SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

LEGAL PROFESSION CONDUCT COMMISSIONER v MANCINI

[2022] SASCFC 1

Judgment of The Full Court

(The Honourable President Livesey, the Honourable Justice Stanley and the Honourable Justice Doyle)

1 August 2022

PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - DISCIPLINARY PROCEEDINGS - SOUTH AUSTRALIA

PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT

The Legal Profession Conduct Commissioner (the **Commissioner**) seeks an order that the respondent practitioner's name be struck off the roll of practitioners pursuant to s 89(2)(d) of the Legal Practitioners Act 1981 (SA).

The practitioner has a long history of disciplinary proceedings. On 17 May 2016, the Commissioner laid a charge against the practitioner alleging nine counts of professional misconduct. Five were assertions that the practitioner made false and misleading representations to the Legal Services Commission and four comprised assertions that the practitioner claimed or attempted to claim fees from the Legal Services Commission which he knew, or should have reasonably known, he was not entitled to claim.

In 2017, the Legal Practitioners Disciplinary Tribunal (the **Tribunal**) found the practitioner not guilty of professional misconduct, but guilty of unsatisfactory professional conduct on all nine counts. On appeal, the Full Court found the practitioner guilty of three counts of professional misconduct and remitted the remaining six counts to the Tribunal. On 13 August 2020, the second Tribunal found the practitioner guilty of professional misconduct on four counts. The Tribunal directed that the question of penalty be referred to this Court for determination.

Held (the Court) allowing the Commissioner's application:

Applicant: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MISS E F NELSON QC - Solicitor: LEGAL PROFESSION CONDUCT COMMISSIONER

Respondent: GEORGE JOSEPH STEPHEN MANCINI Counsel: MR W J N WELLS QC - Solicitor: SHAW & HENDERSON

Hearing Date/s: 14/12/2021

File No/s: CIV-21-002838

A

1. The name of the practitioner, George Joseph Stephen Mancini, will be struck from the roll of practitioners kept by this Court.

2. The practitioner is ordered to pay the Commissioner's costs in this Court.

Legal Practitioners Act 1981 (SA) ss 82, 77J, 88A, 89; *Legal Services Commission Act 1977* (SA); *Supreme Court Civil Rules 2006* (SA) r 200, referred to.
Berger v Counsel of the Law Society of New South Wales [2019] NSWCA 119; *Clyne v The New South Wales Bar Association* (1960) 104 CLR 186; *Giudice v Legal Profession Complaints Committee* [2014] WASCA 115; *Hart v Parole Board* [2017] SASC 184; *Law Society of New South Wales v Foreman (No 2)* (1994) 34 NSWLR 408; *Law Society of South Australia v Murphy* (1999) 201 LSJS 456; *Law Society of South Australia v Rodda* (2002) 83 SASR 541; *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43; *Legal Practitioners Conduct Board v Fletcher* [2005] SASC 382; *Legal Practitioners Conduct Board v Hay* (2001) 83 SASR 454; *Legal Practitioners Conduct Board v Jones* [2010] SASCFC 51; *Legal Practitioners Conduct Board v Lind* (2011) 110 SASR 531; *Legal Practitioners Conduct Board v Morel* (2004) 88 SASR 401; *Legal Practitioners Conduct Board v Phillips* (2001) 83 SASR 467; *Legal Practitioners Conduct Board v Viscariello* [2013] SASCFC 37; *Legal Profession Conduct Commission v Kaminski* [2021] SASCFC 39; *Legal Profession Conduct Commissioner v Cleland* [2021] SASC 10; *Legal Profession Conduct Commissioner v Mancini* (2018) 130 SASR 349; *Legal Profession Conduct Commissioner v Mancini* [2015] SASCFC 106; *Mancini v Legal Practitioners Conduct Board* [2014] SASCFC 31; *Mancini v Legal Profession Conduct Commissioner* [2016] SASCFC 77; *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279; *Peters v The Queen* (1998) 192 CLR 493; *Re Legal Practitioners Conduct Board v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 2 of 2012, 19 April 2013); *Re Legal Practitioners Conduct Board v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 18 of 2010, 20 March 2014); *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020); *Re R (Practitioner of the Supreme Court)* [1927] SASR 58; *Wentworth v New South Wales Bar Association* (1992) 176 CLR 239; *Zimes v The Prothonotary of The Supreme Court of New South Wales* (1957) 97 CLR 279, considered.

LEGAL PROFESSION CONDUCT COMMISSIONER v MANCINI [2022] SASCFC 1

Full Court – Livesey P, Stanley and Doyle JJ

THE COURT:

Introduction

1 The applicant, the Legal Profession Conduct Commissioner (the **Commissioner**), by Originating Application dated 25 March 2021, seeks the following orders against Mr George Mancini (the **practitioner**):

1. That this Honourable Court exercise its power pursuant to s 89(2)(d) of the *Legal Practitioners Act 1981* (SA) (the **Act**) to strike the practitioner's name off the roll of legal practitioners maintained under the Act.

2. That the practitioner pay the Commissioner's costs of and incidental to the proceedings in the Legal Practitioners Disciplinary Tribunal (the **Tribunal**) and in this Court on the Fast Track ordinary scale.

2 The application is made under ss 89(1) and 88A of the Act pursuant to an order made by the Tribunal on 18 February 2021 under s 82(6)(a)(v) of the Act.

3 For the reasons that follow, an order should be made striking the practitioner's name from the roll.

The Commissioner's evidence

4 The Commissioner relied upon material supported by affidavits of Ms Philippa Branson affirmed on 25 March and 28 May 2021.

5 It is appropriate to outline that material. The charge was originally laid against the practitioner in the Tribunal on 17 May 2016. Nine counts of professional misconduct were alleged. The matter was heard by the Tribunal, presided over by Ms Maharaj QC, on 28 April and 19 May 2017 (the first Tribunal). The Tribunal's decision and reasons were delivered on 10 August 2017: the practitioner was found not guilty of professional misconduct but guilty of unsatisfactory professional conduct on all nine counts.

6 The Commissioner appealed. The appeal was heard on 12 February 2018. The Full Court of the Supreme Court of South Australia (the **Full Court**) delivered its judgment on 2 May 2018.[1] The Full Court allowed the Commissioner's appeal. On counts 1, 2 and 4, the Full Court substituted findings of professional misconduct and, on the remaining six counts, the matter was remitted for re-hearing before a differently constituted Tribunal.

---

[1] *Legal Profession Conduct Commissioner v Mancini* (2018) 130 SASR 349 (Kelly, Blue and Parker JJ).

7 On remittal, the Tribunal, with Mr Sallis presiding, heard the matter between 24 and 25 July 2019 and delivered findings and reasons on 13 August 2020 (the second Tribunal).[2] The Tribunal found the practitioner guilty of professional misconduct on counts 3, 5, 7 and 9, with counts 6 and 8 found not proven.

8 Submissions on penalty and costs were heard on 15 October 2020 and, by its decision and reasons delivered on 18 February 2021, the second Tribunal directed that the question of penalty be referred to this Court for determination. The Commissioner emphasises that the practitioner has been convicted of seven counts of professional misconduct and that most of these involve explicit findings of dishonesty. It will be necessary to return to those findings.

9 Before addressing the findings made against the practitioner it is appropriate to outline his extensive history of disciplinary proceedings.

The practitioner's disciplinary history

10 In February 1990, the practitioner was found guilty of unprofessional conduct for lying to a client. He was admonished. In March 1992, the practitioner was found guilty of four counts of unprofessional conduct involving delay, lack of communication and one breach of an undertaking. He was admonished. In March 1995, the practitioner was again found guilty of unprofessional conduct due to a lack of communication. He was again admonished.

11 In October 2011, the practitioner was found guilty of unsatisfactory conduct due to a failure to complete work and a lack of communication. He was reprimanded.

12 In November 2013, the Tribunal, with Mr S P O'Sullivan QC presiding, found the practitioner guilty of unprofessional conduct for misleading a psychologist and failing to pay him. The charge was framed in the Tribunal as the making of a false and misleading statement to a psychologist, concerning four different matters. In the first matter the practitioner wrote to the psychologist, telling the psychologist that the client had deposited monies in trust for the purposes of a psychological report. In fact, at the time the letter was sent, the practitioner ought to have known that there were no monies in trust.[3] The practitioner received the psychologist's report on 3 June 2009 but thereafter failed to pay the attached invoice in the sum of $1,210. In correspondence between July and September 2010, the psychologist wrote to the practitioner seeking settlement of outstanding invoices in this and other matters. In the absence of a response, the psychologist made a complaint to the Legal Practitioners Conduct Board (the **Board**) in November 2010.

---

2 *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020).

3 *Re Legal Practitioners Conduct Board v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 2 of 2012, 19 April 2013), [72].

13 In relation to the second matter involving the same psychologist, the practitioner wrote to the psychologist on 10 February 2010, advising that the matter was the subject of a grant of legal aid at a time when a complete legal aid application had not been lodged. In relation to the third matter, the practitioner again misled the psychologist by telling him that there was a grant of legal aid. In relation to the fourth matter, the practitioner delayed more than 12 months before completing the required commitment certificate which would ensure payment to the psychologist by the Legal Services Commission of South Australia (the **Legal Services Commission**). The practitioner admitted that his conduct was misleading.

14 The Tribunal was critical of the practitioner's conduct, particularly his failure to correct the misleading statements he made and his failure to promptly personally pay the psychologist's accounts. In addition, the Tribunal found that the practitioner did not answer the Board's inquiries with frankness and candour, blaming others for the failure to pay the psychologist's accounts. That was particularly egregious in circumstances where the practitioner's evidence was that his firm had the capacity to pay the psychologist's accounts.

15 In its decision on penalty dated 26 November 2013, the Tribunal was divided. The majority ordered that the practitioner's practising certificate be suspended for two months. In separate reasons dated 29 November 2013, the minority considered it appropriate to impose a fine of $9,500.

16 In March 2014, the practitioner was found guilty of unprofessional conduct for failing to pay a personal costs order in a Federal Court of Australia (the **Federal Court**) matter in which he acted for the applicant and the Australian Government Solicitor represented the respondents, the Australian Federal Police and the Deputy Commissioner of Taxation.

17 The Tribunal, with Mr G G Holland presiding, made findings to the effect that, between 5 May 2009 and 20 December 2011, the practitioner failed to comply with an order made by the Honourable Justice Finn on 5 May 2009, ordering that the practitioner personally pay the costs thrown away for a relisted appeal book index settlement appointment on 30 March 2009. The costs were ordered to be paid to the Australian Government Solicitor. The practitioner had failed to appear because he was in another court. Finn J was concerned that he had received no explanation for the failure to comply with the Court's orders.

18 Finn J had required that the practitioner show cause why the Court should not make an order for costs personally against him. The practitioner told the court that he had no submissions to make against the proposed order. On 5 May 2009, the Australian Government Solicitor wrote to the practitioner requesting payment of $244.20, by way of costs thrown away, within 14 days. The practitioner did not respond to this or to a subsequent letter.

19 In June 2009, the Australian Government Solicitor filed a Bill of Costs in the sum of $1,134 which was served on the practitioner on 19 June 2009. On 18 August 2009, a Certificate of Taxation was issued by the Registrar of the Federal Court, certifying that costs were payable in the amount of $1,134.

20 On 19 August 2009, the Australian Government Solicitor wrote to the practitioner enclosing the Certificate of Taxation and requesting payment within 14 days.

21 The practitioner did not make payment until 21 December 2010.

22 Before doing so, the practitioner attempted to avoid making payment. In August 2009 he telephoned the Australian Government Solicitor and said that he wished to settle the order, asking that the Australian Government Solicitor take into account monies he claimed were owed to him by the Australian Taxation Office. This attempt was rebuffed in a letter sent to the practitioner later that day. Undeterred, the practitioner again telephoned the Australian Government Solicitor on 31 August 2009, saying he wished to write to the Australian Government Solicitor about a claimed set-off. The practitioner said he would send a letter with details of the set-off by 1 September 2009.

23 No letter was sent. In the absence of a letter, on 4 September 2009 the Australian Government Solicitor asked that an order be drawn up and sealed. On 10 September 2009, the Registrar of the Federal Court ordered that the practitioner pay the sum of $1,134. A copy of the original order was served on 11 September 2009. The practitioner was requested to make payment by 4.00 pm on 18 September 2009, failing which enforcement action would be taken.

24 On 18 September 2009, the practitioner wrote to the Australian Government Solicitor claiming that the Australian Taxation Office owed him money concerning a subpoena and he proposed that each party bear its own costs. In that letter, the practitioner said that he had attended the Federal Magistrates Court on 3 February 2009 in response to a subpoena issued against him by the Deputy Commissioner of Taxation, seeking production of documents in his possession relating to dealings between the practitioner and another person. The practitioner said that he had conducted an extensive perusal of his materials for the purposes of answering the subpoena and that he had given consideration to proposed amendments to the subpoena. The practitioner said that his work involved five hours personal attendance and that he had briefed counsel to appear.

25 On 24 September 2009, the Australian Government Solicitor wrote to the practitioner, rejecting his proposal and giving the practitioner until 25 September 2009 to make payment. On 1 October 2009, the practitioner wrote to the Australian Government Solicitor asking that his proposal be reviewed, stating that he had written separately to the Australian Taxation Office.

26 The Tribunal found that the practitioner's position was without any legal basis and had been inconsistent. For example, the Australian Government Solicitor represented two parties in the proceedings before Finn J, being the Australian Taxation Office and the Australian Federal Police, and even on the practitioner's approach only one of those parties could be involved in any asserted set-off. The Tribunal found that the practitioner's explanation for not making payment after August 2009 was both disingenuous and evidenced a complete lack of appreciation of his position as an officer of the Court.[4] The Tribunal found:[5]

> ... based on the undisputed facts and based on the practitioner's evidence, the tribunal is satisfied on the balance of probabilities that the practitioner showed a complete disregard for Justice Finn's order and a lack of respect of [sic] the Federal Court and a senior officer of that court. He went to great lengths to avoid complying with an unambiguous order of the Court.

27 Whilst the Tribunal was not prepared to make a contempt finding, it found that the practitioner's attitude was unnecessarily arrogant, inappropriate and completely unjustified. The Tribunal was concerned that, in evidence, the practitioner continued to show a lack of insight into his behaviour and continued to try and justify his actions. The Tribunal described it as a matter of great concern that, even after a complaint had been made and an investigation was on foot, the practitioner still did not pay the costs order until shortly before the commencement of the hearing before the Tribunal.[6]

28 The Tribunal found that the practitioner committed a serious breach of his professional obligations, amounting to a substantial, recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute. The practitioner was found guilty of unprofessional conduct on both counts before it.

29 In March 2014, the practitioner was also found guilty of unprofessional conduct concerning a "failure to complete work", failing to advise a client and failing to properly deal with trust money. More will be said about this matter in a moment.

30 The practitioner appealed the two-month suspension ordered by a majority of the Tribunal in connection with the matter involving the psychologist. It was determined that the matters concerning the Australian Government Solicitor and the failure to complete work should all be referred to the Full Court.

31 The Full Court summarised the matters before it. On 19 April 2013, the Tribunal found the practitioner guilty of unprofessional conduct for making false and misleading statements to an expert psychologist retained by him and failing to

---

4 *Re Legal Practitioners Conduct Board v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 18 of 2010, 20 March 2014), [74].

5 *Re Legal Practitioners Conduct Board v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 18 of 2010, 20 March 2014), [77].

6 *Re Legal Practitioners Conduct Board v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 18 of 2010, 20 March 2014), [120].

pay that psychologist's accounts. The Tribunal ordered that the practitioner's practising certificate be suspended for two months. On 20 March 2014, the practitioner was found to have failed to meet a costs order of the Federal Court for over a year and to have raised a set-off against that order in circumstances where he knew he was not entitled to do so. On 24 March 2014, the practitioner was found to have failed for over a year to inform a client that a notice of appeal had not been lodged and that the client's appeal would not proceed. The practitioner was found to have failed to deal appropriately with trust monies and delayed unreasonably in making the client's file available to a new solicitor.

32 The determination of penalty for these matters was considered by the Full Court. By an order made on 4 April 2014, the Full Court set aside the two-month suspension and substituted an order for supervision for a period of three years:[7]

> ~~The practitioner's unprofessional conduct, the subject of the findings of the three Tribunals,~~ should be the subject of censure. However, this alone would not be sufficient. The public and the legal profession must understand the serious view the Court takes of the practitioner's unprofessional conduct. We have given consideration to the question of whether the practitioner should be suspended for a period of time. On balance, as discussed above, we consider that there would be little to be gained from suspension. The order of suspension imposed by the Tribunal in respect of the matter under appeal should be set aside.
>
> We consider it appropriate to order that it be a condition of the practitioner's entitlement to practise the profession of the law that he do so under supervision for a period of three years. The supervisor is to be a legal practitioner approved by the Board and the expense of supervision is to be met by the practitioner. Minutes of order setting out the terms and conditions of supervision are to be prepared and forwarded to the Court for approval. The terms of supervision are to be endorsed in full on the practitioner's practising certificate.
>
> In addition to the foregoing, the practitioner is to pay the costs of the proceedings in this Court to be agreed or taxed. It is noted that orders for the costs of the proceedings before the Tribunals have already been made.

33 The order for supervision ultimately made by the Full Court was extensive. The order included the appointment of a supervisor who was required to provide regular reports. In framing these conditions, the Court took into account the practitioner's poor health and service to the profession. The Court accepted that the practitioner's poor health provided an explanation for some of the practitioner's conduct, but it did not alter the characterisation of that conduct, nor did it mitigate the seriousness of it.[8] Plainly, the Full Court was concerned about the practitioner's failure to answer the Board with frankness and candour, pointing out that frankness and cooperation with the Board and the Tribunal is a fundamental obligation of any legal practitioner.[9] The Full Court emphasised that

---

7 *Mancini v Legal Practitioners Conduct Board* [2014] SASCFC 31, [35]-[37] (Gray, Sulan and Bampton JJ).

8 Citing *Law Society of South Australia v Murphy* (1999) 201 LSJS 456, [27] (Doyle CJ).

9 *Legal Practitioners Conduct Board v Jones* [2010] SASCFC 51, [36] (Doyle CJ, Anderson and David JJ).

the protection of the public interest includes ensuring that professional standards of legal practice are maintained and are seen to be maintained.[10]

34 Although the practitioner put evidence before the Full Court to the effect that his absence for two months would have a catastrophic effect on his practice and on his personal finances, the Full Court found this troubling because it suggested that the practitioner conducted his practice in a way that any absence on account of illness or holiday would have a catastrophic effect. The Full Court accepted that this suggested that the practitioner may not have developed the necessary techniques in the conduct of his professional activities to take account of the normal exigencies of life and his probable need to be absent from practice from time to time. The Full Court found that the practitioner's mismanagement of his practice had a part to play in his unprofessional conduct.[11]

35 Following the orders made by the Full Court, between August 2014 and September 2014, three former clients of the practitioner made complaints to the Commissioner. In the course of investigating those complaints the Commissioner determined that the practitioner had not provided his clients with a letter notifying them of the supervision order.

36 In January 2015, the Commissioner made an application to the Full Court to amend the terms of the order to address the practitioner's breach of the obligation to notify clients in writing that he was practising under supervision.

37 In an affidavit filed on behalf of the Commissioner it was disclosed that a review of the supervisor's reports revealed that both the Legal Services Commission and the Magistrates Court of South Australia (**Magistrates Court**) had raised concerns about the practitioner's handling of matters. The Chief Magistrate had made a formal complaint to the Executive Director of the Law Society of South Australia (the **Law Society**), expressing concerns about the practitioner's appearances in court and delays in resolving matters. The Director of the Legal Services Commissioner wrote to the supervisor outlining instances of the practitioner seeking inappropriate grants of legal aid funding and in failing to manage files with due care.

38 The Commissioner commenced an investigation on his own initiative into the matters contained in the supervisor's reports.

39 When the matter came back before the Full Court on 5 March 2015, the Commissioner accepted that the failures to notify clients about the supervision order involved oversights which did not amount to mismanagement. Nonetheless, the Commissioner expressed concern that these oversights occurred. In order to reduce the risk of further oversights, the Commissioner sought an amendment to the terms of the order requiring that all prospective clients be notified in writing save in circumstances of urgency, in which case the notification may be provided

---

[10] *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43, [10] (Doyle CJ and Stanley J).
[11] *Mancini v Legal Practitioners Conduct Board* [2014] SASCFC 31, [26] (Gray, Sulan and Bampton JJ)

verbally but confirmed in writing within 14 days. The practitioner agreed to these amendments.

40 Nonetheless, given the practitioner's administrative oversights and the concerns raised by the Legal Services Commission and the Magistrates Court, the Full Court requested a further report from the supervisor. After considering that report, the Full Court expressed a number of concerns:[12]

> It is a matter of serious concern that the practitioner's handling of cases was so poor that the Chief Magistrate considered it necessary to make a formal complaint. The practitioner's administrative oversights and dealings with the Legal Services Commission, together with the delays in finalising a number of his matters, suggested that he was struggling to cope with his practice. The Court was not content to leave it to the practitioner to remedy the situation. The Court requested the practitioner enter into a series of undertakings concerning the management of his practice.

41 On 15 June 2015, the Court accepted a number of detailed written undertakings proffered by the practitioner regarding the manner in which he would conduct his practice. The Full Court explained that the undertakings provided the practitioner and the supervisor with guidance concerning the Court's expectations. One of the undertakings was that the practitioner must decline to accept instructions for new legally aided suburban or regional Magistrates Court matters. It is unnecessary to address the balance of those undertakings. They were designed to improve the practitioner's practice management and workload.

42 In April 2016, the practitioner applied to amend the terms of the supervision order because he had decided to close his solicitor's practice and practise solely as a barrister in the area of criminal law and child protection. The court varied the terms of the supervision order on 1 July 2016, appointing Mr Mark Griffin QC as supervisor.[13]

43 In April 2018, the practitioner referred himself for failing to record a trust transaction within five business days and overdrawing a client trust ledger. For this, he was found guilty of unsatisfactory professional conduct pursuant to s 77J(1) of the Act and reprimanded.

44 The following month, the Full Court delivered the judgment outlined earlier in these reasons concerning the subject charges.[14]

45 The following year, in July 2019, the practitioner again referred himself, this time for failing to settle an application for judicial review within a known statutory deadline. For this, the practitioner was found guilty of unsatisfactory professional conduct, reprimanded and fined $2,500. It is appropriate to outline the circumstances of that matter. The referral followed an unsuccessful application

---

[12] *Legal Profession Conduct Commissioner v Mancini* [2015] SASCFC 106, [19] (Gray J, with whom Sulan and Bampton JJ agreed).

[13] *Mancini v Legal Profession Conduct Commissioner* [2016] SASCFC 77 (Blue, Stanley and Bampton JJ).

[14] *Legal Profession Conduct Commissioner v Mancini* (2018) 130 SASR 349 (Kelly, Blue and Parker JJ).

for permission to proceed with an action for judicial review which was heard and refused by the Supreme Court on 14 December 2017.[15]

46 The action for judicial review sought the review of a decision of the Parole Board made on 7 February 2017, refusing parole and precluding the plaintiff from applying again until after 17 January 2018.

47 The action was commenced on 6 October 2017, two months out of time. By r 200(2) of the *Supreme Court Civil Rules 2006* (SA) the action could not proceed without the Court's permission. The evidence before the Court on the extension application to explain the delay revealed that the practitioner had been contacted in April 2017. A representative of Prison Fellowship followed the practitioner's advice and drafted documents and supplied them to a solicitor in mid-to-late June 2017. The practitioner received the papers from the solicitor on or soon after 30 June 2017.

48 The practitioner was aware of the six-month time limit and planned to have the documents filed by 7 August 2017. However, the practitioner overlooked doing so because of a number of other "personal and professional exigencies". The practitioner settled the papers and returned them to the solicitor in late August 2017 but, because of her own illness and other problems, the solicitor did not file the papers until early October 2017.

49 The Supreme Court held that, by reason of the delay, even if permission and an extension were granted, a decision was unlikely to be delivered before 17 January 2018 by which time the applicant would be free to again apply for parole. The lack of utility in the application was reinforced by recognition that, even if the Court made an order, it could do no more than quash the Parole Board's earlier decision and order that the Parole Board consider whether the plaintiff should be granted parole forthwith. Accordingly, the Court found:[16]

> Given the delay in this action, even if permission and an extension of time were granted, it is unlikely that a decision on the action for judicial review would be delivered before 17 January 2018. Even if the action succeeded, the Court could do no more than quash the decision of the Board of 7 February 2017 and order that the Board forthwith consider whether the plaintiff should be granted parole. Before that time, the plaintiff will have become eligible to apply again for parole. In any event, I note that, pursuant to s 67(10) of the *Correctional Services Act 1982* (SA), the plaintiff could apply for parole prior to 17 January 2018. In these circumstances, I am satisfied that the action is no longer of any real practical significance. That conclusion is not to deny the proposition that some of the plaintiff's grounds may be reasonably arguable but, given the delay, the plaintiff will shortly have available to her the remedy of bringing a fresh application for parole. In my view, she should pursue that remedy rather than occupying the time and resources of the Court whose orders could not provide her with any better or more effective remedy than could be obtained by making a further application for parole.

---

[15] *Hart v Parole Board* [2017] SASC 184 (Stanley J).
[16] *Hart v Parole Board* [2017] SASC 184, [12] (Stanley J).

50 The practitioner appeared as counsel for the applicant before the Supreme Court to make the unsuccessful extension application. The parties made submissions about this matter. Whilst it may be said that the matter was initiated by the practitioner, and not his client, that does not diminish the practitioner's failure to meet the standard expected of practitioners.

The subject complaints: the Full Court

51 The subject charge comprised nine counts, five were assertions that the practitioner made false and misleading representations to the Legal Services Commission, and four comprised assertions that the practitioner claimed or attempted to claim fees expected from the Legal Services Commission which he knew, or should reasonably have known, he was not entitled to claim.

52 The counts were together alleged to amount to a course of professional misconduct. Alternatively, it was alleged that each separate count comprised professional misconduct.

53 The conduct largely occurred between January and March 2015. Most of the facts were admitted. Where it was alleged that the facts amounted to false and misleading representations, the practitioner maintained that it was never his intention to mislead. Where it was alleged that the practitioner claimed fees that the practitioner knew, or ought reasonably to have known he was not entitled to claim, the practitioner denied that assertion and denied that he acted dishonestly.

54 After hearing the Commissioner's appeal, the Full Court, as mentioned, made findings of professional misconduct on counts 1, 2 and 4. It is appropriate to address the findings made by the Full Court.

55 In summary, the Full Court found that the practitioner's misconduct on count 1 comprised making false and misleading representations to the Legal Services Commission by claiming $137 for a pre-trial conference and $500 for solicitor and counsel fees in a Commitment Certificate forwarded by letter dated 4 February 2015. Though the letter notified that the client's matter was finalised, with the prosecution withdrawing an assault charge, and guilty pleas were entered on the other charges, the Certificate did not disclose that the practitioner did not attend at court for either the pre-trial conference or for the purposes of the guilty pleas.

56 On counts 2 and 4, the Full Court found that the practitioner engaged in professional misconduct when undertaking legal work for clients by sending emails to the Legal Services Commission requesting funding. Those requests amounted to representations to the Legal Services Commission that the criminal charges against the clients were extant and that funding was required for future legal work. In truth, the practitioner knew that criminal proceedings had been finalised by withdrawal by the prosecution.

57 As was explained in the Full Court,[17] the making of a knowingly false representation (count 1) involves a substantial failure to achieve a reasonable standard of competence and diligence and amounts to professional misconduct. If the practitioner believed that the Commission would still have paid the fees claimed if he had disclosed the true position, that did not detract from the fact that he made a knowingly false representation, or the conclusion that he engaged in professional misconduct, albeit such a belief was relevant to the gravity, and the appropriate disciplinary orders to be made as a result, of that professional misconduct.

58 In relation to counts 2 and 4, the Full Court made a similar finding, pointing out that if the practitioner believed the Commission would still have paid the fees claimed on a retrospective basis if he had disclosed the true position, that did not detract from the fact that he made a knowingly false representation or the conclusion that he engaged in professional misconduct.

The practitioner's practice: legal aid funding

59 It is necessary to say something more about the arrangements for legal aid funding before addressing the findings made by the second Tribunal concerning counts 3, 5, 7 and 9. It is also necessary to say something about the practitioner's practice over a period of 40 years because of his familiarity with the funding arrangements applied by the Legal Services Commission.

60 The practitioner was admitted to practice in 1978. In the early 1990s he worked for the Legal Services Commission for about two years. He then established his own practice, primarily in criminal law, practising as both solicitor and counsel. He was a member of the Criminal Law Committee of the Law Society from the mid-1990s until around 2016 after serving for a period as the chair of that committee.

61 The practitioner's legal aid practice comprised between 50 and 75 per cent of his practice. The practitioner was aware that the Legal Services Commission approach to the grant of legal aid funding had significantly changed, and different approaches were taken by different Legal Services Commission officers. During 2015, the practitioner became aware that the Legal Services Commission obtained copies of court records concerning developments and outcomes when determining funding.

62 During 2014, the Legal Services Commission established a panel to which practitioners were required to apply in order to be approved to undertake legally aided work. The practitioner was initially refused membership because there were concerns held by the Legal Services Commission about his past conduct. The practitioner successfully challenged that refusal and, on 29 December 2014, he

---

[17] *Legal Profession Conduct Commissioner v Mancini* (2018) 130 SASR 349, [71] (Kelly, Blue and Parker JJ).

entered into a General Panel Agreement which contained special conditions meeting a number of the concerns held about the practitioner's earlier conduct.

63 Apart from the General Panel Agreement with the practitioner's additional conditions, he was required to comply with the Practice Standards referred to in that agreement. Those Standards were published by the Legal Services Commission and set out the responsibilities of legal practitioners. They emphasised that it was necessary for practitioners to ensure that an application for legal assistance is lodged promptly and, wherever possible, before any activity that would incur costs. In addition, the Legal Services Commission Guidelines stipulated that grants of aid were not retrospective and that the Legal Services Commission would not usually pay for work undertaken before an application is received.

64 Various clauses of the legal Practice Standards required practitioners to be familiar with and observe provisions of the funding and other guidelines made pursuant to the *Legal Services Commission Act 1977* (SA), and to comply with any conditions attached to a grant of legal assistance. Practitioners were required to submit invoicing and provide progress reports and reports on outcomes so as to ensure that the Legal Services Commission was able to determine the amount properly payable. This included detailing court appearances and any other information the Legal Services Commission required.

65 The evidence before the second Tribunal disclosed that between 1995 and 2015 the practitioner had received more than 2,000 grants for legal aid in connection with his practice.

66 Between June and July 2011, the practitioner was notified of a series of matters by correspondence from the Legal Services Commission. These matters included that requests for funding made on the day the funding was required, or after the commencement of a trial, were contrary to the Legal Services Commission Guidelines. The practitioner was notified that funding for legal aid matters had to be approved by the Legal Services Commission before costs were incurred and, that if no funding request had been made before incurring a disbursement, that request would be rejected. The practitioner was notified that claims finalised in the Magistrates Court only attracted funding at rates specified by the Legal Services Commission on the Magistrates Court Scale and not on the District Court Scale. This notification was given on five separate occasions between June and July 2011. The practitioner was also notified that, where a matter did not proceed on the first day of trial, it attracted payment of the "Settle Trial" fee only and not a trial fee.

67 Before the first Tribunal presided over by Ms Maharaj QC, the practitioner gave evidence that he believed that he was entitled to claim for all of the fees which he claimed. He said that he had previously made claims retrospectively and the Legal Services Commission had occasionally allowed them, although he acknowledged that the Commission had also refused them. Ms Brebner, an officer

with the Legal Services Commission for more than 30 years, gave evidence that where funding was sought for a plea to a major indictable offence charged in the Magistrates Court, the funding was approved for a District Court guilty plea, unless the matter was finalised by means of a plea in the Magistrates Court.

The subject complaints: the second Tribunal

68 On remittal, the second Tribunal presided over by Mr Sallis heard and convicted the practitioner on counts 3, 5, 7 and 9. It is necessary to outline the findings made.[18]

69 Count 3 concerned what was said to be a false and misleading representation to the Legal Services Commission following receipt of a letter by the practitioner on 23 January 2015 granting aid for the practitioner to represent a client in the District Court on a plea of guilty. The Legal Services Commission authorised a "maximum fee", being a solicitor's fee of $714 and a counsel fee of $384. The practitioner certified the Commitment Certificate and signed and dated it on 29 January 2015, even though the client had not been committed for trial in the District Court and the practitioner did not at any stage appear for that client in the District Court. The practitioner returned the Commitment Certificate with a Case Finalisation Form on which he had written "24 January 2015" as the finalisation date. The Commissioner alleged that the practitioner knew that this date was false, whereas the practitioner said that it was an unintentional mistake, where the matter had been resolved on 22 January 2015.

70 Count 7 related to the same client. The Commissioner's case was that the practitioner claimed or attempted to claim fees which he knew or should reasonably have known he was not entitled to claim. The practitioner denied this, and he denied acting dishonestly. The allegation was that as the matter was finalised in the Magistrates Court, and not the District Court, and as there had been no grant of legal aid by 22 January 2015 when it was finalised, the practitioner was not entitled to claim fees based on a District Court appearance.

71 The evidence revealed that, on 20 January 2015, the practitioner was notified that the prosecution intended to tender no evidence concerning his client's matter. At that time there had been no application or grant for legal aid. On 22 January 2015, the practitioner attended the Magistrates Court at around 12.30 pm when the prosecution tendered no evidence and the client's matter was dismissed for want of prosecution. Around an hour later, the practitioner made an application for legal aid funding and said in a letter:

> My client has been charged with sexual exploitation of a child under the prescribed age. I request funding for this matter. Thank you.
>
> For and on behalf of George Mancini

---

[18] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020).

72 Before the second Tribunal, the practitioner was cross-examined about his knowledge that legal aid would not normally be approved if prior approval had not been sought from the Legal Services Commission other than in rare and exceptional cases.[19] The practitioner ultimately acknowledged this as well as the further the propositions that there was no emergency, that the client's matter was not a short notice matter and that there were no rare and exceptional circumstances. The practitioner acknowledged that he should have addressed the fact that the charges were withdrawn and that he was seeking retrospective funding based on the considerable amount of work that he had already done. The practitioner's explanation was that he was under pressure and wanted to get the materials off to the Legal Services Commission, but he did not address his mind to those matters. He said he knew that the Legal Services Commission would inevitably check.[20]

73 Although the Tribunal found that the representation made by the certification was false and misleading, the practitioner did not intend to mislead.[21] But, as to the statement made about the finalisation of the case, the Tribunal found that this was knowingly false and misleading and that the practitioner intended to mislead the Legal Services Commission. The Tribunal rejected the submission that the practitioner inserted the date 24 January 2015 negligently and did so in accordance with *Briginshaw* principles.[22]

74 On the question of the fees claim, count 7, the Tribunal rejected the practitioner's evidence that he was not intending to mislead the Legal Services Commission and it rejected the evidence that he believed that he was entitled to fees on account of work done before the grant of legal aid.[23] The Tribunal found that, in claiming the fees, the practitioner acted dishonestly and in contravention of his obligation to act honestly at all times during the course of his practice of the law.[24] The Tribunal found that in claiming these fees, the practitioner's conduct amounted to professional misconduct.[25]

75 Counts 5 and 9 concerned the representation of a different client where, again, the Commissioner alleged that the practitioner made false and misleading

---

19 *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [68]-[69].

20 *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [68]-[69].

21 *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [93].

22 *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [100].

23 *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [125].

24 *Legal Practitioners Conduct Board v Lind* (2011) 110 SASR 531; *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279; *Legal Practitioners Conduct Board v Morel* (2004) 88 SASR 401, *Legal Practitioners Conduct Board v Jones* [2010] SASCFC 51.

25 *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [128].

representations to the Legal Services Commission. The practitioner denied intending to mislead.

76 The client's matter had been listed for trial on 10 and 11 March 2015. On 10 March 2015 at 9.12 am the practitioner sent a facsimile to the Legal Services Commission following up a previous request for the Legal Services Commission to extend funding for a trial. Later that same morning the client pleaded guilty. The practitioner did not amend or withdraw the funding request.

77 On 17 March 2015, the Legal Services Commission extended funding for a trial for one day. At the same time, the Legal Services Commission issued a Commitment Certificate allowing additional amounts of funding to those previously allocated. The practitioner claimed the additional amounts.

78 In a letter dated 20 March 2015, the practitioner wrote to the Legal Services Commission confirming that the matter resolved on the day of trial. He explained that the client pleaded guilty, which he said was necessary and appropriate. The practitioner asked that payment be made. The practitioner claimed on a Commitment Certificate the maximum trial fee of $299 and the maximum counsel fee for "extension for trial" of $858. The practitioner certified the certificate as correct and that it accurately reflected services undertaken.

79 Count 9 concerns the same matter but addressed the fees claimed which it was alleged the practitioner knew, or should reasonably have known, he was not entitled to claim.

80 In its findings, the Tribunal emphasised that there was nothing in the material disclosed by the practitioner to the Legal Services Commission revealing that the trial did not commence. Indeed, the claim for the maximum fee suggested to the Legal Services Commission that the trial had commenced. The Tribunal found that the practitioner's Commitment Certificate was dishonest and indefensibly so.[26] The Tribunal found that the practitioner deliberately provided inaccurate documentation and withheld information to better secure his chances of being paid fees which he knew he was not entitled to receive.[27] The Tribunal found that the practitioner engaged in professional misconduct as alleged in counts 5 and 9.[28]

81 Count 6 concerned an allegation that the practitioner claimed or attempted to claim fees from the Legal Services Commission which he knew, or should reasonably have known, he was not entitled to when he submitted two Commitment Certificates dated 4 February 2015. The practitioner sought payment for a pre-trial conference on 17 December 2013 and a guilty plea on 21 January 2014 in circumstances where he had not attended court on either occasion. The

---

[26] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [144].

[27] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [147].

[28] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [150].

practitioner denied these allegations. Nonetheless, the practitioner conceded in his evidence that he applied for legal aid funding for attending court when he had not done so and that the policy of Legal Services Commission was that a practitioner had to attend court at the time of a conference or plea or otherwise appear in person by audio or visual link or through an agent. The practitioner emphasised, however, that he understood this at the time of giving evidence, but not at the time of making the application for fees. Ultimately, the Tribunal found that the practitioner subjectively believed that he was entitled to make the claim and so the Tribunal found that count 6 was not proved. [29]

82 Count 8 concerned an allegation that the practitioner claimed or attempted to claim fees when he knew or should reasonably have known that he was not entitled to those fees. The practitioner's response was to deny acting dishonestly and to contend that he had submitted an application, but that the application was refused. The Tribunal ultimately found that it was not satisfied that the act of lodging an application for legal aid funding amounted to a claim for fees.[30]

83 In the alternative, it had been alleged that the practitioner attempted to obtain fees and the Tribunal was not satisfied that he did so.[31]

84 When reviewing whether, notwithstanding these findings, the practitioner knew or ought reasonably to have known that he was not entitled to claim fees in the sense of lodging an application for legal aid funding, the Tribunal concluded that the practitioner's letter making the claim was dishonest and comprised professional misconduct.[32] The practitioner's letter concerned a matter which had concluded by the dismissal for want of prosecution at 12.30 pm on 22 January 2015. Just over an hour later, an email was sent from the practitioner's office to the Legal services Commission requesting legal aid to defend the client against various charges. The application for funding was denied by letter dated 11 February 2015. The Legal Services Commission letter identified the application as one for retrospective funding. No Commitment Certificate had been issued.

85 Although the Tribunal concluded in terms that suggested that it found the practitioner guilty of professional misconduct on count 8, as well as counts 3, 5, 7 and 9,[33] that is inconsistent with its earlier finding that the act of lodging an application did not amount to a claim or an attempt to claim fees.

---

[30] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [160].

[31] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [161].

[32] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [189].

[33] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [215]-[216].

86 In the materials provided to this Court, the Commissioner took the view, correctly, that both counts 6 and 8 were found not proven.[34] It is appropriate to proceed on that basis.

87 Following further submissions on 18 February 2021, the Tribunal directed that the question of penalty be referred to the Supreme Court for determination.

The practitioner's affidavits and other evidence

88 The practitioner's affidavit evidence describes a considerable change in his practice, no longer involving a "huge numbers of files from all different areas of law and in a number of courts". The practitioner says that he now has no more than 10 matters at any one time. He explained that after the passing of Mr Griffin QC he approached Mr Andrew Tokley QC who has continued to act as the practitioner's mentor.

89 The practitioner says that his personal life is now healthier than it has ever been and he is working less. He has no desire to do legal aid work in the future. Whilst the practitioner is prepared to do criminal work he has focused on civil litigation, including commercial litigation and administrative law matters.

90 The affidavit evidence reveals a lengthy and commendable history of involvement in professional activities and an evident, genuine desire to improve the administration of justice. The practitioner's evidence included a number of letters of support and commendation from the following:

1. The Hon John Sulan QC
2. The Hon Robyn Layton AO QC
3. Ms Lindy Powell QC
4. Mrs Marie Shaw QC
5. Mr Andrew Tokley QC
6. Mr John Goldberg
7. Mr Rocky Perrotta
8. Mr Anthony Kerin
9. Ms Anne Sibree
10. Ms Sari Krishnan
11. Mr Joshua Davies
12. Mr Vassilios and Mrs Soffia Elovaris

91 The Honourable John Sulan QC, a member of an earlier Full Court involving the practitioner, describes, for example, the practitioner's practice as chaotic but, notwithstanding, he supports the practitioner who has always passionately

[34] Affidavit of Philippa Joan Branson affirmed 25 March 2021, [5].

represented his clients. These letters depose to the extent of the assistance the practitioner has provided to others within the profession as well as his energy and activity in connection with human rights and civil liberties activities.

92 In 2005, the practitioner was awarded the Brian Withers Award in recognition of his involvement with the Law Society and the exceptional way in which he has provided outstanding service to the Society "above and beyond the call of duty". The practitioner deposed to a very large volume of submissions prepared on behalf of the Law Society on various criminal law issues over a period of nearly 15 years.

93 In a psychological report dated 24 August 2021, Dr Loraine Lim rules out any suggestion of mental illness or substance abuse disorder but says, nonetheless, that there are several difficult aspects to the practitioner's personality which explained his professional misconduct. They include:

> ... his somewhat disorganised personal management style, a relaxed and complacent attitude towards formal structures and systems, a conflict-avoidant nature (particularly in respect to his personal life), his propensity to engage in avoidant behaviours in relation to situations that may trigger conflicts or emotional distress, and his tendency to engage in procrastination when his stress levels exceed his coping threshold. Furthermore, I believe that Mr Mancini's engagement in professional misconduct had typically occurred in the context of reactive stress and anxiety, as well as his inadequate self-care practices.

94 Dr Lim described the practitioner as having developed a greater level of insight into his past mistakes and errors of judgment, and that his current focus on self-care and the significant changes made to his professional practice, albeit belatedly, represent an encouraging reflection of his commitment to positive change. Dr Lim expresses the opinion that there are positive indicators to the practitioner's strength of character provided by his commitment to personal development and capacity to openly admit faults and weaknesses.

Consideration of the application

95 The purpose of disciplinary proceedings is to protect the public interest. This Court acts in the public interest.[35] When acting in the public interest the Court acts to protect the public rather than punish the practitioner.[36] Nonetheless, protecting the public includes both deterring the practitioner before the Court as well as deterring other practitioners from similar misconduct in the future.[37] By deterring similar misconduct the Court seeks to maintain professional standards and, thereby, assure the public that it may have confidence in the legal profession.[38]

---

[35] *Wentworth v New South Wales Bar Association* (1992) 176 CLR 239, 250-251 (Deane, Dawson, Toohey and Gaudron JJ).

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

[37] *Law Society of New South Wales v Foreman (No 2)* (1994) 34 NSWLR 408, 471 (Giles AJA).

[38] *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43, [9] (Doyle CJ and Stanley J).

96 The Court must carefully evaluate the nature and the circumstances of the professional misconduct in order to determine the ultimate issue, which is whether the practitioner is fit to remain a member of the legal profession.[39] The evaluation must be undertaken recognising that, for so long as the practitioner's name remains on the roll, he is held out as being fit to practise the profession of the law.[40] The Court must determine whether the Commissioner has shown that this practitioner is not a fit and proper person to practise at this time.[41] Any orders made by this Court must be directed to ensuring that, to the extent that the practitioner is shown to be not fit to practise, the entitlement to practise is either restricted or denied.[42]

97 In this case there are a number of conflicting considerations.

98 The practitioner can justifiably point to a long career of public service and genuine effort and interest in promoting the administration of justice in the community. He has been working assiduously in that respect for more than 40 years. Whilst his work as a legal practitioner over a number of those years has been characterised by dysfunction and chaos he can point to particular stressors and explanations for the situations in which he found himself at the various times he has been subjected to disciplinary action.

99 The practitioner explains that he has now removed himself from many of those situations, principally by focusing on practise as a barrister and improving his practice administration. Indeed, he goes so far as to say that he now has better insight into his difficulties and, as set out in the report of Dr Lim, he is actively working to develop greater insight and positive coping strategies. The practitioner has considerable support within the legal profession which he has earned over a number of decades. All of this is to the practitioner's credit.

100 However, the Commissioner rightly points to a history of disciplinary action which commenced as long ago as 1990. The Commissioner points to the serious adverse findings made in the Full Court and the second Tribunal, including the findings of dishonesty.

101 It must be recognised that a finding of dishonesty reflects a failure to meet current standards of ordinary, honest people in situations where the practitioner

---

39 *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1975) 97 CLR 279, 297-298 (Kitto J).

40 *Legal Profession Conduct Commission v Kaminski* [2021] SASCFC 39, [12] (Livesey P, Bleby and David JJA).

41 *Ziems v The Prothonotary of The Supreme Court of New South Wales* (1957) 97 CLR 279, 297-298 (Kitto J); *Clyne v The New South Wales Bar Association* (1960) 104 CLR 186, 189 (Dixon CJ, McTiernan, Fullagar, Menzies and Windeyer JJ); *Law Society of New South Wales v Foreman (No 2)* (1994) 34 NSWLR 408; *Law Society of South Australia v Rodda* (2002) 83 SASR 541, 545 (Doyle CJ, with whom Williams J agreed).

42 *Law Society of New South Wales v Foreman (No 2)* (1994) 34 NSWLR 408, [441] (Mahoney JA); *Legal Practitioners Conduct Board v Fletcher* [2005] SASC 382, [21] (Debelle J, with whom Besanko and Vanstone JJ agreed); *Legal Profession Conduct Commissioner v Cleland* [2021] SASC 10, [41]-[45] (Livesey JA, with whom Kelly P and Bleby JA agreed).

must have known that this was so.[43] Whilst dishonesty must be determined by reference to an objective standard, the Full Court and the second Tribunal were satisfied that, subjectively,[44] the practitioner recognised that what he was doing was dishonest.[45] Honesty and integrity are essential features of any legal practitioner's fitness to practise the profession of the law. As has been explained:[46]

> Honesty and integrity are important in many spheres of conduct. However, in some spheres significant public interests are involved in the conduct of particular persons and the state regulates and restricts those who are entitled to engage in those activities and acquire the privileges associated with a particular status. The legal profession has long required the highest standards of integrity.
>
> There are four interrelated interests involved. Client must feel secure in confiding their secrets and entrusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and the behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the trust by the judiciary and or the public in the performance of professional obligations by professional people.

102 In *Legal Practitioners Conduct Board v Viscariello* the dishonesty concerned giving dishonest and false evidence in the Supreme Court. The Full Court emphasised that honesty and candour with the courts, clients and fellow practitioners are fundamental elements of any legal practitioner's entitlement to practise.[47]

103 Whilst there is strength in the submission that the practitioner's professional misconduct occurred some time ago, during a defined period and in specific circumstances which no longer operate, that must be weighed very carefully against the fact that the findings which have been made are very seriously adverse to the notion that trust and confidence can be reposed in the practitioner. He has been found prepared to make brazenly dishonest statements to officers charged with disbursing public funding for legal aid.

104 It is true that the practitioner was cooperative with respect to these proceedings and did not put the Commissioner to proof of the underlying factual circumstances. Nonetheless the evidence considered by the Full Court and before the second Tribunal demonstrated that the practitioner failed in a number of

---

[43] *Peters v The Queen* (1998) 192 CLR 493, [15] (Toohey and Gaudron JJ); *Berger v Counsel of the Law Society of New South Wales* [2019] NSWCA 119, [240] (Payne JA, with whom Meagher JA and Simpson AJA agreed).

[44] *Giudice v Legal Profession Complaints Committee* [2014] WASCA 115, [49]-[53] (Martin CJ), [114]-[152] (Buss JA).

[45] *Re Legal Profession Conduct Commissioner v Mancini* (Legal Practitioners Disciplinary Tribunal, Action No 8 of 2016, 13 August 2020), [75], [98]-[100], [120]-[128], [144], [147]-[149]; *Legal Profession Conduct Commissioner v Mancini* (2018) 130 SASR 349, [68]-[69], [71], [73], [74]-[75], [77] (Kelly, Blue and Parker JJ).

[46] *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279, [19]-[20] (Spigelman CJ, with whom Mason P and Handley JA agreed).

[47] *Legal Practitioners Conduct Board v Viscariello* [2013] SASCFC 37, [12] (Gray, Sulan and Blue JJ).

respects to accept that what he had done was dishonest. Though belated acceptance has been communicated through his affidavit evidence and counsel to this Court, it is difficult indeed for this Court and the public to be confident that the practitioner has those essential qualities of character and integrity which are necessary to secure the right and responsibility to practise the profession of the law.[48]

105 The practitioner's conduct represented a gross departure from proper professional standards and fell very substantially short of the standard of conduct to be expected from legal practitioners of good repute and competency.[49] More concerning still, years after that conduct the practitioner failed to recognise and admit to its true character before the Tribunal, particularly the second Tribunal.

106 The practitioner has in the past been admonished, reprimanded, fined and, at the time of the subject offending, subject to a three-year supervision order.

107 Whilst the practitioner urged suspension, emphasising the absence of any premeditated scheme or a strategy, as distinct from impatient and reckless conduct, the fact is that the practitioner lied to the Legal Services Commission and failed to accept that characterisation in two hearings before two Tribunals during 2017 and 2019. It is difficult to see what purpose suspension would serve, still less how a period of suspension could instil confidence in the practitioner's capacity for honesty and integrity. It must be emphasised that suspension is only appropriate for those cases where the misconduct does not demonstrate that the practitioner lacks the qualities necessary to render the practitioner fit to practise.[50] Suspension is not appropriate in this case. Suspension would suggest that the practitioner is otherwise fit and proper, deserving of only a temporary sanction.

108 It may be assumed that striking-off may appear to the practitioner harsh, given the short period of the offending conduct and the small sums involved. However that conduct must be viewed in the broader context of the practitioner's lengthy disciplinary history, his dealings with the Legal Services Commission and the warnings he received about his legal aid claims, and that he was at that time already under stringent supervision conditions imposed by this Court.

109 This Court must act in the public interest and so as to ensure that confidence continues to be reposed in the legal profession. In those circumstances it must be concluded that the practitioner lacks the qualities, character and integrity which are essential to legal practice. No order short of strike-off would be appropriate.

---

[48] *Legal Practitioners Conduct Board v Hay* (2001) 83 SASR 454, [61] (Prior ACJ, Bleby and Martin JJ).
[49] *Re R (Practitioner of the Supreme Court)* [1927] SASR 58, 61 (Murray CJ); *Legal Practitioners Conduct Board v Phillips* (2001) 83 SASR 467, [42] (Gray J, with whom Nyland J agreed).
[50] *In re a Practitioner* (1984) 36 SASR 590, 593 (King CJ).

Conclusion

110 The practitioner's name should be struck from the roll of practitioners kept by this Court.

111 Subject to hearing from the parties, the practitioner should be ordered to pay the Commissioner's costs in this Court.