ing contested trials are not always substantially different from sentences upon a plea ... "[91] Whether this is verifiable or true for every disciplinary tribunal is difficult to ascertain without reliable data.

Our experience suggests that disciplinary panels generally do not substantially differentiate in penalties for cancellation, suspension and reprimand when a practitioner is either pleading guilty to allegations or contesting allegations. This connection is less tenuous for fines and costs. Unsuccessfully contested allegations may attract greater fines and costs may be substantially different if the practitioner elected to plead guilty to allegations rather than contest the allegations.

A plea in mitigation

A plea in mitigation ought to provide an explanation for one's unprofessional conduct and hopefully offer mitigating circumstances for the unprofessional conduct. These twin objectives of a plea in mitigation may ameliorate penalties, fines and cost to your client, if effectively presented to the disciplinary tribunal.

Telling a disciplinary tribunal that your client is not guilty of the conduct alleged is not enough. It has to be backed up by evidence and persuasive advocacy. You will not prove it by either offering excuses or appealing to the disciplinary tribunal's collective conscience. One follows this path if there is an election to plead guilty but not if the election is to contest the allegations.

What are the elements of a good plea?

Kim Lovegrove, as an adolescent, was familiar with a circumstance where a very young man had a traffic encounter where he had been driving without a licence and had a car accident. This incident culminated in some driving charges. The 15-year-old appeared before the Magistrate and pleaded guilty to the charges. The adolescent informed the Magistrate that this type of incident had never occurred previously and would never occur again and that he felt fully responsible for the careless and reckless act. Further, he felt shame and opprobrium. He also mentioned that convictions for the traffic offences would be tantamount to a "black mark" and that the Magistrate might not be of a mind to invoke convictions on account of the long-term ramifications that would flow from this.

The Magistrate was receptive to these possibly naïve and unrefined

submissions. He had regard to the manifestation of genuine remorse, genuine contrition, and ownership of the actions (all being essential elements of mitigation). His Honour also appeared to have regard to the "prompt and frank 'fessing up" and a lack of preparedness on the young man's part to conjure up excuses or distractions designed to resile from complete ownership of the transgression.

Mention is made of the next matter that went before the Magistrate. The co-author observed that another respondent, a man in his thirties, displayed an entirely different approach. He had a clear case to answer but sought to dispute it on confusing and unconvincing grounds. The case against him seemed to be clear and overwhelming, yet the respondent displayed no interest in admitting that the case had merit, and in a very unconvincing fashion endeavoured to resile from his guilt. Indeed, there was a distinct lack of remorse and no contrition. None of this boded well for the respondent, the Magistrate was underwhelmed by the rhetoric and he was found guilty, he was convicted, and he was censured.

A great deal about both life and the law was learnt on this particular day. In fact, the observations shaped the co-author's advocacy and decision-making legal schemata, and the lessons learnt that day have assumed poignancy for the rest of his life. This will now be articulated and embellished upon as elements that are important to plea bargaining.

Ownership and admission of guilt

As pointed out earlier, if there is a *prima facie* case in the prosecutor's favour and the evidence is overwhelming and irrefutable, and of course if the practitioner knows that he/she has transgressed, then it would be difficult to identify any mileage in contesting the matter. When the authors are engaged as practitioner advocates and they have formed the view that the evidence against their client is incontestable, and the client instructs them to enter a plea of guilt, they invariably enter a guilty plea at the earliest possible opportunity. This is often the first mention date or prior to the disciplinary hearing. Invariably there will be dialogue with the prosecution/counsel assisting the tribunal whereby such counsel will be apprised of the practitioner's disposition to concede and admit to certain allegations.

Sometimes, however, one or two allegations may be evidentially