

---

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE -v- MUGLISTON [2022] WASC 215

**CORAM** : TOTTLE J  
SMITH J  
SOLOMON J

**HEARD** : 28 JUNE 2022

**DELIVERED** : 28 JUNE 2022

**FILE NO/S** : LPD 1 of 2022

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Plaintiff

AND

PATRICK JAMES MUGLISTON  
Defendant

---

*Catchwords:*

Legal practitioners - Disciplinary proceedings - Removal from roll of persons admitted to the legal profession - Professional misconduct - Failure to provide competent advice - Misleading conduct over fees charged - Dishonest conduct before the Legal Profession Complaints Committee and Legal Practice Board - Failure to assist and co-operate with investigation of conduct - Removal from roll of person admitted to the legal profession - Practitioner not a fit and proper person to remain a legal practitioner

*Legislation:*

*Legal Profession Act 2008 (WA)*

*State Administrative Tribunal Act 2004 (WA)*

*Result:*

Order that the practitioner's name be removed from the roll of persons admitted to the legal profession under the *Legal Profession Act 2008 (WA)*

*Category:* B

**Representation:**

*Counsel:*

Plaintiff : C Beetham

Defendant : No appearance

*Solicitors:*

Plaintiff : Legal Profession Complaints Committee

Defendant : In Person

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

Khosa v Legal Profession Complaints Committee [2017] WASCA 192  
Law Society (New South Wales) v Foreman (1994) 34 NSWLR 408  
Legal Profession Complaints Committee and Mugliston [2014] VR 83  
Legal Profession Complaints Committee v Brennan [2010] WASC 198  
Legal Profession Complaints Committee v Lashansky [2007] WASC 211  
Legal Profession Complaints Committee v McLean [2012] WASC 297  
Legal Profession Complaints Committee v Mugliston [2019] VR 165  
Legal Profession Complaints Committee v Oud [2019] WASC 287  
Legal Profession Complaints Committee v Smith [2014] WASC 458  
Re Maraj (a legal practitioner) (1995) 15 WAR 12

**JUDGMENT OF THE COURT:**

**Introduction**

1           The court has concluded that the respondent's name be removed  
from the roll of persons admitted to the legal profession and what  
follows are the reasons for reaching that conclusion.

2           On 28 October 2021 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 \$29,221. This order followed findings made on 16 August  
2021 that the respondent had engaged in professional misconduct  
within the meaning of the *Legal Profession Act 2008* (WA) (the Act) in  
six respects. The findings were based on admissions made by the  
respondent in proceedings brought against him by the Legal Profession  
Complaints Committee (the Committee).

3           The findings concern: the provision of incompetent advice by the  
respondent to a client about the client's late father's estate; overcharging  
the client and misleading him in relation to the respondent's fees;  
responding dishonestly to inquiries made by the Committee and the  
Legal Practice Board about his conduct; and failing to provide  
information to the Committee and to assist and co-operate with its  
investigation as he was required to do. The professional misconduct  
occurred between June 2016 and August 2018.

4           The application is before the court by way of a notice of motion  
filed on 22 February 2022. The respondent has not sought to be heard  
on the motion. The respondent has given notice that he does not  
oppose the application. In addition, the Committee seeks an order that  
the respondent pay compensation in the sum of \$10,000 to his former  
client. Given the circumstances it is understandable that the respondent  
has not wished to be heard on this motion. A consequence of that  
decision, however, is that the court has not had the benefit of any  
submissions in mitigation on the respondent's behalf.

**The facts and the findings**

5           The facts were recorded in an agreed statement of facts that was  
published by the Tribunal.<sup>1</sup> The Committee and the respondent agreed

---

<sup>1</sup> *Legal Profession Complaints Committee v Mugliston* [2019] VR 165.

to settle the proceeding before the Tribunal pursuant to s 56 of the *State Administrative Tribunal Act 2004* (WA). The respondent consented to the findings of professional misconduct.

6 In summary:

- (a) The respondent took instructions from a client, Mr N, in relation to a dispute with one of his sisters who was a joint executor of Mr N's late father's will. The dispute concerned whether the will made adequate financial provision for Mr N following the death of his father. The respondent made elementary mistakes in the advice he gave to the client and failed to make basic inquiries. The mistakes involved a serious failure to give attention to the relevant law and facts and constituted a serious dereliction of his duty as a legal practitioner.
- (b) The respondent sought payment on account of costs and paid the money provided to him into his bank account when he was not entitled to do so and, subsequently, rendered an account for work that he had not completed.
- (c) In August 2016, Mr N made a complaint to the Committee regarding the respondent's conduct and in December 2016 an investigation was commenced by the Committee. In response to a request to provide his file, the respondent dictated file notes and a draft originating summons in late February 2017. He included those documents in the file provided to the Committee creating the intentionally misleading impression that the file notes had been prepared contemporaneously with the events to which they related and that the draft originating summons had been prepared in August 2016.
- (d) At a subsequent stage of the Committee's investigation the respondent failed to respond fully and properly to a summons issued to him by the Committee. In the responses he did provide he made statements which were false and misleading.
- (e) Finally, in response to inquiries from the Legal Practice Board as to whether he remained a fit and proper person to hold a practising certificate, the respondent made statements which were false and misleading.

7 The detailed findings are reproduced in the appendix to these reasons.

**Applicable principles**

8 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*<sup>2</sup> and include the following:<sup>3</sup>

- (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.

9 An important object of the disciplinary function is to maintain and protect the reputation of the legal profession.<sup>4</sup> Account must also be 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.<sup>5</sup>

10 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

---

<sup>2</sup> *Legal Profession Complaints Committee v Oud* [2019] WASC 287.

<sup>3</sup> *Legal Profession Complaints Committee v Oud* [17] (Quinlan CJ, Kenneth Martin & Smith JJ).

<sup>4</sup> *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).

<sup>5</sup> *Law Society (New South Wales) v Foreman* (1994) 34 NSWLR 408, 444F (Mahoney JA).

that the lack of appreciation of impropriety and the lack of insight increases the risk of recurrence of the improper conduct.<sup>6</sup>

**The respondent's circumstances**

11 The respondent was 59 years of age in August 2016. By then he had practised as a lawyer for some 35 years, having been admitted in 1981.

12 Save for a finding of unsatisfactory professional conduct in 2014 for which a fine was imposed, there have been no other adverse findings of misconduct made in respect of the respondent. The 2014 unsatisfactory professional conduct finding arose out of a failure by the respondent to lodge GST returns in the approved form between December 2009 and September 2011.<sup>7</sup>

13 The respondent did not attempt to renew his practising certificate in July 2019.

14 In mitigation the respondent provided the Tribunal with medical reports which disclosed that he had been diagnosed with a serious illness in 1999. A report written by the respondent's general medical practitioner contained a description of the respondent's illness as a chronic condition that could be controlled to a variable extent with medication but that in its acute phases the illness was capable of profoundly diminishing the sufferer's cognition and insight and causing disordered executive function.<sup>8</sup>

15 We have read the medical reports. It is unnecessary to detail their contents. They refer to a relapse of the respondent's condition in late 2016 persisting to early 2017 and that in his relapsed state the respondent's ability to practise law would have been impaired though his position had stabilised by 31 January 2017. The reports stop short of providing direct evidence of a causal link between the respondent's illness and his professional misconduct. It may be observed, however, that in many cases in which legal practitioners engage in professional misconduct involving fees and clients' money external pressures giving rise to the misconduct can be readily identified. In the respondent's case there is no such evidence of such external pressures. When regard

---

<sup>6</sup> *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).

<sup>7</sup> *Legal Profession Complaints Committee and Mugliston* [2014] VR 83.

<sup>8</sup> Report of Dr David Flynn 21 dated September 2021.

is had to the respondent's history, the inference that the respondent's illness contributed to the professional misconduct is compelling.

16 In addition to the medical reports, the respondent provided the Tribunal with a personal reference from a long-standing member of the medical profession who has known the respondent for over 50 years, having first met him at school. Relevantly, the reference read:<sup>9</sup>

Over the time I have known Patrick he has always remained a helpful, moral and decent person and I have no hesitation in endorsing his good character.

I have read the complaint and am aware that Patrick has admitted his culpability in this matter. He has expressed his profound regret and has been humiliated and very adversely [affected] by this event.

His behaviour in this regard is completely out of character and does not reflect the person that I know Patrick to be.

17 It is to the respondent's credit that he settled the proceedings before the Tribunal. Further that he agreed the extensive and detailed statement of facts provided to the Committee indicates the respondent has insight into his misconduct as does the fact that he has not opposed the present application.

### **Disposition**

18 The jurisdiction the court is called upon to exercise is protective and not punitive and, irrespective of their cause or causes, the findings of professional misconduct are so serious that the protection of the public and the maintenance of the reputation and standards of the legal profession require the removal of the respondent's name from the roll.

19 In the present case there is no call for elaborate analysis. Legal practitioners must observe the highest standards of honesty and integrity. The dishonest conduct engaged in by the respondent in his dealings with his client compounded by his dishonesty when responding to the inquiries of the regulatory authorities is incompatible with the respondent's continued membership of the legal profession.

20 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

---

<sup>9</sup> Letter of Dr Anthony Brisbout dated 29 September 2021.

the profession that dishonest conduct of the nature displayed in this case will not be tolerated within the legal profession and this can only be done by removing the respondent's name from the roll.

**Compensation**

21 Mr N paid or caused to be paid to the respondent a total of \$10,000 in respect of costs. We are satisfied that the respondent should pay to Mr N \$10,000 as compensation for fees wrongfully charged by the respondent.

**Costs**

22 No doubt in acknowledgement of what has been said previously about the award of costs when a practitioner does not oppose an order for the removal of the practitioner's name, the Committee has not pressed for an order that the respondent pay its costs. The costs of these proceedings are to be regarded as part of the cost of regulating the profession and the court will not make an order as to costs.<sup>10</sup>

**Conclusion**

23 For these reasons, the court will order that the name of the respondent be removed from the roll of persons admitted to the legal profession and that the respondent pay compensation totalling \$10,000 to Mr N.

---

<sup>10</sup> *Legal Profession Complaints Committee v Smith* [2014] WASC 458 [15] (Martin CJ, McKechnie & Allanson JJ); *Legal Profession Complaints Committee v McLean* [2012] WASC 297 [16] (Martin CJ, McKechnie & EM Heenan JJ).

**APPENDIX**

1. The practitioner, Patrick James Mugliston (practitioner), between about June 2016 and August 2016, in the course of acting for Mr N (client) in relation to a dispute with one of his sisters, Ms O, who was a joint executor of the client's late father's will (Will), concerning adequate financial provision for the client following the death of his father, Mr N Senior (Matter), engaged in professional misconduct within the meaning of sections 403 and 438 of the Legal Profession Act 2008 (WA) (LP Act) in that his conduct, when taken together as a course of conduct, fell short consistently and to a substantial degree of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner by:
  - 1.1 advising the client to commence proceedings under the Family Provision Act 1972 (WA) (FP Act) in circumstances in which the practitioner had not:
    - (a) advised the client about the purpose and operation of the FP Act;
    - (b) taken any steps to confirm whether the limitation period in which to commence proceedings under the FP Act had already run;
    - (c) taken any instructions about, and had not provided any advice concerning, the factors the Court would take into account in determining if it had jurisdiction to make any orders under the FP Act;
    - (d) taken any adequate instructions about the size and nature of the Mr N Senior's estate (Estate), with a view to providing advice about the utility (if any) of commencing proceedings under the FP Act;
    - (e) taken adequate instructions about, and had not provided any adequate advice concerning, the nature and operation of the trusts that were referred to in the Will as The K Trust and The H Trust (Trusts);
    - (f) adequately advised the client that that once an application was made under the FP Act, other parties could join the claim against the Estate;

- (g) adequately advised the client about the risk that if the client was not successful he may be liable to pay some or all of the other parties' costs as well as his own if he commenced proceedings under the FP Act; and
    - (h) adequately advised the client about the prospects of successfully making a claim pursuant to the FP Act based on the client's instructions and the available evidence.
  - 1.2 failing to advise the client as to the merits of and prospects of success of other possible causes of action or courses of conduct in the Matter, including any concerning, or arising from:
    - (a) the nature and operation of the Trusts;
    - (b) the validity or otherwise of Clause 11 of the Will; and
    - (c) circumstances in which the Will was made while Mr N Senior was subject to undue influence.
  - 1.3 further, failing to take any further instructions from the client, including as to any preliminary inquiries required, in order to properly and competently advise the client as to obtaining any alternative sources of information and documents, in circumstances where the practitioner:
    - (a) considered there was a "paucity of information" in respect to the Instructions; and
    - (b) was instructed that the client or his former solicitors, without any success, had made attempts to obtain information and documents from Ms O, in her role as executor of the Will, and her solicitors.
- 2. The practitioner, from about June 2016, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct, when taken together as a course of conduct, fell short consistently and to a substantial degree of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence and would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence by:

2.1 on 13 July 2016, issuing to the client a memorandum of account in the Matter and subsequently seeking payment of that account in advance of providing the legal services the subject of that account:

- (a) to which money the practitioner was not lawfully entitled; and
- (b) which money could not lawfully be held by him in circumstances where he did not maintain a general trust account in the jurisdiction in accordance with section 214 of the LP Act;

2.2 on 16 August 2016, following the termination of the practitioner's retainer in the Matter by the Client, rendering a final bill of costs to the Client, and purporting to account for payments made to him by, or on behalf of, the client in the sum of \$5,000, and retaining that money, for work purportedly performed by him (August 2016 Bill), in circumstances where:

- (a) to the practitioner's knowledge, he did not perform some of the work for which he billed the client; and
- (b) the practitioner sent the August 2016 Bill to the client when he knew the client could not properly be charged for some of the charges in that Bill;

as a result of which the practitioner knowingly misled the client as to the extent of legal services performed by him in the Matter;

2.3 further, over the course of the Matter, charging the client legal costs and retaining money paid to the practitioner by or on behalf of the client in the total sum of \$10,000 (inclusive of GST), in circumstances where:

- (a) it was not reasonable to carry out the work to which the legal costs related or for which money was retained by the practitioner; and
- (b) the practitioner's legal costs were not fair and reasonable, and it was not fair and reasonable for the practitioner to retain the money paid to him.

3. The practitioner, from about February 2017 engaged in professional misconduct within the meaning of sections 403 and

438 of the LP Act in that his conduct fell short consistently and to a substantial degree of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence and would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence in circumstances where following a complaint made by the client the Legal Profession Complaints Committee (LPCC) was investigating the practitioner's conduct under the LP Act (Investigation) and requested the practitioner to produce to it "all [his] entire original files and all documents relating to [him] acting in the [Matter]" including documents such as file notes:

- 3.1 on 21 February 2017 the practitioner produced to the LPCC a file containing documents which he represented to be "[his] file in relation to [the Matter]" and which contained 11 file notes in relation to the Matter (File Notes), which by including them in his file in respect to the Matter he represented were prepared contemporaneous to the events they recorded (Representation);
  - 3.2 the Representation was misleading or deceptive in that the File Notes were not prepared contemporaneous to the events they recorded and were in fact dictated and prepared, or caused to have been prepared, by the practitioner sometime between 20 and 22 February 2017 and following the commencement of the Investigation;
  - 3.3 the practitioner knew the Representation was misleading or deceptive;
  - 3.4 the practitioner intended the LPCC to rely on the Representation in the Investigation; and
  - 3.5 the practitioner intended that the LPCC be misled or deceived by the Representation.
4. The practitioner, on or after 26 July 2018 and continuing, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short, consistently and to a substantial degree, of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence and would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence by, without reasonable excuse, failing to provide information verified by statutory declaration required by the terms of a 'Summons to Provide Written Information verified by Statutory Declaration

and to Produce Documents and to otherwise assist in and cooperate with an Investigation' issued to the practitioner by the LPCC pursuant to sections 520(1)(c) and 520(3) of the LP Act, in breach of sections 520(5) and 532(3) of the LP Act.

5. The practitioner from 7 December 2017 engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short to a substantial degree of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence and would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by:
  - 5.1 preparing and sending to the Legal Practice Board (LPB) written submissions as to why he remained a fit and proper person to hold a practising certificate under the LP Act in light of among other things, the client's complaint, in which he made representations which were false and misleading in material respects:
  - 5.2 making the representations when he knew that they were false and misleading; and
  - 5.3 intending the LPB to rely on the representations when considering his fitness to practice; and
  - 5.4 intending the LPB to be misled by the representations.
6. The practitioner, from about February 2017, during the course of the Investigation, engaged in professional misconduct within the meaning of sections 403 and 438 of the LP Act in that his conduct fell short consistently and to a substantial degree of the standard of professional conduct observed and approved by members of the legal profession of good repute and competence and would be reasonably regarded as disgraceful or dishonourable to practitioners of good repute and competence, by:
  - 6.1 providing to the LPCC written submissions which contained information that was false and misleading in material respects, in circumstances where the practitioner provided the written submissions to the LPCC:
    - (a) knowing that the written submissions contained the false and misleading information;

- (b) intending that the LPCC rely on the written submissions; and
  - (c) intending to mislead the LPCC;
- 6.2 providing to the LPCC written responses to questions put to the practitioner by the LPCC in relation to matters concerning his conduct of the Matter, which responses contained information that was false and misleading in a material respect:
- (a) knowing that the written responses contained the false and misleading information;
  - (b) intending that the LPCC rely on the written responses; and intending to mislead the LPCC;
- 6.3 providing to the LPCC further written responses and, subsequently, a statutory declaration (in the same terms as the further written responses) in purported compliance with the Summons, which contained information that was false and misleading in a material respect, and the practitioner provided the written responses and statutory declaration to the LPCC:
- (a) knowing that they contained the false and misleading information; and
  - (b) intending that the LPCC rely on the written responses and statutory declaration; and
  - (c) intending to mislead the LPCC.

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

OK

Associate to the Honourable Justice Tottle

28 JUNE 2022