

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Loel* [2020] QCAT 326

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

v

**JAMES BERESFORD LOEL**  
(respondent)

APPLICATION NO/S: OCR180-15

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 10 September 2020

HEARING DATE: 15 July 2020

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:

Dr John de Groot, Legal Panel Member

Dr Margaret Steinberg AM, Lay Panel Member

- ORDERS:
- 1. On each of Charges 11, 13, 14, 15 and 17, there is a finding that the respondent engaged in professional misconduct.**
  - 2. On each of Charges 1, 2, 3, 4, 5, 6, 7 and 10, there is a finding that the respondent engaged in unsatisfactory professional conduct.**
  - 3. The respondent is publicly reprimanded.**
  - 4. The respondent shall pay a penalty of \$10,000.**
  - 5. The respondent is prohibited from applying for or obtaining a principal practising certificate for one year after being granted an employee practising certificate.**
  - 6. The respondent's next application for a practising certificate must be accompanied by a copy of these reasons, and the report of an independent practising psychiatrist who has been provided with a copy of these reasons, and who has reported on the respondent's mental condition and its effect on his ability to engage in legal practice, such report to**

be obtained within six months prior to the application.

7. **Practising certificates issued to the respondent for the three years following his next application for a practising certificate must contain conditions that:**
  - (a) **the respondent maintain a therapeutic treating relationship with a suitable treating psychiatrist and each quarter provide evidence of that relationship to the Queensland Law Society; and**
  - (b) **the respondent accept mentoring from a senior legal practitioner agreed to, or nominated by, the Queensland Law Society and consult with that practitioner on matters of law, practice and ethics at least once per month, and submit an annual report to the Queensland Law Society (countersigned by the mentor) confirming compliance with that condition.**
8. **The respondent shall undertake the next remedial trust account and ethics courses facilitated by the Queensland Law Society.**
9. **The respondent shall pay the applicant's costs of and incidental to this discipline application, such costs to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland.**
10. **Julianne Harris shall advise the Tribunal and the respondent as to whether she wishes to pursue her Notice of Intention to Seek Compensation Order by 4:00pm on 9 October 2020.**
11. **If Julianne Harris advises that she wishes to pursue a compensation order, then the matter will be listed for directions on a date to be advised by the Tribunal.**

**CATCHWORDS:**

**PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent was engaged to represent a prospective lender in relation to a loan – where the prospective borrower was a client or former client of the respondent – where a title search of the property offered for security revealed two existing mortgages over the property, an amendment to the second mortgage, and a caveat – where the respondent failed to inform his client of the existing encumbrances on a number of occasions – where**

the respondent requested the transfer of the loan amount from his client and undertook to retain that money in his law practice's trust account until all documents were properly executed, stamped and lodged – where the respondent provided a further undertaking that he would conduct a title search before disbursing the funds – where the client transferred the loan amount subject to certain preconditions – where the respondent disbursed most of the funds without having satisfied these conditions – where the respondent disbursed some of the funds to pay outstanding invoices of the borrower, his former client – where the respondent accepts that his conduct was dishonest, that he failed to provide proper advice to his client, that he acted in a conflict of interest situation, that he failed to inform his client of the conflict of interest, that he failed to act in his client's best interests, that he failed to comply with his undertakings and that he transferred money from his trust account without authority – whether the respondent's conduct amounts to professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – NEGLIGENCE AND DELAY – where the respondent is charged with failing to act with the competence and diligence a member of the public is entitled to expect from a reasonably competent Australian legal practitioner in matters for various clients – where the respondent failed to take adequate steps to advise a client of, seek advice from counsel on, or otherwise protect his client's rights against expiration of, relevant limitation periods – where, for another client, the respondent failed to take any, or any adequate, steps to conduct the legal work required to comply with directions of the Supreme Court of Queensland, resulting in his client's claim being struck out for want of prosecution – where, in another matter, the respondent again failed to conduct the legal work necessary to comply with directions of the Family Court of Australia, and delegated the conduct of the trial preparation to a junior solicitor in his employ less than seven days before commencement of the trial – whether the respondent's conduct in relation to each of these charges constitutes unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – SOLICITOR'S COSTS – where the respondent was retained to act for clients in a conveyancing matter – where the respondent did not disclose to his clients the basis upon which his costs would

be calculated, as required by s 308 of the *Legal Profession Act 2007* (Qld) (“*LPA*”) – where the respondent prepared tax invoices that were not properly chargeable to the clients because no costs disclosure was made – where the respondent withdrew money received in trust to pay the amount the subject of the first tax invoice – whether this conduct amounts to unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – TRUST MONEY – where the respondent is charged with improperly dealing with his clients’ trust money for his own benefit in breach of s 249(1)(b) of the *LPA* – where the respondent, on two occasions, transferred monies from his law practice’s trust account without authorisation from his clients – where the respondent accepts that his authorisation of the transfers was reckless – where the transferred sums were subsequently repaid to the clients – where the respondent is also charged with failing to maintain reasonable standards of competence and diligence in the conduct of the matter for his clients – whether this conduct amounts to professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent acted for a client in a town planning matter – where the client instructed the respondent to stop work on the matter – where the respondent proceeded to obtain a town planner’s report despite these instructions – where the client further requested that the respondent send certain photographs to a named expert – where the respondent failed to provide the photographs to the expert – whether the respondent’s conduct amounts to unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – QUEENSLAND – ORDERS – where the respondent has provided evidence of the significant personal and professional pressures with which he was dealing at the time of his offending conduct – where the respondent has tendered medical reports from his treating psychiatrist indicating that he has achieved significant rehabilitation – where the respondent has made frank admissions in relation to his conduct, and has accepted full responsibility for his actions – where the applicant accepts that an order recommending removal of the respondent’s name from the Roll of Legal Practitioners is not called for in the present case – where orders made by the Tribunal are

primarily protective of the public, and may be imposed to achieve personal and general deterrence – whether the objective of deterrence can be appropriately met by the imposition of a public reprimand and payment of a penalty – whether other orders should be made for the protection of the public

*Legal Profession Act 2007* (Qld) s 6, s 249, s 308, s 418, s 419, s 456, s 462

*Legal Profession Regulation 2017* (Qld) reg 58

*Legal Services Commissioner v Bussa* [2011] QCAT 388

*Legal Services Commissioner v Munt* [2019] QCAT 160

*Watts v Legal Services Commissioner* [2016] QCA 224

#### APPEARANCES & REPRESENTATION:

Applicant: D Holliday, instructed by the Legal Services Commission

Respondent: M Black, instructed by Gilshenan & Luton Legal Practice

#### REASONS FOR DECISION

- [1] By an amended discipline application brought under the *Legal Profession Act 2007* (Qld) (“*LPA*”), the applicant, the Legal Services Commissioner, has proceeded with a total of 13 charges against the respondent solicitor, James Beresford Loel.
- [2] The charges relate to the respondent’s conduct over a period of some eight years from February 2007 to July 2015.
- [3] The respondent, who is now 62 years old, was admitted as a solicitor on 4 March 1980, after completing articles of clerkship. Shortly after his admission, the respondent entered into a legal partnership. He has practised in various firms over the years. Aside from a break between about 1992 and 1993, he practiced as a solicitor from the time of his admission until the Queensland Law Society (“*QLS*”) cancelled his practising certificate in June 2018.
- [4] The respondent has admitted in full the facts underlying each of the charges. The parties have filed statements of agreed facts in relation to the charges. In addition, the respondent has filed two affidavits, and tendered a number of medical reports and professional references. Whilst not contesting the charges, the respondent’s position, in brief, is that the conduct occurred “in the context of chronic alcohol dependence and significant personal trauma”.<sup>1</sup>

#### The charges

- [5] In summary, the 13 charges before the Tribunal are as follows:<sup>2</sup>
- (i) Charge 1 – Between 19 September 2012 and 4 April 2013 the respondent failed to act with the competence and diligence a member of the public is

<sup>1</sup> Respondent’s outline of submissions filed 8 July 2020, para 6 (“Respondent’s submissions”).

<sup>2</sup> Outline of submissions on behalf of the Legal Services Commissioner filed 1 July 2020, para 6 (“Applicant’s submissions”).

- entitled to expect from a reasonably competent Australian legal practitioner;
- (ii) Charge 2 – Between 3 April 2013 and 8 April 2013 the respondent failed to act with the competence and diligence a member of the public is entitled to expect from a reasonably competent Australian legal practitioner, and failed to act in the best interests of his client;
  - (iii) Charge 3 – Between 11 October 2011 and 29 November 2012 the respondent failed to act with the competence and diligence a member of the public is entitled to expect from a reasonably competent Australian legal practitioner;
  - (iv) Charge 4 – Between December [2010] and February 2013 the respondent failed to act with the competence and diligence a member of the public is entitled to expect from a reasonably competent Australian legal practitioner;
  - (v) Charge 5 – Between 27 March 2012 and 30 October 2015, the respondent, an Australian legal practitioner, failed to provide costs disclosure in breach of the Act;
  - (vi) Charge 6 – On 31 May 2012 and 30 October 2012, the respondent, an Australian legal practitioner, committed unsatisfactory professional conduct (claiming costs to which he was not entitled);
  - (vii) Charge 7 – On 31 October 2012 the respondent, an Australian legal practitioner, committed unsatisfactory professional conduct (Breach of s 249 of the Act and Regulation 58(4) Legal Profession Regulation [2017]);
  - (viii) Charge 10 – Between 7 April 2015 and 24 May 2015, the respondent failed to follow the client’s lawful, proper and competent instructions;
  - (ix) Charge 11 – Between 24 July 2014 and 31 July 2015 the respondent failed to maintain reasonable standards of competence and diligence in the conduct of a matter on behalf of his clients, Julieanne and David Harris;
  - (x) Charge 13 – On 16 June 2015 the respondent improperly dealt with a client’s trust money for his own benefit in breach of s 249(1)(b) of the Act, without the authority of the client on whose behalf the money was received;
  - (xi) Charge 14 – on 7 July 2015 the respondent improperly dealt with a client’s trust money for his own benefit in breach of s 249(1)(b) of the Act, without the authority of the client on whose behalf the money was received;
  - (xii) Charge 15 – Between 13 January 2007 and 30 June 2007 the respondent failed to manage reasonable standards of competence and diligence in the conduct of a matter on behalf of his client Dr Greenbaum and/or Kosiere Pty Ltd;
  - (xiii) Charge 17 – That between 19 February 2007 and 24 February 2007 the respondent dishonestly transferred monies from the trust account to general account to pay outstanding invoices of Mr Cousin and/or Cousins Securities.

- [6] At the time of the conduct covered by those charges, the respondent was an “Australian legal practitioner”,<sup>3</sup> and practised as the legal practitioner director of an incorporated legal practice “Lillas & Loel Lawyers Pty Ltd”, trading as “Lillas & Loel” (“the law practice”). He was also the sole signatory and operator of a trust account operated in the name of the law practice.
- [7] It is convenient to summarise the impugned conduct in chronological order.

**Charges 15 and 17: January and February 2007**

- [8] In January 2007, the respondent was engaged by a Dr Greenbaum on behalf of Kosiere Pty Ltd (“Kosiere”) in relation to a possible loan by Kosiere to a Mr Cousins or Cousins Securities. Mr Cousins and/or Cousins Securities was a client or former client of the respondent.
- [9] On 18 January 2007, Dr Greenbaum left a message with the respondent’s legal practice saying that he did not wish to proceed with the loan, and asked for a bill to be sent for the law practice’s services. On the same day, the respondent sent a record of that message to Mr Cousins and asked “Next steps??”.
- [10] Dr Greenbaum ultimately changed his mind and decided to proceed with the loan. The law practice obtained a title search of the property offered for security (“the property”), which detailed that there were already two mortgages over the property, an amendment to the second mortgage, and a caveat. An Australian Securities and Investments Commission search revealed numerous registered charges over Cousins Securities.
- [11] On 24 January 2007, the respondent sent an email to Dr Greenbaum with details of the proposed transaction under which the sum to be lent was \$450,000 for a four-month period at an interest rate of 10 per cent. He further said that the security for the loan was a second registered mortgage over the property valued at \$3.5 million, that the existing first mortgagee was owed \$1.7 million, and that Kosiere would receive a charge over Cousins Securities and a guarantee from Mr Cousins. The respondent failed to inform Dr Greenbaum that there were already two mortgages over the property, an amendment to the second mortgage, and a caveat.
- [12] The respondent requested an urgent transfer of the \$450,000, and undertook to retain the money in the law practice’s trust account until he was in a position to confirm that all documents had been properly executed and witnessed and that he was able to attend to stamping and lodgement.
- [13] Dr Greenbaum requested that he be sent confirmatory documents. The reference schedule of the loan agreement, which also detailed that the securities were a second registered mortgage over the property, a mortgage debenture over Cousins Securities and a personal guarantee by Mr Cousins, was sent to Dr Greenbaum on 25 January 2007 by the respondent. Again, the respondent failed to inform Dr Greenbaum that there were already two mortgages over the property, an amendment to the second mortgage, and a caveat. Dr Greenbaum requested confirmation that a title search would be done on the day of the advance.
- [14] The respondent provided a written undertaking to Dr Greenbaum on 25 January 2007 that he would conduct a title search before the funds were disbursed from his trust

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<sup>3</sup> LPA s 6(1).

account and said that “if there are any irregularities [I] will not disburse such funds until such time as those irregularities are attended to my satisfaction ...”.

- [15] There was other communication consistent with Kosiere’s security being a second registered mortgage over the property, and the respondent undertook not to disburse the funds until signed copies of documents were obtained.
- [16] There were further communications in relation to the loan and, on 15 February 2007, the respondent asked for confirmation from Dr Greenbaum that he would proceed with the loan and undertook that “once the monies are received I will certify to you that all securities are in place and will then seek formal authority to disburse the funds as directed by the borrower”.
- [17] On 19 February 2007, Dr Greenbaum confirmed that the loan amount would be transferred to the law practice’s trust account on the condition that the money should not be released without confirmation of the loan agreement as to the second mortgage on the property, the personal guarantee by Mr Cousins, and that the money was to be repaid at the first opportunity. On that same day, \$450,000 was transferred into the law practice’s trust account.
- [18] The bulk of the monies were disbursed from the trust account on that and the following days, including a transfer of \$55,000 to the respondent’s general account to pay outstanding invoices of his client (or former client), Mr Cousins and/or Cousins Securities. In his most recent affidavit filed in this Tribunal, the respondent has accepted that the disbursement of the funds without having satisfied Dr Greenbaum’s preconditions was dishonest conduct.<sup>4</sup> He says that he was not motivated by the prospect of payment of outstanding invoices, but accepts that this was the effect of the transfer.
- [19] The respondent also accepts that he:
- (a) failed to advise Dr Greenbaum of the true state of affairs in relation to the interests in the property;
  - (b) acted in a conflict of interest situation because Mr Cousins and/or Cousins Securities were current or recent former clients of the law practice;
  - (c) failed to inform Dr Greenbaum of the conflict of interest;
  - (d) failed to act in the best interests of the client;
  - (e) failed to obtain a Deed of Priority from the first mortgagee;
  - (f) failed to comply with the undertaking he had given to his client that he would not release the loan funds until he had a Deed of Priority and had ordered a search on the day of the release of the funds; and
  - (g) transferred the money from his trust account when he had no authority to do so.
- [20] The loan was not repaid within the time stipulated in the agreement. On 31 May 2007, Dr Greenbaum wrote to the respondent about directions to claim for the second mortgage. Dr Greenbaum only then became aware that there was already a second mortgage registered over the title and expressed his disappointment to the respondent.

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<sup>4</sup> Affidavit of James Loel filed 6 July 2020, para 5.

- [21] Cousins Securities was subsequently placed into liquidation, and Mr Cousins declared bankrupt.
- [22] Apart from the payment of \$34,656.45 on 18 December 2017, the loan was not repaid. Proceedings were commenced by Kosiere in the Supreme Court of Queensland against the respondent and his law partner. In August 2014, the respondent consented to judgment being entered in that matter in the sum of \$800,000 (inclusive of interest).
- [23] Kosiere made a claim on the fidelity fund,<sup>5</sup> which was eventually paid.

**Charge 4: December 2010 – February 2013**

- [24] Between December 2010 and February 2013, the respondent acted for Bluefin Seafoods Pty Ltd and its directors in a claim against a local government authority arising from a contract entered into in 2006, purportedly in reliance on representations made by officers of the local government before the contract was entered into.
- [25] It is admitted that the respondent personally handled this matter from December 2010. Over the subsequent two years, the respondent failed to take adequate steps to advise his clients as to relevant limitation periods, seek advice from counsel about any such limitation periods, or otherwise protect his clients' rights against expiration of the relevant limitation periods. It was not until 5 December 2012 that the respondent briefed counsel to advise on limitation period issues. The clients terminated the respondent's retainer on 10 February 2013.

**Charge 3: October 2011 – November 2012**

- [26] Between October 2011 and November 2012, the respondent was retained by Aqwell Pty Ltd and its director in relation to litigation then being conducted in the Supreme Court against BJC Drilling Services Pty Ltd.
- [27] On 11 October 2011, directions were made in the Supreme Court proceeding for the future conduct of the matter. Those directions were made by consent.
- [28] Between the date of those directions and 29 November 2012, the respondent failed to take any, or any adequate, steps to conduct the legal work necessary to assist the client to comply with the directions and prepare the matter for hearing.
- [29] The opposing party successfully applied to strike out the claim for want of prosecution in light of the non-compliance with the Court's directions.

**Charges 5, 6 and 7: 27 March 2012 – 31 October 2012**

- [30] From about 27 March 2012, the respondent was retained to act for Robert and Mary-Anne Munro in relation to a protracted conveyancing matter. At no time between 27 March 2012 and 30 May 2012 did the respondent disclose to his clients the basis upon which his costs would be calculated, as was otherwise required by s 308(1) of the *LPA*. This forms the basis of Charge 5.
- [31] Then, on 31 May 2012, the respondent prepared a tax invoice in the sum of \$4,045.80 which was not properly chargeable to the clients, because no costs disclosure or basis of charging had been made to the clients. On 30 October 2012, the respondent then prepared a further tax invoice which included \$990 (inclusive of GST) which was also

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<sup>5</sup> The fidelity fund is managed and administered by the QLS under Part 3.6 of the *LPA*.

not properly chargeable. The respondent subsequently offered to repay the sum of \$990. This conduct underpins Charge 6 of the amended discipline application.

- [32] In respect of Charge 7, on 26 and 29 October 2012, the respondent received sums totalling \$57,767.42 into his trust account as settlement monies on this conveyancing matter. The respondent transferred the sum of \$4,045.80 (the subject of the first tax invoice) from his trust account to his general account. In May 2013, the respondent refunded the entire sum of these fees to the clients.

**Charges 1 and 2: 19 September 2012 – 8 April 2013**

- [33] The respondent was retained by a Mr Dimopoulos in a contested family law matter. On 19 September 2012, the Family Court of Australia made directions as to the future conduct of the matter, and set it down for hearing on 8 April 2013.
- [34] Between the date of those directions and the date of trial, the respondent failed to take any, or any adequate, steps to conduct the legal work required to assist his client to comply with the directions. This included a failure to comply with a number of directions which required documents, affidavits, expert evidence and other legal documents to be filed by nominated dates. Further, the respondent failed to reach and keep a reasonable standard of competence and diligence by failing to give his client the benefit of his professional advice and judgment on matters relevant to the matter. He failed to respond to email correspondence from the client. He failed to keep the client informed about the progress of the matter. He failed to comply with the Court directions, and otherwise failed to take any or any adequate steps to prepare the matter for trial. All of these failings are admitted by the respondent.
- [35] On 3 April 2013, less than seven days before the trial was due to commence, the respondent delegated the conduct of the trial preparation to an employed solicitor. The employed solicitor then took some steps to prepare the matter for trial. The respondent accepts that he failed to act in the best interests of the client by delegating the conduct of the trial preparation to a junior solicitor who had no previous involvement in the conduct of the matter. The respondent accepts that the junior solicitor should not have been given the task of conducting trial preparation only five days before the hearing.

**Charges 11, 13 and 14: 24 July 2014 – 31 July 2015**

- [36] On about 24 July 2014, Mrs Julieanne Harris and Mr David Harris contacted the respondent for advice in relation to their rights to recover money from Westpac Banking Corporation and the liquidators of Advance Equity Management Pty Ltd (in liq.) (“Advance Equity Management”).
- [37] By 4 August 2014, the respondent became aware that the liquidators proposed to finalise the liquidation of Advance Equity Management and that, as a consequence of that imminent event, time was of the essence to negotiate a resolution of the matter.
- [38] Attached to the relevant statement of agreed facts is a detailed chronology which sets out the correspondence, communications, transactions and events relating to the respondent’s conduct, particularly between 24 July 2014 and 31 July 2015. It is unnecessary to set out the detail of that chronology, because the respondent admits and accepts that the conduct summarised in that chronology demonstrates that he:
- (a) failed to adequately progress the matter;

- (b) failed to adequately respond to numerous requests of Mr and Mrs Harris as to the progress of the matter;
- (c) failed to give any advice to Mr and Mrs Harris in relation to their rights against the liquidators until 15 May 2015;
- (d) failed to make contact with the liquidators at any time after 13 February 2015 pursuant to the written instructions of his clients to request that the liquidators “sweeten the deal” (i.e. offer the clients more money);
- (e) represented to Mr and Mrs Harris in person on 14 April 2015 that he had verbally checked with the liquidator’s solicitors and that they were not prepared to “sweeten the deal” when in fact he had not made any such inquiries;
- (f) failed to send to the liquidator’s solicitor a settlement deed and a further copy of that deed executed by the clients on 22 April 2015 and sent to him later that day;
- (g) failed to send a further copy of the signed settlement deed as had been provided to him by Mrs Harris on 18 May 2015 to the liquidator’s solicitor;
- (h) failed to ensure that the settlement deed that was sent to the liquidator’s solicitor was in accordance with the instructions of his clients as to the nominated place for payment of settlement funds (which was to the clients’ nominated bank account and not to the respondent’s trust account), and the settlement deed did not contain the relevant page executed by the clients nominating the same;
- (i) failed to respond to numerous emails from the clients about the fact that the place for payment of settlement proceeds had been changed without their instructions;
- (j) communicated in writing to the liquidator’s solicitor that the law practice was entitled to maintain a lien over some of the settlement money without telling his clients of that communication;
- (k) caused an invoice to be created for legal services rendered to the client, but did not sign or send the invoice;
- (l) transferred \$1,500 from the trust account to the firm’s general account in circumstances where he was not authorised to do so and was aware that the clients had alleged that the settlement deed had been altered without their instructions; and
- (m) failed to ensure that the person the respondent instructed to undertake a review of the client’s file had not been previously involved in the matter and that the client file contained all email communications.

[39] The respondent then proceeded to obtain and transfer an additional sum of \$3,573.59 from the trust account to the general account of the law practice when he did not have authorisation to do so, had not sent an invoice to the clients, was aware that the clients had requested the return of their funds, and that the clients had objected to the sum being transferred.

[40] The respondent accepts that his authorisation of the transfer of \$1,500 and \$3,573.59 from the trust account to the general account was reckless.

- [41] It should also be noted that it is common ground that those sums of \$1,500 and \$3,573.59 were subsequently repaid to the clients.

**Charge 10: failing to follow instructions between 7 April 2015 and 24 May 2015**

- [42] As at 7 April 2015, the respondent was acting for a client named Oldin in relation to a town planning matter. On that day, the client instructed the respondent to “stop the town planner’s work immediately on this matter”. Subsequently, on 9 April 2015 and again on 17 April 2015, the client confirmed that no town planning work was to be undertaken.
- [43] Notwithstanding these express communications, the respondent proceeded to obtain a town planner’s report and provided it to the client on 22 May 2015.
- [44] In addition, on 24 May 2015, the client requested that the respondent send copies of certain photographs held on the respondent’s file to a named expert, but the respondent failed to provide those photographs to the expert as he had been instructed.

**Characterisation of the conduct**

- [45] It is necessary to characterise the conduct under each of the charges as having been either unsatisfactory professional conduct or professional misconduct. For that purpose, regard must be had to the statutory definitions of those terms in the *LPA*:

**418 Meaning of unsatisfactory professional conduct**

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

**419 Meaning of professional misconduct**

- (1) *Professional misconduct* includes –
- (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
  - (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
- (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.

- [46] As was noted in *Legal Services Commissioner v Bussa*:<sup>6</sup>

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<sup>6</sup> [2011] QCAT 388, [10], and omitting citations.

... the question whether or not a practitioner's misconduct in a particular case amounts to unsatisfactory professional conduct or professional misconduct is generally a matter of degree and each case will be determined on its own facts.

- [47] In relation to the conduct concerning Kosiere, particularised under Charges 15 and 17, it is clear that there was both a substantial and a consistent failure on the part of the respondent to keep reasonable standards of competence and diligence. The respondent has also accepted, in relation to Charge 17, that his conduct in transferring the money to his general account to pay outstanding invoices of his former client was tainted by dishonesty. As a consequence, the law practice benefitted from his dishonest conduct. His actions caused significant loss. Cousins and Cousins Securities defaulted on the loan, and ultimately a claim was made on the fidelity fund by Dr Greenbaum.
- [48] The respondent's dishonest conduct clearly amounted to professional misconduct.
- [49] The conduct which is the subject of Charge 15 involved many fundamental and substantial failures. The respondent acted in a clear conflict of interest situation, and failed to act in the best interests of the client. He failed to follow instructions, failed to give accurate advice to Dr Greenbaum, failed to comply with an undertaking he had given to his client, and proceeded to make the transfer of monies which was the subject of Charge 17. A finding of professional misconduct under Charge 15 is clearly appropriate.
- [50] Similarly, in relation to the conduct under Charges 11, 13 and 14, the nature of the failings are such that each involved both a substantial and consistent failure to keep a reasonable standard of competence and diligence, and should be characterised as professional misconduct.
- [51] Each of Charges 13 and 14 involved the respondent transferring monies from his trust account to his general account not only without authorisation, but also in the knowledge that the clients had made certain allegations against him, including that the settlement deed had been altered and that Mrs Harris had objected to the money being transferred from the trust account. There was an element of recklessness to the respondent's conduct which was an aggravating feature. This was professional misconduct.
- [52] The conduct under Charge 11 also involved many fundamental and substantial failures. These included, but are not limited to, the respondent representing to his clients that he had verbally checked with the opposing party's solicitor about an issue when in fact he had not done so, and failing to send a settlement deed that had been executed by the clients but instead sending a form of deed that was not in accordance with the clients' instructions. The conduct under Charge 11 clearly amounted to professional misconduct.
- [53] In relation to each of Charges 1, 2, 3, 4, 5, 6, 7 and 10, the applicant submitted that these should properly be characterised as unsatisfactory professional conduct because each involved conduct happening in connection with the practice of law that fell 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. The conduct under each of the charges has been described above. The Tribunal accepts the characterisation of the conduct under each charge as unsatisfactory professional conduct.

[54] The respondent has expressly accepted each of these characterisations of his conduct as professional misconduct and unsatisfactory professional conduct respectively.<sup>7</sup>

[55] Accordingly, there will be the following findings:

- (a) That in respect of each of Charges 11, 13, 14, 15 and 17, there is a finding that the respondent engaged in professional misconduct; and
- (b) That in respect of each of Charges 1, 2, 3, 4, 5, 6, 7 and 10, there is a finding that the respondent engaged in unsatisfactory professional conduct.

### **Sanction**

[56] The Tribunal having been satisfied that the respondent engaged in unsatisfactory professional conduct and professional misconduct, the very broad discretion of the Tribunal to make sanction orders under s 456 of the *LPA* is enlivened. In that regard, it is convenient to repeat the observations made by this Tribunal in *Legal Services Commissioner v Munt*:<sup>8</sup>

[43] In approaching the question as to the orders which ought be made as a consequence of that finding, the following propositions are well-established:

- (a) In this disciplinary jurisdiction, orders are shaped in the interests of the protection of the community from unsuitable practitioners, and in determining what orders should be made ‘regard should primarily be had to the protection of the public under the maintenance of proper professional standards’.
- (b) An order removing a practitioner’s name from the roll should only be made when the probability is that the practitioner is permanently unfit to practice.
- (c) The determination is as to present fitness, not fitness at the time of the offending conduct.

[57] The offending conduct in this case occurred over a protracted eight year period, and included one instance of conduct tainted by dishonesty. Much of the conduct was also characterised by what can be seen as an attitude of recklessness to the proper treatment of monies held in trust. These, of course, are attributes which go to the fitness of a person to remain a member of the legal profession.

[58] The respondent has, however, provided a significant amount of evidence which goes both to explaining the circumstances of his life which led to him conducting himself professionally in that way, and which also demonstrates his rehabilitation from that state over the significant period of time which has now elapsed since the last of the offending conduct.

[59] The respondent has provided lengthy affidavit evidence to this Tribunal in which he describes his antecedents and the significant personal and professional pressures with which he was dealing at the time of his offending conduct.

[60] As already noted, he started practice as a solicitor in 1980, and continued practising, with only a short time away from the profession, until his practising certificate was cancelled. On all accounts, he had a very successful practice, but carried a very heavy

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<sup>7</sup> Respondent’s submissions, paras 1 and 15.

<sup>8</sup> [2019] QCAT 160, [43], and omitting citations.

workload which set the scene for some of the difficulties which he subsequently encountered.

[61] In the time leading up to the offending conduct, which commenced in January 2007:

- (a) the respondent had three children with his first wife, but eventually separated in 2001 and divorced;
- (b) the respondent remarried in 2005;
- (c) the respondent worked extensive hours in the profession, and was undoubtedly overworking without sufficient rest. This included building up a firm from scratch to the point where it had some 60 staff;
- (d) the respondent had very significant family issues, particularly relating to one of his children who unfortunately experienced mental health, drug and violence issues. These issues caused stress to the respondent and his family;
- (e) in addition, by about 2006, the respondent was personally involved in litigation with a former business partner. Apart from this being a cause of great stress to the respondent, it ultimately resulted in him suffering significant financial cost and loss; and
- (f) over this period, the respondent increasingly turned to alcohol as a means of coping with the personal and professional stresses he was undergoing. He was drinking daily, and relatively heavily, in what he described as a “mindless attempt to numb the concerns” of the stresses in his life.

[62] During the period of the offending conduct, the professional and personal stresses on the respondent were exacerbated:

- (a) He remained embroiled in the costly and stressful litigation with his former business partner. This was personally, professionally and financially exhausting for him;
- (b) He continued to overwork and take on too much professional responsibility; and
- (c) The situation with his troubled son became increasingly problematic, and caused constant stresses in the life of the respondent and his family. He describes the period from 2014 to 2016 with that child as being a “downward progression” which was “akin to living in a nightmare”.

[63] The last of the offending conduct occurred in July 2015. Since then:

- (a) the respondent realised he had a drinking problem, and he stopped consuming alcohol in December 2015;
- (b) his wayward son died in tragic circumstances on Christmas Day, 2016. This tragedy acted to strengthen the respondent’s resolve to abstain from alcohol;
- (c) the respondent has been engaged in therapeutic treatment with a psychiatrist since November 2016;
- (d) the respondent has expressly recognised his errors, and articulated his remorse and shame. He has personally apologised to the former clients; and
- (e) he maintains a supportive network of family, friends and colleagues.

- [64] The respondent's practising certificate was cancelled in June 2018, and he has not practised since that time. Since then, he has worked productively on a real estate development project with his brother and a business partner. Whilst the respondent does not presently have an evinced intention to return to legal practice, he does maintain an indirect association with his former firm through his wife's directorship of the incorporated legal practice.
- [65] The respondent tendered personal references from two Queen's Counsel, each of whom has known the respondent for many years, and each of whom spoke very favourably of the respondent's professionalism and expertise as a legal practitioner.
- [66] The Tribunal has also had the benefit of a report from the respondent's treating psychiatrist, Dr Warwick Middleton. Dr Middleton concluded that the respondent satisfied the psychiatric diagnosis of "chronic alcohol dependence (now in remission)". Having interviewed the respondent extensively, and having considered the disciplinary charges, Dr Middleton offered the following opinion:<sup>9</sup>

For the reason I have included above, I think that Mr Loel's professional shortcomings reflect the degree of his then alcoholism, itself a consequence of developmental issues and sustained by multiple stresses, rather than Mr Loel being a dishonest person. He made errors and omissions that constitute examples of negligence. He has honestly admitted such errors and has tried very hard to make substantial and permanent changes to his lifestyle and work practices. He remains sober, and on good terms with family members and colleagues.

- [67] In short, Dr Middleton's opinion was that the respondent's conduct reflected aspects of his then-alcohol dependence. Dr Middleton said that the alcohol dependence would have clouded the respondent's reasoning, memory and judgment at the relevant time.
- [68] It is clear on Dr Middleton's report that the respondent has achieved significant rehabilitation. While recommending that the respondent's current therapeutic arrangement should continue, Dr Middleton said:<sup>10</sup>

Clearly Mr Loel needs to maintain sobriety. He enjoys the support of his wife and family. Over an extended period of time now I have observed Mr Loel putting into practice the core elements of a rehabilitation process. He remains drug and alcohol free. He is a non-smoker. He maintains high standards of physical fitness and exercises very frequently. He has taken on board his period of suspension from practice and has involved himself in gainful employment in a property development project with his brother and brother's business partner.

- [69] Dr Middleton indicated a prognosis in positive terms, and also found that the respondent's alcohol dependence condition was in remission. He expressed the view that, from a psychological perspective, there was no impediment to the respondent's ability to carry out the tasks required in the practice of law.
- [70] In the affidavit material filed before this Tribunal, the respondent has made frank admissions in relation to his professional misconduct and unsatisfactory professional conduct. Where necessary he has given explanations for that conduct. He has not, however, attempted to hide behind excuses; rather, he has fully accepted responsibility for his offending conduct. In his affidavit sworn on 30 September 2019, the respondent referred to the fact that the lapse of time generally, and the time spent with

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<sup>9</sup> Report of Dr Warwick Middleton dated 25 September 2019, page 12 ("Middleton Report").

<sup>10</sup> Middleton Report, pages 12–13.

Dr Middleton specifically, has allowed the respondent to see very clearly, and with the obvious benefit of hindsight, just how easy it is to make significant errors as a result of personal impairment “and more importantly how those errors had the very real prospect of severely affecting the lives of others”. He said that he was genuinely ashamed of the stress and loss that his negligence caused others and the effect that it has had on his family and the profession.

- [71] The applicant expressly conceded that in view of the lapse of time since the offending conduct, the respondent’s explanation for the circumstances of the offending conduct, and the evidence of significant rehabilitation since that time, this was not a case in which the Tribunal could or should make a finding that the probability is that the practitioner is permanently unfit to practice.<sup>11</sup> The applicant expressly accepted that an order recommending removal of the respondent’s name from the Roll is not called for in the present case.<sup>12</sup> The Tribunal accepts that concession.
- [72] That being said, there is no doubt that the respondent engaged in misconduct which brought himself and the profession into disrepute and which caused harm to his clients over an extended period of time. Whilst these proceedings are not punitive, the imposition of a penalty is called for to emphasise this Tribunal’s disapproval of the conduct engaged in by the respondent, to act as a personal deterrent in the event the respondent ultimately returns to practice, and also to send a clear message, by way of general deterrence, of the seriousness with which infractions such as this are regarded and the consequences which will ensue.
- [73] In the present case, that objective of deterrence can, in the opinion of this Tribunal, be appropriately met by:
- (a) a public reprimand of the respondent; and
  - (b) the imposition of a penalty of \$10,000.
- [74] It is to the credit of the respondent that he has engaged in significant rehabilitation. Acknowledgment of that rehabilitation, however, needs to be tempered by recognition of the fact that orders made by this Tribunal are primarily protective of the public. Given the nature of the offending conduct, this Tribunal considers that, if the respondent does wish to return to legal practice, he ought not be permitted to do so immediately in the capacity as a principal, but rather must first complete 12 months under supervision as an employed solicitor. His application for a practising certificate will also need to be supported by independent expert evidence attesting to his mental condition at that time.
- [75] Similarly, to provide a measure of comfort and protection for the public in light of the circumstances which caused or contributed to the offending conduct, this Tribunal considers it appropriate that, if the respondent does return to legal practice, then for a period of three years he should accede to professional mentoring by a senior legal practitioner agreed to, or nominated by, the QLS, and also provide evidence of his ongoing psychiatric therapeutic treatment.
- [76] Moreover, in view of the offending conduct which constituted the professional misconduct, it is appropriate to require the respondent to undertake the remedial trust account and ethics courses offered by the QLS.

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<sup>11</sup> See *Watts v Legal Services Commissioner* [2016] QCA 224, [45]–[46].

<sup>12</sup> Applicant’s submissions, para 80.

[77] The respondent accepts that he must pay the costs of this discipline application, as mandated by s 462 of the *LPA*.

[78] The Tribunal also notes that a notice of intention to seek compensation order has been filed by Mrs Julieanne Harris. Having found that the respondent engaged in professional misconduct and unsatisfactory professional conduct, it is necessary for the Tribunal to make directions for the future conduct of that application.

[79] Accordingly, the Tribunal makes the following orders:

1. On each of Charges 11, 13, 14, 15 and 17, there is a finding that the respondent engaged in professional misconduct;
2. On each of Charges 1, 2, 3, 4, 5, 6, 7 and 10, there is a finding that the respondent engaged in unsatisfactory professional conduct;
3. The respondent is publicly reprimanded;
4. The respondent shall pay a penalty of \$10,000;
5. The respondent is prohibited from applying for or obtaining a principal practising certificate for one year after being granted an employee practising certificate;
6. The respondent's next application for a practising certificate must be accompanied by a copy of these reasons, and the report of an independent practising psychiatrist who has been provided with a copy of these reasons, and who has reported on the respondent's mental condition and its effect on his ability to engage in legal practice, such report to be obtained within six months prior to the application;
7. Practising certificates issued to the respondent for the three years following his next application for a practising certificate must contain conditions that:
  - (a) the respondent maintain a therapeutic treating relationship with a suitable treating psychiatrist and each quarter provide evidence of that relationship to the Queensland Law Society; and
  - (b) the respondent accept mentoring from a senior legal practitioner agreed to, or nominated by, the Queensland Law Society and consult with that practitioner on matters of law, practice and ethics at least once per month, and submit an annual report to the Queensland Law Society (countersigned by the mentor) confirming compliance with that condition;
8. The respondent shall undertake the next remedial trust account and ethics courses facilitated by the Queensland Law Society;
9. The respondent shall pay the applicant's costs of and incidental to this discipline application, such costs to be assessed on the standard basis as if this were a proceeding before the Supreme Court of Queensland;
10. Julieanne Harris shall advise the Tribunal and the respondent as to whether she wishes to pursue her Notice of Intention to Seek Compensation Order by 4:00pm on 9 October 2020; and
11. If Julieanne Harris advises that she wishes to pursue a compensation order, then the matter will be listed for directions on a date to be advised by the Tribunal.