

# QCAT

Queensland Civil and Administrative Tribunal

## DECISION

**Case number:** OCR293-13  
**Applicant:** Legal Services Commissioner  
**Respondent:** Habib Abraham Mellick

**Before:** Justice Thomas, President  
Assisted by:  
Mr Peter Sheehy, Legal panel member  
Dr Margaret Steinberg, Lay panel member


**Date:** 14 April 2016  
**Proceeding Type:** On the papers

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IT IS THE DECISION OF THE TRIBUNAL THAT:

1. Mr Mellick be publicly reprimanded.
2. There be a fine in the sum of \$1,500.00.
3. Mr Vince Bailey, of the Boland Centre 14 Spencer Street Cairns, be appointed to supervise Mr Mellick for a period of 12 months on the following basis:
  - a) Within the next 30 days, Mr Bailey will undertake an audit of Mr Mellick's files to satisfy himself that the files are conducted in a timely fashion and provide a report to the Legal Services Commissioner.
  - b) To satisfy himself that files are being conducted in a timely fashion, Mr Bailey will meet with Mr Mellick at least every 2 months for a period of 12 months, and audit files as he believes necessary.
  - c) Mr Bailey will provide reports to the Legal Services Commissioner at the expiration of the period of 6 months from the date of this order and 12 months from the date of this order.
  - d) All costs associated with the work undertaken by Mr Bailey will be paid by Mr Mellick to Mr Bailey.
4. The Legal Services Commission shall have liberty to apply for further orders in these proceedings including an order varying the penalty based on information provided by Mr Bailey at any time up to the date which is 18 months from the date of this order.
5. Mr Mellick pay the costs of the Legal Services Commissioner assessed on the standard basis pursuant to the *Uniform Civil Procedure Rules 1999 (Qld)* as if the matter had been heard in the Supreme Court of Queensland.

Signed

  
Justice Thomas, President  
Queensland Civil and Administrative Tribunal

# QCAT

Queensland Civil and Administrative Tribunal

**CITATION:** *Legal Services Commissioner v Mellick* [2016]  
QCAT

**PARTIES:** Legal Services Commissioner  
(Applicant/Appellant)  
v  
Habib Abraham Mellick  
(Respondent)

**APPLICATION NUMBER:** OCR293-13

**MATTER TYPE:** Occupational Regulation matters

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** Justice DG Thomas, President  
Assisted by:  
Mr Peter Sheehy, Legal panel member  
Dr Margaret Steinberg, Lay panel member

**DELIVERED ON:** 14 April 2016

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

1. Mr Mellick be publicly reprimanded.
2. There be a fine in the sum of \$1,500.00.
3. Mr Vince Bailey, of the Boland Centre 14 Spencer Street Cairns, be appointed to supervise Mr Mellick for a period of 12 months on the following basis:
  - a) Within the next 30 days, Mr Bailey will undertake an audit of Mr Mellick's files to satisfy himself that the files are conducted in a timely fashion and provide a report to the Legal Services Commissioner.
  - b) To satisfy himself that files are being conducted in a timely fashion, Mr Bailey will meet with Mr Mellick at least every 2 months for a period of 12 months, and audit

files as he believes necessary.

- c) Mr Bailey will provide reports to the Legal Services Commissioner at the expiration of the period of 6 months from the date of this order and 12 months from the date of this order.
  - d) All costs associated with the work undertaken by Mr Bailey will be paid by Mr Mellick to Mr Bailey.
4. The Legal Services Commission shall have liberty to apply for further orders in these proceedings including an order varying the penalty based on information provided by Mr Bailey at any time up to the date which is 18 months from the date of this order.
5. Mr Mellick pay the costs of the Legal Services Commissioner assessed on the standard basis pursuant to the *Uniform Civil Procedure Rules 1999 (Qld)* as if the matter had been heard in the Supreme Court of Queensland.

**CATCHWORDS:**

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where the respondent failed to initiate proceedings on behalf of his clients – where the respondent falsely represented to his clients that their matter was progressing when in fact proceedings had not been initiated – where the respondent has been the subject of a disciplinary proceeding before the Tribunal previously – where the respondent admits his conduct amounts to professional misconduct – where the respondent says he agrees to be subject to supervision – where the respondent paid compensation to his clients and waived their legal fees – nature of appropriate penalty

*Legal Profession Act 2007 (Qld)* ss 418, 419, 437, 443(1)(a)(i), 443(3), 466  
*Queensland Civil and Administrative Tribunal Act 2009 (Qld)* s 32  
*Uniform Civil Procedure Rules 1999 (Qld)*

*Legal Practitioner's Conduct Board v Phillips*  
[2002] SASC 63

**APPEARANCES and REPRESENTATION (if any):**

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

**REASONS FOR DECISION**

**Charges**

- [1] Three charges have been brought against Mr Mellick by the Legal Services Commissioner.

*Charge 1 – delay and failure to advance client's action*

- [2] It is alleged that between 22 March 2009 and 23 June 2012, Mr Mellick failed to make a claim for damages on behalf of his clients, Robert Giffin, Bruce Hanson and Robert McNee.<sup>1</sup>

*Charge 2 – false representations*

- [3] It is alleged that between 24 August 2011, and 23 June 2012, Mr Mellick made false representations to his clients, Robert Giffin, Bruce Hanson and Robert McNee about the progress of their matter (referred to in charge 1).

*Charge 3 – failure to comply with a written notice*

- [4] It is alleged that Mr Mellick failed to comply with a written notice issued on 20 February 2012 by the Legal Services Commissioner pursuant to section 443(3) of the *Legal Profession Act 2007* (Qld) ('The Act').
- [5] In the response filed on behalf of Mr Mellick,<sup>2</sup> Mr Mellick admits each of the allegations made by the Legal Services Commissioner.

**Background**

- [6] The parties have filed a statement of agreed facts.<sup>3</sup>
- [7] Mr Mellick was retained by Robert Giffin, Bruce Hanson and Robert McNee, to act in a civil claim in relation to the purchase of a boat. Mr Mellick did not take any steps to progress the claim and, when asked by the clients about the progress of the claim, falsely represented the position on a number of occasions.

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<sup>1</sup> Application or referral – disciplinary proceeding, filed 27 November 2013.

<sup>2</sup> Response on behalf of the respondent, filed 10 February 2014.

<sup>3</sup> Statement of agreed facts, filed 11 August 2014.

- [8] On the final occasion, on 22 June 2012, Mr Mellick told his clients that the matter was finalised and money would be paid into their accounts on or about 27 June 2012.
- [9] No money was ever received by the clients and, when making the representations, Mr Mellick knew that no claim for damages had been filed or proceedings instituted on behalf of his clients.
- [10] In the course of the investigation, the Commissioner wrote to Mr Mellick pursuant to section 437 of the Act advising him of the complaint and ultimately requiring him to provide an explanation to the complaint pursuant to section 443(1)(a)(i) of the Act. The Commissioner gave Mr Mellick notice that if his failure to comply with the written request to provide information continued beyond 5 March 2012, he might be dealt with for professional misconduct. The Commissioner allowed a number of extensions to enable Mr Mellick to comply with the notice. However, Mr Mellick failed to provide a response within the specified time.

### **Discussion**

- [11] Section 418 of the Act defines "unsatisfactory professional conduct" as including conduct which 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.
- [12] Section 419 of the Act defines "professional misconduct" as unsatisfactory professional conduct where the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence.
- [13] The Tribunal finds that Mr Mellick's conduct involved a substantial failure to reach or keep a reasonable standard of competence and diligence and so amounts to professional misconduct.
- [14] The Commissioner submits, and Mr Mellick admits, that his conduct in relation to each of the charges, amounted to professional misconduct.

### **Sanction**

- [15] This is the second occasion on which Mr Mellick has been subject of charges relating to delay in acting on behalf of clients in proceedings and misrepresenting the position to clients. In an earlier matter, in which the decision was published on 27 July 2012, Mr Mellick was disciplined for very similar conduct.
- [16] Whilst Mr Mellick and the Commissioner agree that his conduct amounted to professional misconduct, they differ as to the penalty which should be imposed.
- [17] It is well established that the imposition of penalties in relation to disciplinary matters occurs with a view to protecting the public rather than punishing the practitioner.

- [18] The Legal Services Commissioner submits that, through Mr Mellick's consistent failure to keep or reach a reasonable standard of competence and diligence in his client's matters and through his dishonesty, he has demonstrated that he is not a fit and proper person to engage in legal practice. The Commissioner submits that the only order which should flow from this is that his name be removed from the local roll.<sup>4</sup>
- [19] The Commissioner points in particular, to the fact that Mr Mellick's conduct is repeated, having been disciplined for exactly the same conduct previously.<sup>5</sup>
- [20] The Tribunal must aim to impose an appropriate penalty which will protect the public.
- [21] The date at which the penalty is assessed is the date of the hearing rather than the date at which the conduct occurred.
- [22] So, for example, it is possible that a practitioner might be unfit to practice at the time the conduct occurs (for example through illness) but may not remain unfit as at the date of the hearing.
- [23] On the other hand, Mr Mellick submits that the protection of the public does not demand that the only sanction available to protect the public is that Mr Mellick be struck off.<sup>6</sup>
- [24] Whilst Mr Mellick does not offer an excuse for his conduct, he suggests the explanation for his actions lie in the fact that he was suffering depression resulting from overwork and professional burnout.<sup>7</sup> He submits that these factors do not exist as at the date of the hearing.
- [25] Mr Mellick has seen Sharon Daniels, a psychologist who has provided a report concerning his condition. Mr Mellick has also provided an affidavit which sets out some details which might be relevant as to whether he has made sufficient changes in his lifestyle so as to mean that the conduct, which was the subject of the complaint, will not reoccur.<sup>8</sup>
- [26] Ms Daniels offers the following opinion:<sup>9</sup>
- Mr Mellick realised that he could not service his then current files. He concedes that he should have taken action then but procrastinated and became mentally blocked. His condition spiralled downwards, with no respite and an ever increasing workload. He felt overwhelmed, helpless and hopeless to influence his workload.

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<sup>4</sup> Submissions on behalf of the applicant, filed 14 October 2014, paragraph 50.

<sup>5</sup> Ibid, paragraph 52.

<sup>6</sup> Submissions in regards to penalty on behalf of the respondent, filed 23 October 2014, paragraph 11.

<sup>7</sup> Ibid, paragraph 7.

<sup>8</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014.

<sup>9</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014 exhibit HAM1, Report of Sharon Daniels dated 15 November 2012.

Unable to say no to clients, he eventually developed a psychological paralysis which meant he avoided and procrastinated - always promising himself that he would do the task next, or tomorrow.<sup>10</sup>

- Mr Mellick grew to realize that over time he forgot about older tasks, as newer ones came before him, and he constantly altered his priority list.<sup>11</sup>
- He became overwhelmed by constant telephone and email interruptions, which interfered with time set aside to attend to a client's matter, or for more complex or difficult cases. He would then suffer a mental block that he "couldn't deal with", leading to an ever continuing cycle of frustrated procrastination. So, the more he procrastinated, the guiltier and more depressed he felt about dealing with a matter.<sup>12</sup>
- When he hadn't taken action with a client, he told them he had as a method of motivating himself into action. But, with increasing and constant interruptions and demands, and not being able to say no to people, he felt like "a car spinning its wheels".<sup>13</sup>
- Mr Mellick's personality assessment inventory (PAI) is marked by a significant elevation on the depression scale, indicating that the content tapped by this scale reflects a particular area of difficulty for Mr Mellick.<sup>14</sup>
- The difficulties reported by Mr Mellick were consistent with a significant depressive experience and these included thoughts of worthlessness, hopelessness and personal failure. They also include Mr Mellick's observation that he was worried and concerned about current issues to the degree that his ability to concentrate and attend was significantly compromised.
- In relation to the clinical analysis questionnaire (CAQ) undertaken by Mr Mellick, the personality profile is indicative of some psychological disturbance. Mr Mellick has a slightly elevated anxiety level and his behaviour controls are poorly developed with regard to appropriate management of personal boundaries. He experiences great inner turmoil, producing conflicts between his values and behaviour.<sup>15</sup>
- As to rehabilitation, Mr Mellick suggested he would like to retire from his practice and believes he could "learn to say no". He said his difficulty in saying "no" emanated from his law firm's long standing

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<sup>10</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014 exhibit HAM1, Report of Sharon Daniels dated 15 November 2012, page 3 titled "interview notes".

<sup>11</sup> Ibid, page 4.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, page 6.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid, page 7.

reputation in the community, which is, in essence, “you accommodate”. This meant seeing clients outside business hours and “you see clients and help, putting your own needs and prejudices aside”.

- Mr Mellick had made a tangible effort to change his behaviour by being more up to date and attentive to his client’s legal matters.<sup>16</sup>
- In summary:<sup>17</sup>
  - Mr Mellick is extremely remorseful that he has allowed matters to deteriorate to this extent.
  - Mr Mellick suffers from over work and burn out, which has likely manifested in his diagnosis of depression.
  - Mr Mellick’s deep regret has left him being self-critical, to the extent it has adversely affected his outlook on life, which became one of helplessness and hopelessness.
  - Mr Mellick acknowledges that his underlying principle of not being able to turn clients away, and sacrificing his personal and leisure time, has undermined his ability to keep on top of his work.<sup>18</sup>

[27] Mr Mellick deals with some relevant issues in his affidavit. It is to be noted that Mr Mellick’s affidavit was not challenged and Mr Mellick was not cross examined or tested about the affidavit.

[28] In his affidavit, Mr Mellick discusses current work and life practices.<sup>19</sup>

[29] Mr Mellick swears to the following:

- a) Immediately following the 2012 Tribunal decisions Mr Mellick commenced a deliberate regime of modifying his work and private life practices which involved a full audit of his files and commencing a diligent program in relation to civil litigation files (including personal injuries files) of completing those files within 12 months if it were possible or, where not possible referring the client’s to other solicitors.<sup>20</sup>

<sup>16</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014 exhibit HAM1, Report of Sharon Daniels dated 15 November 2012, page 8.

<sup>17</sup> Ibid, page 2.

<sup>18</sup> Ibid, page 3.

<sup>19</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014 paragraphs, 13-21.

<sup>20</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014, paragraph 14.



- b) He concentrates on only taking instructions in relation to matters which are of short duration and in particular concentrating more on criminal matters and commercial/conveyancing matters.<sup>21</sup>
  - c) The process has been successful to the extent that, as at the date of his affidavit, he had 10 civil litigation files and all his remaining files were relating to criminal matters or conveyancing and commercial matters which, of necessity, had rigorous case management timeframes and overall short duration from opening to closing of the file.<sup>22</sup>
  - d) Whilst Mr Mellick did consider further treatment from Ms Daniels he decided to "take the bit between his teeth" and resolve his issues personally, and he believes he succeeded in doing so.<sup>23</sup>
  - e) Mr Mellick has reduced his working hours and aims to spend more time outside his working life, including taking more time to be with colleagues and friends.<sup>24</sup> Mr Mellick's intention is to maintain these practice procedures and accept instructions only in crime and commercial matters, which he says he does without any difficulty, stress or delay and achieves excellent outcomes for clients.<sup>25</sup>
  - f) Mr Mellick's "work life balance and mental health have all now returned to normal" and he cannot foresee any possibility of his conduct recurring.<sup>26</sup>
  - g) He has put in place personal professional work practices to eliminate situations arising by modifying the amount of time he spends in the office and the type of matters in which he takes instructions.<sup>27</sup>
  - h) He is prepared to be subject of supervision and audit as may reasonably be required by the Tribunal and/or the Legal Services Commissioner.<sup>28</sup>
- [30] Mr Mellick points to the fact that he has been admitted since February 1987 and has been subject to just two complaints (the current complaint and the earlier complaint described in these reasons).
- [31] He has had an active involvement in the local community. He was a founding member of the Cairns Community Legal Aid Centre (participating as a volunteer for 4-5 years),<sup>29</sup> was a member of the far north Queensland Law Association Management Committee for approximately 5 years

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<sup>21</sup> Ibid, paragraph 15.

<sup>22</sup> Ibid, paragraph 16.

<sup>23</sup> Ibid, paragraph 17.

<sup>24</sup> Ibid, paragraph 19.

<sup>25</sup> Ibid, paragraph 20.

<sup>26</sup> Ibid, paragraph 27.

<sup>27</sup> Ibid, paragraph 28.

<sup>28</sup> Ibid, paragraph 29.

<sup>29</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014, paragraph 22.

serving in all executive positions from President, Vice President, Treasurer and Secretary,<sup>30</sup> was instrumental in organising law dinners, law balls and educational programs for local solicitors, and was a duty lawyer with the Legal Aid Service Queensland for 5-6 years.<sup>31</sup>

- [32] Mr Mellick concedes that his real failure is in failing to take steps to change his work life balance by modifying his client and file intake to a manageable level thereby allowing himself to be overwhelmed by his inability to act promptly and professionally in relation to the Giffen file.
- [33] He submits that he has made changes to his lifestyle and to his work practices which involve a drastic modification of his work intake to a position where it is now completely manageable to the extent that conduct such as that which is the subject of this complaint will not reoccur.<sup>32</sup>
- [34] He submits that protection of the public does not require that he be struck off the Roll, a step which he describes as "unnecessary and unwarranted".<sup>33</sup>
- [35] In the context of an order that a practitioner's name be removed from the Roll of Practitioners, the Tribunal must be satisfied, as at the date of the hearing, that the practitioner is not a fit and proper person to be a legal practitioner, and is likely to remain so for an indefinite period.
- [36] In considering the question of penalty, the objective is for the Tribunal to consider the protection of the public rather than be aiming to punish the practitioner.
- [37] In her report, Ms Daniels referred to Mr Mellick suffering from over work and burn out which likely manifested itself in his diagnosis of depression. Ms Daniels refers to this as the source of the problem which was confronted by Mr Mellick which led to symptoms such as poor sleep, hours of worry at night, poor appetite, no social life and organisation difficulties.<sup>34</sup>
- [38] The Commissioner describes the report as unhelpful in that it does not assist in addressing the issue of Mr Mellick's dishonest conduct and in particular his tendency to make false representations to clients or his fitness to practice.<sup>35</sup>
- [39] As to the misrepresentations made to the two clients, Ms Daniels expressed the opinion that the actions taken by Mr Mellick were the result

<sup>30</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014, paragraph 23.

<sup>31</sup> Ibid, paragraph 25.

<sup>32</sup> Ibid.

<sup>33</sup> Submissions in regards to penalty on behalf of the respondent, filed 27 October 2014, paragraph 9.

<sup>34</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014 exhibit HAM1, Report of Sharon Daniels dated 15 November 2012, page 4 titled "symptoms".

<sup>35</sup> Submissions on behalf of the applicant, filed 14 October 2014, paragraph 58.

of his condition - that he made the comments as a method of motivating himself into action, but then with increasing and constant interruptions and demands as a result of not being able to say no to people, felt like "a car spinning its wheels".<sup>36</sup> It would follow that, if the underlying issues are solved, then there would be a reasonable expectation that this conduct will not reoccur.

- [40] The Commissioner submits that Ms Daniels' report cannot be seen as excusing Mr Mellick's behaviour in any way. The Commissioner further submits that there have been occasions where mental illness is pleaded in an attempt to explain misconduct and it is the evidence of that mental illness, when coupled with the misconduct itself, which leads the Court or Tribunal to find the lawyer unfit to practice.<sup>37</sup>
- [41] In this respect, the Commissioner refers to the case of *Legal Practitioner's Conduct Board v Phillips* ('Phillips').<sup>38</sup> The passage extracted by the Commissioner refers to the fact that a disorder may explain conduct but does not excuse a practitioner's inappropriate conduct towards the client. Gray J also observed that the medical evidence provided nothing to explain other aspects of the practitioner's conduct. Those aspects referred to included dishonesty, lack of candour and frankness with the Tribunal and the Court, and manipulation of the Court process to obtain a personal advantage, while retaining a charge over client property when the practitioner was not entitled to do so. The conduct in Phillips' was clearly much more serious, and allegations such as those considered in Phillips cannot be levelled against Mr Mellick. For example, Mr Mellick has acted appropriately and with candour and frankness when dealing with this Tribunal. He has admitted the particulars of the disciplinary application at an early stage and has agreed a statement of facts.
- [42] The report by the psychologist does not excuse Mr Mellick's conduct. As the Tribunal has found, Mr Mellick's conduct was totally unacceptable and amounted to professional misconduct.
- [43] Whilst it does not excuse the conduct, it does assist in explaining the conduct and, if the reasons for the conduct which are identified from the explanation are removed, then the Tribunal can be satisfied, as at the date of the hearing, that the need to protect the public does not require the practitioner to be removed from practice.
- [44] In this case, Mr Mellick did not decide to seek further treatment from Ms Daniels. As to this issue, the Commissioner submits against Mr Mellick that he has not made any attempts to seek professional help for stress or depression since his last consultation with Ms Daniels on 31 October 2012.<sup>39</sup> However, it seems that due to the report provided by Ms Daniels, Mr Mellick identified the cause of his conduct and has taken steps to

<sup>36</sup> Affidavit of Habib Abraham Mellick on behalf of the respondent, sworn 25 September 2014 exhibit HAM1, Report of Sharon Daniels dated 15 November 2012, page 4.

<sup>37</sup> Submissions on behalf of the applicant filed 14 October 2014, paragraph 59.

<sup>38</sup> [2002] SASC 63.

<sup>39</sup> Submissions on behalf of the applicant, filed 14 October 2014, paragraph 58.

eliminate that cause. He has described the steps he has taken in his affidavit which, as observed earlier, has not been subject to challenge by the Legal Services Commissioner.

[45] The Tribunal is satisfied that, in all the circumstances, it is not necessary to order that Mr Mellick's name be removed from the Local Roll in order to protect the public from conduct similar to that conduct which has been the subject of these disciplinary proceedings.

[46] Of course, Mr Mellick should be very much aware that if similar conduct were to be repeated then a different outcome would be likely.

[47] One element of protection of the public is to deter other practitioners from being involved in similar conduct. That is an important aspect of deterrence.

[48] By way of deterrence, it is appropriate that a fine be imposed.

[49] A further aspect of protection of the public is to ensure that the steps which have been taken by Mr Mellick have had the effect of restructuring his practice as he describes and so removing the reasons for the conduct which was the subject of this discipline application. It is necessary that there be a regular check to see that the changes which have been made by Mr Mellick continue to be effective.

[50] These issues were raised with the parties at a hearing on 8 March 2016, and further information was provided by Mr Mellick on 16 March 2016.

[51] Mr Mellick has provided the name of a practitioner from Cairns who is prepared to audit Mr Mellick's files and then supervise Mr Mellick over a period of 12 months. The practitioner identified is Mr Vince Bailey who has been a solicitor of the Supreme Court of Queensland since 1980.

[52] At the hearing of the matter on 8 March, the Commissioner submitted that were the Tribunal to be considering supervision, as opposed to an order that Mr Mellick's name be removed from the local roll, then a period of 12 months would be a suitable period. The Commissioner also submitted that he should be allowed leave to apply at the end of that period if he believes that further orders are required.

[53] In those circumstances, the Tribunal orders that:

1. Mr Mellick be publicly reprimanded.
2. There be a fine in the sum of \$1,500.00.
3. Mr Vince Bailey, of the Boland Centre 14 Spencer Street Cairns, be appointed to supervise Mr Mellick for a period of 12 months on the following basis:
  - a) Within the next 30 days, Mr Bailey will undertake an audit of Mr Mellick's files to satisfy himself that the files are conducted in a

timely fashion and provide a report to the Legal Services Commissioner.

- b) To satisfy himself that files are being conducted in a timely fashion, Mr Bailey will meet with Mr Mellick at least every 2 months for a period of 12 months, and audit files as he believes necessary.
  - c) Mr Bailey will provide reports to the Legal Services Commissioner at the expiration of the period of 6 months from the date of this order and 12 months from the date of this order.
  - d) All costs associated with the work undertaken by Mr Bailey will be paid by Mr Mellick to Mr Bailey.
4. The Legal Services Commission shall have liberty to apply for further orders in these proceedings including an order varying the penalty based on information provided by Mr Bailey at any time up to the date which is 18 months from the date of this order.

#### **Compensation order**

[54] An application claiming compensation for pecuniary loss was made by Mr Robert Giffin on behalf of Robert McNee, Bruce Hanson and Mr Giffin.

[55] Pursuant to section 466 of the Act, a compensation order requiring payment of an amount of more than \$7,500.00 by way of monetary compensation cannot be made unless both the complainant and the law practice consent to such an order.

[56] An enquiry was made by Ms Campbell, an investigator employed by the Commissioner regarding whether the claim for compensation was being pursued.

[57] Ms Campbell has filed an affidavit dealing with that enquiry.<sup>40</sup>

[58] That enquiry reveals that:

- a) Mr Mellick paid a figure in the vicinity of \$20,000.00 to the claimants and did not make any charge with respect to fees; and
- b) The claimant does not wish to pursue the claim.

#### **Costs**

[59] The Tribunal must make an order requiring Mr Mellick to pay costs unless the Tribunal is satisfied that exceptional circumstances exist.

[60] In this case no exceptional circumstances exist and so it is ordered that Mr Mellick pay the costs of the Legal Services Commissioner assessed on

<sup>40</sup> Affidavit of Darielle Glenna Campbell on behalf of the applicant, sworn 2 March 2016.

the standard basis pursuant to the *Uniform Civil Procedure Rules 1999* (Qld) as if the matter had been heard in the Supreme Court of Queensland.

- [61] The Tribunal notes that Mr Mellick has indicated he consents to such an order.