QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Doyle* [2021] QCAT 347
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **MARTIN JAMES DOYLE** (respondent)
APPLICATION NO/S:	OCR250-20
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	9 November 2021
HEARING DATE:	25 October 2021
HEARD AT:	Brisbane
DECISION OF:	Hon Duncan McMeekin QC, Judicial Member Assisted by: Mr Douglas Murphy QC Dr Margaret Steinberg AM
ORDERS:	**1. Pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld), an order is made recommending that the name of the respondent be removed from the local roll.** **2. There be no order as to costs.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – FALSIFICATION OF DOCUMENTS AND TRANSACTIONS – where the respondent was an Australian legal practitioner – where the respondent represented himself as being entitled to engage in legal practice and engaged in legal practice when not entitled – where the respondent made dishonest representations about court dates – where the respondent falsely represented that he was undertaking legal work when purporting to act for individuals and charged costs for this work – where the applicant brought a discipline application against the respondent – where the discipline application contains four charges – where the respondent initially disputed Charges 3 and 4 but has since pled guilty to all – where the respondent has shown little insight into his conduct – where the disciplinary process has been delayed and prolonged – whether the conduct ought be characterised as unsatisfactory professional conduct or professional

misconduct – whether the respondent ought be struck off the Roll

Legal Profession Act 2007 (Qld), s 6, s 24, s 25, s 417, s 418, s 419, s 434, s 450, s 456, s 462

Adamson v Queensland Law Society Incorporated [1990] 1 Qd R 498
Allinson v General Council of Medical Education and Registration [1894] 1 QB 750
Attorney-General of the State of Queensland v Legal Services Commissioner; Legal Services Commissioner v Shand [2018] QCA 66
Barristers' Board v Darveniza [2000] QCA 253
Legal Services Commissioner v De Fraine [2015] QCAT 292
Legal Services Commissioner v Madden (No 2) [2008] QCA 301
Legal Services Commissioner v McQuaid [2019] QCA 136
NSW Bar Association v Cummins (2001) 52 NSWLR 279
Rice v Asplund [1978] FamCA 84

APPEARANCES & REPRESENTATION:

Applicant:	S Robb (counsel) instructed by Legal Services Commissioner
Respondent:	Self-represented

REASONS FOR DECISION

[1] This is a discipline application. The respondent is Martin Doyle. He faces four charges (with a summary of the evidence as submitted by the applicant):

(a) Charge 1 – Engaging in legal practice when not entitled between 31 July 2018 and 22 September 2018.

Particulars

The respondent, purporting to act for clients, sent legal correspondence on a "Martin Doyle" letterhead with the signature block of "Martin Doyle, Principal, Martin Doyle law". The correspondence included an "offer to settle" and other legal discussions. The respondent also had a meeting with an Australian legal practitioner where he engaged in legal discussions. The impugned conduct amounts to engaging in legal practice when not entitled.

(b) Charge 2 – Representing or advertising his entitlement to engage in legal practice when not entitled between 9 September 2018 and 22 September 2018.

Particulars

The respondent advertised his entitlement to engage in legal practice on a website "Doyle Rausch" lawyers. The respondent admitted to an Australian

legal practitioner that "Doyle Rausch" lawyers was only himself and was a "play on words". The respondent was also nominated as the "representative" in an unfair dismissal application and represented that he was from "Doyle/Rausch lawyers".

(c) Charge 3 – The respondent engaged in conduct amounting to professional misconduct or unsatisfactory professional conduct on 17 September 2018.

Particulars

The respondent, purporting to act for Aaron Robinson, emailed Holly Robinson and dishonestly represented that a court date had been set and made representations as to what could occur to make the "whole saga ... end" and what would otherwise occur.

(d) Charge 4 – The respondent failed to maintain a reasonable standard of competence and diligence between 31 July 2018 and 22 September 2018.

Particulars

The respondent, purporting to act for Aaron Robinson, wrongly stated in a letter to Holly Robinson the legal requirements for an executor. Further, in a meeting with an Australian legal practitioner, the respondent falsely represented that he had spent "around 20 grand costs already" [sic] on the matter and represented that he was going to bring applications which were clearly not legally available in the circumstances.

Overview

[2] The applicant relies on affidavits sworn by Travis Degen, Peter van de Graaff, Holly Robinson and Darielle Campbell.

[3] Mr Doyle has not filed any sworn material, but he has filed a Response to Complaints, an Outline of Submissions, and a document entitled "Affidavit", but which is unsigned and unsworn. We propose to treat these various documents as in the nature of submissions. The facts attested to by the applicant's witnesses remain uncontested by sworn evidence and provide the basis on which Mr Doyle is to be dealt.

[4] Mr Doyle made clear at the hearing that he accepted that he was guilty of the four charges brought against him. This has not always been his position. It is not necessary to detail all of his responses save to say that his equivocation justified the Commissioner in gathering the evidence that was presented at the hearing.

[5] Indeed, Mr Doyle maintained what he termed his "strong denial" of Charges 3 and 4 until the day of the hearing. This denial was based on his view that he was not an "Australian Legal Practitioner" as defined and so the provisions of Chapter 4 of the *Legal Profession Act 2007* (Qld) ("LPA"), under which the charges were brought, did not apply to him. He explained to the Tribunal that on the morning of the hearing Ms Robb, who appeared for the Commissioner, had drawn his attention to s 417 of the LPA (which appears in Chapter 4 of the LPA) which he had overlooked, and which provides:

> (1) This chapter applies to Australian lawyers and to former Australian lawyers in relation to conduct happening while they were Australian lawyers (but not Australian legal practitioners) in the same way as it applies to Australian

legal practitioners and former Australian legal practitioners, and so applies with any necessary changes.

[6] Mr Doyle is an Australian lawyer and the conduct complained of occurred while he was an Australian lawyer. Hence Chapter 4 applies.

[7] The purpose then of these proceedings, given Mr Doyle's acceptance of the charges and the lack of any affidavit material contesting the applicant's case, is to determine the appropriate order to make under s 456 of the LPA. To discharge that function it will be necessary to examine Mr Doyle's conduct and background as well as his responses to the case made against him.

The relevant legislative provisions

[8] It is relevant to note the applicable provisions of the LPA. They include ss 6, 24(1), 25(1), 418 and 419:

> **6 Terms relating to legal practitioners**
>
> (1) An Australian legal practitioner is an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate.
>
> (2) A local legal practitioner is an Australian lawyer who holds a current local practising certificate.
>
> (3) An interstate legal practitioner is an Australian lawyer who holds a current interstate practising certificate, but not a local practising certificate.
>
> **24 Prohibition on engaging in legal practice when not entitled**
>
> (1) A person must not engage in legal practice in this jurisdiction unless the person is an Australian legal practitioner.
>
> Maximum penalty—300 penalty units or 2 years imprisonment.
>
> **25 Prohibition on representing or advertising entitlement to engage in legal practice when not entitled**
>
> (1) A person must not represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner.
>
> Maximum penalty—300 penalty units or 2 years imprisonment.
>
> **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.

[9] There are various exceptions and qualifications set out in ss 24 and 25 that are not here relevant. It is worth noting that a breach of ss 24(1) or 25(1) of the LPA involves potential criminal sanction – the maximum penalty is 300 penalty units or 2 years' imprisonment. Those penalties serve to demonstrate the seriousness of a breach of these provisions

Mr Doyle's status

[10] The only sworn evidence of Mr Doyle's status comes from Ms Campbell. Ms Campbell is an officer of the applicant and has access to relevant records. Her affidavit shows that Mr Doyle was admitted to practise in Queensland on 2 June 2008. He remains on the Roll of Legal Practitioners. From 26 June 2010 to 30 June 2014, Mr Doyle held a conditional practising certificate entitling him to practise as a barrister, the condition being "that the holder may practise as a barrister only as an employee of the Aboriginal and Torres Strait Island Legal Service."

[11] From mid-2014 Mr Doyle moved to Victoria taking up a position with ATSILS in that State. He then held a Victorian "Principal practicing certificate without trust authorisation." That certificate remained current until 30 June 2018.

[12] On 9 July 2018, Mr Doyle submitted an application to the Queensland Law Society ("QLS") for a principal level practising certificate. He failed to make payment for the Certificate, nor did he make payment for the requisite professional indemnity insurance. Both are necessary preconditions to obtaining a Certificate.

[13] In response to an application by Mr Doyle for deferment of the Practice Management Course, the QLS wrote to Mr Doyle on 14 August 2018 to inform him that the appropriate officer had resolved to approve his application "allowing you to apply for your Principal Practicing Certificate".

[14] So far as the material shows Mr Doyle took no further action to obtain a practising certificate and no certificate was issued.

[15] On 27 January 2021, Mr Doyle applied to the QLS for an employee level practising certificate. So far as the material shows that application has not been determined.

[16] No material has been filed contesting these matters. In his "Affidavit" Mr Doyle claims to have been exempted from undertaking the Practice Management Course. That is not completely accurate – the advice from the QLS was that the requirement had been deferred until August 2019. That deferment meant that he could proceed to apply for his certificate without the necessity of completing the Course as is usually required. However, Mr Doyle took no further steps to obtain a certificate.

[17] In the end result, Mr Doyle was not entitled to engage in legal practise or represent that he was so entitled, at any level, from 30 June 2018.

[18] It is plain from the applicant's material, and it is not now in contest, that Mr Doyle did engage in legal practise and did represent that he was entitled to so engage.

The Foley matter

[19] Mr Degen was formerly an industrial officer employed by the Australian Road Transport Industrial Organisation (Queensland branch). In that capacity he represented a member of the organisation, Russell Transport, in an unfair dismissal claim before the Fair Work Commission brought by one Adam Foley. A claim form was filed. "Martin Doyle" of the firm "Doyle/Rausch lawyers" is nominated on the claim form as representing the applicant. The form is dated 10 September 2018.

[20] On 18 September 2018, an email was received by Russell Transport purportedly from the respondent – his name appears in the sender section and the signature block reads "Martin Doyle Principal Doyle/Rausch Lawyers." The contents of the email relevantly include:

(a) "we continue to act for Mr Adam Foley in relation to this unfair dismisal (sic) matter currently set down for concillitation (sic) on the 11th October 2018";

(b) points as to why the matter should be settled;

(c) an "offer to settle" of $65,000.00 plus costs which were nominated as "approx.. $7,500-$8,000.00";

(d) the words "offer is a Calderbank offer"; and

(e) that the offer is open until a date specified at "which point no further offers will be forthcoming from our client".

[21] It is worth noting that Mr Doyle had no right to charge costs, and that the demanding of something to which you know you are not entitled is dishonest.

The Robinson matter

[22] By way of background, Holly and Aaron Robinson are stepsiblings. They share a mother but have different fathers. Their mother separated from Holly's father, Mr Stephen Robinson. In April and May 2016, consent orders dealing with property matters between the parents were executed by the parents and subsequently filed in the Family Court. Pursuant to those orders, and subject to re-financing the mortgage, Holly's mother transferred her interest in a certain property to Mr Stephen Robinson. Holly's mother subsequently passed away and Holly and Aaron were the beneficiaries of her estate. Mr Peter van de Graaff, a solicitor, was retained by Holly's father to attend to the conveyance of the property previously mentioned. As the orders make

plain, Mr Robinson (Snr) was by then quite entitled to sell the property. The property did not form part of the deceased's estate and Mr Aaron Robinson had no entitlement to it.

[23] According to Mr Doyle, and for reasons that remain obscure, Mr Aaron Robinson considered that the consent orders were unfair to his mother, that he had standing to have them set aside, and that, in the meantime, he should prevent his stepfather from selling the property. Mr Doyle says that Mr Robinson was an old friend and that he was determined to assist him.

[24] Against that background, Charge 3 asserts that on 17 September 2018, the respondent, in an email communication to Holly Robinson, engaged in conduct that amounts to professional misconduct or unsatisfactory professional conduct.

[25] The affidavits show that on 17 September 2018, when purporting to act for Aaron Robinson, the respondent emailed Holly Robinson and represented to her that "we have a court date of next Wednesday in the Supreme Court to apply to have a full account of the estate and all of its assets and liabilities...". He continued:

> Ultimately Holley (sic), Aarons (sic) part in this whole saga can end this Friday if you cut a separate cheque for him...othetwise (sic) next Wednesday we haul everyone including you, your father ...before the Supreme Court to account for their actions.

A date was provided for Holly to advise the respondent of her position.

[26] There was no application before the Supreme Court and no date set for any matter to be heard. Mr Doyle's claims were false. They were plainly designed to put improper pressure on Ms Robinson to have her accede to Mr Doyle's demands. Unsurprisingly, she swears that the threat caused her distress.

[27] Charge 4 asserts that between 31 July 2018 and 22 September 2018 the respondent failed to maintain reasonable standards of competence and diligence. There are several particulars:

(a) The respondent wrongly stated, in a letter to Holly Robinson on an unknown date in August 2018, that it was a general requirement under the law for an executor to reside in Queensland. There is no such requirement.

(b) On 21 September 2018, in a meeting with Mr van de Graaff the respondent represented that he was going to bring applications which were not legally available in the circumstances including a *Rice v Asplund*[1] application and/or application to re-open the consent orders.

(c) In that same meeting, the respondent represented that he had spent "around 20 grand costs already" on the matter. This was clearly false. When questioned further on this issue, the respondent said that it was a "guesstimate" and it was due to time spent on his "research" and "consulting". Later, he said "that's what I'm saying I'm up for."

[28] *Rice v Asplund* stands for the proposition that the Family Court will require proof of a significant change in circumstances before revisiting final orders in parenting

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1 [1978] FamCA 84.

matters. It has nothing to do with revisiting consent orders involving assignment of property rights by a stranger to those orders.

[29] Mr Doyle's conduct fell well below a reasonable standard of competence and diligence.

Mr Doyle's response

[30] Summarising the various documents Mr Doyle has provided, it would appear that Mr Doyle presently relies on the following submissions:

(a) he was assisting a friend in legal difficulties;

(b) there was evidence of highly suspicious and perhaps fraudulent conduct and he acted to prevent a major injustice;

(c) he wished to place on the record that one of the "beneficiaries" objected to an imminent sale of property which made him feel compelled to act;

(d) he has cooperated with the LSC;

(e) he has always been ready to plead guilty to practising without a certificate;

(f) his website was not live at the time, was still under construction and should not have been able to be found under any search engine – Mr van de Graaff must have found his web address from the headers or footers of his correspondence and entered the address into the browser;

(g) the disciplinary process has taken three years to complete and has caused complete ruin to his personal and professional circumstances;

(h) because Mr Doyle was obliged to reveal these disciplinary proceedings to potential employers, he has been unable to obtain any positions during this time;

(i) he has no money or assets and is totally reliant on job seeker payments from Centrelink and has, at times, been homeless or otherwise relied on shared accommodation through aboriginal community services;

(j) Mr Doyle has chronic depression and other stress related health conditions;

(k) a penalty of being struck off the Roll for practising without a certificate for what was a period of six to eight weeks would be crushing and unnecessary;

(l) a private reprimand would be a more balanced penalty in the circumstances; and

(m) Mr Doyle apologises for his actions.

Discussion

[31] Mr Doyle appeared at the hearing of this application. While evidently contrite it was not evident that that he had any insight into the gravity of his conduct.

[32] Two of Mr Doyle's submissions should be acknowledged. There has been an extraordinary delay in the prosecution of the matter and this delay has constituted a significant punishment. He has been impoverished by the delay and his health has suffered. And it is true to say, as he did in his oral submissions, that he refrained from again practising once the LSC contacted him about these matters. Thus, his misconduct occurred over an approximate eight-week period three years ago. We do

not overlook that the point of these disciplinary proceedings, of course, is not punishment but protection of the public and the standing of the profession.[2]

[33] Other submissions are not accurate. While Mr Doyle has responded reasonably promptly to the investigation by the LSC, it is hardly the case that he has "co-operated". He very clearly disputed the jurisdiction of the LSC at an early stage, effectively put in issue Charges 1 and 2 at that early stage and maintained his innocence regarding Charges 3 and 4 until the morning of the hearing. His responses involved attacks on the honesty and integrity of the deponents (other than Ms Campbell).

[34] There was no attempt made to show by way of evidence that there was anything at all "highly suspicious" or fraudulent about the matters that Mr Doyle involved himself in. Even if there had been that would not excuse Mr Doyle's conduct, but it would go some way to explain it.

[35] Further, Mr Doyle's characterisation of the charges as simply involving conduct assisting a friend in legal trouble over a six-to-eight-week period when he happened to not have a practising certificate — inferentially because he had not paid two amounts of money – misses the significant point. His conduct that is criticized while practising without a certificate involved dishonesty, misleading statements, unethical dealings, in some respects actions that displayed at best incompetence, and unacceptable threats to a lay person. Why he had not attended to the necessary payments was unexplained although at one point Mr Doyle claimed he held, for reasons not revealed, the view that the payments were to be attended to, apparently by some unidentified third party. But whatever that explanation it is largely irrelevant given the way in which he conducted himself.

[36] It is apparent that Mr Doyle's time with the aboriginal legal services in Queensland and Victoria had not adequately prepared him for practise in a private capacity that he was endeavouring to enter for the first time in mid-2018. Some of the conduct complained of in Charge 4 may be explained in this way, although the statements regarding costs of $20,000 having been incurred were plainly false.

[37] Had Mr Doyle behaved in a courteous, honest and competent way in that six-to-eight-week period when assisting a friend, particularly given the long delay in the prosecution of these charges and its impact on him, then there would be some considerable force in his submission that he has learnt his lesson and an adequate response to the charges would be a reprimand. But that is not the situation.

[38] It is necessary to characterise the conduct as either professional misconduct or unsatisfactory professional conduct. The relevant statutory definitions are set out above. Regard may also be had to the common law, given the legislation is expressed as inclusive only. The authorities are clear.

[39] It has long been regarded that to make a finding of professional misconduct there must be proof of conduct which "would be reasonably regarded as disgraceful or

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[2] See *Legal Services Commissioner v Madden (No 2)* [2008] QCA 301, [122]; *Attorney-General of the State of Queensland v Legal Services Commissioner; Legal Services Commissioner v Shand* [2018] QCA 66; *NSW Bar Association v Cummins* (2001) 52 NSWLR 279, 284.

dishonourable by his professional brethren of good repute and competency".[3] In similar terms, in *Adamson v Queensland Law Society Incorporated*, Thomas J formulated the test for professional misconduct as follows:[4]

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

[40] The breaches of ss 24(1) and 25(1) of the LPA are in themselves serious enough. The Commissioner cites *Legal Services Commissioner v De Fraine*[5] as authority for the proposition that such a contravention "is a serious violation of the respondent's legal and ethical responsibilities and amounts to professional misconduct". Carmody J there wrote:

> [6] As the respondent's conduct substantially falls short of the reasonable standard of competence and diligence expected of an Australian legal practitioner, it constitutes professional misconduct.
>
> [7] Engaging in legal practice without a legal practicing certificate is a serious violation of the legal and ethical responsibilities of an Australian legal practitioner. A practicing certificate confirms the suitability, in terms of competence and ethics, of the legal professional to practice law. The process of regular certification of lawyers preserves the integrity, ethics and standards of competence and diligence required of legal practitioners.

[41] While acknowledging the seriousness of practising without certification, the purposes of the certification process identified by Carmody J do not reflect the reality of the present situation. Sight should not be lost here of the fact that several weeks before the impugned conduct Mr Doyle held a practising certificate, he had been exempted (perhaps unwisely) from completing the Practice Course, he had practised without any complaint against him for ten years, and there appears no reason why he would not have been granted such a certificate had he paid the two sums outstanding. It seems evident that Mr Doyle was setting up his private practice and assumed, with some justification, that the issuing of his Certificate was a formality. He should not have assumed any such thing, but so far as these two charges are concerned, this case is not at the egregious end of the scale.

[42] The conduct that forms the basis of Charge 3 (see paragraphs 24 and 25 above) can only be described as disgraceful and dishonourable. Mr Doyle lied about the impending hearing date to deliberately put pressure on a lay person to induce a settlement. The conduct complained of in Charge 3 strikes at the very integrity of his practice of the law. It involved an attempt to obtain monies for his "client" by improper and dishonest means. The tests of professional misconduct just referred to are satisfied.

[43] The conduct forming the basis of Charge 4 is disturbing and calls seriously into question Mr Doyle's competence. His reference to the costs incurred of $20,000 was plainly false and sufficient to justify characterization of the conduct under this charge as professional misconduct. Again, the tests just referred to are satisfied.

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3 *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750.
4 [1990] 1 Qd R 498, 507.
5 [2015] QCAT 292.

[44] What then is the proper response? Section 456 of the LPA sets out the alternative orders available. That section relevantly provides:

> **456 Decisions of tribunal about an Australian legal practitioner**
>
> (1) If, after the tribunal has completed a hearing of a discipline application in relation to a complaint or an investigation matter against an Australian legal practitioner, the tribunal is satisfied that the practitioner has engaged in unsatisfactory professional conduct or professional misconduct, the tribunal may make any order as it thinks fit, including any 1 or more of the orders stated in this section.
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> (2) The tribunal may, under this subsection, make 1 or more of the following in a way it considers appropriate—
>
> (a) an order recommending that the name of the Australian legal practitioner be removed from the local roll;
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> (b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;
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> (c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;
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> (d) an order that—
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> (i) imposes stated conditions on the practitioner's practising certificate granted or to be issued under this Act; and
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> (ii) imposes the conditions for a stated period; and
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> (iii) specifies the time, if any, after which the practitioner may apply to the tribunal for the conditions to be amended or removed;
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> (e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner;
>
> (f) an order that no law practice in this jurisdiction may, for a period stated in the order of not more than 5 years—
>
> (i) employ or continue to employ the practitioner in a law practice in this jurisdiction; or
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> (ii) employ or continue to employ the practitioner in this jurisdiction unless the conditions of employment are subject to conditions stated in the order.
>
> …
>
> (4) The tribunal may, under this subsection, make 1 or more of the following—
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> (a) an order that the Australian legal practitioner pay a penalty of a stated amount, not more than $100,000;
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> (b) a compensation order;

(c) an order that the practitioner undertake and complete a stated course of further legal education;

(d) an order that, for a stated period, the practitioner engage in legal practice under supervision as stated in the order;

(e) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;

(f) an order that the practitioner stop accepting instructions as a public notary in relation to notarial services;

(g) an order that engaging in legal practice by the practitioner is to be managed for a stated period in a stated way or subject to stated conditions;

(h) an order that engaging in legal practice by the practitioner is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;

(i) an order that the practitioner seek advice from a stated person in relation to the practitioner's management of engaging in legal practice;

(j) an order that the practitioner must not apply for a local practising certificate for a stated period.

(5) To remove any doubt, it is declared that the tribunal may make any number of orders mentioned in any or all of subsections (2), (3) and (4).

(6) Also, the tribunal may make ancillary orders, including an order for payment by the Australian legal practitioner of expenses associated with orders under subsection (4), as assessed in or under the order or as agreed.

(7) The tribunal may find a person has engaged in unsatisfactory professional conduct even though the discipline application alleged professional misconduct.

[45] The finding that Mr Doyle engaged in professional misconduct enlivens the jurisdiction to make any one of the orders mentioned in s 456. The totality of his conduct must be looked at.

[46] The remarks in *Barristers' Board v Darveniza* are relevant and provide guidance here:[6]

> Generally speaking the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practices.

[47] That precisely describes Mr Doyle's conduct and situation.

[48] In addition to Mr Doyle's conduct, it is relevant to note his responses to these charges. As earlier stated, Mr Doyle appears to completely lack insight into the seriousness of

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6 [2000] QCA 253, [33].

his behaviour. His attitude seems to be that his perception of his "client's" claimed predicament justified the means adopted. That is the very antithesis of the conduct expected of an honourable practitioner. There is much force in the applicant's submission that:

> [T]he defects in the respondent's character, revealed by the offences, are incompatible with the qualities, standards and behaviour required of a member of the legal profession. The public could not view with respect, and have complete confidence in, the respondent.

[49] In deciding whether to recommend that the respondent's name be removed from the Roll, as the applicant urges, the test we must bear in mind is that the probabilities must show that the respondent is unfit to practise now and permanently so.[7] We must also bear in mind that there are wider issues as explained by McMurdo JA in *Attorney-General of the State of Queensland v Legal Services Commissioner v Shand:*[8]

> [52] The discretion conferred by s 456 is a broad one and, as noted by the Tribunal, not subject to any express constraint. It is to be exercised for the purposes which are established by the authorities. It is well established that the purpose is not to punish the respondent, but to protect the public.
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> [53] The protection of the public, of course, is a purpose also served by an order which affects an existing or future practising certificate. By an order affecting a practising certificate, the public is immediately protected from the risks to which those who would encounter an unfit person would be exposed.
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> [54] However the removal of the name of an unfit practitioner from the Roll serves the interests of the public in more extensive ways. In *Attorney-General v Bax*, Pincus JA said that the remedies of suspension or striking off are for the protection of the public and of the profession's standing and that further, there is also a deterrent element. And in *De Pardo v Legal Practitioners Complaints Committee*, French J (as he then was and with whom the other Members of the Full Federal Court agreed) said that:
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> > "[The protection of the public] extends beyond protection against further default by the particular practitioner to protection against similar defaults by other practitioners."
>
> [55] The reference by Pincus JA in *Bax* to the protection of the profession's standing is important. The community needs to have confidence that only fit and proper persons are able to practise as lawyers and if that standing, and thereby that confidence, is diminished, the effectiveness of the legal profession, in the service of clients, the courts, and the public is prejudiced. The Court's Roll of practitioners is an endorsement of the fitness of those who are enrolled.

[50] We are mindful of Mr Doyle's apparent blameless practice for ten years with aboriginal legal services. Mr Doyle informed the Tribunal that he had not worked for three years since these charges were brought. He has not advanced any referees or

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7 *Attorney-General of the State of Queensland v Legal Services Commissioner v Shand* [2018] QCA 66, [57] (McMurdo JA, Morrison JA and Brown J agreeing).

8 Ibid, [52]-[55] (omitting citations and footnotes).

other support persons that might usefully employ him or mentor him. He advised that he had left the Victorian employment on poor terms.

[51] Had we thought that there was some appropriate order that could be made that would preserve his involvement with such services whilst providing protection to the public and protection of the integrity of the profession through suspension, education or mentoring we would be minded to follow that course. We are of the view however that there is no evidence to justify the view that Mr Doyle is or is likely to become a person fit to practise and hence there is no alternative available that will sufficiently protect the public and the reputation of the profession other than to recommend that Mr Doyle's name be removed from the local roll.

Costs

[52] The applicant seeks costs. Section. 462(1) LPA is relevant:

> **462 Costs**
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> (1) A disciplinary body must make an order requiring a person whom it has found to have engaged in prescribed conduct to pay costs, including costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.

[53] Thus, there is no discretion to refuse an order save and unless we are satisfied that "exceptional circumstances exist".

[54] The matter that concerns us is the extraordinary delay in prosecuting these matters and the resulting impact that has had on Mr Doyle. We sought an explanation from the applicant at the hearing. Mr Doyle is not to blame, unless it is said that his initial rejection of the charges justifies the taking of three years to prosecute them. We were advised that the onset of the COVID-19 pandemic had had some impact as had an injury to the investigator. We observe that COVID-19 restrictions were first put in place in March 2020. These complaints were made in September 2018 and Mr Doyle's initial response was known in October of that year. The injury to an investigator hardly justifies any lengthy delay. The applicant's affidavit material was not sworn until February 2021, two and a half years after the applicant was aware of the complaints.

[55] The Commissioner has an obligation to deal with complaints as efficiently and as expeditiously as is practicable.[9] No attempt is made to rely on s 434 which provides for circumstances in which the Commissioner may delay dealing with a complaint.

[56] While we are conscious of the policy considerations that inform s 464 (see *Legal Services Commissioner v McQuaid*[10] and in particular [26] per Morrison JA) the delay here was inordinate and unexplained, and the impact on Mr Doyle devastating. These seem to us to be exceptional circumstances justifying a refusal to further burden Mr Doyle with an order for costs.

Orders

[57] We order as follows:

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9 LPA s 450.

10 [2019] QCA 136.

1. Pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld), an order is made recommending that the name of the respondent be removed from the local roll.

2. There be no order as to costs.