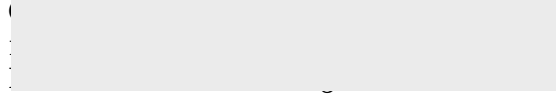




08 July 2024

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).”