LP NO. 1/21

IN THE MATTER	of Part III of the Law Practitioners' Act 1993-94
AND IN THE MATTER	of a complaint alleging professional misconduct
BETWEEN	**COOK ISLANDS LAW SOCIETY** Complainant
AND	**WILKIE OLAF PATUA RASMUSSEN**, of Rarotonga, Barrister and Solicitor Respondent

Appearances:	Mr B P Mason for Mr WOP Rasmussen Mr B Marshall and Ms G L Rood for Cook Islands Law Society
Date of Decision (No.1):	20 January 2022
Date of this Decision:	11 April 2022
Date of Inquiry:	23 March 2022

DECISION NO.2 (PENALTY) OF THE HON. HUGH WILLIAMS, CJ

[A]: For the reasons discussed in this Decision, pursuant to ss 5(3) and 20(1)(a) of the Law Practitioners Act 1993-4, the Registrar is directed to strike the name of Wilkie Olaf Patua Rasmussen off the Roll of Barristers and Solicitors of the High Court of the Cook Islands on delivery of this Decision.

[B]: Decisions No.1 (Liability) and No.2 (Penalty) are to be distributed and may be published as appearing in paragraphs [33] – [37] of this Decision.

[C]: Should an appeal be filed against this Decision, there will be a timetable for dealing with the appeal as appears in paragraph [38] of this Decision.

Introduction

[1] The frontispiece of Decision No.1 (Liability) concerning the Cook Islands Law Society's[1] complaint of professional misconduct against one of its members, Mr WOP Rasmussen,[2] relevantly read:

> [1] There will be a finding under s 15(2)(d) of the Law Practitioners' Act 1993-4 that Mr Rasmussen, having been convicted of offences punishable by imprisonment for terms exceeding one year on the dates, times and in the circumstances appearing in this decision, and the Chief Justice being of the opinion that those convictions reflect on Mr Rasmussen's fitness to practice as a barrister and solicitor of this Court and tend to bring the legal profession into disrepute, Mr Rasmussen is found guilty of misconduct in his professional capacity.
>
> [2] Pursuant to the powers in ss 15(3) & 16 of the Act, there will be an inquiry to decide on the penalty to be imposed on Mr Rasmussen which is to take place and be conducted as set out in paragraphs [35] and [36] of this decision.
>
> [3] Publicity of professional misconduct decisions being discretionary, at this stage distribution of this decision is restricted to Mr Rasmussen, his immediate family, his counsel, Mr Mason and members of the Council of the Cook Islands Law Society with any notification of the same beyond those persons only being by leave[3].

[2] This decision deals with the penalty to be imposed on Mr Rasmussen following delivery of Decision No.1 (Liability) and the inquiry as to the appropriate penalty, conducted under ss 15(3) and 16 of the Law Practitioners' Act 1993-94[4] on 23 March 2022.

[3] By way of introduction to this Decision, the following passages from Decision No.1 (Liability) are pertinent:

> [1] On 18 August 2021 the abovenamed Wilke Olaf Patua Rasmussen was convicted by Justice Woodhouse on two counts of indecent assault (in relation to which, at the conclusion of a Judge Alone trial, the Judge had found the charges proved) and one count of attempting to pervert the course of justice, to which Mr Rasmussen had pleaded guilty. He was fined $2,500 on

---

1 "CILS".

2 Mr Rasmussen now resides on Penrhyn and was, for technical reasons, unable to participate in the inquiry on 23 March 2022.

3 None was sought.

4 The "Act". All statutory references in this Decision are to the Act unless otherwise stated.

each of the indecent assaults, (with half the amount to be paid as compensation to the victim) and fined a further $2,000 on the attempting to pervert the course of justice charge.

[2] Mr Rasmussen has, for a considerable period of time been an enrolled Barrister and Solicitor of this Court and has practised as a lawyer, or worked in legally-related positions, for a number of years, both in New Zealand and in the Cook Islands.

…

[5] On 18 June 2021, the Cook Islands Law Society acting, commendably, under s 29(4), brought to the Chief Justice's attention that at that stage Mr Rasmussen had been found guilty – though not then convicted – by Justice Woodhouse on the indecent assault charges.

…

[9] In his sentencing notes, Justice Woodhouse first advised Mr Rasmussen that he did not intend to imprison him for the offences but that his remarks were "not to be taken as diminishing the relative gravity of the two indecent assault offences or the offence of attempting to pervert the course of justice"[5]. The Judge continued:

> [5] You are a lawyer, or you were until very recently practising as one.
>
> [6] In July 2020 you were at Court for a client. The victim of the indecent assaults, who I will call "X", was at the Court to support your client. Your client is her nephew. X was 22 at the time. You were 62. You asked X to wait for you when the case finished, which she did. At the end of the case, you asked her to go with you to your office. You did not explain to her why you wanted her to go to the office. She went willingly, thinking you wanted to talk about her nephew. At the office, you in fact asked her if she would have sex with you. There were various statements by you to that end, including an offer of money. She rejected, and quite clearly rejected, your advances which you continued orally or verbally. You then put your hand on her leg and kissed her, forcing your tongue into her mouth. She pushed you off and tried to leave. You grabbed her coat and forced your tongue into her mouth again. She pulled away and she left. The offending, in terms of your acts, ended at that point. The consequences for her continued.
>
> [7] The two assaults, which in substance were a single event, probably lasted no more than about a minute. And I would say at this point, in relation to facts, and much else relating to the indecent assault offences, you pleaded not guilty and elected trial by Judge alone and I was the Judge who presided at your trial.
>
> [8] The attempt to pervert the course of justice, the remaining offence, occurred on 12 October 2020. That is three months after the indecent assault charges were laid. You went to the Court registry to deal with some land matters, and I apprehend from the submissions for the Crown that it is accepted that you went to the Court on that occasion purely to deal with your legal business.

---

5 At [3].

> [9] The Court officer who dealt with you is an aunt of X. You asked the aunt, and seemingly opportunistically, if you could talk to her outside the Court house on a personal matter. She agreed. Outside, you asked her if she could speak to X about dropping the indecent assault charges. You also told her that you would defend yourself and, if successful, you would sue X.
>
> [10] The agreed statement of facts to which you pleaded guilty records that your behaviour in your conversation with the aunt was normal – that is the word used I think. The aunt said she would try and talk to her niece, but that she did not think that it would be helpful because of the no drop policy of the Police and because the matter was serious. That, Mr Rasmussen, is the extent of your attempt. The aunt did not raise the matter with X. She did raise it with Crown counsel and the charge of attempting to pervert the course of justice followed.
>
> [11] I am bound to take account of the impact – the effect – of your offence on X and I have a victim impact statement from her. X did not sustain any physical injury, but she did suffer material emotional and psychological, or mental, harm. From the evidence I heard, and which I accepted, X was plainly distressed by the assault on the day of the incident and I am sure the impact of what you did continued for an extended period. Notwithstanding a submission from Mr Mason, it is not something that X is going to forget. X's own statement, however, indicates that the biggest impact on her was coping over the period of almost a year before the trial was finished. As she put it in her victim impact statement, in part, and I quote: "In a way during this time I was broken mentally and emotionally and now I feel all the stress, struggle and burden being lifted from my shoulders". It is perhaps fortunate for you, Mr Rasmussen, that she has that mental and emotional fortitude to look forward positively now; to positive things in her life.

> [10] The Judge's sentencing notes then reviewed personal matters relating to Mr Rasmussen,[6] considered a number of New Zealand and Cook Islands' decisions submitted as precedents, said the starting point for sentencing should be imprisonment, noted Mr Rasmussen's remorse and his surrender of his practising certificate as a barrister and solicitor[7]. He summarised five factors bearing on the appropriate sentence on the attempt to pervert the course of justice charge[8] gave him credit for his guilty plea and said he agreed with counsel that the charge was "opportunistic, ill-conceived, badly executed and not pursued by you any further"[9].

[4] Following that recital of events, Decision No.1 (Liability) reviewed the authorities bearing on Mr Rasmussen's position and continued:

> [16] In *Taffs*[10], the practitioner, when acting for a defendant, telephoned the mother of the complainant the night before the hearing, and made threatening remarks, coupled with the suggestion that the complainant not give evidence or only give false identification evidence. The client was found guilty. *Taffs*

---

6 Later detailed.
7 At [25]-[27].
8 At [29]-[33].
9 At [34].

was convicted of attempting to pervert the course of justice. For the Court of Appeal Lord Cooke said[11]:

> "…The Judge fined the accused $5,000 – on its face a sufficient penalty in the particular circumstances for an offender without substantial means. We were told that after the conviction the District Law Society required the accused to undertake not to practice pending the present appeal, indicating that disciplinary proceedings were contemplated. While such proceedings are entirely a matter for the Law Society in the first instance, and while the accused's conduct deserves censure, it may perhaps be of some help to the Society to say that, on such knowledge of the facts as this Court has (which may of course be incomplete), the accused acted in a hasty and ill-considered way, for which he has now been appropriately punished, bearing in mind that for a period he has had to abstain from practice. The facts of this particular case do not suggest that any further penal action, by way of future deprivation or restriction of his right to practise or monetary penalty, is necessary in the public interest."

[17] In relation to the indecent assault charges, Mr Mason submitted that Mr Rasmussen had fully accepted his wrongdoing, the offending was not ongoing, the victim was not a client, and Mr Rasmussen did not suggest the victim might in any way be to blame. He noted that Mr Rasmussen had surrendered his practising certificate as a mark of his contrition and written an unqualified apology to the victim. He also relied on Mr Rasmussen's unblemished record as a lawyer and his public service to the CILS and to the Cook Islands generally.

[18] In relation to the attempted perversion conviction, Mr Mason emphasised Justice Woodhouse's comments earlier recorded and, relying on *Taffs*, submitted striking off would be too harsh a penalty. He concluded:

> 30. It is accepted by Mr Rasmussen that there is no excuse for his conduct. That is why he surrendered his practising certificate and represented to the Court that his days in the practice of law are now over. Mr Rasmussen said he wishes to return to his home island of Penrhyn to live.
>
> …
>
> 32. There has been nothing in the media or elsewhere to suggest the public feels that Mr Rasmussen has "got off lightly" or had a "free ride" or in any other manner that there has been a loss or diminution of confidence in the profession.
>
> 33. It is accepted that surrendering the practising certificate and ending the practise of law will not per se lead a tribunal not to strike off or suspend but it is submitted the facts in this case allow you considerable discretion in particular because the offending was in

---

10 *R v. Taffs* [1991] 1NZLR 69, CA.

11 At [34].

> each case at the low end (albeit serious offences) and Mr Rasmussen's actions from the time the convictions were entered against him have indicted [sic: indicated?] a full recognition of, and remorse for, his wrongdoing which is so fundamental to whether he may be trusted in the future as a practitioner. The charges he faced reflected far more on him personally than they did on the profession as his offending, egregious though it was, did not involve a client or a client's funds, (although Mr Rasmussen does not seek to submit that his was not conduct in his professional capacity).
>
> 34. It is accepted that at a minimum Mr Rasmussen must be censured but it is also submitted the armoury of options set out in section 20 of the Law Practitioners' Act 1993-94 are sufficiently broad to allow you to impose a penalty that is short of striking off, and on the basis that if there is an alternative to striking off that option should be followed, you may do so.

[5] Then, after recounting s 20 of the Act, Decision No.1 (Liability) continued:

> [20] In saying Chief Justices "may" make one or more of the orders in s 20 the section gives Chief Justices a discretion but, in this case, in light of Mr Rasmussen's concessions[12], he does not strongly contend that he ought not to be found guilty of professional misconduct. So, following that outcome, effectively the exercise of that discretion is likely to come down to whether Mr Rasmussen should be struck off the Roll of Barristers and Solicitors of the High Court or whether some other penalty, though still within the enabling powers of s 20, is found to be the appropriate outcome.
>
> [21] In the serious circumstances of this complaint, as mentioned, once a finding of professional misconduct has been reached, only the penalty in s 20(1)(a) need be considered. Convictions against a lawyer on two counts of indecent assault and one count of attempting to pervert the course of justice are such serious departures from the proper standards of the profession and are so inimical to the profession's reputation that, were the penalty imposed to be no more than censure or a fine, serious though those penalties are, that would be a manifestly inadequate outcome.

[6] The Decision then considered the various determinations concerning the only Cook Islands lawyer who has been struck off, a Mr Vakalalabure, and continued:

> [32] In considering those decisions as they bear on the complaint against Mr Rasmussen, it is notable that he accepts that the three convictions entered against him and the penalties imposed reflect on his fitness to practice as a barrister and solicitor or a barrister, and that they tend to bring the legal profession into disrepute. Those admissions mean his case has echoes of Mr Vakalalabure's so striking-off must be considered open.
>
> …

---

12 In [12] above.

> [35] To consider the appropriate penalty to be imposed on Mr Rasmussen, pursuant to the powers in ss 15(3) and 16 of the Act, there will be an inquiry into that issue. That will take place during the week commencing 21 March 2022 at the Courthouse in Rarotonga with the actual date and time of the hearing to be fixed by the Registrar. If Mr Rasmussen is not on Rarotonga at the time of the hearing he may appear by AVL.
>
> [36] A copy of this judgment is to be forwarded to the CILS and it is invited, should it consider it appropriate so to do, to be represented at the penalty hearing and to make submissions on that topic.

Inquiry and Submissions

[7] Mr Mason, counsel for Mr Rasmussen, made comprehensive submissions at the inquiry designed not to minimise Mr Rasmussen's conduct but to submit that an order for striking off would be too severe in the circumstances of this case. Recognising that, in the arena of professional misconduct, Mr Rasmussen's conviction for attempting to pervert the course of justice was the major consideration, he stressed Woodhouse J's comment that the charge was "opportunistic, ill-conceived, badly executed and not pursued by you any further"[13] and submitted that, were any penalty other than striking off available, authorities suggested the least severe penalty available should be imposed and that those authorities should be followed in Mr Rasmussen's case.

[8] He submitted that there were sufficient differences between the cases of Mr Vakalalabure and Mr Rasmussen – the former having found to have fabricated evidence[14] – for the penalty imposed on the former not to be repeated in this case and canvassed other results which he suggested were avenues available other than a striking off order under ss 5(3) and 20(1)(a). In particular, he endorsed the suggestion that the matter might be met by Mr Rasmussen giving an undertaking to the Court not to apply for a practising certificate for a number of years, thus effectively resulting in his suspension from practice for that period, even though suspension is not amongst the penalties available under s 20.

[9] He said that people on Penrhyn have been consulting Mr Rasmussen recently on land matters on the island and other issues which would fit within

---

13 At [35].

14 Though never charged under s 124 of the Crimes Act 1969 arising out of the finding, he did not appeal it.

Mr Rasmussen's non-legal qualifications. He submitted that any order short of striking off might contain a condition permitting Mr Rasmussen to continue to practise law in those areas and thus enable him to continue his occupations.

[10] He noted that, having been convicted of an offence under s 128 of the Crimes Act 1969, Mr Rasmussen was excluded from resuming his participation in politics for five years pursuant to s 8(2)(d) and Part 2 of the Third Schedule to the Electoral Act 2004.

[11] He, naturally, relied on Mr Rasmussen's lengthy public service in the Cook Islands and elsewhere. He has been enrolled as a Barrister and Solicitor in the Cook Islands for 26 years, been Cook Islands' High Commissioner to New Zealand (2000-2002), a Member of Parliament for several terms from 2002, Leader of the House, and, between 2005-2010, held a number of significant Ministerial portfolios including Attorney-General and Minister of Finance. He advised the Penrhyn Island Council from 2010-2019. He was Leader of the Opposition (2011-14) and President of the CILS (2015-19). He is a Notary Public.[15]

[12] Mr Marshall and Ms Rood, President and Vice President respectively of the CILS, filed very helpful written submissions and elaborated on those at the inquiry. In so doing they emphasised that the Society's role was one of assisting the Chief Justice concerning the application of the disciplinary regime under Part III of the Act, but not to advocate for any particular penalty to be imposed.

[13] The Society's submissions reviewed a number of relevant authorities, including that of Mr Vakalalabure, plus a number of Australasian and United Kingdom decisions, the most relevant of which were *Auckland Standards Committee 1 v. Hanif*[16] where the practitioner was struck off for knowingly providing false or misleading information to an Immigration Officer; *Canterbury Westland Standards Committee v. Taffs*[17], the professional misconduct proceeding following *R v. Taffs* earlier mentioned where the practitioner was suspended for three months; and *Auckland Standards Committee 1 v. Choi*[18] where a practitioner was suspended for

---

15 Though he has said he no longer intends to practice as such.
16 [2019] NZLCDT 13.
17 [2013] NZLCDT 13.
18 [2021] NZLCDT 20.

six months after conviction for obstructing the exercise of powers under the Overseas Investment Act 2005 (NZ). Also helpful was their reference to *Auckland Standards Committee 1 of the New Zealand Law Society v. Fendall*[19] which involved striking off a practitioner for convictions for making false declarations to an insurance company and which contains a useful review of a number of authorities in the area.

Discussion and decision

[14] Before dealing with Mr Rasmussen's case directly, it is appropriate to acknowledge the role the CILS has played in this matter.

[15] Its lodging of the initial complaint under s 29(4) was described as "commendable," and its involvement in the matter since then has been to provide helpful and comprehensive submissions to assist in the making of the various decisions required, while always refraining from the slightest comment which might be seen as trespassing on the Chief Justice's role of actually imposing the appropriate penalty.

[16] The CILS is again to be commended for its public-spirited role in the matter and its properly calibrated defence of the Cook Islands' legal profession and its upholding of the Rule of Law. Its participation has been exactly that to be expected of a responsible Law Society, properly attentive to the interests of its members and its role in protecting the public.

[17] Turning to Mr Rasmussen's position, the essential – indeed the only – decision to be made concerning a lawyer who has been convicted of two counts of indecent assault and one of attempting to pervert the course of justice is whether striking off under ss 5(3) and 20(1)(a) is the proper result, or whether some penalty short of striking off, but resulting in Mr Rasmussen removing himself from practice for a period, is more appropriate. It is important to note that, apart from Mr Mason's suggestion of some form of Mr Rasmussen's continuing entitlement to practice in a limited role, there was – and could be - no suggestion Mr Rasmussen should be able

---

19 [2018] NZLCDT 32.

to apply for renewal of his practising certificate and immediately resume practice as a lawyer.

[18] Looking first at the matter broadly, it is helpful to recount the well-known passage, cited in many decisions involving lawyers' professional misconduct, in the UK Court of Appeal restoration case of *Bolton v. The Law Society*[20] where the following appears in the judgment of the Master of the Rolls:

> 14. Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors…. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the Tribunal be likely to regard as appropriate any order less severe than one of suspension.
>
> 15. It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. 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

[20] [1994] 1WLR 512.

> 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. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. …. A profession's most valuable asset is its collective reputation and the confidence which that inspires.
>
> 16. Because orders made by the Tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely to be, so the consequence for the individual and his family may be deeply unfortunate and unintended. But is does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

[19] Those observations are universally applicable to lawyers, including in the Cook Islands, and indicate strongly that striking off should follow Mr Rasmussen's convictions, not as punishment additional to that imposed by Woodhouse, J – Mr Rasmussen has complied with that – but in order to protect the public and uphold the role of the legal profession.

[20] Focussing on the Cook Islands, the only relevant complaint concerning the striking-off of a practitioner is the determination of Sir David Williams CJ[21] in

---

[21] Delivered 19 November 2009.

Mr Vakalalabure's case. The following passages from that determination are relevant:

> [6] On a general level, the Oath of Allegiance requires law practitioners to uphold the Constitution of the Cook Islands and as this Court has previously noted:
>
> > "It is generally accepted that the legal profession has a special role in maintaining and upholding the rule of law." (Misc No. 67/07 – Application for Admission by Mr Rakuita Saurara Teariki Vakalalabure, Judgment of David Williams CJ dated 20 December 2007, at paragraph 36)
>
> [7] Section 10 of the Act provides that every practitioner shall be deemed to be an officer of the Court. As such, and in the interests of the fair administration of justice, the overriding duty of a practitioner is to this Court.
>
> [8] In addition to the above general duties, practitioners are required to comply with the duties set out in the scheduled code of ethics pursuant to section 57(1) of the Act. Those duties include inter alia: maintaining the honour and dignity of the profession and abstaining from any behaviour which may tend to discredit the profession (rule 1); maintaining due respect towards the Court (rule 7); and, never giving incorrect factual information to the Court knowingly (rule 8).
>
> …
>
> [38] As indicated above, a finding of dishonesty falls within the most serious category of professional misconduct. In addition to the list of purposes identified [in *Bolton*], all of which are relevant to the present proceeding, it is necessary to have regard to their unifying principle of ensuring the fair and efficient administration of justice, for that is where the profession's true purpose lies. That ultimate goal requires not only public confidence in the profession, but also the ability of the judiciary to rely on the integrity of counsel appearing in the courts. It is irrelevant whether a member of the profession falls short of complete honesty in an attempt to further his own interests or those of a client.

[21] After observing[22] that "it is quite inappropriate for members of the Bar to commit criminal offences however minor they may be" the Determination concluded[23]:

> [50] In any event, it must be remembered that the purposes of professional disciplinary proceedings do not generally involve imposing punishment where that has already been provided for by the criminal law. By contrast, disciplinary proceedings in relation to behaviour that does not directly

---

22 At [43].
23 At [50].

> impeach a person's ability to discharge his or her professional responsibilities will often, as here, involve the need to preserve the special status within society of a particular profession. In the case of the legal profession, … that special status derives from the profession's "special role in maintaining and upholding the Rule of Law." In other words, a lawyer must practise what he or she preaches. As *Bolton* put it:
>
> > "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

[22] It must first be said that Mr Mason's proposals which would enable Mr Rasmussen to continue in some limited form of practice on Penrhyn are, with respect, unrealistic. Geographical restrictions are beyond the powers in s 20 and supervision and audit would be effectively impossible.

[23] However, reviewing all the circumstances concerning Mr Rasmussen in the light of the UK, New Zealand and Cook Islands' authorities, were the convictions for indecent assault the only convictions entered against him, then without in the least minimising the serious circumstances which lead to the convictions and the trauma it imposed on the victim, it might perhaps have been conceivably possible to contemplate some form of outcome short of striking off by balancing all the circumstances relating to those convictions against his public service record, though it must immediately be emphasised that, for the reasons appearing in the authorities – especially *Bolton* – because protection of the public is the underlying goal of professional misconduct matters, personal issues play no more than a modest role in them.

[24] That said, of the range of actions which commonly give rise to charges of indecent assault, the circumstances of Mr Rasmussen's offending might be seen as not amongst the most serious. True, he defended the charges but, after being convicted, he did not appeal. He has paid the fine. He has written the complainant a full apology expressing his contrition.

[25] In all those circumstances, were suspension, or some penalty which effectively amounted to suspension, available, balancing all those factors against one another might, though a considerable stretch, have possibly justified an outcome less than striking off.

[26] However, when the conviction for attempted perversion of the course of justice is put into the balance there can be no doubt that striking off is the only appropriate outcome. That conclusion is fortified by Mr Rasmussen's acceptance that his actions reflected on his fitness to practice as a lawyer, tended to bring the legal profession into disrepute and led to the finding that he was guilty of professional misconduct.

[27] Every action in their professional capacity of every lawyer, every day on every file, no matter how far removed from litigious issues, should be grounded on upholding the Rule of Law, the orderly organisation of society and the proper conduct of the profession in advancing the interests of the public and protecting it, all in accordance with its professional duties and the Code of Ethics. A conviction for attempting to pervert the course of justice – in association with the other convictions – self-evidently seriously undermines those goals and breaches those obligations in a significant way.

[28] In the litigious sphere, it is difficult to comprehend how a lawyer, who is by statute an officer of the Court, could convincingly and conscientiously advise clients to comply with the law and respect the Courts' litigious processes when they have pleaded guilty to being prepared to act in defiance of the law and those processes for their own interests. As the authorities emphasise, Courts must invariably be able to rely on the integrity of counsel who appear before them. Courts cannot have that trust in lawyers who are prepared to jeopardise, undermine and breach the Court's processes for their own ends, especially when their actions are coupled with a threat to use the Court's processes to achieve their unlawful purposes.

[29] Woodhouse, J's description of Mr Rasmussen's actions concerning the charge of attempting to pervert the course of justice was appropriate, but his remarks are to be seen as having been made in the overall context of sentencing and may reflect the fact that Mr Rasmussen was charged only with an attempt to pervert the course of justice, not the full offence.

[30] In terms of the New Zealand authorities to which the CILS referred, as noted striking off was the result in most of the comparable authorities, and, if striking off

did not follow in *Taffs*, that may have been because the practitioner's actions were to further his client's position, not his own.

[31] In terms of *Bolton*, Mr Rasmussen has failed to discharge his professional duties with "unquestionable integrity, probity and trustworthiness". He has been dishonest. He has engaged in criminal conduct. He has been convicted of three serious offences. He has breached his statutory duty as an officer of the Court. He has also breached the Code of Ethics by failing to maintain the honour and dignity of the profession and abstain from behaviour discrediting it, plus not maintaining due respect toward the Court. He has abused the trust the public is entitled to have in the legal profession.

[32] In all those circumstances the appropriate order under ss 5(3) and 20(1)(a) is to direct the Registrar to strike the name of Wilkie Olaf Patua Rasmussen off the Roll of Barristers and Solicitors of this Court forthwith on delivery of this Decision.

Publication of the Decisions

[33] Section 20(7) gives Chief Justices power to publish particulars of complaints, decisions and orders made in professional misconduct cases if such publication is in the public interest.

[34] Because of the public criticism it has endured, the CILS presses for publication both of this decision and Decision No.1 (Liability).

[35] The Chief Justice agrees that, given the amount of publicity Mr Rasmussen's actions has brought on him and the resulting opprobrium visited on the CILS, it is in the public interest that both Decisions be published.

[36] There will therefore be an order that both Decision No.1 (Liability), and this Decision be delivered to Mr Mason for onward transmission to Mr Rasmussen and to the Council of the CILS for onward transmission to its members forthwith on the Decision being delivered.

[37] To ensure all recipients are advised of the Decisions prior to their being made public, the Decisions will be embargoed from wider distribution for 3 working days following delivery to Mr Mason and the CILS' members, after which they may be made available publicly to the media and others who may seek them.

Appeal

[38] Under s 21, Mr Rasmussen has a right of appeal direct to the Court of Appeal on a question of law in relation to the orders made against him. Should he exercise that right and file an appeal, the Registrar is to advise the Chief Justice immediately and a conference will be convened to decide if any further orders are necessitated in connection with those orders. Pending the filing of any appeal, the orders are to remain operative.

Hugh Williams, CJ