Connop v Law Society Northern Territory [2016] NTSC 38

PARTIES:	**CONNOP, Wayne**
	v
	LAW SOCIETY NORTHERN TERRITORY
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	LA 3 of 2016 (21610276)
DELIVERED:	8 June 2016
DATE PUBLISHED:	15 July 2016
HEARING DATES:	11, 12 April, 16 May, 1 June 2016
JUDGMENT OF:	HILEY J

CATCHWORDS:

LEGAL PRACTITIONERS (NORTHERN TERRITORY) – Appeal – cancellation of unrestricted practising certificate – fit and proper person – suitability matters – duty to administration of justice –duty of full and frank disclosure – duty of candour – undertakings to the Court – duty to the client – obligation to be open and frank in dealings with the Law Society – failure to comply with special conditions of unrestricted practicing certificate – trust account irregularities and notification failures - lack of oversight of trust account and invoicing – failure to provide Continuing Professional Development declaration – failure to provide trust account statements or final accounting – trust monies not properly accounted for – misleading costs agreements – failure to comply with conditions on stay pending appeal – conduct falling short of reasonably competent legal practitioner – failure

to disclose complaint when applying for unrestricted practicing certificate – misleading statements in affidavits and in court – unreliable witness.

Legal Profession Act 2006 (NT) s 4, s 6(a), s 11, (1)(a), (f)-(g), s 47, s 47(2)(a)-(f), s 54(2), s 56, s 57, (2), s 70(3), s 78, s 89(1), s 89(5), s 122(1), (5)-(6), s 123, s 125(3), s 247(1), (3), s 252, s 254, s 256, s 257, s 265(1), s 270, s 303, s 305, s 325, s 330, s 475, s 475(1), (6), s 476(2), s 488, s 540, s 621(1), (3), s 689-695.

Legal Profession Regulations 2007 (NT) r 7(1)-(3), r 47(2)(c), r 51, r 55(2)(b), r 63(1) and (5)-(6), r 68(3)-(4), r 72, r 73, r 77.

Rules of Professional Conduct and Practice 2005 (NT) r 17.6, .7, r 32, r 32.2, p 7, p 13.

Criminal Code (NT) s 96.

Briginshaw v Briginshaw (1938) 60 CLR 336; *In re John Cameron Foster* (1950) 50 SR (NSW) 149; *Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR 655; *Legal Practitioner v Council of the Law Society of the ACT* [2011] ACTSC 110; *New South Wales Bar Association v Livesey* [1982] 2 NSWLR 231; *New South Wales Bar Association v Murphy* (2002) 55 NSWLR 23; *Re Deo* (2005) 16 NTLR 102; *Re Hampton* [2002] QCA 129, applied.

Barakat v The Law Society of NSW [2014] NSWSC 773; *Barlow v Law Society of the ACT* [2013] ACTSC 68; *Builders' Licensing Board v Sperway Construction (Syd) Pty Ltd* (1976) 135 CLR 616; *Commission for Safety and Rehabilitation of Commonwealth Employees v Chenhall* (1992) 37 FCR 75; *Copini* [1994] NSWLST 25; *D'Alessandro & D' Angelo v Bouldas* (1994) 10 WAR 191; *Dennis v Law Society of New South Wales* (Court of Appeal, 17 December 1979, unreported); *Heydon v NRMA Ltd* (2000) 51 NSWLR 1; *In the matter of an application by Julian Valvo* [2014] NTSC 27; *In the matter of an application by Mariel Jessica Sutton* [2016] NTSC 9; *Law Society of NSW v Foreman* (1991) 24 NSWLR 238; *Melliphant v Attorney-General for the State of Queensland* (1991) 173 CLR 289; *NSW Bar Association v Cummins* (2001) 52 NSWLR 279; *Re Application by Saunders* (2011) 29 NTLR 204; *Re B* [1981] 2 NSWLR 372; *Re Gadd* [2013] NTSC 13; *Re OG (A Lawyer)* (2007) 18 VR 164; *Rogers v Whitaker* (1992) 175 CLR 479; *Sommer v Coates Hire Operators Pty Ltd* [2015] NTMC 28 (11 December 2015); *Stanoevski v The Council of the Law Society of NSW* [2008] NSWCA 93; *The Prothonotary Supreme Court of NSW v Darveniza* (2001) 121 A Crim R 542; *Thomas v Legal Practitioners Admission Board* (2005) 1 Qd R 331; *Truong v The Queen* [2015] NTCCA 5; *Veghelyi v Council of the Law Society of New South Wales* (1989) 17 NSWLR 669; *Wentworth v NSW Bar Association* (1992) 176 CLR 239, referred to.

ABA-ALI Committee on Continuing Professional Education Model Peer Review System 11 (Discussion Draft, 15 April 1980).

G E Dal Pont, Lawyers' Professional Responsibility (Thomson Reuters, 5th ed, 2013).

REPRESENTATION:

Counsel:

Appellant:	D Baldry and P Hanlon
Respondent:	S Brownhill SC and W Roper

Solicitors:

Respondent:	Law Society Northern Territory

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Connop v Law Society Northern Territory [2016] NTSC 38
No. LA 3 of 2016 (21610276)

BETWEEN:

WAYNE CONNOP
Appellant

AND:

LAW SOCIETY NORTHERN TERRITORY
Respondent

CORAM: HILEY J

REASONS FOR JUDGMENT

(Delivered 15 July 2016)

Introduction

[1] This is an appeal against the decision by the Law Society Northern Territory (the **Law Society**) to cancel the appellant's unrestricted practising certificate (**UPC**).[1]

[2] On 8 June 2016 I dismissed the appeal and declared that Mr Connop is not a fit and proper person to hold an unrestricted practising certificate. These are my reasons.

[3] The appellant obtained a Bachelor of Laws at the Australian National University in 2003 and was admitted as a legal practitioner later that year. He held a restricted practising certificate in the Northern Territory from 5 November 2004 until 1 July 2010 when he was first issued with a UPC. He was issued with UPCs each year thereafter including on 1 July 2015.[2]

[4] His UPC issued with effect from 1 July 2015 (**UCP 2015/16**) was issued subject to certain special conditions (**SCs**) imposed pursuant to ss 54(2) and 70(3) of the *Legal Profession Act 2006* (NT) (**LPA**).[3] The conditions related to the conduct of monthly reviews of the appellant's

[1] An "unrestricted practising certificate" means an Australian practising certificate that is not subject to any condition under the *Legal Profession Act 2006* (NT) (**LPA**) or a corresponding law requiring the holder to engage in supervised legal practise or restricting the holder to practise as or in the manner of a barrister: s 4 LPA. "Supervised legal practise" is defined by s 4 to mean legal practice as an employee of or working under supervision in a law practice where at least one partner, legal practitioner director or other employee holds an UPC and the person engages in legal practice under the supervision of that person; or legal practice as a partner in a law firm where at least one other partner holds an UPC and the person engages in legal practice under the supervision of that person.
[2] Affidavit of Kellie Anne Grainger made 15 March 2016 (**Grainger 15/3/16**) [8] & [9].
[3] Ibid [11] & [13] and Annexure KAG 6.

management of his law practice (focussing on costs disclosure, billing and trust monies), and a quality practice review of the appellant's law practice.[4] The Law Society's reasons for imposing the SCs included a number of complaints made against him in the preceding 12 months, various overdue trust accounting notifications, and three trust account transactions made without any supporting evidence.[5] The Law Society concluded that the appellant was struggling to meet aspects of the regulatory requirements for operating his legal practice and that this presented as a serious risk to consumers of his legal services.

[5] SCs 3.2 and 3.3 required the appellant to provide to his existing clients and any new clients written notification that a person may be reviewing his files and requesting written consent for their file to be so reviewed. He was to do that within seven days of the issue of the UCP 2015/16, that is, by 20 October 2015. SC 3.4 required the appellant to provide the appointed Reviewer with "a list of all client matters and all client matters closed within the preceding month" no later than 14 days after being notified of the Reviewer's appointment.[6] The appellant's failure to comply with these special conditions delayed the Reviewer undertaking his initial review of the appellant's legal practice.[7]

[6] On 17 December 2015, the Law Society decided to consider action to cancel the appellant's UPC and directed that he be notified pursuant to

[4] Grainger 15/3/16 Annexure KAG 6.
[5] Ibid [12] Annexure KAG 5.
[6] Ibid 15/3/16 [15].
[7] Ibid [16] Annexure KAG 8.

s 57 of the LPA.[8] He was notified on 21 December 2015,[9] and responded on 13 January 2016.[10]

[7] On 21 January 2016, the Reviewer provided a report to the Law Society following his initial review of the appellant's legal practice.[11] The Reviewer noted that the appellant had still not complied with SCs 3.2 and 3.3[12] and that the main issue affecting the appellant's management of his legal practice was the absence of administrative support, which the practice could not afford.

[8] On 28 January 2016, the Law Society decided to cancel the appellant's UPC with effect from 26 February 2016 (the **decision to cancel**).[13] The Law Society's reasons for that decision were provided to the appellant on 1 February 2016.[14] By this proceeding, the appellant appeals to this Court from that decision.

[9] On 24 February 2016 the appellant sought an order staying the decision to cancel, and sought and was granted abridgments of time so the application could be heard on 26 February 2016. I granted a stay and made orders on 29 February 2016 which contained a significant number of conditions upon which the appellant could continue to practice, until further order (the **stay orders**).

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[8] Grainger 15/3/16 [17].
[9] Ibid [18] Annexure KAG 9.
[10] Ibid [19] Annexure KAG 10.
[11] Ibid [20] Annexure KAG 11.
[12] Ibid.
[13] Ibid [21].
[14] Ibid [22] Annexure KAG 12.

[10] I set the matter down for hearing on 11 April 2016 and made orders for the filing and exchange of an amended notice of appeal and further affidavit material. Affidavits were filed on behalf of both the appellant[15] and the respondent[16], and detailed written submissions were provided by both parties.[17]

[11] At the hearing on 11 and 12 April 2016 the appellant was cross-examined by senior counsel for the Law Society, Ms Brownhill SC. The matter was adjourned to enable the parties to provide supplementary written submissions.[18] Any additional oral submissions were to be made on 1 June 2016.

[12] On 16 May 2016 the appellant sought and was granted leave to adduce further evidence and to be excused from an undertaking he had given to the Court to attend a Practice Management Course to be conducted by the Queensland Law Society in Brisbane on 2-4 June 2016.[19] On 1 June 2016, prior to the hearing of the oral submissions, the appellant was given leave to adduce further evidence in the form of another

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[15] Affidavits of Wayne Connop made on 24/2/16 (**Connop 24/2/16**), 25/2/16 (**Connop 25/2/16**), 8/3/16 (**Connop 8/3/16**), 23/3/16 (**Connop 23/4/16**), 5/4/16 (**Connop 5/4/16**) and 27/5/16 (**Connop 27/5/16**).
[16] Affidavits of Kellie Anne Grainger made on 25/2/16 (**Grainger 25/2/16**), 8/4/16 (**Grainger 8/4/16**) and 11/4/16 (**Grainger 11/4/16**).
[17] See "Amended Appellant's Submissions" dated 29 March filed 4 April 2016 (**Appellant's Submissions**) and "Respondent's Written Submissions" dated and filed 6 April 2016 (**LSNT Submissions**).
[18] See "Appellant's Amended Closing Written Submissions" filed 31 May 2016 (**Appellant's Closing Submissions**), "Appellant's Supplementary Closing Written Submissions" filed 30 May 2016 (**Appellant's Supplementary Closing Submissions**) and "Respondent's Supplementary Written Submissions" dated and filed 4 May 2016 (**LSNT Supplementary Submissions**).
[19] Transcript 12/4/16 p 174. Exhibit A2.

affidavit sworn by him on 27 May 2016 and he was further cross-examined by senior counsel for the Law Society.

Summary of main contentions

[13] The appellant contended throughout that the Law Society was wrong to cancel his UPC, or alternatively that the Court should now find him to be a fit and proper person to hold a UPC and if thought appropriate, impose conditions upon his UPC.

[14] The respondent, the Law Society, contended that the appellant is not a fit and proper person to hold a UPC, that the imposition of conditions upon his UPC is not open if the Court finds he is not a fit and proper person to hold a UPC and that imposition of the conditions proffered by the appellant[20] is not consistent with the provisions of the LPA or sustainable in the medium to long term, and that the appeal should be dismissed, with costs.

[15] Prior to the hearing of the appeal in April 2016 the Law Society referred to the following matters as demonstrating that the appellant is not a fit and proper person to hold a UPC:

(a) the appellant's failures to comply with the SCs of his UPC, and the Reviewer's observations regarding the appellant's legal practice;

[20] Appellant's Submissions [87].

(b) the Law Society's finding on 13 August 2015 of unsatisfactory professional conduct in relation to a complaint by Monica Williamson;

(c) the appellant's failure to pay the fine ordered in relation to that finding of unsatisfactory professional conduct;

(d) complaints by Dorothy Fox, Anne Louise Ray, Brendan Loizou and Pieter Bekkers, and the appellant's responses thereto;

(e) a complaint by Craig Sommer, findings and orders of the Work Health Court, and the appellant's responses thereto;

(f) a letter from Justice Kelly in relation to the appellant's representation of Joshua Hes in the Supreme Court, and the appellant's responses thereto;

(g) irregularities in respect of the appellant's trust accounts, the appellant's failures to comply with the regulatory requirements for notifications in respect of trust accounts and the appellant's responses to the Law Society's concerns about those matters;

(h) the appellant's failure to notify the Law Society regarding his purported practice as an incorporated legal practice (**ILP**) as required by s 122 of the LPA;

(i) the appellant's recent application for a restricted (barrister and solicitor) practising certificate[21] (**RBSPC**) which asserts that he would be employed as an "ILP solicitor director";

(j) the appellant's failure to comply to the letter with the conditions imposed by the Court upon the stay of the Law Society's decision to cancel his UPC.

[16] Following the hearing of the appeal on 11-12 April 2016 and the re-opening of the appeal on 1 June 2016, the Law Society identified further matters which it submitted also demonstrate that the appellant is not a fit and proper person to hold a UPC. Many of these further matters arose out of cross-examination of the appellant.

Relevant legal principles

Nature of the appeal

[17] Despite some of the grounds and the form of the relief sought in the Amended Notice of Appeal filed on 4 March 2016, the parties agreed[22] that the appeal from the Law Society's decision pursuant to s 89(1)(c) of the LPA is an appeal de novo.[23] Essentially, the Court stands in the shoes of the Law Society, exercising original jurisdiction, and

[21] A UPC entitles the holder to practise as a legal practitioner without restriction; a RBSPC entitles the holder to practise as a legal practitioner only when engaged in supervised legal practise: rr 7(1), (2), (3) of the LPRs.
[22] See Appellant's Submissions [9].
[23] See *Veghelyi v Council of the Law Society of New South Wales* (1989) 17 NSWLR 669 at 675 per Smart J, citing *Dennis v Law Society of New South Wales* (Court of Appeal, 17 December 1979, unreported) at 12-13 and applying the reasoning in *Builders' Licensing Board v Sperway Construction (Syd) Pty Ltd* (1976) 135 CLR 616.

determines whether the appellant's UPC should be cancelled.[24] Following the hearing of the appeal the Court may make the order it considers appropriate (s 89(5) LPA). Since s 57(2)(c) of the LPA permits the Law Society to cancel, suspend or amend the UPC, it would be open to the Court on the appeal to take any or none of those actions, as it considers appropriate.

[18] While much of the focus was on the various concerns expressed by the Law Society when it made its decision, I need to take into account other matters, especially events that have, or have not, occurred since the decision to cancel made by the Law Society on 28 January 2016. This includes matters arising out of the cross-examination of the appellant on 11-12 April 2016 and 1 June 2016, and the submissions made on his behalf.

[19] The respondent accepts that it bears the onus of proof of the ultimate issue in the proceedings, namely that the appellant is not a fit and proper person to continue to hold a UPC, but there is the usual shifting evidentiary onus.[25] The Law Society also accepts, and I agree, that the standard of proof is on the balance of probabilities, and that the

[24] See *Legal Practitioner v Council of the Law Society of the ACT* [2011] ACTSC 110) at [21]-[27] per Penfold, North JJ and Mathews AJ.
[25] See *Stanoevski v The Council of the Law Society of NSW* [2008] NSWCA 93 at [58] - [64] per Campbell JA (Hodgson JA and Handley AJA agreeing). These observations were made in the context of an appeal on a question of law from a decision to remove a practitioner's name from the roll, but they apply equally to an appeal from a decision to cancel a practising certificate.

Briginshaw test[26] is applicable to allegations made regarding the appellant's conduct (and his explanations therefor).

Cancellation of a practicing certificate

[20] The grounds for cancelling a local practising certificate[27] are (relevantly) that the holder is no longer a fit and proper person to hold the certificate (s 56(a) LPA). Various matters may be taken into account in considering whether a person is a fit and proper person to hold a local practising certificate (s 47 LPA). They include:

(a) any "suitability matter" relating to the person (defined by reference to s 11 LPA);

(b) whether the person obtained an Australian practising certificate because of incorrect or misleading information (s 47(2)(a) LPA);

(c) whether the person has contravened a condition of an Australian practising certificate held by the person (s 47(2)(b) LPA);

(d) whether the person has contravened the LPA or the *Legal Profession Regulations 2007* (NT) (**LPRs**) (s 47(2)(c) LPA);

(e) whether the person has failed to pay a required contribution or levy to the Fidelity Fund or other costs or expenses for which the person is liable under the LPA (s 47(2)(e)(i) LPA); and

[26] *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362.
[27] "Local practising certificate" means a practising certificate granted under s 4 of the LPA.

(f) other matters the Law Society considers appropriate (s 47(2)(f) LPA).

[21] Section 11 identifies "suitability matters" and includes the following:

> (1) Each of the following is a suitability matter in relation to an individual:
>
> (a) whether the person is currently of good fame and character;
>
> …
>
> (f) whether the person is currently subject to an unresolved complaint, investigation, charge or order under any of the following:
>
> (i) this Act or a previous law of this jurisdiction that corresponds to this Act;
>
> (ii) …
>
> (g) whether the person:
>
> (i) is the subject of current disciplinary action, however expressed, in another profession or occupation in Australia or a foreign country; or
>
> (ii) has been the subject of disciplinary action, however expressed, relating to another profession or occupation that involved a finding of guilt.

[22] Although many of the allegations and legal principles relevant to this matter would also be relevant if a court or other relevant body was considering allegations of professional misconduct or unprofessional conduct in the context of other disciplinary action and/or a person's admission as a legal practitioner, there is a difference between unfitness to hold a practising certificate (or a particular class thereof)

and unfitness to be a legal practitioner.[28] The question for this Court is whether the appellant is no longer a fit and proper person to hold a UPC, taking into account relevant matters in s 47 of the LPA, which include the suitability matters in s 11 of the LPA. Whether the appellant is a fit and proper person to hold a RBSPC is not a matter which this Court is required to determine in this appeal.

[23] It is clear from the terms of the LPA, and the distinction in the LPRs between UPCs and RBSPCs, that the holder of a UPC must be a person who is suitable to conduct a law practice as a principal and be qualified to engage in unsupervised legal practice.[29] It is also implicit in the overall scheme that the holder of a UPC should be capable of supervising other practitioners such as holders of RBSPCs.[30]

[24] In *Murphy*, Giles JA held (at [113]:

> Refusal, cancellation or suspension of a practising certificate upon determination of unfitness to hold a practising certificate is not punitive of the legal practitioner. It is protective of the public in the same manner as removal from the roll. Fitness to hold a practising certificate is to be assessed having in mind the high standards required of legal practitioners in the practice of their profession. The standards are required because the relationship between legal practitioner and client, between legal practitioners, and between legal practitioner and court is one of trust in the performance of professional functions, and because there must be confidence in the public and those engaged in the

[28] See *New South Wales Bar Association v Murphy* (2002) 55 NSWLR 23 (***Murphy***) at [111] per Giles JA.
[29] *Barlow v Law Society of the ACT* [2013] ACTSC 68 (***Barlow***) at [73] per Refshauge, Burns and Marshall JJ. See also the responsibilities of a legal practitioner director of an ILP in s 125 of the LPA - see [313] below.
[30] Regulation 7(3) LPR entitles the holder of a RBSPC to practice only when engaged in "supervised legal practice", defined in s 4 LPA to require supervision by the holder of a UPC.

> administration of justice that legal practitioners will properly perform those functions.

[25] To be a fit and proper person to hold a practising certificate requires demonstrated honesty and competence in dealing with clients, other practitioners and the Court. It also extends to the assessment of a practitioner's "character" in order to maintain the continuing confidence of the public in the performance of the duties of legal practitioners, given the central role the profession plays in the administration of justice.[31]

Obligations of legal practitioners

[26] There are numerous textbooks which conveniently summarise the various obligations of practising lawyers, many of which would have been readily available to the appellant. A fundamental starting point for a lawyer practising in the Northern Territory is the *Rules of Professional Conduct and Practice* made by the Law Society pursuant to its rule making powers in ss 689-695 of the LPA (**NTPCRs**).[32]

Duties to the Administration of Justice

[27] The NTPCRs contain the following statement of general principle regarding practitioners' duties to the Court:

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[31] *Barakat v The Law Society of NSW* [2014] NSWSC 773 at [140] per Beech-Jones J, citing *NSW Bar Association v Cummins* (2001) 52 NSWLR 279 at [20] per Spigelman CJ. See too *Murphy* at [170].

[32] The NTPCRs are binding on the holder of a UPC such as that held by the appellant. See s 694 LPA.

> Practitioners, in all their dealings with the courts, whether those dealings involve the obtaining and presentation of evidence, the preparation and filing of documents, instructing an advocate or appearing as an advocate, should act with competence, honesty and candour. Practitioners should be frank in their responses and disclosures to the Court, and diligent in their observance of undertakings which they give to the Court or their opponents.[33]

[28] A practitioner is expected to deal with the Court openly and honestly and not "…knowingly make a misleading statement to the Court on any matter".[34] If a practitioner becomes aware that a misleading statement has been made to the Court, he or she must rectify this error as soon as practicable after becoming aware that such a statement is misleading.[35]

[29] These rules are based upon well-established principles including that a member of the legal profession is required to be:

> …honest and frank in his relations with the court and otherwise in his professional conduct and in evidence given by him before the court so that the court and other members of the profession can deal with him with confidence relying on his integrity.[36]

[30] In *In re John Cameron Foster*[37] the Court was faced with a barrister who the Court was satisfied:

> …would not hesitate to depart from the truth whenever he thought he could thereby derive some personal advantage from so doing.

[31] Street CJ said at p 152:

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[33] NTPCRs p 13 (under heading "Practitioners' Duties to the Court"). The same statement of principle is also contained in the professional conduct rules in ACT, NSW and Victoria.
[34] NTPCR r 17.6.
[35] Ibid r 17.7.
[36] *New South Wales Bar Association v Livesey* [1982] 2 NSWLR 231 at 233, per Moffitt P citing *Re B* [1981] 2 NSWLR 372 at pp381-383 and 395.
[37] *In re John Cameron Foster* (1950) 50 SR (NSW) 149.

> It would be an evil day for this community if Judges were not able to accept, unreservedly and without question, any statements made by counsel to them in court or any answers given by counsel to questions by the court, and every judge expects, and is entitled to expect, to be able to place complete confidence in counsel's honour and integrity.

Disclosure obligations and candour

[32] The fundamental importance of candour expected of a legal practitioner was emphasised by the High Court over a hundred years ago in *Incorporated Law Institute of New South Wales v Meagher*,[38] at p 681:

> The errors to which human tribunals are inevitably exposed, even when aided by all the ability, all the candour, and all the loyalty of those who assist them, whether as advocates, solicitors or witnesses, are proverbially great. But, if added to the imperfections inherent in our nature, there be *deliberate misleading* or *reckless laxity of attention to necessary principles of honesty* on the part of those the courts trust to prepare the essential materials for doing justice, these tribunals are likely to become mere instruments of oppression, and the creator of greater evils than those they are appointed to cure. There is therefore a serious responsibility on the court – a duty to itself, to the rest of the profession, to its suitors, and to the whole of the community to be careful not to credit any person as worthy of public confidence who cannot satisfactorily establish his right to that credential. It is not a question of what he has suffered in the past; it is a question of his worthiness and reliability for the future.
>
> (my emphasis)

[33] This passage has been quoted and followed in numerous subsequent authorities relating to the requirement of proper disclosure of matters which may relate to the fitness of a legal practitioner to practice.[39] A

[38] *Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR 655 (***Meagher***).
[39] These include *Wentworth v NSW Bar Association* (1992) 176 CLR 239 at 251; *Re Deo* (2005) 16 NTLR 102 (***Deo***) at [6]; *Saunders* at [5]; *Re Gadd* [2013] NTSC 13 (***Gadd***) at [14].

recent example is the decision of this Court in *In the matter of an application by Mariel Jessica Sutton.*[40]

[34] Whilst many of those authorities relate to people seeking admission, most of the underlying principles apply equally in circumstances such as these where suitably matters like those in s 11(1) of the LPA apply, in particular the "good fame and character" requirement in s 11(1)(a) LPA.[41] The position of an applicant for a practicing certificate is no different to that of an applicant for admission, as regards ethical obligations and obligations of candour.

[35] A practitioner's duty of candour necessarily requires that an applicant for admission comprehensively discloses "any matter which may reasonably be taken to bear on an assessment of fitness for practice"[42] and satisfies the Court that he or she is currently of good fame and character and a fit and proper person to be admitted.[43] Per Riley CJ in *Saunders,* at [6]:

> The obligation is upon the applicant to make candid and comprehensive disclosure regarding anything which may reflect adversely on the fitness and propriety of the applicant to be admitted to practise. The obligation of candour does not permit deliberate or reckless misrepresentation pretending to be

[40] *In the matter of an application by Mariel Jessica Sutton* [2016] NTSC 9 (***Sutton***). See too the cases cited therein at [93] - [101] and *In the matter of an application by Julian Valvo* [2014] NTSC 27.
[41] See for example *The Prothonotary Supreme Court of NSW v Darveniza* (2001) 121 A Crim R 542 (***Darveniza***) where the applicant for a practising certificate failed to disclose a criminal conviction in another jurisdiction when his application required him to state whether he was aware of any facts or circumstances which might influence or affect his good fame and character or his fitness to remain a legal practitioner. See [5], [10], [14] and [17].
[42] *Re Hampton* [2002] QCA 129 at [26].
[43] *Re Application by Saunders* (2011) 29 NTLR 204 (***Saunders***) at [6] - [8].

> disclosure.[44] The applicant must be frank with the Board and, through it, the Court. Full and accurate information must be provided to the Board by the applicant. It is not sufficient if such information is incomplete, or if the whole of the relevant information only emerges in response to enquiries from the Board.[45]

[36] A practitioner is not excused from his or her obligations of disclosure and candour merely because the information that should have been disclosed is ultimately determined by the relevant tribunal not to be such as to render the person unfit to practice. That is a matter for the tribunal to determine, having been provided with all relevant information.

[37] The significance of an applicant's intention, or lack thereof, to mislead the Court by omitting to disclose certain information was discussed by Martin (BR) CJ in *Deo*, at [68] – [69]:

> In some circumstances, the failure of an applicant to disclose relevant material might be excused on the basis of an erroneous but understandable error of judgment. In other circumstances it may be assessed that, strictly speaking, disclosure of the particular information was not required. In all of those situations, however, of particular importance is the applicant's motivation for not making the disclosure. In the circumstances under consideration, I am satisfied that the applicant omitted the draft application from his affidavit… in a continuation of his attempt to minimise the adverse material disclosed to the court.
>
> Finally, irrespective of the view taken as to whether it was, strictly speaking, necessary to disclose the draft application, the significance of the unsatisfactory evidence given by the applicant in this regard remains. In his evidence on this aspect

[44] *Re OG (A Lawyer)* (2007) 18 VR 164.
[45] *Thomas v Legal Practitioners Admission Board* (2005) 1 Qd R 331.

> the applicant demonstrated a continuing and disturbing lack of candour.

[38] And, as the Court said in *Sutton,* at [100]:

> The candour of an applicant in the disclosure process is important not only to ensure that all relevant material is before the Court but also to demonstrate that the applicant has a proper perception of his or her ethical obligations and is a fit and proper person to practice as a lawyer.

Undertakings to the Court

[39] An "undertaking" is a promise made by a legal practitioner "to do or refrain from doing something".[46] The importance of undertakings is conveniently summarised in *Dal Pont* at [22.05]:

> Fidelity to undertakings in the course of professional practice is an important component of a lawyer's professional responsibility, and directly relevant to the court's continuing accreditation of her or his fitness to practise. Because of this, and the fact that lawyers may give undertakings to a court, another lawyer or a third party (including a regulatory body), the topic merits separate treatment. It has been noted, to this end, that:[47]
>
> > Undertakings are given by legal practitioners for the specific purpose of enabling legal activities to be carried out. Other persons rely on those undertakings. The undertakings are personal to the legal practitioner and bind that practitioner… as a matter of professional conduct and comity, and will be enforced by the Courts because legal practitioners are officers of the Court and because without enforcement undertakings would be worthless, persons and Courts would be unable to rely on the word of the legal practitioner and this aspect of legal practice, that demands compliance for legal efficiency, would collapse.

[46] G E Dal Pont, Lawyers' Professional Responsibility (Thomson Reuters, 5th ed, 2013) (**Dal Pont**) p 723.
[47] *Copini* [1994] NSWLST 25 at 6.

> Because the courts, other lawyers and third parties must rely on the representations and assurances of lawyers in the course of their practice, the law expects strict compliance with lawyers' undertakings. It is ordinarily no defence that the undertaking required by a third part to do an act, that its performance would place the lawyer in breach of duty to a client, or that it is inconvenient for a lawyer to fulfil its terms.

[40] It is self-evident that a legal practitioner should not give an undertaking that he or she is not confident of being able to fulfil.

[41] There are numerous consequences that may flow from a failure to comply with an undertaking. This may include orders enforcing the undertaking, orders to compensate a person who has suffered loss as a result of the non-compliance, proceedings for contempt of court, and disciplinary proceedings. A failure to honour a personal undertaking given in a lawyer's professional capacity will often amount to misconduct.[48]

Duties to the client

[42] The NTPCRs includes the following statement of general principle regarding a practitioners' duties to the client:

> Practitioners should serve their clients competently and diligently.[49]

[43] A practitioner must do his or her utmost to ensure that work undertaken on behalf of a client is done competently and as soon as practicable. If

[48] See summary in Dal Pont at [22.50].
[49] NTPCRs p 7 (under the heading "Relations with Clients").

this is not possible, a practitioner must "inform the client immediately".[50]

[44] The standard of competence that can be expected from a legal practitioner "is that of the ordinary skilled person exercising and professing to have that special skill". Although this standard is adopted from the general law it also applies to the legal profession.[51]

[45] "Competence" may also be viewed in the following broad terms:

> Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which he or she practices, (2) performs the techniques of such practice with skill, (3) manages such practices efficiently, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client's attention, (5) properly prepares and carries through the matter undertaken, and (6) is intellectually, emotionally, and physically capable.[52]

[46] A lawyer's duty to the client also extends to dealings in relation to fees and trust monies. The LPA contains extensive provisions regarding financial matters including costs agreements and trust accounts.[53]

Dealings with the Law Society

[47] The NTPCRs require a practitioner to be "open and frank in his or her

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[50] G E Dal Pont, Lawyers' Professional Responsibility (Thomson Reuters, 5th ed, 2013) [4.20].
[51] See *Heydon v NRMA Ltd* (2000) 51 NSWLR 1at [146] per Malcolm AJA. See also, *Rogers v Whitaker* (1992) 175 CLR 479 at 483, 487 per Mason CJ, Brennan, Dawson, Toohey and McHugh JJ. See further, Halsbury's Laws of Australia "250— Legal Practitioners" (C) Standard of Care at [250-1430].
[52] *ABA-ALI Committee on Continuing Professional Education Model Peer Review System 11* (Discussion Draft, 15 April 1980). See also *Dal Pont* [4.20].
[53] See Chapter 3 Part 3.1 concerning trust money and trust accounts and Part 3.3 concerning costs disclosure and assessment.

dealings with the Law Society" and to "respond within a reasonable time and in any event within 14 days (or such extended time as the Law Society may allow) to any requirement of the Law Society for comments or information in relation to the practitioner's conduct or professional behaviour and in doing so the practitioner should furnish in writing a full and accurate account of his or her conduct in relation to the matter."[54]

Compliance with Special Conditions of UPC

[48] The appellant's UPC 2015/16, issued on 13 October 2015, was subject to 10 special conditions, seven of which were directed to monthly reviews of the appellant's files by a Law Society appointed Reviewer.[55]

[49] SC 3.2 required the appellant to provide to existing clients within seven days of issue of the UPC written notification that "a Reviewer may be reviewing Mr Connop's files from time to time" and that client confidentiality and legal professional privilege would be strictly maintained. Such a notification was also to be provided to new clients "at the commencement of any new Retainer during the currency of this practising certificate". SC 3.3 required the appellant to "request each client referred to at special condition 3.2 to provide their written consent for their file to be reviewed, solely for the purpose of oversight, by the Reviewer." I shall refer to these as **SC 3.2 letters**.

[54] NTPCRs r 32.
[55] Grainger 15/3/16 Annexure KAG 6 at pp 55-56.

[50] SC 3.4 required the appellant to provide to the Reviewer, within 14 days after being notified of the Reviewer's appointment, "a list of all client matters and all client matters closed within the preceding month". The list was to include "the name of the client, Mr Connop's file reference, a brief description of the matter and the area of law for the matter." The appellant was required to update the list by the 14th day of each month.

[51] The special conditions contemplated that the Reviewer undertake monthly reviews of a selection of the appellant's files (SC 3.5) with such information as the Reviewer reasonably required (SC 3.6), and report to the Law Society at three monthly intervals regarding the appellant's level of cooperation, the Reviewer's opinion of the appellant's law practice, and in respect of reviewed files, the appellant's costs disclosure, billing and trust money issues (SC 3.7). The first report was to be provided by 31 December 2015 (SC 3.7).

[52] SCs 3.8 to 3.10 required the appellant to engage the services of LeMessurier Harrington Consulting (**LHC**) no later than 30 October 2015 to undertake a quality practice review of his law practice and to provide a written report of any identified issues and recommendations for corrective action. Within 3 months of receiving such a report the appellant was to undertake any corrective actions recommended by LHC.

[53] On 2 December 2015 the Law Society appointed Mr Eric Hutton as the Reviewer and notified the appellant of that appointment.[56]

SCs 3.2 and 3.3

[54] The appellant was required to provide SC 3.2 letters to his existing clients within seven days of the issue of the UPC 2015/16, namely by 20 October 2015. He failed to comply with this requirement until about 2 February 2016. His non-compliance with the requirements of SC 3.2 gave rise to a number of matters of concern during the hearing of this appeal.

[55] First, in his affidavit of 24 February 2016, in support of his application for a stay of the Law Society's decision to cancel, the appellant said:

> [7] In the period between 19 January 2016 and 2 February 2016 I sent approximately five hundred (500) letters to all of my clients in compliance with condition 3.2 of my current practicing certificate. …
>
> [8] Since then I have received about twenty (20) copies of those letters from my clients *indicating their consent* for my files to be reviewed. (my emphasis).
>
> [9] On 23 February 2016 I telephoned Eric Hutton and told him that that was the case … He told me he would come to my office on Monday 29 February 2016 to continue the review process.

[56] Grainger 15/3/16 Annexure KAG 7.

[56] What the appellant said in [8] was false. In his affidavit of 5 April 2016 the appellant referred to those paragraphs and said in relation to [8]:

> I made that statement in error. I did receive about twenty (20) of those letters back, but they were received back from Australia Post marked 'return to sender'. I only received back about two (2) or three (3) of those letters signed by clients indicating their consent to the files being reviewed by Eric Hutton.[57]

[57] It is of concern that the appellant did not correct this "error" until 5 April 2016, notwithstanding that he had corrected a number of other "errors and omissions" in his affidavit of 24 February 2016 by swearing a further affidavit on 25 February 2016.

[58] It is also of concern that he told the Reviewer that he had received about 20 letters back but did not disclose that only two or three of them contained consents. This was reckless and misleading. It would have been very clear to the appellant simply by looking at the envelopes marked "return to sender" that they would not contain signed consents. His explanation in his affidavit of 5 April 2016 that: "I did not appreciate that he wanted to know how many of such letters had been received back from clients signed by them by way of authorisation for him to review their files",[58] is absurd.

[57] Connop 5/4/16 [1].
[58] Ibid [2].

[59] Second, in his affidavit sworn 5 April 2016 the appellant said that he sent 10 letters of the kind required by SC 3.2 to existing clients for whom he still had to perform legal work on 2 and 3 March 2016.[59] Compliance with SC 3.2 required that such letters be sent on or before 20 October 2015.

[60] I agree with the Law Society's submission that the failure to send these letters to existing clients (including those for whom he had further work to perform) some three, four or more months late was a significant breach of SC 3.2. As it involved obtaining his clients' consent to providing confidential and privileged information to the Reviewer, SCs 3.2 and 3.3 were fundamental to the process of legal practice review contemplated by the SCs.

[61] Counsel for the appellant submitted that the delay from 20 October 2015 to 2 February 2016 to despatch the SC 3.2 letters did not disadvantage Mr Hutton in the performance of his review function, inter alia because Mr Hutton was not appointed until 2 December 2015.[60] This misses the point. The fact is that he breached SC 3.2. It is no excuse to say, in effect, that he could ignore SC 3.2 because he considered strict compliance unnecessary. Moreover a meaningful review could only begin when the letters were responded to and the necessary consents given.

[59] Connop 5/3/16 [3].
[60] Appellant's Closing Submissions [42] - [46].

[62] Third, although the appellant agreed that his client's files were confidential and subject to privilege and that the client's consent was required before their files could be provided to Mr Hutton,[61] it appears that he nevertheless provided Mr Hutton with access to all of his client files and that Mr Hutton selected 10 files to review.[62]

[63] Fourth, when asked why he did not send the SC 3.2 letters earlier than he did, the appellant referred to the fact that he was a sole practitioner and did not have sufficient administrative support and required software to generate a report.[63] But it transpired that he only had a very small number of existing clients. (As at 8 March 2016 he only had "fourteen open files for clients".[64]) It was not an onerous obligation.

[64] Fifth, it seems that he misunderstood the requirements in SC 3.2 and thought that he was required to send such letters to every client that he had ever had, notwithstanding that only about 14 of his files were current. Rather than admit that he had misunderstood the requirement that he (only) send SC 3.2 letters to existing and future clients, he provided two explanations, both of which I consider most unsatisfactory.

[61] Transcript 11/4/16 at pp 39-40.
[62] Grainger 15/3/16 Annexure KAG 11.
[63] Transcript 11/4/16 pp 40 and 43.
[64] Connop 8/3/16 [142].

[65] One explanation was that he had not "closed" any of his files and that all of his files were "open" and therefore "existing", albeit that only fourteen were active.[65] However in [142] of his affidavit of 8 March 2016, where he said that he had only "fourteen *open files* for clients", he appeared to refer to "open files" as those (14) files which were active.

[66] The second explanation was that he sent the letters to all 465 people, not just his 14 existing clients, because the Reviewer, "Mr Hutton said I had to and he came in and said I had to send them out to everybody, and I said: 'Oh. I thought it was only the 14.'"[66] After he said that the following exchange occurred:

> Ms BROWNHILL SC: Mr Connop, have you got any written note of Mr Hutton saying that to you? --- Not on me in court here, no.
>
> You have it back at your practice?--- I'm not sure.
>
> Did you make a record of Mr Hutton saying that to you?--- I just assumed that he was saying I had to write to everybody regardless.
>
> So he didn't actually say those words---?No.
>
> --- and you've assumed?--- Well, I did assume that, because I didn't want to get in trouble. [67]

[65] Transcript 11/4/16 pp 43-44.
[66] Ibid p 44.
[67] Ibid pp 44-5.

[67] This is one of many examples of the appellant proffering an answer which deflected blame or responsibility onto someone else but was exposed to be incorrect and misleading only after further probing by counsel.

[68] Clearly his reason for sending out those 465 letters was that he misunderstood the requirement in SC 3.2, not that Mr Hutton required him to do that.

[69] A further reason why this explanation was misleading was that Mr Hutton did not attend the appellant's office until 4 December 2015 at the earliest, having only been appointed as Reviewer two days before. By then the time for compliance with SC 3.2 had passed by some six weeks.

[70] Sixth, the appellant's assertion in his affidavit of 24 February 2016 that he "sent approximately 500 letters to all of my clients in compliance with condition 3.2 of my current practicing certificate" gave the false impression that he did in fact have such a large number of existing clients. Consequently there were potentially a large number of people who might be prejudiced unless the appellant's application for the stay was granted. Although he was present in Court when the stay application was heard, he did nothing to correct this impression until 26 February 2016 when his counsel properly informed the Court that this was an error on his part, which I accept.

[71] The Law Society submitted that the factual inaccuracies in paragraphs [7] and [8] of his affidavit of 24 February 2016 were deliberately contrived by the appellant to further his prospects in his urgent application for a stay of the decision to cancel. Even if they were not deliberately contrived no reasonably competent legal practitioner could have sworn such an affidavit which contained such misleading statements.

[72] Seventh, it seems to me that the appellant either ignored his obligations under SC 3.2 and 3.4, or misunderstood the meaning of the words "existing clients". If he was unsure of what those words meant, or if he honestly believed that he was required to send SC 3.2 letters to every client he had ever had but would not be able to comply in the time required, he should have sought clarification from the Law Society and/or an extension of time within which to comply. As I pointed out in [61] above, the fact that the Reviewer was not appointed until 2 December 2015 is irrelevant.

[73] Counsel for the appellant submitted that even if the appellant misconstrued whatever he may have discussed with Mr Hutton about what letters should be despatched "that … does not matter because the appellant merely acted in a cautious manner by sending letters to all clients whose files were still open."[68] I disagree. It seems that the appellant wasted much valuable time and resources in performing this

[68] Appellant's Closing Submissions [49].

unnecessary exercise, in circumstances where he had other serious deadlines to meet.

SC 3.4

[74] The Law Society's letter of 2 December reminded the appellant that he was to provide to the Reviewer within 14 days of 2 December 2015 "a list of all current client matters and all client matters closed during November 2015".[69] Hence, the last date for compliance with SC 3.4 was 16 December 2015.

[75] The appellant did not provide the Reviewer with any list of clients on or before the due date, 16 December 2015. The next day the Reviewer informed the Law Society that the appellant had just provided him with a list of names of clients for whom he had opened files in October and November 2015, but not of all current files, and he sought an extension of time for submitting his first report as he would be unable to commence his review until January 2016.[70] Later that day the appellant provided the Reviewer with a list identifying 465 clients and files, which comprised all files opened in the practice since 2012.[71]

[76] The Reviewer's first report was provided to the Law Society on 21 January 2016. It recorded that SC 3.2, and consequently SC 3.3, had not been complied with as at that date, with the underlying cause

[69] Grainger 15/3/16 Annexure KAG 7 at p 60.
[70] Ibid Annexure KAG 8.
[71] Connop 5/4/16 Annexure WC 68.

of non-compliance being lack of administrative assistance. It also recorded that SC 3.4 was complied with on 17 December 2015.[72]

[77] The appellant has admitted to failures to comply with the requirement of SC 3.4 to provide updated client lists to the Reviewer monthly, for the months of January, February and March 2016.[73]

SC 3.7

[78] As to the matters to be reported on in SC 3.7, the Reviewer noted in his first report that the level of cooperation was satisfactory, that the main issue in respect of the appellant's management of the law practice was lack of administrative assistance, that the files reviewed did not involve billing, and that the trust account had not been examined. The Reviewer stated that:

> the appellant is hampered in his practice by not having administrative support…The reality is that there is insufficient revenue generated by the practice at this stage to contemplate employing someone to undertake reception and/or clerical assistance duties.[74]

Conclusions

[79] The special conditions in his UPC 2015/16 were conditions upon the appellant's right to engage in legal practice.[75] It is an offence to

[72] Grainger 15/3/16 Annexure KAG 11 at pp 75-6.
[73] Connop 5/4/16 [8] - [9].
[74] Grainger 15/3/16 Annexure KAG 11 at p 76.
[75] Subject to the LPA, an Australian legal practitioner is entitled to engage in legal practice in the Northern Territory (s 45). "Australian legal practitioner" means an Australian lawyer who holds a current local practising certificate or a current interstate practising certificate (s 6(a)).

contravene a condition to which a practising certificate is subject (s 78 LPA). The appellant had indicated to the Law Society that he was willing to accept the imposition of special conditions upon his UPC broadly in the terms of the SCs.[76] However, he failed to comply with SCs 3.2, 3.3 and 3.4 in their terms, and has not offered any satisfactory explanation for these failures.

[80] Moreover, it became apparent, early in the course of his cross-examination, that he did not understand the importance of complying with the special conditions that the Law Society had imposed when issuing his UCP for 2015/16. He seemed unaware that the Law Society had real concerns about his conduct of his practice and that he was at risk of having his practising certificate cancelled.[77]

Conduct in relation to clients

Unsatisfactory professional conduct re Williamson

[81] On 13 August 2015, in response to a complaint by Ms Monica Williamson (the **Williamson complaint**), the Law Society found that:

(a) the appellant had failed to provide adequate and timely costs disclosure to Ms Williamson as required by ss 303 and 305 of the LPA, which conduct fell below the standard of a diligent and competent solicitor; and

[76] Grainger 15/3/16 Annexure KAG 5 at pp 45, 49.
[77] Transcript 11/4/16 pp 35-9.

(b) the appellant's conduct in issuing his invoice dated 11 September 2014 to Ms Williamson fell below the standard of a diligent and competent solicitor;

both of which constituted unsatisfactory professional conduct. He was fined $1,530.[78]

[82] In his response to the complaint, the appellant ascribed the blame for the failure to properly invoice and record a client payment to his employed bookkeeper.[79] I interrupt to note that he has also blamed his employed bookkeeper for a number of other serious errors and omissions that have been ventilated in the course of this appeal.[80] The Law Society took the view that the appellant is the person with ultimate responsibility for the billing undertaken by his legal practice, and his failure to properly supervise his staff in billing and informing clients about trust account transactions was reckless or careless.

[83] On 24 August 2015, the appellant was informed of the Law Society's decision regarding the Williamson complaint, and required to pay the fine to the Legal Practitioners Fidelity Fund within 30 days,[81] i.e. by 23 September 2015.

[84] In October 2015, the Statutory Supervisor, Michael Grant QC, undertook a mediation of a costs dispute pursuant to s 330 of the LPA

[78] Grainger 15/3/16 [123] - [133] and Annexure KAG 72.
[79] Ibid pp 391-392.
[80] See for example in Connop 8/3/16 [79] - [91], [108], [121] - [123]; Connop 23/3/16 [24(a)].
[81] Grainger 15/3/16 [136] - [137] Annexure KAG 73.

in respect of the costs the subject of the appellant's invoice to Ms Williamson.[82] The costs dispute consisted of whether Ms Williamson was required to pay to the appellant the costs claimed by the invoice. The outcome of that mediation was that the appellant withdrew his invoice.[83]

[85] In his affidavit of 24 February 2016, the appellant swore that as a result of the mediation, the Williamson complaint was negotiated and settled on a without admission basis and that Ms Williamson withdrew her complaint.[84] In his later affidavit of 8 March 2016, the appellant admitted that this was a misstatement made in error.[85]

[86] That he could make such an error given the Law Society's findings and penalty discloses a serious lack of understanding about the requirement for legal practitioners to act with absolute candour and to ascertain the true facts before swearing an affidavit that is likely to mislead the reader, particularly where the reader is likely to be a court or other tribunal who is considering the fitness of that person to hold a UPC.

Failure to pay the Williamson fine

[87] By 5 January 2016, the appellant had not paid the fine or otherwise sought to have his obligation to pay it deferred, and he was sent a

[82] Grainger 15/3/16 [134] - [135].
[83] Ibid Annexure KAG 75.
[84] Connop 24/2/16 [13].
[85] Connop 8/3/16 [42].

reminder letter on that date.[86] The appellant paid the fine on 8 February 2016.[87]

[88] The appellant's explanation for not paying the fine was that he forgot, and it was an oversight.[88] He said that he paid it "soon after" receiving the Law Society's reminder. In fact his payment was made more than a month after the reminder, which required him to pay within seven days or to contact the Law Society if there were any difficulties in payment.[89] The appellant has still not explained that further delay despite being put on notice of this point in [35] of the LSNT Submissions.

Unresolved Complaints

[89] The Law Society's reasons for cancelling the appellant's UPC[90] also referred to a number of complaints that had been made about the appellant's conduct which had not yet been finalised. The appellant submitted that the Law Society "has failed to prove [those complaints] to the requisite standard",[91] or that the complaints have not sufficiently progressed,[92] such that they should not be taken into account in determining whether the appellant is a fit and proper person to hold a UPC.

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[86] Grainger 15/3/16 Annexure KAG 76.
[87] Ibid [137].
[88] Connop 8/3/16 [43].
[89] Grainger 15/3/16 Annexure KAG 76.
[90] Connop 24/2/16 Annexure WC 1.
[91] Appellant's Submissions [51], [65], [70].
[92] Ibid [83] - [85].

[90] This submission is inconsistent with the express terms of ss 47(2) and 11(1)(f) of the LPA, which specifies that a suitability matter includes whether the person is currently subject to an unresolved complaint, investigation, charge or order under (relevantly) the LPA. It is not within the function of the Court on this appeal to hear and determine the complaints. However, their existence, nature and content, and the appellant's responses thereto, are clearly relevant matters for the Court to take into account. This is particularly so if they comprise or contain grounds which have a consistent theme which is relevant to fitness to hold a UPC (including costs disclosure, billing, trust account issues, and competence).

[91] The fact that the appellant has taken such technical and pedantic points both in this regard and also in response to many other issues raised by the Law Society is itself a matter of concern. A legal practitioner should be prepared to provide full disclosure and to answer all allegations made against him.

Complaint by Dorothy Fox

[92] The complaint by Ms Dorothy Fox comprises serious allegations made by Ms Fox about the appellant's conduct while waiting in Court to appear as a witness in a criminal matter involving Ms Fox's niece.[93] The complaint is currently being investigated pursuant to s 488 of the

[93] Grainger 15/3/16 [138] - [142].

LPA. Essentially, Ms Fox has alleged that the appellant acted in a threatening way and spoke some abusive words directed to her or her niece. The appellant denies the allegations and proffers a motive for the "false complaint".[94] There is presently no independent evidence to corroborate or refute that complaint.

Complaint by Anne-Louise Ray

[93] Ms Ray was a client of the appellant's in respect of a residential tenancy dispute in the Local Court. She made a complaint on 2 July 2014, which was modified by the Law Society to add further grounds on 2 December 2014.[95] The grounds of the complaint are:[96]

(a) lack of costs disclosure;

(b) making inappropriate comments and irresponsible conduct;

(c) seeking payment for amounts already paid;

(d) failing to provide an itemised bill when requested;

(e) making a false and misleading misrepresentation to Ms Ray that the appellant's hourly rate was the same as the Northern Territory Legal Aid Commission's (**NTLAC's**) rate; and

[94] Connop 8/3/16 [46] - [51].
[95] Grainger 15/3/16 [143] - [152].
[96] Ibid Annexures KAG 82 and KAG 88.

(f) that the appellant's representation and advice in relation to the tenancy dispute was lacking in competence and diligence, the particulars of which are:[97]

(i) failure to provide advice or providing inadequate advice as to Ms Ray's legal position, her prospects, the potential costs of pursuing the appeal, and the risks and costs of litigation;

(ii) poorly or inadequately drafted affidavit material; and

(iii) potential lack of knowledge or understanding of the *Residential Tenancies Act 1999* (NT).

[94] The documents prepared by the appellant and filed in the Local Court comprised an application under the *Small Claims Act 1974* (NT) for an order to be set aside and re-hearing,[98] and an affidavit.[99] There was also a notice of appeal (Form 37A).[100] These documents disclose significant procedural deficiencies including use of the wrong form, failure to make references to the sections of the *Residential Tenancies Act* under which relief was being sought, failure to address the nature of the appeal under s 150 of that Act, and failure to address the relevant matters for an order suspending the operation of an order for possession under s 105 of that Act. In addition, the affidavit was flawed in that it purported to be made by both the appellant and

[97] Grainger 15/3/16 Annexure KAG 88 at pp 541-542.
[98] Connop 8/3/16 Annexure WC 39.
[99] Grainger 15/3/16 Annexure KAG 84 at pp 479-481.
[100] Ibid Annexure KAG 84 at pp 475-476.

Ms Ray. The appellant acknowledged that he made errors in the affidavit, and attributed his making of those errors to it being necessary for him to prepare the affidavit urgently on a Saturday when Ms Ray first came into his office.[101]

[95] On 31 January 2014, the appellant invoiced Ms Ray for the sum of $110 for work done on that day described as "legal advice in relation to tenancy matters, option to appeal".[102] The appellant said that Ms Ray paid him $110 for the work he did on that day, namely taking instructions and preparing the tenancy appeal documents.[103] On 5 March 2014, the appellant invoiced Ms Ray for the sum of $1,188 less $600 paid by her in March and April 2014, leaving an outstanding amount of $588. The invoice purported to be for "tenancy legal advice, court representation, preparation of interlocutory application and appeal application", but did not refer to the sum of $110 paid on 31 January 2014. On 16 April 2014, the appellant sent a "revised"[104] tax invoice to Ms Ray (on its face stating "Draft - Unapproved") identifying fees of $330 for the work done on 31 January 2014, and making no reference to any payments made by Ms Ray.[105] His covering email of that date stated that she had paid $500 against the invoiced amount of $1,188.[106] On 18 June 2014, the appellant and Territory

[101] Connop 8/3/16 [37] - [38].
[102] Grainger 15/3/16 Annexure KAG 86 at p 535.
[103] Ibid Annexure KAG 84 at p 451.
[104] Connop 8/3/16 [40] - [41].
[105] Grainger 15/3/16 Annexure KAG 86 at p 529.
[106] Ibid Annexure KAG 86 at p 530.

Debt Recovery sought payment of $698 from Ms Ray for outstanding fees.[107] When asked to explain the discrepancy between the sum allegedly owing ($588) and the sum demanded ($698), the appellant's response was that his bookkeeper had sent the demand because Ms Ray owed the practice money.[108]

[96] In the email he sent to Ms Ray on 16 April 2014, the appellant stated:[109]

> I charge $300 dollars per hour plus GST…
>
> … the fees I charge per hour is the same as NT legal aid, what they pay lawyers for providing legal services to their clients, so I have not over charged you at all as legal aid has very low rates.

[97] As at 1 October 2014, the Northern Territory Legal Aid Commission (NTLAC) paid solicitors rates ranging from $100 per hour for criminal matters to 80% of the Supreme Court scale for civil (non-family) law matters.[110] This was generally consistent with the appellant's experience. He acknowledged that NTLAC paid rates from $100 per hour up to $300 per hour depending upon the complexity of the matter and the court in which the work is to be performed. The appellant said

[107] Grainger 15/3/16 Annexure KAG 84 at pp 456-458.
[108] Ibid Annexure KAG 86 at p 526.
[109] Ibid Annexure KAG 86 at p 530.
[110] Ibid Annexure KAG 82 at p 444.

his intention was to "emphasis [sic] to the client that my hourly rate was a modest hourly rate".[111]

[98] Given that NTLAC paid a range of hourly rates, starting at $100 per hour, his statement that his charge of $300 per hour is "the same as" the NTLAC rate was objectively false (as not stating the whole truth) and likely to mislead, regardless of his subjective intention in making it.

Complaint by Brendan Loizou

[99] Mr Loizou was a client of the appellant's in respect of a family law matter in the Federal Circuit Court. He made a complaint about the appellant's conduct on 10 February 2015.[112]

[100] In his final submissions counsel for the appellant requested the Court to bear in mind that "the respondent has still not formally notified the appellant about this complaint or called upon the appellant to respond to it", the respondent first provided the appellant with a copy of Mr Loizou's complaint when the respondent served the two (2) volume affidavit sworn by Kellie Ann Grainger on 15 March 2016 on the appellant, and that the Court indicated at the commencement of this proceeding that it did not want the appellant to place complete copies

[111] Grainger 15/3/16 Annexure KAG 90 at p 547.
[112] Ibid [154] - [159].

of all of his files for each client complaint into evidence.[113]

Costs agreement, tax invoices and trust accounting

[101] Mr Loizou had contacted the Law Society on 30 July 2014 seeking assistance in recovering from the appellant the balance of his money held in trust (which the appellant had told him was about $2,750) and the release of his file in order to pursue his family law matter with different legal representation.[114] Mr Loizou had contacted the appellant twice in the preceding 11 days regarding the matters and had not had any response from the appellant. When the appellant was contacted by the Law Society, his explanation was that he needed to "go through LEAP" before he could settle the matter, and he said he had told Mr Loizou it would take two weeks. The Law Society suggested the appellant send Mr Loizou an email informing him of his proposed actions.[115] On 1 August 2014 the appellant sent an email to Mr Loizou apologising for not responding earlier and advising that he was currently in the process of finalising Mr Loizou's files and invoices. He said that once this has been done he would forward any left-over funds to Mr Loizou, or "if you owe any funds to us after finalising everything I will be putting a Lien on your files until all payments are finalised before releasing your files to you".[116] That was

[113] Appellant's Closing Submissions [84].
[114] Grainger 15/3/16 Annexure KAG 92.
[115] Ibid [156].
[116] Ibid Annexure KAG 91 at p 576.

the last Mr Loizou heard from the appellant.[117]

[102] Mr Loizou also complained that he was not provided with a costs agreement, any invoices for fees, or any receipt for funds deposited in trust.[118] It appears that Mr Loizou first saw the appellant on 25 November 2013 and he then signed a retainer ("terms of engagement").[119] He did not sign a costs agreement until 2 January 2014.[120]

[103] The signed costs agreement comprised an agreement produced for the purposes of the *Legal Profession Act 2004* (NSW). Amongst other things it provides that the applicable law is the law of New South Wales. The document also contains most of the defects identified in the Law Society's decision on costs disclosure in the Williamson complaint.[121] In addition, it stated that total fees and disbursements are likely to be "in the order of $16,000 … plus GST" "or" "in the range of $200 to $400". It also stated that: "Those members of the firm that work on your matter will record the time they spend and charge according to" hourly rates ranging from $380 for work done by a Partner, $330 for work done by a Senior Associate or Lawyer, to $165 for work done by a Clerk.[122]

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[117] Grainger 15/3/16 Annexure KAG 91 at p 573.
[118] Ibid Annexure KAG 91 at p 574.
[119] Connop 8/3/16 Annexure WC 48 at p 161.
[120] Ibid Annexure WC 48 at pp 149-154.
[121] Grainger 15/3/16 Annexure KAG 72 at pp 383-385.
[122] Connop 8/3/16 Annexure WC 48 at p 150.

[104] The appellant was the only legal practitioner working in the practice. By stating this he implied that there were other people within his employ such as a senior associate, lawyer and clerk and that some of the client's work would be done by such person at the lower rate. I consider such an implication to be misleading and improper.[123]

[105] As was the case in relation to the costs disclosure in the Williamson matter, the costs disclosure encompassed by provision of this costs agreement did not comply with the requirements of ss 303 and 305 of the LPA and falls below the standard expected of a competent and diligent practitioner.

[106] The appellant's affidavit of 8 March 2016 includes copies of numerous tax invoices all addressed to Mr Loizou at 525 Lonsdale Street, Melbourne, as follows:[124]

Invoice No	**Date**	**Amount/s charged**	**Description**	**Amount/s deducted**	**Balance due**
299	5.12.2013	$10,000	Legal Representation in Family Law proceedings	$5,000 EFT 5.12.13	$5,000
299	5.12.2013	$10,000	Legal Representation in Family Law proceedings	$5,000 EFT 5.12.13 $10,000 EFT 21.2.14	-$5,000
299	5.12.2013	$10,000	Legal Representation in Family Law	$5,000 EFT 5.12.13	-$10,500

[123] See further discussion about this at [144] - [153] below.
[124] Connop 8/3/16 Annexure WC 48 at pp 165-177.

			proceedings	$10,000 EFT 21.2.14 $5,500 EFT 11.4.14	
425	30.12.2013	$2,000	Legal fees for Mr Loizou's Family Law Matter	$2,000 EFT to business account 13.1.14	$0
426	8.02.2014	$1,000	Legal fees for Mr Loizou's family law matter	$1,000 EFT to business account 22.2.14	$0
299	20.02.2014	$10,000 $2,403.06 $5,483.06	Legal Representation in Family Law proceedings Hanlon Barrister fees 26.3.14 Hanlon Barrister fees 16.4.14	$5,000 EFT 5.12.13 $10,000 EFT 21.2.14 $5,500 EFT 11.4.14	-$2,613.88
299	20.02.2014	$10,000	Legal Representation in Family Law proceedings		$10,000
427	1.03.2014	$1,000	Legal fees for Mr Loizou's family law matter	$1,000 EFT to business account 15.3.14	$0
428	12.03.2014	$2,403.06	Legal fees for Mr Loizou's family matter	$2,403.06 EFT to Peter Hanlon 26.3.14	$0
431	2.04.2014	$5,483.06	Legal fees for Mr Loizou's family matter	$5,483.06 EFT to Peter Hanlon 16.4.14	$0
428	7.05.2014	$1,000	Legal fees for	$1,000	$0

			Mr Loizou's family law matter	EFT to business account 21.5.14	
429	8.05.2014	$1,000	Legal fees for Mr Loizou's family law matter	$1,000 EFT to business account 22.5.14	$0
432	31.05.2014	$1,000	Legal fees for Mr Loizou's family law matter	$1,000 EFT to business account 15.6.14	$0

[107] The content of these invoices is confusing.

[108] Further, it is not clear whether Mr Loizou received these invoices, there being some confusion about his correct mailing address.[125] It appears that none of the invoices were sent by the appellant until more than six weeks after 15 April 2014, despite him having commenced work for Mr Loizou in November 2013, and having made numerous deductions from Mr Loizou's trust account funds from 13 January 2014. Similarly, although the appellant's affidavit includes three trust account receipts for money transferred by Mr Loizou,[126] it is not apparent whether they were received by Mr Loizou.

[109] The appellant was cross-examined on a number of matters concerning his dealings with Mr Loizou.

[125] Connop 8/3/16 [63].
[126] Ibid Annexure WG 48 at pp 162-164.

Reliance upon the bookkeeper.

[110] He conceded that he sent some thirteen tax invoices to Mr Loizou, without having looked over them himself, relevantly stating: "…I basically relied on my bookkeeper."[127]

[111] The appellant was not able to explain irregularities in his trust account receipts or how an amount of some $5,613.88 had been accounted for or disbursed, other than to say that the irregularities arose as a "consequence of inadequate or inappropriate bookkeeping".[128]

[112] I agree with the Law Society that the fact that any fault for the subject irregularities may rest with others does not mitigate in the appellant's favour. He was ultimately responsible for what occurred in his practice and for oversight of the management of its financial affairs. The Courts have long recognised that a principal can be found guilty of professional misconduct for the actions of his or her underlings and/or for a failure to properly supervise.[129]

[113] I agree with the LSNT submission that, in effectively delegating responsibility for the management of his firm's and clients' accounts to his bookkeeper and in exercising little or no oversight of that bookkeeper's actions in relation to the billing of clients and the

[127] Transcript 11/04/16 at p 94. See also p 96.
[128] Ibid pp 94 to 96. The words in parenthesis are those of Senior Counsel for the Law Society which the appellant conceded were an accurate reflection of his reasons for the irregularities in his records.
[129] *D'Alessandro & D' Angelo v Bouldas* (1994) 10 WAR 191(***Bouldas***) at 211 per Malcolm CJ with whom Rowland and Ipp JJ concurred at 221; *Law Society of NSW v Foreman* (1991) 24 NSWLR 238 (***Foreman***) per Mahoney JA at 252.

recording of transactions,[130] the appellant's conduct fell a long way short of what is reasonably expected of a fit and proper person operating as a legal practitioner under a UPC.

[114] In his final submissions the appellant acknowledges that allowing his bookkeeper to prepare and send the 13 tax invoices to Mr Loizou without firstly reading them for correctness was "an unwise practice, because he accepts that he, as the director of the practice holding a UPC, is ultimately responsible for the correctness or otherwise of any tax invoices sent to clients."[131] He says that he now "prepares a narrative of the work performed, provides it to his current bookkeeper so she can prepare a draft tax invoice and he checks the drafts of them, and if thought necessary, corrects them and then they are sent to clients."[132]

Ceasing to act

[115] The appellant was questioned as to the circumstances in which he had ceased to act for Mr Loizou and as to the accuracy of the explanation that he gave in paragraph 64 of his affidavit of 8 March 2016.[133] The email from Mr Loizou to the appellant of 27 June 2014 (the **Loizou email**)[134] suggests the retainer was brought to an end for reasons very different to those given by the appellant.

[130] Transcript 11/04/16 pp 94 and 95.
[131] Appellant's Closing Submissions [85](a)(i).
[132] Ibid [85](a)(ii) referring to Connop 8/3/16 [135] to [137].
[133] Transcript 11/4/2016 pp 96 to 99.
[134] Grainger 15/3/16 p 588.

[116] The Loizou email comprised some 13 paragraphs. It referred to the fact that the Family Court had made orders on 25 June 2014 listing his matter for hearing on 16 July 2014. It then stated:

> You have stated that you will not act any further without further funds being made [sic] into your Trust Account.
>
> In relation to that, can you please provide me with:
>
> 1. detailed Statement of my Account;
> 2. copy of my Trust Account.
>
> I believe I have provided you with either $20,000 or $25,000 in relation to my matter to date.
>
> I have become concerned that there might not be much done to date.

[117] After expressing concerns about the fact that the appellant had not contacted a particular person in sufficient time to obtain a medical report that the Family Court had previously ordered the email stated: "Clearly, you are too busy to deal with my matter." Following another paragraph in which Mr Loizou expressed frustration about another aspect, the email concluded: "I look forward to receiving a detailed account."

[118] In [64] of his Affidavit of 8 March 2016 the appellant swore:

> I ceased acting for Mr Loizou in about August 2014, because he was not providing clear instructions or responding to my emails.

[119] However:

(a) the appellant failed to adduce into evidence any such emails, or telephone attendance records or file notes in support of this contention;

(b) the Loizou email suggests:

(i) that the appellant had communicated an intention to cease to act unless and until further funds were deposited into trust;

(ii) concern that not much had been done by the appellant up to the date of the email, in furtherance of Mr Loizou's interests (which concern is inconsistent with the appellant's professed reasons for ceasing to act); and

(iii) that Mr Loizou was concerned that the appellant was too busy to deal with his matter; and

(c) The appellant's email to Mr Loizou of 27 June 2016[135] suggests that a failure to provide instructions was raised in the context of an attempt to explain delays at the appellant's end.

[120] When questioned by Senior Counsel for the Law Society as to whether he had communicated to Mr Loizou that he was ceasing to act because monies were not being paid into trust, the appellant emphatically denied any such suggestion, relevantly stating: "I didn't say that to him" and "No, he wrote that himself." When questioned by the Court

[135] Grainger 15/3/16 p 586.

about this, the appellant initially maintained his denial, saying: "I never said that to him". He then changed his position to one of not being able to recall, one way or the other, and he ended up by qualifying that supposed lack of recall with the statement: "Unless I did send something in writing to him saying: 'I'm easing back'."[136]

Trust account statement not provided

[121] The appellant was then queried as to why he had not provided Mr Loizou with a trust account statement.[137] The appellant started by saying that he was unsure as to what it was that Mr Loizou was seeking in the Loizou email. He said that he had a trust account statement ready for Mr Loizou. When he was asked whether any trust account statement had been sent to Mr Loizou, he was initially unable to give a definitive answer. When further pressed about this he admitted that no trust account statement had been provided and he sought to explain that failure by saying he had not yet closed Mr Loizou's file (although the work had been completed by August 2014).

[122] He admitted that he had not refunded any monies from trust to Mr Loizou, apparently because of his ongoing investigations, in conjunction with his accountant, into the operation of his trust account. He was asked when he would ordinarily provide a trust account statement to a client and he responded: "Only if they ask for them, I

[136] Transcript 11/04/16 pp 97-8.
[137] Ibid pp 98-102.

give them". He was also asked why the provision of a trust account statement may need to await the closure of a client's file, and he said: "Well, I want to find out if he actually owes me any money, because we did a lot of work on this matter." The appellant said that he expected to be in a position to close the file within "the next couple of weeks". He acknowledged that he had been in the process of finalising Mr Loizou's file for in excess of a year and a half, and disagreed with the suggestion that it was unacceptable for a client to wait over a year and a half for the provision of a trust account statement, stating: "I don't think so, because I never closed the file off." He also suggested that it was unclear to him whether Mr Loizou would be requiring him to undertake further work on the files because he still had the files. He considered that it was Mr Loizou's responsibility to attend his offices in order to collect the trust account statement, but later said that Mr Loizou could not collect any trust account statement until he, the appellant, was satisfied that it was "above board".[138]

[123] Section 247(3) of the LPA relevantly provides that a law practice must account for monies held in trust in the manner provided for in the LPRs. A failure to comply with s 247(3) is an offence.[139]

[124] LPR 63 relevantly requires that:

[138] Transcript 11/04/16 pp 100-102.
[139] LPA s 247(4).

(a) a law practice furnish a trust account statement to each client on whose behalf trust money is held;[140]

(b) a trust account statement contain:[141]

(i) the information required to be kept under Part 3.1 of the Regulations, which relevantly includes, inter alia, a client specific trust ledger account recording all receipts and payments in that account;[142] and

(ii) details of the balance held (if any);

(c) such statements be furnished:[143]

(i) as soon as practicable after completion of the matter to which the ledger account or record relates; or

(ii) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or

(iii) except as provided by sub-regulation (7),[144] as soon as practicable after 30 June each year.

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[140] LPR r 63(1).
[141] Ibid r 63(5).
[142] Ibid r 51.
[143] Ibid r 63(6).
[144] Sub-regulation (7) provides exceptions to LPR 63(6)(c) which are not applicable on the facts before the Court.

[125] It is apparent that, contrary to the requirements of s 247(3) of the LPA:

(a) no trust account statement was provided to Mr Loizou at any time following the appellant ceasing to act in June or August 2014, or following Mr Loizou's requests in his email of 27 June 2014 for a detailed statement of his account and a copy of his trust account[145] and in July 2014 that his trust account ledger be closed and the balance remitted;[146] and

(b) no trust account statements were provided to Mr Loizou, as soon as practicable or at all, following 30 June 2014 or 30 June 2015.

[126] Notwithstanding Mr Loizou's requests in July 2014 for the return of his file in the context of ongoing litigation and for the refund of monies owed to him which he told the appellant were "really need[ed]…to pay rent and living expenses",[147] and the intervention of the Law Society on 30 July 2014 following which the appellant said that he was in the process of preparing a final invoice which expected to issue within two weeks and he would thereafter return the file and remit any balance of trust monies to Mr Loizou, the appellant failed and continued to fail to offer to return the file or finalise Mr Loizou's trust account until 28 May 2016. The appellant has provided no acceptable justification for this very poor conduct on his part.

[145] Grainger 15/3/16 Annexure KAG 91 at pp 585 and 588.
[146] Ibid Annexure KAG 92 at pp 593-4.
[147] Ibid Annexure KAG 92 at pp 593-4.

[127] Even when he gave evidence in these proceedings in April 2016, the appellant could not say that he was in fact owed any money by Mr Loizou; his evidence did not rise any higher than that he might be owed something.[148] On the basis of that mere suspicion he had withheld files that Mr Loizou may have required for the conduct of his family law litigation and refused to refund any amount to Mr Loizou for more than eighteen (18) months.

[128] When he sought leave to reopen his case on 16 May 2016, the appellant swore that he was still trying to finalise preparation of trust account statements to all clients for whom the firm was holding any monies in its trust account.[149] According to the trust account ledger in evidence prepared on 12 April 2016 the current balance of Mr Loizou's trust account was $113.88.[150]

Final accounting provided on 28 May 2016[151]

[129] By letter dated 28 May 2016 addressed to Mr Loizou the appellant provided copies of three trust account receipts (acknowledging receipt of a total of $20,500), various tax invoices including one dated 26 May 2016 itemising all work done (between 26 June 2013 and 18 August 2014) and charges therefor, a trust account statement prepared 26 May 2016 (the **Loizou trust account statement**) showing the amount of

[148] Transcript 11/04/16 p 102.
[149] Connop 12/5/16.
[150] Exhibit A1.
[151] Connop 27/5/16 WC 84 at pp 7-9.

$113.88 held on Mr Loizou's behalf and a cheque for $113.88. He said that he had checked the letter and had it reviewed by counsel.

[130] The letter explained that an amount of $5500 had been banked into the appellant's office bank account by electronic funds transfer rather than into his trust account, and that explains why the trust account statement does not include a record of that payment. The letter then provided a brief summary showing the client owing the appellant $9,413.12, being the balance due after deducting from the amount shown on the tax invoice of 26 May 2016 the total amount of $25,500 "received from you paid into our office account or our trust account". The appellant advised that "in the circumstances" he would not be requiring Mr Loizou to repay that balance, and instead was enclosing the cheque for the $113.88.[152]

[131] During cross-examination he agreed that he had made an error in adding up the four amounts received from his client, namely the $20,500 recorded on the trust account receipts and the $5500 banked into his office account, as a consequence of which he had been paid $26,000 not $25,500.[153] However he later changed his evidence and said that the $5500 banked into his office account was in fact the same payment that was recorded in one of the three trust account receipts. Consequently he had only in fact received $20,500, not the $25,500

[152] Connop 27/5/16 WC 84 at p 9.
[153] Transcript 1/6/16 pp 7-8.

stated in the letter, nor the $26,000 previously acknowledged during his evidence.[154] If this is correct, the client would owe him $14,413.12, namely $5000 more than stated in the letter.

[132] When it was put to him that he could easily have ascertained when and whether the $5,500 was paid into his office account by checking his bank statements he admitted that he did not do that. When asked how the client could have paid the money into his office account he surmised that his bookkeeper must have provided the client with the wrong account information.

[133] I find all this most unsatisfactory. The last item of work for Mr Loizou was done in August 2014 and the final accounting in May 2016 was still wrong, by as much as $5000. Moreover, I find it extraordinary that he is now prepared to write off a significant amount of legal fees to which he now says he is entitled, and indeed send the client the cheque for $113.88.

[134] I agree with the LSNT submission that the appellant's conduct in relation to this client is demonstrative of a lack of fitness to practice. His conduct is not of the standard reasonably expected of a person holding a UPC.

[154] Transcript 1/6/16 pp 48-49.

Complaint by Pieter Bekkers

[135] Mr Bekkers was a client of the appellant's in respect of a dispute with a government authority in relation to banana farming. On 21 August 2014 Mr Bekkers requested the appellant to return any unused funds.[155] On 25 May 2015 he made a complaint to the Law Society. The Law Society sent the complaint together with other materials to the appellant on 8 October 2015 and sought his response within 14 days.[156] He replied on 30 December 2015.[157]

[136] The complaint alleged failures on the part of the appellant to provide adequate costs disclosure as required by s 303 of the LPA, including failures to advise Mr Bekkers of his estimated legal fees and of his entitlement to a costs agreement and to respond to his request for a written costs agreement, failure to properly account for trust monies, failure to advise Mr Bekkers of his right to dispute costs as required by s 325 of the LPA, withdrawing money from trust for legal fees without authority and overcharging.

[137] Mr Bekkers first consulted the appellant on 10 January 2014.[158] The appellant told the Law Society that he gave Mr Bekkers a cost estimate of $6,000, and provided him with a copy of a costs agreement that

[155] Connop 8/3/16 Annexure WC 58 at p 403.
[156] Grainger 15/3/16 [162] - [168] and Annexures KAG 95 and KAG 96.
[157] Connop 8/3/16 Annexure WC 60.
[158] Ibid Annexure WC 60 at pp 408, 413.

day.[159] The costs agreement is in essentially the same form as that the subject of the Williamson complaint and the Loizou complaint, and suffers from most of the same defects.[160] The costs agreement was never signed by Mr Bekkers.[161] It estimated fees and disbursements at $6,000, advised the same hourly rates as referred to in the Loizou costs agreement, estimated likely costs of $30,000 for counsel or other experts, and required an initial payment of $2,000.

[138] Consistently with the Law Society's decision in relation to the Williamson complaint, the costs disclosure encompassed by provision of this costs agreement (assuming it was provided as the appellant describes) would not comply with the requirements of ss 303 and 305 of the LPA.

[139] In his reply to the Law Society on 30 December 2015, the appellant said he had issued and delivered to Mr Bekkers tax invoices for the work he had performed and disbursements incurred, and that he withdrew amounts from the trust account accordingly.[162] This assertion was made even though Mr Bekkers' complaint clearly stated:

> The address provided on each of those invoices is 3, 5 Manton Street, DARWIN. It is in fact that of Mr Connop's own office, not my address. It is clear that the invoices never left his firm until I had terminated his services. In accordance with the

[159] Connop 8/3/16 Annexure WC 60 at pp 408-409.
[160] Ibid pp 422-428.
[161] Ibid p 409.
[162] Ibid pp 410, 412.

> above, I was never advised how much of my money was being used and deliberately misled when I did make enquiries.[163]

[140] In his affidavit of 8 March 2016 the appellant acknowledged that he first became aware that a "trust account receipt and some of the tax invoices rendered to Mr Bekkers were incorrectly addressed with the practice's address" when he read Mr Bekkers' complaint.[164] He then acknowledged that "it may be the case that" Mr Bekkers did not receive those invoices or the trust account receipt until after he terminated his retainer, in August 2014.[165] He also acknowledged that a copy of the barrister's tax invoice may not have been sent to Mr Bekkers. Again, the appellant sought to blame his bookkeepers for these failings.[166]

[141] In his response of 30 December 2015 the appellant acknowledged that there remained in his trust account the sum of $1,000 belonging to Mr Bekkers and he undertook to deliver a cheque in that sum to Mr Bekkers within seven days of his letter.[167] Despite that undertaking, the appellant did not pay that money to Mr Bekkers until 7 March 2016, when he sent him a bank cheque for $1000.[168] He provided no explanation for that failure.

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[163] Grainger 15/3/16 Annexure KAG 95 at p 609. The underling was included in that passage.
[164] Connop 8/3/16 [128].
[165] Ibid.
[166] Connop 8/3/16 [122]-[123].
[167] Grainger 15/3/16 Annexure KAG 100 at p 645.
[168] Connop 8/3/16 [133] - [134].

[142] The appellant's affidavit of 27 May 2016 included a letter of 26 May 2016 addressed to Mr Bekkers which attached a trust account statement as at 25 May 2016 (the **Bekkers trust account statement**) and a cheque for $900. That trust account statement shows transactions between January and March 2014 and a credit balance of $900 as at 18 March 2014. It does not refer to or otherwise acknowledge the payment of the $1000 (on 7 March 2016).

[143] During cross-examination on 1 June the appellant agreed that the Bekkers trust account statement did not record his receipt of $1000 on 22 January 2014, in payment of an invoice dated the same day.[169] He also acknowledged that he rendered a tax invoice dated 1 February 2014 which included a claim for the same work as that the subject of the 22 January 2014 invoice and payment.[170] He said that until this was pointed out to him during cross-examination he did not realise that Mr Bekkers had been charged twice for the same work, apparently because his bookkeeper had redone the invoice. He said that he assumes that would be covered by the $1000 paid in March 2016 and the further $900 repaid in May 2016, and that he does not propose to do anything more about it unless Mr Bekkers comes back to dispute the accounts or unless the Court orders him to do something about it.[171] This is not a satisfactory way for a legal practitioner to avoid his

[169] Grainger 15/3/16 Annexure KAG 95 at p 613.
[170] Ibid p 614.
[171] Transcript 1/6/16 pp 31-6.

responsibility to provide proper accounting to his former client, and further illustrates his lack of proper understanding of his obligations to clients.

Costs agreements

[144] As already noted, when he was acting for Mr Loizou and Mr Bekkers the appellant used costs agreements of the kind required in New South Wales under the *Legal Profession Act 2004* (NSW), not those required in Chapter 3 Part 3.3 of the LPA, in particular s 303.[172] During cross-examination the appellant conceded that the fact that he had used such costs agreements, until becoming aware that it was not appropriate for him to do so (following the Law Society's findings in the Williamson matter), meant that the costs disclosures provided in the Loizou and Bekkers matters would fall below the standard required of a reasonably competent legal practitioner.[173]

[145] I have already referred to the fact that some of the costs agreements which the appellant used included rates for partners, senior associates, lawyers, paralegals and clerks, and I expressed the view that this would have created the misleading impression that there were such other people within his employ and that some of the client's work would be done by such person at a lower rate than that which the appellant would

[172] See above at [103] - [105] re Loizou & [137] - [138] re Bekkers.
[173] Transcript 11/04/16 at p 91. See too Transcript 12/04/16 at p 119 with respect to the continuation of this practice.

charge as a principal.[174]

[146] During cross-examination the appellant was asked why he included a breakdown for staff he did not in fact employ. The appellant responded:

> I just basically wanted to be honest with people and just tell them, 'this is what people charge.'[175]

[147] When asked how this could be described as being honest with clients, given the appellant did not in fact employ any senior associates, lawyers, paralegals or clerks, the appellant initially suggested people would walk in "wanting to know those fees".[176]

[148] When pressed, instead of providing a straightforward answer to the question, he said:

> What's your point with this?[177]

and later:

> Well you are making an issue, I don't know where you are leading with this.[178]

[149] He also sought to avoid the suggestion that this practice was misleading by suggesting that he does engage Senior Counsel. When asked to name such a person the appellant referred to Mr Hanlon, a

[174] See [103] - [104] above.
[175] Transcript 11/4/16 p 92.
[176] Ibid.
[177] Ibid.
[178] Ibid p 93.

barrister who has been retained for clients of the appellant's in a number of matters. When it was pointed out to him that Mr Hanlon is not a Senior Counsel the appellant responded that Mr Hanlon was a senior barrister, apparently unaware of the distinction between the two descriptions.

[150] I consider that the appellant's answers concerning this part of his costs agreements were disingenuous and evasive. So too is the submission made on his behalf that:

> It is also possible, even if unlikely, that at some stage during work being performed for these matters after the costs agreements were prepared, that the Appellant may have employed other personnel with differing levels of experience and qualifications and if that occurred the Appellant would then have been able to charge out work performed by those employees at the rates stated in the costs agreements for these matters.[179]

[151] The appellant eventually conceded that the costs agreements implied that he may use the services of another lawyer or paralegal on a client's case and could lead clients to believe that some of their work would be done at a cheaper rate than the rates he charged himself.

[152] I have not reached the required degree of satisfaction that the appellant deliberately tried to mislead his clients about this. However, it was reckless of him to include those references in the costs agreements. Moreover that conduct demonstrates a failure on his part to understand

[179] Appellant's Closing Submissions [80].

the function of a costs agreement as an agreement between solicitor and client, governing respective contractual rights and obligations in relation to the provision of legal services and charges therefor.

[153] I accept the Law Society's submission that the provision of these misleading costs agreements was conduct inconsistent with the high standard of conduct the courts, the profession and the public are reasonably entitled to expect of a practitioner operating under a UPC.

[154] I understand that the appellant has been using an appropriate form of costs agreement since late October 2015 and has been receiving advice from Mr Hutton, Mr Maley and LHC about the correct ways to complete them.[180]

Complaint by Craig Sommer and Work Health Court orders

[155] Mr Sommer was a client of the appellant's in relation to a workers' compensation claim in the Work Health Court following a work injury he suffered in March 2012. Although the claim had been accepted by the employer the parties fell into dispute concerning Mr Sommer's ongoing entitlements. Because he was living in Western Australia Mr Sommer consulted Mr Saupin, a Perth solicitor, who arranged for the appellant to act for Mr Sommer in relation to the claim.

[180] Appellant's Closing Submissions [83].

[156] On 17 September 2015 Mr Sommer made a complaint to the Law Society about the appellant's conduct, alleging incompetence.[181] The appellant was notified about the complaint on 8 October 2015,[182] but did not respond to it until 31 December 2015, explaining the delay on the basis that he was awaiting the decision of Neill SM in the proceedings (delivered on 11 December 2015)[183] and thereafter on the basis that "I have been far too busy to apply my mind to responding to the complaint".[184]

[157] The appellant commenced proceedings in the Work Health Court by filing an initiating application on 20 February 2015. The employer objected to the original statement of claim, and to an amended statement of claim, following which the matter was referred to Mr Neill SM on 29 July 2015. Mr Neill SM listed the matter for directions on 6 August. However by letter dated 31 July 2015 the appellant gave notice that he had ceased to act for Mr Sommer. No one appeared for Mr Sommer on 6 August and the matter was adjourned to 27 August.[185] On that occasion Mr Sommer was represented by a new solicitor and counsel, who sought and were given leave to make significant amendments to the pleadings, including to cure a number of serious defects in the previous versions.

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[181] Grainger 15/3/16 [169] - [176].
[182] Ibid Annexure KAG at p 104.
[183] *Sommer v Coates Hire Operators Pty Ltd* [2015] NTMC 28 (11 December 2015) (**Sommer Reasons**) reproduced at Grainger 15/3/16 Annexure KAG 105 at pp 683-698.
[184] Grainger 15/3/16 Annexure KAG 105 at pp 681-2.
[185] Sommer Reasons [5] – [7].

[158] Mr Sommer sought orders that all costs between himself and the appellant and Mr Saupin be disallowed and that the appellant and Mr Saupin pay any costs thrown away which Mr Sommer might be ordered to pay to the employer. Both the appellant and Mr Saupin conceded that the standard of legal work performed by them for Mr Sommer was inadequate, and that all costs between them and Mr Sommer should be disallowed, and that Mr Sommer should be fully indemnified for costs he was ordered to pay to the employer. However each of the appellant and Mr Saupin contended that the other should be solely responsible for indemnifying Mr Sommer for those costs.

[159] In his Reasons for Decision Mr Neill SM[186]:

(a) said that the pleading of and pursuit of instructions for a common law cause of action in the statements of claim, in a no-fault statutory jurisdiction, reveals an ignorance of the jurisdiction indicative of negligence (at [31]-[32]);

(b) said that the statements of claim were patently inadequate and altogether the conduct of both the appellant and Mr Saupin amounted to a failure to act with the competence reasonably expected of ordinary members of the profession, which failure caused costs to be wasted both by negligence and by undue delay (at [33]); and

[186] Grainger 15/3/16 Annexure KAG 105 at pp 684-698.

(c) rejected the appellant's submissions that he acted merely as town agent of Mr Saupin. The appellant had entered into a written and signed costs agreement with Mr Sommer to carry out work in relation to the proceeding, issued tax invoices to Mr Sommer for that work, appeared in the Court on his behalf, had some hand in preparing and drafting the statements of claim and separately had a solicitor/client relationship with Mr Sommer with all the professional obligations of competence and responsibility arising therefrom (at [47]-[50]).

[160] His Honour made orders disallowing all costs between the appellant and Mr Sommer, requiring the appellant to repay to Mr Sommer any monies already paid to him on account of costs, and requiring each of the appellant and Mr Saupin to pay half of the costs which Mr Sommer was required to pay to the employer as a result of its costs thrown away.[187]

[161] The appellant has acknowledged that he did not act competently for Mr Sommer, and attributed that to an absence of prior experience in workers compensation claims.[188] I note that the Williamson matter was also a workers compensation case, albeit under federal legislation.

[162] The appellant's response to the Law Society about the complaint

[187] Sommer Reasons [53].
[188] Connop 8/3/16 [68].

stated:[189]

> …Mr Sommer is not in any way prejudiced by the earlier representation by both Dr Saupin and myself…
>
> It is respectfully submitted that in the circumstances of this case there remains no genuine basis for a complaint to be laid by Mr Sommer.
>
> I can only apologise for my earlier involvement in the matter and it is not my right or duty to apologise on behalf of any other legal practitioner earlier acting in the matter.

[163] I agree with the Law Society that such response discloses a concerning lack of appreciation of the high professional standards demanded of legal practitioners in the interests of both the public and the profession itself (see paragraph [23] above).

Misleading website

[164] During cross-examination the appellant said that well before he read Mr Neill's decision he realised his "incompetence in work health matters" and decided that he would not take on any more work health matters. Counsel pointed out to him that his website still advertised Workers' Compensation Law as one of his areas of practice.[190]

[165] The appellant relevantly responded: "That was supposed to be removed and I requested the person to remove it and they obviously haven't

[189] Grainger 15/3/16 Annexure KAG 105 at p 682.
[190] Transcript 12/04/16 pp 149-150.

removed it."[191]

[166] Then occurred the following exchange:[192]

> Have you checked to see if it was there?---No.
>
> Why not?---Because I've been too busy.
>
> I see. And who was it that was supposed to remove that from your website?
> ---Tropicnet who deals with my website.
>
> And when did you ask them to withdraw it?---I think it was a while ago when the work health matter or summons was on foot.
>
> Have you got any written document to prove that you did that?---I can't recall. I did send an email but I can't recall the date.
>
> What do you mean you can't recall?---I can't recall the date.
>
> Did you send an email or not?---I can't recall the date that I sent it.
>
> I'm not asking about the date. I said do you have any written document that proves that you've asked your web server person to remove that reference?---I can't recall.
>
> You can't recall if you have a document?---No.
>
> The fact is you don't have one do you?---Not on me here.
>
> You don't have one anywhere, Mr. Connop, do you?---No.
>
> And that's because you never asked them to take it away?---I can't recall whether I did or I didn't.
>
> So when you said a moment ago that you did that was a lie wasn't it?---No. I just couldn't recall. I keep telling you.
>
> You didn't say you couldn't recall. You gave evidence to his Honour that you made a request to a particular identified person to take it off. Now you're saying to his Honour you can't recall?---You asked me if I had a document and I said, 'I

[191] Transcript 12/04/16 p 150.
[192] Ibid pp 150 to 151.

can't recall.'

No, your evidence was you can't recall whether you did it or not?---Well, I don't recall. I'll withdraw the remark, sorry.

What you said previously was a lie wasn't it?---No, I just couldn't recall.

If you couldn't recall you would have said, as you've said now, 'I don't recall.' Correct?---Yes.

But you didn't say 'I don't recall' you said 'this is what I did'. That was a lie, wasn't it? ---Yes.

[167] In addition to the obvious seriousness of a legal practitioner telling a lie in Court,[193] this exchange is one of many where the appellant readily provided a self-serving answer which when tested proved to be false or misleading.

[168] I agree with the Law Society's submission that the appellant's performance under cross-examination, both specifically in relation to the website and more generally, places this Court in a very similar position as was the Court of Appeal in *Foster* with respect to the character of the practitioner before it.[194]

[169] I also agree that the fact of the appellant's dishonesty to the Court demonstrates a serious failure to comprehend, and a serious disregard for, his duty of candour. The appellant has demonstrated he is not an individual in whose word a court can repose its confidence.

[193] See too s 96 *Criminal Code*.
[194] See [30] above.

Complaint by Ms Hall

[170] The appellant acted for Mr Hall in relation to a drugs matter that resulted in him being sent to prison in September 2015. His mother, Ms Hall, had arranged for a friend of hers, Ms Vosso, to deposit $30,000 into the appellant's trust account to cover Mr Hall's legal fees. On 6 April 2016 Ms Hall contacted the Law Society and complained that the appellant had failed to provide any invoices or trust account statements specifying how the sum of some $30,000.00 had been disbursed.[195]

[171] Following completion of the matter Ms Hall emailed the appellant on 26 September 2015, requesting "an itemised account of the fees incurred".[196] On 6 October 2015, Ms Hall sent a further email to the appellant seeking a response to her email of 26 September.[197] The appellant emailed Ms Hall stating: "I am in the middle of doing the final bill now and will have it done by the end of next week. Once this is done then I will advise."[198]

[172] The appellant subsequently refused to provide Ms Hall with any information unless and until she provided him with written authorities from both Ms Vosso and Mr Hall. During his cross-examination the appellant conceded that he did not ask Ms Vosso or Mr Hall for any

[195] Grainger 8/4/16 [10] to [13] and Grainger 11/4/16.
[196] Connop 9/4/16 Annexure WC 73 at p 11.
[197] Ibid p 10.
[198] Ibid p 9.

authority to disclose the financial information to Ms Hall until sometime after 6 October 2015.[199] The appellant did not provide a satisfactory reason for him requiring Ms Hall to obtain the authorities, rather than him seeking them himself.

[173] Ms Hall provided the appellant with the requested authorities on 21 March 2016.[200] The appellant provided Ms Hall with the requested invoices and accounting on 8 April 2016.[201]

[174] When the appellant was asked why he did not provide the material earlier and only did so after he became aware of Ms Hall's complaint of 6 April, he said that he was in a position to provide the material to Ms Hall when she came to Darwin to visit Mr Hall in the period 27 March 2016 to 2 April 2016 and that he had expected her to attend his offices to collect it.[202]

[175] The appellant was cross-examined as to the basis of his belief that Ms Hall would attend his offices to collect this material.[203] He conceded that he had not contacted Ms Hall to schedule any such attendance and when pressed as to why, he said: "I just didn't bother."

[176] When asked if he would have provided the material to Ms Hall had she attended his offices when she was in Darwin to visit her son, the

[199] Transcript 12/04/16 p 144.
[200] Connop 9/4/16 Annexure WC 73at p 9.
[201] Ibid [8] - [9] and Annexure WC 74.
[202] Ibid [7].
[203] Transcript 12/04/16 pp 140 to 143.

appellant responded: “Yes. I probably would have”, then “I would have”.[204] He said that the material was sitting on his desk awaiting collection, but then added that the requisite material had not been finalised.

[177] When the appellant was asked why he had not complied with his obligations to provide Mr Hall with tax invoices and other documents although the matter (which involved fees in the vicinity of $30,000) had been finalised, he said that Mr Hall had instructed him that he did not want him to deliver any accounting correspondence to him while he was in prison.[205]

[178] Counsel for the appellant conceded that the appellant did not provide the necessary accounting and that, as a result, he has breached his statutory obligations. However counsel submitted that because Mr Hall had provided instructions not to send tax invoices or other accounting documentation while he was in prison, he has waived or forgiven his entitlements to receive such materials. Counsel submitted that in these unusual circumstances it would not be appropriate for the Court to find that those breaches of the LPA, and the LPR, warrant a finding that the Appellant is not a fit and proper person to hold a UPC.

[179] The Law Society pointed out that the appellant’s conduct in this regard constituted a clear breach of s 247(3) of the LPA. Mr Hall was

[204] Transcript 12/05/16 p 143.
[205] Ibid p 145.

imprisoned and his mother, Ms Hall, was seeking an accounting in relation to the money that had been paid into the appellant's trust account to pay for his legal costs. To the extent the appellant was concerned as to whether the information should be disclosed to Ms Hall all he had to do was seek appropriate instructions from Mr Hall.

[180] The Law Society contended that even if one takes the view that the appellant may have been justified in requiring written authority before releasing information to Ms Hall, he was obliged to provide a trust account statement to Mr Hall as soon as practicable following completion of Mr Hall's matter.[206] A reasonably competent legal practitioner would have understood the need to provide such a statement promptly following the final appearance for Mr Hall on 11 September 2015. At the very latest, such an obligation would have arisen on the appellant generating his final invoice dated 26 October 2015[207] (notwithstanding that the invoice was not in fact provided to his client or anyone else until 8 April 2016).[208]

[181] I agree with these submissions.

[182] Section 254 of the LPA provides for how a legal practitioner is to deal with trust monies. Relevantly s 254(b) provides that a law practice may:

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[206] LPR 63(6)(a).
[207] Connop 9/4/16 Annexure WC 74 at p 25.
[208] See the appellant's concession in this regard at Transcript 12/04/16 p 145.

> …withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act are complied with.

[183] LPR 68 provides that monies can be withdrawn to pay legal costs:

(a) where there is a legal costs agreement,[209] the owner of the trust monies is first sent:

(i) a request for payment referring to the proposed withdrawal; or

(ii) a written notice of withdrawal;

(b) otherwise,[210] only after the issue of a bill relating to the money to be withdrawn and on the satisfaction of a number of other conditions.

[184] Annexure "WC74" to the appellant's affidavit sworn 9 April 2016, shows that the amount of $31,250.00 was fully disbursed from his trust account by 26 October 2015.[211] The appellant admitted under cross-examination that he had not provided any invoices to his client and that the trust account statement, invoices and other information comprising annexure "WC74" had not been provided to anyone before being provided to Ms Hall on 8 April 2016.[212]

[209] LPR r 68(3).
[210] Ibid r 68(4).
[211] See the Trust Account Statement at pp 48 to 49.
[212] Transcript 12/04/16 p 145.

[185] The appellant failed to comply with LPR r 68 and consequently committed an offence under s 247(3) and (4) of the LPA.

[186] The cross-examination of the appellant in relation to the Hall matter also revealed some other inadequacies, which one would not expect of a legal practitioner holding a UPC.

[187] When Ms Hall was endeavouring to obtain character references for her son's imminent sentencing hearing the appellant refused to provide her with necessary information, in particular as to the charges which her son was facing. His apparent reason for this was that he first needed Mr Hall's authority. One would have thought that such authority, if not implicit in his retainer, would have been sought and obtained when initially taking instructions from Mr Hall. Further, as the appellant conceded, the fact and nature of the charges to which Mr Hall was pleading guilty, were matters of public record.[213]

Representation of Joshua Hes

[188] Criminal law is one of the areas which has always been a large component of the appellant's legal practice and in which he professes some degree of competence.[214]

[189] Mr Hes was the appellant's client in relation to a criminal charge on indictment in the Supreme Court of unlawfully supplying

[213] Transcript 12/04/16 pp 137 to 139.
[214] Connop 5/4/16 Annexure WC 68.

methamphetamine, a Schedule 1 drug, under the *Misuse of Drugs Act*. Mr Hes pleaded guilty and the appellant appeared on his behalf in respect of the plea and sentencing.

[190] On 8 December 2015, Justice Kelly wrote to the Law Society regarding potentially unsatisfactory professional conduct by the appellant. Her Honour expressed concerns that:[215]

(a) the appellant's oral and written submissions may have fallen short of the standard of competence and diligence a member of the public is entitled to expect of a reasonably competent Australian legal practitioner;

(b) the appellant may not have the requisite level of skill to be practising unsupervised; and

(c) the appellant may not have fully understood his ethical obligations to his client and to the Court.

[191] The appellant's oral and written submissions on sentence disclose a number of matters which raise questions about the appellant's competence and diligence.

[192] The appellant's initial position in relation to her Honour's letter was that this Court should not take it into account, essentially because the

[215] Grainger 15/3/16 Annexure KAG 717.

appellant was not provided notice of it under s 475 of the LPA.[216] However, the appellant was given notice of the matters which concerned the Law Society on 21 December 2015,[217] and took the opportunity to make extensive and detailed comments thereon on 6 January 2016.[218] I agree with the respondent that for the appellant to take such a position in this proceeding discloses a disturbing lack of insight into the seriousness of a judicial officer's reporting of a legal practitioner's conduct to the regulatory body.

[193] During cross-examination the appellant was asked whether he agreed with submissions advanced by his counsel to the effect the Court should not consider his conduct in the Hes matter in these proceedings. The appellant initially said: "I don't see what conduct you're talking about".[219] He then gave non-responsive answers, stating that "Joshua Hes got a very good outcome".[220] When pressed to answer the question, first by counsel for the Law Society and then by the Court, he asked for the question to be repeated. He then purported to object to the question on the basis it constituted two questions and ultimately conceded that the Court could have regard to his conduct in the Hes proceedings.[221]

[194] The appellant was cross-examined about a number of unsatisfactory

[216] Appellant's Submissions, [84].
[217] Grainger 15/3/16 Annexure KAG 9 [180].
[218] Ibid Annexure KAG 109.
[219] Transcript 11/4/16 p 46.
[220] Ibid p 47.
[221] Ibid p 48.

aspects of his representation of Mr Hes, both in and out of court.

Written submissions to the Court

[195] The appellant provided written submissions to the Court for the purpose of the sentencing (**Defence submissions**).[222] In her letter to the Law Society Justice Kelly said:

> The written submissions were frankly of a standard that I would not expect a legal practitioner of this Court to produce.[223]

I agree.

[196] Counsel for the Crown had previously provided written submissions on behalf of the Crown (**Crown's submissions**).[224] They comprised 24 paragraphs. Apart from minor changes such as replacing the words "the Crown submits" with the words "the Defence submits" or "the Defence does not deny" and small changes to some of the wording in three of the paragraphs, the first 22 of the 24 paragraphs of the Crown's submissions were copied into the Defence submissions. The Defence submissions also included almost two pages of additional information concerning the personal background of Mr Hes and eight paragraphs under a heading "Health and Personal Issues".

[197] The appellant conceded that he copied and reproduced parts of the Crown's submissions into those he advanced on behalf of Mr Hes, even

[222] Connop 8/3/16 Annexure WC 52.
[223] Grainger 15/3/16 Annexure KAG 107 at p 767.
[224] Connop 8/3/16 Annexure WC 51.

to the extent of repeating grammatical errors.[225]

[198] The appellant was asked about his letter to the Law Society of 6 January 2016,[226] specifically about what he had asserted to be the usual practice when providing sentencing submissions in Northern Territory courts.[227] Under the heading 2.3 he said:[228]

> From my experience of written sentencing submissions exchanges in the Northern Territory, there is an informal formula that is followed. The Crown followed the informal formula in their written sentencing submissions. I followed the informal formula in my written sentencing submissions.
>
> When comparing both sets of submissions, it is apparent that some parts of my submissions mirror those of the Crown. That is not unusual so as to show what is agreed by way of submissions or so as to show what is not agreed by way of submissions.

[199] The appellant had difficulty answering counsel's questions as to how the Court could be assisted by submissions which were almost identical to those filed by the Crown. He eventually conceded that the mere repetition of the other party's written submissions does not assist the Court or the parties and is a waste of time for all those involved. [229] I reject the submission by the appellant's counsel that "this area of

[225] Transcript 11/04/16 p 50.
[226] Grainger 15/3/16 Annexure KAG 109 at pp 885 to 895.
[227] Transcript 11/04/16 p 50.
[228] Grainger 15/3/16 Annexure KAG 109 at p 888.
[229] Transcript 11/04/16 pp 50-2.

questioning concerns questions of style of submission rather than competency."[230]

[200] Parts of the Crown's submissions which the appellant copied into the Defence submissions included submissions:

(a) that "the objective seriousness of the offending is high" and that "had the offenders not been apprehended a significant quantity of drugs would have been introduced into the community, beyond those already supplied, and directly through the offender's role in its distribution";[231]

(b) that "the Defence does not indicate how much of the methamphetamine was to be sold by the offender, or to whom."[232]

(c) that his client had only agreed to plead guilty after an alleged co-offender had agreed to give evidence against him;[233]

(d) that this type of offending was becoming increasingly prevalent;[234]

(e) noting that "following the decision in *Truong v The Queen* [2015] NTCCA 5 (***Truong***) the tariff for trade in Schedule 1 substances has been significantly raised, …".[235]

[230] Appellant's Closing Submissions [61].
[231] Connop 8/3/16 Annexure WC 52 [9] cf WC 51 [9].
[232] Ibid [11] cf WC 51 [11].
[233] Ibid [17] cf WC 51 [17].
[234] Ibid [20] cf WC 51 [20].
[235] Ibid [21] cf WC 51 [21].

[201] The appellant was asked how it was in the interests of his client to repeat these submissions. In relation to the submission referred to in [200](a) above he said that the making of these concessions resulted in his client getting a good result.[236] He conceded that it was not in his client's interest to repeat the Crown's submissions to the effect that his client had only agreed to plead guilty after an alleged co-offender had agreed to give evidence against his client.[237]

[202] He also conceded that he had not read the Court of Criminal Appeal's recent decision in *Truong* and he said he did not have time to read it. He said that the decision probably would not have helped his client because he had "sent [the judge] 80 comparative cases."[238]

[203] The appellant was asked why he responded to paragraph 11 of the Crown's submission that stated: "The Crown cannot indicate how much of the methamphetamine was to be sold by the offender, or to whom", in the way that he did, namely by simply altering the opening words to read "The Defence does not indicate …". The appellant provided two answers, both of which raise serious concerns about his credibility and the reliability of his testimony.

[204] First, he said that he had been pressed for time as a result of the Crown's submissions only having being served at 7pm the night before

[236] Transcript 11/04/16 p 54.
[237] Ibid p 61.
[238] Ibid p 62.

the hearing.[239]

[205] Second, the appellant said that although his client was pleading guilty to supplying a commercial quantity of methamphetamine he did not know what quantity of methamphetamine was found or what quantity was to be sold or to whom. When it was put to him in cross-examination that this would have been an important mitigating factor that should have been included in the Defence submissions, he said: "I did tell the judge that."[240]

What the appellant told the judge about this mitigating factor

[206] Counsel for the Law Society asked the appellant to peruse the relevant transcripts during the forthcoming lunch break and indicate where he is recorded as having told her Honour about this important mitigating factor, namely that Mr Hes was not aware how much methamphetamine was going to be distributed. Then followed this exchange:[241]

> MS BROWNHILL SC: … Can you do that over the lunch break, please?--- I can't recall if I said that in there because *she kept cutting me off* every time I speak.
>
> You just told his Honour that you did say that to the court?--- Well, I recall saying something but *she kept cutting me off* and I didn't get a chance to even speak in the court properly.
>
> Well, now you're saying something different to what you told his Honour a moment ago?--- Well, I'll have a look at the transcript.

[239] Transcript 11/04/16 p 52.
[240] Ibid p 55.
[241] Ibid.

(my emphasis)

[207] The following exchange occurred after the luncheon adjournment:[242]

> MS BROWNHILL SC: Before we get onto that, Mr Connop, did you have a look at any transcript over lunch?---I only managed to go through two, not all of them, I'm sorry.
>
> Could you find anywhere where you told her Honour about the mitigating factor that he wasn't aware how much methamphetamine was going to be distributed?---I couldn't recall seeing anything there. But, I mean, I only read the two transcripts, I didn't get to go through the third one.
>
> So, you didn't find anything in the bits you read?---No. I did read the part with the most important thing the prosecution pointed out was the guns. They were - - -
>
> HIS HONOUR: No. Just a minute, Mr Connop, really we're taking a lot of time with you saying things that have got nothing to do with the question?---Okay.
>
> The question was, did you check the transcript over lunch to see a reference to you having told Justice Kelly, that by way of mitigation, your client did not know the quantity of meth involved, or something like that; that's the question. And, I think your answer is, you've looked at two of the three transcripts, so far you haven't found that?---No.
>
> Okay. Thank you?---Sorry.

[208] Counsel for the Law Society submitted that the appellant's evidence was contrived to mislead. In asserting that he had only had a chance to read the first two of three transcripts, the appellant sought to reserve the possibility that his recollection of having told the Court of his

[242] Transcript 11/04/16 p 60.

client's lack of knowledge as to quantity may yet be found in the third transcript. Presumably the third transcript is the transcript of the further proceedings on the morning of 20 November 2015.[243] There is nothing in that transcript relevant to this point. The only reference to the state of Mr Hes's knowledge about quantity in any of the transcripts is contained in the submissions made on behalf of the Crown.[244]

[209] Counsel for the appellant has not been able to direct me to any part of any transcript that shows the appellant making this submission to her Honour or to her Honour cutting him off when he was trying to make such a submission. I find that the appellant was wrong when he made these assertions, and thereby attempted to mislead this Court, if not deliberately certainly recklessly.

[210] The appellant had also made assertions to the effect that he was prevented from making oral submissions in addition to his written submissions in his letter to the Law Society of 6 January 2016.[245] This too was false and misleading. As can be seen from the discussion below about the various opportunities afforded by the Court on 27 October, 11 November and 20 November 2015, the appellant had every opportunity to make oral submissions and tender additional material. When asked in cross-examination to identify where her Honour had

[243] Transcript 20/11/15 in Grainger 15/3/16 Annexure KAG 108 at p 720.
[244] Transcript 27/10/15 p 23 in Grainger 15/3/16 Annexure KAG 107 at p 747.
[245] Grainger 15/3/16 Annexure KAG 109 at pp 885 to 895.

said that the appellant was confined to his written submissions, the appellant was unable to do so and ultimately conceded that no such comment was made by her Honour.[246]

Pressed for time and late service of Crown's submissions

[211] I turn now to the appellant's evidence to the effect that he was pressed for time as a result of the Crown's submissions only having been served at 7pm the night before the hearing. This evidence was incorrect and misleading.

[212] The Crown's submissions had been provided on 26 October 2015[247] following an email from her Honour's associate on 16 October 2015, requesting the Crown to provide certain materials, and defence counsel to provide a brief outline of the background of the accused, at least 24 hours before the hearing scheduled for 27 October 2015.[248] At the appellant's request the hearing was adjourned to 11 November 2015.

[213] In the course of final submissions in this appeal counsel for the appellant contended that

> the respondent has failed to prove, to the requisite standard, that the prosecutor delivered the material he sent to her Honour's associate on 26 October 2015 to the appellant on the same date. Alternatively, if the Court does not agree with that submission, the Court could nevertheless find that it is possible that the

[246] Transcript 11/04/16 p 82.
[247] Transcript 27/10/15 p 3 in Grainger 15/3/16 Annexure KAG 107 at p 720.
[248] Grainger 15/3/16 Annexure KAG 107 at p 863.

> appellant merely had a poor recollection of the date upon which he received the prosecutor's material.[249]

[214] I reject these submissions and infer that the appellant was provided with the Crown's submissions on 26 October, not the night before the hearing some three weeks later. Firstly, one would not have expected counsel for the Crown to have sent submissions to the Court without copying in the appellant. Secondly, at the hearing on 27 October 2015, the prosecutor expressly referred to "the written submissions that [he] provided to [the] associate yesterday afternoon".[250] Had the appellant not already received them one would have expected him to complain then and there about private communications having occurred between the prosecutor and the Court and requested a copy of the written submissions.

[215] Thirdly, that submission misunderstands the evidentiary burden that shifts to the appellant once the above inference is open. If the appellant wished to challenge this inference he could easily have given evidence about this. Fourthly, such a forensic point is not one that should normally be taken in the context of proceedings such as these which concern the appellant's honesty and integrity and where the evidence to challenge the inference is in the appellant's possession, not that of a third party such as the respondent.

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[249] Appellant's Closing Submissions [60(c)].
[250] Transcript 27/10/15 p 3 in Grainger 15/3/16 Annexure KAG 107 at p 721.

[216] I find that the appellant was sent the Crown's submissions on 26 October 2015, not at 7pm the night before the hearing. He had them for three weeks before the hearing on 20 November.

[217] Further, contrary to his evidence that he provided the Defence submissions to her Honour's associate on the morning of the hearing and after showing them to Mr Hes,[251] they were in fact provided on the morning of 10 November, by email.[252] When his email was brought to his attention in cross-examination, the appellant paused for a lengthy period when it became apparent to him that his earlier evidence was incorrect. He initially persisted in his assertion that the submissions had been shown to Mr Hes before being provided to the Court, and ultimately suggested the submissions may have been discussed with Mr Hes before being provided to the Court, as opposed to having been shown to him, but he could not recall.[253]

[218] Nor was he "pressed for time". The appellant had taken instructions to enter a plea for Mr Hes as early as 13 July 2015.[254] The matter had been set down for both plea and submissions as to sentence on 27 October 2015 at the appellant's request.[255]

[219] At the appellant's request the matter was then adjourned to 11 November, to enable him "to provide counselling reports and medicals

[251] Transcript 11/04/16 pp 52-53.
[252] Grainger 15/3/16 Annexure KAG 107 at p 868.
[253] Transcript 11/04/16 p 59.
[254] Ibid p 77.
[255] Grainger 15/3/16 Annexure KAG 107 at p 860.

and also some references".[256] The Court granted Mr Hes bail. Her Honour asked the appellant whether two weeks would be sufficient time for him to get the necessary material in order, and the appellant replied that it would be. Her Honour directed him to supply copies of material to be relied on and an outline if only in dot point form of the background material that he wanted to rely on, at least 24 hours before the date of the sentencing submissions. When asked whether that would create a difficulty he said: "No, your Honour. Thank you."[257]

[220] Even then, the matter was adjourned again, to 20 November, at the appellant's request so that he could "obtain some medical records and the employer letter and a few other small things and to clarify a few things about his health and personal issues."[258] On the morning of 20 November 2015 her Honour invited and permitted the appellant to provide further materials and further submissions.[259]

[221] Counsel for the appellant contended that it was difficult for the appellant to obtain instructions from Mr Hes because he lived in Alice Springs and it was often necessary for the appellant to leave messages for Mr Hes to ring him back. These circumstances were not particularly unusual and, as I have just noted, her Honour granted adjournments and was assured by the appellant that he had sufficient time to obtain necessary materials. Presumably Mr Hes was in Darwin

[256] Transcript 27/10/15 p 2 in Grainger 15/3/16 Annexure KAG 107 at p 719.
[257] Transcript 27/10/15 p 23 in Grainger 15/3/16 Annexure KAG 107 at p 740.
[258] Transcript 11/11/15 p 16 in Grainger 15/3/16 Annexure KAG 107 at p 759.
[259] Transcript 20/11/15 pp 1-8 in Grainger15/3/16 Annexure KAG 108 at pp 876-883.

when the appellant took his initial instructions in July 2015. He was also in Darwin on 27 October 2015 when he answered his bail and entered his guilty plea. And, as I have found, the appellant had received the Crown's submissions the day before, and could therefore, and should, have taken proper instructions from Mr Hes before he returned to Alice Springs, on bail.

[222] Her Honour proceeded to sentence Mr Hes later on 20 November 2015. After Mr Hes had been removed from the courtroom her Honour informed the appellant of a number of concerns that she had about the way in which he had conducted the matter and that she considered it her duty to refer the matter to the Law Society.[260]

Relevant comparative sentences

[223] Another serious concern about the appellant's competence in relation to criminal matters arises from the way in which he attempted to provide references to comparative sentences.

[224] I have already referred to the recent decision of the Court of Criminal Appeal in *Truong* and to the fact that the appellant did not even read that decision despite having referred to it in the Defence submissions. Although, contrary to the Crown's submissions which the appellant copied into the Defence submissions, that decision does not purport to fix or raise a tariff for this kind of offending, it does indicate the

[260] Transcript 11/11/15 p 7 in Grainger 15/3/16 Annexure KAG 107 at p 767.

degree of seriousness with which this Court now regards offending of this kind. It would have been an important decision for defence counsel to refer to and distinguish.

[225] Rather, the appellant provided her Honour with 78 pages comprising detailed summaries of approximately 32 sentences, which summaries had been provided to him by the Supreme Court Library.[261]

[226] When asked by Justice Kelly which of the summaries were relevant, the appellant suggested to her Honour that the first two cases were all that she need consider.[262] However they relate to offending in 2001 and 2002 respectively. At that time Methamphetamine was a schedule 2 drug, as a consequence of which the maximum penalties under the *Misuse of Drugs Act* (NT) were significantly lower than they are now. Those sentences were irrelevant and it was incompetent, if not misleading, for counsel to rely on them, particularly without acknowledging that important difference.

[227] Not only should any person who purports to practice in this area of the law be aware that Methamphetamine has been a Schedule 1 drug for some years now, the appellant was expressly made aware of the fact that Methamphetamine is a Schedule 1 drug by virtue of the fact that this was stated in the Indictment, and in paragraphs 1 and 21 of the Crown's submissions which he copied into the Defence submissions.

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[261] Transcript 11/4/16 p 66.
[262] Grainger 15/3/16 Annexure KAG 107 at p 751.

[228] The Defence submissions also repeated the reference in the Crown's submissions to the maximum penalty being 14 years imprisonment. According to the first two summaries which the appellant referred to her Honour, the maximum penalty for the 2001 offending was five years imprisonment, and for the 2002 offending 169 penalty units. The latter summary was clearly wrong as the offender was actually sentenced to a term of imprisonment. The fact that the appellant relied upon this apparently inaccurate summary without drawing the error to the attention of the judge and if appropriate providing her with the actual sentencing remarks, also suggests carelessness on his part, to say the least.

[229] Further, the appellant conceded during cross-examination that he had only read some 50% of the 78 pages of summaries that the Supreme Court Library had provided to him.[263] By informing her Honour that he was relying upon those first two summaries in particular her Honour would have been entitled to assume that he had perused all of summaries.

[230] Counsel for the appellant conceded that appellant's failure to read more than 50% of the comparable sentences "is certainly regrettable", but submitted that that "can be explained due to them being lengthy and, because the appellant may have had little time to read all of them."[264] I

[263] Transcript 11/04/16 p 65.
[264] Appellant's Closing Submissions [67].

reject that submission.

[231] Firstly, it implies that the appellant expected the judge to do all that work herself, without assistance from counsel. One of the important duties which counsel owes to the Court is to present and identify materials, having first perused them and selected which parts are relevant. The appellant failed to honour this obligation. Secondly, when her Honour sought assistance from him in this regard the appellant referred her to the two irrelevant historic sentences. A judicial officer without any relevant experience in this area may well have been misled into relying upon those two irrelevant sentences. Thirdly, there was no point in the appellant reading and handing up summaries of sentences that predated the time when Methamphetamine was removed from Schedule 2 and placed in Schedule 1.

[232] Further, the respondent has pointed out that the appellant misled the Court when he told Justice Kelly that "I basically did some research and looked at some of the actual comparative sentences …" and that "I couldn't come across any other cases similar to my client's because I looked through the database and went through and tried to find more cases that were actually related."[265] The fact is that staff from the Supreme Court Library undertook the research of the Court's Sentencing Database and sent the appellant the 78 page printout that he

[265] Transcript 11/11/15 p 8 in Grainger 15/3/16 Annexure KAG 107 at p 751.

handed up to her Honour.[266]

Expert evidence

[233] The appellant was cross-examined about three paragraphs on page 4 of the Defence submissions under the subheading "Health and Personal Issues". Paragraphs 3 to 5 stated:[267]

> 3. It is opined that he has suffered Bipolar Personality Disorder for many years and possibly commencing soon after the death of his sister.
>
> 4. It is opined that with Counselling, his likelihood of re-offending will be greatly reduced.
>
> 5. It is opined that his offending behaviour is related to his familial dynamics.

[234] When asked by the respondent's counsel who opined that Mr Hes has suffered Bipolar Personality Disorder for many years the appellant said: "His psychologist, Dr Phil Walcott." Counsel then asked the appellant to identify where that opinion was to be found in Dr Walcott's report. The appellant responded:

> I'll retract that, because I remember crossing that out, because I actually spoke to Mr Hes and retracted it. … No. It's not in Dr Walcott's, sorry I retract that remark.[268]

[235] The appellant conceded that the language "it is opined" was not based upon any legal or medical opinion but rather was based on matters

[266] Transcript 11/04/16 pp 64-6.
[267] Connop 8/3/16 Annexure WC 52 at p 272.
[268] Transcript 11/04/16 p 71.

communicated to him by Mr Hes. He conceded that this language was likely to be misleading.[269]

[236] The appellant added that the fact that the submissions may have been misleading in this regard was due to the fact that he was rushed in their preparation. He later conceded that being rushed was not a reasonable excuse.[270]

[237] In final submissions counsel for the appellant referred to the fact that paragraph 3 of the Defence submissions, which contains the reference to bipolar disorder, appears to have been crossed out by hand. Counsel pointed out that there is no reference to bipolar disorder in the relevant transcripts although there was considerable discussion between her Honour and the appellant about the appropriateness of his submission concerning Mr Hes suffering from depression. Counsel implied that paragraph 3 may have been crossed out prior to the hearing and therefore not relied upon.[271] Had this being the case, one would have expected the appellant to say so when he was asked about this issue. Moreover, when the appellant was asked about the handwriting on this part of the Defence submissions he said that as far as he knows the handwriting was not on the submissions when he filed them.[272] Further, the copy of the Defence submissions that was attached to

[269] Transcript 11/4/16 pp 71 – 75.
[270] Ibid p 76.
[271] Appellant's Closing Submissions [69] – [73].
[272] Transcript 11/04/16 p 48.

Justice Kelly's letter to the Law Society of 8 December 2015 did not contain the handwriting or crossing out.[273]

[238] As I have already noted the appellant said that he had taken instructions to enter a plea for Mr Hes as early as 13 July 2015.[274] When queried as to why, given the lengthy period between July and October, he had not found a medical expert to give evidence by 27 October 2015, the appellant said that he left it to Mr Hes to source an expert.[275]

[239] When it was suggested to the appellant that the fact that an expert was only found on 27 October, the day when the matter was to be heard, necessitating the matter being adjourned to 11 November, the appellant said: "That's correct. Because we didn't know we would be sentencing on the same day as the plea."[276]

[240] I do not accept this testimony. On 6 October 2015 the appellant wrote to her Honour's associate, saying:

> We just want a date for Mr Hes to enter his plea and be sentenced … so we can get his matter out of the way and as he resides in Alice Springs and has to travel and pay for flights and accommodation to complete his matter.

[241] Following this request, by his email of 16 October, [277] her Honour's associate notified the prosecution and the appellant that: "The above

[273] Grainger 15/3/16 Annexure KAG 107 at p 769.
[274] Transcript 11/04/16 p 77.
[275] Ibid p 78.
[276] Ibid.
[277] Grainger 15/3/16 Annexure KAG 107 at p 863.

matter is listed for a plea on 27 October 2015 at 9.30 …", requested them to provide certain materials 24 hours in advance, and advised them that:

> The material is requested in advance to enable sentencing remarks to be prepared and the sentence to be handed down in a timely fashion.

[242] At the hearing on 27 October the appellant did not suggest that he thought the matter was for plea only. Rather he offered a number of other reasons why he was not prepared to make sentencing submissions on that day and needed an adjournment.

[243] When his email of 6 October 2015 was brought to his attention, the appellant conceded that he had requested that the matter be set down for hearing of both plea and sentence[278] and attributed the blame for delays to Mr Hes.[279]

[244] In his written submissions counsel for the appellant submitted that it is possible that when the appellant read the associate's email of 16 October he may have misinterpreted its meaning and have only focused on the words in the first paragraph: "The above matter is listed for the plea …". The submissions point out that the appellant was not cross-examined as to what he understood that wording in the email to have meant and imply that I should accept that as a possibility.[280] I reject

[278] Transcript 11/04/16 p 88.
[279] Ibid – see also p 79.
[280] Appellant's Closing Submissions [60(b)].

that contention. If this is in fact what the appellant believed when he read the associate's email I would expect him to have been asked that by his own counsel either in chief or in re-examination.

Good outcome for his client

[245] On several occasions the appellant appeared to justify his conduct of Mr Hes' matter by stating that he had obtained an "excellent outcome"[281] or a "good outcome"[282] for Mr Hes. In particular he pointed out that Mr Hes got credit for the two days served in custody following his initial arrest.[283]

[246] However, apart from the fact that an offender will invariably get credit for time already served, it was counsel for the Crown, not the appellant, who brought to her Honour's attention the two days already served. This occurred after her Honour has announced the sentence and asked whether there was anything arising from what she had said.[284] When this was brought to the appellant's attention in the course of cross-examination, he said: "Well, if Mr Ledek didn't say it, I was going to say it, but he said it before me, so what's the difference?"[285] I consider it unlikely that the appellant would have made this submission. The fact that he had not made this simple point

[281] Letter to the Law Society at Grainger 15/3/16 Annexure KAG 109 at p 889.
[282] Transcript 11/04/16 at p 83.
[283] Letter to the Law Society at Grainger 15/3/15 Annexure KAG 109 at p 889 and Transcript 11/04/16 p 84.
[284] Transcript 20/11/15 p 6 in Grainger 15/3/16 Annexure KAG 107 at p 766.
[285] Transcript 11/04/16 p 86.

earlier in the course of any of his sentencing submissions suggests that he may not even have known of this common practice or about s 63(5) of the *Sentencing Act* (NT).

[247] More importantly, it appears that he tried to mislead the Law Society and this Court to accept that Mr Hes' "good outcome" was obtained because of his endeavours.

Conclusions

[248] The many irregularities that occurred in the course of and following the Hes matter cause me to have grave doubts about his competence in the criminal jurisdiction. The matter was a routine plea in the Supreme Court and would normally only require a single hearing of the plea and submissions, lasting little more than an hour.

[249] The appellant's responses to Justice Kelly, the Law Society and his answers to questions during cross-examination concerning the Hes matter also cause me great concern about his honesty, integrity and candour. Even if he was not deliberately trying to mislead her Honour, the Law Society or this Court during this appeal, many of his assertions and answers were evasive and misleading.

Trust account irregularities and notification failures

[250] A significant number of irregularities in relation to the appellant's trust account were revealed in the materials available to the Law Society and

more emerged during cross-examination and from the trust account statements that the appellant included with his affidavit of 27 May 2016.

[251] The Law Society wrote to the appellant on 2 October 2014 informing him that he had failed to provide a number of notifications required under the LPA and LPRs and requiring him to provide them by 17 October 2014. These included the Part B Declaration for the 2013/14 year, the Annual Declaration under LPR 55 and an external examiners report for the 2013/14 year. On 20 October 2014 the Law Society wrote to the appellant again stating that he had not provided any of the notifications required, that the matters were substantially overdue and required immediate attention, and also requiring him to appoint an external examiner who could complete and provide a report by 30 November 2014.[286] The Law Society wrote to him again on 3 February 2015 referring back to that correspondence and warning him that the Law Society was considering initiating an own motion disciplinary complaint. It requested his response within 21 days. The appellant responded to that letter on 7 April 2015 providing various reasons for his non-compliance including problems encountered by his then bookkeeper and stating that he had attended a trust account refresher

[286] Grainger 25/2/16 Annexure KAG 11.

course held by the Queensland Law Society in Brisbane on 4 March 2015.[287]

[252] Following receipt of that correspondence the Law Society resolved to formally initiate an own motion complaint against the appellant regarding those matters and sent him notice under s 475 of the LPA on 9 July. The notice attached a copy of the Law Society's guide to complaints, set out the grounds of the complaint, referred back to the previous correspondence, required his response within 14 days and directed his attention to NTPCR r 32.2. No response was received, despite the Law Society having sent him reminder letters on 13 August 2015 and 15 September 2015.[288]

Trust account irregularities

[253] The following trust account irregularities have occurred in the appellant's trust accounts:

(a) bank fees were deducted from his Commonwealth Bank trust account from July 2012;[289]

(b) equipment rental payments were deducted from the trust account;

[287] Connop 24/2/16 Annexures WC 23 and WC 24.
[288] Grainger 25/2/16 [19] and Annexure KAG 11.
[289] Grainger 15/3/16 [46] - [49]. The appellant admitted that trust accounts are not supposed to have bank charges deducted from them: Connop 8/4/16 [100].

(c) three transactions on the appellant's trust account during the 2013-2014 year did not have any supporting evidence;[290]

(d) six client ledgers and a suspense account ledger show that the appellant's trust account was overdrawn to the extent of $8,109.09 as at 31 March 2015, and remained so overdrawn until 1 March 2016;[291] and

(e) there were other overdrawings on his trust account in 2014.[292]

[254] The appellant says he did not know that the trust account had a debit balance as at 31 March 2014 or that bank fees and the equipment rental payments were being deducted from the trust account until Ms Poullas told him about those things in about April 2015.[293] However Ms Grainger says, and I accept, that she spoke to the appellant on 21 June 2013 about a number of irregularities concerning his trust account, including the fact that he should not be deducting bank fees from it.[294] He blamed his previous bookkeeper for the error concerning the deduction of the equipment rental payments.[295]

[255] The appellant also says that he did not know that the trust account had a debit balance as at 31 March 2015 in the amount of $8,109.09 "or at

[290] Grainger 15/3/16 [95].
[291] Ibid [109] and Annexure KAG 64.
[292] See [268] below.
[293] Connop 8/3/16 [99] – [101] and [107] – [110].
[294] Grainger 15/3/16 [49] and Annexure KAG 20.
[295] Connop 8/3/16 [108].

all" until Ms Poullas told him about that in about September 2015.[296]

[256] Contrary to s 256(1) of the LPA, the appellant did not provide the Law Society with written notice of these irregularities as soon as practicable after becoming aware of them.[297] His failures to do so comprise offences (s 256(1)).

[257] Under cross-examination during the hearing in April 2016 the appellant conceded[298]:

(a) that it was not his practice to review his firm's monthly trust account bank statements himself and that he left that to his accountant;

(b) that trust account receipts and tax invoices were being issued to clients without him having sighted them;

(c) that he relied on his bookkeepers to prepare his firm's annual trust account declarations;

(d) that he never satisfied himself that the subject declarations were being properly prepared until after April 2015;

(e) that he did not "really operate the trust account properly until about 2013" or 2014 although he had been in practice since 2012;

[296] Connop 8/3/16 [102] - [104].
[297] He did not provide the 2013-2014 external examiners report (**EER**) (which disclosed the three transactions) until 8 April 2015: Grainger 15/3/16 [95] and Annexure KAG 54. He did not provide the 2014-2015 Part B declaration (which disclosed the overdrawn trust account ledgers) until 12 October 2015: Grainger 15/3/16 [106] and Annexure KAG 62.
[298] Transcript 11/04/16 pp 104-8.

(f) that he had failed to provide his 2015/2016 Trust Account Declaration within the time required;

(g) that he had relied on his new bookkeeper to attend to the filing of the 2015/2016 Trust Account Declaration;

(h) that his failure to file the subject declaration was an offence under the LPA (although he asserted he had a reasonable excuse for that failure involving the necessity to prepare for these proceedings);[299] and

(i) that he did not in fact require the services of his bookkeeper to file the subject declaration and would file the same that night (on the 11 April).

Trust account statements 25 May 2016

[258] During his evidence on 11 April 2016 the appellant said that he hoped to provide final accounting to clients on behalf of whom monies were held in his trust account (which would include providing trust account statements) within the following couple of weeks.

[259] In his affidavit sworn 12 May 2016 the appellant stated that he had been attempting to prepare trust account statements, final tax invoices and letters to the 18 clients and ex-clients identified in the Interim

[299] Transcript 11/04/16 p 106.

Trust Account Trial Balance document dated 12 April 2016[300] with the help of "my bookkeeper, Maria Poullas".[301] He referred to some difficulties being experienced in that process and said:

> 14. …I now believe that that further accounting should be performed by a chartered accountant, because, I no longer believe that Maria Poullas is able to do so. I therefore intend and undertake to the Court to engage the services of a chartered accountant to review the firm's accounts and perform whatever accounting entries are required to put the accounts in order so that I can then finalise letters to these clients and enclose appropriate accounting documents.
>
> 15. I undertake to retain the services of a chartered accountant to perform the work within the next 2 weeks. Once it has been done I undertake to immediately send such letters to all of those clients with a view to closing its trust account as soon as practically possible thereafter.

[260] No independent chartered accountant was engaged. In his affidavit of 27 May 2016 the appellant swore that he attempted to obtain the assistance of two chartered accountants to assist with the preparation of trust account statements for those clients "but neither of them were able to assist me in that regard immediately." He went on to say that he and his bookkeeper, Ms Poullas, who had been the firm's bookkeeper from about January 2015,[302] had been able to prepare the trust account statements.[303]

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[300] Exhibit A1.
[301] Connop 12/5/16 [14] – [15].
[302] Connop 8/3/16 [92].
[303] Connop 27/5/16 [1].

[261] About 19 trust account statements were finalised on 26 May and posted to clients on 27 May 2016 with accompanying letters and in some cases other documents such as cheques, tax invoices and receipts.[304]

[262] During cross-examination on 1 June the appellant said that he had satisfied himself about the correctness of what was in the letters and trust account statements before he signed the letters and sent them.[305] After explaining what he did to satisfy himself of their correctness he was asked: "Did you look at the trust account bank statements?" and he said: "Yes." He then provided a non-responsive answer about trust receipts and was asked again:

> I'm not sure that you answered my question, which was to do with bank account statements. Did you look at the trust bank account statements; that is, the statements that your bank sends you which show the transactions on the account?--- My accountant looked at them, not me.
>
> You didn't look at them?--- No, because she had those figures and was more involved with doing the dollar figures than I was.[306]

[263] The appellant agreed that he took the word of Ms Poullas for the accuracy of the trust account statements and invoices. It was put to him that he had previously expressed doubts about her ability to do that work when he swore his affidavit of 12 May 2016 and undertook to engage a chartered accountant. He then volunteered that Ms Poullas

[304] Connop 27/5/16 [2] and Annexure WC 84.
[305] Transcript 1/6/16 p 4.5.
[306] Ibid p 4.

was a chartered accountant[307], notwithstanding that he had previously been describing her as his bookkeeper.[308]

[264] As I have already observed, several of the trust account statements, including those relating to Mr Loizou and Mr Bekker, were incomplete and inaccurate.

[265] Further, when asked why he simply returned the funds that were in credit rather than offset them against monies that he said he was owed, for example offsetting the $113.88 in Mr Loizou's account against the significant amount owed by Mr Loizou, the appellant said that he "couldn't generate an invoice" and it was "easier just to pay the $113 and just hand it back and don't touch it."[309]

Trust account drawings and overdrawings

[266] Despite being aware that his trust account was overdrawn $8,109.09 from September 2015, the appellant did not repay the overdrawn funds until 1 March 2016.[310] He attributed this failure to a lack of adequate cash flow in the practice.[311] Six client accounts were overdrawn.[312]

[267] The trust account statements as at 25 May 2016 provided with the 19 letters dated 26 May show a large number of withdrawals from trust accounts, often of $1000 and sometimes $2000, described as being a

[307] Transcript 1/6/16 p 46.
[308] Ibid p 5.
[309] Ibid p 9.
[310] Connop 8/3/16 [112].
[311] Ibid [113].
[312] Grainger 15/3/16 [109] and Annexure KAG 64 from p 252.

"transfer to office for legal fees". When asked why these would often be for even amounts where the corresponding fee was or would not have been for such an amount, he insisted that he had already done the work and relied upon his bookkeeper to tell him that he could transfer the monies.

[268] In respect of at least three clients (one of whom had also been identified in the 31 March 2015 documentation), such withdrawals resulted in trust accounts being overdrawn: in the case of Mr Page on four occasions,[313] Mr Grieve on five occasions,[314] and Mr Tupou on five occasions.[315]

[269] Further, Mr Tupou's trust account was overdrawn from the outset as a result of a $1000 "transfer to office for legal fees" three weeks before any money was paid into that account. The appellant explained that Mr Tupou had promised to pay the money into his trust account earlier but failed to do so.

[270] The last entry on the trust account statement for Mr Grieve showed a "transfer to office for legal fees" of $200. That transaction occurred on 15 April 2016, but Mr Grieve's matter appears to have been finalised in September 2014. Mr Grieve's trust account had been overdrawn between 21 September 2014 and 1 March 2016 due to two

[313] Connop 27/5/16 Annexure WC 84 at p 33.
[314] Ibid at p 42.
[315] Ibid at p 54.

transfers to office for legal fees each of $1000 in September and October 2014. The appellant explained that he actually gave that $200 to Mr Grieve's mother "because she was in desperate need for some funds" and "she was going through a very hard time".[316]

[271] In addition to the fact that the appellant did not independently check that he had in fact done the necessary work and prepared a tax invoice for it, his evidence that he only transferred monies to his office account after his bookkeeper told him that he could do that raised a number of further issues. When it was put to him that he had previously said the bookkeeper only attended on a Friday, but that a number of these transfers were made on other days, he said that he would have spoken to the bookkeeper on the telephone before making the transfer. When asked who the bookkeeper was, he said that he had engaged Katherine Haynes, of KHP Bookkeeping, and that it was usually one of her staff who attended on the Fridays. Contrary to the impression previously created that he had the same person acting as his bookkeeper, it appears that there were up to three different members of the staff of KHP Bookkeeping who were providing the bookkeeping services, as well as the principal Ms Haynes.

[272] After the appellant was asked about the over drawings of the Page, Grieve and Tupou trust accounts, senior counsel for the Law Society asked the following:

[316] Transcript 1/6/16 p 25.

> So what's your understanding, Mr Connop, of what happens when you overdraw a client's trust account?--- Well, you have to basically rectify it.
>
> What's happening? Where's the money coming from?--- Well, it's coming from probably other people's accounts, which we did identify and rectify and put the money back in.
>
> So it's blatantly improper, isn't it, to overdraw a trust account?--- Yes, it is. It wasn't because I deliberately did it. I just assumed … somebody … was putting money in.
>
> And that makes it okay does it?--- No, it doesn't.[317]

[273] I have the clear impression that the appellant was effectively using his trust account as one would use an automatic teller machine, without having any proper regard for his entitlement to it. I find that he did not exercise the kind of diligence that a legal practitioner operating his own business should exercise before drawing monies out of his firm's trust account.

[274] Even though he conceded that it is blatantly improper to overdraw a trust account he continued to minimise the seriousness of his conduct by saying that he did not deliberately do it.

Other notification failures

The appellant has, for each of the 2012-2013, 2013-2014, 2014-2015 years, failed to comply with the requirements of the LPA regarding notification within specified timeframes of various matters relating to trust accounts,

[317] Transcript 1/6/16 p 27.

including opening and closing of trust accounts (required pursuant to rr 77 & 73 of the LPRs), annual trust account declarations Part A (required pursuant to r 71 LPRs) and Part B (required pursuant to s 270 LPA), annual notification of appointment or termination of an external examiner (required pursuant to r 72 LPRs), annual signatories notification (required pursuant to r 55(2)(b) LPRs) and annual external examiners reports (required pursuant to s 270 LPA; r 72 LPRs).[318] The appellant agreed that these notification failures have occurred.[319]

Conclusions

[275] In the Appellant's Closing Submissions counsel for the appellant accepts that it is "most regrettable" that the trust account irregularities noted in [257] above occurred, but submitted that the appellant has been taking corrective measures to attempt to correct the trust account operation deficiencies and, in any event, intends to close the trust account in the near future.[320] Counsel submitted that his acceptance of those various accounting breaches of the LPA and his taking of appropriate remedial steps to rectify those matters coupled with his intention to close the firm's trust account in the near future, indicate that the appellant is a fit and proper person to hold a UPC.[321] I disagree.

[318] Grainger 15/3/16 [43] - [110].
[319] Connop 23/3/16 [22] - [23].
[320] Appellant's Closing Submissions [109].
[321] Ibid [113].

[276] Although the appellant attended a course on trust accounts in Brisbane on 4 March 2015 (the Queensland Law Society Annual Trust Account Refresher Course)[322] it appears that his ignorance of the importance and function of trust accounts and his obligations in relation to trust accounts continued after that. As already observed his trust account was overdrawn as at 31 March 2015, a fact of which he should have been aware. Despite Ms Poullas informing him of that situation in September 2015 he failed to rectify it until 1 March 2016.

[277] I agree with the Law Society that the above matters demonstrate that for each year since his current legal practice commenced, the appellant has experienced systematic and ongoing difficulties complying with the requirements for the operation of a trust account. His conversations with the Law Society's Manager Regulatory Services concerning these difficulties disclose a clear lack of understanding of those requirements.[323] The fact that he effectively placed all responsibility for effecting and recording trust account transactions in the hands of his bookkeeping staff and his auditor,[324] and knew nothing about those transactions or inappropriate debits to the trust account when or soon after they occurred, confirms that lack of understanding and a failure to appreciate his own responsibility for the trust account and the practice's billing and accounting.

[322] Connop 24/2/16 Annexure WC 24 at pp 253 and 300-363.
[323] The appellant agrees with what Ms Grainger has attested about her conversations with him: Connop 23/3/16 [23].
[324] Connop 23/3/16 [24].

[278] This conclusion is reinforced by the appellant's recent decision not to operate a trust account, which suggests that he has only recently come to appreciate the heavy administrative burden involved.[325]

[279] I agree with the Law Society's submissions that the appellant's manifest failures and seeming disregard for his obligations make it clear that he is not a fit and proper person to practice under a UPC, irrespective of whether doing so involves the operation of a trust account. No reasonably competent legal practitioner in his position would have operated a trust account in the manner that he did. The Court, the profession and the public have a right to expect a certain standard of a practitioner operating under a UPC.[326] A practitioner with a demonstrated history of delegating the performance of his statutory and ethical obligations to non-legally qualified third parties, falls well short of that standard.

Disclosure Obligations - NAAFVLS

Affidavit of 8 March 2016

[280] In paragraphs 8 and 9 of his affidavit sworn 8 March 2016, the appellant deposed to the fact that, as at the time of the issue of his UPC on 1 July 2010, he was employed as the principal solicitor of the North Australian Aboriginal Family Violence Legal Service (**NAAFVLS**).

[325] Connop 23/3/16 [25].
[326] *Murphy* at [113].

[281] In the next paragraph, paragraph 10, the appellant said:[327]

> I am unaware of any complaints made against me *in relation to the manner I conducted myself as a solicitor in that role*.
>
> (my emphasis)

[282] The appellant was cross-examined about a complaint about him when he was employed at NAAFVLS. (For convenience I shall refer to this as the **NAAVFLS matter**.) The appellant said that he acted in the capacity of principal solicitor for NAAVFLS until about December 2011 or January 2012, after which time he acted as NAAVFLS' chief executive officer (**CEO**) until he left NAAVFLS in or about June 2012.[328]

[283] When asked whether he was aware of any complaints against him while acting as the CEO, the appellant initially said: "No".[329] He then said that he had in fact been stood down while complaints against him were investigated. He later conceded that the allegations leading to his having been stood down and investigated involved "bullying and harassment".[330] He said that he resigned from NAAVFLS and entered into a deed of confidentiality with NAAVFLS, without any adverse

[327] At [10].
[328] Connop 8/3/16 [9] and Transcript 11/04/16 p 27.
[329] Transcript 11/04/16 p 27.
[330] Transcript 12/04/2016 p 115.

findings been made against him.[331]

[284] Counsel for Law Society put to him that the statement in paragraph 10 of his affidavit of 8 March 2016 was misleading. He rejected any such suggestion, stressing that the complaints and investigation concerned his conduct while he was CEO and that he was not under investigation for any conduct referable to his time as principal solicitor.[332]

Application for UPC in June 2012

[285] The appellant also failed to disclose the NAAVFLS matter when he applied for a UPC in June 2012. He should have made that disclosure when completing part 11.3 of his declaration in his application dated 21 June 2012 (the **June 2012 UPC application**).[333]

[286] Part 11.3 has the heading "Fit & Proper Person, Suitability Matters" and provides as follows:

> I understand that the Law Society Northern Territory must not grant a practising certificate unless satisfied that I am a "fit and proper person" to hold the certificate. I understand that I must disclose to the Society any matter which is material to the question of whether I am a fit and proper person including "suitability matters". (eg outstanding complaints or investigations in this or other jurisdictions refer to s 11)
>
> There is further information relevant to the question of whether I am a fit and proper person.

[331] Transcript 11/4/2016 p 27.
[332] Ibid pp 28 to 31.
[333] A copy of the appellant's application appears in Grainger 15/3/16 Annexure KAG 14 at pp 99 to 104.

[287] The applicant was then required to place a tick adjacent to the word "no" or "yes" and if "yes" to attach details unless they had previously been provided to the Society. The appellant placed his tick to the left of the word "No".

[288] The Law Society submitted that s 11(1)(g) of the LPA relevantly provides that whether a person is or has been the subject of disciplinary action in another profession or occupation, here or abroad, is a suitability matter for the purposes of informing consideration of his or her fitness for practice.[334] This is not quite correct. Section 11(1)(g)(ii) only applies to past disciplinary action that involved a finding of guilt.

[289] Counsel for the Law Society pointed out that the term "disciplinary action" is not defined in the LPA other than for the limited purposes of Chapter 4, Part 4.13.[335] Counsel referred to the definition of "disciplinary action" in *Butterworths Australian Legal Dictionary*,[336] in the context of employment, as being:

> Reasonable lawful action taken against an employee in the nature of, or promoting discipline[337]…Generally, disciplinary action includes a decision by an employer to defer paying an increment to the employee, or to reduce the rank, classification, position, grade, or pay of the employee; to impose a fine or

[334] LSNT Supplementary Submissions [208].
[335] See s 540 - the definition in this context is limited to the publication of disciplinary action taken against a legal practitioner under the LPA.
[336] Dr Peter Nygh and Peter Butt (eds), Butterworths Australian Legal Dictionary (Butterworths, 1997).
[337] *Commission for Safety and Rehabilitation of Commonwealth Employees v Chenhall* (1992) 37 FCR 75 at 83-84.

> forfeit pay; to annul the appointment of an employee on probation; or to suspend or dismiss an employee…

[290] I agree with the Law Society's submission that the term should be given its ordinary meaning, and ought not be construed narrowly, having regard to purposes and objects of the LPA. I also agree with the Law Society's submission that the fact that the appellant resigned without any other action being taken against him does not change the character of the standing down as disciplinary action.

[291] In relation to s 11(1)(g)(i) counsel for the appellant submitted that irrespective of whether the appellant was aware of the contents of s 11(1)(g) when he completed that part of the June 2012 application,

> it is open for the Court to find that he did not answer that question incorrectly, because at the time he then applied for another UPC the complaint referred to above was no longer current, because it was not pursued or investigated by NAAFVLS and therefore, the appellant's answer to the question does not bear on the Court's consideration of whether the appellant is now a fit and proper person to hold a UPC.[338]

[292] There are a number of problems with this submission. First, it assumes that the complaint was "no longer current, because it was not pursued or investigated by NAAFVLS". But this seems contrary to the evidence, such as it is. Unfortunately the late disclosure of the NAAVFLS matter, the appellant's reliance on the alleged deed of confidentiality and the unreliability of his evidence about this issue renders it difficult if not impossible to know the true facts about what

[338] Applicant's Closing Submissions [36].

actually happened and when. In particular the assertion that the complaint "was not pursued or investigated by NAAFVLS" is contrary to the appellant's evidence referred to above in [283]. On the basis of the evidence before me I infer that the complaint was investigated and was not resolved until 30 June 2012 when the appellant resigned.

[293] Second, the submission seems to be based upon the appellant's evidence that although he was employed as the principal solicitor of NAAFVLS from 1 July 2010 to about June 2012,[339] for the last six (6) months of that period of employment he was appointed as NAAFVLS' Acting Chief Executive Officer. The submission goes on to say that he said that during the period he was Acting CEO there were not a lot of practice management functions to be performed by him, because an Administrator had been appointed.[340] Presumably this is intended to convey that although he was still employed as the principal solicitor of NAAFVLS when he made the June 2012 UPC application, s 11(1)(g)(i) did not apply to him because his practice did not involve solicitor's work.

[294] Third, even if the complaint was resolved before 21 June 2012, as a result of which s 11(1)(g)(i) would not strictly apply, he still should have disclosed it for the reasons discussed in [32] – [38] above.

[339] Connop 8/03/16 [8] and [9].
[340] Appellant's Closing Submissions [30] – [31].

[295] *Darveniza* concerned the non-disclosure of a previous conviction by a barrister when he applied for a practising certificate. At [14]:

> At best his negative answer to the New South Wales Bar Association on his application for a practising certificate revealed a lack of awareness of professional standards and at worst a deliberate false statement in a statutory declaration.

[296] Fourth, for the appellant to take this point, particularly in circumstances where the relevant information has at all times been within his possession and was only disclosed in part during his cross-examination, further demonstrates his ignorance of his disclosure obligations and his unsuitability as a holder of a UPC.

[297] The Appellant's Closing Submissions also refer to the appellant saying that he did not think the complaint was justified, that it was not fully investigated and that he left the organisation after entering into a confidential Deed with NAAFVLS. Again, such a submission misunderstands the disclosure obligations imposed upon a legal practitioner. It is for the Law Society, not the applicant for a UPC, to consider any complaints and whether or not there is anything about them that suggests that the applicant should not be issued with a UPC.

<u>Reasons for not disclosing</u>

[298] When asked why he had not disclosed the NAAVFLS matter in his application for a UPC in June 2012 the appellant repeated his earlier answers to the effect that he did not disclose it because it was related

to his having acted in the capacity of CEO, not as the principal solicitor.[341] Towards the end of his evidence concerning this topic he said that: "I didn't disclose the CEO issue, because I didn't think it was relevant."[342]

[299] He also said that he considered that the execution of the deed of confidentiality prevented such disclosure.[343] I very much doubt that he genuinely held that belief when he made his application in June 2012 and swore his affidavit on 8 March 2016. If he did, he should, at the least, have sought advice from the Law Society or counsel as to the effect that such a deed would have on his disclosure obligations. To use this as an excuse for not providing proper disclosure, particularly where he has not even bothered to seek such advice, further demonstrates his ignorance of the disclosure requirements. Even if he was genuinely of the belief that the execution of the deed of confidentiality prevented such disclosure he should, at the least, have disclosed the fact that there were complaints when he was at NAAVFLS and stated that he was not providing full detail because he considered he was bound by the deed. This would at least have put the Law Society (and this Court) on notice, and enabled it to pursue the NAAVFLS matter further as it considered appropriate. It is absurd to suggest that a person can be immune from disclosing conduct that

[341] Transcript 12/4/16 p 116.
[342] Ibid p 119.
[343] Ibid.

might be relevant to that person's fitness to practice because he or she has signed a deed of confidentiality.

[300] I have considerable difficulty reconciling his evidence to the effect that he did not think it necessary or appropriate to disclose the NAAVFLS matter because he did not think it relevant, with his later reference to the deed of confidentiality. I think he seized upon the latter excuse very recently, probably as late as during cross-examination, as a further attempt at justifying his non-disclosure of the NAAVFLS matter.

[301] Further, the appellant admitted that he executed the declaration in the June 2012 UPC application without being fully aware of the content of s 11 of the LPA.[344] This is a further basis for concern about his fitness to practice under a UPC, particularly in light of the fact that part 11.3 expressly referred to that provision.[345]

Conclusions

[302] I find that the appellant was in breach of his obligations to disclose the NAAVFLS matters, both when applying for a UPC in June 2012 and in his affidavit of 8 March 2016.

[303] Moreover, I find that by including the words "in relation to the manner in which I conducted myself as a solicitor in that role" in paragraph 10 of his affidavit of 8 March 2016, he deliberately attempted to hide the

[344] Transcript 12/4/16 p 117.
[345] See [286] above.

fact of the NAAVFLS matters and to mislead the Court into thinking that there were no reasons of the kind referred to in s 11(1)(g) or other complaints that should be taken into consideration when considering his fitness to hold a UPC.

[304] I reject the contention made on his behalf that paragraph 10 of the affidavit was not misleading "because the statement made by the appellant was truthful and it cannot be properly said to have misled the respondent simply due to not having included a reference to a non-current complaint made when he was acting in a non-legal position."[346] This too misunderstands the importance of full and frank disclosure required of an officer of the Court.

[305] I agree with the Law Society's submission that the appellant's conduct in failing to disclose and in the reasons he proffered for doing so, demonstrate an appalling lack of insight into his ethical and professional obligations, which lack of insight cannot be reconciled with what one would expect of a reasonably competent practitioner operating under a UPC.

Other matters

Failures to comply with time limits

[306] The appellant has consistently failed to make submissions in relation to complaints within the period permitted by the Law Society under

[346] Appellant's Closing Submissions [38].

s 475(1)(b)(ii) and (6) of the LPA.[347] He also failed to comply with notification requirements regarding his trust account and to respond to the Law Society's correspondence dating back to 2 October 2014 and the Law Society's own motion complaint of 9 July 2015.[348]

[307] The appellant's position in relation to these failures has been that the delay was not significant or that it is explained by his practise as a busy sole practitioner with a lack of clerical support.[349] I agree with the LSNT submission that to consistently respond after the permitted period has expired, and without any request made within the permitted period for an extension of the period (as permitted by s 476(2)), discloses an unprofessional attitude to complaints, which causes delay to their resolution, neither of which are in the interests of the public or the profession.

[308] Further, a failure to produce specified documents at or before a specified time as required by a notice issued under s 621(1) of the LPA is a breach of the LPA and constitutes an offence (s 621(3)). The appellant has contravened this provision on numerous occasions:

(a) in respect of the Williamson complaint: notice was sent on 16 October 2014, requiring production of documents by 3 November 2014; only some documents were produced on 10 November 2014;

[347] Grainger 15/3/16, [124], [126], [139] - [141], [144], [146] - [148], [150] - [152], [163], [165] - [167], [170], [172] - [173].
[348] See [251] - [252] above.
[349] Appellant's Submissions [34] - [40].

further documents were sought on 2 March 2015; no further documents were produced;[350]

(b) in respect of the Bekkers complaint: notice was sent on 8 October 2015, requiring production of documents by 26 October 2015; after two reminder letters, documents were produced on 5 January 2016;[351] and

(c) in respect of the Sommer complaint: notice was sent on 8 October 2015, requiring production of documents by 26 October 2015; after a reminder letter and a reminder email, documents were produced on 3 February 2016.[352]

Failure to provide CPD declaration

[309] The appellant acknowledged that he has not lodged his Continuing Professional Development (**CPD**) declaration, which was due to be lodged by 31 March 2016. He said he had not done so because he normally speaks to a person at the Law Society and he wanted to know what credit points he has and that he may have an over-balance from the previous year which he can carry over to the current year.[353]

[310] Counsel for the appellant submitted that:

[350] Grainger 15/3/16 [125] - [127].
[351] Ibid [164] - [167].
[352] Ibid [171] - [175].
[353] Transcript 11/05/16 pp 106 to 107.

> (a) this is a credible explanation and, while this evidences a failure by the Appellant to adhere to the lodgement of the CPD certificate when due, the consequence of its late lodgement is that that prevents the Appellant from obtaining a UPC for the 2016/2017 year until he provides the required CPD certificate; and
>
> (b) therefore, this line of questioning is not relevant to whether the Appellant is a fit and proper person to hold a UPC.[354]

[311] I reject both of these submissions. Apart from the fact that it is not up to the Law Society to keep track of a practitioner's CPD points, failure to lodge a CPD declaration by the due date is a breach of a condition of a practising certificate, therefore an offence. Again, this kind of submission shows a serious lack of insight as to the underlying reasons for practitioners undergoing continuing legal education.

Failure to make ILP notification

[312] The appellant says that the company, Connop Barristers & Solicitors NT Pty Ltd (**CBSPL**), is and has been since 1 July 2012, an incorporated legal practice (ILP).[355]

[313] An ILP is a corporation that engages in legal practice in the Northern Territory (s 119(1) LPA). It is required to have at least one legal practitioner director (s 125(1) LPA). A legal practitioner director is a director of an ILP who is an Australian legal practitioner holding a UPC (s 118 LPA). Each legal practitioner director is responsible for the management of the legal services provided by the ILP in the

[354] Appellant's Closing Submissions [106].
[355] Connop 23/3/16 [8] - [9] Annexure WC 67.

Northern Territory (s 125(2) LPA), and is obliged to ensure appropriate management systems are implemented and maintained to enable the provision of legal services by the ILP in accordance with the professional obligations of Australian legal practitioners under the LPA (s 125(3) LPA).

[314] Section 122(1) of the LPA provides that, before a corporation starts to engage in legal practice in the Northern Territory, it must give the Law Society written notice, in the approved form, of its intention to do so. If a corporation fails to comply with s 122(1), it is in default of s 122 until it gives the Law Society written notice, in the approved form, of the failure and the fact that it has started to engage in legal practice (s 122(3) LPA). A corporation that is in default of s 122 must not engage in legal practice in the Northern Territory and commits an offence if it does so (s 122(2) LPA).

[315] The approved form for the purpose of s 122(1) is titled "Incorporated Legal Practice" and is available on the Law Society's website.[356] The Law Society had never received a completed ILP form relating to CBSPL,[357] until the one he provided on 17 March 2016.[358]

[316] In his affidavit of 23 March 2016 the applicant said that: "I consider that from the outset of the operation of the legal practice [CBSPL], I

[356] Grainger 15/3/16 [26] Annexure KAG 15.
[357] Ibid [27].
[358] Connop 23/3/16 [9] Annexure WC 67.

informed the LSNT that [CBSPL] would be operating that practice."[359] The appellant did not say any more about the basis for that assertion in his affidavit or elsewhere. He had however mentioned to an officer of the Law Society on 9 February 2016 that he thought the Law Society knew that his practice was being run by CBSPL because the name of that company appeared on his letterhead.[360]

[317] I reject his evidence to the effect that he had informed the Law Society that CBSPL would be operating his practice. He said nothing about such an entity in his June 2012 UPC application[361] and he declared that he was not a director of an ILP when he sought and obtained professional indemnity insurance.[362]

[318] The notification requirements of s 122 have not been complied with. To the extent that CBSPL has operated a legal practice since 1 July 2012 it has been doing so in default of s 122 of the LPA. This would have serious consequences for the corporation and the practice under s 122(5) and (6).

[319] It is concerning that the appellant considers his practice to have been operating as an ILP since 2012, but did not know in 2016, what "ILP"

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[359] Connop 23/3/16 [8].
[360] Grainger 15/3/16 [29]. There is in fact no reference to the company on the appellant's letters annexed to Grainger 15/3/16 Annexures KAG 80 and KAG 109.
[361] See Grainger 15/3/16 Annexure KAG 14, which is the appellant's application for a UPC commencing on 1 July 2012. The section regarding ILPs is left blank; none of the supporting documentation required by the ILP form has been included.
[362] Connop 8/3/166 Annexure WC 35, esp at p 31.

meant.[363] It may be inferred that he was also unaware of the obligations of legal practitioner directors of ILPs under s125 of the LPA. The company may also have committed a breach under s 123 of the LPA.

Application for RBSPC as employed "ILP solicitor director" and the sale to Ms Gray

[320] On 8 February 2016, the appellant applied for a RBSPC indicating that he would be employed by "Connop Barristers and Solicitors" in the capacity of an "ILP solicitor director".[364] However this is not permitted. By virtue of the definitions of "legal practitioner director" and "unrestricted practising certificate", a person cannot be both an ILP legal practitioner (ie solicitor) director and the holder of a RBSPC.

[321] In paragraphs 139 and 140 of his affidavit sworn 8 March 2016, the appellant deposed:

> 139. When I lodged the application [referring to the application for the RBSPC[365]], I stated that *I would be employed by CBSPL*, because I was then attempting to negotiate the sale of my practice to *a solicitor who holds an unrestricted practicing certificate* and I considered that if those negotiations culminated in a sale being agreed, I may be able to continue to work for the practice as an employed solicitor.
>
> 140. Those sale negotiations have not, as yet, culminated in a sale agreement, but *are ongoing*.
>
> (my emphasis)

[363] Connop 23/3/16 [10]. See also Grainger 15/3/16 [29].
[364] Grainger 15/3/16 [23] - [24] Annexure KAG 13, esp at pp 91, 93.
[365] Ibid Annexure KAG 13.

[322] When questioned about these negotiations, on 11 April, the appellant identified the potential purchaser as a Ms Gwen Gray from Grays Legal (**Ms Gray**). He suggested that Ms Gray had sent him an email "saying she was going to purchase" but when pressed to produce the email he resiled from that evidence stating: "No, she didn't make any offer…".[366]

[323] The email from Ms Gray, produced on 12 April following a call for it by Ms Brownhill SC, was dated 17 February 2016 and had as its subject "Your firm".[367] It included the following:

> I refer to the above and thank you for *your proposal*. As you are aware I am in Sydney in trials at present and cannot travel to Darwin until 5 March 2016.
>
> Please seek leave of the Law Society to extend the time for you to either *get a principal or close your practice*. I am very interested in your proposal and believe that there is good prospects of working with you and will need to have contracts drawn up and get some legal advice.
>
> (my emphasis)

[324] When he was cross-examined about these negotiations the appellant conceded that Ms Gray did not attend his offices or otherwise communicate back to him since she had sent the email (of 17 February). Although he swore seven affidavits in these proceedings and has made corrections to "errors" in at least three of them, and

[366] Transcript 11/04/16 p 31.
[367] Exhibit A4.

could have given evidence in chief about this topic on 11 April, he failed to disclose this information until he was cross-examined about it.

[325] When asked whether Ms Gray held a UPC the appellant said: "Yes she does, she's been practicing for very long years in Sydney and owns her old (sic) Gray Legals in Sydney."[368] He subsequently conceded he did not in fact know whether Ms Gray held a UPC.

[326] I consider that it was misleading of him to represent in [139] & [140] of his affidavit of 8 March that there were "sale negotiations" that were "ongoing". He should have disclosed the true facts about the state of those "negotiations". It was also misleading of him saying and implying that he would be employed as a solicitor by CBSPL or by another person with an unrestricted practising certificate.

Appellant's attempts to comply and improve his fitness to practice

[327] Counsel for the appellant has referred to various attempts which the appellant has made, since the Law Society's decision to cancel, to comply with the special conditions imposed in October 2015 and with those imposed by this Court when the stay was granted in February 2016. Counsel also referred to other endeavours which the appellant has made in order to improve his knowledge and skills.

[368] Transcript 11/04/16 p 32.

Mr Hutton's reports

Report of 7 April 2016

[328] Counsel for the appellant referred to Mr Hutton's report of 7 April 2016[369] which was based primarily upon reviews conducted on 29 February and 7 April 2016. The report stated that:

(a) the appellant's level of co-operation continued to be satisfactory and the appellant had given Mr Hutton full access to his office and authorised files so Mr Hutton could conduct the review process;

(b) the appellant had complied with:

(i) SC 3.2 and 3.3 of the UPC from 21 January 2016, based upon Mr Hutton's sighting of 39 of the letters that the appellant had sent to clients. Only four (4) clients had responded with signed authorities for their files to be inspected, which occurred on 29 February.

(ii) SC 3.4 to 3.6 and 3.8.

(iii) SC 3.10 insofar as LHC had provided the appellant with the basis of a legal practice manual, including precedent documents, which he appears to have embraced and incorporated into the firm's business practices and he has

[369] Grainger 8/4/16 Annexure KAG 111.

many more precedents in a practice manual sourced from Peter Maley and Mr Hutton.

(iv) orders 1(e) of the Court's orders made by the Court on 29 February 2016 to the extent of sending letters to 13 clients on 2 and 3 March and receiving the requested authorisation back from two of them, thus enabling Mr Hutton to inspect those two files, which he did on 7 April.

[329] Mr Hutton also stated that:

(a) the appellant was in the process of engaging archivists to assist him with closure of files, the appellant would provide a list of closed files shortly and the appellant was in the process of writing to clients advising that their files will be closed and retained for seven years;

(b) whilst the main issue for Mr Hutton continued to be the appellant's lack of administrative assistance, it was evident to Mr Hutton on his attendances at the appellant's office on 29 February 2016 and 7 April 2016 that the appellant's administrative practices were much improved and that suggestions from LHC, Peter Maley and Mr Hutton had been implemented;

(c) it was apparent from the files examined (presumably the four files inspected on 29 February and the other two files inspected on

7 April) that the appellant was following practices suggested by LHC, Peter Maley and Mr Hutton, and costs disclosure had been provided to those (six) clients.

[330] Mr Hutton had expressed concerns about two of the four files that he inspected on 29 February. Both of those files concerned wills prepared by the appellant which were defective. In accordance with Mr Hutton's recommendation the appellant wrote to each of those clients on 7 March informing them of the defects and advising that both of the wills should be redone by another lawyer and that he would refund the fees paid to him and would pay for another solicitor to prepare new wills.[370]

[331] Counsel for the appellant submitted that this report is most important in these proceedings, because it can act in support of a finding by the Court that the appellant is presently a fit and proper person to hold a UPC.[371]

Report of 27 May 2016

[332] Mr Hutton attended the appellant's office again on 26 May 2016, having been provided with a copy of the LHC report of 20 April 2016[372]. Mr Hutton provided a report the next day.[373]

[370] Connop 8/3/16 [148] - [151] and Annexures WC 64 and WC 65. See too Hutton reports 7 April and 27 May 2016 (Exhibit A5).
[371] Appellant's Closing Submissions [55].
[372] Connop 12/5/16 Annexure WC 77.
[373] Exhibit A5.

[333] The appellant told Mr Hutton that he intended to refund all the monies in his trust account and that he would close his trust account as he did not intend to hold moneys in trust in the future. Mr Hutton said that he was "somewhat surprised by" these intentions, particularly because of the risks of not being paid for criminal work, and urged him to reconsider his position in the event that he is permitted to retain his practising certificate. The appellant informed Mr Hutton that he only had two active files, both involving appearances before the Local Court early in June, and that there were no monies held in trust for either client.

[334] Mr Hutton noted that the appellant's administrative practices were much improved and that suggestions from LHC, Mr Maley and himself have been implemented. He also noted the ongoing concerns expressed by LHC regarding costs disclosure and cost agreement obligations under the LPA.[374]

[335] In relation to Order (1)(e) Mr Hutton said that there is no evidence to suggest that work has been undertaken otherwise than in accordance with the order. However it appears that Mr Hutton did not know about the Niddrie matter discussed at [359] – [367] below. He said that he has not conducted a thorough review of the trust account but that the appellant told him there were discrepancies which resulted in monies being paid from the trust account when they should not have been. The

[374] See [378] below.

appellant told him that the errors occurred as a result of inexperience on the part of his book-keeper and that he is confident that the situation will not arise in the future.

Conclusions

[336] Mr Hutton has found the appellant's level of co-operation "satisfactory", that he has complied with those conditions and orders relevant to Mr Hutton's functions and observed some noticeable improvement in his administrative practices. Unfortunately however, Mr Hutton has only been able to review six files, despite the appellant having sent some 465 letters to clients seeking their permission for their files to be reviewed. Moreover, two of those six files concerned wills that were defective and need to be redone by another solicitor. I cannot conclude from Mr Hutton's reports that the appellant is a fit and proper person to hold a UPC.

Assistance of LeMessurier Harrington and Mr Maley

[337] I shall discuss the appellant's progress in relation to the LHC report and recommendations of 27 October 2015 and the assistance provided by Mr Maley following the making of Orders 1(i) and 1(o), in [369] - [379] and [380] - [384] below, respectively.

Attendance at Practice Management Course in NSW in May 2016

[338] The appellant attended and "successfully completed" a Practice Management Course for sole practitioners conducted by FRMC Pty Ltd in Sydney on 4-6 May 2016.[375]. The course is designed for solicitors "who wish to comply with The Law Society of New South Wales's requirements seeking to satisfy the removal of Condition 3 from a practising certificate."[376]

[339] Counsel for the appellant submitted that the appellant's attendance and satisfactory completion of the course is another strong reason why the Court should find that the appellant is presently a fit and proper person to hold a UPC.[377] I disagree. Although the appellant exhibited some 320 pages of "course materials"[378] there is no evidence that he read or understood and remembered any of it.

Course on Costs Agreements and General Costs Communication

[340] The appellant participated in a very brief course conducted by Mr Giles Watson, a costs consultant in Brisbane who has lectured on costs agreements at Queensland University of Technology for the last three years and at the Queensland Law Society for nine years before that. The course consisted of three one-on-one lectures each of one hour's duration conducted by Skype on 18, 19 and 20 May 2016.

[375] Connop 12/5/16 [12] and Annexure WC 83.
[376] Ibid Annexure WC 80 at p 20.
[377] Appellant's Closing Submissions [135].
[378] Connop 12/5/16 [11] and Annexure WC 82.

[341] Mr Watson wrote a letter to the Court confirming that the appellant "successfully completed the course" and stating that he "actively participated in the course throughout and demonstrated sound understanding of both the issues discussed, and of his obligations as a solicitor." Mr Watson stated that the course "was directed to the relevant obligations under the *Legal Profession Act 2009* (NT), specifically sections 303-330, and the *Legal Profession Regulations* (NT)." The letter does not otherwise indicate what issues were discussed or how Mr Watson was able to be satisfied within such a short period that the appellant demonstrated a sound understanding of his obligations as a solicitor.

[342] The appellant agreed that he undertook that course because he did not have proper understanding of the requirements regarding costs disclosure and costs agreements.[379] He exhibited almost 200 pages of materials including the Queensland Law Society Costs Guide 2014 edition (130 pages), printouts from a PowerPoint presentation and a document entitled "Costs, Billing and Profitability" (51 pages).[380]

[343] When asked whether he had read all of those materials the appellant said: "I'm still reading them. There is so much to read." He was then asked whether he had been able to read the Queensland Law Society Costs Guide and said: "Not fully, sorry." When pressed about this he

[379] Transcript 1/6/16 p 36.
[380] Connop 27/5/16 Annexure WC 86.

said that he has read "probably only the first couple of pages because we were focusing on using his overheads more than anything." He has not read the Costs, Billing and Profitability document.[381] He said he had a lot of questions to ask Mr Watson. He did not have to complete any written test or other document to show that he understood everything.

[344] The appellant agreed that the course materials related to Queensland practitioners and acknowledged that there are differences for Northern Territory practitioners. He said he read sections 303 to 330 of the LPR.

[345] Counsel for the Law Society referred him to a section entitled "1.6 Applicable laws" in Chapter 1, of the Queensland Law Society Costs Guide, and in particular to a sentence on page 9 which states that "costs in the Family Court as between solicitors and their clients have been regulated by the relevant state or territory legislation, subject to additional costs disclosure requirements."[382] When asked about the "additional costs disclosure requirements" for Family Law matters and to identify one such requirement he referred to the "UCPR", which he described as "Universal Civil Practice Rules". His understanding is that they apply in all Family Law proceedings right across the country

[381] Transcript 1/6/16 p 37.
[382] Connop 27/5/16 Annexure WC 86 at p 93.

"because it's a Federal jurisdiction, except Western Australia."[383] This is obviously wrong and creates considerable doubt about the appellant's knowledge and competence in the practice of family law in the Northern Territory. As stated on page 7 under the heading "1.1 Abbreviations table and commonly used terms" "UCPR" is the well-known acronym for the *Uniform Civil Procedure Rules 1999* (Qld), which would be unlikely to have application outside Queensland.

[346] The appellant was also asked about the subheading immediately below that sentence "1.6.2 Australian Solicitors Conduct Rules 2012". He said, wrongly, that those rules apply in the Northern Territory.[384]

[347] Counsel for the appellant emphasised Mr Watson's opinions that I quoted in [341] above. Unfortunately I cannot give those opinions much weight, partly for the reasons set out above, and partly because of the superior advantage that I have had observing and listening to the appellant and perusing other materials in the course of his appeal.

Conclusions

[348] Although the appellant attended and "successfully completed" these courses there is nothing in his testimony on 1 June 2016 that suggests that he has learnt anything from them.

[349] I agree with senior counsel's submission that the appellant has left it

[383] Transcript 1/6/16 p 41-2.
[384] Ibid p 41.

very late to attempt to improve his knowledge. Since August last year he was aware of concerns by the Law Society which resulted in the special conditions being imposed from October and further concerns leading up to the cancellation of his UPC. Prior to that, he was aware of various complaints, particularly about costs disclosures and costs agreements, including the Law Society's own motion complaint of July 2015 that related back to concerns expressed in October 2014 concerning his trust account. And yet it was not until the second day of the hearing of his appeal that he announced that he was proposing to, and undertook to the Court that he would, attend a Practice Management Course to be conducted by the Queensland Law Society on 2-4 June 2016.[385]

[350] I also agree that concerns about a practitioner's honesty and integrity and candour are not matters that can be alleviated by the practitioner undertaking such a course. Nor can such concerns be addressed by confining the practitioner to practice in particular courts or in relation to particular areas, or by the practitioner not operating a trust account.

[351] Further, the appellant should already have had a proper knowledge and appreciation of many of the matters where it has been found wanting. One would expect that he was taught and learnt about a wide range of subjects before graduating with his Law degree in 2003, and about ethics and legal practice matters before being admitted as a legal

[385] Transcript 12/4/16 p 175. See Exhibit A2.

practitioner in August 2003. He held a restricted practising certificate in the Northern Territory from November 2004 until 1 July 2010. He worked as an employed solicitor for about six months with a Darwin legal firm in 2005, as a public servant until 2009, as a senior investigation officer for the NT Ombudsman's office in 2009 and then for NAAVFLS.[386] He should also have been attending CPD programmes in compliance with the Law Society's requirements and thus keeping himself up-to-date in areas relevant to him and his practice. And, he attended the course in trust accounts in March 2015 following the Law Society's correspondence concerning his trust account.

[352] Notwithstanding all of that, the appellant's suitability to hold a UPC has been found wanting in numerous respects. I therefore have real doubts about any beneficial effect of these recent courses upon his suitability.

Conduct in these proceedings

[353] As I have already noted the Law Society's decision to cancel the appellant's UPC was stayed on a number of conditions. The appellant swore a number of affidavits at various stages of the proceedings and was cross-examined by senior counsel for the respondent on 11-12 April and 1 June after the appellant was given leave to reopen his

[386] Connop 8/3/16 [2] – [9].

appeal. This provided a good opportunity for the Court to observe the appellant's fitness to hold a UPC having regard to his responses to questioning and the submissions made by counsel on his behalf.

Compliance with stay conditions

[354] The Court's order made on 29 February 2016 staying the Law Society's decision to cancel the appellant's UPC contained detailed conditions with which the appellant and CBSPL were to comply.

Order 1(c)

[355] Order 1(c) required the appellant, by 2 March 2016, to notify all clients in respect of which operative instructions were held, of the Law Society's decision to cancel, the appeal, the stay, the hearing date, and his inability to continue to act if his appeal was unsuccessful.

[356] Contrary to this order the appellant did not provide letters to Mr Battye[387] and Ms Niddrie[388] until 3 March 2016. Nor did he apply to the Court for an extension of time for compliance with this condition. His failures to comply with the strict timeframe applicable to this condition have not been explained.

Order 1(e)

[357] Order 1(e) provided that the appellant could only perform legal services on behalf of new and existing clients after notifying them that

[387] Connop 5/4/16 Annexure WC 67 at pp 23 - 24.
[388] Ibid pp 25 - 26.

their files may be the subject of review by the Reviewer (Mr Hutton), a Supervisor (Mr Maley) and LHC and that their written consent to such reviews was required before any further action could be taken.

[358] The appellant was asked about his dealings with Ms Niddrie, who had not yet responded to his letter of 3 March and provided written consent as required by Order 1(e)(ii).

[359] On 7 April 2016 the appellant sent a text message to Ms Niddrie on 7 April 2016, which said: "Thanks. Get medical report for me also if u can if not let me know and I can send letter to you [sic] dr".[389]

[360] When asked about this text message the appellant admitted that he had telephone discussions with Ms Niddrie on 7 April 2016 during which he suggested Ms Niddrie obtain a medical report for the purposes of her sentencing proceedings and advised her why she needed to get such a report.[390] He said that apart from a text message he received from Ms Niddrie on 12 April 2016 he had not heard any further from Ms Niddrie since 7 April, and that he was still expecting to receive the consent letter back from her "so I can continue to act - so I can start acting for her."[391]

[361] I agree with the Law Society's submission that by telling Ms Niddrie to obtain a medical report for the purpose of her sentencing proceedings

[389] See Exhibit A3 and Transcript 12/04/16 pp 181-2.
[390] Transcript 12/04/16 p 183.
[391] Ibid p 184.7.

the appellant was performing legal services in breach of Order 1(e). However I accept that the breach was relatively minor in the scheme of things.

[362] The appellant's reference to the text message received from Ms Niddrie on 12 April, the second day of his cross-examination, also resulted in him changing his answer, although the text should have been fresh in his mind.

[363] He said that:

> … there's a lady that's a new client that's actually texted me this morning … who basically wants me to act and she's going to drop the form off.[392]

This was a reference to the Order 1(e) letter that he had provided to Ms Niddrie on 3 March.

[364] Then occurred the following exchange:

> She texted that she was going to sign the letter and drop it off, did she?--- Yes, she said that she's …[393]

[365] Ms Brownhill then called for production of the text message. Then there was the following exchange:

> The text message where she said to you, "I will sign the consent letter"---She didn't say that in the text, she just told me where she was in the women's shelter.

[392] Transcript 12/04/16 p 155.
[393] Ibid p 155.

> You just gave evidence a second ago … that she texted you and said …--- Well I'll retract … *Sorry, I'll retract that remark,* because I was trying to look at the question you asked before.
>
> Well, retracted, because it's a lie, right?--- No, because I was trying to answer your question before that and I got mixed up.
>
> Mr Connop, you didn't get mixed up. You said she texted and said she would sign the consent form?--- No, sorry, *I'll withdraw that.* She just texted me and told me where she was at the women's shelter.
>
> Which is completely different to the evidence you gave a moment ago?---That's correct.[394]
>
> (emphasis added by me)

[366] This was not the only time that the appellant purported to "retract" or "withdraw" an answer following questions which demonstrated that his original answer was wrong.

[367] Moreover, given the concerns of this Court and others in relation to the appellant's competence in relation to other matters such as the Hes, Ray, Sommers and Hall matters, I have reservations about the appellant's ability to properly advise Ms Niddrie, a person who, according to him, has some mental health issues.[395]

Order 1(h)

[368] Order 1(h) required the appellant to provide the Law Society with a report from the Reviewer regarding compliance with the conditions of the stay on or before close of business on 31 March 2016. This did not

[394] Transcript 12/4/16 pp 155-6.
[395] Ibid p 183.

occur. Mr Hutton did carry out a review of some files on 29 February 2016. He attended the appellant's offices again on 8 March 2016 but was unable to conduct a further review as the appellant was "called away to Court and the archivists were making an assessment of [his] files." Mr Hutton was then on leave for two weeks and apparently not able to attend the appellant's office again until 7 April. He provided his further report on 7 April 2016.[396] I accept that the appellant's non-compliance with this Order was due to matters outside of this control.

Orders 1(i) & (j)

[369] Order 1(i) required the appellant to "continue to progressively implement the legal practice management procedures and systems recommendations made in the LHC report dated 27 October 2015.

[370] Order 1(j) required the appellant to retain the services of LHC to conduct a further review of the legal practice management procedures and systems. LHC were to attend the appellant's practice on 14 April 2016 to undertake that review, and to provide a report by 21 April 2016.[397]

[371] On 4 March 2016, LHC wrote to the applicant, by email,[398] providing him with an excel spreadsheet[399] summarising their recommendations

[396] See Connop 5/4/16 [7] - [14]; Grainger 8/4/16 Annexure KAG 111 and [328] - [336] below.
[397] Connop 23/3/16, [152], Connop 5/4/16, Annexure WC 70.
[398] Connop 5/4/16 Annexure WC 70 at p 45.
[399] A copy of the spreadsheet (as completed by the appellant) appears at Connor 5/4/16 WC 70 pp 46 to 47.

and requesting that the applicant "complete and return the document to us prior to 11 April 2016" in preparation for their visit on 14 April. The spreadsheet listed 21 recommendations and contained a column headed "Implemented (Yes/No/partial)".

[372] The applicant completed the spreadsheet and provided it to LHC under cover of an email of 5 April 2016.[400] In the column headed "Implemented (Yes/No/partial)" the appellant inserted the word "yes" opposite all but two of the recommendations.

[373] When questioned about a number of the recommendations, it became apparent that he had not in fact implemented them.[401] Far from implementing recommendations 2 and 3 the applicant was simply continuing with practices that he had in place before the recommendations had been made.[402] The appellant conceded that his answer as to whether recommendation 7 had been implemented should have been: "No, But, I've had some discussions with Mr Hutton and Mr Maley about these sorts of things."[403] As to recommendations 16, 18, 20 and 21, the appellant ultimately conceded that it would have been more accurate to state in the spreadsheet: "No I haven't done it, because I need more assistance", rather than saying "yes" (that the

[400] Connop 5/4/16 Annexure WC 70 [18].
[401] Transcript 12/04/2016 pp 120-130.
[402] Ibid pp 121-124.
[403] Ibid p 125.

recommendations had been implemented) but more assistance was required.[404]

[374] Counsel for the appellant submitted that the Court could find that the statements made by the appellant indicate that he "generally attempted to make correct statements in the spreadsheet about action taken by him to make changes to his practice management systems in the manner recommended by [LHC] and that he had then wholly or partially implemented quite a few of those recommendations". I disagree.

[375] Even if the Court could so find, the fact is that a significant number of his responses were misleading. The misleading and careless nature of the appellant's responses to bodies such as LHC also causes significant concern about his fitness as a legal practitioner.

[376] Moreover it is apparent that he had failed to progressively implement the LHC recommendations. His evidence that "I am implementing her recommendations" (in the 27 October 2016 report) in his affidavit of 24 February 2016[405] somewhat overstated the true position.

[377] Jane LeMessurier and Sue Harrington of LHC attended the appellant's office on 20 April 2016 and prepared a Follow-Up Report, which was provided to the Law Society on 29 April 2016.[406] The Report indicated that the appellant was implementing a number of the recommendations

[404] Transcript 12/04/2016 pp 129-130.
[405] Connop 24/2/16 [20(b)].
[406] Connop 12/5/16 [3] – [5] and Annexures WC 77 and WC 78.

previously made by LHC in the report of 27 October 2015. Much of the Report was based upon what the appellant told the reporters. The appellant informed LHC that he had only taken on two new files since January 2016 and that both of these were minor criminal matters. The Report also noted that the appellant was only taking on work in the criminal and family law areas, and had recently transferred to another firm a criminal property forfeiture matter.

[378] LHC reported that the appellant "had not finally settled his costs agreement document and had not incorporated [some] risk management suggestions". LHC added an additional recommendation: that the appellant ensures that he "fully understands and complies with the costs disclosure and cost agreement obligations under the LPA". The appellant said that that is the reason why he "decided to try to locate a good quality continuing legal education course which dealt with that area and attend it as soon as possible." Hence the three hour course with Mr Watson, referred to in [340] above.

[379] Although the Report is positive, its usefulness in assessing the appellant's fitness to hold a UPC is somewhat limited. Its primary focus is practice management. The Court is particularly concerned in the present matter with more fundamental issues such as honesty and integrity and general competence. Even then LHC has only had limited time to spend reviewing the practice since its initial review in October 2015 and the appellant has only had a very small number of files

available to be reviewed. Moreover, much of the views expressed in the latest report depend upon the accuracy or otherwise of what the appellant has told the reporters.

Order 1(o)

[380] Order 1(o) required the appellant to engage the services of Peter Maley or another legal practitioner holding a UPC to be approved by the Law Society (the Supervisor) to attend at the appellant's office premises for at least two hours per week to review active client files and make recommendations as to how to properly conduct those matters.

[381] In his affidavit of 5 April, the appellant said that Mr Maley had attended the appellant's office or vice versa about three times per week, has reviewed one file and partially reviewed another, and gave some advice regarding some aspects of practice management.[407] Contrary to the terms of Order 1(o) only two of those attendances involved Mr Maley actually attending the appellant's office premises.[408]

[382] In his email of 5 April 2016 Mr Maley confirmed that he has met with the appellant on at least three occasions each week and provided assistance and advice regarding the day-to-day operation of the firm and the operation of the trust account. He said he attended the appellant's business premises on two occasions and the appellant has

[407] Connop 5/4/16 [15].
[408] Ibid Annexure WC 69 at p 43.

attended his office on at least four occasions. The appellant has also contacted him by telephone and email on several occasions and he has spoken to the appellant in the precinct of the Darwin Local Court regarding the day-to-day operation of his practice. Mr Maley has provided the appellant with various precedents including draft costs agreements. He conducted a file review and provided advice regarding the closing of historic files and returning monies held in trust.
Mr Maley expressed the opinion that the appellant "seems to have generally taken on my advice and has changed some of his procedures and tidied up his office."[409]

[383] Counsel for the Law Society submitted that the advice given by Mr Maley does not fall within the purview of Order 1(o), which was to review files and make recommendations about how to properly conduct the matters. That is, it is directed, not to practice management (which is essentially the scope of the review processes being undertaken by Mr Hutton and LHC), but to supervision of the legal conduct of matters undertaken by the appellant.

[384] Counsel also contended that there is no evidence of any consideration of that nature by Mr Maley of the appellant's files.[410] This is not correct. The evidence of the appellant and Mr Maley is to the effect that at least one file was reviewed by Mr Maley. That much of

[409] Connop 5/4/16 Annexure WC 69 at p 43.
[410] LSNT Submissions [89].

Mr Maley's attention was directed towards the appellant's practice management and procedures is not surprising given that there were only a handful of current files, six at the most, which Mr Maley would have been permitted to review in any event.

Conclusions

[385] In summary, I consider that the appellant has not strictly complied with the conditions imposed by the Court upon the stay of the Law Society's decision to cancel his UPC, namely those in Order 1(c), (e), (h) and (o) (albeit that the failure to comply with Order 1(h) was for reasons beyond his control) and that the extent of his compliance with Order 1(i) has been unsatisfactory.

[386] I agree with the respondent's submissions that the fact that the appellant did not comply with those orders and provided no satisfactory explanation for his failures to comply with some of them demonstrates a reckless disregard for, and a fundamental lack of understanding of the importance of, the need for strict compliance with the Court's Orders.

Undertakings to the Court

[387] I have already referred to references in the NTPCRs and in *Dal Pont* to the importance of undertakings to a court.[411] The appellant gave three undertakings to this Court. The first was that he would attend the

[411] See [39] - [41] above.

Practice Management Course in Brisbane on 2-4 June 2016 (the **Brisbane PMC undertaking**).[412] The second undertaking was that he would do all things necessary to achieve an orderly closure of the firm's trust account as soon as reasonably possible, provide the Law Society with a trust account closure notification at the required time, and not hereafter use the trust account for any current or future client matters (the **close the trust account undertaking**).[413] The third undertaking was that he would engage a chartered accountant to review the firm's accounts and perform whatever accounting entries are required to put the accounts in order within two weeks of 12 May 2016 (the **chartered accountant undertaking**).[414]

[388] The appellant did not comply with either the Brisbane PMC undertaking or the chartered accountant undertaking. He did however seek and was given leave to be excused from the Brisbane PMC undertaking.

[389] The appellant did not seek leave to be excused from the chartered accountant undertaking. When it was put to him that he did not engage a chartered accountant as he had promised he said: "No; we did" and proceeded to explain why. When asked directly whether he had complied with the undertaking he said: "No, I did engage a chartered accountant, Maria Poullas". This was the lady who he had previously

[412] See [12] above and [349] above.
[413] Connop 27/5/16 [7].
[414] See [259] - [263] above.

referred to as his bookkeeper and whose ability to do that particular work he had previously doubted.[415] He also said in effect that the work could be done by him and Ms Poullas, and that his purpose in engaging an independent chartered accountant was merely to obtain a second opinion. In other words, there was no harm done by him not complying with the undertaking. (As I have already observed there were in fact significant errors and discrepancies in relation to some of the letters, invoices and trust account statements that the appellant posted out on 27 May.)

[390] The appellant eventually agreed that he did not fulfil the undertaking.[416] When it was put to him that that is a "very serious matter, isn't it?" he said: "I don't know. That's what you're telling me it is."

[391] After he agreed that he had heard it said before that one shouldn't give undertakings about things that are beyond one's control the following exchange occurred:

> But you gave an undertaking about things that were beyond your control anyway?--- No. I just assumed at the time we did give it that that's what was going to happen. *Sorry*. I mean, it was supposed to happen and it didn't because someone wasn't available.[417] (my emphasis)

[415] See [263] above.
[416] Transcript 1/6/16 p 47.1.
[417] Ibid p 47.

[392] Counsel for the Law Society asked the appellant what he understood could be the consequences of breaking an undertaking to the court. He said: "Well, you can get in trouble … serious trouble." After being asked to be more specific about what he meant by this answer he said:

> You're committing perjury to the court and that's what you're leading to. I know that. That's what you want me to say. That's what you got in my answer.[418]

[393] After being further pressed for an answer and providing non-responsive answers he said:

> I just said, "serious trouble" because I don't know the consequences of whether you get a fine or whether you get referred to criminal proceedings or - because it's a very general question. … Well, you could get a fine. I don't know.[419]

[394] Clearly the appellant still had no idea of the importance of undertakings to the court, notwithstanding the emphasis placed upon undertakings in case law and easily found in professional conduct rules and textbooks such as *Dal Pont*.

[395] Nor was the appellant conscious of the need to be confident of being able to comply with an undertaking before giving it, particularly where it might depend upon matters outside his control. This is all the more surprising in light of the fact that he had previously been cross-examined about giving the Brisbane PMC undertaking without having any idea about its costs, location or course prerequisites. When it was

[418] Transcript 1/6/16 p 44.
[419] Ibid p 45.

put to him that he should not have given such an undertaking without knowing more the appellant had said:

> No I don't agree with what you're asking because you're just going overboard pedantic and I'm trying to move forward and say I want to do this course … .[420]

[396] Further, the appellant appears to have ignored the requirement to provide early and complete disclosure of any likely inability to comply with an undertaking and the reasons therefor, and to seek to be excused from the undertaking. This is all the more surprising as he had done just that in relation to the earlier Brisbane PMC undertaking.

[397] It was not sufficient to simply say "sorry" as if to suggest that should be the end of the matter. I agree with Ms Brownhill's submission that the appellant seems to have seen the giving of an undertaking as a convenient way to attempt to overcome perceived difficulties.

The appellant's performance as a witness

[398] Following and in relation to the appellant's cross examination during the hearing in April the Law Society submitted that: "to put it charitably, [the appellant] was less than a credible witness." In giving his evidence, the appellant:

(a) frequently paused for extended periods of time following the putting of questions to him and had to be prompted for answers by

[420] Transcript 12/4/16 p 177.

counsel for the Law Society and the Court;[421]

(b) was non-responsive and argumentative;

(c) had to be instructed on numerous occasions by counsel for the Law Society and directed by the Court to answer questions and confine himself to the questions asked;[422]

(d) repeatedly made comments which demonstrated that his concern was more with where questions were leading than in answering them;[423] and

(e) admitted to proffering false testimony.[424]

[399] I agree. I found that many of the appellant's assertions and answers were evasive, absurd, false or misleading.[425]

[400] The appellant was often anxious to quickly provide an answer favourable to his cause, without pausing to consider whether or not it was true or misleading, and in the hope that his answer would be accepted without further question. When questioned further, he ended up changing or even contradicting his earlier answer. Indeed there were several occasions when he expressly "retracted", withdrew or modified previous answers that were incorrect, often without any

[421] Transcript 11/04/16 at pp 35, 36, 38, 58, 61 and 67.
[422] Transcript 11/04/16 at pp 41, 47, 54, 58, 59, 60, 71, 74, and 76; Transcript 12/04/16 pp 138, 139, 147 to 148, 154 and 177.
[423] Transcript 11/04/16 pp 37, 84, 92, and 93 Transcript 12/04/16 p 156.
[424] Transcript 11/04/16 pp 59, 71.7 and Transcript 12/04/16 at pp 150 to 151.
[425] See for example [56], [58], [65], [67], [69], [70], [85], [120], [122], [143] - [151], [165] - [167], [193], [209], [210], [211], [262] and [303] above.

apparent embarrassment about having initially provided a misleading answer since proven to be wrong.[426]

[401] On other occasions the appellant tried to avoid answering the question by saying something non-responsive and when corrected, blaming counsel for not asking clear questions. I found many of his answers to be opportunistic and not based upon any belief as to their truth or accuracy. I agree with the submission by the respondent's counsel that the appellant was reckless about the truth, as is evidenced by his numerous retractions and apologies and changes to his evidence, both in his affidavits and in the witness box.

[402] Unfortunately the appellant continued to behave in a similar manner when he was cross-examined on 1 June after he was given leave to reopen his case. On some occasions he was reluctant to answer questions directly and provided answers that were unresponsive and sometimes self-serving, or wrongly blamed counsel for not putting the question clearly. On other occasions he quickly provided answers that he found himself obliged to withdraw or modify.

[403] During that cross examination there were further examples of the appellant providing answers that were misleading or answers unexpected of an honest witness. They included: his answers about

[426] See for example the passages quoted in [234] & [365] above. See too Transcript 11/04/16 p 59.

looking at the trust account bank statements;[427] saying "I'm not going to lie to the court";[428] his evidence about reading the Watson material;[429] and his evidence about the significance of undertakings and simply saying "sorry" when asked about his breaching of the chartered accountant undertaking.[430]

[404] None of this is the kind of conduct to be expected of a legal practitioner, especially one holding an unrestricted practising certificate.

[405] In the Appellant's Closing Submissions counsel made some concessions concerning the appellant's conduct and demeanour in the witness box and identified a number of factors that should be taken into account when assessing this. He referred to the fact that the appellant said he was not feeling well on the first day of his evidence (on 11 April) following two hours of cross-examination and the fact that he was cross-examined for several hours on the second day of the hearing and submitted that he would have been under considerable emotional stress when being cross-examined about such serious matters which included his performance of his duties as a solicitor. Counsel also contended that the appellant should be regarded as an inexperienced witness, having only given evidence previously on only

[427] See [262] above.
[428] Transcript 1/6/16 p 33.
[429] See [343] above.
[430] See [390] - [397] above.

one occasion.[431] Counsel also contended that "despite their legal training and experience appearing on behalf of clients in courts, some might say that solicitors are often poor witnesses." [432]

[406] I reject those contentions. As a practitioner who appears in courts, both as a solicitor and as counsel, the appellant should have a much better idea than most people of how witnesses should conduct themselves, and would regularly advise clients and witnesses about such matters. The appellant would have spent a lot more time in court than most other people and would have questioned witnesses himself and seen witnesses being questioned by others in court. Moreover, solicitors commonly settle and make affidavits in relation to matters in which they are involved and would be expected to understand the need for their content to be relevant and focused and to expect the deponent to be cross-examined on the affidavit.

[407] Counsel for the appellant submitted that save for one instance, at all times, the appellant appeared to be attempting to answer the questions asked by the Law Society's counsel and the Court in a truthful manner, to the best of his ability. I disagree.

[408] Counsel conceded that the appellant sometimes gave answers which did not respond to the questions put to him and on a few occasions inappropriately asked the Law Society's counsel what she intended by

[431] Appellant's Closing Submissions [13].
[432] Ibid [14].

her questions. I accept counsel's submission that "that situation alone does not establish that he was attempting to mislead the Court or be untruthful."[433] But there was much more about these aspects of his conduct that create great concern about his conduct in the witness box.

[409] The "one instance" referred to by counsel concerned his false answers about having told Tropic Net to alter his website. See [164] to [167] above. In the Appellant's Closing Submissions counsel said that the appellant had asked him as his counsel to convey to the Court his "sincere apology for having given that untruthful answer."[434] Counsel submitted that, despite the appellant's admission that that answer was a lie, it remains open for the Court to find that that aberration may be explained as being due to "evidence fatigue" and the stress that the appellant has been under in the proceedings, and that the appellant at all other times appeared to be attempting to give truthful answers.

[410] As I have indicated elsewhere I do not consider that he was attempting to give truthful answers at all other times. Whatever "evidence fatigue" and stress he was under was largely of his own making as he tried to explain away perfectly proper questions that he had difficulty answering in a way that did not reflect poorly upon him and his conduct.

[433] Appellant's Closing Submissions [15].
[434] Ibid [18].

[411] More importantly, the lie about his website cannot simply be swept aside as an aberration, or by way of the apology provided in the course of closing submissions, even if the lie was told when the witness was tired and stressed or inexperienced. For a witness, in particular a legal practitioner, to lie under oath is a most serious matter, which raises serious doubts about the ability of a court to accept unreservedly and without question other statements made or answers given by the practitioner in court.[435] As counsel for the Law Society put it: "the undisputed lie is an important prism through which to view the rest of Mr Connop's evidence and his actions in other contexts."[436]

[412] Counsel for the appellant also submitted that:

> Even if under cross examination a witness' answers can be shown to be an incorrect statement of historical facts, due to there being other associated factual details which the Court considers to be more reliable, that does not necessarily mean that the witness was intending to be untruthful when giving those answers. Instead, the Court might find that those incorrect answers may have been due to a poor recollection by the witness of those events or because at the relevant time the witness misunderstood those facts and has continued to do so up to the time when giving his or her evidence or, alternatively, the Court may not make any findings in relation to the truthfulness of the witness' answers, because it does not consider it is able to form a definite opinion in that regard or feels it does not need to do so.[437]

[413] The problem with this submission is that the appellant often gave answers spontaneously and confidently without any suggestion that his

[435] cf Street CJ in *Foster* quoted in [31] above.
[436] Transcript 1/6/16 p 60.
[437] Appellant's Closing Submissions [21].

recollection was poor or that he did not understand the relevant facts. Most of the questions concerned facts that were within his own knowledge. If he was unable to answer a particular question he should have said so. This would be expected of any witness, even more so a legal practitioner whose answers a Court should be able to rely upon without further question.

[414] I agree that the appellant has demonstrated by his conduct in the witness box that he is an individual in whose word and integrity no Court can place its trust.[438] He is not a fit and proper person to operate under a UPC.

Inappropriate avoidance of responsibility

[415] The Law Society has also referred to the appellant's frequent attempts to shift responsibility for his shortcomings onto others.

[416] On numerous occasions he blamed his bookkeepers, including his current bookkeeper, for making errors for which he was ultimately responsible.[439] On several occasions he blamed his clients, for example Mr Loizou for failing to provide instructions[440], Ms Hall because "she never cared for her son" as justifying the tone of his correspondence with her[441], Ms Ray's failure to attend on him for his failure to discharge his "professional obligations and to discharge [his] retainer"

[438] See too [169] above.
[439] See for example [82], [95], [110], [113], [132], [140], [254], [271] and [335] above.
[440] Transcript 11/04/16 p 96.
[441] Transcript 12/04/16 p 140.

in the Ray matter[442] and Mr Hes for being a difficult client.[443] He also wrongly blamed Mr Hutton for telling him that he should send SC 3.2 letters to every client that he had ever had.[444] And he wrongly accused Justice Kelly of cutting him off and preventing him from making oral submissions during the Hes matter.[445]

[417] On several other occasions he attempted to avoid responsibility for not being prepared or for providing misleading information by saying that he was too busy or "pressed for time".[446]

[418] These matters further demonstrate the appellant's inability to organise himself and his resources to ensure that he can properly perform his functions as a legal practitioner who has the responsibilities that accompany the holding of a UPC. They also show a serious lack of insight on his part concerning such responsibilities.

Findings and Conclusions

[419] Counsel for the appellant maintained that the Law Society was wrong to conclude that the appellant was not a fit and proper person to hold a UPC and consequently should not have cancelled his UPC. I have rejected this claim for the reasons already expressed above.

[420] Counsel also contended that even if the Law Society was justified in

[442] Grainger 15/3/16 Annexure KAG 90 at pp 548 to 549.
[443] Transcript 11/04/16 p 79. See too [243] above.
[444] See [66] - [69] above.
[445] See [206] - [210] above.
[446] See for example [94] (Ms Ray), [117] (Mr Loizou), [156] (Sommer complaint) and [204], [211], [218] and [236] (Hes) above.

cancelling the appellant's UPC, the actions taken by the appellant since then, including improving the firm's management practices, attending courses, posting the finalised trust account statements and cheques, and remedying past breaches of the LPA, warrant a finding that the appellant is now a fit and proper person to hold a UPC.[447] I have also rejected this contention.[448]

[421] Counsel for the Law Society provided a list of findings which it submitted the Court should make and conclusions which it contended that the Court should reach.[449]

[422] For the reasons already expressed I find that:

(a) The appellant failed to comply with special conditions imposed upon his UPC, namely SCs 3.2, 3.3 and 3.4.

(b) The appellant has failed to exercise the oversight of his trust account and invoices that one would expect of a fit and proper person operating under a UPC.

(c) The appellant failed to provide his 2015/2016 Trust Account Declaration to the Law Society on or before 8 April 2016 and had no reasonable excuse for that failure.

[447] Appellant's Supplementary Closing Submissions [9].
[448] See [348] - [352] above.
[449] LSNT Supplementary Submissions [242].

(d) The appellant failed to provide his 2015/2016 CPD Declaration to the Law Society within time and had no reasonable excuse for that failure.

(e) The appellant's failures to provide trust account statements or final accounting to Mr Loizou for a period exceeding eighteen (18) month, to Mr Bekkers until 28 May 2016, and to Ms Hall or Mr Hall until 8 April 2016 and his use of costs agreements specific to practice in New South Wales and lacking disclosure requirements of the LPA were conduct falling short of what one would expect of a person operating under a UPC and of a reasonably competent legal practitioner in his position, and demonstrate the appellant's lack of insight in relation to his obligations as a legal practitioner including his obligations under the LPA and the LPR and to his clients generally.

(f) The appellant has breached s 247(3) of the LPA and possibly ss 252, 254(1)(b), 255(1), 256 and 257 of the LPA.

(g) The appellant's itemisation of fees in his costs agreements, for staff he did not in fact employ, was conduct capable of misleading his clients into believing that their work would be charged, in part, at lower rates than those which the appellant himself would

charge.[450]

(h) The appellant has breached Orders 1(c), 1(e)(ii) and 1(i) of the Orders, and remained in breach of Order 1(i) as at 12 April 2016.[451]

(i) In the Hes matter, the appellant (i) failed to adequately prepare his client's case, (ii) advanced submissions contrary to his client's interests, (iii) advanced submissions that had no proper basis, (iv) failed to make obvious submissions in mitigation, (v) failed to assist his client and the Court as one would expect a reasonably competent legal practitioner to do, and (vi) misled the Court by suggesting that he had undertaken research and looked at a database when this was untrue, and by tabling a bundle of summaries of sentencing remarks and suggesting the first two were those to which her Honour should direct her attention all.[452]

(j) The appellant was required to disclose in his application for a UPC in June 2012 that he had been stood down by NAAFVLS and was investigated for complaints of bullying and harassment.

(k) His failure to disclose the information regarding the NAAFVLS matter in each of the June 2012 UPC application and in his affidavit of 8 March 2016 in this proceeding was conduct falling

[450] See [104], [137] and [144] - [153] above.
[451] See [385] - [386] above.
[452] See conclusions at [248] - [249] above.

short of what one would expect of a fit and proper person operating under a UPC and of a reasonably competent legal practitioner in his position and demonstrated a concerning lack of insight into his obligations of disclosure.[453]

(l) The appellant lied to this Court when he swore that he had instructed a third-party to alter his website by removing references to him practising in the area of workers compensation.[454]

(m) The appellant was an unreliable witness and has sworn false and/or misleading affidavits in the course of these proceedings.[455]

[423] I do not consider it necessary or appropriate to make some of the other findings sought by the respondent. This is primarily because I am not sufficiently aware of all of the relevant circumstances. Further, in light of my conclusions that there are a number of other reasons why the appellant is not a fit and proper person to hold a UPC, it is not necessary for me to make all of those findings.

[424] I have considerable concerns about the appellant's honesty, integrity and candour in his dealings with the Law Society and courts, including this Court in the course of this appeal. The appellant's affidavits[456] and

[453] See [302] - [305] above.
[454] See [165] - [169] above.
[455] See references footnoted under [399] above.
[456] See Connop 25/2/16, [2] - [14]; Connop 8/3/16 [42], [66]; Connop 23/3/16 [4] - [5], [7]; Connop 5/4/16 [1].

testimony in these proceedings and other declarations he has made,[457] show a concerning lack of serious consideration for the need to provide complete and accurate information. Whilst every person who provides information on oath is expected to be truthful and not misleading, this requirement is of critical importance in the case of a legal practitioner.

[425] The appellant's apparent indifference to and lack of insight concerning his obligations under the LPA, the LPRs and the NTPCRs and consequently to the Law Society, the Court, his clients and the public is also of great concern. This includes his failures to respond to complaints and other requests made by the Law Society when required, failures to observe statutory requirements in relation to costs disclosure, invoicing and trust monies, failures to respond appropriately to the various warnings of the Law Society and to comply with the special conditions of his UPC, and his frequent blaming of others for things that were his responsibility.

[426] I also have considerable doubts about the appellant's competence in relation to the law, including in relation to areas in which he claims to have some experience, namely criminal law and family law. His conduct in respect of a variety of matters in various courts, and in relation to workers compensation, tenancy, wills, trust law, ethics and

[457] See for example the June 2012 UPC application and the declaration in his recent application for a RBSPC.

practice and procedure suggests a level of competence considerably below that normally expected of members of the legal profession.

[427] In my opinion the appellant is not a fit and proper person to hold a UPC. Nor was he a fit and proper person to hold a UPC at the time when the Law Society decided to cancel his UPC.

Other matters

Reference to DPP

[428] The Law Society also submitted that it would be open to the Court to consider referring both the file and the transcript in these proceedings, and the file and transcript in the Hes matter, to the Director of Public Prosecutions (**DPP**), for investigation into whether any prosecution should be brought against the appellant for perjury.[458] The Law Society submitted that the appellant may have committed perjury when he gave the false answers concerning his website.[459]

[429] Counsel for the appellant has argued against such referral, inter alia on the basis that the appellant's false answers were not "false testimony touching any matter that is material to any question then depending in the proceedings" within the meaning of s 96 of the *Criminal Code* (NT). Counsel referred to the High Court's decision in *Melliphant v Attorney-General for the State of Queensland* (1991) 173 CLR 289

[458] LSNT Supplementary Submissions [243].
[459] See too my discussion about this topic at [164] to [169] above.

which concerned virtually identical wording in s 123 of the *Criminal Code* (QLD). Counsel contended that the relevant "matter" was instructing the website consultant to amend the appellant's website by removing the reference to workers compensation claims being an area of the appellant's practice.[460]

[430] I reject that contention. I would have thought that the giving of the false answers concerning his actions following the adverse conclusions of the Work Health Court in the Sommer's matter is very material to the appellant's honesty and integrity and thus his fitness to hold a UPC. But I do not propose to express a final view on this question. That is better left for others if they wish to take this matter further.

[431] However, I do not see any particular need to accede to the Law Society's request. That is not to say that the Law Society cannot refer this and other matters to the DPP for consideration or that the DPP cannot consider this and other matters itself. I would assume that the DPP will become aware of this matter and these reasons for judgement.

<u>UPC with special conditions</u>

[432] Counsel for the appellant submitted that concerns about the appellant's fitness to hold a UPC could be sufficiently addressed by the Court allowing him to have a UPC but attaching to it conditions designed to protect his clients and the public from his inadequacies. These could

[460] Appellant's Closing Submissions [23] – [28].

include conditions requiring continuing supervision of him and his practice, restricting him to practice in particular areas of the law, and prohibiting him from operating a trust account or holding controlled monies.

[433] I disagree. I have found the appellant is not a fit and proper person to hold a UPC, and for reasons involving conduct which cannot be simply prevented or regulated by the imposition of conditions. It should go without saying that a person who is not a fit and proper person to hold a UPC should not be issued a UPC.

Orders

[434] The respondent submitted that if the Court is satisfied that the appellant is not a fit and proper person to hold a UPC, it should confirm the Law Society's decision to cancel his UPC and dismiss the appeal. This appeared to be the appellant's position as well. [461]

[435] Accordingly I have made the following declaration and order:

1. I declare that the appellant is not a fit and proper person to hold an unrestricted practising certificate.

2. I dismiss the appeal.

[436] I see no reason why the appellant should not be required to pay the respondent's costs of this appeal. Unless I hear otherwise within the

[461] Appellant's Submissions [2]-[6].

next 14 days I shall make an order that the appellant pay the respondent's costs of this appeal, such costs to be taxed if not agreed. I would certify the matter fit for senior counsel.
