

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Williamson* [2019]
QCAT 82

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
JENNIFER LESLIE WILLIAMSON
(respondent)

APPLICATION NO: 071 of 2015

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 16 April 2019

HEARING DATE: 6 February 2018

HEARD AT: Brisbane

DECISION OF: **Justice Daubney, President**

Assisted by:
Mr Ken Horsley
Dr Margaret Steinberg AM

ORDERS: **1. The discipline application filed 29 April 2015 is dismissed.**

2. The Tribunal will hear the parties as to costs.

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERAL – where the respondent is charged with witnessing a transferor’s signature on a land transfer which was not signed in her presence contrary to s 162 of the *Land Title Act* 1994 (Qld) – where the respondent is charged with acting without instructions in endorsing the transferee’s execution of the transfer – where the respondent is found to have allowed a transferor’s signature on the execution of a land transfer to be incorrectly dated – whether allowing a transferor’s signature on a land transfer to be incorrectly dated is unsatisfactory professional conduct within the meaning of s 418 of the *Legal Profession Act* 2007 (Qld)

Duties Act 2001 (Qld), s 16
Land Title Act 1994 (Qld), s 162
Legal Profession Act 2007 (Qld), s 418, s 419, s 452,

s 656C

Adamson v Queensland Law Society [1990] 1 Qd R 498
Attorney-General v Bax [1999] 2 Qd R 9; [1998] QCA
 089
Briginshaw v Briginshaw (1938) 60 CLR 336; [1938]
 HCA 34
De Kuyper v Crafter [1942] SASR 238
Legal Services Commissioner v Bone [2013] QCAT 550
Legal Services Commissioner v Laylee & Anor [2016]
 QCAT 237
Legal Services Commissioner v McClelland [2006] LPT
 13
Legal Services Commissioner v Sorban [2009] LPT 5

**APPEARANCES &
 REPRESENTATION:**

Applicant: G R Rice QC, instructed by Legal Services
 Commissioner

Respondent: G Page QC, with R Sibley, instructed by Williamson &
 Associates

REASONS FOR DECISION

- [1] On 11 January 2010, one Timothy John Henderson made an online complaint to the applicant, Legal Services Commissioner, about the respondent solicitor, Ms Jennifer Williamson. The complaint was said to have been made by Henderson “for and on behalf of Leanne Apostolakis”. The complaint form alleged:

The Respondent signed a Form 1 Title Document stating she witnessed the signatures on it before paying the duty payable, however the signature is a forgery and Mrs Apostolakis was not in the State of Queensland at that time.

- [2] The complaint form stated further:

On the 18th June, 2007, Jennifer Williamson witnessed a Land Titles Transfer Form 1, which was purportedly signed by Mrs Leanne Apostolakis on the 15th June 2007 and her husband, Mr Thomas Edward Apostolakis also on the 15th June, 2007.

The Titles Transfer Form shows that Ms Williamson then proceeded to pay the Duty on the Transfer which has been confirmed by the Office of State Revenue, however the titles was then never lodged.

The signature inscribed on the Titles Transfer Form purportedly to be Mrs Apostolakis’ is NOT Mrs Apostolakis and is a forgery.

- [3] The applicant initially referred the complaint to the Queensland Law Society (“QLS”) for investigation. The Professional Conduct Committee of the QLS resolved to recommend to the applicant that the complaint be dismissed, and that recommendation was communicated to the applicant in a letter dated 22 November 2010. Notwithstanding that recommendation, the applicant pursued investigation

of the complaint for nearly five further years, including by obtaining numerous advices and expert reports.

- [4] Ultimately, on 29 April 2015, the applicant commenced the present disciplinary proceeding under s 452 of the *Legal Profession Act 2007* (“LPA”) by which the applicant alleged that the respondent was guilty of professional misconduct and/or unsatisfactory professional conduct, and particularised the following charges against the respondent:

B. PARTICULARS OF CHARGE

The Commissioner alleges that the following charges constitute professional misconduct and/or unsatisfactory professional conduct:

CHARGE 1

1. The respondent witnessed a transferor’s signature on a land transfer for Lot 67 on RP 120756 registered 18/6/07 which was not signed in her presence contrary to s. 162 of the Land Title Act 1994 and her professional obligations generally.

Particulars

- 1.1 At all material times, the respondent was an Australian lawyer as defined by section 5(1) of the Act.
- 1.2 At all material times, the respondent engaged in legal practice, and was a legal practitioner and principal of the law practice Williamson and Associates (“**the law practice**”).
- 1.3 Between 11 June 2007 and 19 June 2007, the respondent executed, as witnessing officer, a memorandum of transfer (“the transfer”) for certain real property situated at 1506 Boundary Road, Carole Park, having Queensland Title reference 14300173, and the real property description lot 67 on RP120756.
- 1.4 A copy of that memorandum of transfer is attached marked ‘A’.
- 1.5 By so executing that memorandum of transfer, the respondent represented that it had been executed in her presence by Leanne Apostolakis, as transferor.
- 1.6 Leanne Apostolakis did not so execute that memorandum of transfer.

CHARGE 2

2. The respondent allowed a transferor’s signature on the execution of a land transfer to be incorrectly dated as “13 June 2007”.

PARTICULARS

- 2.1 The applicant repeats and relies on particulars 1.1 and 1.2.
- 2.2 Between 11 June 2007 and 19 June 2007, a person unknown (who was a staff member employed by the respondent) subscribed the date “13 June 2007” as the date of execution of the transfer by Leanne Apostolakis as for both transferor and transferee.

- 2.3 The document had not in fact been executed by Leanne Apostolakis on that date.
- 2.4 Between 11 June 2007 and 19 June 2007, the respondent had the transfer in her possession.
- 2.5 The respondent allowed the transfer to be registered bearing the incorrect date of 13 June 2007, when she knew or ought to have known that date was incorrect.
- 2.6 The respondent took no steps to correct the incorrect date on the transfer prior to, or after, its registration.

CHARGE 3

- 3. The respondent acted without instructions from her client in endorsing a transferee's execution of the transfer.

PARTICULARS

- 3.1 The applicant repeats and relies on particulars 1.1, 1.2, and 2. – 2.4 inclusive.
- 3.2 The respondent took instructions for the preparation and execution of the transfer from Thomas Apostolakis.
- 3.3 At no time prior to 19 June 2007, did the respondent take instructions from Leanne Apostolakis about the transfer.
- 3.4 As at 18 June 2007, the respondent had no instructions from Leanne Apostolakis to execute or endorse the transfer as solicitor for the transferee.

- [5] Mrs Apostolakis is now known as Ms Leanne Dickinson, and it is by that name that she will be referred to in these reasons, except where the context otherwise requires.
- [6] As advanced before the Tribunal, the applicant's primary case was that the signature of Leanne Dickinson on the subject Transfer was a forgery, and that it therefore could not have been her genuine signature witnessed by the respondent. The respondent denied this, and said that she had actually witnessed the signing of the document by Ms Dickinson.
- [7] Charge 3 is, as counsel for the applicant conceded, bound up with the findings in respect of Charge 1. The respondent signed the subject Transfer as solicitor for the transferee on behalf of Ms Dickinson. The prosecution case is that if Ms Dickinson's signature was a forgery, then she could not, and did not, give instructions for the respondent to sign on her behalf as transferee. Equally, it was conceded that if the applicant's case on Charge 1 is not accepted, then Charge 3 cannot be maintained.
- [8] Charge 2 concerns the insertion of execution dates against, amongst others, the putative signature of Ms Dickinson on the subject Transfer. As will appear, even on the respondent's evidence, the execution date written on the document (13 June 2007) was not the date when it had actually been signed by Ms Dickinson.

- [9] Resolution of these issues requires the Tribunal to consider whether the applicant has proved its case on each charge to the reasonable satisfaction of the Tribunal, with the application of the shifting standard of *Briginshaw v Briginshaw*,¹ by which the necessary degree of satisfaction may vary according to the gravity of the fact to be proved.² This standard of proof is now prescribed in s 656C of the *LPA*:

656C Standard of proof

- (1) If an allegation of fact is not admitted or is challenged when the tribunal is hearing a discipline application, the tribunal may act on the allegation if the body is satisfied on the balance of probabilities that the allegation is true.
- (2) For subsection (1), the degree of satisfaction required varies according to the consequences for the relevant Australian legal practitioner or law practice employee of finding the allegation to be true.
- (3) In this section –

Australian legal practitioner includes a person to whom chapter 4 applies as mentioned in section 47.

Background

- [10] Much of the background to this matter is uncontroversial, or at least uncontested on the evidence before the Tribunal.
- [11] Ms Dickinson married Thomas Apostolakis in August 2000. They lived in Brisbane until late 2006/early 2007, when they moved to Sydney. During their time in Brisbane they lived, relevantly, at 40 Thomas Street, Sherwood. They then lived together in Sydney until 19 October 2007, when they separated. Ms Dickinson moved overseas shortly after the separation. They were divorced in January 2010. During the time of their marriage, Ms Dickinson adopted the name “Leanne Apostolakis” and used that name for her signature. Mr Apostolakis has a son, Christos Apostolakis, by a previous relationship.
- [12] In the early years of their marriage, Mr Apostolakis was employed by Suncorp Metway, initially in its insurance area and later as a mobile loans officer. In about mid-2006 Mr Apostolakis and Christos set up a financial planning firm. The precise details of that are not relevant for present purposes.
- [13] Between 2004 and 2007 Ms Dickinson and Mr Apostolakis purchased about 12 residential properties. One of those was a rented duplex property at 1506 Boundary Road, Carole Park (“the Boundary Road property”). In fact, a contract for the purchase of that property had originally been entered into by Christos on his own account in late 2005, but he was subsequently unable to complete. Then in mid-2006 the vendor agreed to rescind the contract with Christos and enter into a new contract of sale with Mr Apostolakis and Ms Dickinson. That contract settled, and the parties became registered proprietors as tenants in common with Ms Dickinson holding a 99/100th interest and Mr Apostolakis a 1/100th interest in the Boundary Road property.

¹ (1938) 60 CLR 336; [1938] HCA 34.

² *Adamson v Queensland Law Society* [1990] 1 Qd R 498 per Thomas J at 504.

- [14] The Transfer which is the subject of this proceeding purported to evidence a transfer of Mr Apostolakis' 1/100th interest in the Boundary Road property to Ms Dickinson, with the obvious result that she would become the sole registered proprietor. The evidence about the subject Transfer will be outlined below.
- [15] After she separated from Mr Apostolakis, Ms Dickinson spent considerable amounts of time overseas. Mr Apostolakis became embroiled in significant disputes, including concerning the ownership of various properties and claims by creditors. There were various proceedings in the Supreme Court of Queensland, the Supreme Court of New South Wales, and the Federal Magistrates Court. The proceedings involved (amongst others) Karen Edmunds (Ms Dickinson's sister) and Nicholas Kapitsalas. It seems that both of those were assisted in pursuit of their claims by Timothy Henderson (the former husband of Karen Edmunds), a self-described "forensic accountant". It also seems clear that it was Henderson who discovered the existence of the subject Transfer, which had never been lodged for registration and was simply sitting on a file.
- [16] On Ms Dickinson's evidence before this Tribunal, it was Henderson who took it on himself, without consulting Ms Dickinson or even showing the subject Transfer to her, to make the initial complaint to the applicant alleging that Ms Dickinson's signature on the subject Transfer was a forgery. The applicant did not adduce any evidence from Henderson to explain his involvement in the matter, the circumstances under which he found the document, the basis of his authority for making the complaint to the applicant or the basis for the very serious allegations made by him in the complaint. No explanation was given as to why the applicant did not call evidence from Henderson.
- [17] It is, however, clear enough that, by the time of the making of the complaint, the respondent had become caught up in the various pieces of litigation which were being pursued against Mr Apostolakis and those associated with him by numerous claimants who were being at least supported by Henderson. This included pursuit of an order for third party disclosure against the respondent in proceedings commenced by (or on behalf of) Ms Dickinson against Mr Apostolakis in the Supreme Court of New South Wales in November 2008.
- [18] That Henderson was an "active player" in the pursuit of Mr Apostolakis is clear from the fact that Henderson, with the leave of the Registrar of the Federal Magistrates Court, appeared on behalf of Karen Edmunds in the public examination of various people under the *Bankruptcy Act*. That included Henderson, on 20 April 2010, conducting a public examination of the respondent about the financial dealings of Mr Apostolakis. This, it will be recalled, was only three months after Henderson had made the complaint, apparently on his own initiative and without consulting Ms Dickinson.
- [19] There is uncontested evidence before this Tribunal which demonstrates that from the mid-2000s Ms Dickinson suffered from significant health issues which, amongst other things, had a palpable impact on her cognitive functioning and memory. She traversed this issue in an anodyne fashion in her affidavit before this Tribunal:

3. I am not working and I receive a Disability Pension from the Australian Government. This pension relates to my chronic fatigue syndrome (CFS)

condition, which was diagnosed in about October 2005. A DNA test that was carried out by my specialist Dr John Whiting. That test detected that I have the genes for Narcolepsy, Coeliacs and Alzheimers. As it was explained to me by Dr Whiting, this does not mean I will ever get these diseases, but simply that the genes for them are present. I have never been diagnosed with Narcolepsy, Coeliacs or Alzheimers.

- [20] On the uncontested evidence before this Tribunal, however, it is quite clear that Ms Dickinson's mental acuity was significantly adversely affected for a significant period of time from the mid-2000s. Indeed, in February 2005 Ms Dickinson made a claim on a Total and Permanent Disability insurance policy for suffering Chronic Fatigue Syndrome, and in November 2007 received a payout of more than \$200,000 on that claim.
- [21] Medical reports relating to that, and other, claims by Ms Dickinson were in evidence before the Tribunal. It is not necessary to recount these in detail, but together they point compellingly to Ms Dickinson's cognitive disabilities during that period.
- [22] So, for example, a report from her treating specialist physician, Dr Whiting, dated 13 October 2005 confirms his diagnosis of chronic fatigue syndrome and notes that she was suffering from a "severely debilitating illness" and says that she was "functionally severely impaired". Dr Whiting described the impact of the condition on her, including:

Mrs Apostolakis' cognitive disturbances affect higher executive functions in particular, often to a degree that could be mistaken for the early features of a dementing process such as Alzheimer's disease. She has ongoing problems with short term memory, which in turn affects her ability to comprehend conversations, written material and even simple words, depending on her levels of alertness, foggy-headedness and the quality of her sleep at that time. Her ability to multitask is also affected, as is her procedural memory for tasks that formerly were performed with ease. Her cognitive function can be temporarily improved by limiting herself to simple undemanding tasks and by obtaining sufficient quality rest and sleep.

- [23] On 6 July 2006, Dr Lucille Douglas, psychologist, provided a report in which she recounted, as part of the history taken from Ms Dickinson, that Ms Dickinson had said that "her poor memory was one of her biggest problems" and that she felt she did not retain information like she used to. Dr Douglas administered a number of tests which indicated, amongst other things, that Ms Dickinson's "current overall memory and attentional difficulties are significantly and abnormally below the level expected for a woman of her age, educational and occupational background". After casting that conclusion against normative population levels, Dr Douglas said, "This is reflective of an abnormal deterioration in cognitive functioning and is of significant concern."
- [24] Dr Douglas recommended further neurological investigation. Her conclusions included:

Ms Apostolakis' current cognitive test profile is of significant concern. Her tests scores reflected evidence suggesting this individual has experienced a global decline in intellectual functioning (particularly targeting her visual discrimination and attentional skills), a global decline in memory functioning

(particularly targeting her capacity to retain information in memory over time), and demonstrates patterns on other tests suggesting the possible beginnings of a drop in her word finding and verbally based cognitive flexibility skills.

- [25] Dr David Alcorn, specialist psychiatrist, provided a report dated 5 September 2006 in which he opined that there were strong indications of impaired cognitive functioning in a number of Ms Dickinson's memory and executive domains.
- [26] On 27 September 2007, Dr Ivan Lorentz, consultant neurologist, gave a report after examining Ms Dickinson. He confirmed the previous diagnosis of Chronic Fatigue Syndrome, and expressed the opinion that Ms Dickinson's condition was "severe and consists of lack of concentration, problems with memory and tiredness".
- [27] The impact of this uncontested evidence about the significant degree of cognitive and functional defects on the credibility of Ms Dickinson for the present proceedings will be addressed later.
- [28] The respondent was admitted as a solicitor in 1991. In 1993, she commenced practice on her own account under the name "Williamson & Associates" at Graceville. She has practised continuously in that capacity since then. Hers is what might be described as a general suburban practice, including conveyancing, some litigation, some estate work, some family law, and some criminal law matters. From the mid-2000s up until the time of the global financial crisis, conveyancing was a significant part of her practice.
- [29] Prior to 2005, the respondent's firm had shared premises with another sole practitioner, Eleanor Wallis. Whilst sharing premises, the two firms were completely separate. Each had their own clients and separate signage, telephone numbers and post boxes.
- [30] Mr Apostolakis and Ms Dickinson were clients of Ms Wallis.
- [31] In mid-2005, Ms Wallis retired from practice and the respondent effectively took over what had been Ms Wallis' clientele and business for no consideration. It was only then that the respondent met Mr Apostolakis and Ms Dickinson for the first time. Over the next few years, the respondent acted for Mr Apostolakis and Ms Dickinson, and interests associated with them, in numerous conveyancing and related transactions, including the acquisition of the Boundary Road property. The respondent says that, in the course of these dealings, she met Ms Dickinson on some 15-20 occasions in connection with the signing of transfers, mortgages, and other conveyancing documents. Ms Dickinson also estimates that she met the respondent on 15-20 occasions, including for making a will.
- [32] There is no suggestion in the evidence before this Tribunal that the respondent has ever been the subject of professional complaint or disciplinary action, apart from this matter. Nor is it suggested that the respondent has ever otherwise failed in any way to observe and maintain the standards of competence and diligence of a reasonably competent solicitor, whether before or since the matters which are the subject of this application.
- [33] Finally, it is necessary to say something about the form of the subject Transfer which, on the respondent's uncontradicted evidence, was prepared by one of her

office staff. As noted above, the Boundary Road property was registered in the names of Mr Apostolakis and Ms Dickinson as tenants in common to the extent of one per cent and 99 per cent respectively. The apparent intent of the form was to effect a transfer of Mr Apostolakis' one per cent interest to Ms Dickinson. The stated consideration for that transfer was \$3,300. But the form of transfer which is the subject of this complaint wrongly specified both Mr Apostolakis and Ms Dickinson as transferors, and failed to identify that what was being transferred was Mr Apostolakis' 1/100th interest.

- [34] On its face, the subject Transfer bears a number of signatures. Consistent with the erroneous specification of both Mr Apostolakis and Ms Dickinson as transferors, the document bears two transferor signatures – Mr Apostolakis and the disputed “Leanne Apostolakis” signature. Adjacent to each of those is the signature of the respondent as witnessing officer. Each of those “transferor” signatures has a handwritten execution date of “13/6/07”. Under those is a further purported signature of “Leanne Apostolakis” as transferee. This also has a handwritten execution date of “13/6/07”. Then under that is the respondent’s signature as the solicitor for the transferee (as permitted by s 11(1)(b) of the *Land Title Act* 1994). That signature has a handwritten execution date of “18/6/2007”.
- [35] That the intent was to transfer Mr Apostolakis' one per cent interest to Ms Dickinson is apparent from the fact that it was stamped for “duty paid on 1 100th share”. The amount of duty paid was \$49.50, obviously calculated on the consideration of \$3,300. If the subject Transfer had been lodged for registration in the Land Titles Office, the document would have been at least requisitioned, if not rejected. But this document was not lodged for registration. Another transfer form was utilised to effect the transfer of the parties' interests in the property. There is no suggestion of any misconduct by the respondent in connection with the form of transfer which was eventually registered. The misconduct is said to arise out of the subject Transfer (unregistered and unregistrable), which apparently sat on a file until it was uncovered, in unexplained circumstances, by Henderson, who then used it to found the present complaint against the respondent.

Charge 1

- [36] The applicant’s case is that Ms Dickinson’s signature as transferor on the subject Transfer is a forgery, and therefore the respondent could not have witnessed Ms Dickinson signing the document. The respondent, on the other hand, is adamant that Ms Dickinson signed the subject Transfer in her presence.
- [37] The applicant’s evidence for Charge 1 came from Mr Heath, a document examiner, and Ms Dickinson. The applicant was also required to produce Mr David Edwards, a legal officer with the applicant, for cross-examination on affidavits he had sworn in the proceeding.
- [38] The respondent gave evidence, and also led evidence from a number of witnesses who had dealt with Ms Dickinson.

Mr Heath

- [39] Mr John Heath is a very experienced and well-qualified forensic document examiner. His qualifications to give expert opinion evidence to the Tribunal were not challenged.
- [40] Three reports by Mr Heath were produced, dated 18 August 2010, 17 December 2013 and 22 March 2017 (including an erratum on the first day of hearing). Mr Heath also gave evidence before the Tribunal.
- [41] His first report concerned nine documents which had been provided to him, including the subject Transfer and various “specimen signatures” for “Leanne Apostolakis”. At that time, Mr Heath considered there was only limited support for the proposition that the “Leanne Apostolakis” signatures on the subject Transfer were false signatures, but also said that the “poor copy nature of the questioned signatures prevents any furthering of the expressed conclusion”.
- [42] For his second report, Mr Heath was provided with the original of the subject Transfer and two further “Leanne Apostolakis” specimen signatures. His conclusion at that time was that the “Leanne Apostolakis” signatures on the subject Transfer and on two other documents which had been provided for examination (identified in his reports as documents 02 and 05) were written by the one writer, and were false (or simulated) signatures which were not written by the specimen provider.
- [43] For the purposes of preparing his third report, Mr Heath was provided with a further 13 documents bearing “Leanne Apostolakis” signatures by the applicant and by the respondent’s legal representatives. Mr Heath’s conclusions after examining those documents was that the signature on one of them (document 11) was written by the author of the questioned signatures on the subject Transfer and documents 02 and 05. Mr Heath also reconsidered his opinion on another document (document 03) which he had previously set aside from this group, and now expressed the view that the signature on document 03 was written by the author of the signatures of the subject Transfer.
- [44] Mr Heath’s final report also contained the following important observation:
- The questioned signatures “Leanne APOSTOLAKIS” contained on documents 01 [the subject Transfer], 02 & 05 (previously examined) & 11 and the specimen Leanne APOSTOLAKIS signatures present on documents 12 to 17 & 19 to 20 & 23 form a clear and individual signature pattern or form.
- [45] The documents in that observation included the following:
- (a) Document 11 – the signing page of a tenancy agreement dated 4 February 2002;
 - (b) Document 13 – Form 1 Transfer dated 28 March 2007 with Kathryn Coles as witness to “Leanne Apostolakis” signature;
 - (c) Document 14 – Form 1 Transfer dated 21 January 2007 with the respondent as witness to “Leanne Apostolakis” signature;

- (d) Document 15 – Form 1 Transfer dated 16 May 2007 with Kathryn Coles as witness to “Leanne Apostolakis” signature;
 - (e) Document 16 – REIQ Contract of Sale with Nick Mamara as witness to “Leanne Apostolakis” signature;
 - (f) Document 17 – REIQ Contract of Sale with Nick Mamara as witness to “Leanne Apostolakis” signature;
 - (g) Document 19 – Form 1 Transfer dated 28 May 2007 with the respondent as witness to “Leanne Apostolakis” signature.
- [46] The documents Mr Heath referred to in that observation were one group of documents identified by him. The other group were the documents he regarded as specimen signatures written by the one author (documents 7, 8, 9 and 10 together with a number of other identified specimen signature documents).
- [47] In his evidence in chief, Mr Heath expanded on the bases for a number of opinions expressed in his reports. He explained the factors he took into account when concluding that there was no indication that the two distinct signature patterns he had identified were written by one author using two different forms of signature, and the matters he took into account when concluding the fact of different authorship. He said that he was confident that the two groups were written by different authors and explained his reasoning by reference to, amongst other things, the structure and features of the writing. He said that he had not seen a situation where it would be accepted that two groups of signatures such as this had been written by the one writer.
- [48] Under cross-examination, Mr Heath was questioned about the provenance of the signatures he had treated as specimens (documents 7, 8 and 9), and ultimately conceded that he had made an assumption that the signatures, whilst written by the one person, had been written by the designated writer.
- [49] He was also questioned at some length in relation to his changing opinion between the various reports as to whether the signature on document 03 had been written by the same writer as the signatures on the subject Transfer.
- [50] He also confirmed that it was his opinion that the signatures on the documents in the first group were false signatures written by the same person.
- [51] Importantly, however, Mr Heath made the following concession at the end of his cross-examination:
- Yes. All right. Thank you. Now, if you can consider this hypothetical, right: if you were convinced that, say, document 13 was written by the specimen provider, Leanne Apostolakis, you would be of the opinion that 01 was written by the specimen provider?---Correct.
- Yes?---Correct.
- And if, for example, number 15, you were convinced that that was written by the specimen provider, go back to one [indistinct]?---Correct. Absolutely.

So that if any one of these documents the tribunal is persuaded was written by Leanne Apostolakis, or Dickinson, as she's now known---?---Yes.

--- they could comfortably conclude that she signed document 01, in your opinion?---Correct.

Ms Dickinson

[52] Ms Dickinson's evidence in chief was by way of an affidavit sworn on 31 January 2018. In that affidavit she said that the first time she saw the subject Transfer was when she was shown a copy in 2008. She said it contained the signatures of three people, and recognised Mr Apostolakis' signature. She then said:

25. The signatures that appear on the second line for the transferor's signature and on the first line for the transferor's or Solicitor's signature is not a signature I am familiar with, but it does appear to be an attempted copying of my signature. This signature is very unlike my signature.
26. The two signatures that are purported to be my signature on the transfer are not my signatures.
27. I gave no person any permission or authority to sign my name on the transfer document.
28. I have no knowledge about the circumstances surrounding the transfer document being prepared or executed, as it was never discussed with me by Tom or any other person.
29. I also recognise the signature of Williamson appearing three times on the transfer document as the witnessing officer of the transferor's signatures and on the last line for the placement of the signature of the transferee's or solicitor's signature.
30. At no time did Williamson witness me signing the transfer document; because I did not sign this document and it is not my signature that appears on it.
31. I note that the execution date for the transferors' and transferees' signatures recorded on the transfer document is 13 June 2007, while the execution date beside Williamson's signature on the transferee's or solicitor's signature line is recorded as 18 June 2007.
32. Between March 2007 and 19 October 2007, being the date of my separation from Tom, I never travelled to Brisbane and I did not meet with Williamson at any other place or time during this period.
33. I have seen an explanation from Williamson stating that the transfer document was in fact executed on 26 October 2006.
34. I never met Williamson on that date for the purpose of signing the transfer document and I have never had any conversation with her about it.

[53] Ms Dickinson was cross-examined about the circumstance of her having provided a copy of the tenancy agreement (document 11) to the applicant as containing a specimen of Mr Apostolakis' signature without expressly alerting the applicant to

the fact, as she now said, that the “Leanne Apostolakis” signature on that document had not been written by her. She asserted that she had advised the applicant of this verbally.

- [54] She was also asked about the timing of, and her knowledge of, the lodgement of the complaint. She had, in fact, been overseas from early December 2009 and only arrived back in Australia on 11 January 2010, the day after the complaint was lodged with the applicant. She said that she had “no idea” whether she had told Henderson that her signature on the subject Transfer was a forgery. She referred to the fact that there were other proceedings involving her ex-husband over similar issues, and was asked about her subsequent attendance at the Indooroopilly Police Station. She conceded that she did not recall whether she knew at that time that Henderson had lodged the complaint with the applicant. Nor could she recall what she had said to the police. Despite that, she averred that she had told the police that the signature on the subject Transfer was a forgery. This averral is, however, simply not borne out by the relevant police report, which stated in terms:

The complainant did not make allegations that her signature was forged only that it was allegedly witnessed by the solicitor whilst [Ms Dickinson] was not in the country.

- [55] This last contention referred to in the police report was based on the fact that the document bore an execution date of 13 June 2007. On the respondent’s version, the document was not signed on that day, but was signed in October 2006, when Ms Dickinson was certainly in the jurisdiction.
- [56] Ms Dickinson’s assertion that she first saw the subject Transfer in 2008 is unsupported by any other evidence. As already noted, no evidence was led from Henderson (or any other person) about how and when the subject Transfer was found on one of Mr Apostolakis’ files. The assertion by Ms Dickinson sits ill with her evidence under cross-examination that she did not remember when she first saw the subject Transfer and that she did not recall any communications about it with Henderson. The assertion also does not sit well with the medical evidence about her impaired memory and mental acuity from the mid-2000s. Henderson had corresponded with the respondent in the month or so prior to making the complaint to the applicant and asserted to the respondent that Ms Dickinson’s signatures on the subject Transfer were forgeries. But again, there is no evidence that Ms Dickinson knew anything about this, and she said that she had no recollection of this. Not only is there no evidence to support Ms Dickinson’s contention that she first saw the subject Transfer in 2008, there is evidence (in the form of police file notes) that in June 2008 Ms Dickinson attended at the Indooroopilly Police Station and complained that her ex-husband had forged her signature on a transfer of the Boundary Road property. It is clear from the police notes, however, that the document she complained about in mid-2008 was a document which transferred the Boundary Road property into Christos’ name and not the subject Transfer. The first, and only, reference to the subject Transfer in the police notes is in relation to her attendance on the police in January 2010 (referred to above). The police notes record Ms Dickinson saying that she had come across the subject Transfer “whilst going through other documents”, with no timeframe given.
- [57] In her evidence before the Tribunal, Ms Dickinson had no memory of the circumstances surrounding the acquisition of the Boundary Road property and did

not recall an arrangement to transfer Mr Apostolakis' one per cent share in the property to her. Her repeated assertion was simply that it was not her signature on the subject Transfer.

- [58] She was asked about her medical condition, and the expert medical opinions which had been given. She said, "My memory takes a little longer than probably everybody else's. ... It's like an upturned – upside down filing cabinet."
- [59] Ms Dickinson was questioned further about, and largely agreed with, the cognitive and functional defects which had been identified by the medical specialists, but avoided responding to the proposition that she may have forgotten that she had attended at the respondent's office to sign the subject Transfer. The extent of her evidence was that on looking at the document she said the signature was not hers.
- [60] She was then questioned at some length about the history of her dealings with Henderson and her involvement in the claims which were made against Mr Apostolakis. Ultimately, however, her evidence came down to simply repeating that the signature on the subject Transfer was not hers.
- [61] In re-examination, Ms Dickinson was asked about the circumstances of her providing the tenancy agreement to the applicant. Even though she had said under cross-examination that she had told the applicant in phone calls that it was not her signature on the tenancy agreement, under re-examination she said that she had no recollection of mentioning the tenancy agreement in those phone calls.

Mr Edwards

- [62] Mr Edwards was cross-examined particularly on an affidavit he had sworn on 28 August 2016 and in relation to documents which had been provided by Ms Dickinson to the applicant. He was referred to a request which he said was made verbally to Ms Dickinson in a conference that she provide the applicant with samples of her signature. Subsequently, under cover of a letter dated 6 September 2011, Ms Dickinson sent the applicant a bundle of documents, including a copy of the tenancy agreement (Mr Heath's document 11). Mr Edwards confirmed that there was no occasion when Ms Dickinson indicated to the applicant that any of the signatures on these document she had provided had been forged.

Ms Williamson

- [63] The respondent's evidence in chief was by way of a 56-page affidavit sworn 8 May 2017 to which was annexed some 650 pages of exhibits. Much of the affidavit was discursive, and much of it was argumentative.
- [64] The affidavit canvassed details of Mr Apostolakis and Ms Dickinson and other persons and entities associated with them. The respondent described the circumstances under which she came to act for Mr Apostolakis and Ms Dickinson after the retirement of Ms Wallis, saying that she first met them after 30 June 2005. She quoted Ms Dickinson's estimate of having attended at the respondent's office on 15-20 occasions, and said that there would be no reason for Ms Dickinson to visit the office if she was not involved in property transactions.
- [65] The respondent outlined in some detail the circumstances of the acquisition of the Boundary Road property. Her affidavit then set out at some length the

respondent's understanding of various matters, including an attempt to transfer the Boundary Road property into the name of Christos Apostolakis, the circumstances surrounding Henderson complaining to the applicant, and what she describes as the "real relationship between Leanne [Dickinson] and Henderson".

[66] Directly relevant for present purposes is what she deposed to in her affidavit under the heading "My response to the complaint":

- 69 Tom and Leanne came to my office sometime prior to October 2006 and asked to transfer Tom's interest in Boundary Road to Leanne as they were concerned about a diagnosis of early onset Alzheimer's Disease.
- 70 Leanne and Tom signed the Disputed Form 1 in my presence and I witnessed Tom and Leanne's signature as Witnessing Officer on the Transferor's Signature lines.
- 71 As the transaction was not arm's length, I did not date the Disputed Form 1 pending the receipt of valuations for the purpose of stamping the documents.
- 72 The Disputed Form 1 was filed away and not acted upon again until a request from Tom on 12 June, 2007 to re-activate it.
- 73 In the intervening period there was an attempted sale to Sbhghden which failed because of finance. There was also an email request from Tom to discharge mortgages over 4 properties including Boundary Road.
- 74 The transfer reactivation request was by email from Tom on 12 June, 2007 which he signed as *'Tom Apostolakis, Finance and Relationship Manager, Excalibur Financial Services and Finance'* and read *'Can you please arrange to urgently transfer my interest in the ppty at Carole park to Leannes name only as I need to use this as security for a loan which needs to settle next week 19/6'* [JLW 7, 8, 12 Boundary Road File].
- 75 The email went to Kathy Coles, employee of Williamson & Associates, who prepared a blank Transfer Form 1 and forwarded it to the complainant at PO Box 656, Paddington, as requested.
- 76 In the meantime it was recalled the Disputed Form 1 had already been prepared and signed, and it was decided that the already signed Transfer would be used.
- 77 On 14 June, 2007 a valuation was received by me but rejected because two comparative sales were required. [JLW 10 and 11].
- 78 On 18 June, 2007 a second valuation with two comparative sales was received and I stamped the document, signed both the stamp box and as the Transferee's Solicitor and dated both places as 18 June, 2007.
- 79 The stamped transfer was then forwarded to Tom and Leanne on 18 June, 2007. [JLW9 copy of the letter forwarding Transfer].
- 80 I did not at any time date the Transferor's Signature Execution Dates. I do not know who put the 13 June 2007 date there but I presume it was one of my conveyancing staff, most likely Kathryn Coles.

- [67] The balance of the respondent's affidavit dealt with the medical evidence relating to Ms Dickinson's disability, and contained pages of argumentative assertion about the reliability of Ms Dickinson's accounts, a lengthy critique of Mr Heath's opinions, and a description of the various pieces of litigation in which Mr Apostolakis and Henderson were involved. The affidavit concluded with a narrative of the dealings between the respondent and her advisers and the applicant, the delays experienced in dealing with the applicant, and the protracted refusal of the applicant to give to Mr Heath documents which had been provided by the respondent for his examination.
- [68] As deposed to by the respondent, she had in fact provided to the applicant a detailed recitation of her version of the circumstances surrounding the signing of the subject transfer in a response dated 28 June 2010. A copy of this response was exhibited to the applicant's material in support of the present application, and the respondent was cross-examined on the contents of the response. In that response, the respondent said:

In about October 2006 Mr Apostolakis attended on me at my office. I was acting for him in a matter, proceedings for which had been commenced in the District Court. He told me that Leanne Apostolakis had been diagnosed with an early onset of Alzheimer's, and he was concerned for her. He told me that he had bought her a ruby ring, and that he was going to transfer the 1% interest in the Boundary Road property to her as a gift, so she would be the sole owner.

On a later date in October, but before 26 October 2006 (which was the mediation date for the District Court matter), Mr Apostolakis attended on me at my office to discuss the mediation. Leanne Apostolakis was with him. We discussed the diagnosis that had been made of Alzheimer's, and the potential difficulties Mrs Apostolakis would face in the future. I suggested to them that they should consider drawing up a Power of Attorney while Mrs Apostolakis still had capacity, and particularly so given that she had registered interests in some of their property holdings.

Mr Apostolakis then raised the issue of the Boundary Road property, and asked me to prepare the necessary transfer to gift Mrs Apostolakis his 1% interest. The transfer was drawn up by one of my staff and given to me. Both Mr and Mrs Apostolakis signed the transfer document in my presence. Mrs Apostolakis signed as both transferor and transferee. I did not witness her signature as transferee. I explained to them both that as the transaction was not 'arms length', a valuation had to be obtained for Stamp Duty purposes. I further explained that once I received this, I was able to sign as transferee on behalf of Mrs Apostolakis. The undated transfer was then put onto the purchase file.

On 30 April 2007 we received a contract for sale of the property to Sbeghen. A release of mortgage was sent to the Commonwealth Bank. This contract for sale of the Boundary Road property did not proceed and was terminated under the finance clause on 21 May 2007. As far as I am aware, Mrs Apostolakis had signed the contract for sale.

Two pages were faxed to the office from a Brisbane number, and then the agent, Graceville Realty, sent the entire contract. The address on the contract was the Apostolakis' address at Thomas Street in Sherwood. Neither my

staff or myself witnessed the signatures on the sale contract, but both Mr and Mrs Apostolakis had signed it.

On 24 May 2007 Mr Apostolakis requested discharges for the mortgages over the properties at Thomas Street, Boss Road, Abelia Street and Boundary Road. He was no longer working for Suncorp and was operating his own finance company, Excalibur Finance in Sydney, and had organized refinance. Mrs Apostolakis had signed the discharge/refinance authority. To the best of my knowledge the refinance did not go through.

On 12 June 2007 Kathryn Coles received an email from Mr Apostolakis requesting the transfer of his interest in the Boundary Road property to Mrs Apostolakis. Ms Coles sent a transfer addressed to both Mr and Mrs Apostolakis at their address in Sydney.

I subsequently received a call from Mr Apostolakis on 13 June 2007 saying Mrs Apostolakis was away, and asking if I could use the copy that had previously been signed by them in October 2006. I agreed to do so but said I could not transfer his interest until I received a valuation. I then provided the undated transfer to a member of my firm. I presume I gave it to Ms Coles, but cannot be certain. I did not date the transfer document and have no knowledge, despite enquiries on relation to the same, as to who did.

On 14 June 2007 a valuation was received but it was (sic) did not refer to three recent sales in the area. I contacted the agent, Graceville Realty, and explained that as the transaction that would rely on the valuation was not arm's length, there had to be reference to three recent sales. The agent agreed to send out an amended appraisal. It was only after I received the amended appraisal that I signed and dated the transfer document. This was on Monday 18 June 2007. The effect of this transfer would have increased Mrs Apostolakis' interest from 99% to 100%.

An invoice for the conveyance was sent to Mr and Mrs Apostolakis at their Sydney address on 18 June 2007, with a copy of the signed and stamped transfer which it appears was never registered. A cheque in payment of the invoice was received on 25 June 2007.

[69] The response of 28 June 2010 also said:

My specific response to the complaint is as follows:

1. I did sign the Transfer Form 1 of the property at 1506 Boundary road, Carole Park as the witness to the signatures of Leanne Apostolakis and Thomas Apostolakis.
2. The execution date recorded on the transfer of 13 June 2007 was not written by me but would have been written by a member of my firm. The signatures were not witnessed by me on 13 June 2007, but were witnessed in October 2006. I did not date the transfer at the time as it is usual practice not to date the transfer until the conveyance is ready. I am unaware of why the date 13 June 2007 was recorded on the transfer. The execution date of 18 June 2007 was recorded by me.
3. Both of the signatures on the transfer that purport to be of Leanne Apostolakis are her signatures. She signed the transfer in my presence in my office in about October 2006.

4. The signatures that purport to be that of Leanne Apostolakis are made by her and therefore cannot have been made by another person.
5. I deny the allegation that I did not witness Leanne Apostolakis' signature on the document, but agree that this was not on 13 June 2007. It would not have been possible for me to witness anyone's signature on 13 June 2007, including that of Mr Apostolakis, as to the best of my knowledge, he was in Sydney.
6. I deny that I did not meet Leanne Apostolakis when she signed the transfer.

[70] The respondent at that time also provided her files to the applicant. She confirmed that her electronic diary from 2007 had been deleted by the firm's IT providers, and provided a letter confirming that fact. She also provided a copy of her hard copy 2006 diary which contained an entry "Conference Apostolakis" at 3 pm on 26 October 2006.

[71] The respondent was cross-examined at some length about her professional experience, the nature of her practice, the circumstances of her taking over Ms Wallis' practice, and the circumstance of her acting for Mr Apostolakis and Ms Dickinson. She was, as noted, cross-examined on the contents of her written response to the applicant dated 28 June 2010. She confirmed that, through Mr Apostolakis' capacity as a finance broker, her firm received a significant number of conveyancing client referrals, estimated at two or three per month, as well as Mr Apostolakis' own conveyancing transactions, which she estimated as 36 files being opened in two and a half or three years of which about 10 actually settled.

[72] She was cross-examined in some detail about the version given in her response about the circumstances of the signing of the subject transfer. In the course of that, the respondent agreed with the suggestion that there were in fact two occasions in 2006 when the respondent had a discussion with Mr Apostolakis about the proposed transfer of his 1/100th interest in the Boundary Road property to Ms Dickinson. She said that on the first occasion he was alone, and told the respondent something about Ms Dickinson having been diagnosed with Alzheimer's Disease. The respondent said, however, that this was not a meeting in her room; it was an encounter at the front door of the office, at which time Mr Apostolakis also showed her a ruby ring he had bought for Ms Dickinson. She was adamant that this was not a formal attendance, and Mr Apostolakis may well have been in the office to see her conveyancing clerk, Ms Coles.

[73] The respondent was cross-examined on the way in which she observed Ms Dickinson presented herself in October 2006. She described Ms Dickinson at that time as being "clingy", "clutchy", "needy", "very reserved", "very shy", and "not forthcoming". She said that Ms Dickinson's presentation in 2006 was completely different to the way in which Ms Dickinson had presented herself before this Tribunal when giving evidence. According to the respondent, in 2006 Ms Dickinson was physically bigger, was hunched over, and looked to her husband to prop her up.

[74] The respondent was then cross-examined about the occasion when Mr Apostolakis and Ms Dickinson attended for an appointment about another matter. This, clearly enough, was the attendance on 26 October 2006. She said they told the respondent

they wanted to do the transfer. The respondent asked one of her reception secretaries to prepare a form of transfer. There was discussion between the respondent and Mr Apostolakis, in Ms Dickinson's presence, about the Alzheimer's diagnosis in the context of this leading to the proposal to implement the transfer of his 1/100th interest to Ms Dickinson. The form of transfer was quickly prepared, and the respondent said that Ms Dickinson signed the subject Transfer in the respondent's sight and presence.

- [75] The respondent confirmed that she did not open a new file for the preparation of the subject Transfer, nor did she make a specific diary note relating to it, saying that the clients' instructions were "on the face" of the transfer itself. The respondent was challenged about her failure to keep a diary note, and expressed her understanding of the desirability of keeping contemporaneous notes. She said, however, that this was a "quick job", and that a transfer of a 1/100th share from one client to the other while they were sitting in front of her and she was witnessing their signatures did not require a file note.
- [76] The respondent did agree, however, that there was no independent record of the content of the meeting recorded in her diary as having taken place on 26 October 2006.
- [77] The respondent reaffirmed her version that Ms Dickinson had signed the subject Transfer in her presence on that day, and flatly rejected suggestions that Ms Dickinson had not signed and was not even present on that occasion.
- [78] The respondent then said that her instructions were to hold the transfer "in abeyance". A valuation for the property had to be obtained, and the transfer was not at that time ready to be signed off for registration. She also said that the form of the subject Transfer at that time did not have any amount shown for the consideration. That was, it seems, to be filled in after the valuation was obtained and the amount of duty payable on the transfer able to be calculated.
- [79] The respondent was then questioned about the circumstances of the subject Transfer being completed and dated in mid-2007 before being sent to Mr Apostolakis in Sydney. Whilst strictly relevant particularly to Charge 2, it is convenient to refer to the passage of cross-examination in which the respondent was asked about the fact that the transferors' signatures on the subject Transfer have an execution date of 13 June 2007. The respondent said that she did not insert that date, but did sign the document as solicitor for the transferee on 18 June 2007. There was then this passage of evidence:

By the time you signed it, the date of the 13th was already inserted, was it not? ---Correct. Well, the – he needed to settle on the 19th of the 6th it's go here in the email. So, if I sent it express post on the 18th, he should have had it on the 19th.

But you accept, don't you, that insofar as the form requires an execution date, that the 13th of June 2007 wasn't the execution date, was it? It was back in October the previous year?---Correct.

You didn't see fit to correct that when you saw this on the form?---No.

Could it be, Ms Williamson, that back in October 2006, when this form was actually signed up – that you let your standards drop and you didn't actually witness Leanne Apostolakis's signature?---No.

Could that be because - - -?---That didn't happen.

Could that be because Tom Apostolakis was a client of value to you and your firm?---No. No one's that much value to compromise my standards.

- [80] It was also suggested to the respondent that she had not in fact witnessed the signature of Ms Dickinson on the documents identified by Mr Heath as document 14 and document 19. In each case, the respondent rejected the suggestion and affirmed that she had in fact witnessed those signatures.

Mr Michael Savas

- [81] Mr Savas is a qualified nurse who has worked in various capacities in that profession, particularly as a psychiatric nurse. Mr Savas' evidence in chief was by way of a statutory declaration dated 17 July 2013, which he affirmed as correct in evidence. He now lives in Greece, and appeared before the Tribunal by telephone for cross-examination.
- [82] Mr Savas first met the respondent in about 1994, when she acted for him in a conveyance. They stayed in contact and became friends. From the late 1990s until he moved to Greece, Mr Savas would occasionally visit the respondent at her office for a coffee with her or her staff and was invited to office functions. Occasionally he voluntarily assisted her with minor tasks around the office.
- [83] He says that he spent more time in the respondent's office in 2006 because his mother was very ill at that time (she passed away in August 2006). The respondent was helping Mr Savas through that difficult period, and he says he relied on her guidance and support heavily at that time.
- [84] As a result of his occasional presence at the respondent's office functions, he had met Mr Apostolakis. He estimated that was in about the early 2000s, and said that he did not know Mr Apostolakis well, but had their Greek heritage in common.
- [85] Mr Savas recalled an occasion in about 2006 when he saw Mr Apostolakis with Ms Dickinson in the reception area of the respondent's office. He said that Mr Apostolakis attempted to introduce his then wife, but "she put her head down and walked straight into [the respondent's] office without acknowledging me". Mr Savas recalled that she looked "frumpy" and had an old-fashioned dress on. He said this was the only occasion he ever met Mrs Apostolakis (as she then was). Mr Savas said he was chatting with the respondent's office staff while Mr Apostolakis and Ms Dickinson met with the respondent. After the meeting, he and Mr Apostolakis went and had coffee at a delicatessen nearby. Ms Dickinson was not with them.
- [86] Mr Savas' statement continued:

9. During our coffee Tom opened up about a number of personal issues, as if he needed to 'unload'. He spoke to me of problems he was facing with his wife and said that she had been diagnosed as suffering from Alzheimer's Disease. Our conversation progressed and he talked about a

property at Carole Park and that he and his wife had come into Jenny's office that day for him to sign that property over to his wife. I recalled expressing to him my surprise that he had property at Carole Park, making the (light hearted) point that it was not a suburb with a great reputation. During this conversation he also talked about his employment with Suncorp and his elderly parents in Melbourne where he wishes to return one day. I would estimate the conversation lasted about 40 minutes.

- [87] Under cross-examination, Mr Savas confirmed that the statutory declaration was his first written record of the conversation he had with Mr Apostolakis. He was adamant that the conversation occurred in 2006, and related that directly to the year his mother died. He confirmed his description of the clothes worn by the woman accompanying Mr Apostolakis, describing her appearance as "frumpy".
- [88] Mr Savas made appropriate concessions under cross-examination. For example, whereas in his statement he had referred to Mrs Apostolakis going home while he and Mr Apostolakis went for coffee, he conceded that he had assumed that she had gone home, and it was quite possible that she had gone shopping. He also confirmed that he took what he had been told by Mr Apostolakis at face value. Mr Savas had no independent means of verifying whether or not Mrs Apostolakis was suffering from Alzheimer's Disease. This was what Mr Apostolakis had told him.
- [89] Importantly, despite being challenged as to the extent of his recollection, Mr Savas was firm in his evidence about what he had been told by Mr Apostolakis about the reason for attending at the respondent's office that day:

Could it be said that he said something to the effect that he was intending to sign over this property to his wife?---Yes.

Could you rule that out?---That's why he was said there, the – for the house in Carole Park, and that's why we were laughing about Carole Park and he said, well, that's [indistinct] area, and I said, I didn't think that he would own a house in Carole Park because it had a bad reputation.

Well, I'm just suggesting to you that with the passage of time, you couldn't be sure that the content of that account of that conversation was accurate, could you?---Yes, because I used to live in Forest Lake, which was next to Carole Park, and that's why we were laughing about it.

Well, okay. You spoke about a property at Carole Park and you made a joke about the suburb. Correct?---Yes.

Is that about the extent of it?---And that he was signing over a house that he had there to give his wife.

He was signing over the house to his wife?---Yeah.

Is that what happened? Did he tell you on this occasion- - -?---I don't know.

Did he tell you on this occasion, 'I'm signing over this house to my wife'?---Yes. He said, 'I'm getting rid of the house. I'm going to give it – I'm signing it over, and that's why I've gone to Jenn's, to sign it over to my wife.'

...

Can I suggest to you that perhaps your recollection of that is not accurate, not clear?---No, it is clear to me. That's the conversation I had with Tom.

Did you have any conversations with Tom after that?---No.

Mr Nick Mamara

- [90] Mr Mamara is a real estate agent and the principal of Graceville Realty. His evidence in chief was by way of a statutory declaration dated 23 March 2011, which was confirmed as correct in an affidavit by him affirmed 18 January 2018.
- [91] Mr Mamara has been a licenced real estate agent since 1994. He knew both Mr Apostolakis and Ms Dickinson, and was appointed as selling agent for two of their properties. He exhibited to his declaration the contracts of sale of those properties. Each of those contracts appears to have been signed by both Mr Apostolakis and Ms Dickinson. In relation to each of those contracts, Mr Mamara said, "Both Tom and Leanne were present and I witnessed both their signatures."
- [92] The signing pages on these contracts are document 16 and document 17 in Mr Heath's report.
- [93] Under cross-examination, Mr Mamara confirmed that he had had contact with both Mr Apostolakis and Ms Dickinson, and this had occurred both in his office and also their home in Thomas Street, Sherwood.
- [94] Despite vigorous challenge under cross-examination, Mr Mamara was adamant about his recollection of the circumstances of the signing of one of the contracts (dated 18 April 2007), and gave specific details of the negotiations and the travelling backwards and forwards he had to undertake between the vendors and the purchaser to obtain a final form of contract. He gave specific detail about the purchaser under that contract, and it was clear that this person had made a particular impression on Mr Mamara which left him with a particular memory of the transaction. He was emphatic that Ms Dickinson had signed the contract in front of him, and was equally emphatic that he did not sign a contract as witness unless the principal signature had actually occurred in front of him. He said expressly that the only time he witnessed signatures was when a person had physically signed the document in front of him.

Ms Kathryn Coles

- [95] Ms Coles' evidence in chief was by way of an affidavit sworn 18 January 2018, and she appeared before the Tribunal for cross-examination.
- [96] Ms Coles has been employed in the respondent's firm as a senior conveyancing clerk since August 2005. She is also a Justice of the Peace. She confirmed that she had witnessed the "Leanne Apostolakis" signature of Ms Dickinson on numerous Titles Office documents, including those which were document 13 and document 15 to Mr Heath's report. She knows Ms Dickinson, having first met her after Ms Coles commenced employment with the respondent.
- [97] In relation to the subject Transfer, Ms Coles said that she did not insert the "13/7/07" dates on that document.

[98] Ms Coles deposed to the following:

8. I recall a day when Thomas Apostolakis and Leanne Apostolakis were at the office in Jennifer Williamson's room. I recall that Leanne was dressed in a hideous blue floral print dress with white flowers. I have not seen that dress before or since on her. I recall that after they left Jennifer Williamson's office, Jennifer spoke to me outside of her room, which I had been in and out of during the meeting with Tom and Leanne, and Jenny said to me words to the effect that 'Tom said Leanne had early onset of Alzheimer's'.

...

13. I have been a Justice of the Peace for over 15 years. During this time I have never purported to witness a signature that had not been placed on the document in my sight and presence. I have been asked to do so in the past and when I have refused I have been abused and still refused to witness a signature that was not done in my sight and presence. I say that Thomas Apostolakis has never asked me to witness a signature that was not signed in my sight and presence.

[99] Under cross-examination, Ms Coles confirmed that she had had regular dealings with Mr Apostolakis and Ms Dickinson. The context of her dealings with Ms Dickinson was witnessing her signature on documents.

[100] In relation to the documents identified in Mr Heath's report as document 13 and document 15, Ms Coles gave the following evidence:

Well, I think we're finished with those documents that are now in front of you. There are a couple of documents that I need to show you, and Mr Kelly's affidavit would be the best vehicle for that. I think the pages are numbered in the bottom right-hand corner. Could you go to page 195. It's Mr Heath's document 13. Just have a look at that transfer document. You see you are shown as the witnessing person for two signatures on 28 March 2007?---Yes.

I just want to suggest to you so far as the signature of Leanne Apostolakis is concerned that that is not her signature and therefore she did not sign that in your presence as the form indicates?---She would have been in my presence and, therefore, I signed as the witnessing officer.

It's a very long time ago. You wouldn't suggest any particular recollection of this occasion, would you?---Well, I do not witness people's signatures on any documents unless they are in my presence.

Yes. I understand you say that. I asked you if you had any particular recollection of this incident?---No. I do not.

Could you go forward two pages to page 197? It's Mr Heath's document 15. You are shown as the witnessing officer of Ms Apostolakis' signature on the 16th of May 2007. I just suggest to you, likewise, that you did not in fact witness that signature by her signing in your presence?---She was in my presence.

Do you have any particular recollection of that occasion?---No. I do not.

No. You – you’re relying on what you’ve already told us your practice is; correct?---Correct.

Could it be that for this client you just, for some reason, allowed your standards to drop?---Absolutely not.

- [101] In re-examination Ms Coles was asked whether she had ever, in the course of her practice as a senior conveyancer or otherwise signed a document as a witness without having seen that signature placed on the document, to which she responded bluntly “Never. No.”

Determination of Charge 1

- [102] Having set out in considerable detail the evidence relied on by the parties, it is clear that the ultimate question for the Tribunal is whether the applicant has proved, to the requisite standard, that the relevant “Leanne Apostolakis” signature as transferor on the subject Transfer was not written by Ms Dickinson and that the respondent falsely placed her signature as witness on that document.

- [103] Whilst it is for the applicant to prove its case on the balance of probabilities, the potential consequences for the respondent of making the findings urged by the applicant are very serious, and accordingly the Tribunal would need to be satisfied to a high degree in order to make those findings.

- [104] In the view of the Tribunal, Ms Dickinson’s evidence needs to be approached with considerable caution. Despite the positive and confident demeanour with which she presented before the Tribunal, it is clear that Ms Dickinson suffered considerably in the fallout from the separation from her ex-husband. She became directly and indirectly embroiled in various protracted disputes which had their genesis in financial and property dealings undertaken by her ex-husband during their marriage. These dealings and disputes affected her directly, not least because they impacted on her ability to retain, or recover, the benefit of the insurance payouts which had been made to her. The involvement of Henderson in all of this was unexplained, but he clearly had a significant role. So much is clear at least from the fact that on 22 January 2010, Ms Dickinson wrote to the applicant referring to a question raised by the applicant about the validity of a Power of Attorney she had given to Henderson. In that letter she wrote:

As I currently suffer from Chronic Fatigue Syndrome and am in receipt of a Disability Pension, I have difficult in absorbing information and short term memory loss. As such, I hereby authorise Mr Henderson to make this complaint on my behalf.

- [105] But of even greater concern in relation to the weight to be given to Ms Dickinson’s evidence is the welter of contemporaneous medical evidence which demonstrates the significant degree of impairment under which she was suffering during the time in question. Importantly, the evidence is not limited to saying that she suffered from some memory degradation. She had impaired cognitive functioning in a number of memory and executive domains. Amongst other things, her attentional skills were adversely affected.

- [106] Ms Dickinson properly conceded having no memory of transactions concerning the Boundary Road property. That concession was completely consistent with the

medical evidence. At base, her relevant evidence before this Tribunal was to the effect that the “Leanne Apostolakis” signature on the subject Transfer was not hers and was a forgery. This was an allegation first made by Henderson, without previously having consulted her. It was also an allegation which she did not make to the police when she was interviewed by them.

- [107] Other indicators include the Tribunal’s hesitation, in light of the police records, to unquestioningly accept Ms Dickinson’s uncorroborated assertion that she first saw the subject Transfer in 2008, and the fact that her evidence that she had told the applicant that her signature on the tenancy agreement was a forgery cannot be accepted in light of her own concession under re-examination and Mr Edwards’ evidence.
- [108] All of these factors impact adversely on Ms Dickinson’s credibility, and the Tribunal is unable to place any great weight on her evidence.
- [109] Mr Heath’s meticulous examination of the documents which had been provided for examination resulted in him identifying two groups on which the signatures had, in his opinion, been written by different authors. The subject Transfer fell into the larger group, which he said were “false signatures” written by the same person. His designation of them as “false signatures” depended on his acceptance of the smaller group containing “true signatures”, or what he described as “specimen signatures”. Yet, as he accepted, he had based this on an assumption that the “specimens” had been written by the designated writer, i.e. Ms Dickinson.
- [110] True it is, as was submitted by counsel for the applicant, that there may be reason to doubt the veracity of several of the signatures in the large group on the basis that Ms Dickinson was out of the jurisdiction on the purported dates of execution of those documents.
- [111] But even with that acknowledgment, the probative value of Mr Heath’s evidence for the applicant’s case was significantly eroded by the concessions very properly made by Mr Heath at the end of his cross-examination to the effect that if it was accepted that any of the other signatures in the larger group was genuine that it followed that the signatures on the subject Transfer were also genuine. In this regard, there was compelling evidence before the Tribunal from Mr Mamara, Ms Coles and, indeed, the respondent pointing to the authenticity of the “Leanne Apostolakis” signature on other documents in the larger group.
- [112] The Tribunal accepts each of Mr Mamara and Ms Coles as credible witnesses of truth.
- [113] Mr Mamara presented as a forthright person who was not shaken under cross-examination. Importantly, in respect of one of the contracts which bore the “Leanne Apostolakis” signature, he gave a credible and detailed explanation as to how it was that he recalled the circumstances of the signing of that contract, despite the considerable period of time which had since elapsed. The Tribunal accepts Mr Mamara’s evidence that he witnessed Ms Dickinson sign each of the documents identified by Mr Heath as document 16 and document 17.
- [114] The Tribunal also accepts the evidence of Ms Coles. Although she is, and has for a considerable time been, employed by the respondent, Ms Coles was not, and was

not suggested to be, in any way partisan. She was an impressive witness who presented as an honest professional. The Tribunal accordingly accepts Ms Coles' evidence that she witnessed Ms Dickinson sign each of the documents identified by Mr Heath and document 13 and document 15.

[115] Those findings alone are sufficient, on the basis of Mr Heath's concession, to cast such doubt on the case advanced by the applicant as to warrant the dismissal of Charge 1.

[116] In light of those findings, it is not necessary to make a finding about the authenticity of the signature on the tenancy agreement (document 1), but it should be recorded that Ms Dickinson's failure to identify it as a forged signature when she supplied the document to the applicant is a matter which would not have bolstered the applicant's case.

[117] In any event, the Tribunal accepts the respondent's version that Ms Dickinson attended with her then husband at the respondent's office on the afternoon of 26 October 2006 and that both she and Mr Apostolakis signed the subject Transfer in the presence of the respondent.

[118] The respondent was strongly challenged under cross-examination, but her version was credible and was consistently given credibly. It contrasted with Ms Dickinson's inability to recall anything about the dealings with the Boundary Road property.

[119] The respondent's version is also supported by the evidence of Mr Savas and Ms Coles. Mr Savas was a completely credible witness, who was able to explain his reason for recalling his presence at the respondent's office and the discussion he subsequently had with Mr Apostolakis. It is also notable that both Mr Savas and Ms Coles had specific recollection of Ms Dickinson's attire and appearance on that day.

[120] In view of the Tribunal's acceptance of the respondent's version, the credibility of the other witnesses called for the respondent, the concessions made by Mr Heath, and the minimal weight which can be attached to Ms Dickinson's evidence, it is clear that the case on Charge 1 cannot be made out to the requisite standard.

[121] Charge 1 will be dismissed.

Charge 3

[122] In light of the Tribunal's acceptance of the respondent's version of the circumstances of the signing of the subject Transfer, Charge 3 cannot be maintained, and the applicant's counsel effectively accepted as much.

[123] Charge 3 will be dismissed.

Charge 2

[124] The terms and particulars of Charge 2 are set out above. On any view, particulars 2.5 and 2.6 cannot be maintained because the subject Transfer was never registered, or even lodged for registration.

[125] Counsel for the respondent resisted Charge 2 on the basis that the charge, by its terms, averred that the respondent has “allowed” a transferor’s signature on the subject Transfer to be incorrectly dated. Mr Page QC, who appeared for the respondent, submitted that the contention that the respondent “allowed” the incorrect date implied a positive action on the respondent’s part that she instructed someone to insert the incorrect date or that she put it in the hands of someone to insert the incorrect date.

[126] The Tribunal does not accept that the word “allow” connotes the positive action contended for by the respondent. Allowing something to occur is analogous to permitting something to occur. Indeed, it has been said that “allow” is at least as wide as “permit” if not wider.³

[127] Even on the respondent’s own version, the sequence of events was:

- (a) On 26 October 2006, the subject Transfer was signed by Mr Apostolakis and Ms Dickinson and deliberately left undated, pending valuation for stamp duty calculation;
- (b) On 12 June 2007, Mr Apostolakis sent an email to the respondent’s firm asking them to “urgently transfer my interest” in the Boundary Road property to Ms Dickinson because he needed to use it as security for a loan which was settling the following week;
- (c) Ms Coles prepared a fresh Form 1 Transfer and sent it to Mr Apostolakis;
- (d) In the meantime, the respondent recalled that the subject Transfer had already been prepared and signed and, according to the respondent, “it was decided” that the subject Transfer would be used. It is clear from her evidence that the respondent was a party to this decision;
- (e) On 18 June 2007, the necessary valuation was received. On that day, the subject Transfer was stamped and the respondent signed the document as the transferee’s solicitor with the date 18 June 2007;
- (f) When the respondent signed the subject Transfer as the transferee’s solicitor on 18 June 2007, the execution dates of “13/6/07” had been handwritten next to the signatures of the (putative) transferors by some unidentified person in the respondent’s office. The respondent saw this. She knew that the (putative) transferors had actually been signed in October 2006. But she did not correct what she must have known to be incorrect execution dates on the subject Transfer;
- (g) The subject Transfer bearing those incorrect execution dates was then sent by the respondent to Mr Apostolakis under cover of a letter dated 18 June 2007 from the respondent which relevantly stated: “We attach hereto Transfer ready for registration.”
- (h) The subject Transfer was not lodged for registration, but sat on a file until it was uncovered, apparently, by Henderson.

³ *De Kuyper v Crafter* [1942] SASR 238, per Richards J at 243.

[128] In the view of the Tribunal, by knowingly not correcting the execution dates on the subject Transfer, the respondent “allowed” the incorrect dating of those signatures.

[129] It is true that the subject Transfer evidenced (or purported to evidence) a small transaction – a transfer of a 1/100th interest in a property for a small amount of consideration and on which something barely greater than nominal stamp duty would have been payable. But the magnitude of a transaction does not inform the degree of rectitude required of a legal practitioner.

[130] In *Attorney-General v Bax*,⁴ McPherson JA said that the act of falsely backdating documents is “plainly a serious matter”, explaining:⁵

The ordinary presumption is that, unless there is affirmative evidence to the contrary, a document is taken to have been executed on the date it bears. Such evidence is often difficult to obtain, particularly after a lapse of some time from the event. The presumption is therefore one on which business is habitually conducted and for that reason, among others, it is plainly important to maintain its integrity so far as possible.

[131] His Honour then went on to give examples of a number of ways in which the date on a document is critical, including determining priorities and the rights of creditors in insolvent estates.

[132] Counsel for the applicant in this case contended, in effect, that the particular vice in the post-dating of documents such as the subject Transfer lay in the potential to postpone timely payment of transfer duty on the document and to avoid the imposition of penalties for late lodgement or late stamping.

[133] The standard Form 1 transfer, such as was used in this case, requires the “execution date” to be noted next to each signature. That, clearly enough, refers to the date on which the document is actually executed by the signing party.

[134] However, this was not, and was not contended to be, a case like *Bax* in which the solicitor deliberately backdated documents with an intention to mislead creditors. Nor was it a case like *Legal Services Commissioner v Sorban*⁶ where a solicitor fabricated and backdated an email to give the impression that it had been sent when it actually had not, and was then found guilty of professional misconduct.

[135] This was, rather, a case of sloppy practice. As already noted, the subject Transfer was in the wrong form to achieve the intended transaction. And it seems clear enough from the cross-examination of the respondent that she considered that the subject Transfer did not become a document liable for transfer duty under s 16 of the *Duties Act 2001* until the respondent signed it as the solicitor for the transferee.⁷ On her view, until such time as she signed it as the solicitor for the transferee, she was holding the document “in abeyance”. That goes to explaining why her focus was on the date she signed it as solicitor for the transferee, rather than the true “execution date” of the transferor – on the respondent’s understanding, the document only became dutiable when the respondent signed it.

⁴ [1999] 2 Qd R 9; [1998] QCA 089.

⁵ At 13.

⁶ [2009] LPT 5.

⁷ Transcript 3-15.

- [136] In fairness, the respondent may well not have been on completely the wrong track with her reasoning. If the transfer document had been prepared in the proper form and signed only by Mr Apostolakis as transferor, then it may well have been the case that, as the transfer would have been the only document evidencing the transaction, the liability to pay transfer duty would only have arisen when the form of transfer was signed by the solicitor for the transferee.⁸
- [137] But whether or not the respondent was correct in her understanding of the time when the liability for transaction duty arose, or even whether there was some licit means of achieving the apparent objective of the parties, is not to the point. What is relevant is that, in light of her explanation, it is clear that the respondent's conduct in "allowing" the wrong execution dates to remain on the subject Transfer was not motivated by any intention to mislead any party or to deceive the revenue authorities.
- [138] The applicant, quite properly, did not contend that a finding of "professional misconduct", within the meaning of that term as defined in s 419 of the *LPA*, ought be made in this case. At worst, it would be an instance of "unsatisfactory professional conduct". That term is defined in s 418 of the *LPA* as follows:

418 Meaning of unsatisfactory professional conduct

Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner."

- [139] On that inclusive definition, the question then becomes whether the "allowing" of the wrong execution dates in the particular circumstances described above, and with the practitioner's explanation that, in effect, the subject Transfer did not become operative and dutiable until she had signed it as solicitor for the transferee, was conduct which fell short of the "standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner".
- [140] "Competence" is concerned with the adequacy of a practitioner's qualifications and whether they have the capacity and skills to perform their role to a reasonable standard. "Diligence" goes to the industriousness and efficiency of the practitioner.
- [141] It is not suggested in this case that the respondent was not diligent.
- [142] Apart from this incident, there has been no question raised as to the respondent's competence; on the contrary, her general competence as a practitioner may be inferred from her lengthy time in practice with no professional complaints apart from this.
- [143] The question then is whether this one incident sufficiently demonstrates a lack of competence such as to warrant a finding of unsatisfactory professional conduct.

⁸ See s 16 and Schedule 2 of the *Duties Act* 2001.

[144] Not every isolated instance of error, lack of attention to detail or sloppy practice will lead to a finding of unsatisfactory professional conduct. As Wilson J said *Legal Services Commissioner v Bone*:⁹

Both s 418 and s 420 of the *LPA* contained flexible tests, such that not every error which a practitioner may make will constitute unsatisfactory professional conduct. Decided cases suggest, rather, that a finding of that kind will usually involve repeated errors or a significant departure from accepted standards of competence.

[145] In *Legal Services Commissioner v Laylee & Anor*,¹⁰ Thomas J observed:¹¹

If every negligent act or error made by a practitioner were to be categorised as unsatisfactory professional conduct, disciplinary prosecutions would follow every claim against a legal practitioner for professional negligence, for which every practitioners must be insured.

[146] Having regard to these, and other relevant authorities such as *Legal Services Commissioner v McClelland*,¹² this Tribunal agrees with a recent observation that the authorities “suggest that there needs to be substantial and/or consistent failure to reach or maintain a reasonable standard of competence and diligence in order to attract sanction for unsatisfactory professional conduct”.¹³

[147] Every case depends on its own facts and is determined on its own merits. In the very particular and isolated circumstances of this case, the Tribunal is not satisfied that the respondent’s conduct amounted to unsatisfactory professional conduct. It may have been somewhat sloppy practice. It may have been somewhat misguided. But it does not bespeak repeated erroneous conduct or such a significant departure from accepted standards of competence as would warrant a finding of unsatisfactory professional conduct.

[148] Accordingly, Charge 2 will be dismissed.

[149] All of that being said, this case serves as a timely reminder of the need for legal practitioners to check documents carefully, and to be scrupulous when attending to details such as the insertion of correct execution dates.

Conclusion

[1] The orders of the Tribunal are as follows:

1. The discipline application filed 29 April 2015 is dismissed.
2. The Tribunal will hear the parties as to costs.

⁹ [2013] QCAT 550 at [65] and omitting references.

¹⁰ [2016] QCAT 237.

¹¹ At [40].

¹² [2006] LPT 13.

¹³ R Brittan “A Measure of Responsibility”, March 2019, Proctor at p 21.