



**IN THE LEGAL PRACTITIONERS
DISCIPLINARY TRIBUNAL**

Action No. 2 of 2020
Action No. 4 of 2020

IN THE MATTER OF :

THE LEGAL PRACTITIONERS ACT 1981

- and -

DAVID ROBERT DUVAL STOKES

REASONS FOR DECISION

Background

1. There are two separate charges before the Tribunal. Action number 2/20 and Action number 4/20.
2. Each of the charges against the practitioner have been laid by the Legal Profession Conduct Commissioner (the Commissioner) under section 77L of the Legal Practitioners Act (1981) SA (the Act).
3. By agreement between the Commissioner and the practitioner, both charges were heard together.
4. Each charge alleges 2 counts of professional misconduct by the practitioner. All four counts relate to the practitioner's noncompliance with Disciplinary Orders made by Commissioner pursuant to his powers to make such orders under section 77J of the Legal Practitioners Act (The Act).
5. The practitioner has made a full and frank admission with respect to his failure to comply or fully comply with each of the Disciplinary Orders and acknowledges the

breach with respect to each of the four counts charged. He has expressed remorse and contrition for his conduct with respect to the four counts charged.

6. With respect to the two counts charged in Action 2 / 2020, the practitioner complied with the Disciplinary Order before the charge was laid, but not within the timeframe imposed by the order.
 7. In that Action he submits that the two counts should have been charged as a single count and have been unfairly duplicated. The practitioner submits that one of the counts should be struck out or dismissed.
 8. The practitioner submits that the conduct in question in both counts should be characterised as unsatisfactory conduct rather than professional misconduct as it is conduct at the lesser end of the scale. He argues that the Tribunal should find him guilty of one count of unsatisfactory professional conduct with respect to this charge.
 9. With respect to the two counts in Action 4 of 2020 he acknowledges his failure to comply with each of the Disciplinary orders with respect to education. He contends that the conduct charged is at the lesser end of the scale and should be characterised as unsatisfactory professional conduct and that the Tribunal has the discretion to make such a finding with respect to each of the counts in this charge.
 10. The common issue in both actions is whether the conduct in question should be classified as professional misconduct or as unsatisfactory professional conduct. This gives rise to a discussion of section 77J (10) of the Act and sections 68 and section 69 of the Act.
 11. The Commissioner contends that a practitioner's breach of a Disciplinary Order made under section 77J (1) or (2) of the Act can only be characterised as professional misconduct due to the operation of section 77J (10) of the Act which provides relevantly as follows:
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S77(J)(10) A contravention of an order under this section is professional misconduct.

12. The Commissioner submits that section 77J (10) is phrased in clear terms and that if the Commissioner determines to charge a practitioner for contravening a Disciplinary order made under section 77J (1) or (2) of the Act then the Commissioner must charge the practitioner with professional misconduct. The Tribunal has no discretion to find the conduct to be unsatisfactory professional conduct if the charge is proven.
13. In this case the practitioner acknowledges the breaches. The Commissioner submits that the Tribunal has no alternative other than to make findings of professional misconduct with respect to each count.
14. This is the first time that charges against a practitioner have been laid before this Tribunal with respect to allegations of a practitioner's breach of Disciplinary Orders made under section 77J of the Act since amendments to the Act in 2014 that established the Office of the Legal Profession Conduct Commissioner and gave wide disciplinary powers to the Commissioner.
15. Commencing 1 July 2014, a new disciplinary system was established under the Act. The Commissioner was given substantial powers to deal with disciplinary matters involving practitioners without referral to the Tribunal other than in the more serious cases of unsatisfactory conduct or professional misconduct.
16. These amendments were designed to ensure the efficient processing of complaints against legal practitioners and only the more serious charges of professional misconduct or unsatisfactory professional conduct would subsequently be referred to the Tribunal.
17. Less serious matters involving the unsatisfactory professional conduct of a legal practitioner can be dealt with by the Commissioner if the Commissioner is satisfied

that the conduct in question can be adequately dealt with by a Disciplinary Order made under section 77 J (1) (a) of the Act.

18. Section 77 J (2) of the Act also gives the Commissioner the power to deal with some instances of conduct that amount to professional misconduct without referral to the Tribunal if satisfied that the disciplinary powers under section 77J (2) of the Act are adequate to deal with the professional misconduct in the particular case, and if the legal practitioner consents to such a course of action.
19. The counts in each of the actions now before the Tribunal relate to the practitioner's failure to comply, either in a timely fashion or to comply at all, with Disciplinary Orders made under section 77J (1) of the Act after the Commissioner had made findings of unsatisfactory professional conduct by the practitioner.
20. The Commissioner could have dealt with the breaches in each charge by using the disciplinary powers conferred by section 77J (2) of the Act (and if the practitioner had consented) however he has elected to refer all counts in each of the charges to the Tribunal.¹
21. The Tribunal was told by counsel that the Commissioner chose this latter course because of the practitioner's failure to comply with the Commissioner's own Disciplinary Orders combined with the Commissioner's concerns about the significance of the practitioner's prior disciplinary history.
22. The Disciplinary orders breached by the practitioner relate to an "apology order" and an order that he pay a fine (the fine order) in action 2/20.
23. Action number 4/20 involved the practitioner failing to undertake some specific educational units ordered as part of the disciplinary process established by the Act.

¹ Section 82 Legal Practitioners Act.

The Hearing

24. Both parties were represented by counsel. The practitioner attended the hearing and gave oral evidence.
25. Each of the parties submitted detailed written submissions with respect to the legal issues and made further oral submissions at the hearing.
26. The Tribunal received into evidence a book of documents² that contained material relevant to each charge. Other exhibits were received by the Tribunal as follows:
- a. A Statement of agreed facts relevant to each of the counts in each action.³
 - b. A professional mentoring agreement to which the practitioner is a party.⁴
 - c. Dominic Agresta email dated 17 June 2020.⁵
 - d. The practitioners agreed disciplinary history.⁶
 - e. The Commissioner's outline of submissions.⁷
 - f. The practitioner's outline of submissions.⁸
 - g. A bundle of other relevant communications.⁹
27. The practitioner acknowledged his breach of the orders and gave some evidence about the pressures that he was under at the time.

Relevant legislative definitions

28. The Act defines unsatisfactory professional conduct and professional misconduct in the following terms:

68—Unsatisfactory professional conduct

² Exhibit 1

³ Exhibit 2

⁴ Exhibit 3

⁵ Exhibit 4

⁶ Exhibit 5

⁷ Exhibit 6

⁸ Exhibit 7

⁹ Exhibit 8

In this Act—

unsatisfactory professional conduct includes conduct of a legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

69—Professional misconduct

In this Act—

professional misconduct includes—

- (a) unsatisfactory professional conduct of a legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and*
- (b) conduct of a legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to practise the profession of the law.*

70—Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

Without limiting section 68 or 69, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct:

- (a) conduct consisting of a contravention of this Act, the regulations or the legal profession rules;*
- (b)*
- (c)*
-*
- (f) conduct of a legal practitioner in failing to comply with an order of the Tribunal made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay wholly or partly a fine imposed under this Act or a corresponding law);*
- (g) conduct of a legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law;*
- (h) conduct of a legal practitioner in failing to comply with the terms of a professional mentoring agreement entered into with the Society.*

Charge number 4/20

29. This charge comprises 2 counts of professional misconduct. Both counts involve the practitioner failing to comply with disciplinary education orders made by the Commissioner under Section 77J (1) (a) (iv) of the Act.

Count 1

“The practitioner failed to comply with an order of the Commissioner of 18 June 2015 that he undertake five (5) professional development units of training in relation to client relationship management and practice management.”

30. The particulars of this count are detailed in the charge. There is an agreed statement of facts with respect to this count.¹⁰
31. The relevant matters as established from the evidence and from the agreed statement of facts are as follows.
32. A complaint was made in 2012 by a client of the practitioner to the Legal Practitioners Conduct Board (the Barry complaint). The Barry complaint alleged the practitioner’s failure to advance the progress of a matter, and his lack of communication and excessive delay.
33. The investigation of the Barry complaint had not been finalised by 1 July 2014, and the complaint transitioned to the Office of the Legal Profession Conduct Commissioner when it commenced in July 2014 pursuant to the transitional provisions in the amending Act.¹¹
34. The Commissioner issued a determination on 1 May 2015 that the practitioner’s conduct constituted unsatisfactory conduct (as defined in Section 5 of the Act, immediately before it was amended by the Amending Act).¹²

¹⁰ Exhibit 2

¹¹ The Legal Practitioners (Miscellaneous) Amendment Act 2013 (the amending act)

¹² The conduct had occurred prior to the amending legislation.

35. On 18 June 2015, the Commissioner made a Disciplinary Order (The 18 June order) pursuant to section 77J (1) of the Act. Pursuant to paragraph 6 of that order the practitioner was reprimanded, he was ordered to make an apology for his conduct to the complainants and he was fined the sum of \$3000.¹³
36. Paragraph 6(c) of the 18 June order required that the practitioner undertake five professional development units in the subjects of client relationship management and practice management within his compulsory Mandatory Continuing Professional Development (MCPD) by 18 June 2016.
37. The 18 June order was published to the practitioner under cover of letter from the Commissioner's office of 19 June 2015. The letter advised the practitioner inter alia:
- "a failure to comply with an order amounts to professional misconduct."*¹⁴
38. The practitioner was required to provide evidence of completion of these educational requirements no later than one month after the expiration of the 12-month period.
39. In May 2017, and then again in September 2017 the Commissioner's office wrote to the practitioner requesting proof of compliance with the June 18 order. The practitioner did not respond to either inquiry.
40. On 29 August 2017 the Commissioner commenced an investigation into the failure of the practitioner to comply with paragraph 6(c) of the 18 June education order.
41. The practitioner was sent a letter by the Commissioner's office on 27 October 2017 advising him of an investigation into an apparent contravention of the 18 June order. He was invited to make submissions to the Commissioner's office within 21 days of the date of that letter. He did not respond.

¹³ Exhibit 1 page 40 paragraphs 6(a)(b) and (d) of Order under Section 77J

¹⁴ Exhibit 1 page 42

42. After several more attempts by letter to elicit a response from the practitioner, a legal officer from the Commissioner's office-initiated telephone contact with the practitioner in February 2018 and on 2 March 2018 the practitioner provided the Commissioner with his CPD report for relevant periods and an internal professional development sheet.
43. The Commissioner deemed the response inadequate as it did not establish compliance with the June 18 education order.
44. On 3 May 2018 the practitioner was advised in writing that it appeared to the Commissioner that he had completed only 2.5 units in the required subjects of client relationship and practice management instead of the five units ordered by the 18 June education order.
45. On 20 June 2018, the Commissioner's office wrote to the practitioner advising him that a report was being prepared for the Commissioner.
46. On 11 September 2018, the practitioner was advised that the Commissioner had formed a preliminary view as to the practitioner's conduct. The practitioner was invited to provide submissions within a specified time. He did not respond.
47. On 12 December 2018, the Commissioner determined that there was evidence the practitioner had engaged in professional misconduct by failing to comply with the 18 June order. The Commissioner then determined under section 77 L of the Act to lay a charge against the practitioner in this Tribunal. The charge was served on the practitioner on 3 July 2019.

Count 2

“The practitioner failed to comply with an order of the Commissioner in the disciplinary determination of 23 June 2016 that he undertake a further education unit in addition to his. annual MCPD unit.”

48. The particulars of this count are detailed in the charge and there is an agreed statement of facts with respect to this count.¹⁵
49. The relevant matters as established from the evidence and from the agreed statement of facts are as follows.
50. A complaint was made in 2015 by a client of the practitioner to the Commissioner that related primarily to an allegation of overcharging.
51. On 18 May 2016, following an investigation, the Commissioner found that the practitioner had engaged in unsatisfactory conduct and as the conduct had taken place prior to the amending legislation the Commissioner had regard to that term as defined in Section 5 of the Act before it was amended by the Amending Act.
52. The practitioner was provided with a copy of the Commissioner's determination and he was advised of the Commissioner's views as to appropriate disciplinary action. He was invited to make submissions with respect to the proposed penalty but did not do so.
53. On 23 June 2016 the Commissioner made a Determination as to disciplinary action.¹⁶ The practitioner was reprimanded and ordered to pay a \$5000 fine. Paragraph 7(b) of that Determination required that the practitioner undertake certain "training education or counselling". Paragraph 8 of the determination specified that he must undertake one additional professional development unit in relation to cost disclosure and costs agreements within 12 months of the date of the determination (the 23 June education order). He was required to provide evidence to the Commissioner's office that he had undertaken that education no later than one month after the expiration of the 12-month period.

¹⁵ Exhibit 2

¹⁶ Exhibit 1 page 535

54. On 27 October 2017 the practitioner was advised of the Commissioner's investigation into his apparent non-compliance with the 23 June education order and he was invited to make submissions.
55. The practitioner did not respond to written requests from the Commissioner that he provide submissions. After the Commissioner's office-initiated telephone contact with him in early 2018 the practitioner provided the Commissioner's office with his law society CPD report for the 2016 and 2017 reporting years as well as his firm's internal professional activity sheet for the relevant period.
56. The Commissioner found that he had not complied with 23 June education order.
57. On 6 September 2018 the practitioner was advised by letter from the Commissioner's office that the Commissioner had formed a preliminary view that the practitioner had engaged in professional misconduct due to his non-compliance with the 23 June education order. The Commissioner's proposed findings of fact were contained in the letter and the practitioner was invited to provide submissions as to the Commissioner's proposed finding of facts and the Commissioner's proposed characterisation of the conduct. The practitioner did not respond.
58. On 18 December 2018 the Commissioner issued a determination under section 77L of the Act and determined that there was evidence of professional misconduct by the practitioner in that he had failed to comply with the 23 June education order.
59. He determined that he would lay a charge before the Tribunal under section 82 of the Act.

Charge number 2/20

60. The two separate counts in this charge both arise from the practitioner's failure to comply with separate aspects of a disciplinary order made by the Commissioner on 14 February 2019.

61. The Commissioner received a complaint from a client of the practitioner on 19 January 2017. The complaint was published to the practitioner on 1 February 2017.
62. On 14 February 2019 the Commissioner made a determination as to the practitioner's conduct and made a finding of unsatisfactory professional conduct as that term is defined in section 68 of the Act.¹⁷
63. The Commissioner determined that the appropriate penalty was a reprimand, and an order that the practitioner apologise to the person affected by his conduct (the apology order) and an order that the practitioner pay a fine of \$5000 (the 14 February fine order).
64. Paragraph 17 of the determination dealt with the terms of the apology which was to be made within 28 days of the date of the determination. Paragraph 18 of the determination required the practitioner to pay the \$5000 fine within 14 days of receiving a copy of the certificate of fine filed in the Supreme Court.
65. On 18 February 2019 the practitioner was provided with a copy of the 14 February determination.

Count one

“The practitioner failed to comply with the 14 February apology order.”

66. The particulars of this count are detailed in the charge and there is an agreed statement of facts with respect to this count.
67. Paragraph 19(b) of the 14 February Determination provided the practitioner was to apologise in accordance with the requirements of paragraph 17 of that determination. Paragraph 17 is as follows:

“The practitioner is to apologise within 28 days of the date of this determination, to the complainant for:

¹⁷ Exhibit 1 pages 581-586

his failure to communicate effectively; and

his failure to take steps to brief counsel in a timely manner.

The apology is to be prepared by the practitioner in draft, following which he is to provide a copy to my office for comment/approval;

the wording used in the apology must be approved by my office before the practitioner sends it to the complainant; and

once he has sent the apology to the complainant, the practitioner is to provide a final copy of it to my office.

68. The practitioner did not provide a draft apology to the Commissioner for his consideration within 28 days of the determination nor did he provide a written apology to the complainant.
69. In a letter from the Commissioner of 30 April 2019 the practitioner was reminded that the draft apology had not been received by the Commissioner.
70. On 21 May 2019 the practitioner was reminded by letter of the terms of the apology order and he was advised that an investigation was about to be recommended to the Commissioner.
71. On 6 June 2019 the Commissioner commenced an investigation under section 77B (1) of the Act in relation to the practitioner's apparent failure to comply with the apology order by the date for compliance.
72. On 13 June 2019 the practitioner was provided with details of the internal investigation and reminded of the consequences of a contravention of a Disciplinary Order and he was asked for a response by 4 July 2019.
73. The Commissioner wrote to the practitioner again twice in July 2019 and once in August 2019 requesting a response to the Commissioner's letter of 13 June 2019. A solicitor acting for the practitioner then contacted the Commission on 9 August 2019 with respect to the matter.

74. On 15 August 2019 the practitioner provided a draft letter of apology to the Commissioner for comment/approval. The written apology as approved was sent to the complainant on 16 August 2019.
75. On 24 October 2019 the Commissioner decided that he was satisfied there was evidence the practitioner had engaged in professional misconduct by failing to comply with the apology order and he determined to lay a charge against the practitioner in the Tribunal under section 82 of the Act.

Count two

“the practitioner failed to comply with the 14 February fine order.”

76. Paragraph 19 (c) of the 14 February order required that the practitioner pay a fine of \$5000. Paragraph 18 of the disciplinary determination required the fine to be paid within 14 days of the practitioner receiving a copy of the certificate of the fine that the Commissioner was to file in the Supreme Court.¹⁸
77. On 16 April 2019 the Commissioner filed the certificate of the fine in the Supreme Court.
78. On 30 April 2019 the Commissioner provided a copy of the certificate of the fine to the practitioner and reminded the practitioner of the terms of the 14 February fine order.
79. The payment of the fine was required to be made no later than 14 May 2019. The practitioner did not pay the fine by the due date.
80. On 13 June 2019 he was advised by letter that the legal profession conduct Commissioner had commenced an investigation into his failure to pay the fine and he was asked for a response by 4 July 2019.

¹⁸ Section 77J(11) of the Act

81. The Commissioner's office wrote to the practitioner twice in July 2019 and once in August 2019 requesting a response to the Commissioner's letter of 13 June 2019.
82. A solicitor acting for the practitioner then made contact with the Commissioner's office on 9 August 2019.
83. On 14 August 2019 by letter with attached cheque, the practitioner made payment to the Commission of the fine of \$5000.

The Parties Submissions

84. The Commissioner contends that section 77J (10) is unequivocal in its language and that a contravention of a Disciplinary Order of the Commissioner is professional misconduct and no further enquiry into the conduct is required once the practitioner's failure to comply with the orders are established.
85. The Commissioner submits that section 77J(10) must be seen in the context of the powers that were given to the Commissioner when the office of the Commissioner was established.
86. The Act, through the wide range of misconduct provisions and disciplinary action provisions in section 77J, allows the Commissioner to deal with many cases of unsatisfactory professional conduct and professional misconduct that were previously referred to the Tribunal.
87. The Commissioner is required to provide procedural fairness to the practitioner when investigating a matter.
88. The Tribunal finds that the practitioner was provided with the required procedural fairness in this case and given ample opportunity to make submissions both during the investigation phase and prior to Disciplinary Orders being made.

89. The Commissioner submits that section 77J (10) provides for strict liability and any breach of a disciplinary order is deemed by that provision to be professional misconduct. The Commissioner contends that Parliament was concerned to enact provisions that would support and reinforce the significant disciplinary role that was being given to the Commissioner by the amending Act and so section 77 J (10) was included in the Act to reinforce the importance of practitioners complying with Disciplinary Orders made by the Commissioner. Such a characterisation is necessary to ensure the effectiveness of the disciplinary system.
90. The Commissioner submits that the Tribunal need not consider the statutory definitions of “professional misconduct”, or “unsatisfactory professional conduct” contained in the Act or consider the case law to characterise the conduct. The breaches in this case are statutorily deemed to be professional misconduct by virtue of section 77J (10) of the Act.
91. The Commissioner submits that if Parliament had intended for the Tribunal to have any discretion as to the characterisation of a breach of a Disciplinary Order made under section 77J then it would not have included section 77J (10) in the Act.
92. By way of comparison the Commissioner referred the Tribunal to schedule 4, part 2, clause 5 (6) of the Act. In that instance Parliament enacted the following:
- “a failure by a legal practitioner to comply with a requirement (to respond to a notice issued pursuant to clause 4 (1) or (2)) is capable of constituting unsatisfactory professional conduct or professional misconduct.”*
93. The Commissioner submits that it is accepted authority (and numerous cases were cited in support of this proposition) that the purpose of disciplinary proceedings against a practitioner is to protect the public and not to punish the practitioner.¹⁹

¹⁹ The Law Society of South Australia v Murphy (1999) 201 LSJS at 456; Legal practitioners Conduct board v Nicholson (2006) 243 and LSJS 293.

Practitioners are a vital part of the system of justice and a high standard of conduct is required and that it is critical that practitioners can command the confidence of the court, fellow practitioners, and clients. It is also vital that the Commissioner can command the complete respect of practitioners hence a transgression of a Disciplinary Order of the Commissioner has been determined by Parliament to be professional misconduct.

The Practitioners Submissions

94. The practitioner submits that the Tribunal does have has a discretion to find the practitioner guilty of the lesser charge of unsatisfactory professional conduct and that despite the clear and unambiguous terms of section 77J (10) it is not clear that it was intended by Parliament for that section to curtail or otherwise limit the discretion simultaneously imposed by section 82 (1)(a) of the Act which relevantly provides as follows:

82 (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).....

95. The practitioner submits that words conferring a discretion are usually to be read broadly so as not to limit that discretion and words conferring jurisdiction should also properly be read broadly.

96. They practitioner's counsel argues that it follows that although section 77J (10) is in plain terms, so too is the wording in section 82 (1) of the Act and the former provision should not be read in a way that limits the scope and breadth of the latter.

97. They also submit that there are good reasons why this construction should be preferred so that the Tribunal retains the appropriate power and discretion to deal with the many and varied fact situations that can arise from a practitioner's breach of a disciplinary order.
98. The practitioner acknowledges that time requirements are important and that a failure to comply with a time limit could in some circumstances amount to professional misconduct but not on the facts of this case. The practitioner refers to the breach of the apology order and the fine order (2/20) as examples of the need for the Tribunal to retain a discretion as to characterisation of conduct where there has been compliance with the substance of the orders by the practitioner, but the compliance was late.
99. The practitioner submits that there may be circumstances which explain why the time requirement was not met and in such cases the Tribunal might be satisfied that such a failure is less serious than abject failure to comply with the substance of the order at all.
100. The practitioner submits that based on the definition of "professional misconduct" as contained in the Act, a breach of a Disciplinary Order will not always fall within the statutory definition of professional misconduct. There is therefore an inconsistency between the definition of professional misconduct in the Act and in an interpretation of section 77J (10) that requires every breach of a Disciplinary Order of the Commissioner to be characterised as professional misconduct regardless, even where the underlying facts of the breach are such that in reality the conduct falls within the definition of unsatisfactory professional conduct rather than professional misconduct as defined in the Act.
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Consideration of Section 77J (10) of the Act.

101. The Tribunal has had regard to the submissions put forward by both parties with respect to the interpretation of section 77J (10) of the Act.
102. The modern approach to statutory interpretation focuses on considering first the statutory text and the natural and ordinary meaning of the text and, in approaching that task, the context in which the text is written must be considered. The context can include a consideration of the statute as a whole and consideration of the purpose of the particular provision of the Act. The Tribunal may have regard to extrinsic materials and legislative history, but these cannot displace the meaning of the statutory text.
103. The words of section 77J (10) are unequivocal and lacking in ambiguity. The words of the section are simple and clear and state in plain terms that a breach of a Disciplinary Order made under section 77J of the Act is professional misconduct. There is no apparent discretion imported into that provision.
104. Section 69 does not purport to define exhaustively conduct that can constitute professional misconduct and opens with the words:
- In this Act—*
professional misconduct includes—
105. The addition of the word “includes” in that section suggests that there can be other categories of professional misconduct in addition to the conduct defined in section 69(a) and 69(b) of the Act. There appears no conflict between section 69 and section 77J (10).
106. The Tribunal accepts the submissions of the Commissioner that a strong and efficient disciplinary process was intended by Parliament when amending the Act to establish the Office of the Legal Profession Conduct Commissioner. There was deliberate

parliamentary intention in adding section 77J (10) to the Act in its clear and unambiguous terms.

107. Section 77J (10) of the Act was included to ensure that the expanded disciplinary powers provided to the Commissioner by the amending legislation, would be taken very seriously by the legal profession and would have the impact intended. That the public could also be reassured as to the strength and efficacy of this new Office and the new disciplinary regime established by the amending Act.
 108. The Tribunal is satisfied that Parliament intended section 77J (10) to mean exactly what it says in plain words namely if a practitioner breaches a disciplinary order of the Commissioner made under section 77J of the Act, then it is deemed to be professional misconduct.
 109. The arguments put forward by the practitioner about the danger of trivial matters being charged by the Commissioner as professional misconduct fail to have regard to the fact that the Commissioner has a discretion about whether to charge a practitioner at all if a very trivial or technical breach of a disciplinary order occurs.
 110. Section 77J (10) deals only with characterisation of the conduct if the Commissioner's decides there has been a breach and it should be charged.
 111. The Commissioner also retains the discretion to deal with a disciplinary order breach with the practitioner's consent by making another disciplinary order under section 77J (2).
 112. It was the particular facts of this case combined with the practitioner's prior disciplinary history that caused the Commissioner to elect to lay charges to the Tribunal.
 113. The Tribunal is satisfied that the Commission made every attempt to give the practitioner in this case a chance to explain himself.
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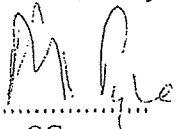
114. The practitioner was repeatedly warned of the consequences of a charge being laid under section 77J (10) of the Act but due to reasons that undoubtedly will be expanded upon at the penalty hearing, the practitioner kept his head stuck firmly in the sand and did not take up opportunities to explain his situation to the Commissioner's office.
115. The practitioner was warned on multiple occasions in relation to each order that he appeared to be breaching and he was given opportunities to commence a dialogue with the Commissioner about his apparent breach. The Tribunal can appreciate why the Commissioner considered the matter sufficiently serious that it should be charged under section 82 of the Act.
116. Section 77J (10) would have no meaningful place in the Act at all if it was not intended to have the meaning proposed by the Commissioner.
117. The plain meaning of the Act could not be clearer. The Tribunal agrees that a breach by a practitioner of a Disciplinary Order made by the Commissioner under section 77J of the Act, if charged and found to be proved, is professional misconduct.
118. The sole remaining issue for the Tribunal to determine is whether there has been an unnecessary duplication of counts in action number 2/20.
119. The Commissioner has elected to set out his determination from which the charges have arisen in action number 2/20 in a certain way. Rather than giving individual numbers to each Disciplinary Order they have been expressed in the determination as sub-paragraphs of one order. They could equally have been drafted as singular orders.
120. The fine order and the apology order are in the Tribunal's view effectively separate orders with distinct requirements and although the substance of each of the orders were eventually complied with, it was substantially after the due date and only after

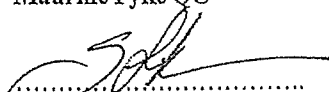
considerable pressure to comply was exerted on the practitioner by the Commissioner's office. There was a breach of each of the orders in that the practitioner failed to comply with the terms. The Tribunal is not minded to dismiss or strike out either of the counts.

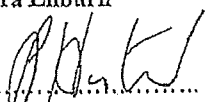
DETERMINATION

121. The Tribunal finds that the practitioner is guilty of professional misconduct with respect to each of the four counts contained in the two charges before the Tribunal.
122. The matter will be listed for further submissions with respect to penalty.

DATED the 16 day of MAY 2022.


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Maurine Pyke QC


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Dr Sandra Lilburn


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Lesley Hastwell