

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Kirin* [2024] QCAT 489

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

V

MILLS JOHN KIRIN
(respondent)

APPLICATION NO/S: OCR271 of 2023

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 14 November 2024

HEARING DATE: 24 October 2024

HEARD AT: Brisbane

DECISION OF: Hon Duncan McMeekin KC, Judicial Member

Assisted by:
Mr John Sneddon
Ms Julie Cork

- ORDERS:
- 1. That the respondent's conduct the subject of Charge 1 amounts to unsatisfactory professional conduct.**
 - 2. That the respondent be publicly reprimanded;**
 - 3. That the respondent pay a penalty of \$2000 within 30 days;**
 - 4. That the respondent be required to undertake specialist domestic violence training approved by the Applicant; and**
 - 5. That 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 AND UNSATISFACTORY PROFESSIONAL CONDUCT – where the respondent was engaged to act for a client in a matter under the *Domestic and Family Violence Protection Act 2012* (Qld) – where the respondent sent correspondence to the opposing solicitor

acting in that matter – whether that correspondence was discourteous and that went beyond legitimate advocacy and was likely to embarrass or frustrate another person – whether the respondent’s conduct amounts to professional misconduct or unsatisfactory professional conduct – where parties dispute the pecuniary penalty amount – appropriate pecuniary penalty

Legal Profession Act 2007 (Qld) ss 418, 419, 452, 456, 462
Australian Solicitors’ Conduct Rules 2012 rr 21
Domestic and Family Violence Protection Act 2012 (Qld) s 3

Allinson v General Council of Medical Education and Registration [1894] 1 QB 750
Law Society of New South Wales v Foreman (No 2) (1994) 34 NSWLR 408
Legal Services Commissioner v Brown [2020] QCAT 423
Legal Services Commissioner v Bussa [2011] QCAT 388
Legal Services Commissioner v Cooper [2011] QCAT 209
Legal Services Commissioner v Ferguson [2021] QCAT 205
Legal Services Commissioner v Madden [2009] 1 Qd R 149
Legal Services Commissioner v Munt [2023] QCAT 479
Legal Services Commissioner v PRF [2023] QCAT 291
Legal Services Commissioner v Orchard [2012] QCAT 583
Legal Services Commissioner v SYG [2023] QCAT 401
Legal Services Commissioner v Winning [2008] LPT 13
Legal Services Commissioner v XBT [2018] QCAT 64

APPEARANCES & REPRESENTATION:

Applicant: H Edwards instructed by Legal Services Commissioner
 Respondent: C McGee, of 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] The respondent, Mills John Kirin, has been charged by the Legal Services Commissioner that:
 - On various dates between 22 February 2022 and 16 August 2022 [Mr Kirin] sent correspondence that was discourteous and that went beyond legitimate advocacy and was likely primarily designed to embarrass or frustrate another person.
- [3] At all material times, Mr Kirin:
 - (a) was an Australian legal practitioner within the meaning given in s 6(1) of the LPA;

- (b) has held an unrestricted practising certificate; and
 - (c) was a sole practitioner and the principal of his law practice Seraphus Solicitors.
- [4] Mr Kirin accepts the charge but maintains that his conduct should not be characterised as professional misconduct as the Legal Services Commissioner ('Commissioner') submits. Mr Kirin acknowledges his conduct amounts to unsatisfactory professional conduct.
- [5] The parties are agreed, save for the amount of a pecuniary penalty, on the appropriate orders that should be made. The Tribunal must of course exercise its own discretion and is not bound by the common approach here, but, with respect, the proposed orders are eminently sensible. The orders proposed by the Commissioner and agreed are:
- (a) a public reprimand pursuant to s 456(2)(e) of the LPA; and
 - (b) Mr Kirin be required to undertake specialist domestic violence training approved by the Commissioner pursuant to s 456(4)(c) LPA.
- [6] It was also proposed and agreed that Mr Kirin complete a Queensland Law Society ethics course at his own cost. There is no need for an order as we were advised at the hearing that Mr Kirin had, by the time of the hearing, undertaken the ethics course proposed.
- [7] The parties were agreed that a fine be imposed (pursuant to s 456(4)(a) LPA) but disagreed as to the amount. The Commissioner submitted that a fine of \$10,000 was appropriate. Mr Kirin submitted that a fine of \$1500 was sufficient.
- [8] For the reasons that follow the Tribunal accepts that the agreed proposed orders ought to be made (and in respect of the ethics course, would have been made). In respect of the two matters disputed the Tribunal:
- (a) finds the conduct be characterised as unsatisfactory professional conduct; and
 - (b) Orders that Mr Kirin be fined in the amount of \$2000.

The impugned conduct

- [9] The material facts are not in dispute. At the relevant time Mr Kirin acted for the respondent husband in an application for a protection order matter under the *Domestic and Family Violence Protection Act 2012 (Qld)*. In acting for his client Mr Kirin corresponded with Ms Sarah Milson-Mahy, a solicitor acting for the applicant wife. Ms Milson-Mahy complained to Mr Kirin and subsequently to the applicant, the Commissioner, about aspects of Mr Kirin's correspondence. Eventually he was charged.
- [10] It is not necessary to detail each and every piece of correspondence that are rightly characterised in the charge. That correspondence is fully particularised in the agreed facts. The Commissioner neatly summarised the initial correspondence as consisting of five discourteous and inappropriate emails (see rule 21.2 *Australian Solicitors Conduct Rules* 2012), four of which were sent within a two week period. Examples of unsubstantiated and unprofessional language included:
- (a) the wife was "postnatally depressed" and "mentally ill";
 - (b) the wife was "wandering the earth" with the clients' infant daughter;

- (c) Ms Milson-Mahy was acting “belligerently”, was putting forward “blatant lies... unquestionably and uncritically”, and acting in an “overzealous” manner in a “legally aid funded crusade against” [Mr Kirin’s client];
 - (d) referring to Ms Milson-Mahy was bullying and threatening to Mr Kirin;
 - (e) implying that Ms Milson-Mahy had not obtained instructions from her client before responding.
- [11] The Commissioner further submitted that in this difficult and emotionally charged area of legal practice that the reference in his correspondence by Mr Kirin of “the DV your so-called aggrieved alleges is at the low scale of what we see every day” has the tendency to diminish the impact of domestic violence. We would acknowledge that there exists at least the potential to minimise quite inappropriately the possible impact on any client of whatever the conduct may be in question. That is evidently so as the background, context and personalities involved can mean some very great significance to one and perhaps not to another. Given that truism, a comment by a practitioner of the type in question here ought to be avoided, ought to be well aware of that potential, and is an aggravating aspect.
- [12] Ms Milson-Mahy pointed out to Mr Kirin the unsuitability of Mr Kirin’s correspondence (as it had transpired to that time) and the potential breaches of the *Australian Solicitors’ Conduct Rules 2012*, rules that she particularised, in an email. Regrettably this did not cause Mr Kirin to reflect on his own behaviour. Mr Kirin responded with the following:
- When I was overseas in places like the Ukraine, for instance, promoting democracy and the rule of good law, my life was threatened several times (!) My career many times more (!) I did not think I would return to Australia to the same tactics. If you think you can be a BULLY and THREATEN my career, just because you are a woman fighting for women then I’m here to tell you that’s not on!
- [13] There is considerable irony for Mr Kirin to claim his promotion of the rule of law in his earlier career while characterising an appeal by his colleague to the law applicable to his own conduct as bullying and threatening.
- [14] His apparent incapacity to appreciate the inappropriateness of his behaviour continued. In response to a notice from the Commissioner, sent some months later, concerning his conduct, Mr Kirin thought it appropriate to write to Ms Milson-Mahy:
- (a) asserting that he would report Ms Milson-Mahy to the Australian Capital Territory Law Service if she did not withdraw the complaint; and
 - (b) alleging that her complaint would cause him to “re-live the horror of what happened to [him] in Europe” as a “recovering victim of torture sustained during [his] time working in the post-Soviet bloc”.

Characterisation of Correspondence

- [15] The first task is to determine whether the conduct is better seen as professional misconduct or unsatisfactory professional conduct. That finding is made by assessing the seriousness of the conduct, judged without reference to subsequent events and in particular the practitioner’s subsequent rehabilitation or reaffirmation of character: *Legal Services Commissioner v Munt* [2023] QCAT 479 at [105].

- [16] The statutory definitions while important provide little guide.
- [17] “Professional misconduct” is defined in section 419 of the LPA as:
- (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.
- [18] “Unsatisfactory professional conduct” is defined in section 418 of the LPA as including:
- 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.
- [19] There is no doubt that Mr Kirin’s conduct falls below the standard referred to in s 418. The Tribunal explained why in *Legal Services Commissioner v XBT* [2018] QCAT 64, (citations omitted):
- [19] There is no question that sending rude, demeaning, derogatory, disparaging, personally abusive or offensive, undisciplined and discourteous correspondence to or about a third party with an opposing interest in a matter where the practitioner acts for a client breaches r 28(5) *Solicitors Rule* 2007 (since repealed) and meets the statutory description of unprofessional conduct.
 - [20] The conduct diminishes the dignity and high standing of the profession and tends to reduce community respect for it. It is unbecoming and suggests a loss of the objectivity, independence and judgment needed for the proper discharge of professional responsibilities on which the administration of justice depends and the court relies.
 - [21] The defendant appears to have allowed herself to overinvest in her client’s case to a degree that unbalanced her professional judgment. Identifying too closely with a client’s cause is a constant danger for a committed lawyer to guard against. The conduct in question amounted to a serious professional indiscretion and ordinarily calls for the censure of a public reprimand to express disapproval and deter similar conduct by others.
- [20] It is obvious to say that it is all fact dependent, involves a matter of degree, and that this Tribunal must obtain such guidance from the cases as we can. Those cases hold the practitioner guilty of the more serious charge where the conduct in question would be considered by practitioners of good repute and competence to be “disgraceful or dishonourable”: see *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750. For recent cases see *Legal Services Commissioner v Brown* [2020] QCAT 423 at [20]; *Legal Services Commissioner v Ferguson* [2021] QCAT 205 at [15].
- [21] Here the Commissioner put significant reliance on the determination of *Legal Services Commissioner v SYG* [2023] QCAT 401. SYG sent seven letters on behalf of his client

and partner over a 14-week period. *SYG's* conduct was found to amount to professional misconduct. The Commissioner submitted:

Similarly to the current case, those letters included emotional language, unsubstantiated personal opinion, went beyond legitimate advocacy, and were primarily designed to embarrass or frustrate other persons. There were several recipients of the letters including senior government officials.

...

While *SYG's* unacceptable correspondence was sent to a greater number of recipients over a longer period, the nature of the Respondent's correspondence was similarly egregious and persisted both after concerns were raised and after the Respondent was notified the Applicant was investigating his conduct.

SYG's conduct, in contrast to the present case, did not occur in the context of domestic violence proceedings. There is a growing problem of inappropriate and offensive correspondence being sent in the domestic violence practice area. General deterrence is therefore an important consideration.

- [22] The Commissioner submitted that other cases involving offensive correspondence, such as *Legal Services Commissioner v Winning* [2008] LPT 13, *Legal Services Commissioner v Cooper* [2011] QCAT 209, and *Legal Services Commissioner v Orchard* [2012] QCAT 583, represented less serious examples than the present case. The submission went on:

Notably, each of these cases were outside the domestic violence practice area. *Winning* and *Cooper* both involved fewer occasions of correspondence. Meanwhile, *Orchard* sent a document produced by his client without fully reflecting upon its nature and consequences. Here, the correspondence was the Respondent's own and included threats for a fellow legal practitioner to withdraw a legitimate complaint about his conduct.

Analysis of the cases said to be comparable

- [23] *SYG* is in our view a more serious case. First, it is not irrelevant that the practitioner there accepted that a finding of the more serious charge was open on the uncontested evidence. Secondly, the dissemination was much wider – seven inappropriate letters not only to the original recipient (as is the case here) but then to the local police station, the Ethical Standards Command of the Queensland Police Service and to the Crime and Corruption Commission. Thirdly, and acknowledged in the Commissioner's submission, the period involved here was not so long. Mr Kirin's more serious conduct – the four discourteous emails - took place over an exchange that occurred over a two week period, while the seven letters complained of sent by *SYG* were sent over a 14 week period. It is true that the last email sent by Mr Kirin was at the end of a six month period and in response to the notice from the Commissioner but it does not reflect an ongoing attack over six months on Ms Milson-Mahy. *SYG's* conduct involved that sustained attack. Fourthly, the practitioner in *SYG* made much more serious allegations. His statements included gross personal abuse. He alleged inter alia of criminal conduct to the original recipients which were repeated and eventually made allegations of "serious offences, official misconduct and/or official corruption by various people". In short, the conduct involved more serious allegations, over a longer period, and involving public dissemination.
- [24] *Cooper* plainly involved conduct of a less serious form. It concerned two letters to another solicitor on behalf of a client which were insulting and personally offensive.

The Tribunal described the language as “intemperate and disappointing”. The Tribunal found that the conduct was unsatisfactory professional conduct. The decision does not assist greatly in elucidating where the line should be brought, but the conduct is far closer to that of Mr Kirin than the conduct considered in SYG.

- [25] *Orchard* again is of little assistance save that it is consistent with the view that Mr Kirin’s conduct is at the lesser end of the scale. While perhaps of less serious conduct in *Orchard* the finding of unsatisfactory professional conduct throws little light on this case. There the solicitor did not himself author the offending document but forwarded it on instructions of his client (a teacher) to the mother of the complainant (a student) who had been involved in a sexual relationship with him. The Tribunal noted that the document forwarded arguably involved the author in a breach of the criminal law. Nonetheless the Tribunal concluded:

...this Tribunal is also unpersuaded that Mr Orchard’s behaviour should be categorised in respect of either charge as anything other than unsatisfactory professional conduct. Nothing in the correspondence he sent to the mother itself conveyed a threat (unlike the direct communications and letters in *LSC v Winning* and *LSC v Cooper*). His mistake was, again, one involving a failure to properly and carefully reflect upon the contents of the material he conveyed, on instructions, from his client.

- [26] We turn then to *Winning*. It is of assistance as the case involved offensive and threatening comments and the Tribunal drew a distinction between conduct that falls on one side of professional misconduct and conduct that falls in the less serious category. Here we cannot accept the submission that the conduct of the practitioner in *Winning* was of a less serious example. Some closer examination is necessary.
- [27] Mr Winning faced nine charges in all, was found not guilty of five, and guilty of four. Each of the ones for which he was found guilty involved using offensive and insulting language to various persons. The legislative provisions applicable changed through the course of the unedifying conduct under examination. Thus, two of the charges were described as guilty of “unprofessional conduct”, one of those four, Charge 7, involved “unsatisfactory professional conduct” within the meaning as now applied, and one, Charge 9, involved “professional misconduct” as now understood. “Unprofessional conduct” involved very similar if not identical considerations to “unsatisfactory professional conduct”.
- [28] There is no sufficient explanation of the facts underlying some of those charges to enable analysis, however the facts involved in Charge 7 were particularised:
- 7.1 On 5 July 2004, and inside Court 5 of the Supreme Court at Rockhampton, prior to the commencement of proceedings, the respondent was seated at the bar table in the presence of other practitioners and members of the public.
 - 7.2 In a conversation with another legal practitioner, the respondent said words to the effect:
 - (a) “Jolene is nothing but a fucking drunk”
 - (b) “She falls off fucking bar stools every five minutes”
 - (c) “Paul should stop listening to fucking coppers and use what’s between his fucking ears”
 - (d) “Most of the lawyers around here think that Paul is the fucking village idiot and they’re right”

- (e) “I told him to come outside and sort it out right now”
- (f) “The problem is fucking coppers drinking with fucking Magistrates”
- (g) “Paul knows that he can’t prove three of the six elements”

- [29] The female referred to was a listing clerk employed by the Director of Public Prosecutions. The male referred to was the barrister conducting the prosecution. Mr Winning addressed another barrister seated at the Bar table who was representing the client and while waiting for the court to resume. Others were present in the court room. Mr Winning contended that the conversation was a private conversation. The Tribunal held that the comments were made in a sufficiently loud voice for the effect of it to be heard by at least one person, ie the witness who deposed who was the instructing clerk for the prosecutor, and perhaps to others present in the Court.
- [30] There is no close analysis by the Tribunal of the effect of the offensive words used. For our part the fact that the abuse in paragraphs (a) to (f) was communicated to a third party and in a public place - at least to the barrister intended and to any other within hearing in the court room - of itself makes this a more serious example. As well, the abuse is in our view worse in its content, albeit it is not evident here what was intended as set out in either paragraph (e) or (g). The inferences of the remaining matters included that an employee involved within the prosecution team was grossly and adversely affected by alcohol consistently, that a barrister was either not capable of analysing the legal issues or not exercising his faculties to do so, and that there was inappropriate social contact between the magistracy and the police (whose function is well recognised as involved in gathering and presenting evidence to the magistrates) with the evident inference that justice was not being, or not being seen to be, fairly dispensed. The words plainly had the potential or tendency to bring the legal profession or criminal justice system into disrepute.
- [31] It is instructive to compare the facts with Charge 9 where the more serious charge was applicable. There the conduct involved the making of submissions to the court in a public court room asserting that the DPP, then Ms Claire, was “this stupid woman”, “this silly woman” and was “involved in grubby little deals to protect paedophiles”. Mr Winning apologised by letter nearly two years later.
- [32] The distinctions with the facts underlying Charge 7 include that the comments directed to the DPP were made against a person holding a position of considerable responsibility, it involved a direct insult of one’s probity, they were made deliberately to a public place and had the very likely prospect of wide dissemination. The conduct involved was worse but the features not very different. The attack on the criminal justice system under Charge 7 did not involve the naming of the subject of the insult, and while the prosecuting barrister holds a position of responsibility, one not so great and so with hopefully lesser adverse effect, and the possible dissemination very probably less.
- [33] This conduct was in the context of three other charges of similar conduct and to similar effect and at quite different times. When considering whether the conduct involved “a substantial or **consistent failure** to reach or keep a reasonable standard of competence and diligence” (emphasis added), as s 419 demands, the repeated nature of the conduct ought to have of itself had the Tribunal give serious consideration to whether that required a finding of the more serious charge. However the Tribunal did not take that

step on Charge 7. In our view these various considerations result in our determining that Mr Winning's conduct under Charge 7 was worse than that here.

- [34] The several cases relied on did not support the submission that the conduct here ought to be considered in the more serious category.

Domestic Violence cases

- [35] The remaining principal submission is that the Tribunal should take a more serious view of the impugned conduct as the correspondence was forwarded in a case that concerned allegations of domestic violence and family law. We note that there was no breach of any criminal law by Mr Kirin.
- [36] There might well be a case where that consideration (that the area of law concerned related to allegations of domestic and family violence) would be of some relevance but here it is hard to see why it should. The four emails and then the response to the Commissioner's notice were all directed to a practitioner, not to the client or to the public more generally. It is difficult to see why the fact that the recipient, a solicitor, was involved in such a case cannot have carried any added concern than any other litigious matter. Nor would a competent practitioner have been unduly troubled by the rather empty threat in the response. Its significance is more in demonstrating Mr Kirin's lack of insight into his conduct.
- [37] We are fortified in that view by the approach of the Tribunal in *Legal Services Commissioner v PRF* [2023] QCAT 291. The disclosure there was potentially a criminal offence. As counsel for Mr Kirin summarised the facts of the case:

That matter involved a breach of the *Domestic and Family Violence Protection Act 2012* and the *Family Law Act 1975* by a practitioner publishing, to 20 of his personal contacts, details of domestic violence proceedings in which he appeared as advocate. The domestic violence proceedings had concerned his daughter and son-in-law. In determining the conduct amounted to unsatisfactory professional conduct rather than professional misconduct...

- [38] So far as the facts are relevant here we do not accept that we should take a different view of the characterisation of the conduct by reason that the area of law concerned related to allegations of domestic and family violence.

Conclusion – unsatisfactory professional conduct

- [39] Mr Kirin had a view that his comments here were expected in the practice in litigation involving commercial matters and the like, matters of which he had experience. The practitioners on this Tribunal do not share that experience, but whether true or not, his complete lack of prior experience in cases of allegations of domestic and family violence in this area of practice was admitted and evidently contributed to his insight into his discourteous, offensive and thoughtless comments.
- [40] In our view the conduct here should be characterised as unsatisfactory professional conduct.

Sanction

- [41] We have no doubt that a pecuniary penalty is appropriate. It is plainly as a reminder to the profession that the conduct here is unacceptable and useful to achieve the aim not of punishment but to securing "the interests of the protection of the community from unsuitable practitioners": *Legal Services Commissioner v Madden* [2009] 1 Qd

R 149. The Commissioner submits that personal and general deterrence are relevant to the protection of the public and is particularly relevant in sanctioning Mr Kirin. Aggravating features were that Mr Kirin acted with apparent impunity in continuing such conduct, and, following complaint, in making threats in seeking the complaint be withdrawn.

- [42] As mentioned, it is agreed that Mr Kirin should be subjected to being publicly reprimanded for his conduct. That of course is a significant sanction involving public shame and the probable impact on the practitioner's future practice. It is in that context that we consider the remaining issue of the suitable size of the pecuniary penalty.
- [43] Mr Kirin is 51 years old. He was admitted to the Supreme Court of Tasmania in 2004. He was a principal solicitor at the time of the conduct in question. He has worked in litigation, corporate finance, leveraged buy-outs, and international contractual fields. For 12 years Mr Kirin practised in Central and Eastern Europe and the United Kingdom, returning to Australia in 2018. Prior to the subject matter he had no experience in family law or domestic violence offences. He has now ceased practice at least temporarily. When in practice he enjoyed a very modest income.
- [44] Mr Kirin had an unblemished career over a period of 20 years and has no disciplinary history. He has not been the subject of any complaints or further disciplinary action since the conduct the subject of the charge.
- [45] Counsel submitted on Mr Kirin's behalf that from the start of these proceedings, Mr Kirin "has acknowledged the inappropriateness of his actions, and his regret for his conduct in sending the correspondence".
- [46] There were several further matters that were urged in mitigation. Each matter urged was appropriate and justified a more lenient approach:
 - (a) his co-operation in admitting the impugned conduct and not requiring witnesses to attend;
 - (b) this was the respondent's first domestic and family violence matter;
 - (c) the respondent's demonstrated insight and remorse, as outlined in his apology letter;
 - (d) the steps he has taken by way of further education and self-improvement;
 - (e) the correspondence was not sent directly to the aggrieved;
 - (f) the correspondence was not in contravention of any protection order and therefore did not amount to any criminal offence;
 - (g) the correspondence was private and was not disseminated to other person, practitioners or agencies.
- [47] Counsel for Mr Kirin submits that the fine sought here by the Commissioner of \$10,000 is more than six times that of any fine in comparable matters. That submission appears accurate. In *Winning, Cooper and Orchard*, discussed above, no pecuniary fine was imposed. In *SYG*, where the conduct was found to amount to professional misconduct, the practitioner was publicly reprimanded and ordered to pay a \$2,000 pecuniary penalty.
- [48] In *Legal Services Commissioner v Bussa* [2011] QCAT 388 a fine of \$10,000 was imposed but the conduct was egregious. Having been dealt with for an extraordinary

delay in carrying out a client's instructions, sufficient to justify a finding of professional misconduct and among other sanctions ordered to pay a fine of \$6,000 by the Chief Justice, he was again charged for professional misconduct in respect of another lengthy delay in carrying out his instructions for the two years immediately on following the decision of the Chief Justice. That case involved contumelious disregard of the order of the Chief Justice and of his client's rights and expectations over many years. It is not remotely similar to the case here.

- [49] The Commissioner's submission justifying the startlingly different approach to other cases is again the point that the area of practise here concerns allegations in domestic violence and family law. The submission reads:

Second, deterrence and protection of the public is particularly important considering the context of the correspondence involved domestic violence proceedings. The objects of the DFVPA include: maximising the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives (s 3(1)(a), *Domestic and Family Violence Protection Act 2012* (Qld)). These objects reflect the community's expectations of legal practitioners who act in such matters. Protection of the public is not confined to the protection of the public against further default by the Respondent. It extends also to the protection of the public against similar defaults by other solicitors and has, in this sense, the purpose of publicly marking the seriousness of what the Respondent has done (citing *Law Society of New South Wales v Foreman (No 2)* (1994) 34 NSWLR 408 at 441).

- [50] The citation of *Foreman* emphasises that there is nothing new in the point – that case was decided 30 years ago. The objects of the Act relied on appear to have only a remote connection to correspondence directed to a fellow practitioner. He has accepted the charge brought – that he sent correspondence “that was discourteous and that went beyond legitimate advocacy and was likely primarily designed to embarrass or frustrate another person”. There was no allegation here, nor evidence, that he has minimised “the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives”. For him to be treated on the basis that he has done so would require a distinct case brought and proved.
- [51] It is said that this is a growing problem within the profession. The Commissioner may be well positioned to make this submission, but no evidence was proffered to prove the point or to enable this Tribunal to judge how cogent the submission might be. As said earlier, these cases are very much fact dependent and we cannot judge this case against others to see what weight ought to be given, if any, to the submission.

Conclusion – sanction

- [52] The very recent decisions in *SYG* (where a fine of \$2000 was imposed, and our characterisation of the conduct here as amounting to a lesser infraction of the standards expected) and *PRF* (where a fine of \$1500 was imposed), provide guidance to the appropriate pecuniary penalty. There are differing personal circumstances, the most notable being in *PRF* that the practitioner's family there was involved and with impediments to communicate during the Covid period. Those factors resulted in a more lenient approach. Differing mitigating features are present here and perhaps not so cogent.
- [53] We fix the fine at \$2000.

Costs

[54] The Applicant seeks an order pursuant to section 462 of the LPA that the respondent pay the Applicant's costs of and incidental to this discipline application. That is the usual order unless it can be shown there are exceptional circumstances. There are not.

[55] The parties are agreed that Mr Kirin should pay the costs of the applicant.

Orders

[56] The orders are:

1. That the respondent's conduct the subject of Charge 1 amounts to unsatisfactory professional conduct.
2. That the respondent be publicly reprimanded;
3. That the respondent pay a penalty of \$2000 within 30 days;
4. That the respondent be required to undertake specialist domestic violence training approved by the Applicant; and
5. That 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.