



IN THE MATTER OF:

THE LEGAL PRACTITIONERS ACT 1981

ACTION NO. 7 OF 2014

IN THE MATTER OF:

ANDRIS BILKENS

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

REASONS FOR DECISION

Delivered on 5 December 2014

1. By a complaint dated 2 June 2014, the Legal Practitioners Conduct Board, now the Legal Profession Conduct Commissioner, charged Mr Andris Bilkens with one count of unprofessional conduct in that in about August 2013, he held himself out as being entitled to practise the profession of the law whilst not being the holder of a practising certificate, contrary to s.21(1)(a) of the *Legal Practitioners Act 1981* (SA).
2. The particulars which are not generally in dispute are that the practitioner was enrolled in the Supreme Court as a barrister and solicitor on 31 January 2000, and was a legal practitioner within the meaning of the Act. The practitioner has never been the holder of a practising certificate.
3. The conduct arises out of a letter sent by the practitioner in relation to a collision between two vehicles which occurred in July 2013 at the intersection of South and Richmond Roads at Keswick. On about 5 August 2013, the practitioner wrote a letter to the first driver in which he purported to act as the lawyer for the second driver who was his friend. In that letter the practitioner used the following phrases and terms. He wrote:
 - (a) 'I act on behalf of Christable Noble the driver of a Holden Commodore Omega 2006 sedan, XRO 800.'
 - (b) 'After reviewing the vehicle collision reports supplied by SA Police and questioning the available witnesses, I'm drawn to the conclusion that Christable was substantially at fault.'
 - (c) '...this matter ought to be resolved in a pragmatic way between the parties.'
 - (d) 'Upon receiving this information I can move towards presenting an offer to finalise this matter.'
 - (e) 'Yours faithfully,

Andris Bilkens BA LLB LP
Barrister and Solicitor"

4. There is some discrepancy about some of the surrounding facts, namely a telephone conversation or conversations between the practitioner and Ms Quinn, the daughter-in-law of the first driver. The Commissioner asserts that not much arises from the dispute about these matters and I agree. Nevertheless Mr Bilkens indicates that he first telephoned Ms Quinn in July 2013. She was the daughter-in-law of the first driver. In his reply he has stated he said various things. He introduced himself stating that he was calling on behalf of the second driver; he enquired about the first driver's health and the health of any other occupants to the first driver's vehicle; he stated that the second driver's vehicle was uninsured; made enquiries about the first driver's insurance, vehicle details and recollection of the collision; confirmed that the first driver's vehicle was also uninsured; stated he had a legal background but was not a practising lawyer; and stated that was in everyone's best interest to resolve this matter without recourse to litigation. He believed that the tone of the conversation was casual and not business in nature. The Commissioner did not plead that telephone call in the Complaint, but rather pleaded a telephone conversation with Ms Quinn in or about August 2013 in which it was claimed he said he was a lawyer and acting for the second driver.
5. I find that it does not matter to a great degree when that telephone conversation occurred. Nor do I find it necessary to resolve any dispute about its timing or detailed content. The letter sent by Mr Bilkens in August 2013 clearly gives the objective impression that he was a practising lawyer.
6. Following the letter, there was some email contact between the practitioner and the daughter-in-law in which there was some discussion about some information that was needed, and it was more casual in nature.

7. Essentially in his reply Mr Bilkens has admitted the conduct. In submissions today and in his reply he submits his conduct was inadvertent in that he did not intend to convey that he was a practising lawyer. In my view it is plain on the face of the letter that the practitioner was holding himself out as a practising lawyer. Applying an objective test to the contents of that letter, I reject the submission that it was inadvertent at the time.
8. I find that when he wrote the letter, Mr Bilkens intended to convey that he was practising in that particular area of law. I find the charge of unprofessional conduct as it was defined in the legislation at the time, proved. Under the current legislation I have an option of imposing a reprimand or a fine of up to \$10,000 or dismissing the matter as being frivolous and vexatious.
9. The Conduct Commissioner seeks a reprimand in relation to this conduct. The practitioner has asked me to find that the matter is frivolous and vexatious, in other words so minor that it is not worthy of the imposition of any penalty. I do not find that this conduct was frivolous and vexatious. One of the important purposes for the legislative regime regarding the practice of law is for the protection of the public. Only admitted legal practitioners with a practising certificate are entitled to practise the law. In order to hold a practising certificate an admitted legal practitioner must make application to the Supreme Court. The Court may require further information from the practitioner and may issue a practising certificate for such period not exceeding 12 months as the Court thinks fit.
10. Having explained that to Mr Bilkens today, he conceded that on reflection one could get the impression from his letter that he was holding himself out as a practising lawyer. He now acknowledges that his letter could be interpreted in that way. He

submitted to me today that it has been a lesson learnt and it will not happen again.

He has indicated he has no intent to obtain a practising certificate in the future.

11. He understands he can in a situation like this help a friend out, but in doing so he must not hold himself out as a practising lawyer.
12. In all of the circumstances I have decided to issue a reprimand in relation to this unprofessional conduct. I make an order for costs in favour of the Conduct Commissioner in the sum of \$500.

A handwritten signature in cursive script, appearing to read 'L. Chapman', written in dark ink.

Liesl Chapman SC