# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

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| CITATION: | *Legal Services Commissioner v Lawrence* [2018] QCAT 206 |
| PARTIES: | **LEGAL SERVICES COMMISSIONER**<br>(applicant)<br>**v**<br>**LINDSAY TERENCE LAWRENCE**<br>(respondent) |
| APPLICATION NO/S: | OCR121-15 |
| MATTER TYPE: | Occupational regulation matters |
| DELIVERED ON: | 3 July 2018 |
| HEARING DATE: | On the papers |
| HEARD AT: | Brisbane |
| DECISION OF: | Hon Peter Lyons QC, Judicial Member<br><br>Assisted by:<br>Ms M Mahon<br>Dr Susan Dann |
| ORDERS: | **1. It is declared that the respondent's conduct the subject of changes 1, 3, 4 (so far as it relates to the financial period ending 31 March 2014) and 5 amounts to professional misconduct;**<br><br>**2. Charge 2 is dismissed;**<br><br>**3. It is recommended that the name of the respondent be removed from the local roll;**<br><br>**4. The respondent is to pay the applicant's costs of and incidental to the application to be assessed on the standard basis.** |
| CATCHWORDS: | PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – disciplinary proceedings – where proceedings conducted entirely on the basis of documents – whether the Tribunal has completed a hearing for the purposes of s 456 of the *Legal Profession Act* 2007 (Qld) – where allegations relating to conduct of respondent in litigation – where allegation that the respondent failed to comply with external examination requirements for trust account – |

where respondent allegedly failed to comply with s 443 *Legal Profession Act* 2007 (Qld) notices – whether professional misconduct and or unsatisfactory professional conduct – where respondent suffering from undisclosed 'personal issues' – where respondent suffered from two strokes – whether reprimand appropriate – whether fit to practice

*Queensland Civil and Administrative Tribunal Act* 2009 (Qld), s 6, s 9, s 10, s 28, s 29, s 32, s 95, Schedule 3
*Legal Profession Act* 2007 (Qld), s 268, s 418, s 419, s 420, s 443, s 452, s 456, s 462, s 598, s 656C, Schedule

*Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498
*Quinn v Legal Services Commissioner* [2016] QCA 354

| APPEARANCES & REPRESENTATION: | |
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| Applicant: | D A Holliday, instructed by the Legal Services Commission |
| Respondent: | A M Nelson, instructed by Slade Waterhouse Lawyers |

[1] The Commissioner has alleged that Mr Lawrence, the respondent, is guilty of professional misconduct and/or unsatisfactory professional conduct ('conduct allegations') and has sought disciplinary orders pursuant to s 456 of the *Legal Profession Act* 2007 (Qld) ('LP Act').

[2] There is unchallenged evidence that the respondent was at relevant times an Australian legal practitioner as defined by s 6(1) of the LP Act.

**Conduct allegations**

[3] These allegations relate to four topics. The first is concerned with litigation which the respondent was engaged to conduct on behalf of Ms Rendon, the defendant in Magistrates Court proceedings. This gives rise to two charges. One is based on the manner in which the respondent conducted the litigation. The second is that the respondent made a misleading statement to Ms Rendon about his conduct of one aspect of this litigation. The second topic concerns the respondent's response to inquiries by the Legal Services Commission about the conduct of this litigation.

[4] The third topic is the alleged failure by the respondent to comply with external examination requirements for his trust account. The fourth topic concerns his response to inquiries by the Legal Services Commission about this allegation.

**Legislation relating to Tribunal proceedings**

[5] Section 452 of the LP Act authorises the Commissioner to make an application, called a discipline application, to this Tribunal for an order against a Queensland legal practitioner in relation to a complaint. Section 453 requires the Tribunal to hear and decide each allegation made in the application. Section 456 authorises the Tribunal to

make certain orders on completion of the hearing of the application made by the Commissioner. These provisions amount to a conferral of jurisdiction on the Tribunal for the purposes of sections 9 and 10 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) ('QCAT Act').

[6] Section 598 of the LP Act requires the Tribunal to be constituted by a judicial member who is a Supreme Court Judge, or a former Supreme Court Judge who is nominated by the President to constitute the Tribunal.[1] The Tribunal is, as provided in s 599(2), to be helped by two panel members chosen by the Tribunal's principal registrar and approved by the Tribunal.

[7] Under s 656C of the LP Act, the Tribunal may act on an allegation if satisfied of it on the balance of probabilities, but the degree of satisfaction required will vary according to the consequences of the finding for the respondent.

[8] By s 28 of the QCAT Act, the Tribunal is required to act fairly and according to the substantial merits of the case. It must observe the rules of natural justice. However, it is not bound by the rules of evidence, and may inform itself in any way that it considers appropriate.

[9] By s 29 of the QCAT Act, the Tribunal must take all reasonable steps to ensure that each party to a proceeding understands the practices and procedures of the Tribunal, and the nature of the assertions made in the proceeding, and the legal implications of the assertions. It must also ensure that proceedings are conducted in a way that recognises and is responsive to the needs of a party with a physical disability.

[10] Section 32 of that Act authorises the Tribunal to conduct proceedings entirely on the basis of documents, without the attendance of the parties at a hearing.

[11] Section 95 of the QCAT Act requires the Tribunal to allow a party to a proceeding a reasonable opportunity to call or give evidence, to examine witnesses, and to make submissions. Evidence in a hearing may be given orally or in writing. It must be given on oath or by affidavit only if the Tribunal so requires.

[12] Section 456 of the LP Act confers powers on the Tribunal, after it has completed a hearing of the application, and it is satisfied that the respondent has engaged in unsatisfactory professional conduct or professional misconduct. In context, the hearing referred to is the hearing required by s 453. As previously indicated, this section is relevant to the conferral of jurisdiction on the Tribunal. No suggestion has been made that the Tribunal may not exercise its powers under s 456, when the proceedings have been conducted entirely on the basis of documents, without the attendance of the parties at a hearing before the Tribunal. Nevertheless, it is necessary to consider whether those powers may be exercised in such a case.

[13] Section 6 of the QCAT Act provides that an Act such as the LP Act may vary provisions relating to the conduct of proceedings for jurisdiction conferred on the Tribunal by such an Act. If it does, then the relevant provision of the LP Act prevails. A question arises whether s 456 is intended to exclude the operation of s 32 of the QCAT Act. That seems

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[1] The term 'judicial member' is defined in Schedule 3 of the QCAT Act to include an ordinary member who is a former Judge and is nominated by the President to constitute the Tribunal for a matter or a class of matters.

unlikely. Section 456 is not directed to the manner in which the Tribunal's proceedings are conducted. Rather, it seeks to confer powers on the Tribunal when it determines an application. It follows that those powers may be exercised when the Tribunal has conducted proceedings entirely on the basis of documents and without a formal hearing at which the parties attend. Proceedings conducted in that fashion are a 'hearing' for the purposes of s 456, notwithstanding the fact that no party is present. That is because of the combined effect of sections 28, 29 and 95 of the QCAT Act; and the fact that the Tribunal's decision must be based on a consideration of the 'evidence'.[2] The last proposition is made clear by the decision in *Quinn v Legal Services Commissioner*.[3] It will be convenient to refer to the consideration of an application and its determination entirely on the basis of documents as an unattended hearing.

**History of these proceedings**

[14] The discipline application was filed on 29 July 2015. A letter dated 14 October 2015 to the Commission from the respondent records service of the application on him on 7 September 2015.

[15] On 2 November 2015, an order was made, apparently by consent, adjourning a directions hearing listed for the following day. On a number of subsequent occasions, directions were made by the Tribunal, and according to the Tribunal's records, generally these were posted and emailed to both the applicant and the respondent. Some of the earlier directions were vacated. On 8 August 2017, Judge Sheridan, as Acting President of the Tribunal, made directions but it is not clear whether they were served on the respondent.

[16] On 12 September 2017, Judge Sheridan made a direction that, subject to proof of service of her order on the respondent, this proceeding would be determined entirely on the papers, and without an oral hearing. The order required that it be served on the respondent pursuant to rule 39 of the *Queensland Civil and Administrative Tribunal Rules* 2009 (Qld). An affidavit of Ms D G Campbell filed on 19 September 2017 proves service of the order.

[17] The Tribunal and panel members conferred on 9 February 2018. A letter was sent by the QCAT Registrar to the respondent (copied to the Commissioner) on 16 February, inviting the respondent to submit material and make submissions. The respondent provided an affidavit on 29 March 2018. That resulted in an application by the Commissioner to amend the discipline application by deleting Charge 2. On 9 May a further letter was sent to the respondent, inviting him to make submissions, particularly relating to the characterisation of his conduct, and appropriate orders. The letter also informed the respondent that he could apply for an oral hearing if he wished to do so. There has been no reply.

**Law relevant to the respondent's alleged conduct**

[18] The LP Act contains statutory definitions relevant to the conduct allegations against the respondent. Thus s 418 of the Act provides:

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2 Subject to s 28 of the QCAT Act.

3 [2016] QCA 354, [19]-[20]. The Court appeared to accept that the Tribunal could determine the application on the basis of documents: *Quinn*, [19]. It was not necessary for the Court to consider s 28 of the QCAT Act.

> Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

[19] Section 419 of the same Act provides that professional misconduct includes:[4]

> …unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.

[20] Because these definitions are inclusive, and because these (or similar) expressions were in common use before the LP Act was enacted, common law tests for the assessment of such conduct remain relevant. In *Adamson v Queensland Law Society Inc*,[5] Thomas J said, with respect to professional misconduct:

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

[21] Under s 268 of the LP Act, a law practice must have its trust records externally examined by the practice's external examiner for each financial period. A financial period is the 12 month period ending on 31 March. Under s 274 of that Act, the practice must, within 60 days after the end of the financial period, give to the Queensland Law Society a copy of the external examiner's report. Penalties are imposed for breaching these requirements. Relevantly in this context, by virtue of s 244, a reference to a law practice includes a reference to the principals of a law practice; and obligations fall on them jointly and severally. Moreover, the definition of 'law practice' in the Schedule to the LP Act includes an Australian legal practitioner who is a sole practitioner. The Schedule defines a 'sole practitioner' as 'an Australian lawyer who engages in legal practice on his or her own account'.

[22] Reference should also be made to s 443 of the LP Act. It permits the Commissioner, when carrying out an investigation of a complaint against a legal practitioner, to require the legal practitioner to give the Commissioner, in a stated reasonable time, a full explanation of the matter being investigated. It then imposes an obligation on the legal practitioner to comply with the requirement, and a failure to do so is subjected to a penalty. Further, if the practitioner fails to comply with the requirement, the Commissioner may give the practitioner written notice that, if the failure continues for a further 14 days, the practitioner may be dealt with for professional misconduct. Section 443(4) then provides that, if such a notice is given and the failure continues for the 14 day period, the practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period.

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4 Other provisions of the LP Act deal with misconduct, e.g. ss 419(1), 420, but they have not been relied on in this matter.

5 (1990) 1 Qd R 498, 507.

**Material before the Tribunal**

[23] The Commissioner has relied upon an affidavit of Ms Rendon, three affidavits of Ms Campbell, and an affidavit of Mr Hourigan. As mentioned, there is now also an affidavit of the respondent.

[24] Ms Rendon's affidavit deposed directly to conduct of the respondent. She also exhibited a copy of her complaint to the Commission and deposed to the truth of it. In the complaint itself, Ms Rendon recorded some of the alleged conduct. She also stated that she had sent various text messages to the respondent. In the complaint, she attached emails and texts, which she described as 'provided evidence'. She also signed a declaration that the information provided in the complaint was true, and that no relevant information had been omitted. An attachment to the complaint is a series of printed entries with dates and times which appear to be the text messages referred to by Ms Rendon. They are generally consistent with matters to which she directly deposed. There may be some imperfection in the evidence, but it seems appropriate to rely upon them as accurate evidence of communications by text message between Ms Rendon and the respondent.

[25] Mr Hourigan's affidavit deposed to the contents of the Queensland Law Society Database, which showed that the respondent held a principal level practising certificate and was the sole practitioner of Lawrence and Associates from 2004 to 30 June 2014. In August 2013, a trust account investigator reviewed the respondent's trust account records. In February 2014 the Queensland Law Society appointed supervisors of trust money, as the respondent was by then insolvent. Mr Hourigan also deposed that the respondent had failed to lodge an external examiner's report for the periods ending 31 March 2010, 31 March 2011, 31 March 2012, 31 March 2013 and 16 February 2014. The trust account records were reconstructed for the period from 31 May 2010 to 31 March 2015, and copies were provided to the respondent on 2 September 2015. According to Mr Hourigan, this was done to enable the external examination requirement to be complied with.

[26] One of the affidavits of Ms Campbell related to correspondence between the Commissioner and the respondent about the Rendon investigation, and about the complaint that he failed to comply with the external examination requirement. These matters are dealt with subsequently. However, this material includes correspondence from the respondent purporting to explain difficulties he was experiencing in his practice.

[27] Another affidavit from Ms Campbell deposed to an inspection of the Magistrate's Court file in Ms Rendon's matter. The inspection revealed that the respondent wrote to the plaintiff's solicitors stating that he acted for Ms Rendon and that those solicitors would have received his 'defence'. The date of the letter is not in the material before the Tribunal. No defence appeared on the Magistrate's Court file. Apparently subsequently, and on 23 May 2012, the plaintiff's solicitors stated they had not received any defence, nor had they received a response to their correspondence to the respondent. The respondent had not appeared on 23 May 2012.

[28] A further affidavit of Ms Campbell recorded correspondence and other documents from the respondent to the Commission, including what appear to be medical reports. Since the Tribunal is not bound by the rules of evidence, it is appropriate to have regard to these documents and correspondence.

[29] The respondent has deposed that he was made bankrupt in February 2014. He was suffering from a number of (unidentified) personal issues, and closed his legal practice in June 2014. He had a temporary stroke on 17 December 2014, and a major stroke on 17 January 2015. The latter resulted in his being hospitalised for some four months and has left him with significant ongoing symptoms.

[30] The respondent accepted that the Rendon file was not handled well. He deposed that he had prepared a defence. On the day when an application for default judgement was heard, the respondent spoke by telephone with the principal of the firm acting for the plaintiff. An arrangement with made that the respondent would provide the plaintiff's solicitor with the defence and pay his costs of the application for default judgement. The respondent then sent a copy of the defence to the plaintiff's solicitor. The respondent subsequently became aware that an enforcement hearing was to take place on 23 May 2012. He again spoke with the plaintiff's solicitor, who agreed to adjourn the application to enable the respondent to file a defence. That was the basis on which he sent the text message referred to in charge 2, which was not deliberately misleading.

[31] With respect to charge 3, the respondent stated that at the time of the correspondence from the applicant, he was not in his office every day, and just subsequently to his failure to comply with the section 443 notice (which is dated 2 October 2013, and required a response to correspondence of 26 August 2013, for which there was a reminder email of 2 September 2013), he was facing a lot of problems on many different files, because one employee had not been following instructions, or completely disregarding them, for several months. He was also getting more and more behind in his work, culminating in his bankruptcy. Nevertheless, the respondent pleaded guilty to charge 3.

[32] With respect to charge 4, the respondent stated that after his bankruptcy on about 6 February 2014, he was no longer able to sign trust account cheques, and control of the trust account went to the Law Society. In January 2014, he engaged an external examiner to prepare a report for 2010, 2011, 2012 and 2013. He said that a report was not at that time required for 2014. After the intervention of the Society, he got the impression that the examiner whom he had engaged had been dismissed. Prior to that, the examiner had done some work, for which the respondent paid the sum of $3000.

[33] With respect to charge 5, the respondent referred to the fact that the trust account was then under the control of the Society. He said that, at this time, he had decided not to continue practice for at least a year, and that he was not thinking rationally. He accepted that he was guilty of not producing a response to the s 443 notice.

**Charge 1: conduct of Rendon proceedings**

[34] The history of these proceedings is, broadly speaking, uncontentious. Ms Rendon was involved in a motor vehicle accident on 3 May 2011. She engaged the respondent to act for her in relation to the accident on about 6 May 2011. Another party involved in the accident commenced proceedings against her on 1 December 2011. Ms Rendon advised the respondent that she wished to defend the proceedings, and engaged him to file a defence. He failed to do so. Judgement was entered against her on 16 March 2012.

[35] According to Ms Rendon's affidavit, the respondent told her that he would appeal against this judgement. While there might be some doubt about whether Ms Rendon's recollection is completely accurate, it seems reasonably clear that the respondent said that he would take some action to have the judgement set aside.

[36] On 12 April 2012 Ms Rendon was informed by the Magistrate's Court that an enforcement hearing would take place on 23 May 2012. Before that date, she sent text messages to the respondent asking what was happening about this hearing. She deposed that he told her that he would appear at the hearing. On 23 May 2012, she received a text message from the respondent, which included the following:

> Everything is fine this morning. The enforcement hearing was adjourned, pending us filing our material by consent. Will explain the (sic) later.

An inspection of the Magistrate's Court file reveals that there was no appearance by Ms Rendon or the respondent on that date, and a document described as a Warrant of Arrest issued, which was served on Ms Rendon on 16 July 2012.

[37] A copy of this document is exhibited to Mr Rendon's affidavit. Although the words, 'WARRANT OF ARREST', appear near the top of the document, they appear below the words, 'BAILIFF'S NOTICE OF ACTION'. The document required Ms Rendon to appear at the Magistrate's Court Brisbane on 18 July 2012, and stated that a failure to do so might result in her arrest. The document does not identify any statutory provision under which it was issued, and the Tribunal has not had the benefit of submissions as to its effect.

[38] When served with this document, Ms Rendon contacted the respondent about the document, saying: 'I don't understand why you have not defended me as you agreed?' The respondent replied that he would find out what was happening. Ms Rendon attended the Court on 18 July 2012 but the respondent did not. It appears from text messages that the respondent did not inform Ms Rendon whether he had made any inquiries about the matter, or whether he would attend the Court on 18 July. There is no suggestion that Ms Rendon was at any time arrested.

[39] On 6 August 2012 Ms Rendon sent a text to the respondent enquiring whether she needed to be in Court on the following Wednesday with the respondent. He replied the next day, stating that he was making arrangements to set aside the judgement. A text message from Ms Rendon to the respondent records that she attended Court on 8 August, and that she was advised that a 'summons has been dropped'. It is apparent the respondent did not attend. On 13 August 2012, Ms Rendon again sought the respondent's assistance in relation to the action. There is no evidence that he provided it.

[40] It appears from the text messages annexed to Ms Rendon's complaint that, in November 2012, the representative of a party associated with a third vehicle in the accident contacted Ms Rendon. The respondent agreed to speak to the representative. However, on 24 June 2013, Ms Rendon was informed that judgement had been passed in respect of the claim relating to the third vehicle. How that came about is not clear, nor does the evidence reveal what ultimately happened in relation to this claim. This matter is not dealt with in the body of Ms Rendon's affidavit, nor is it expressly mentioned in the discipline application. Accordingly, it will not be considered further.

[41] On 27 June 2013, a notice to attend an enforcement hearing in relation to the earlier action was issued. It required Ms Rendon's appearance on 21 August 2013 at the Magistrate's Court. It would appear from an email from Ms Rendon to the respondent that the notice was served on 8 July 2013. Ms Rendon contacted the respondent about this notice, at least by 8 August 2013. On 18 August 2013 Ms Rendon sent an email to the respondent about the matter, saying that she had tried to approach him on several

occasions, and he had been unresponsive. She was still waiting for a response from him. On either 20 or 22 August 2013 (the transcript of text messages records both dates), the respondent stated that he had spoken with the principal of the plaintiff's firm of solicitors for the purpose of a consent order for the removal of the judgement and to permit Ms Rendon to file a defence. He expected to be able to confirm that Ms Rendon would not be required to appear.

[42] Ms Rendon gave evidence that she herself made an application, heard on 21 August 2013, which resulted in the judgement being set aside. She subsequently arranged for different legal representation.

[43] In his letter of 14 October 2015 to the Commission, the respondent said that he had prepared a proper defence to the claim, and that he had sent a copy to the other solicitor and to Ms Rendon. He had instructed an employee on several occasions to file the defence, but the employee did not do so. He also said that Ms Rendon had not paid the respondent's invoice in relation to this matter and had not paid for any work done by his firm on her behalf. He also queried why Ms Rendon had not made a claim for any loss she suffered as a result of the default judgement. He did not provide any documentary support for these statements.

[44] With respect to the charge of misleading Ms Rendon, the respondent stated that he had not attended the Court on 23 May 2012, but that he had made arrangements with the solicitor for the plaintiff to pay the costs of the default judgement and to provide a copy of the defence, the other solicitor agreeing in return for the judgement to be removed. This matter is also dealt with in the respondent's affidavit.

[45] As it will have been apparent, the respondent's affidavit deals with some but not all of the matters raised against him. His evidence relating to the 'application for default judgement' is unlikely to be correct. If he had made the arrangement with the plaintiff's solicitor to which he deposes, it is unlikely that default judgement would have been obtained on 16 March 2012, and that the matter would have would have proceeded to an enforcement hearing in May of that year. It is not mentioned in his letter of 14 October 2015, and is inconsistent with the arrangement he said he made to send the defence to the plaintiff's solicitor, in effect on 23 May 2012. On the other hand, the material raises a real prospect that the respondent made an arrangement with the plaintiff's solicitor on about 8 August 2012, to which the respondent does not depose. It is likely that the respondent's evidence relating to the default judgement reflects confusion. This is suggested by the passage of time, and the respondent's state of health. Moreover, the respondent's evidence indicates, and it is probable, that the respondent has not had access to his file for the purpose of preparing his affidavit, and his earlier letters to the applicant. His evidence on this point is unreliable, and it should not be accepted.

[46] It is not possible to determine whether the respondent sent a copy of the defence to the solicitor for the plaintiff. The evidence is not sufficiently clear. It appears from the search of the Magistrate's Court file that he believed he did.

[47] The respondent has stated both in his affidavit and his letter to the applicant that he prepared a defence. There is no material to contradict this, and he has not been cross-examined about it. The absence of corroborative evidence may be explicable by the fact that the respondent no longer has access to his file. In the end, this evidence is accepted.

[48] There are difficulties with the respondent's statement in his correspondence to the Commission that he instructed an employee to file the defence on several occasions. If the instructions were given more than once, it is highly likely that the respondent would at some point have ensured that they were carried out. Nor is there any suggestion of this explanation in the communications between the respondent and Ms Rendon throughout the period when the judgement was in force. It might be expected that such an explanation would have been communicated to the solicitor for the plaintiff, but there is no suggestion of that. In his letter of 12 November 2013, the respondent complained of the conduct of this employee between November 2012 and July 2013. By his letter of 14 October 2015 he again complained about the employee's conduct in that period. Yet the judgement was entered on 16 March 2012. On the basis of the respondent's statements, it would seem that the employee was in significant dereliction of her duties for a lengthy period of time. If that were so, it would indicate a very serious failure in supervision on the part the respondent. The respondent's statement about giving instructions to file the defence on several occasions is not consistent with the account in his affidavit. It should not be accepted.

[49] The events relating to 23 May 2012 are dealt with later in these reasons.

[50] On any view, the respondent failed to take effective action at any time to have the judgement set aside.

[51] A number of other matters are established by the evidence, and not challenged by the respondent. He was engaged by Ms Rendon to defend the claim. He did not file the defence in the prescribed time, and has given no explanation for his failure to do so. That resulted in a judgement being entered against Ms Rendon. The respondent then failed to take proper steps to protect the interests of his client, resulting in a document threatening her with arrest. Indeed, he had taken no real action to have the judgement set aside by August 2013.

[52] As the evidence has unfolded, it is apparent that the respondent did not give Ms Rendon clear advice about the steps that should be taken to set aside the judgement.

[53] Ms Rendon has also complained that on occasions in August 2013 she made appointments with the respondent that he did not keep. On one occasion, the respondent's text communications state that he was unwell; and on another, that he had to do other work. While there is reason for scepticism, the explanations may well be true, and it is not possible to be satisfied otherwise. It was discourteous not to inform Ms Rendon in a timely fashion that he would not be available. However, these matters do not themselves establish the allegations of professional misconduct and unprofessional conduct.

[54] The findings which have been made establish that, in his conduct of the litigation on behalf of Ms Rendon, the respondent substantially and consistently failed to reach and maintain a reasonable standard of competence and diligence. His failures extended over a lengthy period of time. They were substantial, resulting in the entry of judgement against Ms Rendon, and subsequent enforcement proceedings. The respondent has not advanced any argument contending that his conduct of these proceedings did not amount to professional misconduct. In the circumstances, it should be so characterised.

**Charge 2: misleading statement of 23 May 2012**

[55] The court records inspected by Ms Ingram and Ms Campbell indicate that on 23 May 2012, a representative of the plaintiff's solicitors stated that they had not received any defence, nor had they received a response to their correspondence to the respondent. That seems to contradict the respondent's statement in his text message of that date that he had made arrangements about the judgment. However, the respondent's affidavit provides an explanation for the text message. There may be an inconsistency between that explanation, and the service of the bailiff's notice on Ms Rendon on 16 July; though some time had passed by then, and the respondent had not taken steps to set aside the judgment and file a defence. There is nothing else to contradict the respondent's explanation. The applicant has not sought to cross-examine the respondent about this matter. It would be a very serious thing for a solicitor to send a message such as that sent to Ms Rendon on 23 May, unless some arrangement had been about the proceedings. In the circumstances, it is appropriate to accept the respondent's explanation.

[56] The applicant has sought leave to vary the discipline application, by deleting charge 2. While that course would be open, it seems appropriate to dismiss the charge.

**Charge 4: Failure to lodge external examiner's reports**

[57] There is no dispute that the respondent did not lodge external examiner's reports for the financial periods ending 31 March 2010, 31 March 2011, 31 March 2012, and 31 March 2013. Compliance with the obligation to lodge such reports is an important aspect of legal practice in this State. The respondent is therefore guilty of a substantial and consistent failure to maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner. This conduct should be characterised as professional misconduct.

[58] The application also alleges that the respondent failed to lodge an external examiner's report for the period ending 31 March 2014. The submissions for the applicant however do not expressly refer to the failure to lodge the report for that year. The Queensland Law Society appointed supervisors of trust money for the respondent's practice on 17 February 2014, as by then the respondent had become insolvent. Mr Hourigan has deposed that the supervisors arranged for the external examination of the practice's trust account for the periods from 17 February to 31 March 2014, and the year ending 31 March 2015. The respondent deposed that he closed his practice at the end of June 2014. It appears from Mr Hourigan's affidavit that the respondent ceased to be the sole practitioner of Lawrence & Associates from 30 June 2014 and did not hold a practising certificate after that date.

[59] It may be technically correct that s 268 of the LP Act imposed an obligation on the respondent to lodge an external examiner's report by about the end of May 2014 for the 12 month period ending on 31 March of that year, and that he failed to comply with that obligation. However, in that period, the respondent did not have control of the trust account. The applicant has not advanced an argument to show that the respondent's conduct in relation to the financial period ending 31 March 2014 amounted to unsatisfactory professional conduct or professional misconduct. In those circumstances, it is inappropriate for the Tribunal to reach either conclusion.

**Charges 3 and 5: failure to comply with section 443 notices**

[60] The respondent has admitted both the facts, and that his conduct amounts to professional misconduct. These admissions were inevitable, and the conduct should be so characterised.

**Discussion**

[61] The respondent's conduct of the Rendon litigation is a matter of serious concern. At least much of it appears to predate the time when the respondent was experiencing personal difficulties, and having trouble with the conduct of an employee. The respondent has not provided any satisfactory explanation for this conduct.

[62] Similarly, there is serious concern arising from the respondent's failure to lodge external examiner's reports for 4 years. It is difficult to think an experienced practitioner would not be conscious of this failure over such a period.

[63] The respondent's breaches of s 443 occurred before either of his strokes. Although he refers to personal issues affecting him in 2013 in 2014, he has not identified them, nor explained what role they played (if any) in his breaches. It is therefore difficult to attribute any significance to them. The breaches are themselves serious, following, as they do, on failures to respond to earlier inquiries.

[64] Taken together, these matters give rise to a significant concern about the respondent's current fitness to practice. That concern is heightened by issues relating to the respondent's health, which he appears to raise by way of mitigation.

[65] The applicant has contended that it would be appropriate to reprimand the respondent. It is difficult to see that this is an adequate response to the concerns raised by the material before the Tribunal. The conduct which has led to the findings of professional misconduct indicate that the respondent is currently unfit to practice. There are no subsequent events to show otherwise; if anything, they support that conclusion. Given the findings that the respondent is guilty on a number of counts of professional misconduct, the appropriate order is a recommendation that his name be removed from the roll of practitioners.

**Costs**

[66] The applicant has sought his costs. Section 462 mandates such an order unless exceptional circumstances exist. The respondent has submitted that his bankruptcy makes such an order futile, as he will remain bankrupt until 2 July 2018.

[67] An order for costs will remain enforceable long after the respondent ceases to be a bankrupt. Liability to meet such an order is not a provable debt in the bankruptcy;[6] and accordingly, is not rendered unenforceable under the Bankruptcy Act.[7] The respondent has not attempted to demonstrate his assertion that the order would be futile, nor that the circumstances of this case are exceptional. It follows that an order for costs must be made.

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6 See s 82 of the *Bankruptcy Act* 1966 (Cth).

7 Ibid s 58(3).

**Orders**

[68] The following orders are made:

(a) It is declared that the respondent's conduct the subject of changes 1, 3, 4 (so far as it relates to the financial period ending 31 March 2014) and 5 amounts to professional misconduct;

(b) Charge 2 is dismissed;

(c) It is recommended that the name of the respondent be removed from the local roll; and

(d) The respondent is to pay the applicant's costs of and incidental to the application to be assessed on the standard basis.