

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v McCormick* [2025] QCAT
299

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

v

MATTHEW DAVID MCCORMICK
(respondent)

APPLICATION NO/S: OCR133-24

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 26 August 2025

HEARING DATE: 28 July 2025 on the papers

HEARD AT: Brisbane

DECISION OF: Justice Williams

Assisted by
Ms Petrina Macpherson, Practitioner Panel Member
Mr Keith Revell, Lay Panel Member

- ORDERS:
- 1. The Respondent's conduct identified in respect of each of Charges 1, 3, 4 and 5 in the discipline application is proved and is found to constitute unsatisfactory professional conduct.**
 - 2. The Respondent's conduct identified in respect of each of Charges 2 and 6 in the discipline application is proved and is found to constitute professional misconduct.**
 - 3. It is recommended that the name of the Respondent, Matthew David McCormick, be removed from the roll of legal practitioners in Queensland.**
 - 4. 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.**
 - 5. In respect of the claims for compensation orders, the Applicant and the complainants (Mr Bresler, Mr Shea and Mr Munschi) file and serve any further affidavits and submissions in light of the matters identified in these reasons within 21 days.**

CATCHWORDS:

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where the Respondent did not engage with the Tribunal and did not file any material – whether the Respondent had been given notice of the hearing under s 92 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) – whether the Tribunal could proceed to final determination

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – NEGLIGENCE AND DELAY – where the Respondent failed to notify his client of a visa refusal decision – where the Respondent failed to provide the visa refusal notice to his client – where the Respondent failed to undertake promised work prior to the expiration of an appeal period – where the Respondent failed to file his clients' residency application by the due date – where the Respondent failed to provide his clients' legal documents to them following multiple requests – where the Respondent failed to deliver legal services competently, diligently and as promptly as reasonably possible – whether the Respondent engaged in unsatisfactory professional conduct or professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where the Respondent failed to respond to two s 437 *Legal Profession Act 2007* (Qld) letters – where the Respondent subsequently failed to respond to two s 443(1) *Legal Profession Act 2007* (Qld) notices – where the Respondent subsequently failed to respond to two s 443(3) *Legal Profession Act 2007* (Qld) notices – whether the Respondent engaged in professional misconduct

Australian Solicitors Conduct Rules 2012, r 4.1.3, r 14.1, r 43

Legal Profession Act 2007 (Qld), s 418, s 419, s 420, s 437, s 443, s 452, s 456, s 462, s 464, s 465, s 466

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 32, s 92, s 93

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

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

Legal Services Commissioner v Beatty [2019] QCAT 45, cited
Legal Services Commissioner v Bradshaw [2009] QCA 126, cited
Legal Services Commissioner v Bussa [2005] LPT 5, considered
Legal Services Commissioner v Dingwall [217] QCAT 76, considered
Legal Services Commissioner v Jazayeri [2024] QCAT 106, considered
Legal Services Commissioner v Jiear [2012] QCAT 221, considered
Legal Services Commissioner v Lawrence [2018] QCAT 206, considered
Legal Services Commissioner v Laylee [2016] QCAT 237, cited
Legal Services Commissioner v Mackie [2010] QCAT 570, considered
Legal Services Commissioner v McHenry & Anor (No 2) [2020] QCAT 50, cited
Legal Services Commissioner v Ploetz [2024] QCAT 507, considered
Legal Services Commissioner v Reeve (No 3) [2016] QCAT 487, cited
Legal Services Commissioner v Smith [2011] QCAT 126, cited

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

Applicant: B Clements (sol) of Clements Fitzgerald Lawyers

Respondent: No appearance

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 contains six charges against the Respondent, Matthew David McCormick (**Respondent**), being:
- (a) four charges of failing to deliver legal services competently, diligently and as promptly as reasonably possible; and
 - (b) two charges of failing to comply with a written notice issued by the LSC under s 443(3) of the LP Act without reasonable excuse.
- [2] The Respondent did not participate in the proceedings commenced by the LSC and has not filed any material in response to the discipline application or the affidavit filed on behalf of the LSC.

- [3] The LSC submits that the evidence establishes the charges and the issues for consideration by the Tribunal are the characterisation of the conduct and the sanction.
- [4] The LSC contends that the Respondent engaged in unsatisfactory professional conduct in respect of Charges 1, 3, 4 and 5 and professional misconduct in respect of Charges 2 and 6.
- [5] In all the circumstances, the LSC contends that there should be an order recommending that the Respondent be removed from the local roll of legal practitioners.
- [6] Accordingly, the issues to be determined by the Tribunal are as follows:
 - (a) Is it appropriate to decide the discipline application on the papers and in the absence of the Respondent?
 - (b) Are Charges 1, 2, 3, 4, 5 and 6 proved?
 - (c) In respect of Charges 1, 2, 3, 4, 5 and 6, is the Respondent's conduct properly characterised as professional misconduct or unsatisfactory professional conduct?
 - (d) What are the appropriate orders pursuant to s 456 of the LP Act?
 - (e) What is the appropriate costs order?
- [7] If the Tribunal makes findings of unsatisfactory professional conduct and/or professional misconduct, there are applications for compensation orders to be considered.
- [8] Before dealing with each of the issues in turn, it is appropriate to consider the relevant statutory authorities.

Statutory provisions relevant to characterisation of unsatisfactory professional conduct or professional misconduct

- [9] In determining the discipline application:
 - (a) Pursuant to s 656C(1) of the LP Act, the Tribunal must be satisfied of the allegations against the Respondent on the balance of probabilities.
 - (b) Pursuant to s 656C(2) of the LP Act, the degree of satisfaction required as to whether proof has been established depends upon the gravity of the allegations in question and the consequences for the Respondent.
- [10] 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.”
- [11] In considering the conduct it is relevant that, pursuant to s 420(1)(a) of the LP Act, conduct consisting of a contravention of a relevant law,¹ which includes the *Australian Solicitors Conduct Rules 2012*² (ASCR),³ is conduct capable of constituting unsatisfactory professional conduct or professional misconduct.
- [12] The LSC alleges the Respondent contravened s 443(3) of the LP Act and the conduct is capable of being professional misconduct pursuant to s 443(3) of the LP Act.
- [13] Section 443 of the LP Act states:
- “(1) The entity carrying out an investigation as mentioned in section 435 or 436 may, for the investigation—
 - (a) require an Australian legal practitioner who is the subject of the investigation—
 - (i) to give the entity, in writing or personally, within a stated reasonable time a full explanation of the matter being investigated; or
 - (ii) to appear before the entity at a stated reasonable time and place; or
 - (iii) to produce to the entity within a stated reasonable time any document in the practitioner’s custody, possession or control that the practitioner is entitled at law to produce; or
 - (b) engage a person, whom the entity considers is qualified because the person has the necessary expertise or experience, to report on the reasonableness of an Australian legal practitioner’s bill of costs.
 - (2) Subject to subsection (6), the Australian legal practitioner must comply with a requirement under subsection (1)(a).
Maximum penalty—50 penalty units.
 - (3) If the practitioner fails to comply with the requirement, the entity may give the practitioner written notice that, if the failure continues for a further 14 days after the notice is given, the practitioner may be dealt with for professional misconduct.

¹ The term “relevant law” is defined in Schedule 2 of the LP Act to mean “this Act”. See also s 1 of the LP Act.

² The 2012 ASCR were in force at the time of the relevant conduct. The 2023 ASCR did not come into force until 27 September 2024.

³ Section 420(1)(a) of the LP Act includes a note that a contravention in relation to the LP Act, includes a contravention of a regulation or legal profession rules.

- (4) If notice under subsection (3) is given and the failure continues for the 14 day period—
 - (a) the Australian legal practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period; and
 - (b) the commissioner may apply to the tribunal for an order in relation to the charge that the practitioner has committed professional misconduct as stated in paragraph (a) as if the application were an application in relation to a complaint against the practitioner.
- (5) In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (3) and any enclosures with the notice are evidence of the matters in the notice and the enclosures.
- (6) An Australian legal practitioner may refuse to give the entity an explanation of a matter being investigated if—
 - (a) the practitioner satisfies the entity that to give the explanation would contravene, or invalidate, a policy for professional indemnity insurance held by the practitioner; or
 - (b) the explanation would tend to incriminate the practitioner.
- (7) A regulation may provide for how part 4.9 applies to an application to the tribunal for an order in relation to a charge that a legal practitioner has committed professional misconduct as stated in subsection (4)(a) and may be dealt with under that part as an application in relation to a complaint against the practitioner.”

[14] The LSC also relies on Rules 4.1.3 and 14.1 of the ASCR. Rule 43 of the ASCR is also relevant. Non-compliance with a relevant rule of the ASCR is capable of constituting unsatisfactory professional conduct or professional misconduct.

[15] Rule 4.1.3 of the ASCR states:

“A solicitor must also ... deliver legal services competently, diligently and as promptly as reasonably possible.”

[16] Rule 14.1 of the ASCR states:

“A solicitor with designated responsibility for a client’s matter, must ensure that, upon completion or termination of the law practice’s engagement:

14.1.1 the client or former client; or

14.1.2 another person authorised by the client or former client,

is given any client documents, (or if they are electronic documents copies of those documents), as soon as reasonably possible when requested to do so by the client, unless there is an effective lien.”

[17] Rule 43 of the ASCR states:

“43.1 Subject only to his or her duty to the client, a solicitor must be open and frank in his or her dealings with a regulatory authority.

43.2 A solicitor must respond within a reasonable time and in any event within 14 days (or such extended time as the regulatory authority may allow) to any requirement of the regulatory authority for comments or information in relation to the solicitor's conduct or professional behaviour in the course of the regulatory authority investigating conduct which may be unsatisfactory professional conduct or professional misconduct and in doing so the solicitor must furnish in writing a full and accurate account of his or her conduct in relation to the matter."⁴

[18] Further, in determining whether the relevant conduct amounts to unsatisfactory professional conduct or professional misconduct, the following authorities considering the general principles are of some assistance.

[19] In *Legal Services Commissioner v Laylee*, the Tribunal states the test required to establish unsatisfactory professional conduct as follows:

"The test required to determine whether conduct is unsatisfactory professional conduct is such that the relevant 'falling short' does not embrace all cases of error but must be sufficiently substantial. There must be an appreciable departure from the standard for the conduct to be unsatisfactory professional conduct. An isolated instance, not involving unethical conduct, and more in the nature of conduct which might give rise to an assertion of negligence, is less likely to amount to unsatisfactory professional conduct. Serious, or repeated instances, are more likely to amount to unsatisfactory professional conduct or professional misconduct."⁵

[20] In *Legal Services Commissioner v Bradshaw*, McMurdo P considered what must be demonstrated by the applicant to establish whether conduct falls within the statutory definition of unsatisfactory professional conduct and stated as follows:

"In establishing whether conduct is unsatisfactory professional conduct, the commissioner is not required to prove what a member of the public expects of a reasonably competent Australian legal practitioner. This is not something easily capable of direct proof. But in any case, s 418 refers to what 'a member of the public is entitled to expect of a reasonably competent Australian legal practitioner'. This is a standard to be determined by the tribunal after considering all the relevant circumstances pertaining in each case."⁶

[21] The test for professional misconduct was described by Thomas J in *Adamson v Queensland Law Society Incorporated* as follows:

"The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency."⁷

[22] Turning to consider the identified issues in turn.

⁴ Rule 43.1 is relied on in the letters to the Respondent at Exhibit 26 to the Affidavit of Thea Marilyn Johnson sworn 6 November 2022 (page 147 of the Hearing Book).

⁵ [2016] QCAT 237, at [43] per Thomas J.

⁶ [2009] QCA 126, at [54].

⁷ (1990) 1 Qd R 498, at 507.

Is it appropriate to decide the discipline application on the papers and in the absence of the Respondent?

- [23] The discipline application was listed on 28 July 2025 to be determined by the Tribunal on the papers.
- [24] Section 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) provides as follows:
- “(2) The tribunal may, if appropriate, conduct all or part of a proceeding entirely on the basis of documents, without the parties, their representatives or witnesses appearing at a hearing.”
- [25] At a directions hearing on 25 March 2025 conducted by President Mellifont, the LSC and the three complainants seeking compensation consented to the discipline application and associated compensation applications being heard and determined on the papers. President Mellifont ordered that the matter be listed to be heard and determined on the papers on 28 July 2025.
- [26] Accordingly, the parties and the complainants were notified by emails on 10 and 15 July 2025 from the Associate to President Mellifont that the discipline application and associated compensation applications had been listed to be heard and determined on the papers on 28 July 2025.
- [27] The Respondent was also sent a text message on 16 July 2025 informing him that the discipline application and associated compensation applications had been listed to be heard and determined on the papers on 28 July 2025.
- [28] In all of the circumstances, the Tribunal is satisfied that it is appropriate to hear and determine the discipline application and associated applications for compensation on the papers.
- [29] Section 93 of the QCAT Act deals with deciding in the absence of a person and states as follows:
- “(1) This section applies if –
- (a) a person has not attended a hearing and the tribunal is satisfied the person has been given notice of the hearing under section 92; or
- (b) the tribunal is satisfied a person can not be found after reasonable inquiries have been made.
- (2) The tribunal may hear and decide the matter in the person’s absence.
- (3) This section applies even if the absent person is a party to the proceeding.”
- [30] There is evidence on the Tribunal file relevant to the consideration of this issue.
- [31] The Respondent and the LSC filed a joint application for a consent order on 9 September 2024 to progress the discipline application to a final hearing. That order was made by the Tribunal.
- [32] Subsequently to that, the Respondent:
- (a) has not met any of the filing deadlines, nor engaged with the Tribunal;

- (b) has not filed a response, any material or submissions; and
 - (c) has not appeared at directions hearings held on 5 February 2025 and 25 March 2025.
- [33] Notices were sent to the Respondent informing him of directions hearings by email from the Registry on 21 January 2025 and 12 March 2025.
- [34] Further, during the directions hearing on 25 March 2025 the Tribunal attempted to contact the Respondent via his mobile telephone number but there was no answer. President Mellifont left a voicemail message for the Respondent.
- [35] The Respondent did telephone President Mellifont's chambers later that day and left a voicemail message that he was not aware of the directions hearing and asked for a return call on a specified mobile telephone number.
- [36] The Associate to President Mellifont called the Respondent on the specified mobile telephone number on 25 March 2025 and 26 March 2025. On both occasions there was no answer and the Associate left a voicemail message.
- [37] The following notifications were given to the Respondent:
- (a) An email was sent on 10 July 2025 to the parties and the complainants informing them that, pursuant to the President's order of 25 March 2025, the matter had been listed to be heard and determined on the papers on 28 July 2025.
 - (b) The 10 July 2025 email informed the Respondent of the dates and times the Tribunal had tried to contact him on the specified mobile telephone number. The Respondent was also informed that the matter was listed before Williams J to be determined on the papers on 28 July 2025 and that the matter may proceed to final determination without his submissions unless the Respondent contacted the Tribunal.
 - (c) An email was sent on 15 July 2025 to the parties and the complainants. The email specifically informed the Respondent that the matter was listed on 28 July 2025 and may proceed to final determination without his submissions unless he contacted the Tribunal.
 - (d) On 16 July 2025, the Deputy Principal Registrar sent the Respondent a text message with a screen shot of the 15 July 2025 email correspondence. The text message informed the Respondent that the matter was listed for final determination on 28 July 2025 and may proceed to final determination without his submissions if he did not contact the Tribunal. The text message provided contact details for the Registry. The text message was sent to the specified mobile telephone number that the Respondent provided by voicemail message on 25 March 2025.
- [38] In all of these circumstances, the Tribunal is satisfied that the Respondent has been given notice of the hearing under section 92 of the QCAT Act.⁸

⁸ Section 92 requires notice of the time and place for the hearing to be given to each party and other specified persons.

[39] Further, there is no evidence that the Respondent contacted the Tribunal Registry, the Deputy Principal Registrar, the Associate to President Mellifont, or the Associate to Williams J about the listing for hearing or the hearing.

[40] Further, in all of these circumstances the Tribunal is satisfied that the Tribunal may proceed to hear and decide the discipline application and associated applications for compensation in the absence of the Respondent, and in the absence of any material or submissions having been received from or on behalf of the Respondent.

Are Charges 1, 2, 3, 4, 5 and 6 proved?

[41] The discipline application sets out the six charges, and the LSC has filed affidavit evidence in support of the discipline application.

[42] The charges in the discipline application are as follows:

(a) Charge 1 – Bresler file:

“Between 12 July 2021 and 16 August 2021, in acting for a client in relation to a visa application, the Respondent failed to deliver legal services competently, diligently and as promptly as reasonably possible.”

(b) Charge 2 – Bresler Section 443(3) Notice:

“Between 26 April 2023 and 10 May 2023 the Respondent, without reasonable excuse, failed to comply with a written notice issued by the [LSC] under section 443(3) of the [LP Act]”

(c) Charge 3 – Munschi & Shea Application:

“Between 12 January 2021 and 7 May 2021 in acting for clients in relation to their permanent residency applications, the Respondent failed to deliver legal services competently, diligently and as promptly as reasonably possible.”

(d) Charge 4 – Munschi & Shea Health Examination:

“Between 5 May 2021 and 3 June 2021, the Respondent, in failing to provide correspondence to his Clients in a timely manner failed to deliver services competently, diligently and as promptly as reasonably possible.”

(e) Charge 5 – Munschi & Shea File:

“Between 24 September 2021 and 15 July 2022, the Respondent failed to provide a copy of the Clients’ file to the Clients and in doing so failed to deliver legal services competently, diligently and as promptly as reasonably possible.”

(f) Charge 6 – Munschi & Shea Section 443(3) Notice:

“Between 23 February 2022 and 9 March 2022 the Respondent, without reasonable excuse, failed to comply with a written notice issued by the [LSC] under section 443(3) of the [LP Act].”

[43] In respect of all charges the LSC contends that the Respondent:

(a) was at all material times an Australian Lawyer as defined by s 6(1) of the LP Act;

- (b) held a principal practicing certificate as the incorporated legal practitioner director of McCormicks Law (**ML**) from 8 June 2012 to 15 November 2019;
- (c) held an employee practicing certificate at ML from 19 December 2019 until 16 June 2021;
- (d) held an employee practicing certificate at Ashlar Legal from 17 June 2021 to 30 June 2022, and 2 July 2021 to 18 July 2022.

[44] In respect of Charge 1, the particulars of the charge as follows:

- (a) In or around December 2019, the Respondent and ML were engaged by Mr Oren Bresler to apply for a Distinguished Talent Visa Subclass 858 (**DTV Application**).
- (b) On 19 December 2019, the Respondent filed the DTV Application with the Department of Home Affairs (**Department**).
- (c) On 12 July 2021, the Respondent was notified by the Department that the DTV Application had been rejected (**Refusal Decision**).
- (d) The Refusal Decision provided that:
 - (i) Mr Bresler's bridging visa was to expire on 16 August 2021; and
 - (ii) if he wished to appeal the Refusal Decision, Mr Bresler was required to lodge the appeal by 2 August 2021.
- (e) On 28 July 2021:
 - (i) Mr Bresler discovered that his bridging visa was to expire on 16 August 2021.
 - (ii) Mr Bresler sent a text message to the Respondent asking why his bridging visa was expiring.
 - (iii) The Respondent sent a text message to Mr Bresler advising him that they would speak about it that afternoon.
 - (iv) The Respondent did not contact Mr Bresler that afternoon.
- (f) On 29 July 2021, Mr Bresler contacted the Department and was told about the existence of the Refusal Decision but not the contents of the Refusal Decision.
- (g) Later that day, on 29 July 2021, Mr Bresler had a telephone call with the Respondent, during which the Respondent advised Mr Bresler:
 - (i) of the Refusal Decision; and
 - (ii) that he would lodge an appeal prior to the expiration of Mr Bresler's bridging visa (**Required Work**).
- (h) Between 29 July 2021 and 6 August 2021, Mr Bresler made multiple requests for the Respondent in relation to the Required Work but did not receive a response from the Respondent.
- (i) On 6 August 2021, Mr Bresler complained to the Legal Services Commission (**Commission**) about the Respondent.

- (j) Mr Bresler requested a copy of the Refusal Decision from the Respondent but did not receive a copy of the Refusal Decision from the Respondent.
- (k) Mr Bresler ultimately received a copy of the Refusal Decision on 9 August 2021, seven days after the time limit for the appeal, after persistent requests to the Department.
- (l) The Respondent:
 - (i) in failing to notify Mr Bresler of the Refusal Notice;
 - (ii) in failing to provide Mr Bresler with a copy of the Refusal Notice upon request by Mr Bresler; and
 - (iii) in failing to undertake the promised Required Work prior to the expiration of the appeal period,
 failed to deliver legal services competently, diligently and as promptly as reasonably possible.

[45] In respect of Charge 2, the particulars of the charge are as follows:

- (a) On 20 February 2023, the Commission wrote to the Respondent in relation to Mr Bresler's complaint pursuant to s 437 of the LP Act, requesting a response by 6 March 2023 (**s 437 Letter**).
- (b) The Commission did not receive a response to the s 437 Letter.
- (c) On 9 March 2023, the Commission issued a notice pursuant to s 443(1) of the LP Act, which attached the s 437 Letter, and required a response by 23 March 2023 (**s 443(1) Notice**).
- (d) The Commission did not receive a response to the s 443(1) Notice by 23 March 2023.
- (e) On 28 March 2023, the Respondent requested an extension to respond to the Commission.
- (f) The Respondent was granted an extension to respond to the s 443(1) Notice until 11 April 2023.
- (g) The Respondent did not provide a response to the s 443(1) Notice.
- (h) On 20 April 2023, the Commission sent an email asking for a response to the s 443(1) Notice by 21 April 2023.
- (i) The Respondent again did not provide a response to the s 443(1) Notice.
- (j) On 26 April 2023, the Commission issued a notice pursuant to s 443(3) of the LP Act which attached the s 437 Letter and the s 443(1) Notice and requested a response by 10 May 2023 (**s 443(3) Notice**).
- (k) The Respondent did not provide a response to the s 443(3) Notice by 10 May 2023 or at all.

[46] In respect of Charge 3, the relevant particulars are as follows:

- (a) On an unknown date in 2020, the Respondent and ML were engaged by Mr Stephen Shea and Mr Jonathan Munschi (**Clients**) to make an application for permanent residency on their behalf (**Residency Application**).
- (b) On 12 January 2021, ML notified the Clients that they had received nomination approval from Mr Munschi's employer and were now in a position to make the Residency Application.
- (c) Mr Munschi's work-sponsored visa was to expire on 1 March 2021 and the application for permanent residency was required to be made by 1 March 2021.
- (d) On 25 February 2021, Ms Ella Doyle of ML sent an email to the Clients advising them that the Residency Application was finalised and would be lodged on 26 February 2021.
- (e) At 5.16 pm on 1 March 2021, ML requested the Clients' bank details for the lodgement of the Residency Application fee.
- (f) At 9.03 pm on 1 March 2021, the Respondent attempted to lodge the Residency Application but was unable to do so as a result of the Clients' bank not authorising the payment.
- (g) The Respondent made an application for a bridging visa for the Clients on 2 March 2021 which was granted on or around 8 March 2021.
- (h) As a result of the Respondent's delay in making the Residency Application, the Clients were without a visa between 2 March and 8 March 2021.
- (i) The Residency Application was not actually made until 5 May 2021.
- (j) The Respondent, in failing to file the Residency Application on behalf of his Clients by the due date, failed to deliver legal services competently, diligently and as promptly as reasonably possible.

[47] In respect of Charge 4, the particulars of the charge are as follows:

- (a) On 5 May 2021, the Respondent received a letter from the Department requesting that his Clients obtain a health examination.
- (b) On 6 May 2021, the Clients asked the Respondent if they could request the HAP ID and permission letter for the medical assessment.
- (c) On 3 June 2021, the Clients again asked the Respondent if they could request the HAP ID and permission letter for the medical assessment.
- (d) On 3 June 2021, the Respondent provided the letter from the Department dated 5 May 2021.⁹

[48] In respect of Charge 5, the particulars of the charge are as follows:

- (a) On 24 September 2021, the Clients notified the Respondent that they no longer wished to engage the Respondent for the Residency Application and further requested that the Respondent send:

⁹ From the charge it can be understood that the Respondent, in failing to provide the correspondence to his Clients in a timely manner, failed to deliver legal services competently, diligently and as promptly as reasonably possible.

- “a. all information and documentation regarding [their] case alongside with all correspondence with the Department of Immigration regarding [their] case within 7 days; and
- b. the contact details of the case officer currently in charge of [their] case at the Department of Immigration.”
- (b) On 1 October 2021, the Clients again emailed the Respondent to request their file.
- (c) On 5 October 2021, the Clients again emailed the Respondent to request their file.
- (d) On 11 October 2021, the Clients again emailed the Respondent to request their file.
- (e) As of at least 15 July 2022, the Clients had not received a full copy of their file from the Respondent.¹⁰

[49] In respect of Charge 6, the particulars of the charge are as follows:

- (a) On 14 December 2021, the Commission wrote to the Respondent in relation to the Clients’ complaint pursuant to s 437 of the LP Act, requesting a response by 12 January 2022 (**Second s 437 Letter**).
- (b) On 20 January 2022, the Respondent contacted the Commission and advised he would respond to the Second s 437 Letter by 28 January 2022.
- (c) On 21 January 2022, the Commission issued a Notice pursuant to s 443(1) of the LP Act which attached the Second s 437 Letter and required a response by 4 February 2022 (**Second s 443(1) Notice**).
- (d) The Commission did not receive a response to the Second s 443(1) Notice.
- (e) On 23 February 2022, the Commission issued a notice pursuant to s 443(3) of the LP Act which attached the Second s 437 Letter and the Second s 443(1) Notice and requested a response by 9 March 2022 (**Second s 443(3) Notice**).
- (f) The Respondent did not respond to the Second s 443(3) Notice by 9 March 2022.
- (g) On 31 March 2022, the Respondent contacted the Commission and stated that he:
 - (i) had located the Second s 443(3) Notice after doing a specific search, but had not seen it before then; and
 - (ii) would provide a response to the Second s 443(3) Notice by 6 April 2022.
- (h) On 6 April 2022, the Respondent sought a further extension of the Second s 443(3) Notice until 11 April 2022, which was granted by the Commission.
- (i) On 11 April 2022, the Respondent provided a Dropbox link to the Clients’ file, but did not provide a response to the Second s 437 Letter or the Second s 443(3) Notice.

¹⁰ From the charge it can be understood that the Respondent, in failing to provide a copy of the Clients’ file to the Clients, failed to deliver legal services competently, diligently and as promptly as reasonably possible.

- (j) The Respondent to date has not provided the response to the Second s 437 Letter or the Second s 443(3) Notice.

[50] On the basis of the affidavit of Thea Marilyn Johnson sworn on 6 November 2024, the Tribunal is satisfied that the relevant facts constituting each of Charges 1, 2, 3, 4, 5 and 6 have been established on the balance of probabilities, taking into account the gravity of the allegations in question and the consequences for the Respondent.

In respect of Charges 1, 2, 3, 4, 5 and 6 is the Respondent's conduct properly characterised as professional misconduct or unsatisfactory professional conduct?

[51] It is convenient to consider the characterisation of the charges in groups, namely:

- (a) Charge 1 relating to Mr Bresler.
- (b) Charges 3, 4 and 5 relating to Mr Munschi and Mr Shea.
- (c) Charges 2 and 6 relating to non-compliance with the s 443(3) Notice and the Second s 443(3) Notice.

Charge 1

[52] Relevant factors in respect of the Respondent's conduct the subject of Charge 1 include:

- (a) The Respondent failed to notify his client that his visa was about to expire, notwithstanding the serious consequences that the Refusal Decision may have on his client.
- (b) The Refusal Decision was received on 12 July 2021 and where the visa was to expire approximately one month later on 16 August 2021 it was critical that the client knew about the Refusal Decision.
- (c) It was also crucial that the Respondent obtain instructions about the filing of an appeal, which was due only 3 weeks later on 2 August 2021.
- (d) The client discovered by chance that his visa was to expire. This occurred 16 days after the Respondent was notified and 5 days prior to the expiration of the appeal period.
- (e) Following this, the Respondent advised the client that he would undertake the Required Work prior to 2 August 2021 but failed to do so. This was despite repeated contact by the client.
- (f) The Respondent continued to fail to provide the Refusal Decision to the client, which forced the client to make repeated attempts to obtain a copy from the Department directly.
- (g) The client ultimately received a copy from the Department on 9 August 2021 and then filed an appeal himself on 11 August 2021.

[53] The LSC relies on a number of authorities in respect of delay.

[54] In *Legal Services Commissioner v Smith*, Wilson J stated :

“the question whether or not conduct in a particular case amounts to unsatisfactory professional conduct, or professional misconduct, is generally a

matter of degree and each case will be determined on its own facts. Gross neglect and delay, particularly if it is part of a pattern, can attract a finding of professional misconduct.”¹¹

[55] Further, in:

- (a) *Legal Services Commissioner v Bussa*, neglect of a personal injuries claim for 2 years caused the claim to be statute barred and resulted in a finding of professional misconduct.¹²
- (b) *Legal Services Commissioner v Lawrence*, a failure to file a defence and to appear at an enforcement hearing in a personal injuries matter in the Magistrates Court, despite representations otherwise to the client, resulted in a finding of professional misconduct.¹³
- (c) *Legal Services Commissioner v Dingwall*, delay and failure to advance the matters of three clients, with delays between 5 to 11 months, resulted in a finding of unsatisfactory professional conduct.¹⁴ The delays did not result in the expiration of limitation periods and the conduct was found to be not substantial or consistent.
- (d) *Legal Services Commissioner v Ploetz*, a failure to progress a family law matter for approximately 8 months resulted in a finding of unsatisfactory professional conduct.¹⁵ The delay was from funding to when the file was transferred to another firm.

[56] It is submitted that the current delay was significantly shorter than in the case of *Bussa*. Additionally, the conduct is of a lower level than that in *Lawrence*, which involved a failure to act at all. However, it is relevant that in the current case the Respondent conducted a practice specialising in this type of work. In particular, the Respondent should have been aware of the appeal period but still failed to notify his client of the Refusal Decision and failed to undertake the Required Work.

[57] Further, no explanation or excuse has been offered by the Respondent in respect of why he did not at least forward the Refusal Decision to the client.

[58] The LSC acknowledges that the Respondent’s conduct does not involve dishonesty.

[59] The Respondent’s conduct is a breach of Rule 4.1.3 of the ASCR.

[60] In all of the circumstances, the LSC contends that the Tribunal should find that the Respondent’s conduct in respect of Charge 1 amounts to unsatisfactory professional conduct.

Charges 3, 4 and 5

[61] Similar to Charge 1, Charges 3, 4 and 5 involve failures by the Respondent in breach of Rule 4.1.3 of the ASCR.

Charge 3

¹¹ [2011] QCAT 126, at [10].

¹² [2005] LPT 5.

¹³ [2018] QCAT 206.

¹⁴ [2017] QCAT 76.

¹⁵ [2024] QCAT 507.

[62] Relevant factors in respect of the Respondent's conduct the subject of Charge 3 include:

- (a) The Clients were in regular contact with ML and the Respondent about the Residency Application between 11 January 2021 and the due date of 1 March 2021.
- (b) The Clients had provided the Respondent with all required information and instructions by 27 February 2021, at the latest.
- (c) It was not until 9.03 pm on 1 March 2021 that the Respondent attempted to lodge the Residency Application.
- (d) The Respondent was paying using the Clients' account and was unable to obtain the payment authorisation code at that time.
- (e) The possible requirement of an authorisation code had been earlier identified by someone at ML.
- (f) As a consequence, the Residency Application lodgement date was missed.
- (g) As a consequence of missing the lodgement date, the Clients were without a visa between 2 March 2021 and 8 March 2021 and were therefore unlawful non-citizens overstaying their visa.
- (h) The Clients were unable to work and would have been unable to travel during that period.
- (i) It is acknowledged that the Respondent then took immediate steps to rectify the issue.

[63] The LSC does acknowledge that the Respondent did attempt to lodge the Residency Application on the due date and also took immediate steps to rectify the issue. This is in contrast to the cases of *Bussa* and *Lawrence* discussed above.

[64] Further, it is acknowledged that the Respondent made no false representation to the Clients.

[65] In all of the circumstances, the LSC contends that the Tribunal should find that the Respondent's conduct in respect of Charge 3 amounts to unsatisfactory professional conduct.

Charge 4

[66] Relevant factors in respect of the Respondent's conduct the subject of Charge 4 include:

- (a) The Respondent failed to deliver important correspondence to the Clients upon request and without reasonable excuse.
- (b) Multiple requests were made for the Respondent to provide the document.
- (c) An aggravating feature is that the Clients requested the document the day after the Respondent received it, but did not receive it until a month later following further requests.

[67] The LSC acknowledges that the conduct in respect of Charge 4 is at the lower end of the offending spectrum.

- [68] In all of the circumstances, the LSC contends that the Tribunal should find that the Respondent's conduct in respect of Charge 4 amounts to unsatisfactory professional conduct.

Charge 5

- [69] Relevant factors in respect of the Respondent's conduct the subject of Charge 5 include:
- (a) After the Clients terminated their retainer with the Respondent, the Clients requested their documents.
 - (b) The Respondent failed to provide the documents to the Clients despite repeated requests.
 - (c) In failing to provide the Clients' documents, the Respondent was in breach of Rule 14.1 of the ASCR which required the Respondent to deliver client documents as soon as reasonably possible when requested to do so by the client.

- [70] The LSC acknowledges that the conduct in respect of Charge 5 is at the lower end of the offending spectrum.

- [71] In all of the circumstances, the LSC contends that the Tribunal should find that the Respondent's conduct in respect of Charge 5 amounts to unsatisfactory professional conduct.

Charges 2 and 6

- [72] Both Charges 2 and 6 involve the Respondent's repeated and continual non-compliance with notices issued pursuant to s 443(3) of the LP Act.

- [73] In respect of the s 443(1) Notice and the Second s 443(3) Notice, the Respondent sought and obtained an extension of time to respond. In both instances the Respondent proposed the dates to the Commission for the responses but still failed to provide any response.

- [74] Accordingly, the Respondent was aware of the s 443(1) Notice and the Second s 443(3) Notice and failed to respond appropriately or at all.

- [75] The LSC relies upon s 443(4) of the LP Act that provides that a practitioner who fails to respond to a notice under s 443(3) of the LP Act within 14 days "is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying".

- [76] Further, the Respondent has not offered any excuse for the non-compliance, nor a reasonable excuse for the non-compliance, to either the LSC or the Tribunal.

- [77] The LSC relies upon the following authorities:

- (a) *Legal Services Commissioner v Jazayeri* in respect of a single charge of failing to respond to a notice under s 443(3) of the LP Act.¹⁶ The Tribunal found professional misconduct and stated:

"[21] The finding of professional misconduct is consistent with the terms of the [LP Act], and particularly section 443(4), which provides that, in the

¹⁶ [2024] QCAT 106.

absence of a reasonable excuse for not complying with the requirement under the notices provided, pursuant to section 443, the conduct is taken to be professional misconduct. The intent of s 443 [LP Act] is consistent with the importance of a legal practitioner recognising his or her obligations under the [LP Act] and expectation that he or she will comply with the law. In *Legal Services Commissioner v Bui* the Tribunal stated:¹⁷

‘It is a serious matter for a practitioner to ignore a notice given under s 443 for the provision of information. It exhibits a fundamental lack of appreciation of the responsibilities which practitioners owe to the profession in general and evinces a lack of understanding of the role of a regulator in ensuring probity within the ranks of the profession. ...’

[22] ...Given the respondent’s disregard of his professional obligations under the [LP Act] to respond to such notices on a number of occasions with which he was obliged to comply under s 443(2) [LP Act], and the terms of s 443(4) [LP Act], his conduct is properly characterised as professional misconduct. It involved conduct falling short to a substantial degree of the standard of professional conduct observed or approved by the members of the profession of good repute and competency and that characterisation is provided for under the terms of s 443(4).¹⁸”

- (b) *Legal Services Commissioner v Beatty* in respect of the failure to respond to four notices issues under s 443(3) of the LP Act.¹⁹ The Tribunal found professional misconduct and stated:

“It is trite to note that a fundamental incident of the privilege of legal practice is an obligation to obey the law. That includes the statutory requirements of the legislation by virtue of which a practitioner has the rights and privileges of practice, in this case the [LP Act]. By her repeated conduct in failing to respond to the applicant’s notices under s 443, the respondent displayed what can only be described as a profound indifference to her legal obligations under the [LP Act].”²⁰

- [78] In all of the circumstances, the LSC contends that the Tribunal should find that the Respondent’s conduct in respect of Charges 2 and 6 amounts to professional misconduct, consistent with s 443(3) of the LP Act.

Characterisation

- [79] In all of the circumstances, the Respondent’s conduct in respect of each of Charges 1, 3, 4 and 5 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.
- [80] Accordingly, the Tribunal finds that the Respondent’s conduct in respect of each of Charges 1, 3, 4 and 5 is properly characterised as unsatisfactory professional conduct.
- [81] In all of the circumstances, the Respondent’s conduct in respect of each of Charges 2 and 6:

¹⁷ [2018] QCAT 424.

¹⁸ See *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498 at 507; LP Act s 419.

¹⁹ [2019] QCAT 45.

²⁰ At [14].

- (a) falls short of the standard of professional conduct observed or approved by members of the profession of good repute and competency to a substantial degree;
- (b) falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner and is a substantial failure within s 419 of the LP Act; and
- (c) is governed by s 443(4) of the LP Act where the Respondent has not provided a reasonable excuse for the non-compliance with the notices.

[82] Accordingly, the Tribunal finds that the Respondent's conduct respect of each of Charges 2 and 6 is properly characterised as professional misconduct.

What are the appropriate orders pursuant to s 456 of the LP Act?

[83] Having made the findings as to professional misconduct and unsatisfactory professional conduct, the discretion in s 456 of the LP Act arises.

[84] 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.”
- [85] The discretion to make any order the Tribunal thinks fit is a wide discretion and is exercised primarily in the protection of the public.²¹ Principles of personal and general deterrence are also relevant.²²
- [86] A further purpose of disciplinary orders is to maintain and enforce proper standards in the profession and to deter other practitioners from engaging in similar conduct to protect the public by enforcing standards upon which the public can rely.²³
- [87] The LSC contends that the appropriate sanction is an order recommending that the Respondent’s name be removed from the local roll pursuant to s 456(2)(a) of the LP Act.
- [88] The Court of Appeal decision in *Attorney-General v Legal Services Commissioner; Legal Services Commissioner v Shand* is of considerable assistance.²⁴ In that case, McMurdo JA²⁵ stated:
- “[54] However the removal of the name of an unfit practitioner from the Roll serves the interests of the public in more extensive ways. In *Attorney-General v Bax*,²⁶ Pincus JA said that the remedies of suspension or striking off are for the protection of the public and of the profession’s standing and that further, there is also a deterrent element. And in *De Pardo v Legal Practitioners Complaints Committee*,²⁷ French J (as he then was and with whom the other Members of the Full Federal Court agreed) said that:
- “[The protection of the public] extends beyond protection against further default by the particular practitioner to protection against similar defaults by other practitioners.”
- [55] The reference by Pincus JA in *Bax* to the protection of the profession’s standing is important. The community needs to have confidence that only fit and proper persons are able to practise as lawyers and if that standing, and thereby that confidence, is diminished, the effectiveness of the legal profession, in the service of clients, the courts, and the public is

²¹ *Legal Services Commissioner v Madden* [2009] 1 Qd R 149, 186 [122].

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

²³ *Legal Services Commissioner v Wrightway Legal* [2015] QCAT 174 at [28].

²⁴ [2018] QCA 66.

²⁵ With whom Morrison JA and Brown J (as her Honour then was) agreed.

²⁶ [1999] 2 Qd R 9 at 22.

²⁷ (2000) 170 ALR 709 at 724 [42].

prejudiced. The Court's Roll of practitioners is an endorsement of the fitness of those who are enrolled.

[56] ... If he was not a fit and proper person to engage in legal practice, all of the purposes which I have described required that his name be removed from the roll, absent something which indicated that he was likely to become a person who was fit to be a legal practitioner."

[89] In all of the current circumstances, the LSC contends that the Respondent's conduct warrants his name being removed from the roll and there is no material before the Tribunal that indicates that the Respondent is likely to become a fit and proper person to be a legal practitioner.

[90] The LSC relies on features of the Respondent's conduct including:

- (a) On two client matters the Respondent failed to act competently, diligently and promptly for his clients.
- (b) The conduct was repeated and persistent.
- (c) The Respondent failed to deliver client documents upon request, failed to comply with deadlines, and failed to correspond with his clients.
- (d) The Respondent exhibited a pattern of "burying his head in the sand" in his dealings with the Commission and later the Tribunal.
- (e) The Respondent exhibited a continuing lack of insight into the offending conduct.

[91] In *Legal Services Commissioner v Jazayeri* the Tribunal was dealing with facts similar to the current matter where the respondent did not respond to a notice pursuant to s 443(3) of the LP Act and also failed to appear and participate in the proceeding before the Tribunal.²⁸ Brown J observed:

"[28] The fact is that the Tribunal has nothing before it which indicates any explanation for the respondent's conduct which demonstrates professional indifference and disregard of his obligations under the [LP Act]. Compliance with legal obligations by a legal practitioner is a fundamental requirement of being a legal practitioner and one of the incidents of the privilege of legal practice. ...

[29] In the present case, there is only one charge that has been laid against the respondent. However, the only sensible inference that can be made from the respondent's lack of engagement is that he is indifferent to his status as a member of the legal profession and the importance of his compliance with the provisions of the [LP Act]. That has been further entrenched by the conduct of the respondent in failing to properly engage with these disciplinary proceedings. ...

[30] The respondent's conduct is, as was described by the Tribunal in *Legal Services Commissioner v Beatty*,²⁹ consistent with profound indifference to his legal obligations.

²⁸ [2024] QCAT 106.

²⁹ [2019] QCAT 45.

[31] The authorities of *Legal Services Commission v Beatty*³⁰ and *Legal Services Commissioner v Mouritz*³¹ confirm that public confidence and the protection of the public requires that people who hold the position of a legal practitioner are people who understand and abide by the obligations that are imposed upon them by the law.”

- [92] Her Honour’s observations equally apply to the consideration of the current conduct and circumstances.
- [93] The Respondent’s conduct is more serious than in *Jazayeri* in that there are two charges of non-compliance with notices under s 443(3) of the LP Act, together with the four charges characterised as unsatisfactory professional conduct for failing to deliver legal services competently, diligently, and as promptly as reasonably possible.
- [94] Similarly, the Respondent has failed to engage with the Commission and the Tribunal, and a reasonable inference is that the Respondent is indifferent to his legal obligations and to his status as a member of the legal profession.
- [95] In all of the circumstances:
- (a) The Respondent has shown that he is permanently unfit for legal practice.
 - (b) There is no material before the Tribunal which indicates that the Respondent is likely to become a person who is fit to be a legal practitioner.
 - (c) The protection of the public and general deterrence requires that the Respondent’s name be removed from the roll of legal practitioners.
- [96] Accordingly, the Tribunal is satisfied that it is appropriate to recommend that the name of the Respondent, Matthew David McCormick, be removed from the roll of legal practitioners in Queensland.

What is the appropriate costs order?

- [97] Section 462(1) of the LP Act states:
- “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.”
- [98] No exceptional circumstances are identified that would justify any departure from an order in accordance with s 462(1) of the LP Act.
- [99] Accordingly, the Tribunal is satisfied that it is appropriate to order that the Respondent pay the LSC’s costs of and incidental to the disciplinary application, to be assessed.
- [100] For the purpose of s 462(5)(b) of the LP Act, it is appropriate that costs be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.

³⁰ [2019] QCAT 45 at [14].

³¹ [2023] QCAT 325 at [227].

Compensation claims

- [101] It is now necessary to consider the claims for compensation made by Mr Oren Bresler, Mr Stephen Shea and Mr Jonathan Munschi pursuant to the notices of intention to seek compensation orders.
- [102] Mr Bresler, Mr Shea and Mr Munschi seek compensation orders upon a finding being made that the respondent's conduct constitutes unsatisfactory professional conduct and/or professional misconduct.
- [103] The LP Act contains a number of provisions relevant to a claim for compensation, including ss 464, 465 and 466(3).
- [104] 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.”

- [105] Here, findings of unsatisfactory professional conduct and professional misconduct have been made in respect of the Respondent's conduct towards his clients, Mr Bresler, Mr Shea and Mr Munschi.

- [106] 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.”

[107] 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.”

[108] In respect of the claim by Mr Bresler, the claim includes:

- (a) The fees paid to ML totalling \$10,912, constituted by:
 - (i) \$2,332;³²
 - (ii) \$1,210;³³
 - (iii) \$2,750;³⁴
 - (iv) \$4,620.³⁵
- (b) The amount paid to the Department in respect of the Residency Application of \$4,164.25.
- (c) Unspecified damages.

[109] In respect of the claim by Mr Shea and Mr Munschi, the total amount claimed is \$41,554.03, constituted by:

- (a) Loss of salary and superannuation for 6 days in the amount of \$4,442.31.
- (b) Reimbursement for medical procedure not covered by Medicare due to the delay in the amount of \$1,227.32.
- (c) Loss of opportunity to take up alternative employment opportunity, including difference in salary, sign on bonus, bonus in the amount of \$22,211.54.
- (d) Fees paid to ML in the total amount of \$13,672.86.³⁶

[110] The Tribunal must also be satisfied that there is a causal connection between the pecuniary loss claimed and the conduct concerned.

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

³² Invoice dated 21 November 2018.

³³ Invoice dated 17 July 2019.

³⁴ Invoice dated 17 October 2019.

³⁵ Invoice dated 4 December 2019.

³⁶ Invoices dated 10 January 2020, 24 January 2020, 2 July 2020 and 5 May 2021.

“[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.”³⁷

[112] A number of issues arise for consideration:

- (a) For the purposes of s 466(3) of the LP Act, there is no evidence that the “law practice” consents to a compensation order of an amount of more than \$7,500. Accordingly, any order for compensation pursuant to s 464(d) of the LP Act of a pecuniary loss suffered because the Respondent’s conduct was found to be unsatisfactory professional conduct or professional misconduct is effectively capped at \$7,500.
- (b) There is evidence that:
 - (i) The Respondent was the incorporated legal practitioner director of ML from 8 June 2012 to 15 November 2019;
 - (ii) The Respondent held an employee practicing certificate at ML from 19 December 2019 until 16 June 2021; and
 - (iii) The Respondent held an employee practicing certificate at Ashlar Legal from 17 June 2021 to 30 June 2022, and 2 July 2021 to 18 July 2022.
- (c) Both ML and Ashlar Legal are possibly “law practices” for the purposes of a compensation order. There is no evidence as to whether ML and/or Ashlar Legal still exist. The notices of intention to seek compensation orders only name ML, but there is no evidence that the notices have been served on ML and/or the Respondent. In *Legal Services Commissioner v McHenry & Anor* (No 2) the Tribunal observed that:

“the language of s 464 rather strongly suggests that an order to pay compensation may be made against a law practice only for the misconduct of a practitioner which occurred while the practitioner is involved in the relevant practice”.³⁸
- (d) In respect of the claims by Mr Bresler, Mr Shea and Mr Munschi for re-payment of the fees paid to ML pursuant to s 464(a) of the LP Act, the cap of \$7,500 does not apply to the repayment of legal costs by a law practice ordered pursuant to s 464(a) of the LP Act.

³⁷ [2016] QCAT 487.

³⁸ [2020] QCAT 50, at [75].

- (e) It is necessary to identify the relevant “law practice” and for them to be served with the material.³⁹

[113] In *Legal Services Commissioner v Mackie* the Tribunal had to consider an application for a compensation order where the law firm which employed the respondent at the time of the relevant conduct no longer existed.⁴⁰ The Tribunal determined that the respondent was a “law practice employee” and was therefore not personally exposed to any compensation order. Further, the Tribunal considered an award under a general order pursuant to s 456 but did not finally determine the issue as the Tribunal found that the complainant was not entitled to any compensation.

[114] In respect of whether an order could be made under s 456 of the LP Act, the Tribunal stated:

“[28] It may be that the tribunal has power under s 456 to make an order that the respondent pay a sum of money to [the complainant], even if the payment is not in the nature of a ‘compensation order’. That section gives the tribunal a general power, upon a finding of professional misconduct or unsatisfactory professional conduct, to make ‘... an order it thinks fit’: s 456(1).”

[115] However, in *Legal Services Commissioner v Jiear* the Tribunal was not persuaded that the general power in s 456(1) of the LP Act extended to permit orders for the payment of money from a practitioner to a complainant when a compensation order cannot be made.⁴¹ The Tribunal considered that because the LP Act contains a specific scheme for complainants to be awarded compensation, it could be concluded that the legislature did not intend the general discretionary power to apply in this way.

[116] The Tribunal requires further evidence and submissions to be able to deal with the applications for compensation orders.

[117] In the circumstances where the Respondent has not participated in the Tribunal proceeding and there is no contradictor to the applications, the Tribunal would be assisted by the LSC filing further evidence, to the extent possible, that goes to whether ML and Ashlar Legal currently exist and whether one or both of them are a “law practice” for the purposes of a compensation order under s 464 of the LP Act.

[118] The Tribunal also requests further affidavits and submissions from the complainants Mr Bresler, Mr Shea and Mr Munschi. This includes evidence as to whether the notices of intention to seek compensation orders were served on ML, whether any responses were received and further submissions on the power of the Tribunal to make orders of the nature sought.

Orders

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

1. The Respondent’s conduct identified in respect of each of Charges 1, 3, 4 and 5 in the discipline application is proved and is found to constitute unsatisfactory professional conduct.

³⁹ *Legal Services Commissioner v Mugford (No 2)* [2016] QCAT 416; *Legal Services Commissioner v Ho* [2017] QCAT 386.

⁴⁰ [2010] QCAT 570.

⁴¹ [2012] QCAT 221.

2. The Respondent's conduct identified in respect of each of Charges 2 and 6 in the discipline application is proved and is found to constitute professional misconduct.
3. It is recommended that the name of the Respondent, Matthew David McCormick, be removed from the roll of legal practitioners in Queensland.
4. 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.
5. In respect of the claims for compensation orders, the Applicant and the complainants (Mr Bresler, Mr Shea and Mr Munschi) file and serve any further affidavits and submissions in light of the matters identified in these reasons within 21 days.