

# SUPREME COURT OF QUEENSLAND

CITATION: *Legal Services Commission v Richardson* [2009] LPT 17

PARTIES: **LEGAL SERVICES COMMISSIONER  
(applicant)**  
**AND**  
**IAN GEORGE MARSH RICHARDSON  
(respondent)**

FILE NO/S: 6611 of 2008

DIVISION: Legal Practice Tribunal

PROCEEDING: Discipline Action

DELIVERED ON: 16 July 2009

DELIVERED AT: Brisbane

HEARING DATE: 27-29 April 2009

JUDGE: Atkinson J

PRACITIONER  
PANEL  
MEMBER: Mr P Mullins

LAY PANEL  
MEMBER: Dr M Steinberg

ORDERS: **Mr Richardson is guilty of professional misconduct with regard to Charge 1 and Charge 2 and unsatisfactory professional conduct with regard to charge 4, as particularised in 4.1, 4.4, 4.5, 4.6, 4.7, 4.9, 4.10 and 4.11.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – GENERALLY – where respondent charged with dishonestly or improperly obtaining his clients’ certificates of title – where respondent appointed as power of attorney under enduring power of attorney of his clients – where respondent lodged the enduring powers of attorney with the Department of Natural Resources and made an application for certificates of title without authority – where respondent refused to deliver the certificates of title and claimed to a possessory lien – whether respondent guilty of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – GENERALLY – where respondent charged with acting deceitfully – where respondent acted for clients in a conveyance – where clients removed certain

equipment allegedly on the advice of the respondent – where purchaser claimed the equipment was fixture – where respondent failed to advise clients that they were required to attend a directions conference – where respondent did not attend directions conference and sent an employee solicitor to seek an adjournment – where judgment was entered against respondent’s clients – where respondent made application to have judgment set aside without instructions – whether respondent guilty of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT – GENERALLY – where respondent charged with breaching professional obligation to co-operate with investigations undertaken by the Queensland Law Society and/or Legal Services Commission – where Commissioner provided twelve examples alleging a breach on behalf of the respondent – whether respondent guilty of professional misconduct

*Guardianship and Administration Act 2000 (Qld)*  
*Legal Profession Act 2004 (Qld)* ss 266, 267, 269, 270, 274  
*Legal Profession Act 2007 (Qld)* ss 9, 418, 419, 420, 423, 435, 438, 443, 453, 456, 601  
*Powers of Attorney Act 1998 (Qld)* ss 66, 73

*Barratt v Gough-Thomas* [1950] 2 All ER 1048, cited  
*Bechara v Atie* [2005] NSW CA 268, cited  
*Belmont Finance Corporation Ltd v Williams Furniture Ltd* [1979] Ch 250, cited  
*Bolster v McCallum* (1966) 85 WN (Pt 1) NSW 281, cited  
*Briginshaw v Briginshaw* (1938) 60 CLR 336, cited  
*Ede v Ede* [2007] 2 Qd R 323, cited  
*Harle v Legal Practitioners Liability Committee* [2003] VSCA 133, cited  
*Leeper v Primary Producers’ Bank of Australia Ltd (In Voluntary Liquidation)* (1935) 53 CLR 250, cited  
*Legal Services Commissioner v Browne* [2004] NSW ADT 63, considered  
*Legal Services Commissioner v Madden (No. 2)* [2008] QCA 301, considered  
*Rejfeek v McElroy* (1965) 112 CLR 517, cited  
*Stark v Dennett* [2007] QSC 171, cited  
*QLS v Carberry; A-G v Carberry* [2000] QCA 450, cited  
*Peters v The Queen* (1998) 192 CLR 493, considered  
*R v Ghosh* [1982] 1 QB 1053, considered  
*Walsh v Law Society of New South Wales* (1999) 198 CLR 73, cited

COUNSEL: MacSporran A J, SC for applicant  
 Davis P J, SC and Wilson, E for respondent

SOLICITORS: Legal Services Commission for applicant  
Michael Cooper Lawyer for respondent

### **Introduction**

- [1] Ian George Marsh Richardson is a legal practitioner presently aged 61 who was admitted to practice as a solicitor by the Supreme Court of Queensland in 1976 and has, apart from six years of that time, practised on his own account. He has been the principal of KRG Law at Southport since 1996, except for a period of two years when he did not practise because of ill health. The firm is also known as KRG Conveyancing. During the course of this judgment it will be referred to as KRG. KRG has a very busy conveyancing practice. It carried out 18,626 cottage conveyances between 1 January 2005 and 30 April 2008.

### **Charges**

- [2] Mr Richardson was charged with four charges by the Legal Services Commissioner (the “Commissioner”). One did not proceed in the Tribunal but three remain to be adjudicated by the Tribunal in these disciplinary proceedings. The remaining charges relate to complaints by his clients, Richard and Mollie Litherland, David and Lynne West, and his failure to co-operate in the investigation by the Commissioner or the Queensland Law Society (the “Society”) of complaints made by Mr and Mrs Litherland, Mr and Mrs West, Dennis and Sharyn Sacshe, Vickie Pollock, Simon and Nadine Graves, Robert Shepherd and Kate Chalmers, Rachel Hinton, Cameron and Tracie Corish, Peter Walker, Dr Ratna Ghosh, Fung Ling Siu Reis and Wheldon & Associates.
- [3] The Commissioner alleged that the charges constitute professional misconduct or in the alternative unsatisfactory professional conduct. The charges are:

#### **Charge 1 Dishonestly obtained Certificates of Title**

1. On or about 15 January 2008 the respondent dishonestly or improperly obtained certificates of title being reference numbers 50488049 and 50488050 (the “Litherlands’ certificates of title”) in the names of Ronald Douglas Litherland and Mollie May Litherland (“Litherlands”) from the Department of Natural Resources and Water (“DNR”).

#### **Charge 2 Deceit – David West and Lynne West**

2. Between May 2006 and February 2007, whilst acting on behalf of David West and Lynne West (“West”) in civil proceedings, the respondent acted deceitfully.

#### **Charge 4 Failure to co-operate with investigations**

4. Between January 2005 and April 2008 the respondent breached his professional obligation to co-operate with investigations undertaken by the Queensland Law Society and/or Legal Services Commission.

### The statutory regime

- [4] The conduct complained of in charge 1 was governed by the *Legal Profession Act 2007 (Qld)* (“the 2007 Act”). When the conduct complained of in charge 2 occurred, it was governed by the *Legal Profession Act 2004 (Qld)* (“the 2004 Act”). Part of the conduct complained of in charge 4 occurred during the currency of the 2004 Act and part during the currency of the 2007 Act. The charges were all brought under the 2007 Act which came into effect on 1 July 2007 since the transitional provisions found in s 423 and Part 9 of the 2007 Act apply the 2007 Act to the relevant conduct all of which occurred after 1 July 2004.
- [5] Chapter 4 of the 2007 Act deals with complaints and discipline. Section 423(1) provides that Chapter 4 applies to conduct of an Australian legal practitioner which happened in Australia whether before or after the commencement of the 2007 Act.
- [6] Schedule 2 of the 2007 Act defines “unsatisfactory professional conduct” as follows:
- “(a) for dealing with a complaint about conduct that happened before 1 July 2004 – see chapter 9; or
  - (b) otherwise – see section 418.”
- [7] Section 418 of the 2007 Act applies since all of the conduct occurred after 1 July 2004. It provides:
- “418 Meaning of unsatisfactory professional conduct**  
**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.”
- [8] Schedule 2 of the 2007 Act defines “professional misconduct” as follows:
- “(a) for dealing with a complaint about conduct that happened before 1 July 2004 – see chapter 9; or
  - (b) otherwise – see section 419.”
- [9] Section 419 provides:
- “419 Meaning of professional misconduct**
- (1) **Professional misconduct** includes –
    - (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and
    - (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
  - (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice

as mentioned in subsection (1), regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate.”

[10] “Suitability matters” are dealt with in s 9 of the 2007 Act. Section 9(2) provides that a matter under s 9(1) is a “suitability matter” even though it happened before the commencement of the section.

[11] Section 420 of the 2007 Act deals with examples of conduct that is capable of constituting unsatisfactory professional conduct or professional misconduct. It provides:

**“420 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

The following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct –

- (a) conduct consisting of a contravention of a relevant law, whether the conduct happened before or after the commencement of this section;

*Note –*

Under the *Acts Interpretation Act 1954*, section 7, and the *Statutory Instruments Act 1992*, section 7, a contravention in relation to this Act would include a contravention of a regulation or legal profession rules and a contravention in relation to a previous Act would include a contravention of a legal profession rule under the *Legal Profession Act 2004*.

- (b) charging of excessive legal costs in connection with the practice of law;
- (c) conduct for which there is a conviction for –
  - (i) a serious offence; or
  - (ii) a tax offence; or
  - (iii) an offence involving dishonesty;
- (d) conduct of an Australian legal practitioner as or in becoming an insolvent under administration;
- (e) conduct of an Australian legal practitioner in becoming disqualified from managing or being involved in the management of any corporation under the Corporations Act;
- (f) conduct of an Australian legal practitioner in failing to comply with an order of a disciplinary body made under this Act or an order of a corresponding disciplinary body made under a corresponding law, including a failure to pay wholly or partly a fine imposed under this Act or a corresponding law;
- (g) conduct of an Australian legal practitioner in failing to comply with a compensation order made under this Act or a corresponding law.

- (2) Also, conduct that happened before the commencement of this subsection that, at the time it happened, consisted of a contravention of a relevant law or a corresponding law is capable of constituting unsatisfactory professional conduct or professional misconduct.
- (3) This section does not limit section 418 or 419.”

[12] This Tribunal’s jurisdiction is conferred by s 601 of the 2007 Act which provides that “the tribunal’s jurisdiction is to hear and decide a discipline application made to the tribunal.” A discipline application is brought by the Commissioner<sup>1</sup> and the tribunal must, pursuant to s 453 of the 2007 Act, hear and decide each allegation stated in the discipline application.

[13] The statutory jurisdiction of the Tribunal was discussed by the Court of Appeal in *Legal Services Commissioner v Madden (No. 2)* [2008] QCA 301 at [72] – [74] to show the precise delineation of the Tribunal’s role and powers on the hearing of a discipline application:

“[72] ... The procedural provisions in Pt 4.9 of the 2007 Act, notably ss 452, 453, 455 and 456, confirm that the legislative intention was to confine the Tribunal’s jurisdiction by reference to the particular allegations made by the Commissioner in the discipline application. That appears clearly from the requirement in s 453 that the disciplinary body must hear and decide ‘each allegation stated in the discipline application’. It is that which the Tribunal is ‘empowered to deal with under this Act’ in terms of s 598, the provision that identifies the purpose of s 601.

...

[74] The scheme of the 2007 Act is that the Commissioner investigates possible misconduct, decides whether to bring a charge, and decides what to charge. The Tribunal’s role is adjudicative.<sup>2</sup>

[14] The onus of proof lies on the Commissioner to satisfy the Tribunal on the balance of probabilities that the allegation is true.<sup>3</sup> The degree of satisfaction varies depending on the seriousness of the matter.<sup>4</sup>

### **Charge 1: Dishonestly obtained Certificates of Title**

[15] The particulars of the charge are as italicised. Where Mr Richardson admitted the particular without qualification, that is not specifically noted but rather is taken as proved. Otherwise the response made by Mr Richardson is as set out.

- [16] *1.1 At all material times the respondent knew and purported to act on behalf of the Litherlands.*
- 1.2 On or about 5 April 2007 the Litherlands appointed the respondent as power of attorney pursuant to two separate enduring Powers of Attorney.*

<sup>1</sup> 2007 Act s 452.

<sup>2</sup> See also *Walsh v Law Society of New South Wales* (1999) 198 CLR 73 at [67].

<sup>3</sup> 2007 Act s 649(1).

<sup>4</sup> 2007 Act s 649(2); *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 360-361; *Rejcek v McElroy* (1965) 112 CLR 517 at 521.

- [17] 1.3 *At the time of executing the enduring Powers of Attorney, the respondent did not advise the Litherlands about the nature and meaning of those documents.*

The respondent said the Litherlands were at all times aware of the nature and effect of the Enduring Powers of Attorney executed by them and said further that the Litherlands authorised and directed the respondent to execute various documents pursuant to those powers of attorney including:

- (a) option agreement for the purchase of the property referred to in paragraph 1.4 of the applicant's particulars;
- (b) notice of exercise of such option; and
- (c) contract of sale and purchase pursuant to the exercise of such option.

- [18] 1.4 *In December 2007 the Litherlands were involved in the purchase of property described at Lots 531 and 532 on SP 156110 ("property").*  
1.5 *On or about 14 December 2007 settlement of the property occurred.*

- [19] 1.6 *On 2 January 2008 the respondent lodged the Enduring Powers of Attorney with DNR without authority from the Litherlands.*  
1.7 *On 10 January 2008 the respondent made application to DNR for certificates of title for the property without authority from the Litherlands.*

The respondent admitted the allegations contained in paragraphs 1.6 and 1.7 to the extent that such acts were without express authority, but said that they were within the scope of his implied authority and not contrary to any express instructions from the Litherlands.

- [20] 1.8 *On 15 January 2008 certificates of title in respect of the property were issued to the respondent by DNR.*

The respondent denied the allegations contained in paragraph 1.8 and said the certificates of title in respect of the property were issued, as that term is used in the Land Titles Act, to the Litherlands and delivered to the respondent by the Registrar of Titles.

- [21] 1.9 *On or about 1 February 2008 the Litherlands directed the respondent to deliver all files and documents held on their behalf.*  
1.10 *Despite demand the respondent refused to deliver the certificates of title to the Litherlands by claiming a lien on account of unpaid legal fees.*

The respondent admitted the allegations contained in paragraph 1.10 insofar as the respondent refused to deliver the certificates of title but said further that he had a *bona fide* claim of right to a possessory lien for unpaid legal fees in respect of which he had since been paid \$180,000.00.

- [22] 1.11 *In the premises, the respondent obtained the certificates of title when:*  
(a) *he had no authority (express or implied) to use the powers of attorney to obtain the certificates of title; and/or*  
(b) *he knew or ought to have known that his personal interest in obtaining remuneration for services rendered was in conflict with his duty to exercise the powers of attorney bona fide and in the interests of the Litherlands.*

**Findings relating to Charge 1**

- [23] The evidence showed that Mr and Mrs Litherland had been friends and clients of Mr Richardson for more than 40 years. There had never been a client agreement between the Litherlands and Mr Richardson.
- [24] Mr Litherland said that Mr Richardson assisted him in a contractual dispute involving his online business, Clubfreedom. The dispute was with Wholesale Leisure Holidays (“WLH”) who at that time provided services to Clubfreedom. Mr Litherland said he transferred \$10,000 into Mr Richardson’s trust account on behalf of Clubfreedom on 28 March 2007.
- [25] Mr Richardson said that in February 2007 he requested that Mr and Mrs Litherland deposit \$10,000 into his trust account for professional services rendered between November 2006 and January 2007. He received the funds by telegraphic transfer in February 2007 from a company associated with Mr Litherland. Mr Richardson later attempted to use those funds in an unsuccessful attempt to purchase vouchers on behalf of the Litherlands so it was not applied to payment of the Litherlands’ legal fees. Mr Richardson retained custody of the cheque for \$10,000 sent as a refund after the unsuccessful attempt to purchase vouchers.
- [26] Mr and Mrs Litherland met with Mr Richardson on 5 April 2007 to sign documents which Mr Richardson told them they needed to sign in order for him to represent them while they were overseas. They were due to go overseas later that week. Mr Litherland said that the nature and meaning of the documents was not explained to him or to his wife by either Mr Richardson or the person who witnessed the documents. Mr Litherland said they signed the documents because they trusted Mr Richardson. Mr Litherland thought that he was signing a document to give Mr Richardson the authority to act on his behalf while he was overseas particularly in regard to the purchase of land at Sovereign Island which is referred to in these reasons as “the property”. Mr Richardson said to them words to the effect “You better sign this before you go so I can look after things while you’re overseas” and gave them one page to sign. They signed it and then Mr Richardson called in a member of his staff, Karen Farrow, to witness their signatures. Mrs Litherland asked Mr Richardson what they were signing. Mr Richardson laughed and said he would fill it out later.
- [27] Ms Farrow’s evidence was given on affidavit and she was not required for cross-examination. Her evidence was therefore unchallenged. She said that, as was his usual practice, Mr Richardson went through each form with his clients ticking the appropriate squares as they advised him. She said that as she certified, both Mr and Mrs Litherland appeared to understand clearly the purpose and effect of the documents they signed. She said that she particularly recalled that Mrs Litherland said at the time she signed the document that she and Mr Litherland had to make new wills with Mr Richardson when they were next in Australia.
- [28] Mr Litherland deposed that, although they did not know it at the time, he now knows that the documents that he and his wife signed were in fact Enduring Powers of Attorney in favour of Mr Richardson in respect of financial matters. It is not necessary to resolve the conflict in evidence. For the purpose of the charge, the Commission did not allege that the Enduring Powers of Attorney were not valid. Mr and Mrs Litherland trusted Mr Richardson and signed documents allowing him

to act as their attorney while they were overseas without taking a great deal of notice of what they were doing. Mr Litherland knew that the documents gave Mr Richardson authority to act on his behalf while he was overseas. Mrs Litherland was not called to give evidence but whilst she might have given evidence relevant to the circumstances of the signing of the Enduring Powers of Attorney, the validity of the Powers of Attorney is not part of the charge made against Mr Richardson.

- [29] By accepting the appointment as attorney Mr Richardson stated, *inter alia*, that he understood that he must exercise the power in accordance with the *Powers of Attorney Act 1998 (Qld)* and the *Guardianship and Administration Act 2000 (Qld)*. This included the duties found in s 66 of the *Powers of Attorney Act* to act honestly and with reasonable diligence and the duty found in s 73 of the *Powers of Attorney Act* not to enter into a conflict transaction unless the principal authorised the transaction or conflict transactions of that type or conflict transactions generally.
- [30] In October 2007, Mr and Mrs Litherland entered into a contract to purchase two blocks of land at Sovereign Island and retained Mr Richardson to act on their behalf.
- [31] Mr Litherland said that Mr Richardson assisted him in relation to two matters arising in the United States being litigation in Pennsylvania regarding a potential class action against Clubfreedom and a transaction involving e-Gold Currency Exchange (“the American litigation”). Mr Litherland said that Mr Richardson procured the services of United States lawyers to act on his behalf in those matters. Those firms had invoiced Mr Litherland’s business directly and all invoices issued had been paid. In about September 2007, Mr Richardson requested Mr Litherland to deposit some funds into his trust account in relation to the American litigation and Mr Litherland said he transferred \$20,000 into his trust account. Mr Richardson said that upon his request Mr Litherland transferred \$30,000 into Mr Richardson’s trust account. Mr Richardson said he specifically asked for the money so he could pay some dental bills.
- [32] Mr Richardson had never invoiced Mr Litherland for his legal services<sup>5</sup> but he expected he would share in the success of Mr Litherland’s business ventures. Mr Richardson said that they had orally agreed that Mr Richardson would charge a 10 per cent “success fee” for his professional services i.e. 10 percent of the total value of funds released from e-Gold and e-Bullion accounts once injunctions in the United States were set aside.
- [33] Mr Richardson’s understanding of the arrangement between himself and the Litherlands was revealed in the following answer in cross-examination. Mr MacSporran on behalf of the Commission established that Mr Richardson was aware that Mr Litherland had become very wealthy “almost overnight” because of the success of his Clubfreedom business. Mr MacSporran then asked:
- “And you believed that, because of that, he was in a position then to – to pay you a proper fee for all the work you’d done from him in respect of that and perhaps other matters?”
- [34] Mr Richardson’s response was:
- “No. Well, I inferred – my reaction, when he wasn’t paying, was to deliver bills even in earlier matters. Right? I withdrew those

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<sup>5</sup> KRG always charged the Litherlands for conveyancing done for them.

because that was not the arrangement. The arrangement had been that I would carry out those services with a view to participation. In this case, he was unable to grant participation because he'd taken on another partner and so I'd said to him, 'Ron, I've got to charge you. You know, I can't continue to work with no prospects of participation and – no money.'"

The matter he was referring to, where Mr Litherland had taken on another partner, was Clubfreedom.

- [35] On 30 November 2007 Mr Richardson requested Mr Litherland in a telephone conversation to deposit a "substantial sum of money" into his account towards his professional fees. Mr Litherland said he could not hear him. Mr Richardson became incensed because he thought Mr Litherland was pretending not to hear him to avoid paying him. On the following day, 1 December 2007, Mr Litherland received an email from Mr Richardson saying that Mr Richardson was of the view that he was trying to avoid further payment to him. He said:

"If you require, we will complete your property purchase. We will not accept any further work. You should retain other solicitors to do various trusts etc.

We will also finalize [*sic*] the US class action provided our fees are paid and the balance secured.

We will prepare detailed bills for all work and advice given over the past few years. At your request we held off doing so until you were in a position to pay.

Obviously this accommodation entitles us to a reasonable premium."

- [36] On 2 December 2007 Mr Litherland replied by email saying that he intended to pay the fees but Mr Richardson had never given him an amount to pay. Mr Richardson replied later that day saying that he no longer wished to act for Mr Litherland and that he would complete the land transaction and nothing more. Mr Richardson said that the major reason bills had not been prepared was because Mr Litherland held out not only to him, but also to Mr Richardson's children, that they would ultimately receive additional benefit from their association and support. Mr Richardson expressed the view that he had been used and that he intended taking his time in recovering as much as he could which he believed would ultimately be between \$350,000 and \$450,000. On the following day Mr Richardson sent an email with a copy to Mr Litherland to Bruce Parker who was a friend and business associate of Mr Litherland's stating in no uncertain terms that he no longer wished to act for Mr Litherland.
- [37] Mr Richardson continued to act in the property purchase but Mr Litherland instructed redchip lawyers<sup>6</sup> on 12 December 2007 with regard to other matters. On 14 December 2007 the property purchase settled and Mr and Mrs Litherland became registered owners on 2 January 2008.

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<sup>6</sup> Lower case used by the firm.

[38] A number of transactions took place without specific instructions from Mr and Mrs Litherland and of which they did not become aware until 21 January 2008:

- On 13 December 2007, Mr Richardson signed an application (using the unregistered Enduring Powers of Attorney) for the issue of two certificates of title for the property which was being purchased by Mr and Mrs Litherland.
- On 2 January 2008 Mr Richardson lodged the Enduring Powers of Attorney given by Mr and Mrs Litherland with the DNR.
- WLH Collections Pty Ltd (“WLH Collections”) was incorporated on 4 January 2008, with Gregory Edwards Reynolds, an employee of Mr Richardson’s, as its sole director. Mr Richardson said that he intended the names to be an ironic reference to a company with a similar name<sup>7</sup> that alleged it was owed a significant amount of money by Mr Litherland. It may well be that Mr Richardson wished to put pressure on Mr Litherland who would assume, unless he investigated ownership of the company, that a company associated with WLH had put a caveat on his residential property.
- On 10 January 2008, KRG lodged for registration in respect of the property, releases of mortgage, transfers and applications for certificates of title. The applications for certificates of title were executed by Mr Richardson using the Enduring Powers of Attorney which had been lodged with the DNR on 2 January. The application for certificates of title had been executed by Mr Richardson as attorney for Ronald Litherland and Mollie Litherland on 13 December 2007.
- Also on 10 January, caveats were lodged over the property by WLH Collections claiming “an equitable share or interest as mortgagee of an estate in fee simple.” The grounds of claim were said to be pursuant to an assignment to the caveator dated 3 January 2008 of “an equitable lien over an estate in fee simple”. The caveats allowed for the registration of the documents lodged by KRG on the same date. In fact, WHL Collections was not incorporated until 4 January 2008 and Mr Richardson said he originally intended assigning to it the debt owed by the Litherlands and the benefit of his lien but changed his mind when he realised it was not possible to assign his possessory lien.
- On 11 January 2008 notification of the caveats was sent by post by the DNR to Mr Litherland.
- On 15 January 2008 the releases of mortgage, transfers and an application for certificates of title were registered and the certificates of title requested by Mr Richardson were issued and collected by KRG on the following day.
- On 16 January 2008 the Registrar of Titles issued a requisition notice to the caveator, WLH Collections, as it did not meet with DNR requirements for registration.
- On 18 January 2008 a request to remove the caveats was lodged with the DNR. It was treated as an application to withdraw the caveats and registered on 29 January 2008.

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<sup>7</sup> Wholesale Leisure Holidays Pty Ltd (WLH).

- [39] After receiving notice of the caveats, Mr Litherland then sought advice on about 23 January 2008 from redchip lawyers. Neither Mr nor Mrs Litherland had ever requested Mr Richardson to obtain the certificates of title nor knew that he intended to do so.
- [40] On 29 January 2008 Mr Barnes of redchip lawyers wrote to Mr Richardson on behalf of Mr and Mrs Litherland noting that Mr Richardson had registered Enduring Powers of Attorney without the consent or authority of Mr and Mrs Litherland and applied for the certificates of title without their consent. Mr Barnes requested Mr Richardson to cease acting with respect to the properties and on the Powers of Attorney and revoked any authority that Mr Richardson may have to act on behalf of Mr and Mrs Litherland.
- [41] On 30 January 2008 Mr and Mrs Litherland signed an authority directing Mr Richardson to deliver all files, documents and records including safe custody documents held by them or on their behalf (including any certificate of title) to redchip lawyers. On Friday 1 February 2008 redchip lawyers sent Mr Richardson the signed authority from Mr and Mrs Litherland. In particular redchip lawyers requested the immediate delivery up of the certificates of title which Mr Richardson had procured without instructions from Mr and Mrs Litherland. They also requested the immediate return of all funds placed by Mr and Mrs Litherland in Mr Richardson's trust account. They also formally notified Mr Richardson of the revocation of the Powers of Attorney.
- [42] On the same day, Mr Barnes of redchip lawyers received a telephone call from Mr Richardson where he said he was claiming a solicitor's lien over the certificate of title and all other documents and files belonging to Mr and Mrs Litherland. Mr Barnes made a detailed note of the telephone conversation on the same day. Mr Barnes commented to Mr Richardson that there seemed to be a blurring of the involvement between Mr Litherland and Mr Richardson between a solicitor/client relationship and a business relationship. When Mr Barnes asked Mr Richardson why he had requested a copy of the certificate of title Mr Richardson replied that "he wanted to get it mounted and present it to Ron Litherland as a gift." He acknowledged that he had no authority or instructions from the client to use the Power of Attorney for the purpose of securing and receiving the duplicate certificates of title. Mr Barnes conceded on cross-examination that Mr Richardson was admitting that he did not have specific instructions from his client to use the Power of Attorney in that way. Mr Richardson said that he was claiming a solicitor's lien over the certificates of title and all other documents and files belonging to the client.
- [43] On 6 February 2008, redchip lawyers sent a letter to Mr Richardson repeating the request for the delivery up of all documents.
- [44] On 8 February 2008 Mr Richardson sent an email to redchip lawyers with a copy to Mr Litherland saying that Mr Litherland and his companies owed Mr Richardson in excess of \$360,000 in fees; that Mr Richardson would also be seeking a "significantly larger sum by way of damages" and that he would be exercising a lien over the "land titles" to ensure payment.
- [45] Mr Litherland swore in his affidavit that at the time of receiving that email Mr Richardson had never produced an invoice or account for work performed in

relation to any matters conducted on behalf of himself or his wife. Mr Litherland then instructed redchip lawyers to write to Mr Richardson requesting that he immediately provide itemised invoices in respect of the amount demanded in fees.

- [46] By letter dated 8 February, posted on 11 February 2008, redchip lawyers requested from Mr Richardson immediate delivery of all itemised bills or invoices relating to the work for which he was requesting payment and demanded immediate delivery up of the certificates of title. On 25 February 2008, on instructions from Mr Litherland, redchip lawyers forwarded a complaint to the Commissioner.
- [47] On 11 March 2008 Mr Barnes at redchip lawyers received invoices from Mr Richardson in respect of what was said to be fees outstanding from the Litherlands. The correspondence noted attachments of copies of invoices for AUD\$55,913 and US\$371,530 and a copy of an invoice from Florida lawyers, Carlton Field. Mr Richardson also said that KRG would continue to exercise their lien over the title. The invoices are undated and not itemised. Mr Richardson had never previously sent invoices to Mr and Mrs Litherland except in respect of conveyancing matters where invoices were sent and paid.
- [48] The invoices were sent on that date both by email and by facsimile. However the two sets of documents are not identical: for example included in the faxed documents, there is an invoice entitled “Wholesale Leisure Holdings” in the amount of \$1,210 where the invoice is in respect of “reopened negotiations with Wholesale Leisure Holdings attempted renegotiations and settlement of dispute”. Also amongst the faxed documents, is an invoice entitled “various multilevel schemes” in the amount of \$5,280 which appears to be a second invoice in respect of the same work and the same amount although with slightly different wording from another invoice included in the faxed documents. Although the wording is not precisely the same, it is sufficiently similar to show that there are two invoices for the same work. The invoice for \$1,210 and the second invoice for \$5,280 are not found in the documents sent by email. However, in the documents sent by email is another invoice entitled “appointment of Hong Kong director” which is an invoice for US\$450 where the work said to have been done is “discussions re local director discussions with Mr Beckett”. This invoice was not included in the documents sent by facsimile. Mr Barnes pointed out that neither copy included an invoice from Carlton Field.
- [49] Mr Richardson explained those discrepancies by saying that two of the invoices sent by email were inadvertently omitted from those sent by facsimile and that the invoice from Carlton Field was addressed to him and not the Litherlands.
- [50] Mr Litherland deposed that the retention of the certificate of title by Mr Richardson prevented him and his wife from lodging with the DNR an amalgamation survey prepared with the purpose of amalgamating the two lots that form the property into one lot. The amalgamation needed to occur as the construction of a house over both lots comprising the property was scheduled to commence. It also prevented the lodgement with the DNR of a mortgage on the property in favour of Ruby Year Pty Ltd as trustee for the Sovereign Family Trust which was the entity that provided the finance for the purchase of the property. Mr Litherland deposed that Mr Richardson was aware prior to 13 December 2007 that a mortgage in favour of the entity financing the purchase of the property was to be registered over the property following the registration of the ownership by Mr and Mrs Litherland.

- [51] On 26 March 2008 on Mr Litherland's instructions, redchip lawyers filed an application in the Supreme Court seeking, *inter alia*, a return of all documents, files and material held by Mr Richardson in respect of Mr and Mrs Litherland. Mr Litherland filed an affidavit in that matter which is in similar terms to the affidavit filed in this matter.
- [52] Mr Richardson prepared, but did not swear or file, an affidavit for those proceedings. He swore to its truth while giving evidence in these proceedings. He says in that affidavit that the primary purpose of his use of the Enduring Powers of Attorney was for the benefit of Mr and Mrs Litherland. He said that he could instead have exercised a lien over the Form 1 and Transfer documents. He also prepared and annexed to that affidavit a schedule setting out more details with regard to each invoice. This version was not precisely the same as the email or faxed copies referred to earlier. The second invoice for \$5,280 found in the faxed copies but not in the emailed copies was not included in the schedule; the invoice for US\$450 found in the emailed copies but not in the faxed copies was not included in the schedule; the invoice for \$1,210 found in the faxed copies but not in the emailed copies was in the schedule. By then Mr Richardson had contacted Carlton Field and found that the invoice from them had already been paid by the Litherlands.
- [53] The dispute was settled by a Deed of Settlement dated 2 May 2008 (the "Deed"). Mr Litherland said he decided to resolve the dispute on a commercial basis.
- [54] In the Deed Mr and Mrs Litherland agreed they would:
- (a) pay Mr Richardson \$140,000;
  - (b) authorise Mr Richardson to bank the cheque provided by ICE Gallery Asia-Pacific Pty Ltd made out to "KRG Law" in the amount of \$10,000 into the KRG Law general account and that Mr Richardson should be absolutely entitled to those funds;
  - (c) provide an authority, acknowledgement and release in a form satisfactory to Mr Richardson's solicitors ratifying and accepting the withdrawal and use of the \$30,000 paid into the KRG Law trust account in or about September 2007;
  - (d) discontinue the proceedings with no order as to costs; and
  - (e) advise the Commission that they wished to withdraw the complaint made by redchip lawyers on their behalf against Richardson.
- [55] Mr Richardson agreed that he would:
- (a) accept the payment of \$140,000 in full and final satisfaction of all and any claims that he or his related parties might have against Litherland or e-Cash or their related parties;
  - (b) accept the payment of \$140,000 in full and final satisfaction of any lien that he might have over documents or records in his possession that were the property of Litherland or e-Cash or their related parties;

- (c) deliver to Mr and Mrs Litherland the documents. Mr Richardson would be at liberty to retain copies of the documents which he was obliged to do in his role as a solicitor; and
- (d) take all steps to discontinue the proceedings with no order as to costs.
- [56] Upon the performance of the obligations any lien claimed by Mr Richardson whether over the certificates of title or any replacement thereof or otherwise was at an end.
- [57] Mr Litherland did advise the Commission that he wished to withdraw his complaint. However, the Commissioner, as he is entitled to do so, elected to continue his investigation.
- [58] By letter dated 3 June 2008 the Commission provided Mr Richardson with draft charges in respect of a number of complaints including the complaint with regard to Mr and Mrs Litherland and requested that he make any further submission by 24 June 2008. Mr Richardson replied with regard to this matter on 11 June 2008 saying, *inter alia*, “the Power of Attorney was used by me for the benefit for my clients and for no other purpose.”
- [59] The Commissioner did not dispute that there was a basis for claiming a lien over the certificate of title but rather that it was improper and/or dishonest to obtain the certificates of title for the purpose of claiming the lien. While it might be considered that it was in the interests of his client to obtain a paper Certificate of Title as good conveyancing practice, it was done with the intention of benefiting the practitioner in a situation where there was conflict between his own interests and those of his clients in exercising the powers of attorney.
- [60] Mr Richardson said that he would have been entitled to exercise a lien over the form 1 Transfer or the Release of Mortgage. It was conceded by Mr Davis SC appearing for Mr Richardson before the Tribunal that Mr Richardson was wrong when he thought he could have exercised a lien over those documents. The Commissioner replied to Mr Richardson’s letter of 11 June 2008 on 13 June 2008 saying in part:  
 “In the Commissioner’s view, following the settlement of the conveyance on 14 December 2007 any asserted entitlement to exercise a lien over the form 1 Transfer or Release of Mortgage was negated by your obligation to act in your clients’ best interests in registering those documents promptly.

Further, in circumstances where:

- You had terminated your retainer with Mr and Mrs Litherland with the exception of the land transaction and were in dispute regarding fees allegedly owed in other matters; and
- It has not been evidenced that you received instructions from the Litherlands to obtain the certificate of title; and
- The Litherlands have disputed the purpose of providing the Enduring Powers of Attorney;

The Commissioner believes there is a reasonable likelihood an inference would be drawn that your sole purpose for obtaining the certificate of title was to enable you to claim a solicitor’s lien thereby strengthening your bargaining power in the fees dispute.”

- [61] Mr Richardson said in his affidavit filed in this disciplinary proceeding that in obtaining the certificates of title, he was acting as a “prudent, competent and diligent solicitor”. He relied upon an affidavit filed by an experienced property lawyer, Robert Scott Gregory, that a prudent, competent and diligent solicitor acting for the registered owner/proprietor of a fee simple interest in land that is unencumbered ought to advise and encourage his or her client to apply for the issue of a duplicate title.
- [62] However, Mr Richardson conceded in cross-examination that once he lodged the Form 1 Transfer and Release of Mortgage he had nothing over which he could exercise a lien so one of the reasons he applied for the certificates of title was so that he could exercise a lien over them. Mr Richardson did not advise or encourage his clients to apply for a certificate of title to protect their interests. He took it upon himself to apply for the certificates of title using the Enduring Powers of Attorney so that he would have valuable documents over which to execute a lien. This was his primary purpose. The prospect that it might protect his clients was, at best, incidental. He claimed he could not see that this put him in a situation of conflict. However he agreed in cross-examination that the statement in the Solicitors Handbook on conflict of interest that “a practitioner should give undivided fidelity to the client’s interests, unaffected by any interest of the practitioner or any other person” was a “fairly basic proposition” and admitted that he was not giving undivided fidelity to his clients’ interests when he obtained the certificates of title. As an experienced solicitor, he well knew that he was in a situation of conflict.
- [63] He conceded that had he explained to the Litherlands that he intended to lodge the powers of attorney, use them to apply for certificates of title and then hold the certificates himself for the purpose of exercising a lien over them they would have given him instructions not to do it. Mr Richardson deliberately chose to use the powers of attorney, without the knowledge or consent of the Litherlands, to obtain the paper Certificates of Title to enable him to exercise his lien for unpaid legal fees. The validity of the lien is not in issue in these proceedings. The right of a solicitor to claim a possessory lien at common law is an incident or an implied term of the solicitor’s retainer.<sup>8</sup> There is no doubt that a lien can be claimed over property of a client that comes into the solicitor’s possession in the course of the retainer and in his or her capacity as a solicitor.<sup>9</sup> However there is an important qualification found in the general principle as stated in *Halsbury’s Laws of England* 3<sup>rd</sup> ed, Vol 36, par 238 quoted with approval by Asprey JA in *Bolster v McCallum* (1966) 85 WN (Pt 1) NSW 281 at 286, which was referred to in the judgment of McColl JA in *Bechara v Atie* [2005] NSW CA 268 at [46] and Douglas J in *Stark v Dennett* [2007] QSC 171 at [21]:<sup>10</sup>
- “At common law a solicitor has a lien upon any documents which come into his [or her] possession in the course of his [or her] employment and in his [or her] capacity as a solicitor **with the sanction of his [or her] clients** and which are the property of his or her clients.” (emphasis added)
- [64] Mr Richardson conceded that in conveyancing practice ordinarily, once the matter had settled, the solicitor would seek the purchasers’ instructions as to whether or not

<sup>8</sup> *Barratt v Gough-Thomas* [1950] 2 All ER 1048 at 1053.

<sup>9</sup> *Leeper v Primary Producers’ Bank of Australia Ltd (In Voluntary Liquidation)* (1935) 53 CLR 250 at 256, 261.

<sup>10</sup> *Stark v Dennett* was overturned on appeal in [2008] QCA 50 but not on this point.

they wished the solicitor to obtain for them a paper copy of the certificate of title and that their instructions would be sought as to, if they did want it, whether they wanted the solicitor to maintain safe custody of that document. He agreed that it is a matter of choice for the client. The client was not given a choice here nor were specific instructions sought. Mr Richardson obtained and retained the certificate of title, not because it was in his clients' interests, but because it was in his own. In doing so, he breached his retainer to his clients and his duties under the *Powers of Attorney Act* to act honestly<sup>11</sup> and not to enter into a conflict transaction.

[65] The charge specifically alleges that Mr Richardson's conduct in obtaining the certificates of title was dishonest or improper. The charge is made in clear terms.<sup>12</sup> There can be no doubt that his conduct was improper. Mr Richardson deliberately used the powers of attorney to obtain certificates of title so that he could claim a possessory lien over them and in doing so improperly preferred his own interests to those of his client. In a situation where he found himself in a position of conflict he should have made full disclosure to the client and sought instructions. He failed to make full disclosure and obtain instructions because he knew that if he did, the client would instruct him not to apply for the certificates of title. In the circumstances, in failing to make full disclosure and obtain instructions so as to further his own interests, he acted dishonestly. This is so whether one applies the test of dishonesty found in *R v Ghosh* [1982] 1 QB 1053 at 1064:

- (1) Whether the conduct was dishonest by the ordinary standards of reasonable and honest people; and
- (2) Whether the respondent must have realised that what he was doing was by those standards dishonest;

or whether one applies a purely objective test favoured in *Peters v The Queen* (1998) 192 CLR 493 at 503-504, 508, 526-527.<sup>13</sup>

[66] As his conduct was both improper and dishonest, the Tribunal is satisfied to the relevant standard that he was guilty of professional misconduct in respect of the charge as particularised.

### **Charge 2: Deceit – David West and Lynne West**

[67] The respondent denied that he acted deceitfully when acting for Mr and Mrs West (also referred to as "the clients"). The italicised particulars of the charge and Mr Richardson's response are as set out below. Where Mr Richardson admitted the particular without qualification that is not specifically noted but rather taken as proved.

[68] 2.1 *At all material times the respondent:*  
 (a) *acted for the [clients]; and*  
 (b) *was the principal of the law practice KRG Law ("KRG").*

<sup>11</sup> As to which see *Ede v Ede* [2007] 2 Qd R 323 at 329-330.

<sup>12</sup> See *Belmont Finance Corporation Ltd v Williams Furniture Ltd* [1979] Ch 250 at 268 quoted by the Court of Appeal in *Legal Services Commissioner v Madden* (No. 2) [2008] QCA 301 at [54].

<sup>13</sup> See also *Harle v Legal Practitioners Liability Committee* [2003] VSCA 133 at [29]-[32].

2.2 *In or about May 2006 the clients retained the respondent to act on their behalf in respect of civil proceedings in the Coolangatta Magistrates Court. The clients were the defendants to a claim alleging breach of contract and/or misrepresentation under the Trade Practices Act 1974 (“proceedings”).*

The respondent said in relation to the allegation contained in paragraph 2.2 that his firm acted for the clients in a conveyancing matter involving the sale of a house property, in the course of which the clients removed the pool heating equipment which the purchaser claimed was a fixture. The clients were advised by the respondent’s firm that such items should not be removed.

The respondent said further that the clients were advised they had little prospect of successfully defending the action and the only legitimate defence open to them centred around the purpose of annexation of the chattel.

The respondent advised the clients that no fee would be charged for preparation of the defence but he reserved the right to do so in the event that the matter went further. No fee was ever charged for this matter.

- [69] 2.3 *The respondent filed a defence in the proceedings.*
- 2.4 *A Notice of the Holding of a Directions Conference dated 14 August 2006 was issued by the Coolangatta Magistrates Court (“the Notice”) and forwarded to KRG. The Directions Conference was to take place on 3 October 2006 at 10.30am and the parties themselves and their legal representatives were required to attend.*
- 2.5 *The respondent failed to advise the clients that the Notice had been issued and that the parties themselves and their legal representatives were required to attend the Directions Conference.*
- 2.6 *On the morning of the Directions Conference the respondent instructed an employee solicitor Ms Eleanor Huang to attend the Directions Conference and seek an adjournment.*
- [70] 2.7 *The respondent telephoned the purchasers’ solicitors and advised that a representative from KRG would be attending the Directions Conference and would be seeking an adjournment on the basis that the purchasers’ costs would be paid. The respondent did not seek the client’s instructions in relation to paying the purchasers’ costs.*

The respondent admitted the allegations contained in paragraph 2.7 and said that he did not seek the clients’ instructions in relation to paying the purchasers costs as he at all times intended that he would pay those costs as they had been incurred because of his failure to notify the clients of the directions conference.

- [71] 2.8 *On 3 October 2006, judgment was entered against the clients pursuant to Rule 525(2)(b) of the Uniform Civil Procedure Rules 1999 (UCPR).*
- [72] 2.9 *On 18 October 2006 the respondent made an application to have the judgment set aside without his clients’ instructions.*

The respondent admitted the allegations contained in paragraph 2.9 but said that he telephoned his female client on her telephone number 55938684 at 12.48pm on 15

November 2006 to discuss the matter. The duration of that call was four minutes thirty six seconds. The respondent said that during the course of that telephone conversation he advised the client that judgment had been entered against them and obtained instructions to appear in the Magistrates Court on 16 November 2006 on the hearing of the application to have judgment set aside. The respondent said that he had not telephoned the client prior to this as he was mostly absent from his office in ill health and his practice was under the control and management of a *locum tenens* in the period 17 October 2006 through to 18 January 2007.

- [73] 2.10 *The application was heard on 16 November 2006 and was unsuccessful.*
- [74] 2.11 *In order that his clients did not become aware of his delay and inattention, the respondent acted deceitfully in that he:*
- (i) *failed to notify his clients about the Directions Conference and their requirement to attend;*
  - (ii) *chose to refrain from telling his clients that judgment had been entered against them;*
  - (iii) *did not seek his clients' instructions in respect of making an application to set aside judgment;*
  - (iv) *appeared before the Coolangatta Magistrates Court without instruction;*
  - (v) *did not return his clients' phone calls following notification of the judgment against them.*

The respondent denied the allegations contained in paragraphs 2.11(ii), 2.11(iii), 2.11(iv) for the reasons aforesaid. Further, the respondent denied the allegations contained in paragraph 2.11(v) and said that he returned his female client's telephone call by a call to her mobile telephone 0414641323 at 10.52am on 23 November 2006. The duration of the call was two minutes eleven seconds and during the course of that conversation the respondent advised his client that the application to set aside judgment had been unsuccessful.

- [75] 2.12 *The respondent thereby preferred his own interests to those of his clients.*

The respondent denied the allegations contained in paragraph 2.12 for all reasons aforesaid.

Further the respondent said that the matter was investigated by the Queensland Law Society on behalf of the applicant. The Society recommended that the complaint be dismissed pursuant to s 274(1)(b).

### **Findings with regard to Charge 2**

- [76] The evidence relevant to this charge was given by Mrs Lynne West, Ms Xiao Yu (Eleanor) Huang and Mr Richardson, each of whom gave evidence on oath in these proceedings by way of affidavit and were cross-examined, and by Kaye Trenham who gave evidence on affidavit and was not required for cross-examination. In addition, the Tribunal had the client file, the correspondence about the complaint and the relevant court file from the Coolangatta Magistrates Court.
- [77] Mr and Mrs West retained KRG to act on their behalf in the sale of their home at 9 Coffeebush Court, Reedy Creek ("the property"). The contract was dated 8 March 2006. Mrs West was cross-examined about the precise date of the retainer. She thought it was immediately after the contract had been signed but was not certain.

The purchasers were Samuel Gimellaro and Louise Gimellaro. Their solicitors were Woodward Lawyers. The real estate agent was Andrew Parkes from Robina Village Real Estate. Settlement was due on 28 April 2006.

- [78] At some time prior to settlement Mr and Mrs West removed a pool heater from the property as they were of the belief that it was not included in the sale of the property.
- [79] On 28 April 2006, there was an agreement to extend the time for settlement. The purchasers' solicitors wrote to KRG asking for their clients to be able to take possession and asked for return of the pool heater which they asserted was a fixture.
- [80] In his affidavit filed in these proceedings, Mr Richardson said that Mr and Mrs West were then advised that the pool heater was a fixture and should be returned to the property. He said they did not accept such advice and advanced various reasons as to why it did not have to be returned and that shortly prior to the settlement they advised they had contacted the buyers who said they would not make an issue of the matter.
- [81] In fact Mr Richardson did not meet or speak with Mr and Mrs West before settlement so it is necessary to go to the affidavit of Kaye Trenham who was working at KRG as a conveyancing clerk at the time and handling this matter. She said she was not aware of any problem about the pool heater until she received the letter of 28 April 2006. She said she rang the client and although she kept no notes of the call, her recollection was Mrs West informing her that the heater was not a fixture, they would not be bringing it back and that it was never meant to be part of the contract.
- [82] Ms Trenham says she has a note on the file of a call made later on that day of her conversation with Mrs West saying that she had spoken to the purchasers who told her they would take possession of the property and would not make an issue in respect of the heater. Ms Trenham said to her that their solicitors would have to put that in writing. She annexed what she said was a copy of the file note to her affidavit.
- [83] In fact the file note is from a Carolyn Brown not Kaye Trenham. It records a telephone call from Mrs West on 28 April 2006 at 5.27pm to that effect and that Mr Woodward of the purchasers' solicitors rang back and said his clients would not take possession, that they would settle on the following week on 4 May and pay interest and reserve their rights.
- [84] Mr Richardson's evidence that Mr and Mrs West were advised prior to settlement that the pool heater was a fixture and should be returned to the property and that they did not accept such advice is not supported by any other evidence, particularly not the evidence given, unsatisfactory as it is, from Ms Trenham his employee. The Tribunal cannot accept Mr Richardson's unsupported hearsay evidence as to this.
- [85] The contract settled on 3 May 2006.
- [86] On 11 May 2006, after settlement, Mr and Mrs Gimellaro commenced proceedings against Mr and Mrs West in the Magistrates Court in Coolangatta for damages in the sum of \$7,315 for the cost of replacing and reinstalling a heat pump and water control flow valve for the pool. The statement of claim showed that they relied

upon representations made by the real estate agent acting for Mr and Mrs West, Mr Parkes, who said words to the effect that, "It is a heated pool and you will be able to swim in it all year round, there is a spa at one end and also a pool cover included"; and "yes this is the pool heating system."

- [87] They also relied upon the promotion of the property on the internet as including "a heated salt water pool for you to enjoy all year round".
- [88] The purchasers said that they noticed the pool heating equipment had been removed in the course of a final inspection on 28 April 2006 prior to settlement and, by letters from their solicitors on 28 April 2006 and 3 May 2006 to Mr and Mrs West's solicitors, gave notice that they required the return and installation of the heating pool equipment prior to settlement. The heating equipment was not returned or reinstalled.
- [89] The purchasers then elected to complete the purchase on 3 May 2006 giving notice of their intention to seek compensation for damages for the removal of the heating equipment to the pool.
- [90] Mrs West said in evidence that she was concerned about settling with this problem outstanding but she was told by an employee of KRG not to be concerned, that she had spoken to a solicitor and that they should settle on time and it would be sorted out afterwards.
- [91] KRG was retained to defend Mr and Mrs West. Their defence was due 28 days after service of the claim. A Notice of Intention to Defend and Defence was filed on 20 June 2006.
- [92] Prior to the filing of the defence Mr and Mrs West met with Mr Richardson on 16 June 2006. Mrs West told Mr Richardson on that occasion, as she said she had during previous telephone conversations, that the real estate agent had produced an affidavit in support of the defendants' case. Mrs West made a file note of the meeting and said that Mr Richardson was extremely rude to both her and her husband and shouted at them and abused them when she confronted him as to why his conveyancer and legal assistant had not solved the issues of the pool heater prior to settlement as she had asked them to. Ms Trenham and Ms Stubbs, employees of KRG, were, according to Mrs West, in and out of that meeting. Mrs West was told she had a 50/50 chance of success.
- [93] Ms Trenham said that after settlement, Mr Richardson, Cherie [Stubbs], a trainee solicitor with the firm of KRG, Mr and Mrs West and herself had a meeting in the boardroom of KRG to discuss the claim issued by the purchasers in respect of the heater. It appears that no notes were kept of that meeting by anyone at KRG. Ms Trenham said her recollection of that meeting was that Mrs West thought that Ms Trenham had not told her the full story about the heater. Ms Trenham said she explained to Mrs West that she had said that it was her understanding that the heater was part of the "chattels to go to the purchaser" and told Mrs West that Mrs West had told Ms Trenham that she was not leaving the heater as she had paid a lot for it and was taking it to her new property. This of course further contradicts Mr Richardson's evidence that Mr and Mrs West were told by KRG prior to settlement that the pool heater was a fixture.

- [94] Mr Richardson confirmed that Mr and Mrs West said that their real estate agent was happy to confirm that the pool heating equipment was not part of the sale. He says that Mr and Mrs West were advised that they had little prospect of successfully defending the action. He denied being extremely rude but accepted that the conversation may have become heated but said that was no more than often happens when a client receives advice he or she does not want to hear. He said he was nevertheless prepared to help out Mr and Mrs West by filing a defence at no cost to them.
- [95] On 19 June 2006, Ms Stubbs, who was an articled clerk at KRG, sent an email to Mr and Mrs West saying she attached a copy of the defence which had been filed and noting they had made various non-admissions because they had not yet received a letter from the real estate agent's solicitor and the plaintiff's solicitor had refused their request for an extension of time to file the defence. The Wests then rang the real estate agent who told them that the affidavit was waiting for collection at the solicitor's office. They passed the information on to Ms Stubbs and told her to get it.
- [96] On 14 August 2006, the Coolangatta Magistrates Court issued a notice of a directions conference to be held at 10.30am on 3 October 2006. It was sent to the address for service for the plaintiffs and for the defendants which, in the case of Mr and Mrs West, was at KRG. As Mr Richardson has admitted, he failed to advise Mr and Mrs West that the notice to attend the directions hearing had been issued and that the parties themselves were required to attend with their legal representatives. He said that Ms Stubbs had left on one day's notice and there was no file handover so he did not become aware of the directions hearing until 2 October 2006.
- [97] Mr Richardson swore in his affidavit that he then telephoned the plaintiffs' solicitors and advised them what had happened and said they would attend and seek an adjournment on the basis that "we pay their costs". The solicitors said they would need to obtain instructions from their clients. Mr Richardson said he "sensed they understood" his situation and he expected the conference to be adjourned. He said he could not contact Mr and Mrs West about the matter because the file could not be located on such notice and their new phone number was not on their permanent records. He thereby accepted that in seeking the adjournment he was acting without instructions.
- [98] Xiao Yu (Eleanor) Huang commenced employment as a junior solicitor at KRG at Southport on 23 August 2006. At that time she held a restricted employee legal practising certificate. She was a graduate in law from Bond University where she had also undertaken practical legal training which included a 14 week placement in a Sydney law firm. She was admitted as a solicitor in New South Wales on 5 December 2003 and then travelled overseas and undertook further study during the following three years. She was employed on the basis that she would handle New South Wales conveyancing matters and was assured that training would be given to her. She did receive two weeks training at KRG in New South Wales conveyancing procedures from a paralegal who was employed at the firm and was leaving. She received no training in, and had no prior experience of, civil litigation practices and procedures or Queensland conveyancing. Until 3 October 2006, Ms Huang worked only on New South Wales conveyancing matters.

- [99] Ms Huang's evidence was that on the morning of 3 October 2006, Mr Richardson handed her a document headed "Notice of Compulsory Conference" in a matter between Gimellaro and West and said words to the effect "Eleanor, we act for Mr and Mrs West, I'm not sure where the file is but I want you to go down to Coolangatta Magistrates Court and seek an adjournment in this matter, on the basis that we need to obtain instructions from the client." She told him that she was not happy to do so as she did not know where the Coolangatta Magistrates Court was, had no experience of civil procedure and no knowledge of the file. However he insisted. He told her to contact the clients.
- [100] Ms Huang said she could not locate the file prior to leaving the office and so was unable to establish telephone contact with her clients. She had never had any contact with Mr and Mrs West during the original conveyance or the subsequent litigation. Ms Huang had difficulty finding the courthouse as she had never been there before. She had, as Mr Richardson knew, no experience at all in civil litigation and, without the file, no contact details for Mr and Mrs West.
- [101] Mr Richardson said that after Ms Huang left the office, the plaintiffs' solicitors contacted him and advised they had received instructions to ask that judgment be entered. He told them that his solicitor would be attending at court that morning and arguing for an adjournment. He did not contact Ms Huang to inform her that the adjournment would be opposed. Mr Richardson said that he thought that when Ms Huang informed the Registrar of the situation the Registrar would have granted the adjournment and set a new date a few weeks ahead. He gives no basis for this belief. He attributes responsibility for judgment being entered to the fact that Ms Huang became lost and arrived at the court half an hour late by which time judgment had already been entered. He said that Ms Huang rang him from the court and he attempted to intercede by telephone to assist her but to no avail. He said in evidence that he spoke to the Registrar by telephone and said he would be making an application to have the judgment set aside.
- [102] The application for an adjournment was unsuccessful and judgment was entered against Mr and Mrs West. The judgment was entered by the Registrar for the claim of \$7,315, interest of \$344.95, professional costs of \$1,235 and court fees of \$192.40. The total amount of the judgment was \$9,087.35. Ms Huang returned to the office and provided Mr Richardson with a copy of the judgment.
- [103] Ms Huang was given the client file and instructed by Mr Richardson to prepare an application to have the judgment set aside. He did not tell her to notify the client of the judgment or the making of the application. She said that she understood that Mr Richardson had obtained all necessary instructions from the client in that regard. In fact, no one informed Mr and Mrs West that judgment had been entered against them. Nor of course did anyone seek instructions from Mr and Mrs West to make application to have the judgment set aside.
- [104] Ms Huang prepared a draft application and supporting affidavit based on a precedent from the firm's computer system. Mr Richardson settled the documents and witnessed Ms Huang's signature on the affidavit. In the affidavit she deposed that she arrived at the Coolangatta Magistrates Court at 10.45am and requested an adjournment to allow KRG to establish contact with Mr and Mrs West as there had been a change in the staff handling the matter, however the application for adjournment was opposed and judgment entered.

- [105] Mr Huang filed the application to set aside the judgment and the supporting affidavit on 18 October 2006. Mr Richardson did not instruct her to contact Mr and Mrs West about the application or to obtain an affidavit from them to support the application. They knew nothing about it. Mr Richardson said in evidence that he did not see any need to tell them. He said that he would tell them when he had fixed the firm's mistake. Mrs West said in evidence, and the Tribunal accepts, that if they had been consulted they would have considered carefully what to do next particularly if they had been told that the real estate agent was not co-operating. They were not given the opportunity to consider their position and take advice since they were not informed of what had happened.
- [106] On 20 October 2006 KRG received a letter from Woodward Lawyers, the lawyers for the purchasers, referring to the delay in the way in which the defendants had conducted the proceedings, their failure to comply with court rules or to attend to the directions hearing without any justification or excuse and of the defects in the original defence which was still relied upon. They notified that they would seek indemnity costs if the defendants did not withdraw their application. Mr Richardson reviewed the letter but gave no instructions to Ms Huang in relation to it. Mr and Mrs West were not informed.
- [107] On 9 November 2006, on instructions from Mr Richardson, Ms Huang sent a letter to Turnbull and Co, solicitors acting for the real estate agents who had sold the property on behalf of Mr and Mrs West, saying they would file an application for leave to file a third party notice against the real estate agents. This letter was sent without instructions from the clients. On 13 November 2006 Woodward Lawyers for the purchasers sent a letter by facsimile to KRG noting that they had not received a reply to their letter of 20 October 2006 other than a copy of the facsimile of 9 November 2006 which showed that the defendants proposed to join their real estate agents as third parties in proceedings which had already been determined by judgment. Mr Gimellaro filed an affidavit confirming various matters that were referred to in the statement of claim.
- [108] Mr Richardson said that he telephoned Mrs West on 15 November 2006. A four minute phone call to her phone number is shown in his telephone records. He did not keep a file note of the conversation. He said that he advised her that judgment had been entered against them and obtained instructions to appear in the Magistrates Court on 16 November 2006 on the hearing of the application to have the judgment set aside. He said he had not called her before that because he was mostly absent from the office due to ill health and his practice was under the control of a locum from 17 October 2006 to 18 January 2007. He said nevertheless he was apologetic to Mrs West and assured her that he would sort the matter out. He did not seek her instructions on the application to set aside the judgment.
- [109] Mrs West's evidence was that she did not receive any correspondence or communication from KRG until 16 November 2006. She thought that the plaintiffs had withdrawn their complaint as they had not heard anything for so long. On 16 November 2006 Mr Richardson telephoned Mrs West and told her that he was very sorry, that it was his fault and that he had not informed them of the court date set for 3 October 2006. It appears from her report of this conversation that this was in fact the conversation she had with Mr Richardson on 15 November, and she mistakenly wrote the date 16 November on the note. He said not to worry as he would fix it as it was his fault and he would make it right. He apologised profusely. He told Mrs

West that he did not get the affidavit she had spoken about from the agent's solicitor. He told her that the "girl" in his office who was working on the defence had resigned and he did not know what she had done. Mrs West reiterated the need to get the affidavit from the real estate agent. Mr Richardson did not inform Mrs West that there was a judgment against them or that they had lost their case. Nor did he tell her about the application to set aside the judgment or seek her instructions. She kept a file note of that conversation. Apart from the date, the Tribunal accepts the accuracy of her account of the conversation, the details of which she recorded contemporaneously.

- [110] The application to set aside the judgment was heard on 16 November 2006 and dismissed by the Registrar. Mr Richardson said he asked his locum and Ms Huang to appear on the application to set aside judgment but both refused. Mr Richardson appeared personally at the hearing of the application to set aside judgment. The defendants were ordered to pay \$310 in costs. Mr Richardson instructed Ms Huang to write to Mr and Mrs West and notify them of the decision. It was put to her that she was told by him to write a report to the clients. She had no memory of that. It seems unlikely since she was not present at court when the application to set aside the judgment was heard and dismissed.
- [111] On 23 November 2006 Ms Huang sent a letter as instructed enclosing a copy of the further judgment. Shortly after she sent that letter, Mr Richardson became extremely angry with her for sending it and was very rude to her. She was distressed and resigned without notice and left the office the same afternoon. As she said in her affidavit at all times during the litigation involving Mr and Mrs West the carriage of the file remained with Mr Richardson and her role as a junior solicitor was limited to carrying out his instructions.
- [112] Mr Richardson gave evidence that he spoke to Mrs West for about two minutes 11 seconds at 10.52am on 23 November 2006 as evidenced by his telephone records. In fact the phone call was made to Mr West's mobile and it does not appear that he had a conversation with Mrs West on that day. Mr Richardson gives a detailed account of what he said to Mrs West in that conversation but his account is unreliable because the Tribunal does not accept that he had any conversation with Mrs West on that day. It may well be that some conversation was had with Mr West but Mr Richardson does not depose to any such conversation with Mr West therefore the Tribunal does not propose to try to guess what might have been said to Mr West. Mr West was not called by the Commission. While his evidence might have been useful in resolving the content of that conversation, it is essentially irrelevant because the conversation was after judgment had been entered and the application to set it aside had been dismissed.
- [113] On 26 November 2006 Mrs West received the letter from KRG which had been sent by Ms Huang enclosing the judgments of 3 October 2006 and 16 November 2006. That was the first time that she realised that they had lost the case and that judgment had been entered against them. She did not know that KRG had made an application to set aside the judgment. She had not given any such instructions. She immediately rang Mr Richardson who again apologised and said the letter was not supposed to have been sent out but not to worry he would fix it and that he would "terminate the girl who had sent it out." Mrs West asked for a full explanation from Mr Richardson and kept a file note of the conversation.

- [114] Mr Richardson told Mrs West that he had sent a young inexperienced solicitor to the hearing to try to adjourn it but she was not granted the adjournment. He said the opposing solicitor railroaded his solicitor because she did not know what she was doing. He told her that the court ruled against Mr and Mrs West because they did not attend court. He also said that the adjournment was unsuccessful because the solicitor arrived late. He said he had submitted an affidavit to the court explaining that it was his fault that Mr and Mrs West did not attend court because he failed to inform them of the date. He told her not to worry, that he would fix it. She again told Mr Richardson to get the affidavit from the real estate agent. He said he was going to sue the real estate agent to recoup the cost of the judgment. She told him not to do that as the real estate agent was supporting the Wests and told Mr Richardson to ring the agent's solicitor to retrieve a copy of the affidavit.
- [115] About an hour later, Mr West rang the real estate agent himself to get a copy of the affidavit. The agent told Mr West that they had already received papers from Mr Richardson threatening to sue them. As Mrs West said, this was directly against their instructions and done without their knowledge.
- [116] The plaintiffs filed an application for an enforcement hearing summons. As a result, orders were made against Mr and Mrs West on 1 December 2006. The order was served on Mr and Mrs West on 11 December 2006. They were required to pay the debt of \$9,557 to the plaintiffs and submit financial information and attend a court hearing on 10 January 2007. Mr Richardson said in evidence that he had intended to pay the costs assessed on the default judgment but in fact he had not because Mrs West had never asked him to.
- [117] Between 12 December and 24 December 2006, Mrs West rang Mr Richardson's office every day, on several occasions twice a day. On each occasion she spoke to Mr Richardson's secretary who told her that Mr Richardson was home sick but was taking messages. She said she would pass on the message and get back to Mrs West but she did not. Mrs West was told there was no other solicitor in the office to whom she could speak. Mr Richardson sought to explain this by his absence from the office due to his ill health and a secretary who did not follow his instructions and had resigned.
- [118] Mrs West said that when it became apparent that no one from Mr Richardson's office was going to contact her she sought advice from other solicitors and sent Mr Richardson a letter dated 19 December 2006 telling him about the documents that had been served on them at home. She told him the advice she had from other solicitors was that as Mr Richardson was at fault for neglecting to inform them of the court dates on 3 October and 16 November he should pay the court ordered debt of \$9,557. She did not receive a reply to that letter.
- [119] Mrs West went to the courthouse to find out what had actually transpired and attended the hearing on 10 January 2007 without any legal representation. Mr and Mrs West borrowed \$9,557 from the bank and paid the court ordered debt. As a result of advice she had received from other solicitors, Mrs West made a complaint to the Commission on 8 January 2007.
- [120] The investigation of the complaint is dealt with in more detail in charge 4.4 however it is relevant here to note that Louise Syme, who is a legal officer in the employ of the Commission, deposed that she reviewed the file kept by KRG with

respect to the Wests' matter and noted that the file did not contain any record of Mr Richardson or his staff:

- informing the Wests of the Directions Hearing or their need to attend;
- seeking the Wests' instructions in relation to the Directions Hearing;
- informing the Wests that a judgment was entered against them immediately after the decision; or
- seeking the Wests' instructions to make an application to have that judgment set aside.

[121] Mr Richardson said in his affidavit that he did the best he could for Mr and Mrs West and did not charge them in respect of the litigation against them. This was an audacious submission. It is difficult to see on what basis he could charge them for such grossly negligent and incompetent representation.

[122] As the Commission submitted, Mr Richardson's firm made a mistake in not noting the date and informing Mr and Mrs West of the directions hearing. Thereafter instead of facing and owning up to the errors, Mr Richardson embarked on a course of concealment from his clients. He took it upon himself to file the application to set the judgment aside. He did that without instructions. He appeared on the application without instructions to do so. He did not inform his clients of what was going on and did not properly advise them as to their options and the consequences of those options. In this sense, he engaged in active deceit preferring his own interest in concealing his errors to those of his clients in being fully informed and being given professional advice.

[123] The Tribunal is satisfied to the requisite standard that Mr Richardson's behaviour was deceitful rather than just incompetent and so also constitutes professional misconduct.

#### **Charge 4: Failure to co-operate with investigations**

[124] This charge was that:

*Between January 2005 and April 2008 the respondent breached his professional obligation to co-operate with investigations undertaken by the Queensland Law Society and/or Legal Services Commission.*

The Commissioner provided twelve instances where he alleged that there was a breach of the respondent's obligation to co-operate.

[125] The gravamen of this charge is not the enumerated breaches of statutory requirements but rather the overall failure to co-operate.

[126] The response of Mr Richardson to this charge was as follows:

1. The respondent denied he breached any obligation to co-operate in the course of investigations undertaken by the Queensland Law Society and/or Legal Services Commission. He said further that he had a reasonable excuse for non-compliance with the various statutory notices. The respondent said further his explanations to the Society had always been candid, admitting errors when they had been made and such explanations had not been in any way evasive. The respondent said he did not believe that the Queensland Law Society investigators had submitted in

their various reports to the Legal Services Commission that the respondent had not been co-operative.

2. The respondent said further that the officers of the Commission had variously failed to reply to correspondence, denied him telephone access and otherwise acted in a manner which was not fair and reasonable.

### **Powers of investigation**

[127] Mr Richardson was the subject of numerous complaints made to the Commission by former clients. These complaints were investigated and it is Mr Richardson's alleged failure to co-operate with many of those investigations that forms the basis of Charge 4 as particularised. As the investigations covered the period from January 2005 to April 2008, they were governed first by Part 4 of Chapter 3 of the 2004 Act and from 1 July 2007 by Part 4.6 of Chapter 4 of the 2007 Act.

[128] The 2004 Act provides that an investigation can be commenced into the conduct of an Australian legal practitioner upon a complaint being made or on the Commissioner's initiative.<sup>14</sup> The Commissioner may refer the complaint to the relevant regulatory authority, that is the Law Society or the Bar Association. If that is done, the referral may state a date by which the regulatory authority is to report to the Commissioner and give directions about the way in which the regulatory authority is to conduct the investigation.

[129] However, pursuant to s 266 of the 2004 Act, the Commissioner must investigate a complaint if satisfied that it is inconsistent with the public interest for the relevant regulatory authority to investigate the complaint or it is in the public interest for the Commissioner to investigate the complaint. The Commissioner must also investigate the complaint if he or she has not referred it to a regulatory authority.

[130] The body carrying out the investigation must give to the respondent to the complaint written notice of the making of the complaint, the nature of the complaint, the identity of the complainant and the action taken by the entity in relation to the complaint. The written notice must also advise the respondent that he or she may make submissions on the complaint by a stated date that is reasonable.<sup>15</sup> Under s 270, a respondent who has given notice of a complaint may make written submissions to the Commissioner or the relevant regulatory authority about the complaint.

[131] Section 269 of the 2004 Act sets out the powers reposed in investigators and the obligations of a practitioner being investigated. It provides:

**“269 Powers for investigations**

- (1) The entity carrying out an investigation as mentioned in section 265 or 266<sup>101</sup> may, for the investigation –
- (a) require an Australian legal practitioner who is the subject of the investigation –
- (i) to give the entity, in writing or personally, within a stated reasonable time a full explanation of the matter being investigated; or

<sup>14</sup> For ease of reference, I will refer to both as a complaint for the purposes of this judgment.

<sup>15</sup> 2004 Act s 267.

- (ii) to appear before the entity at a stated reasonable time and place; or
  - (iii) to produce to the entity within a stated reasonable time any document in the practitioner's custody, possession or control that the practitioner is entitled at law to produce; or
  - (b) engage a costs assessor to report on the reasonableness of an Australian legal practitioner's bill of costs.
- (2) Subject to subsection (6), the practitioner must comply with a requirement under subsection (1)(a).  
Maximum penalty – 50 penalty units.
  - (3) If the practitioner fails to comply with the requirement, the entity may give the practitioner written notice that if the failure continues for a further 14 days after the notice is given the practitioner may be dealt with for professional misconduct.
  - (4) If notice under subsection (3) is given and the failure continues for the 14 day period –
    - (a) the practitioner is taken to have committed professional misconduct, unless the practitioner has a reasonable excuse for not complying with the requirement within the period; and
    - (b) the entity may bring a charge of professional misconduct against the practitioner.
  - (5) In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (3) and any enclosures with the notice are evidence of the matters in the notice and the enclosures.
  - (6) An Australian legal practitioner may refuse to give the entity an explanation of a matter being investigated if –
    - (a) the practitioner satisfies the entity that to give the explanation would contravene, or invalidate, a policy for professional indemnity insurance held by the practitioner; or
    - (b) the explanation would tend to incriminate the practitioner.”
- <sup>101</sup> Section 265 (Referral by commissioner to law society or bar association) or 266 (Commissioner investigating a complaint or investigations matter)

[132] It can be seen that the failure to comply with a requirement under s 269 of the 2004 Act may have serious consequences for the practitioner.

- [133] The Commissioner has the power to refer a complaint to the Law Society or Bar Association pursuant to s 435 of the 2007 Act. Section 439 deals with the role of the Law Society or the Bar Association in investigating complaints. As with the 2004 Act, the Commissioner must investigate a complaint if it has not been referred to a regulatory authority, it is in the public interest for the Commissioner to investigate the complaint or it is inconsistent with the public interest for the relevant regulatory authority to investigate the complaint. Section 437 deals with the giving of notice to the legal practitioner of the complaint that has been made and s 438 for the practitioner to make submissions in response.
- [134] Section 443 deals with the powers of the investigating body and the responsibilities of the practitioner during an investigation in substantially similar terms to s 269 of the 2004 Act. The only relevant changes are to subsections (1)(b) and 4(b). In the 2007 Act subsection 443(1)(b) provides:  
 “engage a person, who the entity considers is qualified because the person has the necessary expertise or experience, to report on the reasonableness of an Australian legal practitioner’s bill of costs.”
- [135] Subsection 443(4)(b) which in the 2007 Act provides:  
 “the commissioner may apply to the tribunal for an order in relation to the charge that the practitioner has committed professional misconduct as stated in paragraph (a) as if the application were an application in relation to a complaint against the practitioner.”
- [136] The first instance of failure to co-operate was in respect of the investigation of a complaint by Mr and Mrs Sachse. The particulars of Charge 4.1 and Mr Richardson’s response are as follows:

#### **4.1 Complaint of Sachse**

- (a) The respondent admitted that by complaint to the Commissioner dated 4 December 2006, Dennis and Sharyn Sachse complained about the respondent.
- (b) By letter dated 11 December 2006 the Commission required the respondent to provide a full written explanation of the matters being investigated and the client file by 20 January 2007.

The respondent admitted the allegations contained in paragraph (b) save that he said it was the Queensland Law Society which required such explanation and file and not the Commission.

- (c) The respondent admitted that he did not provide an explanation or the client file within the time specified but said that following on receipt of the enquiry from the Queensland Law Society he advised Craig Smiley, the Manager – Investigations, that there would be delay in the reply as the hard copy relevant file could not be located. Mr Smiley agreed to several requests for extensions of time in which to respond pending location of the file.
- (d) The respondent provided an explanation to the complainant on 21 May 2007.

The respondent said that once the file had been located he provided a full and frank explanation of the matters being investigated to the Queensland Law Society by

letter dated 21 May 2007. The respondent did not provide a copy of his file because it was a standard practice adopted by the respondent and accepted by the Queensland Law Society that the respondent would simply copy and forward those parts of the file or correspondence which were relevant to the enquiry. The Queensland Law Society had made no complaint of failure to co-operate.

- (e) By letter dated 25 February 2008 the Commission requested that the respondent provide a copy of the client file by 10 March 2008.

The respondent admitted the allegation contained in paragraph (e) and said that he caused a copy of the file to be forwarded to the Commission by express mail such that it would have under normal circumstances reached the Commission by the due date 10 March 2008.

- (f) The client file was forwarded to the Commission by the respondent on or about 12 March 2008.

The respondent said that Ms Syme an officer of the Commission is well aware that the envelope had been incorrectly addressed to the Incorporated Council of Law Reporting and this letter was directly on forwarded by that office to the Commission and accordingly the respondent denies that such delay constitutes evidence of a failure to co-operate in the investigation.

Further, the respondent said that Mr Edwards an officer of the Commission failed to respond to correspondence dated 7 September 2007 wherein the respondent set out reasons for denying that it was appropriate that any compensation should be paid to the complainant.

### **Findings re Sachse investigation**

- [137] The evidence shows that on 11 December 2006, the Commission sent a notice under s 269(1) of the 2004 Act to Mr Richardson with regard to a complaint by Mr and Mrs Sachse saying inter alia:
- “Would you please forward me a full explanation of your conduct subject to complaint at your earliest convenience but in any event by no later than 20 January 2007. Please also provide your firm’s file relating to the transaction.”
- [138] He was told how to apply for an extension of time to reply. Mr Richardson’s statement in his response that it was the Queensland Law Society that required such file and explanation is incorrect although it appears that by April of the following year the investigation had been referred to the Society.
- [139] On 2 February 2007 the Commission wrote to Mr Richardson noting that, following discussions, an extension had been granted to respond to the Sachse complaint and others to the end of January 2007. That time had now passed but the requested explanation and information had not been forthcoming.
- [140] On 7 February 2007 Mr Richardson responded to the Commission referring to “half a dozen or so complaints” being considered by the Commission and advising that he remained in extremely poor health. Nevertheless he had returned to work. He said that his secretary, who failed to do anything during his absence, immediately resigned and his locum solicitor proved “less than capable” and a replacement had

been appointed for him. Mr Richardson sought an extension to reply for a further 10 days. There was no doubt that Mr Richardson was quite ill. A letter from his treating physician of 25 January 2007, which was attached to his letter of 7 February 2007, shows that he suffered from histiocytosis with associated type 1 respiratory failure; triple vessel ischaemic heart disease and mild obesity.

- [141] On 2 April 2007 Mr Foote, the senior solicitor from Professional Standards at the Society wrote to Mr Richardson noting that he had not provided a response to the Sachse complaint. He said that the Commissioner/Society had not yet issued a statutory notice for this matter requiring a response from him, pending his recent advice that his response was imminent. Mr Foote said in the letter:

“The concern of the Society (and the Commissioner) regarding both these matters is not so much the nature of the complaints that have been made, but your belated and/or failure to respond, to the Commissioner’s correspondence in each instance.

As you may be aware, s 269(3) & (4) of the *Legal Profession Act* 2004 provides for you to be dealt with for professional misconduct (as opposed to unsatisfactory professional conduct) if you have received written notice and you do not provide an explanation to the complaint within the time period provided for in that notice **unless** you have ‘a reasonable excuse for not complying with the requirement within the period.’” (emphasis in original)

- [142] On 16 April 2007 Mr Richardson wrote to Mr Foote at the Society with regard to the fact that he had sought an extension from the Commission because of his ill health.
- [143] On 21 May 2007 Mr Richardson wrote to Craig Smiley in his position as manager of investigations at the Society, responding to the Sachse complaint and saying that he had by then located the file. He did not however provide the file.
- [144] Mr Smiley said in his affidavit that he knew that Mr Richardson was often incapacitated by illness and that “though Mr Richardson was sometimes slow in responding to requirements for information from the Society, he invariably did so.” As a result Mr Smiley said he afforded Mr Richardson a “good deal of latitude in the time of his reply and the nature of his replies to complaints.”
- [145] Mr Smiley then said in evidence that Mr Richardson was at all times co-operative and that he “just about always” got the information.<sup>16</sup> The only exception he could think of was the Corish investigation. He said that he would issue a s 269(3) notice if he had not heard from him at all after the issue of a s 269(1) notice. He said that he did not make a record of the telephone calls he received from Mr Richardson but most were received after the issue of a s 269(3) notice.

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<sup>16</sup> Unfortunately this attitude may be thought of as an example in Queensland of what the New South Wales Law Reform Commission described as one of the shortcomings of the former system of discipline of legal practitioners where the system of the Law Society of New South Wales was criticised for showing “excessive sympathy for, and leniency to, solicitors whose conduct was the subject of investigation and adjudication”: New South Wales Law Reform Commission, *Report 32: Second Report on the Legal Profession: Complaints, Discipline and Professional Standards* (1982) p 20.

- [146] On 24 May 2007 Mr Smiley on behalf of the Society wrote to the Commissioner saying that the Society had completed its investigations and recommending that the matter should be dismissed pursuant to s 274(1)(a) of the 2004 Act which provides that the Commissioner may dismiss a complaint if satisfied there is no reasonable likelihood of a finding by a disciplinary body of unsatisfactory professional conduct or professional misconduct by an Australian legal practitioner.
- [147] Mr Smiley did not himself conduct this investigation.
- [148] On 7 June 2007 the manager of complaints at the Commission, Mr Brittan, wrote to Mr Richardson asking questions of him about the complaint by Mr and Mrs Sachse and informing him that the steps he had taken with regard to their matter would be relevant to the question of whether or not it was in the public interest to proceed further with their complaint. Mr Richardson did not answer those queries until 7 September 2007 when he wrote giving a response to some of the Commission's queries.
- [149] On 25 February 2008, the Commissioner wrote to Mr Richardson giving a notice under s 443(1) of the 2007 Act requiring an explanation with regard to an allegation made by Mr and Mrs Sachse which had not yet been the subject of a response. The notice under s 443(1) was in the following terms:  
 "Accordingly I now require you, pursuant to section 443(1) of the *Legal Profession Act 2007* to provide me:
- a full paper copy of your client file in relation to the Sachse's conveyance; and
  - your explanation of any correspondence received from the plaintiff's solicitor before 8 September 2006 and your responses to that correspondence.
- I require this additional information at your earliest convenience but in any event by not later than close of business on Monday 10 March 2008."
- [150] On 25 February 2008, the Commissioner also wrote to Arcuri Lawyers who acted for the other party in the conveyance which was the subject of the complaint by Mr and Mrs Sachse seeking copies of correspondence and details of any telephonic communications about the matter that was the subject of the complaint.
- [151] On 10 March 2008, Mr Richardson telephoned Louise Syme from the Commission asking if she had received the Sachse file as he had sent it via Express Post on the previous Friday [7 March 2008] to save courier fees. He rang again later in the day leaving a message for Ms Syme that the Sachse file was addressed to the Society but had ended up at the "Queensland Reporting Council" and he had asked them to forward it to the Commission. He said he would also email Ms Syme so she did not think he was "telling fibs" and asserting that it was a mistake in good faith. Mr Richardson telephoned Ms Syme on 11 March 2008 to ensure she had received the telephone message left on the previous day.
- [152] On 12 March 2008, the Commission received a copy of the client file in the matter of Sachse from Mr Richardson. Attached to it was a "with compliments" slip from the Incorporated Council of Law Reporting with the words "sent to us in error" printed on it in handwriting. No explanation was given by Mr Richardson as to why the file was sent in error to the Incorporated Council of Law Reporting and not to

the Commission which has an entirely different name and an entirely different address. No satisfactory explanation was given as to how a client's file came to be sent to the Incorporated Council of Law Reporting.

[153] On 12 March 2008, the Commission wrote to Mr Richardson referring to the copy of the client file provided and noting a number of documents which should have been on that file but appeared to have been omitted. An additional explanation was required pursuant to s 443(1) of the 2007 Act and a full copy of the client file by no later than close of business on 26 March 2008. On 31 March 2008 Mr Richardson spoke to Ms Syme and indicated that he had someone checking the files for him and that he hoped to have a response to the Commission shortly. She agreed to take no further action before the end of the week [4 April 2008].

[154] No further contact was made by Mr Richardson with the Commission after that telephone call, so on 18 April 2008 the Commission wrote to Mr Richardson noting his failure to comply with the direction given in the letter of 12 March 2008 and saying:

“Accordingly, I hereby give you written notice pursuant to section 443(3) of the *Legal Profession Act* 2007 that you may be dealt with for professional misconduct if your failure to comply with that direction continues for a further 14 days – that is to say beyond 2 May 2008.

Please note that the Act provides at section 443(4) that you will be taken to have committed professional misconduct if you fail without reasonable excuse to provide me with the explanation by that date.”

[155] An application for an extension of time to respond to the notice was not received until an email was sent on behalf of Mr Richardson on 1 May 2008. On 6 May 2008 Mr Richardson was informed by the Commission that his recent illness might constitute a reasonable excuse for non-compliance and asking for his response together with a copy of a medical certificate or any other relevant documentation in support of his explanation for the delay in responding to this and other matters. The Commission said it would take no further action in relation to the matter before 14 May 2008.

[156] By letter dated 14 May 2008, the Commission received a further copy of Mr Richardson's client file but no medical certificate or any other documentation in support of his explanation for his delay.

[157] On 21 May 2008 Mr Richardson wrote to the Commission asking for a copy of the investigation report prepared by the Society and asking for a reply to his letter to Ms Syme's colleague, Mr Edwards, sent by him on 7 September 2007. In fact that letter was addressed not to Mr Edwards but to Mr Brittan and did not invite a response.

[158] On 22 May 2008, Mr Brittan replied on behalf of the Commission saying that the Commissioner had considered all of the material and had formed a preliminary view that there was a reasonable likelihood that a disciplinary body would make an adverse finding against Mr Richardson and had referred the matter for the preparation of draft charges.

- [159] On 3 June 2008, the Commissioner provided Mr Richardson with draft charges in respect of a number of complaints which included this charge relating to the failure to co-operate with regard to the Sachse complaint. Mr Richardson was requested to make any further submissions by 24 June 2008. On 24 June 2008, he was granted until 27 June 2008 to make submissions. No further submissions were received.
- [160] In summary, an explanation was received on 21 May 2007 in response to a request made on 11 December 2006 and the client file on 12 March 2008 in response to a request first made on 11 December 2006 and then on 25 February 2008.
- [161] Because of acquiescence by the Society it cannot be said that Mr Richardson failed to co-operate with the Society's investigations. The same cannot be said with regard to the investigation by the Commission with which he manifestly failed to co-operate.
- [162] The particulars of charge 4.2 and Mr Richardson's response are as follows:

**4.2 Complaint by Pollock**

- (a) The respondent admitted that by complaint to the Commissioner dated 6 December 2006 Pollock complained about the respondent.
- (b) By letter dated 27 February 2007, as the respondent admitted, the Society required the respondent to provide a full written explanation of the matters being investigated and the complainant's client file by 27 March 2007.
- (c) The respondent did not provide an explanation or the client file within the time specified.
- (d) By facsimile dated 28 March 2007 the Society gave the respondent a Notice pursuant to s 269(3) of the Legal Profession Act 2004 (2004 Act Notice) which required the respondent to provide a full written explanation of the matters being investigated.
- (e) On 18 April 2007 the respondent provided an explanation to the Society. That explanation did not include the client file.

The respondent admitted the allegations contained in paragraph (e) but said further that the Queensland Law Society granted the respondent an extension of time in which to provide the requested explanation and further that it was a long standing practice that the respondent simply provided copies of relevant correspondence with his explanation. For this reason no file was forwarded to the Society. The Society made no complaint of a failure to co-operate in the investigation.

- (f) On 8 October 2007 the respondent provided a copy of the client file to the Legal Services Commission following a notice from the Commission pursuant to s 443(3) of the Legal Profession Act 2007 (2007 Act Notice).

The respondent admitted the allegation contained in paragraph (f) and said that the file was provided within the time limited by the 2007 Act Notice.

**Findings re Pollock investigation**

- [163] Following the complaint by Vickie Pollock, the Commissioner referred the complaint to the Society for investigation on 14 February 2007. By letter from the Society dated 27 February 2007, Mr Richardson was required to provide a full explanation pursuant to s 269(1)(a)(i) and a copy of the client file pursuant to

s 269(1)(a)(iii) of the 2004 Act. He was advised that if he failed to do so a notice pursuant to s 269(3) of the 2004 Act would be issued. He did not respond to that letter.

- [164] The notice under s 269(3) of the 2004 Act, as was set out in the particulars of the charge, was given on 28 March 2007. It was signed by Mr Smiley. As set out in the particulars, Mr Richardson's explanation was not sent until 18 April 2007 and he did not forward the client file or any other documents with this response.
- [165] Mr Smiley said in his affidavit before the Tribunal that he thought that Mr Richardson's response was sufficient to deal with the complaint notwithstanding the fact that Mr Richardson had not provided his file. In evidence he said that he did not receive a formal request for an extension but that Mr Richardson may have rung him and told him it was on its way.
- [166] On 28 June 2007, Mr Smiley on behalf of the Society wrote to the Commissioner with the recommendation of the Professional Standards Committee of the Society that Mr Richardson should engage a management consultant to conduct a management review of his practice with a view to recommending appropriate practices and procedures to be implemented; provided he undertook that course and he successfully implemented the recommendations made by the consultant then it would not be in the public interest to further pursue this matter.
- [167] On 24 September 2007 the Commissioner noted that the client file had not been provided to the Society and required Mr Richardson, pursuant to s 443(1)(a)(iii) of the 2007 Act, to provide a full copy of the client file by no later than 1 October 2007. After a telephone request from Mr Richardson, Mr Brittan the Manager of complaints at the Commission granted Mr Richardson an extension of time until 8 October 2007 to provide the file. On 8 October Mr Richardson provided the file.
- [168] In summary, an explanation was received on 18 April 2007 in response to requests made on 27 February and 28 March 2007, and the client file on 8 October 2007 in response to requests made on 27 February, 28 March and 24 and 25 September 2007.
- [169] Mr Richardson cannot be said to have failed to co-operate in the investigation of this complaint. The Society acquiesced in his approach to their investigation. Once the Commissioner made a request of Mr Richardson, he co-operated in meeting that request within the required time as extended.

### **4.3 Complaint by Graves**

- (a) By complaint to the Commissioner dated 13 December 2006 Graves complained about the respondent.  
By letter dated 8 January 2007 the Commission required the respondent to provide a full written explanation of the matters being investigated and the complainant's client file by 29 January 2007.
- (b) The respondent did not provide an explanation or the client file within the time specified.
- (c) By letter dated 30 January 2007 the Commission required the respondent to provide a full written explanation of the matters being investigated and the complainant's client file by 7 February 2007.

- (d) The respondent did not provide an explanation or the client file within the time specified.

The respondent could not admit or deny the allegations contained in paragraphs (a), (b), (c) and (d) because despite a search for such correspondence the respondent could not locate this. The respondent said that his practice was under the control of Mr Ross Sampson a *locum tenens* in the period 17 October 2006 through to 18 January 2007 during which time the respondent was absent in poor health.

- (e) By letter dated 20 February 2007 the Society required the respondent to provide a full written explanation of the matters being investigated and Mr and Mrs Graves' file by 20 March 2007.
- (f) The respondent did not provide an explanation or the client file within the time specified.
- (g) By facsimile dated 23 March 2007 the Society gave the respondent a 2004 Act Notice which required the respondent to provide a full written explanation of the matters being investigated and the complainant's client file.

The respondent admitted the allegations contained in paragraphs (e), (f) and (g) and said that on the occasion of each such request or notice he telephoned the Society and obtained an appropriate extension for provision of an explanation as required by the Society.

- (h) On 21 May 2007 the respondent provided an explanation to the Society. That explanation did not include the client file.

The respondent admitted that he did not provide the client file as alleged in paragraph (e) [the Tribunal presumes he meant (h)] but said that his explanation was accompanied by copies of all relevant documents. This procedure was with the long standing consent of the Society and adopted with a view to minimising the need for the Society to scour a file looking for relevant documents. The Society has made no complaint of a failure to co-operate in the investigation.

- (i) On 8 October 2007 the respondent provided a copy of the client file following a 2007 Act Notice dated 25 September 2007.

The respondent admitted that the Legal Services Commission gave a 2007 Act Notice and that it did so many months after the Society had closed its file. The respondent said further that he complied with the Notice within the time limited by that Notice.

### **Findings re Graves investigation**

- [170] On 15 February 2007, the Commissioner referred the complaint to the Society for investigation.
- [171] The evidence supports the particulars found in 4.3(a), (b) and (c). The letter from the Commissioner of 30 January 2007 required an explanation pursuant to s 269(1)(a)(i) of the 2004 Act. No explanation as required was provided.

[172] The matter was then referred to the Society for investigation. On 20 February 2007, the Society sought an explanation from Mr Richardson by 20 March 2007. There was no reply from Mr Richardson so a notice under s 269(3) of the 2004 Act was sent on 23 March 2007.

[173] The facsimile from the Society of 23 March 2007 read:

“You, the Practitioner, in breach of Section 269(1)(a)(iii) of the *Legal Profession Act 2004* (“the Act”) have failed to give an explanation in writing of the matters referred to in the complaint of Simon & Nadine Graves dated 4 January 2007 and to provide your client file or provide the files/documents for the matter, which requests were made of you in the Society’s letter to you dated 20 February 2007. A copy of the Society’s letter is attached to this Notice.

I, Craig Smiley, being the Manager of Professional Standards Department of the Queensland Law Society Inc hereby notify you that if such failure continues for a period of 14 days after the date of your receiving this notice you will be liable to be dealt with for professional misconduct, unless you have reasonable excuse for not complying with the requirement of Section 269(1)(a)(i) of the Act to give an explanation in writing within the specified period and for not complying with the requirement of Section 269(1)(a)(iii) to provide your client file or provide the files/documents as specified in the Society’s letter dated 20 February 2007.

Your attention is drawn to Section 269(5) of the Act which provides as follows:

‘In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (3) and any enclosures with the notice are evidence of the matters in the notice and the enclosures.’

This notice is given to you pursuant to Section 269(3) of the Act.”

[174] On 21 May 2007, Mr Richardson wrote to the Society providing an explanation and enclosing some documents from the file. Mr Smiley said Mr Richardson may have rung him after the issue of the s 269(3) notice and Mr Richardson’s written response. On 30 May 2007 Mr Smiley on behalf of the Society wrote to the Commissioner submitting that the Commissioner should dismiss the complaints against Mr Richardson under s 274(1)(a) of the 2004 Act.

[175] By letter dated 21 September 2007, sent via express post on 24 September 2007, the Commission gave a notice to Mr Richardson under s 443(1)(a)(iii) of the 2007 Act requiring a full copy of the client file which had not been provided to the Society during its investigation. Mr Richardson telephoned on 25 September 2007 requesting an extension. An extension was granted by letter from the Commission on 25 September 2007 until 8 October 2007.

[176] On 8 October 2007 the Commission received the file with regard to Mr and Mrs Graves.

- [177] By letter dated 3 March 2008 the Commission provided Mr Richardson with draft charges in respect of a number of complaints including the complaint by Mr and Mrs Graves and requested that he make any further submissions by 7 April 2008.
- [178] In summary, an explanation was received on 21 May 2007 in response to requests made on 30 January, 20 February and 23 March 2007 and the client file on 8 October 2007 in response to requests made on 20 February, 23 March and 21 and 25 September 2007.
- [179] The complaint of failure to co-operate is not made out with regard to charge 4.3.

#### **4.4 Complaint by West**

The particulars of the charge and the respondent's response are as follows:

- (a) By complaint to the Commissioner dated 8 January 2007 the Wests complained about the respondent.
- (b) By letter dated 21 February 2007 the Society required the respondent to provide his client file in this matter by 8 March 2007.
- (c) The respondent did not produce the client file within the time specified.
- (d) By facsimile dated 13 March 2007 the Society gave the respondent a 2004 Act Notice which required the respondent to provide the client file.
- (e) The respondent did not produce the client file within the time specified.

As well as admitting the allegations, in paragraphs 4.4(a) – (d), the respondent also admitted the allegation contained in paragraph 4.4(e) but said he requested an extension of the time for compliance with the 2004 Act Notice and said that such request was granted.

- (f) By letter dated 22 May 2007 the respondent provided an explanation to the complaint.

The respondent admitted the allegation contained in paragraph 4.4(f) and said further that such explanation was accompanied by all relevant documents from the client file in accordance with a long standing practice. The Society made no complaint concerning the respondent's co-operation in the investigation.

- (g) The client file was provided to the Commission on 8 October 2007 following a 2007 Act Notice dated 25 September 2007.

The respondent admitted the allegation contained in paragraph 4.4(g) and said the file was provided within the time limited by such Notice.

#### **Findings re West investigation**

- [180] David and Lynne West made a complaint about Mr Richardson on 8 January 2007 enclosing a copy of an affidavit by Xiao Yu Huang sworn 18 October 2006, the defence filed on behalf of Mr and Mrs West by KRG on 20 June 2006, a letter of 23 November 2006 enclosing judgment issued on 16 November 2006 against Mr and Mrs West as well as judgment entered on 3 October 2006.

[181] On 14 February 2007 the applicant referred the complaint to the Society for investigation. All that the Society required of Mr Richardson, by letter dated 21 February 2007, was his client file and that was to be produced by 8 March 2007. The respondent did not reply to the Society's letter and the file was not provided.

[182] On 13 March 2007 the Society gave a notice to Mr Richardson under s 269(3) of the 2004 Act which read:

“You, the Practitioner, in breach of Section 269(1)(a)(i) of the *Legal Profession Act 2004* (“the Act”) have failed to give an explanation in writing of the matters referred to in the complaint of David & Lynne West dated 7 February 2007 which request was made of you in the Society's letter to you dated 21 February 2007. A copy of the Society's letter is attached to this Notice.

I, Craig Smiley, being the Manager of Professional Standards Department of the Queensland Law Society Inc hereby notify you that if such failure continues for a period of 14 days after the date of your receiving this notice you will be liable to be dealt with for professional misconduct, unless you have reasonable excuse for not complying with the requirement of Section 269(1)(a)(i) of the Act to give an explanation in writing within the specified period.

Your attention is drawn to Section 269(5) of the Act which provides as follows:

“In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (3) and any enclosures with the notice are evidence of the matters in the notice and the enclosures.”

This notice is given to you pursuant to Section 269(3) of the Act.”

[183] No reply was received within the time stipulated in the notice. No request for an extension of time was received although Mr Smiley conceded that Mr Richardson might have rung to tell him it was coming.

[184] On 22 May 2007 Mr Richardson sent a reply to the Society about the complaint by Mr and Mrs West. He says that it was accompanied by all relevant documents from the client file. However on the face of the letter there were no enclosures and the letter itself does not refer to any enclosures. I conclude that there were in fact no enclosures. Mr Richardson said in that letter:

“Our situation was not enhanced when Ms Huang became lost, arrived half an hour late and was met with this unexpected opposition. The registrar had, in fact, already written out his judgment. I attempted to intercede by telephone to assist Ms Huang but to no avail.

I personally contacted Mrs West and advised her of the judgment, the reason for it and of intention to make application to set it aside.

We filed such application which was set for hearing on the 16<sup>th</sup> day of November 2006. I appeared before Mr Costanza and the plaintiff was represented by Mr Woodward.”

- [185] If Mr Richardson meant to convey the order in which events occurred, the letter was at best misleading. Mr Smiley considered the response, which he says was without the file, to be adequate. Of course, without the file Mr Smiley had no way of checking the accuracy of what Mr Richardson said.
- [186] On 28 May 2007 the Society reported to the Commissioner that it had completed its investigations with the following recommendation by Mr Smiley:  
 “You should dismiss this complaint pursuant to section 274(1)(b) of the *Legal Profession Act* 2004. There was a kafuffle [*sic*] Mr Richardson has done what he can to right the situation but the West’s [*sic*] position from the outset was always doomed.”
- [187] On 24 September the Commission sent a notice via Express Post to Mr Richardson saying, inter alia, “I now require you, pursuant to section 443(1)(a)(iii) of the *Legal Profession Act* 2007, to provide me a full copy of your client file in relation to the litigation conducted on behalf of Mr and Mrs West against Samuel Joseph Gimellaro and Louise Marie Gimellaro and to do so at your earliest convenience but in any event by no later than 1 October 2007.” The copy of the client file was provided by Mr Richardson by letter dated 8 October 2007.
- [188] On 8 May 2008 the Commissioner sought a copy of various materials regarding this matter from the Registrar of the Coolangatta Magistrates Court. The court file was provided on 9 May 2008.
- [189] In summary, an explanation was received on 22 May 2007 and the client file on 8 October 2007 after it had been sought on 21 February, 13 March and 24 September 2007.
- [190] Mr Richardson’s responses to the Society were most unsatisfactory. In spite of Mr Smiley’s view expressed to the Commission, the Tribunal is satisfied that Mr Richardson failed to co-operate with the Society’s investigation.

#### **4.5 Complaint by Shepherd and Chalmers**

- [191] The particulars of charge 4.5 and Mr Richardson’s response are as follows.
- (a) By complaint to the Commissioner dated 12 February 2007 Shepherd and Chalmers complained about the respondent.
  - (b) By letter dated 20 February 2007 the Society required the respondent to provide a full written explanation of the matters being investigated and the complainant’s client file by 20 March 2007.
  - (c) The respondent did not provide an explanation or the client file within the time specified.
  - (d) By facsimile dated 23 March 2007 the Society gave the respondent a 2004 Act Notice which required the respondent to provide a full written explanation of the matters being investigated together with the client file.
  - (e) By letter dated 10 May 2007 the Society required the respondent to provide an explanation to the matters being investigated by 31 May 2007.
  - (f) The respondent provided a response by letter dated 19 July 2007.

The respondent admitted the allegations contained in paragraphs 4.4(a), 4.4(b), 4.4(c), 4.4(d), 4.4(e) and 4.4(f) but said that he had a reasonable excuse for non-

compliance with the Notice in that the client had agreed to withdraw the complaint on issue of a replacement certificate of title in respect of which the respondent was paying her legal costs. The clients ultimately did withdraw such complaint.

- (g) By letter dated 21 September 2007 the Commission required the respondent to provide the complainant's client file by 1 October 2007 which was subsequently extended until 8 October 2007.

The respondent admitted the allegation contained in paragraph 4.4(g) and said the client file was provided within the time limited by the 2007 Act Notice.

- (h) The respondent provided the client file on 8 October 2007 following a 2007 Act Notice dated 25 September 2007.

### **Findings re Shepherd and Chalmers investigation**

[192] Robert Shepherd and Kathleen Chalmers made a complaint about Mr Richardson in writing on 12 February 2007. The complaint was referred to the Society for investigation on 15 February 2007. The letter of 20 February 2007 from the Society required Mr Richardson pursuant to s 269(1) of the 2004 Act to provide an explanation and the client file by 20 March 2007. Mr Richardson did not respond to the Society's letter.

[193] On 23 March 2007 a formal notice was given to Mr Richardson by the Society under s 269(3) of the 2004 Act. The Notice was as follows:

“You, the Practitioner, in breach of Section 269(1)(a)(iii) of the *Legal Profession Act 2004* (“the Act”) have failed to give an explanation in writing of the matters referred to in the complaint of Robert Shepherd & Kathleen Chalmers dated 15 February 2007 and to provide your client file or provide the files/documents for the matter, which requests were made of you in the Society's letter to you dated 20 February 2007. A copy of the Society's letter is attached to this Notice.

I, Craig Smiley, being the Manager of Professional Standards Department of the Queensland Law Society Inc hereby notify you that if such failure continues for a period of 14 days after the date of your receiving this notice you will be liable to be dealt with for professional misconduct, unless you have reasonable excuse for not complying with the requirement of Section 269(1)(a)(i) of the Act to give an explanation in writing within the specified period and for not complying with the requirement of Section 269(1)(a)(iii) to provide your client file or provide the files/documents as specified in the Society's letter dated 20 February 2007.

Your attention is drawn to Section 269(5) of the Act which provides as follows:

‘In a hearing before the tribunal about a charge of professional misconduct, a copy of the notice mentioned in subsection (3) and any enclosures with the notice are evidence of the matters in the notice and the enclosures.’

This notice is given to you pursuant to Section 269(3) of the Act.”

- [194] Mr Smiley, who had sent both notices on behalf of the Society, had Ms Carpenter, who was an officer in the Client Relations Centre of the Society, contact Mr Richardson on 9 May 2007 as she had, he said, “considerable success in managing to have Mr Richardson resolve complaints concerning matters.” Mr Smiley himself also spoke to Mr Richardson by telephone on that day.
- [195] By letter dated 10 May 2007 the Society referred to the telephone conversation between Mr Smiley and Mr Richardson on 9 May 2007 and confirmed that it would prefer to close its investigation in relation to this matter with Mr Richardson having rectified the incorrect registration of the property in his clients’ names as joint tenants when they should in fact have been registered as tenants in common. The letter from Mr Smiley ended:  
“When giving your response to the complaint, which the Society would appreciate – by 31 May 2007, could you please also provide details of having rectified the position of Ms Chalmers and Mr Shepherd?”
- [196] Mr Smiley said in his affidavit that this letter did not require production of the file; it was not a formal request for information pursuant to the 2004 Act; but it did not excuse failure to respond to the letters of 20 February and 23 March 2007.
- [197] Mr Richardson did not reply to that letter. On 20 June 2007 the Society wrote again to Mr Richardson asking for his answer to the Society’s letter of 10 May 2007 by no later than 30 June 2007.
- [198] Mr Richardson did not reply until 19 July 2007. He commenced the letter as follows:  
“Despite a thoroughly exhaustive search, we have not been able to locate either the certificate of title or transfer reflecting the change from joint tenancy to tenants in common.”
- In his affidavit filed in these proceedings Mr Richardson said that the relevant documents had been lost or mislaid in his office.
- [199] In his letter of 19 July 2007, Mr Richardson said that he had apologised to Ms Chalmers and arranged to pay for the costs of her local solicitors in New South Wales to rectify the error. He said that Ms Chalmers had agreed that she would withdraw the complaint on completion of the application to issue replacement certificates of title.
- [200] On 4 September 2007 the Society wrote to the Commissioner saying it had completed its investigations. Mr Smiley referred to the recommendation made with regard to the Pollock complaint in regard to Mr Richardson’s engaging a management consultant and said that this matter was another one which fitted within that recommendation save that the Commission might consider whether or not charges ought to be brought for a failure to comply with the notices within a due time. At the date the Society had still not received the file from Mr Richardson.
- [201] By letter dated 21 September 2007 the Commission required Mr Richardson, pursuant to s 443(1)(a)(iii) of the 2007 Act, to provide the Commission with a full

copy of the client file in regard to the Shepherd and Chalmers conveyance by no later than 1 October 2007. On 25 September 2007 Mr Richardson rang Ms Syme asking for an extension of time in a number of matters including this matter until 8 October 2007. On 25 September 2007, Mr Brittan on behalf of the Commission notified Mr Richardson that he was given an extension of time to provide full copies of the files that had been requested in relation to the following matters: Marsh, Graves, Hinton, Shepherd and Chalmers, Pollock, Corish and West. He referred to the number of times the Society had asked for copies of these files and said that in the circumstances where the Society had been endeavouring to obtain a number of those files for over six months he would not consider any further requests for extensions to comply with the most recent notices.

- [202] On 8 October 2007 Mr Richardson sent the Shepherd and Chalmers file as well as other files to the Commission.
- [203] On 8 November 2007 the Commission received a telephone message from Ms Chalmers. Ms Syme returned the telephone call on 9 November 2007 when Ms Chalmers informed her that she wished to withdraw the complaint as she had received the amended title deeds for her house. Ms Chalmers confirmed that in writing.
- [204] On 26 February 2008 Ms Syme had a telephone conversation with Ms Chalmers where they discussed the length of time it had taken for the title to be rectified. Ms Chalmers said that she was happy for Ms Syme to contact her New South Wales solicitors. Ms Syme then rang the New South Wales solicitor who agreed to retrieve his file from archives and provide her with further information. Ms Syme undertook further investigations and on 3 March 2008 the Commission provided Mr Richardson with draft charges in respect of a number of complaints including a charge about his failure to co-operate in the investigation of the Shepherd and Chalmers complaint and requested that he make any further submissions by 7 April 2008.
- [205] In summary, an explanation was received on 19 July 2007 after it had been sought on 20 February, 23 March, 10 May and 30 June 2007 and the client file on 8 October 2007 after it had been sought on 20 February, 23 March, 21 and 25 September 2007.
- [206] Mr Richardson failed to co-operate with the Society's investigation by failing to respond without reasonable excuse to the Society's letters.

#### **4.6 Complaint by Hinton**

- (a) By complaint to the Commissioner dated 26 April 2007 Hinton complained about the respondent.
- (b) By letter dated 30 May 2007 the Society required the respondent to provide the complainant's client file by 13 June 2007.
- (c) The respondent did not provide an explanation or the client file within the time specified.
- (d) By facsimile dated 19 June 2007 the Society gave the respondent a 2004 Act Notice which required the respondent to provide a full written explanation of the matters being investigated together with the client file.
- (e) The respondent failed to respond.

- (f) By letter dated 6 July 2007 the Society required the respondent to provide a full written explanation to the matters being investigated and the complainant's client file by 27 July 2007.
- (g) The respondent did not provide an explanation or the client file within the time specified.
- (h) By facsimile dated 8 August 2007 the Society gave the respondent a 2007 Act Notice which required the respondent to provide a full written explanation of the matters being investigated and the complainant's client file.
- (i) The respondent provided the client file to the Commission on 8 October 2007 following a 2007 Act Notice dated 25 September 2007.

The respondent admitted the allegations contained in paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) but said further that he did not simply ignore the requests referred to in those allegations but continued to request extensions of the time for compliance. This was necessary because the relevant file could not be located.

### **Findings re Hinton investigation**

- [207] Rachel Hinton complained to the Commission in respect of Mr Richardson on 26 April 2007. The Commission referred the complaint to the Society for investigation on 14 May 2007. On 30 May 2007 the Society required Mr Richardson to forward a copy of his file pursuant to s 269(1) of the 2004 Act by 13 June 2007. Mr Richardson did not provide the file so on 19 June 2007 the Society issued him a notice under s 269(3) of the 2004 Act requiring him to provide a copy of the file within 14 days. Both notices were issued by Mr Smiley on behalf of the Society.
- [208] By letter dated 6 July 2007 the Society wrote to Mr Richardson saying it had received further particulars of Ms Hinton's complaint which were attached and required his response to the matters particularised in that letter by 27 July 2007. Mr Richardson was reminded that the explanation should also be accompanied by the relevant client file which had previously been requested. On 8 August 2007 the Society gave a notice to Mr Richardson under s 443(3) of the 2007 Act because of his failure to give an explanation in writing or to provide the client file. He was notified that he should provide the explanation and the client file within 14 days.
- [209] On 3 September 2007 Mr Smiley on behalf of the Society wrote to the Commissioner saying that it had completed its investigations and they made a similar recommendation with regard to Pollock but also drew the Commissioner's attention to the fact that Mr Richardson had not given any response in relation to the matter and that he was in breach of notices issued pursuant to s 269(1) of the 2004 Act dated 30 May 2007, s 269(3) of the 2004 Act dated 19 June 2007, s 443 of the 2007 Act dated 6 July 2007 and s 443(3) of the 2007 Act dated 8 August 2007. Mr Smiley said in evidence that he did not recall receiving any communications from Mr Richardson concerning this matter.
- [210] On 24 September 2007 Mr Brittan on behalf of the Commission gave a notice to Mr Richardson pursuant to s 443(1)(a)(iii) of the 2007 Act to provide a full copy of the client file. This is one of the matters about which Mr Richardson rang asking for an extension of time and finally provided the file on 8 October 2007. Mr Richardson was provided with draft charges in respect of this matter on 3 March 2008.

[211] In summary, no explanation was ever received in spite of requests on 19 June, 6 July and 8 August 2007; the client file was received on 8 October 2007 after requests on 30 May, 19 June, 6 July, 8 August, 24 and 25 September 2007.

[212] The Tribunal is satisfied that Mr Richardson failed to co-operate with the Society's investigation of this matter.

#### **4.7 Complaint by Corish**

- (a) By complaint to the Commissioner dated 14 May 2007 Corish complained about the respondent.
- (b) By letter dated 30 May 2007 the Society required the respondent to provide his client file in this matter by 13 June 2007.
- (c) The respondent did not produce the client file within the time specified.
- (d) By facsimile dated 19 June 2007 the Society gave the respondent a 2004 Act Notice which required the respondent to provide the client file.
- (e) The respondent did not produce the client file within the time specified.
- (f) By letter dated 6 July 2007 the Society required the respondent to provide a full explanation to the complaint by 27 July 2007.
- (g) The respondent did not provide an explanation within the time specified.

The respondent admitted the allegations contained in paragraphs (a), (b), (c), (d), (e), (f) and (g) but said that he had a reasonable excuse for non-compliance in that the relevant file could not be located in his office. On at least two occasions he contacted the Society by telephone to advise of a need for an extension of time for compliance and said that such extensions were granted.

- (h) By facsimile dated 8 August 2007 the Society gave the respondent a 2007 Act Notice which required the respondent to provide a full written explanation to the complaint.
- (i) The respondent did not provide a response within the time specified.
- (j) The respondent provided the client file on 8 October 2007 following a 2007 Act Notice dated 25 September 2007. The respondent failed to provide an explanation to the complaint.

The respondent admitted the allegations contained in paragraph (h) but did not admit the allegations contained in paragraph (i) and said that he telephoned the Society and was granted yet a further extension of time for compliance however prior to the expiry of that extension he was advised by the Society that they had already reported on the matter to the Legal Services Commission. The respondent said that it seems that no record had been made by the Society of the extension granted. The respondent said further that there had been a change in the secretary to Mr Smiley which may have resulted in no record being kept.

The respondent said he complied with the 2007 Act Notice dated 25 September 2007, requiring production of the client file within the time specified.

#### **Findings re Corish investigation**

[213] Cameron and Tracie Corish complained about Mr Richardson on 14 May 2007. They attached emails to KRG showing the difficulty they had had in getting their complaints dealt with by the firm. The matter was referred by the Commissioner to the Society for investigation on 23 May 2007.

- [214] On 30 May 2007 the Society required Mr Richardson to provide the client file by 13 June 2007 pursuant to s 269(1) of the 2004 Act. There was no response to that letter so on 19 June 2007 Mr Smiley on behalf of the Society gave a notice to Mr Richardson under s 269(3) of the 2004 Act. That notice required Mr Richardson to provide the file and an explanation in writing of the matters referred to in the complaint. There was no response from Mr Richardson to that notice.
- [215] On 6 July 2007 the Society required an explanation with regard to the complaint pursuant to s 443(1) of the 2007 Act. A response was required by 27 July 2007. A request was once again made for the relevant client file to be provided. On 8 August the Society under the hand of Mr Smiley gave a notice to Mr Richardson under s 443(3) of the 2007 Act, in view of his failure to provide an explanation or the file, to provide those files within 14 days. Mr Richardson did not respond to that notice.
- [216] Mr Smiley's evidence was that it was the "usual case" that Mr Richardson would contact him and tell him that although a response would be late it would be forthcoming. No such communication, however, took place on this occasion. When it was put to him in cross-examination that Mr Richardson had tried to ring him, Mr Smiley said that he had no file note of that message.
- [217] On 3 September 2007 the Society reported to the Commissioner repeating the recommendation it had made in the matter of Pollock but noting in addition that Mr Richardson had failed to respond to the following notices issued relevant to this complaint:
- “(a) the notice pursuant to s 269(1) of the 2004 Act dated 30 May 2007;
  - (b) the notice issued pursuant to s 269(3) of the 2004 Act dated 19 June 2007;
  - (c) the notice pursuant to s 443(1) of the 2007 Act dated 6 July 2007; and
  - (d) the notice issued pursuant to s 443(3) of the 2007 Act dated 8 August 2007.”
- [218] On 24 September 2007 the Commission sent a notice to Mr Richardson pursuant to s 443(1)(a)(iii) to provide a full copy of the client file by 1 October 2007. This was one of the files for which Mr Richardson sought an extension from the Commission until 8 October 2007 and the file was then received on 8 October 2007. Mr Richardson was provided with draft charges with regard to this investigation on 3 March 2008.
- [219] Mr Richardson said in his affidavit filed in this matter that it was not clear to him until he read the affidavit filed by Mr Corish in these disciplinary proceedings that Mr Corish was out of pocket so he then had his solicitor write to Mr and Mrs Corish on 21 April 2009 reimbursing them and apologising.
- [220] In summary, no explanation was ever received in spite of requests on 19 June, 6 July and 8 August 2007 and the client file was received on 8 October 2007 after requests on 30 May, 19 June, 6 July, 8 August, 24 and 25 September 2007.
- [221] The allegation that Mr Richardson failed to co-operate in the Society's investigation of this complaint is made out.

#### **4.8 Complaint by Walker**

- (a) By complaint to the Commissioner dated 18 June 2007 Walker complained about the respondent.
- (b) By letter dated 12 July 2007 the Society required the respondent to provide a response to an allegation contained in the complaint by 25 July 2007.
- (c) The respondent did not provide an explanation within the time specified.
- (d) By letter dated 8 August 2007 the Society gave the respondent a 2007 Act Notice which required the respondent to provide a full explanation to the letter dated 12 July 2007.
- (e) The Society provided the respondent with an extension of time in which to respond to the complaint until 29 October 2007.

The respondent admitted the allegations contained in paragraphs (a), (b), (c), (d) and (e) and said further that the Society provided a further extension of time in which to respond until 11 November 2007. The respondent provided his response by letter dated 12 November 2007. The Society made no complaint of lack of co-operation.

- (f) By letter dated 12 November 2007 the respondent provided a response to the complaint.
- (g) By letter dated 9 January 2008 the Commission required the respondent to provide further information in respect of the complaint by 23 January 2008.
- (h) The respondent did not provide the information within the time specified.
- (i) By letter dated 30 January 2008 the Commission gave the respondent a 2007 Act Notice.
- (j) The respondent provided the requested information on 31 January 2008.

The respondent admitted the allegations contained in paragraphs (g), (h), (i), (j) and said further that the response provided on 31 January 2008 was within the time limited by the 2007 Act Notice.

#### **Findings re Walker investigation**

[222] As Mr Richardson admitted, Peter Walker made a written complaint about Mr Richardson's conduct on 18 June 2007. The complaint was referred to the Society for investigation by the Commission on 26 June 2007. The Society wrote to Mr Richardson attaching the complaint on 12 July 2007 and required him to give an explanation by 25 July 2007. On 8 August 2007 the Society sent a notice to Mr Richardson under s 443(3) of the 2007 Act requiring compliance with the request made in the letter of 12 July within 14 days. Mr Richardson requested an extension of 21 days and an extension was granted by the Society until 29 October 2007. On 12 November 2007 Mr Richardson sent an explanation to the Society. Mr Smiley could not recall any request by Mr Richardson for a further extension but conceded that Mr Richardson might have telephoned to say it was coming. On 11 December 2007 the Society provided a report to the Commissioner. The Society recommended that the complaint be dismissed.

[223] On 9 January 2008 the Commissioner required Mr Richardson to provide certain documents from the trust account and the file together with additional information by 23 January 2008. The notice was given under s 443 of the 2007 Act. The Commission also sought information from the solicitors for the other party to the conveyance. That material was provided by those solicitors. As Mr Richardson had

not replied to the letter of 9 January 2008, on 30 January 2008 the Commissioner gave him notice under s 443(3) of the 2007 Act to provide the information within 14 days. On 31 January 2008 Mr Richardson sent a response by facsimile transmission with attached papers. On 12 February he again wrote to the Commissioner saying that the Commission's letter of 30 January had crossed with his facsimile of 31 January and asked for confirmation that his letter had adequately addressed their further queries. On 13 February 2008 the Commission told Mr Richardson that the requirement to provide additional information as required by the Commission had been satisfied and that information would be considered together with the rest of the investigation material. On 15 May 2008 Mr Richardson wrote to the Commission complaining about the fact that the investigation was not yet concluded. On 23 May 2008 the Commission informed Mr Richardson that draft charges were being considered and explaining why in the Commission's view the complaint had substance. Mr Richardson was provided with draft charges on 3 June 2008.

[224] In summary, an explanation was received on 12 November 2007 after requests on 12 July and 8 August 2007 and further information on 31 January 2008 after requests on 9 and 30 January 2008.

[225] It cannot be said that Mr Richardson failed to co-operate with the investigation by the Society in this matter.

#### **4.9 Complaint of Ghosh**

- (a) By complaint to the Commissioner dated 20 July 2007 Ghosh complained about the respondent.
- (b) By letter dated 8 August 2007 the Society required the respondent to provide the client file in this matter together with trust account records by 15 August 2007.
- (c) The respondent did not provide an explanation or the client file within the time specified.
- (d) On 20 August 2007 the Society gave the respondent a 2007 Act Notice which required the respondent to provide the client file and the trust account records.

The respondent admitted the allegations contained in paragraphs (a), (b), (c) and (d) but said further that the complainant had made complaints with the New South Wales Police Service that the respondent had threatened the life of the female complainant and defrauded her of the amount of \$10,000. Those matters were under investigation by the Queensland Police Service on behalf of the New South Wales service. The respondent advised the Society that he did not wish to respond to their various requests until the police investigations had been satisfactorily concluded.

- (e) On 3 October 2007 the respondent provided the trust account records to the Society.
- (f) On 26 October 2007 the respondent provided the client file to the Society.
- (g) By letter dated 14 January 2008 the Society requested an explanation to the complaint by 28 January 2008.
- (h) The respondent provided a reply by letter dated 11 February 2008.

The respondent admitted the allegations contained in paragraphs (e) (f) (g) and said further that the Society wrote to the respondent on 30 January requesting a

response no later than 11 February 2008. The respondent replied by that date. The Society made no complaint of lack of co-operation.

### **Findings re Ghosh investigation**

- [226] Dr Ratna Ghosh made a complaint to the Commissioner about Mr Richardson on 20 July 2007. The matter was referred to the Society for investigation on 24 July 2007. Dr Ghosh's husband, Dr Bandyopadhyay, gave a letter in support of her complaint on 23 July 2007.
- [227] On 8 August 2007 the Society required Mr Richardson to provide his full file in relation to this matter. That request was apparently ignored and by notice sent by facsimile on 20 August 2007 the Society noted that Mr Richardson was in breach of the requirement to provide his client file and trust account records and he was given notice under s 443(3) of the 2007 Act that he should provide it within 14 days. He did not do so.
- [228] On 4 September 2007 Dr Ghosh sent further information to Mr Smiley at the Society saying that \$10,000 was paid into Mr Richardson's trust account on 18 June 2007. This was confirmed by a letter from the Commonwealth Bank. Mr Smiley's evidence was that he had not had any correspondence from Mr Richardson regarding this matter by this time. On 7 September 2007, Mr Smiley wrote to Mr Richardson on behalf of the Society saying that he had not responded and should do so by 17 September 2007.
- [229] On 3 October 2007, Mr Richardson contacted Mr Smiley and asked for an extension of time to comply with the notices. Mr Richardson confirmed this by email where he said that his involvement in US litigation involving class action and interim injunctions had severely interrupted his normal working days.
- [230] By an undated facsimile transmission which bears the date impressed by the machine of 3 October 2007, Mr Richardson sent to Mr Franklin at the Society one page of his trust ledger and said he would forward other material on the following day. The trust account ledger appeared to show that he had retained \$9,400 of Dr Ghosh's money in his trust account. He sent a log dated 3 October 2007 of various phone calls that an employee in his office had had between 26 April 2007 and 3 September 2007 with regard to this matter and a facsimile from the file from the solicitors who acted for the other parties in the sale dated 18 June 2007.
- [231] On 4 October 2007 Mr Franklin wrote to Dr Ghosh on behalf of the Society saying that it was satisfied that Mr Richardson had not stolen the sum of \$10,000 and that KRG had received the sum from the Commonwealth Bank of Australia. He asked for a copy of Dr Ghosh's letter wherein she instructed KRG Law that if the show cause notice issued by the Council was not resolved within one month, the sum of \$10,000 was to be paid to her.
- [232] On 8 October 2007 Mr Smiley granted Mr Richardson an extension on that and two other files until 29 October 2007. By letters dated 16 October and 25 October Dr Ghosh and her husband Dr Bandyopadhyay provided further material to the Society enclosing a letter from KRG to the solicitors for the other party to the transaction dated 18 June 2007 which states in part:
- “We have also been advised by our clients of the amount of \$10,000 to be held in our trust account for one month from settlement date

after which time this amount will be returned to our client should the Gold Coast City Council approvals for the deck and carport not be received.”

- [233] Mr Richardson provided the file on 26 October 2007 in response to the notices of 8 and 20 August 2007.
- [234] On 26 November 2007 Mr Richardson advised Mr Smiley in writing that he had been admitted to the Prince Charles Hospital on the evening before. By letter dated 5 December 2007 from the Society to the Commissioner, the Society provided an investigation report on this matter.
- [235] Mr Smiley said he was aware that by January 2008 that Mr Richardson was again able to work so on 14 January 2008 he wrote to Mr Richardson on behalf of the Society asking on what basis he held the sum of \$10,000 in trust and asking for his response by 28 January 2008. No response was received to that letter so another letter was sent by the Society to Mr Richardson on 30 January 2008 asking for his response to that letter by no later than 11 February 2008. On 11 February 2008 Mr Richardson wrote to the Society about how he intended to deal with the \$10,000. On 10 March 2008 the Society reported to the Commission submitting that the complaints should be dismissed pursuant to s 448(1)(a) of the 2007 Act.
- [236] On 3 June 2008 the Commission provided Mr Richardson with draft charges in respect of the Ghosh complaint. On 11 June 2008 Mr Richardson requested a copy of the investigation report which was sent to him on 13 June 2008.
- [237] In summary, trust account information was provided on 3 October 2007 after requests on 8 and 20 August 2007; the client file on 26 October 2007 after requests on 8 and 20 August 2007 and an explanation on 11 February 2008 after requests on 14 and 30 January 2008.
- [238] Mr Richardson was dilatory in his responses to the Society and, contrary to what he said in his response to the Tribunal, the explanation given to the Society for his delay was because of pressure of other work. He failed to co-operate in the Society’s investigation of Dr Ghosh’s complaint.

#### **4.10 Complaint of Reis**

- (a) By complaint to the Commissioner dated 26 October 2007 Reis complained about the respondent.
- (b) By letter dated 19 November 2007 the Commission required the respondent to provide a full written explanation to the matters being investigated and the client file by 3 December 2007.
- (c) The respondent did not provide an explanation or the client file within the time specified.

The respondent admitted the allegations contained in paragraphs (a), (b) and (c) but said further that on 16 November 2007 he received extensive dental implant work which caused massive bleeding as a consequence of which he was bed ridden for a period of one week and subsequently admitted to the Prince Charles Hospital for blood transfusions. The period of that hospitalisation was of the order of one week after which he spent a further period recuperating. The respondent’s secretary Jo

Bartrim (now Watson) advised Ms Syme of these matters by way of reasonable explanation for the delay in response.

- (d) By letter dated 13 December 2007 the Commission required the respondent to provide a full written explanation of the matters being investigated and the client file by 18 January 2008 which was further extended until 23 January 2008.

The respondent admitted the allegation contained in paragraph (d) and said the Commission agreed to the extension until 23 January 2008 because the respondent's daughter gave birth to her first child on 18 January 2008.

- (e) The respondent did not provide an explanation or the client file within the time specified.
- (f) By letter dated 30 January 2008 the Commission gave the respondent a 2007 Act Notice which required the respondent to provide an explanation to the complaint together with the client file.
- (g) The respondent provided an electronic copy of the client file together with an explanation to the complaint on 13 February 2008.

The respondent admitted the allegations contained in paragraphs (e) and (f) and say that he complied with the terms of the 2007 Act Notice in that he gave an explanation and electronic copy of the file on 13 February 2008.

The respondent said that by letter dated 14 February 2008 the Legal Services Commission had not formed a view as to whether or not provision of an electronic copy of the file was sufficient to discharge his statutory obligations and required that the respondent provide a full paper copy of the client file.

The respondent subsequently provided a paper copy of the file to the Commission.

### **Findings re Reis investigation**

[239] As Mr Richardson admitted, Ms Fung Ling Siu Reis complained to the Commissioner about Mr Richardson by written complaint dated 26 October 2007. On 19 November 2007 the Commissioner required Mr Richardson to give a full explanation of his conduct the subject of the complaint and also a full copy of the file in relation to the conveyance. He was asked to do that by 3 December 2007. On 26 November 2007 the Commission received a phone call from an employee of Mr Richardson's saying that he had been admitted to hospital on the previous evening. On 13 December 2007 Ms Syme from the Commission called Mr Richardson's office. A receptionist explained that he was not coming into the office because he was not well but that he was receiving correspondence by letter and email. By letter dated 13 December 2007 the Commission gave Mr Richardson notice under s 443 of the 2007 Act to provide an explanation and full copy of the file by 18 January 2007.

[240] On 21 January 2008 Ms Syme was informed when she called Mr Richardson's office that he had not responded by 18 January 2008 as he had "other family matters". Later on that date Ms Syme from the Commission received a phone call from the receptionist at Mr Richardson's law firm saying that his daughter went into labour on Friday and asking for an extension until Wednesday. Ms Syme said she agreed and would confirm by facsimile. Accordingly on that day the Commission sent a letter confirming an extension of time until 23 January 2008. Ms Syme

received a telephone message to contact Mr Richardson on 23 January 2008. There was further message left with the Commission from Mr Richardson's assistant saying that their computer was "down" and that a response would be sent on the following day. No response was received on the following day so on 30 January 2008 the Commission sent a notice to Mr Richardson under s 443(3) of the 2007 Act advising him that he might be dealt with for professional misconduct if his failure to comply with that direction continued for a further 14 days.

- [241] By letter dated 13 February 2008 Mr Richardson sent an explanation of the complaint. On the following day he also emailed as an attachment what was said to be a copy of the file. The Commission was unable to download the file. On 14 February 2008 the Commissioner sent a letter to Mr Richardson requiring a paper copy of the file within 14 days, that is by 28 February 2008. That notice was given under s 443(3) of the 2007 Act. A paper copy of the file was enclosed by letter dated 28 February 2008.
- [242] However, on 7 March 2008 Mr Brittan on behalf of the Commission wrote to Mr Richardson having reviewed the file and noting a number of documents that were not present asked for confirmation that it was a full copy of the file or for him to provide copies of the other materials not previously provided. The letter requested that if it was a full copy of the file, additional explanation be provided. The information was to be provided by 21 March 2008.
- [243] On 31 March 2008 Mr Richardson telephoned the Commission explaining that he was having someone check the file so he hoped to have a response to the Commission shortly. Ms Syme agreed to take no further action before the end of that week, that is before 4 April 2008.
- [244] On 18 April 2008 the Commissioner wrote to Mr Richardson about his failure to respond to the letter of 7 March 2008 and giving him notice under s 443(3) of the 2007 Act that he was required to do so by 2 May 2008. On 1 May 2008 the Commission received an email on behalf of Mr Richardson seeking an extension of time to respond to the notice. The Commission replied by email of 6 May 2008 advising that no further action would be taken on the notices before 14 May 2008.
- [245] The respondent provided a copy of the client's file by letter dated 14 May 2008 but did not provide a response to the issues raised in the Commission's letter of 7 March 2008. Mr Richardson was provided with draft charges in respect of this and other complaints on 3 June 2008.
- [246] In summary, an explanation and electronic version of the client file was received on 13 February 2008 after requests on 19 November, 13 December 2007 and 30 January 2008 and the paper version of the client file on 28 February 2008 after a further request on 14 February 2008. No further information was received in spite of requests on 7 March and 18 April 2008.
- [247] The sequence of events shows a failure by Mr Richardson to co-operate with the Commission's investigation.

#### **4.11 Litherland complaint**

- (a) By complaint to the Commissioner dated 25 February 2008, redchip lawyers complained about the respondent on behalf of their clients, the Litherlands.

- (b) By letter dated 4 March 2008 the Commission required the respondent to provide a full written explanation of the matters being investigated and documents by 28 March 2008.
- (c) The respondent did not provide an explanation or the documents within the time specified.

The respondent admitted the allegation contained in paragraphs (a), (b) and (c) but said further that on 26 March 2008 the Litherlands brought an application 2647/08 in the Supreme Court of Queensland. Such application and the supporting material traversed all matters dealt within the complaint and the respondent said that he advised the Commission to that effect in the course of a telephone conversation with Ms Syme on 31 March 2008.

The respondent said that the Commission acknowledged such conversation in its letter dated 8 April 2008 but continued to require the respondent's submissions and explanation confirming the status of the matter before the Court. The respondent admitted that he did not respond to that request as he regarded it as improper given that the matter was before the Court.

- (d) By letter dated 8 April 2008 the Commission required the respondent to provide an explanation of the matters being investigated by 18 April 2008.
- (e) By letter dated 21 April 2008 the Commission gave the respondent a 2007 Act Notice.

The respondent admitted that allegations contained in paragraph (e) and said further that the Supreme Court proceedings were settled on 1 May 2008. It was a term of such settlement that the Litherlands and their solicitors would withdraw the complaint made to the applicant. Accordingly the respondent contended this amounts to a reasonable excuse for non-compliance with the Notice.

- (f) By letter dated 7 May 2008 the Litherlands withdrew the complaint.
- (g) By letter dated 13 May 2008 the Commission advised the respondent that it would continue with the investigation.
- (h) By letter dated 27 May 2008 the respondent purported to respond to the Litherland investigation.
- (i) By letter dated 27 May 2008 the respondent purported to provide further submissions in respect of the Litherland investigation.
- (j) By letter dated 3 June 2008 the Commissioner sought submissions in respect of a draft charge arising from the Litherland investigation.

The respondent further admitted the allegations made in paragraphs (h), (i) and (j) and said further that he made some submissions by letter dated 11 June 2008 and on 23 June wrote to the applicant seeking an extension of time in which to address further submissions. That request was refused.

- (k) During the course of the investigation, the respondent failed to provide a full explanation regarding the matters being investigated to the Commissioner.

The respondent denied the allegations contained in paragraph (k) for reasons herein before stated.

**Findings re Litherland investigation**

- [248] After the letter from the Commissioner of 4 March 2008 referred to in paragraph 4.11(b) of the charge, Mr Richardson, as he said in his response, telephoned Ms Syme at the Commission telling her that the matter was before the court. She asked him to confirm that in writing. He did not.
- [249] On 8 April 2008 Mr Richardson left a message for Ms Syme to call him. She returned the call and he asked her to email a copy of the complaint. She emailed a copy of the complaint to the email address he provided. He did not however provide any written advice as to the matters being before the court nor did he provide an explanation or the documents requested by 8 April 2008.
- [250] On 8 April 2008 the Commission sent Mr Richardson a notice pursuant to s 443(1)(a)(i) of the 2007 Act requiring an explanation of certain matters by 18 April. Those matters were his explanation confirming the status of the matter before the court and in particular detailing how the matters raised in Mr Barnes' complaint formed the basis of any court action. Further an explanation was required of a possible breach of the obligations found in s 332(2) of the 2007 Act in that he had allegedly failed to provide itemised accounts in response to Mr Barnes' request. The Commissioner noted that the accounts were not itemised in that they did not reflect full details of the date on which services were provided or specifics of services provided on those dates. Mr Richardson did not reply to that letter.
- [251] Accordingly, on 21 April 2008, the Commissioner sent Mr Richardson a notice pursuant to s 443(3) of the 2007 Act that he might be dealt with for professional misconduct if his failure to comply with the direction given on 8 April 2008 continued for a further 14 days, that was beyond 6 May 2008. He was asked to advise Ms Syme in writing if he believed he had a reasonable excuse for failing to provide the explanation by that date.
- [252] On 1 May 2008 the Commission received an email on behalf of Mr Richardson saying that he was absent from the office with the flu and asked for an extension of seven days in respect of the Litherland complaint and others. Mr Brittan on behalf of the Commissioner emailed a response on 6 May 2008 saying that because of the issue of the s 443(3) notices he was not able to provide an extension of time but that Mr Richardson's recent illness might constitute a reasonable excuse for non-compliance. He asked for Mr Richardson's responses in relation to the various matters along with a copy of a medical certificate or other relevant documentation in support of his explanation for the delay and said that he would take no further action before 14 May 2008.
- [253] On 7 May 2008 Mr Barnes from redchip lawyers by letter advised the Commissioner that Mr and Mrs Litherland wished to withdraw the complaint against Mr Richardson.
- [254] On 13 May 2008 Mr Brittan, on behalf of the Commission, wrote to Mr Richardson referring to the withdrawal of the complaint by Mr and Mrs Litherland but informing Mr Richardson that pursuant to s 443 of the 2007 Act the Commissioner might, of his own initiative, continue the investigation of a complaint irrespective of the complainants' withdrawal of their original complaint. Mr Brittan said that, given the seriousness of the conduct alleged in the complaint made by Mr and Mrs Litherland, the Commissioner had decided to continue the investigation and still

required Mr Richardson's explanation and submissions as set out in the Commission's correspondence of 8 April 2008. He reiterated that he would take no action in relation to the matter before close of business of 14 May 2008.

- [255] On 13 May 2008, Mr Richardson sent an email to the Commission, to the attention of Ms Syme, saying that because the settlement of the court matter was confidential and all his files had been handed to the Litherlands' solicitor he would have considerable difficulty preparing a response and asking for her advice. On 14 May 2008, Ms Syme obtained a copy of the court file in relation to the dispute between Mr Litherland and Mr Richardson from the Supreme Court Registry. The court file included an affidavit from Mr Litherland setting out the matters referred to in charge 1 before this Tribunal. On 14 May 2008, Mr Brittan on behalf of the Commission wrote to Mr Richardson setting out the history of the matter and telling him that he remained under a statutory obligation to provide a full explanation of his conduct.
- [256] By letter dated 16 May 2008, Mr Richardson wrote to the Commission saying that he had contacted Mr Michael Long of redchip lawyers requesting he obtain his clients' instructions to release him from the confidentiality condition and submitting that his knowledge of the withdrawal of the complaint was a reasonable excuse for non-compliance with the s 443(3) notice. Mr Brittan responded on behalf of the Commission on the same date.
- [257] On 22 May 2008 Ms Syme conducted a number of searches as a part of the investigation. She obtained from the Australian Securities and Investments Commission ("ASIC") a copy of the application for registration of WLH Collections made by Gregory Reynolds; a search of the DNR for the property purchased by Mr and Mrs Litherland and dealings in respect of the caveat.
- [258] On 27 May 2008 Mr Richardson sent to Ms Syme at the Commission a response to the allegation that he might be in breach of s 332(2) of the 2007 Act. He referred to the letter from redchip lawyers of 8 February 2008 on behalf of the Litherlands which had said:  
"We request the immediate delivery of all itemised bills or invoices relating to the work for which you are requesting payment."
- [259] It appears that Mr Richardson took the view that the word "itemised" referred to bills but not to invoices. He said that the invoices were prepared on a "value billing basis". He said during the course of the litigation he had provided further particulars to Mr Barnes and now provided that to the Commission.
- [260] On 30 May 2008 the Commission received further material from redchip lawyers explaining the circumstances in which their clients agreed to withdraw the complaint and confirming that neither party was bound by confidentiality obligations with regard to disclosure made to the Commissioner.
- [261] In summary, an explanation was provided on 16 May 2007 and 27 May 2008 after requests on 4 March, 8 and 21 April 2008. The client file was never provided in spite of a request on 4 March 2008.
- [262] The Tribunal is satisfied that Mr Richardson failed to co-operate with the Commission's investigation of this complaint.

**4.12 Complaint of Wheldon & Associates**

- (a) By complaint to the Commissioner dated 6 March 2008, Wheldon & Associates complained about the respondent.
- (b) By letter dated 12 March 2008 the Commission required the respondent to provide a full written explanation of the matters being investigated together with the client file by 2 April 2008.
- (c) The respondent did not provide an explanation or the client file within the time specified.
- (d) By letter dated 8 April 2008 the Commission required the respondent to provide a full written explanation of the matters being investigated and the client file by 18 April 2008.
- (e) The respondent did not provide an explanation or the client file within the time specified.
- (f) By letter dated 21 April 2008 the Commission gave the respondent a 2007 Act Notice which required the respondent to provide a full explanation and the client file.
- (g) On 14 May 2008 the respondent provided an explanation to the complaint together with the client file.

The respondent admitted the allegations contained in paragraph (a) (b) (c) (d) (e) and said further that these delays were occasioned by the need to obtain information and copy documents.

**Findings re Wheldon investigation**

- [263] On 6 March 2008, the law firm of Wheldon & Associates made a complaint to the Commission about the conduct of a conveyance by the firm of which Mr Richardson is the principal. Mr Wheldon enclosed six items of correspondence sent by Wheldon & Associates to KRG in an attempt to deal with the problem that had arisen for their client as the result of KRG's conduct of the conveyance to which he had not had any response in almost four months.
- [264] The Commission wrote to Mr Richardson on 12 March 2008 enclosing a copy of the complaint and asking for a full explanation of his conduct and a full paper copy of the client file no later than 2 April 2008. There was no response to the Commission's letter so on 8 April 2008, the Commission required an explanation and the file by no later than 18 April 2008. That notice was given pursuant to s 443 of the 2007 Act. Mr Richardson did not respond to that letter.
- [265] On 21 April the Commission wrote to the body corporate managers of the property which was the subject of the dispute seeking information relevant to the complaint. On the same date the Commissioner gave Mr Richardson a notice pursuant to s 443(3) of the 2007 Act requiring the explanation by 6 May 2008. On 28 April 2008 the Body Corporate sent the requested information to the Commission. On 1 May 2008 the Commission received an email on behalf Mr Richardson about the number of complaints that the Commission had asked him to respond to and asking for an extension of seven days because he was absent from the office with the flu.
- [266] Mr Brittan on behalf of the Commission said he would take no further action before 14 May 2008. In addition to the material he had already sought he sought a copy of a medical certificate or any other relevant documentation in support of his explanation for the delay in responding to these matters. On 14 May 2008 Mr

Richardson provided an explanation as requested on 12 March 2008 and sent the file by courier. No medical certificate or other relevant documentation relating to the delay was sent.

- [267] On 3 June 2008 the Commission provided the respondent with draft charges in respect of a number of complaints including this complaint and requesting any further submissions be made by 24 June 2008. On 13 June 2008 Mr Richardson sought a copy of documents that had been provided to the Commission in respect of the investigation. The documents were sent to Mr Richardson on 16 June 2008.
- [268] In summary, the explanation and client file were provided on 14 May 2008 after requests on 12 March, 8 April and 21 April 2008.
- [269] Mr Richardson responded to the s 443(3) notice within the time as extended. It is of concern that he failed to provide a medical certificate but it could not otherwise be said that he failed to co-operate with the Commission's investigation.

#### **Findings with regard to Charge 4**

- [270] Mr Richardson's response to requests from the Society and the Commission showed, as he agreed in evidence, that he always ignored the first request for information. This led to a notice being issued under s 269(3) of the 2004 Act or s 443(3) of the 2007 Act which carried with it the risk of a prima facie finding of professional misconduct. This usually brought a response but inevitably later than the date by which a response had been sought. It reveals a pattern of behaviour by Mr Richardson of being less than diligent in fulfilling his professional obligation to respond to information requests. It was true that when the matter was being investigated by the Society, Mr Smiley often acquiesced in Mr Richardson's tardiness; but the same cannot be said of the Commission. Mr Richardson was well aware that his responses were required on time.
- [271] The Commissioner submitted that Mr Richardson failed to comply in a timely manner with 12 separate investigations. It was submitted his course of conduct in failing to comply with the notices and to co-operate with the Society and Commission in the investigation of the allegations was a serious breach of Mr Richardson's professional obligations.
- [272] The Commissioner relied on the following passage from *Legal Services Commissioner v Browne*,<sup>17</sup> where the Tribunal observed:
- “The Tribunal again sends a very clear message to the profession that Practitioners must comply with correspondence sent to them by the Commissioner or the Law Society in a timely fashion. In *Veghelyi -v- Council of the Law Society of New South Wales* 12662 of 1989, unreported, NSW SC6/9/89, Mr Justice Smart stated at page 16:
- ‘It is important that Solicitors respond promptly to the Society when it asks for a reply in response to complaints that have been made. It will be an unusual and complex case when a delay of more than

<sup>17</sup> [2004] NSW ADT 63 at [13].

14 days is acceptable and often, the replies should be delivered within a shorter period such as 7/10 days. Replies to the Law Society in respect of complaints warrant a high priority.’ ”

- [273] The Commissioner submitted that the respondent’s failure to comply with the requests for explanations and client files in a timely manner over an extended period of time could only be described as professional misconduct.
- [274] Senior counsel for the practitioner submitted that the 2004 Act and the 2007 Act have provided a mechanism whereby the practitioner is obliged to provide information and documents to the Society and the Commissioner. He submitted that there are professional repercussions if a notice is not complied with but there cannot be professional repercussions if there is no notice given or if the notice is complied with within time or any extended time.
- [275] What is alleged is a failure to co-operate in the various investigations of the many complaints against Mr Richardson. There is a statutory regime, breach of which on even one occasion, can lead to the imposition of a fine or constitute professional misconduct. It is not a breach of that statutory regime that is alleged here rather a breach of a duty to co-operate. The question is whether Mr Richardson’s response to the investigation of complaints against him constitutes unsatisfactory professional conduct or professional misconduct.
- [276] The definitions of “unsatisfactory professional conduct” and “professional misconduct” in the 2007 Act are inclusive. It includes conduct by the legal practitioner in connection with his or her practice which falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.
- [277] A member of the public who makes a complaint against a legal practitioner to the practitioner’s professional association or the statutory body set up to investigate complaints is, in the Tribunal’s view, entitled to expect that a reasonably competent legal practitioner will respond competently and diligently to the investigation of that complaint. The public interest in maintaining confidence in the legal profession demands no less.
- [278] If the practitioner fails to comply with a notice given under s 443(3) of the 2007 Act or its equivalent in the 2004 Act, then the practitioner has *prima facie* been guilty of professional misconduct. However, this does not mean that the practitioner can ignore the investigation until such notice is given. Indeed the failure to give a full explanation in response to a notice under s 443(1)(a) gives rise to the liability to pay a fine of up to \$5,000.
- [279] In this case Mr Richardson failed to demonstrate the standard of competence and diligence the public is entitled to expect from a competent Australian legal practitioner in his response to the investigation of a number of the complaints. The public is entitled to expect a legal practitioner, unless he or she finds himself or herself in peril under s 443(6), to be “candid” and “co-operative” to use the words of Pincus JA in *QLS v Carberry; A-G v Carberry* [2000] QCA 450 at [7]. This is part of his or her professional duties.

- [280] The Tribunal is satisfied that Mr Richardson failed to co-operate with the Society in its investigation of the West complaint, the Shepherd and Chalmers complaint, the Hinton complaint, the Corish complaint and the Ghosh complaint, and failed to co-operate with the Commission in its investigation of the Sachse complaint, the Reis complaint and the Litherland complaint. On each occasion where that occurred it represents unsatisfactory professional conduct in that it fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.
- [281] Mr Richardson exhibited unsatisfactory professional conduct on a number of occasions and that there are circumstances where such conduct could give rise to a finding of professional misconduct as defined in s 419(1)(a) of the 2007 Act. However the statute expressly provides for a circumstance that represents professional misconduct if a practitioner fails to respond to notices and so the Tribunal would not in this instance find that the failures to co-operate with the investigations represented professional misconduct particularly in the absence of an allegation by the Commissioner of a failure to comply with a notice given under s 443(3) of the 2007 Act or its 2004 Act equivalent.

### **Conclusion**

- [282] The Tribunal has found that Mr Richardson is guilty of professional misconduct with regard to Charge 1 and Charge 2 and unsatisfactory professional conduct with regard to charge 4, as particularised in 4.1, 4.4, 4.5, 4.6, 4.7, 4.9, 4.10 and 4.11.
- [283] The Tribunal, having been satisfied that Mr Richardson has been guilty of professional misconduct and unsatisfactory professional conduct, will now consider the appropriate order to be made under s 456 of the 2007 Act.