



**IN THE LEGAL PRACTITIONERS
DISCIPLINARY TRIBUNAL**

ACTION NO. LPDT 4 OF 2023

THE LEGAL PRACTITIONERS ACT 1981

IN THE MATTER OF:

WILLIAM CHAU

REASONS FOR DECISION

Summary

The Legal Profession Conduct Commissioner (“**the Commissioner**”) charged a legal practitioner, William Chau (“**the Practitioner**”) with three counts of professional misconduct under section 82(2) of the Legal Practitioners Act 1981 (“**the Charge**”). The facts alleged may be summarised as follows:

1. Failure by the Practitioner to comply with his obligations to meet instalment payments in respect of a \$9,000 fine (“**the Fine**”) imposed by the Commissioner pursuant to section 77(J) of the Legal Practitioners Act 1981 (“**LPA**”);
2. Failure by the Practitioner to comply with Continuing Professional Development (“**CPD**”) requirements of the Legal Practitioners Education and Admission Council Rules 2018 (“**LPEAC Rules**”);¹
3. Failure by the Practitioner to comply with the requirements of the LPEAC Rules in respect of completion of an Accredited Law Practice Management Course.²

The Practitioner with some qualifications to the facts asserted in counts 2 and 3 has made admissions as regards each count. The qualifications are immaterial in that they do not impact upon the making out of the Charge of professional misconduct in respect of each count.

¹ The Practitioner was required to complete 10 units of Mandatory Continuing Professional Development between 1 April 2022 and 31 March 2023 however failed to do so.

² The Practitioner was initially required to complete the course by 29 November 2022, and thereafter following an extension of time granted by the Board of Examiners, by 31 January 2023.

The Tribunal finds that the conduct of the Practitioner in respect of each count constitutes professional misconduct, and, that such conduct taken as a whole also comprises a course of conduct constituting professional misconduct (“**the Infringing Conduct**”).

The Tribunal finds that the Charge by the Commissioner is made out.

The Tribunal determines that the appropriate disciplinary action to be taken in respect of the Practitioner is the issue of a formal reprimand.

Background

During the hearing of the within matter on 20 May 2024, the Commissioner tendered into evidence a book of documents containing communications exchanged between the Practitioner, officers of the Commissioner, and various Law Society officers.³ It is necessary to descend into some of the details of the documents to understand the background to the Charge.

By determination by the previous Legal Practice Conduct Commissioner, Commissioner May, on 28 June 2022 (“**First Determination**”), the Fine was imposed, and the Practitioner was required to undertake additional CPD and an Accredited Law Practice Management Course. At paragraph 12 of the First Determination, Commissioner May made the following factual and legal findings:

12. *I make the following findings of fact on the balance of probabilities, having regard to the requirements of Briginshaw and Neat Holdings:*
 - (a) *In the Report, the Society raised a number of concerns with particular conveyancing files conducted by the Practitioner, including tracing the funds in a property purchase by a Mr Abellanosa, and a mis-named payment to Revenue SA in a conveyance for Benson (labelled as Wong). Through significant persistence by investigator Sharon Spence, these matters were eventually able to be untangled and explained adequately. However the complete absence of any trust accounting records and some eccentric naming of transactions in the office records made this very difficult.*
 - (b) *While the proprietor of SMH from April 2017 to August 2018, the Practitioner paid a total of \$889,892.50 of trust money into his office account. While he ran Simpliate from July 2016 until about the end of 2020, he channeled \$571,340.86 of trust funds through that office account. No money was ultimately unaccounted for, but because of the failure to deposit trust money into a trust account, the Practitioner was assessed by the Society as owing interest of \$3,662.77 to the Statutory Interest Account. The Society directed the Practitioner*

³ These have admitted into evidence as Exhibit C1.

to pay this amount to the Society by 3 February 2021, but he did not do so until 23 August 2021.

- (c) *The Practitioner spent some time and correspondence debating the definition of trust money with the Society, as well as arguing about when he was entitled to be reimbursed for disbursements. His rather combative approach was followed up by some more concerning behaviour. Once it was ascertained what he had been doing, he was directed by the Society immediately to stop depositing trust money into his office account. (By then he only had the Simpliate business, having sold SMH.) The dates of these written directions included 12 December 2019, 6 February 2020 and 8 May 2020. However, the Practitioner continued with these same unacceptable practices until late in 2020.*
- (d) *The Practitioner has breached a number of the clauses of Schedule 2 regarding trust money and trust accounting. These include:*
- (i) failing to operate a general trust bank account in breach of clause 11(1);*
 - (ii) causing or permitting over \$1,460,000 in trust money to be deposited to an office account, in breach of clause 12(1);*
 - (iii) intermixing trust money with non-trust money in breach of clause 21; and*
 - (iv) failing to keep records of trust money received, in breach of clause 25.*

Commissioner May then proceeded to find inter alia that whilst there had been no dishonesty by the Practitioner in the mishandling of trust monies in the sense of misappropriation, the Practitioner had been uncooperative and evasive at times, and his conduct and attitude considered as a whole were of concern.⁴

First Determination Disciplinary Action

Commissioner May found there was evidence of professional misconduct by the Practitioner and determined the appropriate course of disciplinary action was to direct that the Practitioner pay the Fine in equal monthly instalments of \$375 per month, and that conditions be imposed on the practising certificate of the Practitioner requiring him to complete 10 additional units of CPD, and an Accredited Law Practice Management Course. The Commissioner in addition reprimanded the Practitioner.⁵

Second Determination

By letter dated 16 November 2022, the Commissioner advised the Practitioner that he had determined to conduct a new investigation on his own initiative into the failure by the Practitioner to comply with the

⁴ First Determination [14(b)].

⁵ First Determination [22-25]

subject of the First Determination. The letter also notified the Practitioner that the Commissioner was considering whether to make an application to suspend the legal practitioner's practicing certificate.

In response by letter dated 29 November 2022, the Practitioner (belatedly) provided Ms Branson, a solicitor in the employ of the Legal Conduct Commissioner, with a series of explanations for both non-compliance with his payment obligations in respect of the Fine, as well as his failure to respond to enquiries by the Commissioner. The Practitioner submitted that his non-compliance and failure stemmed inter alia from a range of difficulties including disruption caused by a reported stalker, his suffering an adverse reaction to the Covid-19 booster vaccination and falling behind with his workload as a consequence thereof, his securing of new employment and the termination of that employment shortly thereafter. The latter necessitated him to re-establish his former practice on two weeks' notice.

By email dated 14 February 2023, Ms Sharon Spence a senior investigator in Law Practice Compliance of the Law Society of South Australia notified Ms Branson that the Law Society had no record of the Practitioner having purchased any trust accounting courses, and that the Practitioner had failed to complete the Accredited Legal Practice Management Course. That notification was after the already extended timeframe agreed by the Board of Examiners for the Practitioner to undertake the course.

On 13 April 2023, Ms Branson wrote to the Practitioner noting he had defaulted in payment of the Fine, and that there remained an unpaid balance of \$6,375. Ms Branson informed that unless the Practitioner made another payment of \$375 within 7 days and continued monthly payments as he had agreed to do, there would be a recommendation the Commissioner issue debt recovery proceedings for the whole of the amount outstanding.

On 2 June 2023 Mr Werner van Wyk, the Law Society Deputy Director (Ethics and Practice), notified the Practitioner he was in default of meeting his CPD compliance obligations for the period ending 31 March 2023, and his practising certificate was thereby incapable of being renewed. Mr van Wyk also notified the Practitioner that he had failed to complete the required Accredited Law Practice Management Course despite the Board of Examiners having granted him an extension to do so by 31 January 2023.

On 26 June 2023 Mr Van Wyk informed Ms Branson that the Law Society had not received an application for renewal of the Practitioner's practising certificate.

By July 2023, the Conduct Commissioner appeared to have held concerns as to whether the health of the Practitioner was impeding compliance with his professional obligations. On 13 July 2023 Ms Branson requested the Practitioner to voluntarily submit to a medical examination by a medical practitioner nominated by the Commissioner. No response to that request was received from the Practitioner.

On 28 July 2023, Ms Rosalind Burke, also a Law Society of South Australia Director (Ethics and Practice) informed the Practitioner that the Law Society had not issued him with a practising certificate for

2023/2024, and that his entitlement to practice had ceased upon the expiration of his last practising certificate on 30 June 2023.

Referral to Tribunal

On 29 August 2023 the Commissioner determined that the Practitioner had engaged in professional misconduct by virtue of his failure to meet his payment obligations in respect of the Fine, his failure to complete the 10 CPD units he had been required to complete by 31 March 2023 and his failure to complete the Accredited Law Practice Management Course by 30 June 2022 (“**Second Determination**”).

The Commissioner also found that the Practitioner’s conduct was sufficiently serious such that it could not be adequately dealt with under section 77J of the LPA, and accordingly laid the within Charge against the Practitioner pursuant to section 82(2a) of the LPA.

The Tribunal Hearing

The Charge was listed for hearing before the Tribunal on 20 May 2024.

On the morning of the hearing the Practitioner sent an email to Ms Branson wherein he informed he was unlikely to attend at the hearing. The Practitioner wrote:

“Hi Philippa,

I hope you are well and have fully recovered.

I had hoped to discuss the matter with you before the hearing.

I'll get to the short of it, this is all getting a bit much for me, and I don't think I will make it to the hearing tomorrow.

I mean no disrespect to you or the Court, and I will fully abide by any decision that the Court makes (irrespective of what that may be). As I have indicated to you and the Court in my response, I do not seriously contend the matter (except for some relatively minor facts, which only give context to my conduct but do not excuse it).

I am in your and the Court’s hands.”

In light of the content of the email, the Commissioner, who appeared in person, indicated he wished for the hearing to proceed in the absence of the Practitioner, and the Tribunal agreed to that course.

The Commissioner's Submissions

The Commissioner submitted it was appropriate that the Tribunal discipline the Practitioner by issuing a further reprimand, but take no other action. The Commissioner, in the absence of the Practitioner, candidly drew to the attention of the Tribunal that he did not consider it appropriate for a further fine to be imposed in light of the Practitioner's limited financial circumstances, and as the Practitioner was no longer practising. The impression the Tribunal has been left with from the Commissioner's submissions is that the Practitioner is unlikely to return to practice in the future.

Consideration of Appropriate Disciplinary Action

In considering appropriate disciplinary action, the Tribunal bears in mind the primary aim of such action is to protect the public and not to punish practitioners, noting principles of personal and general deterrence have an important role to play in the delivery of that protection. In appropriate cases those principles serve to ensure practitioners are provided with clear indication as to the type of conduct that is unacceptable in professional practice, and to thereby deter practitioners from engaging in such conduct.

Where the Tribunal is satisfied a practitioner is guilty of unsatisfactory conduct or professional misconduct it may exercise its powers under section 82(6) of the LPA to discipline practitioners in a variety of ways. These include fining a practitioner to a maximum amount of \$50,000, suspending the practitioner's practising certificate for a limited period and imposing conditions on the practitioner's practicing certificate. The range and specific types of conditions are not defined in the section.

In the within matter the Tribunal notes the Practitioner has appropriately made admissions that the Infringing Conduct amounts to professional misconduct in respect of each of the three counts, and that there is no suggestion that the conduct adversely impacted upon any clients of the Practitioner. The Practitioner has ceased to practice and no longer holds a practising certificate. Accordingly protection of the public is of diminished importance.

The Tribunal also notes that the Infringing Conduct involved no personal dishonesty on the part of the Practitioner, and that the conduct is at the lower end of the scale of behaviour constituting professional misconduct. In this regard, although the Practitioner has not complied with his professional obligation to pay a number of the instalments required to discharge the Fine, it is accepted by the Commissioner that he has had and continues to have limited financial means.⁶ Further, the Practitioner in his response to count 2, indicates he had completed the required CPD units, however failed to file the required documents confirming he had done so. Additionally, the Practitioner in his response to count 3 indicates he paid for the Accredited Law Practice Management Course, attended all lectures and seminars, however failed to submit the final assessment due to illness. The Commissioner has taken no issue with these responses by the Practitioner.

⁶ The Commissioner considered debt recovery proceedings to recover the outstanding balance of the Fine was unlikely at least at present to be of any utility.

The Practitioner appears to have suffered a series of setbacks in the form of medical illnesses and an inability to cope with his legal practice workloads together with professional obligations. Indeed, the reason he advanced for his non-attendance before the Tribunal (in his above extracted email of 20 May 2024) indicates the Practitioner continues to be overwhelmed by his current circumstances, notwithstanding cessation of legal practice.

Had the Practitioner continued to hold a practising certificate, the Tribunal would likely have considered it appropriate to impose conditions requiring the Practitioner to obtain medical clearance certifying he was fit for practice, and to practice under appropriate supervision for an appropriate period. The Tribunal does not consider it has power to impose such conditions in respect of any practising certificate which may be sought by the Practitioner in the future. That will be a matter to be determined by the Board of Examiners (at least in the first instance) having regard to its assessment of the Practitioner's fitness for legal practice at that point in time.

Having regard to the totality of the circumstances, the Tribunal agrees with the Commissioner's submission that the appropriate disciplinary action is for the Tribunal to issue a reprimand to the Practitioner in respect of the Infringing Conduct.

The Tribunal's Determination

The Tribunal determines that the conduct of the Practitioner the subject of each of the three counts constitutes professional misconduct in each instance, and also, that considered in totality the conduct amounts to a series of acts which together constitute professional misconduct.

The Tribunal finds that the Charge as laid by the Commissioner is made out.

The Tribunal hereby reprimands the Practitioner on account of his conduct the subject of the Charge.

Dated the 11th day of June 2024

Roger Sallis
Presiding Member



Charles Gillam
Tribunal Member



