

the lesser censure is required. Adept advocacy, be it prosecutorial, be it defence, will involve an intimate understanding of the seminal cases and Acts of Parliament that shed light on the characterisation of matters that articulate the professional misconduct threshold vis-à-vis those that don't.

By saying “don't gild the lily”, one does not want to parade or market one's client as being a paradigm of virtue when the evidence suggests that he or she is not. Alternatively, one should avoid making representations in mitigation that cannot be substantiated. A common plea is “my client is well regarded in the industry”. Yet when the question is asked, “Well, how do you back that up, where are the references?” there is nothing to back up the contention. Furthermore, it is self-evident that the person who lodged the misconduct complaint did not share that sentiment of reverence for the respondent. To put it simply, never put forward a proposition or contention that cannot be backed up.

### **Tick off all the boxes**

A good plea in mitigation for instance will evidence the following ingredients:

- Contrition and remorse.
- Cooperation, and hopefully the prosecutor's concurrence with the respondent's contention that there has been cooperation.
- Intimate knowledge with the facts and the law on point.
- The availability of apposite fresh references from referees of good repute.
- Knowledge of priors or lack thereof.
- If no real or actual harm has been occasioned, submissions verifying that.
- Evidence as to “financials”, particularly where there can be heavy fine censure, earnings need to be revealed, outgoings need to be revealed.
- Evidence as to whether there are any dependants, and the impact that an adverse finding will have on them.
- Evidence that can be produced that verify the changes that have been introduced, systemically, to avoid repeat occurrence.

- In circumstances where additional education has been obtained to improve skill sets, that should be adduced.
- Evidence of any reparation that has been effected.

The above menu or plea criteria should be applied to all pleas in mitigation because the information is germane to the painting of the mitigational picture. Each ingredient should be treated as “a box to be ticked off”, when it is possible to do so and if an advocate applies this somewhat formulaic approach to their submissions in mitigation he/she will be advancing the cause of their respondent client.