

30 August 2024

NSW Attorney General

Attn: NSW Attorney General The Hon. Michael John Daley

MP GPO Box 5341 SYDNEY NSW 2001

By webform via <https://www.nsw.gov.au/nsw-government/ministers/attorney-general>

Dear NSW Attorney General The Hon. Michael John Daley

RE: Ms Valerie Griswold, Director Legal Regulation - Professional Standards

Department (PSD) of the Law Society of NSW. Cases of M.Odtojan PSD2023_57155 and A.Bryl PSD2023_57157.

Ms Griswold/PSD's recordings of unfounded statements of facts: findings of misconduct/prior misconduct and the contravention of the lawful process.

1. We refer to the above matter and bring to your urgent attention our concerns regarding the alleged conduct of Ms Valerie Griswold, Director Legal Regulation of NSW Law Society Professional Standards Department (**PSD**) set out herein and in our letters to PSD dated 13 August 2024 **enclosed**.
2. Ms Griswold, Director of PSD is alleged to have used her position of authority and delegated powers, to fabricate and record a statement of fact of findings of misconduct/prior misconduct against us, two legal practitioners, in order to interfere with the legitimate process of the renewal of our practising certificates (**certificates**), an act already committed by Ms Griswold before we were given any notice by PSD. We were not heard on the matter, and neither were we afforded due process and procedural fairness pursuant to the established process under the *Legal Profession Uniform Law (NSW) 2014 (LPUL)*. We were denied natural justice.¹
3. The complaint process and procedures for determining alleged misconduct are clearly set out under the LPUL, and at the OLSC and NSW Law Society in their respective websites.²
4. Ms Griswold's conduct is demonstrable of her disregard and contravention of the established process under the LPUL, particularly s 300(1)(b) LPUL. Ms Griswold has discarded the lawful process and in her position, she has arbitrarily affected our certificates, preventing their renewal. Such acts were undertaken by Ms Griswold/PSD without notice to us.
5. As the PSD Director, Ms Griswold would be fully aware that if PSD/Law Society alleges misconduct against a legal practitioner, they are to undertake disciplinary proceedings where such matter is to be determined by the designated tribunal, the NSW Civil and Administrative Tribunal, (**NCAT**).³
6. We refer to the following **enclosed** documents which provide the background and the conduct of Ms Griswold, as follows:
 - a. Ms Marie Odtojan's (**Ms Odtojan**) and Mr Artem Bryl's (**Mr Bryl**) letter to the Law Council of the Law Society of NSW dated 15 August 2024, giving notice of Ms Griswold's conduct and a call for their action. See paragraph 25 of the said letter. The PSD and the OLSC, Ms Samantha Gulliver, (the Commissioner) were included in the said correspondence.
 - b. Ms Odtojan's letter to Ms Griswold/PSD dated 13 August 2024 (**MOLtrPSD**) in response to Ms Griswold's PSD letter to Ms Odtojan dated 8 July 2024 (**PSDLtrMO**).
 - c. Mr Bryl's letter to PSD dated 13 August 2024 (**ABLtrPSD**) in response to Ms Griswold's PSD letter to Mr Bryl dated 17 July 2024 (**PSDLtrAB**).

¹ *Kioa v West* (1985) 159 CLR 550, 563, quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342, 360.

² See s 300 LPUL; 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

³ s 300 LPUL.

7. The result of Ms Griswold's conduct, based on her created facts of prior misconduct,⁴ has unlawfully affected our applications for the renewal of our certificates where they are neither *'approved or refused'*, and are *'taken to continue in force on and from 1 July 2024'*,⁵ until Ms Griswold has her next private meeting with the Council where she stated *'I intend to ask Council... to consider whether to grant or refuse your application dated 15 May 2024.'*⁶ The representation of Ms Griswold in the PSD letter is not the lawful process. When such a meeting with the Law Council will take place is not disclosed.
8. The matters before PSD to assess/investigate were from a NSW Court of Appeal (**NSWCA**) referral of papers.⁷ The OLSC clearly states in its complaint process, that a referral by a judicial officer is a 'source of information'.⁸ The Council of the Law Society has delegated its powers to PSD for an independent assessment/investigation of the NSWCA referral of papers.
9. Based on the first PSD letter we each received, Ms Griswold had already notified the Law Council and/or the Licensing and Registry office to prevent the renewal of our certificates. This act was done prior to us being notified and receiving the PSD letters.⁹ There was also non-compliance with the NSWCA's referral of papers orders. PSD did not have all the court documents pursuant to the orders.¹⁰ The substantial missing documents were Ms Odtojan's court documents, including all court transcripts.¹¹ Such conduct is demonstrable of Ms Griswold/PSD and the OLSC having no intention of complying with their duties of conducting an independent and objective assessment/investigation of these matters.
10. Ms Griswold had also sought to obtain admissions from each of us regarding misconduct, stating *'Council will, however, need to consider whether since that time you have taken steps to address the prior misconduct'*.¹² There is no such misconduct by us and Ms Griswold is fully aware of this.
11. It appears from Ms Griswold's PSD letters that the status of our practising certificates, whether they will be renewed or refused, and our ability to continue to practise law, which Ms Odtojan has been practising for 14 years, having undertaken extensive legal education and training, and Mr Bryl with 2 years of legal practise with extensive training/education including overseas training/education, all comes down to Ms Griswold's arbitrary decision in her next private meeting with the Law Council.¹³
12. It is noted that Ms Griswold has omitted relevant reports made to the OLSC and/or the PSD from the period 2016 to date,¹⁴ which are relevant as Ms Griswold has listed Ms Odtojan's personal civil cases in her PSD letter, and has alleged that PSD is unaware of the facts and circumstances of Ms Odtojan's civil cases. The PSD and the OLSC has received various reports from Ms Odtojan in relation to the civil cases listed by Ms Griswold which pertain to alleged conduct of fraud/improprieties by legal practitioners. The OLSC/PSD has a duty to report suspected offences to police or other appropriate investigating or prosecuting authority under s 465 LPUL.
13. Ms Griswold's PSD letter fails to provide what jurisdiction and powers were invoked by PSD/Law Council to prevent the legitimate renewal of our practising certificates. There is no basis for PSD/The Law Council to withhold/prevent our practising certificates from being issued for the year 2024/2025 as there are no findings of misconduct against either of us.

⁴ PSDLtrMO 4, [3]-[7] 8; PSDLtrAB 4, [3]-[7] 6.

⁵ PSDLtrMO [1]-[3] 1; PSDLtrAB [1]-[3] 1.

⁶ PSDLtrMO [5] 8; PSDLtrAB [5] 6.

⁷ See MOLtrPSD 'C. NSWCA Referral of papers' 6-7 and [2].

⁸ Relying on which the OLSC may initiate a complaint, conduct initial assessments and may undertake investigations if it proceeds to pursue the complaint; OLSC, LSC Initiated Complaint:

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

⁹ PSDLtrMO [1]-[4] 1; PSDLtrAB [1]-[4] 1.

¹⁰ See [15.d] below.

¹¹ See MOLtrPSD [30]-[31].

¹² PSDLtrMO [5] 8; PSDLtrAB [4] 6.

¹³ Ibid.

¹⁴ See MOLtrPSD [12.h], 'E. Reports to OLSC/PSD' 13-15. 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 Ms Odtojan's former legal representatives Mr Ford, Mr Glynn and Mr Condon SC, and impersonation of legal practitioners by Piper Alderman employees; See Mr Bryl's email enclosing this letter - G.Drive links: See document numbers 15 to 17.

14. If PSD and/or the Law Council is of the opinion that there is an alleged misconduct and/or non-disclosure by either of us, then the Law Council is to afford us 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 to be determined by the tribunal, NCAT.¹⁵ Notwithstanding, the Law Council has no basis to withhold/prevent the renewal of our practising certificates even if such a process is undertaken, until the matter is determined by the Tribunal.
15. The conduct of making a false statement recorded under the PSD letterhead is a very serious matter which requires the urgent attention and action by the Law Council, the Law Society President, Attorney General and appropriate authorities, where the Director of PSD (Certificate IV in Investigations), in the position of authority over legal practitioners, has made unfounded statements of misconduct against two legal practitioners and has unlawfully interfered with the renewal of our practising certificates.
16. Ms Griswold's recordings of unfounded statements of facts in her position of authority which cause detriment to a person are capable of constituting offences under Part 4AA of the *Crimes Act 1900* (NSW).
17. The alleged conduct of Ms Griswold reasonably raises serious questions of her fitness as a legal practitioner and Director, Legal Regulation, of PSD of the Law Society of NSW, where she has a wide range of delegate powers having an authority over 40,000 NSW legal practitioners (solicitors). Ms Griswold has demonstrated in our case, that she has used her position to make unfounded statements of facts of misconduct and has acted upon those false premises to prevent the legitimate process of the renewal of our practising certificates.
18. NSW lawyers and the public are to be protected from unjust, oppressive conduct and abuses of power by an officer of PSD. A legal practitioner should never receive a letter from PSD/regulatory body with false recordings of any kind. In this instance, Ms Griswold recorded a statement of fact of misconduct against two legal practitioners and has caused great distress, damages and detriment.¹⁶
19. The conduct of Ms Griswold requires great effort from her to go against her duties, obligations, and the established process under the LPUL, which demonstrates her intent to do such unlawful acts to affect our practising certificates.¹⁷ Ms Griswold has been called out of her corrupt conduct.¹⁸
20. It is alleged that Ms Griswold has circumvented the assessment/investigation and the LPUL process to avoid discovery of what transpired at the leave to appeal hearings presided by the NSW Justices Leeming and Kirk (Mr Condon SC case) and Justices Basten and White (Mr Ford and Mr Glynn's case). The said Justices, in their respective judgments, had recorded facts, representations and evidence, substantially by ambush, which do not reflect what transpired in court. Ms Odtojan has notified the said Justices of the above-mentioned issues in relation to the recordings in their respective judgments.¹⁹
21. The said NSWCA Justices are alleged to have engaged in conduct which interferes with the administration of justice. They had referred two innocent persons, using our legal profession as basis to refer us to the regulatory body, the OLSC, where the Justices are aware that they have referred us on false premises, recording in their judgments that there is no basis/evidence for Ms Odtojan's claims. The Justices are aware they have omitted material facts, issues and evidence that was put before them at the procedural hearing and where we are witnesses and a victim that are yet to give evidence, and where the substantive evidence is yet to be filed in the District Court for the final hearing including calling witnesses.²⁰ The Justices, in their judicial positions, have intimidated, threatened and referred a victim and two witnesses to be subject of investigation by the OLSC (ss 314, 315, 315A and 319 of the *Crimes Act 1900*).

¹⁵ S 300 LPUL; Findings of misconduct are recorded by the 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.

¹⁶ MOLtrPSD [21].

¹⁷ Ibid [5]-[16], [30]-[31], [44]-[45], [50], [56]-[60].

¹⁸ See MOLtrPSD [27] 6.

¹⁹ Ibid [12.j] 3-4; [35] 8.

²⁰ See MOLtrPSD [32] 7, [34] 8, [38] 8, [40] 8-9, [48] 10-11, [49] 11-12, [61] 16, and [64] 16.

22. In relation to the serious matters set out in our letters to Ms Griswold/PSD and the President/Law Council of the Law Society of NSW, we have called for action to be undertaken by PSD²¹ and the Law Society of NSW.²² To date, we have not received a response from the PSD, the OLSC, and the Law Council.
23. Ms Griswold/PSD, the Law Council have been notified that they are to issue the renewal of the practising certificates of Mr Bryl and Ms Odtojan for the year 2024/2025,²³ where they have no legal basis to prevent our certificates from being renewed. Such conduct by PSD/Law Council constitutes an ongoing unlawful withholding of our certificates.
24. We call for action for the Attorney General to raise these serious issues which are of public importance with the Law Council, the Law Society of NSW President, Mr Brett McGrath and CEO, Mr Kenneth Tickle, and to take action, as follows:
 - i. To immediately renew and issue Ms Odtojan's and Mr Bryl's practising certificates for the year 2024/2025, which have been unlawfully prevented from being renewed.
 - ii. To remove Ms Griswold from her position as the Director and officer of PSD.
 - iii. To conduct an investigation in relation to Ms Griswold's conduct of making and recording unfounded statements of facts of misconduct against two legal practitioners and interfering with the legal practitioners' practising certificates based on false premises and contravening the lawful process.
 - iv. To make enquiries and investigate the conduct of the PSD/OLSC in relation to Ms Odtojan's reports made to the OLSC/PSD as listed in her letter to PSD²⁴ where the said reports have been systematically closed without investigation. The various alleged reported conduct involves fraud/improprieties including impersonations of legal practitioners and administration of justice offences. There is a duty of the regulatory bodies to report suspected offences to appropriate authorities under s 465 LPUL.
25. As per Ms Odtojan's reports to the OLSC/PSD, we have discovered an alleged unlawful business model by Credit Corp Services Pty Limited and its lawyers, a *modus operandi* of using the courts across Australia to obtain judgments by fraud relating to claims under credit contracts which are subject to the credit laws.²⁵
26. The OLSC and PSD has systematically closed all reports by Ms Odtojan without investigation. We also refer to Ms Odtojan's report to your office, addressed to the former Attorney General, Mr Mark Speakman, and to the former NSW Governor General, Mr David Hurley, on 11 March 2019, raising issues of the conduct of the former Legal Services Commissioner, Mr John McKenzie, where he disregarded voluminous documents/evidence provided to the OLSC, did not conduct any investigation into the raised issues pertaining to criminality, and made unfounded representations on behalf of Piper Alderman lawyers.
27. This matter is of great public importance, for the protection of all NSW lawyers and the public, where the conduct of PSD and its Director is capable of greatly undermining the integrity of the legal profession and diminishing the public confidence in the legal industry, the legal regulatory body and the Law Society of NSW.
28. We will rely on this letter giving notice to your office in relation to the above matters.

Kind regards,

Marie Odtojan

Ms Marie Odtojan

Artem Bryl

Mr Artem Bryl

²¹ MOLtrPSD [23]-[25] 5-6 and [68] 17; ABLtrPSD [26]-[30] 5 and [61] 12.

²² ABMOLtrLSNSW [25] 4.

²³ ABMOLtrLSNSW [25.c] 4; MOLtrPSD [25] 5 and [68.a] 17; ABLtrPSD [28] 5 and [61.a] 12.

²⁴ n 14.

²⁵ MOLtrPSD [61-67] 16.

15 August 2024

The Law Society of New South Wales

Attn: NSW Law Society President, Law Council and Licensing & Registry

170 Phillip Street

Sydney NSW 2000

By Email: The Law Society of NSW President Mr Brett McGrath President@lawsociety.com.au

Law council members:

Senior Vice President Ms Jennifer Ball jball@claytonutz.com; Junior Vice President Mr Ronan MacSweeney ronan.macsweeney@baptistcare.org.au; Immediate Past President Ms Cassandra Banks cassandra.banks@lawsociety.com.au; Ms Lauren Absalom ldabsalom@gmail.com; Mr Angelo Biliass angelo@nswlaw.net; Ms Danielle Captain-Webb danielle.captain-webb@legalaid.nsw.gov.au; Ms Jacqueline Dawson jdawson@sextonfamilylaw.com.au; Ms Sylvia Fernandez sfernandez@tglaw.com.au; Mr Anthony Gordon agordon@marsdens.net.au; Ms Mary Macken mary.macken@blacktown.nsw.gov.au; Ms Moira Saville moira.saville@au.kwm.com; Ms Jade Tyrrell jade.tyrrell@jws.com.au; Ms Alexia Yazdani alexia@hillsidelegal.com.au; councilsupportunit@lawsociety.com.au (requested to provided to Ms Rebekah Hunter).

Director, Licensing and Registry, The Law Society of NSW Ms Nadya Haddad registry@lawsociety.com.au

Copied: PSD psd@lawsociety.com.au and OLSC olsc@justice.nsw.gov.au

Dear NSW Law Society President, Law Council members and Director of Licensing and Registry.

RE: Ms Valerie Griswold Director, Legal Regulation of NSW Law Society Professional Standard Department (PSD). Cases of M.Odtojan PSD2023_57155 and A.Bryl PSD2023_57157.

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.

1. We refer to the above matter and bring to your urgent attention our **enclosed** letters to the NSW Law Society Professional Standards Department (PSD) by Ms Marie Odtojan (**Ms Odtojan**) dated 13 August 2024 (**MOLtrPSD**) and Mr Artem Bryl (**Mr Bryl**) dated 13 August 2024 (**ABLtrPSD**) in response to Ms Valarie Griswold's (**Ms Griswold**) PSD letters to Ms Odtojan dated 8 July 2024 (**PSDLtrMO**) and to Mr Bryl dated 17 July 2024 (**PSDLtrAB**) (**PSD letters**), also **enclosed**.
2. We raise serious concerns of Ms Griswold's conduct, legal practitioner, officer and Director of PSD, as set out in our said letters and briefly herein, where Ms Griswold has recorded unfounded statements of facts of a serious nature, of misconduct/prior misconduct¹ against two legal practitioners under her office and letterhead of PSD where it appears that she has used her position, authority and delegated powers to influence the Law Council/Licensing and Registry Office (communications which are not made transparent to us), to affect and interfere with the legitimate renewal application of our practising certificates (**certificates**), based on false premises that there is a misconduct/prior misconduct by us.
3. We are concerned that there are representations being made by Ms Griswold, PSD Director to the Law Council or other members/staff of NSW Law Society regarding misconduct by us, where Ms Griswold would be aware that such representations are untrue and without basis, as there are no findings of misconduct against either of us. There are no determinations of misconduct by the designated tribunal, NSW Civil and Administrative Tribunal (**NCAT**).
4. Ms Griswold's PSD letters to us were the first letters we received from PSD. Upon receipt of Ms Griswold's PSD letters, we were notified for the first time, only after the act has been done by Ms Griswold, that the first action taken by her was to arbitrarily affect our practising certificates (**certificates**)

¹ PSD Letter [5] 8, 4 'serious past misconduct' in *Thomas v Legal Practitioners Admissions Board* [2004] QCA 407 [2005] 1; An unfounded statement of fact constitutes a fabricated fact. Black's Law Dictionary, 2nd Ed. 'A fact that is not founded on a truth'.

by interfering with the their renewal/approval, which appears to be based on Ms Griswold's unfounded statements of facts of misconduct and non-disclosure of misconduct. This act was done without prior notice to us. We were not heard on the matter, and neither were we afforded due process and procedural fairness pursuant to the established process under the *Legal Professional Uniform Law (NSW) 2014 (LPUL)*. We were denied natural justice.²

5. The result of Ms Griswold's conduct, based on her created facts of prior misconduct,³ has unlawfully affected our applications for the renewal of our certificates where they are neither '*approved or refused*', and are '*taken to continue in force on and from 1 July 2024*','⁴ until Ms Griswold has her next private meeting with the Council where she stated '*I intend to ask Council... to consider whether to grant or refuse your application dated 15 May 2024*'.⁵
6. The matters before PSD to assess/investigate were from a NSW Court of Appeal (**NSWCA**) referral of papers.⁶ The OLSC clearly states in its complaint process that a referral by a judicial officer is a 'source of information'.⁷ The Council of the Law Society has delegated its powers to PSD for independent assessment/ investigation of the NSWCA referral of papers.
7. Based on the first PSD letter we each received, steps were already taken by Ms Griswold to notify the Law Council and/or the Licensing Registry office to prevent the renewal of our certificates. This act was done prior to us being notified and receiving the PSD letters,⁸ and where there was non compliance with the NSWCA referral of papers orders. There appears to be no independent assessment/investigation conducted by Ms Griswold/PSD as she did not have in her possession all the court documents pursuant to the NSWCA orders,⁹ where the substantial missing documents were Ms Odtojan's court documents, including all the court transcripts.¹⁰
8. Ms Griswold is alleged to have circumvented and contravened the well-established process under the LPUL. The complaint process and procedures for determining an alleged misconduct are clearly set out under the LPUL, and by the OLSC and NSW Law Society in their respective websites.¹¹
9. Professional misconduct, as Ms Griswold would be aware in her position as PSD Director, is determined by the designated tribunal, NCAT, under s 300(1)(b) of the LPUL.
10. Professional misconduct is the most serious finding by NCAT against a legal practitioner. Ms Griswold has made unfounded statements of facts that we have findings of misconduct/prior misconduct when she would be aware such statements are untrue.
11. Ms Griswold had also sought to obtain admissions from each of us regarding misconduct, stating '*Council will, however, need to consider whether since that time you have taken steps to address the prior misconduct*'.¹² There is no such misconduct by us. Ms Griswold failed to provide any particulars, the paragraphs and to quote the excerpts of findings of misconduct in the orders/judgments she vaguely and generally referred to in her PSD Letters.
12. It appears Ms Griswold has used the NSWCA referral of papers to initiate her/PSD's own case against us, using her office to search Ms Odtojan's personal civil cases (where Ms Odtojan was not acting in professional capacity of a legal practitioner), listing those civil cases in her PSD letter to Ms Odtojan, and

² *Kioa v West* (1985) 159 CLR 550, 563, quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342, 360.

³ PSDLtrMO 4, [3]-[7] 8; PSDLtrAB 4, [3]-[7] 6.

⁴ PSDLtrMO [1]-[3] 1; PSDLtrAB [1]-[3] 1.

⁵ PSDLtrMO [5] 8; PSDLtrAB [5] 6.

⁶ See MOLtrPSD 'C. NSWCA Referral of papers' 6-7 and [2].

⁷ Relying on which the OLSC may initiate a complaint, conduct initial assessments and may undertake investigations if it proceeds to pursue the complaint; OLSC, LSC Initiated Complaint:

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

⁸ PSD.LtrMO [1]-[4] 1; PSD.LtrAB [1]-[4] 1.

⁹ See [15.d] below.

¹⁰ See MOLtrPSD [30]-[31].

¹¹ 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

¹² PSDLtrMO [5] 8; PSDLtrAB [4] 6.

listing the NSWCA of referral of paper orders in her PSD letter Mr Bryl, alluding that those orders/judgments are findings of misconduct in her PSD letters to us. These issues are separate matters to the NSWCA of referral of papers. There appears to be an agenda to target our practising certificates based on false premises of misconduct and non-disclosure of misconduct, with the intent to affect our ability to practise law.

13. It is noted that Ms Griswold has omitted relevant reports made to OLSC/PSD from the period 2016 to date, which are relevant as Ms Griswold has listed Ms Odtojan's personal civil cases in her PSD letter, and has alleged that PSD is unaware of the facts and circumstances of Ms Odtojan's civil cases where PSD and OLSC has received multiple reports from Ms Odtojan in relation to the civil cases listed by Ms Griswold¹³. OLSC/PSD has a duty to report suspected offences under s 465 *Legal Professional Uniform Law (NSW) 2014 (LPUL)*.
14. It appears from Ms Griswold's PSD letters that the status of our practising certificates, whether they will be renewed or refused, and our ability to continue to practise law, which Ms Odtojan has been practising for 14 years with years of undertaking extensive legal education and training, and Mr Bryl with 2 years of legal practise with extensive training/education including overseas training/education, all comes down to Ms Griswold's arbitrary decision in her next private meeting with the Law Council.¹⁴
15. For convenience, the background of the matters we have raised with Ms Griswold/PSD are set out in our said letters to PSD, (MOLtrPSD and ABLtrPSD), and we refer to them, as follows:
 - a. 'A.1 Communications - OLSC/PSD' - MOLtrPSD p.1 and ABLtrPSD pp.1-2;
 - b. '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.' See MOLtrPSD pp.2-5 and ABLtrPSD pp.2-5;
 - c. 'B. Notice/Next Action' - See MOLtrPSD pp.5-6 and ABLtrPSD p.5;
 - d. 'C. NSWCA Referral of Papers' - See MOLtrPSD pp.6-7 and ABLtrPSD p.6;
 - e. 'D.1 NSWCA Judgments' - See MOLtrPSD pp.7-9 and ABLtrPSD pp.6-8;
 - f. 'D.2 Your/PSD Alleged Conduct Issues' - See MOLtrPSD pp.9-13 and ABLtrPSD pp.8-11;
 - g. 'E. Reports to OLSC/PSD' - See MOLtrPSD pp.13-15;
 - h. 'F. Notice/Public Importance' - See MOLtrPSD pp.16-17 and ABLtrPSD pp.11-12.
 - i. The documents referred to in our said letters to PSD are made available and can be accessed via the Google Drive link in our said email to you enclosing our said letters.
16. Based on Ms Griswold's PSD letter to us, there is a failure to provide what jurisdiction and powers were invoked by PSD/Law Council to prevent the legitimate renewal of our practising certificates.
17. There is no basis for PSD/The Law Council to withhold/prevent our practising certificates from being issued for the year 2024/2025 as there are no findings of misconduct against either of us.
18. If PSD and/or the Law Council is of the opinion that there is an alleged misconduct and/or non-disclosure by either of us, then the Law Council is to afford us 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 to be determined by the tribunal, NCAT.¹⁵ Notwithstanding, the Law Council has no basis to withhold/prevent the renewal of our practising certificates even if such a process is undertaken, until the matter is determined by the Tribunal.
19. The conduct of making a false statement recorded under the PSD letterhead is a very serious matter which requires the urgent attention and action by the Law Council and the Law Society President where

¹³ See MOLtrPSD [12.h], 'E. Reports to OLSC/PSD' 13-15. 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 Ms Odtojan's former legal representatives Mr Ford, Mr Glynn and Mr Condon SC, and impersonation of legal practitioners by Piper Alderman employees; See Mr Bryl's email enclosing this letter - G.Drive links: See document numbers 15 to 17.

¹⁴ Ibid.

¹⁵ 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.

the Director of PSD (Certificate IV in Investigations), in the position of authority over legal practitioners, has made unfounded statements of misconduct against two legal practitioners.

20. The alleged conduct of Ms Griswold reasonably raises serious questions of her fitness as a legal practitioner and Director, Legal Regulation, of PSD of the Law Society of NSW, where she has a wide range of delegate powers having authority over 40,000+ NSW legal practitioners. Ms Griswold has demonstrated in our case, that she has used her position to make unfounded statements of facts of misconduct and has acted on those false premises to prevent the legitimate process of the renewal of our practising certificates.
21. Ms Griswold's alleged conduct is capable of greatly undermining the legal profession and diminishing the public confidence in the legal profession, the legal regulatory body, OLSC, and the Law Society of NSW.
22. NSW lawyers, solicitors, and the public are to be protected from unjust, oppressive conduct and abuses of power by an officer of PSD. A legal practitioner should never receive a letter from PSD/regulatory body with false recordings of any kind. In this instance, Ms Griswold recorded a statement of fact of misconduct against two legal practitioners and has caused great distress, damages and detriment.¹⁶
23. The conduct of Ms Griswold requires great effort from her to go against her duties, obligations, and the established process under the LPUL, which demonstrates her intent to do such acts to affect our practising certificates.¹⁷
24. Ms Griswold's recordings of unfounded statements of facts in her position of authority which cause detriment to a person are capable of constituting offences under Part 4AA of the *Crimes Act 1900* (NSW).
25. In relation to the serious matters raised herein, as set out in our letters to PSD, we call for the Law Council to consider the following actions¹⁸:
 - a. For the Law Council to remove Ms Griswold from the PSD cases of Ms Odtojan and Mr Bryl;
 - b. For the Law Council to investigate Ms Griswold's conduct of making and recording unfounded statements of facts of misconduct against two legal legal practitioners and interfering with the legal practitioners' practising certificates based on those false premises. An act done in her position of authority having a wide range of delegated powers where she has authority over legal practitioners.
 - c. In reference to the [16]-[18] above, the Law Council is to immediately notify/direct the Registry office to issue the renewal of the practising certificates of Mr Bryl and me for the year 2024/2025 as PSD/The Law Council has provided no basis to withhold and/or prevent our practising certificates from being issued for the year 2024/2025. Should PSD continue to withhold/affect the renewal of our practising certificates, without legal basis, it will constitute an ongoing unlawful withholding of our certificates.
 - d. The Law Council is to make enquiries and investigate the conduct of PSD in relation to Ms Odtojan's reports made to OLSC/PSD as listed in her letter to PSD¹⁹ where the said reports have been systematically closed without investigation. The various alleged reported conduct involves fraud/improprieties including impersonations of legal practitioners, and administration of justice offences. There is a duty of the regulatory bodies to report suspected offences under s 465 LPUL.
26. We will rely on this letter giving notice to the Law Council on the above matters.

Kind regards,

Marie Odtojan

Ms Marie Odtojan

Artem Bryl

Mr Artem Bryl

¹⁶ MOLtrPSD [21].

¹⁷ Ibid [5]-[16], [30]-[31],[44]-[45],[50],[56]-[60].

¹⁸ Ibid 'B. Notice/Next Action' [68], 5-6.

¹⁹ n 13.

13 August 2024

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

By email: psd@lawsociety.com.au

RE: PSD Case No 2023_57155.

- 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 Ms M. Odtojan & Mr A. Bryl.**

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 8 July 2024

A.1 Communications - OLSC/PSD

1. I refer to your NSW Law Society Professional Standards Department (**PSD**) letter to me dated 8 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 my law firm. The leave to appeal proceedings in the NSW Court of Appeal (**NSWCA**) regarding the referral of papers¹ to the Office of the Legal Commissioner (**OLSC**), as you would be aware, is in relation to my personal civil tort damages cases against my former legal representatives, Mr Nicolas George Ford, Barrister of Edmund Barton Chambers (**Mr Ford**), Mr Thomas Patrick Glynn, Principal solicitor of Glynn's Lawyers (**Mr Glynn**) and Mr Miles Kevin Condon, Senior Counsel of New Chambers (**Mr Condon SC**).
3. Please direct all correspondences regarding this matter to mo.sydney.au@gmail.com which is the email address recorded on all court documents, where I am a party/applicant to the three proceedings, a litigant in person, a client of the above-mentioned respondent legal practitioners, a victim and a witness of the alleged fraud/improprieties recorded in my statement of claims,² and where I am not acting in professional capacity as a legal practitioner.
4. I note you have recorded in your PSD letter for me to provide my 'further submissions'³ when I made no prior submissions to PSD or OLSC. As you are aware, your PSD letter is the first letter I received from you regarding this matter.

¹ The OLSC complaint process provides that a referral by a judicial officer is a 'source of information' See n 11.

² n 60; 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 '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 PSD Letter [2] 9.

- 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.
5. Your letter dated 8 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'.⁴ An unfounded statement of fact is a fabricated fact⁵, which you have created and recorded under the PSD's letterhead, using your position as an officer and Director of PSD.
 6. 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.
 7. The result of your conduct, based on your created facts that there is prior misconduct by me and I did not disclose such misconduct,⁶ has unlawfully affected my application for the 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',⁷ 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.*'⁸
 8. It appears you have used your position, authority and delegated powers to influence the Law Council/Licencing 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.
 9. It appears from your PSD letter that the status of my practising certificate whether it will be renewed or refused and my ability to continue to practise law, which I have been practising for 14 years with years of undertaking extensive legal education and training, all comes down to your sole arbitrary decision in your next private meeting with the Law Council.⁹
 10. This matter was brought to your attention by the NSWCA referral of papers, which PSD received in July 2023 for Mr Condon's case, and in March 2024 for Mr Ford's and Mr Glynn's cases.¹⁰
 11. The OLSC clearly states in its complaint process that a referral by a judicial officer is a 'source of information'¹¹ relying on which the OLSC may initiate a complaint, conduct initial assessments and may undertake investigations if it proceeds to pursue the complaint.
 12. 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 8 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 your office to search my personal civil cases and listed them in your PSD letter, and generally refer to those orders/judgments, without particulars, as findings of misconduct where you concluded that I have not disclosed 'prior misconduct'.¹² This is a separate matter from the NSWCA referral of papers initiated by you/PSD which is to have its own file/case number.

⁴ PSD Letter [5] 8, 4 '*serious past misconduct*' in *Thomas v Legal Practitioners Admissions Board* [2004] QCA 407 [2005] 1

⁵ Black's Law Dictionary, 2nd Ed. '*A fact that is not founded on a truth*'.

⁶ n 4, [3]-[7] 8.

⁷ PSD Letter [1]-[3] 1.

⁸ Ibid [5] 8.

⁹ Ibid.

¹⁰ PSD Letter 'Annexure A' [1]-[3] 1, [1]-[3] 5.

¹¹ OLSC, LSC Initiated Complaint:

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

¹² PSD Letter [3]-[7] 8.

- d. The list of documents in your 'Annexure A' provides that NSWCA referral of papers orders¹³ have not been complied with as there are missing documents, which are substantially my court documents.¹⁴
- e. You had already taken action to notify 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.¹⁵ and where the NSWCA referral of papers orders had not been complied with. I refer to my email dated 2 August 2024¹⁶ regarding the incomplete documents and request for extension of time regarding the serious matter of my practising certificate giving notice of contacting Law Cover about the matter where I only knew about the PSD initiated case regarding my certificate upon receipt of the PSD letter. I received no response from PSD to the matters I raised in my email.
- f. You vaguely state in the PSD letter, without any foundation nor specific particulars put to me, that *'Your certificate renewal applications for the period 2017/2018 to 2024/2025 may be considered to be providing incorrect or misleading information...'*¹⁷ It appears you have used my personal civil cases including the NSWCA referral, stating generally that there are findings of misconduct/prior misconduct to be disclosed.¹⁸ It is not clear what it is you allege I am to disclose under *Legal Profession Uniform General Rules 2015 (Uniform Rules)*.
- 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'*.¹⁹ You have failed to provide me any particulars, the paragraphs and to quote the excerpts of findings of misconduct in the orders/judgments which you vaguely and generally state I should disclose.²⁰
- h. My personal civil cases you listed stem from the Local Court proceedings (2014/00219407) (**LCProceedings**), where the OLSC/PSD have been aware of the nature of the proceedings and the serious issues I raised of fraud and collusion from the various reports made to the OLSC/PSD for the period 2016 to date.²¹ These reports to the OLSC/PSD are relevant as OLSC/PSD were given notice of the facts, circumstances and issues relating to the LCProceedings which I note your PSD letter has omitted. I reported the conduct of Piper Alderman lawyers, their counsels, impersonation of legal practitioners including the conduct of my three former legal practitioners, Mr Ford, Mr Glynn and Mr Condon SC, and an incorporated legal practice of Credit Corp, Certus Partners.²²
- i. It appears you are attempting to place me in the capacity of a legal practitioner in my civil cases, which is contrary to your determination in the 2016 complaint made by Piper Alderman against me in the LCProceedings using my status as a legal practitioner. OLSC/PSD closed the complaint determining that I am not acting in the capacity of the legal practitioner, being a party to proceedings, and the Solicitor Rules did not apply to me as relied upon by Piper Alderman.²³
- j. The conduct of searching my personal civil cases and using them against me is similar conduct by Justices Leeming and Kirk (Condon case), who used their judicial public office to also search my personal civil cases and recorded in their judgment, by ambush, a 2019 case²⁴ which is irrelevant and was not a matter before them. The Justices had cast aspersions on me, my firm/business and my marriage/family unit in their judgment where such matters they recorded in the judgment were not raised nor put to me to answer in court. What is substantially recorded in the published judgment

¹³ *Odtojan v Condon (No.2)* [2023] NSWCA 149 [39]; *Odtojan v Glynn t/as Glynn's Lawyers*; *Odtojan v Ford (No.2)* [2024]. NSWCA 25 [6].

¹⁴ See [33].

¹⁵ PSD Letter [1]-[4] 1.

¹⁶ See Ms Odtojan email to PSD dated 2 August 2024.

¹⁷ PSD Letter [7] 4.

¹⁸ n 6.

¹⁹ Ibid [5] 8.

²⁰ Ibid [1] 5, [3]-[7] 8.

²¹ See 'E. Reports to OLSC/PSD' 13-15; OLSC/PSD has the Judgment of Magistrate Freund in the Annexure to the report on Piper Alderman dated 27 June 2018 (See Annexure D.1, p. 513).

²² Ibid.

²³ See [60.a]

²⁴ *Odtojan v Condon* [2023] NSWCA 129 [78-79].

available to the public, was done by ambush. I gave notice to the Justices in my submission²⁵ of the above-mentioned issues amongst others, in the show cause for referral of papers. The Justices responded by recording in their published judgment (No.2): '*if anything, they reinforce that such a referral is appropriate*'.²⁶ The 2019 case recorded by the Justices was my appeal from costs assessment against Credit Corp/Piper Alderman. Mr Peter Rosier (**Mr Rosier**) assessed tampered/backdated account documents. Mr Rosier ignored the issues I put to him, seeking no questions or clarifications from Piper Alderman throughout the costs assessment process.²⁷

- k. I note you have not provided the disclosures of the OLSC complaint process and the applicable legislation, particularly, the specific provisions of misconduct under the LPUL. Such disclosures are standard practice by OLSC/PSD, essential for an independent and fair procedure.
- l. 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 who is not a legal practitioner, seeking admission with the Legal Practitioners Admissions Board (**APB**). 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.
13. 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.
14. 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.²⁸ Professional misconduct is determined by the designated tribunal, NSW Civil and Administrative Tribunal (**NCAT**) under s 300(1)(b) of the LPUL.
15. On 17 July 2024, Mr Bryl received a letter from you/PSD which appears to be a copy and paste of your letter to me. The content of your letter to Mr Bryl shows disregard of whether the issues you raised with Mr Bryl apply to him or not. As you would be aware from the NSWCA judgments, Mr Bryl only appeared as a McKenzie friend, having been granted leave to appear at the NSWCA leave to appeal hearings. Mr Bryl is not the solicitor on record and has not acted in the capacity of a solicitor in my court proceedings other than a McKenzie friend. Mr Bryl cannot be held responsible for my court documents, correspondences and communications in my personal civil court proceedings.
16. In your PSD letter to Mr Byl, you repeated the conduct of recording unfounded statements of fact that Mr Bryl has 'prior misconduct'.²⁹ There are no findings of misconduct against Mr Bryl or me.
17. 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 Mr Bryl 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 a false statement of 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.

²⁵ See 'D.1 NSWCA Judgments' 7-9.

²⁶ *Odtojan v Condon (No.2)* [2023] NSWCA 149 [38].

²⁷ See [60.f].

²⁸ 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

²⁹ See PSD letter to Mr Bryl's letter to PSD dated 17 July 2024.

18. 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,³⁰ 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.
19. The Council of the Law Society has delegated its powers to PSD for independent assessment/ investigation of the NSWCA referral of papers. Your statement in our first letter to me that you '*intend to ask Council... to consider whether to grant or refuse...*'³¹ my practising certificate in your next meeting demonstrates that you/PSD are disregarding the LPUL process and not conducting an impartial and independent assessment/investigation. I am denied procedural fairness and not afforded due process under the LPUL.
20. It is made clear by your conduct and your 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 Mr Bryl'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 Odojan to operate her legal practice.
21. 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, where we are also part of the NSW Law Society pro-bono scheme, and affect the operation of my business where I have obligations to my clients, to 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 matters to attend to your PSD letters where actions have been made against our practising certificates under the false premises of misconduct by us.
22. 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

23. 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 Mr Bryl's and my practising certificates. PSD/The Law Council has provided no basis to withhold and/or prevent our practising certificates from being issued for the year 2024/2025.
24. If PSD and/or the Law Council is of the opinion that there is an alleged misconduct and/or non-disclosure by Mr Bryl and me, then the Law Council is to afford Mr Bryl 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 to be determined by the tribunal, NCAT.³² 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.
25. 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 of Mr Bryl 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.

³⁰ A copy of this letter and related documents will be provided to the above-mentioned parties.

³¹ n 8

³² 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.

26. 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 Mr Bryl and me, that such statements are untrue. You are to promptly notify us, in writing, that you have done so.
27. 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."³³

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.

C. NSWCA Referral of papers

C.1 NSW Referral of papers orders

28. Based on your PSD letter, the referral of papers from the NSWCA in Mr Condon's case before Justices Leeming and Kirk on 31 May 2023 (referred by you as '**Odtojan No 2**') was received by OLSC on 3 July 2023, and forwarded to 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 OLSC on 29 February 2024 and forwarded to Council of the Law Society on 8 March 2024.
29. A leave to appeal hearing (**LAHearing**) is a very limited procedural hearing where an applicant seeks permission to have a leave hearing before the NSWCA. Each party is allocated 20 minutes to present their leave to appeal arguments/issues.³⁴ Effectively, it is usually a 1-2 hour hearing which only addresses the leave/appeal argument/issues recorded in the prescribed Applicant's argument and the Respondent's Argument, and cannot address substantive issues of fact/law/credit which require a final hearing.

C.2 NSWCA referral of papers - Incomplete documents

30. 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.³⁵

³³ United Nations Office on Drugs and Crime.

<https://www.unodc.org/e4j/zh/anti-corruption/module-1/key-issues/corruption---baseline-definition.html>

³⁴ (Condon) Applicant's White Folder 1 dated 26 May 2023 *Summary of Applicant's Argument filed 30 March 2023* Tab 2, n39; (Ford and Glynn) Applicant's White Folder 1 dated 28 June 2023 *Summary of Applicant's Argument filed 28 June 2023* Tab 2; n 37 G.Drive link: See document numbers 12-14.

³⁵ n 13.

31. PSD has a duty to make enquiries to ensure compliance with the NSWCA orders.³⁶ The following documents appear to be missing in your 'Annexure A':
- a. In relation to show cause re: referral of papers (referred by you as Odtojan No.1):
 - i. The Applicant's Submissions dated 26 June 2023 (p.12).³⁷
 - ii. The Applicant's Affidavit sworn 26 June 2023 (p.15)³⁸ with Annexure of court transcript 31 May 2023, Summary of Applicant's Argument dated 30 March 2023 and Applicant's Response to the Respondent's Response dated 29 May 2023, and correspondence to Mr Berg 21 May 2023. (p.80).
 - iii. My 'Applicant's Response to Respondent's Response' dated 29 May 2023 (p.8).³⁹
 - iv. The affidavit of Mr James Berg of DLP Piper dated 30 May 2023 (p.8) with exhibits (p.193).
 - v. The affidavit of Mr James Berg of DLP Piper dated 31 May 2023 (p.6) with exhibits (p.26).
 - b. In relation to the referral of papers in Mr Ford and Mr Glynn's matter (referred by you as Odtojan/Glynn/Ford 2), there is no identification of both respondent's documents.
 - c. The court transcripts of 31 May 2023 (Condon) and 11 Oct 2023 (Ford and Glynn).⁴⁰
 - d. The email response from the Associate of Justices Basten and White dated 6 December 2023.⁴¹

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

32. I gave notice to the Justices that their respective judgments recorded facts, representations and evidence which were not ventilated at the leave to appeal hearings, 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.
33. I rely on the following documents:
- a. The court transcripts of 31 May 2023 and 11 October 2023.⁴² 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 Summary of the Applicant's Argument dated 30 March 2023 (Condon) and 28 June 2023 (Ford and Glynn)⁴³
 - c. The Applicant's Written Submissions dated 14 February 2023.⁴⁴
 - d. The Applicant's Submissions dated 26 June 2023.⁴⁵
 - e. The Applicant's affidavit sworn 26 June 2023.⁴⁶
 - f. The Applicant's Response to Respondent's Response' dated 29 May 2023.⁴⁷
 - g. My email to the Associate of White and Basten dated 5 December 2023 and response email from the Associate on 6 December 2023.⁴⁸

³⁶ n 35.

³⁷ Ms Odtojan's email to PSD enclosing this letter - G.Drive link: 4. *Applicant's Submissions dated 26 June 2023 (Condon)*.

³⁸ Ibid. G.Drive link: 6. *Applicant's Affidavit sworn 26 June 2023 (Condon)*.

³⁹ Ibid. G.Drive link: 3. *Applicant's Response to Respondent's Response dated 29 May 2023 (Condon)*.

⁴⁰ Ibid. G.Drive link: 6. *NSWCA Court transcript 31 May 2023 (Condon)*; 7. *NSWCA Court transcript 11 October 2023 (Ford and Glynn)*.

⁴¹ Ibid. G.Drive link: 8. *Ms Odtojan w/Associate of Justices Basten and White emails dated 5-6 Dec 2023*.

⁴² n 40.

⁴³ Applicant's White Folder 1 dated 26/05/2023 Tab 2 (Condon); Applicant's White Folder 1 dated 28/06/2023 Tab 2 (Ford); Applicant's White Folder 1 dated 28/06/2023 Tab 2 (Glynn). n 37 Documents number 12.

⁴⁴ Applicant's White Folder 1 dated 26/05/2023 Tab 10 (Condon); Applicant's White Folder 1 dated 28/06/2023 Tab 10 (Ford); Applicant's White Folder 1 dated 28/06/2023 Tab 10 (Glynn); n 37 G.Drive link: See documents number 9-11.

⁴⁵ n 37.

⁴⁶ n 38.

⁴⁷ n 39.

⁴⁸ n 41.

34. Justices Leeming and Kirk acknowledged in court that Mr Bryl and I are witnesses in the all-important conference. However, these material facts, among others, were omitted in the Justices' judgments.⁴⁹
35. I refer to my email to the Associate of Justices Basten and White dated 5 December 2023, giving notice that Mr Bryl 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.⁵⁰ The Justices recorded the application of s 170 of the Credit Code to a contract where no contract was 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.⁵¹
36. The material issues and documents/evidence raised and referred to by Mr Bryl, acting as McKenzie friend at the LAHearings were either omitted and/or misrepresented in the NSWCA judgments.
37. My firm, Odtojan Bryl Lawyers (**OBL**), and the criticism recorded in the judgment, casting aspersions on me, placing me in capacity of legal practitioner in my personal civil cases, and disregarding the established legal, contractual and fiduciary obligations of my legal representatives (Mr Ford, Mr Glynn and Mr Condon SC), were not raised nor put to me to answer at the LAHearings.
38. My firm, Mr Byl 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. Mr Bryl and I are witnesses and I am a victim, 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.
39. The respondents, Mr Ford, Mr Glynn and Mr Condon SC, has failed and continue to fail for 8 years, to produce to me 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 I received a contract on 12 January 2015 (which is not my case and where there is no evidence to support such statement),⁵² 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 judgment⁵³, by ambush and without any evidence in support, that Mr Condon SC addressed my 16-page letter to resolve the issue 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 completely ignored and omitted in the Judgment of Justices Basten and White in Ford's and Glynn's cases.
40. The respondents and their legal representatives⁵⁴ are aware how they obtained the NSWCA judgments.⁵⁵ There was no involvement of their respective professional indemnity insurance

⁴⁹ See [33.a]; (Condon) Court transcript 31 May 2023 [44]-[48] 1;

⁵⁰ 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. These issues were put to the Justices in both LAHearings which were disregarded by the Justices. n 37 G.Drive link: 25. *Magistrate Sharon Freund Judgment 16 Aug 2016 (LCProceedings 2014_00219407)*.

⁵¹ See [32]-[35], [39], [41], [49].

⁵² 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.

⁵³ *Odtojan v Condon* [2023] NSWCA 129 [12].

⁵⁴ (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.

⁵⁵ [48.f]; Also see Ms Odtojan's email to PSD enclosing this letter - G.Drive link: 20. *Judicial Registrar James Howard email to parties dated 28 Sept 2022 and Ms Odtojan reply email dated 29 Sept 2022*.

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 Mr Bryl 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, Mr Bryl 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 Mr Bryl that there was no contract nor 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 judgments.

41. 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.
42. In relation to the District Court interlocutory hearing where I 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/legal basis, Judge Norton limited my claim to plead only in relation to the respondents 'appeal/prospects of success of appeal'. Judge Norton stated that my claims pertain to criminality, however, in limiting my claim, the pleadings of fraud/conspiracy were removed, rendering my case hopeless as the pleadings no longer supported my causes of action. There is no cause of action under 'appeal/prospect of success to appeal'.
43. Judge Norton made oppressive orders where I was to file all evidence before the Respondents filed their defences. Such order is contrary to the civil procedure and prescribed timetables of filing evidence only after the pleadings are closed. Judge Norton applied criminal standards to my civil torts cases.

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.⁵⁶
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 15 in your PSD letter,⁵⁷ 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*'.⁵⁸ The rule against bias ensures that the decision maker can be objectively considered to be impartial and not to have pre-judged a decision.

⁵⁶ See [12.c], [12.g]-[12.h], [12.j].

⁵⁷ PSD Letter 5-8.

⁵⁸ *Kioa v West* (1985) 159 CLR 550, 563, quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342, 360.

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 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 the alleged conduct issues in 1-15 in your PSD letter:

- a. You have raised conduct issues with me, solely relying on the NSWCA judgments and quoting from them without referring to any other documents. As noted herein, you do not have all the documents pursuant to the NSWCA referral of papers orders, where my court documents are substantially missing and not within your possession.⁵⁹
- b. My three amended statements of claim (**ASOCs**)⁶⁰ have extensive pleadings of 27 pages (Condon), 50 pages (Mr Ford) and 44 pages (Mr Glynn) filed in the NSW District Court Sydney under the civil tort damages division which contains alleged facts and allegations in support of the pleading rules for causes of action of unlawful civil conspiracy, intentional negligence and fraud. My claims require a determination by a trial judge at a final hearing in the civil District Court. The issues and allegations I raised in my claims remain outstanding and unresolved.
- c. The OLSC/PSD has no jurisdiction to determine alleged facts and allegations in my ASOCs, being court documents. The regulatory body is not the appropriate forum. Notice was given to Justices Leeming and Kirk that the OLSC has no jurisdiction to determine the allegations in my ASOCs, where such allegations require a final hearing.⁶¹
- d. As you are aware, the 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 constitutes offences under the *Crimes Act*, including referring an innocent person to be subject to an investigation by an authority/regulatory body.

⁵⁹ See 'C.2 NSWCA referral of papers - Incomplete documents' 6.

⁶⁰ 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; [33.c] above; n 37 G.Drive link: See ASOCs documents number 21-23.

⁶¹ See [33.d]-[33.e].

- e. I had exercised my rights under the civil court jurisdiction where the respondents had legal, contractual and fiduciary obligations to me under the established legal relationship of client/legal practitioner. This legal relationship was disregarded by the Justices in their judgments.
 - f. The respondent's legal representatives are aware how they obtained the judgments/orders. I refer to the court transcripts and to my letter to Mr James Berg of DLA Piper.⁶²
49. In relation to your alleged conduct issues 1,2, 8, 9, 10, 12 and 13:
- a. It is unclear what you are alleging I have breached? I refer to [29]-[31], [32]-[48] and [54]. The alleged facts and allegations in my ASOCs can only be determined at a final hearing.
 - b. 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.⁶³
 - c. Your alleged conduct issue 13 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.⁶⁴ No such statement was made. I rely on the court transcript of 11 October 2023 and my ASOC on Mr Ford. Mr Ford's conduct is extensively pleaded.
 - d. The Justices in the leave to appeal hearing of Condon (approx 1.5 hour hearing) and Mr Ford and Mr Glynn (approx. 3 hour hearing) did not go through my extensive pleadings of civil unlawful conspiracy, fraud and intentional negligence. It is not within the scope of the limited LAHearing to determine evidence nor resolve issues of fact/law/credit. There are strict procedures and documents to be completed for LAHearings. The judgments recorded matters that are impermissible, ultra vires and done by ambush, and went beyond the summary of the applicant's argument⁶⁵ and the respondent's response.
 - e. Justices Basten and White recorded that there is '*No skerrick of evidence to support the premise...*'⁶⁶ where the LAHearing is not to determine evidence and neither did we go through evidence. In court, the Justices did not put to Mr Bryl 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 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.

⁶² n 54; [33.a]; See Ms Odtojan's email to PSD enclosing this letter - G.Drive link: 19. Ms Odtojan ltr to Mr Berg DLA Piper dated 3 July 2023 (Condon); (1) On 16 February 2023, Mr Anthony McInerney 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 McInerney SC was laughing when he raised to the court the issue of Mr McInerney 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.

⁶³ See [31.a.i]-[31.a.iii] and [33.c], [49.f].

⁶⁴ *Odtojan v Ford* [2023] NSWCA 277 [16].

⁶⁵ See [33.b].

⁶⁶ *Odtojan v Glynn t/as Glynn's Lawyers* [2023] NSWCA 276 [96].

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.

- f. 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 orders⁶⁷ (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.⁶⁸
 - g. The NSWCA Justices do not refer/quote my affidavits, arguments, submissions, legislation (Credit Laws and s 91 EA) and case authorities which support my 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.
50. In relation to your alleged conduct issue 3:
- a. It is unclear what you are alleging I have breached? I refer to [29]-[31], [32]-[49]. Justices Leeming and Kirk, recorded in their judgment a 2019 case which is my costs assessment appeal against Credit Corp/Piper Alderman and is irrelevant to the Condon case before the said Justices at the LAHearing. The recording of this case in the judgment was made by ambush. The Justices had searched for my past civil cases which are not the matters before them.⁶⁹ It is noted that you have engaged in similar conduct, searching for my personal civil cases⁷⁰ and using them against me.
51. In relation to your alleged conduct Issue 4:
- a. It is unclear what you are alleging I have breached? I refer to [29]-[31], [32]-[49]. This issue recorded by the Justices in their judgment making criticisms about me sending an email to Judge Norton was not put to me to answer at the LAHearing.⁷¹ This was recorded by ambush. I refer to my email to Judge Norton, copying the other side party, which is self-explanatory as to the purpose of my email. I was exercising my right to contact the court within 14 days after the orders were made and I had also relied on r 36.16 of the *Uniform Civil Procedure Rules 2005 (UCPR)*.

⁶⁷ 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 37 G.Drive link: See document number 24.

⁶⁸ Pleadings were not closed. No defences were filed. Evidence was yet to be timetabled for filing in the District Court.

⁶⁹ See [12.j].

⁷⁰ See PSD letter [1] 5, [3]-[4], [7] 8; See [12.j].

⁷¹ n 37 G.Drive link: 6. NSWCA Court transcript 31 May 2023 (Condon)

52. In relation to your alleged conduct issue 5, 11 and 14:
- It is unclear what you are alleging I have breached? I refer to [29]-[31], [32]-[49]. This issue recorded by the Justices in their judgment making criticisms about me regarding my appeal grounds of bias, breach of bias rule and denial of procedural fairness was never put to me to answer at the LAHearing.⁷² These are my grounds for appeal and I am exercising my legal rights to appeal and access the court. This is my constitutional right. No one should be threatened nor prosecuted for exercising their rights to appeal a court order/judgment.
53. In relation to your alleged conduct issue 6 and 7:
- It is unclear what you are alleging I have breached? I refer to [29]-[31], [32]-[49]. I refer to paragraphs 3 and 4 of the Applicant's Response to Respondent's Response dated 29 May 2023⁷³ which refer to Annexure A 'Table of Issues in Respondent's Supplementary White Book...' in Tab 7.⁷⁴ A side-by-side comparison can be made of the documents being tampered. This was disregarded by the Justices and such evidence/documents were omitted in the judgment. Tampering with court documents is an offence under s 317 of the *Crimes Act 1900* (NSW) (**Crimes Act**). Disregarding evidence that constitutes an indictable offence, is concealment, and accusing an innocent person to be investigated by authority/regulatory body are offences under the *Crimes Act*.
54. In relation to your alleged conduct issue 15:
- It is unclear what you are alleging I have breached? I refer to my email to Associate of Justices Basten and White dated 5 December 2023 which is self-explanatory. See [35].
 - Mr Bryl and I sought a 7-day extension on the condition that the Justices provide clarification of the evidence they relied upon in the judgment regarding the contract, the application of s 170 of Credit Code to a contract which was not before them to apply the Credit Code, and their recordings of Mr Ford's and Mr Glynn's conduct in the judgment stating '*the conduct of which they complained could be readily explained as a matter of oversight...*'.⁷⁵ There was no such evidence nor submissions made by the respondents or their counsels. I rely on the court transcript dated 11 October 2023.
 - It is noted that the Justices' Associates reply email to me dated 6 December 2023 is not listed in your Annexure A. The said email did not state to me that my email to the Justices Associate was inappropriate, however, the Justices' published judgment records that my email was inappropriate. The Justices had failed to provide the clarifications sought in my email as above-mentioned.
55. You have raised the issue whether Mr Bryl 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 a legal practitioner which raises questions of their fitness to practise.

E. Reports to OLSC/PSD

56. OLSC/PSD have received multiple reports for the period 2016 to date. The reports involved conduct that involve fraud/criminality, indictable offences, and administration of justice offences.
57. My reports to the OLSC/PSD with supporting evidence/documents were systemically closed without investigation. OLSC/PSD has a duty to report suspected offences under s 465 LPUL.
58. These various reports are easily accessible to the PSD/OLSC, however, they have been omitted in your PSD letter to me. These reports are relevant as PSD is alleging it is unaware of the circumstances of my LCProceedings when such matters are well-known to the OLSC/PSD having received voluminous documents and reports of the LCProceedings where OLSC/PSD has copies of

⁷² Ibid.

⁷³ See [31.a.iii].

⁷⁴ (Condon) Applicant's White Folder 1 dated 26 May 2023, Tab 7 38-40.

⁷⁵ *Odtojan v Glynn t/as Glynn's Lawyers* [2023] NSWCA 276 [107].

the judgment of Magistrate Sharon Freund (**Magistrate Freund**) in my 2018 report on Piper Alderman. I raised issues of how the judgment and costs order were obtained by fraud and collusion.

59. The allegations I have raised in my ASOCs against my former legal representatives of fraud and conspiracy are already known to the OLSC/PSD. I made similar and consistent allegations in my reports against Piper Alderman in 2018 (102 pages and approx. 660 pages of supporting documents), which outline the conduct of my former legal representatives, Mr Ford, Mr Glynn and Mr Condon.
60. I refer to the following reports:
- a. In 2016 - Complaint to OLSC by Mr Florian Ammer and Mr Matthew Mellinni of Piper Alderman Lawyers on me, during Local Court proceedings (22014/00219407), using my profession as solicitor against me in my personal civil case where they were aware I am a litigant in person (**LIP**).
 - i. Mr Ammer/Piper Alderman made the complaint against me for giving notice of the issue disputing the existence of their alleged credit contract and raising their conduct of misleading the court. Piper Alderman repeatedly ignored the issues of their failure to produce their alleged contract⁷⁶ under the Notices to Produce/Court Orders. Notice was given to Mr Adam Carpenter of Credit Corp, who was aware of the issue to produce the contract under Notices to Produce/orders up to March 2016.
 - ii. PSD held onto the complaint throughout the LCProceedings despite their guidelines not to conduct an investigation whilst proceedings are on foot. PSD/OLSC closed the complaint after the conclusion of the proceedings, and determined I was a LIP and not acting in the capacity of a solicitor and the Solicitors Rules relied upon by Piper Alderman did not apply.
 - b. In 2016, in reply to Mr Ammer/Piper Alderman's complaint, I gave notice to PSD, amongst other issues, that Ms Natalie Miller paralegal/JP of Piper Alderman (**Ms Miller**), an unqualified person, was impersonating a legal practitioner throughout the LCProceedings, sitting at the bar table and being referred to as a solicitor/instructing solicitor by the Credit Corp/Piper Alderman's counsel Mr Sebastian Hartford-Davis, who was aware Ms Miller was not a solicitor.
 - i. Mr Hartford-Davis misled the court by referring to an unqualified person, Ms Miller, as his instructing solicitor throughout LCProceedings and in the two day final hearing. Ms Miller touched/tampered with evidence, circling my signatures at the bar table where that document was tendered as evidence/exhibit. PSD did not investigate the issues raised and returned my written submissions retaining no copy for its record (available upon request).
 - c. In 2017 - My report to OLSC on Mr Carlos Toda and Ms Kelly Witts of Certus Partners (Credit Corp lawyers) regarding their undertakings in correspondence where they represented in writing, that they would produce to me their alleged credit card contract, (as pleaded in their statement of claim), within a specified timeframe.
 - i. OLSC did not refer the complaint to PSD and closed the complaint stating the lawyer's representation to provide the credit card contract was not an undertaking.
 - ii. To date, Mr Toda of Certus Partners continues to plead credit card contract/agreements, (regardless if a contract exists or not, and with no causes of action), in Credit Corp's statements of claim filed in the courts throughout Australia, circumventing and contravening *National Consumer Credit Protection Act 2009 (NCCPA)*⁷⁷ adversely affecting the lives of many Australians across the Country.

⁷⁶ See n 67. Notices to Produce/Court orders to produce the credit contract among other documents were agreed by Credit Corp/Piper Alderman/Mr Sebastian Hartford-Davis signed 17/12/2015, where they failed to produce and comply with the court orders and are in contempt of the Notices to Produce/Court orders since 2015-16, for almost 10 years and ongoing. Mr Ford at the final hearing represented that his client received the contract on 12 January 2015 (not his client's case). This representation is contrary to the Notice to Produce signed by Mr Hartford-Davis on 17 December 2015. Mr Hartford-Davis did not prove a cause of action (breach of terms/default) nor did he put his case to Ms Odtojan (*Browne v Dunn*). The Notices to Produce/court orders were disregarded and omitted in the NSWCA judgments.

⁷⁷ NCCPA Schedule 1 - *National Credit Code*.

- d. In 2018 - My report to OLSC on Piper Alderman Lawyers dated 27 June 2018⁷⁸ included the conduct of Mr Sebastian Hartford-Davis, Mr Nicolas Ford, Mr Thomas Glynn and Mr Miles Condon SC and the impersonation of legal practitioners. The allegations of fraud and collusion raised in my statements of claim filed in 2022 are already known by the OLSC/PSD. The allegations are consistent with my said reports.
 - i. OLSC did not forward the report to PSD, however, I had provided a copy to PSD.
 - ii. OLSC closed the complaint without investigation. The former Commissioner, Mr John McKenzie represented that Magistrate Freund found the contract and stated it was a "Form" without any evidence in support of such statement and without citing where it is recorded in the judgment that the contract was a "Form". There is no such record in the judgment.
- e. In 2018 - My report to PSD on Ms Natalie Miller (Piper Alderman paralegal/J.P.) and Mr Owen Nanlohy (Piper Alderman clerk) for unqualified persons impersonating legal practitioners (solicitors and a barrister) at LCProceedings'. PSD closed the complaint without investigation. The letter from PSD dated 6 November 2019, (Ref.No 1283 and 1284) signed by Mr William Sit, PSD Litigation Solicitor, stated that PSD '*has determined that the matters will not need to be taken any further.*' PSD disregarded s 10 of the LPUL NSW 'Prohibition of engaging in legal practice by unqualified entities'. The Law Society website provides the penalties for unqualified practitioners.
- f. In 2019 - Report on Mr Peter Rosier, Costs Assessor in the three costs assessment matters of Mr Ford, Mr Glynn, and Piper Alderman. Mr Rosier ignored issues of fabricated account statements and unaccounted trust funds with Mr Glynn and Mr Ford and the altered account records in Piper Alderman's account documents, such as backdating/changing Ms Miller's attendances from 'instructing' to 'attending conference', among many other matters raised.
 - i. Mr Rosier, a legal practitioner, disregarded his duties as Costs Assessor, to report such matters to the regulatory body⁷⁹ and proceeded to assess the matters for the benefit of Mr Ford, Mr Glynn and Piper Alderman disregarding serious issues I raised of their conduct that pertains to offences under the Crimes Act.
 - ii. Mr Ford made a false recording in his account statement, framing my firm/me as instructing solicitor when I am his client and was not acting in a professional legal capacity. He omitted Mr Glynn/Glynns Lawyers as the instructing solicitor from his account statements, where trust funds are not recorded to be received from Mr Glynn's Trust account. There are unaccounted trust funds since 2016 to date. Mr Ford never mentions nor records Mr Glynn as his instructing solicitor throughout his costs assessment submissions in 2017.
 - iii. Mr Rosier did not seek any questions/clarifications about Mr Ford, Mr Glynn and Piper Alderman's account statements nor raised any concern of their conduct. Mr Rosier answered for Mr Ford and Piper Alderman that the credit contract was some "document" with a signature. There was no evidence to support Mr Rosier's statement.
- g. On 12 June 2019 - Notice was given to OLSC/PSD that the legal practitioners/persons I reported are engaging in the same conduct. Notice was given to protect the public. My notice was ignored and I received no response from OLSC/PSD.⁸⁰

⁷⁸ See Ms Odtojan's email to PSD enclosing this letter - G.Drive link: See document numbers 15 to 17, Report on Piper Alderman law firm (PA) and its 8 (eight) PA legal practitioners: Mr Florian Ammer (Partner), Ms Anne Freeman (Partner), and solicitors: Ms Matthew Mennilli, Ms Hannah Veldre, Mr Brendan May, Mr Malcom Quirey, Mr Stefano Calabretta, Mr Owen Nanlohy (who was a PA clerk impersonating a counsel at the court hearing on 16/08/2016. Mr Nanlohy was admitted as a lawyer on 11/12/2017). The report also outlined the conduct of Mr Sebastian Hartford-Davis of Banco Chambers, Mr James Willis of Eight Selborne Chambers, Mr Nicolas Ford of Edmund Barton Chambers, Mr Miles Condon SC of New Chambers and Mr Thomas Glynn of Principal Solicitor of Glynns Lawyers.

⁷⁹ LPUL s 202.

⁸⁰ See n 78 G.Drive link: 18. Ms Odtojan correspondence to OLSC 12 June 2019 (J.McKenzie).

F. Notice/Public Importance

61. This letter will be made public for the protection of Mr Bryl, 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 Mr Bryl 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.
62. My case is of great importance. For almost 10 years I have been dealing with the alleged fraud/Improprieties of an ASX-listed company, Credit Corp Services Pty Limited, its lawyers and my former legal representatives that stem from St George Bank's contravention of the credit laws⁸¹ in failing to form the credit card contract and pre-contractual documents, and providing an unsolicited credit card.⁸² This conduct was perpetuated by Credit Corp and its lawyers making a claim under a credit card contract that does not exist and using the NSW Local Court Sydney to obtain a judgment without proving a cause of action.⁸³ The alleged conduct of the reported legal practitioners/persons greatly undermines the integrity of the legal system and legal profession.
63. My case is not an isolated case. The conduct of Credit Corp and its lawyers, as above-mentioned, is their *modus operandi* across Australia, where many lives are adversely affected, these are individuals, business owners, vulnerable people (elderly, those with disabilities etc), estates and deceased estates. I made various reports over the years to OLSC/PSD among others, which have been systemically closed without any investigation.
64. Mr Bryl and I are witnesses and I am a victim of the alleged conduct as above-mentioned, and outlined in my ASOCs and in my reports to OLSC/PSD. Mr Bryl and I have been threatened, intimidated and are being prosecuted, and our careers are at risk because we discovered the fraud committed against me by my former legal representatives, by Credit Corp and its lawyers in the LCProceedings, who are alleged to obtain the judgment by fraud and committed further acts of fraud/improprieties in the costs assessment process and subsequent court proceedings. The said conduct is captured in the court transcripts, court documents, correspondences, account statements and more, where these documents have substantially been provided in my reports to the OLSC/PSD.
65. OLSC/PSD is fully aware of the allegations of fraud and collusion that stem from the LCProceedings which are recorded in the various reports I made to them.⁸⁴ However, these reports have been omitted in your PSD letter to me where they are relevant as you raised questions representing as if PSD is unaware of the facts and circumstances of the LCProceedings and subsequent civil cases.
66. There is a history of OLSC/PSD systematically closing and not investigating my various reports where the reported conduct pertains to indictable offences and administration of justice offences which OLSC/PSD has a duty to report suspected offences under s 465 LPUL.
67. 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, which such conduct is to be referred to the appropriate authority.

⁸¹ n 77.

⁸² AS/C Act. Penalties for issuing an unsolicited credit card attract penalties of approx. \$2.5M.

⁸³ Magistrate Freund's Judgment dated 16 August 2016 records 'contract' as a statement of fact approximately 75 times and identifies the proceedings as a 'credit card contract' case, however, no contract was produced nor ventilated at the final hearing on 18 and 19 July 2016, (See court transcripts 18 and 19 July 2016). The judgment does not identify/refer to evidence of a credit contract nor determine the cause of action of a breach of term/default under a credit contract contract; n 37 G.Drive link: 25. *Magistrate Sharon Freund Judgment 16 Aug 2016 (LCProceedings 2014_00219407)*

⁸⁴ 'E. Reports to OLSC/PSD' 13-14.

68. 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 Mr Bryl'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 Mr Bryl 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 Mr Bryl 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.
69. The PSD/Law Council has a duty to afford Mr Bryl 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.

Marie Odlojan

[Redacted Signature]

Email: mo.sydney.au@gmail.com

13 August 2024

Professional Standards Department
The Law Society of New South Wales
Attention: Ms Valerie 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 Glynn's 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/Licencing 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/e4j/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 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.
- a. 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.
 - b. 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.
 - c. 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.
 - d. 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 McInerney 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 McInerney SC was laughing when he raised to the court the issue of Mr McInerney 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:
- For PSD/Law Council to issue the renewal of Ms Odtojan and my practising certificates;
 - 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.
 - 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

08 July 2024

PRIVATE AND CONFIDENTIAL

Ms Marie Odtojan

Sent via email only: admin@odtojanbryllawyers.com.au

Dear Ms Odtojan

Application for the renewal of your practising certificate for the practice year 2024/2025

I refer to your 2024/2025 application for the renewal of an Australian practising certificate as a principal of a law practice dated 15 May 2024 (**application**).

I should first indicate that the application has not been approved or refused by the Council of the Law Society of New South Wales (**Council**).

Relevant legislation

By operation of rule 17 of the *Legal Profession Uniform General Rules 2015* (the **General Rules**), your practising certificate for the year ended 30 June 2024 is taken to continue in force on and from 1 July 2024, until whichever of the following first occurs: Council renews or refuses to renew the certificate, or you withdraw the application, unless the certificate is earlier suspended, cancelled or surrendered.

As you are aware, in assessing the application, Council is to consider whether or not to grant the application having regard to its obligations under section 45(2) and 45(4) of the *Legal Profession Uniform Law* (NSW) (**Uniform Law**). Section 45(2) of the Uniform Law provides that Council “must not grant or renew an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold the certificate.” Section 45(3) of the Uniform Law states that the Law Society may have regard to matters specified in r13(1) of the *Legal Profession Uniform General Rules 2015* (*Uniform Rules*) including:

“...Rule 13(1)

(a) whether the applicant is currently of good fame and character;

...

*(g) whether the applicant –

(i) ...

(ii) has been the subject of disciplinary action, however expressed in another profession or occupation in Australian or a foreign country that involved a finding adverse to the applicant;

...

(m) whether the applicant is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner:

(n) whether the applicant has provided incorrect or misleading information in relation to any application for an Australian practising certificate under an Australian Law relating to the legal profession.

...

(q) whether the application has contravened –

(i) an order of a Court or Tribunal made in any proceedings, or

(ii)...

...

(t) whether the applicant has failed to pay any costs or expenses for which the applicant was liable under an Australian law relating to the legal profession

(u) any other matter that is related to a matter referred to in another provision in this rule.

The *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (**Solicitors' Conduct Rules**) furnishes guidance and assistance to solicitors to act ethically and in accordance with the principles of professional conduct established by the common law and the Solicitors' Conduct Rules.

Rule 3.1 provides that a solicitor's duty to the Court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

Rule 4.1 provides that a solicitor must:

- 4.1.1 act in the best interest of a client in any matter in which the solicitor represents a client,
- 4.1.2 be honest and courteous in all dealings in the course of legal practice,
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible, and
- 4.1.4 comply with these Rules and the law.

Rule 5.1 provides that a solicitor must not engage in conduct, in the course of legal practice or otherwise, which –

- 5.1.1 demonstrates that the solicitor is not a fit and proper person to practice law, or
- 5.1.2 is likely to a material degree to –
 - (i) be prejudicial to, or diminish the public confidence in, the administration of justice, or
 - (ii) bring the profession into disrepute

Rule 21.3 provides that a solicitor must not allege any matter of fact in –

- 21.3.1 any court document settled by the solicitor,
- 21.3.2 any submission during any hearing,
- 21.3.3 the course of an opening address, or
- 21.3.4 the course of a closing address, or submission on the evidence

unless the solicitor believes on reasonable grounds that the factual material already available provides a proper basis to do so.

Rule 32.1 provides that a solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory profession conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation can be supported provides a proper basis for it.

Relevant Matters in the assessment of the application

The matters for consideration by Council in the assessment of the application are detailed in Annexure A to this letter.

Consideration

The fit and proper test is intertwined with the public expectations of honesty, candour, integrity and compliance with the law as well as promoting public confidence in the administration of justice, by its individual members and the profession as a whole.

As Spigelman CJ detailed in *New South Wales Bar Association v Cummins* [2001] NSWCA 284; 52 NSWLR 279:

“... Honesty and integrity are important in many spheres of conduct. However, in some spheres significant public interests are involved in the conduct of particular persons and the state regulates and restricts those who are entitled to engage in those activities and acquire the privileges associated with a particular status. The legal profession has long required the highest standards of integrity.

There are four interrelated interests involved. Clients must feel secure in confiding their secrets and entrusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and the behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people...”

Together with demonstrable fitness and propriety, Council must also ensure that legal practitioners are able to carry out satisfactorily the inherent requirements of legal practice, as detailed by Davies J in *MN Legal and Management Consultants Pty Ltd v the Council of the Law Society of New South Wales; Michail v The Council of the Law Society of New South Wales* [2018] NSWSC 1410, to include:

“I accept the submission of the Law Society that the inherent requirements for a legal practitioner must include the following:

- (a) the ability to perform the day-to-day tasks associated with providing legal services, including the ability to communicate in a professional manner with the courts, law-enforcement agencies and other legal practitioners;
- (b) the ability to discharge the legal practitioner's tortious and fiduciary duties to his or her clients, whether arising under their retainer, in tort or in equity;
- (c) the ability to discharge the legal practitioner's duties to the Court, including:

- i. the duty to be honest and courteous in all dealings in the course of legal practice: r. 4.1.2, Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (NSW) (Conduct Rules);
- ii. the duty not to engage in conduct, in the course of practice or otherwise, which is likely to a material degree to be prejudicial to, or diminish the public confidence in, the administration of justice, or bring the profession into disrepute: r. 5.1, Conduct Rules;
- iii. the duty not to knowingly or recklessly mislead the court: r. 19.1, Conduct Rules;
- iv. the duty not to allege any matter of fact in any court document settled by the solicitor, or any submission during any hearing, unless the solicitor believes on reasonable grounds that the factual material already available provides a proper basis to do so: r. 21.3, Conduct Rules; and
- v. the duty not to communicate in the opponent's absence with the court concerning any matter of substance in connection with the current proceedings: r. 22.5, Conduct Rules.

To those matters there would need to be added, an obligation to obey the law and to comply with court orders.”

A solicitor’s duty of candour is paramount in any consideration of fitness and propriety to hold a practising certificate. Your practising certificate renewal applications for the period 2017/2018 to 2024/2025 may be considered to be providing incorrect or misleading information with regard to those applications and may also demonstrate an absence of insight and understanding by you of the importance and obligation of candour in seeking to be considered a fit and proper person to hold a practising certificate.

In *Thomas v Legal Practitioners Admissions Board* [2004] QCA 407; [2005] 1 Qd R 331, de Jersey CJ said:

“By making candid and comprehensive disclosure of relevant information an applicant demonstrates a proper perception of his or her duty and will thereby seek to demonstrate his or her good character.”

In the same matter McMurdo P observed:

“His lack of disclosure does, however, demonstrate a lack of insight into his serious past misconduct and a lack of understanding of his duty to make full and accurate disclosure to the Board”.

The protection of the public is a further valid consideration by Council in assessing an applicant’s fitness to hold a practising certificate, to ensure not only that particular legal practitioners do not repeat prior misbehaviour, but that other legal practitioners do not replicate the misbehaviour or misconduct. As observed by Beazley JA (as her Excellency then was) in *Law Society of New South Wales v Walsh* [1997] NSWCA 185, “this wider notion of the protection of the public involves the Court ensuring that the high standards which are demanded of members of the profession are maintained”.

In making any determination regarding a practitioner’s fitness to practise and to carry out satisfactorily the inherent requirements of legal practice, Council will take into

account any findings or orders made by any Courts (and the fact and circumstances from which the orders arise), coupled with the need for public confidence in the profession and its individual members. The findings of and the orders made by the Local Court, the District Court and the Court of Appeal between 2016 and 2024, the non-disclosure of those findings in your practising certificate applications between the practice years 2017/2018 and 2024/2025, as well as the declarations made by you in your practicing certificate renewal applications between the practice years 2017/2018 to 2024/2025 are relevant to both those matters.

Alleged Conduct

A. Court of Appeal referrals

Based on the information provided by the referrals and the abovementioned Court of Appeal decisions, the following alleged conduct issues appear to arise:

Issue 1

1. During proceedings before the District Court of NSW in *Marie Odtojan v Thomas Glynn* 2022/00273977 (**Glynn District Court proceeding**) and *Marie Odtojan v Nicolas Ford* 2022/00242555 (**Ford District Court proceeding**), you contended in pleadings and in oral and written submissions, without reasonable grounds, that Messrs Thomas Glynn (a solicitor) and Nicholas Ford (a barrister), who had represented you in the Local Court proceedings *Credit Corp Services Pty Ltd v Marie Odtojan* 2014/219407 (**Local Court proceeding**), had acted in a conspiracy with the opposing party, Credit Corp Services (**CCS**), and its legal team, to pervert the course of justice in the Local Court Proceeding. The Amended Statement of Claim filed in the Glynn District Court proceeding and in the Ford District Court proceeding included the following (without particulars):

paragraph 12 – [you] “discovered the pre-meditated and concerted effort by Mr Ford and Mr Glynn conspiring with CCS and its legal representatives to defraud the Plaintiff at the final hearing, to conduct a trial by ambush on the Plaintiff with intent to eliminate the central issue of the alleged Credit Contract, perverting the administration and the course of justice in order to obtain an illegal judgment and costs order against the Plaintiff.”

Issue 2

2. During proceedings before the District Court of New South Wales in *Marie Odtojan v Miles Condon* No 2022/00273980 (**Condon District Court proceeding**) you contended in pleadings and in oral and written submissions, without reasonable grounds, that Mr Condon SC had participated in a further conspiracy and had acted fraudulently and conspired to pervert the course of justice in the course of advising you on your prospects of appeal against the Local Court Proceedings judgement dated 16 August 2016.

Issue 3

3. Whilst seeking to set aside a security for costs orders made by Strathdee DCJ in *Marie Odtojan v Credit Corp Services Pty Ltd* 19/51923 relevant to the appeal lodged by you regarding the assessment of CCS’ legal costs following the Local Court proceedings, Mahony DCJ detailed at [15]-[16] in *Marie*

Odtojan v Credit Corp Services Pty Ltd [2019] NSWDC 273, (**Odtojan/CCS**) the numerous attacks made by you on the decision of Strathdee DCJ including that her Honour manifest “apparent/apprehended judicial bias” and the orders were made irregularly and in bad faith.

Issue 4

4. Without the leave of the Court and absent the consent of the Mr Condon and his legal representatives, you sent an email to the Associate to Norton DCJ on 24 February 2023.

Issue 5

5. While seeking leave to appeal to the NSW Supreme Court of Appeal (**Court of Appeal**) in the matter of *Odtojan v Condon* [2023] NSWCA 129 (**Odtojan No 1**) against an order of Norton DCJ in the Condon District Court proceeding to strike out your amended statement of claim and granted leave to replead, you pleaded in your draft Notice of Appeal that Norton DCJ manifested bias, both actual and apprehended.

Issue 6

6. During the Court of Appeal proceedings in *Odtojan No 1*, you contended, without reasonable grounds, that the legal practitioners involved in the preparation of the application books in those proceedings had tampered with evidence and attempted to pervert the course of justice.

Issue 7

7. During the Condon District Court proceeding and/or Court of Appeal proceedings in *Odtojan No 1* and/or *Odtojan No 2*, you contended that the legal representatives acting for Mr Condon SC had committed serious breaches of professional ethical rules, without reasonable grounds.

Issue 8

8. In an affidavit and submissions dated 27 June 2023, sent to the Court of Appeal to show cause why you should not be referred to the NSW Commissioner, you reiterated serious allegations without any proper foundation as well as the apparent ongoing misunderstanding by you and Mr Bryl regarding your obligations as legal practitioners.

Issue 9

9. In your amended statement of claim in *Odtojan/Glynn No 1*, you alleged that Mr Glynn had been a party to a conspiracy with Mr Ford and the lawyers for CCS to engage in wilful impropriety in the Local Court proceeding to obtain an illegal judgment against you. You pleaded that after the judgment had been given in the Local Court you discovered:

“fabricated Court documents that were presented and relied upon by Mr Glynn, Mr Ford and CCS and its legal representatives, to fraudulently create false material facts at the final hearing with intent to omit and circumvent material facts and the central issue of the “Credit contract and applicable Credit Laws”” (para 32)

Issue 10

10. In your amended statement of claim in Odtojan/Glynn No 1 you pleaded the following against Mr Glynn:

- Mr Glynn deliberately omitted ventilating the applicable credit laws at the final hearing and conspired with CCS and its legal representatives to circumvent the credit legislation and penalties (par 37).
- Mr Glynn and Mr Ford had fraudulently removed the onus of proof from CCS to prove the existence of the pleaded Credit Card Contract (par 39).
- CCS and its legal representatives had intentionally pleaded matters asserting the existence of a Credit Card Contract which they knew was untrue (par 41).
- CCS and its legal representatives could only have obtained an illegal judgment at the final hearing and at the costs hearing by acting in concert with Mr Glynn and Mr Ford (par 42)
- Mr Glynn, in concert with Mr Ford, and in concert with CCS and its legal representatives, acted improperly by presenting and relying upon a case that the central issue in the proceeding was the Card Collection/ Overdraft/ Get Set Checklist document (which it was found that she signed) but omitted the real issue of the “Credit Card Contract” (par 43)
- Mr Glynn and Mr Ford intentionally failed to ask Mr Carpenter to identify what document he referred to as the contract (par 45(h)(viii) 13).
- Mr Glynn intentionally failed to provide to her an affidavit and materials served by CCS in support of their application for indemnity costs so as to deprive her of her right to review and reply to those materials (pars 70-73).

Issue 11

11. In the draft Notice of Appeal in Odjotan/Glynn No 1 you allege breach of the bias rule.

Issue 12

12. Notwithstanding admonishing by Leeming and Kirk JJA in Odtojan No 1, and the referral of papers to the NSW Commissioner in Odtojan No 2, in Odtojan/Glynn No 1 and Odtojan/Ford No 1 you maintained allegations of fraud and collusion against Mr Ford and Mr Glynn without demonstrating any proper basis.

Issue 13

13. In the application before the Court of Appeal in Odjotan/Ford No 1, you allege that because Mr Ford referred to documents as “contract documents”, as CCS claimed the documents to be, that was evidence of fraud by Mr Ford.

Issue 14

14. In the application before the Court of Appeal in Odtojan/Ford No 1, you made a serious allegation that you were denied procedural fairness in the Local Court proceeding and you allege in your proposed Notice of Appeal in ground

1(b) that there was a breach of the “bias rule” and via your summary of argument you allege that the bias is actual bias.

Issue 15

15. In an email to the Court of Appeal dated 05 December 2023, described by the Court of Appeal as lengthy and inappropriate, you questioned the Court of Appeal’s reasons given on 21 November 2023, in Odtojan/Glynn No 1 and Odtojan/Ford No 1.

B. Failure to Disclose

The failure to disclose the Local Court findings and orders in your 2017/2018 application, the failure to disclose all the District Court findings and orders in your 2020/2021 application, the failure to disclose all the District Court findings and orders in your 2023/2024 application and the failure to disclose all the Court of Appeal findings and orders in your 2024/2025 application.

C. Declarations

The declarations made by you in your 2017/2018 application, your 2020/2021 application, your 2023/2024 application and your 2024/2025 application.

Next steps

Council will need to consider whether your prior conduct as detailed above, is incompatible with the holding of a practising certificate. Council will, however, need to consider whether since that time you have taken steps to address the prior misconduct such that you may now be considered to be fit and proper to hold a practising certificate.

I intend to ask Council at its next meeting to consider whether to grant or refuse your application dated 15 May 2024, pursuant to s45(2) and 45(3) of the Uniform Law and rr13(1)(a), 13(1)(g)(ii), 13(1)(m), 13(1)(n), 13(1)(q), 13(1)(t), and 13(1)(u) of the Uniform Rules. Further, having regard to the grant of any practising certificate to you, Council may consider the type of practising certificate that you may be granted and whether certain conditions should be attached to your practising certificate which may include but is not limited to, further education, medical reporting, financial reporting, supervision and mentoring.

Before considering the matter, I would like to provide you with an opportunity to make submissions to demonstrate that you are a fit and proper person to hold a practising certificate, notwithstanding the findings and orders of LCM Freund (Local Court), Strathdee DCJ, Mahony DCJ and Norton DCJ (District Court) and White JA, Lemming JA, Kirk JA, White JA and Basten AJA (Court of Appeal) between 2016 and 2024, the non-disclosure of the findings and orders made in the Local Court proceeding (CCS v Marie Odtojan 14/219407), the District Court proceedings (Odtojan/CCS, Glynn District Court proceeding, Ford District Court proceeding and Condon District Court proceeding) and the Court of Appeal proceedings (Odtojan 1, Odtojan 2, Odjotan/Glynn No 1, Odjotan/Ford No 1, Odjotan/Glynn/Ford No 2) in you 2017/2018 application, your 2020/2021 application, your 2023/24 application and your 2024/2025 application, as well as the declarations made by you in your

practising certificate renewal applications between the 2017/2018 practice year and the 2024/2025 practice year.

Please provide your further submissions **by no later than Friday 02 August 2024**.

Communicating with the Law Society

To minimise delays in receiving any material you may wish to provide, please respond to psd@lawsociety.com.au, quoting reference PSD2023_57155 marked to my attention. If you cannot respond in writing due to a disability, please contact the Professional Standards Department on (02) 9926 0110.

If you are attaching any documents, please provide a list of the attached documents as size restrictions may prevent documents being received.

Resources

The Law Society's website contains information about resources available for solicitors including:

Solicitor Outreach Services

The Solicitor Outreach Service (SOS) is the Law Society's mental health and wellbeing support service. It is a dedicated and confidential psychological support service for NSW solicitors who may be experiencing emotional difficulties and stress. Through SOS, NSW solicitors can access up to three psychological sessions per financial year and telephone crisis support if in acute distress, funded by the Law Society. SOS is available to solicitors who hold a current practising certificate from the Law Society of NSW, including those who may be the subject of a disciplinary process. The phone number for the service is 1800 592 296. For further information see <https://www.lawsociety.com.au/sos>

Professional Conduct Advisory Panel

The Professional Conduct Advisory Panel (PCAP) provides support to solicitors who are subject to complaints and disciplinary investigations. The assistance is confidential and independent of the regulatory authorities. Further information, including contact details of panellists, can be found at <https://www.lawsociety.com.au/practising-law-in-NSW/complaints-and-discipline/PCAP>

Yours faithfully



VALERIE GRISWOLD
Director, Legal Regulation
Professional Standards

ANNEXURE A

Relevant Matters in the assessment of the application

1. Referral from the Court of Appeal of the Supreme Court of New South Wales to the New South Wales Legal Services Commissioner dated 03 July 2023

The Court of Appeal of the Supreme Court of New South Wales (**Court of Appeal**) invited you and your husband Mr Arem Bryl to show cause why a referral should not be made to the New South Wales Legal Services Commissioner (**NSW Commissioner**) at [83] of the Court of Appeal's judgment in your appeal in *Odtojan v Condon* [2023] NSWCA 129 dated 09 June 2023 (**Odtojan No 1**).

On 03 July 2023, Jerry Riznyczok, Registrar, Court of Appeal, Supreme Court of New South Wales (**Registrar Riznyczok**) made a referral (**referral**) to the NSW Commissioner pursuant to the judgment of Leeming and Kirk JJA in *Odtojan v Condon (No 2)* [2023] NSWCA 149 (**Odtojan No 2**) dated 03 July 2023.

On 07 July 2023, the NSW Commissioner forwarded the referral to Council of the Law Society of New South Wales (**Council**) for consideration regarding your conduct and the conduct of Mr Bryl, a solicitor who appeared for you in the capacity of a McKenzie Friend before the Court of Appeal.

Background

The background to this matter is summarised in the judgment in *Odtojan No 1*. The Registrar has provided a link to that judgment in the attached cover email to the NSW Commissioner dated 03 April 2023, which was accompanied by the following Court of Appeal papers:

- Sealed Applicant's Supplementary White Book in *Odtojan No 1*, filed 27 April 2023 in matter 103644 (361 pages);
- Sealed Updated White Folder Part 1 (Tabs 1-12) in *Odtojan No 1*, filed 26 May 2023 in matter 2023/103644 (387 pages); and
- Sealed Updated White Folder Part 2 (Tabs 13-25) in *Odtojan No 1* filed 26 May 2023 in matter 2023/103644 (366 pages).

Odtojan No 1

At [32] in *Odtojan No 1* the Court of Appeal stated:

"The applicant is a solicitor. The fact that she is acting for herself does not excuse her from her ethical obligations. Nor does the fact that Mr Bryl sought to appear merely as a McKenzie friend excuse him from his. As indicated in the case just quoted, for a legal practitioner to make allegations of the kind made here without a proper foundation can lead to disciplinary proceedings against the practitioner. In the correspondence between the applicant and the respondent solicitors there are suggestions that the Solicitors' Conduct Rules are inapplicable because the applicant acted for herself. The same theme appears to underlie the applicant's submissions in response, which include (as written):

"The Respondent had casted unjustifiable aspersions on the Applicant, her profession as a legal practitioner and her firm. Despite notice to cease threatening and referring to the Applicant's profession where she is not in capacity of a legal practitioner in these proceedings, the Respondent and his legal representatives wilfully continued to refer to and threaten the Applicant's profession."

At [61] the Court of Appeal remarked that the sending of an email on Friday 24 February 2023, to the associate to Norton DCJ in the proceedings *Odtojan v Condon* [2023] NSWDC , without the leave of the Court, or the consent of Mr Condon SC, was quite inappropriate.

At [66ff] the Court of Appeal remarked:

We have outlined above the lack of a proper basis for the serious allegations made in the ASOC. We have noted that the applicant has suggested, with no apparent proper basis, that the legal representatives of the respondent wilfully misled the District Court and otherwise breached their professional obligations (see [33] and [60] above). There are further reasons to have concerns about Ms Odtojan's and Mr Bryl's understanding of, and compliance with, basic ethical requirements.

[67] The respondent read an affidavit of Mr James Berg, a partner of DLA Piper and the respondent's solicitor on the record, sworn 30 May 2023. The point of the affidavit was to respond to and contextualise the allegations raised by Ms Odtojan and Mr Bryl against the legal representatives of the respondent. No objection was made to the affidavit or the associated exhibit.

[68] What emerges from the affidavit, and the material exhibited to it, is that both Ms Odtojan and Mr Bryl have repeatedly accused the counsel and solicitors appearing for the respondent of misconduct. They have done so in written and oral submissions to the District Court, in written submissions to this Court, and in various other court documents. Mr Berg set out a long list of the various accusations in a letter sent to Ms Odtojan dated 18 May 2023, which includes the following summation:

“47 As various times you, directly or through Mr Bryl, have asserted that the Legal Representatives have:

47.1 wilfully misled the Court of Appeal and District Court;

47.2 engaged in improper conduct, seemingly to mislead the Court through the making of misrepresentations to the Court;

47.3 disregarded Court rules and processes;

47.4 interfered with the administration of justice;

47.5 shown consistent intentional dishonesty in this matter; and

47.6 tampered with evidence.”

[69] No reasonable basis is apparent for any of these very serious allegations.

At [80] the Court of Appeal summarised certain allegations made by you in the following terms:

[80] “What emerges from the above is that either or both of Ms Odtojan and Mr Bryl have:

(1) accused the solicitor and junior counsel who acted for Ms Odjotan at the Local Court trial of a conspiracy with the opposing party and legal team to pervert the course of justice;

(2) accused senior counsel who advised on appeal prospects of participation in a further conspiracy and of acting fraudulently;

(3) submitted that a District Court judge who made a procedural order for a small amount of security for costs was biased and had acted in bad faith, which allegations were found to be unsubstantiated;

(4) accused the District Court judge who struck out a pleading whilst granting leave to replead of actual and apprehended bias, even though the pleading was concededly defective;

(5) accused those involved in the preparation of the application books of tampering with evidence and attempting to pervert the course of justice, without reasonable foundation; and

(6) more broadly, repeatedly accused the legal representatives of the respondent of serious breaches of professional ethical rules, without any apparent reasonable basis.”

At [81ff], the Court of Appeal gave you and Mr Bryl an opportunity to address the Court’s concerns about your professional conduct:

[81] “During the course of the hearing in this Court, having raised concerns about there being any proper basis for various of the allegations being made by Mr Bryl and Ms Odtojan, we gave the parties leave to draw the Court’s attention to any relevant authorities as to how the Court should proceed if concerned about what had occurred.

The respondent supplied references to *Simpson v Hodges* [2007] NSWSC 1230 at [266]-[268], *Australian Building and Construction Commissioner v Parker (No 2)* [2017] FCA 1082 at [89], *Muriniti v Kalil* [2022] NSWCA 109 at [105]-[107] and *Day v Perisher Blue Pty Ltd (No 2)* [2005] NSWCA 125. The first two decisions address what occurs when a court is of the view that an offence has been committed; they are not relevant to the position which arises if the Court formed the view that there had been serious and ongoing breaches of the rules of professional conduct. However, *Muriniti v Kalil* is apposite. There Brereton JA said:

[105] As has been noted, at various points of her Honour’s reasons, the primary judge made observations about various aspects of the professional conduct of Mr Muriniti and Mr Newell, and foreshadowed that the matter would be the subject of a referral to the Legal Services Commissioner. Her Honour’s formal orders included the following:

“Noted: These reasons are to be sent by the Registrar so that the matter may be referred to the Legal Services Commissioner to determine whether or not Mr Muriniti and/or Mr Newell have engaged in unsatisfactory professional conduct or professional misconduct.”

[106] It is conventional that when a judge has in mind referring a legal practitioner to a professional regulator for disciplinary investigation, the practitioner is afforded an opportunity to show cause why there should not be a referral. This practice was not followed in this case. This was not a private complaint to the Legal Services Commissioner, nor a decision to institute disciplinary proceedings, in respect of which at common law there might be no right to be heard, but a formal

decision recorded in a published judgment to refer a practitioner to a regulatory authority for disciplinary investigation, which of itself has serious potential reputational consequences for a practitioner, such as to attract the principles enunciated in cases such as *Mahon v Air New Zealand*, *Annetts v McCann* and *Ainsworth v Criminal Justice Commission*. [footnotes omitted]

[82] His Honour regarded what had occurred in that litigation as involving a denial of procedural fairness. Further, in *Day v Perisher Blue Pty Ltd (No 2)* an opportunity was given to the solicitors to show cause why the papers should not be referred to the Legal Services Commissioner.

[83] Although during the course of the hearing Mr Bryl was squarely confronted with the possibility that this Court might find that there had been a breach of rule 32, it may be that he was under a misapprehension of the applicability of the rules of professional conduct to cases where a solicitor brings proceedings as plaintiff and acts for herself, or of the potential application to himself when acting as a McKenzie friend. It is also possible that the interests of Mr Bryl and Ms Odtojan are not wholly aligned on this issue. On balance, we have concluded that each of Mr Bryl and Ms Odtojan should be given a further opportunity to show cause why this Court should not refer this judgment and the papers in this application to the Legal Services Commissioner.

Conclusion

[84] The orders of the primary judge were entered on 17 February 2023. The summons seeking leave to appeal was filed more than 28 days later, on 30 March 2023. An extension of time is thus required: UCPR, r 51.16. The delay is not extensive, no prejudice has been identified and in all the circumstances the extension should be granted. The application for leave to appeal should be dismissed with costs. In the circumstances outlined we consider it appropriate to order that the costs be payable forthwith.

[85] Ms Odtojan and Mr Bryl should be provided with an opportunity to show cause why this judgment and the papers in this application should not be referred to the Legal Services Commissioner. Either or both of them may, if they wish, exercise that entitlement by filing submissions and affidavits and supporting materials within 14 days of today. If either of them seeks to be heard orally, that should be stated in the submissions. The materials should also be served on the respondent, but we do not at this stage intend to make a direction permitting him to be involved in that process, although we will review the position if and when any materials are supplied.

Odtojan No 2

At [38] of *Odtojan No 2*, after considering further submissions from you and Mr Bryl, the Court of Appeal found that those submissions did not show cause why the Court's judgment and papers should not be referred to the NSW Commissioner and, if anything, reinforced that a referral is appropriate, given the reiteration of serious allegations by you and Mr Bryl without any proper foundation and the apparent ongoing misunderstanding by you and Mr Bryl of your obligations as legal practitioners.

2. Referral from the Court of Appeal of the Supreme Court of New South Wales to the New South Wales Legal Services Commissioner dated 14 February 2024

The Court of Appeal invited you and your husband Mr Bryl to show cause why a referral should not be made to the NSW Commissioner at [108] of the Court of Appeal's judgment in your appeal in *Odtojan v Glynn t/as Glynn Lawyers* [2023] NSWCA 276 dated 21 November 2023, (**Odtojan/Glynn No 1**) and at [22] in *Odtojan v Ford* [2023] NSWCA 277 dated 21 November 2023 (**Odtojan/Ford No 1**).

On 29 February 2024, Karen Jones, Registrar, Court of Appeal, Supreme Court of New South Wales (**Registrar Jones**) made a referral to the NSW Commissioner pursuant to the judgment of White and Basten JJA in *Odtojan v Glynn t/as Glynn Lawyers; Odtojan v Ford (No 2)* 2024 NSWCA 25 (**Odtojan/Glynn/Ford No 2**) dated 29 February 2024.

On 08 March 2024, the NSW Commissioner forwarded the referral to Council for consideration regarding your conduct and the conduct of Mr Bryl, a solicitor who appeared for you in the capacity of a McKenzie Friend before the Court of Appeal.

Background

The background to these matters is summarised in *Odtojan/Glynn No 1* and *Odtojan/Ford No 1*. Registrar Jones has provided a link to the judgment/s in the (enclosed) cover email to the NSW Commissioner dated 29 February 2024, which was accompanied by the following Court of Appeal papers:

- Sealed Applicant's White Folder 1 (Tabs 1-12) in *Odjotan/Glynn No 1*, filed 28 June 2023 in matter 131229 (403 pages);
- Sealed Applicant's White Folder 2 (Tabs 12-21) in *Odjotan/Glynn No 1*, filed 28 June 2023 in matter 131229 (319 pages);
- Sealed Applicant's White Folder 1 (Tabs 1-12) in *Odjotan/Ford No 1*, filed 28 June 2023 in matter 131242 (406 pages);
- Sealed Applicant's White Folder 2 (Tabs 12-24) in *Odjotan/Ford No 1*, filed 28 June 2023 in matter 131242 (324 pages);
- Sealed Applicant's Supplementary White Book in *Odtojan/Ford No 1 No 1*, filed 28 June 2023 in matter 131242 (57 pages); and
- Email to the Associates of White JA and Basten AJA from Marie Odtojan dated 05 December 2023.

Odtojan/Glynn No 1

At [4] of *Odtojan/Glynn No 1*, White JA details that you commenced proceedings against Mr Glynn and Mr Ford regarding their conduct of your defence in the Local Court proceedings, alleging that Mr Glynn and Mr Ford conspired with each other and the lawyers for CCS to obtain judgments against you with such judgments being obtained by fraud and collusion. At [5] White JA details that you alleged that Mr Condon SC also became a party to the conspiracy.

At [41] – [47] White JA details that you alleged in your Amended Statement of Claim that Mr Glynn had been a party to a conspiracy with Mr Ford and with the lawyers for CCS to engage in wilful impropriety at the hearing before the Local Court to obtain an illegal judgment against you. You pleaded that, after judgment had been given in the Local Court, you discovered fabricated court documents that were presented and relied upon by Mr Glynn, Mr Ford, CCS and its legal representatives, to fraudulently create false material facts at the final hearing with intent to omit and circumvent material facts and the central issue of 'the Credit Contract and applicable Credit Laws (par 32) and that at the final hearing you discovered that "there was no Credit Contract produced in evidence" and that "the material issue of an alleged Credit Contract

and alleged breaches of the credit legislation were never ventilated nor determined by the Court” (par 34).

You pleaded that Mr Glynn deliberately omitted ventilating the applicable credit laws at the final hearing and conspired with CCS and its legal representatives to circumvent the credit legislation and penalties (par 37). You pleaded that Mr Glynn and Mr Ford had fraudulently removed the onus of proof from CCS to prove the existence of the pleaded Credit Card Contract (par 39). You pleaded that CCS and its legal representatives had intentionally pleaded matters asserting the existence of a Credit Card Contract which they knew was untrue (par 41). You pleaded that CCS and its legal representatives could only have obtained an illegal judgment at the final hearing and at the costs hearing by acting in concert with Mr Glynn and Mr Ford (par 42).

At par 43, you pleaded that Mr Glynn, in concert with Mr Ford, and in concert with CCS and its legal representatives, acted improperly by presenting and relying upon a case that the central issue in the proceeding was the Card Collection/ Overdraft/ Get Set Checklist document (which it was found that you signed) but omitted the real issue of the “Credit Card Contract”.

You alleged that Mr Carpenter committed perjury by giving false evidence referring to a credit card contract when he knew that what he said was untrue (par 45(h)(viii) 12). You alleged that Mr Glynn and Mr Ford intentionally failed to ask Mr Carpenter to identify what document he referred to as the contract (par 45(h)(viii) 13).

You alleged that Mr Glynn intentionally failed to provide to you an affidavit and materials served by CCS in support of their application for indemnity costs so as to deprive you of your right to review and reply to those materials (pars 70-73).

At [47] White JA notes there were other allegations of fraud and conspiracy but these were the most specific.

At [50] White JA summarises the allegation made by you against Mr Glynn and Mr Ford was that they fraudulently, and in collusion with CCS’s lawyers, suppressed what is alleged to have been the central issue before the Local Court, namely, that because of non-compliance with the credit laws, there was no credit contract that CCS could enforce.

At [51] White JA remarks that Mr Bryl, who was given leave to speak for you as your McKenzie friend, challenged the totality of the orders made by the primary judge, and in the alternative, the order limiting the right to replead, which precludes you from repleading the claims of fraud and conspiracy in relation to the conduct of the hearing in the Local Court.

At [52], White JA remarked that the allegations of fraud and conspiracy as pleaded are based upon the contention that, in the absence of a contract document required by the then ss 12 and 15 of the Consumer Credit (NSW) Code (now ss 14 and 17 of the National Credit Code) there could be no credit contract on which CCS could rely. White JA further remarked that this was a false premise and noted at [60] that you allege that because what you assert to have been the central issue in the Local Court proceedings was not raised, the reason for its not being raised was fraud on the part of your lawyers and collusion between them and the lawyers for CCS.

White JA observed at [61ff]:

61. “Even if Ms Odtojan’s understanding that for a credit contract to be enforceable it had to found in a signed contract document were correct, it would not justify her allegations of fraud and conspiracy. The possibilities that her lawyers took a different view of the law, or that they failed to consider the matter adequately could not be excluded. Although Mr Bryl denied that the reason fraud and conspiracy were pleaded was to seek to avoid a plea of advocates’ immunity, no satisfactory explanation was given as to how fraud and conspiracy might be established, or why a cause of action in negligence was not pleaded, unless Ms Odtojan thought such a plea would have been subject to the immunity.

62. Ms Odtojan relied upon the amendment of the Statement of Agreed Facts and Issues in Dispute referred to at [31] and [32] above which she contends was made without her knowledge or consent. Assuming that to be so, they do not advance a case of fraud or collusion. Rather, they are consistent with counsel for the parties in the Local Court accepting that there was no issue whether a contract had been documented in accordance with the requirements of the Code, and that the real issue was whether any contract had been made at all.”

At [73] White JA details that the draft notice of appeal alleges “breach of bias rule” and remarks that there was no basis for the allegation of either apprehended or actual bias and that suffice it to say, the applicant’s contentions, which were in the nature of mere assertions, ought not to have been made”: *Reid v Commercial Club (Albury) Ltd* [2014] NSWCA 98 at [68]-[78].

At [90] White JA further remarked:

90. “If it were shown that there is an arguable basis for alleging that CCS or its lawyers colluded with Mr Glynn and Mr Ford fraudulently to procure a judgment against Ms Odtojan on CCS’s claim, I would accept that the claim should proceed to trial, notwithstanding that if the claim succeeded, it would impeach the judgment of the Local Court which has not been set aside.
91. But there is not a skerrick of evidence to support the premise. We have been provided with the judgments and pleadings in the Local Court and the full transcript of the hearing. There is nothing in them that provides any basis for the allegation of collusion between CCS or its lawyers, and the lawyers for Ms Odtojan. To the contrary, the case was hard fought on what counsel perceived to be the issues for trial.
92. In so far as Ms Odtojan relies on “mere” fraud on the part of Mr Glynn or Mr Ford, not extending to collusion with CCS or its lawyers, then even if there were a basis to plead fraud, leave to replead could not be given where no proceeding to set aside the judgments of the Local Court had been brought.”

At [100] White remarked that “Because of the limitation on the right to replead, because Mr Glynn did not provide advice on the prospects of appeal, and because the primary judge’s decision is practically tantamount to the summary dismissal of Ms Odtojan’s claim, I have proceeded on the basis that it must be clear beyond any doubt that her claim could not succeed (*Johnson Tiles Pty Ltd v Esso Australia Ltd* (2000) 104 FCR 564; [2000] FCA 1572 at [43]). I am so satisfied.”

At [103ff] White JA discusses the potential referral of papers to the Legal Services Commissioner

103. In *Odtojan v Condon* [2023] NSWCA 129, Leeming and Kirk JJA expressed concerns about the allegations made by Ms Odtojan and Mr Bryl about the conduct of Mr Condon and the primary judge. Their Honours gave Ms Odtojan and Mr Bryl 14 days to show cause why the Court’s judgment and the papers should not be referred to the Legal Services Commissioner.
104. In *Odtojan v Condon (No 2)* [2023] NSWCA 149, their Honours referred the papers to the Legal Services Commissioner.
105. That decision was given on 3 July 2023. The hearing of this application took place on 11 October 2023. Similar allegations were advanced to those deprecated by Leeming and Kirk JJA. For example, there was the following exchange:
- “BRYL: If we assume that the party who successfully obtained the judgment by fraud, representing their client, is free to go and does not have any obligations after that, that

will undo the whole legal history of obligations of legal representatives to their clients and to the Court. We are actually entering into the uncharted territory where you don't have real obligations. You can do whatever you want and you can get away with it and rely on the previous judgment which you wanted to obtain. That's the result. This result is judgment was exactly as alleged by the applicant, the result Mr Ford and Mr Glynn were seeking to obtain giving false evidence from the Bar table and giving false documents to the Court.

WHITE JA: Can I just make sure I understand the submission you're making.

BRYL: The submission I'm.

WHITE JA: No, sorry, I just want to repeat it and you can tell me if this is right because it's a very serious submission. I understand you to say that Mr Ford and Mr Glynn wanted to obtain a judgment from the Local Court against your client for the debt claimed by the plaintiff in the Local Court.

BRYL: That is correct, and it's as alleged.

WHITE JA: What's the basis for your saying that that was what they wanted?

BRYL: From their conduct in the Court, from their treatment of the documents, from their tampering with the evidence, from filing the statement of facts and issues where dates are edited, the issue of the contract is removed, from not ventilating the issue of the credit contract on the day of Court, from giving evidence at the Court that the credit contract has been provided to the defendant and aligning that with the 12 January 2015 date - crucial date connected to their offer of compromise given by the other side.

WHITE JA: You have been reminded of the obligations on solicitors and other lawyers not to make such serious allegations unless there is a proper basis for them.

BRYL: That's correct. And I stand by it, yes, your Honour."

106. As Ms Odtojan and Mr Bryl had been told by Leeming and Kirk JJA, rule 32.1 of the Solicitors' Rules provides that:

"A solicitor must not make an allegation against another Australian legal practitioner of ... professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it."

107. Notwithstanding their Honours' admonition and their referral of the papers to the Legal Services Commissioner in the matter of *Odtojan v Condon*, Ms Odtojan and Mr Bryl maintained allegations of fraud and collusion against Mr Ford and Mr Glynn for which they have not demonstrated any proper basis. It may be that they did not appreciate that s 170 of the Credit (NSW) Code undermined the premise of their allegations, although that provision was referred to in Mr Condon and Mr Ford's advice. Even if that be so, there was no reasonable basis for the allegations. The conduct of which they complain could be readily explained as matters of oversight, if it were not the conscious recognition by Mr Glynn and Mr Ford of the effect of s 170 of the Consumer Credit (NSW) Code.

108. I propose the following orders:

1. Summons for leave to appeal dismissed with costs.
2. Within 14 days Ms Odtojan and Mr Bryl show cause why this judgment and the papers in this Court not be referred to the Legal Services Commissioner.

109. **BASTEN AJA:** I agree with the orders proposed by White JA.
110. To justify those orders it is not necessary to enter upon the legal issues concerning the appropriate procedural mechanism for challenging a judgment said to have been procured by the fraud of one party (or its lawyers) colluding with the lawyers of the other party to defeat her interests. As White JA explains at [96] above, no arguable evidential basis for alleging either fraud or collusion on the part of the defendant (or of counsel briefed by him, or the legal representatives of CCS) has been identified. The claims so pursued have every appearance of being a contrivance to justify the decision not to appeal, nor to seek leave to appeal out of time, from the judgment in the Local Court. Otherwise, as Mr Bryl appeared to accept, they were relied on to avoid possible proceedings for incompetence or negligence of the lawyers foundering on the rock of advocates' immunity. However that may be, the factual basis for an arguable case of fraud or collusion was absent.
111. Nor is it necessary to rely on the Solicitors' Rules governing conduct between members of the profession, fundamental as they are to the proper administration of justice; the allegations of fraud and collusion without a hint of justification would not be countenanced whoever the proposed defendants were.

Odtojan/Ford No 1

At [1ff] White JA detailed the following:

1. This is an application for leave to appeal from a judgment of the District Court (Norton SC DCJ) in which the primary judge struck out the applicant's Statement of Claim with only limited liberty to replead. Her Honour also required that the applicant serve a paginated and indexed bundle of documents on which she relies with regard to her proposed further amended statement claim.
2. The application for leave to appeal raises the same issues as were raised in the application for leave to appeal from orders made in favour of a Mr Thomas Patrick Glynn. Judgment in the Glynn matter is being delivered at the same time as these reasons (*Odtojan v Glynn* [2023] NSWCA 276).
3. Mr Glynn is a solicitor. Mr Ford is a barrister. They were retained by Ms Odtojan to act for her in proceedings in the Local Court brought by Credit Corp Services Pty Ltd ("CCS") for a debt allegedly owed by Ms Odtojan arising from credit provided by the St George Bank to Ms Odtojan through the use of a credit card supplied by that bank. CCS was the assignee of the alleged debt.
4. Ms Odtojan was unsuccessful in her defence of the claim and a substantial order for costs was made against her. Much later, but (so the primary judge held) within the limitation period, she brought proceedings against Mr Ford and Mr Glynn and also Mr Condon SC alleging that the judgments against her in the Local Court were the result of fraud on the part of Mr Ford and Mr Glynn, conspiracy between them and CCS or its lawyers and, in some respects, acts of "intentional negligence".
5. In proceedings brought against Mr Condon, Ms Odtojan alleged that he became a party to the conspiracy in giving advice in relation to her prospects of appeal.
6. The primary judge gave Ms Odtojan leave to replead her allegations against Mr Ford only so far as they related to the provision of advice as to the merits of an appeal. It follows that she does not have leave to replead allegations made against him in relation to the conduct of the proceedings in the Local Court. As in the case of Mr Glynn, that is tantamount to the summary dismissal of her claims against Mr Ford in relation to his conduct of the proceedings in the Local Court.
7. The primary judge held:

[41] Ms Odtojan, in these proceedings, is seeking to re-examine Magistrate Freund's finding that there was a contract and Ms Odtojan had attended at the bank and signed a declaration to the effect that she had been made aware of the conditions of the loan and accepted them. Under the guise of allegations as to the conduct of Mr Glynn and Mr Ford she is seeking to relitigate her claim that the signature on the document is a fraud and that Her Honour had not accepted arguments based on the application of the relevant Legislation.

[42] The allegations of conspiracy between the lawyers for the plaintiff and lawyers for Ms Odtojan are fresh claims. No evidence is supplied to support the allegations that there were any such conspiracies on foot at the time of the hearing in the local court and those alleged fellow conspirators have not been made parties to any proceeding.

[43] It is often appropriate to grant leave to a plaintiff to replead if a Statement of Claim is struck out. Ms Odtojan has been given the opportunity to replead these allegations and the Amended Statement of claim suffers from the same lack of clarity. The allegations are serious ones and Ms Odtojan was present in court during the proceedings in the local court. The matters she seeks to raise in the present pleadings are the same as those considered by the Magistrate. Once the offensive parts of the Amended Statement of claim are removed there is very little left other than matters which have been decided in the court below.

[44] I find it would be manifestly unfair to the defendant's [sic] that the same issues be relitigated and to permit these allegations to go forward would bring the administration of justice into disrepute. Ms Odtojan was supplied with a draft summons to commence an appeal and chose not to proceed. If necessary the summons could have been amended to add additional matters."

8. The primary judge is correct in her observations at [42] that no evidence was supplied to support the allegations that there were any conspiracies on foot at the time of the hearing in the Local Court between the lawyers for CCS and the lawyers for Ms Odtojan.
9. I do not accept that the matters that Ms Odtojan sought to raise in the District Court proceedings were the same as those considered by Magistrate Freund in the Local Court (para [43]). It is true that in the District Court proceedings against Mr Ford, Ms Odtojan contends that she was not liable to CCS because there was no credit agreement between her and the St George Bank, whereas the magistrate held otherwise. However, in the District Court proceeding against Mr Ford, Ms Odtojan contends that this was because the alleged "central issue" between her and CCS was not raised by Mr Ford, and therefore it was not addressed by the magistrate. In respect of par [44], because the particular issues Ms Odtojan seeks to raise against Mr Ford were not decided in the Local Court, it would not be manifestly unfair to him for them to be raised in the District Court proceeding, if there were a proper basis for the allegations. If there were a proper basis for the allegations, the raising of them would not bring the administration of justice into disrepute.
10. Nor should the pleading be struck out without liberty to replead on the ground that Ms Odtojan was present in court during the hearing in the Local Court. She alleges that she was required to sit at the back of the court where it was hard to hear and did not discover the matters on the basis of which she alleges fraudulent conduct on the part of the lawyers until she reviewed the court files after judgment had been given. That raises a triable issue as to whether the facts alleged to constitute fraud were newly discovered (*Wentworth v Rogers (No 5)* (1986) 6 NSWLR 534 at 538).
11. However, apart from the allegations of collusion with the lawyers for CCS, the claim based on alleged fraud and deliberate negligence, which is tantamount to fraud, could

not be brought without impeaching the judgments of the Local Court. Unless the judgments of the Local Court can be treated as a nullity, they cannot be impeached in collateral proceedings (see *Odtojan v Glynn* at [79]). It is only in the case of a judgment obtained by collusion of the parties together practising a fraud on the court that it is arguable that the judgment can be treated as a nullity in collateral proceedings (*Glynn* at [80]-[93]).

12. It is clear beyond argument from the pleadings, the transcript, and the judgments in the Local Court that there was no collusion between CCS or its lawyers and the lawyers for Ms Odtojan in the conduct of those proceedings. The primary judge was therefore right to limit the leave to replead in the way her Honour did.
13. Two matters particular to Mr Ford warrant emphasis. The first is referred to at par [39] of the reasons in *Glynn*, where in cross examining Mr Carpenter, Mr Ford asked the question:

“Q. In fact, the defendant’s position is that the first time she received the contract documentation from the plaintiff was 12 January 2015. You’re aware that that is her assertion?

A. Yes that rings true, yes.”
14. The second is a statement made by Mr Ford on 19 July 2016 when he submitted that Ms Odtojan had not been cross-examined on evidence that she gave that she did not receive the contract documentation until after the proceedings were commenced and then on 12 January 2015 (after proceedings had been commenced).
15. Ms Odtojan contends that these were fraudulent statements. She admitted that she received the documents on 12 January 2015 that CCS contended were documents that related to the contract it alleged had been formed, but she denied that they were “contract documents”. In his submission on costs on 29 August 2016 (that is, after the magistrate had found that a contract had been entered into between Ms Odtojan and the St George Bank) in part relying upon the documents on which CCS relied as contract documentation, Mr Ford said:

“The offer of compromise of 17 December 2014 was served on my client, and on my case, Ms Odtojan did not receive the contract documentation until 12 January 2015.”
16. Ms Odtojan alleges that because Mr Ford referred to the documents which CCS claimed to be contract documents, and which the learned magistrate found to be contract documents, as contract documents, that was evidence of fraud.
17. That allegation is self-evidently baseless and improper.
18. As in the case of *Glynn*, in this application Ms Odtojan contended she was denied procedural fairness in the Local Court and that there was a breach of the “bias rule” (proposed notice of appeal, ground 1(b)). Although it does not appear from the proposed ground of appeal whether the bias alleged was actual or apprehended bias, it appears from her summary of argument that the bias alleged is actual bias.
19. That is a serious allegation that should not be made without proper ground: *Reid v Commercial Club (Albury) Ltd* [2014] NSWCA 98 at [68]-[74]. Mr Bryl, who appeared for Ms Odtojan with leave as her McKenzie friend, pointed to no basis for the allegation of actual (or apprehended) bias.
20. In relation to the denial of procedural fairness, Ms Odtojan relied upon the evidence that at the hearing before the primary judge, the primary judge had not, at that time, read Ms Odtojan’s written submissions. They had been filed only shortly before the commencement of the hearing. The primary judge reserved her judgment. It is clear

from her Honour's reasons that her Honour had read and considered the written submissions of the parties before she delivered judgment. Thus, at par [37] of her judgment, she referred to Ms Odtojan's submission that the claim had been brought within the six year limitation period and her further submission that that as her claim was based on fraud, time did not run under the *Limitation Act 1969* (NSW) until the time the fraud was discovered. The primary judge accepted the submission.

21. The reasons in *Glynn* apply *mutatis mutandis* to this application for leave to appeal, and are to be read with these reasons. For the reasons in *Glynn* as supplemented by these reasons, the summons for leave to appeal should be dismissed with costs.
22. Also, for the reasons in *Glynn* and these reasons, Ms Odtojan and Mr Bryl should be given 14 days to show cause in writing why the judgment of this Court and the papers should not be referred to the Legal Services Commissioner.
23. I propose the following orders:
 1. Summons for leave to appeal dismissed with costs.
 2. Within 14 days Ms Odtojan and Mr Bryl show cause why this judgment and the papers in this Court not be referred to the Legal Services Commissioner.

At [24] BASTEN AJA agreed with the orders proposed by White JA, for the reasons given by White JA.

Odjotan/Glynn/Ford No 2

In Odjotan/Glynn/Ford No 2, White JA and Basten AJA delivered the following judgment;

1. On 21 November 2023 we dismissed with costs Ms Odtojan's summons for leave to appeal from orders of the District Court of New South Wales, striking out Ms Odtojan's statement of claim with only limited leave to replead. We concluded that there was no proper basis for Ms Odtojan and Mr Bryl to maintain allegations of fraud and collusion against Mr Ford and Mr Glynn (*Odtojan v Glynn t/as Glynn's Lawyers* [2023] NSWCA 276; *Odtojan v Ford* [2023] NSWCA 277).
2. In *Odtojan v Condon* [2023] NSWCA 129, similar allegations were made by Ms Odtojan and Mr Bryl about the conduct of Mr Condon. In *Odtojan v Condon (No 2)* [2023] NSWCA 149, this Court referred the papers in those proceedings to the Legal Services Commissioner.
3. On 21 November 2023 we ordered that, within 14 days, Ms Odjotan and Mr Bryl show cause why the judgments in *Odtojan v Glynn* and *Odtojan v Ford*, and the papers in this Court, should not be referred to the Legal Services Commissioner. At the request of Ms Odtojan and Mr Bryl, on 6 December 2023, we extended the time for provision of such admissions to 12 December 2023.
4. No submissions addressing that issue have been provided by Ms Odtojan or Mr Bryl. They provided a lengthy and inappropriate email questioning the reasons of 21 November 2023 but no submissions as to why the judgments and the papers in this Court should not be referred to the Legal Services Commissioner.
5. The reasons of Leeming and Kirk JJA in *Odtojan v Condon (No 2)* apply equally to these proceedings.
6. We direct the Registrar of the Court to refer the judgments in *Odtojan v Glynn* and *Odtojan v Ford* and the papers in these proceedings, including the email of Tuesday 5 December 2023 11:56pm, to the Office of the Legal Services Commissioner.

3. Practising certificate renewal application for the practice year 2017/2018

In your application for the renewal of your practising certificate dated 11 May 2017, for the practice year 2017/2018 (**2017/2018 application**) you did not:

- a. disclose the findings and orders made by LCM Freund on 16 August 2016, referred to in the Local Court matter of *Credit Corp Services Pty Ltd v Marie Odtojan* 2014/219407; and
- b. you did not disclose the finding and orders made by LCM Freund on 29 August 2016, referred to in the matter of *Credit Corp Services Pty Ltd v Marie Odtojan* 2014/219407.

in relation to question 9 - fit and proper person (Note H) of the 2017/2018 application in accordance with r 13 of the Uniform Rules.

4. Practising certificate renewal application for the practice year 2020/2021

In your application for the renewal of your practising certificate dated 24 April 2020, for the practice year 2020/2021 (**2020/2021 application**) you did not:

- a. disclose the findings and orders made by Strathdee DCJ on 15 May 2019, referred to in the matter *Marie Odtojan v Credit Corp Services Pty Ltd* 2019/51923 ; and
- b. disclose the finding and orders made by Mahony DCJ on 20 June 2019, referred to in the matter of *Marie Odjotan v Credit Card Services Pty Ltd* [2019] NSWDC 273.

in relation to question 9 - fit and proper person (Note H) of the 2021/2022 application in accordance with r 13 of the Uniform Rules.

5. Practising certificate renewal application for the practice year 2023/2024

In you application for the renewal of your practising certificate dated 30 May 2023, for the practice year 2023/2024 (**2023/2024 application**) you did not:

- a. disclose the finding and orders made by Norton DCJ on 16 February 2023, referred to in the matter of *Odtojan v Condon* 2022/00273980;
- b. disclose the findings and orders made by Norton DCJ on 28 March 2023, referred to in the matter of *Odtojan v Glynn t/as Glynn's Lawyers* 2022/273977; and
- c. disclose the findings and orders made by Norton DCJ on 28 March 2023, referred to in the matter of *Odtojan v Ford* 2022/00242555.

in relation to question 9 - fit and proper person (Note H) of the 2023/2024 application in accordance with r 13 of the Uniform Rules.

6. Practising certificate renewal application for the practice year 2024/2025

In your application for the renewal of your practising certificate dated 15 May 2024, for the practice year 2024/2025 (**2024/2025 application**) you did not:

- a. disclose the findings and orders made by the Court of Appeal on 09 June 2023, as referred to in the matter of *Odtojan v Condon* [2023] NSWCA 129;
- b. disclose the findings and orders made by the Court of Appeal on 03 July 2023, as referred to in *Odtojan v Condon (No 2)* [2023] NSWCA 149;
- c. disclose the findings and orders made by the Court of Appeal on 21 November 2023, as referred to in *Odtojan v Glynn t/as Glynn Lawyers* [2023] NSWCA 276;
- d. disclose the findings and orders made by the Court of Appeal on 21 November 2023, as referred to in *Odtojan v Ford* [2023] NSWCA 277;
- e. disclose the finding and orders made by the Court of Appeal on 14 February 2024, as referred to in *Odtojan v Glynn t/as Glynn Lawyers; Odtojan v Ford (No 2)* [2024] NSWCA 25

in relation to question 9 - fit and proper person (Note H) of the 2024/2025 application in accordance with r 13 of the Uniform Rules.

7. Declaration made in the 2017/18 application

Your declaration in the 2017/2018 application dated 11 May 2017 stated:

“I declare that the contents of this application are true and correct. I wish to apply for an Australian practising certificate and have my name entered in the register of local practising certificates in New South Wales. I declare that I am not aware of any finding, conduct or event which would disentitle me, without disclosure to be admitted to a Supreme Court Roll or effect my fitness to hold a practising certificate (other than that which is disclosed herewith or previously disclosed).”

8. Declaration made in the 2020/2021 application

Your declaration in the 2020/2021 application dated 24 April 2020 stated:

“I declare that the contents of this application are true and correct. I wish to apply for an Australian practising certificate and have my name entered in the register of local practising certificates in New South Wales. I declare that I am not aware of any finding, conduct or event which would disentitle me, without disclosure to be admitted to a Supreme Court Roll or effect my fitness to hold a practising certificate (other than that which is disclosed herewith or previously disclosed).”

9. Declaration made in the 2023/2024 application

Your declaration in the 2023/2024 application dated 30 May 2023 stated:

“I declare that the contents of this application are true and correct. I wish to apply for an Australian practising certificate and have my name entered in the register of local practising certificates in New South Wales. I declare that I am not aware of any finding, conduct or event which would disentitle me, without disclosure to be admitted to a Supreme Court Roll or effect my fitness to hold a practising certificate (other than that which is disclosed herewith or previously disclosed).”

10. Declaration made in the 2024/2025 application

Your declaration in the 2024/2025 application dated 15 May 2024 stated:

“I declare that the contents of this application are true and correct. I wish to apply for an Australian practising certificate and have my name entered in the register of local practising certificates in New South Wales. I declare that I am not aware of any finding, conduct or event which would disentitle me, without disclosure to be admitted to a Supreme Court Roll or effect my fitness to hold a practising certificate (other than that which is disclosed herewith or previously disclosed).”

17 July 2024

PRIVATE AND CONFIDENTIAL

Mr Artem Bryl

Sent via email only: admin@odtojanbryllawyers.com.au

Dear Mr Bryl

Application for the renewal of your practising certificate for the practice year 2024/2025

I refer to your 2024/2025 application for the renewal of an Australian practising certificate as an employee of a legal practice (supervised) dated 15 May 2024 (**2024/2025 application**).

I should first indicate that the 2024/2024 application has not been approved or refused by the Council of the Law Society of New South Wales (**Council**).

Relevant legislation

By operation of rule 17 of the *Legal Profession Uniform General Rules 2015* (the **General Rules**), your practising certificate for the year ended 30 June 2024 is taken to continue in force on and from 1 July 2024, until whichever of the following first occurs: Council renews or refuses to renew the certificate, or you withdraw the application, unless the certificate is earlier suspended, cancelled or surrendered.

As you are aware, in assessing the 2024/2025 application, Council is to consider whether or not to grant the 2024/2025 application having regard to its obligations under section 45(2) and 45(4) of the *Legal Profession Uniform Law* (NSW) (**Uniform Law**). Section 45(2) of the Uniform Law provides that Council “must not grant or renew an Australian practising certificate if it considers that the applicant is not a fit and proper person to hold the certificate.” Section 45(3) of the Uniform Law states that the Law Society may have regard to matters specified in r13(1) of the *Legal Profession Uniform General Rules 2015* (*Uniform Rules*) including:

“...Rule 13(1)

(a) whether the applicant is currently of good fame and character;

...

(m) whether the applicant is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner:

(n) whether the applicant has provided incorrect or misleading information in relation to any application for an Australian practising certificate under an Australian Law relating to the legal profession.

(q) whether the application has contravened –

(i) an order of a Court or Tribunal made in any proceedings, or

(ii)...

...

(t) whether the applicant has failed to pay any costs or expenses for which the applicant was liable under an Australian law relating to the legal profession

(u) any other matter that is related to a matter referred to in another provision in this rule.

The *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (**Solicitors' Conduct Rules**) furnishes guidance and assistance to solicitors to act ethically and in accordance with the principles of professional conduct established by the common law and the Solicitors' Conduct Rules.

Rule 3.1 provides that a solicitor's duty to the Court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty.

Rule 4.1 provides that a solicitor must:

- 4.1.1 act in the best interest of a client in any matter in which the solicitor represents a client,
- 4.1.2 be honest and courteous in all dealings in the course of legal practice,
- 4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible, and
- 4.1.4 comply with these Rules and the law.

Rule 5.1 provides that a solicitor must not engage in conduct, in the course of legal practice or otherwise, which –

- 5.1.1 demonstrates that the solicitor is not a fit and proper person to practice law, or
- 5.1.2 is likely to a material degree to –
 - (i) be prejudicial to, or diminish the public confidence in, the administration of justice, or
 - (ii) bring the profession into disrepute

Rule 21.3 provides that a solicitor must not allege any matter of fact in –

- 21.3.1 any court document settled by the solicitor,
- 21.3.2 any submission during any hearing,
- 21.3.3 the course of an opening address, or
- 21.3.4 the course of a closing address, or submission on the evidence

unless the solicitor believes on reasonable grounds that the factual material already available provides a proper basis to do so.

Rule 32.1 provides that a solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory profession conduct or professional

misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation can be supported provides a proper basis for it.

Relevant Matters in the assessment of the application

The matters for consideration by Council in the assessment of the 2024/2025 application are detailed in Annexure A to this letter.

Consideration

The fit and proper test is intertwined with the public expectations of honesty, candour, integrity and compliance with the law as well as promoting public confidence in the administration of justice, by its individual members and the profession as a whole.

As Spigelman CJ detailed in *New South Wales Bar Association v Cummins* [2001] NSWCA 284; 52 NSWLR 279:

“... Honesty and integrity are important in many spheres of conduct. However, in some spheres significant public interests are involved in the conduct of particular persons and the state regulates and restricts those who are entitled to engage in those activities and acquire the privileges associated with a particular status. The legal profession has long required the highest standards of integrity.

There are four interrelated interests involved. Clients must feel secure in confiding their secrets and entrusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and the behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people...”

Together with demonstrable fitness and propriety, Council must also ensure that legal practitioners are able to carry out satisfactorily the inherent requirements of legal practice, as detailed by Davies J in *MN Legal and Management Consultants Pty Ltd v the Council of the Law Society of New South Wales*; *Michail v The Council of the Law Society of New South Wales* [2018] NSWSC 1410, to include:

“I accept the submission of the Law Society that the inherent requirements for a legal practitioner must include the following:

- (a) the ability to perform the day-to-day tasks associated with providing legal services, including the ability to communicate in a professional manner with the courts, law-enforcement agencies and other legal practitioners;
- (b) the ability to discharge the legal practitioner's tortious and fiduciary duties to his or her clients, whether arising under their retainer, in tort or in equity;
- (c) the ability to discharge the legal practitioner's duties to the Court, including:

- i. the duty to be honest and courteous in all dealings in the course of legal practice: r. 4.1.2, Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (NSW) (Conduct Rules);
- ii. the duty not to engage in conduct, in the course of practice or otherwise, which is likely to a material degree to be prejudicial to, or diminish the public confidence in, the administration of justice, or bring the profession into disrepute: r. 5.1, Conduct Rules;
- iii. the duty not to knowingly or recklessly mislead the court: r. 19.1, Conduct Rules;
- iv. the duty not to allege any matter of fact in any court document settled by the solicitor, or any submission during any hearing, unless the solicitor believes on reasonable grounds that the factual material already available provides a proper basis to do so: r. 21.3, Conduct Rules; and
- v. the duty not to communicate in the opponent's absence with the court concerning any matter of substance in connection with the current proceedings: r. 22.5, Conduct Rules.

To those matters there would need to be added, an obligation to obey the law and to comply with court orders.”

A solicitor’s duty of candour is paramount in any consideration of fitness and propriety to hold a practising certificate. Your 2024/2025 application may be considered to be providing incorrect or misleading information with regard to that 2024/2025 application and may also demonstrate an absence of insight and understanding by you of the importance and obligation of candour in seeking to be considered a fit and proper person to hold a practising certificate.

In *Thomas v Legal Practitioners Admissions Board* [2004] QCA 407; [2005] 1 Qd R 331, de Jersey CJ said:

“By making candid and comprehensive disclosure of relevant information an applicant demonstrates a proper perception of his or her duty and will thereby seek to demonstrate his or her good character.”

In the same matter McMurdo P observed:

“His lack of disclosure does, however, demonstrate a lack of insight into his serious past misconduct and a lack of understanding of his duty to make full and accurate disclosure to the Board”.

The protection of the public is a further valid consideration by Council in assessing an applicant’s fitness to hold a practising certificate, to ensure not only that particular legal practitioners do not repeat prior misbehaviour, but that other legal practitioners do not replicate the misbehaviour or misconduct. As observed by Beazley JA (as her Excellency then was) in *Law Society of New South Wales v Walsh* [1997] NSWCA 185, “this wider notion of the protection of the public involves the Court ensuring that the high standards which are demanded of members of the profession are maintained”.

In making any determination regarding a practitioner’s fitness to practise and to carry out satisfactorily the inherent requirements of legal practice, Council will take into account any findings or orders made by any Courts (and the fact and circumstances from which the orders arise), coupled with the need for public

confidence in the profession and its individual members. The findings of and the orders made by the Court of Appeal between in 2023 and 2024, the non-disclosure of those findings in your 2024/2025 application as well as the declaration made by you in your 2024/2025 application are relevant to both those matters.

Alleged Conduct

A. Court of Appeal referrals

Based on the information provided by the referrals and the abovementioned Court of Appeal decisions, the following alleged conduct issues appear to arise:

Issue 1

1. During the Court of Appeal proceedings in Otdojan No 1, you contended, without reasonable grounds, that the legal practitioners involved in the preparation of the application books in those proceedings had tampered with evidence and attempted to pervert the course of justice.

Issue 2

2. During the Court of Appeal proceedings in Otdojan No 1 and/or Otdojan No 2, you contended that the legal representatives acting for Mr Condon SC had committed serious breaches of professional ethical rules, without reasonable grounds.

Issue 3

3. In an affidavit and submissions dated 27 June 2023, sent to the Court of Appeal to show cause why you should not be referred to the NSW Commissioner, you reiterated serious allegations without any proper foundation as well as the apparent ongoing misunderstanding by you and Mr Bryl regarding your obligations as legal practitioners.

Issue 4

4. Notwithstanding admonishing by Leeming and Kirk JJA in Otdojan No 1, and the referral of papers to the NSW Commissioner in Otdojan No 2, in Otdojan/Glynn No 1 and Otdojan/Ford No 1 you maintained allegations of fraud and collusion against Mr Ford and Mr Glynn without demonstrating any proper basis.

Issue 5

5. In the application before the Court of Appeal in Otdojan/Ford No 1, you allege that because Mr Ford referred to documents as “contract documents”, as CCS claimed the documents to be, that was evidence of fraud by Mr Ford.

Issue 6

6. In the application before the Court of Appeal in Otdojan/Ford No 1, you made a serious allegation that Ms Otdojan was denied procedural fairness in the Local Court proceeding and noting Ms Otdojan’s allegation in her proposed Notice of Appeal in ground 1(b) that there was a breach of the “bias rule”, via your summary of argument you allege that the bias is actual bias.

Issue 7

7. In an email to the Court of Appeal dated 05 December 2023, described by the Court of Appeal as lengthy and inappropriate, you questioned the Court of Appeal's reasons given on 21 November 2023, in Odtojan/Glynn No 1 and Odtojan/Ford No 1.

B. Failure to Disclose

The failure to disclose all the Court of Appeal findings and orders in your 2024/2025 application.

C. Declarations

The declarations made by you in your 2024/2025 application.

Next steps

Council will need to consider whether your prior conduct as detailed above, is incompatible with the holding of a practising certificate. Council will, however, need to consider whether since that time you have taken steps to address the prior misconduct such that you may now be considered to be fit and proper to hold a practising certificate.

I intend to ask Council at its next meeting to consider whether to grant or refuse your 2024/2025 application dated 15 May 2024, pursuant to s45(2) and 45(3) of the Uniform Law and rr13(1)(a), 13(1)(m), 13(1)(n), 13(1)(q), 13(1)(t), and 13(1)(u) of the Uniform Rules. Further, having regard to the grant of any practising certificate to you, Council may consider the type of practising certificate that you may be granted and whether certain conditions should be attached to your practising certificate which may include but is not limited to, further education, medical reporting, financial reporting, supervision and mentoring.

Before considering the matter, I would like to provide you with an opportunity to make submissions to demonstrate that you are a fit and proper person to hold a practising certificate, notwithstanding the findings and orders of White JA, Lemming JA, Kirk JA, White JA and Basten AJA (Court of Appeal) in 2023 and 2024, the non-disclosure of the findings and orders made in the Court of Appeal proceedings (Odtojan 1, Odtojan 2, Odjotan/Glynn No 1, Odjotan/Ford No 1, Odjotan/Glynn/Ford No 2) in your 2024/2025 application, as well as the declarations made by you in your 2024/2025 application.

Please provide your further submissions **by no later than Friday 09 August 2024**.

Communicating with the Law Society

To minimise delays in receiving any material you may wish to provide, please respond to psd@lawsociety.com.au, quoting reference PSD2023_57157 marked to my attention. If you cannot respond in writing due to a disability, please contact the Professional Standards Department on (02) 9926 0110.

If you are attaching any documents, please provide a list of the attached documents as size restrictions may prevent documents being received.

Resources

The Law Society's website contains information about resources available for solicitors including:

Solicitor Outreach Services

The Solicitor Outreach Service (SOS) is the Law Society's mental health and wellbeing support service. It is a dedicated and confidential psychological support service for NSW solicitors who may be experiencing emotional difficulties and stress. Through SOS, NSW solicitors can access up to three psychological sessions per financial year and telephone crisis support if in acute distress, funded by the Law Society. SOS is available to solicitors who hold a current practising certificate from the Law Society of NSW, including those who may be the subject of a disciplinary process. The phone number for the service is 1800 592 296. For further information see <https://www.lawsociety.com.au/sos>

Professional Conduct Advisory Panel

The Professional Conduct Advisory Panel (PCAP) provides support to solicitors who are subject to complaints and disciplinary investigations. The assistance is confidential and independent of the regulatory authorities. Further information, including contact details of panellists, can be found at <https://www.lawsociety.com.au/practising-law-in-NSW/complaints-and-discipline/PCAP>

Yours faithfully



VALERIE GRISWOLD
Director, Legal Regulation
Professional Standards

ANNEXURE A

Relevant Matters in the assessment of the 2024/2025 application

1. Referral from the Court of Appeal of the Supreme Court of New South Wales to the New South Wales Legal Services Commissioner dated 03 July 2023

The Court of Appeal of the Supreme Court of New South Wales (**Court of Appeal**) invited you and your wife Ms Marie Odtojan to show cause why a referral should not be made to the New South Wales Legal Services Commissioner (**NSW Commissioner**) at [83] of the Court of Appeal's judgment in Ms Odtojan's appeal in *Odtojan v Condon* [2023] NSWCA 129 dated 09 June 2023 (**Odtojan No 1**).

On 03 July 2023, Jerry Riznyczok, Registrar, Court of Appeal, Supreme Court of New South Wales (**Registrar Riznyczok**) made a referral (**referral**) to the NSW Commissioner pursuant to the judgment of Leeming and Kirk JJA in *Odtojan v Condon (No 2)* [2023] NSWCA 149 (**Odtojan No 2**) dated 03 July 2023.

On 07 July 2023, the NSW Commissioner forwarded the referral to Council of the Law Society of New South Wales (**Council**) for consideration regarding Ms Odtojan's conduct and your conduct as a solicitor who appeared for Ms Odtojan in the capacity of a McKenzie Friend before the Court of Appeal.

Background

The background to this matter is summarised in the judgment in *Odtojan No 1*. The Registrar has provided a link to that judgment in the attached cover email to the NSW Commissioner dated 03 April 2023, which was accompanied by the following Court of Appeal papers:

- Sealed Applicant's Supplementary White Book in *Odtojan No 1*, filed 27 April 2023 in matter 103644 (361 pages);
- Sealed Updated White Folder Part 1 (Tabs 1-12) in *Odtojan No 1*, filed 26 May 2023 in matter 2023/103644 (387 pages); and
- Sealed Updated White Folder Part 2 (Tabs 13-25) in *Odtojan No 1* filed 26 May 2023 in matter 2023/103644 (366 pages).

Odtojan No 1

At [32] in *Odtojan No 1* the Court of Appeal stated:

"The applicant is a solicitor. The fact that she is acting for herself does not excuse her from her ethical obligations. Nor does the fact that Mr Bryl sought to appear merely as a McKenzie friend excuse him from his. As indicated in the case just quoted, for a legal practitioner to make allegations of the kind made here without a proper foundation can lead to disciplinary proceedings against the practitioner. In the correspondence between the applicant and the respondent solicitors there are suggestions that the Solicitors' Conduct Rules are inapplicable because the applicant acted for herself. The same theme appears to underlie the applicant's submissions in response, which include (as written):

"The Respondent had casted unjustifiable aspersions on the Applicant, her profession as a legal practitioner and her firm. Despite notice to cease threatening and referring to the Applicant's profession where she is not in capacity of a legal practitioner in these proceedings, the Respondent and his legal representatives wilfully continued to refer to and threaten the Applicant's profession."

At [61] the Court of Appeal remarked that the sending of an email on Friday 24 February 2023, to the associate to Norton DCJ in the proceedings *Odtojan v Condon* [2023] NSWDC, without the leave of the Court, or the consent of Mr Condon SC, was quite inappropriate.

At [66ff] the Court of Appeal remarked:

We have outlined above the lack of a proper basis for the serious allegations made in the ASOC. We have noted that the applicant has suggested, with no apparent proper basis, that the legal representatives of the respondent wilfully misled the District Court and otherwise breached their professional obligations (see [33] and [60] above). There are further reasons to have concerns about Ms Odtojan's and Mr Bryl's understanding of, and compliance with, basic ethical requirements.

[67] The respondent read an affidavit of Mr James Berg, a partner of DLA Piper and the respondent's solicitor on the record, sworn 30 May 2023. The point of the affidavit was to respond to and contextualise the allegations raised by Ms Odtojan and Mr Bryl against the legal representatives of the respondent. No objection was made to the affidavit or the associated exhibit.

[68] What emerges from the affidavit, and the material exhibited to it, is that both Ms Odtojan and Mr Bryl have repeatedly accused the counsel and solicitors appearing for the respondent of misconduct. They have done so in written and oral submissions to the District Court, in written submissions to this Court, and in various other court documents. Mr Berg set out a long list of the various accusations in a letter sent to Ms Odtojan dated 18 May 2023, which includes the following summation:

“47 As various times you, directly or through Mr Bryl, have asserted that the Legal Representatives have:

47.1 wilfully misled the Court of Appeal and District Court;

47.2 engaged in improper conduct, seemingly to mislead the Court through the making of misrepresentations to the Court;

47.3 disregarded Court rules and processes;

47.4 interfered with the administration of justice;

47.5 shown consistent intentional dishonesty in this matter; and

47.6 tampered with evidence.”

[69] No reasonable basis is apparent for any of these very serious allegations.

At [80] the Court of Appeal summarised certain allegations made by you and Ms Odtojan in the following terms:

[80] “What emerges from the above is that either or both of Ms Odtojan and Mr Bryl have:

(1) accused the solicitor and junior counsel who acted for Ms Odjotan at the Local Court trial of a conspiracy with the opposing party and legal team to pervert the course of justice;

(2) accused senior counsel who advised on appeal prospects of participation in a further conspiracy and of acting fraudulently;

(3) submitted that a District Court judge who made a procedural order for a small amount of security for costs was biased and had acted in bad faith, which allegations were found to be unsubstantiated;

(4) accused the District Court judge who struck out a pleading whilst granting leave to replead of actual and apprehended bias, even though the pleading was concededly defective;

(5) accused those involved in the preparation of the application books of tampering with evidence and attempting to pervert the course of justice, without reasonable foundation; and

(6) more broadly, repeatedly accused the legal representatives of the respondent of serious breaches of professional ethical rules, without any apparent reasonable basis.”

At [81ff], the Court of Appeal gave you and Ms Odtojan an opportunity to address the Court’s concerns about your professional conduct:

[81] “During the course of the hearing in this Court, having raised concerns about there being any proper basis for various of the allegations being made by Mr Bryl and Ms Odtojan, we gave the parties leave to draw the Court’s attention to any relevant authorities as to how the Court should proceed if concerned about what had occurred.

The respondent supplied references to *Simpson v Hodges* [2007] NSWSC 1230 at [266]-[268], *Australian Building and Construction Commissioner v Parker (No 2)* [2017] FCA 1082 at [89], *Muriniti v Kalil* [2022] NSWCA 109 at [105]-[107] and *Day v Perisher Blue Pty Ltd (No 2)* [2005] NSWCA 125. The first two decisions address what occurs when a court is of the view that an offence has been committed; they are not relevant to the position which arises if the Court formed the view that there had been serious and ongoing breaches of the rules of professional conduct. However, *Muriniti v Kalil* is apposite. There Brereton JA said:

[105] As has been noted, at various points of her Honour’s reasons, the primary judge made observations about various aspects of the professional conduct of Mr Muriniti and Mr Newell, and foreshadowed that the matter would be the subject of a referral to the Legal Services Commissioner. Her Honour’s formal orders included the following:

“Noted: These reasons are to be sent by the Registrar so that the matter may be referred to the Legal Services Commissioner to determine whether or not Mr Muriniti and/or Mr Newell have engaged in unsatisfactory professional conduct or professional misconduct.”

[106] It is conventional that when a judge has in mind referring a legal practitioner to a professional regulator for disciplinary investigation, the practitioner is afforded an opportunity to show cause why there should not be a referral. This practice was not followed in this case. This was not a private complaint to the Legal Services Commissioner, nor a decision to institute disciplinary proceedings, in respect of which at common law there might be no right to be heard, but a formal

decision recorded in a published judgment to refer a practitioner to a regulatory authority for disciplinary investigation, which of itself has serious potential reputational consequences for a practitioner, such as to attract the principles enunciated in cases such as *Mahon v Air New Zealand*, *Annetts v McCann* and *Ainsworth v Criminal Justice Commission*. [footnotes omitted]

[82] His Honour regarded what had occurred in that litigation as involving a denial of procedural fairness. Further, in *Day v Perisher Blue Pty Ltd (No 2)* an opportunity was given to the solicitors to show cause why the papers should not be referred to the Legal Services Commissioner.

[83] Although during the course of the hearing Mr Bryl was squarely confronted with the possibility that this Court might find that there had been a breach of rule 32, it may be that he was under a misapprehension of the applicability of the rules of professional conduct to cases where a solicitor brings proceedings as plaintiff and acts for herself, or of the potential application to himself when acting as a McKenzie friend. It is also possible that the interests of Mr Bryl and Ms Odtojan are not wholly aligned on this issue. On balance, we have concluded that each of Mr Bryl and Ms Odtojan should be given a further opportunity to show cause why this Court should not refer this judgment and the papers in this application to the Legal Services Commissioner.

Conclusion

[84] The orders of the primary judge were entered on 17 February 2023. The summons seeking leave to appeal was filed more than 28 days later, on 30 March 2023. An extension of time is thus required: UCPR, r 51.16. The delay is not extensive, no prejudice has been identified and in all the circumstances the extension should be granted. The application for leave to appeal should be dismissed with costs. In the circumstances outlined we consider it appropriate to order that the costs be payable forthwith.

[85] Ms Odtojan and Mr Bryl should be provided with an opportunity to show cause why this judgment and the papers in this application should not be referred to the Legal Services Commissioner. Either or both of them may, if they wish, exercise that entitlement by filing submissions and affidavits and supporting materials within 14 days of today. If either of them seeks to be heard orally, that should be stated in the submissions. The materials should also be served on the respondent, but we do not at this stage intend to make a direction permitting him to be involved in that process, although we will review the position if and when any materials are supplied.

Odtojan No 2

At [38] of *Odtojan No 2*, after considering further submissions from you and Ms Odtojan, the Court of Appeal found that those submissions did not show cause why the Court's judgment and papers should not be referred to the NSW Commissioner and, if anything, reinforced that a referral is appropriate, given the reiteration of serious allegations by you and Ms Odtojan without any proper foundation and the apparent ongoing misunderstanding by you and Ms Odtojan of your obligations as legal practitioners.

2. Referral from the Court of Appeal of the Supreme Court of New South Wales to the New South Wales Legal Services Commissioner dated 14 February 2024

The Court of Appeal invited you and your wife Ms Odtojan, to show cause why a referral should not be made to the NSW Commissioner at [108] of the Court of Appeal's judgment in Ms Odtojan's appeal in *Odtojan v Glynn t/as Glynn Lawyers* [2023] NSWCA 276 dated 21 November 2023, (**Odtojan/Glynn No 1**) and at [22] in *Odtojan v Ford* [2023] NSWCA 277 dated 21 November 2023 (**Odtojan/Ford No 1**).

On 29 February 2024, Karen Jones, Registrar, Court of Appeal, Supreme Court of New South Wales (**Registrar Jones**) made a referral to the NSW Commissioner pursuant to the judgment of White and Basten JJA in *Odtojan v Glynn t/as Glynn Lawyers; Odtojan v Ford (No 2)* 2024 NSWCA 25 (**Odtojan/Glynn/Ford No 2**) dated 29 February 2024.

On 08 March 2024, the NSW Commissioner forwarded the referral to Council for consideration regarding Ms Odtojan's conduct and your conduct, as a solicitor who appeared on behalf of Ms Odtojan in the capacity of a McKenzie Friend before the Court of Appeal.

Background

The background to these matters is summarised in *Odtojan/Glynn No 1* and *Odtojan/Ford No 1*. Registrar Jones has provided a link to the judgment/s in the (enclosed) cover email to the NSW Commissioner dated 29 February 2024, which was accompanied by the following Court of Appeal papers:

- Sealed Applicant's White Folder 1 (Tabs 1-12) in *Odjotan/Glynn No 1*, filed 28 June 2023 in matter 131229 (403 pages);
- Sealed Applicant's White Folder 2 (Tabs 12-21) in *Odjotan/Glynn No 1*, filed 28 June 2023 in matter 131229 (319 pages);
- Sealed Applicant's White Folder 1 (Tabs 1-12) in *Odjotan/Ford No 1*, filed 28 June 2023 in matter 131242 (406 pages);
- Sealed Applicant's White Folder 2 (Tabs 12-24) in *Odjotan/Ford No 1*, filed 28 June 2023 in matter 131242 (324 pages);
- Sealed Applicant's Supplementary White Book in *Odtojan/Ford No 1 No 1*, filed 28 June 2023 in matter 131242 (57 pages); and
- Email to the Associates of White JA and Basten AJA from Marie Odtojan dated 05 December 2023.

Odtojan/Glynn No 1

At [4] of *Odtojan/Glynn No 1*, White JA details that Ms Odtojan commenced proceedings against Mr Glynn and Mr Ford regarding their conduct of Ms Odtojan's defence in the Local Court proceedings, alleging that Mr Glynn and Mr Ford conspired with each other and the lawyers for CCS to obtain judgments against Ms Odtojan with such judgments being obtained by fraud and collusion. At [5] White JA details that Ms Odtojan alleged that Mr Condon SC also became a party to the conspiracy.

At [41] –[47] White JA details that Ms Odtojan alleged in her Amended Statement of Claim that Mr Glynn had been a party to a conspiracy with Mr Ford and with the lawyers for CCS to engage in wilful impropriety at the hearing before the Local Court to obtain an illegal judgment against Ms Odtojan. Ms Odtojan pleaded that, after judgment had been given in the Local Court, she discovered fabricated court documents that were presented and relied upon by Mr Glynn, Mr Ford, CCS and its legal representatives, to fraudulently create false material facts at the final hearing with intent to omit and circumvent material facts and the central issue of 'the Credit Contract and applicable Credit Laws (par 32) and that at the final hearing Ms Odtojan discovered that "there was no Credit Contract produced in evidence" and that "the material

issue of an alleged Credit Contract and alleged breaches of the credit legislation were never ventilated nor determined by the Court” (par 34).

Ms Odtojan pleaded that Mr Glynn deliberately omitted ventilating the applicable credit laws at the final hearing and conspired with CCS and its legal representatives to circumvent the credit legislation and penalties (par 37). Ms Odtojan pleaded that Mr Glynn and Mr Ford had fraudulently removed the onus of proof from CCS to prove the existence of the pleaded Credit Card Contract (par 39). Ms Odtojan pleaded that CCS and its legal representatives had intentionally pleaded matters asserting the existence of a Credit Card Contract which they knew was untrue (par 41). Ms Odtojan pleaded that CCS and its legal representatives could only have obtained an illegal judgment at the final hearing and at the costs hearing by acting in concert with Mr Glynn and Mr Ford (par 42).

At par 43, Ms Odtojan pleaded that Mr Glynn, in concert with Mr Ford, and in concert with CCS and its legal representatives, acted improperly by presenting and relying upon a case that the central issue in the proceeding was the Card Collection/ Overdraft/ Get Set Checklist document (which it was found that Ms Odtojan had signed) but omitted the real issue of the “Credit Card Contract”.

Ms Odtojan alleged that Mr Carpenter committed perjury by giving false evidence referring to a credit card contract when he knew that what he said was untrue (par 45(h)(viii) 12). Ms Odtojan alleged that Mr Glynn and Mr Ford intentionally failed to ask Mr Carpenter to identify what document he referred to as the contract (par 45(h)(viii) 13).

Ms Odtojan alleged that Mr Glynn intentionally failed to provide an affidavit to Ms Odtojan and materials served by CCS in support of their application for indemnity costs so as to deprive Ms Odtojan of her right to review and reply to those materials (pars 70-73).

At [47] White JA notes there were other allegations of fraud and conspiracy but these were the most specific.

At [50] White JA summarises the allegation made by Ms Odtojan against Mr Glynn and Mr Ford was that they fraudulently, and in collusion with CCS’s lawyers, suppressed what is alleged to have been the central issue before the Local Court, namely, that because of non-compliance with the credit laws, there was no credit contract that CCS could enforce.

At [51] White JA remarks that you, given leave to speak for Ms Odtojan as her McKenzie friend, challenged the totality of the orders made by the primary judge, and in the alternative, the order limiting the right to replead, which precludes Ms Odtojan from repleading the claims of fraud and conspiracy in relation to the conduct of the hearing in the Local Court.

At [52], White JA remarked that the allegations of fraud and conspiracy as pleaded are based upon the contention that, in the absence of a contract document required by the then ss 12 and 15 of the Consumer Credit (NSW) Code (now ss 14 and 17 of the National Credit Code) there could be no credit contract on which CCS could rely. White JA further remarked that this was a false premise and noted at [60] that Ms Odtojan alleged that because what she asserted to have been the central issue in the Local Court proceedings was not raised, the reason for its not being raised was fraud on the part of Ms Odtojan’s lawyers and collusion between them and the lawyers for CCS.

White JA observed at [61ff]:

61. “Even if Ms Odtojan’s understanding that for a credit contract to be enforceable it had to found in a signed contract document were correct, it would not justify her allegations of fraud and conspiracy. The possibilities that her lawyers took a different view of the law, or that they failed to consider the matter adequately could not be excluded. Although Mr Bryl denied that the reason fraud and conspiracy were pleaded was to seek to avoid a plea of advocates’ immunity, no satisfactory explanation was given as to how fraud and conspiracy might be established, or why a

cause of action in negligence was not pleaded, unless Ms Odtojan thought such a plea would have been subject to the immunity.

62. Ms Odtojan relied upon the amendment of the Statement of Agreed Facts and Issues in Dispute referred to at [31] and [32] above which she contends was made without her knowledge or consent. Assuming that to be so, they do not advance a case of fraud or collusion. Rather, they are consistent with counsel for the parties in the Local Court accepting that there was no issue whether a contract had been documented in accordance with the requirements of the Code, and that the real issue was whether any contract had been made at all.”

At [73] White JA details that the draft notice of appeal alleges “breach of bias rule” and remarks that there was no basis for the allegation of either apprehended or actual bias and that suffice it to say, the applicant’s contentions, which were in the nature of mere assertions, ought not to have been made”: *Reid v Commercial Club (Albury) Ltd* [2014] NSWCA 98 at [68]-[78].

At [90] White JA further remarked:

90. “If it were shown that there is an arguable basis for alleging that CCS or its lawyers colluded with Mr Glynn and Mr Ford fraudulently to procure a judgment against Ms Odtojan on CCS’s claim, I would accept that the claim should proceed to trial, notwithstanding that if the claim succeeded, it would impeach the judgment of the Local Court which has not been set aside.
91. But there is not a skerrick of evidence to support the premise. We have been provided with the judgments and pleadings in the Local Court and the full transcript of the hearing. There is nothing in them that provides any basis for the allegation of collusion between CCS or its lawyers, and the lawyers for Ms Odtojan. To the contrary, the case was hard fought on what counsel perceived to be the issues for trial.
92. In so far as Ms Odtojan relies on “mere” fraud on the part of Mr Glynn or Mr Ford, not extending to collusion with CCS or its lawyers, then even if there were a basis to plead fraud, leave to replead could not be given where no proceeding to set aside the judgments of the Local Court had been brought.”

At [100] White remarked that “Because of the limitation on the right to replead, because Mr Glynn did not provide advice on the prospects of appeal, and because the primary judge’s decision is practically tantamount to the summary dismissal of Ms Odtojan’s claim, I have proceeded on the basis that it must be clear beyond any doubt that her claim could not succeed (*Johnson Tiles Pty Ltd v Esso Australia Ltd* (2000) 104 FCR 564; [2000] FCA 1572 at [43]). I am so satisfied.”

At [103ff] White JA discusses the potential referral of papers to the Legal Services Commissioner

103. In *Odtojan v Condon* [2023] NSWCA 129, Leeming and Kirk JJA expressed concerns about the allegations made by Ms Odtojan and Mr Bryl about the conduct of Mr Condon and the primary judge. Their Honours gave Ms Odtojan and Mr Bryl 14 days to show cause why the Court’s judgment and the papers should not be referred to the Legal Services Commissioner.
104. In *Odtojan v Condon (No 2)* [2023] NSWCA 149, their Honours referred the papers to the Legal Services Commissioner.
105. That decision was given on 3 July 2023. The hearing of this application took place on 11 October 2023. Similar allegations were advanced to those deprecated by Leeming and Kirk JJA. For example, there was the following exchange:

“BRYL: If we assume that the party who successfully obtained the judgment by fraud, representing their client, is free to go and does not have any obligations after that, that will undo the whole legal history of obligations of legal representatives to their clients and to the Court. We are actually entering into the uncharted territory where you don't have real obligations. You can do whatever you want and you can get away with it and rely on the previous judgment which you wanted to obtain. That's the result. This result is judgment was exactly as alleged by the applicant, the result Mr Ford and Mr Glynn were seeking to obtain giving false evidence from the Bar table and giving false documents to the Court.

WHITE JA: Can I just make sure I understand the submission you're making.

BRYL: The submission I'm.

WHITE JA: No, sorry, I just want to repeat it and you can tell me if this is right because it's a very serious submission. I understand you to say that Mr Ford and Mr Glynn wanted to obtain a judgment from the Local Court against your client for the debt claimed by the plaintiff in the Local Court.

BRYL: That is correct, and it's as alleged.

WHITE JA: What's the basis for your saying that that was what they wanted?

BRYL: From their conduct in the Court, from their treatment of the documents, from their tampering with the evidence, from filing the statement of facts and issues where dates are edited, the issue of the contract is removed, from not ventilating the issue of the credit contract on the day of Court, from giving evidence at the Court that the credit contract has been provided to the defendant and aligning that with the 12 January 2015 date - crucial date connected to their offer of compromise given by the other side.

WHITE JA: You have been reminded of the obligations on solicitors and other lawyers not to make such serious allegations unless there is a proper basis for them.

BRYL: That's correct. And I stand by it, yes, your Honour.”

106. As Ms Odtojan and Mr Bryl had been told by Leeming and Kirk JJA, rule 32.1 of the Solicitors’ Rules provides that:

“A solicitor must not make an allegation against another Australian legal practitioner of ... professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.”

107. Notwithstanding their Honours’ admonition and their referral of the papers to the Legal Services Commissioner in the matter of *Odtojan v Condon*, Ms Odtojan and Mr Bryl maintained allegations of fraud and collusion against Mr Ford and Mr Glynn for which they have not demonstrated any proper basis. It may be that they did not appreciate that s 170 of the Credit (NSW) Code undermined the premise of their allegations, although that provision was referred to in Mr Condon and Mr Ford’s advice. Even if that be so, there was no reasonable basis for the allegations. The conduct of which they complain could be readily explained as matters of oversight, if it were not the conscious recognition by Mr Glynn and Mr Ford of the effect of s 170 of the Consumer Credit (NSW) Code.

108. I propose the following orders:

1. Summons for leave to appeal dismissed with costs.

2. Within 14 days Ms Odtojan and Mr Bryl show cause why this judgment and the papers in this Court not be referred to the Legal Services Commissioner.

109. **BASTEN AJA:** I agree with the orders proposed by White JA.

110. To justify those orders it is not necessary to enter upon the legal issues concerning the appropriate procedural mechanism for challenging a judgment said to have been procured by the fraud of one party (or its lawyers) colluding with the lawyers of the other party to defeat her interests. As White JA explains at [96] above, no arguable evidential basis for alleging either fraud or collusion on the part of the defendant (or of counsel briefed by him, or the legal representatives of CCS) has been identified. The claims so pursued have every appearance of being a contrivance to justify the decision not to appeal, nor to seek leave to appeal out of time, from the judgment in the Local Court. Otherwise, as Mr Bryl appeared to accept, they were relied on to avoid possible proceedings for incompetence or negligence of the lawyers foundering on the rock of advocates' immunity. However that may be, the factual basis for an arguable case of fraud or collusion was absent.

111. Nor is it necessary to rely on the Solicitors' Rules governing conduct between members of the profession, fundamental as they are to the proper administration of justice; the allegations of fraud and collusion without a hint of justification would not be countenanced whoever the proposed defendants were.

Odtojan/Ford No 1

At [1ff] White JA detailed the following:

1. This is an application for leave to appeal from a judgment of the District Court (Norton SC DCJ) in which the primary judge struck out the applicant's Statement of Claim with only limited liberty to replead. Her Honour also required that the applicant serve a paginated and indexed bundle of documents on which she relies with regard to her proposed further amended statement claim.
2. The application for leave to appeal raises the same issues as were raised in the application for leave to appeal from orders made in favour of a Mr Thomas Patrick Glynn. Judgment in the Glynn matter is being delivered at the same time as these reasons (*Odtojan v Glynn* [2023] NSWCA 276).
3. Mr Glynn is a solicitor. Mr Ford is a barrister. They were retained by Ms Odtojan to act for her in proceedings in the Local Court brought by Credit Corp Services Pty Ltd ("CCS") for a debt allegedly owed by Ms Odtojan arising from credit provided by the St George Bank to Ms Odtojan through the use of a credit card supplied by that bank. CCS was the assignee of the alleged debt.
4. Ms Odtojan was unsuccessful in her defence of the claim and a substantial order for costs was made against her. Much later, but (so the primary judge held) within the limitation period, she brought proceedings against Mr Ford and Mr Glynn and also Mr Condon SC alleging that the judgments against her in the Local Court were the result of fraud on the part of Mr Ford and Mr Glynn, conspiracy between them and CCS or its lawyers and, in some respects, acts of "intentional negligence".
5. In proceedings brought against Mr Condon, Ms Odtojan alleged that he became a party to the conspiracy in giving advice in relation to her prospects of appeal.
6. The primary judge gave Ms Odtojan leave to replead her allegations against Mr Ford only so far as they related to the provision of advice as to the merits of an appeal. It follows that she does not have leave to replead allegations made against him in relation to the conduct of the proceedings in the Local Court. As in the case of Mr

Glynn, that is tantamount to the summary dismissal of her claims against Mr Ford in relation to his conduct of the proceedings in the Local Court.

7. The primary judge held:

“[41] Ms Odtojan, in these proceedings, is seeking to re-examine Magistrate Freund’s finding that there was a contract and Ms Odtojan had attended at the bank and signed a declaration to the effect that she had been made aware of the conditions of the loan and accepted them. Under the guise of allegations as to the conduct of Mr Glynn and Mr Ford she is seeking to relitigate her claim that the signature on the document is a fraud and that Her Honour had not accepted arguments based on the application of the relevant Legislation.

[42] The allegations of conspiracy between the lawyers for the plaintiff and lawyers for Ms Odtojan are fresh claims. No evidence is supplied to support the allegations that there were any such conspiracies on foot at the time of the hearing in the local court and those alleged fellow conspirators have not been made parties to any proceeding.

[43] It is often appropriate to grant leave to a plaintiff to replead if a Statement of Claim is struck out. Ms Odtojan has been given the opportunity to replead these allegations and the Amended Statement of claim suffers from the same lack of clarity. The allegations are serious ones and Ms Odtojan was present in court during the proceedings in the local court. The matters she seeks to raise in the present pleadings are the same as those considered by the Magistrate. Once the offensive parts of the Amended Statement of claim are removed there is very little left other than matters which have been decided in the court below.

[44] I find it would be manifestly unfair to the defendant's [sic] that the same issues be relitigated and to permit these allegations to go forward would bring the administration of justice into disrepute. Ms Odtojan was supplied with a draft summons to commence an appeal and chose not to proceed. If necessary the summons could have been amended to add additional matters.”

8. The primary judge is correct in her observations at [42] that no evidence was supplied to support the allegations that there were any conspiracies on foot at the time of the hearing in the Local Court between the lawyers for CCS and the lawyers for Ms Odtojan.
9. I do not accept that the matters that Ms Odtojan sought to raise in the District Court proceedings were the same as those considered by Magistrate Freund in the Local Court (para [43]). It is true that in the District Court proceedings against Mr Ford, Ms Odtojan contends that she was not liable to CCS because there was no credit agreement between her and the St George Bank, whereas the magistrate held otherwise. However, in the District Court proceeding against Mr Ford, Ms Odtojan contends that this was because the alleged “central issue” between her and CCS was not raised by Mr Ford, and therefore it was not addressed by the magistrate. In respect of par [44], because the particular issues Ms Odtojan seeks to raise against Mr Ford were not decided in the Local Court, it would not be manifestly unfair to him for them to be raised in the District Court proceeding, if there were a proper basis for the allegations. If there were a proper basis for the allegations, the raising of them would not bring the administration of justice into disrepute.
10. Nor should the pleading be struck out without liberty to replead on the ground that Ms Odtojan was present in court during the hearing in the Local Court. She alleges that she was required to sit at the back of the court where it was hard to hear and did not discover the matters on the basis of which she alleges fraudulent conduct on the part of the lawyers until she reviewed the court files after judgment had been given.

That raises a triable issue as to whether the facts alleged to constitute fraud were newly discovered (*Wentworth v Rogers (No 5)* (1986) 6 NSWLR 534 at 538).

11. However, apart from the allegations of collusion with the lawyers for CCS, the claim based on alleged fraud and deliberate negligence, which is tantamount to fraud, could not be brought without impeaching the judgments of the Local Court. Unless the judgments of the Local Court can be treated as a nullity, they cannot be impeached in collateral proceedings (see *Odtojan v Glynn* at [79]). It is only in the case of a judgment obtained by collusion of the parties together practising a fraud on the court that it is arguable that the judgment can be treated as a nullity in collateral proceedings (*Glynn* at [80]-[93]).
12. It is clear beyond argument from the pleadings, the transcript, and the judgments in the Local Court that there was no collusion between CCS or its lawyers and the lawyers for Ms Odtojan in the conduct of those proceedings. The primary judge was therefore right to limit the leave to replead in the way her Honour did.
13. Two matters particular to Mr Ford warrant emphasis. The first is referred to at par [39] of the reasons in *Glynn*, where in cross examining Mr Carpenter, Mr Ford asked the question:

“Q. In fact, the defendant’s position is that the first time she received the contract documentation from the plaintiff was 12 January 2015. You’re aware that that is her assertion?”

A. Yes that rings true, yes.”
14. The second is a statement made by Mr Ford on 19 July 2016 when he submitted that Ms Odtojan had not been cross-examined on evidence that she gave that she did not receive the contract documentation until after the proceedings were commenced and then on 12 January 2015 (after proceedings had been commenced).
15. Ms Odtojan contends that these were fraudulent statements. She admitted that she received the documents on 12 January 2015 that CCS contended were documents that related to the contract it alleged had been formed, but she denied that they were “contract documents”. In his submission on costs on 29 August 2016 (that is, after the magistrate had found that a contract had been entered into between Ms Odtojan and the St George Bank) in part relying upon the documents on which CCS relied as contract documentation, Mr Ford said:

“The offer of compromise of 17 December 2014 was served on my client, and on my case, Ms Odtojan did not receive the contract documentation until 12 January 2015.”
16. Ms Odtojan alleges that because Mr Ford referred to the documents which CCS claimed to be contract documents, and which the learned magistrate found to be contract documents, as contract documents, that was evidence of fraud.
17. That allegation is self-evidently baseless and improper.
18. As in the case of *Glynn*, in this application Ms Odtojan contended she was denied procedural fairness in the Local Court and that there was a breach of the “bias rule” (proposed notice of appeal, ground 1(b)). Although it does not appear from the proposed ground of appeal whether the bias alleged was actual or apprehended bias, it appears from her summary of argument that the bias alleged is actual bias.
19. That is a serious allegation that should not be made without proper ground: *Reid v Commercial Club (Albury) Ltd* [2014] NSWCA 98 at [68]-[74]. Mr Bryl, who appeared for Ms Odtojan with leave as her McKenzie friend, pointed to no basis for the allegation of actual (or apprehended) bias.

20. In relation to the denial of procedural fairness, Ms Odtojan relied upon the evidence that at the hearing before the primary judge, the primary judge had not, at that time, read Ms Odtojan's written submissions. They had been filed only shortly before the commencement of the hearing. The primary judge reserved her judgment. It is clear from her Honour's reasons that her Honour had read and considered the written submissions of the parties before she delivered judgment. Thus, at par [37] of her judgment, she referred to Ms Odtojan's submission that the claim had been brought within the six year limitation period and her further submission that that as her claim was based on fraud, time did not run under the *Limitation Act 1969* (NSW) until the time the fraud was discovered. The primary judge accepted the submission.
21. The reasons in *Glynn* apply *mutatis mutandis* to this application for leave to appeal, and are to be read with these reasons. For the reasons in *Glynn* as supplemented by these reasons, the summons for leave to appeal should be dismissed with costs.
22. Also, for the reasons in *Glynn* and these reasons, Ms Odtojan and Mr Bryl should be given 14 days to show cause in writing why the judgment of this Court and the papers should not be referred to the Legal Services Commissioner.
23. I propose the following orders:
 1. Summons for leave to appeal dismissed with costs.
 2. Within 14 days Ms Odtojan and Mr Bryl show cause why this judgment and the papers in this Court not be referred to the Legal Services Commissioner.

At [24] BASTEN AJA agreed with the orders proposed by White JA, for the reasons given by White JA.

Odjotan/Glynn/Ford No 2

In Odjotan/Glynn/Ford No 2, White JA and Basten AJA delivered the following judgment;

1. On 21 November 2023 we dismissed with costs Ms Odtojan's summons for leave to appeal from orders of the District Court of New South Wales, striking out Ms Odtojan's statement of claim with only limited leave to replead. We concluded that there was no proper basis for Ms Odtojan and Mr Bryl to maintain allegations of fraud and collusion against Mr Ford and Mr Glynn (*Odtojan v Glynn t/as Glynn's Lawyers* [2023] NSWCA 276; *Odtojan v Ford* [2023] NSWCA 277).
2. In *Odtojan v Condon* [2023] NSWCA 129, similar allegations were made by Ms Odtojan and Mr Bryl about the conduct of Mr Condon. In *Odtojan v Condon (No 2)* [2023] NSWCA 149, this Court referred the papers in those proceedings to the Legal Services Commissioner.
3. On 21 November 2023 we ordered that, within 14 days, Ms Odjotan and Mr Bryl show cause why the judgments in *Odtojan v Glynn* and *Odtojan v Ford*, and the papers in this Court, should not be referred to the Legal Services Commissioner. At the request of Ms Odtojan and Mr Bryl, on 6 December 2023, we extended the time for provision of such admissions to 12 December 2023.
4. No submissions addressing that issue have been provided by Ms Odtojan or Mr Bryl. They provided a lengthy and inappropriate email questioning the reasons of 21 November 2023 but no submissions as to why the judgments and the papers in this Court should not be referred to the Legal Services Commissioner.
5. The reasons of Leeming and Kirk JJA in *Odtojan v Condon (No 2)* apply equally to these proceedings.

6. We direct the Registrar of the Court to refer the judgments in *Odtojan v Glynn* and *Odtojan v Ford* and the papers in these proceedings, including the email of Tuesday 5 December 2023 11:56pm, to the Office of the Legal Services Commissioner.

3. Practising certificate renewal application for the practice year 2024/2025

In your application for the renewal of your practising certificate dated 15 May 2024, for the practice year 2024/2025 (**2024/2025 application**) you did not:

- a. disclose the findings and orders made by the Court of Appeal on 09 June 2023, as referred to in the matter of *Odtojan v Condon* [2023] NSWCA 129;
- b. disclose the findings and orders made by the Court of Appeal on 03 July 2023, as referred to in *Odtojan v Condon (No 2)* [2023] NSWCA 149;
- c. disclose the findings and orders made by the Court of Appeal on 21 November 2023, as referred to in *Odtojan v Glynn t/as Glynn Lawyers* [2023] NSWCA 276;
- d. disclose the findings and orders made by the Court of Appeal on 21 November 2023, as referred to in *Odtojan v Ford* [2023] NSWCA 277;
- e. disclose the finding and orders made by the Court of Appeal on 14 February 2024, as referred to in *Odtojan v Glynn t/as Glynn Lawyers; Odtojan v Ford (No 2)* [2024] NSWCA 25

in relation to question 9 - fit and proper person (Note H) of the 2024/2025 application in accordance with r 13 of the Uniform Rules.

4. Declaration made in the 2024/2025 application

Your declaration in the 2024/2025 application dated 15 May 2024 stated:

“I declare that the contents of this application are true and correct. I wish to apply for an Australian practising certificate and have my name entered in the register of local practising certificates in New South Wales. I declare that I am not aware of any finding, conduct or event which would disentitle me, without disclosure to be admitted to a Supreme Court Roll or effect my fitness to hold a practising certificate (other than that which is disclosed herewith or previously disclosed).”