JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
ACT	**:**	LEGAL PROFESSION ACT 2008 (WA)
CITATION	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE and LAWSON [2021] WASAT 152
MEMBER	**:**	JUDGE D R PARRY, DEPUTY PRESIDENT MR D AITKEN, SENIOR MEMBER DR E MARILLIER, MEMBER
HEARD	**:**	12, 13, 14, 15, 16 AND 21 OCTOBER 2020 AND 1 SEPTEMBER 2021
DELIVERED	**:**	30 NOVEMBER 2021
FILE NO/S	**:**	VR 60 of 2019
BETWEEN	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE Applicant AND RICHARD JAMES LAWSON Respondent

Catchwords:

Vocational regulation - Legal practitioners - Professional misconduct - Whether practitioner engaged in professional misconduct by knowingly or recklessly making false and/or misleading representations to client, Legal Profession Complaints Committee, Legal Practice Board and Supreme Court of Western Australia in relation to work practitioner performed in respect of client's matter - Whether practitioner engaged in professional misconduct by knowingly or recklessly making false and/or misleading representations to Legal Profession

Complaints Committee and Legal Practice Board in relation to reason for termination of employment of solicitor who gave statement and information to Legal Profession Complaints Committee in respect of conduct investigation - Whether practitioner engaged in professional misconduct by not refunding to client difference between original invoice and bill of costs for costs assessment

Legislation:

Legal Profession Act 2008 (WA), s 402, s 403, s 403(1), s 421(1), s 428(1), s 438, s 438(1), s 442

Result:

Findings of professional misconduct on all nine grounds

Category: B

Representation:

Counsel:

Applicant	:	Ms P Cahill SC and Mr S Merrick
Respondent	:	Mr AE Eyers

Solicitors:

Applicant	:	Law Complaints Officer
Respondent	:	Lawson Legal

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

Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336
Cabal v United Mexican States [2001] FCA 97; (2001) 111 FCR 418
Giudice v Legal Profession Complaints Committee [2014] WASCA 115
Khosa v Legal Profession Complaints Committee [2017] WASCA 192
Kyle v Legal Practitioners' Complaints Committee [1999] WASCA 115; (1999) 21 WAR 56
Legal Practitioners Complaints Committee and Segler [2009] WASAT 205; (2009) 67 SR (WA) 280
Legal Profession Complaints Committee and A Legal Practitioner [2013] WASAT 37; (2013) 84 SR (WA) 158

Legal Profession Complaints Committee and Caine [2010] WASAT 178
Legal Profession Complaints Committee and Chang [2019] WASAT 67
Legal Profession Complaints Committee and in de Braekt [2012] WASAT 58; (2012) 80 SR (WA) 134
Legal Profession Complaints Committee and Lee-Steere [2010] WASAT 189
Legal Profession Complaints Committee and Segler [2010] WASAT 135
Legal Profession Complaints Committee and Tang [2021] WASAT 117; (2021) 103 SR (WA) 249
Legal Profession Complaints Committee v Brickhill [2013] WASC 369
Vogt v Legal Practitioners Complaints Committee [2009] WASCA 202

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REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 The Legal Profession Complaints Committee (applicant or Committee) has referred this matter to the Tribunal, under s 428(1) of the *Legal Profession Act 2008* (WA) (LP Act), alleging nine grounds of professional misconduct against Mr Richard James Lawson, who is a legal practitioner, (respondent or practitioner). The Committee alleges that the practitioner knowingly or recklessly misrepresented to a client, CL, in itemised invoices, the work he performed and the time he spent working in respect of CL's matter in July 2011 (grounds 1 and 3). The Committee also alleges that, subsequently, the practitioner made those or similar misrepresentations to the Supreme Court of Western Australia (Supreme Court) in an affidavit filed in a costs assessment proceeding brought by CL against the practitioner (ground 4), and to the Supreme Court and CL in a bill of costs filed in the costs assessment proceeding (ground 5), to the Committee in the course of its conduct investigation (grounds 7 and 9), and to the Legal Practice Board of Western Australia (Board) for the purposes of the practitioner's application for renewal of his local practising certificate (ground 8). It is also alleged that the practitioner engaged in professional misconduct by knowingly or recklessly making a false and/or misleading representation to the Committee that he worked 'exclusively' for CL during a particular period (ground 2) and that he knowingly or recklessly made false and/or misleading representations to the Committee (grounds 7 and 9) and to the Board (ground 8) in relation to the reason why he terminated the employment of a solicitor, JR, who subsequently gave a statement and information in respect of the conduct investigation. Finally, the Committee alleges that the practitioner engaged in professional misconduct by not refunding to CL before a certain date the sum of $5,247, being the difference between the practitioner's original invoice to CL ($27,500) and his bill of costs in the costs assessment proceeding ($22,253) (ground 6).

2 The practitioner does not dispute that he engaged in professional misconduct by not refunding to CL the sum of $5,247 in terms of ground 6. However, the practitioner contends that he did not engage in professional misconduct by knowingly or recklessly making misrepresentations to CL, the Supreme Court, the Committee, and the Board, in terms of the other eight grounds alleged against him.

3 We will now set out the nine grounds of professional misconduct alleged by the Committee against the practitioner. We will then refer to

the legal framework in relation to this matter and make findings of background facts. We will then address each of the nine grounds of alleged professional misconduct in turn.

4 For the reasons set out below, we have determined that the practitioner engaged in professional misconduct in terms of each of the nine grounds alleged by the Committee against him. In particular, we have determined that the practitioner knowingly sought to mislead CL, the Supreme Court, the Committee, and the Board, in relation to the work he performed and the time he spent working in respect of CL's matter and that he knowingly sought to mislead the Committee and the Board in relation to the reason he terminated JR's employment. We have also determined that the practitioner engaged in professional misconduct by not refunding to CL the difference between the original invoice and the bill of costs in the costs assessment proceeding.

Grounds of alleged professional misconduct

5 The Committee alleges the following nine grounds of professional misconduct against the practitioner:[1]

> **GROUND 1**
>
> That the practitioner RICHARD JAMES LAWSON (**the practitioner**), on about 6 August 2011, engaged in professional misconduct within the meaning of sections 403 and 438 of the *Legal Profession Act 2008* (WA) (**LP Act**) in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by preparing and issuing to his client (**CL**), at CL's request, an itemised account dated 6 August 2011 (**First Itemised Account**) relating to tax invoice 0545 dated 31 July 2011 in the sum of $27,500 (including GST) for the practitioner's fees for legal services (**Original Invoice**), in circumstances where:
>
> (a) the practitioner knew the First Itemised Account was false and/or misleading in material respects and intended CL be misled by the First Itemised Account;
>
> (b) alternatively, the practitioner was recklessly indifferent as to whether the First Itemised Account was false and/or misleading in material respects and as to whether CL would be misled by the First Itemised Account.

[1] Amended Substituted Annexure A dated 13 October 2020 (Exhibit 8) (original emphasis). In these reasons, we use the expressions defined in the grounds.

GROUND 2

That the practitioner, on about 31 October 2011, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by preparing and sending to the Legal Profession Complaints Committee (**Committee**) a letter dated 31 October 2011 (**31 October 2011 letter**) in response to a letter from the Committee dated 7 October 2011 regarding a complaint made by CL against the practitioner, in circumstances where:

(a) the practitioner knew the 31 October 2011 letter was false and/or misleading in a material respect and intended the Committee be misled by the 31 October 2011 letter;

(b) alternatively, the practitioner was recklessly indifferent as to whether the 31 October 2011 was false and/or misleading in a material respect and as to whether the Committee would be misled by the 31 October 2011 letter.

GROUND 3

That the practitioner, on about 13 May 2012, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by preparing and issuing to CL, at CL's request, an itemised account dated 13 May 2012 (**Second Itemised Account**) relating to tax invoice 0545C dated 13 May 2012 in the sum of $27,544 (including GST) for the practitioner's fees for the legal services, in circumstances where:

(a) the practitioner knew the Second Itemised Account was false and/or misleading in material respects and intended CL be misled by the Second Itemised Account;

(b) alternatively, the practitioner was recklessly indifferent as to whether the Second Itemised Account was false and/or misleading in material respects and as to whether CL would be misled by the Second Itemised Account.

GROUND 4

That the practitioner, on about 16 and 17 August 2012, engaged in professional misconduct within the meaning of sections 403 and 438 of the

LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by swearing and filing, or permitting to be filed, an affidavit dated 16 August 2012 (**Affidavit**) in Supreme Court of Western Australia costs assessment proceedings LPA 16 of 2012 commenced by CL against the practitioner (**Costs assessment proceedings**), in circumstances where:

(a) the practitioner knew the Affidavit was false and/or misleading in material respects and intended the Supreme Court be misled by the Affidavit;

(b) alternatively, the practitioner was recklessly indifferent as to whether the Affidavit was false and/or misleading in material respects and as to whether the Supreme Court would be misled by the Affidavit.

GROUND 5

That the practitioner, on about 18 June 2013, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by filing, or permitting to be filed, a bill of costs dated 14 June 2013 in the sum of $22,253 (including GST, but excluding a claim for drafting the bill and preparing for and attending the taxation) (**Bill of Costs**) in the Costs assessment proceedings, in circumstances where:

(a) the practitioner knew the Bill of Costs was false and/or misleading in material respects and intended the Supreme Court and/or CL be misled by the Bill of Costs;

(b) alternatively, the practitioner was recklessly indifferent as to whether the Bill of Costs was false and/or misleading in material respects and as to whether the Supreme Court and/or CL would be misled by the Bill of Costs.

GROUND 6

That the practitioner, between about 18 June 2013 and about 30 September 2014, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, by not refunding to CL the sum of $5,247, being the difference between the Original Invoice ($27,500) and the Bill of Costs ($22,253) for the practitioner's professional fees for legal services.

GROUND 7

That the practitioner, on about 28 May 2017, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by preparing and sending to the Committee a letter dated 28 May 2017 (**28 May 2017 letter**) in response to a letter from the Committee dated 19 April 2017 regarding a conduct investigation pursuant to section 421(1) of the LP Act (**conduct investigation**), and providing, or permitting to be provided, to the Committee with the 28 May 2017 letter a witness statement dated 23 May 2012 from the practitioner's wife (**ML; ML Statement**), in circumstances where:

(a) the practitioner knew the 28 May 2017 letter and the ML Statement were false and/or misleading in material respects and intended the Committee be misled by the 28 May 2017 letter and the ML Statement;

(b) alternatively, the practitioner was recklessly indifferent as to whether the 28 May 2017 letter and the ML Statement were false and misleading in material respects and as to whether the Committee would be misled by the 28 May 2017 letter and the ML Statement.

GROUND 8

That the practitioner, on or about 3 August 2017 and 8 August 2017, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by:

1. under cover of a letter to the Legal Practice Board of Western Australia (**Board**) dated 3 August 2017, and in response to a letter from the Board dated 28 July 2017 requesting further information in relation to the conduct investigation for the purposes of consideration by the Board of the practitioner's application for the renewal of his local practising certificate, providing a copy of the 28 May 2017 letter and a copy of the ML Statement;

2. preparing and sending to the Board an email dated 8 August 2017 (**8 August 2017 email**),

in circumstances where:

(a) the practitioner knew the 28 May 2017 letter, the ML Statement and the 8 August 2017 email were false and/or misleading in material respects and intended the Board be misled by the 28 May 2017 letter, the ML Statement and the 8 August 2017 email;

(b) alternatively, the practitioner was recklessly indifferent as to whether the 28 May 2017 letter, the ML Statement and 8 August 2017 email were false and/or misleading in material respects and as to whether the PAC would be misled by the 28 May 2017 letter, the ML Statement and the 8 August 2017 email.

GROUND 9

That the practitioner, on about 13 November 2017, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, further or alternatively, would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by preparing and sending to the Committee a letter dated 13 November 2017 (**13 November 2017 letter**) in response to a letter from the Committee dated 20 October 2017 regarding the conduct investigation in circumstances where:

(a) the practitioner knew the 13 November 2017 was false and/or misleading in material respects and intended the Committee be misled by the 13 November 2017 letter;

(b) alternatively, the practitioner was recklessly indifferent as to whether the 13 November 2017 letter was false and/or misleading in material respects and as to whether the Committee would be misled by the 13 November 2017 letter.

Legal framework

6 Section 438(1) of the LP Act confers jurisdiction on the Tribunal in this matter as follows:

> The State Administrative Tribunal has jurisdiction to make a finding that an Australian legal practitioner has engaged in unsatisfactory professional conduct or professional misconduct.

7 The Committee bears the onus of proof in relation to each of the allegations of professional misconduct it makes against the practitioner. The civil standard of proof ('on a balance of probabilities') applies

together with the ***Briginshaw*** approach,[2] which requires clear and cogent evidence to be adduced by the Committee and for the Tribunal to feel an actual persuasion of the occurrence or existence of relevant facts before it can find the practitioner guilty of professional misconduct (or unsatisfactory professional conduct).

8 Section 402 and s 403 of the LP Act contain non-exhaustive[3] definitions of the terms 'unsatisfactory professional conduct' and 'professional misconduct', respectively. Section 402 of the LP Act states 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 Section 403 of the LP Act states as follows:

> (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 As the statutory definitions of the terms 'professional misconduct' and 'unsatisfactory professional conduct' in s 403(1) and s 402 of the

[2] See ***Briginshaw v Briginshaw*** [1938] HCA 34; (1938) 60 CLR 336 at 361-362 (Dixon J).
[3] ***Legal Practitioners Complaints Committee and Segler*** [2009] WASAT 205; (2009) 67 SR (WA) 280 [96].

LP Act, respectively, are non-exhaustive definitions, conduct that constitutes 'unprofessional conduct' (sometimes expressed as 'professional misconduct', signifying more serious misconduct) at common law can constitute professional misconduct (or unsatisfactory professional conduct) under the LP Act.[4]

11 The common law concept of unprofessional conduct was restated by Parker J in ***Kyle v Legal Practitioners' Complaints Committee*** [1999] WASCA 115; (1999) 21 WAR 56 at [61] (Ipp J at [1] and Steytler J at [22] agreeing) as follows:

> … This Court has long accepted and applied, in this context, the understanding of the notion of unprofessional conduct which was expressed by the Full Court of the South Australian Supreme Court in *Re a Practitioner of the Supreme Court* [1927] SASR 58: see, eg, *Re a Practitioner* (unreported, Supreme Court, WA, Full Court, Library No 4989, 18 July 1983). It was usefully summarised (at 3) by the Full Court as conduct that would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, or that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the profession of good repute and competence. The first limb of this summary includes, but is not confined to, conduct which occurs in the course of legal practice. The other limb necessarily relates to conduct in the course of legal practice because of the reference to 'professional conduct'. While the words should not be taken as necessarily an exhaustive or codified statement, the essence of the notion of unprofessional conduct is usefully revealed in these decisions.

12 As the Tribunal[5] said in ***Legal Profession Complaints Committee and Chang*** [2019] WASAT 67 at [137], the words 'disgraceful' and 'dishonourable', which are used in the first limb of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61], mean:[6]

> ***disgraceful*** … bringing or deserving disgrace; shameful; dishonourable; disreputable. …
>
> ***dishonourable*** … **1.** showing lack of honour; ignoble; base; disgraceful; shameful: *a dishonourable act*. **2.** having no honour or good repute: *a dishonourable man*. …

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[4] ***Legal Profession Complaints Committee and Caine*** [2010] WASAT 178; ***Legal Profession Complaints Committee and in de Braekt*** [2012] WASAT 58; (2012) 80 SR (WA) 134; ***Legal Profession Complaints Committee and A Legal Practitioner*** [2013] WASAT 37; (2013) 84 SR (WA) 158.
[5] Judge Parry DP, Mr D Aitken SM and Ms S Gillett SessM.
[6] *Macquarie Dictionary Online* (original emphasis).

13 The Committee contends that the practitioner's alleged conduct referred to in each of the nine grounds constitutes professional misconduct under s 403 and s 438 of the LP Act, because it falls within the second limb of the restatement of the common concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61] ('conduct … that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the [legal] profession of good repute and competence'). Further or alternatively, the Committee contends that the practitioner's alleged conduct referred to in each of the grounds, other than ground 6, constitutes professional misconduct under s 403 and s 438 of the LP Act, because it falls within the first limb of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61] ('conduct that would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence').

14 Section 442 of the LP Act authorises the Tribunal to make an alternative finding that a person is 'guilty of unsatisfactory professional conduct', even though the referral of the matter by the Committee alleges 'professional misconduct'.

15 In ***Legal Profession Complaints Committee and Tang*** [2021] WASAT 117; (2021) 103 SR (WA) 249 at [10], the Tribunal[7] said the following, which is equally apposite in relation to each of the nine grounds of alleged professional misconduct in this case:

> Significantly, in terms of ground 1, as the Tribunal recognised in *Legal Profession Complaints Committee and A Legal Practitioner* [2013] WASAT 37; (2013) 84 SR (WA) 158 at [123] - [124], a charge and finding of professional misconduct (or unsatisfactory professional conduct) against a lawyer does not need to be – and is often not – based on (a breach of) a particular written and prescribed legal or ethical rule, obligation or duty. Furthermore, as the Tribunal recognised there, professional misconduct includes a serious impropriety, whether proscribed or not, affecting a practitioner's character, which is indicative of a failure either to understand or to practise the precepts of honesty and fair dealing that are essential to the privilege and responsibilities of practising as a legal practitioner. As the Tribunal said in *Legal Profession Complaints Committee and A Legal Practitioner* at [123] - [124]:
>
> 123 Even in the absence of an express authority on point, we have no doubt such duty exists. As Rich J said in *Kennedy*

[7] Judge Parry DP, Dr S Willey SM and Ms M Connor M.

> *v The Council of the Incorporated Law Institute of New South Wales* (1939) 13 ALJR 563:
>
> > … a charge of misconduct as relating to a solicitor need not fall within any legal definition of wrong doing. It need not amount to an offence under the law. It was enough that it amounted to grave impropriety affecting his professional character and was indicative of a failure either to understand or to practise the precepts of honesty or fair dealing in relation to the courts, his clients or the public.
>
> 124 Similarly, the High Court of Australia observed in *Clyne v New South Wales Bar Association* [1960] HCA 40; (1960) 104 CLR 186 at 200 that certain rules (or duties) which govern the conduct of legal practitioners, which their Honours described as 'fundamental' and contrasted with rules which are 'merely conventional in character':
>
> > … are, for the most part, not to be found in writing. It is not necessary that they should be reduced to writing, because they rest essentially on nothing more and nothing less than a generally accepted standard of common decency and common fairness.

16 As the Tribunal also said in ***Legal Profession Complaints Committee and Tang*** at [56]:

> Honesty and integrity are essential characteristics for the privilege and responsibilities of legal practice. Fitness to practise law requires that a practitioner must command the personal confidence of his or her clients, fellow practitioners and judicial officers [*Legal Profession Complaints Committee v Bachmann* [2011] WASC 309 [46] (Martin CJ, EM Heenan J and Jenkins J)]. Put simply, if legal practitioners cannot be trusted to act and speak with honesty and integrity, the effective and efficient provision of legal services and administration of justice would be fundamentally undermined.

17 Because honesty and integrity are essential characteristics expected of a legal practitioner, the Supreme Court and the Tribunal have generally taken a very serious view when dealing with dishonesty by a practitioner.[8]

18 When a legal practitioner provides information or makes a statement which is false or misleading, there are (at least) three categories of cases

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[8] See, for example, ***Legal Profession Complaints Committee v Brickhill*** [2013] WASC 369 and ***Legal Profession Complaints Committee and Tang***.

in which that conduct will constitute either professional misconduct or unsatisfactory professional conduct under the LP Act. The first category is where the practitioner knows that the information or statement is false or misleading. The second category is where the practitioner has a reckless disregard as to whether the information or statement is false or misleading. The third category is where the practitioner is negligent or careless in providing the information or making the statement. Because the first two categories will only apply if, assessed subjectively, the practitioner either is aware that the information or statement is false or misleading (and therefore knowingly makes the misrepresentation) or is wilfully indifferent as to the truth of the information or statement (and therefore recklessly makes the misrepresentation), in the absence of special circumstances, one would ordinarily expect a finding of either of these categories of conduct to be characterised as a substantial departure from the standard of conduct reasonably expected of a practitioner such as to constitute 'professional misconduct', rather than (merely) 'unsatisfactory professional conduct', within the taxonomy of the LP Act.[9]

19 Ordinarily, in an adversarial context, such as vocational disciplinary proceedings, findings by the Tribunal as to a person's state of mind, for example, as to their knowledge or intention, will be a matter of inference from primary facts found by the Tribunal on the evidence.[10]

Background facts

20 The background facts are not in dispute. In his written closing submissions on behalf of the practitioner, Mr AE Eyers said that the background facts are 'adequately and accurately summarised'[11] by the Committee at paragraphs 14-36 in its closing submissions – and we make findings of fact – as follows:[12]

> 14. The practitioner was admitted to legal practice in Western Australia on 21 December 2000.
>
> 15. At all material times the practitioner was:
>
> a. an Australian legal practitioner within the meaning of s 5(a) of the LP Act;

[9] ***Giudice v Legal Profession Complaints Committee*** [2014] WASCA 115 [8] (Martin CJ).
[10] ***Khosa v Legal Profession Complaints Committee*** [2017] WASCA 192 [169] (Murphy and Beech JJA).
[11] Respondent's closing submissions dated 13 August 2021 (practitioner's submissions) para 2.
[12] Legal Profession Complaints Committee's closing submissions dated 19 March 2021 (Committee's submissions) paras 14-36 (original emphasis). In these reasons, we use the expressions defined in these background facts.

b. a sole practitioner, practising under the name Lawson Legal from premises situated at 524 Hay St, Perth.

16. JR commenced an unpaid work experience position as a law graduate at Lawson Legal in about March 2011. At that time the firm had no office support staff. There were no employed solicitors or other legal staff at the firm.

17. JR remained in the work experience position until about December 2011, when she commenced a full-time position as an employed solicitor at the firm after she was admitted to legal practice.

18. JR ceased employment at the firm in about mid-June 2012.

19. ML is the practitioner's wife. From about 2007 to 2014 she was the business manager of the QE II Medical Centre Trust. She worked at Lawson Legal at least from 2007 however her precise role and the extent of her involvement in the practice is in issue.

20. On 16 July 2011, CL was arrested. The practitioner met with CL on 18 July 2011. On 20 July 2011 CL caused funds of $91,538.05 to be deposited to Lawson Legal's trust account.

21. On 21 July 2011, the practitioner met with CL at Hakea Prison where CL was remanded into custody. During the meeting the practitioner provided CL with a costs agreement which CL signed and the practitioner witnessed (**First Costs Agreement**).[13]

22. The First Costs Agreement provided for:

a. a "lump sum fee" capped at $22,000 (inclusive of GST) in relation to "EXTRADITION TO USA (CHARGES; POWER OF ATTORNEY)";

b. additional work outside the scope of the lump sum fee to be charged at $440 per hour (inclusive of GST) for a practitioner and $110 per hour (inclusive of GST) for a paralegal.

23. At the practitioner's instruction, on about 23 and 24 July 2011, JR researched and drafted a written opinion (**First Opinion**) addressing, inter alia, the possible charges under Florida law CL would face if he was extradited to the United States.[14] The nature and extent of the practitioner's contribution to the final form of the First Opinion is in issue.

[13] The First Costs Agreement is Legal Profession Complaints Committee Book of Documents dated 30 March 2020 (Exhibit 3), pages 25-27.
[14] The First Opinion (as originally prepared by JR) is Exhibit 3, pages 137-150.

24. On or about 24 July 2011 CL terminated the retainer with the practitioner.

25. On 25 July 2011 the practitioner wrote to CL noting that, inter alia:

> "I have researched your case extensively in relation to the US allegations against you … If you wish for me to resume as your legal representative, I would be prepared to submit a bail application on your behalf on 4 August 2011 (providing the extradition papers have not arrived from the USA). Your success of obtaining bail would be increased if [KB] was your surety and spouse in order to illustrate support in your life. In the event you are extradited, [KB] and I would engage the best Florida lawyer available (subject to legal fees available) in order to defend this matter at trial and to get you bail."[15]

26. On 26 July 2011, the practitioner and JR met with CL at Hakea Prison. During the meeting the practitioner provided CL with a further costs agreement (**Second Costs Agreement**) which CL signed and JR witnessed. Also during the meeting, the practitioner provided the First Opinion in final form to CL.[16]

27. The Second Costs Agreement provided for:

    a. a "lump sum fee" capped at $66,000 (inclusive of GST) for the practitioner being retained in relation to "EXTRADITION PROCEEDINGS TO USA; BAIL; ALTERNATIVE POWER OF ATTORNEY, USA TRAVEL & BAIL";

    b. additional work outside the scope of the lump sum fee to be charged at $440 per hour (inclusive of GST) for a practitioner and $110 per hour (inclusive of GST) for a paralegal.

28. On 26 July 2011, following the meeting with CL, at the office, JR met with KB and took a witness statement from her, which KB then signed, and JR witnessed (**KB's witness statement**).[17] The extent of the practitioner's involvement in that meeting and in the preparation of KB's witness statement is in issue.

29. At the practitioner's instruction, on about 26 and 27 July 2011, JR researched and drafted a written opinion addressing, inter alia, the

[15] The 25 July 2011 letter is Exhibit 3, pages 193-194; 343-344.

[16] The First Opinion (as provided by the practitioner to CL) is Exhibit 3, pages 3-16. The Second Costs Agreement is Exhibit 3, pages 40-42.

[17] Exhibit 8, para 16; [Practitioner's] Statement of Facts & Contentions (By reference to Substituted Annexure A 3 August) dated 1 September 2020 (Exhibit 2), para 5b; Exhibit 3, pages 202-205 and 467; ts 46, 12 October 2020.

relevant procedure under the Extradition Act and bail pending extradition (**Second Opinion**).[18] The nature and extent of the practitioner's contribution to the final form of the Second Opinion is in issue.

30. On 28 July 2011 the practitioner and JR met with CL at Hakea Prison. During that meeting, relevantly, the practitioner provided the Second Opinion in final form to CL. CL terminated the retainer with the practitioner for a second and final time and signed a written note to that effect.[19]

31. On about 31 July 2011, the practitioner prepared and issued to CL tax invoice no. 0545/trust account statement (**Original Invoice**) for legal fees totalling $31,038.05 including GST, comprising of the practitioner's fees in the sum of $27,500 and $3,528.05 paid to DG Price & Co in respect to the preparation of an enduring power of attorney in favour of a third party.[20]

32. On about 31 July 2011 the practitioner transferred the sum of $27,500 from his trust account to his general account in satisfaction of the Original Invoice.[21]

33. The narration on the Original Invoice provided:

> *"LEGAL FEES INCLUDE receiving instructions and providing advice; discussions with arresting police officer, [KB], [CT], [CL's parents]; Perth Magistrates Court appearance; consultations with the Australian Government Solicitor and counsel; official prison visits x 5 [sic]; establishing enduring power of attorney; consultation with DG Price and Co regarding second power of attorney; legal research; legal opinions on offences, extradition and bail and all matters incidental thereto…*
>
> *Exceeding but say to you [$27,500 inclusive]".*

34. Sometime between about 31 July 2011 and 4 August 2011, CL requested the practitioner provide an itemised bill relating to the Original Invoice.

35. At the practitioner's instruction, and in the absence of any time records of the practitioner's and JR's work for the legal services, on 4 and 5 August 2011, JR prepared, based on her best recollection and a review of relevant documents on her computer, a schedule of the work undertaken on the matter by her alone and by her in

[18] The Second Opinion (as originally prepared by JR) is Exhibit 3, pages 208-213.
[19] The Second Opinion (as provided by the practitioner to CL) is Exhibit 3, pages 17-21.
[20] Exhibit 3, page 47.
[21] Exhibit 3, pages 49 and 88.

company with the practitioner (**Timesheet**), which she then emailed to the practitioner on 5 August 2011.[22]

36. The practitioner neither made nor retained any records of the time he had spent on CL's matter, regarding it unnecessary for him to do so because the First Costs Agreement and the Second Costs Agreement provided for a lump sum fee, and it not being his practice generally to keep timesheets.[23]

21 The First Opinion comprises eleven sections and two annexures/schedules and is a total of 14 pages in length. The First Opinion consists of the following sections and annexures/schedules:

- Section one sets out six child abuse and child exploitation material charges against CL under the law of Florida, United States of America (USA), in tabular form;
- Section two sets out ten potential prosecution witnesses against CL in tabular form;
- Section three sets out two possible defence witnesses for CL in tabular form, namely CL and KB, CL's partner;
- Section four sets out a timeline in tabular form;
- Section five is entitled 'Background' and refers to CL's relationships, including with RP, the co-accused and the mother of the two child complainants, and CL's contact with Lawson Legal, and also states as follows:[24]

5.3.9. Lawson Legal obtained the details of three prominent Miami defence attorneys for consideration by [CL]. Details are:

a) David B. Rothman
Phone: 305 358 9000
(www.tandrlaw.com)

b) Roy Black
Phone: 305 358 6421
("www.royblack.com")

c) David M. Edelstein, PA
Phone: 877 321 4545

[22] Exhibit 3, pages 127-128 and 221.
[23] ts 200, 14 October 2020 and ts 363-364, 15 October 2020.
[24] Exhibit 3, pages 5 and 139.

("www.miami-criminal-lawyer.net");

- Section six notes that extradition from Australia to another country is governed by the *Extradition Act 1988* (Cth) (Extradition Act) and refers to a number of its provisions;

- Section seven is entitled 'Charges Against [RP]' and sets out the charges against RP and admissions made by her, and also refers to injuries sustained by the complainants and further evidence available to the prosecution;

- Section eight is entitled '[CL's] involvement' and refers to evidence of the complainants, evidence of RP, and items seized from CL by Western Australia Child Protection Unit Police;

- Section nine briefly refers to CL's instructions;

- Section ten is entitled 'Other Relevant Considerations' and comprises the subheadings 'The Charges' and '[KB]' (in the First Opinion (as originally prepared by JR)) / '[CL's] instructions' (in the First Opinion (as provided by the practitioner to CL));

- Section eleven is entitled 'Conclusion' and expresses opinions in relation to the likelihood of CL obtaining bail, being extradited to the USA, and being found not guilty of the alleged offences;

- Annexure/Schedule 1 sets out the relevant sections of the statute under which the charges against CL were brought; and

- Annexure/Schedule 2 sets out twelve charges against RP.

22 The content, presentation and formatting (including paragraph numbering) of the First Opinion (as originally prepared by JR) is precisely the same as the content, presentation and formatting of the First Opinion (as provided by the practitioner to CL), with the exception of the following nine changes, which, we infer, the practitioner made to the First Opinion in the relatively short period between when he received the First Opinion from JR at 10.28 am on 26 July 2011 and when the practitioner and JR left to see CL at Hakea Prison later that morning:

1. The practitioner changed the word 'Annexure' to 'Schedule' four times in the document: at the end of section one, in para 7.1, and in the headings of 'Annexure One' and 'Annexure Two';

2. The practitioner substituted a first name starting with 'E' for the first name starting with 'K' in KB's name in section three and para 5.1.3, and put the name starting with 'K' in quotation marks within brackets after the first name beginning with 'E' in those places;

3. The practitioner changed the date when CL attended his office in para 5.3.1 from 'at the end of May 2011' to 'on 6 June 2011';

4. The practitioner deleted the words '(Annexure Three)' at the end of the sentence in section 7.1, which stated 'Facts relating to the charges have been obtained from [RP's] arrest affidavit, Incident Number 2011-048168 (Annexure Three)';[25]

5. The practitioner deleted para 10.1.3 and para 10.1.4 from the First Opinion (as originally prepared by JR), which stated as follows:[26]

> **10.1.3.** It has been reported that [CL] had viewed the videos of the complainants up to eleven times.
>
> **10.1.4.** The Polk County Sheriff's Office has also stated that after viewing the videos [CL] contacted [RP] and berated her.;

6. The practitioner deleted para 10.2 from the First Opinion (as originally prepared by JR), which stated as follows:[27]

> **10.2.** [KB]
>
> > **10.2.1.** [KB] claims that she was fully aware of [CL's] involvement in this matter.
> >
> > **10.2.2.** She has advised counsel that she is willing to give evidence in support of [CL].

[25] Exhibit 3, page 141 (original emphasis).
[26] Exhibit 3, page 145 (original emphasis).
[27] Exhibit 3, page 145 (original emphasis).

> **10.2.3.** [KB] has advised counsel that she had access to both [CL's] computer and passwords associated with various internet website accounts, including those relating to these charges.

and substituted a different para 10.2 in the First Opinion (as provided by the practitioner to CL), which stated as follows:[28]

> **10.2.** <u>[CL's] instructions</u>
>
> **10.2.1.** [CL] has given conflicting instructions to counsel.
>
> **10.2.2.** [CL] has instructed Lawson Legal that he no longer wishes to be represented by them.;

7. The practitioner deleted the following two paragraphs in section eleven and thereby reduced the paragraphs in that section from eight to six (and renumbered them accordingly):[29]

> **11.1.** This opinion has been compiled from information gained by Lawson Legal's independent investigation.
>
> …
>
> **11.7.** The evidence of [KB] may raise some doubt in the culpability of [CL].
>
> …;

8. The practitioner deleted the word 'highly' in para 11.4, which in the First Opinion (as originally prepared by JR) stated as follows:[30]

> **11.4.** In my opinion, it is *highly* unlikely that [CL] will be granted bail due to the seriousness of the offences.; and

9. The practitioner deleted the page numbering at the foot of each page of the document.

23 The Second Opinion is shorter than the First Opinion and comprises three sections and a total of six pages (the Second Opinion (as originally

[28] Exhibit 3, page 11 (original emphasis).
[29] Exhibit 3, page 145.
[30] Exhibit 3, page 145 (bolded emphasis original; italicised emphasis added).

prepared by JR)) / five pages (the Second Opinion (as provided by the practitioner to CL)).

24 The Second Opinion consists of the following:

- Section one again notes that extradition from Australia to another country is governed by the Extradition Act and refers to the same provisions as are referred to in section six of the First Opinion, but also quotes two of them;

- Section two refers to the availability of bail under the Extradition Act and cites and briefly quotes from and discusses factors referred to in ***Cabal v United Mexican States*** [2001] FCA 97; (2001) 111 FCR 418; and

- Section three expresses opinions that no special circumstances exist for bail to be granted, no grounds for an objection to extradition exist, and that CL 'is better served by consenting to the extradition and defending the alleged offences against him in the United States of America', but without providing any reasoning for these opinions.

25 The content, presentation and formatting (including paragraph numbering) of the Second Opinion (as originally prepared by JR) is precisely the same as the content, presentation and formatting of the Second Opinion (as provided by the practitioner to CL), with the exception of the following three changes, which, we infer, the practitioner made to the Second Opinion in the relatively short period between when he received the Second Opinion from JR at 8.37 am on 28 July 2011 and when the practitioner and JR left to see CL at Hakea Prison later that morning:

1. The practitioner deleted the final word in para 1.7, which was 'completed', and substituted the words 'complied with through diplomatic channels', so that the final sentence of the paragraph stated as follows in the Second Opinion (as provided by the practitioner to CL):[31]

> … The arrested person can be held in custody for up to 45 days whilst formal extradition procedures are *complied with through diplomatic channels*.;

[31] Exhibit 3, page 19 (emphasis added).

2. The practitioner changed the heading of section three from 'Opinion' to 'Conclusion'; and

3. The practitioner deleted a statement of consent by CL to be extradited from Australia to the USA, pursuant to s 18 of the Extradition Act, with a place for CL's signature and inclusion of the date on which the consent is given, which appeared on the last page of the Second Opinion (as originally prepared by JR).[32]

26 The Timesheet JR prepared at the practitioner's request relevantly states as follows:[33]

[CL's full name]

Date	**Detail**	**Hours**	**Amount**
…			
23-24 July 2011	• Research to identify charges • Identify client's culpability • Research Florida laws (offences & penalties) • Research Extradition Act • Research Extradition Treaty with USA • Locate relevantly qualified Florida defence attorneys • Compile opinion	16	$7,040
26 July 2011	• Travel to and from Hakea Prison • Discuss client's previous conflicting instructions re: [KB] • Discuss costs and sign cost agreement • Discussed prepared opinion • Discuss duties of power of attorney		

[32] Exhibit 3, page 213.
[33] Exhibit 3, page 127.

	• Take instructions • Take statement from [KB]	6.5	$2,860
26-27 July 2011	• Confirm research re: Treaty & Extradition Act • Research extradition cases (stopping extradition and likelihood of bail) • Consider likelihood of client successfully applying for bail • Compile opinion	11.5	$5,060
…			

Grounds 1 and 3 – Knowingly or recklessly making false and/or misleading representations to the client in itemised accounts as to the work performed by the practitioner

27 It is convenient to address grounds 1 and 3 together, because they concern essentially identical representations made by the practitioner to CL as to the work the practitioner performed and the time he spent working in relation to the First Opinion, taking a witness statement from KB, and in relation to the Second Opinion.

28 On or about 6 August 2011, the practitioner prepared and issued to CL a schedule, described as 'Itemised Account', relating to the Original Invoice (First Itemised Account), recording, during the period 16 July 2011 to 28 July 2011, 63 hours of work performed by himself in CL's matter, in half hour or hourly blocks, at a rate of $440 per hour, and totalling $27,720 (including GST) for his professional fees. The First Itemised Account relevantly states as follows:[34]

[34] Exhibit 3 pages 223-224. We note that there is a discrepancy in the final bullet point of 'Detail' for the work the practitioner represented he performed on 20 July 2011 in relation to the First Opinion in different copies of the First Itemised Account on the practitioner's file. In one copy of the First Itemised Account on the practitioner's file (Exhibit 3, pages 50-51), the final bullet point of Detail for 20 July 2011 states 'Compile above research and construct opinion' (Exhibit 3 page 50), whereas in another copy of the First Itemised Account on the practitioner's file (Exhibit 3 pages 52-53) and in the copy of the First Itemised Account that the practitioner rendered to CL, which we reproduce in this paragraph (Exhibit 3 pages 223-224), the final bullet point of Detail for 20 July 2011 states 'Compile opinion' (Exhibit 3 page 52 and page 223) (which is the same expression used by JR in the Timesheet). In the Second Itemised Account rendered by the practitioner to CL (Exhibit 3, pages 226-227), the final bullet point of Detail for 20 July 2011 states 'Compile above research and construct opinion'. It appears that at some point after the practitioner rendered the First Itemised Account to CL and before the practitioner rendered the Second Itemised Account to CL, he changed his electronic office copy of the First Itemised Account to be the same as the Second Itemised Account in terms of the final bullet point of Detail for 20 July 2011 and then printed it out and placed it on the file.

Lawson Legal

ABN [number]

ITEMISED ACCOUNT (Invoice No 0545) [CL's full name]

Date	Detail	Hours	Amount
…			
20 July 2011	• Research to identify charges • Identify client's culpability • Research Florida laws (offences & penalties) • Research Extradition Act • Research Extradition Treaty with USA • Locate relevantly qualified Florida defence lawyers • Compile opinion	9	$3960
…			
26 July 2011	… • Took statement from [KB]	2	$880
27 July 2011	• Research re: Treaty & Extradition Act • Exhaustive research re extradition cases (stopping extradition and likelihood of bail) • Consider likelihood of client successfully applying for bail • Compile opinion …	7	$3080
…			

…

Richard Lawson

6 August 2011

29 On or about 13 May 2012, the practitioner prepared and issued to CL tax invoice 0545C [sic] / accounts statement for legal fees in the sum of $27,544 (including GST) (Further Invoice) and attached a schedule, described as 'Itemised Account', relating to the Further Invoice (Second Itemised Account), for the same work that was the subject of the Original Invoice and the First Itemised Account. The Second Itemised Account is in identical terms to the First Itemised Account, except that for the 18 July 2011 entry relating to the practitioner's attendance at the Magistrates Court (2 hours), his hourly rate was reduced from $440 to $350 per hour (and hence the total amount for his professional fees was reduced from $27,720 (including GST) to $27,544 (including GST)), and the final bullet point of Detail for the 20 July 2011 entry was changed from 'Compile opinion' to 'Compile above research and construct opinion'. The Second Itemised Account relevantly states as follows:[35]

Lawson Legal

ABN [number]

ITEMISED ACCOUNT (Invoice No 0545C) [sic] [CL's full name]

Date	Detail	Hours	Amount
…			
20 July 2011	• Research to identify charges • Identify client's culpability • Research Florida laws (offences & penalties) • Research Extradition Act • Research Extradition Treaty with USA • Locate relevantly qualified Florida defence lawyers • Compile above research and construct opinion	9	$3960
…			
26 July 2011	… • Took statement from [KB]	2	$880

[35] Exhibit 3, pages 226-227.

27 July 2011	• Research re: Treaty & Extradition Act • Exhaustive research re extradition cases (stopping extradition and likelihood of bail) • Consider likelihood of client successfully applying for bail • Compile above research and construct opinion …	7	$3080
…			

…

Richard Lawson

13 May 2012

30 The Committee contends that:[36]

The First Itemised Account [and the Second Itemised Account were each] false and/or misleading in material respects because, having regard to the contents of the First Costs Agreement and the Second Costs Agreement, [each] represented that:

[1] on 20 July 2011 the practitioner or another legally qualified practitioner spent 9 hours (x $440 per hour (including GST) = $3,960) carrying out research for the purposes of, and drafting, the First Opinion, whereas the true position was that JR alone, who was not then legally qualified, carried out that work on 23 and 24 July 2011;

[2] on 26 July 2011 the practitioner or another legally qualified practitioner spent 2 hours ($880) taking the witness statement from KB, whereas the true position was that JR alone, who was not then legally qualified, took KB's statement on that date;

[3] on 27 July 2011 the practitioner or another legally qualified practitioner spent 7 hours ($3,080) carrying out research for the purposes of, and drafting, the Second Opinion, whereas the true position was that JR alone, who was not then legally qualified, carried out that work on 26 and 27 July 2011.

31 In response, the practitioner contends as follows:[37]

[36] Exhibit 8, para 27 (and para 38).

a. By reference to the Timesheet, it is accepted that JR compiled a draft opinion on instruction and under the supervision of the [practitioner]; however, JR provided only a very limited list of relevantly qualified Florida defence attorneys. Subsequently, therefore, on the 23-24 July 2011, the [practitioner] spent the time itemised on the First Itemised Account [and the Second Itemised Account] completing the research for and writing the First Opinion;

b. On the 26 July 2011, JR travelled to and from Hakea with the [practitioner] and took a statement from [KB] once the [practitioner] had spoken with [KB] and subsequently the [practitioner] settled and amended the statement taken by JR from [KB]. The [practitioner] completed the balance of the work claimed;

c. On the 27 July 2011, the [practitioner] spent in excess of 7 hours himself researching and compiling and discussing with JR the Second Opinion, quite in addition to JR also working on the Second Opinion under the instruction and supervision of the [practitioner]; furthermore, the [practitioner] alone advised on the likelihood of bail.

32 It is essentially common ground between the parties – and we find – that in the First Itemised Account and in the Second Itemised Account (collectively, the itemised accounts), the practitioner represented to CL that he:

- performed the work described under 'Detail' on 20 July 2011 and spent nine hours working in relation to the First Opinion;
- 'Took statement from [KB]' on 26 July 2011 and spent two hours working in relation to the taking of KB's statement; and
- performed the work described under 'Detail' on 27 July 2011 and spent seven hours working in relation to the Second Opinion.

33 In their closing submissions, the parties agree that the key question to be determined by the Tribunal in relation to grounds 1 and 3 is 'whether the practitioner spent the time claimed doing the work described in the First Itemised Account and the Second Itemised Account on the dates 20 July 2011, 26 July 2011 and 27 July 2011'.[38] However, given that the Committee bears the onus of proof, we would characterise the key question to be determined in relation to grounds 1 and 3 as whether we are

[37] Exhibit 2, para 5 (and para 9).
[38] Committee's submissions, para 57 and practitioner's submissions, para 18.

satisfied on a balance of probabilities and feel an actual persuasion on the basis of clear and cogent evidence that the practitioner:

- did not perform the work described under 'Detail' on 20 July 2011 and did not spend nine hours working in relation to the First Opinion;
- did not 'take' KB's statement and did not spend two hours working in relation to the taking of KB's statement; and
- did not perform the work described on 27 July 2011 and did not spend seven hours working in relation to the Second Opinion.

34 The Committee's principal witness is JR. JR's credibility is challenged by the practitioner for essentially two reasons. First, noting, correctly, that JR gave evidence about events 'that occurred more than nine years prior to her testimony', the practitioner submits that JR's evidence 'was not the product of spontaneous recall of recent events [but] rather it was consistent with a version of events contained within a statement dated the 30 March 2017 that was itself compiled and constructed over a significant period of time in consultation with the [Committee]'.[39] Secondly, the practitioner submits that 'there is a clear sense in which [JR] not only objectively sought to recall events but did so in a subjectively aggrieved and resentful state of mind given the allegations and accusations made by the [practitioner] and his wife, against her and brought to her attention during the process of the [Committee] compulsorily liaising with her and constructing her statements'.[40]

35 However, having carefully observed her evidence, for the reasons which follow, we find JR to be an impartial, truthful and credible witness, and we accept her evidence.

36 As the Committee submits, 'JR gave her evidence to the Tribunal in a straight-forward and forthright manner, notwithstanding that she was cross-examined extensively in relation to sensitive matters such as her family and intimate relationships and her mental health'.[41]

37 Having been first approached by the Committee to provide information in relation to the conduct investigation concerning the

[39] Practitioner's submissions, para 7.
[40] Practitioner's submissions, para 7.
[41] Committee's submissions, para 49.

practitioner in 2016, some four to five years after the events in issue, JR was candid in explaining that she needed to refresh her memory and compile her statement in an iterative manner, which she ultimately completed, was satisfied with, and signed, in March 2017. JR gave the following evidence:[42]

> All right. Now, can you explain to the [T]ribunal about what the state of your memory is today about what happened in that matter and what you did? --- I have had to refresh my memory from looking at documents, looking at old statements, but I also do have a - a - a recollection in my mind that has come with me from - from that time.

38 While JR understandably needed to refresh her memory, we accept her evidence that, when she gave evidence to the Tribunal in October 2020, she indeed had 'a recollection in my mind that has come to me … from that time'. The careful and responsive manner in which JR gave her evidence, both in chief and under cross-examination, demonstrated to the Tribunal that she had an actual recollection of the events about which she gave evidence.

39 We do not accept the practitioner's submission that JR sought to recall events 'in a subjectively aggrieved and resentful state of mind given the allegations and accusations made by the [practitioner] and his wife, against her'. Although it was clear during JR's cross-examination that she found the practitioner's and ML's allegations against her to be hurtful, and she stridently rejected their truthfulness, she maintained grace and equanimity, and it was clear to the Tribunal that her evidence was in no way the product of an aggrieved and resentful state of mind, but rather a genuine effort to recall events when asked about them, both by Ms P Cahill SC, who appeared with Mr S Merrick on behalf of the Committee, and by Mr Eyers. Moreover, as the Committee submits, JR was not a complainant against the practitioner, the Committee approached her (rather than the other way around), and the evidence she gave was on the understanding that she was compelled to give evidence in this case. Furthermore, while the practitioner's termination of JR's employment in May 2012 (which we relevantly discuss in relation to ground 7 below) was no doubt difficult for JR, she went on to find employment and remains a practising lawyer. We also accept the Committee's submission that, unlike the practitioner and his wife, JR 'had nothing to gain or to lose by her evidence to the Committee or the Tribunal'.[43]

[42] ts 32, 12 October 2020.
[43] Committee's submissions, para 50.

40 Finally, JR's evidence is supported by contemporaneous documents to which we refer below.

41 For the foregoing reasons, we accept the Committee's submission that '[t]he Tribunal should accept and rely upon JR's evidence as being credible and truthful'.[44]

First Opinion

42 For the following reasons, we are satisfied on a balance of probabilities and feel an actual persuasion on the basis of clear and cogent evidence that the practitioner did not perform the work described under 'Detail' in the itemised accounts on 20 July 2011 (which, we find, JR entirely or substantially performed on 23-24 July 2011) and that the practitioner did not spend nine hours working in relation to the First Opinion, and therefore that the First Itemised Account and the Second Itemised Account each contained false and misleading representations in this respect.

43 As we said earlier, it is agreed between the parties in their closing submissions – and we found at [20] above – that, at the practitioner's instruction, on about 23 and 24 July 2011, JR 'researched and drafted' the First Opinion.[45] Furthermore, JR gave the following evidence, which we accept, in relation to her research and compilation of the First Opinion:[46]

> Can you explain to the [T]ribunal what work is reflected in these bullet points for the entry 23 to 24 July [in the Timesheet]? --- Yes. So when I got home from CLs home, I basically did Google searches to try and find out more information about CLs case because I - we didn't know a lot at the time. I recall that the co-accused's name was [RP], so I recall - - -
>
> Sorry. Do you mind if I just pause there? --- Yes.
>
> So what work had you been asked to do and by whom? --- [The practitioner] had asked me just to see what more information I could find out about the possibility of charges that Mr - CL would be facing.
>
> Yes. All right. So, sorry, I interrupted you, and you were saying that you went on to the internet? --- Yes. So what I started with was essentially a whole lot of Google searches. I googled CLs name; I googled the co-accused's name. And then I found a - an arrest affidavit from Polk County, and from there it identified the charges that the co-accused was facing. And then I did some more research to try and find out exactly what

[44] Committee's submissions, para 51.
[45] Para 23 of the Committee's submissions set out at [20] above.
[46] ts 36-38, 12 October 2020.

the elements of those offences were. So it did take me an extremely long time to - to get to the nitty-gritty of it all.

So then can you just explain to me about the third bullet point, what that was about? ---Yes. So when I - when I found out the offences that [RP] had been charged with, I essentially copied and pasted those into my search engine to try and find the - the - the laws of - of that State in America because I was unfamiliar with that law.

And why did you do that? --- Because I wanted to give as much information as I possibly could.

To whom? --- To [the practitioner].

Right. And the next bullet point "research Extradition Act"? --- Yes. So essentially I was again Google searching because I wasn't aware of - well, I - I was aware of how to find legislation, but it was really late at night. I wanted to just be able to have a brief understanding of the Extradition Act because I had no idea at all. I did look up the treaty with the US - USA - and essentially I just made myself familiar with the relevant statute.

All right. Then this next dot point about "locating relevantly qualified Florida defence attorneys". What was that about? --- Yes. So I recall that CL had asked us to find him a lawyer form [sic] the internet. I googled for "Florida attorneys", and it came up with a whole raft of things. And so then I went and googled "Florida defence attorneys", and then I realised I was spelling - I needed to spell "defence" with an "s". And then essentially I went through the top probably page of the lawyers, went into their website, had a look at whether they dealt with criminal matters and matters of a sexual nature.

And what did you do with that information? --- I essentially compiled all of that into an opinion.

All right. And is that what the last document is about? --- Yes. That's correct.

Was that something you had been asked to do by [the practitioner]? --- I'm not entirely sure whether he asked me to draft an opinion, but --- he certainly asked me to find out some more information.

All right. You put it in an opinion? --- I put it in an opinion. Yes.

44 Contemporaneous documentary evidence also supports JR's evidence that she drafted the First Opinion. A printout of the 'document properties' of the First Opinion from JR's personal computer shows that the document was '[c]reated' (by JR) at 11.50 am on 24 July 2011 (which was a Sunday) and that it was '[l]ast [m]odified' (by JR) at 10.26 am on 26 July 2011

(which was a Tuesday).[47] Furthermore, documentary evidence shows that JR emailed the First Opinion from her home email address to her Lawson Legal work email address at 10.28 am on 26 July 2011.[48]

45 JR also gave evidence, which we accept, that the practitioner had no involvement in the creation of the First Opinion, in the form that she researched and drafted it, and then emailed it from her home email address to her work email address at 10.28 am on 26 July 2011. JR gave the following evidence, which we accept:[49]

> All right. Now, just taking that PDF document [that is, the First Opinion] that you sent to the practitioner, [Exhibit 3] 159 through to 167, can you tell the [T]ribunal, please, what, to your knowledge, was [the practitioner's] involvement in the creation of that document? --- The creation of the document there was no involvement, but we had obviously had a discussion about CLs basic instructions because I note I've included that into the opinion.
>
> All right. So a discussion about the basic instructions, are you able to elaborate on that discussion using direct speech as to what the discussion was to the best of your recollection? --- I can only recall [the practitioner] telling me that CL had been to his office in about May of 2011 saying that he had received an obscene video from the United States. I knew that Mr - or CL was denying the allegation that he was involved in anything in the United States. And, other than that, I think I recall Mr - CL saying that he had very little experience with the internet.

46 JR explained that 'most of the information … in the [First] [O]pinion came from the [co-accused RP's] arrest affidavit' from Polk County in Florida, which JR found through her internet research.[50] JR gave evidence, which we accept, that, at the practitioner's request, at 3.30 pm on 25 July 2011, she sent a PDF copy of RP's arrest affidavit from her home email address to the practitioner's Lawson Legal email address. Again, JR's evidence in this respect is supported by documentary evidence.[51] JR was cross-examined in relation to whether the practitioner had already independently obtained RP's arrest affidavit and she firmly rejected the suggestion that the practitioner already had the arrest affidavit when she emailed it to him at his request. JR gave the following evidence under cross-examination:[52]

[47] Exhibit 3, page 151.
[48] Exhibit 3, page 158.
[49] ts 40, 12 October 2020.
[50] ts 38, 12 October 2020.
[51] Exhibit 3, page 153.
[52] ts 112-114, 13 October 2020.

Would it be fair to say that you don't know whether you obtained that [that is, the arrest affidavit] or whether [the practitioner] had already independently obtained that? --- Well, from my understanding, when I sent it to [the practitioner] he hadn't seen it prior to that. It actually took me quite a long while to find that and lots of research and searches to find that.

Yes. But they were researches with sufficient persistence and entry of - - -?---Yes.

- - - keyword searches that could facilitate the obtaining of that document on an open source? --- Yes. That's right.

Okay. And - when you - at the time that you made your statement - and we appreciate it was made over some period of time - would it - would I be correct in saying you could not, definitively, recall whether it was you who obtained the arrest affidavit or whether [the practitioner] had already provided you that information? --- No. 100 per cent no. That - I was the - well, sorry. 100 per cent no, that I found that arrest affidavit and I had not previously seen it before finding it myself.

…

All right. I'm suggesting to you that [the practitioner] already had the arrest affidavit prior - - -? --- No.

- - -to your obtaining it? --- I do not agree. Do not agree.

Well, can you say, from your own knowledge, what you saw and heard that he didn't have that? --- No. But why would he request that I send him a copy of the affidavit? Because he asked me where did I get the information from the [F]irst [O]pinion and it was pretty much entirely from that arrest affidavit which is why I sent it through to him.

All right. He asked you to send a copy and we've seen the properties of the email - of attaching the file. But what I'm suggesting is he had already had that; he asked you to send another copy? --- No.

And in fact, he spoke to you about the content of that affidavit before you started work on the 23rd? --- Definitely not.

All right. But we go back to the timesheet, don't we, in the sense that- - -?---Yes.

- - -prior to the 23rd – yes? --- Yes.

Since his first contact with CL you cannot say what work [the practitioner] had done in relation to this file before your direct involvement? --- That's right but he never discussed with me that affidavit prior to me sending it to him.

47 It is clear from JR's evidence set out immediately above that the practitioner had not independently obtained RP's arrest affidavit. The practitioner had not given the arrest affidavit to JR, or even told her about it, when he instructed her to conduct the research that resulted in her preparing the First Opinion, and had never discussed it with JR prior to him asking her to email it to him. Furthermore, as JR asked rhetorically during this passage of cross-examination, 'why would [the practitioner] request that I send him a copy of the affidavit [if he already had it]?'.[53] If the practitioner had already independently obtained the arrest affidavit, as counsel for the practitioner suggested to JR during cross-examination, it is highly likely that the practitioner would have given it to JR and discussed it with her when he instructed her to research and draft the First Opinion, and it is highly unlikely that he would have asked her to email it to him when she found it through her own research.

48 JR gave the following evidence, which we accept, that the details of the three Florida defence attorneys at para 5.3.9 of the First Opinion (set out above at [21] above) came from her internet research and that the practitioner's only involvement in relation to the identification of possible defence attorneys in the First Opinion was a cursory discussion about the names found by JR after she researched and drafted the First Opinion:[54]

> All right. Now, just come back to the PDF version [of the First Opinion (as originally prepared by JR)] at page 161 [of Exhibit 3], and you've got paragraph 5.3.9 there? ---Yes.
>
> And you will see there's the names of three, as they like to say, attorneys from Miami. Do you know where that information came from? --- My Google searches.
>
> And who inserted it into the PDF? --- I did.
>
> And whether and to what extent Mr Lawson had any involvement in the inclusion of those names in the PDF document? --- There was no involvement in the names, but we did have a discussion about the names.
>
> Right. After you produced the PDF? --- That's correct.
>
> And tell us about that discussion, please? --- I had said to [the practitioner] that I - I was reluctant to even include these names because we didn't really know if they were good enough, essentially, to act on CLs behalf. I said to him these are the ones that had come up first in the - basically in the Google search, and the conversation was along the lines of, "Well, just because they come up at the top of the Google search doesn't mean that

[53] ts 114, 13 October 2020.
[54] ts 42-43, 12 October 2020.

> they're the best lawyers." And we referred to - [the practitioner] referred to a Perth practitioner who came at the top of the Google list, and he made a comment that that practitioner was not the best in Perth.
>
> All right. What about discussions about any other names? Did you have any discussions about the names of other attorneys? --- No. The only other discussion I recall was about Mr Edelstone [sic] because I recall Richard saying, "That's a Jewish name", and that Jewish attorneys were quite prominent in the US.

49 It is also clear from the time sequence of what occurred on 26 July 2011 and from the nine relatively minor amendments to the First Opinion that were made between the First Opinion (as originally prepared by JR) and the First Opinion (as provided by the practitioner to CL) that the practitioner performed only very minor work on the First Opinion. As indicated earlier, the First Opinion was emailed by JR from her home email address to her work email address at 10.28 am on 26 July 2011. Both JR and the practitioner gave evidence that they went to Hakea Prison to confer with CL and provide him with the First Opinion later that morning, and that it generally takes between 30 and 40 minutes to get from the City to the prison.[55] Thus, the practitioner had no more than about an hour in which to review and amend the First Opinion, after he received it electronically from JR and before he and JR left to provide it to CL at Hakea Prison. Furthermore, the practitioner only made the nine relatively minor amendments to the First Opinion referred to at [22] above before he provided the document to CL.

50 The Timesheet that JR prepared at practitioner's request on 4 and 5 August 2011, which we relevantly set out at [26] above, in particular the 'Detail' for 23-24 July 2011, provides relatively contemporaneous documentary evidence that JR (and not the practitioner) entirely or substantially performed the work in relation to the First Opinion that is detailed in the First Itemised Account and in the Second Itemised Account for 20 July 2011. As JR said in evidence-in-chief, she was asked by the practitioner to provide in the Timesheet 'the best estimate of the actual time I had spent on those matters' and '[t]he hours [recorded in the Timesheet] were my hours … I would have calculated how much time I had spent working on each of … the things that I actually had done'.[56]

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[55] ts 44, 12 October 2020 (JR) and ts 235, 14 October 2020 (practitioner).

[56] ts 34, 12 October 2020. The practitioner gave consistent evidence in cross-examination with JR's evidence in this respect:

'Now, you asked [JR] to write down the time she has spent on the CL matter, didn't you? --- Yes.

And you asked her to write down everything that was done on the matter, whether by her or by you, on the days that she was involved in it? --- By her, yes.

Just by her? --- Just by her.' (ts 204, 14 October 2020)

Furthermore, as JR specifically indicated in cross-examination, 'all of the seven dot points on 23/24 July [2011] [in the Timesheet] relate only and solely to what [she] did'.[57] The seven 'dot points' describing the work that JR performed on 23-24 July 2011, as set out in the Timesheet, are identical to the seven bullet points set out in the First Itemised Account for 20 July 2011, and are identical to the seven bullet points set out in the Second Itemised Account for 20 July 2011, other than the minor change in the final bullet point from 'Compile opinion' to 'Compile above research and construct opinion'.

51 Furthermore, we do not accept the practitioner's evidence in relation to the work he said he performed and the time he said he spent working in relation to the First Opinion. The practitioner gave evidence that the First Itemised Account and the Second Itemised Account are each '[t]ruthful'[58] and, in particular, that he carried out his own independent research in relation to the subject matter of the First Opinion and found the 'arrest affidavit [for RP] … [a]nd I printed that off and it gave me all the facts and the charges … and I used that as a good starting point',[59] and that 'I drafted my version of [the First Opinion]',[60] which he also described as 'a rough draft of my research',[61] that 'was very similar to this opinion [that is the First Opinion]'.[62] For the reasons which follow, we do not accept the practitioner's evidence in relation to the work he said he performed and the time he said he spent working in relation to the First Opinion.

52 As we said earlier, if the practitioner had carried out his own independent research and located RP's arrest affidavit, it is highly likely that he would have given the arrest affidavit to JR and discussed it with her when he instructed her to research and draft the First Opinion, and it is highly unlikely that he would have asked JR to email it to him when she found it through her own research. Furthermore, the practitioner gave evidence in re-examination that '[w]hen I went to see [CL] at Hakea [Prison] on 21 July 2011, I had the arrest warrant [that is, affidavit] with me, and I highlighted and I made notes on that arrest warrant [that is, affidavit]'.[63] The practitioner also gave evidence in re-examination that when he and JR returned to the Lawson Legal office on 26 July 2011,

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JR could not recall the origin of the dollar amounts recorded on the Timesheet and said 'I could only assume that [the practitioner] provided me with that figure' (ts 34, 12 October 2020).

[57] ts 103, 13 October 2020.

[58] ts 174, 14 October 2020 (First Itemised Account) and ts 175, 14 October 2020 (Second Itemised Account).

[59] ts 219, 14 October 2020.

[60] ts 230, 14 October 2020.

[61] ts 230, 14 October 2020.

[62] ts 231, 14 October 2020.

[63] ts 360, 15 October 2020.

after conferring with CL and providing him with the First Opinion at Hakea Prison, to take KB's statement, 'I remember I had the arrest affidavit present when I was doing it because those were the facts in relation to the offences'.[64] If the practitioner had in fact found RP's arrest affidavit through his own independent research, printed it off and highlighted and made notes on it, it is likely that the printed hardcopy with highlighting and notes would have been retained on the practitioner's hard copy file in relation to CL's matter. However, there is no such document on the practitioner's file that he produced to the Committee when required to do so in 2015.[65] We therefore find that the practitioner did not carry out independent research in relation to the subject matter of the First Opinion and find RP's arrest affidavit, but rather was provided with the arrest affidavit by JR, who had found it when conducting her research for the First Opinion. It follows that we do not accept the practitioner's evidence that, on the basis of his independent research and in particular the arrest affidavit he said he found, he prepared his own independent rough draft of the First Opinion.

53 The practitioner was questioned in cross-examination as to the time he said he spent working in relation to the First Opinion in terms of the work described in the bullet points under 'Detail' for 20 July 2011 in the itemised accounts. He said that he spent 'two hours'[66] working on the first bullet point ('Research to identify the charges'), 'half an hour, maybe, 15, 20 minutes'[67] working on the second bullet point ('Identify client's culpability'), 'say an hour'[68] working on the third bullet point ('Research Florida laws (offences & penalties)'), 'half an hour, 45, maybe an hour, tops'[69] working on the fourth bullet point ('Research Extradition Act'), '[n]ot very long at all'[70] working on the fifth bullet point ('Research Extradition Treaty with USA'), and 'the bulk of the research', being 'hours and hours and hours' and indeed 'days on this, actually'[71] working on the sixth bullet point ('Locate relevantly qualified Florida defence lawyers'). It is instructive to set out the whole of the practitioner's evidence given in

[64] ts 370, 15 October 2020.
[65] The practitioner gave evidence that his electronic file in relation to CL's matter (and other matters) was lost as a result of a crypto virus in January 2015 (ts 281, 15 October 2020). The Committee disputes whether such a crypto virus occurred. It is unnecessary to resolve that question, because the practitioner gave evidence that he printed off and highlighted and annotated a hard copy of the arrest affidavit.
[66] ts 222, 14 October 2020.
[67] ts 222, 14 October 2020.
[68] ts 223, 14 October 2020.
[69] ts 223, 14 October 2020.
[70] ts 224, 14 October 2020.
[71] ts 224, 14 October 2020.

cross-examination in relation to the work he said he performed on the sixth bullet point:[72]

> Do you mean in relation to obtaining further names of potentially suitable defence attorneys in Florida? --- I think it was in relation to those defence attorneys. That was the bulk of the research.
>
> The bulk of the research? --- I spent hours and hours and hours.
>
> How many hours? --- I spent days on this, actually, because if I may explain. What I was searching for were Miami basically attorneys that could do this sort of work and I didn't know anybody over there and Mr CL will say he wanted to know the price that they were going to charge for the work, "So I want you to get me the best attorney." He was selling his home, everything, so we could pay for it and that's where I really concentrated on that. So I initially googled these defence lawyers. I went to their websites and then from there I took these - each individual lawyer that I thought was appropriate and did a specific Google search on them to see what would come up in terms of work they've done.
>
> How long did it take you to do that work? --- It was an ongoing work. I did it on the weekend, but a week.
>
> It took you a week? --- Well, I never finished it. I just had to stop eventually, but I remember I worked on the weekend on it, I worked - every day I was - or bits of my times searching these defence lawyers.
>
> Estimating how much time you spent; how many hours? --- That's -that's difficult, because I did it in pieces and not in one hit. So I would say could be 10, 12 hours all up, maybe even more. I'm not really sure.
>
> So coming back to your response at [5a], your response document [that is, Exhibit 2, which is set out at [31] above]? --- Yes.
>
> The position was this, was it, that first of all [JR] gave you a list of defence attorneys? --- No.
>
> Just come back to your response, please? --- Yes.
>
> However, [JR] or:
>
>> JR provided only a very limited list of relevantly qualified Florida defence attorneys.
>
> ? --- Yes.
>
> Continuing:

[72] ts 224-230, 14 October 2020.

> Subsequently, therefore, on 23 to 24 July the [practitioner] spent the time -

etcetera. So are you saying she provided a list of attorneys before 23 July? --- I can't remember. She - we worked on it together, three of us.

Go back to your response document, please. This is what you say, [5a]:

> JR provided only a very limited list of relevant qualified Florida defence attorneys.

When do you say she did that? --- I can't recall.

Well, it was before 23 July on the basis of this document, your response, isn't it? --- I worked on this on the 20th.

Just listen to the question. We're talking about what [JR] provided to you? --- Yes. I can't - I can't recall.

Listen to the question, please. Read what you've written there in the response document. You say there to the [T]ribunal that [JR] provided only a very limited list before 23 July. You agree with that; that's what you're telling the [T]ribunal? --- She may have.

That's what you've said, Mr Lawson, isn't it?

EYERS, MR: Actually, it's not. It's a passing of the content of that. In other words, the interpolation of prior to 23 and 24 July. It's not time specific if we actually look at this.

[JUDGE PARRY]: Well, at the moment I think counsel is simply asking whether Mr Lawson had said what's written in paragraph [5a]. That's what I understood was the question.

EYERS, MR: Can I just respectfully suggest it might be fairer to just put to Mr Lawson what's there and ask what he meant by it, rather than - - -

[JUDGE PARRY]: Well, he has got it in front of him.

EYERS, MR: Yes, exactly. But my learned friend gave her own interpretation of that. In other words, she imported "prior to 23 and 24 July" in relation to a limited list of defence attorneys. I just think it's important to focus upon what's there rather than perhaps inadvertently giving it a context which it doesn't bear on its face.

[JUDGE PARRY]: I think it was a reasonable question based on what's there, but let's start again.

EYERS, MR: Thank you.

[JUDGE PARRY]: Can you please ask a question.

CAHILL, MS: Paragraph [5a], Mr Lawson? --- Yes. Yes.

So it is accepted that [JR] compiled a draft opinion on your instruction and under your supervision? --- Yes. Yes.

However, you say:

> [JR] provided only a very limited list of relevant qualified Florida defence attorneys.

? --- Yes.

Is that true or not? --- Yes.

So she provided a list to you that had only a limited number of names? --- Yes.

How many? --- I can't - I can't recall. There weren't too many.

Approximately? --- Three, four, maybe.

And then you say:

> Subsequently -

so you mean after she gave you that very limited list -

> therefore, because of that on 23 to 24 July - - -

? --- Yes.

You spent time completing research for and writing the first opinion; see that? --- Yes. Yes, I do.

Therefore, she must have given you the list of defence lawyers, the three or four, on it before 23 or 24 July; is that the case? --- Well, according to this - I wouldn't - I wouldn't argue with that, because it said "subsequently". Yes.

It's your document, Mr Lawson? --- But I can't recall, ma'am.

Mr Lawson, this is your document? --- Yes.

This is your case? --- Right.

Is it true or not? --- Well, I would accept that if I wrote that in there.

Is it true or not? --- I can't remember. I can't remember.

Did you remember at the time that you wrote this? --- Probably. You're asking me now how many attorneys that she gave me before the 23rd or 24th.

Mr Lawson, I'm asking you about when you received the list from her, whether that was before the 23rd; yes or no? --- It could have been, yes.

You wrote this response [that is, Exhibit 2] last month, Mr Lawson? --- Yes.

Did you remember then? --- Well, I accept it was before the 23rd then.

Well, is that your case? Is that what you say happened? --- I would accept that, yes. I know I got a list from her.

Are you accepting that that is what you say happened? --- This happened, but the research was not complete. I can put it to you like that.

So you after that started doing research on Florida attorneys? --- No, I continued.

So you had been doing it at the same time she had? --- Yes. I started on the 20th.

Why didn't you put that in [5a]? --- I don't know, ma'am.

Is it because it's not true, Mr Lawson? --- No.

Is it because you didn't actually do any research on Florida lawyers? --- That was the bulk of my research.

Is it because this is actually untrue at [5a]? --- No, it's not untrue.

Now, if you go to page 159 [of Exhibit 3], and this is the draft of the opinion provided by [JR] to you; see that? --- Yes.

And you go to page 161? --- Yes.

And at 5.3.9 there's three lawyers nominated? --- That's right.

And if we go back to page 3. 3? --- 3. Yes.

This is the version of the opinion contained on your firm's file? --- Yes.

And you accept that this is the version that you amended before you gave it to [CL]? --- On page 5?

3. 3 through to 16? --- Mmm.

Do you mean yes? --- Yes.

And we go to page 5? --- Yes.

5.3.9? --- Yes.

Using the same terms as page 161? --- Yes.

You didn't do any research on Florida lawyers, Mr Lawson. You just used what [JR] gave you? --- No. Those lawyers - I selected those lawyers. [JR] was in consultation with me along with my practice manager.

That's not true, is it? --- It is true. I spent the bulk of my work - those three - I even called their firms.

You don't reflect that time in your itemisation, do you? --- No, because it was way - it was too excessive, way too excessive.

The time making phone calls? --- No, no, no, no, no. I never got through to them. I talked to their secretaries and they - they couldn't give me a quote on how much it would cost. They didn't have the brief. They didn't know - they - they just, "Sorry, it's not the way do things," but I tried with these three specifically, because that's what the client wanted.

You contacted these three? --- I phoned their firms, yes. I remember I worked at night because of the time different, but I never got through - - -

But you never actually spoke to any of them? ---Not to the lawyers, no.

Because? --- Because I got the legal secretaries and they - and I wanted to get a quote on what it would cost and they said, "I'm sorry, but we're not prepared to give you a quote." They wouldn't give me the answer, so I couldn't tell CL what these lawyers would cost in terms - that's what he wanted to know.

Is that true, Mr Lawson? --- Yes. Yes.

Couldn't you have just said to these secretaries, "Well, look, I actually need to speak to the lawyer, because I'm here in Australia and we don't know anything about this system"? --- That's exactly what I - - -

"And I need to just get a rough idea about the approximate costs." Did you say anything like that? --- I said, "I'm calling from Australia and I would like to know what a matter like this would cost." And then none of them were very forthcoming. I said, "I actually wanted to speak to the lawyer. What's the (indistinct) and all the rest (indistinct) I have no documentation and can't give you any quotes."

Come back to page 52, please, entry for 20 July, the last dot point. You say that you constructed - sorry, you say "compile opinion". And by that do you mean that you drafted it? --- Yes. That's - yes. That's correct.

But you didn't? --- I did.

54 We find that the practitioner lied in his evidence that he 'spent hours and hours and hours' and indeed 'days' on finding relevantly qualified Florida defence lawyers. The only defence lawyers that are referred to in

the First Opinion are the three defence lawyers that JR found in her own research and which she briefly discussed with the practitioner in the terms set out at [48] above, after she emailed the First Opinion to the practitioner at 10.28 am on 26 July 2011. It is highly implausible – to the point of being fanciful – to suggest that the result of 'hours and hours and hours' and indeed 'days' of research in relation to Florida defence lawyers on the part of the practitioner was, coincidentally, precisely the same three attorneys located by JR through her research and listed by her in the First Opinion. Furthermore, as the passage of cross-examination set out in the preceding paragraph shows, the practitioner was evasive and hyperbolic in his evidence. The manner in which the practitioner gave his evidence on this issue (and generally) can be contrasted with the clear and responsive manner in which JR gave her evidence, both in chief and in cross-examination.

55 The practitioner's evidence given in re-examination in relation to Florida defence lawyers he said he researched only served to further undermine his credibility. Referring to the three attorneys listed by JR at para 5.3.9 of the First Opinion, the practitioner said the following in re-examination:[73]

> … those three attorneys that are listed there are the ones that I - I selected to go in there [that is, in para 5.3.9 of the First Opinion] on a very extensive search which started off with many attorneys, and I culled them back, shortlisted them and came up with the best three, which are listed there [that is, in para 5.3.9 of the First Opinion]. So I did that. …

56 As indicated earlier, it is agreed between the parties in their closing submissions – and we found at [20] above – that, at the practitioner's instruction, on about 23 and 24 July 2011, JR 'researched and drafted' the First Opinion, including para 5.3.9, which lists three Florida defence attorneys.[74] The three attorneys identified at para 5.3.9 of the First Opinion were not selected, suggested or listed by the practitioner, but rather by JR, after she found them doing her own research. As we said earlier, it is implausible – to the point of being fanciful – to suggest that after a 'very extensive search that started off with many attorneys' and that he 'culled them back, shortlisted them and came up with the best three', the practitioner's research came up with, coincidentally, precisely the same three attorneys located by JR through her research and listed by her in the First Opinion. Moreover, the three lawyers the practitioner said he ultimately 'came up with' are not, as he asserted, 'the ones that I …

[73] ts 361, 15 October 2020.
[74] Para 23 of the Committee's submissions set out at [20] above.

selected to go in *there*' and 'the best three, which are listed *there*',[75] that is in para 5.3.9 of the First Opinion. The three attorneys who are listed at para 5.3.9 of the First Opinion were selected to go there and were listed there by JR, not by, or as a result of independent research undertaken by, the practitioner.

57 ML gave evidence that she and the practitioner researched Florida defence attorneys for CL while they were at the Lawson Legal office together. ML said they 'were just trying to work out, you know, which lawyers were the appropriate lawyers that [CL] could use at that time' and 'there was times there where I actually stood next to [the practitioner], going through some stuff in regards to the lawyers'.[76] ML also gave evidence that she 'located more Miami lawyers than [the practitioner]'[77] and that they discussed them and 'we narrowed it down … to about 20, and then we went through each one, trying to get like, a CV on them to see exactly what their background was'.[78]

58 We do not accept ML's evidence on this aspect for two reasons. First, ML is obviously not an independent witness, being the practitioner's wife. Indeed, in re-examination, the practitioner described ML and himself as 'a very close unit' and said that 'she has always been there for me'.[79]

59 Secondly, ML's evidence that she and the practitioner researched Florida defence attorneys for CL is inconsistent with her statement to JR in an email dated 31 May 2012 that 'I have nothing to do with the day to day work of the [Lawson Legal] office (I'm just the bookkeeper, working after hours)'.[80] The email sent by ML to JR on 31 May 2012 states as follows:[81]

> …
>
> Subject: Apology
>
> Hi [shortened form of JR's first name]
>
> I would like to apologise for the conversation that we had on the weekend. The reason for the call was to let you know that I don't dislike you and that my primary concern was the health of my husband. My intent was never

[75] Emphasis added.
[76] ts 447, 21 October 2020.
[77] ts 448, 21 October 2020.
[78] ts 448, 21 October 2020.
[79] ts 383, 15 October 2020.
[80] Exhibit 6.
[81] Exhibit 6 (emphasis added).

> to hurt you but to let you know that you're not alone and if you need a helping hand that I was available for you as a friend.
>
> I have no animosity whatsoever towards you and believe that there was a miscommunication. I feel that you're wanting to leave the position because of me and that shouldn't be the case. *I have nothing to do with the day to day work in the office (I'm just the bookkeeper, working after hours)* and it would be a shame to see you leave under these circumstances.
>
> I'm willing to put the past behind us.
>
> Regards
>
> [ML's first name]

60 ML gave evidence that the statement in her email to JR that 'I have nothing to do with the day to day work of the office (I'm just the bookkeeper, working after hours)' is 'untrue[,] because I did more than just being a bookkeeper'.[82] ML sought to justify or explain her 'untrue' statement in the email on the basis that 'I just minimised the whole thing because I wanted [JR] to feel like - that she was very important in the office'.[83]

61 However, we find ML's justification or explanation for her statement 'I have nothing to do with the day to day work in the office (I'm just the bookkeeper, working after hours)' being 'untrue' to be unconvincing. JR had undertaken practical legal training at Lawson Legal from March 2011 and had been an employed solicitor at the firm for about five months by the time of the email that ML sent on 31 May 2012. JR therefore knew precisely what role ML had at Lawson Legal. It makes no sense for ML to seek to 'minimise' her role by making an 'untrue' statement to JR. Moreover, in 2011-2012, and until 2014, ML worked full-time as the business manager at the Queen Elizabeth Medical Centre Trust. That full-time role meant that she was unable to do the day-to-day work in the office of Lawson Legal, including researching Florida defence attorneys for CL in July 2011, and that her role at the time was limited to bookkeeping, working after hours.

62 We also find that the practitioner lied in his evidence at the end of the passage of cross-examination set out at [53] above, where he said that he did the work described in the final bullet point under 'Detail' for 20 July 2011 in the itemised accounts ('Compile Opinion' in the First Itemised Account and 'Compile above research and construct opinion' in

[82] ts 471, 21 October 2020.
[83] ts 460, 21 October 2020.

the Second Itemised Account). For the reasons given earlier, we accept JR's evidence that she compiled the First Opinion / compiled her research and constructed the First Opinion. Indeed, as we said earlier, it is agreed between the parties in their closing submissions – and we found at [20] above – that, at the practitioner's instruction, on about 23 and 24 July 2011, JR 'researched and drafted' the First Opinion.[84] Drafting the First Opinion involved 'compiling' it or 'compiling' (JR's) research and 'constructing' it.[85]

63 In light of our findings in relation to the practitioner's evidence set out above, we consider that he is not a truthful and credible witness in relation to any of the evidence he gave to the Tribunal in this matter, and we consequently do not accept any of his testimony unless it is consistent with other evidence we accept. We note, however, that even on the practitioner's evidence, once we exclude the 'hours and hours and hours' he said he spent on locating suitably qualified Florida defence lawyers, he only said that he performed a total of four to four-and-a-half hours on the other work described under 'Detail' for 20 July 2011 in the itemised accounts, rather than nine hours as specified in the itemised accounts.

64 Finally, in relation to the First Opinion, as indicated earlier, the practitioner contends that as 'JR provided only a very limited list of relevantly qualified Florida defence attorneys … [and] [s]ubsequently, therefore, on the 23-24 July 2011, the [practitioner] spent the time itemised on the First Itemised Account [and the Second Itemised Account] completing the research for and writing the First Opinion'.[86] However, as we found earlier, JR researched and drafted the First Opinion, including finding and listing the three Florida defence attorneys at para 5.3.9, on 23 and 24 July 2011, and only provided her draft of the First Opinion to the practitioner at 10.28 am *on 26 July 2011*. Thus, JR had not provided a draft of the First Opinion to the practitioner in order for him to be able to '*[s]ubsequently ... on the 23-24 July 2011* … spen[d] the time itemised on the First Itemised Account [and the Second Itemised Account] completing the research for and writing the First Opinion'.[87] Moreover, the only writing of the First Opinion that the practitioner did was to make the nine relatively minor amendments referred to earlier in the approximately one hour that he had after receiving the First Opinion

[84] Para 23 of the Committee's submissions set out at [20] above.
[85] The practitioner's evidence at the end of the passage of cross-examination, that he 'drafted' the First Opinion, is also inconsistent with para 5a of his Statement of Facts & Contentions set out at [31] above.
[86] Exhibit 2, para 5a (and para 9).
[87] Emphasis added.

from JR and before they left to confer with and present the First Opinion to CL at Hakea Prison.

Taking KB's statement

65 For the following reasons, we are satisfied on a balance of probabilities and feel an actual persuasion on the basis of clear and cogent evidence that the practitioner did not 'take' KB's statement (which, we find, JR entirely or substantially did) and that the practitioner did not spend two hours working in relation to the taking of KB's statement, and therefore that the First Itemised Account and the Second Itemised Account each contained false and misleading representations in this respect.

66 JR and the practitioner gave essentially consistent evidence in relation to the taking of KB's statement. They both gave evidence that, having conferred with CL at Hakea Prison on 26 July 2011, they arrived back at the office of Lawson Legal at around 2 pm to find KB waiting for them there. JR gave evidence that the practitioner set up a template for a witness statement on his office computer and spoke to KB for 'probably 10 to 15 minutes'[88] in the reception area before he left JR and KB together in his office to enable JR to take KB's statement without the practitioner being present. JR gave evidence that this 'took at least an hour, maybe more, and then it [that is, KB's witness statement] was immediately printed'.[89] JR agreed in cross-examination that the reason the practitioner left her and KB together in his office, without him also being present, during the taking of KB's statement, was 'to avoid any conflict arising' from the practitioner being present during the taking of the statement.[90] JR also gave evidence that after she took KB's statement, she asked the practitioner whether there was any issue with her witnessing the statement and, after the practitioner said that would be no issue, KB signed the statement and JR witnessed it. JR said that after KB signed the statement, JR left the Lawson Legal office, leaving the practitioner and KB together.[91]

67 The practitioner did not disagree that the initial discussion he had with KB, prior to JR taking KB's statement in the practitioner's office and in his absence, lasted for 'only about 10 to 15 minutes', although he said that that discussion took place in his office, rather than in the reception

[88] ts 45, 12 October 2020.
[89] ts 46, 12 October 2020.
[90] ts 123, 13 October 2020.
[91] ts 46, 12 October 2020.

area, as JR recalled it.[92] The practitioner gave evidence that, while JR took KB's statement in his office, 'I went for a walk' to the Lawson Legal mailbox, which is not in the same building, and 'I remember I came back and I still had to wait outside the office because the door was shut and [JR] was taking the statement'.[93] The practitioner gave evidence that his initial discussion of 10 to 15 minutes with KB, before JR commenced taking her statement, as well as the period when he was going for a walk and sitting outside in the reception area, while JR took KB's statement, was 'over an hour, minimum an hour'.[94] In cross-examination, the practitioner gave evidence that he settled KB's statement, after JR took it and before KB signed it, but 'I didn't make any amendments'.[95] Later in his cross-examination, the practitioner said, inconsistently, that he did make some amendment to KB's statement, which 'could have been a date or something[,] … [b]ut it wasn't significant'.[96] The practitioner described KB's statement as taken by JR as 'a very good statement'.[97] The practitioner said that, after KB signed the statement and JR witnessed it, 'I did have a few words with [KB]',[98] and when asked how long that discussion took, the practitioner said 'it wasn't long'.[99] In re-examination, the practitioner said that he spoke with KB after JR left for '[p]ossibly another half an hour, possibly'.[100]

68 On the practitioner's evidence, his work in relation to taking KB's statement involved an initial discussion of 10 to 15 minutes, reading the statement after it had been taken, and either making no amendments or making a minor amendment to it, and talking to KB after JR left for up to half an hour. Thus, on his own evidence, the practitioner's involvement in the taking of KB's statement for which he could charge CL was no greater than about an hour. JR gave evidence, which we accept, that 'it took at least an hour, maybe more' for her to take KB's statement in the practitioner's absence.[101] The practitioner's evidence that his initial discussion of 10 to 15 minutes with KB and the period when he was excluded from his office, while JR took KB's statement, 'was over an hour, minimum an hour',[102] is consistent with JR's evidence.

[92] ts 291, 15 October 2020.
[93] ts 370, 15 October 2020.
[94] ts 370, 15 October 2020.
[95] ts 282, 15 October 2020.
[96] ts 287, 15 October 2020.
[97] ts 287, 15 October 2020.
[98] ts 282, 15 October 2020.
[99] ts 283, 15 October 2020.
[100] ts 374, 15 October 2020.
[101] ts 46, 12 October 2020.
[102] ts 370, 15 October 2020.

69 It appears that the entire process of taking KB's statement, including the initial discussion of 10 to 15 minutes between the practitioner and KB, the taking of KB's statement by JR in the practitioner's office and in his absence, the reading of KB's statement by the practitioner and the making of (possibly) one minor amendment by him, and the discussion between the practitioner and KB after JR left the office, took in total about two hours. However, the practitioner's involvement in the taking of KB's statement took only about half that time. Thus, the practitioner did not perform the work of 'taking' JR's statement and did not spend two hours working in relation to the taking of KB's statement that he charged CL for and that he represented in the First Itemised Account and in the Second Itemised Account that he performed.

Second Opinion

70 For the following reasons, we are satisfied on a balance of probabilities and feel an actual persuasion on the basis of clear and cogent evidence that the practitioner did not perform the work described under 'Detail' in the itemised accounts on 27 July 2011 (which, we find, JR entirely or substantially performed on 26-27 July 2011) and that the practitioner did not spend seven hours working in relation to the Second Opinion, and therefore that the First Itemised Account and the Second Itemised Account each contained false and misleading representations in this respect.

71 As indicated earlier, it is agreed between the parties in their closing submissions – and we found at [20] above – that, at the practitioner's instruction, on or about 26 and 27 July 2011, JR 'researched and drafted' the Second Opinion addressing, among other things, the relevant procedure under the Extradition Act and bail pending extradition.[103] For the reasons given earlier, we accept JR's evidence as truthful and credible. In particular, in relation to the Second Opinion, we accept JR's following evidence, which was directed to the four bullet points JR wrote under 'Detail' for 26-27 July 2011 in the Timesheet she prepared (reproduced at [26] above):[104]

> Can you explain to the [T]ribunal what these entries, these four dot points, reflect? --- Yes. I recall that CL had inquired with us during the Hakea visit about applying for bail. So [the practitioner] asked me to go and have a look at the Extradition Act and also to consider what Mr CLs chances of bail would be. So I again went back and looked at the treaty between Australia and the USA. I also on 27 July downloaded a copy of the

[103] Para 29 of the Committee's submissions set out at [20] above.
[104] ts 48, 12 October 2020.

> Extradition Act to my personal laptop, and I researched the cases, essentially using Google because it was done at home and I didn't have access to Lexus [sic] Nexus [sic] or any of those kinds of things.
>
> All right. Just tell me a little bit more about the researching of the cases and what you did and what that produced? --- So, again, it was a lot of Google searches with lots of different terms. I recall the case of Cabal, C-a-b-a-l, and I read that case and probably four or five other cases, which essentially all referred back to Cabal, so I thought that was the seminal case in relation to the likelihood of bail. So I took what I thought was the relevant points from each of those cases, but particularly Cabal, and I compiled an opinion.

72 As in relation to the First Opinion, contemporaneous documentary evidence supports JR's evidence that she researched and drafted the Second Opinion. In particular, the documentary evidence shows that JR emailed the Second Opinion from her home email address to the practitioner's Lawson Legal work email address at 8.37 am on 28 July 2011.[105]

73 We also accept JR's evidence that the practitioner had 'no involvement with the actual drafting of the [Second] [O]pinion [which JR emailed to him at 8.37 am on 28 July 2011], but we did have a conversation about what the consent should say'.[106] The 'consent' refers to the formal consent by CL for extradition that JR included at the end of the Second Opinion, but which the practitioner deleted before providing the Second Opinion to CL at Hakea Prison later that morning.

74 Furthermore, as in relation to the First Opinion, it is clear from the time sequence of what occurred on 28 July 2011 and from the three relatively minor amendments that were made between the Second Opinion (as originally prepared by JR) and the Second Opinion (as provided by the practitioner to CL) that the practitioner performed only very minor work on the Second Opinion. As indicated earlier, JR emailed the Second Opinion to the practitioner at 8.37 am on 28 July 2011. The practitioner agreed in cross-examination that he and JR left the Lawson Legal office at about 9.30 am that morning in order to be at Hakea Prison for their 10 am appointment with CL to whom the practitioner handed the Second Opinion. Thus, the practitioner only had about an hour in which to review the Second Opinion (as originally prepared by JR) and make any amendments to it. Furthermore, the practitioner only made the three

[105] Exhibit 3, page 207 and pages 208-213; ts 49, 12 October 2020.
[106] ts 50, 12 October 2020.

relatively minor amendments to the Second Opinion referred to at [25] above before he provided the document to CL.

75 As in relation to the First Opinion, the Timesheet prepared by JR on 4 and 5 August 2011, which we relevantly set out at [26] above, in particular the 'Detail' for 26-27 July 2011, provides relatively contemporaneous documentary evidence that JR (and not the practitioner) entirely or substantially performed the work in relation to the Second Opinion that is detailed for in the First Itemised Account and in the Second Itemised Account for 27 July 2011. As indicated earlier, JR gave evidence, which we accept, that '[t]he hours [recorded in the Timesheet] were my hours … I would have calculated how much time I had spent working on each of … the things that I actually had done'.[107] In the First Itemised Account and the Second Itemised Account, the practitioner used precisely the same language under 'Detail' for 27 July 2011 as JR had used for 26-27 July 2011 in the Timesheet to describe the work that she had carried out in relation to the Second Opinion, with the minor exceptions that the practitioner deleted the word 'Confirm' at the beginning of the first bullet point and added the word 'Exhaustive' at the beginning of the second bullet point, and in the Second Itemised Invoice also substituted 'Compile above research and construct opinion' for 'Compile opinion' in the final bullet point.

76 As indicated earlier, the practitioner's contention in relation to the Second Opinion is that he 'spent in excess of 7 hours himself researching and compiling and discussing with JR the Second Opinion, quite in addition to JR also working on the Second Opinion under the instruction and supervision of the [practitioner]; furthermore, the [practitioner] alone advised on the likelihood of bail'.[108]

77 The practitioner did not in fact specifically state in the evidence he gave before the Tribunal that he spent in excess of seven hours himself researching and compiling and discussing with JR the Second Opinion. Rather, having not said anything to this effect during his evidence-in-chief, during cross-examination, the practitioner said that he

[107] ts 34, 12 October 2020. The practitioner gave consistent evidence in cross-examination with JR's evidence in this respect:
'Now, you asked [JR] to write down the time she has spent on the CL matter, didn't you? --- Yes.
And you asked her to write down everything that was done on the matter, whether by her or by you, on the days that she was involved in it? --- By her, yes.
Just by her? --- Just by her.' (ts 204, 14 October 2020).
JR could not recall the origin of the dollar amounts recorded on the Timesheet and said 'I could only assume that [the practitioner] provided me with that figure' (ts 34, 12 October 2020).
[108] Exhibit 2, para 5c.

had prepared a 'rough draft' of the Second Opinion. The practitioner gave the following evidence in cross-examination:[109]

> And you accept that [JR] provided you with a draft [of the Second Opinion]? --- Yes.
>
> And you don't suggest that you prepared your own rough draft? --- I did, and I - based on what the - the conference with the AGS solicitor; he gave me a seminal case on that matter.
>
> Are you saying you prepared a rough draft - - -?--- Yes.
>
> - - -of this opinion as well? --- Absolutely.
>
> …
>
> You didn't compile the opinion? --- I put - I put it together in a rough draft like - like the other one.
>
> The opinion that CL received, you did not compile? --- I - not in that form, no. It wasn't in that form, but I had the same information as [JR] had, and I settled her opinion, checking it with my work.
>
> …
>
> Yes. You did not compile it [that is, the Second Opinion], did you? --- I compiled it in my rough draft.
>
> This is not the document you compiled? --- She compiled this.

78 We do not accept the practitioner's evidence that he prepared a 'rough draft' of the Second Opinion. Whereas in his letter to the Committee dated 28 May 2017 in relation to the conduct investigation, the practitioner said in relation to the First Opinion that 'I also conducted my own research and formulated my own rough draft, which was similar in content to [JR's] draft but not as neatly formatted',[110] and although he said in the same letter that 'I adopted [JR's] final draft of the Second Opinion that I collaborated on with her',[111] he did not refer to having prepared a 'rough draft' of the Second Opinion. Indeed, the practitioner had not mentioned having created his own 'rough draft' of the Second Opinion in any correspondence with the Committee in relation to the conduct investigation, in any correspondence with the Board in relation to his application for renewal of this local practising certificate, in his responsive Statement of Facts & Contentions (Exhibit 2) filed in this

[109] ts 258, 14 October 2020, ts 264, 14 October 2020 and ts 274, 15 October 2020.
[110] Exhibit 3, page 466.
[111] Exhibit 3, page 468.

proceeding, or in his evidence-in-chief. Given that the practitioner had never previously mentioned creating his own 'rough draft' of the Second Opinion, we find that his reference to it for the first time during cross-examination was an untruthful invention 'on the run'. It appears from the flow of the cross-examination set out in the preceding paragraph that the practitioner invented his 'rough draft' of the Second Opinion, because of the wording of the final bullet point of the itemised accounts for 27 July 2011 ('Compile opinion' in the First Itemised Account and 'Compile above research and construct opinion' in the Second Itemised Account). Plainly, the practitioner could not have performed the work in the final bullet point under 'Detail' in relation to the Second Opinion, because she '[c]ompile[d] [that] opinion' and '[c]ompile[d] above research [that she entirely or substantially performed] and construct[ed] [that] opinion'. The practitioner seems to have invented his 'rough draft' of the Second Opinion to be able to say that he, too, '[c]ompile[d] [an] opinion' and '[c]ompile[d] above research and construct[ed] [an] opinion'.

79 As we said earlier, in light of our findings in relation to the practitioner's evidence in respect of the First Opinion, we consider that he is not a truthful and credible witness in relation to any evidence he gave to the Tribunal in this matter and consequently we do not accept any of his testimony unless it is consistent with other evidence we accept. We also specifically reject the practitioner's evidence about having prepared a 'rough draft' of the Second Opinion. We do not accept the practitioner's contention that he spent in excess of or even seven hours himself researching and compiling and discussing with JR the Second Opinion or working in relation to the Second Opinion.

80 Finally, although it is correct, as the practitioner contends, that he advised on the likelihood of bail, he did so in the words drafted by JR in para 3.1 of the Second Opinion, having only changed the heading of section 3 of the Second Opinion from 'Opinion' to 'Conclusion'.

Did the practitioner engage in professional misconduct in terms of grounds 1 and 3?

81 As the Committee submits, the First Itemised Account and the Second Itemised Account each 'convey that the practitioner spent the time specified on 20 July 2011, 24 [sic-26] July 2011 and 27 July 2011 performing the work described under the heading "Detail"' and that 'the practitioner's time spent specified for those dates, resulted in the production of the First Opinion, KB's witness statement, and the Second

Opinion'.[112] It follows from our findings above that the statements in the itemised accounts were relevantly false and misleading, because the practitioner did not himself perform the work described under 'Detail' in the itemised accounts on 20 July 2011, 26 July 2011 (in relation to KB's statement) and 27 July 2011 (in relation to the Second Opinion) (which, we find, JR entirely or substantially performed) and that the practitioner did not spend nine hours working in relation to the First Opinion, two hours working in relation to taking KB's statement, and seven hours working in relation to the Second Opinion.

82 The only reasonable inference which is open on the evidence is that the practitioner knew that the statements in the itemised accounts were false and misleading and intended that CL be misled by the statements so as to justify his claim for the payment of the costs charged to CL. The practitioner obviously knew what work he did and did not do in relation to CL's matter. The practitioner sought to mislead CL as to the work he had performed in relation to CL's matter in order to justify the fees he had charged.

83 As the Court of Appeal said in ***Vogt v Legal Practitioners Complaints Committee*** [2009] WASCA 202 at [61], '[f]or a practitioner, in the course of his or her practice, intentionally to mislead anyone is a serious breach of the practitioner's professional duty'. Intentionally seeking to mislead a client in relation to the work that a practitioner performed on the client's matter is both conduct that would be reasonably regarded as disgraceful, that is bringing or deserving disgrace, shameful or disreputable, or dishonourable, that is showing lack of honour, ignoble, base and shameful, (within the first limb of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61]) and conduct that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the professional good repute and competence (within the second limb of the restatement of common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committtee*** at [61]). Moreover, the practitioner's conduct was grossly unfair to CL and involved serious dishonesty and therefore serious impropriety affecting his character, which is indicative of a failure either to understand or to practise the precepts of honesty and fair dealing that are essential to the privilege and responsibilities of legal practice.

[112] Committee's submissions, paras 85 and 86.

84 The practitioner therefore engaged in professional misconduct under the LP Act in terms of each of grounds 1 and 3.

Ground 2 – Knowingly or recklessly making false and/or misleading representations to the Committee in response to a letter regarding the client's complaint

85 By letter dated 7 October 2011, the Committee wrote to the practitioner in relation to a complaint made by CL that the practitioner overcharged him. The practitioner responded to the Committee by letter dated 31 October 2011 in which he relevantly stated:[113]

> [CL] was very demanding of my services. *I worked exclusively* for [CL] from 16 July 2011 to 24 July 2011, at which time I was terminated upon instructions from [KB] [sic] via [CL] [sic] … .

86 Read in the context of the expression used by the practitioner in his letter to the Committee dated 31 October 2011 ('I worked exclusively for [CL] from 16 July 2011 to 24 July 2011') the apposite meaning of the adjective 'exclusive' is 'shutting out all other activities: *an exclusive occupation*',[114] and the adverb 'exclusively' has a corresponding meaning. Although the practitioner gave evidence that the content of his letter to the Committee dated 31 October 2011 is '[t]ruthful',[115] it is clear on the whole of the evidence – and indeed even clear from the practitioner's own evidence – that he did not shut out all other work activities and, therefore, did not work 'exclusively' for CL during the period from 16 July 2011 to 24 July 2011.

87 The practitioner's position in his responsive Statement of Facts & Contentions (Exhibit 2) is that he 'did not schedule any new work in the period of 16 to 24 July 2011' and although he did work 'for clients other than CL' during this period, this involved only the following:[116]

> i. On the 19 July 2011, attendance at Hakea [Prison] to confirm with a client (RD) to confirm ongoing representation prior to future filing of a Notice of Acting (out of the office for no more than 2 hours in total);
>
> ii. Attendance at the Perth Magistrates court on 20 July 2011 for no more than 30 minutes (a Committal Mention hearing);

[113] Exhibit 3, page 370 (emphasis added).
[114] *Macquarie Dictionary Online* (original emphasis).
[115] ts 178, 14 October 2020.
[116] Exhibit 2, para 7b.

iii. Attendance at the Perth District court [sic] on the 22 July to file a Notice of Acting and to collect two pre-sentence reports (in total less than 40 minutes away from his office).

88 During cross-examination, the practitioner confirmed that he did the work set out immediately above for three different clients during the relevant period.[117] Thus, even on the practitioner's own evidence, he did not work 'exclusively' for CL from 16 July 2011 to 24 July 2011, and his statement to the Committee in his letter dated 31 October 2011 to this effect was false and misleading.

89 Furthermore, the practitioner's diary for the period 18 July 2011 to 24 July 2011, which is in evidence,[118] indicates that he also performed work for clients other than CL and the three other clients to whom he referred in his evidence, during the period 18 July 2011 to 24 July 2011. The practitioner was cross-examined about those entries. For example, there is reference in the practitioner's diary to an appointment at 2 pm, which was then changed to 5 pm, on Monday 18 July 2011, with MT, and a reference at 9 am the following morning to MT with the words '(extra-ordinary)' after his name.[119] The practitioner gave the following evidence in cross-examination in relation to these entries in his diary:[120]

> CAHILL, MS: So this is the way it went, Mr Lawson, isn't it, that [MT] was a client who came to you for the purpose of an application for an extraordinary driver's licence? You've met with him on the afternoon of 18 July and then attended on his behalf at the Perth Magistrates Court the following morning? --- No. He's not even in my - I don't know who this guy is; not in my register.
>
> …
>
> What do you mean he's not in your register? --- Well, you have to have a register, according to the Legal Practice Act, of every client.
>
> According to the Legal Practice Act, you need to have a register of every client? --- I believe so, yes.
>
> What are you referring to? --- A list in a book of every client that you have.
>
> And you have one, do you? --- Yes, I do.

[117] ts 297, 15 October 2020.
[118] Exhibit 3, pages 531-532.
[119] Exhibit 3, page 531.
[120] ts 306-307, 15 October 2020.

> And you've referred to it recently for the purposes of coming here today and giving evidence, have you? --- I went to this. If it's not there, it's not there.
>
> So sorry, just answer that question? --- Yes, we did. I - I looked at these names. They're [not] in the register.
>
> So you have a register in your office? --- Yes. My practice manager keeps it.
>
> All right. And is it in hard copy or electronic? --- It's, I believe, in hard copy.
>
> All right? --- I believe; I'm not sure now. You would have to ask her.
>
> Well, you checked, you see, and you - - -? --- She checked it.
>
> She checked it? --- Yes, she checked it.

90 The practitioner's evidence in this relatively short passage of cross-examination contained a material inconsistency as to whether he or his wife checked the register to which he referred. At first the practitioner said that he himself checked the register: 'I went to this' and 'I looked at these names. They're [not] in the register'. Just three questions later, the practitioner gave inconsistent evidence: 'She [that is, ML] checked it' and 'Yes, she [that is, ML] checked it'. Furthermore, the practitioner's evidence that the maintenance of the register to which he referred is a legal requirement under the LP Act, and that the Lawson Legal register is 'in hard copy' and not electronic, is inconsistent with the evidence of ML.

91 ML confirmed that she enters names of clients in the register, but otherwise gave inconsistent evidence to the practitioner's evidence in relation to the register. ML described the register as 'not a legal document'.[121] When asked by Mr Eyers what the register was created for, ML said 'I just wanted to know which files that we had, when - when they could be destroyed, and we actually use it because sometimes we get repeat customers, and we've already got that data or the information of the client there'.[122] ML also gave evidence that 'so far as [she] understood it, [she] did [not] have a professional obligation to keep this document [that is, the register]'.[123] ML also gave evidence that the Lawson Legal client register was created in electronic form 'in about 2007'.[124]

[121] ts 461, 21 October 2020.
[122] ts 461-462, 21 October 2020.
[123] ts 462, 21 October 2020.
[124] ts 501, 21 October 2020.

92 Similarly to the cross-examination of the practitioner in relation to MT, the practitioner was also cross-examined about a number of other names appearing to be appointments in his diary during the period in question, some with dollar amounts written next to or below the name. The practitioner said in relation to each of those names that he did not do any legal work for the person, because the name of the person is not in the 'register'.

93 In light of the material internal inconsistency in the practitioner's evidence and the material inconsistencies between his evidence and ML's evidence in relation to the register, we do not accept the practitioner's evidence that either he or ML checked the register and did not find the names of the people appearing in his diary during the period 18 July 2011 to 24 July 2011 listed as clients of Lawson Legal.

94 When the practitioner referred to the 'register' during his cross-examination (on the morning of 15 October 2020), Ms Cahill called for production of the register. After the lunch adjournment that day, Mr Eyers told the Tribunal that he had spoken with ML during the adjournment and she informed him that the register is in electronic form and she forwarded it to him electronically. Mr Eyers then forwarded the register to Ms Cahill.[125] The Committee's legal representatives reviewed the register overnight and on the following morning (16 October 2020) the Lawson Legal register (entitled 'Lawson Legal file registry') was tendered and became Exhibit 10 (Excel version), Exhibit 11 (PDF version) and Exhibit 14 (electronic version). The practitioner became unwell during an adjournment on 16 October 2020 and was taken by ambulance to hospital. When the hearing resumed on 21 October 2020, the practitioner was cross-examined in relation to the register and conceded that his clients AB and RJ, for whom he performed legal work (not during the period 16 July 2011 to 24 July 2011), are not recorded as clients in the register.

95 ML was also cross-examined in relation to the register as follows:[126]

> This register is not complete, is it? It doesn't have all of the clients that Lawson Legal has ever had? --- It's just a record for myself.
>
> Just answer the question: it's not complete, is it? --- Well, to my knowledge, it's inaccurate.
>
> Do you remember the client [E]? --- [E], yes.

[125] ts 355-356, 15 October 2020.
[126] ts 503-504, 21 October 2020.

He is not in here? --- That's an oversight.

[RJ]. He was a significant client? --- Yes.

Not in here? --- Yes, that's an oversight. This is only from my records and my records only.

[AB], a significant client? --- Yes.

Not in here? --- But as I said, this is only for my records and my records only.

It's not complete, is it? --- It's an oversight.

Just listen to the question? --- I am listening to the question.

The register is not a complete record of all clients Lawson Legal has ever had? --- Well, to my - it's not - to my knowledge, it was a pretty accurate one, to - - -

Well, to your knowledge now, it's not, isn't it? --- Well, there is a few of them that you have mentioned.

So you accept- - -?--- That's an - it's an oversight on my behalf.

So you accept it's incomplete? --- Well, it's an oversight on my behalf.

Do you accept it is incomplete? --- Well, they're not there, so yes.

96 Plainly, the Lawson Legal register to which the practitioner referred in cross-examination is not a comprehensive and reliable document recording the names of all of Lawson Legal's clients. Thus, the absence of a name from the register does not establish that that person is not a client of Lawson Legal for whom the practitioner performed legal work.

97 Given the material inconsistency within the practitioner's evidence and the material inconsistencies between his evidence and ML's evidence in relation to the register (see [89]-[91] above) and that the register is not a comprehensive and reliable document recording the names of all Lawson Legal's clients, we do not accept the practitioner's evidence that he did not perform legal work for the persons referred to in his diary during the period 18 July 2011 to 24 July 2011. We are satisfied on a balance of probabilities and feel an actual persuasion on the basis of the entries in the practitioner's diary that he performed legal work, including for MT in relation to an application for an extraordinary driver's licence, during the period 18 July 2011 to 24 July 2011, in addition to working for CL and the three other clients for whom the practitioner conceded he did work during this period. This finding is also supported by the

practitioner's statement in a statutory declaration made on 18 December 2017, which is in evidence, that during the period 16 July 2011 to 24 July 2011 'I still had a business to run so I answered the office phone and received instructions and gave advice, but [CL's] matter took priority'.[127]

98 By the time the practitioner was re-examined by Mr Eyers, he appears to have recognised that he did not, in fact, work 'exclusively' for CL during the period 16 July 2011 to 24 July 2011. The practitioner gave the following evidence in re-examination:[128]

> Now, it's suggested to you in terms by Ms Cahill that by making the representation, that you worked exclusively for [CL], that you were being deliberately misleading by using that word. What would you like to say about that? --- Yes. Well, my intention was not to mislead anybody in terms of the work I did with [CL]. Having reflected on all of this now, *probably a better word I should have used would be predominantly* because there were two little small issues with getting court dates and seeing [RD] in a prison for a very short period of time. Depending on - I mean, I - *I understand what the word exclusive means*. *I was taking it in a very broad context*. I think in retrospect when you're answering these kind of questions to put to the [C]ommittee *it was a wrong word to use*. *Predominantly would have been a better word*. But in my mind I still believe that working for [CL] he devoted – he had my full attention and I wasn't taking on any other clients, and then I erroneously formed the word exclusively. That's on reflection what I'm thinking right now, having heard everything and saw everything again. But he had my attention the whole time. He was the - he was the dominant figure, if I could put it that - had a couple of things in the diary I attended to very briefly, no new clients came in. These were things that were already there that I addressed. And I didn't think that that would be, sort of, detracting from the work or the instruction that [CL] gave and my assurance to him that I was working solely for him during this period of time is what I wanted to say.
>
> Okay? --- So it wasn't my intention to mislead the [C]ommittee by using the word exclusively. It was a bad word in retrospective considering what I had to go through to explain all this. *Predominantly would have been a better word* given those two other little matters.

99 Notwithstanding the practitioner's evidence in re-examination set out immediately above, Mr Eyers submits on behalf of the practitioner that his representation that he 'worked exclusively for [CL] from 16 July 2011 to 24 July 2011' in his letter to the Committee dated 31 October 2011 was not false or misleading, variously because:

[127] Exhibit 3, page 539.
[128] ts 393-397, 15 October 2020 (emphasis added).

- of the manner in which the practitioner 'intended the representation of exclusivity to be construed … [as] best explained by him in the [s]tatutory [d]eclaration sworn by him dated 18 December 2017';[129]

- the way in which the practitioner 'described fully the tasks he performed for other clients over the period in question' during cross-examination informed 'his use of the word exclusively';[130]

- the practitioner 'was practising as a sole practitioner with no office staff and administrative assistance from ML largely outside of business hours';[131] and

- the Tribunal should find that the practitioner's 'intention', when he used the 'exclusively', was to refer simply to 'no other substantive legal work including written or oral legal advice or court hearings of a substantive nature'.[132]

We do not accept any of these submissions. In both his statutory declaration dated 18 December 2017 and in his evidence in cross-examination to which Mr Eyers referred, the practitioner invited the Committee and the Tribunal to interpret his words 'I worked exclusively' not 'in a very narrow and literal way', but 'in a broader practical sense considering all the work that I completed [during the period 16 July 2011 to 24 July 2011]',[133] and according to 'a broader term of exclusive, the majority and the main components and what you were instructed to do from [CL] was achieved in an exclusive manner in that I did not do any work of that nature with any other clients'.[134] However, as the Committee aptly submits, the practitioner's attempt to define such an alternative meaning of 'exclusively' 'was gibberish, wrong and was not a meaning which either a legal practitioner or a lay person would understand the word to mean'.[135] It is frankly ridiculous to suggest that a lawyer of 20 years' experience thinks that the word 'exclusively', used in the context of a letter responding to an allegation that he overcharged his client, can bear the meaning asserted by the practitioner in the statutory declaration or in his evidence. As the Committee also submits, the practitioner's

[129] Practitioner's submissions, para 36.
[130] Practitioner's submissions, para 37.
[131] Practitioner's submissions, para 39.
[132] Practitioner's submissions, para 42.
[133] Statutory declaration (Exhibit 3, page 539).
[134] ts 297-298, 15 October 2020.
[135] Committee's submissions, para 96.

evidence in relation to this ground is 'an untruthful attempt after the event to reconcile his statement to the Committee with the objective facts'.[136] Given that it appears from the diary entry that the practitioner represented MT on an extraordinary driver's licence application on 19 July 2011, we do not accept the submission that he did not appear in any 'court hearings of a substantive nature' during the relevant period. Given that the practitioner did work for other clients during the relevant period and said in his statutory declaration made on 18 December 2017 that 'I still had a business to run so I answered the office phone and received instructions and gave advice',[137] we do not accept the submission that he did 'no other substantive legal work including written or oral legal advice' during the period. However, in any case, the practitioner did not qualify his representation to the Committee in any way, but baldly represented that he worked 'exclusively' for CL during the relevant period.

100 The practitioner's statement that he worked 'exclusively' for CL during the relevant period was plainly false and misleading, because he did not work exclusively for CL during that period, but also worked for (on his own admission) three other clients and also (we find) for additional clients who had appointments with him in his diary, including MT. The practitioner did not shut out all other work during the relevant period.

101 Furthermore, the only reasonable inference on the evidence we accept is that the practitioner knew that the representation he made was false and misleading and that he intended the Committee to be misled by it. This is because the practitioner obviously knew that he had performed work for clients other than CL during the period 16 July 2011 to 24 July 2011 and he asserted that he worked 'exclusively' for CL during that period in order to counter CL's complaint that the practitioner had overcharged him and, in particular, to justify the significant fees he had charged.

102 As the Tribunal[138] said in ***Legal Profession Complaints Committee and Lee-Steere*** [2010] WASAT 189 at [22] - [24]:[139]

> 22 The reputation of the legal profession in the eyes of the public and among its members depends to a large extent upon the power and ability of the Board and the Committee to regulate effectively the

[136] Committee's submissions, para 97.
[137] Exhibit 3, page 539.
[138] Judge Sharp DP, Ms F Child M and Mr M Odes QC SSessM.
[139] Followed in ***Legal Profession Complaints Committee and Chang*** and ***Legal Profession Complaints Committee and Tang***.

activities of all legal practitioners. The purpose of the Act is expressly stated in its long title 'to provide for the regulation of legal practice in Western Australia'.

23 It is incumbent upon all legal practitioners to ensure that the above purpose is realised in all respects. To that end, legal practitioners are obligated to cooperate with the reasonable requests of their regulatory body to the fullest extent. It is a duty owed to the Board and the Committee in a measure not less than the duty owed by a practitioner to his or her client and to a Court or Tribunal.

24 In our view it is unacceptable, both to members of the public and to the profession, for a practitioner to undermine the authority of a regulatory body by ignoring its requests for information or failing to respond to those requests with alacrity and with complete honesty. To flaunt that authority is to fly in the face of the legislative intent and disables the body from executing its statutory functions. Such conduct is viewed by this Tribunal in a most serious light and will not be countenanced.

103 For a legal practitioner to intentionally seek to mislead the Committee in the course of an investigation into a complaint about the practitioner is conduct that would be reasonably regarded as disgraceful, that is bringing or deserving disgrace, shameful or disreputable, or dishonourable, that is showing lack of honour, ignoble, base and shameful, by practitioners of good repute and competence (within the first limb of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61]) and conduct that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the profession of good repute and competence (within the second limb of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61]). Moreover, the practitioner's conduct involved serious dishonesty and therefore serious impropriety affecting his character, which is indicative of a failure either to understand or to practise the precepts of honesty and fair dealing which are essential to the privilege and responsibilities of legal practice. It also 'undermine[d] the authority of a regulatory body'[140] to effectively investigate the complaint made by CL about the practitioner's conduct and thereby to seek to protect the public in their dealings with lawyers and to maintain the reputation and standards of the legal profession. The practitioner therefore engaged in professional misconduct under the LP Act in terms of ground 2.

[140] ***Legal Profession Complaints Committee and Lee-Steere*** [24].

Grounds 4 and 5 – Knowingly or recklessly making false and/or misleading representations to the Supreme Court and to the client in the costs assessment proceeding

104 On about 21 May 2012, CL filed an application for assessment of costs of the Further Invoice (and the Second Itemised Account), which became proceeding LPA 16 of 2012 (costs assessment proceeding). On 3 August 2012, Registrar Dixon ordered Lawson Legal to file and serve an affidavit deposing to the terms and extent of its retainer by CL. Only 16 August 2012, the practitioner swore an affidavit, which he then filed, or permitted to be filed, in the costs assessment proceeding, on or about 17 August 2012 (affidavit). At para 15 - para 18 of the affidavit, the practitioner, in effect and relevantly, verified the correctness of those parts of the First Itemised Account and the Second Itemised Account in relation to the First Opinion and the Second Opinion which are the subject of grounds 1 and 3. At para 20 of the affidavit, the practitioner expressly made the same representation that is the subject of ground 2, namely 'I worked exclusively for [CL] from 16 July 2011 to 24 July 2011'.[141]

105 On 18 June 2013, the practitioner filed his Bill of Costs for assessment pursuant to the LP Act in the costs assessment proceeding (Bill of Costs). Although the Bill of Costs was drafted by the practitioner's counsel in the costs assessment proceeding, DG, who is an expert in costs, both DG and the practitioner gave evidence that the dates, details and hours of work referred to in the Bill of Costs were provided by the practitioner to DG. As DG said in evidence, 'my input was directed to scale allowances and scale references [only]'.[142] The relevant entries under 'Detail' in the Bill of Costs for 20 July 2011, 26 July 2011 and 27 July 2011 are identical to those contained in the First Itemised Account (except that the final bullet point for 20 July 2011 states 'Compile above research and construct opinion', rather than 'Compile opinion') and the Second Itemised Account. The Bill of Costs relevantly states as follows:[143]

The bill of the Practitioner for taxation

Item	**Date**	**Detail**	**Hours**	**Scale reference**	**Amount**
…					
4.00	20 July 2011	• Research to identify		LPCD [that is, the	

[141] Exhibit 3, page 274.
[142] ts 151, 13 October 2020.
[143] Exhibit 3, pages 347-348.

		charges • Identify client's culpability • Research Florida laws (offences & penalties) • Research Extradition Act • Research Extradition Treaty with USA • Locate relevantly qualified Florida defence lawyers • Compile above research and construct opinion	9	Legal Practitioners Criminal Determination]	3960
…					
… 10.40	26 July 2011	• Took statement from [KB]	2	LPCD	880
11.10 …	27 July 2011	• Research re: Treaty & Extradition Act • Exhaustive research re extradition cases (stopping extradition and likelihood of bail) • Consider likelihood of client successfully applying for bail • Compile above research and construct opinion …	7 …	LPCD	3080 …
…					

106 It is essentially common ground between the parties – and we find – that in the Bill of Costs the practitioner represented to the Supreme Court and CL that he:

- performed the work described under 'Detail' on 20 July 2011 and spent nine hours working in relation to the First Opinion;
- 'Took statement from [KB]' on 26 July 2011 and spent two hours working in relation to the taking of KB's statement; and
- performed the work described under 'Detail' on 27 July 2011 and spent seven hours working in relation to the Second Opinion.

107 On 19 August 2013, Registrar Dixon assessed the Bill of Costs and allowed $11,768. On 8 November 2013, the practitioner lodged objections to the assessment. On 23 July 2014, Registrar Dixon conducted a review of his assessment of costs and heard the parties' submissions. Registrar Dixon subsequently provided written reasons in which he allowed an additional amount of $291 to the amount which he previously allowed, giving an assessment of $12,059.

108 The representations made by the practitioner in the affidavit referred to at [104] above are the subject of ground 4 and the representations made by the practitioner in the Bill of Costs referred to at [106] above are the subject of ground 5. The practitioner gave evidence that the content of the affidavit is 'truthful'[144] and that the information he provided to DG for the purposes of the Bill of Costs is '[t]ruthful'.[145] However, as Mr Eyers properly concedes on behalf of the practitioner, '[l]ogically the Tribunal's findings as the characterisation of the statements in question in these [g]rounds [4 and 5] must … follow from the findings as to the same statements contained within the itemised accounts [the subject of grounds 1 and 3] and October 2011 letter [the subject of ground 2]'.[146]

109 For the reasons we have given in relation to grounds 1 - 3, the representations made by the practitioner to the Supreme Court in the affidavit referred to at [104] above and the representations made by the practitioner to the Supreme Court and CL in the Bill of Costs referred to at [106] above were false and misleading. Furthermore, the only

[144] ts 177, 14 October 2020.
[145] ts 178, 14 October 2020.
[146] Practitioner's submissions, para 45.

reasonable inference on the evidence is that the practitioner knew that the representations in the affidavit and the Bill of Costs were false and misleading and intended that the Supreme Court be misled by the representations in the affidavit and the Bill of Costs and that CL be misled by the representations in the Bill of Costs. The practitioner obviously knew what work he did and did not do in relation to CL's matter and that he had performed work for clients other than CL during the period 16 July 2011 to 24 July 2011. He made the false and misleading representations in the affidavit and the Bill of Costs in order to obtain a favourable assessment of costs.

110 As indicated earlier, intentionally seeking to mislead a client in relation to work performed by a practitioner constitutes professional misconduct falling within both limbs of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61]. Intentionally seeking to mislead a court is self-evidently serious professional misconduct falling within both limbs of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61].[147] As the Court of Appeal said in ***Vogt v Legal Practitioners Complaints Committee*** at [61], for a practitioner to mislead a court 'goes to the very heart of a practitioner's duty as an officer of the court and therefore to the proper administration of justice'. As the Court of Appeal said in the same case at [70]:

> As we have observed, it is a matter of the utmost seriousness for a practitioner intentionally to mislead a court. The effective administration of the justice system and public confidence in the system depends upon the absolute and unconditional discharge by practitioners of their duty of honesty and candour to the court. It is a duty so fundamental that factors such as relative inexperience and lack of supervision do not weigh so heavily in mitigation as they might in other situations. …

111 Furthermore, as the Tribunal[148] said in ***Legal Profession Complaints Committee and Segler*** [2010] WASAT 135 at [69]:

> It is no less the case when a member of the legal profession is engaged in court or tribunal proceedings in an individual capacity as when he or she represents a client.

112 The practitioner therefore engaged in professional misconduct under the LP Act in terms of each of grounds 4 and 5.

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[147] See ***Legal Profession Complaints Committee and A Legal Practitioner*** [148] - [151] and the authorities reviewed there.

[148] Judge Eckert DP, Mr DR Parry SM and Mr G Potter SSessM.

Ground 6 – Not refunding the client

113 There was a difference in the sum of $5,247 between the Original Invoice ($27,500) and the Bill of Costs ($22,253). The Committee contends – and the practitioner does not contest – that the practitioner should have refunded the sum of $5,247 to CL on about 18 June 2013, which was the date on which the Bill of Costs was filed. The practitioner did not refund this sum to CL until about 1 October 2014. On that date, following agreement between the parties, the practitioner paid CL the sum of $19,760 by way of settlement of CL's outstanding claims in the costs assessment proceeding, including the sum of $15,441 representing the difference between the $27,500 paid by CL and the taxed costs allowed on the review of $12,059.

114 The practitioner does not dispute that he engaged in professional misconduct in terms of ground 6. We find that, by not refunding to CL the sum of $5,247 between 18 June 2013 and about 30 September 2014, the practitioner engaged in professional misconduct under the LP Act in terms of ground 6, in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed or approved by members of the legal profession of good repute and competence.

Ground 7 – Knowingly or recklessly making false and/or misleading representations to the Committee in response to a letter regarding the conduct investigation

115 By letter to the practitioner dated 19 April 2017, the Committee, relevantly and in substance, invited the practitioner to make submissions in respect of the conduct the subject of grounds 1 - 5. The practitioner responded by letter to the Committee dated 28 May 2017 (28 May 2017 letter) and enclosed a witness statement from ML dated 30 April 2017 (ML statement).

116 In the 28 May 2017 letter, the practitioner:

- disputed 'your allegation that the true position was that only [JR] did all the work on the First Opinion' and said, relevantly, 'I also conducted my own research and formulated my own rough draft, which was similar in content to [JR's] draft but not as neatly formatted' and 'I believe I spent a full weekend researching this opinion (at least 12 hours work)';[149]

[149] Exhibit 3, page 466.

- said 'I spent two hours of my time in the **process of obtaining a statement** from [KB]';[150] and
- disputed 'your allegation that the true position was that only [JR] did all the work on the Second Opinion' and said, relevantly, 'I did my own research into extradition and bail and also discussed it with [JR]' and 'I charged [CL] for the time that only I spent on this opinion'.[151]

117 For the reasons we have given in relation to grounds 1 and 3 above, the practitioner's statements in the 28 May 2017 letter set out in the preceding paragraph were false and misleading. Furthermore, the only reasonable inference is that the practitioner knew that these representations were false and misleading and intended that the Committee be misled by them. The practitioner obviously knew what work he did and did not do in relation to CL's matter. In responding to the Committee in this way, the practitioner was obviously seeking to persuade the Committee to terminate the conduct investigation or determine it in his favour. Plainly, the practitioner sought to knowingly mislead the Committee in the conduct investigation.

118 The practitioner concluded the 28 May 2017 letter as follows:[152]

> [JR's] employment was *primarily terminated*, by me, *for unprofessional conduct* plus financial concerns. She has been resentful towards myself and my practice manager before and after her dismissal. [JR] departed very disgruntled. I do not accept [JR's] representations (for example 5.2 [relating to the taking of KB's statement]) that she did all the work and I did nothing.

119 The ML statement that the practitioner enclosed with the 28 May 2017 letter is signed by ML and dated 30 April 2017. The ML statement states as follows at para 12:[153]

> Approximately a year later, [JR's] employment was *terminated due to unsatisfactory conduct* and financial concerns. She departed Lawson Legal in a disgruntled manner and since, refuses to acknowledge me in public.

120 For the reasons which follow, we are satisfied on a balance of probabilities and feel an actual persuasion on the basis of clear and cogent evidence that JR's employment at Lawson Legal was terminated by the

[150] Exhibit 3, page 467 (original emphasis).
[151] Exhibit 3, pages 467 and 468.
[152] Exhibit 3, page 469 (emphasis added).
[153] Exhibit 3, page 471 (emphasis added).

practitioner not because of any 'unprofessional conduct' or 'unsatisfactory conduct' on the part of JR, but rather solely or primarily because she wanted a pay rise and Lawson Legal was experiencing a financial downturn at the time.

121 We accept JR's evidence in relation to the circumstances of the termination of her employment by the practitioner, both because, as we said earlier, we find JR to be a truthful and credible witness, and also because her evidence is consistent with the terms of the email by which the practitioner terminated JR's employment and aspects of his own evidence. Moreover, there is no cogent evidence that JR's conduct was unprofessional or unsatisfactory, or that her employment was terminated for those reasons. Rather, the overwhelming evidence is that JR's employment was terminated solely or primarily because she wanted a pay rise and Lawson Legal was experiencing a financial downturn at the time.

122 As JR said in evidence, '[a]t the end of May [2012] I approached [the practitioner] and asked him whether he would be willing to pay me an extra $100 a week so I could … cover expenses, because I was going backwards financially at that point in time'.[154] The practitioner 'said he couldn't afford to do it' and JR 'accepted it'.[155] The following day, JR received a telephone call from ML. ML said to JR 'How dare you ask my husband for a pay rise when you've booked yourself a holiday to Singapore?'.[156] JR remembers 'being extremely upset after the phone call' and recalls 'crying'.[157] It appears that ML's email to JR on (Thursday) 31 May 2012, which is set out at [59] above and in which ML states 'I would like to apologise for the conversation that we had on the weekend', relates to the conversation about which JR gave evidence and indicates that the telephone conversation occurred on the weekend of 24 - 25 May 2012.

123 While the practitioner denied the proposition put to him in cross-examination that JR 'asked for $200 a fortnight as pay rise', replying 'No, she didn't have any specific money in a pay rise requisition. No, absolutely not',[158] he conceded shortly afterwards that '[t]he issue whether or not to pay [JR] more money was something [he] discussed with [his] wife' and that the practitioner and ML 'both thought that … the practice

[154] ts 54, 12 October 2020.
[155] ts 54, 12 October 2020.
[156] ts 54, 12 October 2020. In March 2012, JR booked a holiday to Singapore between 28 June 2012 and 5 July 2012, using her credit card.
[157] ts 55, 12 October 2020.
[158] ts 326, 15 October 2020.

couldn't … afford it'.[159] The practitioner also did not deny the proposition put to him in cross-examination that '[ML's] angry conversation on the phone with [JR] [was] about her request for a pay rise',[160] and said about the telephone conversation that 'It may have included the money. It may have included more money'.[161] The practitioner also conceded in cross-examination that, in consultation with ML, he decided to terminate JR's employment for financial reasons:[162]

> Did you discuss with your wife [JR's] termination? --- When it happened, yes.
>
> Before it happened? --- Well, yes.
>
> You consulted with her? --- Yes.
>
> And you both agreed that she should be terminated? --- Yes.
>
> And that was because you couldn't afford to pay her more? --- That was one aspect of it. Well, we – yes. I mean, I had to a website and, ironically, sort of, [JR] said, "You've got to get a website now. You're not getting any new business in." And that cost 10 grand roughly, and then there were search engine optimisation on top of that to get me on a Google search, and it was a slow period of the year. Being the wintertime, it's slow in criminal. And we were looking at all that, thinking, you know, this is getting very difficult now to maintain, because the money wasn't coming in.

124 We also note that in a letter to the Committee dated 13 November 2017, the practitioner referred to JR's 'obsession with a pay increase' and stated that '[s]he was eventually terminated because Lawson Legal couldn't meet her financial needs'.[163]

125 At 3.44 pm on Saturday 26 May 2012, the practitioner sent the following email from his work email address to JR's work email address (termination email):[164]

> …
>
> Dear [JR's first name]

[159] ts 326, 15 October 2020.
[160] ts 326, 15 October 2020.
[161] ts 327, 15 October 2020.
[162] ts 327-328, 15 October 2020.
[163] Exhibit 3, page 484.
[164] Exhibit 3, page 430 (original emphasis).

> Lawson Legal is experiencing a significant financial downturn due to unforeseen financial events and advertising difficulties (which is dramatically affecting business).
>
> Regrettably, I am unable to sustain your employment in the new fiscal year.
>
> Your last working day will be 22 June 2012, whereby you will receive your final pay including your entitlements.
>
> I will assist you to secure alternative legal employment.
>
> Regards,
>
> ***Richard Lawson LLB LLM***
>
> **BARRISTER & SOLICITOR**
> **LAWSON LEGAL**

126 The termination email is consistent with JR's evidence that she asked for a pay rise and was turned down by the practitioner, because it refers to Lawson Legal 'experiencing a significant financial downturn due to unforeseen financial events and advertising difficulties' and '[r]egrettably, I am unable to sustain your employment in the new fiscal year'. Furthermore, the termination email clearly indicates that JR's employment was terminated by the practitioner solely or primarily for financial reasons, not because of any unprofessional conduct or unsatisfactory conduct on the part of JR. Indeed, the concluding statement in the termination email ('I will assist you to secure alternative legal employment') is entirely inconsistent with JR's employment having been terminated by the practitioner for unprofessional conduct or unsatisfactory conduct.

127 In re-examination, the practitioner was asked 'why you didn't include or describe or point to [JR's] other aspects of unprofessional conduct' in the termination email and the practitioner replied as follows:[165]

> Look, I don’t want to throw salt in the wounds, you know. She was very upset, she was depressed, so I left it at financial and I said I would help her obtain other employment. Okay. But if you look in that email it says due to unforeseen financial events and advertising difficulties. That’s the website, advertising my business. Nobody could see it.

128 Mr Eyers submits that the practitioner's explanation for not referring to any unprofessional conduct in the termination email 'is consistent with

[165] ts 382, 15 October 2020.

common sense and the high regard that the [practitioner] had for JR's legal ability and disinclination to blight her future career prospects'.[166] However, the 'high regard' that the practitioner had for JR's legal ability is in itself inconsistent with her employment having been terminated for reasons of unprofessional conduct or unsatisfactory conduct. Furthermore, in his answer to Mr Eyers' question in re-examination set out in the preceding paragraph, the practitioner himself stressed the financial reason for terminating JR's employment. The termination email is an important contemporaneous piece of evidence which is entirely inconsistent with the statements made in the 28 May 2017 letter and in the ML statement that JR's employment was primarily terminated for unprofessional conduct or unsatisfactory conduct.

129 As JR said in evidence, on either Monday 28 May 2012 or Tuesday 29 May 2012, the practitioner had a conversation with her in the office 'essentially withdrawing the termination and asking me to stay on, at which point I said to [the practitioner] that I just - I was actually resigning. I wasn't going to stay'.[167] The practitioner conceded in cross-examination that, after he sent JR the termination email, he had 'a conversation with [her] in which [he] suggested that she, in fact, continue working for [him]'.[168]

130 As JR said in evidence, the termination email 'came as a complete surprise' to her.[169] The practitioner and JR had never previously had any discussions about the possibility of her employment being terminated and, as she said, '[a]ll the feedback I got was positive'.[170] Consistently with JR's evidence, the practitioner described her in cross-examination as 'a good work colleague' and 'excellent at her job',[171] and described her work as 'brilliant'.[172] In re-examination, the practitioner also said about JR that 'She was great. She did excellent work'.[173]

131 Furthermore, consistently with the practitioner's statement in the termination email that 'I will assist you to secure alternative legal employment', both JR and the practitioner gave evidence that the practitioner sought to find her employment. The practitioner gave evidence that 'between … 26 May [2012] and 22 June [2012], I was

[166] Practitioner's submissions, para 52a.
[167] ts 56, 12 October 2020.
[168] ts 328, 15 October 2020.
[169] ts 57, 12 October 2020.
[170] ts 55, 12 October 2020.
[171] ts 324, 15 October 2020.
[172] ts 332, 15 October 2020.
[173] ts 377, 15 October 2020.

working on getting [JR] alternative employment'.[174] Indeed, over three months after JR left Lawson Legal, the practitioner sent her the following email on 6 October 2012:[175]

> …
>
> Hi [shortened form of JR's first name]
>
> I've called you a couple of times regarding possible employment opportunities.
>
> I could have had you placed in a family law firm and I also would have offered you a position here (we're now expanding to migration law), but I've had to get someone else.
>
> Given that you haven't replied I assume your [sic] not interested in practicing [sic] law anymore.
>
> All the best.
>
> Richard

132 The evidence referred to at [122] - [131] above, including the practitioner's evidence and the documentary evidence in terms of the termination email and the practitioner's email to JR dated 6 October 2012, is entirely inconsistent with JR's employment having been terminated for any unprofessional conduct or unsatisfactory conduct on her part.

133 The practitioner gave evidence-in-chief that the content of his 28 May 2017 letter to the Committee is '[t]ruthful'[176] and that, 'as far as [he is] concerned', the content of the ML statement is '[t]ruthful'.[177] However, as the Committee submits, '[n]o evidence was given by the practitioner of conduct by JR which amounts to unprofessional conduct [or unsatisfactory conduct], other than generalised assertions'.[178] The practitioner's evidence-in-chief on this topic simply consisted of the statement that the contents of the 28 May 2017 letter and the ML statement were '[t]ruthful'. In cross-examination, the practitioner was specifically asked what he means by 'unprofessional conduct' in the context of the 28 May 2017 letter, and he gave the following evidence in response:[179]

[174] ts 329, 15 October 2020.
[175] Exhibit 3, page 432.
[176] ts 180, 14 October 2020.
[177] ts 184, 14 October 2020.
[178] Committee's submissions, para 126d.
[179] ts 332, 15 October 2020.

> What happened was - if you would let me explain and if I can tell you - there was a big problem. She couldn't make ends meet. The unprofessional - and that caused her a lot of stress and she seemed somewhat depressed over that. And her unprofessional conduct is what happened between her and my wife on a great big argument in the office, and she had to go. I mean, up to that point she was - she seemed - very depressed. She was quite snappy. She was very distressed over what was going on towards the end of her tenure with me.

134 Mr Eyers submits that '[t]he explanation by the [practitioner] for his termination of JR as being for 'unprofessional conduct and financial concerns' is most comprehensively gleaned from his re-examination'.[180] In re-examination, the practitioner gave the following evidence:[181]

> Why didn't you - just clarify this: why didn't you retain [JR] going forward from this period of time? --- For the two reasons: my wife had - it was - it was - my wife didn't want to be in the office, as simple as that. So it was very uneasy. [JR] was in an extreme unhealthy state. She was very depressed. She was very snappy. It - it - her conduct was just to me unprofessional. She couldn't get along in there anymore, right, and wasn't happy, just - it was awful. It was just an awful scene from what I saw before she became a practitioner on salary.

135 However none of the evidence given by the practitioner, including the whole passage of re-examination relied on by Mr Eyers in his submissions,[182] provides any cogent or satisfactory basis for considering that JR's conduct was unprofessional or unsatisfactory, much less that her employment was terminated for those reasons. It appears that a conflict developed between ML and JR. However, it appears that the underlying cause of the conflict was JR's request for a pay rise and Lawson Legal's financial circumstances, and could not in any way reasonably be characterised as reflecting unprofessional conduct or unsatisfactory conduct on the part of JR.

136 ML also did not give any cogent or satisfactory evidence supporting her allegation in her statement that JR's employment was terminated due to unsatisfactory conduct. When she was asked in examination-in-chief 'what do you mean by the two words "unsatisfactory conduct" in relation to [JR]?', ML said that JR 'was an intense person, a very angry person in her demeanour and always - she would complain about something all the time but mainly financial - financially, saying that she never had enough money to - to do things'.[183] When asked later by Mr Eyers to 'just

[180] Practitioner's submissions, para 52.
[181] ts 381, 15 October 2020.
[182] ts 378-387, 15 October 2020.
[183] ts 449-450, 21 October 2020.

describe [JR's] demeanour and presentation' on one occasion when she had had a heated telephone conversation with her child's day care centre, ML replied:[184]

> She was yelling at me. Her voice was loud. She was very frustrated, very angry, very intense and just - just basically blaming everything that - what was going on in her life at that point of time there and then. So it was just a build-up of everything.

137 In cross-examination, when ML was asked 'when you said unsatisfactory conduct, unsatisfactory conduct professionally or personally?', ML replied '[i]t was personally, which flowed on professionally', and then when asked 'professionally how?', ML replied '… [JR's] demeanour was quite … intense … and she was very angry, and you could feel that when you walked into the office' and 'my biggest concern was the fact that if I could feel that if I - walking into the office, that potential clients could also feel that as well'.[185]

138 ML did not provide any cogent or satisfactory evidence supporting the allegation that JR engaged in unsatisfactory conduct, much less that her employment was primarily terminated for that reason. It appears, even from ML's evidence, that, consistently with JR's evidence, JR wanted a pay rise and this request caused conflict between her and ML. Furthermore, there is absolutely no evidence that anything about JR's 'demeanour' manifested in any unprofessional or unsatisfactory conduct affecting clients or potential clients of Lawson Legal. Indeed, the practitioner's glowing evidence as to JR's work, his suggestion after the termination email that she continue to work for him, and his efforts to find her alternative employment, are all inconsistent with such a proposition. Finally, as the Committee submits, the terms of ML's apology email, which is set out at [59] above, are 'at odds' with the allegation that JR's employment was terminated due to unsatisfactory conduct on her part.[186] As the Committee submits, in the apology email ML 'attempted to persuade JR to remain working with Lawson Legal and said she wished to remain friends'.[187]

139 As it is clear that JR's employment was solely or primarily terminated by the practitioner because she wanted a pay rise and Lawson Legal was experiencing a financial downturn at the time, and not because of any unprofessional or unsatisfactory conduct by JR, the practitioner

[184] ts 451, 21 October 2020.
[185] ts 484, 21 October 2020.
[186] Committee's submissions, para 130.
[187] Committee's submissions, para 130.

made false and misleading representations to the Committee in terms of ground 7 by sending the 28 May 2017 letter to the Committee and enclosing the ML statement. Furthermore, the only reasonable inference is that the practitioner knew that the representations as to the reason for the termination of JR's employment were false and misleading and intended that the Committee be misled by them, because he obviously knew that the sole or primary reason he terminated JR's employment was financial and not any unprofessional or unsatisfactory conduct on JR's part, and he wanted to discredit JR in the eyes of the Committee when it was considering the conduct investigation in which JR's evidence and information was material.

140 As we explained at [103] above, intentionally seeking to mislead the Committee in a conduct investigation constitutes professional misconduct under the LP Act. The practitioner engaged in professional misconduct in terms of ground 7.

Ground 8 – Knowingly or recklessly making false and/or misleading representations to the Board in a letter and an email

141 In late May or early June 2017, the practitioner submitted an online application for the renewal of his local practising certificate for the year ending 30 June 2018 to the Board (renewal application). By letter dated 28 July 2017, the Board requested further information from the practitioner in relation to the Committee's conduct investigation concerning the matters now the subject of grounds 1 - 5 for the purposes of consideration of the renewal application by the Board. In response to the letter from the Board dated 28 July 2017, under cover of the letter to the Board dated 3 August 2017, in which the practitioner said that '[CL's] complaint is contested', the practitioner provided to the Board his 28 May 2017 letter to the Committee together with the ML statement. The practitioner gave evidence that the content of his letter dated 3 August 2017 to the Board is '[t]ruthful'.[188]

142 As we found in relation to ground 7, the 28 May 2017 letter and the ML statement contained the false and misleading representations on account of which we determined that the practitioner engaged in professional misconduct in terms of ground 7. As Mr Eyers observes in the practitioner's submissions, '[t]he Tribunal's determination of [g]round 7 will obviously also determine the issue predicated upon the [practitioner's] letter of 3 August 2017'.[189] For the reasons we have given

[188] ts 183, 14 October 2020.
[189] Practitioner's submissions, para 56.

in relation to ground 7, by providing a copy of the 28 May 2017 letter and the ML statement to the Board, the practitioner knowingly sought to mislead the Board in its consideration of the renewal application. Knowingly seeking to mislead a regulator of the legal profession in its consideration of an application for the renewal of a practitioner's local practising certificate is conduct that would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence (within the first limb of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61]), and is also conduct that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the profession of good repute and competence (within the second limb of the restatement of the common law concept of unprofessional conduct in ***Kyle v Legal Practitioners' Complaints Committee*** at [61]), and constitutes professional misconduct under the LP Act.

143 By an email dated 8 August 2017 to the Board, the practitioner substituted three paragraphs for paragraphs in his letter dated 3 August 2017 to the Board, which he referred to as 'my submissions'.[190] One of the paragraphs that the practitioner requested be substituted in his submissions to the Board for the purposes of his renewal application states as follows:[191]

> *Further, the [Committee] erroneously alleges that I did not perform the legal work that I billed for, namely, 2 written opinions that my College of Law student (on work experience) completed without any consultation or collaboration from me. She had not done legal opinions before. This is <u>a total fabrication</u> from <u>a problematic employee</u>, that <u>I terminated</u> shortly afterwards (when she was a restricted practitioner), <u>with a history of psychological problems.</u>*

144 The practitioner gave evidence that the content of his email dated 8 August 2017 to the Board is '[t]ruthful'.[192] However, the final sentence of the substituted paragraph set out immediately above contains false and misleading representations. In particular, we are satisfied on a balance of probabilities and feel an actual persuasion on the evidence that the allegation that the practitioner did not perform the legal work that he billed for is not 'a total fabrication', JR was not 'a problematic employee', JR did not and does not have 'a history of psychological problems', and

[190] Exhibit 3, page 555.
[191] Exhibit 3, page 556 (italicised emphasis original and underlined emphasis added).
[192] ts 189, 14 October 2020.

her employment was not terminated by the practitioner because of any such history.

145 In light of our reasons and determination that the practitioner engaged in professional misconduct in terms of grounds 1 and 3, the information given by JR to the Committee in relation to the conduct investigation (and her evidence to the Tribunal) was not 'a total fabrication', but was rather truthful and accurate.

146 There is no cogent evidence that JR was 'a problematic employee'. As indicated earlier, the practitioner regarded JR as 'excellent at her job'[193] and 'a good work colleague',[194] and said that '[h]er work was brilliant'.[195] While it appears that a conflict developed between ML and JR, it arose because JR wanted a pay rise of $100 a week to meet her expenses, whereas ML and the practitioner considered that Lawson Legal could not afford it (and, indeed, could no longer afford to pay JR's previously agreed salary).

147 Furthermore, there is absolutely no evidence that JR had 'a history of psychological problems' and there is no basis in the evidence on which the practitioner could reasonably have believed that. We accept JR's evidence that, although she had previously undergone counselling, she has never been diagnosed with any psychiatric illness or psychological condition.[196] Further, as the Committee submits, the 'plain effect of the [practitioner's] email [to the Board] was, relevantly, to represent that JR's employment had been terminated due to her 'psychological problems''.[197] However, as we found in relation to ground 7, the practitioner's employment was terminated solely or primarily because of JR's request for a pay rise and Lawson Legal's financial position.

148 The only reasonable inference is that the practitioner knew that the relevant representations were false and misleading and intended that the Board be misled by them. The practitioner obviously made the false and misleading representations referred to above intentionally, because he knew why he had terminated JR's employment and he was seeking to discredit her and the evidence and information she gave to the Committee in the conduct investigation in order to persuade the Board to renew his local practising certificate. As we said earlier, knowingly seeking to mislead the Board in its consideration of an application to renew a local

[193] ts 324, 15 October 2020.
[194] ts 324, 15 October 2020.
[195] ts 332, 15 October 2020.
[196] ts 58, 70 and 71, 12 October 2020.
[197] Committee's submissions, para 149.

practising certificate constitutes professional misconduct under the LP Act. The practitioner engaged in professional misconduct in terms of ground 8.

Ground 9 – Knowingly or recklessly making false and/or misleading representations to the Committee in response to a letter regarding the conduct investigation

149 By letter to the practitioner dated 20 October 2017, the Committee sought clarification of a number of statements made by him in the 28 May 2017 letter and invited him to revisit any other statements in that letter. By letter to the Committee dated 13 November 2017, the practitioner represented that the contents of the 28 May 2017 letter were true and correct. Furthermore, the practitioner expressly confirmed, in relation to the First Opinion, that '[t]he rough draft would have been in a word document file' and 'was a work in progress but the majority of my work was conducted during a weekend',[198] and 'I **commenced** working on a draft the following day on 20 July 2011 and it was presented to [CL] on 26 July 2011',[199] and, in relation to the Second Opinion, that 'I worked on the [S]econd [O]pinion on and off from 26 July to 28 July [2011]'.[200]

150 The practitioner gave evidence that the content of his letter to the Committee dated 13 November 2017 is '[t]ruthful'.[201] However, for the reasons we have given in relation to ground 7 (and grounds 1 and 3), the practitioner's representation in his letter to the Committee dated 13 November 2017 that the contents of the 28 May 2017 letter were true and correct, and the specific statements referred to in the preceding paragraph, were false and misleading. The only reasonable inference is that the practitioner knew that his representations to the Committee were false and misleading and intended that the Committee be misled by them. The practitioner obviously made the false and misleading statements to the Committee intentionally, because he knew what work that he did and did not do in relation to CL's matter and he was seeking, by his representations, to persuade the Committee to terminate the conduct investigation or to determine it favourably to the practitioner. The practitioner therefore engaged in professional misconduct in terms of ground 9.

[198] Exhibit 3, page 482.
[199] Exhibit 3, page 483 (original emphasis).
[200] Exhibit 3, page 483.
[201] ts 180, 14 October 2020.

Findings of professional misconduct

151 For the reasons set out above, we make the following findings of professional misconduct:

1. The practitioner on about 6 August 2011, engaged in professional misconduct within the meaning of s 403 and s 438 of the *Legal Profession Act 2008* (WA) (LP Act) in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by preparing and issuing to his client (CL), at CL's request, an itemised account dated 6 August 2011 (First Itemised Account) relating to tax invoice 0545 dated 31 July 2011 in the sum of $27,500 (including GST) for the practitioner's fees for legal services (Original Invoice), in circumstances where the practitioner knew the First Itemised Account was false and misleading in material respects and intended CL be misled by the First Itemised Account.

2. The practitioner, on about 31 October 2011, engaged in professional misconduct within the meaning of s 403 and s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by preparing and sending to the Legal Profession Complaints Committee (Committee) a letter dated 31 October 2011 (31 October 2011 letter) in response to a letter from the Committee dated 7 October 2011 regarding a complaint made by CL against the practitioner, in circumstances where the practitioner knew the 31 October 2011 letter was false and misleading in a material respect and intended the Committee be misled by the 31 October 2011 letter.

3. The practitioner, on about 13 May 2012, engaged in professional misconduct within the meaning of s 403 and

s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by preparing and issuing to CL, at CL's request, an itemised account dated 13 May 2012 (Second Itemised Account) relating to tax invoice 0545C dated 13 May 2012 in the sum of $27,544 (including GST) for the practitioner's fees for legal services, in circumstances where the practitioner knew the Second Itemised Account was false and misleading in material respects and intended CL be misled by the Second Itemised Account.

4. The practitioner, on about 16 and 17 August 2012, engaged in professional misconduct within the meaning of s 403 and s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by swearing and filing, or permitting to be filed, an affidavit dated 16 August 2012 (affidavit) in Supreme Court of Western Australia costs assessment proceeding LPA 16 of 2012 commenced by CL against the practitioner (costs assessment proceeding), in circumstances where the practitioner knew the affidavit was false and misleading in material respects and intended the Supreme Court be misled by the affidavit.

5. The practitioner, on about 18 June 2013, engaged in professional misconduct within the meaning of s 403 and s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by filing, or permitting to be filed, a bill of costs dated 14 June 2013 in the sum of $22,253 (including GST, but excluding a claim for drafting the bill and preparing for and attending

the taxation) (Bill of Costs) in the costs assessment proceeding, in circumstances where the practitioner knew the Bill of Costs was false and misleading in material respects and intended the Supreme Court and CL be misled by the Bill of Costs.

6. The practitioner, between about 18 June 2013 and about 30 September 2014, engaged in professional misconduct within the meaning of s 403 and s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, by not refunding to CL the sum of $5,247, being the difference between the Original Invoice ($27,500) and the Bill of Costs ($22,253) for the practitioner's professional fees for legal services.

7. The practitioner, on about 28 May 2017, engaged in professional misconduct within the meaning of s 403 and s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by preparing and sending to the Committee a letter dated 28 May 2017 (28 May 2017 letter) in response to a letter from the Committee dated 19 April 2017 regarding a conduct investigation pursuant to s 421(1) of the LP Act (conduct investigation), and providing to the Committee with the 28 May 2017 letter a witness statement dated 23 May 2012 from the practitioner's wife (ML; ML statement), in circumstances where the practitioner knew the 28 May 2017 letter and the ML statement were false and misleading in material respects and intended the Committee be misled by the 28 May 2017 letter and the ML statement.

8. The practitioner, on or about 3 August 2017 and 8 August 2017, engaged in professional misconduct within the meaning of s 403 and s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved

by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by:

a) under cover of a letter to the Legal Practice Board of Western Australia (Board) dated 3 August 2017, and in response to a letter from the Board dated 28 July 2017 requesting further information in relation to the conduct investigation for the purposes of consideration by the Board of the practitioner's application for the renewal of his local practising certificate, providing a copy of the 28 May 2017 letter and a copy of the ML statement; and

b) preparing and sending to the Board an email dated 8 August 2017 (8 August 2017 email),

in circumstances where the practitioner knew the 28 May 2017 letter, the ML statement and the 8 August 2017 email were false and misleading in material respects and intended the Board be misled by the 28 May 2017 letter, the ML statement and the 8 August 2017 email.

9. The practitioner, on about 13 November 2017, engaged in professional misconduct within the meaning of s 403 and s 438 of the LP Act in that his conduct fell short, to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence, and would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence, by preparing and sending to the Committee a letter dated 13 November 2017 (13 November 2017 letter) in response to a letter from the Committee dated 20 October 2017 regarding the conduct investigation in circumstances where the practitioner knew the 13 November 2017 was false and misleading in material respects and intended the Committee be misled by the 13 November 2017 letter.

Programming orders in relation to the issues of penalty and costs

152 Having determined that the practitioner engaged in professional misconduct in terms of each of the nine grounds alleged, the Tribunal must now determine the appropriate professional disciplinary consequence of that conduct and the Committee's application for a costs order.

153 We make the following programming orders:

1. By 29 December 2021 the applicant is to file and serve its submissions in relation to penalty and costs together with a schedule of the amount of costs and disbursements it seeks and supporting accounts.

2. By 27 January 2022 the respondent is to file and serve his submissions in relation to penalty and costs and any evidence, including character references, on which he relies.

3. By 31 January 2022 the applicant is to file and serve a statement of the names of the authors of any witness statements or character references filed in accordance with the preceding order who are required for cross-examination.

4. The matter is listed for a directions hearing in the President's list at 9.30 am on 1 February 2022 in order to list the issues of penalty and costs for determination on the documents or at a hearing.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

JUDGE D R PARRY, DEPUTY PRESIDENT

30 NOVEMBER 2021