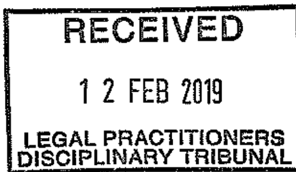

IN THE MATTER OF:

THE LEGAL PRACTITIONERS ACT 1981

Action No. 3 of 2017

IN THE MATTER OF:

JEFFREY VIGAR

REASONS FOR DECISION

By charge dated 9 January 2017 and re-laid on the 13 November 2017, Jeffrey David Vigar ("the Practitioner") has been charged with unprofessional conduct upon the complaint of the Legal Profession Conduct Commissioner **(LPCC).**

At the time that the original charges were laid the **LPCC** did not apply to extend the time for laying charges and there was also an error in a date contained in the charges that required amendment.

We set out the charges in detail as they provide a succinct summary of relevant details.

The two charges against the practitioner as now phrased after the amendment was granted are as follows;

1. The Practitioner was grossly negligent in his provision of legal services to Frederick Piechnick ("the Client").

Particulars

1.1. At all material times, the Practitioner held a practising certificate and practised law at Naracoorte, South Australia.

1.2. The Client was at all material times a farmer from the south-east of South Australia, close to Bordertown.

1.3. In March 2009, by oral agreement, the Client engaged the legal services of the Practitioner in a dispute over an account for the supply and installation of a pump on the Client's farm. The Client was being threatened with legal action by Vermeeren Brothers Engineering Pty

Ltd ("Vermeeren"), the supplier and installer of the pump. Vermeeren was claiming $32,395.00.

1.4. By the implied terms of his oral retainer the Practitioner was required to exercise skill, care and diligence in providing legal services to the Client and was required to act in the best interests of the Client.

1.5. The Client instructed the Practitioner to defend the claim by Vermeeren on the ground that the pump did not comply with specification, was faulty, had not been properly installed, was not fit for its intended purpose and because the amount charged exceeded quotation.

1.6. The Practitioner advised the Client that he would deal with the matter and would be in touch.

1.7. The Practitioner did not attempt to negotiate a settlement with Vermeeren and did not respond to a letter of demand from Vermeeren given to him by the Client.

1.8. Vermeeren commenced legal Action No. 1098 ("the first action") for recovery of the sum of $46,278.99 plus costs and interest in the District Court on or about 19 June 2009. The proceedings were served directly on the Client who telephoned the Practitioner to tell him that he had been served.

1.9. On or about 19 June 2009, the Practitioner informed Robert Brook Solicitors (the firm representing Vermeeren in relation to the first action) that he had instructions to accept service of proceedings in the first action.

1.10. The proceedings were served on the Practitioner by facsimile dated 19 June 2009.

1.11. The Practitioner failed to file a defence to the proceedings in the first action.

1.12. Vermeeren obtained default judgment against the Client in the first action on or about 22 July 2009.

1.13. The Practitioner failed to inform the Client that he had not filed a defence in the first action and that Vermeeren had obtained default judgment against the Client.

1.14. In or about September 2009, as a consequence of the default judgment obtained by Vermeeren, the Client was served with a Form 36 – Warrant of Sale dated 29 July 2009 issued out of the District Court and authorising sale of property to recover the sum of $48, 874.18.

1.15. On or about 16 September 2009, the Practitioner met with the Client and upon being given the Warrant of Sale said to him words to the effect that:

1.15.1. the Warrant of Sale was nothing to worry about;

1.15.2. Vermeeren's solicitor had not been entitled to issue it;

1.15.3. Vermeeren's solicitor had not followed correct processes; and

1.15.4. he would take care of the Warrant of Sale.

1.16. The Practitioner failed to take any step to have the Warrant of Sale and the default judgment withdrawn, set aside or otherwise disposed of.

1.17. In or about November 2009, the Client was served with a Bankruptcy Notice dated 23 October 2009 issued by the Official Receiver for the Bankruptcy District of South Australia, naming Vermeeren as creditor of the Client in the sum of $48, 874.18.

1.18. In or about November 2009, during a meeting between them, the Client gave the Bankruptcy Notice to the Practitioner.

1.19. The Practitioner said words to the Client to the effect that :

1.19.1. the Bankruptcy Notice was nothing to worry about;

1.19.2. the wrong procedure had been followed; and

1.19.3. he would take care of it.

1.20. The Practitioner failed to take any or any proper steps to have the Bankruptcy Notice set aside, withdrawn or otherwise disposed of.

1.21. On or about 8 December 2009, Vermeeren instituted Action No. ADG345 of 2009 ("the second action") in the Federal Magistrates Court of Australia seeking a sequestration order under Section 43 of the Bankruptcy Act 1966 (Cth) against the estate of the Client.

1.22. In or about December 2009, the Client was served with proceedings in the second action.

1.23. Later in December 2009, the Client met with the Practitioner and provided him with a copy of the proceedings in the second action with which he had been served.

1.24. At the meeting referred to in the previous paragraph, the Practitioner said to the Client words to the effect that;

1.24.1. the wrong procedure had been followed by Vermeeren's solicitors;

1.24.2. Vermeeren were not entitled to institute bankruptcy proceedings;

1.24.3. he would attend at the hearing scheduled for the bankruptcy proceedings on 25 January 2010; and

1.24.4. he would have the bankruptcy proceedings sorted out.

1.25. On 25 January 2010, the Practitioner attended a hearing in the Federal Magistrates Court in relation to the second action. At this

hearing, the Court ordered that any Notice of Opposition or affidavit material to be relied upon by the Client be filed and served by 4.30pm on 10 February 2010 and adjourned the hearing to 15 February 2010 at 2.15pm.

1.26. The Practitioner:

1.26.1. failed to inform the Client of the orders made on 25 January 2010;

1.26.2. failed to take any or any proper steps to prepare, file and serve a Notice or Opposition or affidavit material in opposition to the proceedings in the second action; and

1.26.3. failed to attend the adjourned hearing on 15 February 2010.

1.27. Due to the Practitioner's failures as outlined in the previous paragraph, the Federal Magistrates Court on 15 February 2010 made a sequestration order in the second action against the estate of the Client.

1.28. Following being declared bankrupt and losing control of his financial affairs, the Client suffered substantial additional and ongoing financial losses. These included the loss of a farming property, a water licence and a home in Brighton, South Australia. He also incurred substantial legal costs in attempting to reverse the effects of being declared bankrupt and in seeking restitution. The Practitioner's misconduct was at least a substantial cause of substantial losses being sustained by the Client in the order of hundreds of thousands of dollars.

2. The Practitioner intentionally and dishonestly misled the Client in the course of providing legal services to him as outlined above.

Particulars

2.1. The particulars in paragraph 1 are repeated.

2.2. The Practitioner mislead the Client into believing that the Practitioner was attending properly to his affairs and was protecting his interests:

2.2.1. in telling the Client on or about 16 September 2009 that the Warrant of Sale issued in the first action was nothing to worry about, that Vermeeren's solicitor had not been entitled to issue it, that Vermeeren's solicitor had not followed correct processes and that he would take care of it;

2.2.2. in telling the Client in or about November 2009 that the Bankruptcy Notice issued in the second action was nothing to worry about, that the wrong procedure had been followed and that he would take care of it;

2.2.3. in telling the Client in December 2009 that the wrong procedure had been followed by Vermeeren's solicitors, that Vermeeren were not entitled to institute bankruptcy proceedings against the Client, and that he would have the bankruptcy proceedings sorted out;

2.2.4. in failing to tell the client of the orders made in the Federal Magistrates Court in the second action on 25 January 2010; and

2.2.5. in failing to tell the client that he had not attended the adjourned hearing on 15 February 2010 in the Federal Magistrates Court in the second action.

2.3. The Practitioner knew that he had not taken any or any proper steps to defend the Client in the first and second actions or to generally protect the Client's interests but intentionally and dishonestly led the Client to believe otherwise.

This matter came before the Tribunal on 9 November 2017 for final hearing however the matter could not proceed on that date. Neither the practitioner nor counsel instructed on his behalf appeared before the Tribunal on that date. Orders were made by the Tribunal in the following terms:

1. That the Commissioner have leave to file and serve his application for an extension of time to lay a charge and the substantial charge in identical terms to the current charge (save that it will be noted as being "subject to the extension of time being granted") on or before 5 pm on Wednesday the 15 November 2017.

2. That the practitioner has until 5 pm on Friday 17 November 2017 to advise the Secretary of the Tribunal whether he opposes the application or wishes to be heard either in person or by counsel in relation to either the application or the charge.

3. The application for an extension of time to lay the charge will be listed for final hearing on Tuesday 21 November 2017 at 10.00 am and if the application is successful and there has been no objection by the practitioner to the substantive charge being dealt with on the same day the Tribunal will then immediately proceed to hear the substantive charge on the same date.

Subsequent to those orders the LPCC re-laid the charges on 13 November 2017 with the new charges including a notation that they were "subject to an extension of time being granted". Those charges were in identical terms to the original charges. The LPCC also lodged an application for an extension of time to lay charges against the practitioner and for amendment of the charge.

An affidavit of Dr Michael Ahern (the solicitor with conduct of the matter for the LPCC) was filed in support of the application. The amendments sought did not go to the substance of the charges in any way and related to some incorrect dates in the first charge.

The application for extension of time and for amendment of the charge and then the enquiry into the substantive charges were heard by the Tribunal on a final basis on 21 November 2017. The practitioner had made no contact with the Tribunal in response

to the orders of 9 November 2017. He did not appear before the Tribunal either in person or by counsel at the hearing.

The Tribunal first dealt with and granted the application for an extension of time for the laying of two charges of professional misconduct brought by the LPCC against the practitioner with Reasons to be delivered in due course. The Tribunal also granted the request for an amendment whereby the year 2009 in paragraphs 1.15, 1.21, 1.22 and 1.23 of the charge should read 2016. The Tribunal then proceeded to hear the substantive charges.

The Tribunal is satisfied that the practitioner was aware of the proceedings and of the hearing date. He has been served by the Commissioner with all of the documentation, including the re-laid charge and the application for an extension of time and amendment. He was aware that the application for an extension of time was to be dealt with by the Tribunal first and that if the extension was granted the Tribunal intended to proceed immediately to hear the principal charges.

Procedural fairness was accorded to the practitioner at every stage of the proceedings and he had been given the opportunity to respond to the proceedings. He elected not to do so. The Tribunal proceeded to hear the charges in his absence.

The Tribunal was also advised by counsel and it is referred to in the affidavit of Dr Ahern sworn 10 November 2017, that in direct dealings with Dr Ahern, the practitioner has at all times made it clear that he conceded the charges of unprofessional conduct, that he disagreed with some of the facts as stated in the charges, but that he did not intend to appear at the hearing or instruct counsel to appear on his behalf to oppose the charges.

He did not file any documents in the proceedings.

Initially there had been consideration by the LPCC of having the matter dealt with directly by the Supreme Court and the practitioner was given the option of that course however as a result of communications from the practitioner in which he indicated that he admitted the gravamen of the complaint but disputed a number of facts a decision was made by the LPCC to bring the charges in this Tribunal.

THE EXTENSION OF TIME APPLICATION

The charges arise from a complaint made by a former client of the practitioner, Frederick Piechnick, to the LPCC by letter received at their office on 17 December 2015. The course of conduct that gave rise to Mr Piechnick's complaint was alleged to have occurred between 2009 and 2010.

By complaint dated 9 January 2017 and received at the Tribunal on the same date, the LPCC charged Jeffrey David Vigar (the practitioner) with two counts of professional misconduct pursuant to section 82(2) of the Legal Practitioners Act 1981.

Pursuant to Section 82 of the Legal Practitioners Act (1981) (as amended) a charge relating to conduct by a legal practitioner must be laid before the Tribunal within 3 years of the conduct .

Section 82(2) (a) provides for an extension of the time for laying a charge in certain circumstances.

> 82 (2a) The charge relating to conduct by a legal practitioner must be laid before the Tribunal within 3 years of the conduct unless:
>
> (a) the charge is laid by the Attorney-General; or
>
> (b) the Tribunal allows an extension of time.

Each of the 2 charges of professional misconduct has been laid outside the three year time limit as set out in the Act.

The first count of professional misconduct alleges that the practitioner was grossly negligent in the provision of legal services to his client Frederick Piechnick. The particulars of the alleged professional misconduct are set out in the charge.

The alleged professional misconduct occurred between March 2009 and February 2010 being dates more than three years prior to the date that the charge was laid by the Commissioner.

The second charge alleges that the practitioner intentionally and dishonestly misled the same client in the course of providing legal services to him .The particulars of the alleged misconduct are set out in the charge.

The professional misconduct complained of in the second charge also occurred between March 2009 and February 2010 being dates more than three years prior to the date that the original charge was laid by the Commissioner.

The first matter for the Tribunal to determine in this case was whether an extension of time should be granted pursuant to section 82 (2a)(b) such that the hearing in relation to both charges could proceed before the Tribunal.

The practitioner has not at any stage indicated any opposition to the LPCC's application for an order extending the time for the laying of the charges.

Pursuant to the decision of Justice Vanstone in ***Fittock and The Legal Profession Conduct Commissioner*** (2017) SASC 113, any application for an extension of time in which to lay charges under section 82 (2a) (b) is to be characterised as a substantive application and not merely a procedural or an interlocutory matter. Justice Vanstone went on to consider an argument put by the appellant in that case, that one of the factors to be considered in granting such an extension of time pursuant to Section 82(2a)-(b) was whether there was a reasonable prospect of the charges being successful.

She agreed with that contention and commented as follows:

> *"In terms of the breadth of factors to be considered when assessing the application for an extension of time, a consideration of the merits was required. That view is consistent with the approach taken by the Full Court in **Keung v Abbott**. It appears from what I was told that the Tribunal member did not have before her sufficient material on which to assess whether the charge had reasonable prospects of succeeding."*

In this case the Tribunal has before it the charges and the particulars of each charge. The Tribunal also had regard to documents contained in the book of documents tendered by the Commissioner to the Tribunal (Exhibit 1).

The Tribunal refers in particular to the following documents:

- The original detailed complaint from Mr Piechnick to the Commissioner of 15 December 2015. The complaint makes very serious assertions about the practitioner's conduct when the practitioner was acting for him as his solicitor between 2009 and 2010. Mr Piechnick alleged that the practitioner had provided him with false assurances that the practitioner was taking active steps to act for and defend him in relation to a civil claim .This includes the allegation that the practitioner lead Mr Piechnick to believe that the practitioner was appearing in court on his behalf and communicating to the other side in such a way that Mr Piechnick's interests were being protected. He alleges that in fact the practitioner failed to do anything. He asserted that the practitioner lied to him on a number of occasions and he accuses the practitioner of gross professional negligence. The practitioner's inaction and deception resulted in Mr Piechnick being bankrupted with very significant financial consequences for him and his family. He then instituted a civil action in negligence against the practitioner. That was resolved in 2014 in an agreed settlement and he received a settlement sum from the practitioner's Professional Negligence insurer.
- By letter dated 19 February 2016, Dr Ahern, acting on behalf of the Commissioner wrote to the practitioner enclosing the original complaint and requesting a response from the practitioner (Ex 1 page 71).
- By letter dated 22 March 2016 the practitioner responded to Dr Ahern (Ex 1 p73). He acknowledged receipt of the letter and the complaint, he said that he had perused the complaint and all attached material and made the comment that "the gravamen of the complaint was true". He did not admit the full detail of the complaint nor did he deny it. He went on to talk about his health issues causing him difficulties at certain times. He finished by commenting that Mr Piechnick's civil claim against him was settled and that he had admitted liability from the outset in the civil claim.
- File notes of two telephone discussions between Dr Ahern and the practitioner which took place after he had been served with the charges (Ex 1 pp 85 and 89) in which the practitioner stated that he had no intention of defending the proceedings or opposing the charge and that he did not intend to appear before the Tribunal either personally or by counsel

Mr Piechnick was present at the Tribunal hearing. He provided sworn evidence that the content of his complaint was accurate.

Based on the above material, the particulars of the charges and the fact that the practitioner has elected not to oppose the charges, file a response or defend himself in any way the Tribunal is satisfied that he has effectively admitted the complaint. The Tribunal has no hesitation in finding that the charge has reasonable prospects of succeeding. The allegations are serious, it appears a thorough investigation has been carried out by LPCC.

The Tribunal then went on consider whether there are any other factors that would exclude the Tribunal from extending time for the LPCC to bring the claim.

At the hearing Counsel provided written submissions in support of the application for extension of time and also made oral submissions. The Tribunal accepts the arguments put forward by the LPCC which are borne out by the evidence available to the Tribunal and can be summarised as follows;

- The complaint was not made to the LPCC until well after the three year time limit had expired. The LPCC had no prior knowledge of the complaint until the complaint was already out of time.
- The prior civil proceedings which occurred between Mr Piechnick and the practitioner had not resolved until 2014 being a date after the expiration of the time limitation in any event.
- The LPCC acted expeditiously once he had received the complaint however there was significant material to consider including the practitioner's files hence it was some months before formal charges were filed against the practitioner. There was no delay by the LPCC in bringing the proceedings.
- The practitioner has not opposed the application for an extension of time nor does the practitioner oppose a finding of unprofessional conduct. The merits of the case are conceded by the practitioner so there is no unfairness or prejudice to him.

In the case of ***Ulowski v Miller*** (1968) SASR 277 in considering whether delay should result in an action being dismissed for lack of prosecution, Justice Bray considered a number of relevant authorities and commented as follows;

> *"It clearly appears from these cases that five paramount matters to be considered are the length of the delay, the explanation for the delay, the hardship to the plaintiff if the action is dismissed and the cause of action left statute barred, the prejudice to the defendant if the action is allowed to proceed notwithstanding the delay, and the conduct of the defendant in the litigation".*

The charges now brought against the practitioner were out of time in 2013. At that stage Mr Piechnick had not been alerted to the possibility of bringing such a complaint about the practitioner's conduct and he had issued civil proceedings which were not finalised until late 2014. The statement of claim in those civil proceedings (exhibit 1 pp 36 – 46) was filed in the District Court of South Australia in February 2013. The practitioner's defence to those proceedings (exhibit 1 pp 36 – 37) admits the substance of the plaintiff's claim, admits the allegations of negligence as set out in the plaintiff's claim but raises issues as to the quantum of damages claimed by the plaintiff and raises issues with respect to mitigation of loss. The case ultimately settled out of court .The compensation received by Mr Piechnick was to his mind taking into account independent reports as to his losses, wholly inadequate when one brought to account his financial and emotional losses. In 2015 he sought assistance from a number of politicians as to whether any other remedies were available to him as a result of which at the end of 2015 he was advised by the then Attorney General of the possibility of making a complaint to the LPCC.

The Tribunal accepts the submissions of the LPCC that once Mr Piechnick's complaint was received by the LPCC in December 2015, prompt action was taken, an appropriate investigation carried out in what was a complex matter to investigate and the practitioner was given the opportunity to respond before charges were laid. The practitioner was put on notice of the complaint.

Dr Ahern's affidavit attaches all correspondence from the office of the LPCC to the practitioner. The practitioner failed to respond to a number of the communications from the LPCC including a letter of 18 July 2016 in which the practitioner was advised in

clear terms that after considering all relevant material including the practitioner's file the LPCC had formed the preliminary view that the practitioner had engaged in unprofessional conduct as defined in the Act at the relevant time. The LPCC proposed ways in which the matter could be resolved without a Tribunal hearing by either a direct referral to the Supreme Court with the practitioner's consent or by the practitioner consenting to an order that his name be removed from the roll of legal practitioners under section 89(1b) of the Act. The practitioner did not respond at all to this letter or to a reminder sent to him by Dr Ahern in August 2016 requesting an urgent response to the July letter.

The practitioner was given every opportunity to either present a defence to the charges or voice his own concerns about any prejudice or delay but at no stage did he raise these issues.

It is Tribunal's view that there is adequate explanation for the delay in bringing proceedings, the LPCC's office has acted appropriately and promptly in dealing with the complaint upon receipt of it in December 2015, no issue of prejudice has been raised at any stage by the defendant, and the conduct of the defendant in the litigation is such that he has admitted the substance of the conduct complained of. In the circumstances the Tribunal formed the view on the date of the hearing that it should exercise its discretion and extend the time for the laying of the charge pro nunc tunc. The Tribunal then proceeded to hear both charges.

Consideration of the charges

As the conduct occurred before 1 July 2014, the applicable definitions of conduct are those contained in s.5 (1) of the Legal Practitioners Act 1981 (SA). The relevant definitions are as follows:-

> *"unsatisfactory conduct",* in relation to a legal practitioner, means conduct in the course of, or in connection with, practice by the legal practitioner that is less serious than unprofessional conduct but involves a failure to meet the standard of conduct observed by competent legal practitioners of good repute.
>
> *"unprofessional conduct",* in relation to a legal practitioner, means:
> (a) An offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law; or
> (b) Any conduct in the course of, or in connection with, practice by the legal practitioner that involves substantial or recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute.

The test is an objective one.

The first charge against the practitioner alleges that he was grossly negligent in his provision of legal services to Mr Piechnick. The particulars are detailed in the charge as set out.

The second charge of professional misconduct against the practitioner alleges that he intentionally and dishonestly misled the client in the course of providing legal services to him. The particulars are detailed in the charge as set out.

The Tribunal had regard to the contents of the book of documents filed by the LPCC and received as an Exhibit 1 by the Tribunal. That book contains not only the original letter of complaint by Mr Piechnick but also the statement of claim and defence with respect to the civil proceedings whereby the practitioner admitted his negligence and

the only issue between the parties was that of Quantum. All correspondence with the practitioner is included in the documents and notes of telephone attendances with the practitioner.

Mr Piechnick gave sworn evidence at the hearing confirming the accuracy of his letter to the Honourable John Rau (page 18 exhibit 1) which sets out the narrative of the complaint that he made about the practitioner's conduct and which was attached to his original complaint to the LPCC. He also elaborated upon the severe impact that the practitioner's conduct (which had resulted in Mr Piechnick's ultimate bankruptcy) had on himself and his family.

The LPCC's submission was that the evidence contained in the narrative of Mr Piechnick and the admissions contained in the defence filed in the civil proceedings on behalf of the practitioner support a finding of professional misconduct. The practitioner elected not to defend in any way the charges that have been laid against him and he does not oppose the finding.

The Tribunal accepts the LPCC's submission and based on the evidence contained in Exhibit 1 and the sworn evidence of Mr Piechnick and given that the practitioner does not appear to oppose the charges the Tribunal finds that the particulars are proven in relation to each of the charges. The Tribunal also has no hesitation in finding that the course of action described in the particulars to each charge and in the statement of claim in the civil proceedings and in the complaint of Mr Piechnick involves a very substantial and recurrent failure over a period of time to meet the standard of conduct observed by competent legal practitioners of good repute. The course of conduct goes well beyond conduct that could be described as unsatisfactory professional conduct.

The practitioner's course of conduct as particularised occurred over a significant period of time. It involved repeated instances of deceptive and misleading conduct by the practitioner towards his client. The practitioner continued to assure his client that he was acting appropriately and with due diligence on his behalf and that he was taking active steps to defend a civil action brought against his client. The practitioner was in fact doing nothing to protect the client's position despite repeated assurances to the contrary. It was not until after the client has been made bankrupt and a sequestration order made against his estate that the full extent of the practitioner's negligence and

deception emerged. The resultant financial and emotional consequences for Mr Piechnick and his family have been devastating.

The Tribunal refers to the matter of ***Figwer*** (2013) SASC 135 and the comments made by the Full Court when considering that matter.

> "(9) When exercising disciplinary powers, either pursuant to the Act or pursuant to the court's inherent jurisdiction to discipline legal practitioners, the court acts in the public interest to protect the public and the administration of justice. It is primarily concerned with protecting the public, not punishing the practitioner...
>
> (11) It is of the utmost importance that public confidence in the legal profession be maintained. Legal practitioners play an integral part in the administration of justice. The obligations which accompany a practitioner's position are commensurate with the responsibility involved. The duties of a legal practitioner include a duty to uphold the law, duty to the court, a duty to clients and a more general duty to members of the public. The Court and the public demand high standards from practitioners. This is reflected in the legislative processes that regulate the admission of practitioners and govern their conduct.
>
> (13) The public must be protected from legal practitioners who are ignorant of the basic rules of proper professional practice, indifferent to rudimentary professional requirements, and unable to uphold the highest standards of honest conduct in dealing with fellow practitioners, professional regulatory bodies, the public and the courts. The proper administration of justice depends upon this basic requirement."

The Tribunal also had regard to the practitioner's disciplinary history. In 2014 he admitted unprofessional conduct in another matter which involved a single incident as a result of which the Tribunal elected not to refer the matter to the Supreme Court but penalties were imposed on the practitioner including that he file a written undertaking that he not practice the profession of the law in the future (decision at EX1 p 47)

The practitioner no longer holds a practising certificate and has not been in practice for some years nevertheless his name remains on the role of legal practitioners.

The LPCC submitted that the conduct was of sufficient gravity that the Tribunal should exercise its power pursuant to section 82 (6) (c) of the act and recommend that disciplinary proceedings be commenced in the Supreme Court. The LPCC asserts that the conduct is of such a serious nature involving a course of conduct over a period of time and many individual acts of gross negligence, that it demonstrates the practitioner is unfit for practice.

The LPCC takes the view that given the practitioner's prior disciplinary history, the nature of the course of conduct and the practitioner's health issues the conduct is such that no sanction less than striking the practitioner from the roll of practitioners is appropriate.

The Tribunal accepts the submissions of the LPCC and is of the view that the practitioner's conduct in this matter is significantly below the standard of professional conduct that is to be expected of a practitioner .The Tribunal appreciates that he has admitted the charges and no longer practises the law however the Tribunal agrees with the submission that this matter still warrants a very serious penalty and that in the circumstances the Supreme Court which holds greater powers of penalty than the Tribunal should consider the matter.

In the circumstances the Tribunal recommends pursuant to section 82 (6) (c) of the Act that disciplinary proceedings be commenced in Supreme Court against the practitioner.

COSTS

The Tribunal orders that the practitioner pay the LPCC's costs of the action to be agreed or taxed.

DATED the 12th day of February 2019.

M PYKE QC ---------------------------------------

L HASTWELL ---------------------------------------

S LILBURN ---------------------------------------