

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Rosser* [2020] QCAT 375

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

v

CHRISTOPHER JAMES ROSSER
(respondent)

APPLICATION NO/S: OCR023-17

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 20 October 2020

HEARING DATES: 13 November 2018, 19 February 2019

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:

Mr Douglas Murphy QC, Legal Panel Member
Dr Margaret Steinberg AM, Lay Panel Member

- ORDERS:
- 1. On each of Charges 1, 3, 4, 5, 9, 10 and 11, there is a finding that the respondent engaged in professional misconduct.**
 - 2. On each of Charges 6, 7, 8 and 12, there is a finding that the respondent engaged in unsatisfactory professional conduct.**
 - 3. It is recommended that the name of Christopher James Rosser be removed from the roll of legal practitioners in Queensland.**
 - 4. The respondent shall pay the applicant's standard costs of and incidental to this discipline application, such costs to be assessed as if this were a proceeding before the Supreme Court of Queensland.**
 - 5. Alain Cabalé, Carole Ann Wills and MJG shall advise the Tribunal and the respondent as to whether they wish to pursue their respective Notices of Intention to Seek Compensation Order by 4:00pm on 6 November 2020.**
 - 6. If Alain Cabalé, Carole Ann Wills or MJG advise that they wish to pursue a compensation order, then**

the matter will be listed for directions on a date to be advised by the Tribunal.

CATCHWORDS:

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent practised as a barrister in Queensland – where the respondent operated an entity known as the “Legal Advisory Service” (“LAS”) – where LAS was advertised as having a number of “divisions” – where the “crime and traffic division” consisted of the respondent and his unqualified employee, Jacob Reichman, and inquiries relating to other divisions were supposedly referred to external firms of solicitors – where the respondent promoted the LAS to the public through a website, with written and video endorsements – where the respondent caused or permitted LAS to be advertised on the back of a bus and listed under the heading ‘Solicitors’ in the Yellow Pages – where the respondent denies that he held out LAS as a service or law firm independent of himself – where the respondent claims that LAS was a business brand utilised for his practice as a barrister – whether the respondent dishonestly held out the LAS as a law firm independent of him – whether the respondent’s conduct would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency – whether there should be a finding of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent also operated the “Court Advisory Service” (“CAS”), stated to be a division of LAS – where CAS’ website used the plural form and plural pronouns to refer to the practice – where the respondent admitted in proceedings before the Court of Appeal that CAS consisted only of himself – where the respondent now denies that he held out CAS as an organisation consisting of lawyers and barristers – whether the respondent falsely represented CAS to the public as a law firm – whether the respondent’s conduct was disgraceful, dishonest and dishonourable, such as to warrant a finding of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent’s unqualified employee, Jacob Reichman, appeared in court and attended electronically recorded interviews on numerous occasions in relation to

matters in which the respondent had been briefed and was required to personally attend – where the respondent contended that personal attendance by him was not required for menial and non-contentious tasks, or for matters in the nature of an interview refusal by a client – whether the respondent’s conduct warrants a finding of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – TRUST MONEY – where barristers are not, in the course of practising as a barrister, permitted to receive trust money under s 246 of the *Legal Profession Act 2007 (Qld)* – where “trust money” includes money received on account of legal costs in advance of providing the services – where the respondent faces three charges of receiving and holding trust money – where the respondent issued a tax invoice seeking payment of an additional amount of \$2,000 for anticipated work – where the respondent, on another occasion, received a deposit of \$1,000 in advance of any legal services being performed – where, on a further occasion, the respondent received \$500 on account of legal costs in advance of providing the services in respect of which it was paid – whether the respondent’s conduct relating to each of these charges warrants a finding of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where r 17(e) of the 2011 Barristers’ Rule (as amended) states that barristers must not be the address for service of any document, or accept service of any document – where the respondent was specified as a client’s address for service in an originating application – where the respondent’s address was nominated as an address for service in another client’s affidavit – whether this conduct amounts to unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where r 17 of the 2011 Barristers’ Rules states that, *inter alia*, barristers must not act as a person’s general agent or attorney in that person’s business or dealings with others, and must not conduct correspondence in the barrister’s name on behalf of any person otherwise than with an opponent – where an email under the respondent’s hand and bearing his electronic signature was sent on behalf of a client to the utilities office of a body corporate – where

the related QCAT proceeding was against a real estate agent, and not the body corporate – whether this conduct warrants a finding of unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent represented a client arrested on a number of charges – where, on his own admission, the respondent failed to find out the exact nature of the charges, nor did he have any understanding of the impact of a relevant statute, before advising his client to co-operate with police – whether the respondent failed to maintain a reasonable standard of competence and diligence expected of a criminal barrister – whether the respondent’s conduct warrants a finding of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent acted for a client on a direct brief – where the respondent has admitted that he failed to keep proper records of conferences, instructions and a signed plea of guilty form – whether the respondent’s conduct fell short of the standards of competence and diligence expected of a reasonably competent practitioner – whether a finding of unsatisfactory professional conduct should be made

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – QUEENSLAND – ORDERS – where an order removing a practitioner’s name from the roll should only be made when the probability is that the practitioner is permanently unfit to practise – where the Tribunal may have regard to the manner in which a respondent conducts himself or herself during a disciplinary proceeding in considering the practitioner’s fitness to practise – where the respondent failed to comply with certain directions and engage properly in the disciplinary proceeding – where the respondent has not adduced any evidence demonstrating insight into or remorse for his conduct – whether the respondent’s character is so indelibly marked by the misconduct that he cannot be regarded as a fit and proper person to be upon the roll of legal practitioners

Legal Profession Act 2007 (Qld) s 5, s 44, s 216, s 218, s 219, s 220, s 222, s 227, s 237, s 246, s 418, s 419, s 420, s 462, sch 2

Allison v General Council of Medical Education and Registration [1894] 1 QB 750
Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand [2018] QCA 66
Legal Practitioners Complaints Committee v De Alwis [2006] WASCA 198
Legal Services Commissioner v Munt [2019] QCAT 160
Reichman v Legal Services Commissioner; Legal Services Commissioner v Reichman [2017] QDC 158

APPEARANCES & REPRESENTATION:

Applicant: D A Holliday, instructed by the Legal Services Commission

Respondent: A Morris QC, instructed by Whitehead Crowther Lawyers

REASONS FOR DECISION

- [1] By this discipline application under the *Legal Profession Act 2007* (Qld) (“LPA”), the applicant, the Legal Services Commissioner, has pursued 11 charges against the respondent, Christopher Rosser.
- [2] The discipline application, as originally filed, contained 8 charges. On 21 November 2017, the applicant filed an amended discipline application, which removed Charge 2 and added four additional charges. The charges to be determined are:
- (a) Charge 1 – that between 7 December 2012 and 2 December 2016 the respondent, by operating the Legal Advisory Service trading as Gold Coast Legal Advisory Service, engaged in conduct which amounted to unsatisfactory professional conduct or professional misconduct pursuant to the *Legal Profession Act 2007*.
 - (b) Charge 3 – that between 30 January 2013 and 1 September 2016 the respondent, by directing or authorising Jacob Reichman to complete work that should have been conducted or completed personally by the respondent, engaged in conduct that amounted to unsatisfactory professional conduct or professional misconduct pursuant to the *Legal Profession Act 2007*.
 - (c) Charge 4 – that on or about 24 May 2014, the respondent received and held trust money in contravention of s 246(1) of the *Legal Profession Act 2007* and r 17 of the 2011 Barristers’ Rule.
 - (d) Charge 5 – that on a date unknown between 12 July 2012 and 18 July 2012, the respondent received and held trust money in contravention of s 246(1) of the *Legal Profession Act 2007* and r 17 of the 2011 Barristers’ Rule.
 - (e) Charge 6 – that on 10 September 2014 the respondent, in writing to the Utilities Office of the Body Corporate for Circle on Cavill, acted as a person’s general agent or attorney in that person’s business or dealings with others contrary to r 17 of the 2011 Barristers’ Rule.

- (f) Charge 7 – that on or about 12 September 2014, the respondent provided his details as the address for service of any document contrary to r 17(e) of the 2011 Barristers’ Rule.
 - (g) Charge 8 – that on 22 August 2012, the respondent was the address for service in a court document, namely the affidavit of Alain Cabalé, contrary to r 17(e) of the 2011 Barristers’ Rule.
 - (h) Charge 9 – that between 29 September 2015 and 2 December 2016 the respondent, by operating the Court Advisory Service, engaged in conduct which amounted to unsatisfactory professional conduct or professional misconduct pursuant to the *Legal Profession Act 2007*.
 - (i) Charge 10 – that on or about 4 February 2015, the respondent received and held trust money in contravention of s 246(1) of the *Legal Profession Act 2007* and r 17 of the 2011 Barristers’ Rule.
 - (j) Charge 11 – that on 29 October 2015 the respondent, when acting for Alistair John Kennedy, failed to maintain reasonable standards of competence and diligence.
 - (k) Charge 12 – that between 1 February 2015 and 9 April 2016 the respondent, when acting for [MJG] in respect of criminal law proceedings *R v [MJG]*, failed to maintain reasonable standards of competence and diligence.
- [3] Each of the charges was particularised in the amended discipline application. To the extent necessary, those particulars will be referred to below.
- [4] On 14 March 2018, the respondent filed a response to the amended discipline application. The respondent admitted many of the facts alleged in the particulars of the amended discipline application. There were some denials, which will be dealt with below, and in a number of instances the response purported to set out excuses or explanations for the respondent’s conduct.
- [5] The respondent was originally admitted as a legal practitioner in New South Wales. In 1994, his name was entered on the Queensland Roll of Barristers pursuant to the operation of the *Mutual Recognition (Queensland) Act 1992*. The respondent then commenced practising as a barrister on the Gold Coast.
- [6] This case concerns the way in which the respondent conducted, or purported to conduct, his practice as a barrister in Queensland. Before turning to the facts of each charge, it is appropriate to set out the legislative and regulatory framework to which the respondent should have been directing himself in the course of his practice, at least since the advent of the *LPA*.
- Legislation and regulation**
- [7] By s 44(1) of the *LPA*, an “Australian legal practitioner is, subject to [the *LPA*], entitled to engage in legal practice” in Queensland.

- [8] An “Australian legal practitioner” is, relevantly, an Australian lawyer¹ who holds a current local practising certificate.
- [9] The phrase “engage in legal practice” includes practising law.²
- [10] The term “local practising certificate” is defined to mean “a practising certificate granted, or another document that is evidence of the renewal of a practising certificate granted, by the law society or by the bar association under [the LPA]”.³ For completeness, “bar association” is defined to mean the Bar Association of Queensland (“BAQ”).⁴ The BAQ is also a “regulatory authority”⁵ for the purposes of the *LPA*. It is the BAQ, as a regulatory authority, which issues local practising certificates for Australian lawyers to practise as barristers. The grant and renewal of local practising certificates is governed by Part 2.4, Division 4 of the *LPA*.
- [11] Chapter 3 of the *LPA* then contains provisions which regulate “various aspects of the legal profession with the aim of ensuring that law practices and lawyers operate effectively in the interests of justice, their clients and the public interest”.⁶
- [12] Relevantly, s 220 provides for the BAQ to be able to make rules governing the practices of barristers:

220 Rules for Australian legal practitioners engaged in practice in the manner of barristers

- (1) The bar association may make rules about legal practice in this jurisdiction engaged in by Australian legal practitioners as barristers.
 - (2) The barristers rules may provide for a barrister to be prohibited from any or all of the following—
 - (a) engaging in legal practice—
 - (i) otherwise than as a sole practitioner; or
 - (ii) in partnership with any person; or
 - (iii) as the employee of an entity;
 - (b) holding office as a legal practitioner director of an incorporated legal practice;
 - (c) being a legal practitioner partner in a multi-disciplinary partnership.
- [13] These are known as “barristers rules”.⁷ Barristers rules are one species of “legal profession rules”; the other, not surprisingly, are the solicitors rules made by the Queensland Law Society.⁸ Section 222 of the *LPA* then provides:

¹ See *LPA* s 5(1): “An *Australian lawyer* is a person who is admitted to the legal profession under this Act or a corresponding law”.

² *LPA* sch 2 (definition of “engage in legal practice”).

³ *LPA* sch 2 (definition of “local practising certificate”).

⁴ *LPA* sch 2 (definition of “bar association”).

⁵ See *LPA* sch 2 (definition of “regulatory authority”).

⁶ *LPA* s 216(1).

⁷ See *LPA* s 218.

⁸ See *LPA* ss 218, 219.

222 Subject matter of legal profession rules

- (1) Legal profession rules may make provision about any aspect of legal practice, including standards of conduct expected of the following persons to whom they apply—
 - (a) for solicitors rules – Australian legal practitioners, government legal officers and Australian-registered foreign lawyers;
 - (b) for barristers rules – Australian legal practitioners and government legal officers.
- (2) The power to make legal profession rules is not limited to matters for which this Act specifically authorises the making of legal profession rules or administration rules.

[14] The barristers rules, being “legal profession rules”, are binding on, *inter alia*, Australian legal practitioners.⁹ Section 227(2) reinforces the binding nature of the barristers rules by expressly providing that:

Failure to comply with legal profession rules is capable of constituting unsatisfactory professional conduct or professional misconduct.

[15] The barrister rules made by the BAQ and operative in Queensland under the *LPA* are the 2011 Barristers’ Rule (as amended) (“2011 Barristers’ Rule”), and contain the following:

ADVOCACY RULES

General

12. A barrister must not engage in conduct which is:
 - (a) dishonest or discreditable to a barrister;
 - (b) prejudicial to the administration of justice; or
 - (c) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.
13. A barrister must not engage in another vocation which:
 - (a) is liable to adversely affect the reputation of the legal profession or the barrister’s own reputation;
 - (b) is likely to impair or conflict with the barrister’s duties to clients; or
 - (c) prejudices a barrister’s ability to attend properly to the interests of the barrister’s clients.
14. A barrister may not use or permit the use of the professional qualification as a barrister for the advancement of any other occupation or activity in which he or she is directly or indirectly engaged, or for private advantage, save where that use is usual or reasonable in the circumstances.

The Work of a Barrister

15. Barristers’ work consists of:

⁹ *LPA* s 227(1).

- (a) appearing as an advocate;
 - (b) preparing to appear as an advocate;
 - (c) negotiating for a client with an opponent to compromise a case;
 - (d) representing a client in a mediation or arbitration or other method of alternative dispute resolution;
 - (e) acting as a mediator or arbitrator or expert in any dispute resolution;
 - (f) giving legal advice;
 - (g) preparing or advising on documents to be used by a client or by others in relation to the client's case or other affairs;
 - (h) carrying out work properly incidental to the kinds of work referred to in 15(a)-15(g); and
 - (i) such other work as is from time to time commonly carried out by barristers.
16. A barrister must be a sole practitioner, and must not:
- (a) practise in partnership with any person;
 - (b) practise as the employer of any legal practitioner who acts as a legal practitioner in the course of that employment;
 - (c) practise as the employee of any person;
 - (d) be a legal practitioner director of an incorporated legal practice; or
 - (e) be a member of a multi-disciplinary partnership.
17. A barrister must not, subject to Rules 18 and 19,
- (a) act as a person's general agent or attorney in that person's business or dealings with others;
 - (b) conduct correspondence in the barrister's name on behalf of any person otherwise than with the opponent;
 - (c) place herself or himself at risk of becoming a witness, by investigating facts for the purposes of appearing as an advocate or giving legal advice, otherwise than by –
 - (i) conferring with the client, the instructing solicitor, prospective witnesses or experts;
 - (ii) examining documents provided by the instructing solicitor or the client, as the case may be, or produced to the court;
 - (iii) viewing a place or things by arrangement with the instructing solicitor or the client; or
 - (iv) library research;
 - (d) act as a person's only representative in dealings with any court, otherwise than when actually appearing as an advocate;
 - (e) be the address for service of any document or accept service of any document;
 - (f) serve any process of any court;

- (g) conduct the conveyance of any property for any other person;
- (h) administer any trust estate or fund for any other person;
- (i) obtain probate or letters of administration for any other person;
- (j) incorporate companies or provide shelf companies for any other person;
- (k) prepare or lodge returns for any other person, unless the barrister is registered or accredited to do so under the applicable taxation legislation; or
- (l) hold, invest or disburse any fund for any other person.

18. A barrister will not have breached Rule 17 by doing any of the matters referred to in that Rule, without fee and as a private person not as a barrister or legal practitioner.
19. A barrister will not have breached Rule 17(a), 17(h) or 17(l) if the barrister becomes such an agent, is appointed so to act or becomes responsible for such funds as a private person and not as a barrister or legal practitioner.
20. A barrister who is asked by any person to do work or engage in conduct which is not barristers' work, or which appears likely to require work to be done which is not barristers' work, must promptly inform that person:
- (a) of the effect of Rules 15, 16 and 17 as they relevantly apply in the circumstances; and
 - (b) that, if it be the case, solicitors are capable of providing those services to that person.

[16] Rule 16 requires that a barrister be a sole practitioner. By being a "sole practitioner", a barrister is nevertheless a "law practice" for the purposes of the *LPA*. That term is defined in Schedule 2 to the *LPA* to include "an Australian legal practitioner who is a sole practitioner".

[17] The definition of "law practice" also includes "a law firm". That term, however, is separately defined in Schedule 2 of the *LPA* as follows:

law firm means a partnership consisting only of—

- (a) Australian legal practitioners; or
- (b) 1 or more Australian legal practitioners and 1 or more Australian-registered foreign lawyers.

[18] Part 3.3 of the *LPA* regulates the receipt of trust money and the operation of trust accounts by law practices. The term "trust money" is defined in s 237(1) as follows:

trust money means money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice, and includes—

- (a) money received by the practice on account of legal costs in advance of providing the services; and
- (b) controlled money received by the practice; and
- (c) transit money received by the practice; and

- (d) money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for another person.

[19] Relevant to some of the charges is s 246, which provides:

246 Barristers not to receive trust money

- (1) A barrister is not, in the course of practising as a barrister, to receive trust money.
- (2) Subsection (1) does not –
- (a) prevent a barrister receiving money in payment of legal services that the barrister has performed; and
- (b) limit the bar association’s power to make legal profession rules in relation to banking arrangements for fees received in advance by a barrister.

[20] The applicant seeks findings that the respondent engaged in unsatisfactory professional conduct or professional misconduct. Those terms are non-exhaustively defined in the *LPA* as follows:

418 Meaning of unsatisfactory professional conduct

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

419 Meaning of professional misconduct

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

[21] Consistent with s 227(1), s 420(1)(a) provides:

420 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

- (1) The following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct –

- (a) conduct consisting of a contravention of a relevant law, whether the conduct happened before or after the commencement of this section;

Note –

Under the *Acts Interpretation Act 1954*, section 7, and the *Statutory Instruments Act 1992*, section 7, a contravention in relation to this Act would include a contravention of a regulation or legal profession rules and a contravention in relation to a previous Act would include a contravention of a legal profession rule under the *Legal Profession Act 2004*. [...]

The charges

- [22] The charges were particularised in the amended discipline application. As noted above, the respondent filed a response by which he admitted many of the allegations and joined issue with others. The respondent admitted a number of the charges in full, namely Charges 6, 7, 8, 10, 11 and 12.
- [23] The applicant's case was supported by a number of affidavits, the contents of which were largely not challenged by the respondent. Most of the material supporting the charges was exhibited to an affidavit by one of the applicant's principal legal officers, Ms Darielle Campbell. The applicant also relied on an affidavit by Ms Emma Fogerty, a solicitor with Potts Lawyers, who had conducted investigations into the respondent's conduct when acting for a client previously represented by the respondent. The applicant later filed a second affidavit by Ms Campbell which went to the current status of the practice "brands" with which the respondent had been associated.
- [24] The applicant also relied on an affidavit by Mr Alain Cabalé, one of the respondent's former clients. Mr Cabalé was required for cross-examination on his affidavit.
- [25] Apart from his response, the respondent's only material was an affidavit he filed in the proceeding. He was cross-examined on that affidavit. The respondent was also subsequently called to give further oral evidence to explain his non-compliance with directions made by this Tribunal.

Charge 1

- [26] Charge 1 was concerned with the respondent's operation of the so-called "Legal Advisory Service" ("LAS").
- [27] The following particulars of the charge were admitted by the respondent:
- 1.2.1 The Legal Advisory Service is not a registered law firm;
 - 1.2.2 The email address and business address provided of the Legal Advisory Service is that nominated to the Bar Association Queensland by the respondent as his email address and chambers address;
 - 1.2.3 The respondent maintained or dictated the contents of a website with a web address of <http://legaladvisory.com.au>;
 - 1.2.4 The respondent appears in a video on the homepage of the website dressed as a barrister and describing himself as a barrister at law in which the respondent recommends viewers to Legal Advisory Service and suggests that viewers '*talk to them before making any arrangement with any law firm*';
 - 1.2.5 The homepage of the website contains the following words:-

'Recommendation

Chris Rosser, Barrister of Law, recommends talking to legal Advisory before seeing any other law firm for Traffic Offences, Police Charges and any other court appearances. Contact us for a free appointment today!

- 1.2.6 The website repeatedly used the plural pronouns 'our', 'them' and 'us' to refer to the respondent's practice;
- 1.2.7 The 'media' page of the website contains an article posted in May 2014. The heading is 'Life sentences charges dismissed' and within the article it states 'Legal team at the Legal Advisory Service' and 'Our principal barrister' and 'our arguments are preferred';
- 1.2.8 The respondent caused or permitted emails written by Jacob Reichman to include the following- 'incorporating the office of the Legal Advisory Service- Gold Coast' and 'Jacob L Reichman, AQLS, Case Manager-Crime and Traffic Division, CJ Rosser-Barrister-Legal Advisory Service-Gold Coast';
- ...
- 1.2.10 The respondent caused or permitted the Legal Advisory Service to be listed in the section of the Yellow Pages under the heading 'Solicitors'. It refers to a 'Family Division', 'Criminal Division', 'Traffic Division' and 'Civil Division';
- 1.2.11 The respondent caused or permitted the Legal Advisory Service to be promoted including by such means as an advertisement on the back of a bus. In that advertisement, the Legal Advisory Service website address, street address and phone number are displayed.
- ...
- 1.2.13 The respondent admitted in an affidavit sworn on 22 November 2016 that his chambers are 'branded' as Legal Advisory Service but it is his legal practice as sole practitioner.

(original emphasis)

- [28] An allegation (1.2.9 of the amended discipline application) concerning the content of Jacob Reichman's LinkedIn entry, which was denied by the respondent, was not relied on by the applicant at the final hearing.¹⁰
- [29] The respondent also denied that he had "held out the Legal Advisory Service, an entity under the respondent's control, as a service that was independent of the respondent and which was a law firm", saying that:
- (a) he did not hold out the LAS as a service independent of the respondent;
 - (b) he did not hold it out as a law firm; and
 - (c) at all material times, "the Legal Advisory Service was a business brand utilised by the respondent in his capacity as a sole practitioner barrister".¹¹

¹⁰ Outline of submissions on behalf of the Legal Services Commissioner filed 30 October 2018, para 16 ("Applicant's submissions").

¹¹ Response and/or counter-application filed 14 March 2018, para 1.3 ("Response").

[30] The respondent denied allegations that he failed to maintain high standards of professional conduct, that he engaged in conduct that was dishonest or otherwise discreditable to a barrister, and/or engaged in conduct which was likely to diminish public confidence in the legal profession or the administration of justice, or otherwise bring the legal profession into disrepute. His grounds for those denials were:¹²

- 1.4.1 There was no legal or administrative prohibition with respect to the respondent's involvement with the Legal Advisory Service;
- 1.4.2 The respondent has operated the Legal Advisory Service since 1996, with the Bar Association of Queensland being aware of the nature of the operations of the Service;
- 1.4.3 The respondent's involvement with the Legal Advisory Service was honest;
- 1.4.4 The respondent's involvement with the Legal Advisory Service was professional;
- 1.4.5 The respondent's involvement with the Legal Advisory Service provided access to legal assistance for vulnerable and disadvantaged clients, and; [sic]
- 1.4.6 The respondent's conduct was not conduct that was likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.

[31] The respondent also denied an allegation that he "used his professional qualification as a barrister for the advancement of the Legal Advisory Service being an activity that the respondent was directly engaged in for private advantage which was not usual or reasonable in the circumstances", saying:¹³

- 1.5.1 The Legal Advisory Service was a brand utilised for the respondent's practice as a barrister;
- 1.5.2 The 'advancement' of the Legal Advisory Service was the same and inseparable from the respondent's endeavours to advance his own legal practice, and; [sic]
- 1.5.3 The respondent's use of his professional qualifications, in conjunction with the Legal Advisory Service brand was not unusual or unreasonable in the circumstances.

[32] In addition, the respondent averred:¹⁴

- 1.6.1 Rule 14 of the [2011 Barristers' Rule] only prohibits 'the use of the professional qualification as a barrister for the advancement of any **other occupation or activity** in which he or she is directly or indirectly engaged, and; [sic]
- 1.6.2 The respondent's involvement with the Legal Advisory Service was not any 'other occupation or activity', but rather an inseparable part of his usual practice as a barrister.

¹² Response, para 1.4.

¹³ Response, para 1.5.

¹⁴ Response, para 1.6, with original emphasis.

[33] In his affidavit, the respondent described the LAS as follows:¹⁵

5. I founded the Legal Advisory Service ('LAS') in 1996. At all material times, LAS was and is the trading name of my legal practice as a barrister in addition to my own name. I have always practiced [sic] on my own and never employed another legal practitioner.
6. I accept that as a Barrister, I should practice [sic] on my own account. Insofar as LAS was, at the material times, a trading name for my practice as a '*sole practitioner*' barrister, I say LAS was a '*law practice*'. Both italicised terms being within the meaning provided by the *Legal Profession Act 2007*.
- ...
9. The Legal Advisory Service is both a trading name for my office and, as I have stated numerous times in the past, a community initiative of mine.
10. I have operated the Service since 1996 and its purpose is to connect members of the public to appropriate, cost-effective access to legal assistance and representation.
11. As I have stated numerous times previously in letters to the Applicant, when the plural pronouns of 'our', 'us' and 'we' are used, it is referring to the various specialists that people seeking legal help are referred onto, including myself assisting in criminal and traffic matters and other family, civil, commercial etc practitioners that matters are redirected onto. Therefore, I deny that my conduct is misleading and deceptive to speak in an inclusive sense.

[34] Under cross-examination, the respondent's evidence about the LAS was confused and confusing. For example:

- (a) The respondent's evidence about whether he was holding LAS out as a law firm was fluid. He alternated between seeming to accept that he regarded the LAS as a law firm, saying that on his interpretation of the law he was a legal practitioner who could consider himself to be a law firm, but then denying that he held it out as a law firm, while acknowledging at other times in his evidence that he was a barrister and purported to practise as a barrister;
- (b) The respondent described the LAS as his barrister's practice, but also said that there were a number of "divisions" within LAS, namely family, civil and commercial, as well as the "crime and traffic division". That supposed "crime and traffic division" consisted of nothing more than the respondent and his so-called clerk, Reichman.
- (c) According to the respondent, he attended to the crime and traffic work, and inquiries concerning work other than in the "crime and traffic division" were referred to external firms of solicitors. Precisely how, and how often, this happened was never explained by the respondent, despite ample opportunity to do so. On the contrary, his evidence about the nature and existence of the supposed referral arrangements was extremely unsatisfactory. The respondent did not, and apparently could not, produce any documents to evidence these referral arrangements. Nor did he lead any evidence from these other lawyers to whom the non-criminal and non-traffic inquiries were referred. Yet, for the

¹⁵ Affidavit of Christopher James Robert Rosser filed 24 April 2018 ("Respondent's affidavit").

purposes of the respondent's advertising of the LAS, these supposed referral solicitors were the other "divisions" of the LAS.

- [35] The respondent promoted the LAS to the public through a website. That website was registered in the name of the respondent (albeit using one of his middle given names). The text of the website is in evidence before the Tribunal, as is the endorsement video by the respondent which featured on the website. Despite the respondent's protestations to the contrary, the website patently sought to portray the "Legal Advisory Service" as an operation (to use a neutral term) in which multiple lawyers provided, or were capable of providing, a range of legal services to prospective clients. It is sufficient to refer only to that part of the website in which the respondent's video endorsement was embedded. The video was advertised on the website with the following words:

Recommendation

Chris Rosser, barrister of [sic] law, recommends talking to Legal Advisory before seeing any other law firm for traffic offences, police charges and any other court appearances. Contact us for a free appointment today!

- [36] The video itself was of the respondent wearing a barrister's bar jacket and jabot, and was captioned "Chris Rosser barrister of [sic] law". In this video, the respondent said:

I'm Chris Rosser, barrister at law, recommending you to the Legal Advisory Service. If you are facing court on the Gold Coast or elsewhere you should talk to them before making any arrangement with any law firm.

The Legal Advisory Service, since 1996, has been providing top quality legal advice, especially in the areas of traffic offences, police charges and in fact for any court appearance. If you are facing court, have been arrested or have an ongoing police matter, or driver's licence concern, whether it is of a minor nature or it's a serious matter, you should talk to them. The service is free, and is of a very high quality.

- [37] In 2016, the respondent was cross-examined before the Court of Appeal about, amongst other things, this website and video. That was in the course of the hearing of an appeal by one of the respondent's dissatisfied former clients. The transcript of that cross-examination was put into evidence before this Tribunal without objection by the respondent. It is sufficient for present purposes to refer to the following passages of that cross-examination:

No? Obviously. All right. You look at the web page again. 'Chris Rosser' – under the video, which I'll come back to in a minute:

Recommendation: Chris Rosser, barrister at – of law, recommends talking to Legal Advisory before seeing any other law firm for traffic offences, police charges, and any other Court appearances.

?---Yes.

Are you still saying to this court that your intention with the video was not to entice members of the public to use the services of Legal Advisory Service?--- Not the services of Legal Advisory Service; my services.

I see. So somebody looking at that video, you would say, would realise that you are Legal Advisory Service?---Yes.

Even though you're recommending Legal Advisory Service?---Yes; I can recommend myself.

Where in the video do you say that? Where in the video do you say, ‘I’m Chris Rosser. I’m Legal Advisory Service. Please use me’? Where do you say that?--I’m – I’m not required to use a particular format.

Mr Rosser, you’re deliberately trying to mislead the public by this video, aren’t you?---Not at all.

You are deliberately trying to hold out the Legal Advisory Service as a law firm?---Well, if I am the Legal Advisory Service - - -

Right?--- - - - I’m a legal practitioner, and I can advertise myself as the Legal Advisory Service.

Mr Rosser – Mr Rosser, what you’re doing with this video is that you’re using the authority of your office as a barrister to entice people to use Legal Advisory Service. That’s so, isn’t it?---Entice? It’s no more - - -

But you don’t - - -? - - - or less advertising than any other business.

...

Twice – twice on that video, you use the words – you use the term ‘talk to them’. Do you agree with that?---Yes.

And the ‘them’ which is being referred to in the video is Legal Advisory Service?--Yes.

But Legal Advisory Service is you?---It is me and my staff, yes.

So you’re recommending yourself?---Yes, of course.

And are you going to say that in your opinion, that is not misleading?---No, it’s not misleading.

- [38] The Tribunal notes parenthetically that, at the conclusion of the respondent’s evidence, the Court of Appeal directed that the relevant evidence be referred to the Legal Services Commissioner for consideration of the respondent’s conduct of the LAS and the Court Advisory Service (which is the subject of Charge 9).
- [39] The respondent’s justification for setting up the LAS operation was that it was some sort of “community initiative” which was designed “to connect members of the public to appropriate cost-effective access to legal assistance and representation”.¹⁶ Beyond these uncorroborated assertions, which this Tribunal does not accept, there is nothing to support that characterisation of the LAS. Indeed, the evidence paints quite a different picture:
- (a) The respondent patently held out the LAS, which he admitted was under his control, as a law firm which was independent of him. There is no other sensible way of reading the website content or viewing the respondent’s “third party” video endorsement of his own operation. The respondent’s attempts to explain these away were nothing short of risible;
 - (b) The respondent admitted that Reichman was his employee – allegedly, a “clerk”. It is clear on the evidence that the respondent allowed Reichman to send emails which included the words “incorporating the office of the Legal Advisory Service – Gold Coast”. Nowhere in the emails, which included emails to magistrates about pending cases, was Reichman described as the respondent’s

¹⁶ Respondent’s affidavit, paras 9 and 10.

“clerk”. Indeed, the title he used was “Case Manager – Crime and Traffic Division”, suggesting not only that there were other “divisions” of the LAS but that Reichman’s role was that of “Case Manager”. But there was no “Office of the Legal Advisory Service” – this was just a “brand name” for the respondent’s practice, by which he falsely and dishonestly held his operation out as a law firm with the name LAS. Nor were there any other “divisions” of the LAS. In truth, the only operative “division” was the “Crime and Traffic Division”, those being the areas of law in which the respondent practised. That “division” comprised the respondent, Reichman, and a secretary (in reality, an answering service); and

- (c) Despite this being the truth of the nature of his practice, the respondent magnified and perpetuated the deception by having the building from which he operated emblazoned with advertising for the LAS and its supposed services. He took out an advertisement for the LAS in the “solicitors” section of the Yellow Pages. He even posted LAS advertising on the back of a bus.

[40] As will appear below in considering Charge 3, the respondent utilised Reichman’s services in the practical operation of the LAS. As a consequence of his activities on behalf of the LAS, Reichman has twice been dealt with in the criminal courts for breach of s 24 of the *LPA*. A practical example of how the LAS operated is found in the judgment of Shanahan DCJ dismissing Reichman’s appeal against conviction on one of those matters. His Honour noted that the facts in that case were that “a suspect requested that the police officer contact his solicitor, Jacob Reichman”. His Honour continued:¹⁷

The police officer called a number provided by the suspect. The appellant [Reichman] answered. He answered “Legal Advisory Service, Jacob Reichman speaking”. The appellant together with Chris Rosser attended the police station. Mr Rosser and the appellant spoke to the suspect privately. After that meeting, the appellant indicated he would participate as a legal representative for the suspect in the interview. Mr Rosser left the station. The interview was electronically recorded ...

- [41] The respondent produced no evidence to support the notion that the LAS was some sort of “community initiative” which was handing out free legal advice. Indeed, as will appear below, the respondent not only charged for his services, but on occasion he required payment “on account” for services yet to be rendered.
- [42] In short, the edifice of the “Legal Advisory Service” was nothing more than a deceptive façade. It was a ruse which was designed and operated by the respondent as a means of touting for work in his chosen field of practice.
- [43] It was dishonestly held out by the respondent as a law firm which was independent of him.
- [44] Having regard to the admitted allegations and these further matters which the Tribunal has found against the respondent, the Tribunal is satisfied that, by operating the LAS in the manner described, the respondent:

¹⁷ *Reichman v Legal Services Commissioner; Legal Services Commissioner v Reichman* [2017] QDC 158, [30].

- (a) failed to maintain the high standards of professional conduct expected of barristers;
- (b) acted dishonestly;
- (c) engaged in discreditable conduct;
- (d) engaged in conduct which was likely to diminish public confidence in the legal profession;
- (e) engaged in conduct which was likely to diminish public confidence in the administration of justice; and
- (f) engaged in conduct which was likely to bring the legal profession into disrepute.

[45] Each of these findings warrants a conclusion that the conduct under Charge 1 amounted to professional misconduct. The respondent's conduct in operating the LAS was undoubtedly conduct which "would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency".¹⁸

[46] Charge 1 is proved, and there will be a finding of professional misconduct.

Charge 3

[47] Charge 3 is concerned with the respondent's employment of Reichman, and the work which Reichman undertook at the respondent's behest.

[48] The following particulars of the charge were all admitted by the respondent:

3.4 The respondent directed or authorised the following:

3.4.1 Jacob Reichman appearing in the Magistrates Court at Beenleigh in relation to a matter of Mr Wilkinson, on whose behalf Rosser had been briefed as a barrister, on the following dates:

- a. 31 January 2013
- b. 28 February 2013
- c. 14 March 2013
- d. 15 April 2013
- e. 20 May 2013

3.4.2 Jacob Reichman appearing in the Magistrates Court of Queensland in relation to a matter of Ms Carol Wills, on whose behalf Rosser had been briefed as a barrister, on the following dates:

- a. 1 May 2014
- b. 29 May 2014

3.4.3 Jacob Reichman appearing in the District Court of Queensland before Kent QC DCJ in the matters of Simmons, Pino and Matehaere, on whose behalf Rosser had been briefed as barrister.

3.4.4 Jacob Reichman appearing in court on numerous other occasions in relation to matters in which Christopher Rosser had been briefed as a barrister. In a letter to the Bar Association of Queensland

¹⁸ *Allison v General Council of Medical Education and Registration* [1894] 1 QB 750, 763.

dated 9 May 2014, the respondent stated that he had witnessed Jacob Reichman appear in court on ‘hundreds of occasions’ and seek leave to appear as Christopher Rosser’s clerk;

- 3.4.5 Jacob Reichman attending electronically recorded interviews in matters, on whose behalf Rosser had been briefed as a barrister on the following dates:
- a. 18 September 2013;
 - b. 16 October 2013;
 - c. 16 November 2013;
 - d. 27 December 2013;
 - e. 4 February 2014;
 - f. 20 February 2014;
 - g. 17 March 2014;
 - h. 6 May 2014;
 - i. 12 September 2014;
 - j. 25 September 2014.

[49] The respondent denied the charge by taking issue with the proposition that this was work which should have been personally conducted or completed by the respondent and not by his employee. In his response, the respondent contended:

- 3.2 As to paragraph 3.5 of the Applicant’s Application for Referral, the Respondent:
- 3.2.1 Admits that the electronically recorded interview/s attended by Jacob Reichman in which there was any more than a refusal of a client to participate in the interview was work which should have been personally conducted or completed by the Respondent and not by his employee or agent.
 - 3.2.2 Denies the allegation with respect to all other conduct referred to in that paragraph, on the grounds that:
 - 3.2.2.1 There is no legislative or administrative prohibition on the employment of clerks by barristers;
 - 3.2.2.2 There no [sic] legislative or administrative prohibition on clerks being utilised for non-contentious appearances in court;
 - 3.2.2.3 The remaining matters, in which it is alleged that Jacob Reichman attended electronically recorded interviews, were in the nature of interview refusals by clients, which did not require the personal attendance of a barrister;
 - 3.2.2.4 It is common and accepted in Queensland for Legal Practitioners to utilise the services of clerks for menial and non-contentious tasks, and; [sic]
 - 3.2.2.5 The use of clerks to perform menial and non-contentious tasks is an ethical and proper practice

which helps to ensure clients are not overcharged for services.

- [50] The respondent's idiosyncratic view of his obligation as a barrister to actually appear in court on matters on which he had been briefed was explored in cross-examination before this Tribunal. The respondent:
- (a) accepted that his clerk, Reichman, while employed by the respondent had twice been convicted of engaging in legal practice when not entitled to do so;
 - (b) admitted that Reichman had appeared for the respondent in court matters in which the respondent had been briefed on hundreds of occasions;
 - (c) said that he accepted that he had to do all the work, but he relied on Reichman to handle mentions such as adjournments;
 - (d) accepted, however, that a "mention" is a court appearance;
 - (e) said that he did not believe he was required to appear on a mention for an adjournment;
 - (f) said he believed that as long as he had carriage of the matter and oversaw the matter and gave instructions, he could have a clerk appear on his behalf;
 - (g) stated that, as a barrister, he did not have to do everything personally;
 - (h) said that when a court appearance was limited to a simple matter such as an adjournment, it was his understanding that he could have a clerk appear on his behalf. When pressed as to the source of that understanding, the respondent said that he had not seen anything to the contrary;
 - (i) confirmed evidence he had previously given to a magistrate that a reason for him using the clerk in this way was to avoid inconveniencing one court if the respondent was stuck in another court on another matter; and
 - (j) said that he considered that when he was directly briefed in a matter, it was not incumbent on him to appear when a matter was listed in court.
- [51] In light of the admissions, it is not necessary to set out further details of the many occasions when the respondent had Reichman appear in court on his behalf.
- [52] It is clear that the respondent had a profound ignorance of the fundamental obligation of counsel to attend personally on a client's behalf. No appearance before any court or tribunal is "menial"; the right of appearance is a privilege. It is not to the point that an appearance may have been for a matter which was not contentious. The fundamental vocation of a barrister is that of an advocate, as reflected in r 15 of the 2011 Barristers' Rule. A barrister briefed to appear in a matter, no matter how "menial" or "non-contentious", cannot delegate the obligation to appear to an unqualified employee.
- [53] In everyday practice, of course, it is common for the requirement for counsel to appear on a mention to be dispensed with, even at the last minute, by instructing solicitors making arrangements for there to be an appearance by a solicitor or a solicitor's clerk (with leave, if necessary), or by counsel arranging for another barrister to appear (with the consent of instructing solicitors).
- [54] That sort of circumstance, in which appropriate respect for the court or tribunal is preserved and the client's interests are protected, is completely different from the

present case, which involved a business model of a barrister employing an unqualified “clerk” to perform work which the barrister was personally obliged to undertake.

- [55] It was the respondent who personally owed duties to the Court and to his clients. Those duties, sourced in the common law, are made explicit in the 2011 Barristers’ Rule. A barrister cannot, as the respondent purported to in these cases, abrogate or delegate those personal duties by employing a clerk to appear on his or her behalf. Such an arrangement violates the requirements that a barrister be a sole practitioner.
- [56] The respondent’s “justification” of his practice by reference to not inconveniencing the Court manifests his fundamental lack of appreciation of the well-established prohibition on a barrister “double-booking”.¹⁹
- [57] Nor was this a case of “devilling”. The tradition of one barrister “devilling” work to another is regulated by r 107 of the 2011 Barristers’ Rule. In any event, “devilling” is restricted to research and chamber work, and does not extend to court work; it certainly does not permit the delegation of “barristers’ work” (as defined in r 15) to an unqualified clerk.
- [58] So far as Reichman’s attendance at police interviews was concerned, the respondent sought to justify his delegation to Reichman at least in respect of those interviews which were nothing more than clients refusing to answer questions, which according to the respondent did not require the personal attendance of a barrister. The respondent offered no legal or ethical basis for this supposed distinction. Again, it was emblematic of his attitude that, if the process was a formality, then somehow he was relieved of his fundamental obligation of attending to the matter personally.
- [59] All of the particularised interviews attended by Reichman were ones for which the respondent had been directly briefed. In five of them, the client refused to be interviewed. In relation to the other interviews in which there was more than a refusal by the client to answer police questions, the respondent has admitted that by sending Reichman he failed to act with competence and diligence and failed to maintain high standards of professional conduct.
- [60] For the remaining interviews, the respondent’s asserted distinction is simply untenable. Reichman should not have been sitting in the interviews in the first place, regardless of what responses the clients were proposing to give. He was not a “friend or support person”, as the respondent sought to portray him. He was there masquerading as a legal representative to fulfil the role which the respondent was supposed to be performing.
- [61] All of these matters amply demonstrate the respondent’s comprehensive lack of understanding of the fundamental obligation of a barrister to attend personally to a matter for which the barrister has been retained, including on a direct brief.
- [62] Charge 3 has clearly been made out. The conduct under Charge 3 represented such a gross departure from the standards of conduct and practice required of counsel, was so disreputable, and was so ignorant of a barrister’s duties to the Court and to clients that a finding of professional misconduct must be made.

¹⁹ 2011 Barristers’ Rule, r 98.

Charges 4, 5 and 10

- [63] It is convenient to deal with Charges 4, 5 and 10 together. In considering these charges, it may be noted that the term “trust money” in the *LPA* is relevantly defined to include “money received by the practice on account of legal costs in advance of providing the services”.²⁰ Section 246 of the *LPA* prohibits a barrister from receiving trust money.
- [64] On Charge 4, the respondent admitted the following particulars of the charge:
- 4.2 The respondent, by his duly authorised servant or agent, Jacob Reichman, issued a tax invoice dated 7 May 2014 to Lindsay Michael Edwards seeking payment of the amount of \$1,516.00 for legal services performed and the additional amount of \$2,000.00 for ‘*anticipated work over the next three months*’.
 - 4.3 On or about 29 May 2014 the respondent received the sum of \$3,516.00 from Lindsay Michael Edwards by way of electronic transfer into the respondent’s bank account.
- [65] The respondent denied, however, that an amount of \$2,000 within that sum was received on account of legal costs in advance of performing the work. He averred that at no point were funds “received” or “held” on account, and said that money he received was not “trust money”, as defined in the *LPA*.
- [66] The tax invoice in question is in evidence. It stated, in terms, that \$2,000 was required to be deposited by the client with the respondent to cover “anticipated legal expenses over the next three months”. That requirement was repeated in the tax invoice, with the statement “...please deposit the invoice amount due of \$1,516.00 plus payment of an additional \$2,000.00 to cover anticipated work over the next three months”.
- [67] The respondent has led no evidence to prove, or from which it can be inferred, that the \$2,000 was payment for work already completed or, indeed, that it was anything other than what it obviously was; namely, a payment made consequent upon the respondent’s request for the client to pay on account of work to be performed by the respondent in the future.
- [68] Charge 4 is clearly established.
- [69] Charge 5 concerned dealings between Reichman, on behalf of the respondent, and a client, Mr Alain Cabalé. Mr Cabalé provided an affidavit in support of this charge. He swore to the following:²¹
- (a) He attended at the LAS premises on 10 July 2012 and met with Reichman, who told Mr Cabalé that LAS would take on Mr Cabalé’s case and that “the cost would be \$3,000.00, with a deposit of \$1,000.00 and the balance later”. Mr Cabalé deposed that Reichman said words to the effect that the “cost would be \$3,000.00 with a deposit of \$1,000.00 before setting the wheels in motion”;
 - (b) On a date which, to the best of Mr Cabalé’s recollection, was 17 July 2012, Reichman came to Mr Cabalé’s home to collect the “deposit” of \$1,000 and Mr Cabalé’s file of evidence;

²⁰ *LPA* s 237(1).

²¹ Affidavit of Alain Francois Cabalé filed by leave on 13 November 2018, paras 6–10.

- (c) The cheque was presented on 18 July 2012; and
 - (d) Mr Cabalé did not meet with the respondent or Reichman between 10 July 2012 and the date when Reichman collected the cheque. His file of evidence was handed over with the cheque.
- [70] On Mr Cabalé's version of events, it is clear that the respondent had not performed any work on this matter when the cheque for \$1,000 was paid.
- [71] Despite this, the respondent contended in his response that the entire \$1,000 was for legal services already performed.
- [72] Mr Cabalé was cross-examined before this Tribunal. Despite being pressed on the issue, he maintained that the \$1,000 was paid in advance of any legal services being performed.
- [73] The respondent was cross-examined on this transaction. When asked to provide details of the work he had performed prior to the payment of the \$1,000, the respondent admitted that he had not actually performed any work and had received the fees in advance. The respondent, under cross-examination, expressly said that he now accepted Charge 5.²²
- [74] Charge 5 is therefore established.
- [75] In relation to Charge 10, the respondent admitted that:
- (a) by his duly authorised servant or agent, Reichman, he had received \$500 from a client, MJG; and
 - (b) The \$500 was received and held by the respondent on account of legal costs in advance of providing the services in respect of which it was paid.
- [76] Despite these admissions, the respondent, in his response, said the following, presumably by way of explanation or excuse:
- 10.2.1 The sum of \$500 was received in circumstances where the respondent had already performed some of the services and almost immediately prior to the balance of services for which it was paid, being performed by the respondent;
 - 10.2.2 The legal services were at a significantly reduced rate, given the client's personal circumstances, and; [sic]
 - 10.2.2 [sic] The money was obtained in the circumstances that, should the client have been remanded in custody, it would have been extremely difficult to otherwise recover any payment from the client.
- [77] No weight can be given to any of these excuses. The payment related to a bail application for the client whose matter ultimately ended up before the Court of Appeal (referred to above). The transcript of the respondent's cross-examination before the Court of Appeal is in evidence before this Tribunal. In the course of that cross-examination, the respondent admitted that at the time of the payment he had not yet performed the work for which it was paid, i.e. appearing on the bail application. He told the Court of Appeal that he considered he was justified in obtaining the money

²² Transcript of proceedings (13 November 2018) 1-51.

because he was putting his time aside to go to make the bail application, and also for sending his clerk to the watch house.

- [78] The Tribunal is satisfied that Charge 10 is established.
- [79] The respondent's conduct under each of these charges was in flagrant breach of the clear statutory prohibition on barristers being paid in advance of performing work. It is relevant, of course, that this was all done under the guise of the LAS – not only did the respondent hold LAS out as a law firm, he collected fees “on account” as if it were a law firm.
- [80] The conduct of the respondent in these instances was so fundamentally wrong and antithetical to the proper practice of barristers that a finding of professional misconduct will be made on each of Charges 4, 5 and 10.

Charges 6 and 7

- [81] The respondent has admitted to the following facts which underpin Charges 6 and 7:
- (a) As at 10 September 2014, the respondent was acting for a client, Mr Alageeli. An application on behalf of that client was filed in one of the other jurisdictions of this Tribunal. That application specified the respondent as the client's address for service.
- (b) On 10 September 2014, an email was sent under the hand of, and bearing the electronic signature of, the respondent. This email was sent on behalf of the client to the Utilities Office of a body corporate from Reichman's email address. The email stated:

... I act for Mohammed Rashid Alageeli. ... To prevent any further action, I hereby demand that you re-energise the premises at 2451/9 Ferny Avenue immediately. Failure to comply will result in further action being taken including possible claims for relief and compensation (including damage and spoilage to approximately \$15,000 worth of critical diabetes medication).

- [82] At the hearing of the discipline application, the respondent withdrew admissions that he had been acting as a general agent or attorney for the client and that the electricity provider had not been an “opponent” for the purposes of r 17(b) of the 2011 Barristers' Rule.
- [83] In his response, the respondent stated the following, presumably by way of explanation or excuse:
- 6.3.1 The matter was related to a client having electricity unlawfully shut off by a landlord;
- 6.3.2 The client had very few contacts in the community;
- 6.3.3 English was a second language for the client;
- 6.3.4 The client's daughter required the electricity supply activated as a matter of urgency to maintain medical equipment associated with her diabetes, and; [sic]
- 6.3.5 The respondent believed that the health of the client's daughter was in significant jeopardy without medical equipment.

- [84] These explanations do not overcome the fact that the correspondence, on its face, evidences the fact that the email was sent to the electricity provider in the respondent's capacity as a legal practitioner acting for a nominated client. The proceeding which had been commenced in QCAT (in which the respondent had been nominated as the client's address for service) was against a real estate agent, not the body corporate to whom this email was written. The body corporate was therefore not an "opponent" for the purposes of r 17(b).
- [85] The respondent's conduct, in sending the email, contravened r 17(b), and Charge 6 is established.
- [86] By giving his address as the client's address for service in the QCAT application, the respondent patently contravened r 17(e), and he has admitted as much. Charge 7 has been established.
- [87] By engaging in this conduct, the respondent fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner. Accordingly, there will be a finding that the respondent engaged in unsatisfactory professional conduct on each of Charges 6 and 7.

Charge 8

- [88] Charge 8 was also admitted by the respondent. The central admitted fact was that the respondent (or Reichman, on his behalf) had prepared an affidavit by Mr Cabalé which nominated the respondent's address as Mr Cabalé's address for service. This, again, was a blatant breach of r 17(e).
- [89] Charge 8 is established and, for the reasons expressed in respect of Charge 7, there will be a finding that the respondent engaged in unsatisfactory professional conduct.

Charge 9

- [90] Charge 9 concerned the conduct of the respondent's practice under the brand "Court Advisory Service" ("CAS"). It is sufficient to recount the following particulars of the charge, all of which were admitted by the respondent:

9.2 At all material times the respondent operated the Court Advisory Service and:

9.2.1 Court Advisory Service is not a registered law firm;

9.2.2 The respondent maintained or dictated the contents of a website with a web address of <http://courtadvisory.com.au>;

9.2.3 The website includes the words '*Court Advisory a division of Legal Advisory*';

9.2.4 One of the contact addresses provided is that of the Legal Advisory Service;

9.2.5 The website uses the plural form and plural pronouns to refer to the respondent's practice such as:

'our experienced lawyers and barristers service all law courts on the Gold Coast, Brisbane and Northern NSW'; 'Each lawyer and barrister'; 'we understand'; 'our lawyers and barristers'; 'we strongly recommend you have an appointment with us'; 'During our free legal advice meeting we will'; 'we are able to provide legal advice and representation in the hearing'; 'our advice';

9.2.6 Under the heading ‘free legal aid Brisbane’ the words ‘*If we are unable to help with your matter we are able to refer you to someone that may be able to do so*’ appears. Later on the same page the words ‘*The team at Court Advisory ...*’ appears.

9.2.7 On the website under traffic offences the following words appear:

‘Court Advisory traffic lawyers Brisbane and drink/driving lawyers are the lawyers that will help you achieve the best possible results in regards to either your traffic or drink driving charges. At Court Advisory, our lawyers regularly attend all the Magistrate’s courts. We have a deep understanding of the processes involved with all traffic related offences and we recognize the best possible way to approach them.

‘Therefore we can assist you with every type of license problem. If you lose your license at it effects your personal or employment life you should talk to us first. Where the law doesn’t allow you the right to drive we can minimize your time off the road ... So if you need a Traffic Lawyers Brisbane Court Advisory is the one stop shop for all your needs.’

9.2.8 On the website under criminal offences, the following words appear:

‘We can give you advice how to deal with the matter or represent you in the courts. Court Advisory are extremely experienced criminal lawyers Brisbane, which deal in all different types of crime in all the different levels of court ... leading Brisbane criminal lawyers.’

‘.. our specialist criminal lawyers ensure only the highest degree of professionalism’

‘.. our criminal lawyers have decades of experience ..’

‘we are able to provide you with free advice on ...’

‘our court appearances are conducted by leading solicitors and barristers at capped fees that you can well afford ... there is no obligation for you to have us represent you’

‘So if you require criminal lawyers Brisbane please do not hesitate to contact us anytime on ...’

...

9.2.10 The respondent has admitted in sworn evidence in the Court of Appeal that the Court Advisory Service consists of no one but himself.

[91] The respondent denied, however, that he had held out CAS as an organisation consisting of lawyers and barristers.

[92] Everything said above in relation to LAS applies to the respondent’s operation of CAS. The admitted wording of the website in itself proves the allegation that the respondent held this organisation out as one consisting of lawyers and barristers.

[93] In short, the respondent falsely represented CAS to the public as a law firm, when in truth it was nothing more than a front for him to utilise in touting for business.

[94] For the same reasons as were given above in relation to his conduct in connection with LAS, the respondent's conduct in operating CAS was disgraceful, dishonest and dishonourable.

[95] Charge 9 is established, and there will be a finding of professional misconduct.

Charge 11

[96] Charge 11 concerned the respondent's representation of a client named Kennedy, who was arrested on a number of charges. The respondent attended on Kennedy at the police station and provided him with legal advice.

[97] At the time of his arrest, however, Mr Kennedy was a person who was likely to be subject to the provisions of the *Vicious Lawless Association Disestablishment Act 2013 (Qld)* ("*VLAD Act*") because of his association with an outlaw motorcycle gang and the nature of the proposed charges.

[98] The particulars of Charge 11 assert that, in breach of his duty as a barrister, the respondent:

11.4.1 Failed to find out the exact nature of the charges faced by Kennedy prior to providing Kennedy with legal advice to co-operate if Kennedy thought it was in his best interests;

11.4.2 Failed to understand or appreciate prior to providing the legal advice as detailed in 11.4.1 that Kennedy would be subject to the provisions of the [*VLAD Act*].

[99] The respondent joined issue with these allegations, saying that, at the relevant time, Kennedy had not been charged with any offences and was only being held by police under the *Police Powers and Responsibilities Act 2000 (Qld)*, and further that the advice he gave Kennedy was "generic only on the basis of the limited information within the knowledge of the respondent".²³

[100] The respondent's stated position in this matter is, however, comprehensively undermined by evidence he gave about this matter on another occasion.

[101] After being interviewed by the police, Kennedy obtained new legal representation. Those new lawyers brought an application in the Supreme Court for admissions which had been made by Kennedy to be excluded. The application came on before Dalton J. The respondent was cross-examined before her Honour. The transcript of the respondent's evidence before Dalton J is in evidence on the present application.²⁴

[102] In the course of his evidence before Dalton J, the respondent made the following admissions:

- (a) He was present when Mr Kennedy was placed under arrest but was not "listening specifically to the offences ..." as they were listed to Mr Kennedy;
- (b) He "didn't specifically listen to each of the charges or the way they were said to [Kennedy]";

²³ Response, para 11.2.1.

²⁴ This Tribunal also notes parenthetically that one of the outcomes of the application before Dalton J was that her Honour directed that the respondent's conduct be referred to the Legal Services Commissioner.

- (c) He went to the Beenleigh police station and had a conference with Mr Kennedy for about 10 – 15 minutes;
- (d) When he had the conference with Mr Kennedy he had not developed any more of an understanding of the charges – “I didn’t put too much thought into it” and “I can’t recall precise charges being said to me”;
- (e) He did not “go about finding out what the details were” of the charges;
- (f) It “came up in the conversation about should he talk to the police, should he co-operate. I told him that it was entirely up to him what he wanted to do, that if he was going to plead guilty ultimately then he – any assistance he gave to police would be to his benefit”;
- (g) He “explained to [Kennedy] his rights and, if he was ultimately going to plead guilty, then it would be in his interests to co-operate, because he was asking me about co-operation. He [Kennedy] wanted to talk to them”; and
- (h) The respondent left the police station as Mr Kennedy did not require him any further.

[103] The following further evidence was given by the respondent before Dalton J:

Did you tell him that if he co-operated and pleaded to the charge, because they had a VLAD circumstance of aggravation he’d be doing at least a minimum of 15 years? – No.

And did you tell him that because you didn’t know it, did you? – I didn’t.

I didn’t hear you? – I didn’t know he was charged under the VLAD legislation.

[104] The respondent held himself out as a barrister who was very experienced in the practice of criminal law. Yet, by his own admissions before Dalton J, he failed to find out the exact nature of the charges faced by the client before advising him to co-operate with the police. Nor did the respondent have any understanding of the potential impact of the *VLAD Act* on his client’s position, or an appreciation of how that legislation might operate with respect to his client before advising whether or not it was in the client’s interests to co-operate with the police. These were not insignificant issues; on the contrary, they were matters directly relevant to the client’s decision to co-operate, and matters on which the respondent should have given competent advice but failed comprehensively to do so.

[105] By his conduct in relation to Mr Kennedy, the respondent substantially failed to maintain the reasonable standards of competence and diligence expected of a barrister practising in criminal law. Charge 11 is established to the satisfaction of the Tribunal. The nature of the failure, in the circumstances, was so substantial as to warrant a finding of professional misconduct.

Charge 12

[106] Charge 12 is admitted by the respondent. It concerned his conduct of a direct brief on behalf of MJG. The respondent has admitted that, in breach of his duty as a barrister, he failed to keep proper records of conferences, instructions and a signed plea of guilty form.

[107] Charge 12 is established. The conduct under Charge 12 fell short of the standards of competence and diligence expected of a reasonably competent practitioner. There will be a finding that the respondent engaged in unsatisfactory professional conduct.

Summary of findings on the charges

- [108] On each of Charges 1, 3, 4, 5, 9, 10 and 11, there will be a finding that the respondent engaged in professional misconduct.
- [109] On each of Charges 6, 7, 8 and 12, there will be a finding that the respondent engaged in unsatisfactory professional conduct.

Sanction

- [110] At the conclusion of the first day of the hearing of this discipline application, the respondent offered an undertaking to the effect that he would not seek to renew his practising certificate. The matter was then adjourned to a later date to allow the applicant time to investigate matters associated with the proffered undertaking. At the resumed hearing on 19 February 2019, the applicant relied on a further affidavit by Ms Campbell which had been filed and served in November 2018, after the first day of hearing. The affidavit contained further current evidence concerning the manner in which LAS was being operated which, the applicant argued, cast doubt on the value of the undertaking proffered by the respondent. For the reasons which follow, however, it is not necessary to examine that question further.
- [111] The applicant's primary submission was, and remained, that the respondent's conduct was so consistently egregious that he should be struck off.
- [112] In *Legal Services Commissioner v Munt*,²⁵ this Tribunal made a finding that the practitioner had engaged in professional misconduct, and continued:

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

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

(citations omitted)

- [113] It can also be accepted that a fundamental question in this context is whether the respondent's character is so "indelibly marked by the misconduct that he cannot be regarded as a fit and proper person to be upon the roll [of practitioners]".²⁶
- [114] Counsel for the respondent in the present case also conceded that, for the purposes of making that current assessment of the respondent's character, the Tribunal could

²⁵ [2019] QCAT 160.

²⁶ *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66, [57] (McMurdo JA).

properly have regard to the respondent's conduct in the course of the present discipline application. In that regard, the following matters are relevant:

- (a) After the discipline application had been filed, there were, as is conventional, a number of directions hearings for the purposes of progressing the matter. At two of those directions hearings, junior counsel appeared and announced appearances for the respondent. On each occasion, each barrister told the Tribunal, in effect, that the barrister had only just before the directions hearing been asked by the respondent (or his solicitors) to appear, and that the barrister was otherwise bereft of instructions in the matter;
- (b) On 10 April 2018, the Tribunal made directions to progress the application to final hearing. These included a direction that the respondent file and serve his written submissions by no later than seven days before the hearing;
- (c) No submissions were filed by the respondent in accordance with the direction. Mr Morris QC, who appeared for the respondent on the discipline application, told the Tribunal that the respondent had dispensed with the services of his previous solicitors, and that by the time the current solicitors and Mr Morris were retained the time for the filing of the respondent's submissions had passed. Mr Morris informed the Tribunal that his instructions were that the respondent was unaware of the direction to file submissions by seven days before the hearing.

When cross-examined on this point on the first day of the hearing, the respondent said that he had no experience in civil matters, and that he had not been told by either his former or his current solicitors that his submissions were due to be filed seven days before the hearing. He said that he assumed the solicitors were following their own procedures;

- (d) The hearing of the discipline application was adjourned at the end of the first hearing day. Before adjourning, the Tribunal made a number of directions, including for the filing of further material. One of those directions was for the respondent to file and serve his written submissions by no later than seven days prior to the resumed hearing. There is no doubt the respondent was aware of this direction having been made, because he was physically present in the hearing room when the directions were pronounced;
- (e) No written submissions were filed on behalf of the respondent at any time before, or at, the resumed hearing of the discipline application; and
- (f) At the resumed hearing, Mr Morris QC was constrained to call the respondent to give evidence to the Tribunal as to the reason for his non-compliance with the Tribunal's directions. When given the opportunity by Mr Morris to explain why written submissions had not been filed, the respondent gave a garbled answer, in which he again referred to the fact that all of his work had been in criminal and traffic law and he had no experience in civil courts, and that he assumed that his legal representatives would attend to the matter. He confirmed that he was physically present when the directions were made. He confirmed that he was subsequently provided with a written copy of the directions. He said he had no trouble understanding the terms of the direction. When asked if he could explain to the Tribunal why the direction was not complied with, he said "No, I can't".

The respondent's evidence on this point did not improve under cross-examination. He was taken to the transcript of the first day of the hearing where there was discussion as to the necessity for him to file written submissions and accepted that he had heard this discussion. He said that he did not expressly instruct his solicitors to write submissions because he "was assuming those procedures would be done, but I was in error in that assumption". He said that he accepted that he was negligent, but said that it was not anything that he "deliberately didn't do". He said that he was not concerned when he had not seen anything from his legal representatives about finalising the written submissions. Significantly, the respondent said that he did not expect that the Tribunal would be concerned about his failure to comply with a direction of the Tribunal.

Under further questioning, the respondent repeated that he thought the submissions would be filed through his lawyers, and said that he was "possibly negligent in just assuming – that they would do it". The respondent's ultimate position was to say, "I can only say that I was negligent in not providing proper instructions to my legal representatives".

The respondent's position deteriorated even further in re-examination:

- (i) The respondent confirmed having received the further affidavit by Ms Campbell at about the time it was generated (i.e. November 2018);
- (ii) He did not provide any instructions to his legal advisers concerning the contents of that affidavit;
- (iii) On about 5 February 2019, the respondent's solicitors received the applicant's further written submissions, and these had also been provided to the respondent. He said he thought this was "a couple of weeks" before the resumed hearing. He said that he had not provided any instructions to his solicitors in relation to those further submissions by the applicant; and
- (iv) The resumed hearing was on Tuesday 19 February 2019. The respondent confirmed that he first contacted Mr Morris QC and told him that the resumed hearing was listed for 19 February only on the previous Friday.

[115] The manner in which a practitioner conducts himself or herself in the conduct and course of a disciplinary proceeding may be considered on the question of the practitioner's fitness to practise.²⁷

[116] The respondent's persistent failure to engage properly in this discipline application, and his serial failure to comply with directions, cannot simply be attributed to ignorance or lack of familiarity with the civil jurisdiction. At least in respect of the last directions with which he failed to comply, the respondent was well aware of those directions having been made and the necessity for compliance. The respondent was at best indifferent to, and at worst contumelious of, this Tribunal, its authority and its processes. That weighs heavily against any assessment of the fitness of the respondent to hold office as a member of the legal profession.

[117] In relation to the conduct under the charges, the respondent adduced no evidence from which it can be inferred that he had any insight into or remorse for his offending conduct. On the contrary, the respondent sought to explain and justify the manner in

²⁷ *Legal Practitioners Complaints Committee v De Alwis* [2006] WASCA 198, [111].

which he had conducted his practice. For the reasons given above, the way in which the respondent conducted himself as a barrister was disgraceful, dishonest, and dishonourable. There is no evidence of rehabilitation on his part. There is no suggestion that the respondent now has any better insight into the manifest ways in which he departed from the standards of probity in practice expected of barristers.

- [118] Doing the best he could with the hand dealt to him, counsel for the respondent urged the Tribunal to proceed on the basis that the respondent was unaware that it was problematic to send a clerk to court, or that it was problematic to advertise in the Yellow Pages in the way he did, or that it was problematic to publish websites which created the impression for members of the public that the respondent was a member of a law firm providing the full services one would expect from a law firm.
- [119] The insuperable difficulty with that submission, however, is that a person who is so profoundly ignorant of the proper mode of practice as a barrister has no place in the profession. Indeed, such abysmal ignorance would count as a disqualifying factor.
- [120] But in any event, it is clear from the findings above that this Tribunal does not accept that the respondent's professional misconduct was merely sourced in ignorance of proper practice. On the contrary, his operation of LAS and CAS, and his practice of having Reichman attend to barristers' work on his behalf, was all part of a business model which was instituted and intentionally pursued by the respondent. At best, and consistent with the attitude he displayed to this Tribunal in the course of the discipline application, the respondent was indifferent as to whether that business model conformed to the ethical and regulatory requirements of a barrister's practice.
- [121] For completeness, the Tribunal notes that the respondent has a previous adverse disciplinary finding – in 2010, the Legal Practice Committee found that the respondent had engaged in unsatisfactory professional conduct for failing to comply with the then regulatory requirements relating to accepting direct briefs. He was publicly reprimanded and fined \$1,000.
- [122] In *Attorney-General of the State of Queensland v Legal Services Commission & Anor; Legal Services Commissioner v Shand* (“*Shand*”),²⁸ McMurdo JA, with whom Morrison JA and Brown J agreed, said:

[52] The discretion conferred by s 456 is a broad one and, as noted by the Tribunal, not subject to any express constraint. It is to be exercised for the purposes which are established by the authorities. It is well established that the purpose is not to punish the respondent, but to protect the public.

[53] The protection of the public, of course, is a purpose also served by an order which affects an existing or future practising certificate. By an order affecting a practising certificate, the public is immediately protected from the risks to which those who would encounter an unfit person would be exposed.

[54] However the removal of the name of an unfit practitioner from the Roll serves the interests of the public in more extensive ways. In *Attorney-General v Bax*, Pincus JA said that the remedies of suspension or striking off are for the protection of the public and of the profession's standing and that further, there is also a deterrent element. And in *De Pardo v*

²⁸ [2018] QCA 66.

Legal Practitioners Complaints Committee, French J (as he then was and with whom the other Members of the Full Federal Court agreed) said that:

‘[The protection of the public] extends beyond protection against further default by the particular practitioner to protection against similar defaults by other practitioners.’

- [55] The reference by Pincus JA in *Bax* to the protection of the profession’s standing is important. The community needs to have confidence that only fit and proper persons are able to practise as lawyers and if that standing, and thereby that confidence, is diminished, the effectiveness of the legal profession, in the services of clients, the courts, and the public is prejudiced. The Court’s Roll of practitioners is an endorsement of the fitness of those who are enrolled.
- [56] Consequently, the respondent’s disavowal of any intention to engage in legal practice was not the end of the matter. If he was not a fit and proper person to engage in legal practice, all of the purposes which I have described required that his name be removed from the Roll, absent something which indicated that he was likely to become a person who was fit to be a legal practitioner.
- [57] In this way, the test of probable permanent unfitness is, as the Attorney-General submits, a way of identifying that the character of the practitioner is so indelibly marked by the misconduct that he cannot be regarded as a fit and proper person to be upon the Roll.

(citations omitted)

- [123] In the present case, the Tribunal has concluded that the respondent is not a fit and proper person to practise as a barrister. His offer not to renew his practising certificate is of little comfort to the Tribunal. In any event, there is nothing before this Tribunal from which it might surmise that he may in the future become a person who is fit to practise as a barrister. For the reasons identified in *Shand*, the respondent must be regarded as probably being permanently unfit to practise.
- [124] The Tribunal will, therefore, recommend that the respondent be struck off.
- [125] No material has been put before the Tribunal to warrant a departure from the *prima facie* position under s 462 of the *LPA* that the respondent pay the applicant’s costs, and the Tribunal will make an order accordingly.
- [126] Notices of intention to seek compensation orders have been received from several parties, and the Tribunal will now make directions appropriate for the further consideration of those applications.

Orders

- [127] For the foregoing reasons, the Tribunal makes the following orders:
1. On each of Charges 1, 3, 4, 5, 9, 10 and 11, there is a finding that the respondent engaged in professional misconduct.
 2. On each of Charges 6, 7, 8 and 12, there is a finding that the respondent engaged in unsatisfactory professional conduct.
 3. It is recommended that the name of Christopher James Rosser be removed from the roll of legal practitioners in Queensland.

4. The respondent shall pay the applicant's standard costs of and incidental to this discipline application, such costs to be assessed as if this were a proceeding before the Supreme Court of Queensland.
5. Alain Cabalé, Carole Ann Wills and MJG shall advise the Tribunal and the respondent as to whether they wish to pursue their respective Notices of Intention to Seek Compensation Order by 4:00pm on 6 November 2020; and
6. If Alain Cabalé, Carole Ann Wills or MJG advise that they wish to pursue a compensation order, then the matter will be listed for directions on a date to be advised by the Tribunal.