

13 August 2024

Professional Standards Department
The Law Society of New South Wales
Attention: Ms Valarie Griswold, Director
170 Phillip Street
Sydney NSW 2000

By email: psd@lawsociety.com.au

RE: PSD Case No 2023_57157

1. NSW Court of Appeal (NSWCA) referral of papers.
2. NSW Law Society Professional Standard Department (PSD)/ Ms Valerie Griswold Director, Legal Regulation PSD - initiated case against Mr A. Bryl & Ms M. Odtojan
RE: Ms Griswold/PSD unfounded statement of facts: findings of misconduct, prior misconduct and non-disclosure of prior misconduct in the application for renewal of practising certificate.

Dear Ms Valerie Griswold, Director Legal Regulation Professional Standards

A. First Letter from PSD dated 17 July 2024

A.1 Communications - OLSC/PSD

1. I refer to your NSW Law Society Professional Standards Department (**PSD**) letter to me dated 17 July 2024, (**PSD Letter**) with its "Annexure A", which I have received for the first time in relation to the above matters.
2. I note that you have emailed your letter to my work email address and addressed it to Me Odtojan's law firm. Please direct all correspondence to artemb7@gmail.com in relation to this matter as it is the recorded email address with the NSW Law Society.
3. The referral of papers¹ of the leave hearings by the NSWCA to the Office of the Legal Commissioner (**OLSC**) is in relation to Ms Marie Odtojan (**Ms Odtojan**) personal civil tort damages case against her former legal representatives, Mr Nicolas George Ford, Barrister of Edmund Baton Chambers (**Mr Ford**), Mr Thomas Patrick Glynn (**Mr Glynn**), Principal solicitor of Glynns Lawyers and Mr Miles Kevin Condon (**Mr Condon SC**), Senior Counsel of New Chambers, where Ms Odtojan is the applicant, a party to the three proceedings, a litigant in person, a client of the respondent legal practitioners, a victim and a witness of the alleged fraud/improprieties recorded in her statement of claims² and where she is not acting in the professional capacity of a legal practitioner.
4. As you are aware, I was granted leave to appear as McKenzie Friend³, in the NSW Court of Appeal (**NSWCOA**) leave to appeal hearings, (**LAHearings**), which is a limited procedural hearing seeking permission to have a leave hearing in the NSWCA. The parties are allocated 20 minutes and are limited to present their leave to appeal arguments/issues.⁴ Effectively, it is usually a 1-2 hour hearing which cannot address substantive issues of fact/law/credit which require a final hearing.

¹ The OLSC complaint process provides that a referral by a judicial officer is a 'source of information' OLSC, See Initiated Complaint:

<https://olsc.nsw.gov.au/complaints/information-about-complaints-for-the-profession/olsc-initiated-complaints.html>

² n 44; Allegations of fraud and collusion are already known to the OLSC/PSD being similar allegations raised in the Ms Odtojan's report dated 27 June 2018 made against Piper Alderman lawyers which include the conduct of Mr Ford, Mr Glynn and Mr Condon SC, and impersonation of legal practitioners; See Ms Odtojan's email to PSD enclosing this letter - G.Drive links: See document numbers 15 to 17; See Ms Odtojan's letter to PSD 13 August 2024, 'E. Reports to OLSC/PSD' 13-15; OLSC/PSD has a duty to report suspected offences under s 465 *Legal Professional Uniform Law (NSW) 2014 (LPUL)*.

³ See McKenzie friend definition https://www.judcom.nsw.gov.au/publications/benchbks/civil/unrepresented_litigants.html

⁴ (Condon) Applicant's White Folder 1 dated 26 May 2023 *Summary of Applicant's Argument filed 30 March 2023* Tab 2; (Ford and Glynn) Applicant's White Folder 1 dated 28 June 2023 *Summary of Applicant's Argument filed 28 June 2023* Tab 2; See Mr Bryl's email PSD enclosing this letter - G.Drive link: See documents numbers 21-23.

5. I am also a material witness to the alleged fraud/improprieties recorded in Ms Odtojan's three statements of claim against her former legal representatives.
 6. I note you have recorded in your PSD letter for me to provide my 'further submissions'⁵ where I made no prior submissions to you/PSD or OLSC. As you are aware, this is the first letter I received from you regarding this matter.
- A. 2 Ms Griswold, Director of PSD, unfounded statement of fact - findings of 'misconduct'/'prior misconduct' and interference with the approval/renewal of practising certificate.
7. Your letter dated 17 July 2024 is the first letter I received in relation to this matter where you have made unfounded statements of fact of a serious nature against a legal practitioner, that there are findings of misconduct and 'prior misconduct'.⁶ An unfounded statement of fact is a fabricated fact,⁷ which you have created and recorded under the PSD's letterhead, using your position as an officer and Director of PSD.
 8. Upon receipt of your PSD letter, I was made aware for the first time, only after the act was done by you, that the first action you took was to arbitrarily affect my practising certificate (**certificate**) by interfering with the legitimate process of the renewal/approval of my certificate, preventing it from being renewed.
 9. The result of your conduct, based on your created facts that there is prior misconduct by me and I did not disclose such misconduct,⁸ has unlawfully affected my application for renewal/approval of my certificate where it is neither 'approved or refused' and 'is taken to continue in force on and from 1 July 2024',⁹ until you have your next private meeting with the Council where you '*intend to ask Council... to consider whether to grant or refuse your application dated 15 May 2024.*'¹⁰
 10. I note that you have sent a letter to Ms Odtojan dated 8 July 2024 where your PSD letter to me is substantially a copy and paste of your letter to Ms Odtojan and where you have repeated the conduct of recording unfounded statements of fact of 'prior misconduct' to me. There are no findings of misconduct/prior misconduct by Ms Odtojan or me.
 11. The content of your PSD letter to me shows disregard of whether the issues you raised with me apply to me or not. As per [4] above, I only appeared to assist the Plaintiff at the court. I am not the solicitor on record nor have I acted in the capacity of a solicitor in Ms Odtojan's court proceedings, other than appearing as a McKenzie friend at the LAHearings (as recorded by the Justices in their judgments).
 12. You have sought for me to answer Ms Odtojan's pleadings in her three statements of claims, her documents and correspondence. I cannot be held responsible for Ms Odtojan's court documents, correspondences and communications in her civil tort damages cases. I had only jointly signed with Ms Odtojan, the Applicant's Submissions dated 26 June 2023¹¹ in relation to the show cause for referral of papers (Condon's case). The said submission is not listed in your 'Annexure A'.
 13. It appears you have used your position, authority and delegated powers to influence the Law Council/Licensing and Registry Office (communications which are not made transparent to me), to prevent my certificate from being renewed on the false premise that there was misconduct by me.
 14. Based on your PSD letter to me, it seems that the status of my practising certificate whether it will be renewed or refused and my ability to continue to practise law, where I have been practising for 2 years after undertaking years of extensive legal education and training, including my extensive legal education/ training overseas, all comes down to your sole arbitrary decision in your next private meeting with the Law Council.¹²

⁵ PSD Letter [7] 6.

⁶ Ibid [4] 6, 4 '*serious past misconduct*' in *Thomas v Legal Practitioners Admission Board* [2004] QCA 407 [2005] 1

⁷ Black's Law Dictionary, 2nd Ed. '*A fact that is not founded on a truth*'.

⁸ PSD Letter [3]-[7] 6.

⁹ Ibid [1]-[3] 1.

¹⁰ Ibid [5] 6.

¹¹ See A.Bryl's email to PSD enclosing this letter - G.Drive link: 4. *Applicant's Submissions dated 26 June 2023 (Condon)*.

¹² n 10.

15. This matter was brought to your/PSD attention by the NSWCA referral of papers, which PSD received in July 2023 for Condon's case and in March 2024 for Mr Ford's and Mr Glynn's cases.¹³
16. The OLSC clearly states in its complaint process that a referral by a judicial officer is a 'source of information'¹⁴ relying on which the OLSC may initiate a complaint, conduct initial assessments and may undertake investigations if it proceeds to pursue the complaint.
17. I will refer to Ms Odtojan's letter dated 13 August 2024 (**Ms Odtojan letter**) to PSD which forms part of my reply to PSD where I substantially rely on the same responses and/or raise the same concerns/issues.¹⁵ I refer to the following under the headings of Ms Odtojan's letter, as follows:
 - a. 'B. Notice/Next Action' pages 5-6.
 - b. 'C. NSWCA Referral of papers' pages 6-7.
 - i. Referral of papers orders at [28]-[29].
 - ii. The list of documents that are missing at [31].
 - c. 'E. Reports to OLSC/PSD' pages 13-15.
 - d. 'F. Notice/Public Importance' pages 15-16.
18. Based on your PSD letter, I note the following:
 - a. You waited for me to make my application to renew my practising certificate which was submitted on 15 May 2024, before you contacted me in relation to this matter on 17 July 2024. As you would be aware, a legal practitioner would not know if OLSC/PSD has decided to open a case concerning a complaint/referral until they receive a notice by correspondence from OLSC/PSD with a case number and the particulars, facts and legislation alleged to be breached are clearly put to the legal practitioner to answer.
 - b. Your email and letter provides the main subject matter as '*Application for the renewal of your practising certificate for the practice year 2024/2025*'.
 - c. It appears you have used the NSWCA referral of papers to initiate your/PSD's own case against me, where you used the NSWCA referral of orders in your PSD letter, to generally refer to the NSWCA judgments, without particulars, as findings of misconduct where you concluded that I have not disclosed prior misconduct in my 2024/2025 application for renewal of practising certificate.¹⁶ This is a separate matter from the NSWCA referral of papers initiated by you/PSD which is to have its own file/case number.
 - d. The list of documents in your 'Annexure A' provides that NSWCA referral of papers orders¹⁷ have not been complied with as there are missing documents, which are substantially Ms Odtojan's documents.¹⁸
 - e. You had already taken action notifying the Law Council and/or the Licensing Registry Office to affect and prevent the legitimate renewal of my practising certificate before I received your PSD letter.¹⁹ and where the NSWCA referral of papers orders had not been complied with.
 - f. You vaguely state in the PSD letter, without any foundation nor specific particulars put to me, that '*Your 2024/2025 application may be considered to be providing incorrect or misleading information with regard to that 2024/2025 application...*'²⁰ It appears you have used NSWCA referral of paper orders, stating generally that there are findings of misconduct to be disclosed.²¹ It is not clear what it is you allege I am to disclose under *Legal Profession Uniform General Rules 2015 (Uniform Rules)*.

¹³ PSD Letter 'Annexure A' [1]-[3] 1, [1]-[3] 5.

¹⁴ OLSC, LSC Initiated Complaint:

<https://olsc.nsw.gov.au/complaints/information-about-complaints-for-the-profession/olsc-initiated-complaints.html>

¹⁵ See Ms Odtojan's letter to PSD dated 13 August 2024.

¹⁶ PSD Letter [2]-[6] 6.

¹⁷ *Odtojan v Condon (No.2)* [2023] NSWCA 149 [39]; *Odtojan v Glynn T/A Glynn's Lawyers; Odtojan v Ford (No.2)* [2024]. NSWCA 25 [6].

¹⁸ See Ms Odtojan's Letter to PSD dated 13 August 2023 [32].

¹⁹ PSD Letter [1]-[4] 1.

²⁰ PSD Letter [7] 4.

²¹ PSD Letter [2], [4] 6.

- g. You sought to obtain admissions from me regarding misconduct, stating ‘*Council will, however, need to consider whether since that time you have taken steps to address the prior misconduct*’.²² You have failed to provide me any particulars, the paragraphs and to quote the excerpts of findings of misconduct in the NSWCA judgments which you vaguely and generally state I should disclose.²³
 - h. I note you have not provided disclosures of the complaint process and the applicable legislation specifically relating to misconduct under the LPUL. Such disclosures are standard practice by OLSC/PSD, essential for an independent and fair procedure.
 - i. In your PSD letter, you rely on *Thomas v Legal Practitioners Admissions Board* [2004] QCA 407; [2005] 1 Qd R 331 to be applicable to me. The case of *Thomas* relates to a person seeking admission with the Legal Practitioners Admissions Board (**APB**) where he is not a legal practitioner. Mr Thomas also had a criminal history which he did not properly disclose to the APB. This case is not applicable to me being a practising legal practitioner, who is not applying for admissions with the Admissions Board and neither do I have any misconduct nor convictions/criminal history. The process applicable to a practising legal practitioner is under the *Legal Professional Uniform Law (NSW) 2014 (LPUL)*, which, I note, you have omitted to disclose to me in your PSD letter.
19. You have already taken action to affect my practising certificate without any notice to me, where I was not afforded due process and procedural fairness. I have been denied natural justice.
 20. Your conduct is a contravention of the well-established process under the LPUL. The complaint process and procedures for determining alleged misconduct are clearly set out under the LPUL, the OLSC and NSW Law Society websites.²⁴ Professional misconduct is determined by the designated tribunal, NSW Civil and Administrative Tribunal (**NCAT**) under s 300(1)(b) of the LPUL.
 21. Professional misconduct and/or misconduct of any kind is the most serious charge by a regulatory body against a legal practitioner. You have made unfounded statements of fact that Ms Odtojan and I have findings of misconduct/prior misconduct. You recorded such statements of fact against two legal practitioners where you would be aware such statements are untrue. However, you have used your position in PSD to record an unfounded fact, in the office of authority, under the PSD office letterhead that there is misconduct by two legal practitioners to intervene with the renewal of our practising certificates, an act already done by you.
 22. The conduct of making a false statement recorded under the PSD letterhead is a very serious matter which requires the urgent attention by the Law Council, the Law Society President, Attorney General and the appropriate authorities,²⁵ where the Director of PSD, (with a Certificate IV in Investigations), in the position of authority over legal practitioners, has made unfounded statements of a serious nature of misconduct against two legal practitioners. All NSW lawyers are to be protected from such conduct by an officer of the regulatory body, in PSD.
 23. It is made clear to me by your conduct and your first letter to me, that you/PSD has no intention to conduct an independent and objective assessment/investigation of the matters referred to you by the NSWCA. Your actions indicate your intentions to affect Ms Odtojan’s and my practising certificates to either prevent us from continuing to practise law or impose conditions on our certificates, which will affect our ability to practise law and for Ms Odtojan to operate her legal practice.
 24. The conduct of unlawfully affecting our practising certificates has caused great distress, damages and detriment. It affects our livelihoods, our ability to practise law, to provide services to our clients, our community and those in need of legal assistance, being also part of the NSW Law Society pro-bono scheme, and affects the operation of Ms Odtojan’s business where there are obligations to clients, to

²² PSD Letter [4] 6.

²³ Ibid [7] 4, [2] 6.

²⁴ See Complaints Process Information brochure:

https://www.lawsociety.com.au/sites/default/files/2020-04/2020_Complaints-process-information.pdf ; Professional Standards Annual Report 2022, Complaints Investigation Process 7:

https://www.lawsociety.com.au/sites/default/files/2023-01/LSNSW_PSD_AR2022_web_2022-12-19.pdf

²⁵ A copy of this letter and related documents will be provided to the above-mentioned parties.

third parties among other business obligations. We have had to exert a lot of our time and resources away from our small law firm business and client's matters to attend to your PSD letters where actions have been made against our practising certificates under the false premises of misconduct by Ms Odtojan and I.

25. Your recordings of false statements of fact in your position of authority which cause detriment to a person are capable of constituting offences under Part 4AA under the *Crimes Act 1900* (NSW).

B. Notice/Next Action

26. Based on your PSD letter to me, you have failed to provide me what jurisdiction and powers you invoked to interfere and prevent the legitimate renewal of Ms Odtojan's and my practising certificates. PSD/The Law Council has no basis to withhold/prevent our practising certificates from being issued for the year 2024/2025.
27. If PSD and/or the Law Council is of the opinion that there is an alleged misconduct and/or non-disclosure by Ms Odtojan and me, then the Law Council is to afford Ms Odtojan and me the proper due process that all legal practitioners are afforded, under the LPUL, where such matters are to be impartially and independently assessed/investigated and determined by the tribunal, NCAT.²⁶ Notwithstanding, the Law Council has no basis to withhold/prevent the renewal of our practising certificates even if we were to undertake such a process, until the matter is determined by the Tribunal.
28. In reference to the above, you are to immediately notify/direct the Law Council and/or the Registry office to issue the renewal of the practising certificates to Ms Odtojan and me for the year 2024/2025. Should you withhold the renewal of our practising certificates, where you have no legal basis, it will constitute an ongoing unlawful withholding of our certificates.
29. In reference to the serious issues I raised herein of your conduct, you (Ms Griswold) are to immediately retract your statements in the PSD letter and to notify the Law Council and the Licensing and Registry Office and any other persons to whom you made such false statements of misconduct by Ms Odtojan and me, that such statements are untrue, and you are to promptly notify us, in writing that you have done so.
30. I call for your removal. You are to immediately recuse yourself from this matter as you have demonstrated partial and corrupt conduct in your office of authority, as PSD Director.

'Despite the many definitions and contextual uses of corruption, most dictionaries and legal systems agree about its basic meaning. The Oxford and Merriam-Webster dictionaries begin, respectively, with "[d]ishonest or fraudulent conduct by those in power" and "dishonest or illegal behaviour especially by powerful people". Moving in unison, they then proceed to deeper notions. First comes a transformation from purity to debasement - for example, "a departure from the original or from what is pure or correct" (see Merriam-Webster). Second, and relatedly, comes the archaic meaning of "decay", "putrefaction" and "decomposition".²⁷

LexisNexis *Concise Australian Legal Dictionary* 5th ed. Australia 2015 149 provide:

Corruption: A deliberate act of dishonesty, breach of the law, abuse of public trust of power that undermines or is incompatible with the impartial exercise of an official's powers, authorities, duties or functions.

Corrupt conduct: Behaviour which does, or could, adversely affect the honest or impartial exercise of official functions by a public official or authority.

²⁶ S 300 LPUL; Findings of misconduct are recorded by OLSC under S 152 *Legal Profession Uniform Law Application Act 2014 (LPUL Application Act)*. *A Solicitor v Council of the Law Society of New South Wales* [2004] HCA 1; 216 CLR 253; 78 ALJR 310; 204 ALR 8.

²⁷ United Nations Office on Drugs and Crime. Baseline definition of corruption.
<https://www.unodc.org/e4i/zh/anti-corruption/module-1/key-issues/corruption---baseline-definition.html>

C. NSWCA Referral of papers

31. The referral of papers from the NSWCA in Mr Condon's case before Justices Leeming and Kirk on 31 May 2023 (referred to by you as 'Odtojan No 2') was received by the Council of the Law Society on 7 July 2023. The referral of papers from the NSWCA in Mr Ford's and Mr Glynn's cases before Justices White and Basten on 11 October 2023 (referred to by you as 'Odtojan/Glynn Ford No 2') was received by the Council of the Law Society on 8 March 2024.²⁸
32. I refer to your unpaginated Annexure "A" with no paragraph numbers. The documents listed on page 1 and 5 of your Annexure A are incomplete and provide that you do not have all the court documents in accordance with NSWCA referral of papers orders.²⁹ PSD has a duty to make enquiries to ensure compliance with the NSWCA orders. The documents which appear to be missing in your 'Annexure A' are listed in paragraph [31] in Ms Odtojan's letter to PSD dated 13 August 2024.³⁰

D. PSD's Alleged conduct issues and the Judgments of Justices Leeming and Kirk (Condon) and Justices Basten and White (Ford and Glynn).

D.1 NSWCA Judgments

33. The Justices that their respective judgments recorded facts, representations and evidence which were not ventilated at the NSWCA LAHearings, including recordings of evidence for the respondents where no evidence was provided by any of the respondents as they did not attend the LAHearings nor gave evidence nor filed defences.
34. I rely on the following documents:
- a. The court transcripts of 31 May 2023 and 11 October 2023.³¹ The court transcripts provide that the NSWCA judgments do not reflect what transpired at the LAHearing before Justices Leeming and Kirk (Condon) and Justices Basten and White (Ford and Glynn). I note you do not have the court transcripts for both of the LAHearings.
 - b. The Applicant's Submissions dated 26 June 2023 jointly signed by Ms Odtojan and me.³²
35. Justices Leeming and Kirk stated in court (Condon SC case) on court transcript, that Ms Odtojan and I are critical witnesses in the 'all-important conference', however, this material fact was omitted by the said Justices in their judgment. The judgment recorded that there was no basis/no evidence. The conference with Mr Condon and Mr Ford regarding their representations, effectively that 'no contract or pre-contractual document exists and was not ventilated at the final hearing at the Local Court proceedings (2014/00219407) was omitted in the judgment including the Notices to Produce and Court orders for the production of the credit contract, among other issues and material facts I raised at the LAHearings.³³
36. I refer to Ms Odtojan's email to the Associate of Justices Basten and White dated 5 December 2023, giving notice that Ms Odtojan and I could not adequately provide our submissions in the show case regarding the referral of papers as the judgment substantially recorded matters that did not transpire at the hearing. The judgment recorded evidence regarding the conduct of Mr Ford and Mr Glynn where no evidence was given by the respondents. We sought for the Justices to provide me with evidence of the contract recorded in the judgment, where a contract did not exist, but was found by Magistrate Freund.³⁴ The Justices recorded the application of s 170 of the Credit Code to a contract which was not

²⁸ PSD Letter 'Annexure A' [1]-[3] 1, [1]-[3] 5.

²⁹ n 17.

³⁰ See Mr Bryl's email PSD enclosing this letter - G.Drive link to access the documents.

³¹ Ibid G.Drive link: 6. NSWCA Court transcript 31 May 2023 (Condon); 7. NSWCA Court transcript 11 October 2023 (Ford and Glynn).

³² n 11.

³³ Ibid G.Drive link: 24. Notices to Produce and Court Orders Nov 2014 to March 2016

³⁴ A contravention of s 91 of the Evidence Act 1995 (NSW) (EA); There is no record that the Magistrate found a credit contract in the judgment. No contract was produced in evidence nor ventilated at the final hearing in the LCProceedings.

before them at the LAHearing. The Justices created a narrative of what transpired at the LCProceedings which is contrary to the court documents, transcripts and conduct of the parties at the LCProceedings.³⁵

37. The material issues and documents/evidence I raised at the LAHearings were either omitted and/or misrepresented in the NSWCA judgments.
38. Ms Odtojan's legal practice, Odtojan Bryl Lawyers (**OBL**), and the criticism recorded in the judgment, casting aspersions on Ms Odtojan placing Ms Odtojan in capacity of legal practitioner in her personal civil cases and disregarding the legal, contractual and fiduciary obligations of her legal representative (Mr Ford, Mr Glynn and Mr Condon SC), were not raised nor put to Ms Odtojan to answer at the LAHearings.
39. Ms Odtojan's legal practice, Ms Odtojan and I have been defamed in the NSWCA judgments where there are representations and criticisms, casting aspersions on us which were not put to us at the LAHearings to answer. Ms Odtojan is a victim and we are both witnesses, however, the Justices have impermissibly disregarded witnesses and have engaged in conduct that threatens, intimidates and discredits witnesses and a victim who is to give evidence at a final hearing.
40. The respondents, Mr Ford, Mr Glynn and Mr Condon SC, has failed and continue to fail for 8 years, to produce to their client, Ms Odtojan, the credit contract in support of Mr Ford and Mr Glynn's representation at final hearing in the LCProceedings, where they stated to the court that Ms Odtojan received a contract on 12 January 2015 (which is not her case and where there is no evidence to support such statement),³⁶ and where the three respondents expressly relied upon a written contract in their written appeal advice and draft summons. Justices Leeming and Kirk created evidence for Mr Condon SC and recorded in their judgment, by ambush and without any evidence in support, that Mr Condon SC addressed Ms Odtojan's 16-page letter³⁷ to resolve the issue raised that Mr Condon SC had not provided a contract in support of his written appeal advice for 7 years (at the time of the hearing). This issue was ignored and omitted in the Judgment of Justices Basten and White in Ford's and Glynn's cases.
41. The respondents and their legal representatives³⁸ are aware how they obtained the NSWCA judgments.³⁹ There was no involvement of their respective professional indemnity insurance representatives noting the nature of the proceedings, where a client is making a claim against respondents for the legal services they provided. The Court transcripts of the LAHearings will provide that I spoke approximately 60% of the time, the Justices approximately 30% of the time, and the respondent's Counsels approximately 10% of the time. In the LAHearings, I had referred to court documents, representations, correspondences, s 91 Evidence Act 1995 (NSW) (**EA**), the credit laws and the respondent's written appeal advice (expressly recording their reliance on a credit contract) which was inconsistent with representations made in conference on 12 September 2016 where Mr Ford with Mr Condon SC stated to me and to Ms Odtojan that there was no contract nor

These issues were put to the Justices in both LAHearings which were disregarded by the Justices. n 11 G.Drive link: see Magistrate Freund's Judgment dated 16 August 2016 in document number 25.

³⁵ See [33]-[43]; [55]-[57].

³⁶ At the interlocutory hearing on 16 February 2023, Judge Norton stated in court that Mr Ford conducted a different case to his client (me). See Court Transcript 16/02/2023 [46]-[50] 30, [1]-[15] 31. Mr Ford's case was that his client received contract documents on 12 January 2015 where his client's case was disputing the existence of a contract. This supports that the client's case was not heard nor ventilated at the final hearing on 18 and 19 July 2016.

³⁷ *Odtojan v Condon* [2023] NSWCA 129 [12].

³⁸ (1) Mr Miles Condon SC legal representatives: counsels Mr Anthony McInerney SC and Ms Winnie Liu of New Chambers, solicitors: Mr James Berg, Partner and Sarah Li Yee Lien of DLA Piper; (2) Mr Nicolas Ford's legal representatives: counsel Mr Bernard Lloyd of 9 Wentworth Chambers, solicitors: Mr Jonathan Newby and Mr John Georgas of Colin Biggers and Paisley; (3) Mr Thomas Glynn's Legal representatives: Ms Anne Horvath SC of Banco Chambers, solicitors who appeared at the NSWCA LAHearing: Ms Elizabeth Lough and Mr Baron Alder of Moray & Agnew, and former solicitors: Mr Nicholas Andrew and Ms Belinda Marshall of Barry Nilsson.

³⁹ n 46; Also see Mr Bryl's email to PSD enclosing this letter - 20. *Judicial Registrar James Howard email to parties dated 28 Sept 2022 and Ms Odtojan reply email dated 29 Sept 2022.*

pre-contractual statement produced nor ventilated at the final hearing. The material issue of the inconsistent statements about the credit contract by the respondents, among other matters raised in court, were omitted by the Justices in their respective NSWCA judgments.

42. The Justices, by ambush, impermissibly conducted a re-hearing under r 13.4 of the Uniform Civil Procedure Rules 2005 (**UCPR**) of summary dismissal for claims that are baseless, vexatious and frivolous. The Justices also impermissibly resolved issues of fact/law/credit where it is for the final hearing. The Justices disregarded and contravened s 91 EA by referring to a prior judgment/opinion of a judge regarding the issue of fact, the credit contract. Notwithstanding the Justices' reliance on Magistrate Freund's judgment in the LCProceedings that a credit contract was found, there is no such record that the Magistrate found a contract in the judgment. The contract issue was not ventilated by counsels, Mr Ford and Mr Hartford-Davis, at the final hearing, nor was there a record in the judgment that Credit Corp proved their cause of action, a breach of terms under a credit contract.
43. In relation to the District Court interlocutory hearing, Ms Odtojan sought to appeal Judge Norton's orders. Judge Norton did not dismiss the case under r 13.4 UCPR (summary dismissal) which was the application made by the respondents along with r 14.28 UCPR (Strike out pleadings). Judge Norton made orders under r 14.28 UCPR, however, without reasons and with no legal basis, Judge Norton limited Ms Odtojan's claim to plead only in relation to the respondents 'appeal/prospects of success of appeal'. Judge Norton stated that Ms Odtojan's claims pertain to criminality, however, in limiting Ms Odtojan's claim, the pleadings of fraud/conspiracy were removed, rendering Ms Odtojan's case hopeless as the pleadings would not support Ms Odtojan's causes of action. There is no cause of action under 'appeal/prospect of success to appeal'.

D.2 Your/PSD Alleged Conduct Issues

44. Your PSD letter is vague and provides no evidence, facts and particulars to support what you recorded in your PSD letter regarding 'misconduct', 'prior misconduct' and the non-disclosure under r 13.1 Uniform Rules.⁴⁰
45. You cited case laws which clearly provide the specific misconduct in those cases, however, in this matter, there is no misconduct particularised. It is unclear what you refer to as misconduct by me.
46. You have listed alleged conduct issues from 1 to 7 in your PSD letter,⁴¹ however, you failed to provide any specific rule/legalisation with applicable facts and particulars you allege I have breached.

In *Kioa v West*, Gibbs CJ said that the '*fundamental rule is that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power*'.⁴² The rule against bias ensures that the decision maker can be objectively considered to be impartial and not to have pre-judged a decision.

47. The OLSC/PSD have a duty to adhere to the model litigant standards in the complaint process. *Legal Services Commissioner v Adamakis* [2013] VCAT 1970 at [31].

Lawyers' Professional Responsibility. Gino Dal Pont. 7th edition. Lawbook Co. 2021:

At p. 788:

Disciplinary investigations and proceedings must be conducted according to procedural fairness standards (*Wentworth v New South Wales Association* (1992) 176 CLR 239 at 251 by Deane, Dawson, Toohey and Gaudron JJ; *Smith v New South Wales Bar Association* (1992) 176 CLR 256 at 270 per Deane J; *Carver v Law Society of New South Wales* (1998) 43 NSWLR 71 at 98 per Powell JA; at 101 per Stein JA). As disciplinary bodies and tribunals exercise adjudicative functions, a high standard of

⁴⁰ See [18.c], [18.f], [18.g].

⁴¹ PSD Letter 5-6.

⁴² *Kioa v West* (1985) 159 CLR 550, 563, quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342, 360.

procedural fairness is expected... (*Newfoundland Telephone Co v Board of Commissioners of Public Utilities* [1992] 1 SCR 623 at 638 per Cory J; *Livers v Legal Services Commissioner* [2018] NSWCA 319).

At p. 789:

As regulatory bodies and tribunals have broad powers to investigate and summon evidence, these must be exercised bona fide and not in an oppressive manner (*Rogerson v Law Society of the Northern Territory* (1993) 88 NTR 1 at 10 per Asche CJ). While disciplinary proceedings are not criminal in nature, moreover, the position of the regulatory body or officer is sufficiently similar to that of a prosecutor in criminal proceedings to justify a duty of fairness and behaviour as a model litigant (*Legal Services Commissioner v Adamakis* [2013] VCAT 1970 at [31])

At p. 826:

The Uniform Law empowers the Commissioner to initiate and prosecute proceedings against a lawyer in the designated tribunal (in New South Wales the Civil and Administrative Tribunal (NCAT))... if the Commissioner of the opinion that the alleged conduct may amount to unsatisfactory professional conduct that would be more appropriately dealt with by the tribunal, or that the alleged conduct may amount to professional misconduct (LPUL s 300(1) (NSW, Vic).

48. In relation to your alleged conduct issues 1-7 you have raised, I appeared as an assistant for Ms Odtojan only for the LAHearings, with Justices Leeming and Kirk recording me in their judgments as a McKenzie friend. I am not the solicitor on record. I cannot be held responsible for documents/matters you raised which are Ms Odtojan's personal civil cases who is litigant in person and not acting in the capacity of a legal practitioner. I refer to Ms Odtojan's letter to PSD dated 13 August 2024 and to the 'Applicant's submissions' dated 26 June 2023 and 'Applicant's affidavit' sworn 26 June 2023 where notice was given to the Justices that the OLSC/PSD have no powers nor jurisdiction to determine the court documents and where there has been no final hearing.
49. It is noted that you have raised these conduct issues with me when you do not have references to all the documents from the NSWCA referral of papers orders. The substantial missing documents are Ms Odtojan's court documents which include the submission I jointly signed with Ms Odtojan relating to the show cause of referral of papers in Mr Condon's case.⁴³
50. Ms Odtojan's three amended statements of claim (**ASOCs**)⁴⁴ against her former legal representatives have extensive pleadings of 27 pages (Condon), 50 pages (Mr Ford) and 44 pages (Mr Glynn) filed in the NSW District Court Sydney which contain alleged facts and allegations in support of the pleading rules for causes of action of unlawful civil conspiracy, intentional negligence and fraud. The ASOCs require a determination by a trial judge at a final hearing. The allegations in the claims remain outstanding and unresolved as they have not been determined.
51. The OLSC/PSD has no jurisdiction to determine alleged facts and allegations in Ms Odtojan's ASOCs, being court documents. The regulatory body is not the appropriate forum. Notice was given to Justices Leeming and Kirk⁴⁵ that the OLSC has no jurisdiction to determine the allegations in Ms Odtojan's ASOCs, where such allegations require a final hearing.
52. Ms Odtojan's ASOCs raise serious allegations that pertain to criminality and the OLSC/PSD cannot determine these matters and have a duty to report under s 465 LPUL. It is a serious matter to threaten and intimidate a victim and witnesses of conduct that may constitute offences under the *Crimes Act*, including referring an innocent person to be subject to an investigation by an authority/regulatory body.
53. The Justices Leeming and Kirk acknowledged during the hearing that Ms Odtojan and I are witnesses in the all-important conference (see Court transcript 31 May 2023 [44]-[48]), however, these material facts among many others, were omitted by the Justices in their judgments.

⁴³ See [17.b.ii].

⁴⁴ See (Condon) Applicant's White folder 1 dated 26 May 2023 *Amended Statement of claim* Tab 6; (Ford and Glynn) Applicant's White folder 1 dated 28 June 2023 *Amended Statement of claim* Tab 8; See Ms Odtojan's letter to PSD dated 13 August 2024 [33.c] 7; G.Drive link: See ASOCs in document numbers 21-23.

⁴⁵ See Ms Odtojan's letter to PSD dated 13 August 2024 [33.d]-[33.e] 7.

54. The respondent's legal representatives are aware how they obtained the judgments/orders.⁴⁶
55. In relation to your alleged conduct issues 1 and 2: It is unclear what you are alleging I have breached? I refer to paragraph [53] of Ms Odtojan's letter dated 13 August 2024.
56. In relation to your alleged conduct issues 3: It is unclear what you are alleging I have breached? The affidavit you are referring to is Ms Odtojan's affidavit dated 26 June 2024 which is inappropriate for you to ask me to answer. I refer to your Annexure A which appears that you do not have the complete documents pursuant to the NSWCA referral of papers orders including the Affidavit and submissions you are referring to in issue 3. In relation to the submission which I jointly signed and refer to [34]-[43] above. These issues are outstanding, remain unresolved and require a final hearing. PSD has no jurisdiction to determine unresolved allegations without a final hearing. It is a matter of Ms Odtojan to exercise her rights. Threatening a party to proceedings, who is a victim and witnesses is a serious matter where the allegations pertain to criminality.
57. In relation to your alleged conduct issues 4, 5, 6 and 7: It is unclear what you are alleging I have breached? I cannot answer these matters which are not a matter for me to answer. It is inappropriate for you to ask me to answer about another person's civil case matters. Notwithstanding, you have no jurisdiction to determine court documents or a party's grounds of appeal. I refer to paragraphs [49], [52] and [54] of Ms Odtojan's letter dated 13 August 2024.
- It is an impossibility for pleadings of civil conspiracy to be determined at preliminary hearings and this is supported by case authorities as it requires a trial judge to have all the evidence and witnesses' evidence including making inferences of multiple conduct by alleged conspirators and cross referencing of pleadings in the statement of claim. I refer to [32.a.i]-[32.a.iii] and [33.c] in Ms Odtojan's letter to PSD dated 13 August 2024.
 - Your alleged conduct issue 5 states that I *'allege because Mr Ford referred to documents as "contract documents", as CCS claimed the document to be, that was evidence of fraud by Mr Ford.'* This statement is unfounded.⁴⁷ I did not make such a statement. I rely on the court transcript of 11 October 2024 and Ms Odtojan's ASCO on Mr Ford. Mr Ford's conduct is extensively pleaded.
 - The Justices in the LAHearing of Condon (approx 1.5 hour hearing) and Mr Ford and Mr Glynn (approx. 3 hour hearing) did not go through extensive pleadings of civil unlawful conspiracy, fraud and intentional negligence. Ms Odtojan's ASOC for Mr Condon SC is 27 pages, for Mr Ford is 50 pages, and for Mr Glynn is 44 pages. It is not within the scope of the limited LAHearing to determine evidence nor resolve issues of fact/law/credit. The judgments recorded matters that are impermissible, ultra vires and done by ambush, and went beyond the Summary of the Applicant's Argument⁴⁸ and the Respondent's Response.
 - Justices Basten and White recorded that there is *'No skerrick of evidence to support the premise...'*⁴⁹ where the LAHearing is not about evidence and neither did we go through evidence. In court, the Justices did not put to me that they did not understand the Applicant's argument nor stated there is no 'skerrick of evidence'. The court transcript provides that the Justices understood

⁴⁶ Ibid [40] and [48.f]. See Ms Odtojan's email to PSD enclosing this letter - 19. *Ms Odtojan ltr to Mr Berg DLA Piper dated 3 July 2023 (Condon)*; (1) On 16 February 2023, Mr Anthony McNerney SC of New Chambers for Mr Condon SC gave unfounded evidence at the bar table that the contract is based on secondary documents (See Court transcript dated 16/02/2023 at [42] 16 - [7] 17). (2) On 17 March 2023, Mr Bryl put on record that Mr McNerney SC was laughing when he raised to the court the issue of Mr McNerney SC's conduct of giving evidence at the bar table and misleading the court that the contract is based on secondary documents (See court transcript 17/03/2023 at [35] 44- [8] 45). (3) On 16 February 2023, Ms Anne Horvath SC of Banco Chambers for Mr Glynn gave unfounded evidence at the bar table that the contract was the 'Terms and Conditions' (Court transcript dated 16 /02/2023 at [30]-[41] 39). (4) On 11 October 2023, at NSWCA LAHearing Ms Horvath SC brought up an issue whether her client, Mr Glynn, was aware of the existence of the contract issue (Court transcript dated 11/10/2023 at [25]- 35] 46). Ms Bryl proved to the court, referring to Mr Glynn's emails/court documents drafted by Mr Glynn, that he was aware of the existence of the contract issue [31]48 - [16] 50. Justices Basten and White did not refer Ms Horvath SC, her client or Mr Ford to the regulator, instead referring innocent persons, Mr Bryl and Ms Odtojan, using their legal statuses, to the regulatory body, OLSC.

⁴⁷ *Odtojan v Ford* [2023] NSWCA 277 [16].

⁴⁸ See Ms Odtojan's letter to PSD dated 13 August 2024 [33.b].

⁴⁹ *Odtojan v Glynn t/as Glynn's Lawyers* [2023] NSWCA 276 [96].

the Applicant's argument and did not request for production of any evidence. Section 91 EA was disregarded and contravened by the Justices in relying on Magistrate's Freund Judgment to prove an issue of fact of credit contract (which is impermissible to determine in a LAHearing). Section 91 EA is omitted in the Justices NSWCA judgments.

The Court transcript 11 October 2023 [49] 49 - [16] 50:

BRYL: But then we go to the transcript and realise that Mr Ford has given evidence that the contract is not an issue and she received it on 12 June 2015 defeats the problem. So we don't have an issue of the contract, because it's been eliminated from start here, and why this statement of facts and issues has not been provided to the client to see it. Why does she have to discover that the issue of the contract has been eliminated, and that contradicts to what just the counsel of Mr Glynn stated, that he wasn't aware that the contract was in issue, that it wasn't provided, but his email confirms he is aware, he is fully aware, and his additions to the documents confirms he does not want to disclose the issue to the Court. There is a problem with whether the contract has been provided.

WHITE JA: I understand the argument. Anything else?

BRYL: My majority of the argument was in relation to what her Honour found. Section 91 does not allow you to rely on the facts determined by the judge.

WHITE JA: You've made that submission before.

- e. The Justices disregarded two witnesses and a victim before them, among other witnesses yet to be called to give evidence. The documents before the Justices were substantially court documents from the LCProceedings, court transcripts, the Notices to Produce and court orders⁵⁰ (for production of the alleged credit contract, credit insurance contract documents etc), the respondent's written appeal advice and more. My NSWCA White Folders contained documents of approximately 740 pages in each case of Mr Condon SC, Mr Ford and Mr Glynn. These documents were substantially not acknowledged as the basis for my claims by the NSWCA Justices.⁵¹
 - f. The NSWCA Justices do not refer/quote Ms Odtojan's affidavits, arguments, submissions, legislation (Credit Laws and s 91 EA) and case authorities which support her claims. Justices Basten and White recorded in their judgment that s 170 of the *Credit Code* applied to a contract which did not exist and was not before them to apply the code. This issue s 170 of the Credit Code was raised by the Justices not by the respondents and neither was it an issue before the LCProceedings.
58. You have raised the issue whether Ms Odtojan and I are fit and proper persons to hold practising certificates relying on your statement of fact that we have 'prior misconduct'. Such a statement of 'prior misconduct' is unfounded. It is unethical for a legal practitioner/Director of PSD to make unfounded statements of misconduct against another legal practitioner which questions their fitness to practise.

⁵⁰ Mr Sebastian Hartford-Davis, the opposing counsel at the final hearing in the LCProceedings, signed Notice to Produce dated 17 December 2015 which became a Court order. See Notice to Produce/Court orders: (Ford) Applicant's White Folder 1 dated 28 June 2023, Tab 12, 234-245; (Condon SC) Applicant's White Folder 1 dated 26 May 2023, Tab 12, 199-210; (Glynn) Applicant's White Folder 1 dated 28 June 2023, Tab 12, 231-242; n 30 G.Drive link: See document number 24.

⁵¹ Pleadings were not closed. No defences were filed. Evidence was yet to be timetabled for filing in the District Court.

E. Notice/Public Importance

59. This letter will be made public for the protection of Ms Odtojan, myself and the law firm where we have been defamed in the NSWCA judgments where substantial records in the judgment were made by ambush, disregarding and contravening the *Evidence Act 1995* (NSW), s 91 EA and recording evidence/representation for the respondents where the respondents gave no such evidence and was not at the court hearings. The NSWCA referral of papers is being used by the OLSC/PSD to create unfounded statements of fact that Ms Odtojan and I have 'prior misconduct' to interfere with the legitimate renewal of our practising certificates with the intent to affect our ability to practise law. I refer to paragraphs [61]-[67] in Ms Odtojan's letter to PSD dated 13 August 2024.
60. This matter was referred to PSD for independent and objective assessment/investigation. It is a serious matter if a regulatory body willfully fails to discover conduct that is capable of offences under the *Crimes Act 1900*, which such conduct is to be referred to the appropriate authority.
61. I refer to the matters raised herein and to 'B. Notice/Next Action' on page 5-6. Based on the PSD letter to me, PSD/The Law Council has no basis to withhold and/or prevent Ms Odtojan's and my practising certificates from being issued for the year 2024/2025. We call for the following immediate action:
 - a. For PSD/Law Council to issue the renewal of Ms Odtojan and my practising certificates;
 - b. For you/Ms Griswold to retract your statements in the PSD letter and to notify the Law Council, Licensing and Registry Office and any other persons to whom you made such unfounded statements of fact that Ms Odtojan and I have findings of misconduct/prior misconduct that such statement of misconduct made by you is untrue, and you are to promptly confirm with us in writing that you have done the above-mentioned notice to those parties.
 - c. For you/Ms Griswold to recuse yourself from this matter based on the conduct set herein and to notify the Law Council of this matter.
62. The PSD/Law Council has a duty to afford Ms Odtojan and me the process which all legal practitioners are afforded under the LPUL and applicable rules.

I reserve my rights in relation to this matter.

Artem Bryl

Mr Artem Bryl

