

CITATION: *Legal Services Commissioner v Dingwall* [2017] QCAT

PARTIES: Legal Services Commissioner
(Applicant)
v
Jodi Leigh Dingwall
(Respondent)

APPLICATION NUMBER: OCR060-15

MATTER TYPE: Occupational regulation matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice DG Thomas, President**
Assisted by:
Patrice L McKay, Lay panel member
Joanne Collins, Legal panel member

DELIVERED ON: 21 March 2017

DELIVERED AT: Brisbane

ORDERS MADE:

1. The Respondent be publicly reprimanded.
2. The Respondent must pay a fine in the sum of \$2,000.00.
3. After obtaining an employee level practicing certificate, the Respondent must work under the supervision of another legal practitioner who holds a Principal level practicing certificate.
4. The Respondent is prohibited from applying for or obtaining a certificate to practice as a Principal for a period of 3 years after obtaining an employee level practicing certificate.
5. In the absence of an agreement as to the Applicant's costs within 30 days, it is ordered that the Respondent pay the Applicant's costs to be assessed on the standard basis on the Supreme Court Scale under the *Uniform Civil Procedure Rules* 1999 (Qld) in the manner that the

costs would be assessed were the matter in the Supreme Court of Queensland.

CATCHWORDS:

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where respondent failed to progress three client matters causing delay – where respondent made false representations in relation to the progress of three client matters – where respondent subsequently removed false representations from client file entries to reflect the actual progress in those matters and informed employer – where respondent was a junior lawyer of 5 to 6 years post-admission experience – where little to no supervision offered by firm – whether respondent's actions misleading and dishonest – whether whole of respondent's conduct amounts to professional misconduct – whether respondent a fit and proper person – whether imposition of a fine is an appropriate order

Legal Profession Act 2007 (Qld) ss 418, 419, 456, 461, 462

Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 32, 107

Adamson v Queensland Law Society Incorporated [1990] 1 Qd R 498

Legal Services Commission v Bussa [2011] QCAT 338

Legal Services Commissioner v Lim [2011] QCAT 291

Legal Services Commissioner v Madden (No. 2) [2008] QCA 301

Legal Services Commissioner v Mellick [2012] QCAT 333

Legal Services Commissioner v Mellick [2016] QCAT 155

Legal Services Commissioner v Ramsden [2006] LPT 010

Legal Services Commissioner v Slipper [2008] LPT 008

Legal Services Commissioner v Smith [2011] QCAT 126.

Legal Services Commissioner v Sorban [2009] LPT 5

Legal Services Commissioner v Williams [2005]
LPT 008

REPRESENTATIVES (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act').

REASONS FOR DECISION

- [1] The Commissioner has brought disciplinary proceedings against Ms Dingwall, and brings the following charges:

Charge 1 – Delay and Failure to Advance a Client's Actions (BRI Ferrier Matter).

Between 22 April 2013 and 17 September 2013, Ms Dingwall failed to progress a debt recovery application on behalf of her client, BRI Ferrier.

Charge 2 – False Representations (BRI Ferrier Matter).

Between 22 April 2013 and 28 August 2013, Ms Dingwall made false representations to BRI Ferrier about the progress of their matter.

Charge 3 – Delay and Failure to Advance Client's Matter (McMillan Matter).

Between about 25 October 2012 and 17 September 2013, Ms Dingwall failed to progress a debt recovery application on behalf of the trustees of the estate of the late Beryl Nancy McMillan.

Charge 4 – False Representations (McMillan Matter).

Between about 25 October 2012 and 17 September 2013, Ms Dingwall made false representations to the trustees about the progress of their matter.

Charge 5 – Delay and Failure to Advance Client's Actions (Williamson Matter).

Between about 21 September 2012 and 17 September 2013, Ms Dingwall failed to progress and file a discharge application within the New South Wales Supreme Court on behalf of Ms Lena Williamson.

Charge 6 – False Representations (Williamson Matter).

Between about 21 September 2012 and 17 September 2013, Ms Dingwall made false representations to Ms Lena Williamson about the progress of her matter.

- [2] The parties have filed a statement of agreed facts in which, essentially, Ms Dingwall admits the allegations made in the disciplinary application brought by the Commissioner.

Background

- [3] Ms Dingwall is 33 years of age and was admitted to practice on 28 May 2007.
- [4] At the time of the conduct which is the subject of the disciplinary proceedings, Ms Dingwall was an employed solicitor at Roberts Nehmer McKee. Ms Dingwall had 5 to 6 years post-admission experience.
- [5] Ms Dingwall took over the conduct of the three matters which led to the charges from other lawyers in the firm who were on leave.
- [6] In her role at Roberts Nehmer McKee, Ms Dingwall was often handed files of other solicitors during their absence (for example on maternity leave). In the case of the three matters there was no "handover" or any memorandum to inform her of the current status of the file. She felt she was expected to take the files without question regardless of her workload. Consistent with her personality, she simply did so.¹
- [7] At the time, it was difficult for Ms Dingwall to know who her immediate supervisor within the firm was because of the various areas of law in which she was practicing.²
- [8] Ms Dingwall says she had little or no supervision or feedback, no file reviews, no one to speak with about her matters and was not afforded opportunities to express her concerns with the work she was expected to undertake.³ At the time, Roberts Nehmer McKee had no formal risk management plan in place.⁴
- [9] Mr Rohan Armstrong, then a partner at Roberts Nehmer McKee, said "there were no critical dates in the context of limitation dates for those matters and at that time there was not a practice wide diary system. Checklists were not in use in relation to those matter types...the firm did not have a structured written policy specifying the regularity of communication with clients during the course of matters".⁵ Mr Armstrong acknowledged that the firm's review and supervision systems could have been more rigorous.⁶ At the time, Ms Dingwall was under stress because she fell pregnant and became aware of this in January 2013. She was anxious because of this, as she knew that

¹ Material relied upon by the respondent, filed 6 September 2016, paragraph 3.

² Affidavit of Jodi Dingwall, affirmed 28 April 2016, paragraph 24.7.

³ Ibid, paragraphs 27-30.

⁴ Letter from Rohan Armstrong to Queensland Law Society dated 18 July 2014, page 6 paragraph (d).

⁵ Ibid, page 6 paragraph (f) and page 7 paragraph (g).

⁶ Ibid, page 8.

there were already two other employees on maternity leave and felt that she was somehow letting the firm down.⁷

- [10] On Tuesday 17 September 2013, Ms Dingwall told Mr Armstrong, her supervising partner, of all of the relevant facts including her dishonesty.
- [11] Ms Dingwall later took steps to remove from the law practice electronic and hard copy client files, all information relating to the false representations which were made by her to the clients in relation to charges 1 and 2.
- [12] Ms Dingwall says the information was removed not to deceive but to have the relevant file reflect the stage to which the work had actually progressed.⁸
- [13] Ms Dingwall believes that the reason for the conduct was that she had a substantial workload and felt that it was just expected of her to take files without question – which she did without raising any issues.⁹ She felt that even if she had said something about the substantial workload it would have made no difference as no one else was available to do the work.¹⁰
- [14] Following the conduct, after having been given a show cause notice by Roberts Nehmer McKee about the matters to which the charges relate, Ms Dingwall resigned while she was on maternity leave from 17 September 2013.¹¹
- [15] Upon her return to paid employment, she applied for non-legal work because she felt bad about her conduct and the damage she had or potentially had caused to her reputation.¹²
- [16] Ms Dingwall was offered a role as a solicitor at KLP Family Law in March 2014 but was stood down upon receipt of the complaint in or about May 2014.¹³
- [17] In June 2014, Ms Dingwall commenced counselling with a clinical psychologist, Dr McIntyre. Dr McIntyre assessed Ms Dingwall as having an anxiety disorder and mood deficit, which was considered secondary to the anxiety disorder. Dr McIntyre considered that the primary cause of Ms Dingwall's conduct was an anxiety disorder which was "exacerbated by the conditions of work at Roberts Nehmer McKee in several important ways: role overload, workplace culture and inadequate supervision".¹⁴
- [18] On 2 June 2014, Ms Dingwall received a letter of demand from Roberts Nehmer McKee for a claim of \$30,722.36 on the basis that "your [Ms

⁷ Affidavit of Jodi Dingwall, affirmed 28 April 2016, paragraphs 33-35.

⁸ Affidavit of Jodi Dingwall, affirmed 28 April 2016, paragraphs 14-21.

⁹ Ibid, paragraphs 24.8 & 24.9.

¹⁰ Ibid, paragraph 34, 36.

¹¹ Ibid, paragraph 23.5.

¹² Ibid, paragraph 48.

¹³ Material relied upon by the respondent, filed 6 September 2016, paragraph 31 & 32.

¹⁴ Affidavit of Dr Duncan McIntyre, affirmed 10 June 2016, exhibit DM-03, paragraph 4.2.4.

Dingwall's] misconduct caused the loss incurred by our firm".¹⁵ By letter dated 16 June 2014, Ms Dingwall settled that claim by agreeing to pay \$15,000.¹⁶ Ms Dingwall borrowed these funds from close family members.¹⁷

- [19] Ms Dingwall was reemployed by KLP Family Law in about August 2014 as a paralegal after KLP had made its own enquires.¹⁸
- [20] Ms Dingwall participated in over 19 sessions with Dr McIntyre (the last appointment being on 16 August 2016). Dr McIntyre says that termination of his services was discussed with Ms Dingwall but that they had agreed to continue sessions as needed.¹⁹
- [21] Ms Dingwall suffered financially during the period she was unemployed as a result of the reduced income whilst employed in the capacity of a paralegal.

Characterisation of conduct

- [22] Unsatisfactory professional conduct includes conduct of an Australian Legal Practitioner, happening in connection with the practice of law, that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian Legal Practitioner.²⁰
- [23] Professional misconduct includes unsatisfactory professional conduct if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence.²¹
- [24] In considering the question of professional misconduct, Thomas J formulated the test as follows:

"the test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency."²²
- [25] Whether conduct amounts to professional misconduct or unsatisfactory professional conduct is a matter of degree, and must be determined based upon the facts of the individual case.
- [26] A solicitor is required to act with competence and diligence in the service of the client. A legal practitioner should not accept instructions unless the legal practitioner is confident that it will be possible to provide prompt and efficient service to the client. The neglect of a client's matters, with the associated delay which may occur, is capable of amounting to either unsatisfactory

¹⁵ Affidavit of Jodi Dingwall, affirmed 28 April 2016, Exhibit JDL-07.

¹⁶ Ibid, Exhibit JDL-08.

¹⁷ Material relied upon by the respondent, filed 6 September 2016, paragraph 36.

¹⁸ Ibid, paragraph 34.

¹⁹ Dr McIntyre Report dated 10 June 2016, paragraph 2.

²⁰ *Legal Profession Act 2007* (Qld), s 418.

²¹ Ibid, s 419.

²² *Adamson v Queensland Law Society Incorporated* [1990] 1 Qd R 498 at 508.

professional conduct or professional misconduct. This is because such conduct falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian Legal Practitioner.

- [27] In order for the conduct to be regarded as professional misconduct, it is necessary that there is a substantial or consistent failure to reach or maintain the reasonable standard of competence and diligence which is required. For example, gross neglect, particularly if it can be seen as part of trend or regular occurrence, is likely to be regarded as professional misconduct.
- [28] When a client loses rights as a result of the neglect of the legal practitioner (such as, for example, where a limitation period is allowed to expire) the conduct is more likely to be regarded as professional misconduct.
- [29] Of course, a temporary overload situation may occur in legal practices which may be corrected by a practitioner taking steps to make necessary arrangements so that the neglect ceases. It is essential that the practitioner is candid, honest and open in communications with clients about delays and the steps which the practitioner proposes to take.
- [30] In this case, the delay did not mean that limitation periods expired so that the clients were deprived of causes of action. The longest delay was over a period of around 11 months. The conduct in relation to the delay amounted to unsatisfactory professional conduct as it fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian Legal Practitioner but was not substantial or consistent, so was not professional misconduct.
- [31] However, in the circumstances of this case, the actions of Ms Dingwall went beyond mere delay as Ms Dingwall was misleading and dishonest in her communications with the clients.
- [32] The relationship between a legal practitioner and client must be founded upon utmost good faith and honesty. Misrepresentations in the nature of those which were made by Ms Dingwall undermine the fundamental basis of trust which underpins the legal practitioner/client relationship. Such conduct is very serious and falls short, to a substantial degree, of the standard of professional conduct observed or approved by members of the profession of good repute and competency and which is required of legal practitioners.
- [33] As to the amendment of the records, the Tribunal takes account of the fact that, in the same time period, Ms Dingwall provided full details of what she had done to her employer. Had her intention been to hide her conduct, it is logical to conclude that she would not have made this full disclosure. Her explanation is that she wanted to remove the risk that those taking over the matter would be confused as to the stage each matter had actually reached. In view of the fact that she made full disclosure to her employer, the Tribunal accepts the explanation.

- [34] Viewed as a whole, Ms Dingwall's conduct should be regarded as professional misconduct.

Sanction

- [35] Having found that the practitioner has engaged in professional misconduct, the Tribunal may make any order it thinks fitting, including the orders mentioned in section 456 *Legal Profession Act 2007* (Qld).

- [36] The orders mentioned in section 456(2) include:

- (a) an order recommending that the name of the Australian legal practitioner be removed from the local roll;
- (b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;
- (c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;
- (d) an order that imposes stated conditions on the practitioner's practising certificate;
- (e) an order publicly or privately reprimanding the practitioner;
- (f) an order that the practitioner pay a fine of not more than \$100,000;
- (g) An order that the practitioner undertake and complete a stated course of further legal education;
- (h) An order that for a stated period the practitioner engage in legal practice under supervision.

- [37] It is well established that sanctions imposed by the Tribunal are not imposed as a punishment but rather in the interests of protection of the community from unsuitable practitioners.²³

- [38] The Commissioner submits that the appropriate orders are:

- a) The respondent be publicly reprimanded;
- b) The respondent be ordered to pay a fine in the range of \$3,000 to \$5,000;
- c) The respondent practice under supervision of Ms Kate Pateman, Principal of KLP Family Law for a period of 2 years upon obtaining a practicing certificate;

- d) The respondent be prohibited from applying for or obtaining a certificate to practice as a Principal for a period of 5 years after obtaining a practicing certificate.
- [39] Ms Dingwall submits that the conduct is not such that would warrant a finding that she is not a fit and proper person to engage in legal practice or that her name ought to be removed from the role.²⁴
- [40] Ms Dingwall submits that the following orders are appropriate:²⁵
- No fine being imposed or alternatively a fine of between \$1,000 and \$2,000.²⁶ Ms Dingwall notes that she has already paid the sum of \$15,000 to Roberts Nehmer McKee.
 - Further or alternatively a period of supervision under Ms Kate Pateman or as the Tribunal would deem meet.
 - Paying the Commissioners costs, in due course, in the amount of \$1,500.
- [41] Dr McIntyre assessed Ms Dingwall as having an anxiety disorder and mood deficit which was considered secondary to the anxiety disorder.²⁷
- [42] Dr McIntyre believes that the anxiety disorder was exacerbated by the conditions of work at Roberts Nehmer McKee including work overload, workplace culture and inadequate supervision.²⁸
- [43] The stress of carrying her first child at the time may also have played a role in the misconduct.²⁹
- [44] Dr McIntyre is of the opinion that Ms Dingwall's mood deficit has "been remediated by application to therapy content and subsequent personal growth", and that Ms Dingwall is now "adaptively managing the stressors of a busy life—being a working mother with two kids".³⁰
- [45] Dr McIntyre further believes that the primary psychological factor (the anxiety disorder) has been remediated by her application to therapy.³¹
- [46] Dr McIntyre believes that where workflow demands approach the limits of her capacity to process cases within her allocated worktime, there can be confidence that she will assert herself to refuse to take on more cases, or ask for a greater allocation of administrative support.³²

²⁴ Material relied upon by the respondent, filed 6 September 2016, paragraph 12.

²⁵ Material relied upon by the respondent, filed 6 September 2016, paragraph 2.

²⁶ Reference is made to the decision in *Legal Services Commissioner v Sorban* [2009] LPT 5, where a fine of a similar amount was imposed.

²⁷ Dr McIntyre Report dated 29 August 2014, paragraphs 4.1 to 4.2.3.

²⁸ Ibid, paragraph 4.2.4.

²⁹ Affidavit of Jodi Dingwall, affirmed 28 April 2016, paragraph 37.

³⁰ Dr McIntyre Report dated 10 June 2016, paragraph 3.1.

³¹ Ibid, paragraph 3.2 & 3.2.3.

³² Ibid, paragraph 3.2.3.

- [47] Dr McIntyre believes that Ms Dingwall does have the capacity to recommence work as a solicitor having regard to the professional and ethical standards required, that she is vigilant for the factors that led to the behaviour in question and is armed with an array of strategies to ensure such behaviour does not recur. Moreover, from working with Ms Dingwall over the past two years, Dr McIntyre believes Ms Dingwall clearly demonstrates insight, contrition and remorse.³³
- [48] The Tribunal concludes that Ms Dingwall's conduct is not such as to lead to a finding that she is not a fit and proper person to engage in legal practice. The Tribunal notes that the applicant does not assert that this is the case.
- [49] Ms Dingwall has had no other complaint made about her conduct as a solicitor.
- [50] Ms Dingwall has never had any criminal convictions.³⁴
- [51] Ms Pateman, Ms Dingwall's current employer, is supportive of her, and pending the outcome of the disciplinary proceedings, intends to employ her as a solicitor.³⁵ Ms Pateman will, as required, supervise Ms Dingwall.
- [52] At an early time, Ms Dingwall admitted her dishonesty by approaching her supervisor in September 2013.
- [53] Ms Dingwall has co-operated with the Queensland Law Society and the Legal Services Commissioner and has complied diligently with all directions made by the Tribunal.
- [54] Ms Dingwall quickly admitted the six charges including all particulars as outlined in the statement of agreed facts.
- [55] Ms Dingwall is remorseful in relation to her conduct and believes she has gained insight into to her wrongdoing.
- [56] Dr McIntyre has the opinion that Ms Dingwall:
- He says she is truly sorry for what she did – an opinion formed from her consistent and genuine presentation, application to remediate the psychological factors involved, and demonstrable mastery over the key elements of the work across 18 sessions over the past two years.³⁶
 - Has a clear insight into her wrongdoing and is remorseful, ashamed and contrite, and that this is consistent with her misconduct being an aberration of her usual good character.

³³ Dr McIntyre Report dated 10 June 2016, paragraphs 5.2 & 5.3.

³⁴ Affidavit of Jodi Dingwall, affirmed 28 April 2016, paragraphs 50 and 51.

³⁵ Material relied upon by the respondent, filed 6 September 2016, paragraph 54.

³⁶ Dr McIntyre Report dated 10 June 2016, paragraph 5.2.1.

- [57] Ms Dingwall has filed a number of affidavits which describe the remorse which is felt by Ms Dingwall.
- [58] Ms Dingwall now works in a "team environment" which was absent at Roberts Nehmer McKee. Ms Pateman has direct input on all files, there are regular meetings about files and Ms Pateman signs off on all correspondence. There is support and supervision available to Ms Dingwall.
- [59] One aspect of protection of the public is to enforce and impose appropriate standards within the profession. A message must be sent to other practitioners that conduct such as that of Ms Dingwall is not acceptable and will not be tolerated. In those circumstances, the imposition of a reprimand and a fine is appropriate.
- [60] As to the level of fine, the Tribunal takes into account the factors raised by Ms Dingwall particularly that she has already suffered financial loss because of the employment issues and also the payment of the sum of \$15,000 to Roberts Nehmer McKee.
- [61] Ms Dingwall referred to a number of authorities including *Legal Services Commissioner v Mellick*,³⁷ *Legal Services Commissioner v Lim*,³⁸ *Legal Services Commissioner v Ramsden*³⁹ and *Legal Services Commissioner v Sorban*.⁴⁰
- [62] Other cases which have involved conduct including neglect have been *Legal Services Commission v Bussa*,⁴¹ *Legal Services Commission v Williams*,⁴² *Legal Service Commissioner v Slipper*⁴³ and *Legal Services Commissioner v Mellick*.⁴⁴
- [63] In the recent case involving Mr Mellick, very similar conduct was involved including delay in prosecuting matters on behalf of clients and misrepresentations about the reasons for the delay. A fine in the sum of \$1,500 was imposed. In that case, the practitioner had offered compensation to a client and also incurred the cost involved in another practitioner being appointed to supervise Mr Mellick over the following 12 months.
- [64] *Legal Services Commission v Bussa*⁴⁵ involved allegations of professional neglect and undue delay of 8 years in failing to progress a client's matter. The legal practitioner was publicly reprimanded and a fine of \$6000 was imposed. *Bussa* was referred to in *Legal Services Commissioner v Smith*,⁴⁶

³⁷ [2012] QCAT 333.

³⁸ [2011] QCAT 291.

³⁹ [2006] LPT 010.

⁴⁰ [2009] LPT 5.

⁴¹ [2011] QCAT 338.

⁴² [2005] LPT 008.

⁴³ [2008] LPT 008.

⁴⁴ [2016] QCAT 155.

⁴⁵ [2011] QCAT 338.

⁴⁶ [2014] QCAT 518.

where a legal practitioner caused a delay of over 9 years in the progression of a personal injuries claim for his client. The practitioner in *Smith* was also a repeat offender, which justified the fine of \$6000. Each of these cases involved conduct which was more serious than that of Ms Dingwall.

- [65] In *Legal Services Commissioner v Sorban*, dishonesty was involved. The conduct included "fabrication of an email". It was decided that there be no fine with Mullins J observing:

"I consider that, ordinarily, professional misconduct involving dishonesty would not only attract a public reprimand, but also the imposition of a pecuniary penalty. Each matter before the Tribunal has to be decided on all the material that is before the Tribunal. Having regard to the personal circumstances of the respondent and the confidence that the Tribunal has gained from considering the material put before the Tribunal in support of the respondent, I have decided that deterrence, both general and personally, and the protection of the public, will be met in this case by the imposition of a public reprimand without the additional order imposing a pecuniary penalty.⁴⁷

- [66] In the case of *Legal Service Commissioner v Smith*,⁴⁸ Wilson J ordered that the practitioner be publicly reprimanded and pay a fine of \$2,000.

- [67] In light of these cases and having regard to the factors listed above, the Tribunal is of the view that imposition of a fine in the sum of \$2,000 is appropriate.

- [68] This is not a punishment of the practitioner but is at a level which will assist in protecting the public by deterring other practitioners from being involved in similar conduct.

- [69] Protection of the public in these circumstances also requires that, for a time, Ms Dingwall should not be a Principal in a legal practice and should have the benefit of supervision from an experienced practitioner Principal.

- [70] Before applying for a Principal level practicing certificate, Ms Dingwall should undertake the practice management course which is conducted by the Queensland Law Society.

- [71] In the circumstances, the Tribunal orders that:

1. The respondent be publically reprimanded.
2. The respondent be ordered to pay a fine in the sum of \$2,000.
3. After obtaining an employee level practicing certificate, the respondent work under the supervision of another practitioner who holds a Principal level practicing certificate.

⁴⁷ *Legal Service Commissioner v Sorban* [2009] LPT 5 at [1]-[7].

⁴⁸ [2011] QCAT 126.

4. The respondent be prohibited from applying for or obtaining a certificate to practice as a Principal for a period of 3 years after obtaining an employee practicing certificate.

Costs

- [72] Section 461(1) of the *Legal Profession Act 2007* (Qld) provides that the Tribunal must upon finding that the practitioner has engaged in the prescribed conduct, make an order requiring the practitioner to pay costs unless the Tribunal is satisfied that exceptional circumstances exist.
- [73] No exceptional circumstances have been identified by either party and, after reviewing the circumstances, the Tribunal finds that no exceptional circumstances exist, which would mean that an order should not be made that the respondent pay the applicant's costs.
- [74] An order for costs may be for a stated amount or made for an unstated amount "but must state the basis upon which the amount must be decided".⁴⁹
- [75] The Tribunal must, where possible, endeavour to fix costs.⁵⁰
- [76] In this case, the parties have not agreed on an appropriate sum although the respondent submits that the cost should be fixed at \$1,500, to reflect the fact that the respondent co-operated in the matter from an early stage.⁵¹
- [77] To enable the Tribunal to fix costs, it is necessary that evidence be put before the Tribunal by which this task can be undertaken. No evidence as to costs has been filed before the Tribunal.
- [78] However, the Tribunal would encourage the parties to endeavour to agree on a figure for costs.
- [79] In the absence of such an agreement within 30 days, it is ordered that the respondent pay the applicant's costs to be assessed on the standard basis on the Supreme Court Scale under the *Uniform Civil Procedure Rules 1999* (Qld) in the manner that the costs would be assessed were the matter in the Supreme Court of Queensland.

⁴⁹ *Legal Profession Act 2007* (Qld) s 462(5).

⁵⁰ QCAT Act s 107(1).

⁵¹ Material relied upon by the respondent, filed 6 September 2016, paragraphs 57, 79 and 81.