

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Han* [2023] QCAT 310

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

v

BING HAN
(respondent)

APPLICATION NO/S: OCR265-22

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 22 August 2023

HEARING DATE: 29 June 2023

HEARD AT: Brisbane

DECISION OF: Justice Brown

Assisted by:

Mr Geoffrey Sinclair, Practitioner Panel Member

Dr Julian Lamont, Lay Panel Member

- ORDERS:
- 1. It is declared that the charge is established and that the respondent's conduct constitutes professional misconduct.**
 - 2. The respondent be publicly reprimanded.**
 - 3. The respondent be suspended from practice for a period of six months.**
 - 4. The respondent be prohibited from holding a principal's practising certificate for a period of two years after the suspension.**
 - 5. The respondent complete the next available Queensland Law Society ethics referral course and provide evidence of its completion to the applicant.**
 - 6. The respondent pay the applicant's costs of the proceeding on the standard basis.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where the respondent was a party to proceedings in the District Court of Queensland which alleged that the respondent provided negligent legal advice – where the respondent,

through his legal representatives in those proceedings, provided false and misleading information to his opponent that two file notes had been prepared contemporaneously to the two meetings which they documented – where the file notes were in fact created after the proceedings had issued – whether the respondent’s conduct constitutes professional misconduct or unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – GENERALLY – where the respondent was found to have engaged in professional misconduct – whether, amongst other sanctions, a suspension for a period of two years is an appropriate sanction

Legal Profession Act 2007 (Qld)

Council of the Queensland Law Society Incorporated v Whitman [2003] QCA 438

Jensen v Legal Services Commissioner [2017] QCA 189

Legal Services Commissioner v O’Reilly [2019] QCA 251

Legal Services Commissioner v Sturgeon [2019] QCAT 286

Mellifont v Queensland Law Society Incorporated [1981] 1 Qd R 17

Watts v Legal Services Commissioner [2016] QCA 224

APPEARANCES & REPRESENTATION:

Applicant: V Deane of the Legal Services Commission

Respondent: M Black instructed by Gilshenan & Luton Lawyers

REASONS FOR DECISION

- [1] This is an application under s 452 of the *Legal Profession Act 2007 (Qld)* (**LPA**) for the Tribunal to make disciplinary orders pursuant to s 456 of the LPA.
- [2] A single charge lies against the respondent, namely that on various dates between 10 May and 13 September 2019 the respondent, through his legal representative, provided false and misleading information to an opponent in ongoing proceedings in breach of the respondent’s paramount duty to the court and to the administration of justice.
- [3] The respondent does not contest the charge. The facts are agreed and set out in a Statement of Agreed Facts. The salient facts are set out below.

Background

- [4] At all material times, the respondent:
 - (a) was a local legal practitioner as defined by s 6(2) of the LPA;
 - (b) held an unrestricted principal practising certificate; and

(c) was the sole legal practitioner director of Fenson Legal Pty Ltd ACN 608 884 223 trading as Fenson & Co Lawyers (**Fenson & Co**).

- [5] Fenson and Co was the first defendant and the respondent the second defendant in District Court of Queensland proceedings (the **Proceedings**). The plaintiff in the Proceedings alleged that she was provided negligent legal advice in April 2016.

The Conduct

- [6] On 25 June 2019, the respondent's solicitor in the Proceedings, on instructions from the respondent, delivered to the plaintiff's solicitors a list of documents pursuant to r 214 of the *Uniform Civil Procedure Rules 1999* (Qld) (the **LOD**).

- [7] The LOD relevantly provided that the respondent and Fenson & Co held the following documents "directly relevant to the allegation or matters in question in this proceeding", including:

- (a) a "handwritten file note" made by "Fenson" and dated "05.04.16"; and
- (b) a "handwritten file note" made by "Fenson" and dated "06.04.16"

(the **File Notes**).

- [8] The File Notes directly related to what legal advice was allegedly provided by the respondent to the plaintiff, which was a key question in the Proceedings.

- [9] On 29 August 2019, the respondent's solicitors in the Proceedings received correspondence from the plaintiff's solicitors which stated:

"We refer to items 2 and 3 of the Defendant's List of Documents, namely handwritten file notes dated 5 and 6 April 2019, which your client has since produced (File Notes). We enclose a copy of the Defendant's List of Documents and a copy of the File Notes for your reference.

We are instructed to request for your client to answer the following questions in respect of the File Notes:

1. Who of your client is the author of each of the File Notes?
2. What is the date that each of the File Notes were made?
3. Where were each of the File Notes made?
4. Were there any witnesses to the making of each of the File Notes? If so, who?
5. Does your client have any documents in its possession to support its answers to questions 1 to 4 above?
6. Is your client in possession of the original copy of each of the File Notes?
7. Is it your client's general practice to make file notes, or is this one off?
8. Were there any other file notes your client made in respect of this matter?

We look forward to hearing from you."

- [10] On 13 September 2019, on the respondent's instructions, the respondent's solicitor in the Proceedings responded to the plaintiff's solicitor as follows:

"I refer to your email dated 29 August 2019 and adopt the numbering therein:

1. Darren Han.
2. On the same date noted in each of the file notes.
3. At my client's office.
4. No.
5. I am instructed Darren used a mobile phone note which lists points to cover as a reference when he met your client on 5 April 2016. However, a copy of that phone note as at April 2016 is no longer available as the phone note has since been updated from time to time.
6. Yes, my client has the originals of the file notes.
7. I am instructed my client regularly makes file notes in the ordinary conduct of his business.
8. All relevant file notes have been disclosed."

[11] The response to question 2 was false.

[12] On 25 September 2019, the plaintiff's solicitor sent correspondence to the respondent's solicitor in the Proceedings to:

- (a) challenge "the authenticity of the file notes, particularly that the same were created as at 5 April 2016 and 6 April 2016"; and
- (b) seek that an expert be engaged "to verify the dates of the file notes".

[13] On 8 October 2019, in response to the correspondence from the plaintiff's solicitor of 25 September 2019, the respondent affirmed a statutory declaration that relevantly stated:

"I say that the attached file notes dated 5 and 6 April 2016 were prepared after I was served with the Claim but not before 9 May 2019".

[14] The respondent accepts that:

- (a) the File Notes were not prepared on 5 and 6 April 2016 as originally purported by him, but on an unknown date between 1 April and 9 May 2019; and
- (b) the correspondence dated 13 September 2019 was premised on his instructions to his solicitor in the Proceedings and included falsities, specifically with respect to the dates shown on the File Notes.

[15] The respondent accepts that, through his legal representatives, he:

- (a) made false and misleading representations to an opponent in relation to the Proceedings; and
- (b) failed to uphold his paramount duty to the court and to the administration of justice.

[16] The respondent deposes that he was "trying to cover [his] wrongdoing and protect [him]self" and further confirms that it was only upon being advised that the File Notes were to be challenged by an expert assessment that he admitted the File Notes were created subsequent to being served with the Statement of Claim in the Proceedings.

- [17] The respondent further deposes that although the File Notes were not prepared contemporaneously, he maintains the belief that their contents were accurate according to his recollection of the meetings held on 5 and 6 April 2016 respectively.
- [18] Given the facts that have been agreed between the parties, the Tribunal is satisfied that the charge and its particulars have been established to the requisite standard required for disciplinary matters.

Reasons for Conduct

- [19] The respondent deposes to various factors which contributed to his conduct with respect to the Proceedings and/or subsequently with respect to the conduct the subject of the disciplinary application, including that:
- (a) he lacked appropriate mentoring and/or guidance from a senior legal practitioner;
 - (b) in 2016 and 2017 he felt overwhelmed by his workload and that continued into 2019, when he alleges that he was working six days per week and at least 60 hours per week; and
 - (c) Fenson & Co was a new firm which had limited staff and financial pressures which contributed to the respondent's stressors.

Characterisation of the Conduct

- [20] The respondent admitted all the particulars of the charge and conceded that the conduct warranted a finding of professional misconduct.
- [21] Notwithstanding that concession, the characterisation of the conduct is a matter for the Tribunal as part of the first stage of the imposition of any disciplinary order under s 456 of the LPA without reference to subsequent events.¹ In the present case, the concession was properly made.
- [22] Section 419 of the LPA provides:

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.
- (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner

¹ *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66 at [20] where the Court of Appeal confirmed the two-stage process.

were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

- [23] In *Adamson v Queensland Law Society Incorporated*,² Thomas J articulated the test for professional misconduct: “[t]he 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.”
- [24] In this case, the conduct engaged in by the respondent was clearly misleading insofar as he created two handwritten notes which were produced for discovery and subsequently gave instructions that those notes had been created on or about the dates in 2016. He was, on his own admission, “trying to cover [his] wrongdoing and protect [him]self.” His conduct was not only misleading but dishonest, given his attempt to cover up his wrongdoing by providing false information. In providing instructions to his lawyers, the respondent caused them to convey false information to his opponent in response to direct requests about the File Notes concerned and their genesis.
- [25] The respondent did subsequently correct the misrepresentation that the File Notes had been created in 2016 and provided a statutory declaration identifying that they had been created after the Proceedings had issued in 2019. He did, however, only admit the true state of affairs when he was advised that the File Notes were going to be reviewed by an expert and a challenge made to their authenticity.
- [26] The conduct was not only in breach of rr 3.1 and 22.1 of the *Australian Solicitors Conduct Rules* but contrary to the fundamental duty to be honest and act with integrity at all times. It is fundamental to maintaining public confidence in the legal profession that solicitors maintain their personal integrity and honesty in order to fulfil their duties to the court, their clients and members of the public.³
- [27] While the respondent did ultimately “come clean”, so to speak, and admit the true facts in relation to the File Notes, he had initially sought to continue the misleading nature of the discovery provided to the other side by stating that he had created the File Notes on or about the date stated on those notes. As he admitted, he did so to cover up his wrongdoing. In doing so, he failed to meet his fundamental duty to act with honesty and integrity and caused his solicitors to be unwitting parties to his conduct. Such conduct failed to meet the reasonable standard of competence and diligence expected of a practitioner in complying with their ethical rules of conduct, which are largely set out in the *Australian Solicitors Conduct Rules*, and discharging their professional obligations and fell short to a substantial degree of the “standard of professional conduct approved by members of the profession of good repute and competency, and would reasonably be regarded as dishonourable”.⁴ While one may accept that the respondent was subject to stressors at the time, particularly in relation to work, that does not alter the serious deviation from the level of conduct expected of a solicitor.

² (1990) 1 Qd R 498 at 507.

³ *Mancini v Legal Practitioners Conduct Board* [2014] SASCF 31 at [27]–[28]. See also in the context of a failure to comply with an undertaking to the Queensland Law Society: *Legal Services Commissioner v Bui* [2018] QCAT 424 at [16].

⁴ *Legal Services Commissioner v Manz* [2019] QAT 147 at [36] where the solicitor had engaged in conduct which misled the other party which he did not seek to correct and was found to have been dishonest in causing the other solicitor to communicate to the body corporate’s solicitor potential taxation advantages as the reason for the proposed assignment.

- [28] The Tribunal is satisfied that the conduct of the respondent is properly characterised as professional misconduct within the meaning of s 419 of the LPA.

Appropriate Sanction

- [29] In assessing the question of an appropriate sanction, the primary role of the proceedings is protective in nature, not punitive.⁵ The Tribunal should primarily have regard to the protection of the public and maintenance of proper professional standards.⁶ Personal and general deterrence are relevant to the protection of the public.⁷
- [30] Section 456 of the LPA provides for a broad range of orders that may be made by the Tribunal.
- [31] While the applicant contended that it would be open to the Tribunal to consider removing the respondent from the roll, the applicant contends that at a minimum the respondent should be suspended for a period. The LSC proposed that:
- (a) the respondent be publicly reprimanded;
 - (b) the respondent be suspended from practice and not granted a local practising certificate before the end of two years and/or applying for a principal level practising certificate for a further two years from the date of the orders of the Tribunal;
 - (c) after the expiration of the two-year period referred to in (b), the respondent be prohibited from holding and/or applying for a principal level practising certificate for a further two years after being granted an employee level practising certificate; and
 - (d) at the time of first applying for an employee level practising certificate after the expiration of the two-year period referred to at (b), the respondent must:
 - (i) provide evidence of successful completion of the Queensland Law Society's ethics referral course (or equivalent at the time) having been completed at his expense, within 12 months prior to the application; and
 - (ii) include a copy of the Tribunal's reasons with his application.
- [32] The respondent does not contest the sanctions sought by the LSC save that:
- (a) he contends that the suspension should be for six months; and
 - (b) if he was suspended for six months, he agreed to be confined to an employee level practising certificate for two years.⁸
- [33] It is for the Tribunal to determine the appropriate sanction notwithstanding any agreement between the parties as to what sanction should be imposed, although naturally the parties' position is something to which the Tribunal has due regard.

⁵ *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149 at [122].

⁶ *Ibid.*

⁷ *Attorney-General v Bax* [1999] 2 Qd R 9 at 22.

⁸ At the hearing the respondent accepted that it was appropriate for him to be confined to an employee level practising certificate for two years but in his submissions he had contended that a provision for 12 months' counselling/mentoring was an appropriate alternative to what the LSC proposed.

[34] In assessing the question of sanction, it is relevant to have regard to the respondent's conduct since the events which constituted his professional misconduct:

- (a) as noted above, the respondent did ultimately confess to the true position and provided a statutory declaration when doing so. It was done in an unqualified way where he took responsibility for the misleading information provided;
- (b) he has co-operated with the applicant and made full admissions as to the charge;
- (c) his explanation for the preparation of the File Notes was that he panicked when the 2019 litigation commenced and he could not find the 2016 checklist and prepared the File Notes on the basis that he was certain he had provided the advice that was disputed. He admitted his subsequent conduct in providing instructions to his solicitors that the File Notes were created by him in 2016 was to cover up his wrongdoing;
- (d) it is not suggested that the content of the File Notes created were false. The respondent's unchallenged evidence was that they were prepared on the basis of his recollection and his usual practice;
- (e) he has not been the subject of disciplinary action prior to this event nor in the four years since the event occurred when he remained practising as a principal of his firm;
- (f) at the time of the offending conduct, he was suffering from a heavy workload which contributed to his poor decision-making;
- (g) he has deposed to having reflected on his dishonesty and is deeply remorseful and has reconsidered in light of his conduct what kind of role model he wished to be to young lawyers;
- (h) he has provided a number of references deposing as to his normally ethical and professional character including from people he works with and, of more weight,⁹ people that he formerly worked with and a barrister with whom he works;
- (i) he approached a Queensland Law Society (QLS) counsellor to be his mentor who, in correspondence agreeing to be a mentor, noted his candour and frankness;
- (j) he has taken steps to seek the assistance of a psychologist;
- (k) he has taken steps to improve the firm's record keeping systems and practices, particularly as to property purchases which was the subject of the Proceedings, and has employed more staff to ease his workload; and
- (l) he has re-enrolled in the QLS Practice Management Course and stated he is prepared to be referred to undertake the QLS professional ethics course.

[35] The respondent deposed to having provided an apology to his former client, however after the applicant asked for a copy, it turned out not to have been sent. The respondent deposed to the fact he had thought it had been sent. Evidence from his solicitor Ms Ford deposed to the fact that it was not sent through oversight after they

⁹ In the sense that there is no reason for these people to support him, whereas employees of his firm have a personal stake in the outcome.

had engaged with the insurers as to the proposal to send the apology. In those circumstances, it is a neutral feature which is not a factor weighing against the respondent, nor in his favour.

- [36] As to the appropriate sanction, practitioners who engage in dishonest conduct potentially expose themselves to being judged unfit to practise as solicitors and to recommendations that they be removed from the roll. That is not however necessarily the case. In determining the appropriate sanction, the Tribunal has regard to subsequent events¹⁰ and, in particular, efforts at rehabilitation.
- [37] In *Legal Services Commissioner v Sturgeon*,¹¹ the Tribunal determined to recommend that the solicitor in question, who had engaged in more egregious dishonest conduct than in the present case, be struck off the roll. The Tribunal noted that:¹²

“There is ample authority for the proposition that dishonesty of this nature is, of itself, sufficient to indicate that a person lacks fitness for ongoing membership of the profession. It must be recalled, however, that whilst the time for characterising the conduct is at the time of the commission of the conduct, the time for ascertaining the appropriate order to be made is at the time of the hearing. That being said, it is notable that the respondent has not only not put on any material to seek to mitigate his position, he has actively disengaged from involvement in the disciplinary proceeding before this Tribunal.

The applicant has submitted that it is appropriate in the circumstances of the present case for the Tribunal to recommend that the respondent’s name be removed from the roll of practitioners in this State. Counsel for the applicant has properly reminded the Tribunal that the test to be applied when considering whether a person ought be struck off is whether the Tribunal is satisfied that the solicitor is probably permanently unfit to practise. In ascertaining whether or not that test has been reached, it is appropriate, of course, to have regard to the nature of the conduct committed by the respondent. In this case, that is marked by dishonesty, which as the Tribunal has already observed, is something which is fundamental to the practise of law.”

- [38] An order for suspension has in the past been considered in some authorities to only be appropriate where it is found that the practitioner is temporarily unfit to practise or temporarily poses a risk and at the end of the suspension period will no longer be unfit.¹³ In *Watts v Legal Services Commissioner (Watts)*,¹⁴ the Court of Appeal noted that in deciding the contested issue of whether removing the appellant’s name from the roll ought to be made it was incumbent upon the Tribunal to have regard to all material considerations. Gotterson JA further stated:¹⁵

“I would also accept that, at the times when the offending conduct occurred, the appellant failed to exhibit the reliability and integrity in handling trust moneys required of him. That conduct would have rendered him unfit to practice at that

¹⁰ *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66 at [20].

¹¹ [2019] QCAT 286.

¹² *Legal Services Commissioner v Sturgeon* [2019] QCAT 286 at [43]–[44].

¹³ See, eg, *Mellifont v Queensland Law Society Incorporated* [1981] 1 Qd R 17 at 31, Andrews J quoting from *The Law Society of New South Wales v McNamara* (1980) 47 NSWLR 72. In *Mellifont*, the individual’s case was more serious than the present and he was struck off.

¹⁴ [2016] QCA 224 at [40].

¹⁵ *Watts v Legal Services Commissioner* [2016] QCA 224 at [40]. The rest of the Court agreed.

point. However, that is not determinative of whether he is now permanently unfit to practice.”

- [39] In *Watts*, Gotterson JA was not satisfied that the appellant was permanently unfit to practise in light of evidence of a psychologist and further stated:

“... I am fortified in this approach by his subsequent conduct in admitting his guilt, repaying moneys when it was appropriate to do so, and withdrawing from legal practice since 2010. These are all relevant matters for consideration.

The circumstances of the appellant’s fitness to practice may be contrasted with those of the offending solicitor in *Quinn*. There, in 2011, the solicitor, as managing partner of a legal practice, had, by numerous transactions, transferred about \$826,000, in total, from trust moneys to the firm’s general account to pay operational expenses. He had been found guilty of similar professional misconduct by the Solicitors Complaints Tribunal in 2001. That, together with the subject offending of a like nature some 10 years later, warranted a conclusion of permanent unfitness to practise.”

- [40] In the present case, the offending conduct of the respondent was confined to his misleading conduct in creating the File Notes, not informing his solicitors that he had prepared them retrospectively, and then dishonestly instructing his solicitors to respond to the other side that the File Notes had been created on or about the dates on the File Notes.

- [41] In *Jensen v Legal Services Commissioner*, Atkinson J (with whom the rest of the Court agreed) stated that:¹⁶

“An order recommending that a legal practitioner’s name should be removed from the roll should, as Young CJ held, only be made when the probability is that the practitioner will be permanently unfit to practise.

In *Watts v Legal Services Commissioner* this court recorded with approval that the question before QCAT was whether or not the appellant was a fit and proper person at the time of the hearing. To answer that question the Tribunal needed to consider “what was necessary for the protection of the public and the maintenance of professional standards”. Disciplinary penalties are not imposed to punish the practitioner but to protect the public.

The correspondence from Dr Jensen from 11 October 2013 to 12 February 2014 showed that he was not a fit and proper person to practise law during much of that period. He continued to show lack of insight into the inappropriateness of his behaviour during the hearing in QCAT.

However he had never previously been the subject of complaint during a very long period in legal practice. His affidavit filed with this court on 4 July 2017 showed emerging understanding of the inappropriateness of his behaviour.

I am not persuaded that the appellant is permanently unfit to practise law. There is reason to conclude that with a period of suspension from practice, during which he is professionally counselled, the appellant will attain an appropriate level of fitness for practice. It is in his and the community’s interests that the counselling continue for some time after the appellant resumes practice.” (footnotes omitted)

¹⁶ [2017] QCA 189 at [186]–[190].

- [42] Atkinson J in that case found that four charges were established finding the appellant guilty of unprofessional conduct and professional misconduct which justified a finding that he was not a fit and proper person to engage in legal practice.¹⁷ In her discussion of the relevant authorities in terms of sanction, her Honour referred to *Council of the Queensland Law Society Incorporated v Whitman*¹⁸ in which the Court of Appeal rejected an argument that a solicitor who had been found guilty of four charges including misappropriation of client trust funds and making false representations to the Law Society should be removed from the roll as opposed to suspended for nine months which the Tribunal had determined was the appropriate punishment. According to her Honour:¹⁹

“The Court of Appeal balanced the seriousness of Whitman’s conduct and the lack of his cooperation with the Law Society with his “previously unblemished 25 years as a solicitor, with 18 of those in sole practice, evidence of detriment to his health and finances and the favourable character evidence, and acknowledging the absence of evidence to detriment to clients”. It was noted that the key consideration is whether public protection requires that his name be struck off the roll. In these circumstances, the Court of Appeal concluded that suspension was all that was warranted.” (footnote omitted)

- [43] Those cases do not suggest that suspension, which is one of the orders open to the Tribunal under s 456 of the LPA, is limited to circumstances where at the time of making the order the person is unfit to practise or that such unfitness is due to mental illness or the like. Nor do the terms of s 456 of the LPA support it being so confined.
- [44] In the present case, the respondent’s conduct showed that at the relevant time he was unfit to practise. However, his conduct although serious appears to have been a lapse in character, albeit a serious one, as a result of panic and overwork rather than indicative of a lack of moral character such that he should be regarded as permanently unfit to practise. It was an irrational act for no gain. At its highest, the absence of a file note may have brought into question any evidence about having given the advice which the respondent says he gave. The conduct he engaged in does not support a conclusion that he has such a lack of moral character or disregard for his duties as a solicitor to be regarded as permanently unfit to practise. He had practised for nine years before without blemish and has remained in practise for four years since the event in question without blemish. While he gave false instructions on the first occasion, when the question of the creation of the File Notes was raised he subsequently did tell the truth without qualification and provided a statutory declaration. He has throughout co-operated with the applicant and made full admissions. Further, a number of referees who have knowledge of the respondent professionally and of the charge have provided references supporting the fact that his conduct on this occasion was out of character and contrary to their experience of having worked with him. They indicate that he has the continuing support of others in the legal profession.

¹⁷ *Jensen v Legal Services Commissioner* [2017] QCA 189 at [170].

¹⁸ [2003] QCA 438.

¹⁹ *Jensen v Legal Services Commissioner* [2017] QCA 189 at [181].

- [45] As to whether the respondent should be suspended, the question of public protection does include considerations of deterrence, which can be served by a suspension.²⁰ As the conduct of the respondent involved dishonesty where he sought to mislead his former client and her solicitors and his own solicitors by representing that the File Notes were created at the time they were dated, the protection of the public requires more than a public reprimand or penalty to ensure that he is fit to practise. During that time, the respondent will have to undertake the ethics course offered by the QLS. A suspension recognises the seriousness of the respondent's conduct and will ensure that by the time he returns to practise he will have familiarised himself with the ethical requirements which have to be met by him as a solicitor and his duties as a solicitor. Providing for him to be an employee solicitor for two years will act as a safeguard to ensure he demonstrates that he is fully cognisant of and conducts himself in the manner expected of him in accordance with the *Australian Solicitors Conduct Rules*.
- [46] The Tribunal considers that the two-year period proposed by the LSC is disproportionate to the need for the sanction to serve as a deterrent and to ensure the respondent is fully fit to return to practice. The respondent submits it should be a period of six months. The Tribunal considers that the appropriate period of suspension is six months in the circumstances, which acts as a deterrent recognising the seriousness of the breach while the respondent undertakes the ethics course proposed by the applicant, particularly with the added requirement of working for two years as an employed solicitor upon his return to practice.
- [47] A period of suspension of six months and then working as an employed solicitor will serve as a significant deterrent to the respondent and the general profession and as recognition of the seriousness of his conduct.

Orders

- [48] The Orders of the Tribunal are that:
- (a) it is declared that the charge is established and that the respondent's conduct constitutes professional misconduct;
 - (b) the respondent be publicly reprimanded;
 - (c) the respondent be suspended from practice for a period of six months;
 - (d) the respondent be prohibited from holding a principal's practising certificate for a period of two years after the suspension;
 - (e) the respondent complete the next available Queensland Law Society ethics referral course and provide evidence of its completion to the applicant; and
 - (f) the respondent pay the applicant's costs of the proceeding on the standard basis.

²⁰ *Legal Services Commissioner v O'Reilly* [2019] QCA 251 where the Court of Appeal rejected the submission of the LSC that the dishonesty in that case warranted the respondent's removal from the roll and that the suspension did not serve as a proper deterrent to protect the public and preserve the good standing of the profession.