JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA
CITATION	**:**	LEGAL SERVICES AND COMPLAINTS COMMITTEE -v- LAWSON [2024] WASC 158
CORAM	**:**	TOTTLE J STRK J MUSIKANTH J
HEARD	**:**	6 MAY 2024
DELIVERED	**:**	6 MAY 2024
FILE NO/S	**:**	LPD 1 of 2024
BETWEEN	**:**	LEGAL SERVICES AND COMPLAINTS COMMITTEE Plaintiff AND RICHARD JAMES LAWSON Defendant

Catchwords:

Legal practitioners - Disciplinary proceedings - Removal from the Supreme Court roll - Professional misconduct - Where practitioner engaged in a persistent course of dishonest conduct over six years involving false statements to a client and regulatory authorities - Practitioner not a fit and proper person to remain a legal practitioner

Legislation:

Legal Profession Act 2008 (WA)
Legal Profession Uniform Law (WA)
Legal Profession Uniform Law Application Act 2022 (WA)

Result:

Order that the practitioner's name be removed from the Supreme Court roll under the *Legal Profession Uniform Law* (WA)

Category: B

Representation:

Counsel:

Plaintiff	:	C Bailey
Defendant	:	No appearance

Solicitors:

Plaintiff	:	Legal Services and Complaints Committee
Defendant	:	No appearance

Cases referred to in decision:

Khosa v Legal Profession Complaints Committee [2017] WASCA 192
Law Society (New South Wales) v Foreman (1994) 34 NSWLR 408
Legal Profession Complaints Committee v Brennan [2010] WASC 198
Legal Profession Complaints Committee v Lashansky [2007] WASC 211
Legal Profession Complaints Committee v Lawson [2021] WASAT 152
Legal Profession Complaints Committee v Lawson [2021] WASAT 152 (S)
Legal Profession Complaints Committee v Oud [2019] WASC 287
Re Maraj (a legal practitioner) (1995) 15 WAR 12

JUDGMENT OF THE COURT:

Introduction

1 The court has concluded that the respondent's name should be removed from the Supreme Court roll and what follows are the reasons for reaching that conclusion.

2 The application is before the court by way of an originating motion filed on 5 February 2024 and subsequently amended on 14 March 2024.

3 By way of an email sent on 3 April 2024 the respondent informed the court that he had formally surrendered his practising certificate on 21 December 2021. He stated he had no aspirations to practise law 'ever again' and he invited the court to 're-consider removing [him] from the roll of practitioners'.

4 The respondent has not sought to be heard on the motion.

Background

5 On 22 June 2022 the State Administrative Tribunal (**the Tribunal**) ordered that a report be transmitted to this court with a recommendation that the respondent's name be removed from the roll of persons admitted to the legal profession and ordered that he pay costs of $71,890.40.[1] This court received the report on 22 February 2023. The report was received under cover of a letter from the Tribunal dated 12 August 2022 by which the report and recommendations were made. The reason for delay between the making of the orders and the receipt of the Tribunal's letter and report is not apparent from the materials filed in support of the originating motion.

6 The Tribunal's order followed findings made on 30 November 2021 that the respondent had engaged in professional misconduct within the meaning of the *Legal Profession Act 2008* (WA) in nine respects.[2]

7 The relevant circumstances may be summarised as follows.

(a) On 18 July 2011 the respondent was retained by a client who had been arrested pending extradition to Florida in the United States. The client signed a costs agreement with the respondent

[1] ***Legal Profession Complaints Committee v Lawson*** [2021] WASAT 152 (S) (penalty reasons).
[2] ***Legal Profession Complaints Committee v Lawson*** [2021] WASAT 152 (primary reasons).

and deposited $91,538.05 in the respondent's trust account.[3] The costs agreement provided for a 'lump sum fee' capped at $22,000 (inclusive of GST) with additional work outside of the scope of lump sum arrangement being charged at $440 per hour for the practitioner's time and $110 per hour for a paralegal's time (both rates being inclusive of GST).[4]

(b) On 23 and 24 July 2011 a law graduate (JR) undertaking work experience at the respondent's practice prepared a document referred to as the First Opinion which addressed, among other matters, the charges that the client was likely to face in Florida, potential witnesses, a timeline, some background information and the contact details of three lawyers based in Miami. The respondent made minor changes to the First Opinion.[5]

(c) The respondent and JR visited the client in prison on 26 July 2011. On that visit two things happened, the respondent provided the First Opinion to the client and the client signed a second costs agreement. The second costs agreement provided for a lump sum fee capped at $66,000 (inclusive of GST) with additional work being charged at the same rates as those specified in the first costs agreement.[6]

(d) Later, on 26 July 2011, JR took a witness statement from a witness (KB).[7]

(e) On 26 and 27 July 2011 JR prepared a document referred to as the Second Opinion.[8] The respondent made minor changes to the Second Opinion.[9]

(f) On 28 July 2011 the respondent and JR visited the client in prison for a second time. The respondent provided the Second Opinion to the client. The client terminated the respondent's retainer.[10]

[3] Primary reasons [20 (20)].
[4] Primary reasons [20 (22)].
[5] Primary reasons [20 (23)] and [22].
[6] Primary reasons [20 (27)].
[7] Primary reasons [20 (28)].
[8] Primary reasons [20 (29)].
[9] Primary reasons [25].
[10] Primary reasons [20 (30)].

(g) On 31 July 2011 the respondent rendered an invoice to the client that included fees of $27,500 and transferred $27,500 from his trust account to his general account.[11]

(h) In response to a request from the client, the respondent provided the client with an itemised account dated 6 August 2011.[12] The itemised account falsely represented that the respondent had prepared the First Opinion, took the statement from KB, prepared the Second Opinion and, in effect, presented work that had been undertaken by JR as work that had been undertaken by the respondent and recorded costs on that basis.[13]

(i) On 7 October 2011 the respondent sent a letter to the Legal Profession Complaints Committee (**the Committee**) in which he stated that the client was 'very demanding of his services' and between 16 and 24 July 2011 he had worked exclusively for the client.[14] In fact, the respondent did not work exclusively for the client between 16 and 24 July 2011 and undertook work for other clients in that period.[15]

(j) On 13 May 2012 the respondent issued a further invoice to the client to which a schedule described as 'Itemised Account' was attached. The further invoice was for a slightly lesser amount than the invoice dated 31 July 2011. There were minor differences between the text of the Itemised Account provided to the client on 6 August 2011 and that provided on 13 May 2012 but the differences are not material.[16]

(k) In costs assessment proceedings commenced by the client in this court the respondent relied on an affidavit sworn on 16 August 2012 that purported to verify the work he claimed had been undertaken by him.[17] On 18 June 2013 the respondent filed a bill of costs that reproduced the substance of the itemised accounts.[18] The affidavit and the bill of costs falsely

[11] Primary reasons [20 (31)] and [20 (32)].
[12] Primary reasons [28].
[13] Primary reasons [42], [65] and [70].
[14] Primary reasons [85].
[15] Primary reasons [100].
[16] Primary reasons [29].
[17] Primary reasons [104].
[18] Primary reasons [105].

represented the amount of work that the respondent had undertaken on the client's behalf.[19]

(l) Although the bill of costs filed in the costs assessment proceedings was for the sum of $22,253 the respondent failed to repay the client the difference ($5,247) between that amount and the $27,500 that he had invoiced and paid himself out of his trust account on 31 July 2011 until September 2014.[20]

(m) In response to enquiries from the Committee, in May 2017 the respondent made statements that repeated his claims that the costs charged to the client were for work undertaken by him and provided the Committee with a statement from his wife that wrongly suggested that JR's employment with the respondent was terminated due to 'unsatisfactory conduct and financial concerns'.[21] These statements were false.[22]

(n) In August 2017, in response to enquiries made by the Legal Practice Board in the context of the respondent's application to renew his practising certificate, the respondent repeated the false statements referred to in (m).[23]

(o) In November 2017, the respondent made statements to the Committee in which he repeated the claims he had made about the work he had undertaken on the client's behalf.[24]

8 In summary the Tribunal found that the respondent had engaged in conduct that constituted professional misconduct in the following respects:[25]

(a) The respondent had provided itemised accounts to a client that falsely and grossly overstated the number of hours work undertaken by him.

(b) The respondent made a false statement to the Committee to the effect that he had worked exclusively for the client over the period of eight days covered by the itemised accounts.

---

[19] Primary reasons [109].
[20] Primary reasons [113] and [114].
[21] Primary reasons [116].
[22] Primary reasons [117], [121] and [139].
[23] Primary reasons [141], [143] and [148].
[24] Primary reasons [149] and [150].
[25] Primary reasons [151].

(c) The respondent had sworn, filed and relied on an affidavit containing false statements concerning the itemised accounts in the costs assessment proceedings before this court.

(d) The respondent had filed a bill of costs for assessment in this court knowing that it contained entries that were false.

(e) The respondent failed to refund the client the difference between the amount he had been charged and the amount of costs sought to be justified by the bill of costs filed in the costs assessment proceedings.

(f) The respondent made false statements to the Committee about the number of hours work undertaken by him for the client and had made false statements to the Committee about the reasons why JR's employment with him came to an end.

(g) The respondent repeated the false statements to the Legal Practice Board in support of an application to renew his practising certificate.

(h) The respondent made further false statements to the Committee about the number of hours work undertaken by him.

9 The findings were made following a hearing over seven days at which the respondent contested all the allegations other than the allegation based on his failure to repay the $5,247 before September 2014. The principal witness called by the Committee was JR. In his defence of the allegations made against him the respondent maintained that JR's conduct was unprofessional. The Tribunal found that JR was a credible witness who gave reliable evidence.[26] The Tribunal found that the respondent was not only dishonest in his dealings with the client, the Committee and the Legal Practice Board, but also lied in his evidence to the Tribunal.[27] The Tribunal found that the respondent was not a truthful and credible witness in relation to any of the evidence he gave to the Tribunal.[28]

10 In deciding to transmit a report to this court the Tribunal had regard to the following matters:[29]

[26] Primary reasons [35] - [41].
[27] Primary reasons [54], [62].
[28] Primary reasons [63].
[29] Penalty reasons [31] - [54].

(a) Eight out of the nine findings of professional misconduct were for knowingly seeking to mislead the client, the Committee, this court and the Legal Practice Board.

(b) The respondent's conduct towards the client should be characterised as follows:[30]

> the practitioner's conduct was grossly unfair to CL and involved serious dishonesty and therefore serious impropriety affecting his character, which is indicative of a failure either to understand or to practise the precepts of honesty and fair dealing that are essential to the privilege and responsibilities of legal practice.

(c) The respondent's conduct generally should be characterised as involving:[31]

> serious dishonesty and therefore serious impropriety affecting his character, which is indicative of a failure either to understand or to practise the precepts of honesty and fair dealing which are essential to the privilege and responsibilities of legal practice. It also 'undermine[d] the authority of a regulatory body' [being the applicant] to effectively investigate the complaint made by CL ... and thereby to seek to protect the public in their dealings with lawyers and to maintain the reputation and standards of the legal profession.

(d) The respondent engaged in the dishonest conduct over a period of more than six years.

(e) The respondent's dishonesty extended to the evidence given by him at the hearing.

(f) The respondent was dishonest in several different settings: his dealings with the client, his dealings with the Committee, his dealings with the Legal Practice Board and in his conduct of the cost assessment proceedings.

(g) The Tribunal considered it utterly disgraceful for the respondent to have impugned the competence and honesty of JR, a very junior legal practitioner at the start of her legal career.

(h) The respondent engaged his wife in his dishonest conduct.

---

[30] Primary reasons [83].
[31] Primary reasons [103].

(i) The respondent's dishonesty involved an attempt by him to obtain a personal benefit at the expense of his client to whom he owed fiduciary duties.

(j) The respondent has shown no remorse.

(k) The respondent has demonstrated no insight into his conduct. The Tribunal noted the respondent had declined to make submissions to the Tribunal in relation to penalty and thus forewent an opportunity to demonstrate that he had insight into his conduct.

(l) The respondent did not have the mitigatory benefit of a clean record. In August 2015 the respondent was suspended from practice for a period of six months for misconduct that involved dishonesty.

<u>The source of the power to remove a practitioner's name from the roll</u>

11 The Tribunal's order that a report be transmitted and a recommendation made to this court was made under the *Legal Profession Act 2008*. By the time the Tribunal's letter making its report and recommendation was issued, the *Legal Profession Uniform Law Application Act 2022* (WA) (**Application Act**) had come into effect.

12 The Application Act:

(a) repealed the *Legal Profession Act 2008* as of the 'commencement day',[32] which was 1 July 2022; and

(b) implemented, as a law of Western Australia, the *Legal Profession Uniform Law* (**Uniform Law**) as of the 'commencement day'.[33]

13 Section 322 of the Application Act provides that the roll of practitioners previously maintained by the Supreme Court under s 28(1) of the *Legal Profession Act 2008* continues on and from the commencement day as the Supreme Court roll under s 22(1) of the Uniform Law.

[32] *Legal Profession Uniform Law Application Act 2022* (WA), s 260(a).
[33] 'Commencement day' is defined in s 7 of the Application Act as the day on which that section comes into operation. Section 7 is contained within pt 2 of the Application Act. Section 2 of the Application Act provides that all Parts that Act, other than pt 1, came into effect on a day fixed by proclamation, which date was on 1 July 2022 as confirmed by the Compilation Table at page 224 of the Application Act.

14 Section 22(1) of the Uniform Law provides that this court must maintain a roll of Australian lawyers - the Supreme Court roll - for this jurisdiction containing the names and relevant particulars of persons admitted by the court. Section 23(1) of the Uniform Law provides that this court may order the removal of the name and other particulars of a person from the Supreme Court roll on, among other things, the recommendation of 'the designated tribunal'. In this State 'the designated tribunal' is the Tribunal.[34] Section 23(1) of the Uniform Law confers power on the court to remove the respondent's name from the roll.

Applicable principles

15 The principles to be applied in an application to remove a practitioner from the roll are well established. They were summarised by this court in ***Legal Profession Complaints Committee v Oud***[35] and include the following:[36]

> (a) The court's jurisdiction with respect to the regulation of the legal profession is not to be exercised for the purpose of punishing the practitioner concerned, but for the protection of the public and the maintenance of the reputation and standards of the legal profession;
>
> (b) Where the motion is to remove a practitioner from the roll, the critical question for the court is whether the practitioner is shown not to be a fit and proper person to be a legal practitioner;
>
> (c) Fitness to practice law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges;
>
> (d) Removal from the roll is an order reserved for very serious cases, where the character and conduct of the practitioner is seen to be inconsistent with the privileges of further practice;
>
> (e) Integrity and honesty are essential characteristics expected of a practitioner, and therefore, the court has generally taken a very serious approach when dealing with dishonesty by a practitioner.

16 An important object of the disciplinary function is to maintain and protect the reputation of the legal profession.[37] Account must also be

---

[34] *Legal Profession Uniform Law Application Act 2022* (WA), s 22.
[35] ***Legal Profession Complaints Committee v Oud*** [2019] WASC 287 (Quinlan CJ, Kenneth Martin & Smith JJ).
[36] ***Legal Profession Complaints Committee v Oud*** [17].
[37] ***Re Maraj (a legal practitioner)*** (1995) 15 WAR 12, 24 - 25 (Malcolm CJ); ***Legal Profession Complaints Committee v Brennan*** [2010] WASC 198 [10] (Martin CJ).

taken by the court of the effect which its order will have on the understanding of both the public and the profession of the standard of behaviour required of legal practitioners.[38]

17 A practitioner's failure to understand the impropriety of his or her conduct may be a factor of great importance in determining whether their name should be permitted to stay on the roll. A reason for this is that the lack of appreciation of impropriety and the lack of insight increases the risk of recurrence of the improper conduct.[39]

The respondent's circumstances

18 The respondent's decision not to make submissions to the Tribunal in relation to penalty and his decision not to appear in the present application means that the court has very limited information about the respondent's circumstances.

19 The respondent was admitted as a practitioner on 21 December 2000. It appears that he practised as a sole practitioner. In his email to the court of 3 April 2024 the respondent stated that he will be 70 years of age in August. He stated that he is in poor health and unable to work and exists on an Australian Government pension.

Disposition

20 The jurisdiction the court is called upon to exercise is protective and not punitive. One feature of the protective nature of the jurisdiction is that it is invoked to maintain the reputation of the profession in the eyes of the public. Thus, it is irrelevant that the respondent has professed that he does not intend to practise law again and that, in a practical sense, the protection of the public does not require the respondent's name to be removed from the roll of practitioners. The removal of the respondent's name from the roll serves an important aspect of the public interest by demonstrating to the public that legal practitioners are required to observe the highest standards of honesty and integrity. A failure to observe those standards calls into question the suitability of a legal practitioner to enjoy the privilege of practising as a lawyer.

21 This application does not call for elaborate analysis. We endorse and would respectfully adopt the observations made by the Tribunal

---

[38] ***Law Society (New South Wales) v Foreman*** (1994) 34 NSWLR 408, 444F (Mahoney JA).
[39] ***Legal Profession Complaints Committee v Lashansky*** [2007] WASC 211 [35] (Wheeler & McLure JJA, EM Heenan J); ***Khosa v Legal Profession Complaints Committee*** [2017] WASCA 192 [188] - [195] (Murphy & Beech JJA).

about the respondent's conduct in the penalty reasons to which we have referred at [10]. The respondent's persistent dishonesty in his dealings with his client, the Committee and the Legal Practice Board is incompatible with his continued membership of the legal profession.

22 If this court were to permit a practitioner to remain on the roll having manifested such a lack of integrity it would undermine the public's trust and confidence in the honesty and integrity of legal practitioners. The court must send a clear signal to the community and the profession that dishonest conduct of the nature and extent engaged in by the respondent is manifestly incompatible with his remaining on the roll and will not be tolerated.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

CD
Associate to the Honourable Justice Tottle

6 MAY 2024