[2009] WASAT 120

JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
STREAM	**:**	VOCATIONAL REGULATION
ACT	**:**	LEGAL PRACTICE ACT 2003 (WA)
CITATION	**:**	LEGAL PRACTITONERS COMPLAINTS COMMITTEE and BACHMANN [2009] WASAT 120
MEMBER	**:**	JUDGE J ECKERT (DEPUTY PRESIDENT) MR C EDMONDS SC (SENIOR SESSIONAL MEMBER) MR M ANDERSON (SENIOR SESSIONAL MEMBER)
HEARD	**:**	21 MAY 2008 23 MAY 2008 26 - 28 MAY 2008 23 JULY 2008 27 OCTOBER 2008 3 - 7 NOVEMBER 2008 12 NOVEMBER 2008 18 DECEMBER 2008
DELIVERED	**:**	23 JUNE 2009
FILE NO/S	**:**	VR 34 of 2007 VR 53 of 2007
BETWEEN	**:**	LEGAL PRACTITONERS COMPLAINTS COMMITTEE Applicant AND TRICIA Y BACHMANN Respondent

Catchwords:

Legal practitioners - Disciplinary proceedings - Unsatisfactory conduct - Unprofessional conduct - Statements made to clients about progress of work - Whether knowingly false - Charging for work not undertaken or completed - Misrepresentations as to progress of work allegedly completed - Whether dishonest - Practising while under suspension

Legislation:

Interpretation Act 1984 (WA), s 19(1)(b)(ii), s 19(2)(e), s 37(1)(d), s 37(1)(f)
Legal Practice Act 2003 (WA), s 137, s 180(1), s 185, s 185(1), s 187, s 203, Pt 12, Pt 13
Legal Profession Bill 2007 (WA), cl 621, cl 622
Liquor Control Act 1988 (WA), s 68(1)(b)(i)
Liquor Control Regulations 1989 (WA), reg 26(3)
State Administrative Tribunal Act, s 87(2)
Trade Practices Act 1974 (Cth), s 52

Result:

Practitioner guilty of unsatisfactory conduct

Category: A

Representation:

Counsel:

Applicant	:	Ms P Cahill and Ms P Le Miere
Respondent	:	Self-represented

Solicitors:

Applicant	:	Legal Practitioners Complaints Committee
Respondent	:	Self-represented

Case(s) referred to in decision(s):

Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1
Briginshaw v Briginshaw (1938) 60 CLR 336
Kyle v Legal Practitioners' Complaints Committee (1999) 21 WAR 56
Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 67 ALJR 170

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 The Legal Practitioners Complaints Committee brought charges of unprofessional conduct against a legal practitioner, Ms T.Y. Bachmann. In substance, the allegations concerned the practitioner making knowingly false representations to nine clients about work undertaken by the practitioner and the progress of their matters. With respect to several clients, there were also allegations that the practitioner, on behalf of her employer, charged for work she did not undertake. These charges were of the most serious nature. The Committee's proof of them involved allegations that the practitioner created false records to support her claims of work undertaken.

2 The practitioner's position in essence was that she had completed or substantially completed the work in the manner she represented. To the extent the work was not undertaken, this was largely due to the conduct of others and her dismissal by her employer. The practitioner maintained she was entitled to bill in the manner she did for the work performed. She accused several of the clients who gave evidence of dishonesty and confusion.

3 For the most part, the practitioner represented herself and did so in a most unsatisfactory manner. The Tribunal was continuously required to depart from its usual procedures to ensure the practitioner was given a proper opportunity to present her case and to defend the charges.

4 The Tribunal held that the charges had been proved to the requisite standard. The Committee through its witnesses and documentary evidence established a strong prima facie case. For the most part there was no dispute that the representations had been made. The issue was whether they were knowingly false. The practitioner's evidence on the whole was, in varying respects, patently false, incredible, inconsistent and confusing. The Tribunal preferred the evidence of the Committee's witnesses to the testimony of the practitioner. The practitioner's documents did not withstand scrutiny and the Tribunal found that several critical documents had been falsely created to support the practitioner's claims as to work undertaken. The practitioner's conduct may have been affected by her mental condition but there was insufficient medical evidence to establish this. The Tribunal was of the view that it was not possible or appropriate for it to make the relevant finding without that evidence.

5 The Tribunal found the practitioner guilty of unprofessional conduct. The Tribunal sought submissions on penalty and costs.

The reference to SAT

6 Pursuant to the provisions of Pt 12 of the *Legal Practice Act 2003* (WA) (LP Act), the Legal Practitioners Complaints Committee (LPCC) instituted professional disciplinary proceedings before this Tribunal against Ms T.Y. Bachmann, the respondent legal practitioner (the practitioner). These proceedings were instituted by the LPCC's application filed on 28 February 2007, being VR 34 of 2007 (the eight clients matter), and an application filed on 5 April 2007, being VR 53 of 2007 (the G matter). In each case, the LPCC seeks:

1) an order that the practitioner is guilty of unsatisfactory conduct pursuant to s 185(1) of the LP Act;

2) consequential orders pursuant to s 185 and s 187 of the LP Act; and

3) an order that the practitioner pay the LPCC's costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA) (SAT Act).

The LPCC's applications and the practitioner's defences

VR 53 of 2007 - the G matter

7 VR 53 of 2007 is the more serious of the two applications and it is convenient to deal with it first.

8 The grounds of the application (amended on 22 May 2008) in the G matter are that the practitioner is guilty of unsatisfactory conduct by:

1) unprofessional conduct; and

2) conduct occurring in connection with legal practice that 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.

9 In outline, the LPCC's case is as follows:

1) between about 8 August 2005 and 19 September 2005, the practitioner acted for Mr and Mrs G in relation to a

claim against the vendor of a property that Mr and Mrs G purchased in Morley (the Morley property);

2) in the course of the retainer the practitioner claimed to have undertaken considerable work and claimed fees of about $23,000;

3) Mr and Mrs G terminated the retainer on or about 19 September 2005. Immediately following this, the practitioner arranged to lodge caveats against the Morley property and a property that Mr and Mrs G were selling (the Viveash property) on the basis that Aragon Legal Pty Ltd (Aragon), the practitioner's employer, had a claim to the proceeds of the sale of the Morley property and the Viveash property in respect of its fees; and

4) the essence of the complaint is that the practitioner made a number of knowingly false statements concerning the work the practitioner claimed to have undertaken, Aragon's right to lodge a caveat and some incidental matters.

10 In outline, the practitioner's defence by her response filed with the Tribunal on 11 June 2007 is that:

1) the LPCC has failed to prove the facts of its complaint;

2) the practitioner completed the work for which she rendered invoices but the work product in both hard copy and electronic form was lost by Aragon (or some other person or entity). The practitioner says she has not had access to the offices of Aragon since the time her employment was terminated on 4 May 2006 so as to be able to search for the documents;

3) Mr and Mrs G offered the properties as security for Aragon's costs and she was entitled on Aragon's behalf to caveat the properties; and

4) the representations she made were not false and in any event were not knowingly false or recklessly made.

VR 34 of 2007 - the eight clients matter

11 The grounds of the application (amended on 22 May 2008) in the eight clients matter are that the practitioner is guilty of unsatisfactory conduct by:

1) unprofessional conduct;

2) conduct occurring in connection with legal practice that 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;

3) neglect, or undue delay, in the course of practice; and

4) a contravention of s 137 of the LP Act.

12 In outline, the LPCC's case is as follows:

1) there are eight separate matters. Five concern applications for liquor licenses for clients (Mr M, HGW, Mr F, UT and Mr B). Three relate to general work not involving liquor licensing, for other clients (FGC, Mr and Mrs H and Mr A);

2) in each matter the practitioner made knowingly false representations as to the nature of work said to have been carried out. In several cases there are also claims that the practitioner invoiced for work she did not undertake; and

3) in the matter for Mr A, the LPCC also claims that the practitioner:

   a) continued to practice whilst under suspension; and

   b) failed to deposit funds into her trust account.

13 In summary, the practitioner's defence, as based on her response filed with the Tribunal on 19 April 2007, is that:

1) in relation to the liquor licensing matters generally:

   a) when processing applications, the Office of Racing Gaming and Liquor (ORGL) treated differently applications lodged for checking and

applications lodged for processing. The practitioner did not appreciate this distinction during the period she first made licensing applications;

b) ORGL only provided written confirmation of receipt for those applications that were lodged by post and not for those applications that were lodged in person; and

c) due to circumstances not attributable to the practitioner, and often involving the administration of ORGL, the practitioner did not carry out instructions in the various matters 'to completion'.

2) the M matter: the practitioner did all things necessary, accurately and in a timely manner. Many of the difficulties arose from ORGL's procedures;

3) the HGW matter: the practitioner, in effect, completed all tasks necessary for the licence to be lodged, but was unable to complete the matter because of her dismissal;

4) the F matter: the practitioner, in effect, processed the application as instructed but was unable to complete the matter because of her dismissal;

5) the UT matter: the practitioner, in effect, processed the application as instructed but was unable to complete the matter because of her dismissal;

6) the B matter: the practitioner, in effect, processed the application as instructed but was unable to complete the matter because of her dismissal;

7) the FGC matter: the practitioner, in effect, did undertake the work required of her but on behalf of a Mr C and not FGC. The charge was made for the work for Mr C, but Aragon incorrectly sent a copy of the invoice to the FGC. The practitioner was not able to obtain evidence from Mr C;

8) the H matter: the practitioner, in effect, did undertake the work required but Aragon incorrectly invoiced the matter to the wrong client. The practitioner was again not able to obtain corroborating evidence from this client; and

9) the A matter: the practitioner, in effect, undertook the work for which she invoiced the client and she made no misrepresentations. The practitioner did not undertake any work on this matter in the period of her suspension.

The principal issue

14 It will be apparent from this summary that the principal issue in these proceedings is whether, as the practitioner claims, she did in fact undertake the work for which she (through Aragon) charged the clients and in respect of which she made representations as to the progress of the work undertaken.

15 The allegations against the practitioner are extremely serious. In relation to the G matter, the LPCC alleges that the practitioner lied about the work she claimed she had undertaken comprising pleadings, witness statements, research and submissions (collectively, the court documents work) and for which on behalf of Aragon she subsequently invoiced the clients and then instituted recovery proceedings. In relation to many of the other matters, the LPCC alleges that the practitioner deliberately misrepresented to her clients the work she said she had undertaken.

16 The practitioner produced a number of written records relating to these matters, particularly in relation to the G matter, which, on the LPCC's case, are false records. The practitioner maintained throughout the proceedings before us that in fact she did undertake this work and that she has made no misrepresentations as to the work she undertook.

17 It is apparent in these circumstances that whilst the relevant standard of proof is the civil standard, that is, proof on the balance of probabilities, the circumstances require proof in accordance with the decision in ***Briginshaw v Briginshaw*** (1938) 60 CLR 336 (***Briginshaw***) read with ***Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd*** (1992) 67 ALJR 170. In accordance with the ***Briginshaw*** principles, we require reasonably clear evidence in order to be actually persuaded on the balance of probabilities that the facts on which the charges are brought have been established. This is because of the serious nature of the charges brought against the practitioner generally and the grave consequences for her if made out.

18 In the context of the LPCC's reliance on circumstantial evidence, its counsel, Ms Cahill, drew our attention to the decision in ***Bradshaw v McEwans Pty Ltd*** **(**1951) 217 ALR 1. The following passage (without the authorities) appears at 5:

> The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture. But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise.

19 Where the fact in issue is integral to the charge brought against the practitioner so that the ***Briginshaw*** standard applies, the Tribunal will need to be reasonably satisfied, having regard to the seriousness of the matter, that the relevant inference may properly be drawn. In the circumstances of these proceedings, the resolution of the issues in the applications depends in large part on our assessment of the credibility of the practitioner.

Course of proceedings

20 These proceedings have a long and tortuous history before this Tribunal. For reasons we subsequently explain, it is necessary to make reference to this. On 14 July 2006, in earlier proceedings (VR 116 of 2006 and VR 120 of 2006), the Tribunal ordered the practitioner to obtain a psychiatric report and, with her consent, suspended her from practice pending inquiry and determination of the matters raised by the LPCC. The suspension was confirmed and continued on 26 September 2006. The LPCC filed and served its application for the eight clients matter on 28 February 2007 and its application for the G matter on 5 April 2007.

21 There followed a number of directions hearings, mediations, and compulsory conferences and various programming orders were made by the Tribunal (20 March 2007, 24 April 2007, 12 June 2007, 11 July 2007, 24 August 2007 and 20 November 2007). Amongst the various orders made at those hearings were orders that the practitioner file her response to the applications, that the parties file various documents and that the practitioner clarify the documents that she had earlier filed.

22 The practitioner filed only incomplete responses to the LPCC applications.

23 As at 8 January 2008, the practitioner had failed to file documents as ordered and she was again ordered on that date to file the various documents. The practitioner did not comply with those orders. On 6 February 2008, a compulsory conference was held but the practitioner failed to attend. She faxed a doctor's certificate to the Tribunal. On 12 February 2008, there was a directions hearing and the parties were ordered to file witness statements. The matters were listed for hearing from 6 - 9 May 2008 and 12 - 14 May 2008. On 25 March 2008, the practitioner was granted an extension of time for compliance with the orders and the final hearing was relisted for 21 - 29 May 2008. On 9 April 2008, the practitioner was again granted an extension for compliance with the orders. Programming orders were again made but the practitioner failed to comply.

24 At a directions hearing before Deputy President Judge Eckert on 13 May 2008, the practitioner advised that she had sent witness statements to all of her witnesses. She initially confirmed this at the hearing on 21 May 2008 although later on that day she advised she had sent only some of the statements (see below).

The initial hearing

25 On 21 May 2008, the first day of the hearing, the practitioner failed to attend and applied by telephone for an adjournment due to ill health. The practitioner advised that she had sent eight witness statements for signing and she was awaiting their return to her post office box. However, she added that she not checked her post office box since Monday 12 May 2008. She undertook to fax the covering letters attached to those draft witness statements to the Tribunal later that day. The practitioner did not comply with that undertaking.

26 The practitioner then advised that she had prepared half of her witness statements but had made no progress since 13 May 2008. The practitioner seemed confused as to the distinction between her lack of preparation on factual issues and the grounds or legal reasoning underlying her defence to the proceedings. Her general practitioner, Dr Louie, was called and gave evidence before the Tribunal. He expressed the opinion that the practitioner was well enough to attend the hearing.

27 The practitioner's application for an adjournment was refused. Although in the usual course the Tribunal would grant an adjournment if the respondent is unwell or otherwise unable to attend, the Tribunal had before it no satisfactory medical or other evidence to support the practitioner's argument for an adjournment. The practitioner's own doctor had advised the Tribunal that the practitioner was well enough and capable of attending the Tribunal and presenting her case. The Tribunal told the practitioner that she should appear in person that afternoon, but if that was not possible, then she could appear and cross-examine the LPCC witnesses by telephone. The Tribunal also gave her the opportunity of appearing and cross-examining the LPCC witnesses by telephone. Although the practitioner took advantage of that proposal to some extent in the morning, she did not appear in the afternoon either in person or by telephone. The practitioner advised the LPCC after the luncheon adjournment that she was on her way to a barrister's chambers to obtain advice but she refused to say who she was seeing. The hearing continued in her absence.

28 On 23 May 2008, the Tribunal reconvened. The LPCC sought leave to amend its applications. The practitioner, although notified to attend at 10 am, arrived at 11.34 am. She told the Tribunal that she needed professional advice and that she was still unwell. She had asked counsel, Mr Quinlan, to act for her and she advised that he required an adjournment until the following week so he could look over the amended grounds of the applications. At this stage, despite undertaking to do so, the practitioner had not sent any draft witness statements or covering letters to the Tribunal. She advised that this was because no-one had yet returned the draft witness statements to her.

29 On 26 May 2008, when the Tribunal reconvened, Mr Quinlan appeared with the practitioner. He advised he appeared in a very limited capacity with limited instructions to oppose the amended applications and to seek an adjournment of the proceedings so that the practitioner might be properly prepared. Mr Quinlan said that it appeared to him that the practitioner was not properly prepared for the hearing and that she was 'curiously disengaged' (T:15, 26.05.08) from the process of the proceedings. The practitioner then advised the Tribunal that she proposed to call eight witnesses and that she had two of the draft witness statements. She said that she had spoken to one witness who was prepared to sign his statement; however, all other witnesses would have to be summonsed. She undertook to attend to those summonses in the luncheon adjournment. She also handed up to the Tribunal three pages of her own witness statement. The practitioner had, at all times up to this

point, advised the Tribunal that she intended to give evidence and that she wished to file a witness statement in accordance with the Tribunal's directions. She gave the Tribunal the two draft witness statements which were from Mr M and Ms H. At no point did the practitioner provide to the Tribunal final or signed witness statements from those or any other witnesses.

30 During the luncheon adjournment on 26 May 2008, the practitioner appeared to collapse at the registry of the Tribunal. An ambulance was called and she was taken to Royal Perth Hospital. The Tribunal advised the practitioner that it required a medical report as to the condition of her health and her ability and capacity to conduct and be part of the proceedings. The discharge notice from Royal Perth Hospital given to the Tribunal by the practitioner showed that no medical condition had been identified.

31 On 27 May 2008, the practitioner advised the Tribunal that she would not be home from Royal Perth Hospital until the afternoon. She would therefore not be able to attend the Tribunal. The practitioner was discharged from hospital at 3.40 pm. The following day, 28 May 2008, the practitioner did not attend or contact the Tribunal despite attempts by the Tribunal and the LPCC to contact the practitioner. The Tribunal made further orders as to the filing of witness statements and other documents and as to the future conduct of the hearing. Those orders were sent to the practitioner and the LPCC.

23 July 2008 directions hearing

32 Following a request from the practitioner for an urgent directions hearing, the Tribunal made orders listing the proceedings for directions on 23 July 2008. The practitioner sought an adjournment of the hearing and an extension of time to comply with the orders regarding witness statements. The practitioner also advised that she had been ill between the 28 June 2008 and 5 July 2008, and had therefore been unable to comply with the Tribunal's orders to file witness statements. This was despite having had in effect two years to produce these documents and prepare for the proceedings.

33 The practitioner also informed the Tribunal that she required an adjournment because she was depressed. However, the practitioner's psychiatrist gave evidence before the Tribunal. He could not confirm that the practitioner was medically depressed and he advised the Tribunal in effect that the practitioner could proceed to participate in and actively conduct the proceedings. The psychiatrist's view was that the practitioner

was suffering from the usual stress that a party in similar circumstances to the practitioner would be likely to suffer.

34 The practitioner also said that she had met with ten witnesses since 1 July 2008, and that she had substantially completed ten witness statements and sent each of those witnesses a letter. This was not corroborated by any of the practitioner's witnesses. The practitioner listed the witnesses to whom she had written. In particular, she advised that she had contacted Mr C and that she had emailed him in March 2008 regarding the proceedings. The practitioner told the Tribunal that Mr C had given her a perfunctory reply and that she had again emailed him on 20 May 2008. She had sent him a draft witness statement.

35 Subsequently, on 27 October 2008, the practitioner advised that Mr C had emailed a person from her previous church stating that he did not want to give evidence. The Tribunal was unable to locate Mr C and he did not give evidence to the Tribunal. The practitioner did not provide a copy of any correspondence or draft or final witness statements for him nor indeed for any of the other witnesses that she identified on 23 July 2008.

36 In total, the practitioner provided the names of 24 witnesses that she wished to call. She also wished to recall the LPCC's witnesses whom she had not had an opportunity to cross-examine as she had not attended the Tribunal. The practitioner advised the Tribunal that she had sent six draft statements and that she had filed two draft statements with the Tribunal. She confirmed that she had met with eight of her witnesses since May 2008 and undertook to lodge all draft witness statements for all of her witnesses by 24 July 2008. The practitioner said that she had received from the LPCC and the Tribunal various documents and a DVD of all Aragon legal files. She confirmed that although she had received all of the documents at least six weeks earlier, she had not looked at them.

37 The Tribunal informed the practitioner that the process-server had been unable to serve her at the address that she had given the Tribunal. In fact, the process-server swore to the Tribunal that the practitioner had never lived at that address according to reports given by residents of the premises at the address. After much discussion, the practitioner confirmed that she was living with her mother and provided that address to the Tribunal.

38 It was apparent to the Tribunal on 23 July 2008 that the practitioner was having difficulty facing up to these proceedings and doing what was

required to meet the allegations, including contacting her witnesses. She told the Tribunal that she did not have the money to pay the issue fee for 24 summonses. The Tribunal advised that it would serve the summonses on each witness. The practitioner undertook to provide recent addresses for all of her witnesses. As it transpired, none of the addresses provided were accurate.

The adjourned hearing

39 The hearing continued on 27 October 2008. At the commencement of that day's proceedings, the practitioner advised the Tribunal that she would file nine draft witness statements with the Tribunal by the close of business on that day. However, during the course of that day's proceedings it became apparent that the practitioner had not contacted any of her witnesses at the time or in the manner expressed in her undertaking. The practitioner subsequently advised the Tribunal that although she had not spoken directly to witnesses, for example, her former client Mr T in Victoria, she had emailed them.

40 Later that day the practitioner sent a fax to the Tribunal which contained the following information and allegations:

> I have spent my time since the hearing adjourned at 1.35 pm contacting my proposed witnesses. I have experienced the extraordinary response from each and every witness (for whom I planned to lodge the draft and/or completed Witness Statements by close of business today) that they either wished to claim "privilege" over their current draft statements and/or are seeking legal advice regarding their participation in these proceedings.
>
> Two of my proposed witness – who asked me not to cite their names at present – have also claimed that the Legal Practice Board contacted them in or around July to August 2008 and specifically told them not to respond to any communications from me. A third witness also claims that my former employer and co-director, Catherine Bachleda, contacted them and directly asked whether I had been in communication with them. The third witness then claimed that Bachleda "warned them" not to take any part in these proceedings.

41 The practitioner did not file any draft or signed witness statements on that day or subsequently.

42 On further examination on 3 November 2008 by the LPCC's counsel, Ms Cahill, and in response to questions from the Tribunal, the practitioner named several of her witnesses who she alleged had been approached in this manner by the Legal Practice Board (T:8-14, 3.11.08). All of the practitioner's witnesses who subsequently gave evidence denied that they

had claimed privilege or that they were seeking legal advice or that they had made these comments to the practitioner, if indeed they had even spoken to her. On their evidence, none of the witnesses had been contacted by Dr Bachleda or the Legal Practice Board or the LPCC and advised not to participate in the proceedings. The contents of the practitioner's fax on 27 October 2008 were fanciful and evidence of another delaying tactic by her. In the Tribunal's view, the fax and practitioner's statements to us in support of it are an instance where the practitioner's claims as to why she was unable to prepare her defence and proceed at the hearing have been exposed as false. This conduct reflects negatively on the practitioner's credibility and illustrates why her statements and explanations generally are open to question.

43 The proceedings were listed to resume on 3 November 2008. The practitioner arrived at 10.20 am and advised the Tribunal that she had scanned (or typed) and emailed to the Tribunal all documents and witness statements as required by Thursday 30 October 2008. They had not been received at the Tribunal. The practitioner had not brought copies of the witness statements or other documents with her, either in hard copy or on her thumb drive. She advised that she had reduced her own witness statement from 60 pages to 28 pages after help from her new counsel Mr Hooker, but that she had not shown Mr Hooker her final 28 page witness statement. She did not produce this and could not recall if she had printed out a copy of her witness statement. The practitioner subsequently advised the Tribunal that she had no printer paper. It was agreed between the parties and the Tribunal that the Deputy President would take the extraordinary step of arranging for her associate to go with the practitioner to her home with the necessary printing paper and a thumb drive to assist the practitioner to print out her materials.

44 In the luncheon adjournment, the practitioner went with two Tribunal staff members to her home as arranged. However, once inside, the practitioner would not allow the staff to enter and ultimately taped a notice to a window that she was not returning to the Tribunal that afternoon.

45 The Tribunal reconvened on 4 November 2008 at 10 am. The practitioner did not appear. The Tribunal received a fax from the practitioner at 10.08 am advising that she would attend at 2.15 pm, that she had contacted her witnesses and provided the Tribunal with her amended witness timetable. She also stated in that fax that she would fax through all witness statements prior to 2.15 pm. She sent a certificate from her general practitioner saying that he had examined the practitioner

on 3 November 2008 and she was 'unable to function today because of emotional distress'.

46 Meanwhile, the first of the practitioner's witnesses had attended the Tribunal and proceedings were initially delayed pending the arrival of the practitioner. On receiving advice of her non-attendance, the Tribunal proceeded to hear from the first witness and asked him questions that the practitioner had indicated in July 2008 that she wished to ask him. The Tribunal attempted on several occasions to telephone the practitioner on her mobile so that she could ask questions of the witness. As the practitioner had advised that she would be attending at 2.15 pm, the witness was requested to return after the lunch adjournment. At 3 pm the witness had to leave. The practitioner arrived soon after.

47 The Tribunal had continued to press the practitioner for her witness statement as she had continued to indicate in the strongest terms that she wished to give evidence, had prepared a witness statement and was happy to file it. On her arrival on 4 November 2008, the practitioner submitted a short 'summary' of her witness statement. The practitioner had arrived with a suitcase of materials but had omitted to bring her 'full' witness statement or any of the draft witness statements that she said she had prepared.

48 The practitioner advised the Tribunal that she had faxed and emailed all of the required documents and the witness statements. However, whilst the Tribunal had received her faxes about being late the Tribunal had not received the faxes that the practitioner alleged she had sent containing her witness statements. It was at this stage on 4 November 2008 that the practitioner stated that she would not provide electronic copies of her witness statements as they were not relevant, in her view, to support her claims that they had been prepared. The Tribunal thinks otherwise. It was fundamental to the undertakings that the practitioner gave the Tribunal that she had prepared all of these draft witness statements many months earlier. The electronic versions would have indicated the dates on which the statements were first prepared and subsequently amended. In the Tribunal's view, the continuing assertions by the practitioner that she had prepared witness statements and her continued failure to ever produce those statements undermines her credibility.

49 The Tribunal reconvened, as agreed, on 5 November 2008. The practitioner left telephone messages on the general Tribunal switchboard at 9.20 am and 9.46 am that she was ill and would not be attending.

Again, the practitioner confirmed that she had faxed and emailed all required documents. These had not been received by 5 November 2008 and were not provided subsequently.

50 On 6 November 2008, the Tribunal again reconvened at 10 am in accordance with notice it had given. The practitioner telephoned the general number of the Tribunal registry at 10.35 am and advised that she would arrive at 10.45 am. The practitioner arrived at 11 am and advised the Tribunal that that was 'the best that I can do'. The practitioner said (T:229, 6.11.08):

> my circumstances are what they are, Judge Eckert. I wish to have recorded that this is the best that I can do. I know that it falls short of whatever levels that are expected of me, but it is what it is. I apologise.

51 She tendered pages 1 - 4 and page 25 of her draft unsigned witness statement, together with two annexures, and advised that counsel Mr Hooker had given her advice that those pages were all that she should release to the Tribunal.

52 There followed lengthy discussion about what the practitioner had filed in response to the LPCC's applications to the Tribunal and in accordance with Justice Barker's orders. The practitioner said that she filed part 3 of her response on or about 7 December 2007. There was no record with the Tribunal of it ever having been lodged and the LPCC had not received it. Furthermore, the filing of it at that time would have been inconsistent with subsequent orders made by Justice Barker that she file a response. The practitioner had made no enquiries to ensure that it was lodged and had no evidence that it was lodged.

53 The practitioner provided a copy of part 3 of her response to the Tribunal and the LPCC (exhibit 32). Large parts were incomplete and the practitioner expressed confusion as to why so much had been left blank. The hearing proceeded and the Tribunal heard further from the practitioner's witnesses.

54 When the practitioner attended the Tribunal on 7 November 2008, she advised that her health and financial situation had impeded the conduct of her defence. She admitted in effect that she was unprepared for the proceedings. She claimed that she had complied with all Tribunal orders with respect to witness statements; however, at the same time the practitioner conceded that she had not filed any final witness statements (T:123-124, 7.11.08).

55 It is important to note that on several occasions the Tribunal recommended to the practitioner that she obtain independent legal advice. At an early stage, the Tribunal facilitated the practitioner obtaining assistance from counsel Dr Hockley. He acted for the practitioner on a pro bono basis from July 2006 to February 2008. Dr Hockley advised the Tribunal on 6 February 2008 that he had assisted the practitioner at the instigation of the then President of the Tribunal and spent an 'inordinate amount of time on these matters'. However, 'the situation has arisen where I would not be assisting either Ms Bachmann or the Tribunal to continue to act'. Subsequently, encouraged by the Tribunal the practitioner obtained some limited advice and assistance, from Mr Quinlan and Mr Hooker. However, it appears both counsel were approached at a late stage of the proceedings and given limited instructions and a selective collection of materials to consider. The Tribunal is grateful to those barristers for the assistance they provided. However, for much of the proceedings, Ms Bachmann represented herself.

56 We have set out in some detail aspects of the practitioner's conduct during the period of these proceedings in order to illustrate the areas and extent of our concern about the practitioner. We take into account that the practitioner was representing herself in the defence of very serious charges advanced forcefully, but always fairly, by Ms Cahill for the LPCC. We accept the practitioner was suffering some stress in consequence of this. We are conscious also that this conduct was itself not the subject of the applications or any amended applications. However, the issue of the practitioner's credibility and integrity is critical to the determination of these applications and, as we made clear to the practitioner, should we find her guilty of the charges brought, her conduct may well be relevant to penalty.

57 In that respect it is relevant to record our considered impressions of the practitioner in the course of her defence of the charges brought. We think that the practitioner was dishonest or evasive with us and the LPCC on the subjects of the state of her health, her contact with prospective witnesses and their addresses, the preparation of witness statements including her own and the filing of part 3 of her response. These were subjects on which the practitioner was cross-examined.

58 The subject of our assessment of the practitioner's professional competence is also of some relevance in determining the probabilities of the matters the subject of the applications. As will be seen, the contest is between the LPCC's case which is that the practitioner repeatedly failed to act as instructed but claimed she had; and the practitioner's case that she

had competently and in a timely manner done what was asked of her but that others (her clients, public officials, Aragon, third parties) had caused delays to completion. As evidenced by her conduct of these proceedings the practitioner repeatedly failed to do what she was ordered to do and sometimes undertook to do and either blamed others or technology for this failure or attributed a change of circumstances for non-compliance.

59 We think the manner in which the practitioner has conducted her defence is relevant to our findings on the substantive applications in the manner we have indicated, but it is certainly not determinative of them and we would have reached the same decision in any event. The practitioner's closing submissions following the hearing showed considerable industry but limited understanding of the legal principles governing the application. For instance, the practitioner submits that because the LPCC is required to prove certain negative propositions and also the mental elements necessary for fraud, deception and dishonesty, the criminal standard of proof should apply. It is well settled that the standard of proof in disciplinary proceedings such as these is the civil standard but taking into account the principles of ***Briginshaw***. In both her response and closing submissions, the practitioner raises the spectre of the liability of the directors of Aragon in relation to the matters the subject of the applications. The alleged liability of the non-legal directors of Aragon cannot be a relevant consideration to our determination of the consequences of the practitioner's conduct. Again, in her response and closing submissions, the practitioner complains that she effectively undertook four full-time jobs at Aragon but was paid for one full-time position. She alleges that the directors of Aragon engaged in misleading and deceptive conduct and were in breach of s 52 of the *Trade Practices Act 1974* (Cth), when they employed her. Whilst the fact that the practitioner was under some pressure at work may be relevant (and would be relevant to penalty) the size of her salary, which she accepted on being employed, is not.

The practitioner's employment with Aragon

60 The LPCC complains about the conduct of the practitioner in the period August 2005 to September 2006. In August 2005, the practitioner commenced employment with Aragon. This was an incorporated legal practice with non-legal directors, Dr Bachleda and Mr Venables, who gave evidence before us. The practitioner was dismissed from the company in May 2006. The matters the subject of complaint largely took place during the period in which the practitioner was employed by Aragon and relate to Aragon's clients.

61 The practitioner was admitted to practice in December 1996 in Western Australia and worked in Perth as an employed junior practitioner and then from 1999 practised on her own account. Thereafter she advises that she lived and worked in Sydney and the USA as a 'business consultant/paralegal'. She returned to Perth in September 2004 and in February 2005 she resumed sole practice as 'TY Bachmann Lawyers'.

62 In July 2005, the practitioner answered an advertisement from Aragon for a 'commercial solicitor'. She was interviewed and commenced employment on 1 August 2005. There was an initial four month probation period. On 3 December 2005, the practitioner achieved permanent status and commenced as 'Principal Solicitor'.

63 A written assessment made of the practitioner's performance as at 21 October 2005 and 1 December 2005 was put into evidence. At each of these times both Aragon and the practitioner expressed satisfaction with their arrangements. However, in her response and in evidence the practitioner consistently alleged that during her time with Aragon she was put under considerable pressure, both 'personal and professional', by Dr Bachleda who 'relied upon her too much'. The practitioner submitted that part of the responsibility for the matters the subject of complaint ought to be borne by the directors of Aragon. This was so notwithstanding that they were not lawyers and had engaged the practitioner in order to undertake the legal work for Aragon.

64 The practitioner and the directors of Aragon agreed a budget for the fees it was planned the practitioner would bring in for Aragon. The practitioner was keen to demonstrate to the principals at Aragon that she was performing well and bringing in the fees expected of her. In relation to the G matter, this led to the practitioner claiming to have undertaken a great deal of work in preparing for proceedings in a Supreme Court action and claiming that fees of $40,000 would be earned from these proceedings if the matter went to trial.

65 Many of Aragon's clients sought its services in relation to liquor licensing applications. The evidence examined below discloses that the practitioner was not familiar with the appropriate procedures of this jurisdiction. Rather than owning up to this and either declining instructions or obtaining the necessary assistance, the practitioner took on these matters and continually wrote to her clients advising them of the purported progress of their applications through ORGL.

66 On 1 May 2006, the practitioner telephoned Dr Bachleda and advised that she was with a client and would return to work later. She did not do so. The next day the practitioner's mother rang Dr Bachleda and advised that the practitioner was with a client and would return the next day. She failed to arrive at work. On the following day, the practitioner's mother spoke to Dr Bachleda and advised that the practitioner was sick and requested a two month leave of absence. This led to the practitioner's dismissal on 5 May 2006. In her evidence, the practitioner said that during part of the period she was absent she suffered a complete loss of memory as to where she had been or what she had done.

67 Following the dismissal of the practitioner, Dr Bachleda arranged for another solicitor, Mr Boni, to review the hard copy and electronic files that the practitioner was working on. He discovered that there appeared to be documents missing on Mr and Mrs G's file, in particular the court documents work, and from the liquor licensing files, primarily copy applications with associated documents. Mr Boni spoke to the practitioner about the matter and suggested that when she return to collect her personal belongings, she look for the documents from Mr and Mrs G's file. The practitioner told him the documents must have been removed from the file. She did not undertake a search for the documents when she made her final visit to Aragon's offices. Dr Bachleda, with Mr Boni's assistance, arranged to complete or return the various files, sometimes refunding the clients the fees which they had been charged for services purportedly performed by the practitioner.

68 On 14 July 2006, in proceedings before the Tribunal, the practitioner agreed to her suspension from legal practice.

The practitioner's credibility

69 In assessing the practitioner's credibility, we have had the opportunity over a number of days to observe the practitioner's demeanour in giving evidence. We have also had the opportunity to study the transcript of her evidence. Our assessment of the practitioner's credibility is based primarily on the practitioner's evidence under oath in relation to the issues in the matter and, to some extent, on the practitioner's conduct before the Tribunal.

70 We are conscious that with respect to many of the matters the subject of the hearing the practitioner was required to recall events extending back three or so years. As mentioned above, we are conscious also that the practitioner was representing herself in these proceedings and bore the

stress of doing so. In particular, she was required both to conduct her defence as well as give evidence.

71 Taken in isolation, the practitioner's evidence on various matters seemed plausible. She spoke well, had a good vocabulary, in many respects had a good recall of detail and was seldom without an answer. However, as the hearing progressed, it became apparent that the practitioner's evidence of the events which had occurred became less and less believable when tested against other oral and documentary evidence, the objective facts and the probabilities. On several subjects the practitioner appeared to invent answers to explain why, in relation to the matters the subject of the applications, she was unable to complete work she had undertaken, and in relation to the hearing, why she was unable to contact witnesses and so on.

72 On subjects where the practitioner was confronted with evidence opposing her version of events, the practitioner often took refuge in verbosity and irrelevance. An example of this follows (T:253, 6.11.08). In response to a question from the LPCC's counsel, Ms Cahill, the practitioner's evidence was as follows:

> Well, it's a fact, isn't it, that you didn't give the email address to the SAT? ---I believe that - - -
>
> You gave a postal address, didn't you?---Sorry? What date are we referring to? Because I remember at the very last request for confirmation of addresses et cetera, I received an email from President Barker J's associate and I make an apology in that I presumed she was Judge Eckert's new associate, so I gave her the wrong title – but, anyway – and when – when she asked for certain addresses, I replied to her by email that there were only two that I could verify as at that date as being definite. So I didn't mention Mr Cheong at all, I believe.

73 The practitioner ultimately never provided the information requested either in her evidence, in writing or from the bar table.

74 There is in the practitioner's response and closing submissions the common theme that whilst she does not admit to any specific charges made, she was disadvantaged at the final hearing by reason of memory loss, psychological or psychiatric stress, illness and the passage of time. The medical evidence on which the practitioner sought to rely fell well short of supporting a claim that her memory or capacity was relevantly affected in relation to the matters the subject of the proceedings. The practitioner apparently failed to obtain and read many of the principal documents on which the LPCC relied for its case and which were

available to the practitioner insofar as they were tendered by the LPCC (for instance the files relating to the various clients' matters). The practitioner was provided with a copy of the disc containing an electronic copy of Aragon's legal files but admits that she did not make use of this.

75 In her closing submissions, the practitioner maintains that 'credibility is not an all or nothing matter' in that it may be affected by memory loss, stress and illness. To the extent that the practitioner submits that it is not appropriate for the Tribunal to make an adverse finding about her credibility in relation to one event and adopt it with respect to all matters, we think this is correct. It seems to us necessary to identify the various points at which the practitioner's credibility is important to a determination of a particular matter and to then examine the specific context and so on to make the appropriate determination in respect of that matter. That is how we have proceeded. That said, however, we have made an assessment of the practitioner's credibility taking into account the whole of her evidence. There are a large number of occasions in which there are obvious factual errors in what the practitioner has reported to her clients. The practitioner's explanations to us in this respect include innocent error, her misunderstanding of procedures, her poor expression in some of the relevant documents, error on the part of Aragon's staff, error on the part of ORGL, the pressures on the practitioner and her working under stress and so on. Having regard to this evidence and the probabilities of the mater, we take the view that the errors cannot be explained in the manner suggested by the practitioner. For the reasons given below we think that the practitioner effectively lied to her clients about the progress of their matters in order to hide her deficiencies and that her critical evidence was in several crucial respects dishonest and generally unreliable.

VR 53 of 2007 - the G matter

Statement of facts

76 It is convenient to set out the relevant parts of the LPCC's amended statement of facts:

> …
>
> 3. In about August 2005 Ms [G] and Mr [G] ('the [Gs]') sought advice from the practitioner in the course of her employment by Aragon regarding a potential claim by the [Gs] against the vendor of a property at … Morley ('the Morley property') that the [Gs] had contracted to purchase.

4. At all material times the [Gs] had contracted to sell the property they owned at ... Viveash ('the Viveash property') to assist in funding their purchase of the Morley property.

5. On about 19 September 2005, Mr [G] informed the practitioner by telephone to the effect that the [Gs] no longer wished her to act for them.

6. On about 20 September 2005, the practitioner caused Aragon, as purported caveator, to lodge caveats over the Morley property and the Viveash property in circumstances where:

   (a) the practitioner on behalf of Aragon falsely claimed that Aragon was a secured creditor of the [Gs];

   (b) the practitioner on behalf of Aragon falsely claimed that Aragon was entitled to receive a portion of the proceeds of a sale of the Morley property and the Viveash property;

   (c) the practitioner knew at the time she made them that the claims pleaded in subparagraphs (a) and (b) above were false;

   (d) alternatively to (c), the practitioner made the claims recklessly, not caring whether they were true or false;

   (e) the practitioner knew that the [Gs] were not at that date indebted to Aragon in any amount; and

   (f) the practitioner knew that there was no basis, reasonable or otherwise, to justify the lodgement of either caveat.

7. At some time after 20 September 2005, by an invoice purportedly dated 31 August 2005, the practitioner on behalf of Aragon purported to render to the [Gs] an invoice that included fees for:

   (a) drafting documents to initiate Court proceedings;

   (b) legal research; and

   (c) preparing and finalising witness statements for the [Gs] and their children,

   when in fact, and to the practitioner's knowledge, no such work had been done by the practitioner or Aragon.

8. By an invoice dated 7 October 2005, the practitioner on behalf of Aragon purported to further invoice the [Gs] for:

   (d) drafting documents to initiate Court proceedings;

(e) preparing Court submissions;

(f) legal research; and

(g) preparing witness statements for the [Gs], a property inspector and a Western Power inspector,

when in fact, to the practitioner's knowledge, no such work had been done by the practitioner or Aragon.

9. By letter from Aragon to the [Gs] dated 11 October 2005, the practitioner falsely represented to the [Gs] that:

(a) the practitioner had undertaken work on their behalf to justify the invoices referred to in paragraphs 7 and 8 of this application;

(b) the practitioner had advised the [Gs] by telephone on 6 September 2005 of the amount of the first invoice the practitioner purportedly raised;

(c) Mr [G] had requested that invoice be fully itemised;

(d) Aragon had posted an itemised invoice to Mr [G] on 16 September 2005;

(e) Mr [G] had previously been unwilling to negotiate a payment plan in respect of those invoices; and

(f) Aragon was entitled to lodge caveats over the Morley property and the Viveash property because the [Gs] had not paid Aragon's invoices.

10. By letter dated 17 October 2005 from Aragon to solicitors for the [Gs], Thompson Legal Pty Ltd, the practitioner falsely represented to Thompson Legal Pty Ltd that:

(a) the practitioner had undertaken work on behalf of the [Gs] to justify the invoices referred to in paragraphs 7 and 8 of this application;

(b) Aragon was entitled to lodge caveats over the Morley property and the Viveash property because the [Gs] had not paid Aragon's invoices;

(c) Mr [G] had requested from Aragon an itemised invoice on 6 September 2005; and

(d) Aragon had posted an itemised invoice to Mr [G] on 16 September 2005.

11. By letters from Aragon to Thompson Legal Pty Ltd dated 17 October 2005 and 2 December 2005, and by facsimile transmissions from Aragon to Thompson Legal Pty Ltd dated 1 November 2005 and 2 November 2005, the practitioner falsely represented to Thompson Legal Pty Ltd that:

    (a) the practitioner had undertaken work on behalf of the [Gs] to justify the invoices referred to in paragraphs 7 and 8 of this application;

    (b) Aragon was entitled to payment pursuant to those invoices; and

    (c) Aragon was entitled to lodge caveats over the Morley property and the Viveash property because the [Gs] had not paid those invoices.

12. By letter from Aragon to Sheridan Settlements dated 1 November 2005, the settlement agents for the [Gs] in respect of the Viveash property, the practitioner:

    (a) falsely represented that Aragon was entitled to lodge caveats over the Viveash property because the [Gs] had not paid Aragon's invoices;

    (b) falsely represented that the [Gs] had made contracts with Aragon in which the [Gs] had agreed that the [Gs'] legal fees payable to Aragon would be paid from the proceeds of sale of the Viveash property;

    (c) advised Sheridan Settlements of the amount in which the practitioner claimed that the [Gs] were indebted to Aragon;

    (d) proposed that Aragon would provide a withdrawal of caveat at settlement of the sale of the Viveash property if, at the same time, Aragon received payment in full of its invoices; and

    (e) requested that Sheridan not disclose the letter or its contents to the [Gs].

13. From about mid November 2005 to about early April 2006, the practitioner misled counsel retained by her to act on Aragon's behalf, Mr Scott Ellis, by falsely representing to him that:

    (a) the practitioner had undertaken work on behalf of the [Gs] to justify the invoices referred to in paragraphs 7 and 8 of this application;

(b) Aragon was entitled to payment pursuant to those invoices; and

(c) the [Gs] had made statements to the effect that Aragon's invoices would be paid from the proceeds of sale of the Viveash property.

13A. When the practitioner made the representations pleaded in paragraphs 9-13 above:

(a) she knew each of the representations to be false;

(b) alternatively, she made each representation recklessly, not caring whether it was true or false.

14. On or about 29 November 2005, the practitioner caused to be lodged with the Department of Land Information documents for the purpose of seeking an extension of time for the operation of the caveat Aragon had lodged over the Viveash property in circumstances where:

(a) the practitioner knew that the [Gs] were not at that date indebted to Aragon in any amount, alternatively, were not indebted to Aragon in the amount then claimed by it; and

(b) the practitioner knew that there was no basis, reasonable or otherwise, to justify the continued operation of the caveat.

15. On or about 5 December 2005, the practitioner caused Aragon to institute proceedings against the [Gs] in the Magistrates Court of Western Australia for recovery of the amounts the subject of the invoices referred to in paragraphs 7 and 8 of this application ("the Magistrates Court proceedings").

16. On or about 20 December 2005, the practitioner caused Aragon to file in the Magistrates Court proceedings an application for judgment against the [Gs] in default of defence.

17. On or about 6 April 2006, the practitioner caused Aragon to file in the Magistrates Court proceedings a statement of claim in which the practitioner falsely claimed that:

(a) Aragon had undertaken work on behalf of the [Gs] to justify the invoices referred to in paragraphs 7 and 8 of this application; and

(b) Aragon was entitled to payment pursuant to those invoices.

18. The practitioner took the steps pleaded in paragraphs 15 - 17 above in circumstances where:

    (a) the practitioner knew that the [Gs] were not at that date indebted to Aragon in any amount, alternatively, were not indebted to Aragon in the amount claimed by it in the Magistrates Court proceedings; and

    (b) the practitioner knew that there was no basis, reasonable or otherwise, to justify the institution and prosecution of the Magistrates Court proceedings.

19. On about 13 May 2006, the practitioner falsely represented to Stefano Boni, a legal practitioner engaged by Aragon to review the status of Aragon's legal client files, that she had undertaken the work in respect of the [Gs]' matter referred to in paragraphs 7 and 8 of this application.

20. When the practitioner made the representation pleaded in paragraph 19 above:

    (a) she knew the representation to be false;

    (b) alternatively, she made the representation recklessly, not caring whether it was true or false.

The representations

77 Upon analysis of the G matter, the LPCC alleges that the practitioner made eight knowingly false, that is to say fraudulent, representations as follows (the reference to the document identifies where the representation was initially made):

1) Aragon was a secured creditor - the caveats;

2) Aragon was entitled to receive the proceeds of the sale of the Morley property and the Viveash property - the caveats;

3) the practitioner undertook the court documents work reflected in the invoice purportedly dated 31 August 2005 (the August invoice) and Aragon was entitled to payment of that invoice - the August invoice;

4) the practitioner undertook the court documents work reflected in the invoice dated 7 October 2005 (the October invoice) and Aragon was entitled to payment of that invoice - the October invoice;

5) the practitioner advised Mr G of the amount of the August invoice on 6 September and Mr G requested it be fully itemised - letter from Aragon to Mr and Mrs G dated 11 October 2005 - the October letter;

6) Aragon posted the itemised August invoice to Mr G on 16 September 2005 - the October letter;

7) on 19 September 2005, Mr G was unwilling to negotiate a payment plan in respect of the August invoice (the substance of this representation has been slightly changed to accord with the October letter) - the October letter; and

8) Aragon was entitled to caveat the properties because of non-payment of the invoices - the October letter.

78 The making of the representations is not in dispute. The question is whether they were fraudulent in the sense that they were false to the knowledge of the practitioner when made.

The evidence

79 As the period of the practitioner's direct contact with Mr and Mrs G was only six or so weeks, it is convenient to outline the evidence for this period before making findings in relation to what took place.

Mr and Mrs Gs' instructions

80 The practitioner first met Mr and Mrs G at a meeting at Aragon's offices on 8 August 2005.

81 The practitioner claims Mr and Mrs G gave instructions on an urgent basis to 'overturn' the contract for the Morley property and to institute Supreme Court proceedings to that end. Further, that at the meeting Mrs G said she had no money even for the Supreme Court filing fee and had offered the Morley and the Viveash properties as 'securities for costs', insofar as she gave instructions to proceed immediately with the Supreme Court action. The practitioner also gave evidence that she quoted fees of $40,000 for the Supreme Court proceedings.

82 In the practitioner's cross-examination, she put to Mr G that at the meeting she had mentioned that if they proceeded in the Supreme Court she would have to prepare witness statements for the whole family and the tradespeople as well (T:45, 3.11.08). He did not recall that. In answer to

questions by the Tribunal, Mrs G (T:42, 3.11.08) emphatically denied that she ever asked the practitioner to prepare witness statements for anyone.

83 The practitioner said she made notes of the meeting but these were not on the file which she inspected at the LPCC's offices. At this time she had made a general note to the LPCC pointing out that some documents were missing and gave that to the LPCC. She had not taken the matter further. The note was not produced.

84 Mr and Mrs G each claimed in evidence that they made clear to the practitioner that their only interest was to recover an amount of $10,000 being the quoted cost of repairing the Morley property to make it habitable. This was the amount which, on Mrs G's evidence, the vendor had previously undertaken to pay to meet the cost of these repairs but from which agreement he had later resiled. Mr and Mrs G also said they made clear to the practitioner that they did not wish to rescind the contract for the Morley property. They did not want to institute Supreme Court proceedings, as the practitioner suggested, but only to mediate their claim for the cost of repairs. They asked the practitioner to write a letter to the vendor for this purpose. At the meeting, Mrs G provided to the practitioner the tradesmen's cards and, it seems likely, the reports from the tradesmen as to the work required for the repairs to the Morley property. Mr and Mrs G each denied that they had offered either of the two properties as security for Aragon's fees.

85 It appears that, notwithstanding the subsequent dispute between Mr and Mrs G and the practitioner as to the nature and content of her instructions, this meeting ended amicably. Mr Venables' evidence was that on the Gs departing, they made a comment to him to the effect that: 'It's nice to find someone who knows what we want'.

86 By letter to Mr and Mrs G dated 10 August 2005, the practitioner confirmed her instructions. She purported to enclose a copy of the letters she wrote to the vendor and to the vendor's real estate agent. The letter to the vendor demanded repayment of the purchase price and associated expenses on the Morley property of about $400,000, based on contractual misrepresentations. There was no reference to the relevant terms of the contract of sale and no offer to return the Morley property. The enclosed copy letters are in fact dated 15 August 2005 and this is the date referred to in the addressees' replies. We note that this type of inconsistency and error was a fairly typical and constant feature of the practitioner's client documents. The practitioner's letter to Mr and Mrs G advises that if these parties are unwilling to settle then 'we should immediately sue them in the

Supreme Court of WA'. This letter also encloses Aragon's Standard Terms Contract. This was not signed by Mr or Mrs G.

87 By letter dated 23 August 2005, the practitioner advised Mr and Mrs G as to progress. She enclosed a copy of the responses to her letters dated 15 August 2005. The letter from the solicitors for the vendor stated that Mr and Mrs G's claim articulated in the practitioner's letter was 'beyond comprehension'. The practitioner said in her letter to Mr and Mrs G that she would 'like to finalise your statement of claim as soon as possible'. She enclosed a further copy of the Standard Terms Contract. This again was not signed by Mr or Mrs G. It was never signed.

88 On 28 August 2005, the practitioner inspected the Morley property with Mr and Mrs G and their children. There is a dispute between Mrs G and the practitioner as to what took place during that inspection. It is not necessary to determine exactly what occurred.

89 There was then a telephone conversation between Mr and Mrs G and the practitioner on 6 September 2005. There is a dispute about nearly every aspect of the call including who initiated it and from where, who received it and from where, how long it lasted and what was said. The practitioner claims that the call lasted one and a half hours. She first spoke to Mr G and gave him an estimate of her lump sum bill for work undertaken to date of about $14,000. Her evidence was that Mr G said not to mention this figure to Mrs G because 'she would have a heart attack'. She made a file note of the conversation.

90 In the practitioner's cross-examination of Mr G, she put to Mr G that Mrs G rang the practitioner at her office and that they spoke for one and a half hours and that Mrs G had mentioned that the family was at home. Mr G disputed that the call lasted anything like the time claimed but was rather 10 or so minutes and he said the call was made on their mobile phone whilst they were at the dentist's surgery. He denied the fee estimate was provided. All they had spoken about was the practitioner's view that the vendor ought 'not get away with' not repairing the property. There was no discussion about the Supreme Court proceedings or costs. Mr G said he was unaware at this time that the practitioner was preparing the Supreme Court action. Mr G said in answer to the Tribunal that he thought the practitioner's fees would be in the order of $5,000 to $6,000. They were going to fund this from the sale of the Viveash property.

91 Mr G said the phone was then passed to Mrs G. Mrs G in evidence confirmed that the call was made by the practitioner whilst the family was

at the dentist, that Mr G answered the call and spoke first, that it was reasonably short, and that she then took over the phone. She told the practitioner that they wanted to terminate the recovery proceedings (we think in context she meant their 'claim' to $10,000) and that the practitioner had tried to persuade them to continue the claim.

92 In cross-examination of Mrs G, the practitioner suggested that Mrs G had said to Mr G that 'we need to continue this' (meaning the claim against the vendor). The answer from Mrs G was that this assertion was 'totally untrue'.

93 Mr and Mrs G gave evidence that from the time of the practitioner's visit to the Morley property at the end of August 2005, they had lost confidence in her because she overdramatised matters and had pushed them toward the Supreme Court proceedings. They decided to terminate the practitioner's instructions. Mr G did so in a telephone conversation with the practitioner on 19 September 2005. He asked the practitioner to send her bill. He thought that by this stage the fees would be about $3,000 to $5,000.

94 The practitioner said in her evidence she was frequently contacted by Mrs G, on an almost daily basis, in the period from their first meeting until 19 September 2005. Mrs G denied this. The practitioner purportedly made file notes of these conversations which included Mr and Mrs G effectively promising to pay Aragon's fees from the sale of the Viveash property. The substance of these conversations were put to Mrs G by the Tribunal. Mrs G denied the content of these conversations.

95 Mrs G was also asked by the Tribunal about her response to the practitioner's proposal to proceed in the Supreme Court in order, as the practitioner said, to threaten the vendor. Mrs G said 'I believe I would have said, never, ever, ever, ever were we ever going to go to any Supreme Court' (T:147, 27.05.08). She said that is why they refused to pay the filing fee of $700. She said that when the practitioner referred in her letters to proceeding in the Supreme Court she felt bullied by the practitioner. They wanted to move into the Morley property. By the time of the telephone conversation with the practitioner on 6 September 2005, her evidence was that Mr G and she had determined to do the repairs and move in and forget about trying to recover the cost.

The practitioner's work and invoices

96 The practitioner's evidence was that in consequence of these instructions, between the date of her first contact with Mr and Mrs G on

8 August 2005 and the termination of her retainer on 19 September 2005, she prepared the court documents necessary for proceedings in the Supreme Court and in the Magistrates Court. The court documents work included the preparation of a number of statements of claim, witness statements of Mr and Mrs G, their two children and two tradespeople, research and submissions.

97 The practitioner says in relation to the court documents work that she prepared an interim tax invoice dated 31 August 2005 for $18,150 (the August invoice). The practitioner said that following her conversation with Mr G on 6 September 2005 she prepared a fully itemised version of the August invoice which she posted out on 16 September 2005 (the September invoice). Following the termination of her retainer she prepared and sent the October invoice which was a final tax invoice dated 7 October 2005 for $5,618.

98 Mr and Mrs G deny receipt of any invoice until the practitioner's letter dated 11 October 2005.

99 On 20 September 2005, the practitioner arranged for Aragon to lodge caveats over both the Morley property and the Viveash property in each case as 'a person who is to receive portion of the proceeds of land upon a sale, being the registered proprietor's secured creditor'. She made a statutory declaration in support.

100 Thereafter, the practitioner, on Aragon's behalf, sought an extension of the caveats and prosecuted a claim for the recovery of these fees in the manner outlined in the LPCC's statement of facts.

101 The two most significant matters in relation to this aspect of the LPCC's complaint are:

1) whether the practitioner undertook the court documents work comprising the bulk of the amount claimed in the invoices; and

2) whether the practitioner believed that Aragon was a secured creditor entitled to lodge and continue the caveats.

The witnesses

102 Both Mr and Mrs G prepared witness statements, the truth of which they swore, and were first questioned by the Tribunal (in the practitioner's

absence) and subsequently re-called and cross-examined by the practitioner.

103 As between Mr and Mrs G, Mrs G was principally involved in instructing the practitioner. Although it appears her relationship with the practitioner was initially cordial, it quickly deteriorated. Within three weeks or so of their first conference, Mr and Mrs G had resolved to terminate the engagement of the practitioner, which they did some weeks later (19 September 2005). When the practitioner cross-examined Mrs G it was apparent that there was a high degree of animosity between them. Each accused the other of lying about what had occurred.

104 We are inclined to think Mrs G had rather more contact with the practitioner than she was able or prepared to recall in evidence. We also think that she initially went along with the practitioner's proposals to intimidate the vendor of the Morley property by threatening to issue proceedings. Fundamentally, however, we accept that her instructions to the practitioner were to seek to recover $10,000, which she said the vendor had initially promised to pay, by some form of mediated settlement. She did not authorise the practitioner to launch any proceedings nor to undertake the court documents work.

105 In relation to the events during the period in which Mr and Mrs G retained the practitioner, there is considerable conflict between the version put forward by Mrs G and the account of the practitioner. We deal with some specific areas of conflict below. Generally speaking, for the reasons given, we prefer the evidence of Mrs G, particularly when supported by the evidence of Mr G, over the evidence of the practitioner.

106 Overall, Mr G's witness statement and oral evidence supported the evidence of Mrs G. It appeared he was concerned that the practitioner exercised a measure of influence over his wife's decisions. He gave his evidence in a straightforward way and we believe he genuinely endeavoured to tell the truth as he recalled the events. His evidence was important as to the telephone conference with the practitioner on 6 September 2005. We accept his version of events over that of the practitioner in relation to that call and generally.

107 With regard to the other witnesses, Dr Bachleda was a director of Aragon. She gave evidence both by witness statement and orally, on two separate occasions, concerning her role in the employment and termination of the services of the practitioner. She also gave evidence concerning the location and contents of Mr and Mrs G's file. Dr Bachleda

was an impressive witness and we think her evidence entirely reliable. Mr Boni was a solicitor who assisted Aragon in sorting out the practitioner's affairs when her services were terminated. Again, we think he was a reliable witness. His evidence differs from the practitioner's as to the telephone conversations between them. We accept Mr Ellis' limited evidence of his involvement on behalf of Aragon in the recovery proceedings against Mr and Mrs G and we have no reason to doubt the contents of Mr Fullwood's affidavit in relation to his work on the computers at Aragon described below.

108 Overall, we do not accept the practitioner's evidence regarding Mr and Mrs G's matter and we prefer the evidence of the other witnesses which is generally supported by documentary evidence or the fact of the absence of documentary evidence.

Findings

The work undertaken

109 We must first determine what instructions Mr and Mrs G gave to the practitioner in relation to the Morley property. If, as they emphatically maintained, they were opposed to any Supreme Court proceedings and did not authorise the practitioner to commence the court documents work, it seems unlikely that the practitioner would commence and for some weeks continue the drafting of these documents. The practitioner would have known that Aragon's claim for its fees for this work would have been challenged by Mr and Mrs G.

110 There are several reasons why we accept Mr and Mrs G's evidence that their only instructions to the practitioner were to endeavour to recover the $10,000 claimed against the vendor and that they positively opposed the initiation of Supreme Court proceedings.

111 First, Mrs G as the person most involved in giving instructions, but also Mr G, consistently maintained this position. They did so in their witness statements, under questioning by the Tribunal and in cross-examination by the practitioner. They said they only ever wanted to hold the vendor to his earlier agreement to pay about $10,000 for the cost of work on the Morley property. On their evidence, each time the practitioner raised the subject of Supreme Court proceedings, they indicated this was not what they wanted. In her evidence, Mrs G said she regarded the practitioner's advice that they should institute Supreme Court proceedings to 'scare' the vendor as 'bizarre' (T:131, 27.05.08). Although clearly Mrs G was aware that the practitioner was threatening

Supreme Court proceedings, both from the copy correspondence she received and we think also from her telephone contact with the practitioner, we accept her evidence that she did not authorise the practitioner to undertake the court documents work. On the evidence it is apparent that Mr and Mrs G were concerned about incurring legal costs and were themselves scared about the prospect of commencing and conducting Supreme Court proceedings.

112 Second, the rescission of the contract for the Morley property and the recovery of the purchase price necessarily involved the return of that property. Mrs G was adamant in her evidence that at no time did she contemplate such a course. She said, with complete conviction, that the Morley property was 'an amazing beautiful house' which she had no intention of giving up.

113 Third, according to the evidence of the practitioner, at the initial conference on 8 August 2005 she quoted the sum of $40,000 as the cost of the Supreme Court proceedings. We do not believe on the evidence that Mr and Mrs G ever contemplated incurring such a cost, nor indeed the amount they were invoiced, about $24,000, in order to recover the cost of repairs of $10,000. As a matter of probability that was most unlikely. Mrs G's evidence in her witness statement was that in a telephone conversation with the practitioner in mid-August 2005 she told the practitioner that they did not have the $700 the practitioner was seeking for filing fees. We accept Mrs G's evidence in this respect.

114 Fourth, in her own evidence, the practitioner said that it was only Mrs G who wanted to rescind the contract - she accepted that Mr G did not want to rescind the contract because he thought it would be easier just to make the necessary repairs to the Morley property and move in. On that state of the evidence it seems most unlikely that the practitioner genuinely believed she had authority to prepare comprehensive Supreme Court and Magistrate Court proceedings on behalf of Mr (and Mrs) G.

115 Finally, in other areas where there is a conflict between the evidence of Mr and Mrs G and the practitioner (such as the conversation of 6 September 2005) we think the clients' account is more reliable than that of the practitioner.

116 In summary, we find that Mr and Mrs G's instructions to the practitioner were to seek to recover $10,000 from the vendor of the

Morley property by way of a mediated settlement; Mr and Mrs G did not authorise the practitioner to undertake the court documents work.

117 That leaves for consideration why the practitioner would proceed with the court documents work as she alleges, and issue invoices for the cost of that work as was the fact. The practitioner was not the direct beneficiary of the receipt of those fees. The LPCC's case in this respect is that the practitioner's motive in invoicing Mr and Mrs G for the court documents work, notwithstanding on its case she did not undertake it, was that she was incensed at her services having been terminated by Mr and Mrs G and also needed to demonstrate to her principals that she had earned projected fees.

118 We think the first limb of this argument is somewhat speculative. We think the second is established on the evidence. The starting point for the LPCC's argument is an internal Aragon document apparently created by the practitioner on 31 August 2005 showing her progress meeting her monthly budget. The practitioner's monthly budget is shown as $25,000 (ie, four times her annual salary divided by 12) and the provisional total achieved by her for the month of August is shown as $25,140. The practitioner's evidence was that the monthly budget was a figure agreed between the practitioner and Dr Bachleda. Of the provisional total of $25,140 only $6,640 was actually billed. The balance of $18,500 included $16,500, being an estimate of her fees on Mr and Mrs G's matter. That is, some two-thirds of the provisional amount achieved was attributed to Mr and Mrs G's case. It was put to the practitioner by Ms Cahill that the practitioner had inserted the figure of $16,500 for Mr and Mrs G's matter falsely, to represent that the target had been achieved. The practitioner denied this. She said that work of this order had been undertaken but this had not been added up.

119 In order to justify this estimated billing on Mr and Mrs G's matter, the practitioner would have to have undertaken a considerable amount of work. The practitioner says by reference to her timesheets, file notes and the August, September and October invoices that she had done so. The question raised by the LPCC's case is whether this work was in fact undertaken and whether these documents are a genuine record of that work.

120 The documents directly explaining the work undertaken comprise the practitioner's August invoice (as itemised in the September invoice), the October invoice, and the response prepared in answer to these proceedings. In her response, the practitioner claims to have completed:

1) the Supreme Court writ of summons and 27-page statement of claim involving claims for contractual misrepresentation, undue influence and unconscionability and 'potential claims in equity';

2) the Magistrates Court General Claim Summons and description of claim, and to have prepared both documents to the stage where they were 'ready for filing';

3) four witness statements, being two at the second draft stage for Mr and Mrs G and two at the basic stage for their children; and

4) two draft witness statements for a building inspector and an electrician.

121 The invoices contained detailed descriptions of the court documents work and the dates and times involved.

122 After careful consideration we have come to the conclusion that the court documents work was not undertaken and the supporting documents are false and unreliable records.

123 First, we have found that Mr and Mrs G's instructions were for the practitioner to do no more than write to the vendor seeking a mediated settlement of Mr and Mrs G's claim for $10,000. We refer to our reasons in this respect.

124 Second, the work the subject of these documents would comprise, on the evidence of the practitioner, applications and statements of claim for both the Supreme Court and the Magistrates Court, witness statements for six people, research and legal submissions. The practitioner's evidence was that these documents were created by her on her computer at Aragon and that hard copies were printed out and contained in a folder. With the exception of one or two pages of notes on real estate cases of marginal relevance, none of these documents appear on the hard copy file for Mr and Mrs G's matter which was delivered by Aragon to the LPCC and received in evidence, nor on the electronic records of Aragon's files for Mr and Mrs G's matter which were copied from its computer onto a DVD disc and tendered at the hearing.

125 We have heard evidence from Dr Bachleda, Mr Boni and Mr Fullwood concerning the whereabouts and completeness of those records. Dr Bachleda explained the circumstances in which she engaged

Mr Boni to take over the legal files on the practitioner's dismissal. She described the location of the physical files and the security of the building. She said she had no reason to believe the files were tampered with or documents removed. Dr Bachleda also described the computer provided to the practitioner which was connected to Aragon's hard drive, the system that supported it and its access to the section of the drive containing legal matters. She said the practitioner's computer was password protected - Dr Bachleda being the only person other than the practitioner having the password. Dr Bachleda said she did not remove any documents from the computer.

126 Mr Boni swore an affidavit in July 2006, provided a witness statement, gave oral evidence and was questioned at some length by the Tribunal about his role. He described his searches of the physical file and the electronic file for Mr and Mrs G's matter. On the electronic file for Mr and Mrs G's matter there were folders for the Magistrates Court and Supreme Court, but these were empty. At the end of May 2006, Mr Boni rang the practitioner and told her about the absence of the court documents work. The practitioner told him there were both hard copies and copies on the computer in Word format. Mr Boni told her he had searched both. The practitioner then said they must have been removed. Mr Boni suggested she might search for these documents when she returned to Aragon to collect her belongings. Mr Boni also suggested he could obtain a forensic search of the computer files to see whether the documents had ever been created. The practitioner then told Mr Boni not to ring her again on her home number and hung up. In her response, the practitioner said that she did so because Mr Boni was becoming argumentative.

127 Dr Bachleda then arranged for a computer technician, Mr Fullwood, to download the contents of Aragon's legal data onto a DVD. This occurred in June 2006. Mr Fullwood provided an affidavit describing this process and that no files or documents could have been deleted. Mr Boni undertook a further search for the missing documents on the DVD in April 2008 and again could not find them.

128 In her response, the practitioner claimed that at the time she commenced at Aragon she believed some court documents were missing from the legal files. She did not support this claim in her oral testimony, did not call or obtain evidence from the solicitor whom she replaced (the Tribunal discovered he was in Vietnam), and did not cross-examine any witnesses in relation to it. We do not accept that the practitioner's evidence on the point provides any support for the suggestion that selected

court documents were for some unexplained reason removed from Mr and Mrs G's file.

129 The volume, arrangement and content of material on the physical files and on the electronic files for Mr and Mrs G's matter suggest that they constitute the entire files. Nothing in those files or the evidence suggests that some documents were removed from the physical files or exist outside it or that documents were deleted from the electronic records. Notwithstanding that the practitioner had the opportunity when she left Aragon to search for copies of these documents, she did not take this opportunity. Apart from a note to the LPCC claiming that part of the files were missing, the practitioner did not pursue the subject of allegedly missing documents. A copy of the DVD of the electronic file for Mr and Mrs G's matter was provided to the practitioner. She said in evidence she had only limited opportunity to search it. We do not accept that evidence. It would have taken a short time only for the practitioner to have searched through the disc as Ms Cahill evidently did. Had the practitioner believed that a hard copy or electronic copy of her documents was available but was 'lost' we believe that she would have made extensive searches for these documents and vigorously pursued the matter with Aragon and the LPCC. She would surely have been advised by counsel assisting her to do so. The fact that she took so little interest in searching for the documents causes us to think she knew they did not exist.

130 Third, on the evidence, the practitioner did not produce a copy of any of these documents to any person throughout the period from the time of their alleged creation in August 2005 to the date the practitioner's services were terminated in May 2006. No pleadings or witness statements, including those at 'second draft stage', were produced to Mr and Mrs G for them to review. They were not produced by the practitioner to Mr Ellis, the counsel the practitioner engaged on Aragon's behalf to continue the caveats and institute recovery proceedings for Aragaon's fees in the Magistrates Court. They were not produced by the practitioner to Mr and Mrs G's new solicitors, notwithstanding that in their correspondence, and in the Magistrates Court recovery proceedings, they denied that Mr and Mrs G had given instructions to undertake any of the court documents work and said that no drafts of the documents had ever been provided to Mr and Mrs G. Additionally, they were not identified in the Magistrates Court statement of claim in the recovery action against Mr and Mrs G prepared by the practitioner on behalf of Aragon as documents which Aragon would produce in support of the recovery proceedings. Clearly, it could not prove its claim to its fee without producing these documents.

131 Fourth, the practitioner called no-one from Aragon, such as a paralegal or a secretary, to say that they had assisted in the preparation of or seen the court documents work or seen the practitioner working on these documents or could otherwise corroborate that the practitioner had undertaken the alleged 75 hours work claimed in the August and October invoices, the great bulk of which related to the court documents work.

132 Fifth, we have grave concerns as to the authenticity of the date, of 31 August 2005, shown on the August invoice. This invoice was prepared by the practitioner. The electronic version of the document shows it was first created by the practitioner on 28 September 2005. When this discrepancy was put to the practitioner in cross-examination her response was that an earlier version of the document existed. She sought to explain the later creation of a second document because in August 2005 the contents of her laptop had been copied to her new desktop (linked to Aragon's computer system). It was pointed out by Ms Cahill, and demonstrated, that other documents from Mr and Mrs G's file had been transferred across to the desktop computer incorporating their dates of first making. The practitioner then said the later version of the invoice was made in support of the caveat application on 20 September 2005. It was put to her by reference to the recorded date of making, that the invoice was created several days after the caveat was lodged. All that was required for this application was to run off a copy of the existing invoice. The practitioner then said there had to be a reason why a new document for the invoice had been created. In the end she offered no plausible reason for this.

133 The date of the making of this invoice is of particular importance in determining what occurred. The creation of the first invoice at the end of September fits with the evidence of Mr and Mrs G that they received no invoices from the practitioner until the practitioner sent the October letter. It supports the LPCC's explanation that the practitioner, committed to billing a substantial sum to meet her monthly target, incensed at Mr and Mrs G terminating her services on 19 September 2005 and refusing to allow her to see Mrs G, generated the first invoice at the end of September and sent this together with the October invoice to Mr and Mrs G with the October letter.

134 Sixth, as Ms Cahill also exposed in cross-examination, the time for the vendor of the Morley property to meet the demands set out in the practitioner's letter dated 15 August 2005 did not expire until 22 August 2005, yet on the practitioner's case, by reference to the August

invoice, she had already drafted the bulk of the Supreme Court documents.

135 Finally, the practitioner's evidence as to her undertaking the court documents work was entirely unconvincing on many specific matters and overall.

136 The first of these matters is that the practitioner said in her letter to the vendor dated 15 August 2005 that Mr and Mrs G's claim was based on contractual misrepresentations. Questioned by the Tribunal, she said these misrepresentations were in respect of a white ant certificate and as to the state of the electrical wiring. The damages for breach comprised the cost of repair. The practitioner initially accepted that this was $10,000 or $11,000 as Mrs G had consistently asserted. She then said this cost was only for the electrical wiring but there were other claims arising from the vendor undertaking illegal works on the house which required rectification. She alleged that the total cost of these claims was such that she needed to proceed in the Supreme Court. She said the claims for repairs exceeded $250,000 in total.

137 This was an extraordinary allegation, first made by the practitioner in the last few hours of the evidence in the final day's hearing. This cost would appear to have exceeded the entire value of the house, given a total purchase price for the Morley property of $380,000. Mr and Mrs G's evidence throughout was that the quoted cost of repairs was about $10,000. At no time did they suggest there were costs greatly exceeding this figure discussed with the practitioner and neither did the practitioner ever put this to them in cross-examination. No such claim was made by the practitioner in her voluminous response to this application. Nothing in the documents tendered, which included the physical and electronic copy of Mr and Mrs G's file, suggested a repair cost beyond the figure of about $10,000. We have come to the view that this late assertion by the practitioner was invented by her to seek to justify the amount and type of work she says was undertaken, her proceeding in the Supreme Court and the amount of the fees claimed. This finding again undermines our confidence in the practitioner's testimony generally on subjects where there is a conflict in the evidence, or the practitioner's testimony is at odds with the probabilities of the matter.

138 The second matter is that the practitioner said in evidence that her instructions were based on the initial meeting on 8 August 2005 at which she received notes of quotes from tradespeople and substantial handwritten notes provided by Mrs G. On the accepted evidence these

handwritten notes were not provided to the practitioner until her home visit to the Morley property on 28 August 2005. The practitioner's time involved in this visit is the last entry in the August invoice. The itemised invoice shows that between 10 August 2005 and 28 August 2005 the practitioner had spent over 35 hours preparing three statements of claim for contract misrepresentation and negligence (together with particulars and damages) and for specific performance. On the evidence, therefore, this work was undertaken by the practitioner based on oral instructions given by Mr and Mrs G, quotes from tradespeople and several telephone conversations with Mrs G. This is implausible. The practitioner said in evidence that as she recalled, the only text she had available upon which to prepare these pleadings was a book on building law. We think it incredible that the practitioner could have undertaken work of this nature for so many hours without reference to precedents and texts. Further, as mentioned, it was not until 22 August 2005, the expiry of the seven day period for the vendor to respond, that there was any justification for the practitioner undertaking this work. Finally, it is inconceivable that prior to filing any court proceedings, any responsible solicitor would produce submissions in support of the actions as the practitioner claimed in her invoices.

139 The third matter is that the invoices show the practitioner completed the statements of claim by 10 September 2005. In her response, the practitioner claimed these documents were ready for filing subject to her clients' approval and payment of the court filing fees. Asked by the Tribunal why she did not send these to Mr and Mrs G, the practitioner asserted she had sent part of the documents to them by email. The practitioner then said the statement of claim may have been sent or discussed in the email. This was the first evidence of such an assertion and there was no evidence of such an email. Reference to her doing so did not appear in the practitioner's response, had not previously been mentioned in her evidence and was not put to either Mr or Mrs G in cross-examination. We think her assertion was invented and false.

140 The fourth matter is that, with the exception of 'preliminary drafting of witness statement for an expert', the invoices do not include any reference to the six witness statements, which, according to the practitioner's response, she allegedly prepared and some of which she revised. Questioned about this discrepancy, the practitioner suggested the records of the time taken for preparing the other witness statements may have been omitted or deleted from the invoices. There was no evidence to support this. The practitioner also said that Mrs G had insisted on witness statements including from her children. The practitioner's evidence was

that these witness statements of the children would have been basic, saying that 'mummy's upset'. When asked about instructing the practitioner to prepare witness statements for anyone, Mrs G was emphatic that she had given no such instruction. We believe her. The notion that a lawyer would prepare witness statements from the purchasers' children in a sale of land action to the effect that 'mummy's upset' is not believable. We think the practitioner falsely asserted she had undertaken this work in her response and falsely included reference to preparing a witness statement for the expert in her September invoice.

141 The fifth matter is that the practitioner's evidence concerning the nature of the work undertaken otherwise reveals not merely incompetence and confusion but we think dishonesty. The practitioner said first that the claim for specific performance was in relation to the contract of sale. Perhaps realising the incongruity of that (her clients sought to rescind the contract on her case) she then said it was to enforce the removal of the illegal works. She later said this was the reference in her response to 'potential claims in equity,' notwithstanding that she asserted these pleadings were ready for filing. Further, the invoices made no mention of claims for unconscionability and undue influence referred to in her response. The practitioner said she included a claim for unconscionability and undue influence against the vendor's real estate agent in respect of his conduct toward Mrs G in persuading her to purchase the property. This comprised her third statement of claim. Such a claim lacks any legal foundation. The practitioner also said she included in the Magistrates Court statement of claim reference to the obligation of Mr and Mrs G to pay the vendor for furniture which they apparently acquired from him. This was the main object of that claim. It is difficult to see on what basis Mr and Mrs G's liability would be included in a claim against the vendor. We mention finally in this context the practitioner's letter to the vendor seeking to rescind the sale and claiming nearly $400,000 in damages. The response to that letter from the vendor's solicitors was that it was beyond comprehension. We agree with that observation.

142 The sixth matter is that there were manifest errors in the calculations made in the invoices of the time taken for various matters. When these were pointed out to the practitioner by the Deputy President, rather than accept they represented errors and could not be sustained, the practitioner initially sought to justify them. She was 'multi-tasking'. Ultimately, she accepted that the invoices could not be relied upon. These errors provide some evidence that the practitioner's invoices were not genuine.

The caveats

143 On the practitioner's version of events set out in her response, Mr and Mrs G offered the Viveash and Morley properties as security for Aragon's costs because of their instructions to proceed with the Supreme Court action forthwith. The practitioner referred to an extract of her notes recording conversations with Mr and Mrs G during August 2005 and early September 2005, in which Mrs G in effect offered to pay for Aragon's fees from the sale of the Viveash property. This extract includes a note that the practitioner quoted an estimate of the lump sum fees to Mr G on 6 September 2005 and he requested this be itemised. The practitioner says that pursuant to this request she posted the itemised August invoice (the September invoice) out to Mr and Mrs G on 16 September 2005.

144 In Mrs G's witness statement she records her incomprehension and then dismay at the discovery that Aragon had caveated the title of the Viveash property at a time during which it was under a contract of sale. She says that pending the sale of the Viveash property Mr and Mrs G were paying bridging finance. She said that she immediately tried to contact the practitioner about the caveat but the practitioner would not take her calls. Mrs G referred to the statutory declaration of the practitioner made in support of the lodging of the caveats and denied she ever received the invoices referred to or that she had agreed to secure their indebtedness to Aragon. Mr G confirmed this position. Both witnesses were questioned about these events. They did not deviate from this position. We believe them.

145 We have outlined the conflicting versions of the telephone call on 6 September 2005 during which the practitioner alleges she advised Mr G of the amount of Aragon's fees and he requested that she provide an itemised invoice. We accept Mr and Mrs G's account of that conversation.

146 First, they had a much more convincing explanation of the context of that conversation as concerns their whereabouts (their daughter being at the dentist), as to who initiated the call, how long it lasted and so on. The practitioner's notes show the call lasted for an hour and a half. Mr and Mrs G's evidence is that it was for some minutes, perhaps ten. On the probabilities it seems unlikely that Mr and Mrs G would talk with their solicitor on a mobile phone from the dentist's surgery for 90 minutes.

147 Second, it seems most unlikely that if the practitioner had mentioned an estimate of fees of $14,000, that Mr G would not have told Mrs G and remonstrated at the size of this bill, both because it exceeded his

expectation and it substantially exceeded the amount they were seeking to recover. Having regard to his evidence, it seems to us unlikely that Mr G would have known enough about lawyers to have responded to the practitioner's estimate by asking that the practitioner produce an itemised account.

148 Third, Mr and Mrs G's version is consistent with their version of events as to what took place before and after that conversation; that is, their limited instructions to the practitioner, their concern as to her talk of Supreme Court proceedings, their refusal to sign Aragon's standard terms contract, and their failure to pay the proposed filing fees of about $700.

149 It may be that Mrs G told the practitioner something to the effect that they would be in a position to meet Aragon's fees for the claim against the vendor once they had received the proceeds from the sale of the Viveash property. But we do not accept that she or Mr G said anything to the effect that the practitioner could use the Morley or Viveash properties as security for Aragon's fees or anything that could give the practitioner a genuine belief that Aragon was entitled to caveat the titles to those properties. Both Mr and Mrs G emphatically denied that they did so. With respect to the sale of the Viveash property, the effect of Aragon's caveat was to hold up the settlement of that property at the cost of Mr and Mrs G, including in relation to bridging finance. Mrs G was manifestly concerned about this. Mr and Mrs G's purchase of the Morley property of itself would obviously not generate funds to pay Aragon's fees. Significantly, in the practitioner's extract of her telephone conversations with Mrs G which she provided to Aragon's counsel, there is no reference to Mr and Mrs G providing 'security for costs'. As Ms Cahill identified, an SMS included in the extract and allegedly sent by Mrs G to the practitioner on 12 August 2005 referring to their selling the house and working out payment of Aragon's fees, does not appear in an electronic record of SMS messages typed by the practitioner herself at a point in time before the fee dispute arose.

150 The practitioner claimed that she posted the September invoice to Mr and Mrs G on 16 September 2005. Their evidence was that they did not receive this invoice until they received the October letter. We accept Mr and Mrs G's evidence. There is no reason to think that, if posted, the invoice would not have been received in the ordinary course of post. Had it been received we have no doubt that Mr and Mrs G would have remembered this event and passed this on to their new solicitors.

151 There is evidence that the practitioner regarded the lodgement of caveats over the titles to these properties not as a right which Aragon had, but merely as a tactic to secure a settlement of Aragon's fees. So much appears from the October letter offering to remove the caveat on the Viveash property if Mr and Mrs G agreed to pay the full amount of Aragon's fees from the proceeds of that sale. Further, the practitioner sent a letter dated 1 November 2005 to Mr and Mrs G's settlement agent in which she represented that Aragon was entitled to lodge caveats over the Viveash property because Mr and Mrs G had made contracts with Aragon in which they had agreed that the fees payable to Aragon would be paid from the proceeds of sale of the Viveash property. The practitioner here again proposed that Aragon would provide a withdrawal of caveat at settlement of the sale of the Viveash property if, at the same time, Aragon received payment in full of its invoices. The practitioner's competence and integrity is again called into question by this letter, not least because she concludes by requesting that the settlement agent not disclose the letter or its contents to the agent's clients, Mr and Mrs G.

152 We mention, for completeness, that when the practitioner, on Aragon's behalf, engaged counsel to continue the caveats the practitioner had lodged, counsel advised Aragon that it did not have a proper basis to lodge or continue the caveats. This was because Aragon did not have an interest in the subject land, the evidence provided being insufficient to establish an agreement that Aragon had the interest claimed, and there was relevantly no document signed by Mr and Mrs G supporting this claim. We do not think it necessary in these proceedings to consider the validity of an oral charge on the land. Aragon's counsel also noted that Mr and Mrs G had not received any independent legal advice in relation to the alleged agreement. Counsel observed that the practitioner's claim of $24,000 for legal fees would appear to be a 'lot of money' to charge for proceedings which had not been issued and when the client, as counsel was instructed, had agreed to pay only $50 per week and failed to come up with $700 for filing fees. Counsel also pointed out that the invoices rendered by Aragon did not have the endorsement required under the LP Act. Counsel warned that continuing with the caveats might expose Aragon and the practitioner to charges of professional impropriety.

The fraudulent misrepresentations

153 Having regard to the whole of the evidence, we find that the following representations were made by the practitioner in the manner and at the times alleged by the LPCC and in circumstances where the practitioner knew they were false:

1) the practitioner had undertaken the court documents work described in the August invoice and Aragon was entitled to payment of that invoice;

2) the practitioner had undertaken the court documents work described in the October invoice and Aragon was entitled to payment of that invoice;

3) Aragon was entitled to caveat the properties because of non-payment of the invoices;

4) Aragon was a secured creditor;

5) Aragon was entitled to receive part of the proceeds of the sale of the Morley property and the Viveash property;

6) the practitioner had advised Mr G of the amount of the August invoice on 6 September 2005 and Mr G had requested it be fully itemised;

7) Aragon posted the September invoice to Mr G on 16 September 2005; and

8) on 19 September 2005 Mr G was unwilling to negotiate a payment plan in respect of the August invoice.

154 Having regard to the finding that the practitioner was motivated by a dishonest intent in these matters we do not think it open to find that the practitioner was, in addition, guilty of incompetence and lack of diligence in relation to the same matters. We do not think that a finding such as that would ultimately affect penalty.

Unprofessional conduct

155 The test of unprofessional conduct applied in this Tribunal is that adopted in ***Kyle v Legal Practitioners' Complaints Committee*** (1999) 21 WAR 56 at 71-72. That is, that the conduct in question was conduct that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the legal profession of good repute and competence. That standard applies to an allegation of unsatisfactory conduct by unprofessional conduct made under s 185(1) of the LP Act and as made by the LPCC in this application.

156 It is difficult to see how any deliberate lie by a practitioner to a client would not constitute unprofessional conduct even on a subject as

unimportant in itself as the subject of the last-mentioned representation. But this particular representation was part of a course of conduct which included deceiving the client and charging for work that was not performed.

157 In the circumstances, the making of the representations, and particularly the first two representations, constituted conduct which was dishonest and disgraceful. The practitioner's conduct as found clearly constitutes unprofessional conduct within the ***Kyle*** test for the purposes of a finding under s 185(1) of the LP Act.

VR 34 of 2007 - the eight clients matter

158 It is again convenient to set out the LPCC's statement of facts in relation to each of the eight matters the subject of the LPCC's application VR 34 of 2007 and to consider each of these in turn.

159 With respect to the five liquor licensing matters, the LPCC provided a witness statement from Mr Romato, the Deputy Director Licensing and Customer Service, of ORGL. Mr Romato also gave quite extensive oral evidence. In his witness statement he sets out clearly and comprehensively the procedures in relation to applications for liquor licenses. These procedures applied at the relevant times referred to in the LPCC's application.

160 A liquor licence application must be accompanied by certain documents and the prescribed fee. Mr Romato told us that under s 68(1)(b)(i) of the *Liquor Control Act 1988* (WA) notice of an application for a liquor licence must be accompanied by certain documents and the prescribed fee. Regulation 26(3) of the *Liquor Control Regulations 1989* (WA) provides that if the fee is not paid the documents are deemed not to be lodged until it is paid. There is no flexibility in these procedures or provision for a waiver by ORGL staff of the requirements of the Act or Regulations. Mr Romato stressed that the mandated procedures are rigidly applied and that in practice if an application is not accompanied by all the required documentation or the fee then it is rejected as incomplete. Ms Kemp, the former team co-ordinator of customer service at ORGL confirmed this. There is no procedure for accepting an application for checking as alleged by the practitioner. Mr Romato described that suggestion as 'nonsense'. Rather, the application is checked against a checklist for the appropriate documents. If an officer exercises a discretion to accept an application which is not accompanied by all supporting documents, then it is lodged for processing. If accepted, a receipt is issued for the fee for the application.

Mr Romato also provided specific evidence in relation to each of the liquor licensing matters the subject of this application. He was examined as to the procedure generally and in relation to some of the specific matters.

161 Mr Romato was an impressive witness. He is obviously very experienced as to the practices of ORGL and the law underlying those practices. Most importantly, it appeared to us that he took considerable care in answering questions to ensure that he was providing accurate evidence and was not overstating the extent to which the department's practices and procedures were followed and eliminated human error. We accept his evidence with respect to each of the liquor licensing matters and as to the procedures and practices of ORGL generally.

162 The Tribunal also took evidence by telephone from Ms Kemp who worked at ORGL for seven or so years up until late 2007. During 2005 and 2006 she supervised the staff who processed applications. An acknowledgement letter to the individual applicant would go out whenever an application was lodged, whether the application was brought to the counter or posted. If the application was not complete it would be returned together with a check sheet as to what was missing. She disputed that during her time there were problems in processing and tracking applications of the type that the practitioner had deposed to. She also stated, contrary to the information allegedly provided to the practitioner by someone at ORGL, that no-one had been dismissed from her section or to her knowledge from the department.

163 The LPCC's charge in each of the liquor licensing matters that are the subject of this application is in substance that the practitioner failed to lodge the relevant application and that she lied to the clients to the effect that she had done so and that the applications were progressing through ORGL.

164 If the LPCC's allegations are accepted, they constitute extraordinary conduct on the part of the practitioner. The ***Briginshaw*** test applies in these circumstances. The practitioner is entitled to the presumption of innocence and we need to be actually satisfied on the basis of reasonably clear and cogent evidence that, on the balance of probabilities, the facts are as alleged.

The M matter

165 The LPCC's amended statement of facts in relation to the M matter states:

…

5. In about August 2005 the practitioner in the course of her employment by Aragon was instructed by Mr [M], a director of [SPL], to do all things necessary to enable [SPL] to obtain a wholesaler's liquor licence for the business operated by [SPL] and known as "the G".

6. The practitioner did not carry out those instructions.

7. Further, between about 22 September 2005 and 11 April 2006 the practitioner in email correspondence to Mr [M]:

   (i) Represented that the practitioner had personally lodged an application by [SPL] for a wholesaler's liquor licence ('the application') with ORGL, when in fact she had not;

   (ii) Represented that she had personally provided to ORGL [SPL's] cheque in respect of the application fee, when in fact she had not;

   (iii) Represented that she had received a lodgment receipt from ORGL in relation to the application, when in fact she had not;

   (iv) Represented that she had contacted by telephone and met with officers of ORGL on several occasions and discussed with them the progress of the application, when in fact she had not;

   (v) Represented that she had contacted by telephone and met with officers of ORGL on several occasions and discussed the processing of [SPL]'s payment in respect of the application fee when in fact she had not;

   (vi) Represented that ORGL had offered to the practitioner on behalf of [SPL] an occasional facility licence 'for free', when in fact no such offer had been made;

   (vii) Represented that ORGL had promised to the practitioner that the application would be advertised by a certain time when no representation or promise had been made by ORGL to her at all;

   (viii) Represented that there had been no objections to the application when in fact the application had not been lodged;

   (ix) Represented that she or Aragon had lodged with ORGL [SPL]'s cheque in payment of a licence fee, when in fact neither she nor Aragon had done so;

(x) Represented that she had discussed with officers of ORGL the processing of [SPL]'s payment in respect of the licence fee when in fact she had not;

(xi) Represented that ORGL had delayed in processing the application when in fact the practitioner had not lodged the application;

(xii) Represented that she had on several occasions discussed with officers of ORGL the delay by ORGL in processing the application when in fact she had not; and

(xiii) Represented that ORGL had terminated the employment of two of its employees involved in dealing with the application when in fact that was not the case and the practitioner had not been advised to that effect by ORGL or anyone else.

7A. When the practitioner made the representation pleaded in paragraph 7 above:

(i) she knew each of the representations to be false; and

(ii) alternatively, she made each representation recklessly, not caring whether it was true or false.

8. The practitioner on behalf of Aragon invoiced:

(i) Mr [M] and his wife on 4 October 2005; and

(ii) Mr [M] on behalf of [SPL] on 16 March 2006,

for legal work allegedly done in relation to the application when in fact, to the practitioner's knowledge, no such work had been done by the practitioner or Aragon.

166 There is no issue as to the making of these representations. In emails to Mr M, the practitioner made the pleaded representations regarding the payment of the licence application fee, the processing of the application, difficulties and delays she experienced in progressing the application and communications she had with the officers of ORGL in that regard.

167 The practitioner by her response admits that she agreed to obtain this licence for SPL. On 22 September 2005, the practitioner by email informed Mr M that his wholesalers' liquor licence application had been lodged with ORGL at close of business on 20 September 2005. That assertion was inconsistent with what the practitioner herself claimed in these proceedings. The practitioner stated in her response that she remembered lodging the application on 25 September 2005. The

electronic records of the M file show that the practitioner instructed an office assistant on 28 September 2005 to attend ORGL and lodge the application. Notwithstanding, there is no record either within ORGL's records or Aragon's records of any application having been lodged on behalf of Mr M or his wife by the practitioner - there was an application subsequently lodged by SPL on 12 June 2006 (after the practitioner had been dismissed). Mr Romato testified by reference to ORGL's records that there was no such application by the practitioner and that there was no record of any communications between ORGL and the practitioner.

168 The evidence disclosed that at the end of May 2006, the new solicitors for Mr M wrote to Aragon outlining the instructions given to the practitioner, that the practitioner had told the client that the application had been lodged but there were delays etc, that no application had been made and demanding a return of the fees of $1,359 paid to Aragon. Dr Bachleda remitted the fees immediately.

169 The practitioner's explanation in her response is that when she lodged the application, she did not appreciate that this needed to be checked before it was processed. She said there were delays in the processing of the application which she followed up with ORGL. She said she had discussions with officers of ORGL who all agreed there were delays with ORGL processing the application. She was also informed by officers of ORGL that two employees involved in dealing with the application had been dismissed. She said she was frustrated in raising formal complaints about ORGL with Dr Bachleda. She admits to invoicing the client.

170 The practitioner was cross-examined at some length as to these matters. She explained that this was the first liquor licensing matter that she was instructed on at Aragon. She had not done any liquor licensing work previously. She maintained that she was under some misapprehension concerning ORGL's procedures and the relationship between lodgement of applications and ORGL's checking of applications. She also said she may have been misinformed as to the sacking of the two officers from ORGL. She maintains that she held conversations with officers of ORGL as to the progress of the application. She acknowledged she was in error in suggesting that ORGL, as opposed to the applicant, would advertise the application.

171 On the strength of the evidence we are satisfied and find that the practitioner did not carry out the instructions given her by Mr M and that no liquor licence application was ever made by the practitioner on behalf of her client Mr M or SPL or Mrs M.

172 We are satisfied also and find that each of the alleged representations set out above were false. We think Mr Romato's and Ms Kemp's evidence is conclusive against the claims of the practitioner as to what took place; that is, in particular, as to the provision of her cheque to ORGL, her receiving a receipt, ORGL promising to advertise the application, that there had been no objections, that she lodged SPL's cheque, that there had been delays by ORGL and that she had been advised that ORGL had terminated the employment of two staff members. We also think it highly improbable that ORGL would have offered an occasional facility licence 'for free'. We have had some concern as to the falsity of the representations concerning the practitioner's discussions with staff at ORGL. It is possible that the practitioner did speak to staff at ORGL about the procedures for processing applications. However, the practitioner's representations to Mr M are as to discussions concerning the progress of his application and the associated payment and the delays by ORGL with respect to it. In the circumstances as we find them, there could not have been any discussions about those specific matters.

173 We also find that the representations were knowingly false. We think that what motivated the practitioner to make knowingly false representations was no more than the practitioner's wish to be seen as competently carrying out her instructions and her inability to admit, either to her client or to her employer, her lack of experience and knowledge as to processing liquor licence applications. That was also the motivation in the other liquor licensing matters that form part of this application.

174 It follows also and we find that the invoices rendered by the practitioner to Mr and Mrs M and to SPL were for work which, to her knowledge, had not been done.

The HGW matter

175 The LPCC's amended statement of facts in relation to the HGW matter states:

> …
>
> 9. In about October 2005 the practitioner in the course of her employment by Aragon was instructed by Mr DH on behalf of [HGW] to advise [HGW] in relation to, and obtain, an appropriate licence or licences for the sale and supply of liquor at [HGW's] restaurant situated in [V].
>
> 10. The practitioner did not carry out those instructions.

11. Between about 11 January 2006 and 14 March 2006 the practitioner in email or written correspondence to Mr DH:

    (i) Represented that Aragon had lodged with ORGL a special facility licence application, when in fact it had not;

    (ii) Represented that she had discussed with officers of ORGL the progress of the special facility licence application, when in fact she had not.

11A. When the practitioner made the representations pleaded in paragraph 11 above:

    (i) she knew each of the representations to be false;

    (ii) alternatively, she made each representation recklessly, not caring whether it was true or false.

176 Mr Romato's evidence was again that there was no record at ORGL of the practitioner having filed any application nor of having any communications with its officers in relation to a licence for this matter.

177 The practitioner, in her response, admits the instructions. She does not contend that the special facilities licence for HGW was ever lodged. Her position in her response is that she undertook the preparation of and presented a special facilities licence application to ORGL in about the second week of February 2006. The officer checking the application queried whether a redefinition of premises application would be more appropriate. She therefore delayed lodging that application. She said under cross-examination that following the suggestion of the officer of ORGL she recovered the application and cheque and returned them to her office. She set about organising a survey of the premises.

178 Nevertheless, the practitioner in a number of emails, and according to her note of a telephone conversation, stated to her client in effect that:

1) the special facilities licence application had been completed and lodged for preliminary checking by 11 January 2006;

2) as at 17 February 2006 the application had been lodged, was progressing through ORGL and with the requested additional information would progress further;

3) the progress of the application at ORGL had reached a stage where a site inspection and advertisement of the application was necessary; and

4) the practitioner had discussed with officers of ORGL the progress of the application after it had been lodged.

179 The practitioner accepts in her response, confirmed in cross-examination, that by mid-February 2006 she was 'well versed' in the procedures of ORGL. However, in her cross-examination she sought to justify what she had told the client on the basis that what she was doing was part of 'the process of lodgement' of the application. She also explained that she had been very busy and made a poor choice of language in expressing the position to her client. She suggested that in her telephone note it was the client rather than she who had said 'Need to lodge ad'. She said that the officers of ORGL had discussed the outstanding steps as part of the 'checking process'. She said she needed the survey in advance of the processing of the application.

180 We cannot accept this evidence from the practitioner. In her emails to her client she clearly represented that its application was proceeding in circumstances where nothing was happening in relation to it. We do not accept that the problem lay in the language she used or in her understanding of how the process operated. We think the practitioner was so concerned to portray to her clients and to Aragon her efficient discharge of her clients' instructions that she was prepared to be dishonest in what she said had been achieved.

181 We find that the representations as to the lodgement of the application and her discussions with the officers of ORGL were knowingly false.

The F matter

182 The LPCC's amended statement of facts in relation to the F matter states:

…

12. In about November 2005 the practitioner in the course of her employment by Aragon was instructed by Mr [F] and Mrs [F] to prepare and lodge with ORGL on behalf of Mr [F], a restaurant licence application in respect of premises [in regional Western Australia] ("the restaurant licence application").

13. The practitioner did not carry out those instructions.

14. Between about 26 February 2006 and 11 April 2006 the practitioner in email or written correspondence to Mr and Mrs [F]:

(i) Represented that Aragon had lodged the restaurant licence application, when in fact it had not;

(ii) Represented that she had discussed with officers of ORGL the progress of the restaurant licence application, when in fact she had not;

(iii) Represented that there had been no objections to the restaurant licence application, when in fact the application had not been lodged.

14A. When the practitioner made the representations pleaded in paragraph 14 above:

(i) she knew each of the representations to be false;

(ii) alternatively, she made each representation recklessly, not caring whether it was true or false.

183 Mr Romato's evidence was again that there was no record at ORGL of the practitioner having filed any application nor of having any communications with its officers in relation to a licence for this matter.

184 In her response the practitioner admits the instructions. Her explanation is that she lodged the application at ORGL for processing. The practitioner accepts that this was again at a time that she says she had a good understanding of ORGL procedures. It appears from her evidence in cross-examination that she first lodged the application on 1 February 2006 and it was rejected. She says she then presented an application under cover of a letter dated 16 February 2006 and used a 'credit' from the first attempted lodgement. It appears that on the following day she advertised the application. The practitioner's evidence is that the application was processed immediately by ORGL so she was able to advertise it. She then advised her clients there was no objection to the application. She subsequently arranged an inspection. Some months later she advised her clients that there were still issues to be sorted out with ORGL.

185 We accept Mr Romato's evidence concerning the processing of applications and that there was no application lodged in relation to this matter. That excludes the possibility that the practitioner lodged an application which was somehow tied up in the department and lost. We also accept his evidence that there was no procedure for a crediting of fees on a withdrawn application. That makes it impossible, or most improbable, that the practitioner was able to use an existing 'credit' for the second lodgement.

186 Were the issue of the practitioner's credibility confined to the F matter we would perhaps have some difficulty in determining the matter against her. In itself the practitioner's version of events is not entirely implausible. The possibility exists that an application might be lost within ORGL. But it seems most unlikely that the practitioner's documents were mislaid in each of the five liquor licensing matters and would require us to reject Mr Romato's evidence. Further, there is a body of evidence that we accept as to the practitioner dishonestly seeking to excuse her non-performance in each of the liquor licensing matters. Once that position is reached we can have no confidence in preferring the practitioner's evidence over that of the ORGL officers and of the probabilities of the matter. We think on the evidence, conscious of ***Briginshaw***, that the practitioner did not in fact lodge this application and that her representations to her clients that she discussed the matter with officers of ORGL, and advised that there were no objections to the advertisement, were knowingly false.

The UT matter

187 The LPCC's amended statement of facts in relation to this matter states:

> …
>
> 15. In about January 2006 the practitioner was instructed by Mr [MS], on behalf of [UT], to do all things necessary to vary the alcohol serving conditions, vary the licensed area, and approve a new manager for the premises known as [UT] situated at [C].
>
> 16. The practitioner did not carry out those instructions.
>
> 17. Between about 14 March 2006 and 28 April 2006 the practitioner in email or written correspondence to Mr [MS]:
>
> (i) Represented that Aragon would lodge, or had lodged, with ORGL a special facility liquor licence redefinition application, when in fact that was not the case;
>
> (ii) Represented that she had discussed with officers of ORGL the special facility liquor licence redefinition application, when in fact she had not.
>
> 17A. When the practitioner made the representations pleaded in paragraph 17 above:
>
> (i) she knew each of the representations to be false;

(ii) alternatively, she made each representation recklessly, not caring whether it was true or false.

18. On about 14 March 2006 the practitioner on behalf of Aragon invoiced Mr [MS] on behalf of [UT] for legal work allegedly done in relation to the instructions of Mr [MS] when in fact, to her knowledge, no such work had been done by the practitioner or Aragon.

188 We note that a future representation such as that alleged in paragraph 17(i) of the LPCC's amended statement of facts, that the practitioner would do something (ie, 'would lodge'), cannot in its terms (as opposed to the representor's state of mind) be false.

189 The representations are evidenced in the email and letter correspondence. The evidence of Mr Romato is again that there was no application by the practitioner to vary the licence conditions, nor any record of communications with her. The appropriate application was made following the termination of the practitioner's employment with Aragon.

190 The practitioner by her response and initially in cross-examination claimed that she did undertake these instructions by lodging the application 'for checking only'. Under further cross-examination she was unclear whether or not she had actually lodged the application. On 14 March 2006, she advised her client that she proposed to lodge the application rather than waiting for ORGL to conclude its inspection. She sought and received payment of fees of $3,500. On 3 and 28 April 2006, the practitioner advised in effect that ORGL was continuing to process the application. When Mr Romato's evidence was put to the practitioner she said that the application was in for 'checking' rather than being 'lodged' as such. The difficulty with this evidence is that the practitioner confirmed in evidence that she was by this time familiar with and understood ORGL's procedures. The procedures did not allow for a 'lodgement' for 'checking'.

191 It is difficult to understand the practitioner's thinking at the time. She had not lodged an application. There could be no question of it being processed. Ultimately that fact would have to emerge. Her advice to the client over some months that the matter was progressing would also eventually be exposed as false. On each of these liquor licensing matters the practitioner either simply closed her mind to the consequences of this or believed she could continue to bluff her way through until she did get around to making the appropriate application or she ceased her

employment with Aragon and ceased to be responsible for the matter. The burden of this exposure of her conduct must have weighted heavily with the practitioner. It may well have led to her decision to not show up for work at Aragon in early May 2006.

192 We find the practitioner made the representations as alleged, including that the practitioner in substance represented that the application for the licence had been made. We find that the practitioner knew these representations to be false when made by her.

The B matter

193 The LPCC's amended statement of facts in relation to the B matter states:

> …
>
> 19. In about April 2006 the practitioner in the course of her employment by Aragon was instructed by Mr [B] to prepare and lodge with ORGL on behalf of [BR] Pty Ltd an application to transfer a liquor licence ("the transfer application").
>
> 20. The practitioner did not carry out those instructions.
>
> 21. On about 26 April 2006 in email correspondence to Mr [B], the practitioner:
>
> (i) Represented that Aragon had lodged with ORGL the transfer application, when in fact it had not;
>
> (ii) Represented that Aragon had paid the transfer application fee on behalf of [BR] Pty Ltd, when in fact it had not;
>
> (iii) Represented that she had discussed with officers of ORGL the likely progress of the transfer application, when in fact she had not.
>
> 21A. When the practitioner made the representations pleaded in paragraph 21 above:
>
> (i) she knew each of the representations to be false;
>
> (ii) alternatively, she made each representation recklessly, not caring whether it was true or false.

194 The practitioner accepted that her instructions were as alleged. On her evidence the sequence was as follows. Between 17 and 24 April 2006, the practitioner left the client's liquor licence transfer application at the counter of ORGL together with her own cheque in

payment of the fee. She did not stay to see whether it was accepted but organised to return once the officers had completed their checking. By her email to her clients dated 26 April 2006, in response to a request as to whether the application had been lodged, the practitioner advised that the application had been lodged and accepted by ORGL for processing and that the practitioner had paid the application fee on the client's behalf. She said she was waiting for a letter from the customer service officer after which the application would be in the 'processing chain'. ORGL had then advised that the client would need to lodge a new application with supporting documentation because the existing licence had expired and the practitioner collected the application on 28 April 2006. That was the last day of her work at Aragon.

195 Mr Romato's evidence again was that there was no evidence of any lodgement on behalf of the practitioner. Further, that the practice of ORGL was either to accept and process or reject applications so there was no procedure whereby an application might be left at its office.

196 The practitioner adduced no supporting evidence to corroborate her version of events. There is no record on Aragon's files to which the practitioner referred (or which we have seen) that supports her version of events.

197 If the practitioner's evidence is accepted then officers of ORGL departed from the department's practice of receiving an application and either rejecting or accepting it, and in receiving a cheque without giving a receipt for it. No ORGL file was opened with respect to the application and no evidence of this sequence of events was recorded. Although this course of events was possible, we think on the evidence it was most improbable.

198 We have had regard to the evidence given by the practitioner in relation to the matter. Ms Cahill fairly put to the practitioner that her account of the matter was fictitious. The confusing and convoluted answer given, almost entirely unrelated to the question asked and the matters in issue, was typical of so much of the practitioner's evidence in cross-examination. It causes us considerable difficulty in accepting the practitioner's version of events in respect of these matters:

> I suggest to you that the tenor of your response to the effect that you had paid an application fee and then retrieved the documents from the Office of Racing, Gaming and Liquor, was something that you have simply made up to explain the fact that there is no record of this application ever having been lodged?---No. That is not true because there were all the subsequent

> issues and I also gave advice to the client which interestingly does not appear in the book of documents as to issues of the purchase of the restaurant itself and also what I identified to be a perceived conflict of interests by the sales representative who was representing both sides, both our client Mr [B] as the purchaser and surprisingly the vendor and hadn't gotten their authorisation that they allowed that. [T:76, 7.11.08]

199 The LPCC's case is that the practitioner did not complete or present an application, did not draw a cheque in payment of it, wrote to the client informing him in effect that this had been done, collected the rejected application, and then in answer to the complaint made up a detailed story, verified on oath, to justify the advice she had given her client.

200 We think the LPCC has established these facts. Its essential case, however, is that put in its amended application, namely the practitioner's failure to complete the work and the making of the fraudulent representations. Having carefully considered the whole of the evidence we are satisfied to the extent required by the ***Briginshaw*** test. We find that the representations alleged were made at a time when the practitioner knew they were false.

The FGC matter

201 The LPCC's amended statement of facts in relation to this matter states:

> …
>
> 22. The [FGC] did not at any time:
>
> (i) retain the practitioner or Aragon to act on its behalf;
>
> (ii) instruct the practitioner or Aragon to perform legal services or any other work.
>
> 23. Notwithstanding that, on about 13 March 2006, the practitioner in the course of her employment by Aragon, completed a file opening form in which she represented that Aragon had been instructed by [FGC] to act in respect of a proposed partnership agreement with [SPCC].
>
> 23A. When the practitioner made the representation pleaded in paragraph 23 above:
>
> (i) she knew it to be false;
>
> (ii) alternatively, she made the representation recklessly, not caring whether it was true or false.

24. On about 13 March 2006, the practitioner completed a daily timesheet in which she represented that she had performed legal services or other work for or on behalf of [FGC], when she had not in fact, and to her knowledge, done so.

25. On about 10 April 2006, the practitioner created an invoice addressed to [FGC] in the sum of $2,100 in which she represented that she had performed legal services or other work for or on behalf of [FGC], when in fact, and to her knowledge, she had not done so.

26. Further, the practitioner represented in the invoice she would hand deliver the invoice to the [FGC] on 11 April 2006, but:

    (i) She had no intention then of ever doing so; and

    (ii) She in fact never did so.

202 The evidence of Pastor H of FGC makes clear that FGC did not at any time retain Aragon or the practitioner, nor did it instruct Aragon or the practitioner to perform legal services or any other work. The practitioner initially claimed in her response that she was instructed by an unnamed person from Singapore on behalf of FGC. She accepted also in her response that she prepared a file opening form and file for FGC, completed time sheets, prepared an invoice and made copies, one for that unnamed person (which she delivered) and one for Pastor H (which the practitioner claims Dr Bachleda delivered mistakenly).

203 This is another matter where the evidence of the practitioner under cross-examination was most unsatisfactory and we can have no confidence in the convoluted and improbable version of events advanced by the practitioner.

204 The practitioner acknowledged in evidence that she was never retained by FGC. She said all her 'instructions' came from a Mr C with whom she discussed the purchase of a property belonging to FGC. As regards Mr C, she said she had his physical addresses and had corresponded with him by email. She told the Tribunal at the hearing on 23 July 2008 that she had an email response from Mr C and confirmed this in cross-examination. Shortly thereafter she said she was not sure if she had received a response from him. The practitioner admitted that she did not provide that email address to the Tribunal when it sought details of persons whom the practitioner wished to call as witnesses so that the Tribunal could summons them on behalf of the practitioner.

205 The practitioner then resiled from the position in her response that she had created the file opening form. When shown the electronic copy

which disclosed that she had worked on the form some minutes after it was created, she said it may have been opened by an assistant at Aragon. She could not be sure. It was then put to her that if that were so, it was necessarily on the practitioner's instructions. The practitioner admitted this. It was then put that the reason the form did not mention Mr C nor his interest in purchasing a property from FGC, rather than the merger of FGC and SPCC as reflected in the documents, was that the practitioner wished to show FGC as her client. The practitioner denied this. However, in a text message on the morning of 13 March 2006 to Dr Bachleda the practitioner said Aragon had been engaged by FGC in relation to the merger, which was in effect a merger of two different churches. The practitioner then claimed that this message was before her meeting with the real client, Mr C. However, the file opening in the name of FGC took place after the meeting. All this suggests the practitioner did in fact create the file in the name of FGC.

206 In relation to the typed time sheet the practitioner, by the extract of her witness statement filed at the hearing on the morning she gave evidence in relation to the FGC matter, again resiled from her response and stated she did not prepare the typed time sheet. She said in evidence that someone else typed this up from her handwritten time sheet. It was put that this was again necessarily on her instructions. The practitioner said that because she was so busy she did not have time to correct the entries made in the typed sheet. She said she had been unable to locate her handwritten notes of her time and of the matter generally. She first said she had not specifically asked the LPCC for these. She then said she did identify the notes in her handwritten request to the LPCC at the time of her inspection. We think on the evidence that the practitioner did prepare the time sheet.

207 The practitioner was referred to the invoice addressed to Pastor H at the FGC. She confirmed that she had prepared this, that it did not mention Mr C, that the subject line was in effect the merger of the churches and that its contents were consistent with her text message to Dr Bachleda, the file opening and her time sheet. The invoice had noted 'By hand delivery on Tuesday night, 11 April 2006'. Asked about this, the practitioner said that she had prepared this invoice for Pastor H and intended to give it to him but that she had met Mr C who had asked her to give the invoice to FGC to him. That answer was inconsistent with her earlier evidence that her client was Mr C.

208 It was squarely put to the practitioner that this evidence was a made up story purporting to explain the effect of the documents produced by the

LPCC. The practitioner denied this and said that 'people' had seen her in the company of Mr C. Asked where they were, the practitioner said they would not have heard what they spoke about. It was then put that the documents themselves were created to explain away her absence from work that day and that the events they described were a fabrication. The practitioner denied this.

209 We have strong suspicions that the allegations put by the LPCC as to the practitioner's making up the instructions from FGC to explain her absence and show some billable time and fees and her later making up her meeting with Mr C to explain the record of her instructions are correct.

210 We find, on the whole of the evidence, that the practitioner did make the knowingly false representation alleged as to the instructions from FGC, as to performing work pursuant to those instructions and as to delivering the invoice to FGC.

The H matter

211 The LPCC's amended statement of facts in relation to the H matter states:

> …
>
> 27. Neither Mr [H] nor Mrs [H] at any time:
>
> (i) retained the practitioner or Aragon to act on their behalf;
>
> (ii) instructed the practitioner or Aragon to perform legal services or any other work.
>
> 28. Notwithstanding that, the practitioner in the course of her employment by Aragon:
>
> (i) on about 16 January 2006, completed a file opening form in which she represented that Aragon had been instructed by Mr and Mrs [H] to prepare a Will for each of them;
>
> (ii) on about 23 January 2006 prepared a memorandum in which she represented that Aragon had been instructed by Mr and Mrs [H] to prepare a Will for each of them and provided details as to proposed terms of the Wills;
>
> (iii) on 16 and 23 January 2006 completed daily timesheets in which she represented that she had performed work in relation to the preparation of Wills for Mr and Mrs [H];
>
> (iv) prepared draft Wills for Mr and Mrs [H];

(v) prepared final Wills for Mr and Mrs [H].

29A. When the practitioner made the representations pleaded in paragraph 29 above:

(i) she knew each of the representations to be false;

(ii) alternatively, she made each representation recklessly, not caring whether it was true or false.

212 The evidence discloses, and it is not in dispute, that Mr and Mrs H instructed the practitioner in about June 1999 (well before her employment by Aragon) to prepare wills for them. Mr and Mrs H did not at any time thereafter instruct Aragon or the practitioner to perform legal services. There were documents on Aragon's files being a file opening form and the practitioner's memoranda giving instructions to prepare wills, each of which represented that the practitioner had been retained by Mr and Mrs H in about January 2006 to prepare wills for them.

213 The practitioner's position in relation to this matter as reflected in her response and evidence is that in January 2006 she was engaged by a woman with a similar first name and identical surname to Mrs H, being Ms Leanne H (as opposed to the former client, Mrs Leeanne H), to prepare wills. She had arranged for this but the paralegal responsible for the file opening had confused the former client's personal and family details with those of the new client Ms Leanne H. When the practitioner prepared the memorandum she had inadvertently included the wrong details from the file cover. The practitioner says Ms Leanne H subsequently married and moved to Sydney and was now known as Ms Leanne S (Ms S).

214 The practitioner said in the course of the hearing that she had been in contact with Ms S and sent her a draft witness statement. She said that during a telephone call, Ms S had said she was prepared to sign this. However, the practitioner said that she had then lost contact with Ms S in that she had not responded to the practitioner who wrote to her at a post office box in Sydney. The practitioner was asked whether she had met with Ms S. She said she had not seen her since their original meeting in 2006. It was pointed out that on 23 July 2008 the practitioner had told the Tribunal that she had met with Ms S in the previous month - mid June 2008. The practitioner then said that her evidence as to not seeing her was in error. The Tribunal can have little confidence in the practitioner's evidence about such matters in these circumstances.

215 The practitioner was asked about the file opening form. She said she had prepared a handwritten note. She said that Ms S had written her details on a paper napkin from the fast food store where they first met. The practitioner had put the napkin and a post-it note on the file. The practitioner says she did not type up the form but asked her assistant to do so. The electronic copy showed the practitioner had saved the document shortly after its creation. The practitioner said her paralegal may have used her computer. This seems to us to be a less likely probability than that the practitioner did in fact create the document herself, as the evidence indicated.

216 The practitioner was then asked about the memorandum which included all the details of her former friend and client Mrs H. She was asked how the file cover, purportedly in the name of Ms S, would contain all those documents. The practitioner said that she did not know. She thought that a memorandum she prepared for the 'conflicts' database may have contained this and she inadvertently copied this onto the memorandum to the paralegal. She said this 'conflicts database' was to be used where clients had similar names. When asked why it was necessary to include her former clients on such a database, the practitioner then suggested it was a database of her former clients. In a subsequent memorandum to the paralegal, there was further reference to details of the practitioner's former friends and clients, Mr and Mrs H. Again, the practitioner says she did not pick up that fact. These answers seem to us to be invented. Whilst the practitioner might have listed her former clients somewhere there was no credible reason why their details were picked up on the memorandum and why the practitioner would not immediately recognise them as her former clients.

217 It was put to the practitioner that there was no Ms S; that the practitioner had invented the instructions which she passed on to the paralegal in order to provide him with some work to do. The practitioner said this was not correct; there was someone with her when she met Ms S, being a then current 'overseas' client of Aragon. When asked why she did not call the person as a witness, the practitioner's answer was that this client had a dispute with Aragon. We are not satisfied with the answer. Had such a person existed they could have corroborated the practitioner's story. As we have outlined above the practitioner was given every possible opportunity to call evidence to support her defence.

218 The LPCC submits that the practitioner's version of events ought not be accepted for a number of reasons. First, the story in its detail is inherently implausible. The practitioner contends that she mistakenly

recorded in the file opening form and memoranda for Ms S all of Mrs H's details relevant to the preparation of the wills in circumstances where Mr and Mrs H were former friends and clients of the practitioner from the time when she was in sole practice. Second, this supposedly innocent mistake was perpetuated by the practitioner after reviewing the draft wills prepared by the clerk at Aragon, again without picking up the misdescription of the client. Third, the practitioner failed to call both Ms S and the witness to the practitioner's meeting with Ms S.

219 Having regard to the whole of the evidence and our comments above in relation to it, we accept the LPCC's submissions. We find that the representations alleged were made by the practitioner and were knowingly false.

The A matter

220 The LPCC's amended statement of facts in relation to the A matter states:

> …
>
> 30. In about February 2006 the practitioner in the course of her employment by Aragon was instructed by Mr [A] to seek to recover from Mr [LB] the sum of $10,000 being the balance of monies owed on the sale of the boat [Iml] by Mr [A] to Mr [LB] ("the matter").
>
> 31. In about May 2006, the practitioner assumed the conduct of the matter on her own account.
>
> 32. On about 30 June 2006 the practitioner invoiced Mr [A] the sum of $650 for, amongst other things but relevantly, preparation of a general claims summons and preparation of a statement of a claim in respect of the matter in circumstances where the practitioner knew that she had already on behalf of Aragon invoiced Mr [A] by an invoice dated 16 March 2006 for the preparation of a general claims summons.
>
> 33. The practitioner did not prepare a statement of claim in respect of the matter prior to 30 June 2006 or at all.
>
> 34. On about 30 June 2006, the practitioner orally represented to Mr [A] that after payment of the invoice dated 30 June 2006, Mr [A] would not incur any further costs in the [A] matter until it reached the stage of the pretrial conference.
>
> 35. Subsequent to 17 July 2006 the practitioner, contrary to section 203 of the Act and notwithstanding her suspension from practice,

continued to engage in legal practice by acting in respect of the [A] matter as set out in paragraphs 37, 38, 42 and 43 [sic] below.

36. On about 2 August 2006 the practitioner handed to Mr [A] a written chronology of events in which she:

    (i) Represented that a statement of claim had been drafted in the matter on about 27 April 2006 when in fact that was not so;

    (ii) Represented that the practitioner had instructed an office junior of Aragon to serve the statement of claim by post, when in fact she had not done so;

    (iii) Represented that the practitioner had corresponded and spoken by telephone with the solicitors for the defendant in the matter, when in fact she had not done so.

37. On about 2 August 2006 the practitioner provided to Mr [A] a handwritten document setting out further costs in respect of the matter until trial, including:

    (i) Court fees for "pretrial" and "listing";

    (ii) "Drafting fees" in respect of a listing conference memorandum and "witnesses x 2".

38. The practitioner did not, to her knowledge, prior to 2 August 2006 or subsequently:

    (i) incur any Court fees in respect of the matter for "pretrial" or "listing";

    (ii) prepare a listing conference memorandum or any documents in respect of witnesses.

39. On about 2 August 2006, Mr [A] paid the sum of $815 to the practitioner by cheque pursuant to the handwritten document the practitioner had given him.

40. Contrary to section 137 of the Act the practitioner failed to deposit into trust any part of the monies paid by Mr [A] in respect of Court fees.

41. On about 2 August 2006, the practitioner orally represented to Mr [A] that after payment of the costs set out in the handwritten invoice, no further payment would be required from Mr [A] in respect of the matter unless the matter proceeded to trial. That was in fact not so, because no step had been taken in the matter on behalf of Mr [A] other than the filing of a summons.

42. On about 14 September 2006 the practitioner orally represented to Mr [A] by telephone that the matter had been listed for a pre-trial conference on 28 September 2006, when in fact that was not so.

43. When the practitioner made the representations pleaded in paragraphs 34, 36, 41 and 42 above:

(i) she knew each of the representations to be false;

(ii) alternatively, she made each representation recklessly, not caring whether it was true or false.

221 Mr A provided a witness statement and gave evidence including that he had never received any statement of claim in relation to his claim against Mr LB.

222 The evidence disclosed a general claims summons against the defendant, Mr LB, filed on 1 March 2006. In evidence in cross-examination, the practitioner admitted that whilst at Aragon she had sent Mr A an invoice dated 18 March 2006 for the period to the end of February for preparing, filing and serving, by a process-server, a general claims summons. This was faxed to the defendant's solicitors on 29 March 2006 under cover of a letter saying the stamped and sealed copy of the general claims summons would be posted that day. The practitioner accepted the amount for service fees ($75) should have been paid into trust.

223 A notice of intention to defend was filed on 11 April 2006 meaning that a statement of claim was then required to be filed on behalf of Mr A. The practitioner said that before she left Aragon in early May 2006, she prepared the full statement of claim and left instructions for this to be filed. However, after she commenced practice on her own, on 17 May 2006 she advised the defendant's solicitors she would shortly file and serve a full statement of claim meaning that, to that time, a full statement of claim had not been served. In evidence, the practitioner said first she had not provided a copy of any statement of claim to Mr A nor to the LPCC. She then said that after her suspension from practice she sent the file with the statement of claim to Mr A. When it was pointed out that he had given evidence that he had not received a statement of claim, the practitioner suggested he was not clear about this. We think Mr A's evidence was clear on the matter and we accept he did not receive a statement of claim.

224 On 30 June 2006, the practitioner invoiced Mr A for the cost of preparing a general claim summons and statement of claim. The

practitioner said that she had prepared a second general claim summons and had received instructions to prepare a further statement of claim because Aragon had not filed the one she initially prepared and Mr A had not been provided with a copy by Aragon when he collected his file from them.

225 The practitioner accepted that following receipt of her invoice, Mr A had paid a cheque and that the practitioner told him that this would cover everything up to the pre-trial conference. It was put that this was not true because the practitioner had not yet prepared the statement of claim. The practitioner disputed this and said she 'would have' re-prepared this.

226 The practitioner prepared a chronology which was given to Mr A on 2 August 2006. This showed she had prepared the statement of claim on 27 April 2006. This also included a reference in May 2006 to awaiting a response from the opposing solicitors to the statement of claim. When it was put that she had earlier said she had not sent the statement of claim to the defendants' solicitors, the practitioner answered that she was not sure what the entry meant. She was taken to an entry which suggested that 'Lisa' had requested a copy of the statement of claim and this had been provided together with a hard copy. The practitioner suggested that this was a reference to the general claim summons. She then appeared to accept that it meant the statement of claim. However, an entry in the chronology for 13 July 2006 suggests that there was a dispute as to whether the solicitors had received the statement of claim. It was put that the reference to 'Lisa' was to Ms Leisa Van Der Zanden from the defendant's solicitors and that she had requested the statement of claim. The practitioner, somewhat incredibly, suggested that the 'Lisa' may have been someone else who, on the defendant's behalf, had requested a copy of the statement of claim. It was then pointed out that according to her entry, at the time she sent a copy to 'Lisa' she also sent a hard copy to the solicitors for the defendant. The practitioner said she could not confirm whether this had happened. The practitioner was asked whether she was aware that Ms Leisa Van Der Zanden, who had provided a witness statement, had denied ever receiving a statement of claim or having any contact with the practitioner. The practitioner acknowledged this. Given Ms Van Der Zanden's evidence and the confusing and contradictory answers of the practitioner, we think the material entries in the chronology are false.

227 We are unable to accept the practitioner's evidence as to her preparing the statement of claim. It seems clear from the whole of the evidence that the practitioner had not prepared a statement of claim either

whilst at Aragon or when she commenced on her own. If she had done so at Aragon, and given instructions to file the statement of claim, there is no apparent reason it would not have happened, or at least that a copy in paper or electronic form would have been on the file. The practitioner was taken to the electronic files of Aragon and shown that no copy of the statement of claim appeared. She suggested it might not have been saved. This seems most improbable. Once she had left Aragon it seems more probable that she would have contacted Aragon and asked for a copy of the statement of claim rather than, as she claims, prepared a second version and charged the client for this. Had she prepared and filed a statement of claim after she commenced practice on her own, a copy ought to have been included in the file sent to Mr A. She would also have retained an electronic copy. There would have been no reason why she did not, as promised, file and serve a copy of the statement of claim which would then have been available from the court or from the opposing solicitors.

228 As concerns the practitioner's evidence that someone called 'Lisa' had requested the statement of claim but this might not have been Ms Leisa Van Der Zanden from the defendant's solicitors, we accept the LPCC's suggestion that this is entirely fanciful. The practitioner's evidence was made up in order to deal with the evidence from Ms Van Der Zanden that the defendants' solicitors had never received the statement of claim.

229 The practitioner was taken to her note provided to Mr A saying the total costs were $815 and that she had received a payment from him for that amount. The practitioner said she believed that this was payment for her earlier account of 30 June 2006 of $650 together with a contribution of $165 for the church that she attended and through which she had met Mr A. She said this was in accordance with her arrangement with church clients to pay an additional 10% of Aragon's fees by way of a donation. The sum of $165 comprised the 10% figure on $650 ($65) plus a 10% charge on a bill of $1,000 charged for Mr A's wife's matter. There was evidence of work for Mrs A and an account for that work, although in an amount of $1,600. However, the practitioner did not produce any records showing receipt of these amounts or the making of a church donation related to them. The amount of $815 was not paid into trust.

230 Mr A's evidence was that he paid the $650 for the practitioner's earlier account and subsequently paid $815 on the practitioner's invoice, for both of which payments he had cheque butt records. Further, his

evidence was that no part of these payments was in respect of church donations and there was no such arrangement for church donations.

231 We accept Mr A's evidence on the matter. We believe, and find, that he paid two amounts - one of $650 and another of $815 and neither included any amount for church donations.

232 The practitioner accepted that she may have told Mr A that there was no further amount that he would need to pay until the pre-trial conference. She disputed that she told him that the pre-trial conference had been listed.

233 The practitioner accepted that she was suspended on 7 July 2006 and had provided the chronology to Mr A shortly thereafter.

234 We find that the practitioner knowingly billed and received money from Mr A for a general claims summons and statement of claim that she did not prepare and for court fees that she had not incurred. She did not comply with s 137 of the LP Act as she did not pay any amount into trust, as required by the LP Act. Further, we find as alleged by the LPCC that the practitioner made knowingly false representations to Mr A between 30 June 2006 and 14 September 2006 as to the progress and costs of the proceedings. Finally, we find that in her communications and meetings with Mr A after her suspension in July 2006, the practitioner contravened s 203 of the LP Act.

Unprofessional conduct

235 We find that the practitioner knowingly made each of the false misrepresentations in each of the eight client matters as alleged against her in the LPCC's amended application in VR 34 of 2007. We find further that the practitioner was guilty of the other allegations charged in VR 34 of 2007 in relation to the A matter identified above (contravention of s 137 and s 203 of the LP Act).

236 Again, we do not think it open or necessary to make findings of incompetence, neglect and undue delay in respect of these matters.

237 There can be no question that in these circumstances the practitioner is guilty of unprofessional conduct within the meaning of ***Kyle*** in that the practitioner's conduct set out in our findings, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the legal profession of good repute and competence. With respect to the eight clients matter, we therefore find that the practitioner is

guilty of unsatisfactory conduct by unprofessional conduct under s 185(1) of the LP Act.

Conclusion

238 We find that the LPCC's charges in VR 34 of 2007 and VR 53 of 2007 of unsatisfactory conduct by unprofessional conduct under the LP Act have been made out. We will make orders for written submissions on penalty and costs and that aspect will then be decided on the papers.

Orders

1. The practitioner, Tricia Y. Bachmann, is guilty of unsatisfactory conduct.

2. By 8 July 2009, the LPCC must file with the Tribunal and give to the practitioner its written submissions as to penalty and costs (including an itemisation of any costs claimed).

3. By 22 July 2009, the practitioner must file with the Tribunal and give to the LPCC her responsive submissions on penalty and costs.

4. The Tribunal will decide the question of penalty and costs on the papers after 22 July 2009.

I certify that this and the preceding [238] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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JUDGE J ECKERT, DEPUTY PRESIDENT