

**CITATION:** *Legal Service Commissioner v Fyfe* [2015] QCAT 269

**PARTIES:** Legal Service Commissioner  
(Applicant/Appellant)  
v  
Fiona Jayne Fyfe  
(Respondent)

**APPLICATION NUMBER:** OCR413-12 & OCR277-13

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Thomas, President**  
Assisted by:  
**Mrs Joanne Collins, Legal Panel Member**  
**Dr Margaret Steinberg AM, Lay Panel Member**

**DELIVERED ON:** 7 July 2015

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. The respondent be publicly reprimanded.
2. The respondent not be issued with a practising certificate within 12 months of the date of this order.
3. If the respondent returns to practice after the period of 12 months, the respondent is to only be issued with an employee level practicing certificate for a period of 2 years.
4. In any application for a practicing certificate, the respondent must provide to the Queensland Law Society reports from her treating doctor and an independent psychologist in relation to her ongoing treatment for depression and anxiety and her capabilities of engaging in legal practice in an

**employed capacity.**

- 5. The respondent is to pay the applicant's costs assessed on the Supreme Court scale.**

**CATCHWORDS:**

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY - NEGLIGENCE AND DELAY – where practitioner failed to comply with a Queensland Law Society notice – where practitioner failed to prosecute a claim on behalf of her client so that the client's rights were lost – where practitioner failed to have trust records externally examined – where practitioner engaged in legal practice without a practising certificate – where practitioner suffered a depressive illness – where practitioner's domestic partner was a partner in practitioner's practice – where practitioner became the principal of the practice after dissolution of domestic partnership – where no succession plan for the practice in place or carried out – where practitioner's conduct categorised by disorganisation – whether conduct amounts to unsatisfactory professional conduct or professional misconduct

*Criminal Offence Victims Act 1995 (Qld)*

*Legal Profession Act 2007 (Qld)* ss 268, 418, 419, 420, 443, 456

*Queensland Civil and Administrative Tribunal Act 2009 (Qld)* s 32

*Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498

*Law Society of NSW v Pearson* [2005] NSWADT 206

*Legal Services Commissioner v Bussa* [2005] LPT 005

*Legal Services Commissioner v Madden* [2008] QCA 301

*Legal Services Commissioner v Rowell* [2013] QCAT 397

*Legal Services Commissioner v Smith* [2011] QCAT 126

## **APPEARANCES and REPRESENTATION (if any):**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act).

## **REASONS FOR DECISION**

- [1] The Legal Services Commissioner asserts that the following conduct by Ms Fiona Fyfe constitutes professional misconduct and/or unsatisfactory professional conduct.

### **OCR413-12**

#### *Charge 1 – failure to comply with notice*

- [2] On 29 September 2011 the Queensland Law Society issued to Ms Fyfe a written notice pursuant to s 443(3) of the *Legal Profession Act 2007* (the Act), requiring her to provide an explanation in the investigation matter pertaining to a complaint made by her client, Mr Graham Cotterill, and to provide her client file. Ms Fyfe failed to comply with the Society's request within the specified time.

#### *Charge 2 – delay in failure to prosecute*

Between 5 January 2010 and 13 September 2011 Ms Fyfe failed to make a criminal injuries compensation claim on behalf of her client, Mr Cotterill.

### **OCR277-13**

#### *Charges 1 & 2 – failing to have trust records externally examined*

- [3] In breach of s 268 of the Act, Ms Fyfe failed to have the trust records of Moreton Bay Law externally examined for the financial periods ending 31 March 2011 and 31 March 2012 within 60 days after the end of the above periods.

#### *Charge 3 – engaging in legal practice without a practising certificate*

- [4] Ms Fyfe's practising certificate expired on 30 June 2012 and Ms Fyfe did not renew her practising certificate for the following year. Ms Fyfe continued to engage in legal practice between 1 July 2012 and 8 October 2012, acting for a client, Mr Todd Strathearn.

## **Background**

- [5] The parties have filed an agreed statement of facts.
- [6] Ms Fyfe was admitted to practice as a solicitor on 19 September 2001 and, prior to the current charges, had not been subject to any charges by a disciplinary body.

*Charges relating to Mr Cotterill*

- [7] On or about 26 February 2009, the Legal Aid Office Queensland appointed Moreton Bay Law to act on behalf of Mr Cotterill in relation to a criminal compensation matter.
- [8] After several months delay, Mr Sean McNally, a solicitor from Moreton Bay Law, attended Mr Cotterill's home and took instructions. Mr McNally was a partner at Moreton Bay Law between 14 July 2008 and 5 January 2010 and had the carriage of Mr Cotterill's matter. On 5 January 2010 Mr McNally left Moreton Bay Law.
- [9] The time limit for a claim under the *Criminal Offence Victims Act* 1995, on behalf of Mr Cotterill, was 31 January 2010.
- [10] Following Mr McNally's departure, Ms Fyfe took no steps to make a claim for criminal injuries compensation on behalf of Mr Cotterill.
- [11] On 30 May 2011, Legal Aid Queensland contacted Ms Fyfe enquiring about the status of Mr Cotterill's matter.
- [12] By letter dated 10 August 2011, the Legal Services Commissioner referred a complaint made by Mr Cotterill to the Queensland Law Society for investigation.
- [13] In a letter dated 16 August 2011, the Queensland Law Society invited Ms Fyfe to make submissions in relation to the complaint.
- [14] On 30 August 2011, Ms Fyfe responded that she did not take serious issue with the facts alleged by Mr Cotterill.
- [15] By letter dated 1 September 2011, the Queensland Law Society required Ms Fyfe, pursuant to s 443(1) of the Act, to provide full details of her conduct of Mr Cotterill's matter and also requested that Ms Fyfe provide her file. The response was required by 22 September 2011.
- [16] Ms Fyfe did not provide a response within the specified time.
- [17] With an email dated 13 September 2011, Ms Fyfe sent a scanned copy of Mr Cotterill's file to the Legal Aid office and indicated that no application for criminal compensation had been filed.
- [18] By letter dated 29 September 2011, the Queensland Law Society issued to Ms Fyfe a notice, pursuant to s 443(3) of the Act, in relation to her failure to respond to the request of 1 September 2011 and required Ms Fyfe to respond to that notice within 14 days.
- [19] Ms Fyfe failed to comply with the notice issued on 29 September 2011 by the Queensland Law Society pursuant to s 443(3) of the Act.

*Engaging in legal practice without a practising certificate*

- [20] Ms Fyfe acted on behalf of Mr Strathearn in relation to children's and property matters.
- [21] On 5 June 2012, Ms Fyfe had a meeting with Mr Strathearn and his father about his matters and, after Ms Fyfe's request, Mr Strathearn paid \$2,000 for the preparation and attendance for an upcoming court appearance.
- [22] Ms Fyfe says that the payment of \$2,000 (Ms Fyfe recalls this as being \$1,900) was with respect to work done prior to May/June 2012 in preparation for a hearing on 28 September,<sup>1</sup> and that Mr Strathearn was aware that payment of the sum of \$1,900 had been a payment for services previously provided.<sup>2</sup>
- [23] On 30 June 2012, Ms Fyfe's practising certificate expired and Ms Fyfe did not renew her practising certificate for the year commencing 1 July 2012.
- [24] Ms Fyfe did not advise Mr Strathearn that she did not have a current practising certificate.
- [25] On 5 July 2012, Ms Fyfe had a meeting with Mr Strathearn and his father and advised Mr Strathearn that she intended to cease practising as a solicitor in the future, but said words to the effect that she would see all of her client's cases through to completion.
- [26] Ms Fyfe was no longer practising after 30 June 2012 and referred matters to other solicitors including Mr McNally.<sup>3</sup>
- [27] After June 2012 Ms Fyfe had occasional contact with Mr Strathearn, who complained that Mr McNally was not giving him as much time as had Ms Fyfe.<sup>4</sup>
- [28] Mr Strathearn continued, because he was agitated and anxious, to telephone Ms Fyfe in the lead up to the hearing on 28 September 2012 and "either berate Ms Fyfe or complain vehemently about his former wife".<sup>5</sup>
- [29] Ms Fyfe found Mr Strathearn's telephone calls to be "both intrusive and unsettling".<sup>6</sup>
- [30] On or about 27 September 2012, Ms Fyfe advised Mr Strathearn that she could not appear on his behalf on 28 September 2012 as she was appearing in another Court.

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<sup>1</sup> Submissions on behalf of the respondent filed 15 May 2014, OCR277-13 charge 3 paragraph 19.

<sup>2</sup> Ibid, paragraph 23.

<sup>3</sup> Ibid, paragraph 25.

<sup>4</sup> Ibid, paragraph 24.

<sup>5</sup> Ibid, paragraph 27.

<sup>6</sup> Ibid, paragraph 28.

- [31] Ms Fyfe says she was not appearing in another Court on 28 September but did not feel that he “needed to be privy to her movements”.<sup>7</sup>
- [32] In an email of 2 October 2012 to Mr Strathearn, Ms Fyfe referred to matters to do with disclosure and tasks being completed by 30 November 2012.
- [33] In an email dated 3 October 2012, Ms Fyfe suggested to Mr Strathearn that he should make an appointment for the following week to make sure Ms Fyfe had all the necessary disclosure documents, and that she would then serve the documents on the Court, resend engrossed orders and aim to have the Court relist the matter for 30 November 2012.
- [34] On 8 October 2012, Ms Fyfe communicated with Mr Strathearn asking that he bring paperwork to a conference to take place at 9:30am. Ms Fyfe believes that Mr Strathearn knew she was no longer operating Moreton Bay Law after 30 June 2012.<sup>8</sup>

## Discussion

- [35] Section 418 of the Act provides:

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.

- [36] Section 419 of the Act provides:

- (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.

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<sup>7</sup> Ibid, paragraph 29.

<sup>8</sup> Ibid, paragraph 32.

[37] Thomas J formulated the test for professional misconduct as:

“The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.”<sup>9</sup>

[38] In her submissions Ms Fyfe refers to a number of personal issues which she was experiencing during the timeframe of the conduct which lead to the charges. These included:

- a) Ms Fyfe and Mr McNally were a couple who had separated, which lead to Mr McNally leaving Moreton Bay Law. There is one child from that relationship and Mr McNally failed for quite some time to pay any regular child support, which lead to financial difficulties and emotional turmoil for Ms Fyfe.
- b) In September 2011, Ms Fyfe suffered a medical emergency and underwent emergency surgery in the Prince Of Wales Hospital in Sydney,<sup>10</sup> and in that context, suffered a severe emotional reaction requiring professional help.<sup>11</sup>
- c) On 13 September 2011, having been out of hospital and back in Queensland for only 6 days, Ms Fyfe was not spending much time at the office as she was not able to drive, while suffering pain and the after effects of morphine.<sup>12</sup> Ms Fyfe has no accurate or reliable recollection of what occurred in the 3 weeks after being discharged from hospital.<sup>13</sup>
- d) During the relevant period, Ms Fyfe was suffering from severe depression, was behaving irrationally including being unable to remember names and recognise faces. She was sleeping very little, behaving aggressively and was confused about simple and basic information.<sup>14</sup>
- e) She began self-harming and had regular suicidal thoughts and tendencies.<sup>15</sup>
- f) She was also self-medicating heavily with alcohol and spending hours every day crying.<sup>16</sup>
- g) In November 2011, Ms Fyfe was sexually assaulted and as a result suffered further psychological stress and was diagnosed with depression and anxiety requiring medication.<sup>17</sup>

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<sup>9</sup> *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498 at 507.

<sup>10</sup> Submissions on behalf of the respondent filed 15 May 2014, paragraph 8.

<sup>11</sup> *Ibid*, paragraph 9.

<sup>12</sup> *Ibid*, paragraph 29.

<sup>13</sup> *Ibid*, paragraph 31.

<sup>14</sup> *Ibid*, paragraph 32.

<sup>15</sup> *Ibid*, paragraph 33.

<sup>16</sup> *Ibid*, paragraphs 34 and 35.

- h) Ms Fyfe continued to be treated for anxiety and depression throughout the entire period.
- i) Mr McNally often bullied and harassed Ms Fyfe in the context of her request for files and her requests more often than not were met with an aggressive response.<sup>18</sup> Mr McNally withheld files, documents and information.<sup>19</sup>
- j) Even after Mr McNally left Moreton Bay Law, he continued to have access to the firm's internet portal in relation to email, was aware of the password and could access Ms Fyfe's email by remote access.<sup>20</sup>
- k) Ms Fyfe believes that Mr McNally responded to some of the requests, such as that from Legal Aid Queensland, without her approval or knowledge.
- l) Ms Fyfe's conveyancing clerk, who attended the office on a daily basis, also had access to the email. The clerk was in contact with Mr McNally who would sometimes attend the office, use the fax machine, photocopier and computers.<sup>21</sup>
- m) Subsequently, Ms Fyfe lost her driver's license and was required to have an interlock device fitted to the car at a large cost and also ordered to pay Court costs. This caused her to be penalised heavily on a financial basis.
- n) Ms Fyfe has produced a medical certificate which states "this person has ongoing depression and anxiety. She has been having active treatment for this since 31 May 2011."<sup>22</sup>
- o) In April 2013, Ms Fyfe obtained work in sales at Cyprus Persian Carpets. Ms Fyfe worked there until June 2013, but was unable to continue due to depression and anxiety.

### **Failure to respond to written notice**

[39] Certain conduct is deemed to be professional misconduct.

[40] Charge 1 relates to failure to comply with a written notice.

[41] Section 443(4) of the Act provides that an Australian legal practitioner is taken to have committed professional misconduct where the failure to comply with a notice continues for a 14 day period, unless the practitioner has reasonable excuse for not complying with the requirement within the period.

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<sup>17</sup> Ibid, paragraph 10.

<sup>18</sup> Ibid, paragraph 19.

<sup>19</sup> Ibid, paragraph 20.

<sup>20</sup> Paragraph 26 of the submissions on behalf of the respondent filed 15 May 2014.

<sup>21</sup> Paragraph 30 of the submissions on behalf of the respondent filed 15 May 2014.

<sup>22</sup> Report from Dr St John Marsden, Sandgate Medical Centre, dated 12 March 2014.

- [42] Ms Fyfe failed to comply with the notice from the Queensland Law Society dated 29 September 2011 and did not provide any explanation for this failure.
- [43] Ms Fyfe's conduct in that respect amounted to professional misconduct.

### **Failure to prosecute Mr Cotterill's claim**

- [44] In relation to steps taken to act on behalf of Mr Cotterill, there was a failure to prosecute Mr Cotterill's claim so that Mr Cotterill's rights under the *Criminal Offence Victims Act* 1995 were lost.
- [45] This conduct occurred between 26 February 2009 and 31 January 2010 (when the limitation period expired). Mr McNally had the conduct of this matter until 5 January 2010 when he left Moreton Bay Law.
- [46] Ms Fyfe was the principal of Moreton Bay Law from 5 January (when Mr McNally left) until the time limit expired on 31 January 2010, and so had responsibility for the file at the time when Mr Cotterill lost his rights.
- [47] Neglect of a client's affairs, and associated delay, is capable of being either unsatisfactory professional conduct or professional misconduct. A solicitor is required to act with competence and diligence in the service of the client and should only accept instructions when the solicitor reasonably expects to conduct the matter with competence and diligence and attend to the work with reasonable promptness, and within relevant time limits.<sup>23</sup>
- [48] In the case of *Legal Services Commissioner v Bussa*,<sup>24</sup> the delays were much more substantial, ranging over a period of approximately 7 years. In that case, de Jersey CJ held that the conduct of the legal practitioner took on the character of professional misconduct.<sup>25</sup>
- [49] In the New South Wales case of *Law Society of NSW v Pearson*,<sup>26</sup> the conduct involved failure to prosecute criminal compensation claims, with the claims becoming statute barred by reason of the legal practitioner's default without explanation. There was a failure to prosecute the claim and also to communicate with the client. The conduct was regarded as professional misconduct and the practitioner suspended from practice for 12 months.
- [50] Ms Fyfe's explanation in relation to Mr Cotterill's claim was that Mr McNally resigned as a partner of Moreton Bay Law but continued to work on files including those of some private clients. Apparently, Mr

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<sup>23</sup> *Legal Services Commissioner v Smith* [2011] QCAT 126 at [9] and [10].

<sup>24</sup> [2005] LPT 005.

<sup>25</sup> [2005] LPT 005 at line 30.

<sup>26</sup> [2005] NSWADT 206.

McNally did not provide a file review or a summary of files in his care to Ms Fyfe despite the fact that Ms Fyfe said she made repeated requests.<sup>27</sup>

- [51] Ms Fyfe says she was not aware that Mr Cotterill was a client of her firm until the Law Society correspondence in or around November 2011, when the Law Society requested an explanation for the non-filing of Mr Cotterill's claim.
- [52] When Mr McNally was contacted and shown a copy of the Law Society communications, Ms Fyfe asserts he was asked to provide Mr Cotterill's file but did not do so. He did however agree to assist with preparing a response.<sup>28</sup> Ms Fyfe believed that a response was prepared and sent within the requested timeframe however is now unable to locate a copy.<sup>29</sup>
- [53] Ms Fyfe says she repeatedly requested that Mr McNally produce outstanding files (including those of Mr Cotterill) but he was uncooperative and, apart from 2 files produced for the purposes of a trust account report, all other outstanding files including Mr Cotterill's were never produced.
- [54] On Ms Fyfe's version, Mr McNally did not act appropriately and shares a great deal of blame.
- [55] However, at the relevant time, Ms Fyfe was the principal of the law firm retained to act on behalf of Mr Cotterill and did not make adequate arrangements to identify the files which were being conducted by the firm for which she was then the sole principal, nor to ensure that the matter involving Mr Cotterill was being attended to with diligence and efficiency.
- [56] When a legal practitioner leaves a law firm (as happened in January 2010 in the firm of Moreton Bay Law), it is the duty of the practitioners to identify the files being conducted by the departing practitioner, and for the continuing practitioner to ensure that the clients are made aware of the changed arrangements and that the files are conducted with efficiency following the departure of the legal practitioner.
- [57] Ms Fyfe's neglect caused Mr Cotterill to lose rights he otherwise would have been able to pursue under the provisions of the *Criminal Offence Victims Act 1995*.
- [58] In all the circumstances, including the fact that Mr Cotterill was deprived of his rights, the conduct amounts to a substantial failure to maintain standards of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and so amounts to professional misconduct.

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<sup>27</sup> Submissions on behalf of the respondent filed 15 May 2014, paragraph 7.

<sup>28</sup> Submissions on behalf of the respondent filed 15 May 2014, paragraph 13.

<sup>29</sup> Ibid.

### **Failure to have the trust records externally examined**

- [59] Section 420(1) of the Act provides that conduct which is capable of constituting unsatisfactory professional conduct or professional misconduct includes conduct consisting of a contravention of a relevant law.<sup>30</sup> A relevant law includes the Act.<sup>31</sup> Failure to have trust records externally examined is a breach of the Act.
- [60] By way of explanation, Ms Fyfe says that, prior to Mr McNally's departure as a partner of the firm, it was the practice that he maintained the trust account records and was responsible for preparing them.<sup>32</sup>
- [61] When the Queensland Law Society forwarded the request in relation to trust accounting records, Ms Fyfe says that she approached Mr McNally to ensure that she had all necessary documentation (even though he had left the firm).<sup>33</sup>
- [62] For some time Mr McNally was away in Europe, and later Ms Fyfe discovered that he had retained some files in his possession which were necessary to enable the audit to take place. After some lengthy correspondence with Mr McNally and his new firm, Ms Fyfe says that she obtained the files and delivered them to her accounting firm for the audit. There was some delay in the audit. There was also an issue to do with the non-payment of the accountants fees.<sup>34</sup> This conduct again falls substantially short of that which would be required of a reasonably competent and diligent legal practitioner and so amounts to professional misconduct.

### **Engaging in legal practice without a practising certificate**

- [63] Ms Fyfe's practising certificate expired on 30 June 2012 and the Ms Fyfe did not renew the practising certificate.
- [64] Despite this fact, she continued to act on behalf of Mr Strathearn.
- [65] In the case of *Legal Services Commissioner v Rowell*,<sup>35</sup> the conduct of the practitioner was found to be professional misconduct in circumstances where the person practised without a practising certificate for approximately 3 years.
- [66] The period during which Ms Fyfe may have engaged in legal practice without a practising certificate was for a much shorter duration and in very limited circumstances.

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<sup>30</sup> *Legal Profession Act 2007* s 420(1)(a).

<sup>31</sup> *Ibid*, Schedule 2.

<sup>32</sup> OCR277-13 charges 1 & 2, paragraph 10.

<sup>33</sup> OCR277-13 charges 1 & 2, paragraph 11.

<sup>34</sup> OCR277-13 charges 1 & 2, paragraph 12.

<sup>35</sup> [2013] QCAT 397 at [11].

- [67] The substantial issue which emerges from Ms Fyfe's involvement with Mr Strathearn is again the lack of competence in defining the practitioner's relationship with Mr Strathearn in a way which would be expected of a reasonably competent legal practitioner.
- [68] There seems to be a dispute with Mr Strathearn about the circumstances which occurred after June 2012, but this occurred because of the failure by Ms Fyfe in properly informing Mr Strathearn and clearly terminating the retainer.
- [69] In the circumstances, the conduct again falls substantially short of that which would be required of a reasonably competent and diligent legal practitioner and so amounts to professional misconduct.

### Sanctions

- [70] Upon a finding that a practitioner is engaged in unsatisfactory professional conduct or professional misconduct the Tribunal may make any order it thinks fit including those set out in s 456 of the Act.
- [71] It is well established that the aim of sanctions imposed in this jurisdiction is in the interests of protection of the community from unsuitable practitioners rather than as a punishment of practitioners.<sup>36</sup> An aspect of protection of the public is the maintenance of proper professional standards.
- [72] I have found that Ms Fyfe's conduct amounted to professional misconduct with respect to all of the charges which included failures to comply with notices under the Act, delays which caused her client to be deprived of rights under the *Criminal Offence Victims Act 1995*, failure to have trust accounts externally examined and engaging in legal practice without a practising certificate.
- [73] Ms Fyfe refers to her suffering from severe depression which resulted in her behaving irrationally and being confused about simple and basic information. Ms Fyfe also refers to her self-medicating heavily with alcohol and self-harming.
- [74] The Legal Services Commissioner does not submit that Ms Fyfe's conduct demonstrates unfitness to practice. The submission is that Ms Fyfe should satisfy the Tribunal that she is able to manage a legal practice and service clients with a standard of diligence and competence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.<sup>37</sup>
- [75] The Legal Services Commissioner submits that:
- (1) Ms Fyfe should be reprimanded.

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<sup>36</sup> *Legal Services Commissioner v Madden* [2008] QCA 301.

<sup>37</sup> Submissions on behalf of the applicant filed 24 April 2014, paragraph 55.

- (2) Ms Fyfe should not be issued with a practising certificate within 12 months of the date of the order and should not seek a practising certificate in that time.
- (3) Ms Fyfe's return to practice after that period should only be in an employed capacity for a period of at least 2 years under the supervision of a solicitor holding a principal level practising certificate.
- (4) In applying for a practising certificate, Ms Fyfe must provide to the Queensland Law Society a report from her treating doctor in relation to her ongoing treatment for depression and anxiety and her capabilities of engaging in legal practice in an employed capacity.

[76] Ms Fyfe submits that:

- (1) She is no longer in employment.
- (2) She has not sought to renew her practising certificate.
- (3) It is her intention to return to university and pursue an alternative career.
- (4) She has no intention of practising law again.
- (5) She continues to suffer from a depressive illness with accompanying anxiety disorder and to receive treatment and review from her general practitioner and, in that context, continues to take anti depressive drugs and sleeping tablets.

[77] Ms Fyfe has recognised, by her action, that because of her illness, she should not be involved in legal practice. The conduct which has led to the various charges has amounted to professional misconduct which is the more serious categorisation of the conduct of a practitioner.

[78] The conduct occurred across a range of aspects of Ms Fyfe's practice and arose because Ms Fyfe failed to properly organise her legal practice so that important matters, such as appropriate file handover procedures, timely responses to notices from the Queensland Law Society, correct arrangement for trust accounting reports and well defined retainers with clients, were left unattended.

[79] Ms Fyfe has had no previous incidences of conduct which was either unsatisfactory professional conduct or professional misconduct.

[80] It seems that the conduct may have been caused by Ms Fyfe's illness. The submissions by Ms Fyfe were to the effect that she continues to suffer from the depressive illness.

[81] The conduct which led to the charges did not have the character of dishonesty - rather, it was all characterised by a high level of disorganisation.

[82] I am persuaded by the submissions made by the Legal Services Commissioner with respect to penalty. The submissions are entirely consistent with the purpose of the penalty - to protect the public rather than punish the practitioner.

[83] I note that Ms Fyfe does not hold a current practising certificate.

[84] It is ordered that:

- (1) The respondent be publicly reprimanded.
- (2) The respondent not be issued with a practising certificate within 12 months of the date of this order.
- (3) If the respondent returns to practice after the period of 12 months, the respondent is to only be issued with an employee level practicing certificate for a period of 2 years.
- (4) In any application for a practicing certificate, the respondent must provide to the Queensland Law Society reports from her treating doctor and an independent psychologist in relation to her ongoing treatment for depression and anxiety and her capabilities of engaging in legal practice in an employed capacity.

### **Costs**

[85] The Legal Services Commissioner seeks an order for costs.

[86] Under s 462(1) of the Act, the Legal Services Commissioner is entitled to an order for costs unless exceptional circumstances exist.

[87] No such exceptional circumstances exist in this case.

[88] The Legal Services Commissioner has sought that the costs be fixed at an amount of \$5,000. Without further evidence, I'm not prepared to fix costs at that level.

[89] I order that the respondent pay the applicant's costs assessed on the Supreme Court scale.