

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Edwards* [2025] QCAT
291

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

DAVID EDWARDS
(respondent)

APPLICATION NO/S: OCR107 of 2024

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 8 August 2025

HEARING DATE: 30 May 2025

HEARD AT: Brisbane

DECISION OF: Hon. Judicial Member McMeekin KC

Assisted by:

Ms Kathryn McMillan KC, Practitioner Panel Member
Dr Julian Lamont, Lay Panel Member

- ORDERS:
- 1. The respondent's conduct subject of charges 1 and 4 is characterised as professional misconduct.**
 - 2. The respondent's conduct subject of charges 2 and 3 is characterised as unsatisfactory professional conduct.**
 - 3. The respondent is publicly reprimanded for charges 2 and 3, pursuant to s 456(2)(e) of the *Legal Profession Act 2007* (Qld).**
 - 4. It is recommended that the name of the respondent be removed from the local roll, pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld).**
 - 5. The respondent pay the applicant's costs of and incidental to this discipline application, such costs to be agreed or assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – LEGAL PRACTICE — where the respondent was an admitted legal practitioner – where the respondent's practising certificate was not renewed - where

the respondent made six court appearances whilst lacking a practising certificate – where respondent took a direct brief and failed comply with *2011 Barristers’ Conduct Rules* r 24B – where the respondent’s conduct of the direct brief matter was referred to the applicant by the trial Judge – where the applicant alleges four charges against the respondent – where the respondent does not dispute the facts - where the respondent does not intend to continue in practising – whether respondent’s conduct should be characterised as professional misconduct or unsatisfactory professional conduct – whether the respondent’s name should be removed from the roll

2011 Barristers’ Conduct Rules, as amended r 24B, r 95(k)
Legal Profession Act 2007 (Qld) s 418, s 419, s 452, s 456(1)

Uniform Civil Procedure Rules 1999 (Qld) r 225, r 429G, r 429H, r 429I

District Court of Queensland Practice Direction 2 of 2006, cl 2

Adamson v Queensland Law Society Incorporated (1990) 1 Qd R 498

Attorney-General v Bax [1999] 2 Qd R 9

Attorney-General v Legal Services Commissioner; Legal Services Commissioner v Shand [2018] QCA 66

Harvey v Law Society of NSW (1975) 49 ALJR 362

Legal Services Commissioner v de Fraine [2015] QCAT 292

Legal Services Commissioner v Doyle [2021] QCAT 347

Legal Services Commissioner v Madden (No 2) [2008] QCA 301

Legal Services Commissioner v Walter [2011] QSC 132

Prothonotary of the Supreme Court of NSW v McCaffrey [2004] NSWCA 470

APPEARANCES & REPRESENTATION:

Applicant: Mr B Clements solicitor of Clements Fitzgerald Lawyers

Respondent: Self-represented (via video link)

REASONS FOR DECISION

- [1] This is an application by the Legal Services Commissioner (‘Commissioner’) under s 452 of the *Legal Profession Act 2007* (Qld) (‘the *Act*’). The Commissioner alleges that David Roger Edwards (referred to as ‘the respondent’ at times), engaged in professional misconduct and/or unsatisfactory professional conduct. The Commissioner seeks that disciplinary orders be made against Mr Edwards pursuant to s 456 of the *Act*. The conduct in question is particularised in four charges:

- (1) On various dates between 14 July 2022 and 14 November 2022, the respondent engaged in legal practice while not entitled to do so.

- (2) Between 19 April 2013 and 22 July 2020, the respondent accepted a direct brief from persons who were not solicitors, without complying with r 24B of the *2011 Barristers' Conduct Rules, as amended* ('the Rules').
 - (3) On or around 19 April 2013, the respondent failed to discharge his retainer with the degree of care and skill expected of a reasonably competent barrister by failing to plead the necessary elements of the cause of action in the Statement of Claim that the respondent drafted and settled.
 - (4) Between 19 April 2013 and 22 July 2020, the respondent breached r 95(k) of the *Rules* by failing to return his brief in the matter directly briefed despite there being reasonable grounds for the respondent to believe that the failure of his clients to retain an instructing solicitor would, as a real possibility, seriously prejudice the respondent's ability to advance and protect his clients' interests in accordance with the law and the *Rules*.
- [2] This Tribunal's jurisdiction to hear and determine this application is founded in the following agreed facts. The respondent:
- (a) is an Australian lawyer as defined under section 5(1) of the *Act*;
 - (b) is an interstate lawyer as defined under section 5(3) of the *Act*, having been admitted as a solicitor of the Supreme Court of New South Wales on 25 November 1977;
 - (c) was admitted as a barrister of the Supreme Court of Queensland on 14 July 2003; and
 - (d) held a Queensland barrister practising certificate from their introduction on 1 July 2005 until 30 June 2022, except for approximately two months between 1 July 2014 and 9 September 2014.
- [3] The facts regarding the charges are not in dispute and are set out in a document of agreed facts filed in the Tribunal.
- [4] Mr Edwards and the Commissioner agree that there ought to be a finding that the conduct set out in charges (1) and (4) should be characterised as professional misconduct and the conduct in charges (2) and (3) as unsatisfactory professional conduct. The Tribunal, of course, is obliged to exercise its independent assessment of the characterisation of the conduct. The conduct will be detailed, and the Tribunal agrees with the parties' submitted characterisation.
- [5] The area of dispute concerns the disciplinary orders that should be made. The Commissioner submits that Mr Edwards' name should be recommended to be removed from the local roll. Mr Edwards submits that the more appropriate order is that he be publicly reprimanded.
- [6] We will turn to the facts.

Charge (1): Unlawfully engaging in legal practice

- [7] Mr Edwards became a bankrupt. He entered into an arrangement with his trustee in bankruptcy regarding the payment of certain monies. Absent that payment, the trustee would not provide a letter to the Bar Association of Queensland ('Bar Association') confirming that Mr Edwards had met with his duties and obligations as a bankrupt. This was a necessary pre-requisite to obtain a renewal of his practising certificate. Mr

Edwards was unable to obtain the funds he had expected. The letter was not forthcoming from the trustee.

- [8] Following discussions with the Bar Association, Mr Edwards made an application for renewal of his certificate on the morning of 30 June 2022 (the date of expiration of his certificate) without the trustee letter. In response, the Bar Association wrote to Mr Edwards that day advising him that:
- (a) his ‘current practising certificate will expire at midnight tonight, 30 June 2022’; and
 - (b) that he is ‘prohibited from engaging in legal practice commencing tomorrow, 1 July 2022’.
- [9] After 1 July 2022, Mr Edwards appeared on several occasions across various matters, for various clients, at various courts, purporting to be entitled to appear. Apart from one occasion the matters were uncontentious, that is mentions, adjournments or the like, and he charged no fee. Mr Edwards made court appearances:
- (a) on 14 July 2022, in the Federal Circuit and Family Court of Australia (‘FCFCOA’);
 - (b) on 28 September 2022, at a dispute resolution conference in respect of a family law matter in the FCFCOA;
 - (c) on 28 October 2022, for two clients in the Ipswich District Court in respect of a criminal matter;
 - (d) on 1 November 2022, on behalf of a defendant in the Ipswich Magistrates Court;
 - (e) on 8 November 2022, on behalf of a defendant in the Southport Magistrates Court; and
 - (f) on 14 November 2022, at a hearing on behalf of respondents to a family law matter in the FCFCOA.
- [10] It is not in dispute that Mr Edwards engaged in legal practice despite not charging a fee. It is not necessary that it be shown that a practitioner has ‘any entitlement to or expectation of reward or remuneration’ from his clients.¹
- [11] The contentious matter at which Mr Edwards appeared was a mediation conducted by the Registrar of the FCFCOA in a custodial dispute. The FCFCOA has advised that Mr Edwards appeared on two occasions in respect of this matter, on 28 September and 14 November 2022. The latter involving a hearing before the Senior Judicial Registrar.
- [12] It is worth noting that: the Bar Association was in communication with Mr Edwards regarding his inability to practise and his application to renew his certificate on 15 July 2022; Mr Edwards acknowledged his position by his email of 20 July 2022;² and on 5 October 2022, after discussions with the Bar Association, he withdrew his application for a practising certificate expressing an intention to renew the application when in possession of the necessary trustee letter.

¹ *Legal Services Commissioner v Walter* [2011] QSC 132 at [18]-[20] (Daubney J).

² Affidavit of Mr David Roger Edwards sworn 30 August 2024, annexure C.

Charge (2): Direct briefing compliance

[13] On 19 April 2013, Mr Edwards accepted a direct brief from persons who were not solicitors, namely Mr and Mrs Hartley ('his clients'), in respect of a claim brought by a company under their control, Dovedeen Pty Ltd ('Dovedeen matter'). The matter came on for trial before his Honour Judge Porter QC in the District Court of Queensland between 20 and 22 July 2020.

[14] The complaint here is that Mr Edwards failed to comply with r 24B of the *Rules*. The rule provides:

A barrister who proposes to accept instructions directly from a person who is not a solicitor must:

- a. inform the prospective client in writing of:
 - i. the effect of Rules 15 and 17;
 - ii. the fact that circumstances may require the client to retain an instructing solicitor at short notice, and possibly during the performance of the work;
 - iii. any other disadvantage which the barrister believes on reasonable grounds may, as a real possibility, be suffered by the client if the client does not retain an instructing solicitor;
 - iv. the relative capacity of the barrister in performing barristers' work to supply the requested facilities or services to the client compared to the capacity of the barrister together with an instructing solicitor to supply them; and
 - v. a fair description of the advocacy experience of the barrister; and
- b. obtain a written acknowledgement, signed by the prospective client, that he or she has been informed of the matters in (a) above.

[15] Rule 15 provides what work is 'barristers' work' and r 17 lists activities that a barrister may not do.

[16] It is now agreed that Mr Edwards did not at any point prior to the trial advise his clients in writing of any of the following matters which were the subject of r 24B:

- (a) the effect of rr 15 and 17 of the *Rules*;
- (b) the fact that circumstances may require them to retain an instructing solicitor at short notice, and possibly during the performance of the work the subject of Mr Edwards' retainer with Mr and Mrs Hartley;
- (c) the relative capacity of Mr Edwards in performing barristers' work to supply the requested facilities or services to Mr and Mrs Hartley compared to the capacity of a barrister together with an instructing solicitor to supply them; and/or
- (d) a fair description of the advocacy experience of Mr Edwards.

[17] Mr Edwards failed to supply, as r 24B(b) of the *Rules* requires, a signed, written acknowledgement from his clients that they had been informed of the matters particularised above in paragraph 16 (a) to (d).

Charge (3): Incompetence

- [18] Mr Edwards prepared the Claim and Statement of Claim in the Dovedeen matter. The intention was to pursue a claim for damages for breach of contract. It is agreed that the Statement of Claim did not, as it should have, plead the elements necessary to establish the cause of action. It did not contain:
- (a) allegations of fact sufficient, if proven, to establish formation of a contract;
 - (b) the relevant terms of the alleged contract; and
 - (c) facts sufficient, if proven, to establish that the conduct apparently in breach of the alleged contract caused any loss.

Charge (4): Failure to return the brief

- [19] Rule 95(k) of the *Rules* provides that
- a barrister must refuse to accept or retain a brief or instructions to appear before a court if ... there are reasonable grounds for the barrister to believe that the failure of the client to retain an instructing solicitor would, as a real possibility, seriously prejudice the barrister's ability to advance and protect the client's interests in accordance with the law including these Rules.
- [20] As became apparent through the trial, the Dovedeen matter had not been prepared properly or perhaps at all. Judge Porter QC was very critical of Mr Edwards' preparedness and at the conclusion of his judgment referred the papers to the Commissioner. The various complaints included:
- (a) Mr Edwards' clients had not made disclosure as required under the *Uniform Civil Procedure Rules 1999* (Qld) ('*UCPR*'); the obligation was extant from the date 14 days after the Amended Reply in the matter was filed, which occurred some three years before the trial, because Mr Edwards was unaware of the obligation;
 - (b) Mr Edwards was unaware of the effect of the lack of disclosure, namely, that relevant documents that ought to have been disclosed could not be tendered without leave (r 225 *UCPR*);
 - (c) Mr Edwards was unaware prior to trial that expert evidence from three witnesses was needed to prove aspects of his clients' case;
 - (d) Mr Edwards was unaware of the relevant expert evidence rules and so had failed to obtain a written report from expert witnesses or disclose the reports (see r 429G, 429H and 429I *UCPR*);
 - (e) consequently, Mr Edwards was unaware that he would be unable to establish the factual matters that he considered important to his clients' case; and
 - (f) Mr Edwards sought to tender documents at the trial that were not even arguably admissible because he was unable, in advance of the trial, to form a view as to the documents that could be tendered in accord with the rules of evidence.
- [21] Judge Porter QC concluded that 'in both form and substance' Mr Edwards had not complied with Practice Direction 2 of 2006 (as amended by Practice Direction 2012/08) ('the Practice Direction') dealing with direct briefs. Clause 2 of the Practice Direction provides:

2. It is expected that a barrister who accepts a direct access brief will:
- (a) obtain a detailed understanding of the matter, including the client's potential case;
 - (b) give consideration to the evidence likely to be required to be called in the case;
 - (c) ascertain the nature and volume of documentary evidence likely to be relevant in the case;
 - (d) ascertain the identity and number of potential witnesses;
 - (e) give detailed consideration to the manner in which the evidence will be collected and prepared for presentation to the Court;
 - (f) give careful consideration to the likely steps to be taken in the matter, including the prospect of interlocutory proceedings or whether the matter should be on a specialist list such as the commercial list;
 - (g) consider whether, having regard to the resources available to the barrister, including the barrister's experience, general competence, and familiarity with the areas of practice likely to be relevant to the matter, the barrister is satisfied that:
 - (i) the barrister will be able properly to prepare the case for hearing bearing in mind the requirements of r 15 and 17 of the *2011 Barristers' Rule* (see appendix), and
 - (ii) the barrister will be able to take all appropriate action on the client's behalf, in a timely fashion, and in accordance with any rules of practice and procedure, practice directions, or other likely orders or directions made in respect of the conduct of the matter;
 - (h) refuse to accept the direct access brief unless so satisfied.

[22] Because of the various failures listed above Mr Edwards did not fully consider or ensure that he complied with his obligations imposed under clause 2 of the Practice Direction. Regarding clause 2(g) of the Practice Direction, Mr Edwards could not reasonably have come to the conclusion that he had sufficient resources available to him to be satisfied of either of the criteria set out in clauses 2(g)(i) or (ii) and did not take steps to rectify this breach.

Characterisation of conduct

The relevant tests

[23] The Tribunal's power to make a disciplinary order is dependent on a finding that the respondent has engaged in unsatisfactory professional conduct or professional misconduct.³ The statutory definitions are set out in ss 418 and 419. They are inclusive in their terms and hence recourse to common law tests is permissible if helpful.

[24] Section 418 provides:

³ *Legal Profession Act 2007* (Qld), s 456(1) ('the Act').

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 reasonably competent Australian legal practitioner.

[25] Section 419 provides:

(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 maintain 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.

[26] The Commissioner submits that Thomas J’s dictum in *Adamson v Queensland Law Society Incorporated* (1990) 1 Qd R 498 at 507 is of assistance here:

The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.

[27] Section 420(1)(a) of the *Act* is also relevant. It provides that ‘conduct consisting of a contravention of a relevant law’ is conduct ‘capable of constituting unsatisfactory professional conduct or professional misconduct’ and that this includes a ‘contravention of a regulation or legal profession rules’.

Discussion

Charge (1)

[28] Section 24(1) of the *Act* provides:

A person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner.

Maximum penalty—300 penalty units or 2 years imprisonment.

[29] Section 6(1) of the *Act* provides an ‘**Australian legal practitioner** is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate’ (emphasis in original). It follows, that lacking a certificate, an Australian lawyer is not permitted to engage in legal practice.

[30] Until 30 June 2022, Mr Edwards held a local practising certificate. Such a certificate is in force until the end of the financial year.⁴ He was required to apply for a renewal ‘before the time stated in the regulatory authority’s administration rules’.⁵ He did not. When he did make a very late application in the closing hours of 30 June it was refused and the refusal communicated.

⁴ The *Act*, s 47(1)-(2).

⁵ The *Act*, s 47(3). Note: Rule 1.6 of the Administration Rules of the Bar Association prescribes the period to renew a practising for the forthcoming year is before the first Friday in June.

- [31] In an email on 20 July 2022 to the Bar Association, Mr Edwards said he had either ‘not fully read or missed’ the email of 30 June (when advised he was prohibited from practising) and had wrongly assumed the certificate would issue following lodgement of his late application, payment of the fee and provision of the certificate of insurance. These claims are not the subject of the agreed facts and were not advanced by Mr Edwards in the hearing. The relevant point is that whatever the knowledge that Mr Edwards held on 14 July as to his entitlement to appear, when he first appeared in the FCFCOA without an entitlement to do so, he was under no misunderstanding at the time of his later appearances.
- [32] Mr Edwards accepts the characterisation as professional misconduct but has pleaded several circumstances as explaining and minimising the seriousness of his conduct. We will turn to those in due course, but to dishonestly represent to any court that one is entitled to appear as a barrister is a serious departure from the law, no matter the circumstances. The maximum penalty applicable speaks of the seriousness of a breach of the legislative requirement. To do so repeatedly involves flouting the relevant law. And, to do so repeatedly after communicating to the Bar Association on 20 July acknowledging his inability to practise, and on 5 October of an intention to withdraw the application for a certificate, provides considerable insight into Mr Edwards’ attitude to his responsibilities.
- [33] Plainly, Mr Edwards’ conduct fell far below that expected of members of the profession of good repute and competency. His conduct justifies a finding that the practitioner is not a fit and proper person to engage in legal practice. The proper finding is that he was guilty of professional misconduct.

Charge (2)

- [34] The breaches of r 24B of the *Rules* and the requirements of the Practice Direction have the potential to deny a client the right to competent representation. Among the many requirements of accepting a direct brief is to provide ‘a fair description of the advocacy experience of the barrister’.⁶ Mr Edwards’ oral submissions to this Tribunal here included a frank statement that he was not accustomed to conducting matters involving civil disputes of this type. He usually practised in family law and criminal jurisdictions.
- [35] The consequences of the breach are not able to be discerned. His clients were apparently significantly involved in other legal disputes in which they had retained Mr Edwards and apparently had confidence in him. Whether the required disclosures to his clients would have made any difference is speculative.
- [36] It is accepted that the distinction between unsatisfactory conduct and professional misconduct is a question of degree. Here, the conduct is intertwined with the conduct the subject of charges 3 and 4. All these charges relate to the Dovedeen matter. In our judgment the conduct here borders both unsatisfactory conduct and professional misconduct, but the more egregious conduct is plainly caught by charge 4.
- [37] We agree with the Commissioner’s submission that the conduct amounts to unsatisfactory professional conduct. The conduct is more appropriately described as conduct which falls short of the standard of competence and diligence that a member of the public is entitled to expect.

⁶ 2011 *Barristers’ Conduct Rules*, as amended, r 24B(a)(v) (‘the Rules’).

Charge (3)

- [38] No material was advanced by Mr Edwards to explain the inadequacy of the pleading, save his inexperience in these sorts of matters.
- [39] Mr Edwards' pleading fell short of the standard of competence and diligence a member of the public is entitled to expect. The appropriate characterisation is unsatisfactory professional conduct.

Charge (4)

- [40] The summary of the various complaints the trial Judge made of Mr Edwards in the Dovedeen matter are set out in paragraph [20] above. Mr Edwards' apparent ignorance included his clients' disclosure obligations and the effect of failing to comply, expert evidence rules, the inadmissibility of the documents he sought to tender, and the means by which he could tender documents potentially relevant into evidence. This ignorance coupled with the apparent failure to even identify the relevant issues involved in the matter all resulted in his clients' case not being presented as it should have been.
- [41] Mr Edwards submits that: the Dovedeen matter was 'put on the backburner' because of other matters involving his clients; neither party showed any real interest in progressing the matter over the years; and the trial was brought on suddenly by the Court without adequate notice.⁷ None of these submissions supply either excuse or explanation for Mr Edwards' conduct.
- [42] The utility of a divided profession and the dangers in a direct brief are well recognised. The facts here demonstrate those dangers. A competent solicitor would have a 'bring up' system to regularly review outstanding litigious files, and if necessary would: retain competent counsel practising in the area of law involved to draw pleadings; would advise their client of their disclosure obligations and do their best to identify relevant documents; would obtain an advice on evidence well before trial; would obtain detailed statements of evidence from relevant witnesses; and would ensure expert witnesses were identified, briefed fully and reports obtained and disclosed. None of these things were done. Mr Edwards should have realised that he was well out of his depth from the outset.
- [43] Rule 95(k) of the *Rules* plainly applies here. There were 'reasonable grounds for the barrister to believe that the failure of the client to retain an instructing solicitor would, as a real possibility, seriously prejudice the barrister's ability to advance and protect the client's interests in accordance with the law'. That being so, Mr Edwards was clearly required to refuse to retain the brief or instructions from his clients.
- [44] The inadequacies of Mr Edwards' conduct of the Dovedeen matter, both pre-trial and throughout the trial, involved 'a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence', the test set out in s 419 of the *Act*. Plainly, his conduct is appropriately described as professional misconduct.

Sanction

- [45] The Commissioner submits that the proper sanction is that Mr Edwards should be removed from the local roll. Mr Edwards strongly opposed that course and argued that

⁷ Amended Submission on Behalf of the Respondent, filed 7 February 2025, [3]-[4] ('Mr Edwards' submissions').

a reprimand was adequate and would accept any other conditions the Tribunal considered appropriate.

[46] The matters Mr Edwards advanced were:

- (a) He has no intention of ever practising again. He has not practised since November 2022. He remains an undischarged bankrupt. He is now aged 75 years.
- (b) He self-reported his appearing without a practising certificate, and he co-operated with the Commissioner's investigations.
- (c) His conduct, which he accepts included professional misconduct as set out in charge (1), is very much at the lesser end of the scale. His conduct in appearing without a practising certificate was motivated by a wish to assist others who were in trouble. He did not charge any fee for his appearances. Most of the matters involved non-contentious matters. Had he simply sought leave to appear then leave would have been granted. No client was disadvantaged by his conduct, to the contrary. The one contentious appearance involved clients whom he had known and acted for pro bono for some years. His actions were motivated by misguided loyalty.
- (d) He has been a practitioner on good standing since 1977. He practised as a solicitor in NSW before being admitted as a barrister in Queensland in 2003. He has acted over his career pro bono both as a solicitor and as a barrister for indigent clients.
- (e) The Dovedeen trial was called on when he had already been retained in a seven-day criminal trial in Cairns, which to an extent overlapped with the dates. Given the short notice and the complications of the Dovedeen matter, he did not have time to pass the brief to another. He was hence stressed and perhaps confused.
- (f) Both his clients giving instructions in the Dovedeen matter were aged and infirm. He erred in not insisting that, given their state of health, the trial could not proceed.
- (g) The circumstances surrounding the hearing of the Dovedeen trial were 'truly extraordinary'. Mr Edwards' male client was bed-bound, attached to an oxygen cylinder, and unable to attend court. He had episodes of clarity and periods of forgetfulness. Some instructions turned out to be mistaken. The trial was conducted over audio-visual equipment. Mr Edwards' appearance was from his clients' small retirement unit, with little space for documents or reference materials to be at hand. He conducted the trial with affidavits and documents resting on his lap and his computer on the meal table placed over the client's bed. There was limited bandwidth making the exchange of documents slow and uncertain. The electronic link between the Judge and the parties frequently broke down. The defendants' equipment was dated and incompatible with the video link. The male defendant was computer illiterate and the defendants unrepresented. It was, in short, an extremely difficult trial to conduct.
- (h) Mr Edwards' clients provided fresh instructions during the Dovedeen trial requiring him to call and arrange the giving of evidence from witnesses whom he had not been told of previously, and knew nothing of, and who were located at Moranbah, approximately 1000kms away.

- (i) No matter how skilfully the matter had been handled, his clients' case was fundamentally flawed and met with a credible and independent witness for the defendants.
- (j) Mr Edwards' failure to comply with r 24B was perhaps an oversight as he did usually comply as a matter of routine. His submits:

The respondent respectfully suggests that is probable that as he had been acting in the matter since April 2013 for some eight years as a solicitor, he neglected to complete that compliance when he transferred to the Bar in July 2003.⁸

- [47] The submission in sub-paragraph (j) is muddled. Mr Edwards did transfer to the Bar in 2003, nearly 10 years before he drew the Claim and Statement of Claim in the Dovedeen matter, and nearly 10 years since he had practised as a solicitor. It offers no explanation for what is supposed to be routine.
- [48] Apart from that last submission the matters referred to above are accurate and those in sub-paragraphs (a) to (d) weigh much to Mr Edwards' favour. The matters that we have set out in paragraphs (e) to (i) are not so significant. There are some necessary qualifications.
- [49] Firstly, while Mr Edwards did self-report his appearing without a practising certificate, he also mentioned that the issue of him not having a practising certificate was raised by another practitioner two days before he self-reported. Obviously, it was only a matter of time before he was reported. He could not but have realised this.
- [50] Secondly, while none of his actions were undertaken for profit, Mr Edwards claiming the right to appear in the courts before whom he appeared and with any practitioners whom he appeared against is a fundamental dishonesty.
- [51] Thirdly, most of his observations about the Dovedeen trial came about because of his failure to comply with his obligations that are the subject of charges (2) and (4). The difficulties in conducting the trial were very much a result of the manifest lack of preparation for the trial and should have been anticipated long before the date the trial was set.
- [52] Fourthly, it is impossible to know whether proper preparation might have resulted in a better result. He failed to produce and tender a letter his clients claimed existed that was crucial in the Dovedeen matter. Proper preparation might have indicated either flaws in the independent witnesses' evidence, or the existence of contradictory evidence.
- [53] Fifthly, despite his repeated expressions of contrition and regret, both in his communications to the Commissioner and to this Tribunal, his submissions do not reflect the gravity of his misconduct nor show much insight into his quite extraordinary level of incompetence. The conduct the subject of charges (2) and (3) is relevant. His inability to produce the certificates, required by the *Rules* and the Practice Direction, associated with the taking of a direct brief indicates, at least, a shambolic, disorganised approach to his practise. The pleading of the Statement of Claim was simply embarrassingly inadequate.

⁸ Mr Edwards' submissions, [11], see also [14].

Discussion

[54] The question of Mr Edwards' fitness to remain on the roll is to be ascertained now rather than at the dates of the impugned conduct. The principal differences now are the effluxion of time and the expressed intention not to practise again.

[55] The question for the Tribunal here is whether Mr Edwards can continue to hold himself out as a legal practitioner of the Supreme Court of Queensland. The Commissioner cited *Prothonotary of the Supreme Court of NSW v McCaffrey* [2004] NSWCA 470 and the remarks at [63] in justifying their striking off the practitioner there:

The courts and the public could not repose any confidence in a person who is prepared to betray the trust expected from those who practise the law. Both the public and the profession should be protected by ensuring that the opponent can no longer hold himself out as a legal practitioner of this Court.

[56] Mr Edwards submits, with some justification, that the aforementioned case and the other cases relied on by the Commissioner (being *Legal Services Commissioner v Doyle* [2021] QCAT 347 and *Legal Services Commissioner v Madden (No 2)* [2008] QCA 301 ('*Madden*')) dealt with conduct in a more serious category than his own. And, in *Legal Services Commissioner v De Fraine* [2015] QCAT 292 ('*De Fraine*'), which was also cited by the Commissioner, where the practitioner appeared without a practising certificate on three occasions (although only two actual appearances) and for two clients, Mr Edwards submits it not so different to his conduct.

[57] In *De Fraine*, the Tribunal considered a public reprimand and a modest fine adequate to protect the public. However, the facts there were less serious than charge (1) here. Mr Edwards appeared on six occasions without a practicing certificate and, startlingly so, Mr Edwards consistently appeared despite communicating with the Bar Association about his lack of holding a certificate. Not only was there no multiplicity of charges as here, in *De Fraine* there were 'exceptional mitigating circumstances'. Among other things, the practitioner was decades younger than Mr Edwards. While that is not revealed in the judgment it happens to be that the practitioner was known to the Judicial Member here.

[58] It is well established that the purpose of making an order pursuant s 456 of the *Act* is not to punish Mr Edwards, but to protect the public.⁹

[59] In seeking to protect the public, principles of personal and general deterrence are relevant.¹⁰ We can be satisfied that Mr Edwards is unlikely to again misconduct himself as has occurred here. Personal deterrence is not a factor, but general deterrence is relevant. The need to deter other practitioners engaging in similar conduct also protects the public. As well, the removal of the name of an unfit practitioner from the roll serves the interests of the public by maintaining the standard of the legal profession as a whole.¹¹

⁹ *Legal Services Commissioner v Madden (No 2)* [2008] QCA 301, [122] ('*Madden*') citing *Harvey v Law Society of NSW* (1975) 49 ALJR 362; *Attorney-General v Legal Services Commissioner & Anor*; *Legal Services Commissioner v Shand* [2018] QCA 66 ('*Shand*'); *Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498, 504.

¹⁰ *Attorney-General v Bax* [1999] 2 Qd R 9, 22 ('*Bax*').

¹¹ *Madden*, [122]; *Shand* [54]-[55].

- [60] We acknowledge the strength of the mitigating factors here. They are certainly approaching those in *De Fraine*. But the multiplicity of charges and the ignoring of the guidance that the Bar Association provided make this a significantly more serious case. Mr Edwards' expressed intention not to practise again, which we accept is his present intent, does serve to self-evidently protect the public from him. However, as McMurdo JA said in *Shand*, that is not the only purpose behind the application here: 'the practitioner's disavowal of an intention to again practise is not the end of the matter'.¹²
- [61] The fact remains that there is no good reason shown here that Mr Edwards is fit to be a legal practitioner. He repeatedly betrayed the trust given to him. He did not demonstrate skill or competence in his practise of the law. The principal plea Mr Edwards advances is one of mercy given his position at the end of his legal career. That plea reflects the effect on him of an order to remove him from the roll. But our task here is to protect the public, not Mr Edwards. When confronted with a young practitioner at the outset of their professional life one can consider the immaturity and inexperience of youth as justifying a different approach. For a practitioner of 45 years standing to deliberately flout the law, as was involved in charge (1), is both inexplicable and inexcusable. How can it be but that his character is to be indelibly marked by his misconduct? As well, to pretend that a practitioner so incompetent as his conduct displays is fit to be a legal practitioner would be to seriously mislead the public. The approach he urges is contrary to our responsibility to maintain the standing of the profession.

Conclusion

- [62] Justice McMurdo pointed out in *Shand* (with the agreement of Morrison JA and Brown J) that because the roll represents the Court's endorsement of the fitness of those who are enrolled, if a practitioner is not a fit and proper person to engage in legal practice, then:

... all of the purposes which I have described required that his name be removed from the Roll, absent something which indicated that he was likely to become a person who was fit to be a legal practitioner.¹³

- [63] Mr Edwards' submissions do not address that crucial question. His conduct marked him as one not fit to be a legal practitioner. There is nothing to indicate here that anything has changed since the offending conduct. Nor is there any reason to think he would become fit to be a legal practitioner. The reasons to remove his name from the local roll persist.

Costs

- [64] The Commissioner seeks an order pursuant to s 462 of the *Act* that Mr Edwards pay the Commissioner's costs of and incidental to this discipline application. That is the usual order unless it can be shown there are exceptional circumstances. Mr Edwards did not submit there were. There are not.
- [65] Mr Edwards should pay the costs of the applicant.

¹² *Shand*, [56].

¹³ *Shand*, [56].

Orders

[66] The orders are:

- (a) the respondent's conduct subject of charges 1 and 4 is characterised as professional misconduct;
- (b) the respondent's conduct subject of charges 2 and 3 is characterised as unsatisfactory professional conduct;
- (c) pursuant to s 456(2)(e) of the *Legal Profession Act 2007* (Qld), the respondent be publicly reprimanded for charges 2 and 3;
- (d) pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld), an order is made recommending that the name of the respondent be removed from the local roll; and
- (e) the respondent pay the applicant's costs of and incidental to this discipline application, such costs to be agreed or assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.