SUPREME COURT OF QUEENSLAND

CITATION:	*Alroe v Medical Board of Queensland* [2004] QCA 364
PARTIES:	**CHRISTOPHER JOHN ALROE** (registrant/appellant) **v** **MEDICAL BOARD OF QUEENSLAND** (registrants board/respondent)
FILE NO/S:	Appeal No 398 of 2004 D657 of 2003
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Health Practitioners Tribunal at Brisbane
DELIVERED ON:	8 October 2004
DELIVERED AT:	Brisbane
HEARING DATE:	16 August 2004
JUDGES:	McMurdo P, Williams JA and Dutney J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed with costs to be assessed**
CATCHWORDS:	PROFESSIONS AND TRADES – MEDICAL AND RELATED PROFESSIONS – DISCIPLINE, AND REMOVAL FROM AND RESTORATION TO REGISTER – PROCEDURE, EVIDENCE AND APPEAL – where appellant psychiatrist found guilty of unsatisfactory professional misconduct involving acts of sexual intercourse with a former patient – where Tribunal accepted complainant's evidence and rejected appellant's evidence – whether Tribunal had sufficiently scrutinized complainant's evidence bearing in mind the complainant's history of psychiatric illness – whether complainant's evidence was sufficiently supported by other confirmatory evidence – whether supporting evidence must be corroborative in law – whether appeal on findings of fact or on point of law *Health Practitioners (Professional Standards) Act* 1999 (Qld), s 124(1)(a), s 219, s 348 *Briginshaw v Briginshaw* (1938) 60 CLR 336, cited *Bromley v The Queen* (1986) 161 CLR 315, applied *DPP v Kilbourne* [1973] AC 729, cited *Eade v The King* (1924) 34 CLR 154, cited

R v Drury [1985] CCA 95; CA No 9 of 1984, 2 August 1984, cited
R v Kerim [1988] 1 Qd R 426, cited
R v Lewis [1994] 1 Qd R 613, cited
R v Sakail [1993] 1 Qd R 312, cited

COUNSEL: D F Jackson QC, with D A McLure, for the appellant
W Sofronoff QC, with R P Devlin, for the respondent

SOLICITORS: Freehills for the appellant
Phillips Fox for the respondent

[1] **McMURDO P:** On 17 December 2003, the Health Practitioners Tribunal of Queensland ("the Tribunal") found the appellant, a psychiatrist, guilty of unsatisfactory professional misconduct under the *Health Practitioners (Professional Standards) Act* 1999 ("the Act") in relation to a former patient ("the complainant"). The Tribunal is constituted by a District Court judge[1] assisted by assessors,[2] here a psychiatrist, a general practitioner and a lay person.

[2] The particulars of the professional misconduct were primarily that, in circumstances where their previous professional relationship involved psychotherapy and long-term counselling and support, the appellant had consensual sexual intercourse with the complainant on four occasions, first on 17 and then 18 January 1999 in the appellant's Rockhampton home, again in about late February 1999 in the complainant's Rockhampton house, and finally on 7 April 2000 in the complainant's Toowoomba unit.

[3] Further particulars of the appellant's professional misconduct were that between August 1998 and August 2000 he exploited his former professional relationship with the complainant for his own gratification in that he met with her for coffee on a social basis; on about 25 December 1998 he invited her to a social function at a house in Rockhampton during which he took her to his home on two occasions; in about February 1999 he invited her to a social function at another house and later purchased and gave her a bottle of perfume; in about May 1999 he visited her home and initiated sexual contact with her; and in late May or early June 1999 he arranged to contact her and when they subsequently met purchased and gave her another bottle of perfume.

[4] The complainant gave evidence that all these particularised acts occurred. The appellant gave evidence denying any sexual intercourse with the complainant and all other particulars except for the occasional unplanned meeting and to inviting her to a Rockhampton house in December 1998 and again to a social function in a different house in February 1999.

[5] The Tribunal accepted the complainant's evidence and rejected that of the appellant where there was conflict. It found all the particulars established and that after the appellant ceased treating the complainant on 5 August 1998 he should, at the very least, have referred her to a general practitioner. Instead, within weeks he had met with her in a coffee shop and their relationship progressively developed. The previous doctor-patient relationship had involved psychotherapy and was

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1 The Act, s 27.
2 Above, s 31.

necessarily of a highly intensive and personal nature so that even after the relationship ended there remained a significant power imbalance between therapist and patient. The patient was a lonely and vulnerable woman flattered by the attention of an intelligent man who shared her interests in literature and writing. Given her history of illness and the strong possibility of reoccurrence or relapse the appellant had an added responsibility to maintain professional boundaries. His conduct breached relevant ethical guidelines and fell well below the standard of professional conduct expected by the public and by his professional peers. The Tribunal was satisfied that the appellant was guilty of unsatisfactory professional conduct in terms of paras (a),[3] (c),[4] (d)[5] and (e)[6] of the definition of that term in the schedule to the Act. This finding constituted a ground for disciplinary action under the Act.[7]

[6] The appellant appeals from the Tribunal's decision and seeks orders allowing the appeal, setting aside the decision and instead substituting a decision that there are no grounds for disciplinary action against the appellant.[8] An appeal from the Tribunal's findings to this Court can only be brought on a question of law.[9]

[7] The appellant rightly concedes that the Tribunal correctly directed itself as to the onus of proof which lay on the respondent with the standard to be determined on the balance of probabilities bearing in mind the seriousness of the allegations against and the consequences for the appellant: *Briginshaw v Briginshaw*.[10]

[8] The appellant relies on 25 grounds of appeal. The central issue is the Tribunal's acceptance of the credibility of the complainant so that the appellant has a difficult task in demonstrating that his appeal is on a question of law. He principally submits that, because the complainant had a history of psychiatric illness and the Tribunal determined her evidence should be confirmed by other evidence before acting on it, it erred in finding her evidence was supported because the evidence it regarded as confirmatory was irrelevant and not corroborative within the meaning of corroboration in the criminal law.

[9] In *Bromley v R*[11] Gibbs CJ, Mason, Wilson and Dawson JJ agreeing, held that in a criminal trial if it appears that a witness whose evidence is important has some mental disability which may affect the witness's capacity to give reliable evidence, the jury should be warned of the possible danger of basing a conviction on that testimony unless confirmed by other evidence. The warning should be clear but no particular formula need be used; the format of the warning will depend on the circumstances of each case.[12]

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3 "professional conduct that is of a lesser standard than that which might reasonably be expected of the registrant by the public or the registrant's professional peers".

4 "infamous conduct in a professional respect"; "conduct which would reasonably be regarded as disgraceful or dishonourable by other medical practitioners of good repute and competency": see *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750, Lopes LJ at 763.

5 "misconduct in a professional respect".

6 "conduct discreditable to the registrant's profession".

7 Section 124(1)(a).

8 See s 346(a), s 347(a) and s 353 of the Act.

9 The Act, s 348.

10 (1938) 60 CLR 336, 361-362.

11 (1986) 161 CLR 315, 319.

12 See also the observations of Brennan J (as he then was) at 325.

[10] The Tribunal in its reasons noted that the complainant had a history of depression and "rapid cycling bipolar disorder" characterised by extreme mood swings and psychotic episodes. It also referred to the evidence of psychiatrist Dr Reddan that the complainant has a significant personality disorder so that in a case such as this, as far as possible the fact finder would seek "independent corroboration of events and of the need for factual data rather than [acting on] mere impressions." The Tribunal cited *Bromley* and observed that it was therefore necessary to carefully scrutinise the complainant's evidence and be alert to the potential dangers involved in acting on it unless *confirmed* by other evidence (my emphasis). In so stating, the Tribunal was not directing itself to reject the complainant's evidence without confirmatory evidence which was capable of being corroborative within the meaning of that term in the criminal law. Nor was it confining the confirmatory evidence it sought to that which is admissible in law, for the Tribunal is not bound by the rules of evidence.[13] The Tribunal was here using the term "confirmed" in a wide sense to mean "strengthened".[14]

[11] The Tribunal concluded that:

> "The complainant's account has remained, in material respects, consistent throughout. It is an account supported by other direct evidence, circumstantial evidence and 'reliable hearsay' evidence. Notwithstanding her history of illness, the complainant impressed the members of the Tribunal as an intelligent and creative woman, capable of periods of high functioning. Her allegations against the [appellant] emerged in non-psychotic periods of good functioning. She does not seek to attribute misbehaviour to the [appellant] during the period that she received treatment from him, nor does she take the opportunity to wrongly allege misconduct on other occasions as she might easily have done. Her account is inherently credible and the Tribunal is satisfied of both the truth and accuracy of her evidence in material respects."[15]

[12] In reaching that conclusion, the Tribunal noted that the complainant's evidence of the first two acts of sexual intercourse in January 1999 was supported by telephone records. The appellant contends that the phone records were not capable of independently supporting her account that she had sexual intercourse with the appellant or even establishing that he made the phone calls.

[13] In the absence of any other explanation or rational possibility, the Tribunal was entitled to infer that the phone calls to the complainant recorded in the appellant's phone records were made by him. Once their professional relationship ended in August 1998, the appellant had no reason to telephone the complainant at her home for such contact was improper because of their former patient-therapist relationship. The appellant denied to his insurers that he initiated any contact with her, insisted that her allegations were false and that she had stalked him. The telephone records reveal that two calls were made from the appellant's land line to the complainant's land line, first on 17 January 1999 at 7.19pm for 30 minutes and 54 seconds and,

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13 The Act, s 219(1)(c). It must, however, comply with natural justice (s 219(1)(a)), acting quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues before it (s 219(1)(b)), it may inform itself of anything in the way it considers appropriate (s 219(1)(d)).

14 Macquarie Dictionary Federation Edition, Macquarie Library, 2001.

15 Reasons for judgment, [49].

second on 18 January 1999 at 8.11pm for one minute and 53 seconds. The complainant gave evidence that each of these two episodes of sexual intercourse followed a phone call from him. The appellant could offer no explanation for these calls but said that he had a long phone conversation with her about her proposed move to Toowoomba. As she did not contemplate moving to Toowoomba until the position she took up was advertised in April or May 1999, that did not explain the 17 January 1999 phone call.

[14] It is not the law that to be potentially corroborative in the strict legal sense evidence must provide complete independent proof of an allegation; it may be nothing more than confirmation of a controversial part of the evidence of the witness whose evidence is to be supported from some other source: *Eade v The King*,[16] *R v Sakail*[17] and *R v Kerim*.[18] But in any case, there is nothing in the Act nor any common law requirement that a complainant's evidence in proceedings before the Tribunal must be corroborated in law before being accepted. *Bromley* merely requires the fact finder be cognisant of the danger of conviction without other supporting evidence. The Tribunal properly directed itself in these terms. It was entitled to find that the telephone records provided independent support for the complainant's claim that the appellant telephoned her and invited her to his home on 17 January 1999 before having sex with her and that he again telephoned her the next evening and invited her to his home before having sex a second time. The appellant had no professional reason to phone her and, initially at least, denied doing so. As her former therapist, he should not have been phoning her. The phone records suggested an improper relationship between therapist and former patient and in that way supported the complainant's evidence that he visited her home and had sex with her.

[15] The appellant next contends that the Tribunal erred in law in stating that the evidence of the complainant's son further supported her evidence about the events of 17 January 1999. The complainant said that she had sex with the appellant in his Rockhampton home one evening when she was working a late shift. She came home afterwards and was rushing and flustered. She phoned the hospital to explain she would be late. The son said that his mother confided in him about her developing friendship with a prominent Rockhampton man whom she had known for many years; they had met in a coffee shop and he had invited her to his home. He said that she returned from that outing in a rush, uncharacteristically late for work, untidy in appearance, flustered, disorientated and restless. A few days later his mother told him that she had had sex with her friend. The son was concerned because he knew she had not been with a man for many years. After questioning her, the complainant gave an account of a sexual encounter generally consistent with her evidence before the Tribunal. No objection was taken to the son's testimony before the Tribunal.

[16] The Tribunal, not being bound by the rules of evidence, was entitled to consider the complainant's self-serving statement to her son, which was certainly not corroboration in law but which showed consistency on her part, rather like fresh evidence in criminal cases concerning sexual offences. For the reasons already given,[19] the evidence of her dishevelled state and her uncharacteristic lateness for work was capable of being corroborative in law of her evidence of this act of

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16 (1924) 34 CLR 154, 158-159.
17 [1993] 1 QdR 312, 317.
18 [1988] 1 QdR 426, 432.
19 See these Reasons [14].

intercourse; even if it were not, it was certainly independent evidence supportive of the complainant's account.

[17] The appellant next contends that the Tribunal erred in not rejecting the complainant's evidence because the son's evidence only supported one opportunity for intercourse whilst the complainant alleged two acts of intercourse, the first on 17 and the second on 18 January 1999. The Tribunal was not compelled to reject the evidence of either the complainant or her son on this basis.

[18] The appellant points out that the complainant first stated that the acts of intercourse of 17 and 18 January 1999 occurred a week or two later. She became confident that they occurred on 17 and 18 January 1999 after lawyers representing the respondent referred her to her work rosters and the appellant's mobile phone records. The fact that she amended these dates by a week or two after refreshing her memory from other records did not require the Tribunal to reject her evidence.

[19] The son gave evidence of a later occasion when someone phoned the house three or four times over a 15 minute period and hung up each time when he answered. His mother later asked his girlfriend and him to leave the house because her friend wanted to come over. The son and his girlfriend went out to a nightclub until early the next morning. The complainant gave evidence that the appellant came to her house on this occasion in late February 1999 and had sex with her. The appellant contends that the Tribunal erred in not placing weight on the fact that telephone records did not disclose that the appellant rang the complainant's home at these times. The complainant also gave evidence of a phone call at about this time from the appellant which was not supported by the telephone records. The appellant's home land line and mobile records were tendered; he could have phoned the complainant from any number of other lines. The absence of supporting phone records did not require the Tribunal to reject the evidence of the complainant or her son.

[20] The Tribunal found that the evidence of Ms W, who in 1999 lived with another son of the complainant in Toowoomba, provided general support for the complainant's account of events in early June 1999 when she said she met up with the appellant in Toowoomba. The complainant stayed with her son and Ms W for a few days when she visited Toowoomba for a job interview shortly before she moved there in June. Ms W said that a man phoned for the complainant but would not leave his name. Ms W knew the caller was someone the complainant was arranging to meet whilst she was visiting Toowoomba. The complainant asked Ms W for directions to the Coffee Club where she planned to meet a male friend; there were two Coffee Clubs in Toowoomba, one on Margaret Street and another inside the Grand Central shopping centre; both were close to the Myer department store. On one occasion the complainant came home with a bottle of perfume. The Tribunal was not limited to receiving admissible evidence and Ms W's account did provide general independent support for the complainant's evidence that she met the appellant in Myers after a failed assignation at the Coffee Club and he purchased and gave her perfume. Whilst Ms W's evidence may not have been capable of being corroborative in law, it strengthened in a general way the complainant's version, especially when combined with the evidence discussed in the next paragraph.

[21] The Tribunal observed that the appellant's "FlyBuy" card records established that he purchased something at Myers' Toowoomba store in June 1999 and that whilst that

fact alone established very little, when combined with the other facts it tended to support the complainant's account. That observation of the Tribunal was plainly apposite.

[22] The appellant also quibbled with the Tribunal's description that the complainant's account of these events in her letter to the appellant in August 2000 was "relevant". Its relevance was not that it was independent evidence supporting her account but that it showed consistency in her account. The Tribunal did not err in making that observation.

[23] The appellant contends the Tribunal erred in finding that the complainant's work rosters supported her general account of the circumstances of the acts of sexual intercourse on specific dates. She said that she arrived late at work at 11.15pm on 17 January 1999 although she should have commenced work at 10.45pm. Her work records indicate that she commenced work at 10.45pm. In her oral evidence, she explained the work records were not accurate because she regularly worked longer hours and her late start on 17 January was unrecorded to compensate for additional time worked on many other occasions. The Tribunal considered that the work roster which showed she was working a late shift was consistent with her evidence that the first act of sexual intercourse took place on a night she was to work a late shift and her liaison with the appellant made her uncharacteristically late for work so that when she returned home to change for work she was flustered and rushed. Whilst the work roster was not capable of amounting to corroboration of her evidence in law, it was a piece of independent evidence which, in context, was consistent with her general account of the events around 17 January 1999. Similar observations are apposite to the appellant's concern that the Tribunal referred to a telephone record that the complainant phoned her work place at about 10.29pm on 17 January 1999.

[24] The Tribunal found that the telephone record of a call on 7 April 2000 at 12.47pm from the appellant's mobile phone to the complainant's Toowoomba home land line supported her account of him phoning her before they had sex that day. The appellant had no explanation for or memory of the phone call; he did not know how he had her phone number or why he rang her; describing it as "a complete anomaly". The Tribunal punned that the complainant's explanation that the appellant phoned her for better directions to her home had about it "a ring of truth". In circumstances where the appellant denied both the act of intercourse and visiting the complainant's home, the telephone record was capable of supporting the complainant's version of events on 7 April 2000.

[25] The appellant contends the Tribunal erred in finding that his commitment to attend a College of Psychiatrists meeting in Brisbane was capable of independently supporting the complainant's evidence. The Tribunal made no such finding but correctly observed that the commitment was consistent with the complainant's account that the appellant initially asked her to meet him in Brisbane.

[26] The Tribunal stated that the appellant's mobile telephone records showed that he made other calls from Toowoomba and these were consistent with the complainant's spontaneous recollection during cross-examination that he made a least one phone call whilst at her unit. This, too, was not a finding that these telephone records provided independent support of her evidence but that they were not inconsistent with it.

[27] The appellant contends that the telephone records of his mobile phone on 7 April 2000 are inconsistent with the complainant's version of events. She described their sexual intercourse as "brief", after which he showered whilst she made him a cup of tea; he said he would not visit his parents because his trip was secret; the whole encounter lasted about two hours; when he finished his tea he abruptly stood up and left. His telephone records indicate that he was in the Kingaroy area at 11.06am, in Toowoomba by at least 12.37pm and until at least 2.07pm; from 2.10pm until 2.14pm he was in Mt Lofty near Toowoomba; at 2.24pm Gatton and by 3.32pm in Woolloongabba, Brisbane. This suggests he was in Toowoomba for at least one and a half hours. The telephone records did not require the rejection of the complainant's testimony but rather were consistent with it. The events she recounts could easily have occurred within the parameters set by the mobile telephone records. Nor did the fact that his mobile phone records showed only one call to the complainant's home when she said he made two calls require the Tribunal to reject her critical evidence.

[28] The Tribunal did not accept as reliable the evidence of the appellant's mother that her son had visited her Toowoomba home for lunch on 7 April 2000 because she had no real recollection of the visit; her recollection depended on a diary entry which recorded "Chris to visit?" The Tribunal heard and saw the witness, who was cross-examined on this issue. It was entitled to reject the mother's evidence.

[29] The Tribunal referred to a letter from the complainant to the appellant on or about 19 August 1999 in which she wrote of her knowledge of his personal affairs including workplace politics, his purchase of a house and his involvement with repertory theatre. Whilst such evidence may not have been capable of amounting to corroboration in law and it is possible the complainant discovered these things in some way other than from the appellant, the Tribunal was entitled to find it more likely that she learned these things from him so that it was consistent with her account of their improper relationship.

[30] The Tribunal also noted that the complainant said she saw a photograph of the appellant's grandmother and a painting of his daughter inside his home; this demonstrated greater knowledge than might be expected from someone who had only looked into the house from the outside. The Tribunal rejected the suggestion that this knowledge had been acquired through stalking the appellant. Even though the appellant gave evidence that the painting and photograph had been in his office at various times, he agreed they were in his home. When combined with all the other matters to which the Tribunal referred, this evidence also tended to support some aspects of the complainant's account.

[31] The appellant contends the Tribunal erred in considering the absence of any complaint about improper behaviour during the period the appellant treated the complainant as a matter favouring the complainant's credit. I apprehend that in making this point, the Tribunal was merely pointing out that if the complainant was dishonest or fanciful she could have brought more flamboyant and even more serious allegations. It was not a matter on which the Tribunal placed any great weight; it is not an error of law.

[32] The Tribunal briefly noted that the complainant's account was consistent with the appellant's personal circumstances which provided him with an opportunity to pursue a sexual relationship. This, too, was but one observation in a lengthy,

reasoned judgment and was not something on which the Tribunal placed great emphasis. On the other hand, the appellant contends the Tribunal erred in not taking note that at the time of the last alleged act of sexual intercourse on 7 April 2000 the appellant was in a relationship with and living with his present wife. The incident on 7 April 2000 was said to have occurred when the appellant was visiting south-east Queensland without his present wife; the fact that he was in such a relationship did not compel the Tribunal to disregard the complainant's evidence.

[33] The Tribunal also referred to "misleading statements" from the appellant to his insurer, denying improper contact with the complainant and claiming she had been stalking him for about 12 years. The appellant's lack of frankness with his insurer on this issue was established by the telephone records. The Tribunal was entitled to find his misleading statements demonstrated a wish to conceal the existence of an improper relationship with the complainant. In this way his disingenuousness to his insurer generally undermined his credibility and supported the complainant's evidence.[20]

[34] The appellant contends that although the Tribunal said it was satisfied as to all the alleged particulars it did not specifically deal with the allegation that in February 1999 the appellant purchased and gave to the complainant a bottle of perfume or that in May 1999 he visited her home and initiated sexual contact with her. The Tribunal was not obliged to deal individually with each particular. It gave detailed sound reasons for accepting the complainant's account and for finding the particulars proved.

[35] A consideration of the many grounds of appeal reveals only that the appellant is disappointed with the findings of fact made by the Tribunal, all of which were open on the evidence. The Tribunal recognised that the complainant's history of mental illness and her significant personality disorder meant that it must look for supporting evidence, in the absence of which it must scrutinize her evidence carefully before acting on it. The Tribunal did so and found her allegations, which emerged in non-psychotic periods of good functioning, were themselves consistent, and consistent with and supported by other evidence. It was not necessary that this supporting testimony be capable of amounting to corroboration in law before the Tribunal could rely on it.

[36] The appellant emphasises that none of the supporting evidence directly implicates him in having had sexual intercourse with the complainant. It is self-evident that there are unlikely to be eye-witnesses to the acts of sexual intercourse described by the complainant; the presence of any DNA evidence would be highly improbable because of the delay between when the complainant said the events occurred (between January 1999 and April 2000) and her official complaint (October 2000). The confirmatory evidence relied on by the Tribunal did not alone support the claims of sexual intercourse but it did suggest an improper relationship between the appellant and his former patient, a relationship which he denied; his case was not that he met innocently with the complainant on the occasions where she alleged sexual impropriety but rather that they had not met at all on these occasions. The Tribunal was entitled to rely on the evidence it selected as supportive and consistent in deciding whether to accept the complainant's evidence.

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[20] Cf *Edwards v The Queen* (1993) 178 CLR 193, 199-201, 210-211.

[37] The appellant contends that the further particulars not relating to sexual intercourse[21] could not amount to exploitation of his former relationship with the complainant for gratification. The Tribunal noted that the first social coffee meeting occurred within weeks of the end of the professional relationship and from that time their relationship "bears many of the hallmarks of the so-called 'slippery slope'[22] progression described in the literature and referred to in the evidence of Dr. Steinberg".[23] Dr Steinberg gave that evidence and also referred to principle two of the Royal Australian and New Zealand College of Psychiatrists' Code of Ethics:

> "Psychiatrists shall not exploit the power differential in their relationships with patients, either sexually or in any other way.
> Annotation 2.1 Psychiatrists shall recognize that the psychiatrist-patient relationship is inherently unequal and use their position only for the patient's benefit.
> …
> Annotation 2.4 Sexual relations between psychiatrists and their patients are always unethical.
> Annotation 2.5 Sexual relationships between psychiatrists and their former patients are unethical."

Dr Steinberg opined that the meetings in coffee shops, the invitation to the party at Christmas 1998, the invitation to another friend's house in February 1999 and the appellant's gifts of perfume to the complainant were conduct of a lesser standard than might reasonably be expected of a psychiatrist by the public or his professional peers.

[38] The appellant points out there was no direct supporting evidence as to the complainant's further particularised claim that the appellant visited her home in May 1999 and initiated sexual contact with her. Because the Tribunal carefully scrutinised the complainant's evidence and found that it was consistent and in some respects supported by other evidence, it was entitled to accept her evidence of this further particular without direct supporting evidence. It was also entitled to accept her evidence of the other further particulars. Dr Steinberg's evidence provided an ample basis to support the Tribunal's conclusion that proof of these further particulars amounted to exploitation of the appellant's former relationship with the complainant for gratification. I also note that one member of the panel assisting the Tribunal is a psychiatrist.

[39] All the particularised acts together and most of them alone were capable of amounting to professional misconduct because of the previous professional relationship of the appellant as therapist providing highly intensive psychotherapy and long-term counselling and support to the lonely and vulnerable complainant patient with a history of mental illness and strong possibility of relapse.

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21 Set out at para [3] of these reasons.

22 Dr Steinberg's report of 10 July 2003 was before the Tribunal and in it he described the "slippery slope" as "a common sequence involves a transition from last name to first name basis; then personal conversation intruding on the clinical work; then some body contact (eg pats on the shoulder, massages, progressing to hugs); then trips outside the office; then sessions during lunch, sometimes with alcoholic beverages; then dinner; then movies or other social events; and finally sexual intercourse".

23 Reasons, [58].

[40] The appellant has not demonstrated any appealable question of law which would give this Court jurisdiction to hear any appeal. The appeal should be dismissed with costs to be assessed.

[41] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment of the President wherein relevant facts are set out. I agree with those reasons for concluding that the appeal should be dismissed, but set out reasons of my own for arriving at that conclusion.

[42] In about August 2000 the complainant was in contact with the appellant by letter. Clearly the receipt of that correspondence prompted him to write two letters to his insurer, United Medical Protection. The first letter (exhibit CAH 11) is undated, but the second is dated 11 September 2000. The relevant parts of the first letter are as follows:

> "I enclose a letter from the above patient who has been stalking me for approximately twelve years. In this letter she clearly threatens that unless I continue to have contact with her she will disclose the nature of an improper relationship with her. ...
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> …
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> Stalking commenced not long after seeing her as a patient and consisted of giving me books, flowers, presents and inexpensive items, most of which I refused at which point these would be left at my office or on my door step. ...
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> …
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> … This last letter indicates a serious development. After I received this correspondence I rang her and she told me that unless I saw her she would disclose the details of our alleged 'sexual affair'. This was to punish me for being 'cold and indifferent to her'. ...
>
> …
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> … I would anticipate further threats or actual false declarations of an improper relationship ... ."

[43] By letter dated 12 October 2000 the complainant lodged a formal complaint with the respondent. That letter contained allegations of inappropriate behaviour between herself and the appellant, recently her treating psychiatrist, and also made allegations of sexual intimacy.

[44] The respondent called for a response from the appellant and that was forthcoming in a statement enclosed with a letter from the appellant's solicitors dated 2 May 2001. Along with the appellant's statement the solicitors enclosed "an article on stalking". The following extracts from the appellant's written response are relevant for present purposes:

> "... I categorically deny having sexual intercourse with [the complainant] at any time.
>
> ...

I believe that the records and the correspondence show that [the complainant] developed an infatuation with me many years ago and has made the complaint because of my continual refusal to enter into any sort of relationship with her outside of the doctor patient relationship. ...

…

In addition to the letters and gifts and the attendances at my rooms [the complainant] would often drive past my house or I would notice her at a coffee shop which I often went to.

...

… I do recall noticing that before going to Toowoomba she continued to make regular contact with me after the doctor/patient relationship ceased in similar ways to those referred above namely turning up at my rooms, driving past my house and being present when I went to have coffee at the local coffee house, the Emporio. ...

I tried to make it a point whenever I noticed [the complainant] to speak to her with someone else present. ...

…

… I did not believe this was anything more than someone having difficulty in ending a therapeutic relationship until I received a card from [the complainant] in August 2000. ... I realised that there had been some allegation about sexual impropriety. ... I sent a copy to her treating doctor and my Medical Defence solicitor ... .

…

… After I received this correspondence I telephoned her and she told me that unless I saw her she would disclose the details of our alleged 'sexual' affair. ... I determined that I should meet with her in a public place and advise her face to face that there was no possibility of any relationship.

A meeting took place at 1.17pm at the coffee shop at the Urangan Pier, Hervey Bay on Friday 4 August 2000. ...

During the meeting I informed [the complainant] that I had indicated from the earliest days of our acquaintance that no relationship would be possible with her. ...

…

> [The complainant] continued to leave telephone messages for me in an attempt to talk to me by telephone and send me correspondence. ...
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> … I attempted to avoid contact with her by not returning telephone messages. However on one or two occasions she did manage to get through to me and we had brief telephone conversations. ...
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> …
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> I certainly never invited [the complainant] over to my house. This was the last thing I wanted.
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> ...
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> … I believe [the complainant] is making this complaint because I refused to take up the relationship she has tried to coerce me into having."

[45] Subsequently the respondent caused an investigation to be made with respect to the complaints. Telephone records with respect to mobile phones and landlines available to the appellant were obtained. Those records established that on a number of occasions, sometimes reasonably late at night, the appellant had telephoned the complainant at her home. As indicated later, some of those telephone calls could be related to occasions when the complainant said there was sexual intimacy. The investigations also established that on or about Christmas Day 1998 the appellant invited the complainant to spend Christmas Day with members of the local Rockhampton Hospital staff at the residence of a social worker, Ms Symmons. That investigation also provided some confirmation of the complainant's allegation that the appellant took her to his home on that day apparently to check on a turkey that he was cooking. Material gathered from witnesses other than the complainant revealed that in February 1999 the appellant invited the complainant to drinks at the home of a friend, Mr Frew. The complainant attended and there were a few other people present.

[46] The complainant also alleged that in May or June 1999 while she was in Toowoomba, an arrangement was made for her to meet the appellant at a coffee shop. The meeting did not eventuate because the complainant went to the wrong location. But subsequently on that day the pair met by chance, and according to the complainant the appellant purchased a bottle of perfume for her at Myer. Investigations made by the respondent established that in June 1999 the appellant used his Fly Buys card at Myer Toowoomba to make a purchase having a value of $71.95.

[47] All of the matters referred to in the preceding two paragraphs were established by evidence in the proceedings.

[48] The evidence of the complainant, in accordance with her original complaint, was that intercourse took place at the residence of the appellant on 17 and 18 January 1999. Telephone records establish that the appellant telephoned the complainant at 9.08pm on 13 January 1999 for five minutes, at 7.20pm on 17 January 1999 for 30 minutes and at 9.12pm on 18 January 1999 for two minutes. That evidence tends to

confirm the allegations made by the complainant in her first affidavit in paragraphs 45, 49 and 65.

[49] The complainant then alleges that late in February 1999 the appellant came to her house at about 11.30pm and had sexual intercourse with her. Telephone records show that the appellant telephoned the complainant at 1.10pm on 21 February 1999.

[50] According to the complainant (paragraph 120 of her first affidavit) while she was living in Toowoomba in the early months of 2000 the appellant telephoned her to say that he would be able to drive to Toowoomba to meet her. She gave him directions to her unit in North Street. According to her evidence at the "appointed time for our meeting, Dr Alroe rang on his mobile service to tell me he was lost. I gave him further directions. He arrived at my Unit in due course." According to the complainant intercourse occurred thereafter and she described the episode as "brief". Telephone records disclose that on 7 April 2000 the appellant telephoned the number of the complainant's unit at 12.47pm and the call lasted one and a half minutes. That tends to confirm the appellant's account of that meeting. The appellant did not dispute that he was in Toowoomba on that day.

[51] The appellant was not able to give any satisfactory explanation for any of the phone calls referred to above, particularly in light of the contents of his initial statement in response to the complaints. Clearly, contrary to what he said in that statement, he initiated on several occasions contact with the complainant, even quite late at night. The relationship between the complainant and the appellant as established by the totality of the evidence was a far cry from the stalking allegation initially made by the appellant. He was unable to give any satisfactory explanation for having the phone number of the complainant's unit in Toowoomba. When asked in cross-examination about the telephone call at 12.47pm on 7 April 2000 he said he had "no idea" what they talked about.

[52] Senior counsel for the appellant made much of the fact that (with respect to 7 April 2000) the complainant said in her evidence that the "whole visit took about two hours", whereas the appellant's telephone records indicated that a call from his mobile at 2.24pm originated from the Gatton area. There were a number of earlier calls on the mobile which registered as originating in the general Toowoomba area.

[53] In the circumstances it cannot be said that those telephone records establish that the appellant could not have been at the complainant's unit for about an hour from 1.00pm.

[54] The Tribunal at first instance correctly directed itself that the onus was on the respondent of proving the charges in accordance with the principles laid down in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

[55] Further, the Tribunal also correctly directed itself that, because of the complainant's psychiatric condition, it should approach her evidence with caution, aware of the danger of making a finding adverse to the appellant based on her evidence unless it was independently confirmed. That approach was clearly correct, and in accord with the reasoning in *Bromley v The Queen* (1986) 161 CLR 315. There Gibbs CJ said at 319:

> "If it appears that a witness whose evidence is important has some mental disability which may affect his or her capacity to give reliable evidence, common sense clearly dictates that the jury should be

> given a warning, appropriate to the circumstances of the case, of the possible danger of basing a conviction on the testimony of that witness unless it is confirmed by other evidence. The warning should be clear and, in a case in which a lay juror might not understand why the evidence of the witness was potentially unreliable, it should be explained to the jury why that is so. There is no particular formula that must be used; the words used must depend on the circumstances of the case."

[56] I am of the view that in looking for confirmation in a case such as this the Tribunal of fact is not concerned with corroboration in the strict sense in which that term is used in, for example, cases of rape. Particularly in a case such this, where the Tribunal of fact is not bound by the rules of evidence, what is required is that there be evidence tending to confirm that the complainant is giving reliable evidence when she says that a particular event occurred. (See *DPP v Kilbourne* [1973] AC 729 at 750 and 758 and the observations of Pincus JA in *R v Lewis* [1994] 1 Qd R 613 at 642-4. A diary note of a telephone number was held to be capable of providing corroboration in *R v Drury*, unreported, CA No 9 of 1984, judgment delivered 2 August 1984).

[57] Here the independent evidence establishes a highly unusual and improper relationship between a psychiatrist and a former patient shortly after treatment ceased. The significance of that evidence is heightened because of the appellant's express denial initially of any conduct on his part initiating contact with the complainant. Inviting the complainant to attend with him a social function on two occasions, and making telephone calls to her late at night, is not only entirely contrary to his initial response to the complaints, but also highly inappropriate conduct in the circumstances for a psychiatrist.

[58] Undoubtedly because psychiatrists are regularly dealing with persons who have a vulnerable personality it is not surprising that the ethics of that profession impose limitations on social contact between doctor and patient. The relationship between psychiatrist and vulnerable patient involves what was referred to in evidence as a "power differential" which if exploited by the former could exacerbate the patient's psychiatric condition.

[59] In my view when looking for evidence confirming the reliability of allegations made by the complainant the Tribunal was entitled to consider the evidence overall. It is not a situation where confirmation of each and every individual allegation must be shown; it is sufficient in my view if the totality of evidence coming from sources other than the complainant tends to confirm the reliability of her evidence. Here the totality of evidence from sources other than the complainant provided ample confirmation of her evidence.

[60] But on a specific level the appellant's total inability to explain how he came to have the telephone number of the complainant's unit in Toowoomba on 7 April 2000, and his inability to offer any explanation of his phone call at 12.47pm on that day, strongly confirms her evidence that he visited her on that day. That is sufficient confirmation of her evidence that on that occasion sexual intercourse took place.

[61] There was, in my view, ample evidence confirming the allegations of the complainant.

[62] The appeal should be dismissed with costs.

[63] **DUTNEY J:** I have read the reasons for judgement prepared by the President and Williams JA. I agree with them that the appeal should be dismissed. I agree generally with the reasons given by both of the other members of the Court but wish to make the following observations.

[64] I have some reservations as to whether all of the matters relied on by the tribunal are sufficiently connected to the central allegations in this case to be individually confirmatory in the sense discussed by the President in paragraph [10] of her reasons. By way of example, the fact that the complainant was on late shift on 17 January 1999 is essentially neutral. It can scarcely be said to add weight to the complainant's account. At its best it shows that the complainant's account is not impossible in the sense of being contrary to independently established facts. The tribunal did not, however, rely on any single piece of evidence in satisfying itself that the complainant's account was reliable.

[65] I agree with Williams JA that the matters to which he referred provide strong evidence of an improper relationship. Particularly significant is the fact that the appellant inexplicably had the complainant's telephone number in Toowoomba and telephoned her on the day of the last allegation of sexual contact. This is more so given the appellant's allegation that the complainant was stalking him and his formal response to the complaint to the effect that contact with her was unwelcome.

[66] Despite my reservations about whether isolated facts are individually confirmatory of the complainant's account the overall effect of the evidence relied on by the tribunal as confirmatory was that it provided cogent support for the complainant's account. The tribunal was entitled to be satisfied to the *Briginshaw* standard[24] that the allegations were made out.

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[24] *Briginshaw v Briginshaw* (1938) 60 CLR 336, 361-362.