IN THE COURT OF APPEAL OF THE COOK ISLANDS
HELD AT RAROTONGA

CA NO. 4/2017

BETWEEN **NORMAN GEORGE**
Appellant

AND **COOK ISLANDS LAW SOCIETY**
Respondent

AND **THE SOLICITOR GENERAL**
Intervenor

Coram: Fisher JA (Presiding)
White JA
Grice JA

Hearing: 22 November 2017

Judgment: 15 December 2017

Counsel: Mr M C Mitchell for Appellant
Mr W O P Rasmussen for Respondent
Mr D James, Solicitor-General, Intervenor

JUDGMENT OF THE COURT

A. The questions of law are answered as follows:

(i) There was no absence of an appearance of impartiality when the complaint by Weston CJ was investigated and determined by Williams CJ.

(ii) There was no breach of any right to an oral hearing when Williams CJ determined liability "on the papers" because there was no such right under the Law Practitioners' Act 1993-94 and no factual basis for claiming an oral hearing was required in the circumstances of this case.

(iii) The Chief Justice did not have power to order Mr George to publish the press statement at his expense. But this Court does have power to direct that the Registrar should publish the statement and that Mr George should reimburse the Registrar for the costs of publication.

B. Paragraphs [31] and [32] of the Chief Justice's final penalty decision are amended in accordance with the schedule attached to this judgment.

C. There is no order for costs.

Solicitors: M C Mitchell for Appellant
W O P Rasmussen for Respondent
Crown Law Office for Intervenor

Introduction

[1] The appellant, Mr Norman George, is a barrister and solicitor practising in the Cook Islands principally as a criminal defence lawyer. In this appeal he challenges the legal validity of decisions of the Chief Justice of the Cook Islands, Sir Hugh Williams CJ, finding him liable for professional disciplinary penalties and imposing penalties including censure and publication of his name.[1]

[2] The liability finding relates to Mr George's conduct as counsel in two criminal cases where he was briefed to represent the defendants. In both cases he was found to have failed to make appropriate arrangements for the representation of the defendants at the September 2016 sessions of the High Court when he was absent from the jurisdiction attending the meeting of an international sporting body (FIFA).

[3] The Chief Justice found that because of Mr George's absence no jury or judge alone trial was able to proceed during the September sessions, valuable court time was lost, and the two defendant clients were disadvantaged by not being able to advance their cases.[2]

[4] In the penalty decisions, the Chief Justice indicated that he would have suspended Mr George from legal practice if that option had been available, but as it was not, he censured Mr George, required him to report monthly to the Cook Islands Law Society on the management of his practice and to publish, at his own expense, a statement in the Cook Islands News describing the background to the professional disciplinary findings, previous disciplinary findings made against him and the penalties imposed on all these occasions.[3]

[5] The liability decision of Williams CJ was based on a complaint made by his predecessor as Chief Justice, Weston CJ, who had been due to preside over the September

[1] *Re Norman George*, 9 January 2017, Hugh Williams CJ, at [68] (the Liability decision); *Re Norman George*, 21 April 2017, Hugh Williams CJ, at [25] (the First Penalty decision); and *Re Norman George*, 22 May 2017, Hugh Williams CJ, (the Final Penalty decision).

[2] The Liability decision at [7].

[3] First Penalty decision at [19]-[36]; and Final Penalty decision at [19]-[34].

2016 sessions. Mr George was given an opportunity to respond to the complaint which he did by letter dated 28 October 2016.

[6] Weston CJ retired as Chief Justice on 31 October 2016 and was succeeded by Williams CJ on 1 November 2016.

[7] The liability decision of Williams CJ was made "on the papers" without an oral hearing. There was, however, an oral hearing before the first penalty decision.

[8] As permitted by section 21 of the Law Practitioners' Act 1993-94, Mr George now appeals to this Court against the decisions of Williams CJ on two questions of law:

a) Was the Chief Justice entitled to make the liability decision "on the papers" rather than by way of an oral hearing in terms of Mr George's right to a fair hearing under Article 65(1)(d) of the Constitution of the Cook Islands?

b) Was the Chief Justice entitled under the relevant provisions of the Law Practitioners' Act to order Mr George to publish at his own expense in a newspaper the statement as set out in the penalty decision?

[9] In the course of argument in this Court, Mr Mitchell for Mr George, accepted that the first question of law also involved the separate or interrelated question whether in giving Mr George a fair hearing Williams CJ ought to have appointed an independent investigator under the Law Practitioners' Act.

[10] In summary, Mr Mitchell submitted that the Chief Justice's decisions should be set aside as invalid because:

a) The constitutional right to a fair hearing, in accordance with the principles of fundamental justice, was well-entrenched and prevented the Law Practitioners' Act from being construed or applied so as to deprive any person of that right.

b) The right had been breached in two respects:

i) There was an absence of an appearance of impartiality on the part of the adjudicator because the complaint by Weston CJ had been determined by his successor in office, Williams CJ, instead of by an independent investigator; and

ii) There was no oral hearing prior to the liability decision. An oral hearing was mandatory under the constitutional fair hearing requirement.

c) The relevant provisions of the Law Practitioners' Act did not empower Williams CJ to order Mr George to publish the statement in the newspaper at his own expense.

[11] Mr Rasmussen for the Cook Islands Law Society appeared as an observer only and made no submissions.

[12] The Solicitor-General appeared as Intervenor. In addition to providing the Court expeditiously with relevant authorities, he made helpful submissions relating to the interpretation and application of the Law Practitioners' Act in the context of the Cook Islands with its small population and limited judicial and professional resources.

[13] We propose to set out and explain the relevant provisions of the Law Practitioners' Act before addressing the three questions of law raised by Mr Mitchell for Mr George.

Law Practitioners' Act 1993-94

[14] The regulation of law practitioners in the Cook Islands is governed by the Law Practitioners' Act 1993-94 as amended by the Law Practitioners' Amendment Act 2008. We were told by counsel that the Act may be replaced by new legislation, but there is no suggestion this appeal should be determined other than under the existing Act which was in force at all relevant times.[4]

---

[4] *Databank Systems Ltd v Commissioner of Inland Revenue* [1990] 3 NZLR 385 (PC) at 394, and Ross Carter (ed) *Burrows and Carter Statute Law in New Zealand* (5th ed, Lexis Nexis, Wellington, 2015) at 683

[15] The existing Act is divided into eight parts covering admission to the profession, practising certificates, professional misconduct, trust accounts, the Cook Islands Law Society, the Fidelity Guarantee Fund, professional ethics and miscellaneous.

[16] We are concerned with Part III Professional Misconduct which contains the following provisions:

> Section 15 – Complaints of professional misconduct.
> Section 16 – Inquiry.
> Section 17 – Interim suspension.
> Section 18 – Revocation of suspension.
> Section 19 – Evidence and proceedings.
> Section 20 – Penalty and costs.
> Section 21 – Appeals.

[17] As the questions of law relating to Mr George's right to a fair hearing arise in the context of sections 15, 16, 19 and 20, we set out those provisions in full:

> 15. Complaints of professional misconduct – (1) Any complaint by any person about the conduct of a practitioner or an employee of a practitioner in his professional capacity may be made to the Registrar, who shall forthwith forward the complaint, together with such comments as he thinks fit in relation to the complaint, to the Chief Justice.
>
> (2) Where the Chief Justice receives such a complaint or has reasonable cause to suspect that a practitioner who is or was a member of the Society has in his professional capacity been –
>
> (a) guilty of misconduct; or
> (b) guilty of conduct unbecoming a barrister and solicitor or barrister; or
> (c) negligent or incompetent, and that the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practise as a barrister and solicitor or barrister only, as will tend to bring the profession into disrepute; or
> (d) convicted of an offence punishable by imprisonment for a term exceeding one year, and is of the opinion that the conviction reflects on his fitness to practise as a barrister and solicitor or barrister only, or tends to bring the profession into disrepute;
>
> the Chief Justice shall, unless he is of the opinion on reasonable grounds that the complaint is frivolous or vexatious, require from the practitioner such written explanation, within such time as the Chief Justice thinks fit.
>
> (3) Where no explanation is received, or the Chief Justice is not satisfied with the explanation received, the Chief Justice may appoint a person who in his

opinion is suitably qualified and competent to conduct an independent investigation into the matter complained of, and to report his findings to the Chief Justice.

(4) Every such complaint shall be enquired into as soon as practicable.

16. Inquiry – (1) For the purpose of the investigation of any complaint, the Chief Justice and any person appointed by him pursuant to section 15(3), shall have all powers necessary to obtain all documents and information relevant to the complaint and shall have the right of access to the office and the books, documents, and records of the practitioner.

(2) For the purpose of conducting an investigation thc Chief Justice and any person appointed by the Chief Justice pursuant to section 15(3), shall in addition to thc powers set out in subsection (1), have all the powcrs of a Commission of Inquiry and may if he thinks fit hold a hearing in private for the purpose of considering the complaint and shall allow the complainant and the practitioner against whom the complaint has been made, to be represented by counsel at such inquiry.

19. Evidence and proccedings – (1) The Chief Justice, and any person appointed by him pursuant to section 15(3) may by notice in writing require any person to attend and give evidence at the hearing of any inquiry under this Part, and to produce all books or documents in that person's custody or under his control relating to the subject matter of any such application or enquiry.

(2) Witnesscs, counsel, and the practitioner complained against shall have the same privileges and immunities in relation to inquiries under this Part as they would if they were proceedings in a court of law.

(3) The Chief Justice may from time to time make rulcs in rcspect of thc hearing and determination of applications and enquiries under this Part insofar as rules are not herein provided.

20. Penalty and costs – If after inquiring into the conduct of a practitioner the Chief is satisfied that the practitioner is guilty of any of the matters set out in paragraphs (a) to (d) of section 15(2), the Chief Justice may make one or more of the following orders –

(a) that the name of the practitioner be struck from the roll of barristers and solicitors, or the roll of barristers, or both;
(b) censuring the practitioner;
(c) that the practitioner shall cease to accept work, or to hold him or her self out as competent in such fields or practice, and for such period or periods as are specified in the order;
(d) that the practitioner do for any specified person such work within such time and for a fee not exceeding such sum as is specified in the order;
(e) where is appears to the Chief Justice that any person has suffered loss by reason of any act or omission of the practitioner, that the practitioner pay to that person such sum of money by way of compensation as is specified in the order, being a sum not exceeding $5,000;

(f) that the practitioner reduce his or her fees for any work done by the practitioner that is the subject of a complaint before the Chief Justice by such amount as is specified in the order and, for the purposes of giving effect to the order, to refund any specified sum already paid to him or her;

(g) that the practitioner make his or her practice available for inspection at such times and by such persons as are specified in the order;

(h) that the practitioner to make reports on his or her practice in such manner and at such times and to such persons as are specified in the order;

(i) that the practitioner take advice in relation to the management of his or her practice from such persons as are specified in the order;

(j) that the practitioner pay –

  (i) to the Cook Islands Government Account, the reasonable costs and expenses of and incidental to the inquiry by the Chief Justice; and

  (ii) to any person appointed pursuant to sections 15(3), 25(3) or 25(4), that person's reasonable costs and expenses incurred in connection with any investigation, audit or examination and any report undertaken or made in relation to a complaint against that practitioner.

(2) If the complaint is not one to which subsection (1) applies but the Chief Justice is of the opinion having regard to the circumstances of the case that the making of the complaint was justified, the Chief Justice may make an order under paragraph (e) of subsection (1) where that paragraph is applicable, and under any one or more of paragraphs (f) to (i) of subsection (1).

(3) Without prejudice to subsections (1) and (2), if any case arises wholly or partly out of a complaint of overcharging by a practitioner and the Chief Justice considers that the practitioner's bill of eosts in respect of the matter to which the complaint relates is unfair or unreasonable, the Chief Justice may whether or not any other order is made under this section, undertake a review of the bill of costs under section 58.

(4) In paragraphs (g) to (i) of subsection (1), the term "specified" in relation to any person, means specified either by name or as the holder for the time being of any particular office or appointment.

(5) An order made under this section may be made on and subject to such conditions as the Chief Justice thinks fit.

(6) The making of an order under this section for the payment of compensation to any person shall not affect the right (if any) of that person to recover damages in respect of the same loss; but any sum ordered to be paid under this section shall be taken into account in assessing any such damages.

(7) The Chief Justice may from time to time publish particulars of specific complaints, the decision and the orders made, where in the opinion of the Chief Justice, such publication is in the public interest: Provided that the Chief Justice may suppress the name and details of the complainant to such extent as the Chief Justice thinks desirable in the interests of the complainant's privacy.

[18] In interpreting and applying these provisions in accordance with the constitutional right to a fair hearing, the starting point is to recognise that in the Cook Islands principal responsibility for receiving, considering and determining complaints of professional misconduct against law practitioners and their employees rests with the Chief Justice. The Parliamentary decision to confer this responsibility on the Chief Justice rather than on the Law Society as in other countries no doubt reflects the Cook Islands' context, including its small population, the size of its legal profession, the absence of a Law Society with any infrastructure capable of dealing with complaints and the existence of an independent judiciary whose members come from New Zealand.

[19] The next point to note is that the Chief Justice is given a range of responsibilities and powers to exercise under sections 15 to 20. In particular, the Chief Justice:

a) Receives all complaints: sections 15(1) and (2).

b) In the absence of a complaint may also separately have "reasonable cause to suspect" a practitioner has been guilty of misconduct: section 15(2).

c) Must give the practitioner the opportunity to give a written explanation unless the complaint is frivolous or vexatious: section 15(2).

d) May appoint a suitably qualified and competent person to conduct "an independent investigation" when no explanation is received or the Chief Justice is not satisfied with the explanation: section 15(3).

e) May investigate the complaint himself or herself: section 16(1).

f) May hold a private hearing for the purpose of the investigation: sections 16(2) and 19.

g) Must decide whether the practitioner is guilty of professional misconduct and, if so, what penalty or penalties should be imposed: section 20.

[20] As this analysis of the provisions shows, it is clear that the Chief Justice is required to make all the crucial procedural and substantive decisions, including:

a) whether the complaint or matter giving rise to his or her reasonable cause to suspect warrants an explanation and then investigation;

b) whether the investigation should be conducted by himself or herself or an independent investigator;

c) whether a private hearing should be held as part of his or her investigation; and

d) whether the practitioner is guilty of professional misconduct.

[21] Significantly, on the face of these provisions, there is no obligation imposed on the Chief Justice to appoint an independent investigator rather than to conduct the investigation or inquiry himself or herself. The absence of any obligation to appoint an independent investigator is reinforced by the provisions which recognise that the Chief Justice may conduct the inquiry himself or herself and, importantly, section 20 which requires the Chief Justice to make the ultimate liability and penalty decisions even when there is an independent investigation.

[22] If an independent investigator is appointed by the Chief Justice, his or her powers are limited to conducting the inquiry and reporting his or her findings to the Chief Justice. The statutory power of sanction in light of these findings remains with the Chief Justice under section 20.

[23] We now turn to consider whether and, if so, how this analysis of the provisions of the Law Practitioners' Act is affected by the constitutional fair hearing right in accordance with Mr Mitchell's submissions.

An impartial adjudication?

[24] There is no dispute that the constitutional right to a fair hearing in accordance with the principles of fundamental justice requires an impartial adjudication and that

impartiality in this context has two aspects. First, the adjudicator must be subjectively free from personal prejudice or bias. Second, the adjudicator must also be impartial from an objective viewpoint. The concept of objective impartiality is well-established in the context of professional disciplinary proceedings.[5] The question is what the fair-minded and informed observer would think.

[25] We should record here that Mr Mitchell was at pains to make it clear that he was not alleging personal prejudice or bias on the part of Williams CJ. His submission was based fairly and squarely on the proposition that there was an appearance of an absence of impartiality from an objective viewpoint. A fair-minded and informed observer would, he submitted, have considered Williams CJ to have inevitably been influenced by the nature of the complaint from his predecessor, Weston CJ. Both were holders of the same high office in the judicial hierarchy and could not be distinguished for the purpose of this principle.

[26] We accept that when the Chief Justice himself or herself makes a complaint about a law practitioner or otherwise has "reasonable cause to suspect" under section 15(2) of the Law Practitioners' Act, it would be wise for the Chief Justice to consider whether an independent investigator should be appointed under section 15(3). The appointment of an independent investigator would avoid any suggestion that the Chief Justice was investigating and determining his own complaint and any consequential absence of impartiality from an objective viewpoint.

[27] In this regard we record the acknowledgements by both Mr Mitchell and the Solicitor-General that in the event of a Chief Justice's "own complaint" there should be persons available in the Cook Islands or New Zealand who would be able to accept appointment as an independent investigator under section 15(3). It is therefore unnecessary to consider whether the doctrine of necessity would have applied and required the Chief Justice to investigate and determine his or her own complaint.[6]

---

[5] *Re P* [2005] 1 WLR 3019 at [38]; and *Ponifasio v Samoa Law Society* [2012] WSCA 4 at [13].
[6] *Meerabux v Attorney-General of Belize* [2005] AC 513 (PC) at [26]-[29].

[28] In our view, however, we are not satisfied that this situation arose in this case. Here the complaint was made by Weston CJ and investigated and determined by Williams CJ. The Chief Justice who made the complaint did not investigate or determine it. There can therefore be no suggestion that Williams CJ was in any way "judge in his own cause" or, in our view, any appearance of lack of impartiality on his part from an objective viewpoint. A fair-minded and informed observer would not have assumed a lack of impartiality on the part of Williams CJ.

[29] We do not accept Mr Mitchell's submission that the two Chief Justices should somehow be viewed as one. The concept of one judge recusing himself or herself to avoid any suggestion of personal prejudice or bias and being replaced by another judge is well-established as is the concept of judges determining complaints made against their own colleagues.[7]

[30] We therefore answer the first question of law "No". There was no absence of an appearance of impartiality when the complaint by Weston CJ was investigated and determined by Williams CJ.

A right to an oral hearing?

[31] Contrary to Mr Mitchell's submission, it is well-established at common law and under constitutional or legislative fair hearing obligations that an oral hearing is not a mandatory requirement for procedural or substantive fairness.[8] Whether fairness requires an oral hearing will depend on a range of factors, including the particular legislative context, the nature of the rights or interests at stake, the presence or otherwise of disputed material facts, the need to resolve issues of credibility and veracity, or to understand explanations or mitigation.[9]

---

7 *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35, and Grant Hammond, *Judicial Recusal* (Hart Publishing, 2009).

8 Philip Joseph, *Constitutional and Administrative Law in New Zealand*, (4th ed, Brookers, Wellington, 2014) at [25.4.4]; and
Jones & de Villars, *Principles of Administrative Law*, 6th ed 2014 at 293 ff.

9 *Osborn v Parole Board* [2013] UKSC 61, [2013] 3 WLR 1020 at [72]-[78], [81] and [85].

[32] In some cases practical considerations and the availability of alternative hearing techniques, such as skype, may also meet the constitutional requirement for a fair hearing and obviate the need for an oral hearing.[10]

[33] In the context of Part III of the Cook Islands Law Practitioners' Act, there is no mandatory requirement for an oral hearing. Instead under section 16(2) the Chief Justice and any independent investigator appointed by the Chief Justice are empowered, if they think fit, to hold a hearing in private for the purpose of considering the complaint.

[34] We do not accept Mr Mitchell's submission that Article 65(1)(d) of the Constitution requires the word "may" in section 16(2) to be read as a mandatory "shall". That would impose a mandatory obligation not required by the constitutional fair hearing obligation and overlook the range of professional misconduct complaints likely to require investigation, including those where an oral hearing is simply unnecessary because there are no factual or credibility issues.

[35] We were also not persuaded by Mr Mitchell in the present case that there were any real factual or credibility issues requiring resolution at the liability stage. Mr George's response to Weston CJ's complaint effectively accepted the factual basis for the complaint. This was explained in some detail by Williams CJ in his liability decision.[11] Apart from claiming that the facts behind the complaint did not amount to professional misconduct of any sort, Mr George was not really in a position to challenge what had occurred. And as far as explanations and mitigation were concerned, he had the opportunity to be represented at the oral hearing that preceded the first penalty decision. He also had the opportunity, through Mr Mitchell, to make further written submissions on the proposed publication decision before the final penalty decision.

[36] Once this conclusion is reached, it is clear that the second question of law should also be answered "No". There was no breach of any right to an oral hearing when Williams CJ determined liability "on the papers" under the Law Practitioners' Act because there was no such right and no factual basis for claiming an oral hearing was required in the circumstance of this case.

---

[10] *Samatua v Attorney-General* [2015] CKHC 14 at [10]-[14].

[11] Liability decision at [3]-[20], [35]-[37], [43]-[50] and [57]-[64].

Publication of statement at Mr George's expense

[37] To understand the background to this question of law, it is necessary to refer in some further detail to Williams CJ's liability and penalty decisions.

[38] In his liability decision delivered on 9 January 2017, the Chief Justice, acting under sections 15 and 20 of the Law Practitioners' Act , found Mr George to have been, in his professional capacity:

a) guilty of misconduct, and

b) negligent or incompetent to such a degree or so frequent to reflect on his fitness to practise as a barrister and solicitor as will tend to bring the profession into disrepute.

[39] After the first hearing as to penalty on 16 March 2017, at which Mr George was represented by Mr Mitchell, the Chief Justice delivered his first penalty decision on 21 April 2017. The Chief Justice indicated that, in terms of section 20 of the Law Practitioners' Act, he proposed to impose the following penalties on Mr George:

a) censure;

b) a requirement to report monthly to the Cook Islands Law Society on the management of his practice and abide by whatever advice the Law Society gives him; and

c) to publish at his own expense a statement relating to the findings in the first decision and the penalties.

[40] The Chief Justice described his decision of 21 April 2017 as the "First Decision on Penalty" because publication of the statement as to the findings and penalty had not been discussed during the penalty hearing on 16 March 2017.[12] The Chief Justice gave Mr George and the Law Society an opportunity to make further submissions on this issue and

---

[12] At [27].

his intention to make his decision available for publication to accredited news media on request.[13]

[41] Finally, the Chief Justice indicated that Mr George would have been suspended if that power had been expressly included in the Law Practitioners' Act and that he was now "on the brink of being struck off."[14]

[42] Following receipt of further written submissions from Mr Mitchell, the Chief Justice delivered his final penalty decision on 22 May 2017.[15] With one exception, the Chief Justice imposed all of the penalties he proposed in his first penalty decision.[16] The reference to the requirement for monthly reporting to the Law Society on practice management while included in the statement to be published by Mr George was omitted, obviously inadvertently, from the summary of the penalties imposed.[17]

[43] The Chief Justice's final decision as to the publication of the statement by Mr George reads as follows:

> [31] In the result, under s 20(5) and (7), Mr George, as soon as practicable after receipt of this decision and at his own expense, is to publish in the Public Notices section of one edition of the "Cook Island News" the following statement:
>
> **MR NORMAN GEORGE: Finding of professional misconduct**
>
> On 10 January 2017, Mr Norman George, a long-standing Cook Islands lawyer, was found guilty of professional misconduct by:
>
> (a) Failing to appear for a client in the High Court on 12 September 2016, and failing to advise his client to appear on that occasion to comply with his bail, thus exposing his client to possible arrest on a Bench Warrant and possibly being remanded in custody. He also failed to arrange for another lawyer to appear for the client on that occasion,
>
> (b) Failing to appear for another client in the High Court on 12 September 2016, thus leaving the client unrepresented.
>
> (c) His professional misconduct prejudiced his clients and breached his obligations as a lawyer to the Court because the Court was unable to

13 At [22] and [30].

14 At [29].

15 *Re Norman George,* 22 May 2017, Hugh Williams CJ, (the Final Penalty decision).

16 At [32].

17 Compare [31] and [32].

> hear any criminal trials during the sessions beginning on 12 September 2016
>
> Those breaches of Mr George's professional obligations to his clients were, on 10 January 2017, found to amount to professional misconduct and negligence or incompetence of such a degree or frequency as to reflect on his fitness to practise as a barrister and solicitor and as tending to bring the legal profession into disrepute.
>
> As a result of findings of professional misconduct against Mr George in 2013 and 2015 he has been censured and is debarred from ever appearing in the Land Division of the High Court (other than on matters where he or his wife are personally involved) and was debarred for 18 months from 26 September 2013 from appearing in the Court of Appeal.
>
> As a result of the findings on 10 January 2017 and in May 2017, Mr George:
>
> (a) Has again been censured by the Chief Justice.
>
> (b) In addition, Mr George has been required to report monthly to the Cook Islands Law Society on the management of his practice and abide by whatever advice the Law Society gives him.
>
> (c) Mr George has been required to publish this statement at his own expense.

[44] The summary of the penalties imposed reads as follows:

> [32] In summary, the penalty imposed on Mr George on this occasion is:
>
> a) He is censured.
>
> b) He is required to publish the above statement in the "Cook Islands News".
>
> c) The Registrar is directed to distribute the Liability Decision and this Final Penalty Decision to:
>
> i) Mr George and Mr Mitchell.
>
> ii) The Cook Islands Law Society for such distribution to practitioners (but no others without leave) as the Society considers appropriate.
>
> iii) To those JPs who sit as judicial officers.
>
> iv) To accredited news media, on request by them, for publication (with the clients only able to be named as "Mr B" and "Mr T").

[45] In addition the Chief Justice indicated he would distribute his liability decision and the final penalty decision to the former Chief Justice and to the Judges of the Court of Appeal and the High Court.[18]

[46] The Chief Justice concluded with the warning previously given:

> [34] Mr George must realise that he would have been suspended – and may have been suspended on the occasions of the earlier disciplinary decisions – were that power expressly included in the Act. He must now accept that he is teetering on the brink of being struck off. He has been warned on previous occasions of that possible eventuality. This decision is intended to make clear beyond misunderstanding that – subject to what might occur if the currently proposed amendment to the Law Practitioners' Act is enacted – striking off will almost certainly be the result of any future finding of professional misconduct against him, irrespective of how minor any future infraction may objectively be, and irrespective of the impact striking him off may have on the Court system, his clients and himself.

[47] Against this background, Mr Mitchell submitted that section 20 of the Law Practitioners' Act did not empower the Chief Justice to order Mr George to publish the statement at his own expense. Mr Mitchell described the order as humiliating for Mr George.

[48] In our view section 20(7) of the Act confers a wide power of publication on the Chief Justice and makes it clear that the public interest is the guiding criterion for the Chief Justice. In considering whether publication is in the public interest, the Chief Justice is entitled to take into account the circumstances of the particular case in light of the obligations law practitioners owe to the Court as well as their obligations to their clients and other practitioners under the Code of Ethics.[19]

[49] By section 20(5) the Chief Justice also has a wide power to make disciplinary orders "on and subject to such conditions as the Chief Justice thinks fit".

[50] Publication of a professional disciplinary decision with the name of the practitioner included will inevitably be a significant part of the disciplinary penalty or

---

[18] *Re Norman George*, 22 May 2017, Hugh Williams CJ, at [33], (the Final Penalty decision).

[19] Law Practitioners' Act, section 57 and Schedule.

sanction. The Chief Justice's power to publish may therefore be made subject to conditions.

[51] At the same time, however, we do not consider it was open to the Chief Justice to require Mr George to publish the decision. In terms of section 20(7) responsibility for publication rests with the Chief Justice not the particular practitioner.

[52] In our view therefore it would now be preferable for the decision to be published by the Registrar of the High Court and for Mr George to be required to reimburse the Registrar for the costs of publication. Both Mr Mitchell and the Solicitor-General agreed this course was open to this Court when determining the appeal under section 21 of the Law Practitioners' Act. In our view the Court of Appeal has power to answer the questions of law and to make such consequential orders as may be necessary to implement the answers.[20] This power could also be implied for the purpose of making the legislation work in a practical and common sense manner.[21]

[53] The third question of law will therefore be answered "No". The Chief Justice did not have power to order Mr George to publish the statement at his expense. But, at the same time, this Court does have power to direct that the Registrar should publish the statement and Mr George should reimburse the Registrar for the costs of publication.

Amendments to Chief Justice's final penalty decision

[54] Accordingly, the Chief Justice's final penalty decision needs to be amended to add in the inadvertent omission of the requirement for monthly reporting to the Law Society on practice management and to change the publication order as we have indicated.

[55] We therefore attach as a schedule to this judgment replacement paragraphs [31] and [32] of the final penalty decision.

---

[20] Compare Cook Islands Judicature Amendment Act 2011, section 60.

[21] *Northern Milk Vendors Association Inc v Northern Milk Ltd* [1988] 1 NZLR 530 (CA) at 537-538, *Glynbrook 2001 Ltd v Official Assignee* [2012] NZCA 289 at [45]; *Canterbury Regional Council v Independent Fisheries Ltd* [2012] NZCA 601, [2013] 2 NZLR 57 at [12]; *New Zealand Law Society v B* [2013] NZCA 156, [2013] 3 NZAR 970 at [24]; *Teddy v Police* [2014] NZCA 422, (2014) 27 CRNZ 1 at [30] and [44]; and *Chorus Ltd v Commerce Commission* [2014] NZCA 440 at [43].

[56] For completeness, we record that we are not prepared to further amend the Chief Justice's press statement by deleting the references to the earlier professional disciplinary proceedings as urged by Mr Mitchell. In our view it was well within the Chief Justice's power under section 20(7) to include this information in the public interest.

[57] For the reasons given, we answer the three questions of law as follows:

A. There was no absence of an appearance of impartiality when the complaint by Weston CJ was investigated and determined by Williams CJ.

B. There was no breach of any right to an oral hearing when Williams CJ determined liability "on the papers" because there was no such right under the Law Practitioners' Act 1993-94 and no factual basis for claiming an oral hearing was required in the circumstances of this case.

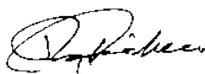
C. The Chief Justice did not have power to order Mr George to publish the press statement at his expense. But this Court does have power to direct that the Registrar should publish the statement and that Mr George should reimburse the Registrar for the costs of publication.

[58] There will be an order amending paragraphs [31] and [32] of the Chief Justice's final penalty decision in accordance with the schedule attached to this judgment.

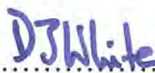
[59] For the avoidance of doubt, we note that there is no restriction on the publication of this decision of the Court of Appeal.

Costs

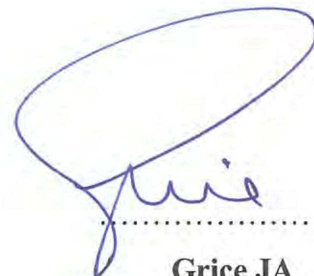
[60] In all the circumstances, costs on this appeal should lie where they fall.



Fisher JA



White JA



Grice JA

SCHEDULE

[31] In the result, under s 20(5) and (7), the Registrar of the High Court, as soon as practicable after receipt of this decision, is to arrange for publication in the Public Notices section of one edition of the "Cook Island News" the following statement:

> **MR NORMAN GEORGE: Finding of professional misconduct**
>
> On 10 January 2017, Mr Norman George, a long-standing Cook Islands lawyer, was found guilty of professional misconduct by:
>
> (a) Failing to appear for a client in the High Court on 12 September 2016, and failing to advise his client to appear on that occasion to comply with his bail, thus exposing his client to possible arrest on a Bench Warrant and possibly being remanded in custody. He also failed to arrange for another lawyer to appear for the client on that occasion,
>
> (b) Failing to appear for another client in the High Court on 12 September 2016, thus leaving the client unrepresented.
>
> (c) His professional misconduct prejudiced his clients and breached his obligations as a lawyer to the Court because the Court was unable to hear any criminal trials during the sessions beginning on 12 September 2016
>
> Those breaches of Mr George's professional obligations to his clients were, on 10 January 2017, found to amount to professional misconduct and negligence or incompetence of such a degree or frequency as to reflect on his fitness to practise as a barrister and solicitor and as tending to bring the legal profession into disrepute.
>
> As a result of findings of professional misconduct against Mr George in 2013 and 2015 he has been censured and is debarred from ever appearing in the Land Division of the High Court (other than on matters where he or his wife are personally involved) and was debarred for 18 months from 26 September 2013 from appearing in the Court of Appeal.
>
> As a result of the findings on 10 January 2017 and in May 2017, Mr George:
>
> (a) Has again been censured by the Chief Justice.
>
> (b) In addition, Mr George has been required to report monthly to the Cook Islands Law Society on the management of his practice and abide by whatever advice the Law Society gives him.

(c) Mr George is to reimburse the Registrar of the High Court the costs of publication of this statement.

[32] In summary, the penalty imposed on Mr George on this occasion is:

a) He is censured.

b) He is required to report monthly to the Cook Islands Law Society on the management of his practice and abide by whatever advice the Law Society gives him.

c) The Registrar of the High Court is directed to arrange for publication of the above statement in the "Cook Islands News".

d) Mr George is to reimburse the Registrar of the High Court the costs of publication of the statement.

e) The Registrar is directed to distribute the Liability Decision and this Final Penalty Decision to:

i) Mr George and Mr Mitchell.

ii) The Cook Islands Law Society for such distribution to practitioners (but no others without leave) as the Society considers appropriate.

iii) To those JPs who sit as judicial officers.

iv) To accredited news media, on request by them, for publication (with the clients only able to be named as "Mr B" and "Mr T").