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Supreme Court of Victoria

Re Walker [2025] VSC 714 (24 November 2025)

Last Updated: 24 November 2025

IN THE SUPREME COURT OF VICTORIA	Not Restricted

COMMON LAW DIVISION

TRUSTS, EQUITY AND PROBATE LIST

S PRB 2023 21813

IN THE MATTER of the Estate of SHARON LOUISE WALKER, deceased

CHERYL ANNE GREEN Plair

v

KYRIACOS TOUMAZOU Defend

JUDGE:	Moore J
WHERE HELD:	Melbourne
DATE OF HEARING:	26, 27, 28 and 29 August 2025
DATE OF JUDGMENT:	24 November 2025
CASE MAY BE CITED AS:	Re Walker
MEDIUM NEUTRAL CITATION:	[2025] VSC 714

WILLS AND ESTATES – Contested application for grant of probate – Whether will duly executed – Whether deceased knew and approved contents of will – Where defendant husband given a life interest in estate property – Where attestation clause – Where will attracts the presumption of regularity – Where only evidence that one witness not present during execution given by defendant – Defendant's evidence not accepted – Propounder proved that will duly executed by testator with testamentary capacity and that testator knew and approved contents – Suspicious circumstances not established - *Wright v Rogers* [1869] UKLawRpPro 34; (1869) LR 1 PD 678 - *Re Bladen* [1951] VicLawRp 38; [1952] VLR 82 - *Re Gramp* [1952] SASR 12 - Thompson v Bella-Lewis [1996] QCA 27; [1997] 1 Qd R 429 - McKinnon v Voigt [1998] 3 VR 543 - *Burnside v Mulgrew; Re Estate of Grabrovaz* [2007] NSWSC 550 - *Veall v Veall* [2015] VSCA 60; (2015) 46 VR 123 - *Public Trustee v Nezmeskal* [2018] WASC 394 -

Weiss v Weiss [2020] NSWSC 1064 - *Re Curtis* [2022] VSC 621 - *Wills Act 1997* (Vic) ss 7, 9.

PRACTICE AND PROCEDURE – Use of artificial intelligence to prepare written submissions filed with the Court – Where reliance placed on non-existent or hallucinated case references – Non-compliance with Guidelines issued by the Court - Accuracy of citations not verified – Responsible use of artificial intelligence – Accuracy of submissions fundamental to due administration of justice – Failure to meet the standards of professional conduct expected of solicitors – Practitioner afforded opportunity make submissions as to why she should not be referred to the Victorian Legal Services Commissioner – Referral not made – Expedient that conduct be dealt with in the Court's inherent jurisdiction in relation to the supervision of legal practitioners – Reprimand imposed - *Director of Public Prosecutions v GR* [2025] VSC 490 - *Re Zita (a solicitor)* [2022] VSC 354 - *Civil Procedure Act 2010* - *Administration and Probate Act 1958,* s 34(1) - *Legal Profession Uniform Australian Solicitors' Conduct Rules 2015*, rr 5.1.2, 4.1.3.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Mr T Staindl	O'Farrell Robertson McMahon
For the Defendant	Mr J Catlin	Rizkallah Partners
For Ms Rizkallah	Mr S Warne	

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1 In this proceeding the plaintiff seeks a grant of probate of a will dated 27 May 2020 (the **Will**) made by Sharon Louise Walker who died on 15 April 2023 at age 57 from endometrial cancer (the **deceased**). The Will appoints the plaintiff, the deceased's sister, as executor and trustee of her estate which, in the inventory of assets and liabilities filed with the application for probate, was valued at approximately $952,000.[1] The application is opposed by the deceased's husband, Kyriacos Toumazou, who is the defendant in the proceeding.

2 The remaining asset of the estate is unit 3/147 Heatherdale Road, Vermont (the **Property**), one of three units which the deceased developed at the above address some years ago. She and the defendant, who began a relationship in about 2014, commenced living at the Property in 2017 and married on 9 December that year.

3 Under the Will, the deceased gives the defendant the right '*to reside at the Property rent-free during his lifetime or until such time that he chooses to vacate the Property or requires full time care*'.[2] The Property is then to be sold and the funds from the sale divided equally between the plaintiff and the deceased's two other sisters, Gayle Guyomar (**Mrs Guyomar**) and Leanne Martin (**Mrs Martin**).

4 The defendant objects to the grant of probate of the Will on the basis that it was not executed in conformity with s 7 of the *Wills Act 1997* (the **Wills Act**). The plaintiff accepts that, in the circumstances of the case, there is a live issue as to whether the Will was duly executed but contends that, if the Court is not satisfied that it was duly executed, the requirements for an 'informal will' are satisfied such that probate should be granted pursuant to s 9 of the Wills Act. At the outset of the trial, the defendant abandoned a claim that, if the Will was admitted to probate, the plaintiff should be passed over as executor. It will, however, be necessary to return to this matter later in these reasons.

5 The plaintiff gave evidence in support of her application, in addition to her sisters Mrs Guyomar and Mrs Martin; three of the deceased's long term friends (Sandra Polites-McLuckie, Tracie Foster (**Ms Foster**) and Angela Featherby (**Ms Featherby**)); and a solicitor formerly employed by Rose Lawyers and Conveyancers (**Rose Lawyers**), Sebastian Hong (**Mr Hong**). Each of these witnesses were witnesses of truth. The plaintiff, her sisters and the deceased's friends were all impressive witnesses and I have no hesitation in accepting their evidence. Collectively, their evidence produced a vivid picture of the deceased's life including her illness, her relationship and marriage to the defendant and, significantly, her testamentary intentions.

6 The only witness called by the defendant, in addition to himself, was Madeleine Cook (**Ms Cook**), a law clerk formerly employed by Rose Lawyers; she was a truthful witness. The defendant was, however, a poor witness whose evidence I do not accept for the reasons I explain in [18]-[24] below.

The Will

7 The Will was drafted by Rose Lawyers and consists of four typed pages, including a cover page. It bears the signatures of the deceased and two witnesses, Mr Hong and Ms Cook, both of whom were then employed by Rose Lawyers. Their signatures appear beneath an attestation that the Will was signed in the presence of the testator and each other. The Will also bears the signatures of the deceased and the witnesses at the foot of each page, except that Ms Cook's signature does not appear at the foot of the second page.

8 Clause 8 of the Will deals with the Property and is in the following terms:

> **I DEVISE** to my executors and trustees my share in the property situated at and known as Unit 3/147 Heatherdale Road, Vermont in the State of Victoria (**Property**):
>
> > (a) To permit my husband **KYRIACOS TOUMAZOU** to reside at the Property rent-free during his lifetime or until such time that he chooses to vacate the Property or requires full time care; and
> > (b) **I DIRECT** my executors and trustees to pay out of the capital and income of my residuary estate the rates, taxes, insurance and outgoings on the Property and maintain it in a state similar to that in which it is at my death; and
> >
> > (a)[3] **I DIRECT** my executors and trustees that on the death of or until such time that **KYRIACOS TOUMAZOU** decides to vacate the Property or requires full time care, to sell the Property and **TO DIVIDE** any funds from said sale between those of my surviving sisters **CHERYL ANNE GREEN**, **GAYLE ELIZABETH GUYOMAR** and **LEANNE MARGARET MARTIN** as tenants in common in equal shares **PROVIDED ALWAYS** that should any of my said sisters not survive me under this my Will leaving children who survive me at my death then such children having attained the age of 18 years shall take by substitution and if more than

> one equally the share in my estate which their parent would otherwise have taken.

9 Clause 9(b) of the Will provides for the distribution of the deceased's residuary estate in the following way: 50% to the defendant; 10% to the charity 'Benwerren'; 20% between her surviving sisters; 10% to her surviving nieces and nephews; and 10% to the deceased's father.

10 As at the date of the deceased's death, her surviving sisters were the plaintiff, Mrs Guyomar and Mrs Martin; she also had seven nieces and nephews.

General principles

11 As explained by Santamaria JA in *Veall v Veall*,[4] where a will is sought to be admitted to probate, the onus of proving the will lies with the propounder who must prove that the testator had testamentary capacity and knew and approved the contents of the will when it was executed.[5] Compliance with the formalities prescribed by the Wills Act is critical to this task. If the propounder proves that a will that is rational on its face has been duly executed in accordance with the Wills Act, a presumption arises that the testator had testamentary capacity.[6] Similarly, once the propounder has proved that the testator had testamentary capacity and that the will was duly executed, a further presumption arises that the testator knew and approved the contents of the will.[7]

12 The formalities for making a will are prescribed in s 7(1) of the Wills Act which provides that a will is not valid unless:

> (a) it is in writing, and signed by the testator or by some other person, in the presence of, and at the direction of the testator; and
> (b) the signature is made with the testator's intention of executing a will, whether or not the signature appears at the foot of the will; and
>
> (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
>
> (d) at least two of the witnesses attest and sign the will in the presence of the testator but not necessarily in the presence of each other.

13 Where a will has, on its face, been regularly executed, there is a rebuttable presumption that, absent proof to the contrary, there has been compliance with these formalities.[8] The presumption is an aspect of the presumption of regularity encompassed in the maxim *omnia praesumuntur rite esse acta*: everything is presumed to have been done correctly.[9] An attestation clause is also prima facie evidence that these requirements have been met and the will duly executed.[10]

Was the Will Duly Executed?

14 The Will is in writing, it bears the deceased's signature and the signature of two witnesses beneath an attestation that they signed in the presence of the testator and each other. Accordingly, on its face, the Will complies with the formal requirements of a duly executed will and attracts a presumption that it was duly executed.[11]

15 However, counsel for the plaintiff properly accepted that, despite the attestation clause, there was a live issue as to whether both witnesses, Mr Hong and Ms Cook, were present when the deceased signed the Will. This acceptance stemmed from the defendant's evidence to the Court that Ms Cook was not present when the Will was signed. It was common ground that the defendant was present at Rose Lawyers when the deceased signed the Will; his evidence was that Ms Cook was not present. Although both Mr Hong and Ms Cook gave evidence as to

their usual practice in witnessing wills and identified their signatures on the Will, neither had any recollection about the making of the deceased's Will in particular.

16 As stated by Lord Penzance in *Wright v Rogers*:[12]

> The court ought to have in all cases the strongest evidence before it believes that a will, with a perfect attestation clause, and signed by the testator, was not duly executed, otherwise the greatest uncertainty would prevail in the proving of wills. The presumption of law is largely in favour of the due execution of a will, and in that light a perfect attestation clause is a most important element of proof.

17 These observations were referred to by Mayo J in *Re Gramp*[13] in support of the proposition that '*indifferent or uncertain sort of proof will not suffice*' to rebut the presumption that the formal requirements for the execution of a will have been satisfied where the will appears on its face to be regular and duly executed.[14] More recently in *Public Trustee v Nezmeskal,*[15] Pritchard J referred to the presumption being rebuttable by '*compelling evidence*' that a will was not duly executed.[16]

18 The only evidence that Ms Cook was not present when the deceased signed the Will was the defendant's oral testimony.

19 The defendant was a singularly poor witness. His answers to many questions in cross-examination were non-responsive. He seized opportunities to try to advance his case from the witness box through speeches and argument. He gave manifestly implausible answers to various questions. For example, he asserted, without qualification or explanation, that it was impossible that the deceased ever spoke to Mrs Guyomar without him being present, and that it was likewise impossible that the deceased spoke to anyone from Rose Lawyers without his knowledge. He asserted, without any basis, and despite evidence to the contrary, that the solicitor with whom the deceased consulted never sent the deceased certain letters and emails. He gave evidence to the effect that the plaintiff and her sisters had conspired to delete emails or text messages. There was no basis for this claim and no such proposition was put to those witnesses in cross-examination.

20 The defendant was unwilling to make obvious and reasonable concessions in cross-examination in the face of documentary evidence, including that certain text messages were sent. Instead, he sought to challenge the authenticity of these documents in circumstances where they were tendered into evidence by agreement. He also adopted artificial and self-serving interpretations of the contents of certain text messages. Aspects of his evidence in relation to the contents of a witness statement he prepared for the proceeding were unsatisfactory. His evidence in relation to the important matter of whether certain payments made to the deceased from a bank account held by his daughter were repayments of a loan was inconsistent and devoid of credibility.[17]

21 I am mindful that the demeanour of a witness can be an unreliable basis upon which to assess their credibility. It is also the case that contested probate proceedings have the capacity to bring to the surface sometimes rancorous feelings between participants which may affect the demeanour of witnesses, but which may not necessarily cast doubt on their credibility or the veracity of their evidence. Making due allowance for these considerations, I was nonetheless struck by an aspect of the defendant's demeanour which I observed at different times in the course of his evidence.

22 My strong impression was that the content of some of the defendant's evidence, the tone in which it was delivered and his bearing from the witness box was at times deliberately provocative and calculated to cause hurt to the plaintiff, her sisters and the witnesses called in the plaintiff's case, many of whom were in the public gallery when he gave evidence. In the course of his evidence, from time to time I observed the defendant alter his

physical orientation in the witness box from facing examining counsel to facing the public gallery, as if he sought to address those seated there. From this position, he looked directly at one or other of the plaintiff, her sisters or the deceased's friends and made statements, sometimes in barbed terms, which were plainly directed at them personally. For example, he asserted that the deceased had greater feelings of love and affection for one sister than another, while appearing to look at the latter. These performative aspects of the defendant's evidence were accompanied by physical expressions including grins, smiles and tilts of the head.

23 These aspects of the defendant's evidence appeared to me to be gratuitous attempts by him to express his disdain and hostility towards the plaintiff, her sisters and the deceased's friends who gave evidence in the plaintiff's case. They affirm my conclusion, based on the contents of his evidence to which I have just referred, that the defendant was an abjectly poor witness whose evidence to the Court was a partisan expression of assertions thought to advance his case in this proceeding and a vehicle by which he sought to give voice to the animus he plainly holds towards the plaintiff, her sisters and the deceased's friends.

24 In assessing the defendant's credibility as a witness, I am mindful that he gave evidence with the assistance of an interpreter. The interposition of an interpreter between examining counsel and witness can give rise to the possibility of inaccuracies or miscommunications, and will often elongate and disrupt the 'flow' of the evidence. In the course of the defendant's evidence, I sought to mitigate these risks by asking the interpreter and the defendant to clarify answers to certain questions.

25 I am cognisant that the present controversy is whether the Court should accept the defendant's evidence that Ms Cook was not present when the deceased signed the Will. Although the above discussion of the deficiencies in the defendant's evidence does not specifically concern evidence given by the defendant in relation to that particular matter, upon careful reflection, I am comfortably satisfied that those deficiencies are so numerous and profound that they taint all of his evidence given in relation to matters which were controversial in the proceeding. Considering the defendant's evidence as a whole, my strong conviction is that he approached the task of giving evidence principally as an opportunity to assert claims in advancement of his own perceived self-interest in challenging the deceased's Will. I have no confidence in the veracity or reliability of his evidence and have concluded that it would be unsound to accept it in relation to any matters of controversy where it is not supported by documentary evidence or the evidence of other witnesses.

26 For these reasons, as there is no satisfactory evidence that Ms Cook was not present when the deceased signed the Will, and certainly no compelling evidence to this effect, the presumption that the Will was duly executed has not been rebutted.

27 Separate to the operation of the presumption of regularity, I am in any event also affirmatively satisfied that Ms Cook was present when the deceased signed the Will on the basis of the contents of an affidavit made on 6 July 2023 by the other witness to the Will, Mr Hong. Although Mr Hong had no recollection at trial of the deceased executing the Will, when he swore this affidavit two years earlier he deposed that he and Ms Cook witnessed the deceased sign the Will. He specifically recalled Ms Cook being present with him and the deceased when the deceased signed each page of the Will. His evidence to the Court was that he had a specific memory of this when he made the affidavit.

28 I accept Mr Hong's evidence. He is an officer of the Court whose credit was not challenged and who was not cross-examined on this part of his evidence, including in particular the contents of his affidavit sworn on 6 July 2023.

Knowledge and approval – suspicious circumstances?

Principles

29 As explained earlier in these reasons, once the propounder of a will has proved that the will was duly executed by a testator with testamentary capacity, a presumption arises that the testator knew and approved the contents of the will. However, as Santamaria JA explained in *Veall v Veall*:[18]

> ... the presumption of knowledge and approval can be displaced by circumstances giving rise to a suspicion that the testator might not have appreciated the contents of the will and approved them. The burden then shifts back on to the propounder, who must adduce affirmative proof that the testator knew and approved the contents of the will.
>
> ...
>
> In the majority of probate applications, the existence of a duly executed will that is rational on its face will be sufficient for the admission of the will to probate. A mere assertion by a contradictor that the testator either lacked testamentary capacity or knowledge and approval will not displace the presumption raised by the due execution of a will that is rational on its face. The party impeaching the will must establish circumstances supporting a well-grounded suspicion that the instrument might not express the will of the testator. In Bailey v Bailey, Isaacs J (with whom Gavan Duffy and Rich JJ agreed) summarised the law thus:

(1) The onus of proving that an instrument is the will of the alleged testator lies on the party propounding it; if this is not discharged the Court is bound to pronounce against the instrument. (2) This onus means the burden of establishing the issue. It continues during the whole case and must be determined upon the balance of the whole evidence.

(3) The proponent's duty is, in the first place, discharged by establishing a prima facie case.

> Once suspicious circumstances are established, it is then for the propounder to dispel that suspicion. What evidence will be sufficient to allay the Court's suspicion will necessarily depend on the circumstances supporting the suspicion; the proof required to allay 'suspicious circumstances' will depend upon what it was about the circumstances that made them suspicious. For instance, where a person who stands to gain a benefit under the will participated in its production and execution, it is said that special vigilance is required.
>
> ...
>
> The circumstances that arouse suspicion will vary. The fact that a beneficiary took part in the preparation of the will is only an obvious example of a circumstance creating suspicion. In Wintle v Nye, Viscount Simonds said:
>
> > It is not the law that in no circumstances can a solicitor or other person who has prepared a will for a testator take a benefit under it. But that fact creates a suspicion that must be removed by the person propounding the will. In all cases the court must be vigilant and jealous. The degree of suspicion will vary with the circumstances of the case. It may be slight and easily dispelled. It may, on the other hand, be so grave that it can hardly be removed.
>
> In McKinnon v Voigt, Tadgell JA said:

> The principle exemplified in such cases as *Barry v Butlin*, *Fulton v Andrew* and Wintle v Nye is not confined to a case in which suspicion is generated because a will is prepared by or on the instructions of a person taking a benefit out of it, or who stands to gain from it. The principle extends:
>
> > ... to all cases in which circumstances exist which excite the suspicion of the Court; and wherever such circumstances exist, and whatever their nature may be, it is for those who propound the will to remove such suspicion, and to prove affirmatively that the testator knew and approved of the contents of the document, and it is only where this is done that the onus is thrown on those who oppose the will to prove fraud or undue influence, or whatever else they rely on to displace the case made for proving the will.
>
> In *Williams, Mortimer & Sunnucks — Executors, Administrators and Probate*, the authors deal with particular matters which arouse suspicion. They say:
>
> > A radical departure from testamentary dispositions, long adhered to, requires explanation, especially if the person in whose favour the change is made possesses great influence and authority with the deceased and originates and conducts the whole transaction; and such facts may raise strong suspicions that the change was not the result of the free volition of the deceased. But that suspicion may be dissipated by proof of a change of circumstances since the earlier wills. There have been a number of cases in which wills prepared by elderly testators in favour of their carers have been subjected to close scrutiny by the court, and often set aside.
> >
> > The testator's feebleness of body or mind may be relevant to knowledge and approval.
>
> Proof that the will was read by or read to the testator before its execution may not be sufficient; nor will evidence that the will was explained to the testator.

30 In considering what might constitute suspicious circumstances, it is helpful to note the following statements in McKinnon v Voigt[19] to which Santamaria JA referred in *Veall v Veall*.[20] Tadgell JA distinguished between '*a mere assertion or allegation*' of suspicious circumstances and the requirement for '*a well-grounded suspicion engendered in the mind of the court acting judicially*'.[21] After noting that the range of circumstances which might arouse suspicion are not to be artificially confined,[22] Ormiston JA referred with approval to the following statement by McPherson JA in *Thompson v Bella-Lewis*:[23]

> ... a circumstance must, to be accounted "suspicious", be related to the preparation or execution of the will, or its intrinsic terms, and not to events happening after the testator's death. What happens after a person's death is not readily capable of throwing light on the question whether he or she knew of and approved the contents of a document executed during his or her lifetime. ...

31 In closing submissions, counsel for the defendant referred to various matters said to give rise to a suspicion that the deceased might not have appreciated and approved of the contents of the Will. In order to properly address those matters, it is necessary to first record my findings of fact in relation to the circumstances in which the

deceased made the Will. These findings are generally consistent with closing submissions made by counsel for the plaintiff, which I accept, and which were largely based on the contents of and inferences drawn from the documentary evidence before the Court.

Circumstances leading to the making of the Will

32 The deceased and the defendant engaged Rose Lawyers to prepare wills on about 31 January 2020. In a meeting at that time, they provided instructions for the preparation of their wills to Phillip Gallo, the principal of Rose Lawyers. The deceased's instructions were: that the plaintiff was to be the executor of her estate (with Rose Lawyers the substitute executor); the defendant was to be given a 'life interest' in the Property; and, upon the life interest being extinguished, the Property was to be sold and distributed equally between the deceased's three sisters. The notes of the conference record that the deceased's instructions in relation to the remainder of her estate were to be confirmed.

33 Mr Gallo provided the deceased with a draft will on 14 March 2020 (the **draft Will**). Relevantly, it provided for the following:

> (a) the appointment of the plaintiff as executor of the deceased's estate with Rose Lawyers the substitute executor;
>
> (b) that the deceased's executors and trustees would hold her estate, which was defined to be comprised of the Property, upon trust for the defendant for life, and that rates, taxes and insurance on the Property would be paid out of the capital and income of the residuary estate, as well as being used to employ carers to enable the defendant to continue living at the Property and to provide for health and welfare programs and services to facilitate the defendant having an independent life; and
>
> (c) on the death of the defendant, the residue of the estate would be divided equally between the deceased's sisters.

34 In an exchange of text messages with the plaintiff on 7 April 2020, the deceased told the plaintiff that she was following up with her lawyer because her will '*seems to be a very legal sounding will, lots of things I didn't quite understand*'. She referred to '*all these things the executor can do that doesn't make sense to me*', and her concerns about the powers given to the substitute executor, including the power to enter into loans. She told the plaintiff that she was going to ask questions of her lawyer and that it was '*hard to work it all out*'. She referred to the need to '*check a few things'*, as '*I don't want to leave a mess to sort out'*.

35 On the same day, the deceased sent Mr Gallo an email regarding the draft Will about which she wrote that she 'wanted to ask a couple of questions' 'to see if I could make a couple of changes and also so I can understand it better'. The email relevantly continued as follows:

> Also I thought we discussed that the house would be put into my 3 sisters names and that Kyriacos my husband could then stay in it as the life tenant, this will seems to be that it would be held in trust, is that correct? Also from what I can understand of the will my sisters would be responsible for the upkeep of the property and the bills is this correct?
>
> I am finding this will hard to understand but I know legal stuff is hard to understand.
>
> Also my other assets other than the house I'd like to leave after expenses etc are taken out.
>
> 50% to Kyriacos Toumazou

> 10% to Benwerrin a charity based at 30 Benwerren Drive Yarra Junction Vic
>
> 20% to my surviving sisters
>
> 10% to my nieces and nephews Mahayla Rose Walker, Chenoa Faye Sarafina Guyomar, Rebeka Green and Mark Green, if my sister Leanne Martin does have childen [sic] at the time I pass can they be included .
>
> 10% to my father Hugh Francis Walker if he passes before me can it go to my nieces and nephews
>
> ...

36 On 25 May 2020, two days before she signed the Will, the deceased had an exchange of text messages with her friend of many years, Ms Featherby. Ms Featherby asked the deceased whether her lawyer had rung her, to which the deceased replied that she had spoken to her lawyer who had given her '*some good ideas*'. The deceased then stated that she needed to check with her two superannuation funds if '*I need to nominate someone or if it will go through [the] will*'. Later in the exchange, she says in relation to one of her superannuation funds, '*if I don't nominate it goes [through what's] in my will*'.

37 On the morning of 27 May 2020, Ms Cook emailed the deceased relevantly stating, '*Your Wills [sic] has been updated in accordance with your instructions and are with [Mr Gallo] for review, we will provide a further draft for your review shortly*'. In reply, the deceased said that she could come into the office that afternoon. It was then arranged that she would attend the offices of Rose Lawyers at 4.00pm. The same day the deceased mentioned in a text message to Ms Featherby that she had '*to go sign [her] will at 4.00pm*'.

38 I infer from the communications referred to in [36]-[37] that, in the period between 7 April and 25 May 2020, the deceased and Mr Gallo spoke about the concerns raised by the deceased in her email to Mr Gallo sent on 7 April 2020 and that this resulted in the preparation of amendments to the draft Will, as is evident in the differences in the provisions of the draft will referred to in [32] and the terms of the Will as executed referred to in [8]-[9] above.

Consideration

39 It is against this unexceptional background in which the deceased signed the Will that that the claims of suspicious circumstances fall to be considered. Although some of the issues raised by counsel for the defendant are more properly viewed as assertions of lack of knowledge and approval, consistent with how the submissions were put, I will also consider them as matters which it was contended constitute, individually or collectively, suspicious circumstances.

40 The first point raised on behalf of the defendant – that the deceased signed the Will without both witnesses being present – may be disregarded as it is contrary to the findings of fact referred to between [17]-[27] above.

41 The defendant next submitted that Ms Cook's email to the deceased on 27 May 2020 indicates that a further draft of a will was created, but that the draft is missing as it was not located in the file produced by Rose Lawyers and which was tendered into evidence. Although it may be accepted that it is consistent with Ms Cook's email that a further draft will was produced, which draft has not been located, it is not clear how this gives rise to suspicious circumstances attending the making of the Will. To the contrary, in isolation, it suggests that there was a further stage of review and consideration before the deceased ultimately executed the Will.

42 It was next submitted on behalf of the defendant that, on the day she signed the Will, the deceased was

'distracted' because the following day she was scheduled to undergo a 'very significant operation' that was 'life threatening' or 'potentially fatal'.

43 On 28 May 2020, the day after the Will was signed, the deceased was to undergo resection surgery to remove cancerous tumours from her stomach and liver.[24] Although this is plainly a significant surgical procedure, there is no evidence that it was life-threatening or potentially fatal. Other than evidence given by the defendant, the only evidence relied on to support this submission was a text message sent by Mr Hong to another staff member on 27 May 2020, after the deceased signed the Will, in which he stated, '*And client was like all confused* [sic]'. However, reliance on this evidence was misplaced as it is apparent from the context of the message that Mr Hong was not referring to the deceased being confused on the day she signed the Will, but at a time some ten weeks earlier when she was provided with the draft Will which contained a number of errors and mistakes.

44 The only other evidence to support the submission that the deceased was distracted on the day she signed the Will was the defendant's evidence that it was 'an extremely stressful time where [sic] Sharon was distressed' and 'confused'. I do not accept this evidence given its vagueness and my findings in relation to the defendant's credit. Further, text messages sent by the deceased to Ms Featherby on 27 May 2020 and her email sent the same day to Ms Cook give no hint that she was then distressed or distracted.

45 In any event, even if, as may reasonably be expected, the deceased was preoccupied and anxious about the surgery she was to imminently undergo, without more, that does not ground a suspicion that the Will she executed might not have expressed her intentions. This is particularly so given that the Will was prepared following communications with Mr Gallo, from which it is apparent that it was produced after revisions were made to the draft Will which was provided to her and which she read and understood.

46 Counsel for the defendant next relied upon what was said to be an unusual departure between the terms of the Will and the terms of the draft Will. I reject this submission. Although material change in a testator's testamentary intentions may be relevant to establishing the existence of suspicious circumstances, here there was no such departure or change as the comparison is between a final and draft testamentary instrument.

47 Another feature of the Will which it was submitted supported a finding that it was made in suspicious circumstances was the absence of any provision in it in respect of the deceased's superannuation. The deceased left two superannuation funds, worth a total of about $270,000. After her death, these funds were paid to the defendant following requests made by him to the relevant funds. It was submitted that the deceased did not receive any advice from Rose Lawyers in relation to what would happen to this significant part of her wealth upon her death and that, when she signed the Will, she did not understand how it would operate in relation to superannuation.

48 This submission is contrary to the evidence. The evidence given by Mrs Guyomar, Ms Foster and Ms Featherby clearly established that, in finalising her testamentary intentions, not only was the deceased well aware of her superannuation entitlements, she intended them to form part of her residuary estate to be disposed of by the Will. That intention would have been realised, without any need to refer to the superannuation benefits, by clause 9(b) of the Will referred to at [9] above; the only reason it was not was because the defendant successfully requested that the superannuation benefits be paid to him.

49 This also disposes of the defendant's reliance on the fact that there is no residuary estate to provide a source of income to maintain the Property and to pay rates, taxes, insurance and outgoings as required by clause 8(b) of the Will referred to at [8] above and which it was submitted would be at least $5,000 per annum. No suspicion attaches to this fact once it is recognised that the deceased intended there to be such a fund which would have been established, but for the defendant's successfully seeking that the superannuation benefits be paid to him. That fund would also have also been available to meet loan payments which the defendant submitted were payable on

t[25] Property.[25]

50 It was submitted on behalf of the defendant that the 'primacy' of his status as the deceased's husband in the 'hierarchy of testamentary duties' gave rise to suspicious circumstances in the making of the Will because of the mere provision made by the Will for his benefit in the form of a life interest in the Property. Furthermore, it was 'unusual and strange' that the deceased did not leave the defendant something in the nature of a 'portable life interest'[26] in the Property because, by operation of cl 8(a) of the Will, he would cease to have the benefit of the life interest in the Property when he required full time care and was therefore in circumstances of particular need.

51 These submissions are unconvincing. When the deceased executed the Will, she and the defendant had been married for only two and a half years, a union they began when they were about 51 and 61 years of age respectively. There is nothing inherently suspicious in a testator prioritising lifelong sibling relationships over a marital relationship of relatively short duration entered into later in life, particularly where the testator has made some provision for their spouse. As to the lack of portability in the life interest given to the defendant, while the complaint may be understandable as a matter of fairness and adequacy of provision, it does not raise a well-founded suspicion that the Will might not express the deceased's intentions. A more likely explanation consistent with the evidence is that the notion of 'portability' in the life interest given to the defendant was not something of which the deceased was aware or was not an alternative raised by her legal advisers.

52 A related and central submission advanced on behalf of the defendant was that suspicious circumstances attended the making of the Will because the provision made for him was 'strange' and inherently unfair given the substantial financial contributions he was submitted to have made for the deceased's benefit during her lifetime. The argument was developed as follows.

> (a) The defendant had sources of funds in the form of inheritances he had received from the estates of his mother and father,[27] and income from a building business which he had operated.
>
> (b) Some of these funds were paid into a mortgage offset bank account held by his daughter, Penny Toumazou (**Penny**), which account was in part used as a holding account for the defendant's funds and to reduce interest payable by Penny on a bank loan associated with the account.
>
> (c) The deceased, the defendant and Penny had a 'blended financial relationship'. Penny had previously provided valuable financial or accounting assistance to the deceased by advising her about how to reduce a substantial taxation liability and Penny had developed some units on a property the deceased owned, which units had been built by the defendant.
>
> (d) Although the evidence as to the funding for this development was unclear, it was submitted that the Court should find that the defendant paid into the deceased's mortgage account between $200,000 - $250,000 in addition to the inheritances that he received from his parents.

53 It is unnecessary to outline all of the evidentiary weaknesses from which this submission proceeds and sufficient to focus on the last mentioned subparagraph, being the gravamen of the defendant's contention. Its asserted evidentiary foundation was the defendant's evidence to the Court, together with a two page bank statement of the offset account held by Penny and a single page of the bank statement for the deceased's mortgage account.

54 In examination in chief, the defendant initially gave evidence that he put $340,000 'together with the inheritance money' into the deceased's mortgage account 'using' Penny's account. However, moments later, the defendant gave very different evidence, stating that only $65,000 was his, the rest being 'Penny's money' which was paid for 'carpentry' and 'building expenses'. His counsel then endeavoured to retrieve the situation by asking whether

various payments of $20,000, $10,000 and $5,000 for a total of $315,000 recorded as being made into the deceased's mortgage account in September and October 2019 were 'your money'; the defendant's answer was that he 'counted' this as his money. In cross-examination, the defendant initially denied that the deceased loaned funds to Penny, asserting simply that the deceased 'gave her money'. However, after repeating that there was no loan between the deceased and Penny, the deceased then accepted that Penny paid back to the deceased the money that the deceased 'gave to her'.

55 In addition to the general unreliability of the defendant's evidence to which I have referred, the shifting and inconsistent nature of his evidence outlined above is an entirely unsatisfactory evidentiary foundation for his claim that he made substantial financial contributions to the deceased's estate. Moreover, the acknowledgment given by the defendant in cross-examination referred to at the conclusion of the previous paragraph confirms the movement of funds between the deceased and Penny as being in substance in the nature of a loan, notwithstanding the defendant's unwillingness to accept this self-evident characterisation. That conclusion is confirmed by the particulars on the bank statement for Penny's offset account in respect of withdrawals corresponding in amount and by date with payments made into the deceased's mortgage account. Each withdrawal from the offset account has the particular: 'Part loan repay Penny'. The existence of such a loan was supported by the evidence of Mrs Guyomar, Ms Foster and Ms Featherby.

56 In conclusion, the defendant has failed to establish the existence of circumstances around the making of the Will – whether looked at individually or collectively – which give rise to a well-grounded suspicion that the Will may not express the deceased's testamentary intentions. To the contrary, the Will is rational on its face and it was executed after a process of consultation between the deceased and her lawyers which commenced some four months earlier. As part of that process, it is apparent from the evidence that the deceased read the draft Will in detail and then raised questions about it with her solicitors. Although the evidence does not reveal the responses she received to these questions, it can be readily inferred from the differences in the content of the draft Will and the Will as executed, and the subsequent communications she had with Ms Featherby and Ms Cook, that she was content with the terms of the Will which she signed and that she knew and approved its contents.

Disposition

57 For the forgoing reasons, the Court will order that, subject to any further requirements of the Registrar of Probates, probate of the Will be granted to the plaintiff. In light of my conclusions, it is unnecessary to consider the plaintiff's alternative argument that probate be granted of the Will as an informal document pursuant to s 9 of the Wills Act.

Use of artificial intelligence

58 In the course of the hearing of this proceeding, it emerged that the defendant's solicitor, Ms Seham Rizkallah, had used artificial intelligence (**AI**) in preparing part of her client's opening submissions. Ms Rizkallah's use of AI was contrary to guidelines published by the Court in relation to the use by practitioners of AI tools and resulted in reliance being placed upon non-existent or 'hallucinated' citations.

59 The Court published guidelines in relation to the responsible use of AI in litigation in May 2024.[28] They set out a number of principles for the manner in which AI may be used by litigants, including the following:

> (a) Parties and practitioners who use AI tools should ensure that they have an understanding of the manner in which those tools work, as well as their limitations.[29]
>
> (b) The use of AI programs by a party must not indirectly mislead another participant in the litigation process, including the Court, as to the nature of any work undertaken, or the content produced by that program. Ordinarily, parties and their practitioners should disclose to each other the assistance provided by AI programs.[30]

> (c) The use of AI programs to assist in the completion of a legal task must be subject to the obligations of legal practitioners in the conduct of litigation, including the obligation of candour to the Court and, where applicable, to obligations imposed by the *Civil Procedure Act 2010*.[31]

60 The Guidelines set out how these principles are to be applied, including as follows:[32]

> [8] Generative AI and Large Language Models create output that is not the product of reasoning. Nor are they a legal research tool. They use probability to predict a given sequence of words. Output is determined by the information provided to it and is not presumed to be correct. The use of commercial or freely available public programs such as ChatGPT and Google Gemini, is more likely to produce results that are inaccurate for the purpose of current litigation. Generative AI does not relieve the responsible legal practitioner of the need to exercise judgment and professional skill in reviewing the final product to be provided to the Court. AI generated text should be checked so as not to be:
>
> ...
>
> (c) inaccurate or incorrect, in that the tool may not produce factually or legally correct output (for example in some situations, users have been adversely affected by placing reliance on made-up cases or incorrect legal propositions);
>
> ...
>
> [9] A party or practitioner signing or certifying a document, filing a document with the Court, or otherwise relying on a document's contents in a proceeding, remains responsible for accuracy of the content. Whether a court document is signed by an individual or on behalf of a firm, the act of signing a document that is filed with the Court is a representation that the document is considered by those preparing it to be accurate and complete. Reliance on the fact that a document was prepared with the assistance of a generative AI tool is unlikely to be an adequate response to a document that contains errors or omissions.

61 As stated by Elliott J in *Director of Public Prosecutions v GR*,[33] it is essential that all litigants and practitioners adhere to the Guidelines.[34] This is because:[35]

> The ability of the court to rely upon the accuracy of submissions made by counsel is fundamental to the due administration of justice. Self-evidently ... any use of artificial intelligence without careful and attentive oversight of counsel would seriously undermine the court's processes and its ability to deliver justice in a timely and cost-effective manner.

It is not acceptable for artificial intelligence to be used by solicitors or barristers in the production of court documents, unless the product of that use is independently and thoroughly verified.[36]

What occurred

62 The parties filed written opening submissions before the trial of the proceeding; the defendant's submissions were signed by Rizkallah Partners. Those submissions outlined the grounds upon which the defendant opposed the plaintiff's application for a grant of probate of the Will and set out the defendant's position that, even if the Will was admitted to probate, the plaintiff should be passed over as executor pursuant to s 34(1) of the *Administration*

and Probate Act 1958, with an independent administrator appointed in her place.

63 As I have noted, the Court was informed on the first day of the trial that the defendant did not press the passing-over claim. However, until that time, the relative prominence of the issue in the defendant's opening submissions suggested that it was likely to be a substantial controversy at trial.

64 In reading the defendant's opening submissions prior to trial, I noted four authorities referred to in respect of the passing-over claim with which I was unfamiliar and which my chambers were unable to locate. I caused inquiries to be made of the Supreme Court Library to locate them and on 25 August 2025 my chambers emailed the defendant's solicitor requesting that she provide a copy of the relevant authorities.

65 In her reply email received during the morning of 26 August 2025, Ms Rizkallah provided the following information:

> (a) In relation to one of the authorities, there had been '*an error in the submissions as to the correct citation*'. She identified the correct citation and attached a copy of the authority.
>
> (b) That the correct name of one of the authorities had not been provided. She provided the correct the name of the authority and provided my chambers with a copy of the same.
>
> (c) That *'[u]nfortunately, I have been unable to obtain a copy'* of the other two authorities.

66 After reviewing this email from Ms Rizkallah, and having been informed by the Supreme Court Library that the four authorities cited did not exist, in the hearing on 26 August 2025 I expressed my concern that submissions prepared by a solicitor had been filed with the Court containing authorities which did not exist. I requested that Ms Rizkallah provide me with an affidavit explaining what had occurred in relation to the inclusion in the submissions of the four 'authorities'.

Ms Rizkallah's affidavit

67 On 27 August 2025, Ms Rizkallah filed an affidavit in which, in addition to the matters to which I have already referred, she deposed to the following:

> (a) That she had drafted the defendant's submissions and had done so in part by using '*an AI-assisted legal research software tool'*, for which her firm held a paid subscription, and that she had used the tool in relation to the submissions dealing with the passing-over claim. She stated that she had limited experience with this the AI-assisted legal research tool and that '*ordinarily, I do not use AI tools for authorities in filed court documents*'. She noted that drafts of the submissions were exchanged with counsel.
>
> (b) Having receiving the email from my chambers on 25 August 2025, she used her best efforts to locate the four authorities, but was unable to do so, except that she was able to identify the inaccuracies in the citations and names of two authorities to which I have referred to above. Despite her '*best efforts using legal case database searches'*, she was unable to obtain copies of the other two authorities.
>
> (c) When she communicated with chambers on 26 August 2025, she had no reason to believe that the two cases that she was unable to locate did not exist in the form cited; she believed that she could not locate them because of limitations in her software subscription. After responding to chambers, she continued to undertake further searches to locate those authorities. In relation to one of these authorities, Ms Rizkallah stated that the reference to it was withdrawn:

> That citation cannot be verified. Whilst the AI research tool produced the reference, the error is mine for filing it without verification. I apologise to the Court and accept responsibility. ...

(d) Ms Rizkallah did not specifically refer to the other authority which she was unable to locate. However, she asserted that the principle for which the two authorities were cited was supported '*by modern, accessible authorities'*, including three which she identified.

(e) She restated her acceptance of responsibility for the 'error' that had occurred. She also undertook that, in the event that she used AI software to assist in legal research in the future, she would implement the following 'verification protocol':

1. every case citation in any filed document will be checked against an authoritative database (official reports/neutral citations) prior to filing;
2. any unreported case will be expressly identified as such and, if relied on, referenced via a reported judgment or recognised commentary; and
3. if AI tools are used in any part of drafting/research, that fact will be recorded internally and key outputs independently verified before filing.

(f) Ms Rizkallah also confirmed that she had reviewed the Guidelines and a document entitled 'Statement on the use of AI in Australian legal practice' jointly published by the Law Society of New South Wales, the Legal Practice Board of Western Australia and the Victorian Legal Services Board and Commissioner. She stated that in the future she would adhere to the guidance provided by these documents.

(g) Finally, Ms Rizkallah:

> ... unreservedly apologise[d] to the Court, the parties and my colleagues for the errors described. I did not in any way intend to mislead the Court. The mistakes arose from reliance on AI-assisted research without adequate verification. I accept sole responsibility in this regard and the corrections above are provided at the earliest opportunity.

68 After reviewing Ms Rizkallah's affidavit, I raised several matters of ongoing concern at the commencement of the third day of the trial on 28 August 2025. I stated that I continued to have serious concerns about Ms Rizkallah's conduct in relation to the use of AI and the sufficiency of the explanation in her affidavit. After detailing my concerns, I stated that I was giving consideration to referring Ms Rizkallah to the Victorian Legal Services Commissioner for consideration as to whether there had been any contravention of professional standards and that I would afford her an opportunity to make any further submissions as to why such a referral should not be made.

Submissions

69 Later on 28 August 2025, Ms Rizkallah requested an opportunity to make further written submissions within seven days after the Court's judgment in the proceeding. I did not agree to that request, but informed her that submissions in relation to the possibility of a referral could be filed within seven days. In due course, detailed written submissions prepared by counsel as to why Ms Rizkallah should not be referred to the Victorian Legal Services Commissioner were filed on 5 September 2025.

70 The general position advanced by Ms Rizkallah in her submissions was that it would be inappropriate to refer the matter to the Victorian Legal Services Commissioner because her conduct did not, *prima facie*, amount to

unsatisfactory professional conduct. However, she also submitted that, if the Court considered that her conduct warranted discipline, the most efficient course was for the Court to deal with it summarily in its inherent jurisdiction. In the event the Court was satisfied that her conduct warranted discipline, counsel for Ms Rizkallah accepted that any sanction of a caution, a reprimand, a financial sanction up to a combined sum of $1,000 in costs and/or deprivation of legal fees associated with the opening submissions and/or a fine would be acceptable. It was also submitted that, if the Court published reasons which named the defendant's solicitor, the inevitable adverse publicity alone would be more than sufficient to achieve the protective ends of the disciplinary system and it would be 'over the top' to include a financial penalty.

71 The submissions also referred to additional factual matters not dealt with in Ms Rizkallah's affidavit of 27 August 2025.

(a) Rizkallah Partners was engaged by the defendant only a few weeks before trial, at which time the matter was not well-prepared for trial. In those circumstances and the other exigencies of trial preparation, Ms Rizkallah prepared the first draft of the defendant's opening submissions, a task she would ordinarily brief counsel to undertake.

(b) The defendant's submissions were not prepared by an AI tool, but cases relevant to passing-over were identified by two paid or subscription AI-assisted legal research tools: 'CourtAid' and Chat GPT. She had not previously used these tools and was ignorant of their 'hallucinatory tendencies'. She was also ignorant of the Guidelines.

(c) Ms Rizkallah was familiar with some of the authorities generated by the AI tools; she considered them and saw that they were germane to the issues in the proceeding.

(d) Ms Rizkallah emailed a draft of the submissions to counsel, indicating that they were overdue, describing them as 'brief points in the attached document which you can use or discard'. Two days later, counsel returned the submissions, which had been amended, but which were unsigned. Because the trial was imminent, the submissions overdue and she understood counsel to be busy with trial preparations, Ms Rizkallah decided to affix the name of her firm to the submissions.

(e) Ms Rizkallah prepared her email to chambers sent on 26 August 2025[37] without properly considering the authorities and while remaining unaware of the possibility that the citations may have been hallucinations. She assumed that her inability to find two of the authorities was due to limitations in the pool of authorities to which her legal research platforms allowed access, and that some more basic human error was the cause of the citation errors in relation to the other two authorities. It was not until Ms Rizkallah discussed the issue with counsel during the lunch adjournment on the first day of the trial that Ms Rizkallah realised '*that there was a problem associated with artificial intelligence, and that it had simply made up and mis-cited authorities which were not germane*'.

(f) Ms Rizkallah acknowledged that it would have been 'preferable' had she read the authorities before referring to them by her email to chambers sent on 26 August 2025, and apologised for not having done so.

Consideration

72 I accept Ms Rizkallah's submission that there is little utility in referring my concerns about her conduct to the Victorian Legal Services Commissioner for investigation. The nature and circumstances of Ms Rizkallah's conduct are sufficiently clear from the material which has been filed to enable the Court to determine whether her conduct has fallen short of the conduct expected of legal practitioners and, if so, whether it is appropriate to exercise the

Court's inherent jurisdiction in relation to the supervision of legal practitioners.[38] An investigation by the Commissioner is unlikely to reveal any other material facts or circumstances beyond those already disclosed in the materials which are before the Court. The fact that Ms Rizkallah's conduct was limited to a part of the proceeding which was not pressed at trial – and therefore did not result in the Court or the parties wasting time and resources beyond that which I have described - is a further reason why it is in the interests of justice for the Court to now deal with the matter.

73 In broad terms, Ms Rizkallah's conduct in filing with the Court submissions which contained non-existent authorities is the product of three things: (a) her stated ignorance of the 'hallucinatory tendencies' of the AI tools that she used; (b) her ignorance of the Guidelines issued by the Court; and (c) her failure to check or confirm the accuracy of citations generated by AI tools which were included in the submissions.

74 It is trite to observe that practitioners who conduct litigation in the Court have a responsibility to comply with any requirements imposed upon them by legislation, the rules of court, practice notes and other published guidance. Ignorance of these requirements is no excuse; as part of their professional obligations, it is incumbent on practitioners to appropriately inform themselves about the obligations and duties to which they are subject.

75 If Ms Rizkallah had read the Guidelines, she would have been on notice that, contrary to the way in which she proceeded in using AI tools in preparing the defendant's submissions, it was necessary for her to understand the limitations of those tools and to disclose their use. She would have also been expressly reminded that the use of AI did not relieve her of the need to exercise judgment and professional skill in reviewing the final product to be provided to the Court, and the need to check AI generated text so as to ensure that it was not inaccurate or incorrect, including by containing made-up cases.

76 Reliance on the fact that a document was prepared with the assistance of an AI tool is unlikely to be an adequate response where the document contains errors or omissions.[39] That is the case here. When Ms Rizkallah prepared the defendant's opening submissions, the Guidelines had been in place for more than a year and had been available on the Court's website. As a principal of a law practice conducting litigation in the Court, Ms Rizkallah's ignorance of, and non-compliance with, the requirements imposed by the Guidelines in relation to the use of AI tools in preparing the defendant's opening submissions constitutes a failure by her to deliver legal services competently and diligently as required by the relevant rules of professional conduct[40] and, as a result, amounted to unsatisfactory professional conduct.

77 The same conclusion follows irrespective of the specific obligations imposed by the Guidelines. As acknowledged by Ms Rizkallah in her submissions, the reliance in the defendant's opening submissions on authorities which had not been read represented a falling short of the standards of diligence that a member of the public is entitled to expect of a reasonably competent lawyer. She accepted that her contribution towards that outcome and the filing of submissions referring to those authorities was capable of constituting unsatisfactory professional conduct.

78 Although these candid acknowledgments are creditable, they are tempered by Ms Rizkallah initial response to the inquiries from chambers referred to in [65(b)] above. In that response, Ms Rizkallah responded to the matters raised by chambers by, amongst other things, correcting the name of one of the authorities to which she referred in her submissions. She referred to this again in he[41]affidavit.[41] However, upon examination, the corrected authority, which concerned the making of a statutory will, had no relevance to the passing-over application, and no explanation was provided in Ms Rizkallah's submissions for the continued reference to and apparent reliance on it. This diminishes the value of Ms Rizkallah's acknowledgment of the importance of legal practitioners reading authorities on which they rely in submissions and suggests the adoption of a superficial approach to the requirement in paragraph 8 of the Guidelines that practitioners check the product generated by AI so as to ensure

its accuracy. A practitioner does not discharge that obligation by merely ensuring the accuracy of the citation of authorities generated by AI without also confirming their relevance.

79 The rules of professional conduct also prohibit legal practitioners from engaging in conduct which is likely, to a material degree, to be prejudicial to, or diminish, public confidence in the administration of justice.[42] I am satisfied that Ms Rizkallah's failure to observe the requirements imposed by the Guidelines and the preparation and filing of submissions containing non-existent authorities generated by AI tools is conduct of this character. This is because, as stated by Elliott J in *DPP v GR*,[43] the accuracy of submissions made by counsel (and likewise by solicitors) is fundamental to the due administration of justice.

80 Having determined that Ms Rizkallah's conduct amounted to unprofessional conduct, it is necessary to consider whether, in the exercise of the Court's inherent disciplinary jurisdiction over legal practitioners, a penalty should be imposed any, if so, the appropriate penalty. Given the several ways in which Ms Rizkallah's conduct is to be seen as falling short of the conduct expected of legal practitioners, I am satisfied that the conduct is sufficiently serious to warrant the imposition of a penalty. The emerging ubiquity of AI in society and the significant number of judgments in recent times in which legal practitioners have been criticised or disciplined for their inappropriate use of AI,[44] mean that considerations of general deterrence also support that assessment.[45]

81 Deterrence must, however, give way to proportion.[46] There are a number of significant mitigating considerations. Ms Rizkallah's conduct concerned a claim which was not pressed at trial; in terms of resources, her conduct therefore did not have any significant adverse consequences for the plaintiff or the Court. Ms Rizkallah promptly and unreservedly apologised to the Court for her conduct; I accept that she is genuinely contrite. There is no evidence that Ms Rizkallah has previously been found to have engaged in unprofessional conduct. I have also taken into account the urgent circumstances of pre-trial preparation in which the conduct occurred and her reliance on counsel.[47] I also do not overlook the fact that the publication of these reasons in which Ms Rizkallah is identified is itself a significant adverse consequence for her professional standing.

82 In my assessment, it is appropriate to, and the Court does, impose a reprimand on Ms Rizkallah for her conduct. A reprimand in itself is a serious sanction for a professional person.[48] Taking into account the matters referred to in the previous paragraph, I consider that to be the appropriate sanction having regard to the nature of Ms Rizkallah's conduct and my concerns set out in [78] above.

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[1] With a mortgage liability of $6,494.98.

[2] Clause 8(a) of the Will.

[3] [Sic].

[4] [2015] VSCA 60; (2015) 46 VR 123 *('Veall v Veall').*

[5] Ibid [166]

[6] Ibid [168]. No attempt was made in this proceeding to suggest that the deceased lacked testamentary capacity.

[7] Ibid [169].

[8] *Re Bladen* [1951] VicLawRp 38; [1952] VLR 82, 84–87 (Sholl J) and *Weiss v Weiss* [2020] NSWSC 1064 [70] (Hallen J) ('*Weiss v Weiss*').

[9] See *Burnside v Mulgrew; Re Estate of Grabrovaz* [2007] NSWSC 550 [19] (Brereton J).

[10] See the discussion by Hallen J in *Weiss v Weiss* (n 8) [71].

[11] The Will also bears the deceased's and two witnesses' signatures at the foot of each page, save that Ms Cook's signature does not appear on the second page of the Will. As was submitted on behalf of the plaintiff, this alone does not render the Will informal.

[12] [1869] UKLawRpPro 34; (1869) LR 1 PD 678, 682.

[13] [1952] SASR 12.

[14] Ibid, 27. Although in dissent on the facts, Mayo J's consideration of the principle has been referred to with approval in subsequent authorities including *Re Curtis* [2022] VSC 621 ('*Re Curtis*') and *Re Jones* [2021] VSC 273 (both McMillan J).

[15] [2018] WASC 394.

[16] Ibid [34] citing *Re Groffman (dec'd)* [1969] 1 WLR 733, 739 (Sir Jocelyn Simon P), referred to by McMillan J in *Re Curtis* (n 14) at fn 20.

[17] See [53]-[55] below.

[18] *Veall v Veall* (n 4) [169] (omitting citations).

[19] *McKinnon v Voigt* [1998] 3 VR 543 ('*McKinnon v Voigt*').

[20] *Veall v Veall* (n 4) [171].

[21] *McKinnon v Voigt* (n 19) 551.

[22] Ibid 562.

[23] Ibid 563 quoting *Thompson v Bella-Lewis* [1996] QCA 27; [1997] 1 Qd R 429, 451. See also Tadgell JA *Robertson v Smith* [1998] 4 VR 165, 173-174.

[24] Following treatment for cancer which was first diagnosed in September 2016, the cancer went into remission but returned in 2019, by which time it had unfortunately spread to her stomach, liver and lungs.

[25] Although the evidence indicates that, as at 8 October 2019, there was a loan outstanding of $91,370.00 apparently secured by a mortgage over the Property, it is unclear what amount was outstanding on the loan when the deceased executed the Will.

[26] See the discussion by Ipp JA in *Milillo v Konnecke* (2009) 2 ASTLR 235, 243-244 [47]–[48].

[27] His evidence was that he received $65,000 from his father's estate in 2017 and $45,000 from his mother's estate in 2019.

[28] 'Guidelines for litigants – Responsible Use of Artificial Intelligence in Litigation' (the **Guidelines**).

[29] The Guidelines, paragraph [1].

[30] The Guidelines, paragraph [3].

[31] The Guidelines, paragraph [4].

[32] The Guidelines, paragraphs [8]-[9].

[33] [2025] VSC 490 (‘*DPP v GR*’).

[34] Ibid [78].

[35] Ibid [79].

[36] Ibid [80].

[37] See [65] above.

[38] See *Re Zita (a solicitor)* [2022] VSC 354, [90], [96] (‘*Re Zita*’).

[39] Guidelines, paragraph 9.

[40] Rule 4.1.3 of the *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015.*

[41] See [67(b)] above.

[42] Rule 5.1.2(i) of the *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015.*

[43] *DPP v GR* (n 33); See [61] above.

[44] See for example the following cases published in the last year in which practitioners have been criticised for their use of AI: *Murray (on behalf of Wamba Wemba Native Title Claim Group) v State of Victoria* [2025] FCA 731; *JNE24 v Minister for Immigration and Citizenship* [2025] FedCFamC2G 1314; *Valu v Minister for Immigration and Multicultural Affairs (No 2)* [2025] FedCFamC2G 95; *Handa and Mallick* [2024] FedCFamC2F 957; *DPP v GR* (n 33).

[45] General deterrence is capable of being an important purpose when assessing the proper response to conduct by legal practitioners: see *Re Zita* (n 38) [113].

[46] *Re Zita* (n 38) [113].

[47] Referred to in [71(a)] and [71(d)] above.

[48] Ibid [83], [102].