SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

LEGAL PROFESSION CONDUCT COMMISSIONER v MCCARDLE (No 2)

[2024] SASCFC 4

Judgment of The Full Court
(The Honourable President Livesey, the Honourable Justice S Doyle and the Honourable Justice S David)

17 December 2024

PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS - GENERALLY

The Legal Profession Conduct Commissioner applied for orders that the practitioner's name be struck off the roll of legal practitioners maintained under the *Legal Practitioners Act 1981* (SA) and that the practitioner pay the Commissioner's costs of the application to be agreed or taxed.

The Court principally considered the practitioner's conduct in the disciplinary proceedings before the Tribunal and the Court, including the practitioner's determination to relitigate an adverse jurisdictional ruling. The Court also had regard to the findings made against the practitioner by the Tribunal.

Absent submissions regarding the proper interpretation of s 89(5) of the *Legal Practitioners Act 1981* (SA) and the scope of the Court's inherent power, the Court did not rely on any factual findings made in the High Court, the WASAT, the Family Court, and the Federal Magistrates or Federal Circuit Court decisions referred to by the Tribunal.

The Court held (granting the applications):

1. The Court had regard to the findings made by the Tribunal, the adverse jurisdictional rulings made in the Tribunal and other fora but, principally, her conduct in the disciplinary proceedings before this Court including her determination to relitigate an adverse jurisdictional ruling, as well as the adverse findings made in the District Court of Western Australia. [123], [125] and [127]

2. The most concerning feature of the practitioner's conduct concerned her written and oral submissions which traversed issues far removed from the issues at stake in these disciplinary proceedings and included sweeping corruption allegations. The practitioner's conduct in

Applicant: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MR A KEANE - Solicitor: LEGAL PROFESSION CONDUCT COMMISSIONER

Respondent: ROXANNE MARIE MCCARDLE In Person via Telephone

Hearing Date/s: 06/12/2024

File No/s: CIV-24-008078

these proceedings demonstrated that she cannot adhere in any disciplined or logical way to a discussion about the legal issues actually before the Court and, instead, she exhibited a tendency to drift into a discussion about matters that were at best irrelevant if not outright fantastic, quite disengaged from reality. [133]

3. Even though the practitioner never intends to return to legal practice, it would be dangerous to allow her to continue to be held out as a person who is fit and proper to practise the profession of the law. [134]

4. The practitioner's name will be removed from the roll of legal practitioners maintained under the *Legal Practitioners Act 1981* (SA). The practitioner is ordered to pay the Commissioner's costs.

5. Observations made about the basis upon which the Court can have regard to findings made by the Tribunal pursuant to a combination of an implication derived from s 89(1) of the *Legal Practitioners Act 1981* (SA) and the inherent power of the Court. [81]-[114]

Commonwealth of Australia Constitution Act (Cth) s 75(iv); *Family Court Act 1975* (Cth); *Family Court Act 1997 (WA)* (WA) ss 9, 35, 36; *Legal Practitioners Act 1981* (SA) ss 5, 77B, 82, 88A, 89; *Legal Profession Act 2008 (WA)* (WA) ss 438, 407, 440; *Legal Profession Conduct Rules 2010 (WA)* (WA) r 6; *Mutual Recognition Act 1992* (Cth); *Mutual Recognition (South Australia) Act 1993* (SA); *Supreme Court Act 1935* (SA) ss 39, 67, 71, referred to.
Law Society of South Australia v Jordan [1998] SASC 6809; *Mitsubishi v Kowalski* [2005] SASC 154; *New South Wales Bar Association v Muirhead* (1988) 14 NSWLR 173, discussed.
ASIC v Macks (No 2) [2019] SASC 17; *Australian Postal Commission v Dao and Anor (No 2)* (1986) 6 NSWLR 497; *Barristers' Board v Young* [2001] QCA 556; *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245; *Burns v Corbett* (2018) 265 CLR 304; *Cannon v Acres* [2014] FamCA 104; *Clyne v New South Wales Bar Association* (1960) 104 CLR 186; *Council of the Law Society of New South Wales v Jafari* [2020] NSWCA 53; *Fenton & Marvel* [2012] FamCAFC 150; *Georganas v Barkla* [2021] SASC 47; *Gerber & Bradley & Ors (Security for Costs)* [2011] FamCAFC 206; *Gull & Gull* [2013] FamCAFC 97; *Huddart, Parker and Co Pty Ltd v Moorehead* (1909) 8 CLR 330; *In Re Maidment* (unreported, 26 August 1992, Judgment No S3583); *In Re Practitioners* (1980) 26 SASR 275; *Keane v Woolworths Group Ltd (No 4)* [2024] SASCA 113; *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408; *Law Society of South Australia v Murphy* [1999] SASC 83; *Law Society of South Australia v Murphy* (1999) 201 LSJS 456; *Law Society of South Australia v Rodda* (2002) 83 SASR 541; *Law Society of South Australia v Russell* [1999] SASC 389; *Legal Practitioners Complaints Committee v De Alwis* [2006] WASCA 198; *Legal Profession Complaints Committee v Amsden* [2014] WASAT 57; *Legal Profession Complaints Committee v McCardle* [2020] WASAT 51; *Legal Practitioners Conduct Board v Boylen* [2003] SASC 241; *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43; *Legal Practitioners Conduct Board v Fletcher* [2005] SASC 382; *Legal Practitioners Conduct Board v Kerin* [2006] SASC 393; *Legal Practitioners Conduct Board v Le Poidevin* [2001] SASC 242; *Legal Profession Conduct Commissioner v Cleland* [2021] SASCA 10; *Legal Profession Conduct Commissioner v Kaminski* [2021] SASCFC 39; *Legal Profession Conduct Commissioner v McCardle* [2024] SASCFC 3; *Legal Profession Conduct Commissioner v Morcom* [2016] SASCFC 121; *Legal Services and Complaints Committee v McCardle (No 2)* [2023] WASAT (22 December 2023); *Legal Services and Complaints Committee v McCardle (No 2)* [2023] WASAT 131 (23 February 2024); *Legal Services and Complaints Committee v McCardle [No 2]* [2023] WASAT 131(S) (24 April 2024); *McCardle v McCardle* [2013] WADC 182; *McCardle v McCardle* [2014] HCASL 213; *McCardle v Victorian Legal Services Board (Legal Practice)* [2021] VCAT 743 (9 July 2021); *Medlon v Medlon* (ex tempore reasons delivered 31 July 2013); *Medlon v Medlon* [2014] FamCAFC 163; *Mealon v Mealon* [2016] FCCA 2805; *Medlon v Medlon (No 5)* [2015] FamCAFC 156; *Medlon v Medlon (No 6)* (indemnity costs) [2015] FamCA 157; *Mitsubishi Motors Australia Ltd v Kowalski* [2004] SASC 302; *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279; *Official Trustee in Bankruptcy v Gargon (No 2)* [2009] FCA 398; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355; *R v Gallagher; Ex parte Aberdare Collieries Pty Ltd* (1963) 37 ALJR 40; *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty Ltd* (1987) 163 CLR 140; *Rigney v Rigney* (1987) 48 SASR 291; *Rola Co (Australia) Pty Ltd v Commonwealth* (1944) 69 CLR 185; *Southern Law Society v Westbrook* (1910) 10 CLR 609; *Tesseract International Pty Ltd v Pascale Construction Pty Ltd* (2024) 98 ALJR 880; *Vunilagi v R* (2023) 97 ALJR 627; *Waterside Workers' Federation of Australia v JW Alexander Ltd* (1918) 25 CLR 434; *Wentworth v The New*

South Wales Bar Association (1992) 176 CLR 239; *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, considered.

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[2024] SASCFC 4

Full Court – Livesey P, S Doyle and David JJ

THE COURT:

Introduction

1 By application dated 26 August 2024, the Legal Profession Conduct Commissioner (the **Commissioner**) seeks the following orders concerning the respondent, Roxanne Marie McCardle (the **practitioner**):

1. that the name of the practitioner be struck off the roll of legal practitioners maintained under the *Legal Practitioners Act 1981* (SA) (the **Act**); and

2. that the practitioner pay the Commissioner's costs to be agreed or taxed.

2 The Commissioner relies on affidavit evidence which exhibits, amongst other matters, the reasons for decision of the Legal Practitioners Conduct Tribunal dated 12 January 2021,[1] and on penalty dated 3 June 2022.[2] Also exhibited are decisions of the Western Australian State Administrative Tribunal (the **WASAT**) delivered on 22 December 2023,[3] and on penalty on 24 April 2024,[4] recommending that the practitioner's name be removed from the roll of practitioners maintained by the Supreme Court of South Australia.[5]

3 By the 2021 Tribunal reasons, the Tribunal rejected the practitioner's jurisdictional challenge relying on *Burns v Corbett*,[6] together with the practitioner's contention that the charges comprised an abuse of process. In the result, the Tribunal refused to summarily dismiss charges relating to the practitioner's failure to co-operate with what were said to be the Commissioner's reasonable requests concerning information about two complaints.

4 By the 2022 Tribunal reasons, it found, by a majority, that the practitioner had twice engaged in unsatisfactory professional conduct on or about 25 March 2017 by failing to adequately respond to the Commissioner's reasonable requests for information. The Tribunal also found, unanimously, that the conduct of the practitioner during the proceedings before it was so substantially and consistently

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1 The **2021 Tribunal reasons**, comprising KE Clark SC, C Gillam and M Dawson, (Ex SH5).
2 The **2022 Tribunal reasons**, comprising KE Clark SC, C Gillam and M Dawson, (Ex SH6).
3 *Legal Services and Complaints Committee v McCardle [No 2]* [2023] WASAT 131 (Pritchard P, Senior Member Aitken and Member Povey) (22 December 2023) (Ex SH8).
4 *Legal Services and Complaints Committee v McCardle [No 2]* [2023] WASAT 131(S) (Pritchard P, Senior Member Aitken and Member Povey) (24 April 2024) (Ex SH10).
5 The recommendation was made pursuant to ss 438(2)(b) and 440(a) of the *Legal Profession Act 2008* (WA).
6 *Burns v Corbett* (2018) 265 CLR 304.

below the standard required of a legal practitioner that she was not a fit and proper person to practise the law and she posed a danger to members of the public.

5 In consequence, the Tribunal recommended that disciplinary proceedings be commenced in the Supreme Court pursuant to s 82(6)(v) of the Act.

6 After these proceedings were commenced, the practitioner made a number of attempts to adduce a large volume of evidentiary material, none of which appeared to relate to the matters the subject of the adverse findings made against her.

7 In addition, the practitioner's affidavit evidence and written submissions were generally prolix and ill-focussed. At times, a number of scandalous allegations were made by the practitioner, directed to the former and present Commissioners and others, such as a Family Court judge, Federal Magistrates or Federal Circuit Court judges and senior counsel for the practitioner's former husband. These allegations were not supported by evidence and were repeated in this Court. Regrettably, the practitioner's conduct before this Court served to buttress the basis upon which it must be concluded that the practitioner is not a fit and proper person to practise the profession of the law. The practitioner is either ignorant of, or ignores, rudimentary professional standards.

8 For the following reasons, it is necessary to strike the practitioner's name from the roll.

Jurisdictional challenge

9 Notwithstanding the jurisdictional ruling made by the Tribunal on 12 January 2021, and earlier, similar rulings in other jurisdictions, the practitioner again attempted to rely on the contention that the Tribunal had no jurisdiction because her interstate residence raised a question of Federal diversity jurisdiction. It is not necessary to address the submission in any detail because the jurisdiction of the Tribunal is not affected by s 75(iv) of the *Constitution*, nor *Burns v Corbett*.[7]

10 The Commissioner and the Tribunal are not to be conflated with the State of South Australia and these proceedings are not properly to be regarded as proceedings between the residents of different States. The relevant jurisdiction relied on by the Commissioner before this Court invokes a combination of statutory and common law powers. The practitioner put forward no reason to reject the findings made in other tribunals that this jurisdictional challenge should be rejected.[8] The Tribunal had jurisdiction.

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7 *Burns v Corbett* (2018) 265 CLR 304.

8 *Legal Profession Complaints Committee v McCardle* [2020] WASAT 51, [8]; 2021 Tribunal reasons, [10]-[28]; *McCardle v Victorian Legal Services Board (Legal Practice)* [2021] VCAT 743 (9 July 2021).

11 The practitioner challenged the jurisdiction of this Court as well. The Supreme Court has jurisdiction over "legal practitioners" within the meaning of s 5 of the Act:

> ***legal practitioner*** or ***practitioner*** means—
>
> (a) a person duly admitted and enrolled as a barrister and solicitor of the Supreme Court; or
>
> (ab) an interstate legal practitioner who practises the profession of the law in this State …

12 The practitioner was admitted and enrolled as a legal practitioner within the meaning of s 5 of the Act on 8 May 2006, when she participated in an admission ceremony and signed the roll maintained by this Court.

13 The practitioner's contention that this Court does not have jurisdiction because she is not a practitioner within the meaning of s 5 of the Act must be rejected. The Commissioner relied on the following:

1. the power conferred by s 89(1) of the Act, which permits this Court to act on the recommendation of the Tribunal following its inquiry into the practitioner's conduct;

2. the power conferred by s 89(1a) of the Act, to act on the findings, orders and recommendations of a court, here the WASAT, following its inquiry and recommendations, as a result of which the Commissioner formed the opinion that the name of the practitioner should be struck off the roll; and

3. insofar as may be necessary, s 88A(2) of the Act, which preserves the inherent jurisdiction of the Supreme Court of South Australia.

14 The conduct of the practitioner which was considered by the Tribunal between 2021 and 2022 occurred in South Australia in the course of investigations conducted by the Commissioner under Part 6 Division 2 of the Act, as well as during the Tribunal's inquiry conducted pursuant to s 82(4) of the Act.

15 The conduct of the practitioner considered by the WASAT occurred in South Australia, Western Australia and whilst the practitioner was practising in Victoria. Although the practitioner practised law in Western Australia and Queensland, she was never admitted in those jurisdictions.

16 Although the practitioner has not held a practising certificate in South Australia since 30 June 2012, she remains a legal practitioner and held out as such for so long as her name remains on the roll maintained by this Court.[9] The

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[9] *Legal Profession Conduct Commissioner v Kaminski* [2021] SASCFC 39, [12]. See also *Southern Law Society v Westbrook* (1910) 10 CLR 609, 619; *Law Society of South Australia v Murphy* [1999] SASC 83, [30]-[34] (Doyle CJ, with whom Millhouse and Prior JJ agreed); *Legal Practitioners Conduct Board v Boylen* [2003] SASC 241, [52] (Debelle J).

practitioner was permitted to practice in other Australian jurisdictions by reason of the mutual recognition arrangements.[10] There is no evidence that the practitioner was admitted in any other Australian jurisdiction and so it is not necessary to address whether she might also be an interstate legal practitioner within the meaning of s 5 of the Act.

17 Indeed, even if she had been admitted interstate, and were her name to be removed from those interstate rolls, that would have no direct impact on her admission in South Australia because the Supreme Court of South Australia has exclusive jurisdiction over the oversight and maintenance of the roll in South Australia.

18 Whether under the Act or pursuant to its inherent jurisdiction (preserved by s 88A(2) of the Act), the Supreme Court of South Australia may supervise, control and, if necessary, discipline legal practitioners. The proper conclusion is that the Supreme Court of South Australia has primary jurisdiction to supervise and, if necessary, discipline the legal practitioners it has admitted for so long as they are enrolled.[11]

Broad overview of the practitioner's misconduct and adverse findings

19 In general terms, the practitioner's misconduct concerns the way in which she participated in her own Family Court and other proceedings involving her former husband, as well as her conduct in response to an investigation conducted by the Commissioner and during an inquiry by the Tribunal.

20 Whilst some of these events occurred more ten years ago, and the practitioner has not practised for some years, she told the Court that she did not intend to return to legal practice but she opposed the Commissioner's application.

21 In order to understand the various findings made in this case, it is necessary to set out some of the facts which underpin the hearings in which the practitioner has been criticised.

22 On 1 March 2010, the practitioner obtained an interim Domestic Violence order (DVO) in the Victor Harbor Magistrates Court. By 29 November 2011, she had, with the consent of her former husband, finalised a property settlement in the Federal Magistrates Court in Adelaide.

23 By mid-February 2012, the practitioner had relocated from South Australia to Busselton in Western Australia. On 11 July 2012, the practitioner obtained an interim Violence Restraining order (**VRO**) in the Busselton Magistrates Court.

24 On 24 August 2012, the practitioner applied in the Federal Magistrates Court in Adelaide to set aside the property settlement, as well as obtain a restraining order against her former husband. On 30 October 2012, the practitioner's application

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[10] *Mutual Recognition (South Australia) Act 1993* (SA).
[11] *Legal Profession Conduct Commissioner v McCardle* [2024] SASCFC 3, [11].

for a restraining order was dismissed, as was her substantive application concerning the setting aside of the property settlement.

25 On 27 November 2012, the practitioner filed an appeal in the Family Court before a single judge against the 30 October 2012 decision of the Federal Magistrates Court. By 28 February 2013, that appeal was deemed abandoned.

26 On 20 March 2013, there was a hearing of the practitioner's application for a final VRO in the Busselton Magistrates Court and, on the application of the practitioner's former husband, a permanent stay was granted.

27 Five days later, on 25 March 2013, the practitioner applied to reinstate her Family Court appeal.

28 On 10 April 2013, the practitioner filed an appeal in the District Court against the dismissal decision made in the Busselton Magistrates Court on 20 March 2013.

29 On 8 May 2013, the practitioner's application to reinstate the Family Court appeal was adjourned to 31 July 2013. The practitioner then indicated her intention to apply to restrain the former husband's counsel from continuing to act by reason of what was alleged to be a conflict of interest. In support of that contention the practitioner filed an application in the Family Court to issue subpoenas on 24 June 2013.

30 On 28 June 2013, the hearing to issue subpoenas was adjourned because the practitioner had failed to file an application to restrain counsel, with the result that there was no basis for the application to issue subpoenas.

31 On 5 July 2013, the practitioner filed an application and affidavit in the Family Court seeking orders that the presiding judge disqualify himself, that her former husband's counsel and instructing solicitor be restrained from acting and for leave to issue various subpoenas.

32 On 19 July 2013, the subpoena application dated 24 June 2013 was dismissed, as it was overtaken by the application filed on 5 July 2013.

33 On 31 July 2013, the practitioner's application to reinstate the Family Court appeal was heard. It was during this hearing that the practitioner was alleged to have misread from a transcript and made a number of scandalous comments. On the same day, the practitioner's disqualification application was dismissed as a result of which the practitioner appealed to the Full Court of the Family Court.

34 On 28 August 2013, the practitioner sent various emails to the Registrar of the Family Court making intemperate, discourteous and scandalous comments.

35 On 27 November 2013, the practitioner's appeal against the Magistrate's decision on 20 March 2013 was dismissed by the District Court of Western Australia.

36 On 7 January 2014, the practitioner filed an appeal in the Court of Appeal against the District Court decision made on 27 November 2013.

37 On 20 June 2014, the Western Australian Court of Appeal refused the practitioner's application to extend the time to appeal against the District Court decision.

38 On 1 July 2014, there was a hearing in the Full Court of the Family Court regarding the practitioner's appeal against the dismissal of her disqualification application. The question of costs was also agitated. In September 2014, the Full Court dismissed the practitioner's appeal. On 10 December 2014, the practitioner applied for special leave to appeal from the High Court. The High Court dismissed that application.

39 On 12 February 2015, the balance of the practitioner's application dated 5 July 2013 seeking the restraint of the legal representatives of her former husband was heard in the Family Court. On 13 March 2015, the practitioner's application was dismissed.

40 On 27 March 2015, the practitioner's application to reinstate the Family Court appeal was heard and dismissed.

41 On 28 August 2015, the practitioner applied to the Busselton Magistrates Court to set aside its own decision of 20 March 2013. On 24 September 2015, that application was dismissed by Magistrate Hamilton.

42 On 5 November 2015, the practitioner filed another appeal in the District Court against the decision made on 24 September 2015. On 3 March 2017, that appeal was dismissed.

43 On 10 September 2019, disciplinary proceedings were commenced against the practitioner in the WASAT by the Legal Profession Complaints Committee (WA) concerning conduct engaged in by the practitioner between 2012 and 2017 when a party to proceedings in various courts in Western Australia, in the Family Court of Australia and in the Federal Magistrates Court.

44 On 19 November 2019, the practitioner applied to dismiss those proceedings, relying on the contention that the WASAT lacked jurisdiction.

45 On 7 February 2020, a charge of professional misconduct was laid in the Tribunal by the Legal Practitioners Complaints Commissioner (SA).

46 On 13 March 2020, the practitioner's jurisdiction argument was rejected and the application to dismiss proceedings was dismissed by the WASAT (as earlier outlined).

47 On 5 May 2020, the practitioner applied to dismiss the South Australian charge on the basis that the Tribunal lacked jurisdiction. On 12 January 2021, that application was dismissed and reasons were given (as earlier outlined).

48 On 29 September 2021, the Tribunal concluded its inquiry into the conduct of the practitioner. All members of the Tribunal expressed concern about the practitioner's conduct during the course of the Tribunal proceedings. As the majority explained:[12]

> One feature of the Practitioner's behaviour which was most concerning was her refusal to accept the Tribunal's ruling as to its jurisdiction. She continually, and repeatedly raised this objection long after the reasons for that ruling were published and the time for her to appeal had passed. It was evident that the Practitioner either had no understanding of, or alternatively no respect for, the finality of the Tribunal's ruling (either of which is troubling). The Practitioner wasted considerable time by repeatedly raising the jurisdictional issue in her submissions, email correspondence and in telephone hearings.

49 Remarkably, the practitioner had asserted that the Commissioner and the Tribunal members had been "engaging in misconduct, maladministration and, if reasons were published, defamation".

50 In 2022 the Tribunal recorded with concern that the practitioner was focussed on perceived unfairness and prejudicial treatment by the Commissioner, as well as raising unrelated matters concerning disciplinary investigations concerning Mr Viscariello and Mr McGee, to an extent that she failed to "meaningfully engage in the very narrow and discrete issues" before the Tribunal.[13] The Tribunal recorded:[14]

> The Tribunal also finds that the written submissions made by the Practitioner throughout these proceedings were prolix, repetitive, in large parts confused, misconceived and irrelevant. The Practitioner was unable or unwilling to assist the Tribunal to understand her defence and showed no understanding of the proper way to go about gathering and presenting evidence in support of her position, at times appearing to believe this was the Commissioner's responsibility.

51 The Tribunal went so far as to find that the practitioner demonstrated a lack of insight, and her allegations of improper conduct directed to others were "far removed from reality".[15]

52 The Tribunal concluded that the allegations made by the practitioner as to the Commissioner's improper and dishonest conduct were unfounded and that it was unprofessional for her to make them.[16]

53 In making its recommendation that proceedings be commenced in this Court, the Tribunal was concerned that references to the conduct of the practitioner in

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12 2022 Tribunal reasons, [70].
13 2022 Tribunal reasons, [72].
14 2022 Tribunal reasons, [73].
15 2022 Tribunal reasons, [76].
16 2022 Tribunal reasons, [79].

other courts could only be considered by this Court. The Tribunal gave as a "non-exhaustive list of examples", the following findings made in the various courts and hearings already mentioned:

1. *Medlon v Medlon* (*ex tempore* reasons delivered 31 July 2013 by Strickland J), [8]-[14], [21], [30], [36]:

> 8. I observe that the wife failed to accept that ruling and over my objections continued to make the same submission throughout the hearing.
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> 9. The wife has also suggested today, and indeed I recall on the last occasion that the matter was before the court as well, that what should be happening in this case is the application seeking reinstatement should be heard. She professes to be confused as to why that has not taken place and suggests that it is part of some grand scheme to avoid that application being heard. What I pointed out to the wife on the last occasion, and I do again now, is that the only reason that application has not been heard and determined is the wife's own application that I be disqualified, and that Ms Nelson be restrained from acting in the matter on the ground of conflict of interest. It is quite simple, and there is no mystery about that. It is perfectly obvious that both of those applications have to be heard and determined before the application in an appeal can proceed whereby the wife seeks reinstatement of her appeal.
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> 10. The wife today has adopted the approach of taking the court to the transcripts of the hearings on 8 May 2013 and 28 June 2013. She has spent a significant amount of time in reading out various parts, indeed the majority of those transcripts, and at various points making comments in relation to what appears in the transcript. As the transcript of the hearing today will record, at various stages, I interrupted the wife in an attempt to ascertain the point of referring to all the transcript in the way that she was, given that the hearing was about an application for disqualification. The wife assured me that the necessity for that would become apparent as the hearing progressed. I indicated to her at the various points that I raised that issue, that up to then there had been nothing demonstrated to me which provided a basis for me to disqualify myself, and that remained the position at the conclusion of her submissions. I did so intending to prompt the wife to get to the point. However, the wife insisted on continuing to read out the transcripts unnecessarily, and make various comments along the way, taking a significant amount of time.
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> 11. In relation to the comments that the wife made, they were invariably comments where the wife either sought to explain her own statements as recorded in the transcript, or to dispute the factual material recorded in the transcript. When she did this I interrupted the wife and put to her that comments like that were irrelevant to the application before me. The wife though took no notice of what I said in that regard and continued to make such comments. They were not only irrelevant but generally inappropriate and unhelpful, and they contributed to the hearing taking far longer than it should have, as did her insistence in reading out the majority of the transcripts.
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> 12. I also observe, and the transcript of the hearing today will confirm this, that it became apparent that when the wife was allegedly reading from the transcripts of the previous hearings she did not always accurately repeat what was in those transcripts. I made a point of raising this during the hearing because I was concerned that someone reading the transcript of the hearing today might think that what the wife was putting, and allegedly reading, was in fact an accurate representation of what was in those transcripts, when it was not. There are also many examples of where

the wife would read something out from a transcript but not read out the entire part, or not read out the next part, which in a number of instances resulted in an inaccurate picture being presented.

13. What I perceive about the approach that the wife has adopted in pursuing this application, is that many of the complaints which she makes arising from the transcripts, are complaints against findings and ultimately the orders made by the court at the conclusion of those hearings. It is obvious to me that with many of those complaints the wife should have, if she was so minded, looked to appeal against the orders made. One of the particular orders that she is obviously unhappy about is the order that I made that she pay costs. She spent a significant period of time during the hearing referring to the transcripts and making comments as to what she says are the true facts, as opposed to what was revealed at the hearing. However that does not go to any issue of disqualification. The appropriate course for the wife in relation to those matters was to appeal, rather than bringing the application that she has. Just because she is unhappy with the findings and the orders made does not demonstrate that there is a reasonable apprehension of bias on my part.

14. I also note unfortunately that throughout the hearing at various times the wife was disrespectful to senior counsel appearing for the husband, and on those occasions I was obliged to indicate to her that such comments were inappropriate and that she should not do that. Yet, again, the wife took no notice of those rulings, and continued to make such comments.

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21. I also observe that the wife attempted in her submissions to suggest that I was actually biased as opposed to there just being an apprehension of bias. However, this submission was inappropriate given that in her application and her supporting affidavit she only alleged the latter and there was no suggestion of the former. Again though, although I directed the wife to not raise this in her submissions, she ignored that direction.

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30. One other comment is warranted about paragraph 2 of the wife's affidavit. There the wife deposed that I said to her "Oh, what would you know" when discussing the assets received by the husband. However, the wife was unable to take the court to where those words appeared in the transcript, and neither I nor Ms Nelson have been able to find them. It is concerning that the wife, a legal practitioner, has been prepared to swear in an affidavit that I used these words when the transcript does not support that. It adds to my concern about her preparedness to inaccurately repeat parts of the transcripts when reading those transcripts out during the hearing.

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36. Here, the wife failed to accept the discipline of the court, she failed to accept my rulings, she failed to comply with my directions, and she refused to acknowledge my obligation to control the proceedings. That inevitably led to my need to interrupt her and to stop her from putting submissions that were inappropriate, unnecessary and irrelevant.

2. *McCardle v McCardle* [2013] WADC 182 (Judge Fenbury), [7]:

The submissions were discursive, prolix, repetitive and difficult to read. They were not very helpful on the issues to be decided, being in effect the husband's application to bring the proceedings to an end without a consideration of the merits.

3. *McCardle v McCardle* [2014] HCASL 213 (Bell and Gageler JJ), [4]:

The Court of Appeal applied settled principles of law in the exercise of a procedural discretion. The prolix materials filed in support of the application do not identify any question suitable for the grant of special leave nor are the interests of the administration of justice engaged by the application.

4. *Medlon v Medlon* [2014] FamCAFC 163 (May, Ainslie-Wallace and Aldridge JJ), [108]-[110], [113], [121]-[122]:

> 108. We immediately point out that the appeal is brought in relation to his Honour's order that the wife pay the husband's costs of 31 July 2013 and that the costs be paid on an indemnity basis. Even if the assertions contained in the grounds of appeal were factually based none has any apparent relevance to the order for costs.
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> 109. No assistance in understanding the thrust of the grounds is gleaned from the "Revised Summary of Argument" filed out of time on 27 June 2014 by the wife in support of the appeal. It is discursive and relates in large part to the wife's appeal against the order of Federal Magistrate Kelly (as her Honour was then) dismissing the s 79A application. It further contains inappropriate and scandalous comment.
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> 110. Indeed, no part of this document addresses the appeal against the orders of 9 September 2013 that the wife pay the costs of the 31 July 2103 hearing.
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> …
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> 113. While the preparation of appeal books is the obligation of the appellant, the books prepared and forwarded to the court by the wife were wholly deficient and failed to comply with the relevant rules. At the request of the appeals registrar, the husband's solicitor agreed to prepare a set of appeal books for the court.
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> …
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> 121. Obviously, the wife has been wholly unsuccessful. However, her conduct in the proceedings is a significant factor. This was an appeal which was foredoomed to failure, the grounds of appeal raised irrelevant and unrelated issues. The summary of argument did not address the grounds of appeal in the disqualification appeal but rather repeated the submissions made to the judge on the application. The summary of argument was filed after the time prescribed. Further, it failed to address the issue of the costs appeal at all. The document included, as we have indicated, irrelevant, insulting and scandalous comment. The oral argument of the appellant was redolent of her submissions before the judge. It was discursive and failed to engage with the appeal.
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> 122. It should not be overlooked that the wife is a solicitor conducting practice in Western Australia. She must have appreciated that her conduct of the appeal was not in any way orthodox or in accordance with the rules or proper practice.

5. *Medlon v Medlon (No 5)* [2015] FamCAFC 156 (Strickland J), [14]-[18], [20], [24], [37] and [39]:

14. The hearing proceeded, but partway through the same the wife abruptly and deliberately hung up the telephone and she then would not allow the court to reconnect with her; the calls simply went to message bank.

15. This occurred at the point where I was attempting to explain to the wife what she needed to demonstrate to succeed in her application. In any event, given that this was a deliberate action by the wife, that I had earlier refused her application to adjourn the hearing, that the wife had effectively completed her oral submissions, and that this was the second occasion that the wife had abruptly hung up the telephone in an attempt to bring the hearing to a close, I continued with the hearing and received the oral submissions of the husband's senior counsel.

16. However, at the conclusion of the hearing I made orders that the court provide the wife with a full transcript of the hearing, that the wife file and serve written submissions, both in response to the submissions of the husband's senior counsel and generally in relation to the application, and that the husband have leave to file any written submissions in reply.

17. The transcript was duly forwarded to the wife, and she filed written submissions on 23 April 2015.

18. The first thing to note is that nowhere in those submissions was there any reason given by the wife for her actions in hanging up the telephone, or any recognition by her of the subsequent indulgence afforded to her by this court. The second thing to note is that those submissions did not provide any better assistance to the court in determining her application for reinstatement than her previous written and oral submissions or her affidavit material. She continued to be under the same misconception as before in relation to the issues involved, and I will say more about that later in these reasons. She did attempt to rewrite, or reframe the grounds of appeal, by including an expansive narrative detailing the complaints that she has with the decision of the Federal Magistrate, but as I will also explore later in these reasons, still not so that any appealable error by the Federal Magistrate was demonstrated.

…

20. In many respects her submissions were nonsensical and demonstrated her lack of understanding of the issues to be determined by this court, and the appeal process itself. It is again of significant concern that a legal practitioner simply does not appreciate what is required in making an application pursuant to s 79A of the Act, what is required to achieve reinstatement of an appeal deemed abandoned, what an appeal against orders of a trial judge entails, and that applications, once determined, cannot be re-agitated.

…

24. Consistent with the wife's cavalier attitude to orders of this court, and in particular in relation to orders for the filing of documents, without explanation the wife forwarded an affidavit to the court on 24 March 2015 expecting it to be filed. Not surprisingly it was not accepted for filing, and it was left for the wife to seek to tender the affidavit at the hearing.

…

37. It is difficult to discern from the documents relied on by the wife what reason or reasons she proffers for her failure to file the draft appeal index within time, but

> doing the best I can, it seems that she suggests that it was because of the time difference between Victoria and Western Australia, to which State she had then "recently" moved, and her allegedly suffering stress, anxiety, depression and memory loss. Frankly, I fail to see how the latter can be a legitimate reason for missing the deadline, and in any event no medical evidence to support these claims has been presented. Further, it is not correct that she had only "recently" moved to Western Australia; indeed she had moved there 12 months before. Thus, I am not satisfied that there is an adequate reason for the wife's failure to comply with the timeframe for the filing of the draft appeal index. However, the fact of the matter is that the wife was only a few hours late in faxing the draft appeal index to the Southern Appeal Registry, and it would be unjust if she was not able to pursue the appeal for that reason alone.
>
> …
>
> 39. In considering these grounds of appeal in the context of the reasons for judgment of the Federal Magistrate, I cannot say that any of them have any chance of success. They variously comprise narrative, mere assertions, combinations of assertions and evidence, nonsensical claims, and complaints that do not disclose any appealable error by the Federal Magistrate, particularly when bearing in mind that the application before her Honour was a s 79A application and not a property settlement application. I emphasise that because, plainly, the wife has misconceived the nature of a s 79A application, in framing some of the grounds of appeal as being alleged errors by the Federal Magistrate in addressing "an application for a s 79A adjustment" (e.g., Grounds (c) and (h)).

6. *Medlon v Medlon (No 6)* (indemnity costs) [2015] FamCA 157 (Strickland J), [12]-[14]:

> 12. However, what is relevant is that the applications should never have been brought in the first place. As explained in *Medlon & Medlon (No. 3)*, these applications never had any chance of success, and, given that the wife is an admitted legal practitioner, she should have been aware of that.
>
> 13. Further, in relation to the application to restrain Ms Collie, the wife has made scandalous allegations for which she produced no evidence, and they were allegations that should never have been made (see [42] – [47] of *Medlon & Medlon (No. 3)*). For example, in oral submissions the wife alleged that Ms Collie was "attempting to pervert the course of justice" (transcript 12.2.2015, page 37, lines 12-13), yet no evidence was presented to establish that claim.
>
> 14. Then there is the circumstance that the wife was estopped from pursuing her application against Ms Collie as from 31 October 2014, yet she still maintained the application thereafter (see [48] of *Medlon & Medlon* (No. 3)). It was only during the hearing on 12 February 2015 when the court was alerted to the email that the wife sent to the Appeal Registrar and to Ms Collie on 31 October 2014, that the wife accepted that she could not pursue the application and that it should be dismissed.

7. *Mealon v Mealon* [2016] FCCA 2805 (Judge Kelly), [28], [35]-[36], [57] and [61]-[69]:

> 28. I conclude that most of the orders sought by the wife in her Amended Response are without foundation. Paragraph 1 has already been considered by the Full Court and

dismissed, in Appeal SOA25 of 2015. Paragraphs 2 – 5 are akin to an informal s.79A Application, seeking to revisit the 2011 final Orders.

…

35. While the wife is self-represented, it must be remembered that she is a (occupation omitted). She should understand the need to present actual evidence in support of any Application brought before the Court. She has been reminded of this numerous times, both by this Court and by the Full Court.

36. Her failure to comply with this basic requirement leads me to conclude that the order sought in this paragraph is a vexatious proceeding. I find that the wife has brought this Application to annoy and harass the husband, rather than for any legitimate purpose. My conclusion is strengthened by the wife's Affidavit where she states that she intends to file a further Application in the WA Magistrates Court seeking to set aside the earlier decision dismissing her application for a Violence Restraining Order.

…

57. I conclude that this Application is a vexatious proceeding. The interim orders sought clearly identify the basis for the wife's claim and all of the matters referred to in those interim orders have been addressed in earlier proceedings – the Holden (omitted), the Ford (omitted) motor vehicle, the husband's ability to access refinancing immediately after the consent orders were made in 2011.

…

61. The above discussion demonstrates that the wife has filed a number of proceedings in this Court that are without merit and are vexatious, within the meaning of s.102QB. As discussed by Davies J and endorsed by Benjamin J, the requirement of "frequency" may be met by a relatively small number of proceedings, if the proceedings are an attempt to re-litigate proceedings that have already been determined.[17] I conclude that the wife's history of litigation in this Court during 2015 and 2016 is sufficient to find that she has frequently filed vexatious proceedings.

62. I accept the wife has not filed these proceedings purely out of spite, to harass or annoy the husband, but the impact of these vexatious proceedings upon the husband cannot be ignored. It is clear that the wife continues to believe the 2011 final orders reflect a grave miscarriage of justice perpetrated by the husband against her. The wife appears unable to accept that she has now exhausted all legal avenues in this regard. She is unable to accept "the principles of finality of litigation" as discussed by Perram J, above.[18]

63. Section 102QB is designed to protect parties and the Court from exposure to repetitive and unmeritorious proceedings. Such proceedings can be a considerable drain upon Court resources and can cause great cost and inconvenience to other litigants, such as the husband in this case.

64. Limiting a citizen's access to the Court system is a very significant step. It is not a decision that any Judge takes lightly, but only after due consideration and reflection

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[17] *Cannon v Acres* [2014] FamCA 104, [483] (Benjamin J).
[18] *Official Trustee in Bankruptcy v Gargon (No 2)* [2009] FCA 398, [2]-[12] (Perram J).

on the evidence presented. However, a citizen's right to access the Court must be balanced against another citizen's right to be protected from vexatious Court proceedings. In this matter, there is a real risk that the wife will continue to initiate further proceedings that will be equally without reasonable grounds and an abuse of process. I conclude that the wife should be restrained from initiating any proceedings in this Court or any other Court exercising jurisdiction pursuant to the *Family Law Act 1975*, without first being granted leave pursuant to s.102QE.

65. The husband also seeks an order for security of costs, should the wife seek such leave to commence further proceedings. Section 102QB (2)(c) empowers the Court to make "*any other order the court considers appropriate…*" and this includes an order for security of costs.[19]

66. The extent of past litigation and the quantum of outstanding costs orders already made in the husband's favour in various courts leads me to conclude that an order for security for costs may be appropriate and may provide some level of protection for the respondent husband. However, this question would need to be determined in relation to any further proceedings the wife may seek leave to file, taking into account the relevant legal principles in relation to security for costs.[20]

67. In relation to the Applications still before the Court, the wife's Amended Response to an Application in a Case filed 4 March 2015 should be dismissed, as the orders sought are either vexatious, or misguided. The same conclusion applies to her Applications filed 18 December 2015 and 12 January 2016. Having determined that the wife's Initiating Application formally filed on 31 March 2016 is also a vexatious proceeding, that Application should also be dismissed.

68. The wife's Application in a Case filed 11 December 2015 should be dismissed, aside from paragraphs 2 and 3. The wife's Application in a Case filed 15 March 2016 is conceded by the husband and I will stay the Enforcement Warrant and associated proceedings. The wife's Application in a Case filed 29 March 2016 has not yet been determined.

69. I now make orders as published at the commencement of these Reasons. The Court will hear brief submissions in relation to the paragraphs 2 and 3 of the wife's Application in a Case filed 11 December 2015 and her Application in a Case filed 29 March 2016.

54 On 14 April 2022, the Commissioner consented to certain conduct of the practitioner being dealt with in Western Australia pursuant to s 407(2) of the *Legal Profession Act 2008* (WA):

407. Conduct to which this Part applies — generally

…

(2) This Part also applies to an Australian legal practitioner's conduct occurring outside this jurisdiction but only —

---

[19] See legislative note to s.102Qb(2)(c).

[20] For a discussion of the relevant principles regarding security of costs, see *Gerber & Bradley* & *Ors (Security for Costs)* [2011] FamCAFC 206, cited with approval by the Full Court in *Gull & Gull* [2013] and *Fenton & Marvel* [2012] FamCAFC 150.

(a) if it is part of a course of conduct that has occurred partly in this jurisdiction and partly in another jurisdiction, and either —

(i) the corresponding authority of each other jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or

(ii) the complainant and the practitioner consent to its being dealt with under this Act;

or

(b) if it occurs in Australia but wholly outside this jurisdiction and the practitioner concerned is a local lawyer or a local legal practitioner, and either —

(i) the corresponding authority of each jurisdiction in which the conduct has occurred consents to its being dealt with under this Act; or

(ii) the complainant and the practitioner concerned consent to its being dealt with under this Act;

or

(c) if —

(i) it occurs wholly or partly outside Australia; and

(ii) the practitioner concerned is a local lawyer or a local legal practitioner.

(3) This Part does not apply to conduct occurring in this jurisdiction if —

(a) the Complaints Committee consents to its being dealt with under a corresponding law; or

(b) the complainant and the Australian legal practitioner consent to its being dealt with under a corresponding law.

(4) Subsection (3) does not apply if the conduct is not capable of being dealt with under the corresponding law.

(5) The Complaints Committee may give consent for the purposes of subsection (3)(a), and may do so conditionally or unconditionally.

55 On 5 May 2022, there was a final hearing of the disciplinary proceedings in the WASAT.

56 On 3 June 2022, the Tribunal delivered its decision, making a finding (by majority) of unsatisfactory professional conduct and (unanimously) recommending that disciplinary proceedings be commenced in the Supreme Court of South Australia.

57 Following its own inquiry, on 22 December 2023, the WASAT found the practitioner guilty of professional misconduct and on 23 February 2024 it made orders giving effect to those findings.[21]

58 In broad outline, WASAT made the following findings about the conduct of the practitioner:

1. the practitioner's conduct would reasonably be regarded as disgraceful or dishonourable by a practitioner of good repute and competence;

2. the practitioner was not a fit and proper person to engage in legal practice; and

3. the practitioner contravened rr 6(2)(b) and 6(2)(c) of the *Legal Profession Conduct Rules 2010* (WA):

> **6. Other fundamental ethical obligations**
>
> …
>
> (2) A practitioner must not engage in conduct, in the course of providing legal services or otherwise, which —
>
> …
>
> (b) may be prejudicial to, or diminish public confidence in, the administration of justice; or
>
> (c) may bring the profession into disrepute.

59 On 24 April 2024, the WASAT made orders recommending that the practitioner's name be removed from the roll of practitioners maintained in South Australia and on 6 May 2024 it delivered its penalty decision. By that decision, the WASAT summarised its findings concerning the practitioner's conduct:[22]

1. nine instances in proceedings in different courts of either commencing or maintaining applications or appeals which comprised an abuse of process;

2. a number of instances on which the practitioner made submissions or communicated with a court in a manner that was discourteous, intemperate and scandalous;

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[21] *Legal Services and Complaints Committee v McCardle (No 2)* [2023] WASAT 131 (Pritchard P, Senior Member Aitken and Member Povey) (22 December 2023); *Legal Services and Complaints Committee v McCardle (No 2)* [2023] WASAT 131 (Pritchard P, Senior Member Aitken and Member Povey) (23 February 2024).

[22] *Legal Services and Complaints Committee v McCardle [No 2]* [2023] WASAT 131 (S), [22] (Pritchard P, Senior Member Aitken and Member Povey) (24 April 2024).

3. misreading from a transcript in a manner which had the potential to mislead the appeal court in circumstances where the respondent was recklessly indifferent to that possibility; and

4. swearing and filing an affidavit that was false in a material respect, where the practitioner was recklessly indifferent as to whether the affidavit was false and as to whether the appeal court would be misled.

60 The WASAT found:[23]

> The individual instances of conduct, the subject of each of the grounds, were, individually, serious or very serious instances of professional misconduct. Taken collectively, the practitioner's conduct overall was extremely serious professional misconduct.
>
> …
>
> Each of those instances of conduct was demonstrative of a failure to appreciate and observe the most fundamental standards expected of practitioners, namely their duties to the courts not to pursue baseless proceedings, and thereby to waste the time and resources of the courts …

61 The WASAT found that the practitioner's conduct was not isolated and involved multiple departures from the fundamental duties of a lawyer as well as of the essential qualities for legal practice. The WASAT found that the practitioner's misconduct was indicative of a fundamental lack of understanding of the standards of behaviour expected of a legal practitioner, together with a lack of respect for the courts.[24]

62 The WASAT acknowledged that the practitioner's misconduct occurred up to ten years previously, but her disciplinary history suggested that she had continued to engage in similar misconduct. The WASAT referred to findings made earlier by the WASAT in 2015, as well as the findings and recommendations made by the Tribunal in South Australia in 2022. It was observed that there was some similarity in the conduct that was considered by the WASAT and the Tribunal.

63 The WASAT regarded it as important that the practitioner had expressed no remorse and had never offered any explanation for her misconduct. The practitioner had not engaged with WASAT in connection with the findings as to her conduct relevant to the determination on penalty, save for sending emails and submissions by email. The WASAT observed that there was no evidence of any mitigating factors that could be taken into account when assessing or moderating the seriousness of the practitioner's misconduct.

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[23] *Legal Services and Complaints Committee v McCardle [No 2]* [2023] WASAT 131 (S) (Pritchard P, Senior Member Aitken and Member Povey) (24 April 2024) [23], [31].

[24] *Legal Services and Complaints Committee v McCardle [No 2]* [2023] WASAT 131(S) (Pritchard P, Senior Member Aitken and Member Povey) (24 April 2024), [42].

64 In all of these circumstances, the only appropriate remedy was to recommend strike-off.[25]

The hearing in the Full Court

65 During the hearing before this Court, the practitioner participated by telephone. The practitioner answered a number of allegations in a vague and general way, without detail or evidence concerning particular allegations. For example, in response to the allegation that she had earlier terminated a telephone call hearing in the Family Court, she said that she had experienced a panic attack. No detail or medical evidence was given, and this explanation may not have been given to the WASAT.

66 The general nature of the practitioner's responses may possibly have been a function of the time that had passed since the relevant events had occurred. That might also explain the absence of some corroborating evidence, including medical evidence. However the practitioner's conduct was generally aggressive to the point of truculence, and she was insistent that there was no basis for the Commissioner's application.

67 The practitioner renewed her applications for evidence, that is, to obtain an answer to a notice to admit served on the Commissioner, for leave to issue subpoenas and to obtain other evidence. It became clear that the practitioner's purpose in seeking this material was, amongst other matters, to demonstrate impropriety on the part of the Commissioner, that senior counsel for her former husband was conflicted and had misled a court, and that there was a conspiracy between Federal Magistrates Court or Federal Circuit Court judges (as they were formerly described) and a Family Court judge (as those judges were formerly described), to make orders against her and punish her in costs.

68 During the hearing in this Court, the practitioner reiterated that senior counsel for the husband had been prevented by a conflict from acting. The practitioner said that the conflict arose as a result of the practitioner's email to senior counsel, in which she asked senior counsel to represent her and set out the details of the case. She said the staff at the chambers of senior counsel responded that senior counsel declined to act. No details were given, and the practitioner was not in a position to adduce evidence to support her contentions.

69 There was no explanation given for the assumption that senior counsel must have read the email, and it was inferred rather than demonstrated that the email contained privileged and confidential information as distinct from an outline of the case. No further information was provided by the practitioner which explained or justified the contention that there was a relevant conflict of interest. As earlier

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[25] *Legal Services and Complaints Committee v McCardle [No 2]* [2023] WASAT 131(S) (Pritchard P, Senior Member Aitken and Member Povey) (24 April 2024), [49].

explained, the practitioner may have been in difficulty with details and evidence by reason of the effluxion of time.

70 More importantly, the practitioner seemed determined to prove contentions such as these in this Court for reasons that she could never satisfactorily explain. For example, the practitioner did not suggest that establishing her conflict contention might address or perhaps mitigate the adverse findings she confronted. Rather, the practitioner seemed determined to re-litigate past cases without reference to the adverse findings and rulings made in them.

71 After hearing submissions, the Court dismissed the practitioner's applications.[26]

72 As an example of the way the practitioner failed to respond to the matters on which the Commissioner relied in these proceedings, the practitioner responded in her amended outline of submissions along the following lines (underlining in the original):

> The complaints by Ms Nelson QC [senior counsel for the former husband] and her instructing solicitors, Ms Colie and Mr Grant were by collusion and under the instruction of either the former husband or a request by Ms Nelson. It is deemed important to ascertain whether the former husband instructed and paid for these complaints to be collated and lodged with the LPCC because if so then it is another form of family violence ie coercive control using proxy use of the lawyers and the LPCC. The LPCC then should not be involving itself nor allowing to be used by proxy in the form of further violence against the Respondent. It is unethical at best. The Respondent had lodged complaints against all three lawyers in 2013/14 with the most serious against Ms Nelson QC (now KC) including her regular misleading of courts (plural) on material fact issues on which she had to know was misleading because she had a copy of Consent Orders and the transcripts of the hearings plus she attended the hearings as the barrister for the former husband from 2012 onward until around 2015. The complaints by the Respondent were made in 2013/14 and prior to their colluded complaints against the Respondent inn late 2015. It is known to have been collusion as each of the three lawyers took a set time period each and their complaints period did not cross over at all. It was extremely obvious to have been by collusion by the three lawyers. It is also obvious that the complaints against the Respondent were vexatious and or revenge counter-complaints. …

73 The practitioner's submissions continued in this vein for many pages.

74 Without objection from the practitioner, the Commissioner put before the Court an email the practitioner had sent to the Court and the Commissioner the previous evening. The practitioner's email dated 5 December 2024 said:

> Good afternoon All
>
> I am not logged into CourtSA nor intend doing so as I have no computer for ease of such access, so can you send me a copy of that hearing date and time please as an attachment to an email? Also can you ensure it is readable with no overlaid symbols hiding the date and time? Wonderful.

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[26] These are set out in *Legal Profession Conduct Commissioner v McCardle* [2024] SASCFC 3.

While we are on the subject of hearings then I give notice that this Supreme Court has no inherent jurisdiction to hear the LPCC application against me. Why? Because I am not a local legal practitioner holding a practising certificate nor have I held one for around 7 3/4 years as per the inherent jurisdictional powers outlined in the Legal Practitioners Act 1981. As far as my current and past character goes, it is excellent for a person nearly 66 years of age. No client complaints, no criminal charges, no fraud, no deaths by hit and run, no drug labs, no firearms etc. I am a fit and proper person to be within any profession. Instead I am being undermined deliberately by the LPCC since 2013/14 where they never investigated my complaints. They are protecting those I complained against. They are alleging conduct against me which in fact Ms Nelson KC did eg she regularly misled the courts on material fact issues. I was shocked by her conduct and it caused me distress. That on top of the stress from family violence and stress from my university research on corruption within SA which exposed me to threats and dangers. Further, now the LPCC argue they receive their funding from the fidelity fund each year so are not part of the government. Well, yes they are a government body, a State government entity as per their ABN. Still further, the AG has to authorise any release of funds from the fidelity fund and he requires reasons for any release. It's discretionary by use of the word "may" in the Legal Practitioners Act 1981. The LPCC is a government body and s75(iv) of the Australian Constitution applies. The argument it does not because the SA and WA tribunals are administrative is wrong. Every tribunal is administrative and every State tribunal is both administrative and prevented from hearing such classes of matters as noted in ss75 and 76 of the Constitution, and as per the decision in Burns v Corbett [2018] HCA 15. Both SA and WA are audited by the government. As for VCAT, then Member Tang rejected Burns v Corbett on the opposing argument I was still a Victorian resident and only temporarily elsewhere due to a serious immobility condition from April 2017 ie from a lumbar block which left me partially paralysed. That argument was wrong because I wasn't a Vic resident at that time, I had no base in Vic at all whilst I was recuperating for months, then I went to my home State of Qld where I reside.

I encouraged both LPCC's in SA and WA to transfer their files to Qld but both declined for fear of losing their control it would appear.

Yet still further, between around 2014 until a later amendment to the said Act, the time period for charges by the LPCC was within 3 years. In around 2019 that time period was amended back to 5 years. However, any likely charges from the 2015 revenge complaints towards me in retaliation for my initial complaints, would have expired in 2018 or should have been closed if the LPCC did not seek an extension of time prior to its end date. It did not do so. Pray tell, why from 2015 onwards was I responding to both SA and WA on the very same complaints from the very same revenge complainants for 9 and 8 years respectively? That is grossly unfair, such alone to be sufficient for a dismissal.

Again, I note, I have been railroaded into a past tracked hearing without being given adequate time for what are 12 year files and documents up to the current date. I work Monday to Friday and have little computer time at the public library.

This is a deliberate denial of procedural fairness or natural justice and I am not happy so I will be seeking a review or appeal of these outcomes. A reasonably informed observer would know this has been unfair since the first hearing and won't be fair unless it's either dismissed or withdrawn and transferred to Qld.

Regards

RMcCardle

75 When the practitioner was asked by this Court whether she maintained the allegations of improper and dishonest conduct against the Commissioner, as referred to in the 2022 Tribunal reasons at [79], she said that these accusations were justified and, in effect, that the Tribunal was wrong to find that they were unfounded, and the Tribunal was also wrong to find that it was unprofessional of her to make them.

76 When the practitioner was asked to respond to the proposition that her insistence on maintaining unmeritorious jurisdictional challenges and unfounded allegations of improper and dishonest conduct against the Commissioner tended to demonstrate that she was not a fit and proper person to remain as a legal practitioner, she gave a long speech.

77 The practitioner commenced her speech by reiterating that she did not want to practice law, but that she did not want to be "held as unfit to practise". She said that she had put up with 9 years of bullying by the disciplinary authorities and that this "is why so many lawyers end up with mental health issues when they have to respond to these regulators". She questioned how this could be allowed to occur in a State where the Equal Opportunity Commissioner had just released a damning report concerning harassment in the legal profession, and where Dr Colin Manock had been permitted to operate as a pathologist.

78 The practitioner said that she knew the Court would "strike me off" but that this was because she stood up for herself. She said that this was despite official corruption in this State, and the investigation she had carried out into that corruption. The practitioner said that as a result she had been shot at and her daughter had been assaulted in circumstances of family violence. She said that no one cared about that, and no one asked about the corruption she was investigating.

79 As will be seen, we have taken the practitioner's conduct in this Court into account. Indeed, we have given that conduct principal weight in our determination about the practitioner's fitness to remain a practitioner of this Court.

The findings on which this Court has been invited to act

80 The Commissioner invited the Court to adopt and act on the findings of the Tribunal and the WASAT without further inquiry in accordance with s 89(5) of the Act. Section 89 provides:

> **89—Proceedings before Supreme Court**
>
> (1) Where the Tribunal after conducting an inquiry into the conduct of a legal practitioner recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court, the Commissioner, the Attorney-General or the Society may institute disciplinary proceedings in the Supreme Court against the legal practitioner.
>
> (1a) If the Commissioner is of the opinion that the name of a legal practitioner should be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act because

the practitioner has been found guilty of a serious offence, or for any other reason, the Commissioner may, without laying a charge before the Tribunal, institute disciplinary proceedings in the Supreme Court against the practitioner.

(1b) If—

(a) —

(i) a recommendation is made by the Tribunal that disciplinary proceedings be commenced against a legal practitioner in the Supreme Court; or

(ii) the Commissioner has advised a legal practitioner in writing of his or her intention to institute disciplinary proceedings against the legal practitioner in the Supreme Court; and

(b) the legal practitioner informs the Court in writing that he or she would consent to an order that his or her name be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act,

the Court may, despite the fact that disciplinary proceedings have not been instituted, order that the name of the legal practitioner be struck off the roll maintained under this Act or kept in the other State (as appropriate).

(2) In any disciplinary proceedings against a legal practitioner (whether instituted under this section or not) the Supreme Court may exercise any one or more of the following powers:

(a) it may reprimand the legal practitioner;

(b) it may make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—

(i) relating to the practitioner's legal practice; or

(ii) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a specified type;

(c) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order or until further order;

(d) it may order that the name of the legal practitioner be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act;

(e) it may make any other order (including an order as to the costs of proceedings before the Court and the Tribunal) that it considers just.

(4) In any disciplinary proceedings the Supreme Court may refer any matter to a Judge or Associate Justice, or to the Tribunal, for investigation and report.

> (5) In any disciplinary proceedings—
>
> (a) the Supreme Court may, without further inquiry, accept and act on any findings of the Tribunal or of a Judge or Associate Justice to whom a matter has been referred for investigation and report under subsection (4); and
>
> (b) the Supreme Court may—
>
> (i) receive in evidence a transcript of evidence taken in any proceedings before a court of any State and draw any conclusions of fact from the evidence that it considers proper;
>
> (ii) adopt, as in its discretion it considers proper, any findings, decision, judgment or reasons for judgment of any such court that may be relevant to the proceedings.
>
> (6) Where the Supreme Court is satisfied, on the application of the Commissioner, the Attorney-General or the Society, that a legal practitioner is disqualified or suspended from practice under the law of any other State (whether or not that State is a participating State), it may, without further inquiry, impose a corresponding disqualification or suspension under the provisions of this section.

81 The Commissioner argued that this Court could act on the Tribunal's findings under s 89(5) and on the WASAT findings under s 89(5)(b) of the Act.[27]

82 There are a number of difficulties with this approach.

83 First, there is a difficulty with the Commissioner's contention that this Court may "without further inquiry" decide to "accept and act upon the findings of the Tribunal" under s 89(5)(a) of the Act. This provision is clearly intended to confer on the Court the capacity in any disciplinary proceedings to have regard to findings made by the Tribunal in certain circumstances, relieving the Court of the need to make its own findings, as well as overcoming any perceived issue with giving testimonial effect to what might otherwise be hearsay statements made by the Tribunal. As a provision designed to confer power on the Court, it should be read broadly and beneficially.

84 The words of s 89(5)(a), however, necessarily invite reference to s 89(4). The focus of s 89(4) is on the capacity of the Court to delegate fact-finding where that may be thought necessary only after the commencement of disciplinary proceedings in this Court. That kind of power has long been available to the Supreme Court, for example, where it may formerly have directed a Master or expert to inquire and report to it.[28]

85 But when one reads these provisions together, as they must be, s 89(5)(a) cannot be read as if it simply said, "the Supreme Court may, without further inquiry, accept and act on any findings of the Tribunal". Effect must also be given

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[27] Commissioner's Written Submissions dated 7 November 2024, [9]-[10].

[28] See, for example, ss 67 and 71 of the *Supreme Court Act 1935* (SA) and the powers to appoint experts to act as referees or assessors.

to the words following, "or of a Judge or Associate Justice to whom a matter has been referred for investigation and report under subsection (4)".[29]

86 Whilst it might be suggested that these words only qualify referrals by a Judge or an Associate Justice, when these provisions are read together s 89(5) must be read as a corollary of the power of referral conferred by s 89(4). That is, in cases where the Supreme Court has referred any matter to a Judge or Associate Justice or to the Tribunal, for investigation and report, and the Tribunal, Judge or Associate Justice has reported, only then may the Court "without further inquiry, accept and act on any findings of the Tribunal or of a Judge or Associate Justice".

87 On that reading of these provisions, s 89(5)(a) provides no free-standing power to act on Tribunal findings because the inquiry conducted by the Tribunal concerning the practitioner during 2021 and 2022 was not one which had been referred to the Tribunal by the Supreme Court for investigation and report under s 89(4) of the Act. On the contrary, the charge laid in the Tribunal followed an investigation conducted by the Commissioner on his own initiative pursuant to s 77B, and the subsequent inquiry was conducted by the Tribunal pursuant to s 82(4) of the Act.

88 That, however, is not the approach which has been taken to Tribunal findings in previous decisions.[30] As Doyle CJ explained in *Law Society of South Australia v Jordan*:[31]

> It would be peculiar if, in such a case, the Court had no choice but to rehear the evidence, or to go through the process of referring to the Tribunal, for investigation and report, the matters with which it had already dealt. It is for those reasons that I consider that s89(1) by implication authorises the Court to receive and to act upon findings of the Tribunal.

89 The earlier decisions have taken the view that there is an implication to be derived from s 89(1) that the Court has the power to act on Tribunal findings, regardless whether the Tribunal has made those findings on a referral made under s 89(4), and that the Court also has the power to act on Tribunal findings in the exercise of its inherent jurisdiction.[32]

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[29] *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 381 [72] (McHugh, Gummow, Kirby and Hayne JJ).

[30] *Law Society of South Australia v Jordan* [1998] SASC 6809 (***Jordan***), 42-43 (Doyle CJ, with whom Millhouse and Nyland JJ agreed); followed in *Legal Practitioners Conduct Board v Le Poidevin* [2001] SASC 242 (***Le Poidevin***), [24] (Lander J, with whom Bleby J agreed). In *Law Society of South Australia v Russell* [1999] SASC 389, [6] (Doyle CJ, with whom Mullighan and Martin JJ agreed) and in *Le Poidevin* [2001] SASC 242, [3] (Doyle CJ), it was suggested by Doyle CJ, without any analysis, that the power to act on Tribunal findings was conferred on the Court by s 89(5)(a) or s 89(5) of the Act. In *Le Poidevin*, Doyle CJ had referenced his own reasons the year before in *Jordan*, as did Lander J (with whom Bleby J agreed). It is the decision of the Full Court in *Jordan* that provides authoritative guidance on the point.

[31] *Law Society of South Australia v Jordan* [1998] SASC 6809, 42 (Doyle CJ, with whom Millhouse and Nyland JJ agreed).

[32] *In Re Practitioners* (1980) 26 SASR 275 (Mitchell J, with whom Mohr J agreed); *In Re Maidment* (unreported, 26 August 1992, Judgment No S3583), referred to with approval in *Law Society of South Australia v Jordan* [1998] SASC 6809, 42-43 (Doyle CJ, with whom Millhouse and Nyland JJ agreed).

90 Support for that approach may be seen in the scheme of Part 6 of the Act, including ss 82 and 89, when read as a whole. That scheme demonstrates that the power in the Tribunal to conduct an inquiry on the laying of a charge may result in a number of specific findings or conclusions enumerated in s 82(6). Section 82 of the Act is as follows:

> **82—Inquiries**
>
> (1) Subject to this section, a charge may be laid under this section alleging unsatisfactory professional conduct or professional misconduct—
>
> (a) on the part of any legal practitioner; or
>
> (b) on the part of any former legal practitioner who was at the time of the alleged unsatisfactory professional conduct or professional misconduct a legal practitioner.
>
> (1a) A charge may not be laid before the Tribunal relating to conduct by a legal practitioner or former legal practitioner if the Commissioner has exercised a power under section 77J in relation to the conduct.
>
> (2) A charge may be laid under this section by—
>
> (a) the Attorney-General; or
>
> (b) the Commissioner; or
>
> (c) the Society; or
>
> (d) a person claiming to be aggrieved by reason of the alleged unsatisfactory professional conduct or professional misconduct.
>
> (2a) A charge may not be laid before the Tribunal more than 5 years after the day on which the person laying the charge became aware of the conduct to which the charge relates unless—
>
> (a) the charge is laid by the Attorney-General; or
>
> (b) the Tribunal allows an extension of time.
>
> (2c) A charge may be laid before the Tribunal despite the fact that criminal proceedings have been or are to be commenced in relation to a matter to which the charge relates.
>
> (3) A charge laid under this section must be in the form prescribed by rules under this Division.
>
> (4) Where a charge has been laid under this section, the Tribunal must, subject to subsection (5), inquire into the conduct of the legal practitioner or former legal practitioner to whom the charge relates.
>
> (5) The Tribunal may summarily dismiss any charge that it considers frivolous or vexatious and may, for the purpose of dealing with such a charge, consist of 1 member.

(6) If after conducting an inquiry under this section the Tribunal is satisfied—

(a) that a legal practitioner is guilty of unsatisfactory professional conduct or professional misconduct it may exercise any one or more of the following powers:

(i) it may reprimand the legal practitioner;

(ib) it may make orders with respect to the examination of the legal practitioner's files and records by a person approved by the Tribunal (at the expense of the legal practitioner) at the intervals, and for the period, specified in the order;

(ii) it may order the legal practitioner to pay a fine not exceeding—

(A) $50 000; or

(B) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—$10 000;

(iii) it may make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—

(A) relating to the practitioner's legal practice (provided that, in the case of an order made without the consent of the practitioner, such conditions must not operate for a period exceeding 12 months); or

(B) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a specified type;

(iv) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order, not exceeding—

(A) 12 months; or

(B) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—3 months;

(v) it may, unless constituted of 1 member in accordance with section 80(1a)(a), recommend that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court; or

(b) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of professional misconduct—it may order the former legal practitioner to pay a fine not exceeding—

(i) $50 000; or

(ii) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—$10 000.

(c) that a former legal practitioner was, while he or she remained a legal practitioner, guilty of unsatisfactory professional conduct—it may order the former legal practitioner to pay a fine not exceeding—

(i) $25 000; or

(ii) if the Tribunal is constituted of 1 member in accordance with section 80(1a)(a)—$5 000.

(6b) A condition imposed on a practising certificate or interstate practising certificate pursuant to an order under this section may be varied or revoked at any time on application by the legal practitioner.

(7) After completing an inquiry under this section, the Tribunal must transmit the evidence taken by the Tribunal on the inquiry together with a memorandum of its findings to the Attorney-General, the Society and the Commissioner.

(8) If, after conducting an inquiry into a charge alleging professional misconduct by a person who is a legal practitioner or former legal practitioner, the Tribunal—

(a) is not satisfied that the person is guilty of professional misconduct; but

(b) is satisfied that the person is guilty of unsatisfactory professional conduct,

the Tribunal must find the person not guilty of professional misconduct, but may find the person guilty of unsatisfactory professional conduct.

91 It can be seen that the Tribunal has the power to exercise any one or more of a number of powers after an inquiry conducted under s 82(4) of the Act. These include ordering a reprimand, imposing a fine, imposing conditions on practice, ordering suspension from practice for up to 12 months and, under s 82(6)(a)(v), the Tribunal may "recommend that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court". The Tribunal may recommend proceedings where it has in mind strike-off or suspension for longer than 12 months, these being powers reposed only in the Supreme Court and not in the Tribunal.

92 When disciplinary proceedings are then brought in accordance with the Tribunal's recommendation, s 88A makes it clear that Part 6 does not derogate from the Court's inherent jurisdiction, and s 89(1) assumes that those disciplinary proceedings will be instituted in the Supreme Court, whether on the application of the Commissioner, the Attorney-General or the Society.

93 Thereafter, a number of provisions facilitate the conduct of disciplinary proceedings, including where they follow a recommendation made by the Tribunal after an inquiry conducted under s 82(4). For example, s 89(1a) allows the Commissioner to institute disciplinary proceedings in the Supreme Court without previously laying a charge where the Commissioner is of the opinion that the name of the legal practitioner should be struck off (even if the practitioner was admitted elsewhere) where "the practitioner has been found guilty of a serious offence, or for any other reason".

94 In addition, by s 89(1b), where the Tribunal has recommended that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court, or the Commissioner has in writing advised the practitioner of an intention to institute those proceedings, and the practitioner consents to strike off, the Court may make an order for strike-off even if proceedings have not yet been instituted.

95 The powers conferred on the Court by s 89(2) expand on those available to the Tribunal and also include, as has been seen, the power to order strike-off and suspension for longer than 12 months.

96 When the Part 6 scheme is viewed in this way, the reference to proceedings being commenced following an inquiry by the Tribunal in s 89(1) is complementary to the power of the Tribunal to conduct inquiries under s 82(4), particularly where the anticipated sanction is only within the jurisdiction of the Supreme Court. On that approach, the Court may have regard to Tribunal findings made: (1) following an inquiry under s 82(4) and proceedings commenced under s 89(1); (2) under the inherent jurisdiction of the Court which is preserved by s 88A; and (3) following a referral made under s 89(4) of the Act after proceedings have been commenced.

97 It follows that, in the circumstances of this case, the power conferred by s 89(5)(a) is not available to this Court and the Commissioner's submission must be rejected because there has been no referral to the Tribunal made under s 89(4). Nonetheless, the general approach may be supported under a combination of an implication derived from s 89(1) and the inherent jurisdiction of this Court. Whilst the syntax is far from elegant or clear, this general approach accords with the scheme of Part 6 as well as the authorities earlier mentioned.

98 Nonetheless, the second difficulty with the Commissioner's approach concerns whether, under s 89(5)(b)(ii), this Court may adopt "any findings, decision, judgment or reasons for judgment made by any … court", being the findings of the WASAT or, alternatively, the decisions of the courts on which the WASAT has relied.

99 The Commissioner submitted that the word "court", when used in s 89(5)(b), should be given an "expansive" construction and held to embrace a tribunal such as the WASAT, and not merely a "Chapter III Court", namely, a court as might be ordinarily understood.[33] The Commissioner cited no authority in support of this approach to findings made by interstate tribunals charged with responsibility for disciplining legal practitioners. Nonetheless, the Commissioner gave as an example the approach taken to the interpretation of s 39 of the *Supreme Court Act 1935* (SA) by Bleby J.[34] This case was not in the Commissioner's written submissions or list of authorities, but it and the decision of the Full Court addressed

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[33] Cf *Vunilagi v R* (2023) 97 ALJR 627.
[34] *Mitsubishi v Kowalski* [2005] SASC 154.

below were the subject of supplementary written submissions. In those submissions, the Commissioner emphasised the convenience associated with the capacity for this Court to rely on the findings of the WASAT. In her lengthy written submissions, which were rambling, ill-focussed and at times offensive, the practitioner disagreed but did not address these decisions apart from her submission that "the 2005 case did not involve a class of matters defined in ss 75 and 76 of the *Constitution*".

100 In *Mitsubishi v Kowalski*, in the course of vexatious litigant declaration proceedings concerning Mr Kowalski, Bleby J followed Full Court authority which had construed a reference to a court in s 39 as encompassing a tribunal.[35] At the time of that decision the Supreme Court was only explicitly permitted by s 39 to have regard to decisions made in State courts.[36] As Bleby J explained:[37]

> Most of the proceedings said to be vexatious by the plaintiff are proceedings instituted in the Workers Compensation Tribunal ("the Tribunal") constituted under the *Workers Rehabilitation and Compensation Act 1986* ("the Compensation Act"). At a directions hearing during the course of these proceedings a Master ordered that the question "whether or not the Workers Compensation Tribunal is a court for the purposes of s 39 of the *Supreme Court Act* be heard and determined before any other issue in dispute". It was further ordered that the question be referred to the Full Court. The Full Court gave its decision on 24 September 2004: *Mitsubishi Motors Australia Ltd v Kowalski* [2004] SASC 302. Although the decision was handed down after the amendment, the argument had been heard before the amendment and was based on the provisions of s 39 as they were before the amendment. The Full Court answered the question:
>
> > "The Workers Compensation Tribunal is a 'court of the State' for the purposes of s 39 of the Supreme Court Act 1935".
>
> In view of the answer given it is not necessary to consider whether the amendments to s 39 had any retrospective effect. It is now clear that both before and after the amendment, the "proceedings" referred to in sub-section (1) include proceedings in the Tribunal whenever instituted. So far as it affects the resolution of this application, the amendment has made no material difference. It does not mean, as the defendant now contends, that the amendment has the effect of rendering the Tribunal not a court at any time preceding the amendment. It will be necessary to return to consider the meaning and application of some of the particular terms used in s 39.

101 In *Mitsubishi Motors Australia Ltd v Kowalski* the Full Court held that whether the relevant Tribunal was a "court" had to be determined having regard to the statutory context and purpose of the *Supreme Court Act 1935* (SA).[38] The Full Court also held that that it was necessary to have regard to the nature, procedure

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35 *Mitsubishi v Kowalski* [2005] SASC 154, [5]-[6] (Bleby J).

36 The present definition in s 39(6) to a "prescribed court" and to the "South Australian Employment Tribunal, and any other tribunal referred to by regulation", was introduced after this decision. See, for example, *Keane v Woolworths Group Ltd (No 4)* [2024] SASCA 113, [16]-[19].

37 *Mitsubishi v Kowalski* [2005] SASC 154, [5]-[6] (Bleby J).

38 *Mitsubishi Motors Australia Ltd v Kowalski* [2004] SASC 302, [9] (Duggan J, with whom Besanko and Anderson JJ agreed) citing *Australian Postal Commission v Dao and Anor (No 2)* (1986) 6 NSWLR 497, 515 (McHugh JA); *New South Wales Bar Association v Muirhead* (1988) 14 NSWLR 173, 185 (Kirby P, with whom Hope JA agreed, Mahoney JA dissenting).

and powers of the statutory Tribunal in order to determine whether it was appropriate to regard it as a "court" for the purposes of the section.[39]

102 When undertaking that analysis, the proper construction could not be arrived at simply by reference to a checklist of functions,[40] but by commencing with whether there has been an investing of judicial power and its incidents, such as whether the body makes binding and authoritative decision on controversies, determines existing rights and duties according to law rather than by the formulation of policy or the exercise of an administrative discretion, and whether the body has the capacity to give a decision enforceable by execution.[41]

103 As the Court of Appeal explained in *New South Wales Bar Association v Muirhead*, in connection with a case concerning whether commissioners comprised a "court" for the purposes of the law of contempt:[42]

> The determination of whether a body is a "court" to attract the protection of the law of contempt must be considered in the light of all of the characteristics of that body. Whether a body may be categorised as a "court" depends not upon an artificial check list of universal application but upon the purposes for which the categorisation is made. Thus, a decision that a body is a "court" for the beneficial provisions of the *Suitors' Fund Act* 1951, may not necessarily determine whether that body is a "court" to attract the very great power which accompanies the application of contempt law: cf *Australian Postal Commission v Dao (No 2)* (1986) 6 NSWLR 497 at 513 and the cases there cited. Obviously, some of the same considerations will overlap. But in each case it is important to keep in mind the reason for the search …
>
> There is no simple answer to this question, as the parties conceded. It is a matter of considering the criteria by which the categorisation is to be made and then examining the statutory and other material to decide whether the commissioners fall inside or outside the category for this purpose.

104 As this passage makes clear, whether a body is a "court" will usually turn on "the reason for the search". Recently, the High Court accepted that the laws relating to proportionate liability which referred to a "court" were capable of applying to an arbitral tribunal.[43]

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39 *Mitsubishi Motors Australia Ltd v Kowalski* [2004] SASC 302, [11] (Duggan J, with whom Besanko and Anderson JJ agreed).

40 Citing *New South Wales Bar Association v Muirhead* (1988) 14 NSWLR 173, 185 (Kirby P, with whom Hope JA agreed).

41 Citing *Brandy v Human Rights and Equal Opportunity Commission* (1995) 183 CLR 245, 267-268 (Deane, Dawson, Gaudron and McHugh JJ) and, in turn, cases such as *Huddart, Parker and Co Pty Ltd v Moorehead* (1909) 8 CLR 330, 357 (Griffiths CJ); *Waterside Workers' Federation of Australia v JW Alexander Ltd* (1918) 25 CLR 434, 451 (Barton J); *Rola Co (Australia) Pty Ltd v Commonwealth* (1944) 69 CLR 185, 198-199 (Latham CJ); *R v Gallagher; Ex parte Aberdare Collieries Pty Ltd* (1963) 37 ALJR 40, 43 (Kitto J); *Re Cram; Ex parte Newcastle Wallsend Coal Co Pty Ltd* (1987) 163 CLR 140, 149 (Mason CJ, Brennan, Deane, Dawson and Toohey JJ).

42 *New South Wales Bar Association v Muirhead* (1988) 14 NSWLR 173, 185 (Kirby P, with whom Hope JA agreed, Mahoney JA dissenting).

43 *Tesseract International Pty Ltd v Pascale Construction Pty Ltd* (2024) 98 ALJR 880, [116] (Gordon and Gleeson JJ).

105 The Court received no submissions from the Commissioner about whether or to what extent the WASAT exercised judicial power and its necessary incidents sufficient to warrant its characterisation as a court for the purposes of s 89(5) of the Act, in the manner explained by the Full Court in *Mitsubishi Motors Australia Ltd v Kowalski*. Whilst the Commissioner submitted, and there may be much to be said for the proposition that the WASAT should be regarded as a court for the purposes of s 89(5), especially where it is charged with responsibility for disciplining legal practitioners and making associated findings, that conclusion should await a case in which it is necessary to decide it with the benefit of considered submissions on both sides of the debate.

106 As for the Commissioner's alternative contention, that this Court could simply consider the underlying court decisions relied on by the WASAT, that contention must address the difficulties posed by the actual words of s 89(5)(b) of the Act.

107 Whilst the Commissioner emphasised s 89(5)(b)(ii) and the broad discretion in this Court to adopt findings or reasons for judgment, they are findings or reasons "of any such court". Here again it is necessary to read these words in their proper context. They invite attention to s 89(5)(b)(i) and the reference to a transcript "taken in any proceedings before a court of any State". Whilst some decisions emanated from the Magistrates Court, District Court or Court of Appeal in Western Australia, most were Family Court or Federal Magistrates or Federal Circuit Court proceedings, each of which would ordinarily be thought to be Federal courts, not State courts. On the face of it, the findings made in those Federal courts fall outside the scope of s 89(5)(b) of the Act.

108 As it turns out, and unusually, the Family Court of Western Australia is a State court. Although the Family Court of Western Australia was first established by the *Family Court Act 1975* (Cth), it is now continued by the *Family Court Act 1997* (WA).[44] The Family Court of Western Australia is a court of record,[45] and vested with both federal and non-federal jurisdiction.[46]

109 Nonetheless, the Court received no submissions from the Commissioner about whether or to what extent Federal courts could be regarded as State courts for the purposes of s 89(5)(b) of the Act, nor about whether and to what extent the decisions made in Western Australia affecting the practitioner were made by the Family Court of Western Australia or, alternatively, by the Family Court or the Federal Magistrates or Federal Circuit Court.

110 Similarly, no submissions were made about whether the High Court should be regarded as a State court for the purposes of s 89 of the Act, especially where that Court sits at the apex of this State's legal system.

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44 *Family Court Act 1997* (WA) s 9(1).
45 *Family Court Act 1997* (WA) s 9(2).
46 *Family Court Act 1997* (WA) ss 35-36.

111 Again, whilst there may be much to be said for the proposition that this Court should be able to have regard to evidence led and findings made in the High Court and Federal courts and tribunals when looking at the conduct of legal practitioners and making associated disciplinary findings about them, that conclusion should await a case in which it is necessary to decide the issue with the benefit of considered submissions on both sides of the debate. That debate will likely commence with the submissions made by the Commissioner that these provisions of the Act were likely drawn up at a time before there was widespread movement in the legal profession as a result of the mutual recognition arrangements[47] and its counterparts, and there are a number of considerations, including considerations of efficiency, which would support a broad reading of s 89(5) of the Act.

112 Finally, the Court received no submissions from the Commissioner on whether it might be feasible to resort to the inherent powers of the Court and, in that way, take up the evidence or findings of the High Court, the WASAT and Federal courts and tribunals when determining disciplinary proceedings concerning a practitioner admitted by this Court. Whilst it might be said that this should be a clear case for the exercise of the Court's inherent powers,[48] and that save where an Act or rules of court address these issues in a manner inconsistent with the continued recognition of the inherent power, the breadth of the inherent power is not limited or circumscribed,[49] it is again appropriate to defer a conclusion until the issue can be determined with the benefit of considered argument.[50]

113 When giving consideration to whether this Court can or should act on the transcript or findings made by another court or tribunal, it will usually be necessary to know the nature of the hearing and the degree of participation by the practitioner in that hearing. It would usually be necessary to know, for example, if it was a disciplinary hearing concerning the conduct of the practitioner, whether the practitioner was given a procedurally fair hearing and an opportunity to be heard and challenge the evidence before the court or tribunal made adverse findings. Whether rights of appeal were taken up might also be relevant.

114 Where the Court is being invited to act on transcript or findings in hearings where the practitioner was appearing for a client, or on the practitioner's own account, it will again be necessary to know, at least in a broad way, the nature of the hearing and the form of the participation by the practitioner in that hearing. Each case will turn on the particular facts and circumstances raised though, in some settings, the nature of the hearing and the practitioner's role in it will be obvious from a reading of the reasons.

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47 *Mutual Recognition Act 1992* (Cth); *Mutual Recognition (South Australia) Act 1993* (SA).

48 See *Rigney v Rigney* (1987) 48 SASR 291, 298 (White J): "It is not necessary to look for "statutory back-up" for every procedural rule or activity of the court"; *Georganas v Barkla* [2021] SASC 47, [16]-[22]; [209]-[214] (Livesey J).

49 *Georganas v Barkla* [2021] SASC 47, [212] (Livesey J).

50 Cf *ASIC v Macks (No 2)* [2019] SASC 17, [155], [180]-[189] (Doyle J) and the cases there cited.

Relevant principles regarding disciplinary action

115 The purpose of this Court's exercise of disciplinary powers concerning a practitioner is for the protection of the public rather than the punishment of a practitioner.[51] The protection of the public will require that any disciplinary sanction be exercised having regard to specific and general deterrence. In other words, so as to make it clear to the practitioner and to the legal profession that the Court will not tolerate misconduct.[52]

116 By deterring misconduct and upholding professional standards, the Court maintains public confidence in the legal profession;[53] that, indeed, is the purpose of appropriate professional regulation and enforcement.[54]

117 It will usually be necessary for this Court to have regard to the totality of the practitioner's conduct, as well as the character of the practitioner.[55] Because the Court acts in the public interest, rather than with a view to the punishment of a practitioner, the personal circumstances of the practitioner and any extenuating circumstances are generally of less importance.[56] In cases of serious wrongdoing, it will often follow that a practitioner's good professional conduct before or after professional misconduct will remain a secondary consideration.[57]

118 Only those practitioners who can and do observe the minimum professional standards expected of the legal profession should be permitted to remain members of that profession.[58]

119 When considering whether to strike a practitioner's name from the roll there are usually three key considerations. First, the public must be protected from legal practitioners who are ignorant of or indifferent to the basic rules and requirements of proper professional practice.[59] Second, to the extent that the practitioner is not fit to practise, the entitlement to practise should either be restricted or denied.[60] Finally, and for so long as a practitioner's name remains on the roll, that

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51 *Wentworth v The New South Wales Bar Association* (1992) 176 CLR 239, 250-251 (Deane, Dawson, Toohey and Gaudron JJ); *Law Society of South Australia v Murphy* [1999] SASC 83, [30]; (1999) 201 LSJS 456, 460-461 (Doyle CJ, with whom Millhouse and Prior JJ agreed); *Legal Practitioners Conduct Board v Fletcher* [2005] SASC 382, [21] (Debelle J, with whom Besanko and Vanstone JJ agreed).

52 *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408, 471 (Giles AJA).

53 *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43, [9] (Doyle CJ and Stanley J, with whom Anderson J agreed).

54 *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279, [22] (Spigelman CJ, with whom Mason P and Handley JA agreed).

55 *Legal Profession Conduct Commissioner v Morcom* [2016] SASCFC 121, [104] (Kourakis CJ, Blue and Doyle JJ).

56 *Law Society of South Australia v Murphy* [1999] SASC 83, [32]; (1999) 201 LSJS 456, 461 (Doyle CJ, with whom Millhouse and Prior JJ agreed).

57 *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43, [7] (Doyle CJ, and Stanley J, with whom Anderson J agreed).

58 *Legal Practitioners Conduct Board v Kerin* [2006] SASC 393, [27] (Gray J, with whom Duggan J agreed).

59 *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43, [14] (Doyle CJ and Stanley J, with whom Anderson J agreed).

60 *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408, 441 (Mahoney JA).

practitioner is effectively being held out by this Court as fit to practise the profession of the law.[61]

120 Ultimately, the question for this Court is whether the practitioner is at the time of the determination of the application fit to remain a member of the legal profession.[62]

121 There are many examples of professional misconduct which are capable of demonstrating a practitioner's lack of fitness and propriety to practise the profession of the law. One is disrespect for the court and its processes in the conduct of disciplinary proceedings. For example, a practitioner was struck off the roll for conduct that included filing affidavits in disciplinary proceedings replete with argumentative material, including allegations of gross misconduct against judicial officers, practitioners and Court staff, none of which appeared to have any foundation.[63]

122 Where a legal practitioner is personally involved in a legal proceeding, the practitioner nonetheless remains bound by fundamental duties of fairness and propriety.[64] For example, a practitioner's duty of candour and honesty to a court or tribunal will operate regardless of whether the practitioner is acting in a personal or professional capacity.[65]

The determination of the Commissioner's application

123 In this case the Court has had regard to the findings made by the Tribunal, the adverse jurisdictional rulings made in the Tribunal and other fora but, principally, her conduct in the disciplinary proceedings before this Court including her determination to relitigate an adverse jurisdictional ruling.

124 Because of the difficulties associated with the Commissioner's reliance on the findings of an interstate Tribunal (the WASAT), as well as the High Court, the Family Court, and the Federal Magistrates and Federal Circuit Court decisions for the purposes of s 89(5) of the Act, we have not relied on the findings made in those

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61 *Legal Profession Conduct Commissioner v Kaminski* [2021] SASCFC 39, [12] (Livesey P, Bleby and David JJ).

62 *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 297-298 (Kitto J); *Clyne v New South Wales Bar Association* (1960) 104 CLR 186, 189 (Dixon CJ, McTiernan, Fullager, Menzies and Windeyer JJ); *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408, 441 (Mahoney JA); *Law Society of South Australia v Murphy* [1999] SASC 83; (1999) 201 LSJS 456, 461 (Doyle CJ, with whom Millhouse and Prior JJ agreed); *Law Society of South Australia v Rodda* (2002) 83 SASR 541, 545 (Doyle CJ with whom Williams and Besanko JJ agreed); *Council of the Law Society of New South Wales v Jafari* [2020] NSWCA 53, [31] (Bell P with whom White JA and Emmett AJA agreed); *Legal Profession Conduct Commissioner v Cleland* [2021] SASCA 10, [45].

63 *Legal Practitioners Complaints Committee v De Alwis* [2006] WASCA 198, [111] (Steytler P, Pullin JA and Murray J).

64 *Legal Profession Complaints Committee v Amsden* [2014] WASAT 57, [58] (Parry DP, Senior Sessional Member Dembo and Sessional Member Kemp).

65 *Barristers' Board v Young* [2001] QCA 556, [15] (de Jersey CJ, with whom Davies JA agreed).

decisions except in so far as they provide the context for understanding the submissions made by the practitioner to this Court.

125 To be clear, we have not relied on any factual finding made in the High Court, the WASAT, the Family Court, the Federal Magistrates or Federal Circuit Court decisions to which the Tribunal referred (extracted earlier). However, we have had regard to the Western Australian District Court findings. We have also had regard to the adverse jurisdictional rulings made here and interstate, because they are relevant to understanding the practitioner's approach to the jurisdictional points taken in this Court (including the *Burns v Corbett* point). We have also considered and the relied on the findings made in the Tribunal.

126 We have taken this course even though no clear submission about the effect of s 89 of the Act was made by the practitioner.

127 In these circumstances, and on that basis, the following findings are made. First, it is clear that the practitioner has consistently, to the point of vexation, persisted with unmeritorious challenges to the jurisdiction of various tribunals including the Tribunal. At no stage did the practitioner acknowledge these rulings or explain why they might be wrong or distinguishable. She simply made the same challenge based on *Burns v Corbett*. We add that the practitioner persisted with a similarly unmeritorious challenge to the jurisdiction of this Court based on a misreading of sections of the Act. We have also taken into account the criticisms of what was regarded as unmeritorious litigation pressed by the practitioner in the District Court of Western Australia in 2013 and 2016 (referred to earlier as cases numbered 2 and 7 in [53]).

128 Secondly, the practitioner stubbornly persisted with attempts to introduce evidentiary material (including by notice to admit and subpoena) which was intended to overcome earlier rulings made against her in her own Family Court and other litigation, without regard to the issues apparently facing her in these disciplinary proceedings. That this evidence was irrelevant and unhelpful to a determination of the disciplinary proceedings was of no apparent concern to the practitioner. Indeed, some of the evidence was intended to prove a conspiracy directed against her, allegedly engaged in by members of the Family Court and the Federal Magistrates and Federal Circuit Courts.

129 Thirdly, it is clear that the practitioner made baseless claims of improper and dishonest conduct against the Commissioner before the Tribunal, and she persisted with those kinds of claims before this Court, both orally and in writing.

130 Fourthly, the practitioner's participation in the hearing before this Court demonstrated that she was unable, or at best unwilling, to address the issues raised for her response by the application and by the Court, and she had no real understanding of appropriate professional conduct. The practitioner demonstrated a remarkable lack of understanding of the legal issues and the way in which legal proceedings should be conducted. She seemed determined to relitigate her past

cases and, at times, she insisted on speaking over the Commissioner and the Court, ignoring requests that she allow others to finish speaking. This was no mere failure in etiquette, for it reflected a lack of understanding and respect for the Court and its processes.

131 The practitioner's conduct would have been surprising in an unrepresented litigant but, in an admitted legal practitioner, it was completely unacceptable.

132 The practitioner demonstrated that she was unable to meet the basic, minimum requirements expected of someone held out by this Court as fit and proper to practise as a legal practitioner.

133 Finally, perhaps the most concerning feature of the practitioner's conduct concerned her written and oral submissions which traversed issues far removed from the issues at stake in these disciplinary proceedings. The practitioner's final speech delved, it will be recalled, into the conduct of Dr Manock and others, as well as sweeping corruption allegations. The practitioner's conduct in these proceedings demonstrated that she cannot adhere in any disciplined or logical way to a discussion about the legal issues actually before the Court and, instead, she exhibited a tendency to drift into a discussion about matters that were at best irrelevant if not outright fantastic, quite disengaged from reality.[66]

134 Even though the practitioner never intends to return to legal practice, it would be dangerous to allow her to continue to be held out as a person who is fit and proper to practise the profession of the law.

Conclusion

135 There will be an order removing the practitioner's name from the roll of practitioners maintained by this Court.

136 The practitioner must pay the Commissioner's costs.

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[66] Whether there is a diagnosable condition may perhaps be bedside the point. The Court has no evidence from a person expert in psychiatry or psychology of a psychiatric diagnosis.