case, but if headroom is reserved for them, the maximum penalty will never be imposed. Therefore it is an error of principle to save the most serious penalties for the hypothetical "most serious of cases".[25] In any event, he submitted the present was a particularly serious case.

Analysis

[54] Mr Gardner-Hopkins' actions were serious. All the young women were particularly vulnerable. Quite apart from his physical presence and the age difference between them, as a partner of the firm, Mr Gardner-Hopkins was responsible for their safety and wellbeing. It is also relevant that the young women were summer clerks. This was their first placement with a legal firm and they were dependent on positive reports from the partners of the firm if they intended to further their legal careers whether with or outside the firm. This was a pivotal experience for them. Mr Gardner-Hopkins seriously breached the trust that was imposed on him and his actions undoubtedly affected their futures in the law.

[55] While the touching involved in the five incidents on the first occasion was brief in time, it involved intimate touching in the presence of others. We accept without hesitation it has had a significant effect on each of the victims. The brief nature of the touching does little to mitigate its seriousness.

[56] The incident involving Ms K was different. On the evidence before the Tribunal it involved consensual intimacy between the two of them, which may have been initiated by Ms K. However, while it is important to recognise Ms K's autonomy, the context in which the intimate contact occurred is relevant. Ms K, too, was a summer clerk, and in her case particularly dependent upon Mr Gardner-Hopkins for references for her future employment. She was at his home in connection with a work function. Alcohol was freely available and its consumption encouraged. She, with others, was also encouraged to use the pool and sauna. Mr Gardner-Hopkins chose to sit in the sauna with her after they had both consumed a lot of alcohol.

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[25] *R v Beri* [1987] 1 NZLR 46 (CA) at 48; *R v Fulcher* [1987] 2 NZLR 233 (CA); *R v Xie* [2007] 2 NZLR 240 (CA) at [26]; and *R v Lata* [2018] NZCA 615 at [42].

[57] Mr Gardner-Hopkins should have realised that, by dint of the matters just mentioned, Ms K was vulnerable. He should have appreciated the considerable power imbalance between them. Even accepting Mr Gardner-Hopkins did not initiate the kissing, he responded willingly and allowed the intimacy to proceed further. It was entirely inappropriate for him to do so, let alone permit it to escalate. In acting as he did towards Ms K, Mr Gardner-Hopkins breached the duty of care and trust owed to her as a young employee of his firm.

Aggravating features

[58] Mr La Hood submitted that Mr Gardner-Hopkins' exploitation of the five summer clerks was not out of character and was a manifestation of an attitude towards women that was firmly entrenched in his practice. He referred to the further evidence about the culture within the team lead by Mr Gardner-Hopkins within Russell McVeagh.

[59] Mr Long rejected the Standard Committee's characterisation of the conduct as sexual assault or sexual exploitation and said the Tribunal's findings did not go that far. He submitted that the Tribunal erred by taking a number of irrelevant considerations into account in assessing the seriousness of the misconduct, such as Mr Gardner-Hopkins' intention to get drunk on the first occasion, the negative "team culture" evidence raised at the liability hearing, and the power imbalance (without any express exploitation of it). He also criticised the Tribunal's observation that Mr Gardner-Hopkins' conduct could not be considered out of character. Further, he argued the Tribunal had failed to give proper weight to relevant considerations, such as the consensual nature of Mr Gardner-Hopkins' interaction with Ms K, which had been initiated by Ms K.

Analysis

[60] We agree with the Tribunal that Mr Gardner-Hopkins' deliberate excessive consumption of alcohol at the Christmas party, in the knowledge that, when drunk, he had "no respect for personal boundaries" is, to a degree, an aggravating factor. That said, we accept that there is no evidence he intended to get drunk in order to touch the

young women in the way he did. But certainly his inebriation does not constitute an excuse for his actions.

[61] We have some reservations about the Tribunal's reliance on the "laddish culture" of the team led by Mr Gardner-Hopkins to support its conclusion the conduct was not out of character. While we accept that some of the evidence disclosed a team culture (fostered by Mr Gardner-Hopkins) that is, quite rightly, no longer regarded as acceptable, that is a wider issue. It does not significantly inform the seriousness of the conduct giving rise to the charges.

Mitigating features – consequences already incurred

[62] Mr La Hood submitted the Tribunal was wrong to have taken certain factors into account as mitigating. He submitted it was wrong for the Tribunal to take into account the professional consequences already suffered by Mr Gardner-Hopkins. He said such consequences were not relevant to whether he was a fit and proper person, referring to the Supreme Court's decision in *Stanley* where the Court confirmed the test is objective and should not be "influenced by sympathy for the position of the applicant".[26]

[63] In response, Mr Long submitted the Tribunal erred in the way it dealt with the assessment of the professional consequences of a lengthy suspension and overstated Mr Gardner-Hopkins' ability to find alternate work during the suspension period.

Analysis

[64] We consider the Tribunal erred by regarding the financial and professional consequences to Mr Gardner-Hopkins as mitigating factors. The fact that Mr Gardner-Hopkins was required to resign from the Russell McVeagh partnership, and lost connection with the profession, was an inevitable consequence of his actions. Given his conduct, it is unsurprising that he may have been unwelcome at some professional events. Other negative consequences that have flowed from the misconduct are not positive factors in Mr Gardner-Hopkins' favour in the context of disciplinary

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[26] *New Zealand Law Society v Stanley*, above n 21, at [39].

proceedings. The object of the disciplinary process is primarily protective. The personal considerations that might lead to a reduced sentence in a criminal context have less impact in a disciplinary setting.[27]

[65] We therefore conclude that the Tribunal was in error in making the allowances it made for mitigating circumstances in fixing the penalty.

Mitigating features – Changes made/future risk

[66] Mr La Hood submitted that, in imposing suspension rather than striking off, the Tribunal had failed to reach a firm conclusion whether Mr Gardner-Hopkins was in fact a fit and proper person. The overall tenor of the Tribunal's decision was that he was not. He pointed, in particular, to the Tribunal's observation that, without further "appropriate treatment", it was doubtful that the PAC would issue a practising certificate in two years' time; the guidance for the PAC set out in the appendix to the decision could only be seen as a reflection of its view that Mr Gardner-Hopkins was not presently fit and proper.

[67] Mr La Hood argued that Mr Gardner-Hopkins had broken the trust placed in him as a practitioner and had not earned it back. The onus was on him to satisfy the Tribunal of that and he had not provided sufficient evidence that he had made real, durable changes to his attitudes and behaviours. If that was the case, he should have been struck off.

[68] More specifically, Mr La Hood submitted that despite the lapse in time between the events in late December 2015 and the penalty hearing in December 2021, Mr Gardner-Hopkins had not taken the opportunity to fully rehabilitate himself over that period. He made the point that Mr Gardner-Hopkins had originally seen Dr Freeman-Brown for six months in 2018 but then disengaged with her and did not see her again until November 2020 when the Committee brought the charges against him. He noted Dr Freeman-Brown's answer in response to his question why there was that gap:

> I think there are two hypotheses. One, is that James' motivation for seeking psychological treatment at the time that he originally came in 2018 was perhaps extrinsic. The other hypothesis was that he is quite avoidant at

[27] *A v National Standards Committee* [2020] NZHC 563 at [93].

> addressing his issues and that he needs something to become quite imminent before he starts to address it so certainly I think perhaps both of those hypotheses may be in balance correct, but certainly his mental health was quite poor when he contacted me by telephone in November 2020.

[69] Mr La Hood also referred to Dr Freeman-Brown's conclusion that:

> There is still considerable work to be completed on the deeper, core psychological issues that led to James' unhealthy alcohol use and poor work boundaries and behaviour … It is the professional opinion of the writer, that these issues are yet to be fully resolved.

[70] While accepting that Mr Gardner-Hopkins' alcohol misuse had "received some attention", Mr La Hood submitted that was modest and recent as at the date of the hearing. It was also based on self reporting and largely untested. The Tribunal had erred in accepting that Mr Gardner-Hopkins had significantly reduced his alcohol intake and in any event had overemphasised Mr Gardner-Hopkins' drinking habits in relation to the offending. He said the Tribunal should have put little, if any, weight on the statement of Ms Mathieson.

[71] Mr La Hood also submitted the Tribunal was insufficiently sceptical of Mr Gardner-Hopkins' expressions of remorse. He emphasised that Mr Gardner-Hopkins had chosen to put the young women through the further ordeal of giving evidence at the liability hearing and had not apologised at all for that. He contended that neither the Tribunal nor this Court could be satisfied that he took his conduct seriously.

[72] On Mr Gardner-Hopkins' behalf, Mr Long submitted the Tribunal erred by failing to give sufficient weight to Mr Gardner-Hopkins' good conduct before, and in the now more than six years after, the events in question. He noted that despite the scrutiny Mr Gardner-Hopkins has been under, no further issues, historic or more recent, have come to light or been reported. He emphasised the penalty regime was "prophylactic, not punitive".[28]

[73] While acknowledging the need for general deterrence, Mr Long submitted consideration of specific deterrence required consideration of the likelihood of Mr Gardner-Hopkins repeating the behaviour. He submitted the Tribunal had failed to

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[28] *Ellis v Auckland Standards Committee 5*, above n 20, at [78].

have proper regard to the references submitted on Mr Gardner-Hopkins' behalf and that a proper analysis of Dr Freeman-Brown's and Ms Mathieson's evidence should have provided reassurance that Mr Gardner-Hopkins was addressing the issues which had led to his misconduct. Finally, he criticised the suggestion that Mr Gardner-Hopkins had engaged in a "strategy of avoidance". Mr Gardner-Hopkins had only become aware of the formal allegations against him in mid to late 2019, as the Standards Committee was concluding its investigation.

Analysis

[74] In cases involving an application for admission to the roll the Supreme Court has confirmed the evaluation of fitness to practise is a forward looking exercise.[29] While the present case involves consideration of whether to strike-off or not, it still requires an assessment of whether Mr Gardner-Hopkins can be said now to be a fit and proper person to remain on the roll of legal practitioners. An assessment must be made of the risk Mr Gardner-Hopkins poses of future misconduct or of harm to the profession.

[75] It follows we accept that, on appeal, we must also undertake a forward-looking exercise. The relevant assessment of fitness and propriety must be made today, and the steps taken to address the misconduct since it occurred will be a relevant and, in some cases, important consideration. In that sense, the effluxion of time since the misconduct potentially works in Mr Gardner-Hopkins' favour.

[76] As noted earlier, Mr Gardner-Hopkins' acknowledged four areas of risk are:

(a) problematic alcohol consumption;

(b) poor understanding of professional boundaries;

(c) loss of mentorship; and

(d) failure to prioritise therapeutic needs and personal support.

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[29] *New Zealand Law Society v Stanley*, above n 21, at [38].

[77] Mr Gardner-Hopkins was seriously affected by alcohol on both occasions of his misconduct. He has taken steps to address his abuse of alcohol and alcohol dependency. The Tribunal accepted the evidence of Dr Freeman-Brown that Mr Gardner-Hopkins had achieved "early remission of problematic drinking". There was ongoing and planned monitoring of his lowered alcohol use.

[78] It is also relevant that the misconduct was restricted to two occasions, both closely connected in time, at a time when Mr Gardner-Hopkins was experiencing difficulties in his personal life, and that it has not been repeated. As noted, no further complainants have come forward alleging behaviour of that nature. Given the high-profile nature of the proceeding it is likely they would have done if such incidents had occurred. Against that, a number of women have confirmed in the references provided to the Tribunal that Mr Gardner-Hopkins has acted appropriately towards them, both before and after those incidents.

[79] Mr La Hood suggested the positive reference from a woman who had worked with Mr Gardner-Hopkins from 2004 until approximately 2009 should be put to one side as that was a number of years before the incidents and prior to him becoming a partner. While her evidence was historical, in terms of the character of Mr Gardner-Hopkins it is relevant that offensive behaviour towards women did not seem to be embedded or part of his character at that time.

[80] We also consider the Tribunal was entitled to have regard to the evidence of Ms Mathieson. While not a forensic psychologist, given her experience Ms Mathieson is qualified as an expert in workplace culture, systems and working relationships. Such expertise is clearly relevant. She was able to offer an opinion as to whether Mr Gardner-Hopkins posed a risk in the legal workplace. Ms Mathieson confirmed that she has worked with Mr Gardner-Hopkins to develop ways to ensure that the factors which led to his behaviour were not repeated. She confirmed that in her opinion Mr Gardner-Hopkins is now aware of the issues that triggered the behaviour which saw him face the Tribunal. He now has a number of mechanisms to avoid such situations in the future and a better self-awareness. While accepting that a large component of Mr Gardner-Hopkins seeking help was the perceived benefit in being seen to do something in relation to his behaviour, she was satisfied that he is now motivated to

become a better person. In her opinion he is extremely unlikely to present any risk of inappropriate behaviour towards clients or fellow professionals in the future.

[81] We consider the fresh evidence of the consultant psychologist, Ms Bramhall, of particular assistance. Her evidence was measured and fair. She acknowledged the work that Mr Gardner-Hopkins still has ahead of him but confirmed that Mr Gardner-Hopkins now accepts responsibility for his past actions. In her opinion his motivation in continuing to seek her assistance is intrinsic. There has been a shift from the external driver (the pressure of these proceedings) so that his commitment to the sessions now involves internal motivation to engage and to address the treatment goals. She however considers that there is still some way to go and in her opinion something in the region of another nine to 12 months, or 16 to 20 sessions, could be required.

[82] Both parties also sought to rely on the observation by the Tribunal member, The Hon P Heath QC that past conduct is the best predictor of future conduct. Mr Long referred to it, noting that since 2015 there had been no repeat of the misconduct and a number of people had provided references in support of Mr Gardner-Hopkins. Mr La Hood also noted the principle but submitted that the relevant past conduct was that Mr Gardner-Hopkins had fostered a highly sexualised work environment, sexually assaulted four summer clerks, attempted to induce one to come home with him, and then subsequently engaged in the activity with Ms K. He had initially lied about the incident with Ms K when questioned by the firm and had kissed her again in front of colleagues. He said he would be aggrieved if he had to leave Russell McVeagh as a result of his conduct and then had initially engaged but then disengaged with Dr Freeman-Brown. He initially had denied the allegations.

[83] We consider the only past conduct of any particular relevance in Mr Gardner-Hopkin's case is the misconduct in issue itself. It must be acknowledged that the misconduct was repetitive, albeit over a very short period of time. But as we have noted, there are no previous instances of such misconduct. Also, again, the matters raised by Mr La Hood are in part answered by the steps that Mr Gardner-Hopkins has *since* taken to address his issues.

[84] This case is different to the majority of, in fact almost all, cases that come before the Tribunal and the Court in that it is not Mr Gardner-Hopkins' conduct in the course of his practice or dealing with clients which is in issue. There is no suggestion other than that Mr Gardner-Hopkins is a very competent practitioner in his field of expertise. It was his personal behaviour towards (young) women that is of particular concern. As we have noted, it is relevant that the behaviour occurred on two closely connected, but separate social occasions. On both occasions Mr Gardner-Hopkins was seriously affected by alcohol. He has taken significant steps to address his abuse of alcohol.

[85] While Mr Gardner-Hopkins did deny the incident with Ms K when initially challenged by his firm we accept that was in part at least, because Ms K and he had agreed to do so.

[86] However, Mr Gardner-Hopkins took some time to accept responsibility for the other incidents. He defended them before the Tribunal which would no doubt have increased the anxiety of the young women involved.

[87] We do note though, as the Tribunal did, there is now some insight on Mr Gardner-Hopkins' part of the impact of his actions on the young women. That is also confirmed by the, albeit belated, apology he offered during the penalty hearing.

[88] Taken overall, the evidence before the Tribunal (and now Ms Bramhall's evidence before this Court) supports Mr Long's submission that Mr Gardner-Hopkins has taken and is continuing to take appropriate steps to address the risks identified by the Tribunal.

Mitigating features – financial position

[89] Mr Long submitted that the Tribunal was wrong to find that Mr Gardner-Hopkins' financial situation was "not as dire as suggested" and the costs it imposed were significant. Combined with a two year suspension the situation was "dire" from Mr Gardner-Hopkins' point of view. Mr Long also submitted that the Tribunal had overstated Mr Gardner-Hopkins' ability to find other work during any period of suspension.

Analysis

[90] We agree with the way the Tribunal dealt with Mr Gardner-Hopkins' financial position. The statements of income and expenditure filed on his behalf allowed for "unavoidable" living costs of $144,000 a year after tax. A budget at that level does not suggest dire circumstances. In any event, we do not consider a practitioner's financial position operates as a mitigating factor in disciplinary proceedings. Also, to some extent this argument overlaps with Mr Long's first argument as to professional consequences already suffered, which we have found not to be a mitigating factor.

Consistency

[91] Disciplinary proceedings against a lawyer involving allegations of sexual misconduct are not common and cases involving allegations of sexual misconduct with a person other than a client are even rarer.

[92] The two decisions concerning sexual misconduct between lawyer and client specifically referred to by the Tribunal were *Daniels* (in the High Court) and *Horsley* (in the Tribunal).[30] Although reference was also made to a relatively recent Standards Committee decision with facts not dissimilar to the present, the Tribunal's view was that that decision was plainly wrong, an assessment with which we agree.[31] Accordingly, we do not therefore consider that decision further.

[93] In *Daniels*, the most serious charge was of having sexual intercourse with a client at a time when she was still a client and in circumstances which were inconsistent with, or an abuse of, the relationship of trust between the practitioner and client. The client was a vulnerable and impoverished woman with a troubled background. Mr Daniels had acted for her in both the Family Court and in the District Court. Although he had undertaken not to practise again, the Tribunal suspended him for three years citing the need to maintain public confidence in the profession.

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30 *Daniels v Complaints Committee 2 of the Wellington District Law Society* above, n 9; and *Canterbury Westlands Standard Committee v Horsley*, above n 9.

31 *ZTUVK* Notice of Determination by Standards Committee, 25 October 2018, discussed at [71] of the Penalty decision.

[94] In *Horsley,* the practitioner entered a sexual relationship with a former client, but then acted for her on criminal charges while continuing the intimate relationship. When the relationship was discovered he initially denied it, before accepting responsibility for his conduct. The Tribunal took account of the practitioner's prior 30 years of good conduct and considered that was just sufficient to pull the penalty back from strike-off to the maximum period of suspension.

[95] Mr La Hood submitted the Tribunal was wrong to classify Mr Gardner-Hopkins' behaviour as less serious than the conduct at issue in those two cases. He said that, while both *Daniels* and *Horsley* involved exploitative sexual relationships neither involved sexual assault.

[96] Mr La Hood submitted that, in any event, neither *Daniels* nor *Horsley* should be uncritically accepted as relevant precedents. *Daniels* was an appeal by the practitioner, rather than the Standards Committee, and the Court was not called upon to determine whether strike-off would have been an appropriate outcome. Also, both *Daniels* and *Horsley* predated the quite profound change in attitude towards sexual harassment over the last decade. Overall, he said Mr Gardner-Hopkins' conduct was among the most serious kind of sexual misconduct and there was no reason to avoid the most serious penalty.

[97] In response, Mr Long submitted the Tribunal was correct to find Mr Gardner-Hopkins' conduct was less egregious than that at issue in *Daniels* and *Horsley*. In both of those cases, the clients had placed their trust, confidence, reliance and faith in the practitioners. The practitioners were representing the clients on serious and emotional issues. There was a clear fiduciary relationship. Mr Long also emphasised the length of the relationships in those cases.

Analysis

[98] As both counsel really accepted, the facts of *Daniels* and *Horsley* are materially different from the present. They involved consensual sexual relationships of some duration with a vulnerable client. Here, the only consensual conduct involved Ms K and it was a brief, one-off encounter. As we have already said, however, Ms K was

undoubtedly also, but in a different way, vulnerable. The misconduct involving the other four young women was not consensual.

[99] As well, we agree with Mr La Hood that there has been a profound societal change in attitude towards sexual harassment over the last decade and that shift in perception is important when considering penalty in light of the need to maintain the confidence of the public in the legal profession. For that reason—and because of the differences already noted—we do not ultimately consider the decisions in *Daniels* and *Horsley* useful comparators.

[100] Taken overall, we regard Mr Gardner-Hopkins' misconduct as serious. We agree with the Tribunal's characterisation of it as exploitative sexual contact with vulnerable young women. It is conduct that is wholly unacceptable in the legal profession.

[101] We also agree with the Tribunal's assessment that the starting point should be strike-off for misconduct such as Mr Gardner-Hopkins' in 2015 and with Mr La Hood's submission that strike-off—as the most serious sanction—is not just to be reserved for the worst possible case. There may be variations or different examples of serious misconduct, all of which could require a very serious sanction, be it strike-off or the maximum period of suspension. As noted, disciplinary sanctions are not concerned with punishment but with protection of the public, and of the profession's reputation. If the behaviour warrants strike-off or suspension for three years then that is the penalty that should be imposed.

Summary

[102] Drawing the threads from the above together, the relevant considerations particularly applicable to Mr Gardner-Hopkins' case are:

- Although the sanction is not imposed as a penalty as such, and the focus is forward looking, the penalty must still reflect the seriousness of the past behaviour and conduct.

- Is strike-off required to maintain the reputation of the profession and public confidence or will suspension achieve that?

- Will a period of suspension ensure Mr Gardner-Hopkins will comply with the required standards of the profession in the future — essentially a risk assessment exercise?

- In assessing the above, the nature and quality of the misconduct established and Mr Gardner-Hopkins' character, are particularly relevant considerations.

[103] Mr Gardner-Hopkins' actions towards the five complainants is properly regarded as serious, exploitative, sexual misconduct.

[104] Mr Gardner-Hopkins' conduct in 2015 was not that of a fit and proper person. Had the Tribunal or this Court been considering his case much closer to that time the misconduct would have justified striking off: that is what the twin protective disciplinary aims of protection of the public and of the profession's reputation would have required.

[105] It was Mr Gardner-Hopkins' conduct at the time which meant he was not a fit and proper person. Apart from the misconduct towards the young women there is no suggestion that Mr Gardner-Hopkins is anything other than a competent practitioner. At this time the risk Mr Gardner-Hopkins might engage in similar conduct in future has considerably diminished. We say that in particular because of the therapeutic interventions in which he has engaged (and in which he will continue to engage) and his changed life circumstances (both personal and professional). The absence of any further complaints and his past clear disciplinary record provide support for that conclusion. The Tribunal's recommendations to the PAC will arguably act as a further backstop.

[106] However, the need to protect the profession's reputation remains and has not diminished. It is vital that the public can and does have confidence that practising lawyers will act honourably and with integrity. As the Court observed in *Daniels*:[32]

> The public are entitled to scrutinise the manner in which a profession disciplines its members, because it is the profession with which the public must have confidence if it is to properly provide the necessary service. To maintain public confidence in the profession members of the public need to have a general understanding that the legal profession, and the Tribunal members that are set up to govern conduct, will not treat lightly serious breaches of standards.

[107] Mr Gardner-Hopkins' actions can rightly be seen as having dented that confidence and it is important that the profession responds appropriately. Even though the behaviour in the present case did not occur in the course of provision of services to a client, members of the public and of the profession should be able to have confidence that practitioners entering the profession at a junior level will be safe and treated with respect by other members of the profession. The profession's penalty response to egregious behaviour of the kind Mr Gardner-Hopkins exhibited in 2015 is rightly in the spotlight.

[108] Equally, however, Mr Gardner-Hopkins has become the public face of senior legal practitioners behaving inappropriately towards young employees within the profession. It is important that the sanction imposed on him reflect his behaviour, and not be elevated just to make an example of, or to scapegoat, him. Mr Gardner-Hopkins is to be sanctioned for the specific behaviour that gave rise to the charges against him, not the past wrongs of the profession as a whole, or of certain segments of it.

[109] In the end, the principal factor that favours suspension rather than striking off is the steps that Mr Gardner-Hopkins has taken in the six years since late 2015 and continues to take, to address the underlying issues which led to his misconduct. The evidence satisfies us that (with professional assistance) Mr Gardner-Hopkins does now realise the extent of his misconduct and he has developed and is continuing to develop strategies to ensure that it does not happen again.

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[32] *Daniels v Complaints Committee 2 of the Wellington District Law Society*, above n 9, at [34].

[110] Mr Gardner-Hopkins' personal and relationship shortcomings are not of themselves aggravating circumstances.

[111] We are satisfied that a penalty of suspension will ensure Mr Gardner-Hopkins' future compliance with his professional obligations. However, we also consider that the maximum period of three years together with the censure is required to reflect the seriousness of the misconduct in this case. Suspension for the maximum of three years is the "least restrictive outcome" appropriate.[33] We do not consider the "minimum credible suspension" approach in *Jefferies v National Standards Committee* to be particularly helpful or applicable in this case.[34]

Result

[112] For the above reasons we consider that the Tribunal was correct to find that strike-off was not required. However, we consider the Tribunal did fall into error in accepting as mitigating factors the financial and professional consequences to Mr Gardner-Hopkins, and further in placing this case as less serious than *Daniels* or *Horsley*. Taken in context and overall, Mr Gardner-Hopkins' misconduct and sexual exploitation of the young women warranted the most serious response available short of strike-off, so that a suspension of three years was required.

[113] To that extent the appeal by the Standards Committee is allowed. The order suspending Mr Gardner-Hopkins for a period of two years from 7 February 2022 is quashed. The suspension is to run for a period of three years from 7 February 2022.

[114] The cross-appeal is dismissed.

Costs

[115] Costs should follow the event. We allow for second counsel. In the event the parties cannot agree memoranda should be exchanged.

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33 *Daniels v Complaints Committee 2 of the Wellington District Law Society*, above n 9, at [22].
34 *Jefferies v National Standards Committee* [2017] NZHC 1824, [2017] NZAR 1323 (HC).

Suppression

[116] The permanent suppression orders made by the Tribunal pursuant to s 240 of the Act in its penalty decision of 13 January 2022 are confirmed.

Venning, Ellis and Hinton JJ