

In the Matter of Dean Phillip Bax

Case Number: SCT/86
Date of Hearing: 10-12 March, 19-21 May, 27 June & 17 September 2003
Appearing Before: Ms C C Endicott (Chairperson/Practitioner Member)
Mr P Mullins (Practitioner Member)
Ms I Vallin-Thorpe (Lay Member)
In Attendance: Mr J Nimmo (Legal Ombudsman), in part
Mr J W Broadley (Clerk)
Penalty: Mr Bax must not be employed in a legal practice for a period of 12 months from 17 September 2003 and thereafter on certain conditions

Charges

1. That the Respondent in breach of s5K(1)(b) of the *Queensland Law Society Act* wilfully and falsely held himself out as duly qualified to act as a practitioner.

Particulars

- (a) The Respondent is not and has not at any time been admitted to practice as a solicitor of the Supreme Court of Queensland and does not hold any qualification which would entitle him to be so admitted;
- (b) On or about 1 October 1998, WKS retained BJ ("the firm") to act on her behalf in relation to a claim for damages for personal injury;
- (c) The Respondent was the firm's employee primarily responsible for the day to day conduct of WKS's damages claim;
- (d) At the initial conference between WKS and the Respondent on 1 October 1998, the Respondent represented orally to WKS that he was a solicitor;
- (e) In or about May 2000, the Respondent tendered to WKS for execution a form of Client Agreement which provided, *inter alia*:
 - (i) that professional fees would be charged by the firm at the following rates:

"Partner:
\$280.00 per hour

Professional Staff:
\$280.00 per hour

Hourly rates include secretarial and word processing services";
 - (ii) "Persons who will perform your Work

Partner:
SJJ

Professional Staff:
[the Respondent]/AO/MP";
 - (iii) under the heading "Solicitors":

"Your matter is being handled by [the Respondent]/AO/MP a Solicitor of this firm. The supervising partner is SJJ";
- (f) In or about January 2001, the Respondent tendered to WKS for execution a further form of Client Agreement which provided, *inter alia*:
 - (i) that professional fees would be charged by the firm at the following rates:

"Partner:
\$308.00 per hour inclusive of GST per hour

Professional Staff:
\$308.00 per hour inclusive of GST per hour

Our hourly rates include secretarial and word processing services";
 - (ii) "Persons who will perform your Work

Partner:
SJJ

Professional Staff:
[the Respondent], AO, MP and DG";

- (g) Between about April 2000 and about April 2001, the firm acted for GJH in relation to a claim for damages for personal injury; the Respondent was primarily responsible for the day to day conduct of the matter;
- (h) GJH first met the Respondent in about July 1999. The Respondent then introduced himself to GJH as a solicitor from BJ and said that he was the third ranking person in the firm and was in line for a partnership and that the only thing holding him back was that he had not completed the practice management course.
- (i) On or about 4 April 2000, the Respondent tendered to GJH for execution a form of Client Agreement which provided, *inter alia*:
- (i) under the heading "Persons who will perform the work":
- "Partner:
SJJ
- Professional Staff:
[the Respondent], AO, ST, MP or DH"
- (ii) that fees would be charged on a time basis at the following rates:
- Partner:
\$280.00 per hour
- Professional Staff:
\$280.00 per hour
- (j) Under cover of the firm's letter dated 4 April 2000 which was handed by the Respondent to GJH at the meeting on 4 April 2000, the Respondent provided to GJH a document headed "Client Care Procedures" which provided, *inter alia*, under the heading "Solicitors":
- "Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by [the Respondent]. The supervising partner is SJJ."
- (k) Under cover of the firm's letter dated 29 November 2000, the Respondent forwarded to GJH for signature a form of Client Agreement which provided, *inter alia*, as follows:
- (i) in the schedule, item 7, under the heading "Persons who will perform your Work":
- "Partner:
SJJ
- Professional Staff:
[the Respondent], AO, MP";
- (ii) in the section headed "BJ – Client Care Procedures" under the heading "Solicitors":
- "Your matter is being handled by [the Respondent] a Solicitor of this firm. The supervising partner is SJJ.";
- (e) In or about April 1998, the firm was retained by EJW to act in relation to a claim for damages for personal injury. EJW met with the Respondent at the firm's offices in or about April or May 1998. The Respondent was primarily responsible for the day to day conduct of the matter.
- (f) By letter dated 25 May 1998, the Respondent wrote to EJW, enclosing, *inter alia*, a document headed "BJ Client Care Procedures" which provided under the heading "Solicitors":
- "Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by [the Respondent]. The supervising partner is SJJ";
- (g) In or about June 2002, the firm was retained by BMK to act in relation to a claim for damages for personal injury. During the course of the initial interview between BMK and the Respondent, the Respondent:
- (i) spoke by telephone to a third party whom the Respondent described to BMK as AM's manager and in the course of that telephone conversation said words to the effect "I'm a solicitor, you know what I'll do to you if I don't get what I want";
- (ii) said to BMK words to the effect "if they muck around with me, I'm a solicitor, I know what I can do and what I can't do";
- (iii) spoke by telephone to another third party and in the course of that telephone conversation said "I'm a solicitor";
- (h) In or about 1999, the firm was retained by SDN to act in relation to a claim for damages for personal injury. In or about March 2001, the Respondent visited Nelson to discuss her claim and in the course of that discussion said to her words to the effect that she had to accept the next offer made by the insurer of the other driver and words to the effect "I am your solicitor; I tell you what to do and you do as I say";

- (i) At the meeting referred to in subparagraph (o), the Respondent tendered to Nelson a form of Client Agreement which provided, *inter alia*:
- (i) under the heading "Persons who will perform the work":
- "Partner:
SJJ
- Professional Staff:
[the Respondent], AO, ST, MP or DH";
- (ii) that professional fees would be charged by the firm at the following rates:
- Partner:
\$280.00 per hour
- Professional Staff:
\$280.00 per hour;
- (j) In or about September 1996, RKR retained the firm to act on his behalf in relation to a claim for damages for personal injury;
- (k) At the initial conference between RKR and the Respondent in about September 1996:
- (i) in response to RKR's statement to the effect that he wanted the best solicitor to handle his claim, the Respondent said words to the effect he was "a good solicitor" and had never lost a personal injuries case;
- (ii) the Respondent tendered to RKR a form headed "Client Care Procedures" which provided, *inter alia*:
- "Solicitors Your matter is being handled by [the Respondent], a Solicitor of this firm";
- (l) On or about 18 May 2001, the Respondent tendered to RKR a form of Client Agreement which provided, *inter alia*:
- (i) under the heading "Solicitors":
- "Your matter is being handled by [the Respondent]. The supervising partner is SJJ";
- (ii) under the heading "Persons who will perform your Work":
- "Partner:
SJJ
- Professional Staff:
[the Respondent], AO, PM and DG";
- (m) In or about February 1998, the firm was retained to act for SW in relation to a claim for damages for personal injury;
- (n) At the initial conference between the Respondent and SW, in response to SW's statement to the effect that he had been recommended to consult SJJ, the Respondent said to SW words to the effect that he (the Respondent) was a partner in the firm and specialised in personal injury matters.
- (o) Under cover of letter dated 16 June 2000, the firm forward to SW a form of Client Agreement which provided, *inter alia*:
- (i) that professional fees would be charged by the firm at the following rates:
- "Partner:
\$200.00 per hour
- Professional Staff:
\$200.00 per hour
- Our hourly rates include secretarial and word processing services."
- (ii) "Persons who will perform your Work:
- Partner:
SJJ
- Professional Staff:
[the Respondent]/AO/MP."
- (iii) under the heading "Solicitors":
- "Your matter is being handled by [the Respondent]/AO/MP a Solicitor of this firm. The supervising partner is SJJ."

- (p) Under cover of letter dated 7 December 2000, the Respondent forwarded to SW a further form of Client Agreement which provided, *inter alia*:
- (i) that professional fees would be charged at the following rates:
- “Partner:
\$308.00 per hour inclusive of GST per hour
- Professional Staff:
\$308.00 per hour inclusive of GST per hour
- Our hourly rates include secretarial and work processing services.”
- (ii) “Persons who will perform your Work:
- “Partner:
SJJ
- Professional Staff:
[the Respondent], AO, MP and DG.”
- (iii) under the heading “Solicitors”:
- “Your matter is being handled by [the Respondent], AO, MP and DG of this firm. The supervising partner is SJJ.”
- (q) In or about July 1998, DSB retained the firm to act on his behalf in relation to a claim for damages for personal injury.
- (r) At the initial conference between DSB and the Respondent in about August 1998, the Respondent tendered to DSB for execution a form headed “BJ Client Care Procedures” which provided, *inter alia*, under the heading “Solicitors”:
- “Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by [the Respondent]. The supervising partner is SJJ.”
- (s) In or about June 1998, DRF retained the firm to act on her behalf in relation to a claim for damages for personal injury.
- (t) At the initial conference between DRF and the Respondent in about June 1998, the Respondent:
- (i) tendered to DRF a document headed “BJ Client Care Procedures”;
- (ii) told DRF that the firm would charge for his services at an hourly rate of \$280.00;
- (u) At a further conference in about late June 1998, the Respondent tendered to DRF a further document headed “BJ Client Care Procedures”;
- (v) Each of the documents referred to in subparagraphs (aa)(i) and (bb) referred to the Respondent under the heading “Solicitors” as the person with the day to day conduct of the matter under the supervision of SJJ.
- (w) On or about 16 October 1998, the firm was retained by TLW to act in relation to a claim for damages for personal injury. The Respondent was primarily responsible for the day to conduct of the matter.
- (x) At the initial conference between TLW and the Respondent on or about 16 October 1998, the Respondent handed to TLW a document headed “BJ Client Care Procedures” which provided, *inter alia*, under the heading “Solicitors”:
- “Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by [the Respondent]. The supervising partner is SJJ.”
- (y) On or about 10 July 2000, TLW attended at the firm’s offices. MP handed to her, *inter alia*, a form of Client Agreement and a document headed “BJ – Client Care Procedures”.
- (z) The schedule to the Client Agreement provided:
- (i) that professional fees would be charged by the firm at the following rates:
- “Partner:
\$280.00 per hour
- Professional Staff:
\$280.00 per hour”
- (ii) under the heading “Persons who will perform your work”:
- “Partner:
SJJ
- Professional Staff:
[the Respondent]/AO/MP”.
- (aa) The Client Care Procedures document provided, under the heading “Solicitors”:
- “Your matter is being handled by [the Respondent]/AO/MP a solicitor of this firm. The supervising partner is SJJ.”

- (bb) On or about 17 January 2001, TLW attended at the firm's offices. MP handed to her, *inter alia*, a further Client Agreement and a document headed "BJ – Client Care Procedures".
- (cc) The schedule to the further Client Agreement provided:
- (i) that professional fees would be charged by the firm at the following rates:
- "Partner:
\$308.00 per hour inclusive of GST per hour
- Professional Staff:
\$308.00 per hour inclusive of GST per hour"
- (ii) under the heading "Persons who will perform your work":
- "Partner:
SJJ
- Professional Staff:
[the Respondent], AO, MP".
- (dd) The Client Care Procedures document provided, under the heading "Solicitors":
- "Your matter is being handled by MP, *[the Respondent]* and AO of this firm. The supervising partner is SJJ."
- (ee) On or about 11 November 1998, the firm was retained by MEZ to act in relation to a claim for damages for personal injury. The Respondent was primarily responsible for the day to day conduct of the matter.
- (ff) At the initial conference between MEZ and the Respondent on or about 11 November 1998, the Respondent handed to MEZ, *inter alia*, a document headed "BJ Client Care Procedures" which provided, under the heading "Solicitors":
- "Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by *[the Respondent]*. The supervising partner is SJJ."
- (gg) In or about June 2000, MEZ attended at the firm's offices. MP handed to him, *inter alia*, a form of Client Agreement, the schedule to which provided:
- (i) that professional fees would be charged by the firm at the following rates:
- "Partner:
\$280.00 per hour
- Professional Staff:
\$280.00 per hour"
- (ii) under the heading "Persons who will perform your work":
- "Partner:
SJJ
- Professional Staff:
[the Respondent]/MP".
- (hh) On or about 4 December 2000, MEZ attended at the firm's offices. MP handed to him a further Client Agreement, the schedule to which provided:
- (i) that professional fees would be charged by the firm at the following rates:
- "Partner:
\$308.00 per hour inclusive of GST per hour
- Professional Staff:
\$308.00 per hour inclusive of GST per hour"
- (ii) under the heading "Persons who will perform your work":
- "Partner:
SJJ
- Professional Staff:
[the Respondent], AO, MP".
- (ii) On or about 13 October 1998, MYA retained the firm to act on his behalf in relation to a claim for damages for personal injury. The Respondent was the firm's employee primarily responsible for the day to day conduct of MYA's damages claim;

- (jj) On or about 10 May 2000, the Respondent tendered to MYA for execution a form of Client Agreement which provided, *inter alia*:
- (i) that professional fees would be charged by the firm at the following rates:
- “Partner:
\$280.00 per hour
- Professional Staff:
\$280.00 per hour”;
- (ii) “Persons who will perform the work:
- Partner:
SJJ
- Professional Staff:
[*the Respondent*], AO, ST or DH.”
- (kk) Under cover of a letter from the firm dated 8 March 2001, MYA received:
- (i) a document headed “BJ – Client Care Procedures” which provided, *inter alia*, under the heading “Solicitors”:
- “Your matter is being handled by [*the Respondent*], AO and MP Solicitors of this firm. The supervising partner is SJJ.”
- (ii) a second document headed “BJ Client Care Procedures” which provided, *inter alia*, under the heading “Solicitors”:
- “Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by [*the Respondent*]. The supervising partner is SJJ”.
- (ll) In or about August 1997, JMF retained the firm to act on her behalf in relation to a claim for damage to her property;
- (mm) By letter dated 15 October 1997, the Respondent wrote to JMF enclosing a document headed “BJ – Client Care Procedures” which provided, *inter alia*:
- (i) “Your matter is being handled by [*the Respondent*], a Solicitor of this firm”;
- (ii) that the firm’s rates were as follows:
- Partner \$200.00 per hour
- Solicitor \$175.00 per hour
- Managing Clerk \$150.00 per hour
- (nn) Either with the letter referred to at subparagraph (tt) or at the initial conference between JMF and the Respondent in about August 1997, the Respondent tendered to JMF a business card upon which had been printed “CB Solicitor” and on which the name C had been deleted and substituted with the Respondent’s first name.
- (oo) In or about February 1996, GRF retained the firm to act on his behalf in relation to a claim for damages for personal injury;
- (pp) At the initial conference between GRF and the Respondent in about February 1996:
- (i) the Respondent tendered to GRF for execution a document entitled “Authority to Act – Trust Authority” which provided, *inter alia*, that the hourly rates to be charged by the firm to GRF were as follows:
- Partner \$200.00 per hour
- Solicitor \$175.00 per hour
- Managing Clerk \$150.00 per hour
- (ii) the Respondent advised GRF that the rate of \$200.00 per hour would be charged for his services;
- (iii) the Respondent said to GRF that he was the lawyer or solicitor that would handle GRF’s claim.
- (qq) On or about 2 March 2000, AO, an employee of the firm, tendered to GRF for execution a form of Client Agreement which provided, *inter alia*:
- (i) under the heading “Persons who will perform the work”:
- “Partner:
SJJ
- Professional Staff:
[*the Respondent*], AO, ST or DH”;
- (ii) that professional fees would be charged by the firm at the following rates:
- “Partner:
\$280 per hour
- Professional Staff:
\$280 per hour”;

- (rr) On or about 2 April 2001, the Respondent delivered an itemised bill of costs to GRF which charged the Respondent's services:
- (i) prior to 2 March 2000 at the rate of \$200.00 per hour; and
 - (ii) after 2 March 2000 at the rate of \$280.00 per hour.
- (ss) On or about 2 November 1998, MK retained the firm to act on his behalf in relation to a claim for damages for personal injury;
- (tt) At the initial conference between MK and the Respondent on 2 November 1998, the Respondent tendered to MK for execution a document headed "Authority to Act – Trust Authority", which provided that "all costs to be charged shall be chargeable on a solicitor/own client basis at the rate of \$280.00 per hour".
- (uu) On or about 28 March 2000, ST, an employee of the firm, tendered to MK for execution a form of Client Agreement which provided, *inter alia*:
- (i) under the heading "Persons who will perform the work":
 - "Partner:
SJJ
 - Professional Staff:
[the Respondent], AO, ST or DH";
 - (ii) that professional fees would be charged by the firm at the following rates:
 - "Partner:
\$280 per hour
 - Professional Staff:
\$280 per hour";
- (vv) In or about January 2001, DG, an employee of the firm, tendered to MK for execution a further form of Client Agreement which provided, *inter alia*:
- (i) that professional fees would be charged by the firm at the following rates:
 - "Partner:
\$308.00 per hour inclusive of GST per hour
 - Professional Staff:
\$308.00 per hour inclusive of GST per hour
 - Our hourly rates include secretarial and word processing services";
 - (ii) "Persons who will perform your Work
 - Partner:
SJJ
 - Professional Staff:
[the Respondent], AO, MP, DG";
- (ddd) In or about January 2001, DG tendered to MK for execution a document entitled "BJ – Client Care Procedures", which provided, *inter alia*, that "your matter is being handled by [the Respondent] a Solicitor of this firm";
- (eee) In or about February 2001, JJBS and BJS retained BJ to act on behalf of JJBS in relation to a claim for damages for negligence on the part of her previous solicitors;
- (fff) By letter dated 3 April 2001, the Respondent wrote to JJBS and BJS requesting that they attend at BJ's office to execute a client agreement;
- (ggg) On or about 17 April 2001, JJBS and BJS attended a meeting with the Respondent at BJ's office and the Respondent tendered to them for execution a form of Client Agreement which provided, *inter alia*:
- (i) under the heading "Solicitors":
 - "Your matter is being handled by [the respondent] a Solicitor of this firm. The supervising partner is SJJ";
 - (ii) that professional fees would be charged at the following rates:
 - "Partner:
\$350.00 per hour (inclusive of GST per hour)
 - Professional Staff:
\$350.00 per hour (inclusive of GST per hour)
 - Our hourly rates include secretarial and word processing services";

- (iii) "Persons who will perform your Work

Partner:
SJJ

Professional Staff:
[the respondent]".

Appearances

- (a) For the Council of the Queensland Law Society Incorporated:
Mr D J S Jackson QC instructed by Messrs Brian Bartley & Associates
- (b) For the Clerk:
Mr W Sofronoff QC of Queens Counsel and Mr P Davis of Junior Counsel instructed by Messrs Russel and Company, Solicitors

Findings and Orders

- The Tribunal finds the matters set out in paragraph 1 (n)(i), (ii), (iii) of the Amended Notice of Charge of 7 March 2003 proved in that the Respondent wilfully and falsely held himself out as duly qualified to act as a practitioner in breach of s5K(1)(b) of the *Queensland Law Society Act*. The Tribunal finds the Respondent guilty in that respect.
- The Tribunal orders that on and from today, a person must not employ the Respondent in relation to a practitioner's practice except on the following conditions:
 - After a period of twelve (12) months from today, the Respondent can be employed as an employee of a legal practice, if and only if:
 - All letterheads, client agreements and other stationary in relation to any matter involving the Respondent describe him as a "Managing Law Clerk";
 - Any business cards describe him as a "Managing Law Clerk";
 - Any firm advertising, referring to him, describe him as a "Managing Law Clerk"
 - He not represent himself to be a Solicitor unless he becomes one.
 - That before the Respondent commences employment in a solicitor's practice, he inform his employer of, and provide it with a copy of, the Orders and Reasons for Decision handed down by the Tribunal in this matter.
 - That the Council of the Queensland Law Society Incorporated appoint a Senior Practitioner, at the cost of the Respondent, to review the compliance by the Respondent and his employer with these Conditions imposed by the Tribunal.
 - That condition 2(c) is to continue until the Senior Practitioner provides a written report to the Council of the Queensland Law Society Incorporated as to the satisfactory compliance by the Respondent and his employer with these Orders.
- The Tribunal Orders the Respondent to pay the costs of the Queensland Law Society Incorporated of and incidental to the issues raised by paragraph 1(n) of the Amended Notice of Charge dated 7 March 2003 together with the costs of the Recorders and the Clerk of and incidental to the hearing of those issues, such costs to be assessed by Monsour Legal Costs Pty Ltd, if not agreed. Otherwise the Tribunal makes no other orders as to costs.
- The Tribunal further orders the suspension of the commencement of the operation of the Orders of the Tribunal for two (2) weeks.

Reasons

The Respondent has been charged that in breach of s5K(1)(b) of the *Queensland Law Society Act* he wilfully and falsely held himself out as duly qualified to act as a practitioner. The notice of charge sets out the factual particulars on which this charge is based. Those particulars are constituted by oral and written representations to clients named in the notice of charge. The Queensland Law Society called its witnesses to give evidence in person and to be cross-examined on their evidence with the exception of MYA and SDN who were not available for the hearing.

Evidence of WKS

The Society relies on an Affidavit of WKS filed 4 October 2002. WKS was cross examined before the Tribunal. The Society alleges in paragraph 1(b) of the Particulars in the amended Notice of Charge that at WKS's initial conference with the Respondent on 1 October 1998 the Respondent represented orally to her that he was a solicitor.

This contention would appear to be consistent with the evidence contained in paragraph 5 of the Affidavit of WKS where she says "both at the initial meeting with the Respondent and on numerous subsequent occasions when I met with him, he described himself as a lawyer. He would make statements to the effect 'I am your lawyer, I am going to win your case'."

She continues in that paragraph of the Affidavit to swear that she is unable to say that she recalls the Respondent ever describing himself as a solicitor but that rather he used the term lawyer. She says he did not at any stage tell her that he was not legally qualified.

In cross examination before the Tribunal WKS retreated from what she had sworn in paragraph 5 of the Affidavit. She said that she was convinced that the Respondent was a lawyer but not from what was said by him to her in conversation. She was asked by Mr Sofronoff QC for the Respondent "well, you are not prepared – given all these other matters, you are not prepared now to say to the Tribunal that he (the Respondent) told you he was a lawyer, are you?". To this question she answered "no, not in conversation with him, no".

This Tribunal must apply the *Brigginshaw* test in relation to the onus of proof and the Tribunal is not satisfied that the Respondent told WKS in conversation either on the date of their first meeting on 1 October 1998 or at any other time that he was a lawyer.

Of course WKS did receive certain documents from the Respondent. The authorities which are contained in Exhibit A to WKS's Affidavit do not contain any written representation to the effect that the Respondent was a solicitor or lawyer, nor do the letters contained in Exhibit B to WKS's Affidavit.

The references to our "[*the Respondent*]" in letters of 23 December 1998, 17 November 1999, 11 January 2000, 26 April 2000, 26 May 2000 and 5 September 2000 do not in our view carry any suggestion or representation that the Respondent was a lawyer or solicitor.

The client agreement dated 18 May 2000 which is Exhibit C to WKS's Affidavit contains a schedule which at item 7 refers to "Persons who will perform your work". There is a reference to "[*the Respondent*]" against the heading "Professional Staff". We do not regard this reference as a representation that the Respondent was a lawyer or solicitor.

A document notice headed "BJ Client Care Procedures" which is part of Exhibit C to WKS's Affidavit contains the paragraph "your matter is being handled by [*the Respondent*]/AO/MP, a solicitor of this firm. The supervising partner is SJJ".

It will be necessary to determine whether the Respondent was personally aware that this representation had been made in writing.

The Trust Account Authority, part of Exhibit C, is of no relevance.

The client agreement which is Exhibit D to WKS's Affidavit and which is dated 18 April 2001 again contains a schedule in which the Respondent's name appears against the heading "Professional Staff". Again we do not consider this to be a representation that the Respondent was a solicitor or a lawyer. The BJ Client Care Procedures document which is dated 8 January 2001 and which is part of Exhibit D makes no reference to the Respondent and is of no relevance.

Exhibit E is a letter from BJ to MWL dated 13 August 2001 in which a reference is made to "our [*the Respondent*]". We do not regard this as a representation by the Respondent that he was a solicitor or lawyer.

Exhibit F contains a letter from BJ to MWL dated 20 July 2001 and again there is a reference to "our [*the Respondent*]". Again we do not consider this to be a representation that the Respondent was a lawyer or solicitor.

The costs statement which is part of Exhibit F does not assist us to determine whether the Respondent has made oral or written representations to the effect that he was a solicitor.

The crucial finding in relation to WKS's evidence is that she retreated wholly from what is contained in paragraph 5 of her Affidavit in her oral evidence before the Tribunal and we therefore cannot rely on the content of paragraph 5 of the Affidavit. We accept the evidence she gave in cross examination before the Tribunal to the effect that the Respondent had made no oral representation to her that he was a lawyer.

Evidence of EJW

EJW swore an affidavit filed 4 October 2002 and was cross examined before the Tribunal. In paragraph 3 of the affidavit she swore that she could not recall whether or not the Respondent told her at the initial meeting that he was a solicitor, however she did hold the belief that he was a solicitor.

At paragraph 12 of her affidavit, EJW swore that the Respondent never said to her that he was not a solicitor. She swore she believed he was a solicitor until she read to the contrary in *The Courier Mail*.

Exhibited to her affidavit is a letter from BJ to her dated 25 May 1998 which has annexed to her a document headed "BJ Client Care Procedures". Under the heading "Solicitors" the document has the following paragraph:

"Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by [*the Respondent*]. The Supervising Partner is SJJ."

It will be necessary to determine whether this amounts to a representation by the Respondent that he was a solicitor.

Exhibit B to the affidavit is a letter to EJW from BJ dated 17 April 2002 which refers to "our [*the Respondent*]". We do not regard this as a representation the Respondent that he was a lawyer or solicitor.

In cross examination EJW confirmed that the Respondent never actually stated to her that he was a solicitor.

It was suggested to EJW in cross examination that on an occasion when she signed and swore a Notice of Claim under the *Motor Accident Insurance Act* 1994 that it was necessary for the Respondent to call a Justice of the Peace into the room to witness EJW's swearing of the affidavit. It was suggested that was necessary because the Respondent was not a solicitor. EJW accepted that this was a possibility but appeared to have no real recollection that it had occurred. In re-examination by Mr Jackson QC for the Society, EJW accepted that the Respondent had never told her he was not a solicitor.

By virtue of the manner in which EJW gave her evidence before the Tribunal, she appeared to us to be telling the truth and we accept her evidence; but her evidence really amounts to the fact that she always thought the Respondent was a solicitor. She could give no evidence of any oral representation to that effect made to her by the Respondent. It will then be for us to determine whether the reference to which we have already referred in Exhibit B to her affidavit amounts to a written representation by the Respondent that he was a solicitor, and whether that representation was made knowingly and deliberately by him.

Evidence of GJH

GJH swore an affidavit filed in the Tribunal on 9 October 2002. He was cross examined at the hearing. In his affidavit he swore that the Respondent had introduced himself to him as "D, solicitor for BJ". "D" was apparently a nickname for the Respondent. At paragraph 3 of the affidavit GJH swore that the Respondent told him that he was "third ranked in the hierarchy at BJ", that he was "in line for partnership at the firm" and that "the only thing holding him back from becoming was a partner was completion of a practice management course".

GJH was cross examined about his previous employment with the DCS and he admitted to having been dismissed from his position with that Commission. We allowed him to be questioned about this issue because it appeared that the questions went to his credit. It is not for us to determine the reasons why he was dismissed from his position with the CSC but we must say that we formed the view that the witness appeared evasive in relation to the questions about the true reason for his dismissal. He seemed to be hedging and not giving direct answers to the questions put to him by Mr Sofronoff QC on behalf of the Respondent.

GJH gave evidence that it was he who terminated the retainer with BJ and that that preceded litigation brought by BJ to recover their fees. GJH was served with proceedings some time in August 2001 and on 21 August 2001 he lodged a complaint against BJ with the Law Society. GJH was taken through the content of his complaint. GJH also accepted that there had been correspondence between his subsequent solicitors and BJ in relation to the claim and attempts to settle the claim for costs. He accepted in cross examination that he had instructed his latest solicitors to put certain offers to BJ to settle the matter. Again he seemed to hedge in relation to certain questions he was asked about an irrevocable undertaking which he had apparently signed in favour of BJ to settle the dispute about fees (see in particular the exchange at the bottom of page 73 and the top of page 74 of the transcript). He accepted the effect of the irrevocable undertaking was that he irrevocably instructed his then solicitors to pay BJ the sum of about \$5,000.00 from sums received by them on his behalf. Further, by the document he undertook BJ to notify them immediately on the resolution of his action in relation to the motor vehicle accident.

He accepted that he had concluded his claim for damages but he had not complied with his obligation to pay the money to BJ on legal advice of his then solicitor, PW.

We gathered the impression during the exchange on this issue that the witness GJH was more concerned about the possible effect of his answers than on actually giving truthful and responsive answers to the questions. Nothing further emerges from the exchange in relation to the irrevocable undertaking except that we were not impressed by GJH's manner of answering the questions he was asked on the issue.

It was pointed out to GJH in cross examination that in paragraph 12 of his affidavit he said that he had attempted unsuccessfully to resolve the matter of BJ's costs but that they had sued for an amount of just less than \$5,000.00. It was put to GJH that by the time he had sworn the affidavit he had settled the matter of BJ's costs on the footing that he would undertake to pay them money under the irrevocable authority. GJH denied that by paragraph 12 he meant to convey that BJ were still continuing to pursue him for costs. That particular exchange does not assist us in assessing the credit of GJH.

GJH was then cross examined about the events on the day which he met the Respondent. It had been an exam day and after the exams had concluded, GJH went with some fellow students to the University Staff and Graduates Club then on to the Regatta Hotel later in the afternoon. There had been an incident and following the incident GJH went to the Royal Exchange Hotel at Toowong. Whilst opposite the RE Hotel a M, whom GJH had followed from the Regatta Hotel was confronted by two police officers. There was a confrontation between M and the two police officers. GJH was away at a distance when he saw M assaulting the police officers. He decamped and tried to climb a fence but he fell off and dislocated both his elbows, one of them completely and one of them slightly. GJH fell from the top of the fence.

Approximately six weeks later GJH was in a motor vehicle accident. GJH was shown a Notice of Accident form which he completed with BJ. He agreed that he had referred to a "previous minor injury to elbow which had been treated and a full recovery". When asked about that answer and whether the minor injury was the reference to the dislocation of one elbow and the partial dislocation of the other in the fall from the wall or fence, he said "well I don't know. I am not entirely sure that that is my writing. In fact I think that it isn't my writing. I can't recall what I said to whoever was assisting me to fill out the form, but that's what appears to have been written" (see transcript at page 94).

When challenged about referring to those injuries as minor, GJH answered at the top of page 95 of the transcript "well they were both relocated on that evening and there was no permanent damage. They were put back in place that evening. They had just popped out when I had fallen from the top of the fence but, as I said, it doesn't appear to be my writing, so I can't recall what I actually said to them."

He did not entirely disclaim responsibility for the content of paragraph 38 of the Notice about which he was being questioned. He did however say "it wasn't a permanent injury, if that is what you're inferring, at the time". He mentioned that he had had a couple of weeks of physiotherapy which he had completed by the time of the motor vehicle accident so that the injury had healed to that extent

GJH was then cross examined about the motor vehicle accident and accepted that police had attended the scene of the accident. He was asked "you made no complaint about an elbow injury?" and his answer was "I don't know, I haven't seen the contents of the report" (see transcript at the bottom of page 96).

We gained the impression that again GJH was hedging in relation to the answer to that question. He ought to have been able to make a simple and direct answer to the question but he was more concerned about what might have been in the document. There seemed to be a concern on his part that he might be caught out if he answered the question before looking at the document. We view this as an indication that he was more concerned for his own position than in giving direct and honest answers to questions put to him in cross examination.

He accepted that he was in a later motor vehicle accident in February 1999 when he was driving a gemini and he crashed into a bus. He accepted that he had suffered a broken nose and ended up in the bed next to his mother who was in the Prince Charles Hospital at the time. The accident had occurred just outside the hospital. He had accepted that he had not put a reference in the motor accident claim form to that incident and injury.

Exhibit F to GJH's affidavit is a letter he wrote to MB, Managing Partner at BJ dated 25 January 2001. On the second page of that letter in the third paragraph on that page he made the following statement:

"Furthermore, as an extremely active person, I have been substantially affected by the damage sustained to my elbow. Thus, it is essential that this component of my claim be afforded considerable importance."

This was in the context of a complaint to MB that Dr Milroy who was to provide a report following examination had not been properly briefed by BJ and that there had been some discrepancy in the medical centre report. There appeared to be some confusion as to the earlier motor vehicle accident. GJH in cross examination after a number of questions on the issue finally conceded that one of the complaints he made in the letter to MB of 25 January 2001 was that insufficient weight had been given by BJ to his elbow injury.

GJH was at pains to explain that the Respondent was already aware that he had sustained bilateral elbow injuries in the fall from the fence near the RE Hotel. He explained that the Respondent had represented M in a criminal matter which had arisen out of the earlier incidents of that evening so that the Respondent was well aware of the fact that he had sustained the elbow injuries in the fall. He explained that the Respondent had said "don't be worried about that. There are other aspects of your claim." That answer appears to be consistent with what is contained in GJH's letter to MB of 25 January 2001 as follows:

"He (the Respondent) advised me that I should not be concerned, and that even without the elbow injury component of my claim, there were other components of my claim (neck and nova shock) that would be successful."

He denied being disgruntled with the Respondent because the Respondent would not pursue the elbow component of the claim.

On the exchange concerning the elbow injury again we formed the opinion that GJH was hedging in his answers and could easily have given more direct open and straightforward answers than he did. He seemed to be more concerned about protecting his own interests and in sizing up what might be the likely fallout of a particular answer than in giving honest direct and truthful answers to the questions he was asked by Mr Sofronoff.

The questions then returned to the day of the examination. After having been at the RE, GJH and M went to Turtles which is a club at Breakfast Creek. GJH could not remember whether the Respondent was drunk or sober. He could not recall what he was wearing. He thought he had his head shaved at the time. He did not stay with M all evening. He did not leave until the early hours of the morning. Certainly it was after midnight. He accepted that he was drunk when he left after midnight.

It was put to him in cross examination that the content of paragraph 3 of his affidavit was not correct. He denied that. He was questioned about Exhibit F being his letter to MB dated 25 January 2001. He acknowledged that he said in that letter "I was under the belief that [*the Respondent*] was an admitted solicitor".

He agreed with Mr Sofronoff that he had not said in that letter that he had been told by the Respondent that he was a solicitor. The second paragraph of that letter includes the following sentence:

"After consulting the solicitor's role (*sic*), I am now of the belief that [*the Respondent*] is not a solicitor".

The point which Mr Sofronoff was making in cross examination was that in GJH's letter to MB there was no reference to the Respondent having told GJH that he was a solicitor when they were both at Turtles at Breakfast Creek in July 1999. In cross examination GJH was defensive. He answered "the purpose of this letter, Mr Sofronoff, was not to – or should I say – was for no other reason than to try and get MB or someone of that sort to take over my matter. That was the sole purpose of this letter. It was not to try and do anything otherwise."

GJH was also cross examined about Exhibit H to his affidavit being a letter from him dated 21 February 2001 to MB. He agreed with Mr Sofronoff that he had picked up on a concession made in an earlier letter from BJ to the effect that the Respondent was a law clerk, not a solicitor. He also accepted that in the letter Exhibit H he stated that this particular statement was contradictory to previous representations made by BJ and he set out three such written representations.

He accepted that it may have been helpful to point out in the letter that the Respondent had told him that he was a solicitor as he alleges. As to why he did not say that, he said "I was expressly referring to written material at that time because I was concerned about the nature of the firm that I was dealing with. I wanted to refine my answers to written material."

Again we view that answer as defensive and we think it highly peculiar that GJH would be at pains to point out three written instances of a representation that the Respondent was a solicitor without mentioning the direct oral statement that had allegedly been made at Turtles. We think the only explanation for that peculiarity is that the Respondent did not introduce himself to GJH at Turtles on that evening or early morning as a solicitor.

Of course the other inconsistency is that in GJH's complaint to the Law Society which is Exhibit N to his affidavit, where he sets out the particulars of his complaint in the second typed paragraph he says "He was always introduced to me as [*the Respondent*] (by nickname 'D') a Personal Injuries Specialist Solicitor from BJ". Although this reference is not stated to be a direct reference to the introduction which allegedly occurred at Turtles, there is no mention in paragraph 3 of GJH's affidavit to an introduction by the Respondent claiming to be a "personal injury specialist" solicitor.

In all the circumstances we are not convinced on the appropriate standard (*Brigginshaw*) that the Respondent introduced himself to GJH at Turtles in the terms alleged by GJH in paragraph 3 of his affidavit. We have expressed various reservations about GJH's manner of giving evidence. The Respondent in his evidence denies that he introduced himself to GJH at Turtles as a solicitor. We are not prepared to accept the evidence of GJH on that issue.

GJH was shown his notice of accident form which he submitted to Suncorp in relation to the motor vehicle accident. It was put to him that his signature on the form was witnessed by GM and that GM was called into the room by the Respondent on the basis that the Respondent had said "I can't witness this, I am not admitted". GJH said he was not sure about that, he could not recall. When asked if it might have happened that way he said "I can't recall". His answers to those couple of questions were not to our mind impressive.

When all is said and done, we do not accept the evidence of GJH that the Respondent had introduced himself to him as “[D], solicitor from BJ”. We do not accept that the Respondent told GJH at Turtles at Breakfast Creek that the Respondent was “third ranked in the hierarchy at BJ”. We do not accept that GJH was told by the Respondent that he (the Respondent) was in line for a partnership at the firm, nor do we accept that the Respondent said to him “the only thing holding him back from becoming a partner was completion of a practice management course”. We do not accept GJH was a witness of truth on these issues and where his evidence differs from that of the Respondent on those particular issues, we prefer to accept the evidence of the Respondent.

That leaves the only evidence of GJH that can assist the Society in establishing the charge as the evidence of the alleged documentary representations as follows:

1. In Exhibit A in the Client Care Procedures document against the heading “Solicitors” where the following appears “Your matter is being handled by SJJ, a partner of this firm, who will be assisted in the day to day conduct of the matter by [the Respondent]”.
2. The reference to the Respondent in the schedule to the Client Agreement, Exhibit E to GJH’s affidavit which lists the Respondent as one of the professional staff who it was intended would handle GJH’s matter.
3. The representation in the document “BJ – Client Care Procedures” part of Exhibit E to the affidavit of GJH which contains under the heading “Solicitors” the statement “Your matter is being handled by [the Respondent], a solicitor of this firm”.
4. The reference in the Client Agreement, Exhibit J to GJH’s affidavit in paragraph 2 where the Respondent is included in professional staff under the heading “Persons who will perform the work”.

The issue in relation to these written representations is whether or not the Respondent at the time the representations were made was aware that those representations had been made and thereby effectively were made knowingly by him.

We will deal with this issue later in these reasons. It is also of note that when questioned by one of the members of the Tribunal, GJH said he had met the Respondent on only two social occasions. This is at odds with what he says to the Queensland Law Society in his complaint which is Exhibit H to his affidavit where he says that he met the Respondent on a number of times at social occasions and that he was “always introduced to me as [the Respondent] (by nickname [‘D’]) a Personal Injuries Specialist, Solicitor from BJ”.

The flavour we get here is that that statement made to the Law Society was exaggerated or embellished. We gained the impression that GJH was a witness who was prepared to exaggerate or embellish his evidence when he apprehended that that might be in his interests. He was a witness who appeared to have his mind focussed on other objectives than simply listening to the question and giving a straight-forward and honest answer.

Evidence of BMK

BMK swore an affidavit which was filed on 4 October 2002. He was cross examined at the hearing. In his affidavit BMK explained that he had contacted BJ after receiving an advertisement in his letterbox. He contacted DJF whose name had been mentioned on the brochure and when he called for the interview he was told he would be seeing the Respondent rather than DJF.

When he met the Respondent on 29 May 2002 the Respondent took a telephone call during the meeting. BMK said that there was a discussion per telephone about some arrangements for arranging a boxing match and when the Respondent finished the call he told him he had been speaking to AM’s manager.

In paragraph 4 of the affidavit BMK notes that during the telephone call the Respondent had said words to the effect “I am a solicitor, you know what I will do to you if I don’t get what I want”. BMK was careful to point out that he could only hear one side of the conversation, that is the Respondent’s words. He did however get the understanding that there was some argument about the weight of the gloves that was to be used at the match.

In paragraph 5 of the affidavit he says that after explaining he had been speaking to AM’s manager that he said words to the effect “those f...ing blackfellas – they think they can do what they want. If they muck around with me, I am a solicitor, I know what I can do and what I can’t do”.

Apparently the Respondent took a further call during the meeting. Again BMK was unable to identify the caller but he says that the Respondent did say to the caller during the telephone conversation “I am a solicitor”.

In paragraph 8 of the affidavit there is a reference to a meeting one week later when BMK had requested that the Respondent send him monthly accounts of costs so that he could keep track of how much it was going to cost him and so that he could pay those costs each month. He says that in response to this request the Respondent said “In all the years I have been a solicitor, you would be the only person I know of that would want to pay in advance”.

In paragraph 10 of the affidavit BMK said that at no time did the Respondent tell him he was a law clerk and that he was not a solicitor.

One strength of BMK’s evidence is that the events which he recalled in his affidavit occurred at the end of May 2002 and that his affidavit was sworn on 25 September only about 3 or 4 months later. He appeared to have a good recall of events in his cross examination. He was not shaken from the evidence contained in his affidavit.

It was apparent that the meetings were on 29 May and 5 June 2002. BMK was strong and confident in his evidence before us. He gave his evidence in a straight-forward manner. He did not deviate from his affidavit. Our impression of him was that he had a good recollection of events. He was open and responsive to questions and his evidence had the ring of clarity and truth about it. Where his evidence, particularly in relation to the telephone conversations, differs from that of the Respondent, we would prefer the evidence of BMK. He did not appear to be a person who had any personal interest in the matters before the Tribunal.

It was suggested to BMK that when he signed the Notice of Accident form that the Respondent had called GM into the room to witness the document. BMK accepted that the Notice of Accident form and additional information form were both completed by him with the Respondent on 5 June 2002. He said that he signed the documents and handed them to the Respondent. He denied that GM had signed the documents in the presence of BMK as witness. We accept BMK's evidence in this regard.

Evidence of DSB

DSB's evidence in chief was by way of affidavit. He said that he could not remember when the first meeting took place with the Respondent, but he was handed a form headed "BJ – Client Care Procedures" which is exhibited to his affidavit. He said he was unable to say positively that the Respondent at any time said to him that he was a solicitor. He did say he skimmed through the client care document and saw the Respondent's name in a section headed "Solicitors".

He says at no time did the Respondent say anything to the effect that he was a law clerk or that he was not a solicitor and he retained the Respondent and BJ on the basis that he believed that the Respondent was in fact a solicitor. The entry in the written document which is Exhibit A to his affidavit which he was handed by the Respondent under the heading "Solicitors" stated, amongst other things, "Your matter is being handled by SJJ, a Partner of this firm who will be assisted in the day to day conduct of the matter by *[the Respondent]*. The Supervising Partner is SJJ".

He gave further evidence in chief orally before us and gave evidence that he thought the Respondent spoke authoritatively about his matter to him and that this and the fact that he was in an office led him to believe that the Respondent was a solicitor. He gave evidence of having been referred to BJ by a firm of liability consultants and that accordingly he had instructed BJ before the initial meeting with the Respondent.

He also gave evidence that he had signed a Notice of Accident form with BJ which had been signed and witnessed by a person called Forest however when it was put to him that the Respondent told him that he, the Respondent, was not a solicitor and could not swear the document, that is could not witness the document, that was why Forest was brought into the room, he said "I don't remember that, no". He admitted it could have happened. He appeared to have no recollection of that taking place.

DSB agreed that he had sworn an affidavit the previous year for use in Supreme Court proceedings and he admitted that in that affidavit he had sworn the following "At no stage during that initial interview did the Respondent inform me that he was not a solicitor, that he had never been admitted or that he had not obtained a law degree".

He had also referred to the Client Care Procedures document which is Exhibit A to his affidavit before the Tribunal in the earlier affidavit and had said about that document "Some days later, I received a letter from BJ dated 3 August 1998 which enclosed a document entitled BJ Client Care Procedures". There is nothing in DSB's written or oral evidence before the Tribunal which goes to prove that the Respondent made any oral representation to him that he was a solicitor.

Accordingly DSB's evidence is only relevant to the assertion that the reference to the Respondent under the heading "Solicitors" in the Client Care Procedures document, Exhibit A to his affidavit, amounts to a representation by the Respondent that he was in fact a solicitor. The document speaks for itself. As to the assertion we will deal with that later in these reasons.

Evidence of DRF

DRF gave evidence that she had come to BJ on a referral from DB. She had a meeting with someone from DB and that person had asked her to sign some documents "to get the matter going". Subsequently she received a letter from BJ informing her of an appointment with the Respondent on 29 June. She recalled receiving the Client Care Procedures document and another document.

She had actually got two lots of documents and she probably took the client care documents back with her when she went to see the Respondent on 29 June 1998. The relevant documents were tendered as Exhibit 19.

DRF swore in paragraph 2 of her affidavit the Client Care Procedures document was handed to her in the first meeting with the Respondent, but in cross examination she agreed that she may have received it in the mail. She was not entirely sure whether it came by mail or whether the Respondent handed it to her.

She swore in paragraph 5 that she was unable to say positively that the Respondent ever told her that he was a solicitor "in so many words". Because of the various documents to which she was referred and because of the hourly rate which the Respondent quoted to her, she retained the Respondent and BJ in the belief that the Respondent was a solicitor, but at no time did he say anything to her to the effect that he was not a solicitor.

When it was suggested to her in cross examination by Mr Sofronoff QC that the Respondent had explained to her that he was not a solicitor and therefore needed someone else to witness the Notice of Accident form because he was not a Justice of the Peace and was not an admitted solicitor, her answer was "No, no. That is clear no. His fees were \$280.00 per hour and he drummed that into me that much that I would never have not thought that he was a solicitor."

DRF impressed the Tribunal as a truthful witness. She was firm that the Respondent had never said to her that he was a solicitor. There is nothing in her written or oral evidence therefore that supports any contention that the Respondent orally represented to her that he was a solicitor.

The only relevance of her evidence is that it is asserted by the Law Society that the reference to the Respondent under the heading "Solicitors" in the Client Care Procedures document, Exhibit A, to DRF's affidavit amounts to a representation by the Respondent in writing that in fact he was a solicitor. We will deal with this contention later in these reasons.

Evidence of JJBS

JJBS swore an affidavit filed by leave 21 November 2001 in which she said she had retained a firm of solicitors in relation to a complaint to be made to the Anti-Discrimination Commission. She retained this firm in October 1999. She had later been advised that that firm had failed to forward a letter to the Anti-Discrimination Commission in accordance with her instructions and that her complaint had therefore lapsed. She found this out in January 2001 and in February 2001 consulted BJ to act on her behalf.

There was an initial meeting attended by JJBS and her husband with the Respondent. Following the initial meeting she received a letter from BJ dated 22 February 2001. By way of response her husband sent an email to the Respondent enquiring of the cost of sending a letter of demand and there was no response to this facsimile from the Respondent by 21 March so she then faxed a handwritten note written on the last page of the BJ letter as per Exhibit B to her affidavit. This note requested that a price be provided on the letter of demand.

JJBS then received a further letter from BJ dated 3 April 2001 which set out a quote for the letter of demand and which sought the return of a signed trust account authority and asked her to attend at the office to sign a client agreement.

JJBS and her husband signed the trust account authority on or about 17 April. She then said that she attended with her husband at BJ's office when she was seen by the Respondent and was handed a form of client agreement which she signed as did her husband. A copy of the client agreement is Exhibit D to her affidavit. She notes that it is dated 17 April 2001 and on that basis she swore that that was the day she executed the document along with her husband. In paragraph 7 of her affidavit she swore that the client agreement described the Respondent as a solicitor and it was at all times her belief that the Respondent was a solicitor. She swore that she was told nothing contrary by the Respondent or anyone else at BJ.

The Client Agreement is Exhibit D to JJBS's affidavit and in item 7 of the schedule the Respondent's name appears against the heading "Professional Staff".

Nothing in the written or oral evidence of JJBS suggests that there was any oral representation by the Respondent to the effect that he was a solicitor and so the import of her evidence only goes to the contention by the Law Society that the reference to the Respondent against the heading "Professional Staff" in the schedule to the Client Agreement amounted to a written representation by the Respondent that he was a solicitor. We will deal with this contention later in these reasons.

JJBS impressed us as a strong witness who did not demur from her affidavit. She was a little nervous in the manner of giving her evidence but would not be shaken on the matters she had sworn to. JJBS's second affidavit annexes a complete copy of the Client Agreement. In this document under the heading "Solicitors" the Respondent is referred to as a "solicitor of this firm".

Evidence of BJS

BJS's affidavit was filed by leave 21 November 2001. He confirms the accuracy of his wife's affidavit. He confirms that he paid the \$500.00 retainer to BJ. He says that nothing was said to him by the Respondent or anyone else at any time to indicate that the Respondent was not a solicitor. BJS was a very strong witness who was not shaken in cross examination. He swore that he recalled the initial meeting with DJF and the Respondent. He swore that he recalled the second meeting when the Respondent handed the Client Agreement over to him and to his wife. He denied it could have been another person. He denied it could have been a secretary. He denied it could have been DJF.

There is nothing in the written or oral evidence of BJS the effect that any oral representation was made by the Respondent to the effect that he was a solicitor. The only import of his evidence then is that it supports the contention by the Society that a written representation was made to BJS and JJBS knowingly by the Respondent that he was a solicitor. We will deal with this contention later in these reasons.

Evidence of RKR

RKR swore an affidavit filed 27 February 2003. He swore in paragraph 3 that at the initial meeting in about September 1996 the Respondent told him that he (the Respondent) was "the solicitor who would be looking after" him. He also swore at that meeting that he told the Respondent that he wanted the best and that is why he had gone to BJ. He said that the Respondent's response was to the effect that "he (the Respondent) was a good solicitor and had never lost a personal injuries case."

The Respondent had handed him a document entitled "BJ Client Care Procedures" which is Exhibit A to his affidavit. That document contained under the heading "Solicitors" the statement "Your matter is being handled by *[the Respondent]*, a Solicitor of this firm".

RKR also swore that on the basis of what the Respondent said to him during the initial interview in September 1996 he believed that the Respondent was a solicitor. It was not until about May 2001 that RKR found out that the Respondent was not a solicitor.

In the Client Agreement which is Exhibit B to the RKR's affidavit there is a paragraph under the heading "Solicitors" which states "Your matter is being handled by *[the Respondent]*. The Supervising Partner is SJJ."

In item 7 to the schedule of the document against the words "Professional Staff" the following words appear "*[the Respondent]*".

In cross examination it was suggested that RKR was reconstructing the conversation which had occurred at the first meeting. RKR was asked what recollection he had of the conversation in the first meeting and his answer was as follows "Well the reason the conversation came that way is because when I was introduced to him through a close friend of mine, he took me in there and the Respondent, at the time, asked me why did I come to BJ. I said that C told me that they were a good company to come to and I said that – in life, I have had the best of everything." He continued "Well so I got told BJ was the best, so I've come to the best, and then he said to me "Well I am the best solicitor and I have never lost a case" and I said "well thank you", and that was it." (See transcript at pages 189 and 190).

RKR persisted at page 190 of the transcript that the Respondent had told him that he was a solicitor at the initial interview. However when questioned that he may have assumed that anyway, his answer was "At \$280.00 bucks an hour I had assumed he was a solicitor, wouldn't you?". He agreed that the Respondent appeared to have the trappings of a solicitor. He agreed he had his own office and that he had control over staff and that he had solicitors answering to him.

RKR was cross examined about the exact circumstances of him suffering injury. This was the injury in respect of which he consulted BJ.

Much has attempted to be made of the fact that allegedly RKR had given differing versions of the incident to Drs W and P. It is not necessary for us to come to any firm conclusion on this. The other issue of controversy in the cross examination of RKR was in relation to Exhibit A to his affidavit and whether the document headed "BJ Client Care Procedures" which is Exhibit A was in fact handed to RKR by the Respondent in their initial meeting or whether it was forwarded under cover of the letter of 30 September from BJ.

We are not able to come to a final conclusion on this controversy either. However at the end of the day we were not impressed at the manner in which RKR gave his evidence. His answers were not direct. He appeared to us to be hedging in his answers in an apparent attempt to tailor his evidence to do the most damage to the Respondent. His evidence was therefore at some stages confusing. We form the opinion that he was an unreliable witness. We do not accept his evidence where it conflicts with the evidence of the Respondent about the conversation which took place at their initial meeting.

It follows that the only relevance of RKR's evidence is that it potentially supports the contention by the Society that there were documentary representations made by the Respondent that he was a solicitor.

So far as RKR is concerned, these alleged representations appear in the following documents:

1. Exhibit A to his affidavit filed 27 February 2003 being the BJ Client Care document where under the heading "Solicitors" this entry appears:
"Your matter is being handled by *[the Respondent]*, a solicitor of this firm".
2. Exhibit B to the same affidavit where in the Client Agreement under the heading "Solicitors" on page 1 of 7 the following statement appears:
"Your matter is being handled by *[the Respondent]*. The Supervising Partner is SJJ."
3. Item 7 of the Schedule to the Client Agreement Exhibit B of the same affidavit where against the heading "Professional Staff" the following appears:
"*[the Respondent]*"

We will deal with this contention later in these reasons.

Evidence of SW

SW swore an affidavit filed 4 October 2002 in which he swore his first meeting with the Respondent was in March 1997 and at that meeting the Respondent had told him that he was a partner in the firm and that he specialised in personal injury matters. He said he was requested to sign a form of client agreement to retain BJ at that meeting but he was reluctant to sign it at that time. He gave evidence that he signed a form of authority to act which is Exhibit A to his affidavit. He said he signed that document at the first meeting.

He also swears that on 25 July 2000 he signed a form of Client Agreement and forwarded it back to BJ. That document is Exhibit B to his affidavit and refers to the Respondent under the heading "Professional Staff" in item 7 of the schedule.

Secondly, there is a reference in the Client Agreement in the annexed Client Care Procedures document where under the heading "Solicitors" the following appears:

"Your matter is being handled by *[the Respondent]*... a solicitor of this firm."

In Exhibit D to his affidavit, there is a copy of a further Client Care Agreement which he apparently signed 2 January 2001. In item 7 of the schedule the Respondent's name appears against the heading "Professional Staff". Further in the Client Care Procedures documentation annexed to the Client Care Agreement under the heading "Solicitors" the following paragraph appears:

"Your matter is being handled by *[the Respondent]*, AO, MP and DG of this firm."

In cross examination SW conceded that the Respondent had not mentioned his qualifications at the initial interview. He agreed with various matters put to him by Mr Sofronoff to the effect that he gave the impression that he was a solicitor by the Respondent's confidence. He said "he used a lot of superlatives". He agreed that perhaps he was over confident. He appeared to have knowledge of the specialist area of personal injuries.

He was to charge at the highest rate charged by the firm and he agreed it would be very natural for him to come away from the initial meeting believing that he had just spoken to a partner in the firm. He agreed that that could have happened. After this exchange with Mr Sofronoff he said "It's a long time ago. I can't remember exactly what he stated his – in fact, I can't remember him stating his qualifications."

At the end of the day and after hearing the evidence we think SW may well have formed the opinion that he was speaking to a partner not because the Respondent told him he was a partner, but rather from surrounding events and circumstances.

Applying the *Brigginshaw* test as we must do, we are not sufficiently convinced about the content of paragraph 3 of SW's affidavit to rely on it. We are not satisfied to the requisite standard that the Respondent told SW that he was a partner in the firm and that he specialised in personal injuries matters. It follows that we do not accept that there was any oral representation by the Respondent to SW that the Respondent was a solicitor or partner in the firm.

What remains from SW's evidence is the evidence of alleged documentary representations to this effect. We will deal with these documentary representations later in these reasons.

Evidence of TLW

TLW swore an affidavit which was filed 4 October 2002. She swore in paragraph 7 that she did not recall the Respondent ever telling her that he was a solicitor. She said in the first meeting with him in October 1998 he did say that he was handling the case. TLW said that the document she received from BJ gave her the impression that the Respondent was a solicitor. It follows from her evidence that there is no evidence of an oral representation by the Respondent that he was a solicitor.

The alleged documentary representations to that effect are as follows:

1. In the Client Care Procedures document which is part of Exhibit A to TLW's affidavit under the heading "Solicitors" the following paragraph appears:

"Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by *[the Respondent]*. The Supervising Partner is SJJ."

TLW was an honest and open witness and we accept her evidence but at the end of the day there is no allegation of an oral representation. We will deal with the evidence of the written representations later in these reasons.

Evidence of MEZ

MEZ gave evidence by way of affidavit only. This affidavit was filed 4 October 2002. He was not required for cross examination. He swore that he could not recall the Respondent telling him at the November 1998 meeting that he was a solicitor. He had made an appointment to see a solicitor and had met the Respondent at his office. He gave evidence that he thought throughout the course of the matter that the Respondent was a solicitor. He exhibits to the affidavit a copy of the Client Care Procedures document which he says was given to him by the Respondent on 11 November 1998. That document is part of Exhibit A to his affidavit and the Client Care Procedures document has the following paragraph under the heading "Solicitors":

"Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by *[the Respondent]*. The Supervising Partner is SJJ."

Exhibit B to his affidavit is a Client Agreement which he signed 15 June 2000. He signed that agreement when he met with MP whom he understood to be a solicitor. The schedule to that agreement had in item 7 under the heading "Persons who will perform your work" the entry against professional staff of "*[the Respondent]*/MP".

Further, the Client Care Procedure document annexed to the Client Agreement has under the heading "Solicitors" the entry "Your matter is being handled by *[the Respondent]*/MP a solicitor of this firm. The Supervising Partner is SJJ."

Exhibit F to the affidavit is a further client agreement signed 4 December 2000. In that document in item 7 of the schedule under the heading "Persons who will perform your work" there is an entry against professional staff "*[the Respondent]*, AO, MP." Given that there are no oral representations, the only matter which needs to be determined is whether the three alleged written representations to which we have referred were made knowingly by the Respondent. We will deal with this issue later in these reasons.

Evidence of MK

MK gave evidence at paragraph 4 of his affidavit which was filed on 4 October 2002 that he understood from his conversation with the Respondent during the initial meeting on 2 November 1998 that the Respondent was a solicitor. He said "he did not say anything to cause me to doubt that he was qualified." He also gave evidence that the Respondent gave him a business card during the course of his meeting with him but he cannot now recall whether it had the words "Solicitor" or "Lawyer" printed on it. In cross examination he said he did not have the card any longer. He asked whether the card might just have had the Respondent's name on it and his answer was "I am not quite sure, but I had someone with me at the time."

MK was shown the form of a card which did not have the title Lawyer or Solicitor on it and agreed that the card he was given by the Respondent "looked like that".

MK also agreed that he signed a Notice of Accident form in the Respondent's presence. He was cross examined about that issue and denied that the Respondent told him he was not admitted as a solicitor and so someone else would need to witness his signature on the notice. However after strenuous cross examination, he did concede that someone else did come into the room and did witness his signature. He could not recall whether that was a male or female person. He certainly did recall once when someone had to witness his signature. He was not sure about the date which that occurred and said "I have no ideas with what dates, I don't keep dates in mind and I don't write them down".

After having read MK's affidavit and heard his cross examination we cannot be convinced on the appropriate standard (*Brigginshaw*) that the Respondent said anything to him to the effect that he (the Respondent) was a solicitor in the first meeting they had on 2 November 1998.

It may be that MK was led to believe that the Respondent was a solicitor by virtue of other issues but we are not convinced there was anything in his conversation with the Respondent on 2 November 1998 by which the Respondent represented that he was a solicitor or lawyer.

We are not convinced that he was given a business card at that meeting which had the Respondent's name on it with the words "Solicitor" or "Lawyer" printed on it. On the totality of MK's evidence there does not appear to us to be reliable evidence to the effect that there was an oral representation by the Respondent at any time to MK that he (the Respondent) was a solicitor or lawyer.

Generally we found MK to be less than impressive and his cross examination in relation to the issue of the witnessing of Notice of Accident form by a third party demonstrated to us that MK was more intent on giving evidence that advanced his own position or that of the prosecutor than being intent on listening to the question and giving an honest, frank and open answer. On the issue of any oral representation where MK's evidence differs from that of the Respondent we prefer the Respondent's evidence.

It follows that the only residual importance of MK's evidence is as to whether any of the written representations made were made knowingly by the Respondent. Those written representations are as follows:

1. In Exhibit C to MK's affidavit filed 4 October 2002 under the heading "2. Persons who will perform the work" against the title "Professional Staff" the following appears:
 "*[the Respondent]*, AO, ST or DH"
2. In Exhibit F to MK's affidavit which is the Client Agreement dated 19 January 2001 in the schedule at item 7 under the heading "Persons who will perform your work" the following appears:
 "Professional Staff:
 [the Respondent], AO, MP, DG"
3. Again in Exhibit F to the same affidavit in the Client Care Procedures document under the heading "Solicitors" the following paragraph appears:
 "Your matter is being handled by *[the Respondent]*, a solicitor of this firm."

Evidence of JMF

JMF swore an affidavit which was filed 9 October 2002. In her affidavit JMF made no assertion that the Respondent made any oral representation to her that he was a solicitor or a lawyer.

She swore in paragraph 2 that at some time after the initial meeting on 6 August 1997 the Respondent handed to her a business card which had the name "CB" on it. She swore that in her presence the Respondent deleted the name "C" and added his own. The business card is exhibited as Exhibit A to JMF's affidavit.

She consulted BJ concerning a motor vehicle property damage claim and it was necessary for her to fax a repairer's quote through to the Respondent so he could action the matter further. She agreed that she needed to fax the repairer's quote in to the Respondent. She could not recall whether they were the circumstances in which she obtained a card.

When further cross examined about the issue she conceded "I suppose the card was given to me for the fax number. However I don't recall the circumstances in which it was given." Of course she also conceded that at some stage she had in her possession a card with the fax number underlined on it.

The facsimile number is certainly underlined on the card which is Exhibit A to her affidavit.

In relation to this issue and in relation to her whole cross examination, we took the view that JMF was an honest witness and she was prepared to make appropriate concessions in cross examination. At the end of the day we think it more likely that the card was in fact given to her by the Respondent to facilitate her faxing the motor vehicle repairer's quote in to him so that he could action the matter further.

In that sense we tend to the view that it happened on the spur of the moment and that it was not meant to be a representation by the Respondent that in fact he was a solicitor. We take the view that it was simply a convenience step taken by the Respondent to facilitate the conduct of the matter he was handling for JMF.

We cannot be convinced on the appropriate *Brigginshaw* standard that it was a deliberate attempt on the Respondent's part to hold himself out as a solicitor when he well knew he was not one.

Leaving aside the issue of the business card the remaining evidence of JMF goes only to alleged written misrepresentations by the Respondent that he was a solicitor. They are contained in the following written documents so far as they relate to JMF:

1. In Exhibit C to the affidavit of JMF filed 9 October 2002 in the Client Care Procedures document under the heading "Solicitors" the following appears:
 "Your matter is being handled by *[the Respondent]*, a solicitor of this firm who will be assisted in the day to day conduct of the matter by SJJ. The Supervising Partner is SJJ."

We deal with this issue later in these reasons.

Evidence of GRF

GRF swore an affidavit filed 23 October 2002. He gave evidence that he was referred to BJ by another solicitor. He cannot recall the exact date when he consulted BJ but his initial appointment was with the Respondent whom he met in February 1996 at BJ's City office. He gave evidence that at the meeting he was handed a number of documents by the Respondent to sign. Exhibit A to his affidavit is a copy of an authority by which he appointed BJ.

He gives evidence that the Respondent advised him that the rate of \$200.00 per hour, which is referred to in Exhibit A, applied to him the Respondent. He also explained to him the hourly rate which applied to a clerk of \$150.00.

The Respondent is said to have put a box around the \$200.00 per hour rate in the document Exhibit A during the initial meeting (see paragraph 5 of GRF's affidavit). GRF said he was not sure whether the Respondent used the word "lawyer" or "solicitor" but that he certainly said to him at the initial meeting "I am the [lawyer/solicitor] who will be handling your claim."

At paragraph 7 of the affidavit GRF also recalled having had a conversation with the Respondent wherein the Respondent advised him that his file was going to be transferred to the Respondent's "law clerk". GRF gave evidence about his criminal record and the fact that he had been jailed. He also confirmed in cross examination that he was a heroin user and that after being through a rehabilitation clinic and being in for hospital treatment he "ended up on methadone tablets for pain relief". He denied that he was on methadone medication for heroin addiction. He also accepted that he had used cannabis/marijuana to relieve pain.

GRF was cross examined at length about the nature of his complaint against BJ. He had complained to the Queensland Law Society by way of a written complaint dated 26 January 2002 which was Exhibit 31 before the Tribunal. The witness agreed with Mr Sofronoff in cross examination that there was nothing in the complaint to the Law Society to the effect that the Respondent had told him that he was a solicitor or lawyer when in fact he wasn't. He agreed he was very angry at the time of the complaint.

In his manner of answering questions under cross examination the Tribunal gained the impression that GRF was somewhat unreliable. Although he generally "stuck to his guns" the Tribunal formed the view that he was more interested in answering questions that would advance his own position or that of the prosecutor than in listening to questions and giving a simple, honest and direct answer. Before we convict the Respondent on any charge, we must be satisfied to the necessary standard (*Brigginshaw*) that evidence exists to support each of the elements of the charge. We certainly cannot be satisfied to the appropriate standard that the Respondent represented orally to GRF that he was either a lawyer or solicitor who would be handling GRF's claim. For the reasons we have expressed we reject the evidence contained in paragraph 6 of GRF's affidavit.

We do not consider the matters referred to in paragraph 7 of the affidavit as proving there was any representation on the Respondent's part to GRF that the Respondent was a solicitor. It may well be that the Respondent indicated that the file was going to be transferred to a "law clerk". We are not satisfied on the *Brigginshaw* standard however that by making that statement the Respondent was necessarily making a representation that he was a solicitor when he knew he was not.

It follows that we reject any evidence by GRF that there was any oral representation by the Respondent to the effect that the Respondent was a solicitor or lawyer. The remaining relevance of GRF's evidence is that it supports the contention by the Queensland Law Society that there were written representations made by the Respondent knowingly that he was a solicitor when he well knew he was not. The relevant alleged documentary representations are as follows:

1. In Exhibit B to GRF's affidavit filed 23 October 2002 in the second paragraph headed "Persons who will perform the work" the following appears:

"Professional Staff:
[the Respondent]"

We will deal with that issue later in these reasons.

Affidavits of MYA and SDN

MYA swore an affidavit filed 27 November 2002 but it was reported to us that he was out of the country and could not be contacted. He could not therefore be cross examined and it is not possible for the Law Society to rely on his evidence. The same applies to SDN who simply could not be contacted. She was not cross examined and the Law Society cannot rely on the evidence contained in her affidavit.

Evidence of DRLM

This affidavit was filed on behalf of the Respondent on 18 February 2003. DRLM is an airline services operator who has known the Respondent for some 12 years.

They apparently met by reason of a common association with boxing.

DRLM swore that he knew the Respondent is not a solicitor and has known that since shortly after they first became acquainted. He recalled having two telephone conversations with the Respondent relating to a boxing match between DO who he says was a boxer whom the Respondent managed and AM.

The bout took place in Sydney on 3 June 2002. His conversations with the Respondent took place before and after the fight. He did not ever recall having a conversation with the Respondent in relation to gloves to be worn by either boxer during the fight. DRLM swore that under the terms of the match AM's camp ought to have paid DO \$50,000.00 before the commencement of the bout. They did not do so.

He recalls having several conversations with the Respondent immediately before the fight and subsequently about payment of the sum of \$50,000.00. The payment was apparently made some 10 days after the match. He recalls having a telephone conversation with the Respondent about the non payment after the bout and at a time when the Respondent was in his Brisbane office. DRLM swore in paragraph 8 of his affidavit as follows:

"During the conversation [the Respondent] indicated in strong terms that legal action for recovery of the \$50,000.00 might be commenced. He said words to this effect, 'you know who we are' by which I understood him to be emphasising the fact that he worked for a firm of solicitors and that threat of legal action ought to be taken seriously. [The Respondent] did not during this conversation, describe himself as a solicitor or a lawyer."

In cross examination DRLM confirmed that the size of gloves was laid down by the rules. Below a certain weight boxers wear 8 ounce gloves and above that weight they wear 10 ounce gloves. He said this was determined by the rule book.

He did however concede that there could be some issue about what brand or type of glove used. For example, he said that some particular boxers like the Mexican style glove which he described as like 'a puncher's glove' if the boxer were a hard hitter. He said that other people did not like that particular type of glove. He conceded that it has been known to happen that this can cause differences between opposing camps in a lead up to a fight. As to whether he spoke to the Respondent on 29 May he could not recall, but he confirmed that he had several discussions with him by phone before the fight.

The relevance of DRLM's evidence really goes to the evidence given by the witness BMK. It is not clear to us whether the conversation which BMK refers to in his evidence which occurred during the initial meeting he had with the Respondent on 29 May 2002 was with DRLM or not. We have already indicated that in his manner of giving evidence BMK was impressive.

We cannot say the same about DRLM. Even DRLM's written account of the conversation in his affidavit appears to us to be reasonably broad and imprecise. He was equally broad and imprecise in the evidence he gave orally before us. In contrast to this, BMK's evidence was direct and precise. It was clear in its delivery and BMK appeared quite definite about the detail to which he had sworn in his affidavit and could not be shaken from the detail. Where BMK's evidence differs from DRLM's, we prefer the evidence of BMK.

Evidence of RFM

Two witnesses were called by the Society who were not clients of the firm. RFM had been employed by the firm from January 1996 to June 1997 and TJO had been employed by the firm from April 1996 to April 1999. Both had been secretaries in the section of the firm headed by SJJ and were directly responsible to the Respondent and performed work for him.

Both of these witnesses worked at the firm during the period clients were asked to sign authority to act documents which had preceded the introduction of the formal client agreement document. Clients were also provided with a client care procedures document.

RFM gave evidence that she had prepared client packages for new clients that included the authority to act and the client care procedure document. She gave evidence that at some time she could not identify she noticed that one of the documents described the Respondent as a solicitor. By reference to documents exhibited to the affidavits of witnesses who were clients of the firm during the period that clients signed the authority to act documents and were given a separate client care procedures document, it would appear that the client care procedure document contained the following information:

"SOLICITORS

Your matter is being handled by SJJ, a Partner of this firm, who will be assisted in the day to day conduct of the matter by [*the Respondent*]. The supervising partner is SJJ."

The Tribunal heard evidence from several past and present staff members of the firm that the secretarial staff who created the client care procedures document for new clients did not use one central precedent for this document but used several sources for the document and typed in the names of the staff members who the secretarial staff believed were to be involved in acting for the new clients. This ability to use several sources for the creation of the client care procedures document resulted in variations that are seen between the documents exhibited to the affidavits of TLW, RKR and JMF.

RFM was employed by the firm when the client care procedures document for RKR was prepared. That document contained the following:

"SOLICITORS

Your matter is being handled by [*the Respondent*], a Solicitor of this firm, who will be assisted in the day to day conduct of the matter by SJJ. The supervising partner is SJJ."

There is no evidence that RFM was referring specifically to the client care procedures document given to RKR but it is likely that she was referring to this version of the document created erroneously by another staff member. She gave evidence that she brought to the Respondent's attention that there was a document in which he was described as a solicitor but he told her that it was alright to send it out as long as SJJ was referred to as the supervising partner.

The Respondent denies that he gave this any such direction to RFM. In view of the fact that at least 2 complainants (RKR – September 1996 & JMF – October 1997) have produced copies of client care procedures documents in which the words appear "*[the Respondent]*, a Solicitor of this firm" created during or closely after the time that RFM worked at the firm, the Tribunal accepts the evidence of RFM that she saw these type of documents in which the Respondent was described as a solicitor.

The Tribunal finds that RFM was a truthful witness who tried to recall as accurately as possible events that had taken place some 7 years ago. The Tribunal accepts her evidence that she told the Respondent of the misdescription of him as a solicitor and accepts her evidence that the Respondent told her to send out the documents containing that misdescription. The difficulty for the Tribunal arises from the fact that it was not proven that any of the complainants in this charge received the documents that RFM was directed to send out by the Respondent.

RFM also gave evidence that in about mid 1996 she had a conversation with the Respondent about business cards. The Tribunal accepts the evidence of RFM that in that conversation she was told by the Respondent not to tell clients that he was a managing clerk and to tell clients that he was a lawyer if they asked about his status. However, there was no evidence that RFM actually told any clients that the Respondent was a lawyer.

Evidence of TJO

TJO gave evidence that she overheard a conversation between the Respondent and two secretaries when the Respondent told the secretaries to tell clients that he was a lawyer if they asked about his status. The Tribunal considers that TJO was a truthful witness. There was no evidence that TJO actually told clients that the Respondent was a lawyer during the time that she was employed by the firm.

Evidence of SEV

The Respondent called evidence from 3 former and current secretarial employees of the firm. SEV had been employed by the firm from August 1995 to January 2001. For most of that time, she was secretary to the Respondent. Her evidence was given in a straightforward manner and the Tribunal accepts that her evidence was truthfully given. She gave evidence that she had never been told by the Respondent to describe him as a solicitor or as a lawyer and that she had never heard the Respondent describe himself using either the word solicitor or lawyer.

SEV gave evidence that when she first started working for the Respondent, she would compile the initial documents that were given to new clients by the Respondent. Part of those documents were the authority to act form and the client care procedures document. These documents had been photocopied by the previous secretary working for the Respondent and SEV used to place the photocopied documents in the bundle of initial documents given to clients.

SEV gave evidence that in 1996 or 1997 she became aware that the Respondent was described as a solicitor in the client care procedures document and by then she knew that he was not a solicitor. She gave evidence that she could not remember speaking to anyone about the error but that she just corrected the document on the office precedent used by her.

Although she was working for the Respondent in 1998, she gave evidence that she was unaware that a complaint had been investigated by the Queensland Law Society in that year that the Respondent had held himself out to be a solicitor to a client.

SEV gave evidence that she knew of a few occasions in 2000 when the Respondent told her that he had been described as a solicitor in client agreement documents sent to clients. She had not prepared the documents herself as they had been created by other secretaries who did work for the Respondent. SEV gave evidence that these misdescriptions were errors as the secretaries in question had not been aware that the Respondent was not a solicitor. There was no evidence that the Respondent corrected the erroneous description given to clients in those specific cases as the evidence was only to the effect that the Respondent told SEV that the errors were not to occur again.

SEV gave evidence as to the changes made in the format of the initial client documents over the time she was employed by the firm. According to one of the documents in exhibit SEV1 to her affidavit, by August 1999 the authority to act form had been superseded by a client agreement form but the client care procedures document was still a separate document. In the initial version of the client agreement, the Respondent was described as part of the professional staff handling a matter for the client and his name still appeared under the heading "SOLICITORS" in the client care procedures document.

SEV gave evidence that in 2000 the client care procedures document was incorporated into the client agreement. In about May 2000 there was a new form of client agreement created that set out the information in columns and set out the cost information in a schedule. In this form, a dialogue box appeared on the secretary's screen at the places in the document where information was to be added to the fixed text. SEV gave evidence that in the paragraph headed "SOLICITORS" in the client care procedures part of the document, it was her practice to type in the Respondent's name and the names of the professional staff in his section. In doing so, the paragraph appears in the hard copy document with the words "a Solicitor of this firm" after the names she had typed in the dialogue box.

SEV gave evidence that after using the new client agreement for some time, she noticed that the fixed text wrongly described the Respondent as a solicitor. She raised the error with SJJ who instructed SEV to delete the words whenever the Respondent's name was inserted in that part of the document. SEV gave evidence that she subsequently did so herself but she found out that the error was repeated by other secretaries who created the new client agreement sent out to clients when these errors were brought to her attention by the Respondent later in 2000 on the occasion referred to earlier.

Evidence of AKB

Evidence was given by AKB. She is a current employee of the firm. The Tribunal considers AKB to be a truthful witness and accepts the evidence she gave. In 2000 she was assigned to work for a solicitor in the personal injuries section of the firm. AKB gave evidence that in her role she prepared client agreements which were sent or given to clients. Although she knew the Respondent was not a solicitor, she did not realise that there was a distinction between a solicitor and a managing law clerk. As a result, she did not have that distinction in mind when she prepared client agreements that referred to the Respondent as a solicitor.

AKB gave evidence that she was not told by anyone how to describe the Respondent in the information added to the fixed text in the new client agreement in force from May 2000.

Evidence of JMK

JMK is a former employee of the firm. The Tribunal considers that she was a truthful witness. JMK gave evidence of her practice in preparing client agreements by either entering information into a current client agreement and then saving over the document for a new client or after 2001, by using the central client agreement precedent and adding in information using dialogue boxes and retaining the fixed text of the precedent document. She knew that the Respondent was not a solicitor.

JMK gave evidence that she did not check the fixed text of the precedents as she assumed that the text was correct. She gave evidence that she knew that the firm's precedent's co-ordinator had meetings with SJJ and the Respondent to discuss the precedents used in the personal injuries section. She gave evidence that no one told her to change the fixed text so that it did not describe the Respondent as a solicitor.

Evidence of SBW

The Respondent called evidence from past and current staff members involved in the creation of precedents for the client agreement documents. SBW has been employed by the firm since October 2000. The Tribunal considers that SBW is a truthful witness. She gave evidence that she created the system whereby information was entered into client agreements by way of dialogue boxes. She gave evidence that at some time, at best described as by April 2001, she changed the client agreement precedent to remove the words "a solicitor of this firm" from the first sentence in the paragraph headed "SOLICITORS" in the client care procedures section of the client agreement. She also gave evidence that in November or December 2001 she changed the heading of that paragraph from "SOLICITORS" to "PROFESSIONAL STAFF".

Evidence of DJF

Evidence was given by DJF, a solicitor employed by the firm since August 1998. The Tribunal considers DJF to be a truthful witness. He was the person delegated by the partners of the firm to create the client agreement in 1998. He did not create the client care procedures document as that document had been created before DJF started with the firm.

DJF gave evidence that in drafting the early forms of the client agreement he did not turn his mind to the fact that the firm employed law clerks, including the Respondent. However, he had this fact in mind by the end of 1999 when he produced a revised client agreement as a firm precedent. He exhibited the late 1999 version as exhibit DJF2 to his affidavit sworn 17 February 2003. However, this version of the client agreement does not appear in any of the client agreements exhibited by the complainants who appeared as witnesses for the Queensland Law Society.

DJF gave evidence that after SBW was employed by the firm in October 2000, he has had little to do with the ongoing development of the firm's client agreement. DJF gave evidence that the Respondent had nothing to do with drafting the client agreement during the period that DJF had that responsibility. DJF also gave evidence that no one had told him that a complaint had been in 1998 to the Queensland Law Society about documents in which the Respondent had been described as a solicitor and that he had not discussed his drafting of any versions of the client agreement with the Respondent or with SJJ.

DJF gave evidence that he was the person who had changed "solicitor" to "professional staff" in paragraph 2 of the client agreement in the version that was used from late 1999 to May 2000. He was not responsible for the next version of the client agreement that was used from May 2000. In that version, the heading "SOLICITORS" appeared in the client care procedures section of the client agreement rather than Professional staff.

DJF gave evidence that he considered that the Respondent was properly described as a member of the professional staff as he was a managing law clerk and the term "professional staff" would include law clerks as well as qualified solicitors.

Evidence of GM, DAB, BJP and LKF

The Respondent called evidence from four staff members who attested to the fact that they had all witnessed the signatures of clients on documents for clients of the Respondent. The Tribunal accepts that the evidence given by GM, DAB, BJP and LKF was generally truthfully given.

Evidence of BJB

The Respondent called evidence from a solicitor employed by the firm, BJB. He has been with the firm since May 1994. The Tribunal considers BJB to be a truthful witness. BJB works in the personal injuries section of the firm. He gave evidence that he has never heard the Respondent describe himself as a solicitor. He gave evidence that he has been called on by the Respondent to witness signatures of the clients of the Respondent.

BJB gave evidence about the occasion when GJH was introduced to the Respondent in 1999 at a bar. He recalled the introduction when a M introduced the Respondent to GJH using words that identified the fact that the Respondent worked at BJ. BJB did not hear any words that suggested that the Respondent was a solicitor. BJB did not hear any words said by the Respondent to the effect that the Respondent was third ranked at the firm, that he was in line for a partnership or that the only thing holding him back from becoming a partner was the completion of a practice management course. BJB conceded that he was not with the Respondent the entire time.

Evidence of SJJ

The Respondent called evidence from SJJ, a partner of the firm. He gave evidence of the investigation conducted by the Queensland Law Society in 1998 into a complaint that the Respondent had held himself out as a solicitor. SJJ had written to the Society in which he admitted that the misdescription of the Respondent as a solicitor in a client care procedures document was an error that the firm had corrected. SJJ submitted that the Respondent had been instructed by the firm not to hold himself out as a solicitor and that the Respondent had given an assurance that he has not done so. SJJ suggested that an agreement be reached with the Society on the form of words to describe the Respondent in the future. SJJ gave evidence that the suggested form of words was not implemented as the Society had not responded to the suggestion. SJJ gave evidence that he did not unilaterally make the suggested change as he believed that he could not do so without the agreement of the Society. He considered that the complaint had been resolved when he heard nothing further from the Society.

SJJ gave evidence that SEV told him in 2000 that the client agreement contained an error in that it would describe the Respondent as a solicitor if his name was inserted in the client care procedures paragraph. SJJ gave evidence that he told SEV to delete the words "a solicitor" when inserting the Respondent's name into that paragraph.

SJJ gave evidence as to a further complaint lodged with the Queensland Law Society in August 2001 alleging that the Respondent had held himself out as a solicitor to GJH. He gave evidence that that complaint was resolved after the firm submitted that the misdescription of the Respondent as a solicitor in the client agreement in April 2000 had been an error and that the firm had put into place procedures to ensure that this type of error would not be repeated. SJJ then asked SBW in November 2001 to ensure that the Respondent was not described as a solicitor in the firm's precedents.

During cross examination, SJJ conceded that he was unaware of any client agreement documents that described the Respondent as a managing law clerk. SJJ gave evidence that he did not make any changes to the client care procedures part of the client agreement in late 1998 as he considered there was no need to do so as the complaint raised by the Society in July 1998 had been based on an error in the firm's documents and SJJ was satisfied that that error would not be repeated in the documents of the firm.

SJJ gave evidence that following the 1998 complaint, the staff at the firm were directed that they must not hold out the Respondent as a solicitor. SJJ delegated to DJF the task of preparing the form of client agreement used by the firm from the latter part of 1998. SJJ gave evidence that he did not look at the client agreement after that time. The Tribunal considered that SJJ was generally a truthful witness who was prepared to admit that his firm had inadvertently held out that the Respondent was a solicitor when this was not the case.

Evidence of the Respondent

Oral Representations

As to alleged oral representations, the Respondent swears in his affidavit filed 18 February 2003 that he did not say to WKS that he was a solicitor, he did not introduce himself to GJH as a solicitor or make the other statements attributed to him in paragraph 1(h) of the amended Notice of Charge, he did not say in the course of a telephone conversation in BMK's presence (mentioned in paragraph 1(m) of the amended Notice of Charge) that he was a solicitor, he did not tell RKR that he was a solicitor and he did not tell SW that he was a solicitor. See in these respects, paragraphs 12, 13, 14, 16 and 17 of that affidavit.

For the reasons already expressed we prefer the Respondent's evidence to that of WKS, RKR and SW. We also prefer the Respondent's evidence in preference to GJH's evidence, but in respect of BMK's evidence we accept BMK's evidence over the Respondent.

Written Representations

The Respondent says at paragraph 3 of his affidavit "I know that lawyers and their clerks must... never willfully mislead any client; and that they must take care that statements in important documents such as costs agreements are accurate." He acknowledges that statements to the effect "your matter is being handled by [*the Respondent*], a solicitor of this firm" are "incorrect and clearly so" (see paragraph 4 of his affidavit).

He also acknowledges that there are client agreements or the like which mention him (and others) as persons who will be handling the matter. He says that although the text in which that is done "does not contain any sentence asserting that I was a solicitor, the text appears under a heading 'SOLICITORS', I accept that this would convey to many readers that I was a solicitor, though in a less direct way."

The Respondent accepts that although he did not prepare the documents, he had a personal responsibility which he did not discharge to see that the documents did not contain those or other incorrect statements.

The Respondent says he did not wilfully or knowingly prepare or authorise or direct the preparation of any statements in the documents to the effect that he was a solicitor (see paragraph 8 of his affidavit). He also refers to other editions of BJ Client Agreements where he has been listed as a member of professional staff. He says that he honestly does not believe that this involves holding himself out as a solicitor, or any mischaracterisation or misdescription of him.

He claims as a Managing Law Clerk to be a member of the professional staff of the firm.

In relation to the business card handed to JMF (see paragraph 1(uu) of the amended Notice of Charge) the Respondent swears that he did not in giving that card to JMF intend to hold himself out as a solicitor. For the reasons expressed earlier, we accept his evidence in that respect.

Importantly, the Respondent swears at paragraph 10 of his affidavit as follows:

"In every case involving Client Agreements and the like I failed to notice the misdescription of my status. I ought to have noticed it and corrected the error. My oversights were a failure to pay more than cursory attention to extensively used precedent forms either in discussions with clients, or while checking correspondence and enclosures prepared by persons to whom I had delegated the day to day handling of files, or by members of the secretarial staff. Those failures were due to a large workload, and to my too readily assuming that these precedent forms contained no errors. I did not participate in the development of these precedent forms (which are, chiefly, a client care procedures document and forms of client agreement)." (see paragraph 10 of his affidavit).

Particulars of the Charge – Oral Representations

The first of the oral representations referred to in the Notice of Charge is contained in paragraph 1(d) of the particulars. Because we accept the Respondent's evidence and reject WKS's evidence, we do not accept that that oral representation was made by the Respondent.

The second of the alleged oral representations is referred to in paragraph 1(g) of the particulars and 1(h) of the particulars. Because we accept the Respondent's evidence and reject GJH's evidence of the alleged oral representation, we do not accept that that oral representation was made by the Respondent.

The next reference to oral representations in the particulars is paragraph 1(n) at subparagraphs (i), (ii) and (iii). As indicated, we accept the evidence of BMK in relation to the meeting between him and the Respondent. Where that evidence conflicts with that of the Respondent, we would prefer BMK's evidence. It follows that the charge is made out in respect of the allegations referred to in paragraph 1n of the Notice of Charge.

The next of the oral representations is referred to in paragraph 1(r) of the charge, in particular in subparagraph (i). As indicated, we reject the evidence of RKR where it conflicts with that of the Respondent. It follows we do not accept that the Respondent made the representation referred to in paragraph 1(r)(i) of the Notice of Charge.

The next of the oral representations attributed to the Respondent is the one referred to in 1(u) of the Notice of Charge. Because we prefer the evidence of the Respondent to that of SW in relation to what occurred at their meeting, it follows we do not accept that the Respondent made the representation attributed to him in paragraph 1(u) of the particulars.

As to paragraph 1(z) of the particulars, we accept that the Respondent told DRF at her meeting with him that he would charge for his services at an hourly rate of \$280.00 per hour but we do not consider that amounts to a representation that the Respondent was a solicitor.

The next evidence of potential oral representations by the Respondent contained in paragraph 1(ww) of the Notice of Charge, in particular (ii) and (iii) thereof. Whilst we accept that the Respondent may have told GRF that he proposed to charge for his services at the rate of \$200.00 per hour, we do not consider that amounts to a representation on the Respondent's part that the Respondent was a solicitor.

We have indicated where the Respondent's evidence conflicts with that of GRF, that we prefer the Respondent's evidence to that of GRF. Accordingly we do not accept that the Respondent told GRF at their initial meeting that the Respondent was the lawyer or solicitor who would handle GRF's claim.

Accordingly it follows that insofar as oral representations are alleged against the Respondent we find the only one made out is that which he made to BMK as particularised in paragraph 1(n)(i), (ii) and (iii) of the Notice of Charge. In regard to that once instance, we find that the Respondent wilfully and falsely held himself out as duly qualified to practice as a practitioner in breach of s5K(1)(b) of the *Queensland Law Society Act 1952*. We find the Respondent guilty in that respect.

The Alleged Written Representations

The alleged written representations fall into four categories, as follows:

1. Under the written heading "Solicitors", a representation that "your matter is being handled by [*the Respondent*]".
2. Against the heading "Professional Staff", the inclusion of the name "*[the Respondent]*".
3. A reference to the Respondent as "a solicitor of this firm".
4. Under the heading "Solicitors", the inclusion of the statement "... who will be assisted in the day to day conduct of the matter by [*the Respondent*]."

Instances of the first category of representation are as follows:

1. Exhibit B to the affidavit of the witness RKR filed 27 February 2003 (**date of representation 18 May 2001**)
2. Exhibit D to the affidavit of the witness SW filed 4 October 2002 (as contained in the Client Care Procedures document) (**date of representation 7 December 2001**)

Instances of the second category of representation are as follows:

1. Exhibit E to the affidavit of the witness GJH filed 9 October 2002 (**date of representation 29 November 2000**)
2. Exhibit J to the affidavit of the witness GJH filed 9 October 2002 (as contained in the Client Agreement) (**date of representation 4 April 2000**)
3. Exhibit B to the affidavit of the witness RKR filed 27 February 2003 (as contained in item 7 of the schedule to the Client Agreement) (**date of representation 28 March 2001**)
4. Exhibit B to the affidavit of the witness SW filed 4 October 2002 (as contained in item 7 of the schedule to the Client Agreement) (**date of representation 16 June 2000**)
5. Exhibit D to the affidavit of the witness SW filed 4 October 2002 (as contained in item 7 of the schedule to the Client Agreement dated 2 January 2001) (**date of representation 2 January 2001**)
6. Exhibit C to the affidavit of the witness TLW filed 4 October 2002 (as contained in item 7 of the schedule to the Client Agreement) (**date of representation 10 July 2000**)
7. Exhibit B to the affidavit of MEZ filed October 2002 (as contained in item 7 of the schedule to the Client Agreement) (**15 June 2000**)
8. Exhibit C to the affidavit of the witness MK filed 4 October 2002 (**date of representation 28 March 2000**)
9. Exhibit C to the affidavit of the witness MK filed 4 October 2002 (**date of representation September 2000**)
10. The affidavit of the witness GRF filed 23 October 2002 (**date of representation 2 March 2000**)

Instances of the third category of representation are as follows:

1. Exhibit C to the affidavit of the witness WKS filed 9 October 2002 (as contained in the Client Care Procedures document) (**date of representation January 2001**)
2. Exhibit A to the affidavit of JJBS filed 12 February 2002 (as contained in the Client Care Procedures document) (**date of representation 10 April 2001**)
(Note that evidence of this is also contained in the affidavit of BJS)
3. Exhibit A to the affidavit of the witness RKR filed 27 February 2003 (as contained in the Client Care Procedures document) (**September 1996**)

4. Exhibit B to the affidavit of the witness SW filed 4 October 2002 (as contained in the Client Care Procedures document) **(16 June 2000)**
5. Exhibit C to the affidavit of the witness TLW filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation 10 July 2000)**
6. Exhibit B to the affidavit of the witness MEZ filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation June 2000)**
7. Exhibit F to the affidavit of the witness MK filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation September 2000)**
8. Exhibit C to the affidavit of the witness JMF filed 9 October 2002 (as contained in the Client Care Procedures document) **(date of representation 15 October 1997)**

Instances of the fourth category of representation are as follows:

1. Exhibit A to the affidavit of the witness EJW filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation October 1998)**
2. Exhibit A to the affidavit of the witness GJH filed 9 October 2002 (as contained in the Client Care Procedures document) **(date of representation 4 April 2000)**
3. Exhibit A to the affidavit of DSB filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation 3 July 1998)**
4. Exhibit A to the affidavit of DRF filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation June 1998)**
5. Exhibit B to the affidavit of DRF filed 4 October 2002 **(date of representation June 1998)**
6. The affidavit of TLW filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation 16 October 1998)**
7. Exhibit A to the affidavit of the witness MEZ filed 4 October 2002 (as contained in the Client Care Procedures document) **(date of representation 11 November 1998)**

First Category of Representation

We regard the statement “Your matter is being handled by *[the Respondent]*” under the heading “Solicitors” to be a representation that the Respondent is a solicitor. The issue then is in respect of the two instances referred to is whether the Respondent made the representation knowingly and wilfully.

Second Category of Representation

We regard the inclusion of the name “*[the Respondent]*” against the heading “Professional Staff” as potentially a representation that the Respondent was a solicitor. It remains for us to determine whether in each of the instances referred to the Respondent made the representation knowingly and deliberately as a representation that he was a solicitor when he knew he was not.

Third Category of Representation

We regard referring to the Respondent as a “solicitor of this firm” to be a representation that the Respondent was a solicitor. It is for us to determine whether in each of the instances referred to the Respondent made the representation knowingly and deliberately.

Fourth Category of Representation

We regard the inclusion of the words “... who will be assisted in the day to day conduct of the matter by *[the Respondent]*” under the heading “Solicitors” to be potentially a representation that the Respondent was a solicitor. It remains for us to determine whether in each of the instances where the representation was made, the representation was made knowingly and deliberately by the Respondent.

Written Representations

In listing the four types of written representation made, we have in respect of each instance given a date of when it seems the representation was made. These various dates either emerge from oral evidence or the affidavit material filed and in some instances are taken directly from the particular exhibits.

To prove the charge, the Society must prove that the Respondent gave the specified documents to the named clients, that he knew that he was described as a solicitor in each of those documents and that he intended to hold out by the documents that he was a solicitor.

Because we accept RFM’s evidence over that of the Respondent about their conversation in mid 1996 we accept that by mid 1996 the Respondent was aware that documents were going out to clients stating that he was a solicitor. This awareness was reinforced in 1998 by the complaint to the Society and in 2000 by the conversations the Respondent had with SEV.

The Respondent denies that he knew that he was described as a solicitor in the documents specified in the notice of charge. The Respondent swears that he did not wilfully or knowingly prepare or authorise or directed preparation of any of the offending documents. He accepts that he ought to have noticed the errors and corrected them. The difficulty we have is that in any particular instance we do not have the proof required to establish to our satisfaction that the Respondent had the requisite knowledge and the requisite wilful intent. There is some evidence that the Respondent had general knowledge of false representations having been made but not of the actual written representations particularised in the notice of charge.

His evidence is that he did not read through the client care procedures document or the client agreement when these were handed over to clients by him. His long term secretary, SEV, gave evidence that the Respondent did not generally read through the client care procedures documents or client agreements before he saw the clients. DJF who drafted the initial client agreement and later made changes to that document gave evidence that he did not discuss the wording of the documents that he had drafted with the Respondent.

The Society has urged the Tribunal to reject the notion that the Respondent did not know what was in each of the documents he handed over to the clients named in the notice of charge. After all, the Respondent was aware that he had been the subject of a complaint in 1998, his notice had been drawn on several occasions to errors in certain isolated documents by RFM and SEV and it argues that it is too incredible for the Tribunal to accept that the Respondent was not aware of the contents of the client agreements.

While it is accepted by the Tribunal that there was a systematic error in the firm's documents until November or December 2001 that placed the name of the Respondent in the paragraph headed "SOLICITORS", this particular error in the heading was not the focus of the 1998 complaint to the Society nor is there any reason for the Tribunal to find that this error was brought to the Respondent's attention unless it could be proved that he had read that part of the document himself and that he had understood that the error resulted in his being held out as a solicitor to his clients.

To the contrary, the evidence of the Respondent and of SEV is that the Respondent asked his secretary to delete any words that referred to him as a solicitor and she thought she had done so as a matter of her general practice. The Tribunal cannot make a finding that the systematic error was known to the Respondent as there is no evidence to support such a finding.

There is some evidence that the Respondent did read the contents of the client agreements with his clients. In paragraph 30(q) of his affidavit filed 18 February 2003, he swears that in his meetings with clients it was his practice to take out and explain to clients the provisions of the standard form client agreement. He then refers specifically to the one page authority to act form which had been in use by the firm until 1998 when a client agreement document was substituted for the authority to act form. He does not refer to taking the clients through any of the later versions of that document, including the client agreement or the client care procedures document which remained separate from the client agreement until early 2000 when it was incorporated into the client agreement.

There are several copies of authority to act forms exhibited to some of the affidavits filed by the Society that bear markings of the type that the Respondent gave evidence he made on client agreements while going through the agreements with clients – see paragraph 30(r) as to circles around the hourly rate.

However there is no evidence to satisfy the Tribunal that the Respondent had specifically discussed that part of the client agreement with any of the complainants that expressly referred to him as a solicitor and none of the witnesses called by the Society gave evidence that the Respondent specifically drew their attention to that particular paragraph in the client care procedures document or client care procedures part of the later versions of the client agreement. If there was evidence available on this point, the Tribunal assumes that the Society would have asked its witnesses to give that evidence.

The difficulty we have is that in respect of each instance particularised in the notice of charge we must be satisfied on the *Brigginshaw* standard that the Respondent knew of the content of the written representation and that he allowed the document to be sent or handed to the respective client notwithstanding that knowledge. We must be satisfied of this before we can convict the Respondent of wilfully and falsely holding himself out in writing as duly qualified as a practitioner. We think the true position was that the Respondent was reckless about client care documents and retainer documents that were being dispatched from the office as early as mid 1996.

We therefore accept as truthful his evidence that he failed to pay more than cursory attention to the documents.

We are satisfied to the required standard that he had a reckless disregard of the content of such documents. For that reason we believe that although the various documents to which we have referred made false representations which could be interpreted as representations that the Respondent was a solicitor, we cannot be satisfied that in each particularised instance or any particular instance of a written representation that the Respondent knew of the content of the written representation and allowed the document to be dispatched or handed over notwithstanding that knowledge. We are left in considerable doubt that in each or any instance he had the requisite intent to misrepresent his status.

In the absence of evidence from the complainants that the Respondent pointed out any wording to them that expressly stated he was a solicitor and in the absence of any evidence that the Respondent knew that the documents he discussed with the named complainants were in fact documents that erroneously described him as a solicitor, the Tribunal is not prepared to find that the Society has proved that the Respondent wilfully held himself out as a solicitor in the documents specified in the notice of charge.

We are not satisfied that the charges in relation to the alleged documentary misrepresentations are proved. The relevant alleged misrepresentations are the ones set out in paragraph 1(e), 1(f), 1(i) 1(j), 1(k), 1(n), 1(r)(ii), 1(s), 1(v), 1(w), 1(y), 1(aa)(i), 1(bb), 1(ee), 1(ff), 1(gg), 1(hh), 1(ii), 1(jj), 1(kk), 1(mm), 1(nn), 1(oo), 1(tt), 1(ww)(i), 1(xx), 1(bbb), 1(ccc), 1(ddd) and 1(ggg).

It follows that we do not find the charge proved in respect of any instance of written misrepresentation.

Penalty and Costs

The proven misconduct of the respondent is a matter that this Tribunal takes very seriously. The respondent in holding himself out as a solicitor in May 2002 did so at a time when he was well aware of the wrongfulness of his conduct, and was well aware that he would have to face serious consequences in misrepresenting his status at that time.

The proposed conditions submitted by the respondent and the Queensland Law Society have been submitted to this Tribunal on the basis that they would be sufficient to ensure that the misrepresentation by this respondent does not re-occur, and will be sufficient to protect the interests of the public.

The Tribunal does not agree. The public is entitled to be protected against any person holding out that he or she is a practitioner when that is not the case. It is in the interests of the public that there is no confusion when members of the public engage legal services as to the status of the person whose services they engage. By merely imposing the orders that are proposed, it is likely that there will be no deterrent for other persons who are mindful of making similar representations of holding qualifications they do not hold.

The Tribunal found earlier on one instance in this case that the misrepresentation was proven, but given that the misrepresentation was very recent, and given that the respondent denied in these proceedings that he had made that representation on that occasion, the Tribunal considers that it is appropriate for the conditions to be imposed by this Tribunal to include some period of time when the respondent is not to be employed in a legal practice.

The Tribunal has taken into account the various references tendered on behalf of the respondent in making its decision on the length of time during which some prohibition should be imposed on the respondent in relation to his employment by a legal practice.

This Tribunal has a wide discretion as to costs under s6(u). The usual practice is that costs follow the event, and the Tribunal has found that the Charge is proven.

However, the Tribunal found in favour of the Society only in respect of one particular in the Amended Notice of Charge, namely sub-paragraph 1(n). The Tribunal considers that it should depart from the usual practice in this case. Because the Society was successful on the one issue, we think an order should be made in terms of paragraph 1 of the suggested orders proposed by the respondent.

The balance of the issues involved the remaining alleged oral representations and all of the written representations that were alleged. The Tribunal is of the view that it was appropriate for the Society to bring the Charges to hearing to test the evidence from all available witnesses.

So far as the balance of oral representations are concerned, the Tribunal could only determine these issues after hearing the cross-examination of the relevant witnesses. So far as the written representations were concerned, the Tribunal has regarded the respondent's conduct as reckless but not wilful.

The Tribunal could only come to a view on that question after hearing oral evidence. There was no particular part of the hearing that can be identified as not being necessary to deal with the proper issues that were before us. This situation does not fall within the circumstances that applied in the authorities to which we were referred by Counsel for the respondent.

It is appropriate to make no further order as to costs.

In relation to the further applications made before us in relation to suspension of the operation of the order, or in the alternative for a stay of the orders, the Tribunal is mindful of the fact that the respondent has had many weeks since the conclusion of the hearing of this Charge to prepare himself for the possibility that one of the outcomes may have been the termination of his employment.

The Tribunal considers, however, in the interests of the clients of the respondent, that some period is allowed for the orderly handover of the files presently being personally handled by the respondent. The Tribunal suspends the commencement of the operation of these orders for two weeks to allow that orderly handover to occur.

As a result of this, the Tribunal does not propose to deal with the application for a stay, apart from saying that under the Rules of the Solicitors Complaints Tribunal the respondent can make a written application applying to this Tribunal for a stay if he chooses to do so within seven days, from the date of today.

Because the commencement of the operation of the Order will be suspended for a two (2) week period, the Tribunal would expect that the Respondent would take no new instructions within that period of time.