

## *Legal Profession Board of Tasmania*

**Medium Neutral Citation:** **Aditya Sethi v Peter Neil Slipper**  
**[2020] LPBT 86**

**Heard:** **28 September 2020**

**Determination date:** **25 November 2020**

**Jurisdiction:** Legal Profession Board, Tasmania

**Before:** Mr K Pitt QC (Chairman)  
Mr G Jones (Legal Member)  
Mr A Mihal (Legal Member)  
Mr D Lewis (Legal Member)  
Ms H Francis (Lay Member)  
Ms M Hale (Lay Member)

**Determination:** The Board is satisfied that the Practitioner's conduct in relation to allegation 1 of the complaint, as set out in the Murray's Case letter, amounts to unsatisfactory professional conduct, and the Board makes the following determinations under s.456 (7) of the Act:

1. That the Practitioner be reprimanded.
2. That the Practitioner make a written apology in terms approved by the Board within 30 days of the date of the Board's determination.

That allegation 2 of the complaint, as set out in the Murray's Case letter, be dismissed pursuant to section 451(a) of the Act as there is no reasonable likelihood that the practitioner will be found guilty of either unsatisfactory professional conduct or professional misconduct.

**Catchwords:** **PROFESSIONS AND TRADES- Lawyers- Complaints and Discipline- Professional misconduct and unsatisfactory professional conduct- Implied threat in connection with fee recovery – inappropriate conduct -Barrister seeking payment of monies before services delivered**

**Legislation:** *Legal Profession Act 2007 (Tas)*  
*Legal Profession (Barristers) Rules 2016*

**Case(s) Referred to:** *Murray v Murray (1960) 33 ALJR 521*  
*Brigginshaw v Brigginshaw (1938) 60 CLR 336 at 362*  
*Law Society of Tasmania v Turner and Kench [2001] TASSC 129*

**Category:** Determination

**Parties:** Aditya Sethi (Complainant)  
Peter Neil Slipper (Practitioner)

**File Number:** 2020/86

## REASONS FOR DETERMINATION

1. This matter comes to the Board by way of a complaint received on 12 July 2019.
2. The complaint was thereafter investigated pursuant to section 440 of the *Legal Profession Act 2007* ('the Act') and on 21 May 2020, a letter was forwarded to the Practitioner in accordance with the findings in *Murray v Legal Services Commissioner* (1999) 46 NSWLR ('the Murray's Case Letter') outlining the particularised allegations of the complaint, the particulars of the subject matter of the complaint, and the evidence the Board intended to rely upon. The Practitioner provided responsive submissions to the letter and annexures through his legal representatives on 29 June 2020.
3. The Murray's Case Letter set out the relevant facts reproduced below based on the evidence obtained in the investigation.

### Background

4. The Complainant and his friend, Mr. S, were the subject of an Application for Restraint Order.
5. The Complainant and Mr. S were concerned about the possibility of a conviction being recorded against them if the Application was accepted by the Court as those convictions may have had implications for their applications for a subclass 489, Skilled Regional (provisional) visa.
6. The Complainant and Mr. S were referred to the Practitioner.
7. On 6 April 2019 at 7:10am, the Practitioner confirmed he would act for the Complainant.
8. On 24 April 2019, the Complainant and Mr. S, accompanied by their uncle HG, met with the Practitioner at Salamanca Chambers.
9. On the same date, the Complainant paid \$200.00 cash to the Practitioner. The Complainant did not receive an invoice for services prior to the payment nor did he receive a receipt for the payment.
10. On 25 April 2019, the Practitioner sent a text message to the Complainant acknowledging the payment of \$200.00 of the \$250.00 fee agreed and advising a balance was due for the meeting on 24 April 2019.
11. On 29 April 2019 at 5:24am, the Practitioner sent a text message to the Complainant requesting he and/or Mr. S pay a further \$50.00 for the balance of the fee for the meeting on 24 April 2019.
12. On the same date (29 April 2019) at 5:27am, the Practitioner also sent a text message to Mr. S requesting he and/or the Complainant pay a further \$50.00 for the balance of the fee for the meeting on 24 April 2019.

13. On that date (29 April 2019) at 6:57pm, the Complainant paid a further \$50.00 via EFT for the balance of the fee for the meeting as requested by the Practitioner.
14. On 5 May 2019 at 3:26pm, the Practitioner sent a text message to HG requesting the following:

‘I’ve already done work vastly in excess of what I’ve charged it will be necessary to lodge \$396.00 (\$360.00 plus GST) to my account for the appearance on the 15/5 as soon as possible.’
15. On 5 May 2019 at 3:27pm, the Practitioner forwarded the text message referred to at paragraph 14 to the Complainant requesting he and/or Mr. S pay \$396.00 into his bank account for legal fees.
16. On 6 May 2019, the Complainant paid \$396.00 via EFT into the Practitioner’s bank account. The Complainant did not receive an invoice for services prior to payment nor did he receive a receipt for payment of the \$396.00.
17. On 13 May 2019, the Practitioner advised the Complainant via text message that he estimated his fees to appear at a conciliation conference, should the matter be referred to one, would be \$650.00 in total.
18. Also on 13 May 2019, the Complainant sent a text message to the Practitioner indicating his concern about being able to pay the Practitioner’s legal fees.
19. That same day the Practitioner responded to the Complainant via text message advising the Complainant the fee ‘for tomorrow’, meaning his appearance at the Magistrates Court on the Application for Restraint Orders scheduled for 15 May 2019, was already paid.
20. On 15 May 2019, the Practitioner appeared in the Magistrates Court for the Complainant and Mr. S on the Applications for Restraint Orders.
21. The Applications were referred to a conciliation conference listed for Tuesday, 16 July 2019.
22. On 16 May 2019 at 7:39am, the Practitioner sent a text message to the Complainant and Mr. S requesting they pay \$650.00 for legal fees for the Practitioner to appear at the conciliation conference as discussed on 13 May 2019.
23. On 16 May 2019, the Complainant sent a text message to the Practitioner querying the Practitioner’s request for \$650.00 and seeking clarification about what was included in that fee.
24. In the text message referred to in paragraph 20, the Complainant also requested a copy of the invoices for the initial consultation on 24 April 2019 and the hearing on 15 May 2019.
25. The Practitioner responded to the Complainant’s query about what the \$650.00 fee included by forwarding his previous text message of 13 May 2019 which stated:

'The \$650 is what my charge is for the conciliation regardless of how long it takes on the day; usually it is more than a couple of hours and then usually involves also an appearance for the Magistrate to endorse the result of the conciliation. (\$650 is the all up total)'

26. On 16 May 2019 at 9:18pm, the Complainant sent a text message to the Practitioner advising he and Mr. S had not yet received the tax receipt for the 'hearing' at the Magistrates Court the previous day.
27. On 19 May 2019 at 12:20pm, the Complainant sent a text message to the Practitioner making a further request for a receipt for the fees paid. The Complainant also requested to speak with the Practitioner about the fee quoted for the conciliation conference.
28. On 19 May 2019, the Practitioner responded to the Complainant's message of 16 May 2019 via text message with the following statement:

'What do you want to discuss about the very moderate fee I have advised about the conciliation?'
29. On 21 May 2019 at 3:34pm, the Practitioner sent a text message to the Complainant seeking confirmation from the Complainant when the funds, specifically the \$650.00, was transferred by the Complainant and/or Mr. S.
30. On the same day, the Complainant responded to the Practitioner via text message acknowledging 'our hearing is in July, so we will make the payment before that anytime'.
31. On 22 May 2019 at 12:28pm, the Practitioner sent a text message to the Complainant, Mr. S and HG requesting the payment of the \$650.00 'as soon as possible'.
32. On 23 May 2019, the Practitioner sent a text message to the Complainant which contained the following query - 'when will my fee (\$650.00) be paid?'
33. On 24 May 2019 at 12:48pm, the Practitioner sent a text message to the Complainant requesting the Complainant advise him when the money had been paid.
34. On 2 June 2019 at 8:03am, the Practitioner sent a text message to the Complainant seeking confirmation about whether the money had been deposited.
35. One month later on 2 July 2019, the Practitioner sent a text message to the Complainant requesting confirmation when the \$650.00 had been deposited.
36. On 11 July 2019 at 4:46am, the Practitioner sent a text message to the Complainant seeking confirmation on whether the Complainant and/or Mr. S had deposited the fees (\$650.00).
37. On 11 July 2019 around 11:39am, the Practitioner reiterated his request for confirmation about the payment of fees to the Complainant via text message.

38. Also on 11 July 2019, the Practitioner sent a text message to the Complainant requesting the \$650.00 be paid by the Complainant and/or Mr. S, asserting work in excess of the value paid to date had already been carried out.
39. On 12 July 2019 at 6:44am, the Complainant advised the Practitioner that he and Mr. S had engaged an alternate barrister to appear for them at the conciliation conference on 16 July 2019.
40. On the same morning, the Practitioner responded to the Complainant via text message to acknowledge the termination of retainer and to reiterate his request for the \$650.00 fee as he had done more than that value of work in preparation.
41. Also on 12 July 2019, the Practitioner sent a text message to the Complainant as follows:  
  
    'Well please advise when my fees are paid. You will have to pay both my fees and those for your new lawyer but that is a matter for you.'
42. Later that morning, the Practitioner advised the Complainant via text message he would have to attend court on 16 July 2019 to formally withdraw from acting for the Complainant and Mr. S.
43. The Complainant responded via text message to confirm the Practitioner ought withdraw and he would advise his new lawyer to take such steps.
44. The Practitioner responded via text message to confirm he would need to withdraw and made the following request:  
  
    'please also advise when fees are paid so I won't have to take the matter further.'
45. Also on 12 July 2019 at 12:19pm, the Practitioner sent a text message to Mr. S acknowledging the termination of his retainer and advising he would send an invoice for fees as he had already carried out work 'well in excess of the quoted fee'.
46. On 13 July 2019 at 11:42pm, the Practitioner sent a text message to the Complainant and Mr. S together with an invoice requesting the payment of the \$650.00 'to my costs of and incidental acting further on your behalf on your behalf [sic] in this matter; preparation for conciliation and numerous communications back and forth'.
47. On 15 July 2019 at 10:03pm, the Practitioner sent a text message to HG in relation to the \$650.00 sought by the Practitioner. The text message made the following statement:  
  
    '...I'm inclined to write to the Minister for Home Affairs as I'm not convinced we need people like these guys in the country.'
48. On 16 July 2019 at 3:36am, the Practitioner sent a further text message to HG stating:  
  
    'I thought I would let you know that I have decided not to write to the Minister for Home Affairs...'

49. On 17 July 2019 at 11:54am, the Complainant sent an email to the Practitioner requesting itemised invoices for 'the money [we] already paid both in cash and in [the Practitioner's] account, and the money demanded for the services, never been delivered.'
50. On 17 July 2019 at 1:37pm, the Practitioner sent an email to the Complainant entitled 'Outstanding invoice' and enclosing his text message of 13 July 2019, of which included the Practitioner's invoice for \$650.00 for legal fees.
51. On 23 July 2019 at 2:06pm, the Practitioner sent a text message to HG stating the following:

'[The Complainant] and [Mr. S] haven't paid my invoice yet although [the Complainant] asked for a copy of it. I don't wish to file in the court for recovery but will of course. Can you please chase them and let me have a timeframe?'
52. The Practitioner maintained his claim for the \$650.00 for legal fees.

### The Complaint

53. The particulars of the complaint allegations were provided to the Practitioner in the Murray's Case Letter as reproduced below and referred to in this determination as Allegations 1 and 2 (internal paragraph numbers adjusted to accord with paragraphs in this determination):
  1. **The Practitioner inappropriately sent a text message to the Complainant's uncle, HG, which contained an indirect threat to the Complainant.**
    - 1.1 At all material times the Practitioner was an Australian legal practitioner and held a local practising certificate entitling him to act as a barrister.
    - 1.2 At all material times the Practitioner acted for the Complainant in respect to an Application for a Restraint Order.
    - 1.3 Rule 8 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* [NSW], adopted in Tasmania by Rule 5 of the *Legal Profession (Barristers) Rules 2016*, prohibits barristers from engaging in conduct which is:
      - a) *Dishonest or otherwise discreditable to a barrister,*
      - b) *...*
      - c) *Likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute.*
    - 1.4 A practitioner's general law obligations include duties:
      - 1.4.1 to be honest and courteous in all dealings in the course of legal practice;
      - 1.4.2 to ensure that the manner and tone of all correspondence is appropriate;
      - 1.4.3 to conduct themselves in an adult fashion; and
      - 1.4.4 to abide by client confidentiality obligations.
    - 1.5 By reason of sending the [text message referred to in paragraph 47 above], the Practitioner was:
      - 1.5.1 making an indirect threat to the Complainant knowing the Complainant had concerns about the effect a negative outcome from the Application for Restraint Order may have on his and BS' visa applications;

- 1.5.2 attempting to indirectly intimidate the Complainant and/or BS to pay the \$650.00 for legal fees; and
    - 1.5.3 suggesting a preparedness to breach his obligations to his client's confidentiality.
  - 1.6 [On 16 July 2019 at 3:36am, the Practitioner sent a further text message to HG retracting the statement referred to at paragraph 44 stating:  
*'I thought I would let you know that I have decided not to write to the Minister for Home Affairs...'*]
  - 1.7 Despite having retracted the statement, by the Practitioner's conduct referred to in paragraph 1.5:
    - 1.7.1 the Practitioner breached the requirements of Rule 8 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* [NSW] and by extension the *Legal Profession (Barristers) Rules 2016*.
    - 1.7.2 the Practitioner failed to meet the obligations referred to in paragraph 1.4, or one or more of those obligations; and/or
    - 1.7.3 the Practitioner's conduct 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.
2. **The Practitioner requested money for legal fees in advance of work to be conducted.**
  - 2.1 [At all material times the Practitioner was an Australian legal practitioner and held a local practising certificate entitling him to act as a barrister].
  - 2.2 [At all material times the Practitioner acted for the Complainant in respect to an Application for a Restraint Order].
  - 2.3 Section 240 of the *Legal Profession Act 2007* provides that:  
*A barrister is not, in the course of practising as a barrister, to receive trust money.*
  - 2.4 Rule 13 of the *Barrister Rules* reiterates the Act in relation to rules around barristers and trust money stating:  
*A Barrister must not, subject to rules 14 and 15:...*  
*(I) hold, invest or disburse any funds for any other person.*
  - 2.5 Paragraph 22 of the Tasmanian Bar '*Direct Access Guidance Note 2019*' reiterates the pre-existing barrister's obligation not to hold funds for fees in advance of providing services.
  - 2.6 [On 13 May 2019, the Practitioner advised the Complainant via text message that he estimated his fees to appear at a conciliation conference, should the matter be referred to one, would be \$650.00 in total].
  - 2.7 Following the initial quote, the Practitioner made requests for \$650.00 as referred to in paragraphs 26 and 28 (above), requests which were made the day after the Practitioner appeared at the Magistrates Court on the Application for Restraint Orders and two months prior to the scheduled conciliation conference.
  - 2.8 In the circumstances the Practitioner knew, or ought to have known, that by making the requests for the \$650.00 on 16 May 2019 there was a reasonable likelihood the Complainant and/or BS would make the payment in advance of work being conducted.
  - 2.9 In the Practitioner's text messages referred to in paragraphs 17, 25 and 28 (above), the Practitioner specifically refers to the \$650.00 being the fee for him to appear for the Complainant and BS at the conciliation conference.



2.10 The Practitioner requested the Complainant and/or BS pay \$650.00 on the following occasions, after the initial request but still in advance of the conciliation conference:

2.10.1 21 May 2019

2.10.2 22 May 2019

2.10.3 23 May 2019

2.10.4 24 May 2019

2.10.5 2 June 2019

2.10.6 2 July 2019

2.10.7 11 July 2019

2.10.8 12 July 2019

2.10.9 13 July 2019

2.11 The Practitioner made the above requests in circumstances where he knew, or ought to have known, such a request indicated an expectation or intention that such monies would be paid in advance of 16 July 2019.

2.12 The Practitioner made the requests in circumstances where he knew, or ought to have known, a barrister is not permitted to receive and/or hold monies in advance of work.

2.13 By the Practitioner's conduct referred to in paragraphs 2.5 – 2.11:

2.13.1 the Practitioner intended to breach section 240 of the *Legal Profession Act 2007*;

2.13.2 the Practitioner intended to breach Rule 13 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015* [NSW] and by extension the *Legal Profession (Barristers) Rules 2016*;

2.13.3 the Practitioner failed to adhere to barrister's obligations to do with trust monies as referred to in paragraph 2.4; and/or

2.13.4 the Practitioner's conduct 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.

54. On 27 July 2020, having received and considered the submissions of the Practitioner, the Board determined to dismiss the complaint outlined in Allegation 2 pursuant to section 451(a) of the Act on the basis that there was no reasonable likelihood that the Practitioner would be found guilty of either unsatisfactory professional conduct or professional misconduct. The reasons for that decision were to be provided at a later date and are included in this determination.

55. By notice dated 27 August 2020, the Board gave notice to the Practitioner to appear before it on 28 September 2020 pursuant to section 456(1)(a) of the Act to provide an explanation of the matters outlined in Allegation 1 of the complaint.

56. The background facts and particulars provided in the Notice to Appear were essentially identical to the matters relating to Allegation 2 set out in the Murray's Case Letter, however the text messages sent by the Practitioner to the Complainant via the conduit of HG on 15 July 2019 were set out more fully in that notice as follows –

Text sent at 10.03pm 15 July 2019

*'...I'm inclined to write to the Minister for Home Affairs as I'm not convinced we need people like these guys in the country. I have to check whether it is ethnically [sic] appropriate for me to do so. If it is I will and if it's not I won't.'*

Text sent at 3.36am 15 July 2019

*'I thought I would let you know that I have decided not to write to the Minister for Home Affairs even it is ethically appropriate for me to do so.'*

57. The Practitioner provided further written submissions to the Board on 22 September 2020.
58. The Board has considered the submissions from each of the parties, the relevant supporting documentation, and the matters raised by way of explanation and mitigation by the Practitioner on 28 September 2020.

#### Relevant legislation and the law

59. The Practitioner is an Australian legal practitioner within the meaning of section 6 of the Act

60. Section 420 of the Act defines unsatisfactory professional conduct:

***unsatisfactory professional conduct** includes conduct of an Australian legal practitioner occurring 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.*

61. Section 421 of the Act defines professional misconduct:

***professional misconduct** includes –*

*(a) unsatisfactory professional conduct of an Australian legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and*

*(b) conduct of an Australian legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.*

62. The Act also provides that breaches of the Act or applicable conduct rules may amount to unsatisfactory professional conduct or professional misconduct.

63. The legislative definitions are inclusive, and therefore may be used to characterise any impugned conduct according to their well-established meaning at common law.

64. So far as professional misconduct is concerned, that can be taken to mean (apart from the statutory definition) conduct on the part of a practitioner which would reasonably attract the strong reprobation of, or be regarded as disgraceful or dishonourable conduct by other practitioners of good repute and competency.
65. However, it also means that before there can be a finding of professional misconduct the Tribunal needs to be satisfied that the practitioner's conduct falls so far short of the standards of hypothetical practitioners of good repute and competency that it has 'the flavour of being disgraceful or dishonourable', or is 'stamped with the requisite degree of turpitude or shamefulness' to constitute professional misconduct rather than a less serious form of misconduct.
66. If the impugned conduct does not reach that level, then the question is whether the conduct in question is appropriately characterised as unsatisfactory professional conduct.
67. The common law definitions were stated in *Law Society of Tasmania v Turner and Kench* [2001] TASSC 129:
- [44] ... professional misconduct consists in behaviour on the part of a legal practitioner which would reasonably be regarded as disgraceful or dishonourable by legal practitioners of good repute and competency.
- [49] ... in this State, unprofessional conduct extends to conduct which might reasonably be held to violate, or to fall short of, to a substantial degree, the standard of professional conduct observed or approved of by members of the profession who are of good repute and competency (the so called common law test).
68. The Practitioner holds a Practising Certificate as a Barrister in Tasmania. The relevant rules of conduct have been set out in the Murray's Case Letter at paragraph 53 above.
69. The burden of proof of any charge of unsatisfactory professional conduct or professional misconduct brought by the Board following investigation of a complaint rests with the Board.
70. The standard of proof is the balance of probabilities, but with the rider that the weight or strength of the evidence necessary to prove a disciplinary matter varies depending on the circumstances and the gravity of the matter to be proved. This is known as the Briginshaw standard or the standard of 'reasonable satisfaction':

'...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates

an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency.’ [*Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362]

71. This means that the Board is bound to apply the civil standard of proof, keeping in mind that:

‘..... the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove.’

72. In *Murray v Murray* (1960) 33 ALJR 521 Dixon CJ explained (at 524):

‘What the civil standard of proof requires is that the tribunal of fact ..... shall be ‘satisfied’ or ‘reasonably satisfied’. ..... But the point is that the tribunal must be satisfied of the affirmative of the issue. The law goes on to say that [he/she] is at liberty to be satisfied upon a balance of probabilities. It does not say that [he/she] is to balance probabilities and say which way they incline. If in the end [he/she] has no opinion as to what happened, well it is unfortunate but [he/she] is not ‘satisfied’ and [his/her] speculative reactions to the imaginary behaviour of the metaphorical scales will not enable him to find the issue mechanically.’

73. Pursuant to section 451, the Board may dismiss a complaint if satisfied that:

There is no reasonable likelihood that the practitioner will be found guilty of either unsatisfactory professional conduct or professional misconduct (‘the reasonable likelihood test’); or

It is in the public interest to do so (‘the public interest test’).

### Consideration

74. The Board is satisfied upon the material before it that no further investigation of the complaint is necessary.

75. Given that the Board had determined to dismiss Allegation 2 of the complaint alleging an inappropriate demand for legal fees, that matter will be dealt with first in this determination.

76. This allegation of complaint involves a difference of opinion between the parties about the Practitioner’s entitlement to \$650.00 for legal services. The Complainant believed the Practitioner was not entitled to the \$650.00 as it was essentially a quote for a conciliation conference that was yet to happen. The Practitioner, on the other hand, asserts he had done work in excess of the value of money already paid by the Complainant.

77. On 13 May 2019, the Practitioner communicated his hourly rate of \$300.00 per hour to the Complainant at the same time he provided them with a quote for the conciliation, that being \$650.00. The Practitioner also explained to the Complainant how long a conciliation would usually last and that any work required to endorse any agreement from the conciliation would be included in the fee.
78. On 16 May 2019, the Practitioner responded to the Complainant's concerns that the appearance at the Magistrates Court by the Practitioner was only 40 minutes yet he was seeking further fees. The Practitioner explained that whilst the appearance was only short, there was a lot of preparation required prior to him appearing for them.
79. A Practitioner is entitled to charge a client for work conducted in preparation for an appearance especially considering the expectation that a person's legal representative would be familiar with their matter and well prepared to appear for them. The Board notes that the Complainant continued to instruct the Practitioner with knowledge of the Practitioner's hourly rate and with an idea that there would be preparation work required going forward.
80. It is evident from the evidence that the Practitioner on numerous occasions communicated to the Complainant or HG that he had done work in excess of the \$650.00 fee. The invoice issued via text message by the Practitioner on 13 July 2019 and email on 17 July 2019, therefore should not have come as a surprise to the Complainant.
81. The Complainant had previously paid an amount of \$646.00. This consisted of a payment of \$250.00 for the initial consultation and \$396.00 to include the appearance at the Magistrates Court on the restraining order applications for the Complainant and Mr. S.
82. The Practitioner's file supports the Practitioner's assertions that he conducted work above the value of money already paid.
83. Nevertheless, the claim for the sum of \$650.00, as invoiced, was asserted by the Practitioner as being a payment for the proposed conciliation conference. While he had performed some work in preparation for that conference, it was understandable that the Complainant might be confused at receiving a demand for monies in respect of an event which had not yet occurred.
84. Section 231 of the Act helpfully defines Trust money as:
- money received by a law practice in the course of or in connection with the provision of legal services by the practice, and includes;*
- money received by the practice on account of legal costs in advance of providing the services; ...(underlining inserted)*
85. Sections 4 and 6 of the Act include a Barrister acting as a sole practitioner within the definition of a law practice or legal practice.

86. Section 240 of the Act expressly states the rule relating to Barristers and trust money, that being:

‘A barrister is not, in the course of practising as a barrister, to receive trust money’.

87. While there may have been some element of the initial claim for the sum of \$650.00 which related to costs in advance of work performed, it is not disputed that those monies were never paid by the Complainant or received by the Practitioner. Accordingly, the Practitioner had never received monies in advance of providing services as outlined in section 231 of the Act, or monies which could be defined as trust monies under section 240 of the Act. Nor were the funds ever held by the Practitioner in terms of Rule 13 of the relevant Barrister’s Rules.

88. In the Practitioner’s written submissions provided by his legal representatives on 29 June 2020 at page 15, paragraph 82, he advised that he ‘no longer required payment of the \$650.00’. Accordingly, those monies will never be received or held by the Practitioner regardless of whether they might or might not be categorised as trust monies or monies paid in advance of providing services and it is not necessary for the Board to make any further determination as to the nature of the monies claimed.

89. In those circumstances the Board is satisfied that there is no reasonable likelihood that the Practitioner could be found guilty of either unsatisfactory professional conduct or professional misconduct in relation to Allegation 2 and pursuant to section 451(a) of the Act that component of the complaint is dismissed.

*Allegation 1 - inappropriately sending a text message to the Complainant care of his uncle HG which contained an indirect threat to the Complainant.*

90. On appearing before the Board on 28 September 2020, to provide an explanation in relation to Allegation 1, the Practitioner relied upon his further written submission dated 22 September 2020 in addition to the written submissions dated 29 June 2020.

91. Essentially the further submissions dated 22 September 2020 –

(a) urge the Board not to make any finding of unsatisfactory professional conduct on the basis that the offending text message of 15 July 2019 –

(i) was not a part of the original complaint lodged with the Board on 12 July 2019;

(ii) was not, in any event the subject of any evidence that it was ever received by the Complainant;

(iii) therefore could not have threatened or intimidated the Complainant

- (b) raise the issue of procedural fairness to the Practitioner in that the complaint outlined in the Notice to Appear was not referable to the online complaint made on 12 July 2019, and in the documents provided to the Practitioner on 27 August 2020 there is no evidence that the Complainant ever felt threatened or intimidated by the first text message on 15 July 2019 or ever, in fact, received it.
- (c) submit that section 456(7)(ab) of the Act should apply in the event the Board does reach a finding of unsatisfactory professional conduct whereby no further action would be taken against the Practitioner.

92. The further submission also outlined and contained evidence of a fuller chronology of the exchange of text messages and evidence of the precise content of the text messages over 15 and 16 July 2019. The Board accepts the chronology and content of the exchanges as provided and admitted by the Practitioner.
93. As the Practitioner has raised an alleged discrepancy between the allegations contained in the notice to appear and the original online complaint, it is convenient and necessary for the purposes of this determination to set out the terms of the original complaint received by the Board on 12 July 2019 –

*'Me and my friend hired Mr slipper for our case. After our first hearing, we decided to move forward with another lawyer, because of his unprofessional behaviour. There was no legal agreement between us and Mr slipper. Reasons why we left him: 1. In our first meeting at his chamber, we paid 250\$ in cash and approx 400\$ Including GST in account for our first hearing. He has not provided us the receipt for that, despite of asking so many times. He also denied us to provide the receiving for same. 2. In the court despite of providing us service and resolving our problem, he intentionally requested the judge to give a mediation date and requested to adjust the date accordingly to his holiday schedule. 3. I had to lodge my visa, so he promised us that, he will help us with our visas, and there will be no extra cost for that. At the later stage he started demanding extra charges for that, considering a different case. 4. He told us a fixed hourly fee, which he increased to \$650 all of a sudden. 5. He doesn't provide details and proceeding about our case.*

*When we asked him to withdraw his name from case, he started threatening us and putting pressure on us to pay 650\$. He is very unprofessional, he messages at odd timings and threatens us that he will take action. He txts me at 4am and demand money.*

*He is trying to rip off our pocket because he has no clients and bad name in market which we learned recently. He has our documents, which he is not providing us back .*

*We are international students, pls protect us and see he doesn't harms us in anyway.*

*Please see he doesn't harms our visa, and withdraw from case.*

*Profs [sic] can be provided'*

94. The Practitioner was provided with a copy of the original complaint. In his submissions of 29 June 2020, he confirms that he was aware the Complainant and Mr. S were international students and had concerns about their visa status for continued residence in Australia as students. The Board is satisfied that the Practitioner was at all material times aware that the Complainant and his friend were international students concerned about the impact of the application for a restraining order on their student visa status.
95. The essence of the online complaint later provided in more formal particulars in the Notice to Appear was that the Practitioner –
- (a) started threatening us and putting pressure on us to pay \$650.00;
  - (b) messages at odd timings and threatens us that he will take action;
  - (c) 'he text me at 4.00am and demand money';
  - (d) 'please see he doesn't harms [sic] our visa'
96. The Board is satisfied that the complaint is of an ongoing course of conduct by the Practitioner. The text messages sent by the Practitioner on 15 and 16 July 2019 are part of that ongoing conduct and evidence corroborating the conduct complained of. There is no discrepancy between the matters of complaint stated informally in the initial online complaint and the particulars of complaint formally raised in the Notice to Appear.
97. Further, the Notice to Appear requires the Practitioner to provide an explanation in relation to the allegation that he 'inappropriately sent a text message to the Complainant's uncle HG, which contained an indirect threat to the Complainant'. The allegation is that the message was sent, was inappropriate, and contained an implied threat in the context of an ongoing demand for monies. For the purposes of the determination of the complaint, it is irrelevant whether the text was received by the Complainant. It was sent by the Practitioner intending for him to receive it, and certainly HG, who was acting as a conduit between the Practitioner and the Complainant, received it. For the purposes of the conduct complained of, it is also irrelevant whether or not there is any evidence that the Complainant felt threatened or intimidated. The allegation is that the message contained an indirect threat.
98. The Practitioner does not dispute the terms of the message. When asked on 28 September 2020 if there were any circumstances which might render a message of that nature appropriate, he said 'I can't tell you it was appropriate...I would have checked'.
99. The Board is satisfied that on 15 July 2019 the Practitioner sent a text message to the Complainant's uncle, intended for the Complainant, which –



- (a) Was sent in the context of the Practitioner seeking a payment of monies;
- (b) Included the suggestion that he had the ability to write to the Minister for Home Affairs if he thought it was ethical to do so on the basis that he was not convinced people like the Complainant and his friend were needed in Australia;
- (c) At the time he sent the text message he knew, or ought to have known that the message would be received by HG and on forwarded or conveyed to the Complainant and his friend;
- (d) Referred to the Minister for Home Affairs knowing that the Complainant and his friend were concerned about their visa status;
- (e) Was inappropriate in any circumstances;
- (f) Contained an indirect threat for the purposes of persuading the Complainant and his friend to pay monies to him.

100. The Board is satisfied that a person or persons in the circumstances of the Complainant and his friend would have been intimidated and threatened on receipt of that message regardless of whether it was couched with the proviso that the Practitioner would contact the Minister after he had checked that it was *'ethically appropriate to do so. If it is I will if it's not I won't'*.
101. In those circumstances the Board is satisfied that the sending of the text message constitutes unsatisfactory professional conduct.
102. The Board accepts that the Practitioner was suffering from 'jet lag' at the time he sent the first text message and sent a retracting text message at 3.36am the following morning. The Board considers that as mitigating the conduct rather than excusing it.
103. On 28 September 2020, whilst appearing before the Board the Practitioner had raised the issue of procedural fairness as outlined above. He was asked if he wished to have an adjournment so he could address any issues he had not had the opportunity to address. The Practitioner advised he did not wish to seek an adjournment. The Practitioner was also asked at the conclusion of the appearance if there were any matters he thought he might have raised differently or in addition to the matters he had raised in his written and oral submissions arising from his claim that the complaint was procedurally unfair. He stated that there were not.
104. On the basis of the Practitioner's responses and in all the circumstances, the Board is satisfied that the Practitioner has been afforded appropriate procedural fairness.
105. The Board accepts that the Practitioner has not been the subject of any other substantiated complaint within the last 5 years, and has considered the distinguished career of the Practitioner outside of legal practice, together with the references provided to support his competence and diligence.

106. The Board remains concerned however, that despite the Practitioner apologising for his conduct in the written submissions provided to the Board, when given an opportunity to appear personally to explain the conduct, he did not appear to fully accept or understand the gravity of the complaint.
107. The Board considers that the indirect threat contained in the text message sent to the Complainant care of his uncle, in the associated circumstances, is conduct which falls short, to a substantial degree, of the standards of professional conduct observed or approved of by members of the profession who are of good repute and competency. Were it not for the retraction of the threat early on the following morning the Board would not have treated the complaint as a less serious matter under section 456 of the Act.
108. The Practitioner was asked in what circumstances he thought it might be ethically appropriate to send a message of that nature. He initially responded that 'I was completely uncertain of the ethics of it'. When pressed he responded that he could not say it was appropriate, but he would have checked.
109. In circumstances where the Practitioner appeared uncertain of the inappropriate nature of his conduct, and thought he would need to check the ethics of what he had proposed, the Board does not exercise its discretion to apply section 456(7)(ab) to take no further action in relation to this matter.
110. The Board is satisfied that Allegation 1 of the complaint is substantiated but is not sufficiently serious, given the mitigating factors, to warrant a hearing.
111. The Board considers that in all the circumstances the Practitioner should be reprimanded and required to provide a written apology to the Complainant, Mr. S and HG, in terms approved by the Board within 30 days of the date of this determination.

## DETERMINATION

The Board is satisfied that the Practitioner's conduct in relation to Allegation 1 of the complaint, as set out in the Murray's Case letter, amounts to unsatisfactory professional conduct, and the Board makes the following determinations under s.456 (7) of the Act:

1. That the Practitioner is reprimanded.
2. That the Practitioner is to make a written apology to the Complainant, Mr. S and Mr. HG in terms approved by the Board within 30 days of the date of the Board's determination.

That allegation 2 of the complaint, as set out in the Murray's Case letter, is dismissed pursuant to s 451(a) of the Act as there is no reasonable likelihood that the practitioner will be found guilty of either unsatisfactory professional conduct or professional misconduct.

Legal Profession Board of Tasmania

Per: 

David N. Lewis

Board Member

*Please note that within 21 days after the date of this determination the complainant or the legal practitioner, the subject of the complaint may apply to the Disciplinary Tribunal or Supreme Court to have this matter heard by the Disciplinary Tribunal or Supreme Court and may make an application to the Disciplinary Tribunal or Supreme Court to stay the determination pending the finalisation of such an application.*

***If either the complainant or the legal practitioner is a resident of another State at the date of this determination, or both are residents of a State other than Tasmania and of different States, the Disciplinary Tribunal will not have jurisdiction to entertain an application and it should be made to the Supreme Court – see Burns v Corbett [2018] HCA 15.***

***Please be aware that an application made to either the Disciplinary Tribunal or Supreme Court may, in the event that application is unsuccessful, result in a costs order against you.***

***Accordingly, it is recommended that independent legal advice is sought prior to making such an application.***

***Any application to the Disciplinary Tribunal must be in accordance with the form prescribed under the Legal Profession (Disciplinary Tribunal) Rules 2010 (see <http://www.lpbt.com.au/policy-and-guidelines/>).***

*The contact details of the relevant bodies are as follows:*

*Disciplinary Tribunal Secretary – Jarrod Bryan c/ Registry of the Resource Management and Planning Appeal Tribunal, GPO Box 2036, Hobart 7001 or Level 6, 144 Macquarie Street, Hobart.  
Email: [secretarydisciplinarytribunal@justice.tas.gov.au](mailto:secretarydisciplinarytribunal@justice.tas.gov.au)*

*Supreme Court, General Enquiries: 1300 664 608*