

**LEGAL PRACTITIONERS
DISCIPLINARY TRIBUNAL
AT DARWIN**

CITATION: *Godfrey v Law Society Northern Territory*
LPDT No. 2020-02640-SC

PARTIES: **GODFREY, Keith Daniel**
Appellant
v
LAW SOCIETY NORTHERN TERRITORY
First Respondent
v
THELMA GRAY
Second Respondent

FILE NO: 2020-02640

DELIVERED: 12 May 2021

HEARING DATE: 18 February 2021

DECISION OF: **Acting Judge Oliver (Chair)**
Mr Richard Giles
Ms Patrica Slocum

REPRESENTATION:

APPLICANT: Self

FIRST RESPONDENT: Ms M Chalmers

SECOND RESPONDENT: Mr T Liveris

REASONS FOR DECISION

1. The Appellant, Keith Godfrey (“Mr Godfrey”), has appealed the decision of the Law Society Northern Territory (“the Law Society”) dismissing his complaint against the second respondent, Thelma Gray (“Ms Gray”) pursuant to section 498 of the *Legal Profession Act 2006* (“the Act”) on the basis that there was no reasonable likelihood that she would be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct.
2. The original grounds of complaint were that there was a lack of communication from Ms Gray, secondly that she mismanaged and misrepresented Mr Godfrey’s matter in court and thirdly, that she lacked knowledge and understanding of his complaint.
3. The Notice of Appeal largely mirrors these complaints. However, Mr Godfrey has added to the first ground that as he “is disabled with TBI, PTSD and severe dyslexia and requires face to face or at least telephone (with assistance) communication” and that she was aware of this and that email communication was not sufficient contact. The addition of this complaint is dealt with later in these reasons.
4. With respect to the second ground, Mr Godfrey has reframed this complaint as disputing the Law Society’s determination that she was acting *Amicus Curiae* before the Federal Circuit Court (“the Court”). Mr Godfrey says that she was acting for him at Court and that the understanding between them was that she had been hired through Legal Aid to act for him. In his original complaint, Mr Godfrey also asserted that Ms Gray looked at her phone the whole time and struggled to answer questions and that she told the judge she had not been paid by Legal Aid.
5. The third ground of appeal largely repeats the original complaint in that it states that whilst Ms Gray may have had “some knowledge of his case (through Mr Story) she did not have “sufficient knowledge in order to carry her fiduciary obligations with her client”.

The form of an appeal from a decision of the Law Society pursuant to section 506(1)(a) of the Act

6. Section 507 of the Act provides that an Appeal to the Tribunal is by way of rehearing. In an appeal by way of rehearing, the Tribunal is not limited to considering only the matters that were put in the complaint to the Law Society but may receive limited further evidence provided that does not create unfairness to other parties or reframe the actual complaint or complaints.

7. In *Thompkins v South Australian Health Commission* [2001] SASC 147 Martin J adopted the analysis that had been applied in *Wigg v Architects Board* (1984) 34 SASR 111 as to the different types of appeals. As his Honour observed at [27], classifying an appeal as an appeal by way of "rehearing" does not in itself provide an answer as to the nature of the appeal.

8. Relevantly, His Honour then said at [29]

"The second type of appeal identified by Cox J is the appeal by way of rehearing. His Honour described this appeal as follows (p 111):

"This is a rehearing on the documents, but with a special power to receive further evidence on the appeal. The latter power is necessary, because the question on a rehearing of this kind is whether the order of the court below ought to be affirmed or overturned in the light of the material before the appeal court at the time it hears the appeal."

and at [31]

"As Cox J observed (p 113):

'Which type of appeal is given by a particular Act will depend upon its construction. The use of the word "rehearing" will not be decisive, because that is a word to which different meanings have been given It will be a matter of discerning Parliament's intention from an examination of the legislation as a whole.' (footnotes omitted)"

9. In the High Court decision of *Builders Licensing Board and Sperway Constructions (SYD.) Pty Ltd* [1976] HCA 62 Mason J discussed the various types of appeal and concluded

"But in the end the answer will depend on an examination of the legislative provisions rather than upon an endeavour to classify the administrative authority as one which is entrusted with an executive or quasi-judicial function, classifications which are too general to be of decisive assistance. Primarily it is a question of elucidating the legislative intent, a question which in the circumstances of this case is not greatly illuminated by the Delphic utterance that the appeal is by way of rehearing."

10. There are a number of matters that favour the view that this Tribunal has a power to receive limited further evidence, both oral and documentary, on an appeal from a decision of the Law Society. First, the appeal is from a decision

of an administrative body not from a judicial or quasi-judicial body. In determining a complaint, the Law Society may either dismiss the complaint or determine to commence disciplinary proceedings in the Tribunal. That process, for the making of a decision by the Law Society, does not involve the same features as the conduct of an appeal before the Tribunal. It is not an oral proceeding and the material that has been placed before the Law Society is not generally received on oath. There is in that process a limited ability for either party to contest what the other party has placed before it other than by way of submissions or provision of further documents. The material produced by the parties may or may not be admissible in proceedings before the Tribunal to which the rules of evidence apply.

11. The *Legal Practitioners Disciplinary Tribunal Rules 2011* provide for a more formal process than that before the Law Society. They deal with matters such as the filing and service of affidavits on which a party intends to rely at a hearing and for a process for requiring a person who has sworn an affidavit to attend to give evidence or be cross examined (Rule 17). There is nothing that would suggest that affidavits are to be confined to the appellant and the practitioner. Rather, Rule 17(2) suggests otherwise, as it provides for the filing of a notice requiring a person who has sworn an affidavit to attend either for examination or cross examination. There would be little point of a notice to attend if affidavits were confined to only the parties to the proceeding as they would already be in attendance.

12. Rule 16 (1) provides for discovery of documents.

“Unless the Disciplinary Tribunal orders otherwise, a party to proceedings must:

- (a) at least 28 days before the hearing day, serve on each other party a list of documents the party intends to rely on at the hearing; and
- (b) make the documents in the list available for inspection by each other party at least 21 days before the hearing day; and
- (c) if another party requests a copy of a document in the list and pays a reasonable amount for the copy – give the other party the copy requested.”

This Rule does not appear to confine discovery to those documents that have already been provided to the Law Society by the parties. Rather it appears to envisage that there may be other documents which may either support or challenge the case that the appellant or the respondent has put before the Law Society and which were not provided in that process.

13. Similarly, Rule 18 provides for the issue of subpoenas. It imports Order 42 of the Supreme Court Rules 1987 for that purpose. In brief, the Order allows for the issue of subpoenas to attend to give evidence and for a subpoena to produce. If an appeal to the Tribunal were confined to only the documents that had been produced to the Law Society, then there would be no purpose for the application of Order 42.
14. In summary, there would be little point of these procedural and evidential rules if the Tribunal were simply confined to determining the matter on the material that had been before the Law Society.
15. In this matter, both the appellant and the respondent practitioner have sought to introduce additional evidence that was not provided to the Law Society. In particular a transcript of the proceedings of 26 March 2018 was provided by the respondent practitioner. The Chair of the Tribunal had in fact suggested to the parties at a Directions Hearing that the transcript would be a relevant document to source and file as it would potentially settle the disputed allegations as to what was said and done by Ms Gray before that Court.
16. As noted in paragraph 3 above, Mr Godfrey has raised in his grounds of appeal disabilities from which he says he suffers. Although this was not part of his complaint to the Law Society, Ms Gray has not taken any objection to this and has addressed the issue of her contact and communication with Mr Godfrey in her affidavit.
17. No objection is taken by the Law Society to the receipt of the transcript or other material.

Standard of Proof

18. In determining an appeal from a decision of the Law Society, the appellant is required to prove the relevant matters to a standard referred to as the 'Briginshaw principle'¹ which means the Tribunal must be satisfied of the relevant matters on the balance of probabilities, to a comfortable degree, based on clear, cogent and strict evidence.

Conduct of the Tribunal Hearing.

19. At around midday on the day before the scheduled hearing on 18 February 2021 appellant, Mr Godfrey sent an email to the Registry and to the other parties saying that he was ill with pain and on pain management medication

¹ *Briginshaw v Briginshaw* (1938) 60 CLR 336

and not able to attend the hearing. He enclosed a letter from a doctor to that effect and saying that he expected to be okay within two weeks. The solicitor for Ms Gray responded and opposed the adjournment contesting the grounds that Mr Godfrey was putting forward and saying that they were prepared to call evidence that would cast doubt on Mr Godfrey's claim. It was submitted that an adjournment would likely result in costs thrown away which would be unlikely to be recovered from Mr Godfrey. The Law Society did not wish to be heard on the application for the adjournment.

20. The Chair determined that Mr Godfrey should make his application to the Tribunal on the allocated morning for the hearing as it had not been possible to ascertain the views of the other two Tribunal members, noting that there was little likelihood that all parties and all Tribunal members would be available in two weeks' time. Mr Godfrey was asked to attend to seek the adjournment.
21. On 18 February Mr Godfrey did not attend but sent a message to say he was too ill. The Tribunal in session was able to telephone to Mr Godfrey and with the assistance of his scribe, we discussed the potential for the matter to proceed "on the papers" with the parties being given time to file written submissions. Mr Godfrey was agreeable to that process and orders for the filing of submissions were made and the matter adjourned.
22. The parties subsequently filed their submissions, and it is on the basis of the material filed in the proceedings, along with the written submissions, that the matter has been determined.

Ground 1- That Ms Gray had sufficient contact with Mr Godfrey.

23. Mr Godfrey disputes that Ms Gray had sufficient contact with him nominating the relevant period as between 9 March 2018 and 26 March 2018.
24. Mr Godfrey submitted that because of the disabilities he experiences he requires face to face or at least oral communication and the email communication between him and Ms Gray did not constitute sufficient contact. He says that Ms Gray had a copy of his SPELD report dated 2003².
25. In his affidavit filed on 19 November 2020 Mr Godfrey said he phoned Ms Gray late on Friday 9 March 2018. He told her that he had selected her name from the Darwin Legal Aid List and that he needed urgent representation as he had already submitted an application for intervention in a family law matter.

² The Tribunal understands this to be a report from the SPELD organisation that supports people with learning difficulties such as dyslexia.

He said that he told her that he could not afford to hire a lawyer as he had a low income on a disability pension. He said they spoke for about half an hour about his case and that he detailed “the history of my separation from my ex-wife and the custody issues pertaining to my two children”. He advised her of the upcoming “application” hearing on 26 March and the date of the final hearing of 18 August 2018.

26. Further in his affidavit Mr Godfrey outlines a chronology of events following his initial conversation with Ms Gray. In summary, he says that she agreed to take his case and that when “a few days lapsed” he felt he needed to make her aware of the specifics of his case. He says he tried various ways to call her once he realised she had offices in Sydney. Following a conversation with a “Gentleman at the Sydney office” he sent everything he had on the case by email. On the 18th and 19th, he had brief email communications with Ms Gray. On 20 March he attended the Court Registry to retrieve copies of the court documents so he could deliver these to Ms Gray. He was told she had filed a Notice of Address for Service. On 21 March he “took it upon myself to deliver my own copy” personally to Ms Gray’s office in Smith Street. It is not clear to what document Mr Godfrey is referring. He says that he instructed her secretaries to physically give her these documents or scan them to her email and that he would return on 23 March to retrieve his copies. He alleges that when he returned the documents had not been sent because “she had not paid her bills” and that “if you get hold of her, tell her, we want to be paid, and we are doing no other work until then”.
27. Mr Godfrey in his submissions refers to Item 10.1 of the Law Society Northern Territory Rules of Professional Conduct and Practice (May 2005). Rule 10.1 relates to borrowing transactions so it is assumed that the intended reference is to Rule 10A.1 which, as Mr Godfrey quoted requires that “A practitioner must keep the client informed at regular intervals, or upon request, of the progress or lack of progress toward resolution of the client’s matter.” He says that she failed in this duty.
28. The second respondent, Ms Gray, has filed a chronology of events with reference to documents and affidavits filed. Mr Godfrey had personally filed an application on 6 March 2018 in the Federal Circuit Court seeking various orders. At the time, the case had already been listed for hearing on 18 August 2018. Mr Godfrey application was listed in the 9.30am list on 26 March 2018 to join with other applications already listed on that day. Those events are clear from the transcript referred to later in these reasons.

29. On Friday 9 March he made contact with Ms Gray for the first time. Ms Gray's diary entry³ confirms that contact and it is apparent she spoke to him earlier that day before the conversation Mr Godfrey referred to in the afternoon. He told her that he was going to apply for legal aid. The diary entry mentions “? capacity” which Ms Gray says was a note for herself about **her** capacity to take on his matter and “?dyslexia” with two ticks which indicated that she did not think that communication with him was an issue. In her affidavit, Ms Gray says that she booked a conference room for him to attend at 1.30pm that same day. Mr Godfrey in his submissions outlined their contact on that day as being an initial telephone conversation followed by a “brief 5 minute meeting that was interrupted just after 1.30pm that day” and then a latter 35 minute conversation at 6pm. This is consistent with his affidavit that says that on that day they spoke for “about half an hour”. Ms Gray however says that the conference that lasted “between 30 to 45 minutes” commenced at 1.30pm. She details the contents of their conversation and her advice to him.⁴ It seems likely that Mr Gray has forgotten the timing of that conversation but what is clear is that there was a consultation with Mr Godfrey somewhere in excess of 30 minutes on 9 March.

30. Ms Gray says that at the end of their conversation it was understood that the scope of her retainer was to make application to or support his application for legal aid, receive and peruse documentation in preparation for the proceedings and provide advice “subject to and subsequent to suitable grants of legal aid being made.”⁵

31. The Tribunal accepts Ms Gray's account of the limitation she placed on any Retainer (that it was subject to him obtaining a grant of legal aid). It is inherently unlikely given that Mr Godfrey had told her he would be reliant on legal aid for her fees that she would have “agreed to take on my case”⁶ in the broad sense of those words.

32. On Tuesday 13 March Mr Godfrey attended the Northern Territory Legal Aid Commission (“NTLAC”) and obtained a referral for a 20 minute legal advice session and also delivered to Ms Gray's Darwin office a large volume of documents. Emails from him that attached the legal aid referral and a statutory declaration from 2013 sworn in Indonesia which appears to be related to a visa application for his then wife who was the other party in the family law proceedings were forwarded to Ms Gray.⁷ The relevance of the latter document

³ Affidavit of Thelma Gray affirmed 19 January 2021 at Annexure TG-1.

⁴ Ibid at [4].

⁵ Ibid at [5].

⁶ Affidavit Keith Godfrey sworn 19 November 2020 at [8].

⁷ Affidavit of Thelma Gray affirmed 19 January 2021 at [8] and Annexure TG-2 and TG-3.

to the proceedings seems doubtful. The large volume of documents delivered by Mr Godfrey were not sent on to Ms Gray as she instructed the office staff not to do so as he had not yet been granted legal aid.

33. On 16 March Mr Godfrey sent 6 emails to Ms Gray and a further 2 were sent by a Ms Therese Fitzgerald on his behalf.⁸ In her affidavit,⁹ Ms Gray says she took a cursory look and was confused as to their relevance but in any event filed a notice of address for service and wrote to Mr Godfrey's former lawyer seeking documents. In his affidavit¹⁰ Mr Godfrey deposes as to his increased concern that he could not locate Ms Gray; however, she had received the various emails and even though his funding had not yet been approved she was taking steps for his representation by filing the notice of address for service and seeking documents from his former lawyer.¹¹
34. On 18 March Mr Godfrey sent 2 emails which were similar in content. They do not appear to be giving particular instructions and it is unclear what if anything he was asking Ms Gray to do.
35. On 19 March Ms Gray perused the documents Mr Godfrey had sent on 16 March. She says in her affidavit that she was confused by them as to precisely what orders Mr Godfrey wanted her to seek from the Court on 26 March and asked him by email to send her a maximum one page email setting out what he wanted from the Federal Court. He replied to this by two emails¹² giving instructions as to the orders he wished to seek.
36. On the same day Ms Gray wrote to the NTLAC in support of his application for a grant of legal aid noting that she has been told that he is dyslexic "and will be at a disadvantage without legal assistance."¹³
37. On 22 March Ms Gray received an email from staff at her office that Mr Godfrey had delivered further documents which they had scanned and placed in her personal office. It seems likely that these are the copies of the Court documents that Mr Godfrey says he obtained copies of and delivered to Ms Gray's office.¹⁴ Mr Godfrey then says that he returned to the office on 23 March and asked for his documents. He says:

⁸ Ibid at Annexure TG-5.

⁹ Ibid at [11] and Annexures TG-5 and TG-6.

¹⁰ Affidavit Keith Godfrey sworn 19 November 2020 at [9] to [15].

¹¹ Affidavit of Thelma Gray affirmed 19 January 2021 at [11] to [13] and Annexures TG-6 and TG-7.

¹² Ibid at [15] and annexure TG-9.

¹³ Ibid at [16] and annexure TG-10.

¹⁴ Affidavit Keith Godfrey sworn 19 November 2020 at [18] to [21].

“The secretaries advised me: Ms Gray had not been into the office. I asked them whether they had scanned and emailed copies to her and they replied, no as she had not paid her bills.”¹⁵

38. This is inconsistent with the records mentioned above, namely that a staff member from Ms Gray's Darwin office had emailed Ms Gray on 22 March advising the documents had been dropped off and attached his scanned documents.¹⁶ In his subsequent submissions, Mr Godfrey did not challenge this evidence.¹⁷

39. Further, on Friday 23 March at 4.46pm Mr Godfrey emailed Ms Gray saying:

“Hello I asked Darwin office to send you the two affidavits I made to reply to ex wife and her mother with two anxxsur S (*sic*). I hope you can file them or may be you would like to add them first. Thank you Keith. See you Monday thanks”¹⁸

40. The following day Mr Godfrey sent another email to Ms Gray:

“My ex txt me she would bring to children this weekend. She just text 15 minutes before I was going to hand over can't bring the children. No reason. She said make up time and again nothing. Mr Godfrey”.¹⁹

41. However, in his affidavit Mr Godfrey makes no mention of any further contact with Ms Gray until the Court proceedings and claims to feeling “quite dejected” and seeking the assistance of the Advocacy officer Ms Therese Fitzgerald to attend court to assist him.²⁰ The emails above are inconsistent with his claim as to what he was told by an office staff member and his reaction to that. It would be fully expected that he would raise the issue with Ms Gray particularly as to whether or not she had received the documents.

42. Further, Ms Gray sets out at [22] and [23] of her affidavit her review of the documents that she had been sent and how she proposed to deal with them given that a grant of aid had still not been forthcoming. She provides considerable detail as to the applications she anticipated would be before the Court including an application to tender a Family Report. Ms Gray could not

¹⁵ Ibid at [22]

¹⁶ Affidavit of Thelma Gray affirmed 19 January 2021 at annexure TG-13.

¹⁷ Paragraph 19 n page 13 of 16 of Submissions dated 25 March 2021.

¹⁸ Ibid

¹⁹ Ibid at annexure TG-14

²⁰ Affidavit Keith Godfrey sworn 19 November 2020 at [23] and [24].

possibly have been privy to that information had she not received the documents sent to her by her office.

43. As mentioned at [3] Mr Godfrey added to his first complaint that he “is disabled with TBI, PTSD and severe dyslexia and requires face to face or at least telephone (with assistance) communication” and that Ms Gray was aware of this and that email communication was not sufficient contact. This was not part of his initial complaint to the Law Society and therefore outside the scope of the appeal to this Tribunal, however as neither respondent has objected to its consideration it may be taken as a particular of the communication complaint rather than a separate complaint.
44. In any event Ms Gray concedes that she was aware of his dyslexia but made an assessment that they were able to communicate appropriately by email. There is considerable correspondence by Mr Godfrey to Ms Gray and although there are some spelling errors, the correspondence by email between Ms Gray and Mr Godfrey does not display any difficulty in communication between them.
45. Ms Gray said that she was not aware of the other disabilities that Mr Godfrey has asserted. She says that he did not mention these in the telephone conference that was held.²¹ Mr Godfrey has not produced any evidence that would show Ms Gray had been made aware of his additional disabilities.
46. Contrary to Mr Godfrey's assertion that at the foyer of the Court Ms Gray, from a distance, pointed a finger at him asking if he was Mr Godfrey and then “marched on and went straight into the court”²², Ms Gray says she met Mr Godfrey at the court, that she had a brief chat with him confirming her instructions and explaining that some of the issues he raised would not be dealt with as it was a list day. She says that he introduced his support person to her²³.
47. If it were true that Ms Gray had merely identified Mr Godfrey at a distance, then marched into court as he asserts, then it is unlikely that she would know that he was with someone who was his support person. Mr Godfrey has not filed an affidavit from Ms Fitzgerald that would support his account. Ms Fitzgerald should have been able to confirm both Mr Godfrey's alleged distress at what he says he was told by the staff member at the Office and what was said or not said at the Court. No affidavit from her was filed and no subpoena was sought for her attendance at the Tribunal hearing. It would reasonably be expected that a party will call a witness where that witness can give evidence as to some fact in issue. Under the rule at common law (the rule in *Jones v*

²¹ Affidavit of Thelma Gray affirmed 19 January 2021 at [3]

²² Affidavit Keith Godfrey sworn 19 November 2020 at [25] and [26].

²³ Affidavit of Thelma Gray affirmed 19 January 2021 at [24]

Dunkel) an adverse inference may be drawn from a failure to adduce that evidence.

48. Of course, there may be some good reason as to why Ms Fitzgerald was not involved. Given the time between the events and now she may have left the Northern Territory. It is not necessary to go so far as to draw that inference as has been noted above, there is other evidence that contradicts Mr Godfrey's account of the communication between him and Ms Gray.

Ground 2 – That Ms Gray mismanaged and misrepresented Mr Godfrey's matter in Court.

49. Mr Godfrey further complains about the conduct of his matter by Ms Gray before the Federal Circuit Court.

50. He says that when he and his support person entered the courtroom and sat at the back Ms Gray was already at the Bar Table and he heard her say "I have not been paid by Legal Aid". He says this blew him away as it had nothing to do with the safety of his children. He said that Judge Young said, "I do not care about Legal Aid ...why are you here?"

51. A transcript of those proceedings was obtained and filed in these proceedings although it was not a document that the Law Society considered.

52. The transcript does not reveal the exchanges that Mr Godfrey has deposed actually took place between Ms Gray and Judge Young. What Ms Gray did tell Judge Young was that she was appearing "amicus" (curiae) in the matter as legal aid had been applied for, but she had not yet received a response. She advised that Mr Godfrey was before the court. Her statement to Judge Young was entirely correct as her retainer was subject to legal aid funding which had not yet been approved. The transcript indicates that His Honour understood and accepted her position with respect to Mr Godfrey's representation.

53. In his affidavit Mr Godfrey says that when Ms Gray spoke about his case "It was all over the place and she didn't even know the ages of my children".

54. It appears from the transcript that although Ms Gray may have been at some disadvantage given that she had received limited instructions from Mr Godfrey via his emails and the documents that he had delivered to her office. However, she had made it clear to him that she was not accepting a retainer unless legal aid funding was approved. In those circumstances, and with limited and somewhat confusing instructions via the emails, it seems she dealt with the

matters that the court was prepared to deal with that morning in a competent fashion.

55. Regarding the assertion by Mr Godfrey that she did not know the ages of his children, there is nowhere in the transcript any mention about the ages of the children. The only direct mention of them is in relation to the section 69ZW order where His Honour said their names only, presumably as he was writing out the order.
56. Ms Gray says that she explained to Mr Godfrey before they went into court that the issues regarding allegations of contraventions of orders and variation of existing orders/agreements would not be dealt with that day as it was a “list day.”²⁴ She thought he understood this, but it appears that may have not been the case. The applications were not dismissed but put over to the hearing date which appears to have been entirely appropriate and usual given that they were seeking alterations to existing orders for custody and access arrangements and the final hearing was not far off. Mr Godfrey did not lose the opportunity to pursue those applications.
57. Although legal practitioners will sometimes use their phones in court, for example to look up documents or to check their availability for a matter to be listed, it would be expected that if Ms Gray were constantly looking at her phone during the proceedings as Mr Godfrey asserted to the Law Society that the judge would have reprimanded her for this. In any event, Ms Gray says her phone was in her handbag and there is nothing from the transcript that indicates otherwise.
58. Courtrooms can be very confronting for people who are not used to that environment. It is natural that a person will be anxious about the proceedings and particularly when it is a matter concerning their children. It is not at all uncommon for someone to sit in a proceeding and not fully comprehend what is being said and what has occurred. This is likely to be so, particularly when a judge is running a busy list and dealing with many matters in a relatively brisk fashion. In those circumstances, some confusion can arise as to what has been said and done and that appears to have been the case with respect to Mr Godfrey’s recollection of events on that day.

Ground 3 – Ms Gray did not have sufficient knowledge of Mr Godfrey’s case in order to carry out her fiduciary obligations.

²⁴ Ibid

59. This complaint largely overlaps the second ground of complaint. Mr Godfrey's written submissions on this ground are confusing. His assertion at 3.2a. can be distilled as being that a member of the public would reasonably expect that a reasonably competent legal practitioner would be aware of the Northern Territory Legal Aid Commission (NTLAC) conventions and procedures, aware of the need to collect his *Application in a Case* and pursue that in the "Family Court" because of the domestic violence breach before the Local Court.
60. First, it appears that Ms Gray did what she could to support Mr Godfrey's application for legal aid funding. It was his responsibility for this application, however, she attempted to assist him by writing a merits letter to NTLAC.
61. Secondly, as has been referred to above, his application for the variations of the orders were not appropriate for a list day and were not dismissed but adjourned to the final hearing. Quite how that would have impacted any matter regarding a domestic violence breach in the Local Court is unclear and unexplained.
62. Given that Mr Godfrey makes these complaints about Ms Gray's conduct of his matters in the FCC on 26 March, it is surprising that he emails her on 5 April saying in the first one that Legal Aid has sent her a letter, presumably about the limited grant of aid for a conference, and then, in a second email, asking her to take particular steps, including that "two affidavit replies need to go in" with respect to FCC proceedings. If he was so dissatisfied and confused about her conduct of his matter in the FCC, it is surprising that he still pursued her representation.
63. It is unclear what expectation Mr Godfrey then had. The understanding between Mr Godfrey and Ms Gray seems to have been perfectly clear. She was only prepared to represent him in the event that a grant of aid was forthcoming.
64. Ms Gray telephoned him following this and advised him that she was not prepared to further assist him in the FCC without the necessary grant of aid as they had previously agreed nor, as she had previously reiterated to him, she would not assist him in the Local Court proceedings.²⁵

CONCLUSION

65. The onus on the Appeal is for the appellant to establish that the Law Society's decision was in error. Mr Godfrey did not specify in his Notice of Appeal whether he was asserting that Ms Gray was guilty of either unsatisfactory

²⁵ Ibid at [41]

professional conduct or professional misconduct. However, in his written submissions Mr Godfrey said that he wished to draw the Tribunals attention to Item (*sic*) 464 of the NT Legal Practitioners Act (2006) (*sic*). The Tribunal takes the intended reference to be to section 464 of the *Legal Profession Act 2006* and it is this standard upon which he relies. Section 464 provides:

“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.”


66. In the view of the Tribunal, Ms Gray acted competently and with reasonable diligence to take what steps she could to advance Mr Godfrey’s matter in circumstances where her retainer was conditioned on his receipt of legal aid funding. The Tribunal is satisfied that Ms Gray actually undertook a considerable amount of work in order to be able to progress Mr Godfrey’s matter in the event that legal aid was granted. She took initial instructions, filed an appearance notice, obtained documents from his previous lawyer, tried to assist his application for legal aid and appeared amicus for him in the Federal Circuit Court where she obtained a subpoena for documents that were sought to assist his case.

67. The Law Society was correct in dismissing the appellant’s complaint pursuant to section 498 of the *Legal Profession Act 2006*. The Tribunal is not satisfied that the respondent Thelma Gray was guilty of either unsatisfactory professional conduct or professional misconduct.

68. The appeal is dismissed.



Acting Judge Oliver, Chair



Mr Richard Giles, Member



Ms Patrica Slocum, Member