

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Chapman* [2023] QCAT
357

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

v

SHAYE ELIZABETH CHAPMAN
(respondent)

APPLICATION NO/S: OCR031-22

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 19 September 2023

HEARING DATE: 6 September 2023

HEARD AT: Brisbane

DECISION OF: Justice Williams

Assisted by:
Mr Ross Perrett
Mr Keith Revell

- ORDERS:
- 1. The Respondent's conduct identified in respect of the charge in the discipline application is found to constitute professional misconduct.**
 - 2. The Respondent is publicly reprimanded.**
 - 3. For a period of five years from the Tribunal's order, a condition be placed on any practicing certificate issued to the Respondent that the Respondent must not accept any retainer on a deferred fee basis.**
 - 4. The Respondent must undertake the Queensland Law Society Remedial Ethics course, including a component on costs and billing.**
 - 5. The Respondent pay the Applicant's costs of and incidental to the discipline application, to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.**
 - 6. The application for a compensation order by the Complainant, Katrina Harris, is dismissed.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS –
COMPLAINTS AND DISCIPLINE – PROFESSIONAL

MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – SOLICITOR’S COSTS – where the respondent is charged with one charge of charging excessive fees – where the respondent commenced proceedings against the complainant seeking to recover unpaid legal costs and interest – where a costs assessor was appointed – where the respondent sought review of the costs assessment – where the disparity between the costs as charged and as assessed was 42% – where the respondent accepts that the conduct constituted professional misconduct – where the applicant and the respondent also agree on the appropriate sanction – whether the Tribunal is satisfied as to the agreed characterisation of the respondent’s conduct and the agreed sanction

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – SOLICITOR’S COSTS – where the respondent is charged with one charge of charging excessive fees – where the complainant seeks a compensation order for \$7,500 pursuant to *Legal Profession Act 2007 (Qld)* s 464 from the respondent – whether the complainant has suffered pecuniary loss because of the respondent’s overcharging

Legal Profession Act 2007 (Qld) s 5, s 6, s 418, s 419, s 420, s 437, s 452, s 456, s 462, s 464, s 465, s 466

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

Chapman v Harris [2019] QDC 47

Chapman v Harris (No 2) [2019] QDC 78

Legal Services Commissioner v Challen [2019] QCAT 273

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

Legal Services Commissioner v Reeve (No 3) [2016] QCAT 487

Legal Services Commissioner v Wrightway Legal [2015] QCAT 174

Re Veron (1966) 1 NSW 511

APPEARANCES & REPRESENTATION:

Applicant:	P Ahern instructed by Legal Services Commissioner
Respondent:	B Cohen instructed by Bartley Cohen
Complainant:	Self-represented

REASONS FOR DECISION

- [1] This is a discipline application by the Legal Services Commissioner (**LSC**) under s 452 of the *Legal Profession Act* 2007 (Qld) (**LP Act**) for disciplinary orders pursuant to s 456 of the LP Act. The discipline application raises a single charge against the respondent, Ms Shaye Elizabeth Chapman (**Respondent**) of charging excessive fees.
- [2] Ms Katrina Harris (the **Complainant**) has also filed a notice of intention to seek compensation from the respondent pursuant to s 464(d)(i) of the LP Act and the Queensland Civil and Administrative Tribunal Practice Direction Number 10 of 2021.
- [3] At the hearing, the Tribunal heard the discipline application first and then the application for compensation. These reasons deal with each of the applications in turn.

Discipline application

- [4] The LSC and the Respondent have agreed the relevant facts in respect of the discipline application and the hearing proceeded on the basis of a statement of agreed facts dated 27 February 2023 (**ASOF**).
- [5] Further, the Respondent accepts that her conduct is appropriately characterised as professional misconduct and agrees with the proposed sanctions identified by the LSC.¹
- [6] The LSC submits, and the respondent agrees, that the Tribunal should be satisfied that the respondent's conduct constituted professional misconduct and that general deterrence, and the protection of the public are met by imposing a sanction constituted by:
 - (a) An order publicly reprimanding the practitioner pursuant to s 456(2)(e) of the LP Act;
 - (b) Any practising certificate to be issued to the Respondent for the period of five years after the date of the Tribunal's decision must contain a condition that the Respondent must not accept any retainer on a deferred basis; and
 - (c) The Respondent must undertake an ethics course in relation to costs and billing, to be facilitated by the Queensland Law Society (**QLS**).²
- [7] Pursuant to s 462(1) of the LP Act the LSC also seeks an order that the Respondent pay the LSC's costs of and incidental to the discipline action to be assessed pursuant to s 462(5)(b) of the LP Act.³
- [8] Whilst the parties have agreed on the characterisation of the Respondent's conduct and the appropriate sanction, it is still necessary for the Tribunal to be satisfied in respect of both of these issues.

¹ Originally, the respondent submitted that an undertaking may be more appropriate than a condition on her practising certificate. However, this was no longer contested at the hearing.

² This was specifically identified at the hearing as the QLS Remedial Ethics course which is a full day course.

³ On the basis that there are no exceptional circumstances.

[9] Accordingly, in respect of the discipline application the two issues to be determined by the Tribunal are as follows:

- (a) Is the Respondent's conduct properly characterised as unsatisfactory professional conduct or professional misconduct?
- (b) What are the appropriate orders pursuant to s 456 of the LP Act?

Relevant factual circumstances

[10] Before considering the issue of the characterisation of the Respondent's conduct it is necessary to consider the factual circumstances set out in the ASOF.

[11] In summary:

- (a) The Respondent:
 - (i) Is an Australian lawyer within the meaning of s 5(1) of the LP Act.
 - (ii) Is an interstate legal practitioner within the meaning of s 6(2) of the LP Act, having been admitted as a legal practitioner in New South Wales on 25 February 2003 and in Western Australia on 26 September 2007, and held a practising certificate issued in New South Wales.
 - (iii) Is a sole practitioner and principal of a law practice Shaye Chapman Lawyers, a law practice operating in Queensland.
 - (iv) Has no disciplinary history in Queensland.
- (b) The discipline application was commenced after the following events:
 - (i) A referral from James McLellan, legal costs assessor, on 17 April 2018, following the completion of a costs assessment.
 - (ii) The Legal Services Commission (**Commission**) commenced an investigation on 29 April 2018 and the matter was published to the respondent pursuant to s 437 of the LP Act.
 - (iii) A complaint from the Complainant to the Commission on 12 June 2018, including a complaint of excessive charging by the Respondent.
- (c) The Complainant retained the Respondent on 4 May 2011 in respect of a claim arising out of the estate of the complainant's parents, which included various companies and family trusts.
- (d) On 5 May 2011, the Complainant signed a costs agreement with Shaye Chapman Lawyers. The terms of the costs agreement included that the Respondent would not issue the Complainant a tax invoice for professional fees until certain events transpired, but would issue the Complainant regular tax invoices for disbursements.
- (e) Four further costs agreements were entered into on 26 October 2011, 5 June 2013 and 14 May 2014 (two having been entered into on this last date).
- (f) The costs agreements also provided for charging for the work done on the basis of the time taken at a particular rate, calculated on a minimum unit of six minutes.

- (g) The Respondent commenced proceedings in the Supreme Court of New South on behalf of the Complainant in December 2011.
- (h) On 7 June 2014 the Respondent filed a notice of ceasing to act for the Complainant in the NSW proceeding.
- (i) The Respondent issued the Complainant 24 invoices and the Complainant paid \$77,674.83 in respect of the first 19 invoices.
- (j) The final five invoices were delivered to the Complainant after April 2014 and were not paid.
- (k) In 2014 the Respondent commenced a proceeding in the Supreme Court of Queensland against the Complainant seeking to recover the unpaid legal costs and interest.
- (l) The Respondent did not progressively review her work-in-progress entries during the retainer, before issuing the invoices or before commencing the proceedings in respect of the unpaid legal costs.
- (m) On 22 May 2015, the Respondent was ordered to file and serve an itemised bill comprising all of the fees and charges of the Respondent to the Complainant and Mr James McLellan was appointed to assess the costs.
- (n) On 16 July 2015, the Respondent's itemised bill was served with 4,664 items and claiming a total for professional fees and outlays of \$693,301.02 (however, the amount actually sought by the Respondent was \$674,249.54).
- (o) A notice of objection was served by the Complainant.
- (p) A certificate of assessment was filed on 10 October 2017. The legal costs payable by the Complainant to the Respondent were assessed at \$263,475.74, after deducting the costs of the assessment in the amount of \$117,043.95.⁴
- (q) The Respondent sought review of the costs assessment by application filed 9 April 2018, which was transferred to the District Court at Brisbane by consent.
- (r) The review was heard on 11 to 14 March 2019 by Judge McGill SC.
- (s) On 12 April 2019, his Honour delivered judgment, varying the assessment by increasing the amount of professional fees by \$1,935.81 but otherwise not varying the assessment.⁵ His Honour also took into account a conceded error in the certificate where the professional fees allowed were \$2,239.72 too low.
- (t) Accordingly, the certificate of assessment was amended to read:

“Professional fees:	\$362,775.90
Outlays:	\$21,919.32
TOTAL:	\$384,695.22”

⁴ Deducted pursuant to a determination that the costs of the assessment be paid by the Respondent to the Complainant.

⁵ *Chapman v Harris* [2019] QDC 47.

- (u) In respect of the review proceeding, orders were made to the effect that:
 - (i) The Respondent's claim was dismissed.
 - (ii) On the Complainant's counterclaim, the Respondent pay the Complainant \$61,919.05, including \$582.28 statutory interest.
 - (iii) The Respondent pay the Complainant's costs of the review, including various identified costs, but otherwise there be no order as to costs of the claim or of the counterclaim.
 - (iv) The balance of the money held on trust by Mr James Sotiri Michos pursuant to the undertaking to the Respondent dated 8 April 2015, together with any accretions if any, be paid to the solicitors for the Complainant.

[12] The Respondent admits that the amount claimed from the Complainant for professional fees of \$674,249.54 was excessive.

Characterisation of unsatisfactory professional conduct or professional misconduct

[13] Sections 418, 419 and 420 of the LP Act state 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 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.
- (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 were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

420 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

- (1) The following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

- (a) conduct consisting of a contravention of a relevant law, whether the conduct happened before or after the commencement of this section;

Note—

Under the Acts Interpretation Act 1954, section 7, and the Statutory Instruments Act 1992, section 7, a contravention in relation to this Act would include a contravention of a regulation or legal profession rules and a contravention in relation to a previous Act would include a contravention of a legal profession rule under the Legal Profession Act 2004.

- (b) charging of excessive legal costs in connection with the practice of law;
 - (c) conduct for which there is a conviction for—
 - (i) a serious offence; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty;
 - (d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;
 - (e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
 - (f) conduct of an Australian legal practitioner in failing to comply with an order of a disciplinary body made under this Act or an order of a corresponding disciplinary body made under a corresponding law, including a failure to pay wholly or partly a fine imposed under this Act or a corresponding law;
 - (g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.
- (2) Also, conduct that happened before the commencement of this subsection that, at the time it happened, consisted of a contravention of a relevant law or a corresponding law is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) This section does not limit section 418 or 419.”

[14] The decision in *Legal Services Commissioner v Challen* [2019] QCAT 273 is of assistance in identifying the approach to the proper characterisation of the Respondent’s conduct in the circumstances of an allegation of excessive charging of legal costs.

[15] Justice Daubney, President of QCAT, assisted by the other members of the Tribunal in that case, relevantly stated:

“[21] By s 420(1)(b) of the LPA, the charging of excessive legal costs in connection with the practice of law is conduct which is capable of constituting unsatisfactory professional conduct or professional misconduct under the LPA. This reflects the well-established

position at common law that gross overcharging by a solicitor may constitute professional misconduct.⁶

[22] Whilst a disparity between the amount of fees charged and the amount derived on an assessment is not necessarily conclusive of a finding of overcharging, it is nevertheless appropriate for the Tribunal to have regard to the extent of the disparity, and the reasons for the differential, to determine whether a finding of professional misconduct ought be made. It is sufficient for present purposes to repeat and adopt the observations made in this Tribunal by Thomas J in *Legal Services Commissioner v Jackson*:⁷

[95] It is a well-established principle that a Tribunal not bound by the rules of evidence may take into account findings of another court or tribunal.⁸

[96] In *Nikolaidis*, the observation was made that a disparity between a bill of costs as rendered and a bill of costs as taxed did not necessarily lead to the conclusion of overcharging, and the evaluative judgment of the Tribunal or Court, based upon practical legal experience, is relied on in deciding whether the difference amounts to gross overcharging.⁹

[97] It is undoubtedly the case (and is broadly accepted) that whilst the taxed amount is not necessarily the sole factor to be taken into account, the Tribunal is entitled to rely upon the taxed amount as the appropriate standard, and to determine, by reference to that taxed amount, that the amount in fact charged was grossly excessive. In *D'Allesandro*, the court concluded that there was no basis upon which it should interfere with that approach.¹⁰

[98] The decision of McGill DCJ is significant in that it deals with the assessment of the quantum of the costs upon which the Tribunal is entitled to rely as the appropriate standard to consider whether the amount in fact charged was grossly excessive. Importantly, the reasons also undertake an analysis of the reasons why the reductions were made. These reasons are significant in considering the particular circumstances and the conduct of the practitioner in those circumstances.

[99] As has been outlined in a number of the authorities,¹¹ the assessment of the practitioner's conduct is dependent upon a range of factors of which the discrepancy between costs charged and costs taxed is one.

[100] Reference has been made to other factors including difficulty, novelty or complexity, experience of the practitioner, quality of the work, the amount of time spent and any retainer agreement.¹² Where there is a retainer agreement, which governs the

⁶ See, for example, *Re Veron* (1966) 1 NSW 511 at 517.

⁷ [2017] QCAT 207.

⁸ *General Medical Council v Spackman* [1943] AC 627 at 637; *Ziems v Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 at 288, 303; *In re a Solicitor* [1993] QB 69; *Wilks v Medical Board of South Australia* [2010] SASC 287.

⁹ *Nikolaidis v Legal Services Commissioner* [2007] NSWCA 130 at [117].

¹⁰ *D'Allesandro v Legal Practitioners Complaints Committee* (1995) 15 WAR 198 at 220, 221; *Legal Services Commissioner v Keddle* [2012] NSWADT 106 at 17; *De Pardo v Legal Practitioners Complaints Committee* [2000] FCA 335 at [45].

¹¹ *De Pardo v Legal Practitioners Complaints Committee* [2000] FCA 335 at [45].

¹² *D'Allesandro v Legal Practitioners Complaints Committee* (1995) 15 WAR 198 at 214.

practitioner/client relationship, and which is the basis on which the practitioner agreed to act in the matter, the terms of this agreement are of particular significance.”

- [16] It is submitted in this case that a similar approach should be adopted. That is, it is not necessary to start with ss 418 and 419(1)(a) of the LP Act for the characterisation exercise, but rather s 420 of the LP Act.
- [17] On this approach it is necessary to have regard to:
- (a) the disparity between the charged costs and the assessed costs; and
 - (b) the reasons for the differential between the charged costs and the assessed costs.
- [18] In the current case, the disparity between the charged costs and the assessed costs is 42%.¹³ The ASOF records the charged costs for professional fees and outlays were \$674,249.54 and the assessment reduced this amount by \$289,554.32.
- [19] Further, the reasons for the differential are set out in the ASOF as follows:
- “27. The Complainant’s objections were upheld or upheld in part by Judge McGill SC on grounds which can be generally summarised as follows:
 - a. Claiming for a paralegal to peruse and collate documents in circumstances where there was no need for the paralegal to peruse the documents and there was no evidence to support the claim that the work had been done (such as a diary note).
 - b. Duplication of claims.
 - c. Excessive and unreasonable charging for time for printing and copying documents in circumstances where the cost of printing and copying had already been claimed.
 - d. Inefficient work conducted by a paralegal which was ultimately worthless to the complainant.
 - e. Charging for work in six minute increments but in circumstances where each new item of work ‘restarted the clock’, when in fact the respondent should have charged the complainant in accordance with the method of calculation specified in the agreement from the time when she started work on the file until the time when she stopped work on the file, regardless whether during that period she completed one item of work or 50.
 - f. Excessive and unreasonable charging for time for the preparation of correspondence.
 - g. Charging for inconsequential and/or trivial correspondence and phone calls.”

¹³ This figure was corrected from 43% to 42% at [51] of the LSC’s written submissions at the hearing. The figure for the allowed costs at [51] of the LSC’s written submissions was in error and the correct figure is \$289,554.32. This incorrect disparity in allowed costs lead to the miscalculation of the percentage.

- [20] As indicated previously, the Respondent concedes that her conduct constituted professional misconduct. Having regard to the extent of, and the reasons for, the differential between the charged costs and the assessed costs, that is an appropriate concession as to the proper characterisation of the conduct.
- [21] The Tribunal accepts that the significant extent of, and the reasons for, the differential between the amount charged and the assessed amount in the current factual circumstances support a finding that the Respondent committed professional misconduct.
- [22] Accordingly, the Tribunal finds that the Respondent's conduct, identified in respect of the charge in the discipline application, constitutes professional misconduct.

Appropriate orders under s 456 of the LP Act

- [23] Having made the finding as to professional misconduct, the discretion in s 456 of the LP Act arises.
- [24] Section 456 of the LP Act states:

“456 Decisions of tribunal about an Australian legal practitioner

- (1) If, after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian legal practitioner, the tribunal is satisfied that the practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the tribunal may make any order as it thinks fit, including any 1 or more of the orders stated in this section.
- (2) The tribunal may, under this subsection, make 1 or more of the following in a way it considers appropriate—
 - (a) an order recommending that the name of the Australian legal practitioner be removed from the local roll;
 - (b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;
 - (c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;
 - (d) an order that—
 - (i) imposes stated conditions on the practitioner's practising certificate granted or to be issued under this Act; and
 - (ii) imposes the conditions for a stated period; and
 - (iii) specifies the time, if any, after which the practitioner may apply to the tribunal for the conditions to be amended or removed;
 - (e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;
 - (f) an order that no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—
 - (i) employ or continue to employ the practitioner in a law practice in this jurisdiction; or

- (ii) employ or continue to employ the practitioner in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.
- (3) The tribunal may, under this subsection, make 1 or more of the following—
 - (a) an order recommending that the name of the Australian legal practitioner be removed under a corresponding law from an interstate roll;
 - (b) an order recommending that the practitioner's interstate practising certificate be suspended for a stated period or cancelled under a corresponding law;
 - (c) an order recommending that an interstate practising certificate not be, under a corresponding law, granted to the practitioner until the end of a stated period;
 - (d) an order recommending—
 - (i) that stated conditions be imposed on the practitioner's interstate practising certificate; and
 - (ii) that the conditions be imposed for a stated period; and
 - (iii) a stated time, if any, after which the practitioner may apply to the tribunal for the conditions to be amended or removed.
- (4) The tribunal may, under this subsection, make 1 or more of the following—
 - (a) an order that the Australian legal practitioner pay a penalty of a stated amount, not more than \$100,000;
 - (b) a compensation order;
 - (c) an order that the practitioner undertake and complete a stated course of further legal education;
 - (d) an order that, for a stated period, the practitioner engage in legal practice under supervision as stated in the order;
 - (e) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;
 - (f) an order that the practitioner stop accepting instructions as a public notary in relation to notarial services;
 - (g) an order that engaging in legal practice by the practitioner is to be managed for a stated period in a stated way or subject to stated conditions;
 - (h) an order that engaging in legal practice by the practitioner is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;
 - (i) an order that the practitioner seek advice from a stated person in relation to the practitioner's management of engaging in legal practice;

- (j) an order that the practitioner must not apply for a local practising certificate for a stated period.
 - (5) To remove any doubt, it is declared that the tribunal may make any number of orders mentioned in any or all of subsections (2), (3) and (4).
 - (6) Also, the tribunal may make ancillary orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (4), as assessed in or under the order or as agreed.
 - (7) The tribunal may find a person has engaged in unsatisfactory professional conduct even though the discipline application alleged professional misconduct.”
- [25] The discretion to make any order the Tribunal thinks fit is a wide discretion and is to be exercised primarily in the protection of the public.¹⁴ Principles of personal and general deterrence are also relevant.¹⁵
- [26] The maintenance and enforcement of proper standards in the profession is a further aim. Accordingly, it is relevant to consider the need to deter other practitioners from engaging in similar conduct and also to protect the public by enforcing standards upon which the public can rely.¹⁶
- [27] On the facts of the current case, the following are relevant to the exercise of the discretion:
- (a) The Respondent is an experienced practitioner, and at the time of the conduct had been in practice for 11 to 12 years.
 - (b) The Respondent currently holds an unrestricted principal practising certificate issued by the QLS.
 - (c) The Respondent does not have any disciplinary history in Queensland.
 - (d) The Respondent was solely responsible for the large sum overcharged.
 - (e) There is no evidence that the Respondent:
 - (i) sought to address the Complainant’s concerns after issuing the invoices or commencing recovery proceedings.
 - (ii) made any offers of compromise during the costs assessment or the review application.
 - (iii) engaged in any rehabilitative professional development to address the cause of the complained conduct.
 - (f) The Respondent initially maintained to the Commission that she had not engaged in any wrong-doing, however did later admit unsatisfactory professional conduct after the commencement of the discipline application.

¹⁴ *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149 at [122].

¹⁵ *Attorney-General v Bax* [1999] 2 Qd R 9 at 22.

¹⁶ *Legal Services Commissioner v Wrightway Legal* [2015] QCAT 174 at [28].

Ultimately, the Respondent conceded that her conduct constituted professional misconduct.

[28] In the affidavit of the Respondent affirmed on 5 December 2022, the Respondent relevantly states:

- (a) She no longer accepts work on a deferred fee basis and 95% of her firm's work is fixed fee work.
- (b) Her primary business is succession matters and has stopped accepting retainers for most litigation matters.
- (c) She apologises to the Complainant for overcharging and commencing the recovery proceedings and the review proceeding.
- (d) That she regrets her failure to review the work-in-progress entries before issuing the invoices and believes this was an abnormality unique to the deferred fee arrangement.
- (e) The risk of the conduct recurring is very minimal as she no longer accepts deferred fee agreements.

[29] An order publicly reprimanding the practitioner may be imposed pursuant to s 456(2)(e) of the LP Act. The Respondent concedes that a public reprimand is an appropriate order.

[30] The impact of a public reprimand has been recognised previously by the Tribunal. In *Legal Services Commissioner v Challen* [2019] QCAT 273, the Tribunal said:

“[39] First, there will be an order that the respondent be publicly reprimanded. The respondent conceded that this was an appropriate order in this case. The impact of such an order being made cannot be understated, particularly when it is made against a practitioner of significant seniority and an otherwise unblemished professional record. As this Tribunal has previously said:¹⁷

The making of a public reprimand is a serious step by the Tribunal and not one which should be taken or regarded lightly. The public reprimand is and will continue to be a permanent public blemish on the respondent's professional record. It is and will continue to stand as a permanent reminder to the respondent, to the profession and to the public at large that there are adverse personal consequences when one engages in professional misconduct of this kind.”

[31] In the current case, an order that the Respondent be publicly reprimanded is appropriate.

[32] An order attaching a condition to a practitioner's practising certificate may be imposed under s 456(2)(d) of the LP Act.

[33] The relevant risk here is the risk of the Respondent charging excessive fees as a result of the use of deferred retainers. While the Respondent has indicated she no longer accepts retainers on a deferred fee basis, a condition on her practising certificate that she not accept retainers on a deferred fee basis would operate to protect the public from that risk.

¹⁷ *Legal Services Commissioner v Brown* [2018] QCAT 263 at [42].

- [34] Further, the imposition of such a condition is transparent in that it allows members of the public to be fully informed of the condition should they undertake their own inquiries, and allows for compliance to be monitored.
- [35] Such a condition operating for five years from the date of the Tribunal order is reasonable. The Respondent concedes that such an order is an appropriate order.
- [36] In the current case, an order that a condition be imposed for five years on the Respondent's practising certificate that she not accept a retainer on a deferred fee basis is appropriate.
- [37] An order that a practitioner must undertake a course such as the QLS Remedial Ethics course may be ordered pursuant to s 456(4)(c) of the LP Act.
- [38] The proposed course is a refresher course run by the QLS. The course includes an opportunity for focussed reflections on particular topics covered in the course. Given the particular professional misconduct here of excessive charging of professional fees, a focus on costs and billing practices is required. This would include consideration of the benefits of legal practice management processes for the regular review of work-in-progress, estimates of costs, review of invoices prior to issuing and communication with clients regarding costs agreements and costs.
- [39] The Tribunal is satisfied that it is appropriate to order that the Respondent undertake the QLS Remedial Ethics course including a component on costs and billing, which is directed at both the protection of the public and maintaining professional standards.
- [40] During submissions it was noted that the Tribunal in *Legal Services Commissioner v Challen*¹⁸ ordered a public reprimand and ordered the payment of a penalty of \$10,000 pursuant to s 456(4)(a) of the LP Act.¹⁹
- [41] It is not proposed that a penalty be imposed here. The totality of the orders also reflect both personal and general deterrence.
- [42] Further, it is recognised that:
- (a) the Respondent is liable for the costs of registration to attend the QLS Remedial Ethics course.
 - (b) there is a financial impact of the imposition of the condition on the Respondent's practising certificate and the day away from legal practice to attend the QLS Remedial Ethics course.
- [43] In these circumstances, the Tribunal is satisfied that the totality of the orders does not warrant the imposition of a penalty in addition to the other orders, which are directed at the particular conduct and risks, taking into account both personal and general deterrence.

¹⁸ [2019] QCAT 273.

¹⁹ At [34] the Tribunal recognised in that case that the respondent had undertaken rehabilitative professional development since the incident and implemented a review of costs processes and practices with an external legal practice management consultant. Further, at [37] it was recognised that in the particular circumstances of the case there was little purpose to be served in formulating orders for the purposes of achieving personal deterrence. A penalty was imposed for general deterrence.

Costs

[44] Section 462(1) of the LP Act states:

“462 Costs

- (1) A disciplinary body must make an order requiring a person whom it has found to have engaged in prescribed conduct to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.”

[45] Here there are no exceptional circumstance identified that would justify any departure from an order in accordance with s 462(1) of the LP Act.

[46] Accordingly, the Tribunal is satisfied that it is appropriate to order that the Respondent pay the LSC’s costs of and incidental to discipline application to be assessed. For the purposes of s 462(5)(b) of the LP Act, it is appropriate that the costs be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.

Orders

[47] For the reasons stated above, the Tribunal orders that:

1. The Respondent’s conduct identified in respect of the charge in the discipline application is found to constitute professional misconduct.
2. The Respondent is publicly reprimanded.
3. For a period of five years from the Tribunal’s order, a condition be placed on any practising certificate issued to the Respondent that the Respondent must not accept any retainer on a deferred fee basis.
4. The Respondent must undertake the QLS Remedial Ethics course, including a component on costs and billing.
5. The Respondent pay the LSC’s costs of and incidental to the discipline application, to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.

Compensation claim

[48] It is now necessary to consider the Complainant’s claim for compensation, pursuant to the notice of intention to seek compensation order dated 16 March 2023.

[49] The Complainant seeks a compensation order upon a finding being made that the Respondent is guilty of unsatisfactory professional conduct and/or professional misconduct.

[50] The Complainant’s affidavit identifies a number of different amount and claims, including:

- (a) The loss of the “Sydney family home”.
- (b) The transfer of \$305,184.58 from the Complainant’s Sydney lawyer’s Trust Account to the Respondent pursuant to an order of Judge Koppenol on 13 February 2019.

- (c) \$146,431.79 being the “total true claim ... which would have been paid in full at the end of the Sydney Court Matter, 5 years prior.”
- (d) \$250,000 being “the cost to defend myself against [the Respondent’s] false claims.
- (e) “10 years of financial hardship, financial loss, loss of two homes, real estate loss and loss to my Science degree”.

[51] In response, the Respondent does not dispute that:

- (a) The Respondent is the law practice within the meaning of ss 464 and 466(3) of the LP Act as she was and is a sole practitioner.
- (b) The Respondent does not consent to a compensation payment of an amount of more than \$7,500 and the Complainant only seeks a compensation order of \$7,500 in the notice.
- (c) The Complainant is a complainant within the meaning of the LP Act.

[52] Upon the Tribunal making a relevant finding, s 456 of the LP Act sets out the orders that the Tribunal may make, including a compensation order under s 456(4)(b).

[53] The LP Act contains a number of provisions relevant to a compensation order, including ss 464, 465 and 466(3).

[54] Section 464 of the LP Act states:

“464 Meaning of compensation order

*A **compensation order** is 1 or more of the following—*

- (a) an order that a law practice can not recover or must repay the whole or a stated part of the amount that the law practice charged a complainant for stated legal services;
- (b) an order discharging a lien possessed by a law practice in relation to a stated document or class of documents;
- (c) an order that a law practice carry out stated work for a stated person without a fee or for a stated fee;
- (d) an order that a law practice pay to a complainant an amount by way of compensation for pecuniary loss suffered because of conduct that has been found to be—
 - (i) unsatisfactory professional conduct or professional misconduct of an Australian legal practitioner involved in the relevant practice; or
 - (ii) misconduct of a law practice employee in relation to the relevant practice.”

[55] Here, a finding of professional misconduct has been made.

[56] Further, s 465 of the LP Act states:

“465 Compensation order relating to pecuniary loss

- (1) Unless the parties agree, a compensation order that is the type of order mentioned in section 464(d) must not be made unless the disciplinary body making the order is satisfied—
 - (a) if there is a complainant in relation to the discipline application—that the complainant has suffered pecuniary loss because of the conduct concerned; and
 - (b) that it is in the interests of justice that an order of that type be made.
- (2) Also, a compensation order of the type mentioned in section 464(d) for a pecuniary loss for which the relevant complainant has received or is entitled to receive either of the following must not be made—
 - (a) compensation under an order that has been made by a court;
 - (b) compensation from the fidelity fund, or a fund of another jurisdiction under a corresponding law of that jurisdiction, if a claim for payment from the fidelity fund or other fund has been made or decided.”

[57] Section 466(3) of the LP Act is also relevant:

- “(3) A compensation order requiring payment of an amount of more than \$7,500 by way of monetary compensation of the type mentioned in section 464(d) must not be made unless the complainant and the law practice both consent to the order.”

[58] Here, the amount of any compensation order is capped at \$7,500, which is the amount claimed by the Complainant. Further, a compensation order can only be made if the Tribunal is satisfied that:

- (a) the Complainant has suffered pecuniary loss because of the excessive overcharging by the Respondent; and
- (b) it is in the interests of justice that a compensation order be made.

[59] The Respondent submits that the Complainant must satisfy the Tribunal that there is a causal connection between the pecuniary loss and the conduct concerned.

[60] This requirement was discussed in *Legal Services Commissioner v Reeve (No 3)* [2016] QCAT 487 where Justice Thomas, President of QCAT, stated:

- “[13] As is clear, the Tribunal cannot make a compensation order for pecuniary loss suffered unless the complainant demonstrates to the Tribunal that he or she has suffered pecuniary loss because of the conduct concerned.

...

- [15] Whether Mr Smith has suffered a pecuniary loss depends upon his entitlement to the sum of \$2,337.50. Unless Mr Smith establishes that he has such an entitlement, no pecuniary loss will be suffered.

- [16] If Mr Smith establishes that he has such an entitlement and also establishes that the conduct which was found to be unsatisfactory

professional conduct led to him being deprived of the entitlement, then it may be possible to establish pecuniary loss in those circumstances.”

- [61] The professional misconduct by the Respondent is excessive overcharging of professional fees. The relevant facts are summarised earlier in these reasons from the ASOF.
- [62] Looking at the various claims made by the Complainant, general claims for “loss of the ... family home”, the “total true claim ... which would have been paid in full at the end of the Sydney Court Matter, 5 years prior” and “10 years of hardship, financial loss, loss of two homes, real estate loss and loss to my Science degree” are unsubstantiated and there is no evidence of any causal connection to the professional misconduct.
- [63] Without proper substantiation of the loss amount and the causal connection the Tribunal cannot be satisfied in respect of these claims.
- [64] It is necessary to further consider the Complainant’s claim in respect of the amount transferred to the Respondent pursuant to the order of Judge Koppenol.
- [65] From the evidence in the affidavits filed in respect of the discipline application it appears that:
- (a) On 5 February 2019, Judge Koppenol made an order.²⁰
 - (b) On 24 May 2019, Judge McGill SC delivered reasons and made orders dealing with various claims, interest and costs.²¹
- [66] At [5] of the reasons of Judge McGill SC in *Chapman v Harris (No 2)* [2019] QDC 78 it relevantly states:
- “... Then on 5 February 2019 another judge made an order that an amount from funds held in a trust account pursuant to the [the Respondent’s] claim of a lien over some of the proceeds of [the Complainant’s] claim against third parties be paid out to [the Respondent], and that occurred on 13 February 2019 when an amount of \$305,184.58 was paid to [the Respondent].”
- [67] What is apparent from a careful reading of the reasons of Judge McGill SC and the order made is that his Honour carefully considered all amounts owed between the parties. The final order made on 24 May 2019 reconciled all previous payments made (including the amount transferred from trust on 13 February 2019) with the result of the assessment proceedings (including the review and counterclaim), including interest components to both the Respondent and the Complainant and the costs of the assessment (including the costs of the assessor and the Complainant’s legal costs).

²⁰ Pages 456 and 457 of Hearing Bundle.

²¹ Pages 395, 492 to 507 of the Hearing Bundle.

[68] The order of Judge McGill SC on 24 May 2019 states:

“THE ORDER OF THE COURT IS THAT:

1. Plaintiff’s claim is dismissed.
2. On the counterclaim, judgement that [the Respondent] pay [the Complainant] \$61,919.05 including \$582.28 interest by statute.
3. [The Respondent] pay [the Complainant’s] costs of the review, including costs reserved on 9 May 2018 and 17 September 2018, and, if they were not included in the costs of the costs assessment, the costs dealt with on 22 May 2015 by McMurdo J. Otherwise there be no order as to costs of the claim or the counterclaim.
4. The balance of the money held on trust by Mr James Sotiri Michos pursuant to the undertaking by him to [the Respondent] dated 8 April 2015 (together with the accretions if any) be paid to the solicitors for [the Complainant].”

[69] The Complainant had previously paid invoices totalling \$77,674.83. The Respondent’s costs were assessed at \$263,475.74.²² Accordingly, the balance was payable to the Respondent. The amount transferred pursuant to the order of Judge Koppenol was allocated against this balance.

[70] While initially there may appear to be an “overpayment” this in effect is reconciled in the overall “mop up” undertaken in the final order.

[71] Judge McGill SC expressly states in the reasons in respect of the amount of \$305,184.58 transferred:

“[41] ... Deducting the amounts owing on these two invoices with accumulated interest up to that date from the amount of the payment, \$305,184.58, produces a balance in favour of [the Complainant] of \$61,336.77. Hence a restitutionary right to be paid that amount arose at that time.

[42] Accordingly, under r 743H it is appropriate to give judgment for [the Complainant] for this sum, together with interest under the *Civil Proceedings Act* 2011 s 58 from 14 February 2019. This is because, as a result of the costs assessment and the review of the costs assessment, [the Respondent] can be seen, with the benefit of hindsight, to have been overpaid by that amount on that date. I cannot give compound interest under s 58, but the period is short and I will allow interest at 3.5%, which comes to \$582.28, making a total of \$61,919.05. The appropriate course therefore in terms of the proceeding as a whole is to dismiss the claim and to give judgment on the counterclaim for that relief.”

[72] When all of the relevant facts are examined, the effect of the order of Judge McGill SC dated 24 May 2019 is that the Complainant has not suffered any pecuniary loss as a result of the amount transferred pursuant to the order of Judge Koppenol.

²² After deducting the costs of the assessment and the assessor’s fee of \$117,043.95, which the Respondent was ordered to pay.

- [73] The Complainant only claims \$7,500 but the Tribunal must still be satisfied of a pecuniary loss connected to the conduct the subject of the professional misconduct finding in order to be able to make a compensation order.
- [74] In all of the circumstances, there is not a proper basis to make any compensation order as the Tribunal cannot be satisfied that the Complainant has suffered a pecuniary loss causally connected to the conduct of excessive overcharging, in respect of the amounts identified or otherwise.
- [75] Accordingly, the Complainant's application for a compensation order is dismissed.