

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PROFESSION ACT 2008 (WA)

CITATION : LEGAL PROFESSION COMPLAINTS
COMMITTEE and FITZPATRICK [2011] WASAT 20

MEMBER : JUDGE J ECKERT (DEPUTY PRESIDENT)
MR C RAYMOND (SENIOR MEMBER)
MR J MANSVELD (MEMBER)

HEARD : 17 FEBRUARY 2010

DELIVERED : 2 FEBRUARY 2011

FILE NO/S : VR 121 of 2009
VR 122 of 2009
VR 123 of 2009
VR 125 of 2009
VR 126 of 2009
VR 173 of 2009

BETWEEN : LEGAL PROFESSION COMPLAINTS
COMMITTEE
Applicant

AND

CARMEL MARY FITZPATRICK
Respondent

Catchwords:

Legal practitioners - Whether guilty of professional misconduct - Allegations of neglect in connection with the practice of law - Conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or

maintain requisite standard - Knowingly misleading clients - Undue delay - Failure to serve a bill of costs showing that trust monies had been applied towards payment of costs - Failing to relist an application for violence restraining order in accordance with instructions - Failure to deliver a client's file when instructed to do so - Misappropriation of monies - Failure to respond to requests for information from the Legal Practitioners Complaints Committee

Legislation:

Family Court Act 1997 (WA)

Interpretation Act 1984 (WA)

Legal Practice Act 2003 (WA), s 3, s 138, s 198(1)

Legal Profession Act 2008 (WA), s 4, s 5, s 225(1)(b), s 402, s 401, s 403, s 406, s 406(2), s 409, s 438, s 438(1), s 469, s 520(1)(c), s 621(3), Pt 13

Legal Profession Regulations, reg 65(4)(a)

Result:

Practitioner guilty of professional misconduct

Category: B

Representation:

Counsel:

Applicant : Ms P Le Miere
Respondent : No appearance

Solicitors:

Applicant : N/A
Respondent : N/A

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

Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

Briginshaw v Briginshaw (1938) 60 CLR 336

Legal Practitioners Complaints Committee and Gandini [2006] WASAT 163

Re Maraj (a legal practitioner) (1995) 15 WAR 12

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 The Legal Profession Complaints Committee applied to the Tribunal for orders pursuant to s 438(1) of the *Legal Profession Act 2008* (WA) alleging professional misconduct, and in some instances unsatisfactory professional conduct, against the Practitioner in six separate proceedings.

2 The proceedings were not opposed by the Practitioner. Having regard to the uncontested evidence and documentary evidence supporting the allegations, the Tribunal found that all allegations had been established, with the exception of an allegation alleging that the Practitioner had failed to follow a client's instructions to relist an application for a violence restraining order. The particular application was dismissed in that respect.

3 Having regard to the allegations established against the Practitioner, the Tribunal concluded that the appropriate penalty was to refer the matter to the Supreme Court (full bench) with a recommendation that the Practitioner be struck off the roll of practitioners. Costs were ordered in favour of the Legal Profession Complaints Committee.

The applications

4 The Legal Profession Complaints Committee, formerly, and at times relevant to this matter, known as the Legal Practitioner's Complaints Committee (Complaints Committee), seeks an order that the Tribunal make a finding that a legal practitioner, Carmel Mary Fitzpatrick (Practitioner), is guilty of professional misconduct pursuant to s 438(1) of the *Legal Profession Act 2008* (WA) (2008 Act) and consequential orders.

5 The Complaints Committee commenced six separate proceedings against the Practitioner under VR 121/2009, VR 122/2009, VR 123/2009, VR 125/2009, VR 126/2009 and VR 173/2009. The proceedings were heard together on 17 February 2010. For the reasons which follow, the majority of the allegations against the Practitioner have been made out. As it is necessary to consider all conduct of which the Practitioner is guilty together for the purposes of penalty, it is convenient to deal with all matters together in these reasons for decision. Each application is dealt with separately below.

6 The respondent did not participate in any way in the proceedings. She was, however, represented by Mr Jeremy Ludlow, a barrister,

in earlier proceedings in VR 157/2008. In those proceedings, the Complaints Committee had sought orders that the Practitioner be suspended pending inquiry into various matters. That application was withdrawn on 13 January 2009 following an undertaking by the Practitioner to not practise from 9 December 2008 to 30 June 2009 without giving the Complaints Committee and the Legal Practice Board 30 days notice of her intention to recommence engaging in legal practice together with a medical report on her fitness to practise. Mr Ludlow continued to represent the Practitioner in relation to the inquiry being conducted by the Complaints Committee leading to the above proceedings, but ultimately informed the Complaints Committee that he was unable to obtain instructions. The Practitioner had gone to England because her father was unwell and she did not have a return ticket to Australia. Mr Ludlow's, and subsequently the Complaints Committee's, only means of communication was via the Practitioner's husband. All of this is dealt with in the affidavit of Ms Patricia Elizabeth Le Miere sworn on 24 August 2009 in support of an application for an order for substituted service, which was duly made by the President of the Tribunal in each matter. The substituted service orders were made in VR 121/2009, VR 122/2009, VR 123/2009, VR 125/2009 and VR 126/2009 on 8 September 2009 and, in respect of VR 173/2009, on 13 October 2009. The President was informed by counsel representing the Complaints Committee that service had been effected in accordance with the above orders, at a directions hearing on 13 October 2009 in respect of VR 121/2009, VR 122/2009, VR 123/2009, VR 125/2009 and VR 126/2009. At a directions hearing on 22 December 2009, counsel for the applicant informed the President that the respondent was aware of all the proceedings and was reported to have returned to Australia. The Practitioner had been in contact with the Complaints Committee by mobile telephone but had failed to maintain contact and her whereabouts were unknown.

- 7 The conduct the subject of these proceedings occurred prior to the commencement of the 2008 Act and repeal on 1 March 2009 of the *Legal Practice Act 2003* (WA) (2003 Act). The application to this Tribunal under the 2008 Act is permitted by s 621(3) of the 2008 Act. No right or entitlement to which the Practitioner might have affecting the conduct of the proceedings preserved by s 37(1) and s 37(2) of the *Interpretation Act 1984* (WA) has been identified, but the effect thereof is that the Tribunal must be satisfied that the conduct established constitutes unsatisfactory conduct under the 2003 Act and that any penalty is within the range permitted by that legislation.

8 Section 402 of the 2008 Act defines unsatisfactory professional conduct as follows:

For the purposes of this Act -

unsatisfactory professional conduct includes conduct of an Australian legal practitioner occurring 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.

9 Professional misconduct is defined by s 403 of the 2008 Act in the following terms:

(1) For the purposes of this Act -

professional misconduct includes -

(a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and

(b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

(2) For the purpose of finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission or for the grant or renewal of a local practising certificate.

10 There is no direct evidence that the Practitioner is the holder of a current local practising certificate or a current interstate practising certificate, the holding of either of which would qualify the Practitioner as an Australian legal practitioner in accordance with the definitions set out in s 5 of the 2008 Act. As related above, the Practitioner opposed earlier proceedings under VR 157/2008 to suspend her from practice. It can therefore be inferred that the Practitioner is an Australian lawyer as defined under s 4 of the 2008 Act, being a person admitted to the legal profession under that Act or a corresponding law. It therefore does not matter whether the Practitioner holds a current practising certificate. The effect of s 406 of the 2008 Act is that Pt 13 of that Act, dealing with

complaints and discipline, and which includes s 401 to s 469, applies to an Australian lawyer in the same way as Pt 3 applies to Australian legal practitioners.

- 11 Conduct which constitutes professional misconduct or unsatisfactory professional conduct under the 2008 Act is also conduct which constitutes unsatisfactory conduct under the 2003 Act. Section of the 2003 Act defines unsatisfactory conduct to include, relevantly, unprofessional conduct on the part of a legal practitioner, neglect or delay and 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.

VR 121/2009

The allegations

- 12 The allegations made by the Complaints Committee are as follows:

A) That the practitioner was guilty of professional misconduct on the grounds of:

- (i) neglect in connection with the practice of law;
- (ii) conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner; or
- (iii) both of the conduct referred to in (i) and (ii),

between 26 November 2007 and 31 July 2008 or thereabouts in the conduct of instructions from her clients, Mrs PM, Mr IM and Ms JM (clients) in relation to a survivorship application on behalf of Mrs PM and a transfer of the land the subject of the survivorship application into the joint names of the clients.

B) That the practitioner was guilty of professional misconduct on the grounds of:

- (i) knowingly, or alternatively recklessly, misleading Mr IM;

(ii) conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner; or

(iii) both of the conduct referred to in (i) and (ii),

on or about 19 December 2007 when advising Mr IM as to the current position with respect to the progress of the clients' instructions.

C) That the Practitioner was guilty of professional misconduct between 29 January 2007 and 31 July 2008 or thereabouts on the ground of failing to respond to telephone calls and requests for information from the Complaints Committee within the time requested or at all.

Evidence and findings

13 In order to prove the allegations, the Complaints Committee relied upon the witness statement of Mr IM (aka AIM) dated 19 November 2009 (Exhibit 5) and a bundle of documents (Exhibit 6). The unchallenged evidence of Mr IM and the documentation to which reference is made establishes the following material facts.

14 The Practitioner accepted instructions to transfer certificate of title Volume 1610 Folio 774 (property) into Mrs PM's name by survivorship and to then transfer the property to Mrs PM, Mr IM and Ms JM (Exhibit 5, page 2 [9 & 10]).

15 Between 23 May 2007 and 31 July 2007, the Practitioner:

- a) prepared the documents required to effect the survivorship application (Survivorship Application) and had had the documents signed by Mrs PM;
- b) prepared the Transfer of Land for the property (Transfer) and had it signed by the parties;
- c) prepared an agreement for the sale of the property between Mrs PM and Mr IM and Ms JM (Sale Agreement) and had it signed by the parties; and

d) had lodged the Sale Agreement and a stamp duty assessment form with the Office of State Revenue (OSR) (Exhibit 6, pages 24 - 26, 49 & 54).

16 Requisitions were issued by the OSR which the Practitioner responded to and an assessment on the Sale Agreement issued which the Practitioner sent to Mr IM on or about 30 October 2007 (Exhibit 5, page 4 [24] & Exhibit 6, pages 61 - 63).

17 Between early November 2007 and 19 November 2007, Mr IM tried to speak to the Practitioner about payment of the stamp duty but was unable to speak to her (Exhibit 5, page 5 [25]).

18 After making enquiries direct with the OSR, on or about 19 November 2007, Mr IM and Ms JM sent a letter to the OSR enclosing a cheque in payment of the assessed stamp duty (Exhibit 5, page 5 [26]).

19 On or about 26 November 2007, Mr IM received an email from the Practitioner's office confirming that the Practitioner had received the stamped Transfer (Exhibit 6, page 83).

20 By email sent on or about 17 December 2007, Mr IM enquired of the Practitioner what was happening with the transfer of the property (Exhibit 6, page 86).

21 Having received no response to his email of 17 December 2007, Mr IM telephoned the Practitioner on 19 December 2007 and, in response to his query as to what was happening, the Practitioner advised him that the relevant documents were in the hands of a government department and that it may take some time to conclude (Exhibit 5, page 6 [31]).

22 Mr IM had experienced difficulty from approximately September 2007 in communicating with the Practitioner. He telephoned the Practitioner's office on many occasions and was informed that the Practitioner was not available. The Practitioner did not return telephone messages for her to contact Mr IM. He increased the frequency of his telephone calls to the Practitioner's office during December 2007 and eventually managed to contact her on her mobile telephone on the occasion mentioned above on 19 December 2007. On that occasion, the Practitioner advised Mr IM that she would obtain scanned copies of the documents from the unnamed government department said to be in possession of the documents and would provide Mr IM with copies on the following Monday. That did not occur and all attempts to contact the Practitioner thereafter were unsuccessful, both by telephone and by email.

23 In mid January 2008, Mr IM consulted another solicitor because of his concern over the delay. That solicitor reported that he had been unsuccessful in his attempts to contact the Practitioner and recommended that a complaint be made to the Complaints Committee. Mr IM was reluctant to do so at that time and continued in his attempts to communicate with the Practitioner. Mr IM did, however, contact the Complaints Committee, as evidenced from the documentation to which further reference will be made below, because a representative of the Complaints Committee left telephone messages for the Practitioner to contact him on 29 January 2008 and 1, 4 and 5 February 2008 (Exhibit 6 P96 & Exhibit 6 P98). The Practitioner did not respond to those messages.

24 In early February 2008, Mr IM contacted the Landgate Registry Office (Landgate) at Midland and ascertained that no application for any transfer of the property had been lodged, and there was no record of any documents having been lodged from the Practitioner's office.

25 On 3 February 2008, Mr IM emailed the Practitioner and advised her that he had checked with Landgate and that the documents had not been lodged (Exhibit 6 P89). Mr IM stressed in the email that it was important that he have confirmation that the documents had been lodged and requested a reply. No reply was forthcoming and a formal complaint was then lodged with the Complaints Committee.

26 On 27 February 2008, the Complaints Committee wrote to the Practitioner attaching a copy of the written complaint. The Complaints Committee required the Practitioner to respond to the complaint within 14 days of the date of the letter, which the Practitioner failed to do.

27 On 30 March 2008, a formal notice and summons to produce documents was issued by the Complaints Committee (Exhibit 6 P99 - Exhibit 6 P100). Further correspondence was addressed by the Complaints Committee to the Practitioner, calling for a response to the complaint, on 30 April 2008 and 5 June 2008 (Exhibit 6 P104 & Exhibit 6 P108). Apparently in response to those communications, the Practitioner met with the Complaints Committee's principal legal officer, Ms G Roberts, on 23 June 2008 and led Ms Roberts to believe that a response would be provided to the complaint.

28 By letter dated 31 July 2008, the Practitioner wrote to Ms Roberts on behalf of the Complaints Committee indicating her intention to take a break from work for at least eight weeks, asserting that was based on medical advice. By the letter, she purported to enclose a response to the complaint (Exhibit 6 P111). It is evident that no response was enclosed, because on 27 November 2008, Ms Roberts wrote to the Practitioner's then legal representative, Mr Ludlow, advising that no response had been received (Exhibit 6 P113).

29 The evidence of Mr IM and the documentary evidence as outlined above is accepted. Based on this uncontested evidence, the Tribunal concludes as follows.

30 In relation to allegation A, the Practitioner is guilty of professional misconduct in that, between 26 November 2007 and 31 July 2008, the Practitioner neglected the conduct of the clients' matter in connection with the practice of law and did so in a manner which involves a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect from a reasonably competent legal practitioner.

31 In relation to allegation B, the statement by the Practitioner on 19 December 2007 to the effect that the documents were in the hands of a government department was patently false and misleading. The issue is whether the misleading statement was made knowingly or recklessly. The Practitioner has elected not to participate in the proceedings and the failure to provide exculpatory evidence is significant in determining the most probable inference: *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1 at 5, 6. This is not a case in which the inference sought to be drawn by the Complaints Committee is based on vague or meagre evidence and, ultimately, the Tribunal must feel an 'actual persuasion' that the most probable inference is that the Practitioner was aware that the statement she was making was misleading: *Briginshaw v Briginshaw* (1938) 60 CLR 336 as discussed by Justice Barker, the President of the Tribunal in *Legal Practitioners Complaints Committee and Gandini* [2006] WASAT 163 at [61] - [65]. In this instance, the Practitioner had the conduct of the matter, and absent any explanation, must be taken to be aware of the steps which had been taken. It is therefore concluded that the Practitioner is guilty of professional misconduct in that the Practitioner knowingly misled Mr IM, and the Practitioner's conduct occurring in connection with the practice of law, involved a substantial failure to maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

32 In relation to allegation C, the Practitioner has failed to provide information which she was obliged to do (s 198(1) of the 2003 Act and s 520(1)(c) of the 2008 Act). However, the allegation as expressed, is too wide, because it asserts a failure commencing on 29 January 2007 when, on the evidence, it was not until 27 February 2008 that any formal notice to respond to specific allegations was made. Prior thereto, there were no more than telephone messages left for the Practitioner to contact the representative of the Complaints Committee, and the failure to respond to those messages does not constitute, in our view, a breach of any professional or legal obligation. It is concluded that the Practitioner is guilty of professional misconduct in that, between 27 February 2008 and 31 July 2008, the Practitioner failed to respond to notices from the Complaints Committee requiring her to provide information, which conduct occurred in connection with the practice of law and involves a substantial or consistent failure to maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner. A factor influencing our characterisation of this conduct as professional misconduct is that the Practitioner has never provided a response to the Complaints Committee and has effectively abandoned her professional responsibilities.

VR 122/2009

The allegations

33 It is alleged that the Practitioner was guilty of professional misconduct on the grounds of:

- (i) undue delay or, alternatively, neglect in connection with the practice of law;
- (ii) conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain a standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner; or
- (iii) both of the conduct referred to in (i) and (ii),

between 16 October 2006 and 23 April 2008, or thereabouts, and from on or about 23 June 2008 and continuing, in the conduct of instructions from her client, Mr KM, the executor of a will, to administer the deceased estate in accordance with the terms of the will.

Evidence and findings

34 The Complaints Committee relied upon a witness statement of Mr KM dated 20 November 2009 (Exhibit 8) and the contents of a bundle of documents (Exhibit 9). Based on this uncontested evidence, the following material facts are established.

35 On or about 15 February 2005, Mr KM, the executor of the will of Mrs MPW (will) instructed the Practitioner to apply for, and obtain, probate of the will and to assist him with the administration of Mrs MPW's estate (estate). Mr KM further instructed the Practitioner that he would carry out most of the work required including organising the sale of the property (Exhibit 9, pages 1 - 12).

36 On 18 May 2005, probate of the will was granted to Mr KM as executor, and issued to the Practitioner's firm, Fitzpatrick Lawyers (Exhibit 9, page 14).

37 In or about June 2005, Mr KM instructed the Practitioner to have the primary conduct of the administration of the estate (Exhibit 8, page 3 [9 & 10]).

38 The major assets of the estate comprised:

- a) a residential property situate at No 3/44 Sholl Street, Mandurah (property) and the contents, being furniture and effects;
- b) money in two bank accounts at the Mandurah branch of BankWest, namely, approximately \$10,000 held in account 072-025667-8 and \$30,000 held in term deposit 072-698550-8, which was due to mature at the expiration of the term on 16 October 2006 (term deposit); and
- c) the sum of approximately \$23,000 in a cash account held by the Public Trustee, which was the financial administrator of the deceased at the time of her death (Exhibit 8, page 1 [3] & Exhibit 9, pages 10 - 21).

39 On or about 18 August 2005, the property was transferred to Mr KM in his capacity as executor. The property was subsequently sold and settlement of the sale was completed on or about 3 March 2006. On or about that date, the net proceeds of sale were distributed to Ms MacL, the beneficiary under the will or pursuant to her direction (Exhibit 9, page 40).

40 On or about 16 October 2006, the term deposit matured (Exhibit 8,
page 5 [18 & 19]).

41 On or about 6 December 2006, the Practitioner obtained from
Mr KM a signed authority authorising BankWest to close the term deposit
account and transfer the funds to the estate account (Exhibit 9, page 50).

42 On or about 10 January 2007, approximately three months after the
term deposit had matured, the Practitioner instructed BankWest, or caused
BankWest to be instructed, to close the term deposit and transfer the funds
to the estate account and the funds were transferred on 10 January 2007
(Exhibit 9, page 55).

43 Upon the completion of the transfer, all of the funds in the estate
account were capable of being distributed, apart from the payment to
Mr KM of an amount required to reimburse him for expenses he incurred
personally in carrying out his duties as executor (executor's expenses),
the amount of which was yet to be determined but was expected to be
approximately \$900 (Exhibit 9, pages 56 - 57).

44 By letter dated 5 June 2007, Mr KM advised the Practitioner that he
would not be seeking a reimbursement of executor's expenses (Exhibit 9,
page 60).

45 On 2 July 2007, approximately six months after the funds had been
transferred from the term deposit to the estate account, the Practitioner
arranged for Mr KM to attend at her office and sign a cheque in the sum
of \$50,000 drawn on the estate account, being a partial distribution
payable to the residuary beneficiary of the estate, Nulsen Haven. Mr KM
signed the cheque on 2 July 2007 (Exhibit 9, page 62 & Exhibit 8,
page 7 [26]).

46 On 23 April 2008, more than nine months after the cheque was
signed by Mr KM, the Practitioner sent the cheque to Nulsen Haven
(Exhibit 9 pages 73 & 74).

47 The Practitioner, despite requests from Mr KM to do so, failed to
finalise the estate (Exhibit 8, page 8 [29] - [30]).

48 In correspondence addressed to the Complaints Committee dated
11 January 2008, the Practitioner endeavoured to explain the delay in
distributing the estate as having been caused by Mr KM not having
submitted a claim for his reasonable expenses. The Practitioner indicated
that she would act on the assertion made through the

Complaints Committee that Mr KM no longer wished to make a claim on the estate (Exhibit 9 P69). However, that overlooked the fact that Mr KM had given instructions on 5 June 2007, by letter of that date, that he would not be submitting an account for expenses (Exhibit 9 P60).

49 By letter dated 9 January 2008, the Practitioner wrote to Mr KM requesting his written instructions to finalise the estate 'as the residual beneficiary is awaiting distribution'. However, if any further written instructions were required, that should have been requested at a much earlier date. It is evident that the Practitioner prepared a letter on 4 July 2007 with the intention of providing the \$50,000 cheque payment to Nulsen Haven (Exhibit 9 P62) but it was not sent. A further letter was prepared dated 23 April 2008 under which the cheque was forwarded (Exhibit 9 P73 and Exhibit 8, page 7 paragraph 28). In the letter of 4 July 2007, the Practitioner indicated that a further amount of approximately \$1,500 would be paid and the exact amount would be determined when the relevant bank account was closed in approximately one week. There is therefore no reason why any final authority could not have been obtained at that time.

50 Based on the above factual findings, it is concluded that the Practitioner is guilty of professional misconduct in that:

- a) between 16 October 2006 and 23 April 2008 and from on or about 23 June 2008 to date, the Practitioner has neglected the conduct of the matter and, in doing so:
- b) the Practitioner's conduct of the matter occurring in connection with the practice of law involved a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

VR 123/2009

The allegations

- A) It is alleged that the Practitioner was guilty of professional misconduct on the ground of conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent

legal practitioner, between November 2007 and 9 January 2008 or thereabouts, in the preparation of a trial of her client (Mr HT) on a charge of dangerous driving causing bodily harm.

- B) It is alleged that the Practitioner was guilty of professional misconduct or alternatively unsatisfactory professional conduct between December 2007 and 31 July 2008 or thereabouts in failing to serve upon Mr HT a bill of costs showing that trust monies had been applied by the Practitioner towards payment of her costs charged to Mr HT despite requests from Mr HT and the Complaints Committee to do so.
- C) It is alleged that the Practitioner was guilty of professional misconduct between 8 May 2008 and 31 July 2008 or thereabouts on the ground of failing to respond to requests for information from the Complaints Committee.

Evidence and findings

51 The Complaints Committee relied upon the witness statement of Mr HT dated 24 November 2009 (Exhibit 11), the witness statement of Ms DFK (Exhibit 12) and the contents of a bundle of documents (Exhibit 13). This uncontested evidence establishes the following facts.

52 On or about 12 October 2007, while at the Mandurah Magistrates Court, Mr HT retained the Practitioner to act for him at his trial on 10 January 2008 in respect of one charge of driving with a blood alcohol level in excess of 0.08% and one charge of dangerous driving causing bodily harm. The charges related to a motor vehicle accident which occurred in early 2007 (accident) (Exhibit 11, page 2 [5]).

53 In or about late October or early November 2007, Mr HT signed the written costs agreement and returned it to the Practitioner (Exhibit 13, pages 5 - 17).

54 On or about 20 November 2007, Mr HT paid \$3,850 to the Practitioner, being the total of the costs which, under the terms of the written costs agreement, were required to be paid on account (Exhibit 13, page 18).

55 Also on or about 20 November 2007, Mr HT met with the Practitioner for about 10 minutes to discuss the details of the accident. During that meeting, Mr HT told the Practitioner that there had been four people in his vehicle at the time of the accident (witnesses). The Practitioner requested Mr HT to ask the witnesses whether they were prepared to give evidence, and to obtain their contact details for her (Exhibit 11, page 2 [11]).

56 During about late November or early December 2007, Mr HT spoke to the witnesses and they all agreed to give evidence on his behalf (Exhibit 11, page 3 [13]).

57 On or about 11 December 2007, Mr HT's partner, Ms DK, who was one of the witnesses, met with the Practitioner for about two hours to discuss the accident. During the course of this meeting, the Practitioner told Ms DK that one of the witnesses would not assist Mr HT's case, but asked that Ms DK contact the other witnesses and ask them to contact her to provide a statement (Exhibit 12, page 1 [5]).

58 Later, on 11 December 2007 following the meeting with Ms DK, the Practitioner sent an advice to Mr HT in the course of which she asked him not to contact anyone regarding his case until the Practitioner spoke to him again (Exhibit 13, page 21).

59 On or about 24 December 2007, the Practitioner telephoned Mr HT and informed him that the drink driving charge had been dropped. The Practitioner told Mr HT not to do anything about the remaining charge until she contacted him (Exhibit 11, page 3 [16]).

60 By email sent to the Practitioner dated 1 January 2008, Ms DK enquired of the Practitioner whether Mr HT needed to organise witnesses for the hearing on 10 January 2008 (Exhibit 13, page 22).

61 On 8 January 2008, Ms DK telephoned the Practitioner's office and was told by the Practitioner's secretary that the witnesses were probably needed for the hearing on 10 January 2008. By email sent later that day to the Practitioner, Ms DK enquired whether the witnesses were needed and asked the Practitioner to telephone Mr HT or herself (Exhibit 13, page 23).

62 Neither Mr HT nor Ms DK heard from the Practitioner prior to 10 January 2008 (Exhibit 11, page 4 [18] & Exhibit 12, page 2 [8 - 11]).

63 At the hearing on 10 January 2008, Mr HT was found guilty on the charge of dangerous driving. During the course of the hearing, Mr HT contacted two of the other witnesses but only one was able to go to the court that day to give evidence on his behalf (Exhibit 11, page 5 [25] & Exhibit 12, page 2 [8 - 11]).

64 By emails sent to the Practitioner on 30 January 2008 and 28 March 2008, Ms DK requested details of the Practitioner's costs. No response was received (Exhibit 13, pages 24 - 26 and Exhibit 12, page 4 [17]).

65 The Practitioner has failed to issue a bill of costs to Mr HT showing the application of trust monies towards payment of her fees (Exhibit 1, page 7 [36]).

66 By letter dated 7 May 2008, the Complaints Committee wrote to the Practitioner enclosing a copy of a complaint received from Mr HT dated 28 April 2008 and requested that the Practitioner respond to the complaint and prepare and send an account to Mr HT for her costs, showing the application of trust monies towards payment of those costs (Exhibit 13, page 28).

67 Further requests for a response to the letter of 7 May 2008 were sent by the Complaints Committee to the Practitioner by letters dated 19 June 2008 and 31 July 2008 (Exhibit 13, pages 30 - 31).

68 No response to Mr HT's complaint has been received from the Practitioner.

69 The Practitioner has not provided any bill of costs to Mr HT showing the application of trust monies towards payment of her costs.

70 In relation to allegation A above, and on the above findings, it is concluded that the Practitioner failed to take proper instructions from Mr HT regarding the accident, failed to fully investigate the circumstances of the accident by speaking to the witnesses, other than Ms DK, prior to the trial, failed to arrange for any of the witnesses, apart from Ms DK, to give evidence at the trial, and failed to respond to communications from Mr HT and Ms DK as to the preparation for the trial. By reason of such failures, the Practitioner is guilty of professional misconduct in that the conduct of the matter, occurring in connection with the practice of law, involved a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent practitioner.

71 In relation to allegation B above, and on the above findings, it is established that the Practitioner is guilty of professional misconduct in that, between December 2007 and about 31 July 2008, the Practitioner failed to serve upon Mr HT a bill of costs showing that trust monies had been applied by the Practitioner towards payment of her costs charged to him despite requests from Mr HT and the Complaints Committee to do so. Such failure was in breach of the Practitioner's professional obligations (s 138 of the 2003 Act and s 225(1)(b) of the 2008 Act read with reg 65(4)(a) of the *Legal Profession Regulations 2009* (WA) and constitutes conduct in the practice of law which involves a substantial failure to meet the standard of competence and diligence which a member of the public is entitled to expect of a reasonably competent legal practitioner.

72 In relation to allegation C above, the Practitioner is guilty of professional misconduct in that, between 8 May 2008 and approximately 31 July 2008, the Practitioner failed to respond to notices for information from the Complaints Committee to provide information as she was professionally obliged to do (s 198(1) of the 2003 Act and s 520(1)(c) of the 2008 Act), which constitutes conduct in the practice of law involving a substantial failure to meet the standard of competence and diligence which a member of the public is entitled to expect of a reasonably competent legal practitioner. A factor influencing our characterisation of this conduct as professional misconduct is that the Practitioner has never provided a response to the Complaints Committee and has effectively abandoned her professional responsibilities.

VR 125/2009

The allegations

73 It is alleged that the Practitioner was guilty of professional misconduct on the grounds of:

- i) neglect in connection with the practice of law;
- ii) conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner; or
- iii) both of the conduct referred to in i) and ii),

between 30 August 2007 and 3 September 008 or thereabouts in the conduct of instructions from her client, Mr MPM, as the named executor in his father's will, to apply for a grant of probate of the will and effect transfer of land in accordance with the terms of the will.

Evidence and findings

74 The Complaints Committee relied upon the witness statement of Mrs AMM, the widow of the testator, dated 16 January 2009 (Exhibit 15) and the witness statement of Mr MPM, the son of the testator, dated 19 January 2009 (Exhibit 16), together with the contents of a bundle of documents (Exhibit 17). On the basis of the uncontested evidence, the following facts are established.

75 Mr RM (deceased) died on 16 July 2007. Under the terms of his will (will), his son, Mr MPM, was appointed executor and his wife, Mrs AMM, was the sole beneficiary (Exhibit 17, pages 3 - 5).

76 On or about 29 August 2007, Mr MPM and Mrs AMM met with the Practitioner and Mr MPM instructed the Practitioner to apply for probate of the will and to transfer the property the subject of certificate of title Volume 1732 Folio 184 (property) into Mrs AMM's name. At that meeting, Mrs AMM gave to the Practitioner the original will, a certified copy of the deceased's death certificate, the duplicate certificate of title for the property, and other sundry documentation (Exhibit 16, page 1 [8]).

77 Mr MPM heard nothing further from the Practitioner. Between January 2008 and August 2008, Mr MPM left numerous messages with the Practitioner's office by telephone, in person and by way of notes pushed under the door of the Practitioner's office, asking the Practitioner to call him. Mr MPM did not receive any response to his messages (Exhibit 16, pages 3 - 4 [13 - 19] & Exhibit 15, page 3 [14 - 17]).

78 On or about 17 August 2008, Mr MPM lodged a complaint with the Complaints Committee (Exhibit 16, page 4 [20]).

79 The Practitioner's file was given to Mr MPM on or about 3 September 2008, at which time the Practitioner's retainer was effectively terminated (Exhibit 16, page 4 [21]).

80 Based on the above findings, it is concluded that the Practitioner failed to apply for and obtain probate of the deceased's will, failed to effect a transfer of the property to Mrs AMM and failed to respond

to communications from Mr MPM. The Practitioner is guilty of professional misconduct in that:

- a) between 30 August 2007 and 3 September 2008 neglected the conduct of the matter; and
- b) in connection with the practice of law, substantially or consistently failed to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

VR 126/2009

The allegations

- A) It is alleged that the Practitioner was guilty of professional misconduct on the grounds of:
 - i) neglect in connection with the practice of law;
 - ii) conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner; or
 - iii) both of the conduct referred to in i) and ii),

between 1 August 2007 and 1 May 2008 or thereabouts in the conduct of instructions from her client, Ms MT, in relation to responding to an application for the alteration of property under the *Family Court Act 1997* (WA).
- B) That the Practitioner was guilty of professional misconduct or alternatively unsatisfactory professional conduct between 16 May 2007 and mid June 2007 or thereabouts in failing to act on Ms MT's instructions to relist an application for a violence restraining order.
- C) That the Practitioner was guilty of professional misconduct on the grounds of:

- i) knowingly, or alternatively recklessly, misleading Ms MT;
- ii) conduct occurring in connection with the practice of law involving a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner; or
- iii) both of the conduct referred to in i) and ii);

on or about 1 May 2008 when advising the client of the effect on her case as a result of the absence of an appearance on her behalf at court appointments before the Family Court of Western Australia (Family Court) between January 2008 and April 2008 in proceedings to which Ms MT was a party.

- D) That the Practitioner was guilty of unsatisfactory professional conduct between 5 May 2008 and 21 May 2008 or thereabouts on the ground of failing to deliver Ms MT's file to her when instructed to do so in circumstances where urgent action was required to be taken in respect of Ms MT's matter.
- E) That the Practitioner was guilty of professional misconduct between 20 May 2008 and 31 July 2008 or thereabouts on the ground of failing to respond to requests for information from the Complaints Committee.

Evidence and findings

81 The Complaints Committee relies upon the witness statement of Ms MT dated 20 November 2009 (Exhibit 20) and the contents of a bundle of documents (Exhibit 19).

82 The above uncontested evidence establishes the following facts.

83 In about March 2006, Ms MT retained the Practitioner to act on her behalf in respect of a dispute over her share of a property which she owned with her former de facto partner, Mr BE (property).

84 In September 2006, Mr BE commenced proceedings in the Family Court seeking an alteration of the interests of the parties in the

property (proceedings), and matters progressed in the usual manner until about May 2007.

85 On 10 May 2007, the Practitioner and Ms MT attended a procedural conference in the proceedings where various orders were made (Exhibit 19, pages 97 - 98).

86 On or about 11 May 2007, Ms MT, on receiving a letter from Mr BE, sought the Practitioner's advice on the letter and was advised to seek a violence restraining order against Mr BE (Exhibit 19, pages 103 - 106).

87 On or about 14 May 2007, the Practitioner filed an application for a violence restraining order on behalf of Ms MT.

88 The application for the violence restraining order was listed for an ex parte hearing in the Magistrates Court on 15 May 2007, at which time the Practitioner advised Ms MT not to proceed with the hearing of the application that day, but said that she would arrange for it to be relisted the following week (Exhibit 20, page 6 [31]).

89 The Practitioner took no further steps with respect to relisting the application for the violence restraining order for hearing.

90 Ms MT attended the Practitioner's office on 7 June 2007 and discussed a number of matters with a staff member (Exhibit 19). A file note reflects that Ms MT wished to proceed with either a violence restraining order or a misconduct restraining order (Exhibit 19, page 123). The file note also reflects that the staff member informed Ms MT that the Practitioner did not consider that an application for a violence restraining order would be granted. Further, the note records that the meeting terminated on the basis that Ms MT indicated that she wished to make an appointment to see the Practitioner in relation to all of the matters discussed with the staff member. Ms MT did not hear further from the Practitioner and, despite many attempts, was unable to speak to the Practitioner. In the following months, the Practitioner was provided with various instructions with regard to the making of settlement proposals or the basis upon which to make an offer to settle the matter.

91 The pre-trial conference in the proceedings was listed for 29 January 2008. Ms MT was not advised of the listing and there was no attendance at the conference on behalf of Ms MT. The Registrar, after unsuccessfully trying to make contact with the Practitioner by telephone and noting that Mr BE had filed all his trial documents but that Ms MT had not filed any trial documents, adjourned the matter

to the Duty Judge list on 25 February 2008. A copy of the Registrar's file note of the pre-trial conference was sent to the Practitioner (Exhibit 19, page 146).

92 The matter came before Justice Crooks on 25 February 2008 and there was no appearance on behalf of Ms MT. Orders were made extending the time for Ms MT to file her trial documents for 14 days and, in the event of her failure to file those documents, Mr BE have leave to proceed on an undefended basis. A copy of the orders was sent to the Practitioner (Exhibit 19, page 147).

93 By letter dated 13 March 2008 from the Principal Registrar of the Family Court to Mr BE's solicitors, a copy of which was sent to the Practitioner, notice was given that the proceedings had been relisted to be heard on an undefended basis on 14 April 2008 (Exhibit 19, page 148).

94 On 14 April 2008, the proceedings were heard on an undefended basis before Justice Crooks who reserved his decision.

95 Between late 2007 and April 2008, Ms MT contacted the Practitioner's office on a number of occasions to try to arrange an appointment with the Practitioner but her requests for an appointment were never met (Exhibit 20, page 7 [35]).

96 At a meeting on 1 May 2008, the Practitioner informed Ms MT that she had missed a court date but that that would not affect her case. After this disclosure, the Practitioner went into her office to get the file but was unable to find it. The Practitioner informed Ms MT that she was referring the file to another Mandurah practitioner and that she may have already sent the file to that person (Exhibit 20, pages 8 [41] & 9 [42 - 44]).

97 On or about 2 May 2008, Ms MT contacted the Practitioner's office and was told by the receptionist that her file could not be found (Exhibit 20, page 10 [45]).

98 On or about 5 May 2008, Ms MT contacted the Practitioner's office and was told that her file had been found and that the Practitioner wanted her to make an appointment for later that day to discuss the case. Ms MT informed the receptionist that she only wanted to pick up her file. The receptionist said she would get back to her (Exhibit 20, page 11 [49]).

99 Ms MT heard nothing further from the Practitioner.

100 The Practitioner was on the Family Court record as the solicitor for
Ms MT in the proceedings between 15 December 2007 and 20 May 2008
or thereabouts.

101 Ms MT contacted the Family Court direct on 8 May 2008 and as a
result the court relisted the proceedings for a special appointment on
22 May 2008. New solicitors engaged by Ms MT attended the special
appointment and were eventually successful in obtaining orders that the
proceedings be heard on a defended basis (Exhibit 19, pages 144 - 148).

102 On 16 May 2008, Ms MT lodged a complaint with the
Complaints Committee. A Notice to Produce Documents pursuant to
s 198(1) of the 2003 Act was served on the Practitioner on 20 May 2008
requiring the Practitioner to produce Ms MT's file to the
Complaints Committee that day. The Practitioner produced Ms MT's file
to the Complaints Committee on 21 May 2008.

103 Between 1 May 2008 and 21 May 2008, the Practitioner failed to
provide Ms MT with her file despite Ms MT requesting her file.

104 By letter dated 20 May 2008, 19 June 2008 and 31 July 2008,
the Complaints Committee requested the Practitioner to provide her
response to Ms MT's complaint. No response was received to these letters
(Exhibit 19, pages 149 - 150 & 153 - 154).

105 The proceedings settled in November 2008.

106 Between 1 August 2007 and May 2008, the Practitioner took no steps
in respect of Ms MT's instructions. In particular, the Practitioner failed to:

- a) prepare and file Ms MT's trial documents in the proceedings;
- b) attend court appointments in the proceedings; and
- c) advise Ms MT of the court appointments in the proceedings and seek instructions.

107 Between 16 May 2007 and July 2007 or thereabouts, the Practitioner
failed to take any steps to relist Ms MT's application for a violence
restraining order for hearing.

108 Based on the above findings of fact, the Tribunal concludes as
follows.

109 In relation to allegation A, the Practitioner is guilty of professional misconduct in that, between 1 August 2007 and 1 May 2008, the Practitioner neglected Ms MT's Family Court matter, and the Practitioner's conduct in so doing involved a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

110 In relation to allegation B, the evidence is insufficient to establish that the Practitioner failed to follow Ms MT's instructions to relist an application for a violence restraining order between 16 May 2007 and July 2007. Ms MT was aware as a result of the discussion with the staff member, as referred to above, that the Practitioner was not taking any steps to relist the application for a violence restraining order, and it may be fairly inferred that the application was to be held in abeyance pending a proposed discussion with the Practitioner about that matter. The focus later shifted to consideration of possible bases of settlement of the matter. This allegation is therefore not made out and this aspect of the application must be dismissed.

111 In relation to allegation C, it is established that, on or about 1 May 2008, the Practitioner misled Ms MT as to the effect on her family law matter of the Practitioner's failure to attend appearances in the Family Court between January 2008 and April 2008. But for the prompt action taken by Ms MT, the matter may have been determined on an undefended basis which was likely to be prejudicial. Even if any adverse judgment could be set aside, Ms MT would have incurred unnecessary legal costs to achieve that result.

112 Although copies of the various orders and communications from the Family Court were sent to the Practitioner, there is no direct evidence that they came to the Practitioner's attention. The Practitioner was aware that she had missed an appearance, but that may have been a reference to the pre-trial conference listed for 29 January 2008 rather than the hearing on 25 February 2008. The orders of 29 January 2008 and 25 February 2008 do not appear to have been in the file delivered to the Complaints Committee. Copies of these orders were provided by the Family Court. The evidence of Ms MT establishes that the Practitioner did not have the file with her at the time of her disclosure to Ms MT that a court date had been 'missed'. Further, the file could not subsequently be found. In these circumstances, it is open only to find that the Practitioner is guilty of professional misconduct in that she recklessly misled Ms MT as to the effect of the failure to attend court. In acting as she did,

the Practitioner's conduct in connection with the practice of law involved a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

113 In relation to allegation D, it is established that the Practitioner is guilty of unsatisfactory professional conduct in that she failed to deliver up Ms MT's file to her in circumstances where urgent action was required to be taken in the matter, and in doing so, the Practitioner's conduct occurring in connection with the practice of law 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.

114 In relation to allegation E, it is established that between 20 May 2008 and 31 July 2008, the Practitioner is guilty of professional misconduct in that she failed to respond to notices to provide information from the Complaints Committee. In so doing, the Practitioner's conduct involved a substantial or consistent failure to reach or maintain the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner and failed to meet her professional obligations in that regard: see s 198(1) of the 2003 Act and s 520(1)(c) of the 2008 Act). A factor influencing our characterisation of this conduct as professional misconduct is that the Practitioner has never provided a response to the Complaints Committee and has effectively abandoned her professional responsibilities.

VR 173/2009

The allegation

115 It is alleged that the Practitioner engaged in professional misconduct from in or around June 2008 in misappropriating to her own use monies which belonged to her client, Mr DK, or alternatively failing to account to the client for those monies.

Evidence and findings

116 The Complaints Committee relies on the witness statement of Mr DK, sworn on 11 October 2009 (Exhibit 2) and the contents of a bundle of documents (Exhibit 3) together with the further affidavit of Ms Patricia Elizabeth Le Miere, sworn on 18 March 2010 and filed by arrangement with the Tribunal subsequent to the hearing. This affidavit has been accepted and marked as Exhibit 2A.

117 The following facts are established from the above uncontested
evidence.

118 At sometime prior to 24 April 2008, Mr DK was charged with
aggravated assault occasioning bodily harm and criminal damage.
He retained the Practitioner to represent him in respect of those criminal
charges.

119 During the course of the retainer, Mr DK paid a total of \$3,200 to the
Practitioner for her fees (Exhibit 3, page 6 & Exhibit 2, page 2 [10]).

120 At the hearing of the criminal charges on 24 April 2008, costs were
awarded to Mr DK in the sum of \$3,200 (Exhibit 2, page 1 [6]).

121 The Practitioner took steps to obtain payment of the costs awarded to
Mr DK and on 12 June 2008, a cheque was issued by the Department of
the Attorney General made payable to Fitzpatrick Lawyers for \$3,200
(cheque) - Affidavit P Le Miere sworn 18 March 2010 (Exhibit 2A).

122 On 16 June 2008, the cheque was banked into the general account of
Fitzpatrick Lawyers - Affidavit P Le Miere sworn 18 March 2010
(Exhibit 2A).

123 A complaint from Mr DK's mother about the Practitioner's alleged
failure to account to Mr DK for the costs awarded was received by the
Complaints Committee on 20 February 2009 and was forwarded to the
Practitioner's lawyer, Mr Jeremy Ludlow (Exhibit 3, pages 2 - 5).

124 Following receipt by the Complaints Committee of further
information from Mr DK's mother, the Practitioner was requested,
by letter to Mr Ludlow dated 5 March 2009 from the
Complaints Committee, to immediately account to Mr DK for the \$3,200
if it was the case that Mr DK had paid all her fees (Exhibit 3, page 7).

125 By email from Mr Ludlow to the Complaints Committee dated
5 March 2009, Mr Ludlow indicated that he was experiencing difficulties
contacting the Practitioner but was passing all communications from the
Complaints Committee to the Practitioner's husband with a request that he
forward them to the Practitioner (Exhibit 3, page 8).

126 By letter dated 9 April 2009 to Mr Ludlow, the Practitioner was
again requested by the Complaints Committee to immediately account to
Mr DK for the \$3,200 if it was the case that Mr DK had paid all her fees.

127 The Practitioner has not accounted to Mr DK for the proceeds of the
cheque (Exhibit 2 [11]).

128 Based on the above findings, the Practitioner is guilty of professional
misconduct in that she has misappropriated to her own use monies which
belonged to her client, Mr DK, and in doing so, the Practitioner's conduct
involved a substantial or consistent failure to reach or maintain the
standard of competence and diligence that a member of the public is
entitled to expect of a reasonably competent legal practitioner.

Penalty

129 It is submitted on behalf of the Complaints Committee that the
Practitioner is not a fit and proper person to remain a legal practitioner.
When regard is had to all of the conduct of the practitioner as found
above, it is readily apparent that there has been repeated and sustained
neglect of client matters during the period from October 2006 to
September 2008 in the course of legal practice. No attempt has been
made to offer any explanation for that conduct. Whatever the cause for
such conduct, there is no reason to believe that the cause no longer exists.
The Practitioner, if allowed to continue to practise, therefore represents a
risk to the public. The object of disciplinary proceedings is the protection
of the public and the maintenance of proper standards in the legal
profession (*Re Maraj (a legal practitioner)* (1995) 15 WAR 12) and the
appropriate manner, in the circumstances of this case, in which to achieve
that object is by transmitting a report to the Supreme Court (full bench)
recommending the Practitioner's removal from the roll of practitioners,
that being a course which was equally available under the 2003 Act.

Orders

130 The Complaints Committee also sought an order for costs totalling in
respect of fees \$6,900 and disbursements of \$1,746 for all matters.
Those costs are reasonable and an order should issue, as sought, which
accords with the Tribunal's usual practice in vocational matters.
Costs will be fixed accordingly.

131 For the above reasons, the Tribunal orders as follows.

1. In VR 121/2009, the Practitioner is guilty of professional
misconduct in connection with the practice of law in that:
 - a) between 26 November 2007 and approximately
31 July 2008, the Practitioner neglected

instructions from her clients, Mrs PM, Mr IM and Mrs JM; and

- b) between 27 February 2008 and 31 July 2008, the Practitioner failed to respond to notices requiring her to provide information to the Legal Practitioners Complaints Committee.
2. In VR 122/2009, the Practitioner is guilty of professional misconduct in connection with the practice of law between 16 October 2006 and 23 April 2008 and subsequent to 23 June 2008 by neglecting instructions from her client, Mr KM.
 3. In VR 123/2009, the Practitioner is guilty of professional misconduct in that:
 - a) in connection with the practice of law between November 2007 and 9 January 2008, the Practitioner failed to adequately prepare for a trial of her client, Mr HT;
 - b) between December 2007 and approximately 31 July 2008, the Practitioner failed to serve upon her client, Mr HT, a bill of costs showing that trust monies had been applied by the Practitioner towards payment of her costs, despite requests to do so; and
 - c) between 8 May 2008 and approximately 31 July 2008, the Practitioner failed to respond to notices from the Legal Practitioners Complaints Committee to provide information.
 4. In VR 125/2009, the Practitioner is guilty of professional misconduct in connection with the practice of law in that, between 30 August 2007 and 3 September 2008, the Practitioner neglected instructions from her client, Mr MM.
 5. In VR 126/2009:
 - a) the Practitioner is guilty of professional misconduct in connection with the practice of law

in that, between 1 August 2007 and 1 May 2008, the Practitioner neglected the instructions of her client, Ms MT;

- b) the Practitioner is guilty of professional misconduct in that, on 1 May 2008, the Practitioner recklessly misled her client, Ms MT;
 - c) the Practitioner is guilty of unsatisfactory professional conduct in connection with the practice of law in that, between 5 May 2008 and 21 May 2008, the Practitioner failed to deliver to her client, Ms MT, the client's file when instructed to do so and in circumstances where urgent action was required to be taken in respect of the matter;
 - d) the Practitioner is guilty of professional misconduct in connection with the practice of law in that, between 20 May 2008 and approximately 31 July 2008, the Practitioner failed to respond to notices from the Legal Practitioners Complaints Committee to provide information; and
 - e) subject to the further orders below, the application is otherwise dismissed.
6. A report be transmitted to the Supreme Court (full bench) with a recommendation that the Practitioner be struck off the roll of practitioners. These reasons for decision comprise that report. The Tribunal will also forward the exhibits from these proceedings with its report, together with the applicant's written submissions.
7. By 15 February 2011, the Practitioner pay the applicant its costs fixed in respect of all of the above matters in the total sum of \$8,646.

I certify that this and the preceding [131] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

MR C RAYMOND, SENIOR MEMBER