

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

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

**CITATION** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE and BACHMANN [2009] WASAT 120  
[2009] WASAT 120 (S)

**MEMBER** : JUSTICE J A CHANEY (PRESIDENT)  
JUDGE J ECKERT (DEPUTY PRESIDENT)  
MR M ANDERSON (SENIOR SESSIONAL  
MEMBER)

**HEARD** : 21 MAY 2008  
23 MAY 2008  
26 - 28 MAY 2008  
23 JULY 2008  
27 OCTOBER 2008  
3 - 7 NOVEMBER 2008  
12 NOVEMBER 2008  
18 DECEMBER 2008

**DELIVERED** : 23 JUNE 2009

**SUPPLEMENTARY  
DECISION** : 26 OCTOBER 2009

**FILE NO/S** : VR 116 of 2006  
VR 34 of 2007  
VR 53 of 2007

**BETWEEN** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE  
Applicant

AND

TRICIA Y BACHMANN  
Respondent

*Catchwords:*

Referral to Supreme Court (full bench) - Recommendation that practitioner be struck off the Roll of Practitioners - Unsatisfactory conduct - False misrepresentations to clients - Interim suspension from practice - Costs order

*Legislation:*

*Legal Practice Act 2003 (WA)*, s 137, s 185(2), s 185(2)(a), s 203, s 250A(2)

*Legal Profession Act 2008 (WA)*, s 437, s 438, s 622, Pt 13, Pt 19 Div 2

*State Administrative Tribunal Act 2004 (WA)*, s 11(8), s 87(1), s 87(2)

*Result:*

Reference to Supreme Court (full bench) with recommendation that the practitioner be struck off the Roll of Practitioners

Continued suspension of practitioner's right to practice pending the determination of the Supreme Court (full bench)

By 10th December 2009, the practitioner pay the Committee's disbursements  
VR 116 of 2006 and VR 120 of 2006 dismissed

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms P Cahill and Ms P Le Miere  
Respondent : Self-represented

*Solicitors:*

Applicant : Legal Practitioners Complaints Committee  
Respondent : Self-represented

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

A solicitor v the Council of the Law Society of NSW (2004) 216 CLR

Bar Association v Evatt (1968) 117 CLR 177

Barwick v Council of the Law Society of New South Wales [2004] NSWCA 32

Legal Practitioners Complaints Committee and Bachmann [2009] WASAT 120

Legal Practitioners Complaints Committee v Lashansky [2007] WASC 211

Legal Practitioners Complaints Committee v McKerlie [2007] WASC 119

Legal Practitioners Complaints Committee v Nino De Pardo  
[2007] WASAT 211

Re Davis (1947) 75 CLR 409

Re Maraj (a legal practitioner) (1995) 15 WAR 12

The Council of the New South Wales Bar Association v Sahade  
[2007] NSWCA 145

**REASONS FOR DECISION OF THE TRIBUNAL:**

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

1           On 23 June 2009, the Tribunal delivered its decision and written  
reasons in these proceedings. It found the practitioner guilty of  
unsatisfactory conduct under the *Legal Practice Act 2003* (WA).

2           The hearing of these proceedings was delayed on numerous  
occasions through the conduct of the practitioner. She was advised by the  
Tribunal that her conduct could be taken into account if the Tribunal was  
required to make findings on penalty, which the Tribunal did.

3           The Tribunal found that the practitioner had knowingly made false  
representations to clients. She had lied to them and she lied to the  
Tribunal. The practitioner fabricated a complex and, at times, incredible  
story in a bid to explain her conduct. The excuses she gave were  
inherently implausible and it was inevitable that her conduct would  
ultimately be exposed.

4           The findings made by the Tribunal were extremely serious. She  
deliberately misrepresented to her clients the work she said she had  
undertaken. She then invoiced them for it and in one case instituted  
recovery proceedings and caveated property.

5           The Tribunal found that the practitioner's conduct was so serious that  
it fell substantially short of the standard of professional conduct observed  
or approved by members of the legal profession of good repute and  
competence.

6           The Tribunal also found that the practitioner had lied to it when  
giving her evidence and in her conduct throughout the proceedings.

7           Accordingly, the Tribunal ordered that a report be transmitted to the  
Supreme Court (full bench) in respect of the conduct of the practitioner  
with a recommendation that the practitioner's name be struck off the Roll  
of Practitioners.

***Background***

8           On 23 January 2009, the Tribunal delivered its decision in *Legal  
Practitioners Complaints Committee and Bachmann*  
[2009] WASAT 120. It found the practitioner guilty of unsatisfactory  
conduct under the *Legal Practice Act 2003* (WA) (LP Act), and made the  
following orders:

1. The practitioner, Tricia Y Bachmann, is guilty of unsatisfactory conduct.
2. By 8 July 2009, the Legal Practitioners Complaints Committee must file with the Tribunal and give to the practitioner its written submissions as to penalty and costs (including an itemisation of any costs claimed).
3. By 22 July 2009, the practitioner must file with the Tribunal and give to the Legal Practitioners Complaints Committee her responsive submissions on penalty and costs.
4. The Tribunal will decide the question of penalty and costs on the papers after 22 July 2009.

9 That outcome was reached after 14 days of hearing, numerous delays and avoidance tactics by the practitioner, and generally, her poor conduct throughout the course of the proceedings.

10 The Legal Practitioners Complaints Committee (LPCC) filed written submissions in accordance with our orders. However, the practitioner, after seeking several extensions of time in which to lodge her submissions, ultimately failed to file any submissions on penalty and costs.

11 Because of the 'utmost seriousness' of the practitioner's conduct as found by the Tribunal, the LPCC seeks the following orders:

- a) an order that a report be transmitted to the Supreme Court (full bench) with a recommendation that the practitioner be struck off the Roll of Practitioners;
- b) an order that the suspension of the practitioner from practice continue until further order; and
- c) an order for costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA) (SAT Act).

***Applicable legislation***

12 The *Legal Profession Act 2008* (WA) (2008 Act) commenced operation on 1 March 2009, that is, after the Tribunal made its finding of unsatisfactory conduct but before penalty had been determined. The LPCC argues that it is open to the Tribunal to make a finding under the

LP Act (which it has) and to determine penalty under that Act or, alternatively, to direct that the finding and penalty be determined under the 2008 Act, providing that any finding and penalty under the 2008 Act are co-extensive with the liability which exists under the LP Act.

13           In practical terms, the issue of which legislation applies has no real effect, except with respect to the constitution of the Tribunal. The various possible penalties are available under both Acts.

14           Division 2 of Pt 19 of the 2008 Act contains transitional provisions relating to the repeal of the 2003 Act.

15           Section 622 of the 2008 Act provides:

- (1) Part 13 applies in relation to conduct of Australian lawyers, former Australian lawyers, Australian legal practitioners and former Australian legal practitioners whether the conduct occurred before or after the commencement day.
- (2) Part 13 applies to conduct consisting of a contravention of the 1893 Act or the 2003 Act or the rules in force under those Acts before the commencement of this section as if the conduct consisted of a contravention of this Act or the legal profession rules.

16           Part 13 of the 2008 Act is concerned with disciplinary matters, including investigation of complaints by the LPCC, the referral of disciplinary matters to the Tribunal by the LPCC, and the jurisdiction of the Tribunal to make a finding that a practitioner has engaged in unsatisfactory professional conduct or professional misconduct.

17           Section 607 of the 2008 Act deals with the approach to be taken in relation to proceedings commenced before the 2008 Act came into effect. It provides:

- (1) This section applies to an action taken, however described, by -
  - (a) the Board, in relation to a person or the person's practice certificate before the commencement day, other than an action dealt with in another section of this Part; or
  - (b) the Complaints Committee or the Law Complaints Officer in relation to a person whether the action is taken before or after the commencement day.
- (2) The action, and any rights or entitlements the person has in relation to that action, continue to have effect under this Act subject to -

- (a) any conditions stated in a document by which the action was taken in relation to the person, or in a notice given to the person about the action; and
  - (b) this Act.
- (3) To the extent of any inconsistency among provisions applying to the action, this Act prevails.
- (4) In subsections (2) and (3) -
- (a) if the action, right or entitlement involves an appeal to the Supreme Court or a proceeding before the Court started before the commencement day - without limiting the power of the Supreme Court, the Court may direct how that action, right, entitlement or proceeding should be continued; or
  - (b) if the action, right or entitlement involves an application for review to the State Administrative Tribunal or a proceeding before the Tribunal started before the commencement day - without limiting the power of the State Administrative Tribunal, the Tribunal may direct how that action, right, entitlement or proceeding should be continued; or
  - (c) otherwise - a regulation made under section 637 may provide for the way the action, right or entitlement is to continue under this Act.

18 By s 607(2), the rights or entitlements that the parties have continue to have effect under the 2008 Act subject to the provisions of the 2008 Act. By s 607(4)(b), the Tribunal may direct how the proceeding should be continued.

19 As observed above, in this case, the LPCC seeks to have the Tribunal transmit a report to the Supreme Court (full bench) with a recommendation that the practitioner be struck off the Roll of Practitioners. By virtue of s 250A(2) of the LP Act, a report to the Supreme Court could only be made by a tribunal constituted to include the President of the Tribunal. That is not a requirement of the 2008 Act, which permits the Tribunal however constituted under s 437 to exercise any of the jurisdiction of the Tribunal under s 438, including the jurisdiction to make and transmit a report to the Supreme Court.

20 Where, in proceedings under the LP Act, findings were made by a tribunal which did not included the President, but the LPCC submitted, or the President considered, findings might justify the transmission of a

report to the Supreme Court (full bench) under s 185(2)(a), the President could, and did in appropriate cases, exercise his power under s 11(8) of the SAT Act to alter the constitution of the Tribunal for the purpose of the penalty hearing so as to include the President. By reason of s 607(2) of the 2008 Act, reconstitution of the tribunal to include the President for the purpose of considering a report to the Supreme Court may not be necessary. It is, however, appropriate in the present circumstances to direct, pursuant to s 607(4) that the proceeding in relation to the question of penalty should be continued by a tribunal including the President.

21 The reason that that course is appropriate is that these proceedings were commenced under the LP Act, and the hearing was completed, save for delivery of the decision, under the provisions of the LP Act. It is appropriate that they be completed in a manner entirely consistent with the substantive and procedural rights which existed under the LP Act. A direction under s 607(4) of the 2008 Act readily enables that objective to be achieved.

22 Accordingly, the President of the Tribunal has reconstituted the Tribunal pursuant to s 11(8) of the SAT Act for the purpose of considering the appropriate penalty in light of the findings reached by the Tribunal.

### *The issue*

23 The issue before us is whether the Tribunal's findings regarding the practitioner's conduct are so serious that the practitioner is not a fit and proper person to remain a legal practitioner; *Re Maraj (a legal practitioner)* (1995) 15 WAR 12 at 25 (*Maraj*).

### *Principles*

24 Fitness to practice is to be decided as at the time of the hearing and not at the time of the alleged misconduct (see *A solicitor v the Council of the Law Society of NSW* (2004) 216 CLR at 253 [15]). Subject to issues of fair notice, the Tribunal is therefore entitled to take into account the manner in which the practitioner conducted her defence and the veracity with which she gave evidence; see *Barwick v Council of the Law Society of New South Wales* [2004] NSWCA 32 at [109] and [110].

25 An important object of professional disciplinary proceedings is to maintain and protect the reputation of the profession.; see *Maraj* at 24 - 25. When dealing with allegations of unprofessional conduct, the Tribunal is required to act in the public interest, not with a view to

punishment; see *Bar Association v Evatt* (1968) 117 CLR 177 at 183 - 184. The gravity of the practitioner's misconduct may mean that nothing short of removal from the Roll of Practitioners can properly protect the public or preserve the reputation of the profession. Ultimately though, that sanction is a matter for the Supreme Court (full bench).

26 Honesty, fairness and integrity are essential prerequisites to the right to practise law. Willingness to engage in dishonest behaviour is of central relevance to an assessment of a practitioner's fitness to practise; see *Legal Practitioners Complaints Committee v McKerlie* [2007] WASC 119 at [8], and *The Council of the New South Wales Bar Association v Sahade* [2007] NSWCA 145 at [58].

27 Honesty is also fundamental to public and curial confidence in the legal profession. Fitness to practise requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges; see *Re Davis* (1947) 75 CLR 409 at 420.

28 A practitioner's failure to understand the impropriety of his or her conduct may be a factor of great importance in determining whether they should be permitted to stay on the Roll of Practitioners; see *Legal Practitioners Complaints Committee v Lashansky* [2007] WASC 211 at [35].

### *Conduct with respect to clients*

#### **G matter**

29 The Tribunal found the practitioner's conduct with respect to the G matter to display incompetence, confusion and dishonesty [141]. It concluded her invoices to the Gs were not genuine. At [153], it identified a range of fraudulent misrepresentations that she made to her clients. She deliberately lied to her clients. She deceived her clients. And she charged them for work she had not done. Ultimately, she purported to sue her clients for fees that she says were incurred. She briefed counsel to do this. She caveated the land they were selling and purchasing, she secured the fees when she was not entitled to. The practitioner's conduct with respect to her clients, the Gs, was disgraceful. It is not the conduct of an honest or competent practitioner in whom the court or the public can have faith.

#### **Eight clients**

30 With respect to the five liquor licensing matters, the Tribunal found that the practitioner lied to her clients that work was done; she invented a convoluted story of how the process of ORGL, the relevant government

department, operated; she blamed the department's staff for mistakes; she said staff were subsequently fired because of what they had done or not done on her particular client files; refer to the Tribunal's findings regarding the M matter at [165] - [174]; the HGW matter at [175] - [181]; the F matter at [182] - [186]; the UT matter at [187] - [192]; and the B matter at [193] - [200].

31 It is difficult to understand what the practitioner was thinking when she misled her clients and her employer with respect to the liquor licensing applications. She must have known that ultimately the truth would emerge and her assertions would be exposed as false.

32 The Tribunal's findings with respect to the FGC matter are at [201] - [210]. The practitioner gave vastly different explanations of her discussions with the client and how she got instructions in the FGC matter. It was a 'convoluted and improbable' version of events that the practitioner ultimately put forward in cross-examination [205]. That paragraph also sets the garbled chain of events that the practitioner says occurred. At [206] - [219], the Tribunal found the practitioner to have knowingly made false statements in the H matter and at [220] - [234] in the A matter, the practitioner knowingly billed for work not done and court fees not incurred, contrary to s 137 of the LP Act. She did not pay the money that she received into trust. The practitioner also contravened s 203 of the LP Act when she acted for Mr A as she was practising as a lawyer after her suspension by the Tribunal.

33 Clearly, the practitioner's conduct fell far short to a substantial degree of what a reasonable person would expect of a reasonable practitioner.

***Ultimate finding***

34 The primary issue for us is whether the practitioner is a fit and proper person to remain a legal practitioner.

35 The unsatisfactory conduct found against the practitioner is of the utmost seriousness. That conduct is comprised of repeated and sustained dishonesty by the practitioner during the period of August 2005 to May 2006 in the course of legal practice and, specifically, in her dealings with her clients, her employer and other legal practitioners. We find that her conduct, as proven before the Tribunal in the lengthy substantive proceedings, clearly displays that the practitioner is not a fit and proper person to remain a legal practitioner.

36 That conclusion is reinforced by the practitioner's conduct in the  
course of the hearing of these complaints against her.

***The practitioner's conduct during the hearing***

37 The practitioner was put on notice that her conduct during the  
hearing could go to penalty.

38 The practitioner significantly complicated the proceedings. She did  
not file documents when ordered, and what she did ultimately file was  
generally unreliable and unhelpful to her case and to the Tribunal. She  
argued unnecessarily and repeatedly tried to draw argument away from  
the allegations and her proper defence and into the spurious allegation of  
unfair practices and misleading and deceptive conduct by her former  
employers.

39 The Tribunal was required, because of the practitioner's conduct, to  
depart from its usual procedures and practice so as to ensure that the  
practitioner was given all available and proper opportunities to present her  
case in the most favourable way possible. However, the practitioner  
continued on a path most detrimental to her case, ultimately destroying  
any confidence that the Tribunal or the profession could have in her.

40 The Tribunal found her evidence to be 'patently false, incredible,  
inconsistent and confusing', at [4] of the reasons. It found that she falsely  
created documents to support her often incredible claims. She conceded  
during the proceedings that she received documents fundamental to her  
defence which were forwarded to her by the Tribunal and by the LPCC,  
but did not look at them; for example, the practitioner alleged that the  
documents and files that would support her case were missing from  
Aragon. The Tribunal obtained a DVD containing all files that were on  
her computer at Aragon. The practitioner did not look at the DVD.

41 The practitioner gave the Tribunal false addresses for herself. She  
also gave false addresses regarding witnesses; the Tribunal found she did  
this intentionally. Though at times claiming she had complied with every  
order of the Tribunal, she never filed any witness statements. Despite  
repeated promises to file submissions and statements, they never  
materialised. She gave consistently conflicting reports about the status of  
her witness statements (see [20] - [59] of the reasons). The Tribunal took  
the unusual and extremely time-consuming step of summoning the  
numerous witnesses she wished to call. As mentioned, none of the  
addresses that she provided were accurate, despite repeated requests for  
clarification.

42 The practitioner wrote to the Tribunal claiming that after witnesses had been summonsed, they were claiming privilege or seeking legal advice. She informed the Tribunal that 'each and every witness' had been approached by Aragon or the LPCC and warned not to give evidence. This was not borne out by any witness when they were asked whether this had occurred. In fact, most of them had had no contact with the practitioner for substantial periods of time, despite her having told the Tribunal of regular or recent contact.

43 At [42] of the Tribunal's substantive reasons, it found that the contents of the facsimile referred to and sent to the Tribunal were 'fanciful'. The claims she made in it were false and reflected very poorly on her credibility. At [56], the Tribunal refer to her conduct during the proceedings as being relevant to the penalty. At [57], it found her dishonest and evasive. She continually avoided giving the Tribunal any direct answers in response to reasonable questions put by it in its attempts to help her present her case.

44 As we mentioned, the practitioner failed to read or to look at principal materials on which the LPCC and subsequently, the Tribunal, relied in reaching its findings. She was given adequate time to do so. She had the assistance of pro bono counsel at various times, but she was very selective in what she briefed them. Clearly, the practitioner had trouble facing up to the proceedings and at no time during the proceedings did she display any remorse or insight.

45 The findings against the practitioner are sufficient by themselves to support a report being made to the Supreme Court with a recommendation that her name be struck from the Roll of Practitioners. Her conduct in the course of the hearing of the allegations against her further demonstrated her clear unfitness to practise as a lawyer.

***Suspension***

46 An order suspending the practitioner from practice was made in proceedings VR 116 of 2006. Those proceedings will now be dismissed as they were overtaken by the applications the subject of the substantive reasons for decision. It is therefore appropriate to make a further order for suspension of the practitioner pending the determination of the Supreme Court (full bench).

*Costs and disbursements*

47 Under s 87(1) of the SAT Act, each party to proceedings before the Tribunal generally bears their own costs. A discretion to award costs is, however, provided by s 87(2). In disciplinary proceedings, a vocational regulatory body brings before this Tribunal and prosecutes proceedings in the public interest. Where the vocational body is successful in the proceedings, it is the Tribunal's usual practice to make an order for reasonable costs in the applicant's favour. The LPCC would therefore ordinarily be entitled to its reasonable costs in bringing and maintaining the proceedings in the Tribunal; see *Legal Practitioners Complaints Committee v Nino De Pardo* [2007] WASAT 211 at [17] and the cases cited there.

48 The Tribunal has discretion as to what costs it should order and it can take into account what is a fair and reasonable costs order. The LPCC in these proceedings seeks payment of all disbursements, including counsel fees. It does not seek recovery of any costs other than those disbursements. Primarily, the LPCC contends that it has been successful in the application it has brought against the practitioner, and the practitioner's conduct in the course of the proceedings made them far longer and far more expensive than they needed to be: 'in particular the practitioner's overall lack of preparedness, her non-compliance with directions, and her failure to attend hearing days punctually or at all, caused significant delay and expense'; see [40] of the LPCC's submission.

49 A detailed schedule of disbursements and copies of accounts were provided to the Tribunal. The disbursements total \$67,253.21. We find in the circumstances that it is a reasonable claim by the LPCC and, accordingly, we order that the practitioner pay costs fixed in that amount.

50 The LPCC also seeks an order for payment of the application fees on the related matter, VR 116 of 2006, which was overtaken by the applications the subject of these reasons. The LPCC also seeks dismissal of those proceedings. It was under those proceedings that the suspension orders were made. We therefore order that the practitioner pay the \$270 filing fee on that application.

*Orders*

We therefore make the following orders:

1. pursuant to s 185(2) of the *Legal Practice Act 2003* (WA), a report be transmitted to the Supreme Court (full

bench) in respect of the conduct of the practitioner outlined in *Legal Practitioners Complaints Committee and Bachmann* [2009] WASAT 120 with our recommendation that the practitioner be struck off the Roll of Practitioners. These reasons for decision and the Tribunal's reasons set out in [2009] WASAT 120 constitute that report;

2. pending the determination of the Supreme Court (full bench), the practitioner continues to be suspended from practice under s 185(2)(a) of the *Legal Practice Act 2003* (WA);
3. by 10 December 2009, the practitioner pay the Legal Practitioners Complaints Committee's disbursements in these proceedings of \$67,253.21;
4. by 10 December 2009, the practitioner pay the Legal Practitioners Complaints Committee's filing fees of \$270 with respect to VR 116 of 2006; and
5. the application order in matter VR 116 of 2006 is dismissed.

I certify that this and the preceding [50] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

---

**JUSTICE J A CHANEY, PRESIDENT**