

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

**ACT** : LEGAL PRACTICE ACT 2003 (WA)

**CITATION** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE and WALTON [2006] WASAT 155

**MEMBER** : JUSTICE M L BARKER (PRESIDENT)  
MR J MANSVELD (MEMBER)  
MR C EDMONDS SC (SENIOR SESSIONAL  
MEMBER)

**HEARD** : 6 JUNE 2006

**DELIVERED** : 6 JUNE 2006

**FILE NO/S** : VR 21 of 2006  
VR 22 of 2006  
VR 23 of 2006  
VR 24 of 2006  
VR 25 of 2006  
VR 26 of 2006

**BETWEEN** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE  
Applicant

AND

JANET WALTON  
Respondent

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*Catchwords:*

Professionals - Legal practitioners - *Legal Practitioners Act 1893* - *Legal Practice Act 2003* - Unprofessional conduct - Unsatisfactory conduct - Appropriate penalty

*Legislation:*

*Legal Practice Act 2003* (WA), s 185, s 187, s 194  
*Legal Practitioners Act 1893* (WA), s 29A

*Result:*

Findings against Practitioner. Report of findings transmitted to Supreme Court (full bench) with a view to striking off.

*Category:* B

**Representation:**

*Counsel:*

Applicant : Mr J Gilmour QC  
Respondent : No Appearance

*Solicitors:*

Applicant : Legal Practitioners Complaints Committee  
Respondent : J Parry and Co.

**Case(s) referred to in decision(s):**

Kyle v Legal Practitioners Complaints Committee (1999) 21 WAR 56

**Case(s) also cited:**

Nil

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Summary of Tribunal's decision***

1           The Tribunal found the practitioner, Janet Walton, guilty of six  
counts of unprofessional or unsatisfactory conduct as a legal practitioner  
and decided to send a report of its findings to the Supreme Court (full  
bench) to enable the Court to determine whether the practitioner should be  
struck off the roll of practitioners or disciplined in some other way.

2           Pending the Court's determination, the Tribunal suspended the  
practitioner from practice.

***Introduction***

3           On 6 June 2006, following a hearing of the six applications - which  
the practitioner, Janet Walton, failed to attend - the Tribunal announced its  
decision and the President, on behalf of the Tribunal, gave oral reasons.  
The reasons that follow are an edited form of the reasons that appear on  
the transcript of the proceedings.

4           While the practitioner failed to attend the final hearing, she had  
attended (most) earlier directions hearing in relation to the applications,  
had filed documents in the proceedings, and had full notice of the final  
hearing.

5           The Tribunal finds each of the applications made out and,  
accordingly, finds the practitioner guilty of the charges of unprofessional  
conduct in relation to the first two matters and unsatisfactory conduct, by  
reason of unprofessional conduct, in respect of the other four matters. I  
will come to each of them in turn.

6           I should indicate, at the outset, that the Tribunal considers that the six  
matters made out against the practitioner, so far as penalty is concerned,  
are such that each should be referred by the Tribunal to the Supreme  
Court (full bench) for consideration, with the view to the Court deciding  
whether the practitioner should have her name struck off the roll of  
practitioners. In the meantime, the Tribunal will order that the  
practitioner be suspended from practice. We will also make other  
consequential orders.

7           The reasons that I now give will be the subject of a written report to  
the Chief Justice of the Supreme Court, in accordance with both the terms  
of the *Legal Practitioners Act 1893* (WA) (the old Act) as well as the  
terms of the current *Legal Practice Act 2003* (WA) (the 2003 Act), and,

where necessary, I will appropriately edit the reasons I am now about to give, but before they are forwarded in that way.

***VR 21 of 2006***

8 I come first to VR 21 of 2006. The application alleges that the practitioner was guilty of unprofessional conduct, in about September 1998, in knowingly, or recklessly, signing a certificate of independent legal advice for guarantors, which she knew, or ought to have known, was incorrect in a material particular.

9 The facts are set out in a statement of facts and contentions in the application, as lodged. It is there said, and the Tribunal finds, that in about July 1998 the practitioner was retained by Peter Hughes to provide advice on debt factoring contracts in relation to his roofing business, DRC WA Pty Ltd.

10 In about August 1998 that company, DRC, arranged a refinancing package which involved the company borrowing \$350 000 from Jack Debner Hopkins as trustees for the Hopkins Superannuation Fund, with security for the loan being provided by way of a real property mortgage over property belonging to Mr Thomas Hughes at 110 Hamilton Street, Cannington, as well as a fixed and floating charge over the assets of DRC and a guarantee and indemnity to be given jointly by Peter Hughes and Thomas Hughes in favour of the Hopkins.

11 On or about the 7 September, 1998, the practitioner was retained by Thomas Hughes to provide independent legal advice in relation to the guarantee and the loan and other security documents, which formed part of the refinancing package and to sign a certificate of independent legal advice for the guarantor, certifying that such advice had been given to him.

12 We find that the practitioner knew, or ought to have known, that the certificate of legal advice was required, or likely to be required, by the Hopkins as a pre-requisite to their advancing the loan to the company, which loan was to be guaranteed by Thomas Hughes and Peter Hughes.

13 We find that on or about the 7 September, 1998, the practitioner gave advice to Thomas Hughes in relation to the content and effect of the guarantee. The certificate of legal advice addressed to the Hopkins, which was signed by the practitioner and dated 7 September, states that she had been instructed by both Thomas Hughes and Peter Hughes to explain to

both of them the content and effect of the guarantee in the loan and security documentation.

14 We find that the certificate of legal advice signed by the practitioner was misleading in that, at no time, did the practitioner give advice to Peter Hughes in relation to the content and effect of the guarantee or the loan and security documentation.

15 In papers filed in the Tribunal in response to the application, the practitioner suggests she was told by Peter Hughes that the lenders, in effect, did not require him to be separately advised. We make no findings about that. There is no evidence before us concerning whether or not the certificate misled the lenders, or any other person.

16 Nonetheless, we are satisfied that in circumstances such as these the practitioner should not have signed the certificate in which it was stated that she had given advice to both Mr Hughes Senior and Peter Hughes, when that was demonstrably not the case.

17 Documents such as those certificates are important documents in commercial matters. That is well understood in this State, and solicitors have a very clear obligation to ensure that when they sign such documents they are materially correct in every respect.

18 It is usual and appropriate to cite the Supreme Court decision in *Kyle v Legal Practitioners Complaints Committee* (1999) 21 WAR 56, to say that:

"The conduct of the practitioner that falls short of the standard of professional conduct observed or approved by members of the professional of good repute and competence is the standard by which to judge the conduct complained of."

19 We find that the practitioner's conduct, in signing a certificate in the circumstances, fell short of that standard.

### ***VR 22 of 2006***

20 I turn now to the second reference, VR 22 of 2006. The application alleges that the practitioner was guilty of unprofessional conduct in or about November 2000, in that she transferred the sum of \$6600 from trust monies received from the settlement of the sale of the property, previously referred owned by Mr Thomas Hughes, to her general office account, in payment of costs, without having caused to be served upon the client within 14 days after transferring such sum, a bill of costs, so as to justify

the transfer of such sum and showing that trust monies had been acquired by the practitioner towards the payment of those costs.

21 The evidence shows that in or about November 2000, the practitioner acted for Mr Thomas Hughes on the settlement of his property at 110 Hamilton Street, Cannington. The settlement occurred on or about 6 November 2000 and on or about that date - in fact, it appears it may have been the 8 November 2000 - the practitioner received \$121 661.56, being the proceeds of the sale of the property, on behalf of Mr Hughes, and paid those monies into her trust account.

22 On or about the 8 December - actually, I think that should be November - the practitioner caused to be deducted from those sale proceeds, the sum of \$6600 in payment of her costs, which sum was paid to her firm. She did not cause to be served upon Mr Hughes a bill of costs so as to justify the transfer of that sum, showing that trust monies had been applied, until July 2001.

23 The requirement to give that bill of costs arose under s 34A of the old Act. That Act applied to these transactions as these transactions occurred prior to 1 January 2004, when the 2003 Act came into operation.

24 While it is clear, and we so find, that the bill of costs was not provided within the 14 days required by s 34A of the 2003 Act, it is clear, nonetheless, that there is no suggestion of dishonesty or failure to account on the part of the practitioner in this case. A settlement statement issued at the time of the settlement and provided to Mr Hughes clearly showed the amounts of costs in relation to the work done and the settlement, together with GST, that was subsequently shown in the bill of costs which was provided in July 2001.

25 Nonetheless, provisions such as s 34A and its equivalents are there for good reason. Solicitors must account promptly to their clients when funds that were held in trust are applied to other purposes. The settlement statement on its own, whilst noting the payments that had been made, or were to be made, was not a substitute for a proper bill of costs that the 2003 Act has in mind.

26 Accordingly, we find that there was, as alleged, unprofessional conduct by failing to comply with a clear requirement of the 2003 Act that then applied to the practitioner's professional conduct.

*VR 23 of 2006*

27 I turn to VR 23 of 2006. In this application the committee alleges that the practitioner was guilty of unsatisfactory conduct under the 2003 Act by unprofessional conduct between March 2004 to the date of the application, which was about 16 February 2006, in interfering and/or involving herself, without having been retained by any interested party, in relation to District Court action number 2681 of 2003, between Thomas Hughes and Peter Hughes.

28 The statement of facts and contentions set out in the application have been made out by the committee in the evidence before us. In or about July 1998 the practitioner was retained by Mr Peter Hughes, or possibly his company, DRC WA Pty Ltd, mentioned earlier, to provide advice on debt factoring contracts in relation to that company. In or about August 1998 DRC arranged a re-financing package, which I referred to earlier. The DRC re-financing package was executed in about September 1998.

29 DRC, as it turns out, was unable to pay the loan and the guarantee when called upon to do so. Thomas Hughes paid the full amount due under the loan to the Hopkins from the settlement of the sale of his Cannington property, which settlement the practitioner acted upon, as I indicated in relation to the earlier application. The practitioner acted for Mr Hughes on the settlement of the sale of the property.

30 The practitioner ceased acting for Mr Thomas Hughes in or about December 2000, following the completion of the sale of his Cannington property.

31 On or about 8 December 2003, some 3 years later, Mr Thomas Hughes filed a writ of summons, number 2681 of 2003, in the District Court against his son, Peter Hughes. In this action Thomas Hughes was represented by Hammond Worthington solicitors and Peter Hughes, his son, was represented by Camm and Associates solicitors.

32 In the action, Thomas Hughes claimed the amount of \$175 000 from Peter Hughes as co-guarantor of the loan, together with a further amount of \$43 570, pursuant to another loan agreement which Thomas Hughes alleges he entered into with Peter Hughes.

33 By letter dated 4 March 2004 to Kenneth Hughes, Thomas Hughes' son, another son, and holder of power of attorney from Thomas Hughes -

indeed, an enduring power of attorney - the practitioner stated, and I quote:

"Please be advised that mid-afternoon on the 3 March 2004 I became aware that a writ has been issued on behalf of Thomas Hughes against his son Peter Hughes.

It is my intention to make further inquiry of the defendant's solicitors with regard to that matter and may elect to have some involvement in that proceeding, depending upon the information that I receive."

34 By letter dated 5 March 2004, the practitioner wrote to Hammond Worthington concerning that action and, in particular, an affidavit sworn by Thomas Hughes in support of an application for summary judgment and stated, amongst other things, and I quote:

"Furthermore, I have taken the opportunity to peruse the affidavit which Thomas Hughes deposed to and say that, in my opinion, not only is it incompetent, it is also demonstrably false and deliberately misleading to the court.

If you are, in fact, and have been taking instructions from Kenneth Hughes, then that would explain the reason for this essentially dishonest claim. Ken has oppressed the father into bringing this action and it is not supported by the facts. As a material witness I am just as willing to inform you of my evidence as I have been to the defendant's solicitors. Although, in your case, I do not think that hearing what I have to say would encourage you to proceed further with a summary judgment application. As a potential witness I am available to discuss this matter with you, should you so wish, prior to the special appointment."

35 On 10 March 2004, the practitioner swore an affidavit in opposition to Thomas Hughes' application for summary judgment, which affidavit was filed by Camm and Associates in that action. By letters dated 23 and 24 June 2004, to Hammond Worthington, the practitioner sought information regarding the duration and ambit of her retainer with Thomas Hughes, in order for her to be able to provide discovery of documents in the action.

36 By letter dated 30 June 2004, to Hammond Worthington, the practitioner stated, amongst other things, and I quote:

"The writ which you have issued is of no substance and never was. It is essentially an abuse of process and should never have been commenced. It represents a middle line approach directed at the son, Peter, by Kenneth, and has effectively denied the client, Thomas Hughes, any genuine opportunity to recover his losses."

37 The letter goes on to set out a suggested form of settlement between Thomas Hughes and Peter Hughes, which includes the withdrawal of the action.

38 By letter dated 9 July 2004 to Hammond Worthington, the practitioner again refers to the need to know the duration and ambit of her retainer with Thomas Hughes in order that she may make available to the court documents in her possession.

39 By hand-written facsimile dated 15 July 2004 to Hammond Worthington, the practitioner advised that if the information requested in her letter dated 23 June 2004 was not provided, she would initiate an application, pursuant to order 17 of the Supreme Court Rules. That is to say, under the inter-pleading rules.

40 Hammond Worthington responded to the practitioner by facsimile, dated 16 July 2004, requesting copies of the documents to which she was referring in her facsimile. On or about 19 July 2004, the practitioner filed an inter-pleader chamber summons in the action, purporting to be an application under order 17 of the Supreme Court Rules that apply in the District Court, seeking an order that Thomas Hughes relinquish or maintain his claim to undefined documents, by deposing, on oath, to the duration and ambit of the retainer between himself and the practitioner, which forms the basis of his claim to control of the documents in the practitioner's possession.

41 The practitioner's inter-pleader chamber summons was heard by the District Court on 30 July 2004 and was dismissed, with no order being as to costs.

42 In about August 2004, the practitioner delivered to Camm and Associates, who represented Peter Hughes in the action, her files in relation to her retainers with Thomas Hughes, despite having received a letter from Hammond Worthington, dated 3 August 2004, putting the practitioner on notice that if the practitioner released any documents to Peter Hughes, over which Thomas Hughes could rightly claim privilege, she would be breaching her professional obligations.

43 By letter dated 22 September 2004, to Hammond Worthington, the practitioner stated, amongst other things, and I quote:

"I believe the currently maintained action to be merely 'stalking horse' the substance of which is devoid of any justification or legal merit, and that it continues to be maintained for an essentially ulterior purpose."

44 The practitioner then requested that Thomas Hughes discontinue the action within 14 days, otherwise she intended to make an application pursuant to section 78 of the Supreme Court Rules. By response, dated 23 September 2004, Hammond Worthington informed the practitioner that as she was not a party to the action they would not discuss it with her and further advised they would not incur unnecessary costs to their client in dealing with matters that had no basis.

45 By letter dated 26 September 2004 to Hammond Worthington, the practitioner indicated that she maintained an intention to refer the - and I quote:

" - - entire matter of the apparent and extended abuse of process in relation of his matters to a court for determination."

46 And then reference was made to the *Vexatious Proceedings Restrictions Act 2002*.

47 On or about 29 September 2004, the practitioner sent to the District Court, for filing in the action, a chamber summons seeking leave to bring proceedings pursuant to the *Vexatious Proceedings Restriction Act* and seeking an order that the action be stayed, pursuant to s 4(1)(c) of that Act. The practitioner's chamber summons was heard on 18 October 2004, when it was adjourned to a special appointment.

48 By letters dated 19 and 22 October 2004, to Hammond Worthington, the practitioner sought to have Hammond Worthington agree to cease acting for Thomas Hughes in respect of her application in the action, and indicated that she would be making a further application, seeking their removal as Thomas Hughes' representative in the action.

49 The practitioner filed a further chamber summons in the action on 25 October 2004, seeking, amongst other things, an interim stay of the action in the District Court and an order that Thomas Hughes be separately represented. This application was heard on 29 October 2004 and was dismissed, with costs awarded against the practitioner.

50 On 29 October 2004, the practitioner filed a new chamber summons in the action, again seeking, amongst other things, an interim stay of the action and an order that Thomas Hughes be separately represented. This chamber summons was heard on 12 November 2004 and was dismissed with an order that the practitioner pay Thomas Hughes' costs on an indemnity basis.

51 In or about December 2004, the practitioner filed an originating summons in the District Court in action CIV0325 of 2004 between herself, the practitioner, and Thomas Hughes, first defendant, and Peter Hughes, second defendant, seeking, amongst other orders, an order that the further conduct of the main action be stayed.

52 On 15 December 2004, the District Court heard the practitioner's chambers summons in CIV2681 of 2003 and the practitioner's originating summons in CIV0325 of 2004, with both being dismissed and the practitioner ordered to pay Thomas Hughes' costs.

53 The Tribunal finds, as has been alleged against the practitioner, that her conduct had these effects: First, Thomas Hughes has occasioned the following unnecessary legal costs in addressing the practitioner's conduct, which he has not been able to recover by way of taxed costs from the practitioners; first, in dealing with correspondence directed to discovery and the chamber summons in the action, \$1856.80 and, secondly, in dealing with all letters and applications related to vexatious proceedings, in the order of nearly \$7000. And then that Hammond Worthington has incurred the following costs in addressing the practitioner's conduct on behalf of Mr Hughes, which it has not charged him; first, in dealing with the affidavit sworn by the practitioner, opposing Thomas Hughes' application for summary judgment, \$429 and, secondly, in dealing with correspondence directed to discovery in the chamber summons in the action referred to earlier, \$760.

54 In respect of some of those costs there is an application for an order that compensation be awarded and I will come to that later.

55 In the circumstances, the Tribunal has no hesitation in finding that the practitioner's conduct in agitating issues that she raised in that District Court action was conduct that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the profession of good repute and competence.

56 The fact of the matter was that Mr Thomas Hughes was represented in that District Court action by solicitors, whilst the practitioner, in her

correspondence, and in her affidavits and other submissions to the District Court wished to allege that the solicitors were acting without proper instructions. There is no material before us to support the practitioner's view.

57 In any event, even if there were any question concerning the question of authority of the solicitors to act, the conduct of the practitioner, to act as she did in relation to the District Court proceedings, was entirely uncalled for and really quite disgraceful. She had no proper standing to bring any of the proceedings that she instituted in the District Court.

58 Each time she went to the District Court findings were made against her, yet she persisted. Her attempt to justify her standing to bring such actions was weak and, as the court obviously found, on each of those occasions, couldn't be properly justified.

59 The Tribunal finds that the allegation of unsatisfactory conduct by unprofessional conduct, to be made out.

60 There is also merit in the submission of senior counsel for the Committee that the practitioner's apparent responses to the allegations made against her, in relation to his particular application, do not truly respond to the allegations made. Rather, there is a constant attempt by the practitioner to justify, many years after the event of having acted for Mr Thomas Hughes, an interest in the matter, because of her perception that there was a contest, if you like, between the son, Ken, and the son, Peter, for control of the father's interests.

### ***VR 24 of 2006***

61 In relation to the next application, VR 24 of 2006, the committee allege that the practitioner was guilty of unsatisfactory conduct by unprofessional conduct that between March 2004 to September 2004, in knowingly and improperly revealing her former client's confidential information to the opposite party in proceedings to which her former client was a party, intending that this information be utilised to assist the opposite party. The Tribunal finds this complaint made out. The facts are, in many respects, already before the Tribunal in the reasons I have given. The practitioner was first retained by Thomas Hughes in or about September 1998, to provide him with independent legal advice in relation to the guarantee he was proposing to execute.

62 In about December 1999 the practitioner was again retained by Thomas Hughes to act for him in relation to negotiations for a sale of his

property at Cannington. The sale was negotiated and the settlement of the sale took place, as we have heard, on or about 6 November 2000. The practitioner acted for Thomas Hughes on the settlement of the sale.

63 The practitioner ceased acting for Thomas Hughes in or about early December 2000. We expressly find that to be so.

64 It was not until about December 2003 that Thomas Hughes filed a writ of summons in the District Court action, to which reference has already been made. The practitioner was not retained by either Thomas Hughes or Peter Hughes in that action. As I have already pointed out, the plaintiff in that action, Thomas Hughes, had Hammond Worthington acting for him and the defendant in that action, his son, Peter Hughes, had Camm and Associates acting for him.

65 In or about January 2004 Thomas Hughes filed an application in the action, seeking summary judgment. As we have seen, following that, the practitioner wrote to the solicitors for Mr Hughes Senior, raising questions about her retainer and documents she was holding.

66 Subsequent to that, by an affidavit, sworn 10 March 2004, in opposition to Thomas Hughes' summary judgment application, and filed in the action on behalf of Peter Hughes, by his solicitors, the practitioner revealed confidential information relating to Thomas Hughes by deposing to: First, the first of her retainers with Thomas Hughes; secondly, the advice she gave to Thomas Hughes in relation to the guarantee; thirdly, what occurred at meeting she attended at Thomas Hughes' solicitor; fourthly, her understanding of Thomas Hughes' position in relation to the matters, the subject of her retainers with him; and, fifthly, her communications while still acting for Thomas Hughes with Craig McIntosh, who was also retained to act on behalf of Thomas Hughes.

67 The practitioner divulged information to which I have referred, without Thomas Hughes' consent, and in the knowledge it was to be used to oppose Thomas Hughes' application for summary judgment in the action.

68 By letter dated 16 March 2004 to the practitioner, the complaints committee raised concerns about the practitioner breaching the client confidentiality owed to her by Thomas Hughes and suggested that it was inappropriate for the practitioner to have any further communication on any issue, with any party, in relation to the matters learned by her during the course of her retainer with Thomas Hughes.

69 In or about August 2004, the practitioner delivered to Peter Hughes' solicitors, Camm and Associates, her files in relation to her retainers with Thomas Hughes, which contained confidential information relating to: First, the practitioner's communications with Centrelink on behalf of Thomas Hughes; secondly, her communications while still acting for Thomas Hughes with Craig McIntosh, who was also retained to act on behalf of Thomas Hughes; and, thirdly, all work carried out by the practitioner in relation to her retainer with Thomas Hughes, relating to the sale and settlement of the property.

70 The practitioner divulged information without the consent of Thomas Hughes and in the knowledge that the provision of the documents would enable Peter Hughes to make use of these documents in the action.

71 By affidavit sworn 29 September 2004, in support of the practitioner's application for a stay of the action, pursuant to the *Vexatious Proceedings Restriction Act 2002* the practitioner revealed confidential information relating to Thomas Hughes by deposing to: First, the instructions she obtained from Thomas Hughes in relation to her retainer with him; secondly, her communications while still acting for Thomas Hughes with Craig McIntosh, who was retained to act on behalf of Thomas Hughes; and, thirdly, her communications with Thomas Hughes, while she was still acting for him.

72 The Tribunal is satisfied in relation to this particular reference the evidence shows that the practitioner was, indeed, possessed of information that had been provided confidentially by Thomas Hughes to the practitioner. While the practitioner relies, in providing information to the solicitors for Peter Hughes, subsequent to her retainer, on the fact that she received information from both Peter Hughes and Thomas Hughes, the evidence discloses to us that she, indeed, provided information that was confidentially given to her by Thomas Hughes alone. Whether or not she also possessed information that was provided confidentially to her by Peter Hughes, it is not open to the Tribunal to find, in these circumstances, that the practitioner merely divulged information relating to Peter Hughes alone.

73 In fact, the evidence here, quite clearly, shows to the contrary. The practitioner was aware at material times that she had an ethical duty not to divulge confidential information that she had obtained from Thomas Hughes, as his solicitor, without his consent. She purported to meet that obligation by writing to Mr Thomas Hughes' then solicitors, Hammond Worthington, to get them to describe the ambit of her retainer

so, effectively, they would describe what documents she should keep confidential and those which she should not.

74 His solicitors refused, quite properly, to accede to that course of conduct. It seems the practitioner took matters into her own hands and divulged the information regardless.

***VR 25 of 2006***

75 I now turn to the matter of VR 25 of 2006. In this application, it is alleged by the committee that the practitioner was guilty of unsatisfactory conduct by unprofessional conduct between November 2005 and January 2006, in issuing bills of costs when she knew that she had no proper basis for doing so. The Tribunal finds this complaint made out.

76 The primary facts are, again, facts we have already recited. The practitioner was first retained by Thomas Hughes in or about September 1998 to provide him with independent legal advice in relation to the guarantee he was proposing to execute. That first retainer ceased in or about September 1998, following the provision of advice to him.

77 Then, in about December 1999, the practitioner was again retained by Thomas Hughes to act for him in relation to the negotiations for a sale of his property at Cannington and the subsequent sale and settlement of that sale. That second retainer ceased on or about 7 or 8 of December 2000, following the settlement of the sale of that property.

78 The Tribunal finds that since that second retainer ceased, the practitioner has not been retained by Thomas Hughes in relation to any matter.

79 On or about the 21 November 2005, the practitioner issued a lump sum bill of costs to Thomas Hughes, purportedly for legal costs of and incidental to a legal retainer on his behalf, for the period 8 December 2000 to 15 October 2005, in the sum of \$202 198, inclusive of GST.

80 On or about 27 January 2006, the practitioner issued a substitute lump sum bill of costs to Thomas Hughes, purportedly for those same costs, for that same period, in the sum of \$198 198, inclusive of GST. Then on about the 30 January 2006, the practitioner issued an itemised bill of costs to Thomas Hughes for \$206 910, in substitution of that second bill.

81 Each of bills of costs were issued to Thomas Hughes in circumstances where the practitioner had no proper basis for doing so. On behalf of the Tribunal, may I say it is almost incredulous that the practitioner could have issued bills of costs like this, in the circumstances, as they had developed. In essence the practitioner was purporting to charge Mr Thomas Hughes for her meddling in the District Court action between Mr Thomas Hughes and his son, Peter.

82 The practitioner, at no time, had any mandate to engage in the intervention in those proceedings which she undertook. Her conduct in acting in that way, we have already found unsatisfactory by reason of its unprofessional nature, and we similarly find the act of proceeding to issue the three bills, in particular, the last itemised one in the sum of \$206 910, to be unsatisfactory conduct, by unprofessional conduct in the period alleged.

83 To the extent that the practitioner, in documents she has filed in response to the allegations against her, suggests that she did have some mandate or instructions to act for Mr Thomas Hughes in the period after 8 December 2000, the Tribunal, on all the documentary evidence it has before it, simply does not accept that to be the case.

84 Additionally, we accept the evidence of Mr Thomas Hughes and the evidence of Mr Robert Grayden, solicitor, that, at no time, was the practitioner instructed to act, at any material time, for Mr Thomas Hughes in the period alleged.

### ***VR 26 of 2006***

85 I now turn to the last of the references, VR26 of 2006. The Committee alleges that the practitioner was guilty of unsatisfactory conduct, by unprofessional conduct, between December 2005 and January 2006, in sending certain communications to the Chief Judge of the District Court of Western Australia, which was grossly discourteous.

86 The Tribunal has no hesitation in finding that that allegation is made out. The Tribunal is amazed, again, to the point of incredulity, to think that a qualified legal practitioner could write to the Chief Judge of the District Court in the terms in which she wrote. Let me elaborate. Again, these facts have been largely outlined earlier and the particular conduct complained of will be explained in this context.

87 In or about November and December 2004 the practitioner was order, on two separate occasions, in District Court action CIV 2681 of

2003 and, on one occasion, in District Court Action CIV0325 of 2004, to pay costs to Thomas Hughes. In or about August 2005, those costs were taxed in the sum of \$4592, \$2061.68 and \$3506.65, respectively.

88 In or about October 2005, Hammond Worthington, on behalf of Thomas Hughes, sought to summons the practitioner to attend a means inquiry hearing in the District Court, pursuant to the *Civil Judgments Enforcement Act 2004*, as the practitioner had not paid to Thomas Hughes the amounts of costs awarded to him.

89 By letter dated 24 October 2005, to the Chief Judge, the practitioner sought to have the means inquiry adjourned *sine die*, that is to say, indefinitely. The Chief Judge responded to the practitioner by letter dated 27 October 2004. On or about 30 December 2005, the practitioner sent, to the Chief Judge, a facsimile, which contains the following passages - -

"I only need to read portions of it to demonstrate how utterly discourteous and unprofessional the terms of this letter were, and I quote:

'Further, I inquire as to what disciplinary proceedings have to date been initiated by you concerning the judgments of Commissioner Greaves made in the above matters, by him, on 15 December 2004. Clearly there was a gross miscarriage of justice conducted against me on that occasion and opinion has been given to me that his handling of the entire matter was grossly incompetent ...

Further, I inquire as to the basis upon which the vexatious proceeding listed in error as part of CIV2681 of 2003 was not, at some earlier time, recognised by the court judges presiding in the matter as being its own error and, yet, being a nullity, your commissioner saw fit to enforce all of the related costs orders against me, without, it would seem, having had the least idea as to what he was actually doing at that time.

I would also like to be informed as to, and provided with, copies of all affidavit material filed by Hammond Worthington, if any, to support the current enforcement applications. And if there are none, then your explanation as to why it is that Hammond Worthington are permitted by your court to proceed in an enforcement matter when there is, before the court, no affidavit evidence of due and continuing debt...

I also require your formal response as to why the court saw fit to list the enforcement proceedings against me at all prior to the determination of the matter by the committee. Your deputy registrar, Hewitt, went out of his way to ensure that the matter, in contravention of the practice rules, proceeded to a taxation, notwithstanding that he was aware that an issue had been raised, as professional conduct issue, as to the maintenance of the appearance of this retainer with Thomas Hughes ...

So what exactly is the reason for this matter, in defiance of all the usual rules being permitted by you to thus proceed through the court, as if there was nothing at all wrong with it? It is wholly an unlawful process and you would be well advised to reassess the entire content of these related files and reconsider the position taken to date by the court. If it is by your intention and direction that I am now being intimidated into payment of these alleged judgment debts, which have no lawful substance in fact, only the coercive power of this alleged due process, under threat of personal 'arrest.'

If Hammond Worthington should prove, in due course, not to act for the judgment creditor in that their purported retainer with him is illegal and illegally conducted on instructions taken from a third party to that retainer, then will make your correspondence of 27/10/05 look extremely ill-considered and your level of concern regarding these serious issues somewhat superficial.'

90 On or about 9 January 2006 the Chief Judge responded to the practitioner, pointing out that the tone of her correspondence was quite improper. On or about 11 January 2006, the practitioner sent to the Chief Judge a further facsimile which contained the following passages, and I quote:

"The expression of your emotive response in terms of the second paragraph of your letter, to my earlier correspondence to you of 30/12/05 is entirely irrelevant to the due resolution of the issues raised by me and which response, in any event, finds no substantiation in fact upon a proper and correct reading of the actual content of my correspondence to you.

It is noted in your correspondence that each of the paragraphs commencing with words 'you have...' precedes, thereafter, to

entirely misrepresent the actual position taken by me in that regard, in terms of my earlier correspondence to you.

Your letter, therefore, cannot and does not answer professionally to my correspondence, at any level, or at all.

Whilst your letter may give the appearance of a response it does not, in fact, provide the direct answers and response sought by me in terms of my correspondence to you and to which I am entitled.

An awareness of the practice rules and their relevance to the issues involved in this tedious matter must be assumed on your part.

The position thus taken by you in your correspondence might well be considered, in absence of any further explanation, to be deliberately taken in order to 'shore up' and maintain the status quo in a court which I understand to be quite renowned for its general ineptitude in dealing with those of the legal profession who operate somewhat 'between' the rules and thus regarded by the more competent of our profession, who still prefer to maintain and conduct themselves within them.

Therefore you have no option but to curtail the current conduct of the enforcement proceedings by Hammond Worthington pending a satisfactory outcome for them of due committee process and it is the due and proper function of your office to enforce this. It is not the function of either my office or of the committee to extricate you from this unfortunate position. It is your responsibility and for you to discharge it.

If you do not then you run with them and conduct an entirely inappropriate and favouring position towards them, which is insupportable legally, morally and ethically, given the material, both deposed to and documented, to which you have full access from the files."

- 91 To write to any judicial officer, let alone the Chief Judge of the District Court of Western Australia, in those terms is thoroughly unprofessional conduct and unsatisfactory conduct, as those terms are defined in the 2003 Act. Any right thinking practitioner would know that that is not the way to conduct himself or herself in relation to proceedings in which the practitioner felt aggrieved.

92 In this case, as we have seen, the practitioner's involvement in the proceedings about which she was complaining were proceedings in which she had quite improperly and unprofessionally meddled and she had no reason or justification for writing at all to the Chief Judge of the District Court let alone in the manner that she did.

93 There are proper ways to raise matters that need to be raised with a judicial officer and, certainly, this was not a proper way for this practitioner to act. She had no proper reason to write at all.

### *Penalty*

94 As I said at the outset, the consequence of the Tribunal's findings are that the practitioner has acted in respect of the first two matters under the 1893 Act in an unprofessional way and, in relation to the other four matters, her conduct is unsatisfactory under the 2003 Act.

95 The Tribunal then is left to determine what penalties are appropriate.

96 In the circumstances, the Tribunal believes it is necessary to refer its findings on each of these matters to the Supreme Court (full bench) for their consideration. Whilst one might regard each of the separate findings and consider a penalty in respect of each them, in the circumstances we consider they need to be considered together. The last four matters are closely inter-related. The first two matters are also related.

97 The Tribunal's power arises, for example, under *Legal Practice Act 2003*, in this way: Section 187 of the 2003 Act gives the Tribunal various powers, including to suspend a legal practitioner for a period not exceeding 2 years. It can impose conditions or restrictions on the right of a legal practitioner to practice. It can impose a fine not exceeding \$25 000. It has a range of other powers open to it. One of those is the power to impose an order for compensation if the conduct of the legal practitioner has directly caused a person to suffer a pecuniary loss, and I will come back to that, as I indicated earlier that I would. The position is generally the same so far as the Tribunal's powers are concerned under the old Act.

98 If the Tribunal considers, in the circumstances of a particular case, that none of those disciplinary outcomes is appropriate in order to protect the public in relation to a practitioner who has shown themselves to be unworthy of the trust the public are asked to place in them, then it can make and transmit a report on its findings to the Supreme Court (full

bench), with a view to the practitioner having his or her name struck from the roll of practitioners.

99           Where the Tribunal takes that step, then, under s 194 of the 2003 Act, for example, the Supreme Court may fine, suspend the practitioner from practice or strike off the roll of practitioners the name of the legal practitioner, or make any order which the State Administrative Tribunal might make under s 185(2)(b). Further, under s 185(3) if the Tribunal transmits a report in respect of a legal practitioner to the Supreme Court (full bench), under subsection (2)(a) the Tribunal may, pending the determination of the Supreme Court (full bench), suspend the legal practitioner from practice or restrict the entitlement of the legal practitioner to practice.

100           The Tribunal has formed a view, as I indicated at the outset, that it should make and transmit a report on the findings it has made in each of these matters to the Supreme Court (full bench), with a view to the Supreme Court (full bench) considering the striking off or suspension, for more than 2 years, of the practitioner.

101           We think that reference is necessary because the course of conduct of the practitioner, in respect of which we have made findings, really is utterly deplorable and, in our view, no member of the public could have any confidence that a practitioner who conducts herself or himself in this way can act professionally or satisfactorily for them.

102           These reasons will constitute the report that goes to the Supreme Court (full bench).

### ***Orders***

103           In those circumstances the formal orders the Tribunal makes are as follows:

1.       There will be a finding of unprofessional conduct against the practitioner in application VR 21 of 2006, on the basis that I have already outlined.
2.       Similarly, there will be a finding of unprofessional conduct against the practitioner in VR 22 of 2006, on the basis I have already outlined.
3.       There will be a finding of unsatisfactory conduct by unprofessional conduct in VR 23 of 2006, on the basis I have already outlined.

4. There will be a finding of unsatisfactory conduct by unprofessional conduct against the practitioner in VR 24 of 2006, on the basis I have already outlined.
5. There will be a finding of unsatisfactory conduct by unprofessional conduct against the practitioner in VR 24 of 2006, on the basis I have already outlined.
6. There will be a finding of unsatisfactory conduct by unprofessional conduct against the practitioner in VR 26 of 2006, on the basis I have already outlined.
7. There will be transmitted a report by the Tribunal to the Supreme Court (full bench), pursuant to s 185 of the *Legal Practice Act 2003* and the equivalent provision of the *Legal Practitioners Act 1893* which will be constituted by these reasons.
8. Pursuant to both s 185 of the *Legal Practice Act 2003* and the *Legal Practitioners Act 1893*, s 29A, the Tribunal suspends the legal practitioner from practice, pending the determination of the Supreme Court (full bench).
9. The practitioner will also be ordered to pay the Committee's costs of the proceedings in the Tribunal fixed in the sum of \$15 500.

104

In those circumstances, whilst the Tribunal thinks that compensation should properly be ordered, we doubt that we currently have the power to do that and the application will have to be renewed before the Supreme Court (full bench). We say that because under s 185(2), on making the findings that we've made, the Tribunal may make and transmit a report on the finding to the Supreme Court (full bench) or deal with the legal practitioner, as specified in s 187, but not both. The latter includes the s 187(1)(h) power to award compensation. We have made it clear that, in our view, striking off is appropriate in this case.

I certify that this and the preceding [104] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUSTICE M L BARKER, PRESIDENT**