

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Winning* [2025] QCAT
198

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
DOUGLAS JOHN WINNING
(respondent)

APPLICATION NO/S: OCR237-23

MATTER TYPE: Occupational regulation matter

DELIVERED ON: 13 June 2025

HEARING DATE: 22 November 2024

HEARD AT: Brisbane

DECISION OF: Burns J

Assisted by:

Mr Geoffrey Sinclair, Practitioner Panel Member
Dr Julian Lamont, Lay Panel Member

ORDERS:

- 1. In respect of Charges 1 and 2, there is a finding of professional misconduct.**
- 2. In respect of Charge 3, there is a finding of unsatisfactory professional conduct.**
- 3. The Tribunal recommends that the name of the respondent be removed from the local roll.**
- 4. The respondent pay the applicant's costs of and incidental to the disciplinary application, such costs to be agreed or assessed on the standard basis as if the application was a proceeding before the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – CRIMINAL OFFENCES – where the respondent was convicted of one count of official corruption contrary to s 87(1)(b) of the *Criminal Code* (Qld) – where the applicant filed a discipline application in which the conduct underlying that conviction was relied on to ground a disciplinary charge – where the respondent did not dispute that his conduct constituted professional misconduct – where the

respondent accepted that this conduct along with conduct alleged in two other charges ought result in the removal of his name from the local roll – where the Tribunal was called to exercise the discretion conferred by s 456(1) of the *Legal Profession Act 2007* (Qld) – whether the conduct amounted to professional misconduct or unsatisfactory professional conduct – whether it should be ordered that the respondent’s name be removed from the local roll

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent appeared as a solicitor advocate in a criminal trial before a judge of the District Court of Queensland and a jury – where the respondent advanced a case at trial which did not reflect, and was not based on, his instructions – where the applicant filed a discipline application in which the respondent’s conduct at the trial was relied on to ground a disciplinary charge – where the respondent did not dispute that this conduct constituted professional misconduct – where the respondent accepted that this conduct along with conduct alleged in two other charges ought result in the removal of his name from the local roll – where the Tribunal was called to exercise the discretion conferred by s 456(1) of the *Legal Profession Act 2007* (Qld) – whether the conduct amounted to professional misconduct or unsatisfactory professional conduct – whether it should be ordered that the respondent’s name be removed from the local roll

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent sent an email intended for the Office of the Director of Public Prosecutions (Qld) which was grossly offensive, insulting and discourteous – where the applicant filed a discipline application in which the sending of the email was relied on to ground a disciplinary charge – where the respondent did not dispute that this conduct constituted unsatisfactory professional conduct – where the respondent accepted that this conduct along with conduct alleged in two other charges ought result in the removal of his name from the local roll – where the Tribunal was called to exercise the discretion conferred by s 456(1) of the *Legal Profession Act 2007* (Qld) – whether the conduct amounted to professional misconduct or unsatisfactory professional conduct – whether it should be ordered that the respondent’s name be removed from the local roll

Legal Profession Act 2007 (Qld), ss 5, 6, 9, 418, 419, 420, 456, 462

A Solicitor v Council of the Law Society of New South Wales (2004) 216 CLR 253

Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand [2018] QCA 66

Barristers' Board v Darveniza [2000] QCA 253

Bhandari v Morgan Conley Solicitors Pty Ltd [2022] QCAT 282

Hollington v F. Hewthorn and Company Limited & anor [1943] KB 27

In the matter of an application by GBK for admission to the Legal Profession [2022] QCA 129

In the matter of an application for admission as a legal practitioner by MCF [2015] QCA 154

Legal Services Board v McGrath (No 2) (2010) 29 VR 325

Legal Services Commissioner v McKenzie [2021] QCAT 377

Legal Services Commissioner v Madden (No 2) [2009] 1 Qd R 149

Legal Services Commissioner v Winning [2008] LPT 13

Legal Services Commissioner v Winning [2015] QCAT 510

New South Wales Bar Association v Evatt (1968) 117 CLR 177

Prothonotary of the Supreme Court of New South Wales v P [2003] NSWCA 320

Robert Legal v Queensland Law Society Inc [2022] QCAT 57

R v Mansoori [2019] QCA 250

R v Winning [2021] QCA 241

Watts v Legal Services Commissioner [2016] QCA 224

Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279

APPEARANCES & REPRESENTATION

Applicant:	S J Farnden KC, instructed by the Legal Services Commission
Respondent:	No appearance

REASONS FOR DECISION

- [1] The respondent, Douglas John Winning, is an Australian lawyer as that expression is defined in s 5(1) of the *Legal Profession Act 2007* (Qld) (**LPA**), having been admitted as a solicitor on 24 February 1986. He held an unrestricted principal practising certificate for almost 30 years from 1 July 1991 until 15 January 2021, when it was cancelled by the Queensland Law Society. The respondent practised on his own account as principal of Winning Lawyers from offices situated in Rockhampton.
- [2] By a discipline application filed on behalf of the applicant Commissioner on 29 September 2023, it is alleged that the respondent engaged in professional misconduct and/or unsatisfactory professional conduct.
- [3] There are three charges. By **Charge 1**, it is alleged the respondent engaged in conduct for which he was convicted in the District Court of Queensland at Rockhampton for an offence of official corruption. **Charge 2** relates to the respondent advancing a defence in a criminal case in the same course which was not based on his instructions. By **Charge 3**, it is alleged he used discourteous, offensive and insulting language in correspondence intended for the Office of the Director of Public Prosecutions.
- [4] The applicant submitted that the conduct which is the subject of Charges 1 and 2, if proved, amounts to professional misconduct and justifies a finding that the respondent is not a fit and proper person to engage in legal practice. Charge 3, it was submitted, if proved, should be characterised as unsatisfactory professional conduct. Ultimately, the applicant submitted that the Tribunal should make an order pursuant to s 456(2)(a) LPA recommending that the respondent's name be removed from the roll.
- [5] The respondent has a disciplinary history.¹ He did not engage in this disciplinary process save for the sending of a series of emails to the Tribunal which included his agreement with the orders sought by the applicant. To the point, the respondent consented to being “struck off”² and did not attempt to place any material before the Tribunal to demonstrate that he is currently a fit and proper person to practise law, or that he will, at some point in the future meet that description.

Some important principles

- [6] Before there is jurisdiction to make a disciplinary order under s 456 LPA, the Tribunal must first be satisfied that the practitioner engaged in unsatisfactory professional conduct or professional misconduct. That requires a consideration of the proven conduct in light of the statutory definitions of those expressions in ss 418 and 419 LPA as follows:

“418 Meaning of unsatisfactory professional conduct

Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a

¹ See *Legal Services Commissioner v Winning* [2008] LPT 13; *Legal Services Commissioner v Winning (No 2)* [2008] LPT 14; *Legal Services Commissioner v Winning* [2015] QCAT 510; and *Legal Services Commissioner v Winning* [2017] QCAT 150.

² Exhibit 7 to the affidavit of Nicholas Collier filed on 25 October 2024.

reasonably competent Australian legal practitioner.

419 Meaning of professional misconduct

- (1) **Professional misconduct** includes –
 - (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
 - (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.” [Emphasis in original]

- [7] When considering whether an Australian legal practitioner is a fit and proper person to engage in legal practice, regard may be had to the same suitability matters as would be considered if the practitioner were an applicant for admission to the legal profession or for the grant or renewal of a local practising certificate: s 419(2) LPA. By s 9(1) LPA, those suitability matters include whether the person has been convicted of an offence in Australia and, if so, the nature of the offence, how long ago the offence was committed and the person’s age when the offence was committed.³ In addition, a finding of professional misconduct must be founded on an assessment of the nature and seriousness of the conduct judged without reference to subsequent events, including the practitioner’s subsequent rehabilitation or reformation of character.⁴ Subsequent events such as those will, however, be relevant when deciding the appropriate disciplinary order if a disciplinary finding is made.⁵
- [8] It is also important to keep in mind that it is necessary in most cases to look behind the conviction for an offence in order to consider what Fullagar J described in *Ziems v The Prothonotary of the Supreme Court of New South Wales* as the “real facts of the case”.⁶ It is only when that exercise is undertaken that a court or tribunal may properly assess the conduct underlying the conviction and then decide how, if at all, such conduct bears on an overall assessment of the person’s fitness to practise as a lawyer.⁷
- [9] In proof of Charge 1, the applicant relied on the respondent’s conviction for official corruption (including the sentencing remarks of Chowdhury DCJ on 7 October 2020), as well as the decision of the Court of Appeal dismissing the respondent’s appeal

³ Also, s 420(i)(c) LPA when read with the definition of “serious offence” in Schedule 2 to the Act has the effect of providing that a conviction for an indictable offence or an offence involving dishonesty is capable of constituting unsatisfactory professional conduct or professional misconduct.

⁴ *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66, [20].

⁵ *Legal Services Board v McGrath* (No 2) (2010) 29 VR 325, [12]; *In the matter of an application for admission as a legal practitioner by MCF* [2015] QCA 154, [10].

⁶ *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 288.

⁷ *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, 268; *In the matter of an application for admission as a legal practitioner by MCF* [2015] QCA 154, [8]; *In the matter of an application by GBK for admission to the Legal Profession* [2022] QCA 129, [22].

against that conviction.⁸ Similarly, in proof of Charge 2, the applicant relied on the various factual findings made by the Court of Appeal concerning the conduct of a criminal trial by the respondent where he appeared for the accused as solicitor advocate.⁹ Ordinarily, factual findings and conclusions in other proceedings are not admissible as evidence of the facts in another proceeding.¹⁰ However, by s 28(3)(b) of the *Queensland Civil and Administrative Tribunal Act 2019* (Qld), the Tribunal is not bound by the rules of evidence or any practices or procedures applying to courts of record. Instead, the Tribunal is empowered to adopt whichever rules, practices or procedures which are consistent with the well-recognised policy objectives of disciplinary proceedings being essentially protective in nature,¹¹ provided the rules of natural justice are observed. As such, it has been held that any objection based on the rule in *Hollington v Hewthorn* “falls to the ground once it becomes clear that the Tribunal is not bound by the rules of evidence”.¹² I respectfully agree. It is both permissible and appropriate that the Tribunal take that material into account in proof of the charges.

Charge 1

- [10] In the early hours of 17 February 2019, two police officers pulled over a car that was being driven by the respondent. The respondent told them he had been drinking, that he had consumed “a bottle of rum” and that he had slept since finishing the bottle. The respondent was slurring his words. He twice said, “You’re not going to pinch me”. A roadside breath test returned a positive reading. At that point, the respondent held up \$300 in cash and asked, “Can’t pay my way out of this, can I?” One of the officers replied, “No. No, you definitely can’t pay your way out of this”. With that, the respondent folded the bank notes in his right hand and extended his right arm out of the car towards the officers, leaving his arm in that position for some time.
- [11] The police told the respondent he was being detained for the purpose of a further breath test to be conducted at a police station. As the respondent was removed from his car, he still held the cash in his hand. The following exchange then took place:

“Officer 1: *Do you wanna put your cash in the car or do you wanna leave it on your possession?*

Respondent: *I’ll leave it on my possession.*

Officer 1: *Ok. Alright.*

Respondent: *You wa-, you wanna lazy quid?*

Officer 1: *No, no, no.*

Respondent: *Give you a lazy quid-*

⁸ *R v Winning* [2021] QCA 241.

⁹ See *R v Mansoori* [2019] QCA 250.

¹⁰ See *Hollington v Hewthorn* [1943] KB 27, 28.

¹¹ See s 28(3)(a) of the *Queensland Civil and Administrative Tribunal Act*.

¹² *Bhandari v Morgan Conley Solicitors Pty Ltd* [2022] QCAT 282, [28]. And see *Legat v Queensland Law Society Inc* [2022] QCAT 57, [2].

Officer 2: *No, no, no.*

Officer 1: *No, no, no. No, not at all. Come on, Mr Winning, we'll get you in the back of the car. Come on, sir, this way."*

[12] A further breath specimen was obtained and then analysed at the Rockhampton Police Station. It revealed the respondent had a blood alcohol concentration of 0.191 per cent. The respondent was charged with driving under the influence in contravention of s 79(1F) of the *Transport Operations (Road Use Management) Act 1995* (Qld) and one charge of official corruption in contravention of s 87(1)(b) of the *Criminal Code* (Qld). The latter offence will be made out where a person corruptly offers to provide a benefit to, relevantly, a police officer in an attempt to induce the officer not to perform his or her duty.

[13] On 6 March 2019, the respondent pleaded guilty to the drink driving charge. He was convicted, fined \$800 and disqualified from holding or obtaining a driver's licence for a period of eight months.

[14] The official corruption charge was contested. The gist of the Crown case was that the respondent offered a bribe to the police officers to induce them to not perform their duty which, in the circumstances, required them to place the respondent under arrest and, ultimately, to charge him with drink driving. On the other hand, the respondent maintained all he had done was to engage in "a drunken, facetious, mischievous joke" and that, in any event, he was so intoxicated that he could not have formed any corrupt intent. Following a trial in the District Court at Rockhampton before Chowdhury DCJ and a jury, the respondent was found guilty on 7 October 2020. He was sentenced to nine months imprisonment, wholly suspended for an operational period of 18 months, and a conviction was recorded.

[15] The respondent appealed to the Court of Appeal, but that appeal was dismissed on 12 November 2021.¹³ After a review of the evidence given at trial, Morrison JA (with whom Mullins JA and Boddice J, as their Honours then were, agreed) held that it was open to the jury to be satisfied beyond reasonable doubt about the respondent's guilt. His Honour continued:

"Further, the jury could conclude that Mr Winning was intoxicated, but not so intoxicated that he was unaware of what was taking place, and what he was doing. It was open to the jury to conclude that Mr Winning had the requisite intent namely intending that the police officers act contrary to their duty."¹⁴

[16] Special leave to appeal to the High Court of Australia was subsequently sought but, on 16 March 2022, leave was refused.

Charge 2

[17] The conduct about which Charge 2 is concerned preceded the conduct constituting Charge 1.

[18] On 12, 13, 14 and 16 December 2018, the respondent appeared in the District Court

¹³ *R v Winning* [2021] QCA 241.

¹⁴ *Ibid*, [74].

at Rockhampton as solicitor advocate in defence of a client who was charged on indictment with rape. The trial took place before Burnett DCJ and a jury. Prior to its commencement, the client provided the respondent with instructions regarding the allegations against him. However, the respondent advanced a case at trial on behalf of the client (including, most critically, the case he put in cross-examination of the complainant and in his closing address to the jury) which did not reflect, and was not based on, the facts instructed by the client.

- [19] The respondent's client was found guilty. He appealed to the Court of Appeal on grounds that included the complaint that a miscarriage of justice was occasioned by the way in which the respondent conducted the defence case.
- [20] On the hearing of the appeal, both the client and the respondent provided affidavits as to what had occurred. Each was cross-examined.
- [21] On 15 November 2019, the Court of Appeal allowed the client's appeal, quashed his conviction, and ordered that he be retried upon indictment.¹⁵ In the course of his reasons, Henry J (with whom Philippides and McMurdo JJA agreed) rejected the respondent's evidence. His Honour said:

“There is no satisfactory innocuous explanation for the coincidence of the significant problems and implausibility plaguing [the respondent's] evidence. Considered in isolation some of it might be symptomatic of laxity and ignorance of proper professional standards. However, it is telling that [the respondent's] evidence involved a coalescence of problems and implausibility of the very kind likely to be present if the [client's] complaint is true. He was not a credible witness. His account of the [client's] significant shift in instructions does not withstand scrutiny and should be rejected.”¹⁶

- [22] His Honour then concluded:

“Having regard to the whole of the evidence, and even allowing for credibility concerns about some aspects of the [client's] evidence, the [client's] evidence that he did not change his initial instructions to [the respondent] should be accepted. The [client] has proved on the balance of probabilities that the facts of the defence case as put to the complainant by [the respondent] were not the facts as the [client] instructed them to be.

It is not to the point that the [client] did not speak up once that became apparent to the [client]. The [client's] differential acquiescence to his lawyers conduct in control of the case cannot logically serve as a substitute for the existence of client instruction about the facts.

It was a qualifying ingredient of [the respondent's] role as the [client's] agent and his entitlement as a legal practitioner to appear in court for the [client], that any assertion by him about the true facts was consistent with his client's instructions about the facts. That ingredient was missing. Its absence inevitably meant the [client's] true position

¹⁵ *R v Mansoori* [2019] QCA 250.

¹⁶ *Ibid*, [95].

was misrepresented, depriving both him and the prosecution of the trial according to law to which they were entitled. It was properly conceded that, if established, such a fundamental defect left no room for the application of the proviso.”¹⁷

- [23] His Honour went on to make clear that while determination of the appeal required a consideration of the respondent’s evidence about his conduct, the respondent was not a party to the appeal, only a witness. He had no right to make submissions and nor did he have any say in whether evidence from other sources which may have been relevant could or should be led. However, despite the opportunity to do so, the respondent declined to place any sworn evidence regarding his conduct in this respect before this Tribunal and, of course, he has agreed that his name should be removed from the local roll.

Charge 3

- [24] On 26 August 2020, when representing a client in a criminal matter, the respondent sent an email to the associate to Crow J. As it turns out, the email was misdirected; it was intended for the Office of the Director of Public Prosecution. In any event, this is what the respondent wrote:

“God it is impossible to deal with you people. In future I will not try. I will just set everything down for trial and then go to the CCA to correct the errors.

I will revert to having absolutely no contact with your office on contested matters.

I will raise this matter with Crow J on Friday.

Go away and never contact me again. Ring up Peachy and get him and Phillips to trump up another bullshit charge against me.

Doug Winning”

- [25] On 28 August 2020, the sending of this email was raised in court with the respondent by Crow J. His Honour remarked:

“... the Australian Solicitors Conduct Rules 4.1.2 requires a solicitor to be courteous in all dealings in the course of his legal practice. This is not courteous correspondence.”

- [26] The respondent apologised for what he described as a communication sent “out of frustration” and something in relation to which he later asked the intended recipient to “ignore [his] emotional statements”. He also apologised to the court.

Assessment of the conduct

- [27] Before discussing the proper characterisation of the conduct and the sanction for that conduct, it is necessary to make mention of the respondent’s disciplinary history.

¹⁷ Ibid, [96]-[98].

- [28] In *Legal Services Commissioner v Winning*,¹⁸ the respondent was found guilty of unsatisfactory professional conduct and professional misconduct.¹⁹ Similar to the conduct the subject of Charge 3, the respondent was found to have used language in written and verbal communications that was grossly offensive and insulting, displayed a lack of professional courtesy, and had the potential tendency to bring the legal profession into disrepute. Those communications took place at different times during 2004 and were with the Australian Crime Commission, at the bar table in the Supreme Court in Rockhampton in relation to other practitioners and from the bar table in the Magistrates Court at Rockhampton in relation to a prosecutor. White J remarked that the respondent “expressing himself in the crude, vulgar, undisciplined way set out in the charges ... is not to be tolerated [from] a member of the legal profession”.²⁰ The respondent was publicly reprimanded and ordered to engage professional consultation “as and when required” over the following 12 months.
- [29] Similar conduct was repeated several years later. In *Legal Services Commissioner v Winning*,²¹ the respondent was found to have committed professional misconduct by making numerous comments about a prosecutor during a District Court trial that were offensive, discourteous and provocative, and which had a tendency to compromise the integrity and reputation of the legal profession. These comments included profanities and statements in open court, some before the jury, accusing the prosecutor of dishonesty and misleading the court. There was also a remark made to the presiding judge, described by the Tribunal as “disrespectful”, which was also found to amount to professional misconduct. The respondent was again publicly reprimanded and ordered to accept “mentoring” from a senior member of the profession along with a regime of treatment from a clinical psychologist.
- [30] Turning then to this case, it is well-established that disciplinary penalties are not imposed as punishment; they are imposed for the protection of the community. Accordingly, in determining what order the Tribunal might now make, regard should primarily be had to that purpose,²² as well as the maintenance of proper professional standards.²³ Importantly, though, the question of the respondent’s fitness to remain a solicitor is to be ascertained as at the date of the hearing rather than the date of the conduct the subject of the charges.²⁴ However, in circumstances where the respondent has not opposed the making of the orders sought by the applicant, that distinction is moot.
- [31] Nonetheless, an order recommending the removal of the name of a practitioner from the local roll should only be made when the probability is that the practitioner is permanently unfit to practise.²⁵ This test of “probable permanent unfitness” is “a way of identifying that the character of the practitioner is so indelibly marked by the

¹⁸ [2008] LPT 13. See also *Legal Services Commissioner v Douglas John Winning (No. 2)* [2008] LPT 14.

¹⁹ Several charges were assessed by reference to the standard enunciated in the *Queensland Law Society Act 1952* as defined in section 3B, because that conduct occurred before the *Legal Profession Act 2004* came into operation.

²⁰ *Supra*, [74].

²¹ [2015] QCAT 510. See *Legal Services Commissioner v Winning* [2017] QCAT 150.

²² *New South Wales Bar Association v Evatt* (1968) 117 CLR 177, 183-184.

²³ *Legal Services Commissioner v Madden* (No 2) [2009] 1 Qd R 149, [122].

²⁴ *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, [21].

²⁵ *Prothonotary of the Supreme Court of New South Wales v P* [2003] NSWCA 320, [17]; *Watts v Legal Services Commissioner* [2016] QCA 224, [46].

misconduct that he cannot be regarded as a fit and proper person to be upon the Roll”.²⁶ As to this, the following observations made by Thomas JA (with whom McMurdo P and White J agreed) in *Barristers’ Board v Darveniza* are in this case apposite:

“Generally speaking the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system in which he or she practises.”²⁷

- [32] Unsurprisingly, the Commissioner submitted that the only appropriate order was a recommendation that Mr Winning’s name be removed from the local roll. In that regard, the Tribunal requires little persuasion that the conduct underlying the respondent’s conviction for a criminal offence as serious as official corruption, without more, compels a finding of professional misconduct along with an order removing the respondent’s name from the local roll.²⁸ It is conduct which bespeaks not only a lack of trustworthiness and integrity but a preparedness to flout the law. The character of the respondent is so “indelibly marked” by this conduct that he cannot be regarded as a fit and proper person to be on the roll. There is, in any event, no evidence to suggest otherwise.
- [33] In the Tribunal’s view, the conduct constituting Charge 2 also amounts to professional misconduct. Such a serious, and consequential, departure from the standards of competence and diligence required of a legal practitioner can never be tolerated. The respondent ignored his instructions and, instead, developed a case before the jury which actively misrepresented his client’s position. It deprived his client of a trial according to law. It also undermined the administration of criminal justice.
- [34] Charge 3 is at a lower level of gravity. However, there can be no doubt the email went well beyond a lack of courtesy; it was both threatening and offensive. There is simply no place for communications of that kind in the practise of the law. It almost goes without saying that composing and then sending this email fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner. In the Tribunal’s view, the conduct relied on by the applicant in support of Charge 3 amounts to unsatisfactory professional conduct.
- [35] On all the evidence before it, the Tribunal is satisfied that the respondent is permanently unfit to practise. Nothing less than a recommendation that his name be removed from the roll will be sufficient to protect the community and the reputation of the profession.

Orders

- [36] There will be a finding of professional misconduct in respect of Charges 1 and 2 and a finding of unsatisfactory professional conduct in respect of Charge 3. The Tribunal will recommend that the respondent’s name be removed from the roll of legal

²⁶ *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66, [57].

²⁷ *Barristers’ Board v Darveniza* [2000] QCA 253, [33].

²⁸ As to which, see *Attorney-General v Legal Services Commissioner; Legal Services Commissioner v Shand* [2018] QCA 66, [60]; *Legal Services Commissioner v McKenzie* [2021] QCAT 377.

practitioners in Queensland.

- [37] There being no exceptional circumstances within the meaning of s 462(1) LPA, the respondent will also be ordered to pay the Commissioner's standard costs of the application, with such costs to be assessed as if this was a proceeding before the Supreme Court of Queensland.