

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Ploetz* [2024] QCAT 507

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

v

GREGORY JOHN PLOETZ
(respondent)

APPLICATION NO/S: OCR281-23

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 18 November 2024

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice Mellifont, President**
Assisted by:
Ms Pamela Sweetapple
Practitioner Panel Member
Mr Keith Michael Revell
Lay Panel Member

ORDERS:

1. **The Tribunal finds that the respondent engaged in unsatisfactory professional conduct.**
2. **The Tribunal orders that the respondent:**
 - (a) **be publicly reprimanded;**
 - (b) **pay a pecuniary penalty in the sum of \$4,000;**
 - (c) **undertake and complete within 12 months of the date of the Tribunal's orders, at his own expense, the Queensland Law Society Legal Ethics Course pursuant to section 456(4)(c) of the *Legal Profession Act 2007* (Qld); and**
 - (d) **pay the applicant's costs of and incidental to the discipline application, such costs to be assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland, unless the parties otherwise agree.**

CATCHWORDS: PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT - OTHER MATTERS –

where the respondent failed to take steps to progress proceedings related to a family law matter – where the applicant brought a charge against the respondent for a lack of competence and diligence expected of a reasonably competent practitioner – where the respondent accepts that the conduct constituted unsatisfactory professional conduct – where the respondent agrees to the proposed sanctions - whether the Tribunal is satisfied as to the agreed characterisation of the respondent’s conduct and the agreed sanctions

Legal Profession Act 2007 (Qld) s 418, s 419, s 452, s 456

Council of the Law Society of New South Wales v FZK [2023] NSWCATOD 154

Legal Services Commissioner v Bussa [2005] LPT 005

Legal Services Commissioner v Dingwall [2017] QCAT 76

Legal Services Commissioner v Gould [2016] QCAT 533

Legal Services Commissioner v Jiear [2012] QCAT 221

Legal Services Commissioner v Madden (No 2) [2008] QCAT 301

Legal Services Commissioner v Mcleod [2020] QCAT 371

Legal Services Commissioner v Mellick [2012] QCAT 333

Legal Services Commissioner v Smith [2011] QCAT 126

APPEARANCES &
REPRESENTATION:

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

REASONS FOR DECISION

Background

- [1] This is a hearing of a Discipline Application against the respondent pursuant to section 452 of the *Legal Profession At 2007 (Qld)* (‘the Act’) which alleges that between 10 March 2020 and 23 October 2020, while acting for the father (‘the client’) in a parenting matter regarding a child, the respondent failed to meet or maintain a reasonable standard of competence and diligence.
- [2] In summary, it is alleged that the respondent failed to commence or advance those proceedings and various requests by the client for updates were not returned.
- [3] The matter proceeds on the basis of agreed facts and joint submissions on characterisation of the conduct and sanction.

Facts

- [4] The respondent was born on 28 April 1958 and is 66 years old.
- [5] On 30 March 1981, the respondent was admitted to the legal profession in Queensland and practised law for approximately 43 years.

- [6] The respondent has worked as a principal in a private practice since 1982 and has held an unrestricted principal practising certificate since 1 July 1991.
- [7] The respondent has been the sole practitioner principal and/or managing partner of M.A. Kent & Associates ('MA Kent') since 1 September 1987.
- [8] Between on or about 19 November 2019 and 23 October 2020, the respondent acted for the client in relation to a family law parenting dispute between the client and Ms B ('mother').
- [9] The dispute between the client and mother primarily concerned issues relating to their child Miss C, born in 2017. ('Miss C').
- [10] In about 2017, about a month after Miss C was born, the mother relocated with Miss C from Queensland to Sydney.
- [11] A Family Dispute Resolution Conference ('FDRC') in relation to how much time Miss C was to spend with each parent and other significant people was scheduled for 16 December 2019. The respondent was acting for the client in relation to the conference pursuant to a grant of aid from Legal Aid Queensland ('LAQ') with LAQ file reference A ('Grant A').
- [12] On 16 December 2019, LAQ sent correspondence to the respondent in relation to the FDRC which stated (amongst other things):
- We have tried to arrange a family dispute resolution conference between your client and the other parties in relation to their family law matter. Unfortunately we have not been able to arrange the conference.
- [13] The correspondence referred to at above attached a certificate issued pursuant to section 601 of the *Family Law Act 1975* (Cth) to the effect that on 16 December 2019 a conference between the client and the mother did not proceed due to the refusal or failure of the mother to attend the conference.
- [14] On or about February 2020, the mother ceased communication with the client.

Parenting Proceedings

- [15] On 11 March 2020, LAQ granted an extension of Grant A for the respondent to act for the client in the Federal Circuit and Family Court of Australia for the purpose of commencing parenting proceedings as to access or contact by the client to Miss C. The terms of the LAQ Grant included:

For parenting matters, this grant of aid covers all work until a substantive interim order about parenting is made.

Grants of legal assistance in family law matters are provided in stages. This stage includes:

- (a) taking client instructions;
- (b) communication and negotiation with the other party;
- (c) preparing:
 - (i) initiating application or response;
 - (ii) affidavit material;

- (iii) notice of risk of abuse;
- (iv) subpoenas;
- (v) exemption of fees;
- (vi) for court attendance;
- (vii) consent order (if appropriate);
- (d) peruse material filed by the other party;
- (e) inspecting documents at Court which have issued by way of subpoena;
- (f) filing documents;
- (g) attendance at court for three court appearances (including interim / undefended hearings).

[16] On or about 24 March 2020, the respondent met with the client in relation to the parenting proceedings during which, amongst other things, the client informed the respondent:

- (a) the mother had moved with Miss C from Queensland to Sydney;
- (b) the mother was not responding to the client's text or calls;
- (c) the mother had blocked the client or deleted her account on Facebook, and as a result the client had not seen Miss C for a period of time;
- (d) although he did not know the mother's specific address in Sydney, the client believed that the mother may be in Rouse Hill or Blacktown;
- (e) of the mother's mobile phone number; and
- (f) the mother's father (Mr L) lives in Brisbane.

[17] On 25 March 2020, the respondent received correspondence from the client containing the date of birth, mobile number and email address for the mother.

[18] On 9 April 2020, the respondent sent correspondence to LAQ regarding a possible application by the client for another grant of aid with respect to the client's older child, Miss D, born in 2008. Miss D and Miss C had different mothers. In that correspondence the respondent wrote (amongst other things):

We confirm that aid has been granted to our client in relation to issues to concerning Miss C... In that regard we are looking to commence proceedings seeking orders with respect to the child spending time with him.

In discussing that matter with our client, he has also advised that he has another child from another relationship, namely Miss D...

The mother of that child has ceased to allow Miss D in having contact, be it face to face or by telephone with our client. This situation only occurred on or about 23 March 2020. Our client requires aid in respect of that matter as well as the aid that has been granted in respect of the child Miss C.

...

We are instructed that the mother ceased the child having contact with our client after she had asked our client for a sum of \$1,200 for the child's dental work. Our client is not able to pay those funds because he has lost his job. He attempted to explain this to the mother and the mother's response was, '[y]ou won't be seeing Miss D ever again'. Apparently Ms E, the mother of Miss D, then contacted the mother, the mother of the child Miss C and as a result of which they both proceeded to denigrate our client.

- [19] LAQ responded to the respondent's correspondence of 9 April 2020 on the same day. LAQ confirmed that a separate application was required for a grant of aid in relation to Miss D.
- [20] On or about 28 April 2020, the client applied for and was approved a separate grant of aid with respect to Miss D for the client to be represented by the respondent at a family conference with the mother of Miss D. The LAQ reference for that grant of aid was B ('Grant B').
- [21] A family conference scheduled for 29 June 2020 in relation to Miss D did not occur as the mother of Miss D did not attend.

Communications from the client to the respondent

- [22] At 9:31am on 10 June 2020, the client sent an email to the MA Kent general email address 'reception@makent.com.au'. In that email the client wrote:

I am just writing to hopefully get an update on the situation regarding my 2 children Miss C and Miss D. Just anxious to know how far away the next process is for both cases if that is known. Thank you again.

- [23] On 30 June 2020, the client had a meeting with the respondent at the offices of MA Kent.
- [24] At 2:15pm on 23 July 2020, the client sent an email to 'krisse@makent.com.au'. The email attached documents and information requested by LAQ. In that email, the client also wrote (amongst other things):

Hi Krisse,

I've attached the centerlink income statement to this email but will have to hand in hard copies of my bank statements into your office hopefully by tomorrow.

I have absolutely no contact at all with my 3 year old Miss C who is in Sydney. Have not seen her in nearly 6 months now so just very anxious to find out where I am in that situation at the moment, are you able to please find out for me?

- [25] The address 'krisse@makent.com.au' was the email address of the secretary to the respondent.
- [26] The respondent's secretary replied to the client's email as follows:
- Thank you for these forms. Greg is to dictate those documents to commence the Court proceedings. I will leave a message for him to contact you to discuss.
- [27] The respondent did not, however, contact the client.
- [28] On 24 July 2020, the client attended the offices of MA Kent.

- [29] At 5:47pm on 29 July 2020, the client sent an email to 'krisse@makent.com.au'. In that email, the client wrote:

Hi Krisse,

Again ... I am anxious to know what is happening with my child. The initial consultation with Greg for my daughter Miss C was on the 23rd of March.

I haven't been notified since on what is happening with that. I also have not seen, spoken to or heard anything from or about my 3 year old daughter since February the 1st.

All I am asking for is where we are at the moment with this being that I haven't received any updates about it in over 4 months.

- [30] At 2:52pm on 30 July 2020, LAQ sent an email to the respondent in relation to the Grant A as follows:

Dear Practitioner,

Are you able to advise if this matter is still active. I note a FM2A was issued on 11 March 2020.

- [31] On or about 3:00pm, 30 July 2020, the client sent an email to 'krisse@makent.com.au'. In that email, the client wrote the following:

Hi Krisse,

I've just spoken to Legal Aid about the matter to do with 'Miss C' and they said that funding for it to go to court had already gone through.

The number for that is A. If that helps.

- [32] On or about 30 July 2020, the client contacted MA Kent by telephone. The client spoke with MA Kent receptionist who informed the client that she would get the respondent's secretary to get back to the client. The respondent's secretary did not return the client's call.

- [33] At 2:58pm on 31 July 2020, the respondent's secretary replied to the email from LAQ as follows:

We refer to the below email and advise that this matter is still current and we are currently in the process of preparing Court documents to commence proceedings.

- [34] On or about 31 July 2020, the client contacted the respondent's secretary by telephone. She informed the client that MA Kent were just waiting on the respondent to file documents for the parenting proceedings, and that the respondent would be in touch with the client soon. The respondent did not get in touch with the client.

- [35] On 3 August 2020, the client, attended at the offices of MA Kent and provided a document titled 'Information for mother's case (Mother of Miss C)'. The respondent's reception stated to the client that she had informed the respondent to get back to the client.

- [36] On 5 September 2020, the respondent received an email sent by the client at 1:19pm on 5 September 2020 to 'krisse@makent.com.au'. In that email the client wrote:

Hi Krisse,

Just wanting to know how everything is going and where Greg and I are with my case for Miss C (3yr old in Sydney) at the moment.

- [37] On 11 September 2020, the respondent received an email sent by the client at 5:48pm on 10 September 2020 to 'reception@makent.com.au'. In that email the client wrote:

Dear M.A. Kent,

Just wanting to know how everything is going and where Greg and I are with my case for Miss C (3yr old in Sydney) at the moment.

- [38] On 23 September 2020, the respondent received an email sent by the client at 5:29pm to 'krisse@makent.com.au', which forwarded the e-mail sent on 10 September 2020.

- [39] On 24 September 2020, the client contacted MA Kent by telephone. The client spoke with the respondent's secretary who stated that the client's emails had been received, that the respondent had been busy, and that the respondent would get back to the client. The respondent did not return the client's call.

- [40] On 6 October 2020, the client contacted MA Kent by telephone. The call was answered by the respondent's secretary. The client requested to speak with the respondent, the respondent's secretary stated that that the respondent was on a call and would call back the client. The respondent did not return the client's call.

- [41] On 7 October 2020, the client contacted MA Kent by telephone. The call was answered by the respondent's secretary who stated that that the respondent was in Court and that she would get the respondent to call back the client. The respondent did not return the client's call.

- [42] At about 10:00am on 8 October 2020, the client contacted MA Kent by telephone. The call was answered by the respondent's receptionist who stated that the respondent was with a client and that the respondent would return the client's call when he finished. The respondent did not return the client's call.

- [43] At about 2:00pm on 8 October 2020, the client contacted MA Kent by telephone. The client spoke with the respondent's receptionist who stated that the respondent was busy and that she would ask the respondent to get back to the client.

LAQ intervention and change of legal representation

- [44] At 9:10am on 9 October 2020, LAQ sent an email to the respondent in relation to Grant A as follows:

Dear Practitioner

Regarding child: Miss C

Other party/Mother: the Mother

Reference is made to the above client.

I note that funding was initially approved for mediation, this did not proceed as no response was received from the other party.

I note that funding was initially approved for mediation, this did not proceed as no response was received from the other party.

Your office was then funded to initiate court proceedings in March 2020 - can you please provide a detailed progress report advising what stage the proceedings are at and advise of the next court date.

I note that the client has not seen or heard from the child since February 2020. Please also advise if the child and mother are still living in Sydney, NSW and if you were able to locate the mother and serve her with the client's initiating documents.

I await your immediate response.

- [45] The respondent did not reply to this email from LAQ. At 11:21am on 19 October 2020. LAQ sent another email to the respondent in relation to Grant A with reference to its email of 9 October 2020 in which LAQ wrote:

I refer to my email sent to your office on 9 October 2020 (see below) - can you please provide a response as soon as possible.

- [46] On 22 October 2020, LAQ sent an email to the respondent in relation to Grant A as follows:

“Dear Practitioner

The above client has submitted a request for a transfer of solicitors, Legal Aid has approved this request.

The file has been transferred to Cooper Maloy Legal Brisbane. Can you please arrange to forward the client's file to the new firm as soon as practicable.”

- [47] On 30 October 2020, LAQ replied to an email from the respondent of the same date in which the respondent sought confirmation as to which of the client's grants had been transferred. LAQ wrote:

The file that has been transferred is the file Grant A (which relates to the other party mother and child Miss C) which is the only file that has a current grant of aid.

The other file Grant B - funding was approved for mediation - mediation did not proceed and no further extension request for additional funding was received from your office. Accordingly, there is no current grant of aid to be transferred for this file.

- [48] As a result of the transfer of Grant A to alternate legal representatives, the respondent ceased to represent the client in the parenting dispute with mother or have carriage of the parenting proceedings.

- [49] The respondent did not commence Family Court proceedings in relation to Miss C at any time following the extension of the grant of aid for Grant A on 11 March 2020.

Submissions on behalf of the respondent

- a) The respondent's conduct amounts to unsatisfactory conduct as agreed between the parties;
- b) The respondent is 66 years of age;
- c) The client's legal services were funded by legal aid and as such he was at no personal financial loss;
- d) The respondent agreed to the Statement of Agreed Facts;¹
- e) The respondent has acted and co-operated fully and frankly during the LSC's investigation (agreed by the applicant);²
- f) The sanction proposed by the parties in this matter aligns with comparable cases and is commensurate with the respondent's conduct;
- g) The pecuniary penalty is an appropriate amount and one which will deter other practitioners from engaging in similar conduct;³
- h) The proposed orders meet the protective purpose of sanction, in particular, general deterrence, the maintenance of professional standards and to maintain public confidence in the profession; and
- i) The conduct is unlikely to be repeated by the respondent in circumstances where:
 - i. the respondent was dealing with exceptional medical circumstances;
 - ii. the respondent had satisfactorily progressed the matter from November 2019 until March 2020 (when the client/applicant alleges the unsatisfactory conduct to have commenced), and his conduct did/has not repeated across other matters;
 - iii. the respondent was admitted to the legal profession in 1981 and has practised law for approximately 43 years with no previous proceedings against the respondent for professional misconduct or unsatisfactory conduct;
 - iv. the respondent has continued to work as the sole practitioner principle/managing partner of M.A. Kent & Associates without issue; and

¹ Applicant's Submissions dated 24 July 2024, paragraph 94(c)(i).

² Applicant's Submissions dated 24 July 2024, [94](b).

³ *Council of the Law Society of New South Wales v FZK* [2023] NSWCATOD 154.

- v. the respondent is extremely remorseful for his lack of communication and for not delivering legal services as promptly as expected by the client (agreed by the applicant⁴).

Characterisation of the Conduct

[50] The terms ‘unsatisfactory professional conduct’ and ‘professional misconduct’ are defined in sections 418 and 419 of the Act respectively.

[51] Section 418 of the Act defines unsatisfactory professional conduct as follows:

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.

Did the respondent fail to take adequate steps to locate the mother for the purposes of the parenting proceedings?

[52] Within about two weeks of legal aid being granted for the parenting proceedings the respondent was in possession of the information and the mother’s details. The respondent was also in possession of Miss C’s date of birth. The Tribunal finds that the respondent did not make adequate attempts to locate the mother for the purpose of the parenting proceedings.

Did the respondent fail to take adequate steps to advance the parenting proceedings?

[53] A period of about seven months and 11 days had passed between the grant of legal aid for the parenting proceedings and the date that the respondent ceased to act for the client in the parenting proceedings. In that time, the respondent had not commenced the parenting proceedings in the Family Court, or taken adequate steps to progress the parenting proceedings. Nor in that time, had the respondent advanced the parenting proceedings in any substantial way (if at all).⁵

[54] The Tribunal finds that the respondent did not take steps to advance the parenting proceedings. This is unsatisfactory, particularly given:

- (a) the proceedings concerned a young child, and the issue of relocation in circumstances where her exact whereabouts were unknown;
- (b) family dispute matters, especially where parenting issues are involved, are particularly emotional;
- (c) the client had expressed his anxiety to the respondent. For example:
 - (i) by email of 23 July 2020, the client wrote:⁶

I have absolutely no contact at all with my 3 year old [Miss C] who is in Sydney. Have no seen her in nearly 6 months now so just very

⁴ Applicant’s Submissions dated 24 July 2024, [94](c)(ii)-(iii).

⁵ Applicant’s Submissions dated 24 July 2024, [42](a)-(b).

⁶ Statement of agreed facts, [21].

anxious to find out where I am in that situation at the moment, are you able to please find out for me.

(ii) by email of 29 July 2020, the client wrote:⁷

Again ... I am anxious to know what is happening with my child.
...

I haven't been notified since on what is happening with that. I also have not seen, spoken to or heard anything from or about my 3 year old daughter since February the 1st.

(d) the respondent was reminded of the need to advance the parenting proceedings by the various requests from the client and the request by LAQ for an update on the parenting proceedings.

[55] There is no evidence that the respondent had:

- (a) prepared any initiating documents to commence or advance the parenting proceedings;
- (b) commenced to draft any affidavits to support the parenting proceedings;
- (c) made any other inquiries or steps consistent with progressing the parenting proceedings in any substantial way; and
- (d) any significant discussions with the client beyond the March 2020.

Did the respondent fail to respond in a timely manner, to the client's emails, telephone calls or attendances?

[56] There is no evidence that the respondent himself personally emailed or spoke with the client in response to the client's various attempts to communicate with the respondent, apart, it seems from one attempt on 3 August 2020 to call the client.

Did the respondent deliver legal services to the client competently, diligently, and as promptly as reasonably possible?

[57] The Tribunal finds that that the respondent failed:

- (a) to take adequate steps to locate the mother for the purposes of the parenting proceedings;
- (b) to take adequate steps to advance the parenting proceedings; and
- (c) to respond in a timely manner, to the client's emails, telephone calls or attendances.

[58] In consequence, the Tribunal finds that the respondent did not deliver legal services to the client competently, diligently and as promptly as reasonably possible.

[59] A practitioner acting competently, diligently and as promptly as possible would have:

- (a) taken steps beyond those of the respondent to locate the mother, including:

⁷ Statement of agreed facts, [26].

- (i) seeking further details in relation to the mother;
 - (ii) making inquiries as to what options were available to the respondent or the client to locate the mother; or
 - (iii) exploring other options under the *Family Law Act 1975* (Cth) to locate the mother or Miss C, for example by seeking a location order or information order;
- (b) taken steps beyond those of the respondent to ensure that the parenting proceedings could be commenced as expediently as possible, including:
- (i) where necessary, taking the further steps referred to above in order to locate the mother;
 - (ii) substantially preparing initiating documents to commence or advance the parenting proceedings;
 - (iii) drafting any affidavits to support the parenting proceedings; and
 - (iv) conduct further discussions with the client;
- (c) responded to the client's attempts to communicate with the respondent:
- (i) in a timely way; or
 - (ii) by organising time to conference with the client.

What is the Appropriate Characterisation of the Conduct

[60] In *Legal Services Commissioner v Gould* [2016] QCAT 533 ('*Gould*') the Tribunal restated the following commonly accepted observations:

[38] Neglect or delay by a legal practitioner are capable of falling within the definitions of either professional misconduct or unsatisfactory professional conduct, as they amount to conduct which falls short of the standard of competence and diligence that a member of the public can expect of a competent legal practitioner. Whether the conduct is in the more serious category of professional misconduct depends upon the particular factual matrix and whether the conduct is a sufficiently substantial or consistent failure to maintain a reasonable standard of competence and diligence.

[39] If the conduct is part of a pattern of conduct, it is likely that the conduct will constitute the more serious characterisation of professional misconduct rather than unsatisfactory professional conduct.

[40] When neglect or delay leads to a loss of rights, such as where the legal practitioner allows a limitation period to expire, this is a matter which is relevant. In those circumstances, the conduct is more likely to be regarded as sufficiently substantial so as to amount to professional misconduct.⁸

⁸ See also *Legal Services Commissioner v Dingwall* [2017] QCAT 76, [26]–[28]; *Legal Services Commissioner v Smith* [2011] QCAT 126, [9]–[10].

- [61] In *Legal Services Commissioner v Dingwall* [2017] QCAT 76 (*'Dingwall'*), the practitioner Ms Dingwall was charged with delay and failure to advance the matters of three different clients. The delays ranged between about 5 months to about 11 months. The three delays in *Dingwall* did not mean that the limitation periods expired so that the clients were deprived of causes of action.⁹ The Tribunal held that the conduct was not substantial or consistent and so amounted to unsatisfactory professional conduct.¹⁰
- [62] In *Gould* the Tribunal considered five charges against the practitioner, Mr Gould. One charge related to a delay in his progress of a District Court proceeding over a three year period. The Tribunal found that while Mr Gould's conduct was over a lengthy period of time, it was not repeated across other matters and did not involve the client being deprived of their rights.¹¹ The Tribunal found that Mr Gould's conduct was not, of itself, sufficiently substantial or consistent to amount to professional misconduct but was unsatisfactory professional conduct.¹²
- [63] In *Legal Services Commissioner v Jiear* [2012] QCAT 221 (*'Jiear'*), the Tribunal considered a charge against the practitioner, Mr Jiear, for failing to progress a civil claim between 2006 and 2009. Mr Jiear had initially been retained in the matter from 2000. He satisfactorily progressed the claim on behalf of his client until 2006 when he attempted to renegotiate the retainer following doubts about the prospects of recovery. The attempts to negotiate the retainer were unsuccessful and despite being instructed to continue with the claim, he did not. Mr Jiear left the firm in 2009. The Tribunal found that Mr Jiear's conduct was unsatisfactory professional conduct.¹³
- [64] In *Legal Services Commissioner v Mellick* [2012] QCAT 333 (*'Mellick'*), the Tribunal considered a charge against the practitioner, Mr Mellick, who had been retained by his client to bring a civil claim in the District Court against property developers. Mr Mellick filed the claim but subsequently did not respond to a request by the defendant for further and better particulars. He also did not tell his client about an application by the defendant's solicitors for an order requiring Mr Mellick's client to disclose documents, yet he consented to the order and filed a list of documents.¹⁴ For about 29 months thereafter from May 2005 to October 2007, Mr Mellick took no further steps to progress the claim.¹⁵ His client retained new solicitors and leave was granted to proceed. However, ultimately the action was futile as the defendant's companies had gone into liquidation or were deregistered.
- [65] Mr Mellick was separately charged for deceitful conduct in falsely representing to the client that their matter was being progressed appropriately. The Tribunal referred to that deceitful conduct as aggravating factor to the conduct underlying the delay charge.¹⁶ The Tribunal held that although Mr Mellick's conduct was capable of being

⁹ *Dingwall*, [30].

¹⁰ *Dingwall*, [30].

¹¹ *Gould*, [44].

¹² *Gould*, [44].

¹³ *Jiear*, [13].

¹⁴ *Mellick*, [2]-[3].

¹⁵ *Mellick*, [4].

¹⁶ *Mellick*, [11].

characterised as professional misconduct, in all of the circumstances it more properly satisfied the definition of unsatisfactory professional conduct.¹⁷

- [66] In *Legal Services Commissioner v Smith* [2011] QCAT 126 (*Smith*), the Tribunal considered three charges involving delays by the practitioner, Mr Smith, in the matters of three separate clients. The delays were over a number of years wherein the respondent's progress of each matter fluctuated so that activity sometimes followed inactivity. The Tribunal found that the delay did not otherwise form a pattern and noted that the longest period was two years but, at other times, Mr Smith undertook a significant amount of work over a considerably longer period, which had the practical effect of advancing each client's case in an effective way.¹⁸ It was found that Mr Smith's conduct satisfied the definition of unsatisfactory professional conduct.¹⁹
- [67] In *Legal Services Commissioner v Bussa* [2005] LPT 005 (*Bussa*), the practitioner, Mr Bussa, was charged (amongst other charges) with serious neglect and delay and failure to meet reasonable standards of competence. Mr Bussa was acting for the complainant in a third party claim for personal damages arising from a motor vehicle accident. The delay was over a period of more than 10 years. As a result of the delay the client was unable to pursue a personal injuries claim.²⁰ The Tribunal described the delay as substantial and not satisfactorily explained and found that in the circumstances Mr Bussa's conduct amounted to professional misconduct.²¹
- [68] Here, the conduct is appropriately characterized as unsatisfactory professional conduct.
- (a) is objectively not as serious as the conduct in *Mellick* or *Bussa*;
 - (b) given the features of this matter, including the sensitive nature of the parenting proceedings, on one level it is more serious than the conduct in *Jiear*, *Dingwall*, *Gould* or *Smith*. However, *Dingwall* and *Smith* matters involved multiple clients and separate proceedings; while *Jiear* and *Gould*, involved much longer periods of time.

What is the Appropriate Sanction

- [69] In *Jiear*, Mr Jiear admitted the charge and particulars.²² The Tribunal noted that Mr Jiear's conduct did not involve both incompetence and misleading the client. The Tribunal also noted that the claim here had been commenced and appropriately pursued for a number of years, with the delay occurring only after Mr Jiear formed the view the client's action did not justify further pursuit.²³ The Tribunal ordered:²⁴
- (a) Mr Jiear be publicly reprimanded; and
 - (b) a penalty of \$1,500.

¹⁷ *Mellick*, [12].

¹⁸ *Smith*, [12].

¹⁹ *Smith*, [13].

²⁰ *Bussa*, 3.

²¹ *Bussa*, 4.

²² *Jiear*, [1].

²³ *Jiear*, [17].

²⁴ *Jiear*, [17]-[18].

- [70] In *Dingwall*, Ms Dingwall was remorseful,²⁵ cooperated with the QLS and complied diligently with the directions of the Tribunal.²⁶ Ms Dingwall was also found to be suffering from an anxiety disorder and mood deficit but was now remediated and adaptively managing stressors of a busy life.²⁷
- [71] Ms Dingwall was also charged with dishonest conduct in making false representations to her clients to hide her inaction. That charge amounted to professional misconduct. The Tribunal ordered that Ms Dingwall:²⁸
- (a) be publicly reprimanded;
 - (b) pay a fine of \$2,000;
 - (c) after obtaining an employee level practicing certificate, Ms Dingwall work under the supervision of another practitioner who holds a Principal level practicing certificate; and
 - (d) be prohibited from applying for or obtaining a certificate to practice as a Principal for a period of three years after obtaining an employee practicing certificate.
- [72] In *Mellick*, Mr Mellick referred to his misconduct as being caused by his constant work commitments and overwhelming workload, as well as personal stressors relating to his parents' health.²⁹ The Tribunal noted that Mr Mellick's responses when first contacted by the Legal Services Commissioner were appropriate and responsive and showed that he had understood and had insight into his misconduct.³⁰ The Tribunal considered that it was improbable that any training or supervision would alter or improve that. The Tribunal did not therefore make any orders requiring Mr Mellick to undertake any programs or training or education. As Mr Mellick had been in practice for almost two decades, during which time he had never been dealt with by any disciplinary body, the Tribunal further considered that such orders were unnecessary and excessive.³¹
- [73] Mr Mellick was also charged with deceitful conduct in making false representations to his client that their matter was being progressed. That charge amounted to professional misconduct. Ultimately, the Tribunal ordered that Mr Mellick:³²
- (a) be publicly reprimanded; and
 - (b) pay a penalty of \$5,000 within 90 days.
- [74] In *Gould*, Mr Gould believed that his conduct resulted from (amongst other things) an acrimonious divorce at the time, finding himself in a position where he had no staff due to external circumstances such as the global financial crisis and he was

²⁵ *Dingwall*, [55].

²⁶ *Dingwall*, [53].

²⁷ *Dingwall*, [41]–[44].

²⁸ *Dingwall*, [71].

²⁹ *Mellick*, [18].

³⁰ *Mellick*, [25].

³¹ *Mellick*, [24].

³² *Mellick*, [26].

undergoing financial stress.³³ Mr Gould suggested that he had now developed better methods to cope with stress and also pointed to the fact that he would have drastically reduced workload as a result of the termination by the Legal Aid Office of Mr Gould's preferred supplier agreement.³⁴

[75] Mr Gould had also been charged with misleading his client as to the reasons for the delay. That charge amounted to professional misconduct. The Tribunal viewed that it was necessary for the protection of the public that Mr Gould engage the services of a person to provide advice as to appropriate management systems within his practice.³⁵ Ultimately, the Tribunal ordered that Mr Gould:

- (a) be publicly reprimanded;
- (b) pay a penalty of \$6,000; and
- (c) retain the services of a person to provide advice as to the improvement and implementation of appropriate management systems of his practice to enable the provision of legal services by Mr Gould and in accordance with the professional obligation of Australian legal practitioners and to provide a report to the Legal Services Commissioner within 12 months of the completion of the order.

[76] In *Smith*, the Tribunal noted that Mr Smith had cooperated with the investigation process and that there was nothing to suggest a risk that Mr Smith's conduct would re-occur. Mr Smith had also lost about \$3,600 in outlays which he did not attempt to claim from his clients.³⁶ Mr Smith had a good work record and had not previously been the subject of any complaints or disciplinary proceedings. The Tribunal held that Mr Smith's early admission to the allegations, and full cooperation was tangible evidence of insight, and a measure of remorse,³⁷ and that the events were isolated and not a pattern of serious dilatoriness or misconduct in respect of a client's affairs.³⁸

[77] The Tribunal ordered Mr Smith:³⁹

- (a) be publicly reprimanded; and
- (b) pay a fine at \$2,000.

[78] In *Bussa*, Mr Bussa was the subject of other charges including that he failed to comply with notices under the Act. The Tribunal noted that all of these charges against Mr Bussa, in total showed an unacceptable pattern of neglect. The Tribunal ordered that Mr Bussa:

- (a) be publicly reprimanded;
- (b) fined \$6,000; and

³³ *Gould*, [58], [80].

³⁴ *Gould*, [58](p), [68].

³⁵ *Gould*, [82]-[83].

³⁶ *Smith*, [18].

³⁷ *Smith*, [19].

³⁸ *Smith*, [20].

³⁹ *Smith*, [21].

(c) subjected to restraints in his practice.

[79] It can be seen that in the majority of the comparable cases above, the sanction imposed involved a public reprimand and a fine. On some occasions, the Tribunal imposed a requirement for some form of supervision.

Matters relevant to sanction in this matter

[80] The respondent has practised for 43 years with no previous adverse disciplinary findings.

[81] The respondent has continued to work as the sole practitioner principle/managing partner of the firm without apparent issue.

[82] The applicant does not contend that the failures extend beyond the client.

[83] The respondent cooperated with the applicant during the investigation process, and the matter before the Tribunal has ultimately proceeded by way of agreed facts and joint submissions on characterisation and sanction.

[84] The respondent was, for two discrete periods throughout the relevant period of delay, suffering from medical conditions:

(a) He was admitted to the St Andrew's Ipswich Private Hospital Emergency Department on 31 August 2020 suffering severe back pain with right lower back spasms after twisting in his work chair. He was discharged on 3 September 2020 with a recommendation to see a physiotherapist. He was prescribed analgesic and other medication. He had some time off work after his discharge from hospital.

(b) He was again admitted to the hospital on 23 October 2020 for a laparotomy in respect of a division of adhesion and repair of umbilical hernia. He was discharged on 31 October 2020.

While this explains inaction for these two periods, it does not explain inaction for the balance of the period. Nor is there any explanation for the client not being advised that the respondent was unavoidably away from work for any period.

(c) The fact that the client was not personally out of pocket does not assist the respondent. Legal Aid clients deserve the same diligence and competence as a private paying client. Legal Aid should be able to expect that those practitioners who undertake legally aided work do so on the basis that they will act with diligence and competence.

[85] Although the respondent, in early communications with the LSC, sought to proffer by way of excuse for the delay that it was attributable to the client not being aware of where the mother was residing, his later conduct in the proceedings before QCAT, including reaching agreed facts and joint submissions on characterisation and sanction, demonstrate improved insight by the respondent into the nature of his failings and remorse.

Joint submissions on characterization and sanction

- [86] The parties submit that the Tribunal find that the respondent engaged in unsatisfactory professional conduct.⁴⁰ The Tribunal accepts this submission.
- [87] The parties submit that the appropriate orders are that the respondent:
- (a) be publicly reprimanded;⁴¹
 - (b) pay a pecuniary penalty in the sum of \$4,000;⁴²
 - (c) Undertake and complete within 12 months of the date of the Tribunal's orders on sanction, at his own expense, the Queensland Law Society Legal Ethics Course pursuant to section 456(4)(c) of the *Legal Profession Act 2007* (Qld).
- [88] The Tribunal accepts these submissions and observes that:
- (a) the parties submit that there are no special circumstances in this case which would justify a private reprimand;⁴³ and
 - (b) the proposed orders meet the protective purpose of sanction, in particular, general deterrence, the maintenance of professional standards and to maintain public confidence in the profession. The orders proposed are proportionate to the respondent's conduct.

Costs

- [89] The parties are in agreement that a costs order should be made in favour of the applicant.

Orders

- [90] The Tribunal finds that the respondent engaged in unsatisfactory professional conduct.
- [91] The Tribunal orders that the respondent:
- (a) be publicly reprimanded;
 - (b) pay a pecuniary penalty in the sum of \$4,000;
 - (c) undertake and complete within 12 months of the date of the Tribunal's orders, at his own expense, the Queensland Law Society Legal Ethics Course pursuant to section 456(4)(c) of the *Legal Profession Act 2007 Act* (Qld); and
 - (d) to pay the applicant's costs of and incidental to the discipline application, such costs to be assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland, unless the parties otherwise agree.

⁴⁰ *Legal Profession Act 2007* (Qld), s 456(1).

⁴¹ *Legal Profession Act 2007* (Qld), s 456(2)(e).

⁴² *Legal Profession Act 2007* (Qld), s 456(4)(a).

⁴³ *Legal Services Commissioner v McLeod* [2020] QCAT 371, [32].