



IN THE MATTER OF:

**THE LEGAL PRACTITIONERS ACT 1981**

Action No. 2 of 2020

Action No. 4 of 2020

IN THE MATTER OF:

**DAVID STOKES**

**DETERMINATION AS TO PENALTY**

1. The hearing with respect to the Determination of Penalty took place before the Tribunal on 19 October 2022.
2. The Tribunal delivered its determination in the substantive proceedings in actions no's 2 and 4 of 2020 on 23 day of May 2022 and provided comprehensive reasons.
3. The Tribunal determined that the practitioner's conduct in each of the actions constituted Professional Misconduct.
4. We have had regard to those reasons in determining the appropriate penalty.
5. The Legal Profession Conduct Commissioner and Mr D Agresta, who appeared for the practitioner, made submissions at the hearing.
6. We have had regard to those submissions.
7. An agreed statement of facts was filed on behalf of the Commissioner.
8. The Commissioner submitted that the statutory regime with respect to penalty was, in relation to fines, a tiered scheme with the quantum of fines increasing, depending upon whether the Commissioner imposed a sanction, the Tribunal imposed a sanction and whether the conduct was unsatisfactory professional conduct or professional misconduct.
9. As the Commissioner correctly submitted, the decision for the Tribunal is "What is an appropriate sanction in this case, given the repeated disregard the practitioner had for the orders of the Commissioner".

10. In the course of making submissions, the Commissioner acknowledged that, given that the practitioner no longer held a practising certificate, the imposition of a fine was an appropriate penalty.
11. The conduct the subject of the two actions comprised 4 Counts.
12. Specific deterrence with respect to the practitioner and general deterrence with respect to legal practitioners are both issues relevant to the determination of penalty.
13. The Commissioner submitted, that in this matter, the practitioner's disregard for the disciplinary regime was the issue of importance. That disregard undermines the disciplinary regime which would then tend to undermine the public's confidence in the profession.
14. If the profession cannot adequately discipline itself or regulate itself, the public will lose confidence in it.
15. The Commissioner submitted that the totality of the counts of both actions (4) need to be taken into account and each count warranted a fine.
16. The practitioner has ceased to practise, which may be a matter which impacts upon personal deterrence as opposed to general deterrence.
17. On behalf of the practitioner, it was submitted that the practitioner did not renew his Practising Certificate from 30 June 2022 and has no intention of going back to legal practice.
18. It was further submitted that the practitioner's conduct was not intended as a contumelious disregard for the Commissioner's orders but was, rather, the consequence of "burying his head in the sand".
19. It was submitted that the practitioner had apologised to Ms Psaramobas, to the former Commissioner, Mr May and to Mr Richards and Mr Thorn.
20. The quantum of fines already paid by the practitioner is \$13,000, as noted in paragraphs. 35, 53 and 64 of the Tribunal's determination of the substantive proceedings.
21. The Tribunal was referred, in the course of submissions, to the totality principle generally applied in the Criminal Jurisdiction. In essence, whilst one Count would justify the imposition of a particular penalty, where it is necessary to impose penalties in relation to a number of counts (in these proceedings being 4 counts), the totality of the 4 penalties ought not be disproportionate to the conduct looked at as a whole.
22. No issue was raised as to the practitioner's capacity to pay.

23. Section 82(6)(a)(ii)(a) of the Act enables the Tribunal to impose a fine not exceeding \$50,000 with respect to each count.

### **COSTS**

24. The practitioner and the Commissioner each consented to an order that the practitioner do pay the Commissioners costs of and incidental to with respect to each action to be agreed or taxed.

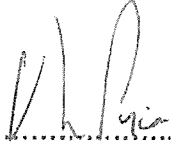
### **DETERMINATION**

25. The Tribunal notes that the practitioner's conduct which led to the Charges before the Tribunal have already attracted collective fines in the sum of \$13,000.
26. We take that into account when assessing penalty.
27. Each Count attracts a penalty.
28. We accept the submission that whilst the maximum penalty applicable is \$50,000 with respect to each Count, the totality principle requires us however to have regard to the practitioner's conduct overall.
29. With respect to each of the 4 counts in actions no 2 and 4 of 2020 we impose a fine of \$3,000, with a total fine to be paid of \$12,000.

### **ORDER**

- (1) The Practitioner do pay, within 60 days, a fine in the sum of \$12,000.
- (2) The Practitioner do pay the Commissioner's cost of and incidental to these proceedings, Actions numbered 2 and 4 of 2020, as agreed between the parties or as may be assessed or taxed.

Dated: 6<sup>December</sup> November 2022



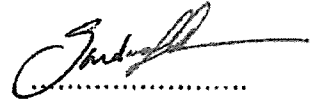
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**Maurine Pyke KC**



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**Lesley Hastwell**



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**Sandra Lilburn**