

FORM 4

IN THE LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

LPDT No. 7 of 2019

IN THE MATTER OF THE LEGAL PRACTITIONERS ACT 1981 AS AMENDED

IN THE MATTER OF:

Claire O'Connor SC

Appellant

and

Legal Profession Conduct Commissioner

Respondent

NOTICE OF APPEAL

Date of Document:	10 July 2019
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The APPELLANT Claire O'Connor SC APPEALS to the Legal Practitioners Disciplinary Tribunal against the determination of the Legal Profession Conduct Commissioner.

LPCC file no: **201610193X**

Practitioner: Claire O'Connor SC

Date of receipt of determination: 16 June 2019

The Appeal is pursuant to Section 77K of the Legal Practitioners Act, 1981.

Paragraphs in the Findings the practitioner is appealing from

Paragraphs, 6, 7, 9 (g) (h) and (i), 13, 19, 20 (f) (g) (h) (i) (l), 21, 23- 28, 30 – 40, 42 - 45, 47 – 57, 59 – 90, and the penalty paragraphs as a consequence of the errors in the Findings.

Grounds of appeal from the determination of the Conduct Commission

1. **The Conduct Commissioner (the Commissioner) erred in finding that he had jurisdiction to hold an own motion investigation under the *Legal Practitioner Act 1981* (the Act).**
2. **The practitioner posted a piece on her Facebook page (the Post). The Commissioner erred in finding that the conduct complained of constituted unsatisfactory conduct within the meaning of the Act.**
3. **The Commissioner erred in rejecting the practitioner's explanation of her intention in writing the Post, and in making findings against her credit, without interviewing her at all.**
4. **The Commissioner failed to afford the practitioner natural justice.**

Particulars

- a. The Commissioner rejected the practitioner's explanations and made findings adverse to her credit without interviewing her.
- b. The practitioner was not provided with the file of the Commissioner, a list of witness(es) that the Commissioner had spoken to in relation to the investigation, notes of all attendances upon witnesses, any invitation to refute versions given by the witnesses where they differed

from that of the practitioner, or copies of materials provided to the Commissioner.

- c. The Commissioner did not, as far as the practitioner is aware, obtain all materials relevant to the findings in particular:
 - i. the views of the all persons where there were findings adverse to that person, for example the Chief Justice;
 - ii. the materials provided to the Law Society in response to its request for the views of the profession about the contents of the Facebook Post;
 - iii. statements of relevant witnesses referred to in other grounds.
 - d. Taking into account media coverage of the Facebook Post when the practitioner was not the author of that media coverage.
5. **The Commissioner erred in making the following findings of fact and law:**
- a. **That the request by the practitioner that the Commissioner contact the Chief Justice of South Australia was inappropriate.** (paragraph 6).

Particulars

- i. The inference in the Findings of the Commissioner is that the practitioner was acting improperly and/or trying to obtain supportive witness(es) to influence the Commissioner. Such an inference was wrong and not available on the materials before the Commissioner.
 - ii. The Commissioner was asked by the practitioner to contact the Chief Justice as a witness, after she was provided with the draft findings against her. The draft Findings said the practitioner had brought the Chief Justice into disrepute. The practitioner had requested, before the final determination, that the Commissioner obtain the Chief Justice's views about whether he agreed with this finding. The practitioner agrees that she had sought such a statement to be provided, not in support of her, but as evidence against the inference drawn by the draft Findings.
- b. **That the Practitioner was aggrieved that she had not been successful in her bid to be elected the president of the Law Society.**

Particulars

- i. The practitioner told the Commissioner that the purpose of the Post was not because she was aggrieved at her failure to be elected but to provide feedback to those who had supported her in her election. The explanation has not been considered, or if considered unreasonably rejected by the Commissioner and his conclusion about the motive of the practitioner is wrong and is not available in any event. Further, without any evidence to the

contrary, it is improper for the Commissioner to make a finding of credit against the practitioner.

- ii. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.
- c. **That the practitioner was aggrieved that she was not appointed silk in the first year that she applied for the appointment, and that as a consequence the Practitioner had implied that certain appointments of Senior Counsel in recent years had been influenced by nepotism, cronyism or some other kind of discrimination, or were based on prejudice or privilege and, further, that she has insulted the Chief Justice. (Paragraph 9 (g) (h) (iv), (20 (f) and 46 - 54)**

Particulars

- i. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.
- ii. The practitioner submitted to the Commissioner in her response that the year of the appointments referred to was not a year, in fact, that she applied for silk. The practitioner was correct that one year (albeit the practitioner made a mistake when she said initially it was 2013 but it was in fact 2012) that all silks were related to Judges by birth or marriage, which was the fact in 2012. The Commissioner says that the practitioner was mistaken in the year when she wrote the Post some years later. The Commissioner says that the practitioner did not provide an explanation for her error. The practitioner submitted that it was simply a mistake. The Commissioner does not say why the error is important or needed further comment.
- iii. The practitioner had submitted that her intent in the Post was to show that those who are able to succeed in the profession have the advantage of gender, class, and race in South Australia and that this advantage is historical, but is not likely to remain as the profession becomes more diverse.

The practitioner submitted that the intent of the statements about the appointments was not to imply that, by the time practitioners reached sufficient seniority and were suitable for appointment as silk, that such appointments were made using anything other than an appropriate measure of their skills and abilities. A plain reading of the comments by the practitioner about silk appointments does not support the Commissioner's finding. The practitioner's explanation was not considered by the Commissioner at all, alternatively it was dismissed without any evidence to the contrary and against the weight of the evidence.

- iv. The practitioner claimed, as she said in her submission (referred to in the Findings at paragraph 49) that the positions of leadership in the profession are more available to those who are privileged. The practitioner provided the Commissioner with

substantial academic and other information to support her assertion. (paragraphs 48 and 49).

- v. The Commissioner found, incorrectly, that the assertion was disrespectful to the Chief Justice. That finding was simply not available on a plain reading of the comments. The practitioner denied any intention to show disrespect for the Chief Justice; the Commissioner did not interview the Chief Justice to ascertain, relevantly, whether he believed he was being criticized or otherwise treated disrespectfully. (paragraphs 50, 51 and 52).
 - vi. The Post, as a whole speaks about the advantage which those with social biases in their favour have in the profession. The intent of the Post was that those biases advantaged those at the bar and made it easier for them to reach the position of being able to be considered for silk appointment. .
 - vii. The Commissioner was wrong when he found that the practitioner needed to provide evidence (paragraph 54) of nepotism or bias in the appointment of senior counsel as that was not her intent. She did provide evidence of bias within the positions of leadership in the profession in the attachments to her submission which material has not been considered at all in the findings.
 - viii. The practitioner gave the Commissioner evidence of two other South Australian silks who had been reported in the press with direct quotes specifically criticizing the Chief Justice for failing to make appointments for silk while the Commissioner was considering the practitioner's matter as evidence that the Bar considered it appropriate to be able to make such commentary (one being the then president and the second being the most senior member of the South Australian Bar). This has not been considered at all by the Commissioner.
 - ix. The Commissioner provides no adequate reason why a criticism of the silk process is not permissible by members of the profession in any event.
- d. **That the practitioner inferred that Mr. Tim Mellor was not a suitable person to be appointed as president-elect of the Law Society and President of the Law Society and that leaders in the past were being criticized** (paragraph 9 (h) (i), 20 (f) and 30 - 44).

Particulars

- i. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.
- ii. The finding that the practitioner was asserting that Mr. Mellor was an unsuitable person to be president of the Law Society is wrong, was not an available meaning on a plain reading of the Post.

The practitioner submitted that the comment about Mr. Mellor was a general comment about white males from large law firms

and was directed at the failure of the leadership of the profession to reflect diversity in class, gender and race.

- iii. The Commissioner failed to take into account the submission by the practitioner or, if he did take it into account, failed to give due weight to, the submissions of the practitioner. The practitioner provided material to the Commissioner in her submission which supported her claims about privilege and bias in the profession which material was not considered by the Commissioner.
- iv. The Commissioner erred in making an adverse credit finding about the practitioner on her statement about Mr. Mellor based on no evidence.
- v. The practitioner submitted that, when using the term, *the Mellors of this world*, it was clear to anyone reading the Post as a whole she was referring to the class of persons he belongs to, not to Mr. Mellor personally. She had described the attributes of the class – all of which were true attributes of Mr. Mellor.
- vi. In considering the conduct of the practitioner, the Commissioner failed to take into account that the practitioner apologized to Mr. Mellor, notwithstanding that the Commissioner had sought a copy of the apology and was provided with it by the practitioner.
- vii. The Commissioner drew an inference in his findings against the weight of the evidence and inconsistent with the practitioner's submissions, that the practitioner was saying that Mr. Mellor was not decent when she posted, "*And the Mellors of the profession are, albeit some are decent people, the past*". This was not the intent of the practitioner; it is not an available implication of the statement; it was a wrong finding and could not have been understood on a fair reading of the statement as having that meaning. (paragraphs 39-40 44).

The opposite is in fact clearly the meaning of the statement, as submitted by the practitioner in her submissions.
- viii. The Commissioner erred in his finding that the practitioner's reference to other practitioners seeking leadership roles and their not doing legal aid work was intending to imply their having a lack of social justice or their having a mercenary outlook. The practitioner had submitted that she meant she was contrasting private practice with community sector lawyers. To making findings that the practitioner has not been truthful about this is wrong and unfair.
 - a. The Commissioner does not give reasons why he rejects the explanation.
 - b. The Commissioner is making findings of credit without having heard from the practitioner.
 - c. The phrase, in any event, when read within the whole of the Post clearly has the meaning the practitioner submitted she intended.

- ix. The Commissioner erred in finding that the practitioner was inferring that many past and present leaders of the Law Society were not of suitable character (paragraph 42). Such an inference is not available on reading the Post. No evidence was provided, as far as the practitioner is aware (and none was referred to in the Findings in any event) that any former leader agreed with the Commissioner's view of the inference. The practitioner said it was not her intent in her submissions.
 - x. On this issue the practitioner provided to the Commissioner, *inter alia*, a letter from two of the former presidents of the Law Society (who had provided them to the Law Society Council), which stated their views that the comments were *not* unsatisfactory, and otherwise in support of the practitioner. The Commissioner has not taken these, or other materials of the views of the profession which were referred to or provided by the practitioner to the Commission, (including other letters and emails from members of the profession), into account in his findings.
- e. **That an email sent to the members of the Law Society before polls closed was reminding members that 'gifting' the presidency to Mr. Mellor was 'the right thing to do' and voting for the practitioner was the wrong thing to do; that the assertions were untrue and unreasonable; that the practitioner was claiming that the Law Society bore an onus to prove its innocence in the assertion; and that the email in any event did not have the intent the practitioner asserted.** (paragraph 9 (h) (ii), paragraph 20 (e) and paragraphs 27 – 38))

Particulars

- i. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.
- ii. The Commissioner made findings that the practitioner was stating that the Law Society had tried to influence the outcome of the election. It is and was a serious allegation that the practitioner made and the practitioner said in her response that she genuinely believed that the email sent to the profession before the polls closed was intended to encourage those in the profession who had not voted at that date to do so and which email content favoured Mr. Mellor as the appropriate candidate. The Commissioner erred in finding that the practitioner had no reasonable basis for making the assertion. The practitioner provided evidence to the Commissioner supportive of her reasonable basis, which evidence was not taken into account by the Commissioner in his findings. The practitioner was not '*seeking to justify*' the assertion made in the Post, as was stated in the Findings, but rather was seeking to provide submissions consistent with her view.

- iii. The Commissioner found that the practitioner failed to respond to the assertion that a reminder was the wrong thing to do (paragraph 30). In making that finding, the Commissioner was confusing the two aspects of the email in his findings, in that the practitioner had never said or submitted that it was wrong, *per se*, to remind lawyers to vote.
- iv. The Commissioner erred in finding that the responses by the practitioner were inconsistent.
- v. The Commissioner found the email was bland, unexceptional and entirely factual. That was an erroneous finding, unless the email did not do the work the practitioner claims it did. The Commissioner did not receive any evidence of the way the email was understood by recipients. The view the practitioner has of the email is available on a reading of the content, was her genuinely held view and she was entitled to make the assertion. The practitioner pointed out to the Commissioner in her response that such an email had not been sent to members of the profession in the past for contested council positions. That submission was not dealt with in the findings.
- vi. The practitioner had submitted, contrary to the findings (paragraph 32), that she was not saying that she expected the Law Society to bear any onus in negating her assertion but that it was appropriate for the Law Society to provide an explanation for the content of the email and an explanation for the unusual fact of sending such an email for elections.
- vii. The Commissioner, in finding that the practitioner was wrong in her assertion, erred in not interviewing and taking evidence from the two persons responsible for sending the email. He said he did not and did not believe it was necessary to do so (paragraphs 37-38).
- viii. The Commissioner erred in finding that he had had no reason to doubt the assertion of the Law Society that they did not intend to influence the election when and in finding that it was up to the practitioner to produce evidence to prove the assertion when the email, containing all the evidence, was considered and referred to. The Commissioner relied on a letter by one person to the practitioner stating his denial of intending to influence and an interview by a staff member of the Commissioner with the second person.
- ix. The Commissioner erred in finding that the practitioner was claiming that the Law Society had succeeded in its attempt to influence the outcome of the election. The practitioner did not make such an assertion (paragraph 35).
- x. The Commissioner failed to address the submission by the practitioner that others in the profession had told her they had the same view of the email as she had expressed in the Post.

- xi. The Commissioner was wrong in finding that the practitioner was claiming that gender bias had a role in the outcome of the election. The practitioner said in the Post, and submitted to the Commissioner, that various biases have an influence on leadership outcomes in the profession. She provided the Commissioner with evidence to support that assertion but that submission and evidence have not been taken into account in the Commissioner's Findings.
- f. **That the Practitioner was wrong in claiming that the then President and the then President-elect had voted against gender equity and that it was "*mischievous and inaccurate*" for her to make the claims against those persons** (the reference is to Mr. Caruso and, now Judge Rossi). (paragraph s9 (h) (iii), 20 and 56-59).

Particulars

- i. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.
- ii. The practitioner, in her submissions, told the Commissioner that she was referring to a vote at the Law Society AGM the year before her Post where members were voting in relation to an amendment to the composition of the Council of the Society to have quotas for women. The Post clearly identified that the vote that was being referred to (paragraph 20 (h) of the Findings) was not a vote against gender equity *per se*. The Commissioner erred when he found that the assertion was an inaccurate assertion against Mr. Caruso and (now) Judge Rossi when they had, in fact, voted against the motion the practitioner was referring to. The practitioner told the Commissioner she had attended the said AGM and had observed their voting against the proposal. The practitioner's submissions have not been considered by the Commissioner in his finding.
- iii. While it is true (paragraph 56 of the findings), that there were no minutes of the AGM which named the persons who voted for and against the motion the practitioner told the Commissioner that-
 - A. She was present,
 - B. The vote was an open one,
 - C. That she saw the vote of the two persons concerned.
- iv. The Commissioner does not address this evidence of the practitioner at all nor does he say whether he or his staff interviewed either Mr. Rossi or Mr. Caruso about their vote.
- v. It was neither '*mischievous* nor *inaccurate*' of the practitioner to make the statement in the context given.
- vi. Further, the practitioner provided the Commissioner with evidence in support of her views that neither of the office holders

was supporting an alternate method of getting women's issues dealt with at the representation level of the Law Society. This was inconsistent with the Commissioner's Findings that there were just two opposing views - either for targets or quotas- both supporting gender equity. Some, including those referred to, were against gender equitable steps at Council and had stated those views at and to Council in the past.

- g. **That the statement the practitioner made about being a victim of sexual harassment and bullying by an unnamed person who was a member of the District Court would cause unfair speculation amongst the profession and was therefore wrong** (paragraphs 9 (h) (v) and 60-62). (Also see m. below).

Particulars

- i. Where a person in the legal profession has been the victim of any unlawful or improper conduct, even if the perpetrator had a leadership role within the profession, it cannot be wrong under the Act to refer to such conduct. The Commissioner asserts that there was speculation. The practitioner told the Commissioner that the Judge had revealed himself to the other members of the Bench. The Commissioner does not say how he came to the conclusion that there was any speculation at all about the Judge's identity. Many in the profession, as the practitioner responded, knew of his identity.
- h. **That the practitioner has only shown qualified remorse in relation to the Facebook Post** (paragraph 9 (i) in that the practitioner had written to the Law Society, the Chief Justice and the Chief Judge apologizing for any concern that those parties had over the content of the Post.)

Particulars

- i. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.
- ii. The practitioner provided the Commissioner with details of the apologies she had written for causing any concern to those who might have felt criticized. The Commissioner knew that she had met with the Chief Justice and the Chief Judge, that she had written to the Law Society and to Mr. Mellor. The Commissioner fails to identify any qualification in the apologies offered to those the practitioner wrote to.
- i. **That it was practically inevitable that the '*Post would find its way into the public arena*' given the controversial nature of parts of the Post, the practitioner's high profile and that she had some 700 followers on her Facebook page.**

Particulars

- i. Many of the comments made by the practitioner about gender, class and privilege in the profession had been made by other

people before and since the Post. The Commissioner failed to take into account material provided by the practitioner in her response, including journal articles, Law Council findings and other reports in this Finding about the content being controversial. (paragraph 23)

- ii. The nature of the allegations has been in the public arena for a significant time at a local, national and international level. It was therefore not inevitable that the views of one South Australian barrister, with fewer than 800 followers on Facebook, would receive the coverage she did. The practitioner says that the broader publication of the Post could not have been predicted at all. The Commissioner fails to give any evidence or reasons for his opinion about this.
- iii. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.

j. That the practitioner denied that she had made *serious allegations*. (paragraph 24).

Particulars

- i. The practitioner accepted that the allegations she made were serious. Privilege, bias and abuse are serious concerns within the profession and have been of concern to the practitioner through her professional life. She informed the Commissioner, in her response, of her advocacy in these areas.
 - ii. However, the Commissioner, by Finding that the withdrawal and apologies were inconsistent with the practitioner claiming the allegations were serious, is inferring that the practitioner is agreeing that the allegations were false. There was nothing paradoxical in taking the actions that the practitioner did following the Post publication. The letters were written as act of courtesy and good manners, not by way of an admission of unsatisfactory conduct. The Commissioner failed to take into account the explanations given by the practitioner for the withdrawal of the Post and the letters of apology, instead viewing the actions with the most negative conclusion. Such dismissal of the practitioner's submissions is unfair, against the weight of the evidence and findings of credit made without taking evidence from the practitioner.
 - iii. The Commissioner rejected the practitioner's explanation and made Findings adverse to her credit without interviewing her.
- k. That any criticism of the Law Society could well diminish public confidence of the profession as a whole.**

Particulars

- i. The practitioner made submissions to the effect that the Commissioner's own office had criticized the Law Society

when the Society published views about the costs of running the Commission and whether the Commission represented value for money for lawyers.

- ii. The Commissioner failed to take into account the submission of the practitioner in relation to this. Members of the profession hold differing views of the decisions and actions of the Law Society, and gender and other biases are examples. It cannot be the case that it is unsatisfactory to hold and express a view about certain matters which might be different to the view of the Law Society. To silence practitioners in such a way will, it was submitted by the practitioner, do more to harm the view the public have of the profession than stating a view inconsistent with that of the Society. (paragraphs 25 and 26.)
- iii. Further, the Society has different views on different topics from time to time. It had a protracted debate about support for gay marriage and different council compositions over the years held differing views.
- iv. The only finding the Commissioner has stated in his reasons about the submission of the practitioner was the statement that the practitioner's opinion on gender bias was true and important and should not be ignored because it is divisive. The Commissioner claims to be perplexed by this response of the practitioner. (paragraph 27). It is neither perplexing nor inconsistent with the practitioner's submissions. The Post contained facts and opinions, and the opinions were being addressed in the statement the Commissioner referred to.
- v. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.

I. That there was no reasonable basis for making *some of the assertions* which the Commissioner finds are not true and that *there was no reasonable basis for making such assertions.*

Particulars

- i. The finding fails to identify what assertions in particular the Commissioner is referring to.
- ii. The finding fails to identify why the Commissioner has rejected the practitioner's views about her basis for the assertions contained in her reply. (paragraph 27).

m. That the practitioner should not have made a statement that she had been a victim of sexual harassment (paragraphs 60- 62)

Particulars

- i. The statement that a person has been a victim of sexual harassment is a statement that a victim of sexual harassment is entitled to make.

- ii. It does not matter that the identification of the person's role within the profession means that it might cause others to speculate about the identity of the perpetrator. The statement was true. (paragraph 60 and 62).
- iii. The evidence was that the practitioner had told the Chief Justice and the then Chief Judge about the matter, including the identity of the judge and the particulars of the incident. The practitioner told the Commissioner that these conversations followed the publication in the press about the post. She told both the Chief Justice and the Chief Judge that she did not want the matter investigated at that time. She informed them both that she had complained to the Director of Public Prosecutions in the days following the incident (being the employer of the perpetrator) who had conducted an investigation. The Commissioner failed to refer to these facts in the Findings.
- iv. The Commissioner failed to take into account the information provided to him by the practitioner that the Judge concerned had admitted the conduct in the weeks after the Post was referred to in the press, that the practitioner told him that the sexual harassment had occurred in a public environment with witnesses present and that a former Judge of the District Court, then Judge Nyland, had spoken to the practitioner about the conduct in the days following the incident. In saying *'irrespective of whether the practitioner's allegation is true (and I note that I have no reason to think otherwise)'* the Commissioner is unfairly rejecting the evidence provided that it was true, failing to take up the invitation to seek from the Judge concerned an admission he had sent to the other judges of the District Court, or even refer in his findings to that material.
- v. The Commissioner rejected the practitioner's explanation and made findings adverse to her credit without interviewing her.

6. The Commissioner erred in finding that there had been a breach of the Australian Solicitors' Conduct Rules and the Australian Barristers' Rules (paragraphs 71-77 and 87).

Particulars

- a. In making his findings, the Commissioner took account of Australian Barristers' Rules, but failed to give due weight to Rule 12, which provides that a barrister must not engage in conduct which is prejudicial to the administration of justice; or likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute. The commissioner failed to take proper account of the fact that the Post was identifying and drawing attention to matters which were prejudicial to the

administration of justice and likely bring the legal profession into disrepute.

- b. The Commissioner erred in considering that drawing attention to matters of legitimate concern about the functioning of the legal profession could amount to unsatisfactory conduct. The Post stated facts accurately and expressed opinions honestly held. To do that is not unsatisfactory conduct.
- c. It is not unsatisfactory conduct (paragraph 70) to express a view in public about the conduct of other lawyers, the affairs of a professional association of lawyers, about the conduct of the judiciary, and about their experiences as a practitioner. The fact that many who might read or hear the views may view the practitioner as a mentor matters not. To hold the views and state them when they contain truths about the profession but might be negative, cannot be unsatisfactory. It is wrong to say that such a right to speak out only applies when a practitioner is representing a client (paragraph 80 – 81). The public has a right of free speech, which is curtailed by various acts and responsibilities. To say that a member of the legal profession does not have that right in relation to his or her own profession is without any authority and beyond the scope of the Act. (paragraph 81). Further while the Commissioner holds that a practitioner may express criticism of the judiciary and the profession his view that it has to be fair and reasonable or must not have a tendency to diminish public confidence is wrong. It would mean that any negative view may well fall foul of the latter. It is also submitted that the former applies to the comments by the practitioner – what she said was fair and reasonable. (paragraph 83).
- d. The Commissioner was wrong to find that a fair comment must be one in the public interest. It is plainly in the public interest for there to be open and frank discussion within the profession about injustices and biases that have an impact on outcomes for those who practice law.
- e. The Commissioner erred in saying that the Post contained a number of inaccuracies (paragraph 85).
- f. The Commissioner erred in saying that the appointment of senior counsel in South Australia does not contain numbers that reflect gender and other bias which shows that it is easier for a person to obtain that appointment if their relatives are judges. The practitioner referred to a journal article by an interstate lawyer, published before the Post written, which said the same thing. The Commissioner failed to refer to the statistics provided and failed to refer to the article. The Commissioner found instead that the one year that the practitioner referred to was an anomaly. (paragraph 86).
- g. While it is the fundamental duty of barristers to not interfere with the administration of justice, it is not the case that a barrister is not permitted to express views about injustices within the profession and the practice of law (paragraph 72).

- h. It cannot be said that the Rule requiring the practitioners not to prejudice or diminish the confidence of the public in the profession or bring the profession into disrepute (Rule 5 quoted at paragraph 73) was intended for any comments other than gross examples. To point out gender and class biases within the profession does not fall foul of the rule.
- i. Further the Commissioner erred when he summed up the Post by saying that the comments were *insulting and quite possibly defamatory*.

7. The Commissioner failed to take into account that the practitioner had apologized in writing to the Law Society and to Mr Mellor.

Particulars

- a. The practitioner provided the Commissioner with details of the apologies she had written for causing any concern to those who might have felt criticized. The Commissioner knew that she had met with the Chief Justice and the Chief Judge, that she had written to the Law Society and to Mr. Mellor.

1. Extension of time (if applicable)
(Set out grounds for extension of time)

N/A

Dated the 11 day of July 2019

Signed: 
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