
JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CIVIL

TITLE OF COURT : FULL BENCH

CITATION : LEGAL PROFESSION COMPLAINTS
COMMITTEE -v- SEGLER [2014] WASC 159

CORAM : MARTIN CJ
BEECH J
CHANEY J

HEARD : 11 APRIL 2014

DELIVERED : 13 MAY 2014

FILE NO/S : LPD 1 of 2014

BETWEEN : LEGAL PROFESSION COMPLAINTS
COMMITTEE
Applicant

AND

MARTIN LEE SEGLER
Respondent

Catchwords:

Legal practitioners - Application for removal from roll of legal practitioners - Whether fit and proper person to be a legal practitioner - Findings of professional misconduct - Misapplication of trust monies - Substantial failure to reach or maintain a reasonable standard of competence and diligence - Intentionally misleading or attempting to mislead the court - Disciplinary history

Legislation:

Legal Practice Act 2003 (WA)

Legal Profession Act 2008 (WA)

Result:

Practitioner's name be removed from the roll of legal practitioners

Category: B

Representation:

Counsel:

Applicant : Ms P Le Miere
Respondent : In person

Solicitors:

Applicant : Law Complaints Officer
Respondent : In person

Cases referred to in judgment:

A Solicitor v Council of the Law Society of NSW [2004] HCA 1; (2004) 216 CLR 253
Casella v Hewitt [2008] WASCA 13
Legal Practitioners Conduct Board v Boylen [2003] SASC 241
Legal Profession Complaints Committee and Segler [2010] WASAT 135
Legal Profession Complaints Committee and Segler [2010] WASAT 135 (S)
Legal Profession Complaints Committee and Segler [2013] WASAT 117
Legal Profession Complaints Committee and Segler [2013] WASAT 117 (S)
Legal Profession Complaints Committee v Brickhill [2013] WASC 369
Mourish v Wynne [2009] WASC 85
O'Reilly v Law Society of New South Wales (1988) 24 NSWLR 204
RGB Integration Pty Ltd v Audiovisual Imagenation Pty Ltd [2009] WADC 165
The Council of the Queensland Law Society Inc v Wright [2001] QCA 58
Vogt v Legal Practitioners Complaints Committee [2009] WASCA 202

1 **JUDGMENT OF THE COURT:** The Legal Profession Complaints Committee (Committee) seeks an order that the respondent, Martin Lee Segler, be removed from the roll of legal practitioners and that Mr Segler pay the Committee's costs of the motion to be taxed if not agreed.

2 The Committee's motion follows a number of findings of professional misconduct by the State Administrative Tribunal (Tribunal) against Mr Segler. Those findings led to a report being made and transmitted to this Court pursuant to s 438(2)(a) of the *Legal Profession Act 2008* (WA) (LP Act) with a recommendation that Mr Segler's name be removed from the roll of legal practitioners.

3 Mr Segler opposed the motion.

The findings against Mr Segler

4 The report by the Tribunal comprised its reasons for decision on the various complaints brought against Mr Segler, reported as *Legal Profession Complaints Committee and Segler*¹ (*Segler* [2013]), and a supplementary decision on penalty, reported as *Legal Profession Complaints Committee and Segler*² (*Segler* [2013] (S)), together with copies of the exhibits and the transcript of the proceedings before the Tribunal. By reason of s 444(1) of the LP Act, the report is to be conclusive as to all facts and findings mentioned in it.

5 The report reveals the following:

- (i) A finding that Mr Segler was guilty of professional misconduct by failing to deposit trust monies provided to him by six different clients to the credit of his trust account, on various dates between 9 August 2007 and May 2010, as required by s 137 of the *Legal Practice Act 2003* (WA) or by s 215(2) of the LP Act. The breaches of the respective Acts were admitted by Mr Segler at the hearing before the Tribunal. The Tribunal found that, Mr Segler being an experienced practitioner, his failure to appreciate statutory requirements relating to trust money could not be explained by inexperience or mere error and that his failures to pay trust money into a trust account amounted to professional misconduct, even in the absence of dishonesty.
- (ii) A finding of professional misconduct in that, between 13 May 2008 and 1 May 2009, in the course of acting on behalf of

¹ *Legal Profession Complaints Committee and Segler* [2013] WASAT 117.

² *Legal Profession Complaints Committee and Segler* [2013] WASAT 117 (S).

Mr Lazo Glusica in Supreme Court action CIV 1511 of 2008 (Glusica matter), Mr Segler substantially failed to reach or maintain a reasonable standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner. The finding was based on the failure of the practitioner to file a statement of claim on behalf of Mr Glusica despite several orders by registrars requiring the pleading to be filed, with the result that Mr Glusica's action was struck out, and Mr Glusica was liable to pay the defendant's costs.

- (iii) A finding of professional misconduct in that, on 11 May 2009, Mr Segler intentionally misled or attempted to mislead the Family Court by informing her Honour Crisford J that:
- (a) disclosure of certain documents had been made;
 - (b) valuation of a property had been made by a valuer agreed by both parties to the proceedings; and
 - (c) neither party to the proceedings had made an offer of settlement;

when he knew or ought to have known that the submissions were not correct and were misleading.

The Tribunal rejected Mr Segler's denials that he had misled her Honour on the three occasions particularised, finding that two statements were, to Mr Segler's knowledge, simply untrue. The third occasion of misleading the Court arose from a response by Mr Segler to a question from the Judge as to whether an offer had been made that 'clearly left (her Honour) with the impression that no offer had been made'.

- (iv) A finding of professional misconduct in that Mr Segler:
- (a) failed to respond to the Committee's reasonable inquiries between 30 June 2010 and March 2011;
 - (b) failed to comply with summonses to produce documents issued by the Committee on 18 August 2010 and 2 September 2010 in breach of s 520(1) of the LP Act; and
 - (c) failed to respond to a letter from the Senior Trust Account Inspector dated 9 June 2010 requesting confirmation of certain findings in a report prepared for the Committee.

The applicable principles

6 The principles to be applied in applications of this kind were conveniently set out in *Legal Profession Complaints Committee v Brickhill*³ where the Court said:

The principles to be applied in an application of this kind are well established. 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: *Re Maraj (a legal practitioner)* (1995) 15 WAR 12, 25 (Malcolm CJ, Kennedy and Franklyn JJ agreeing); *Ziems v Prothonotary of the Supreme Court of New South Wales* [1957] HCA 46; (1957) 97 CLR 279, 286 (Dixon CJ, McTiernan, Fullagar and Kitto JJ agreeing); *Legal Profession Complaints Committee v Masten* [2011] WASC 71 [16] (Martin CJ, Murray and EM Heenan JJ); *Legal Profession Complaints Committee v Brennan* [2010] WASC 198 [10] (Martin CJ, Murray and Hall JJ agreeing); *Legal Profession Complaints Committee v Fitzpatrick* [2011] WASC 320 [43] (Martin CJ, EM Heenan and Jenkins JJ).

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: *Ziems* (297 - 298); *A Solicitor v The Council of the Law Society of New South Wales* [2004] HCA 1; (2004) 216 CLR 253 [15] (Gleeson CJ, McHugh, Gummow, Kirby and Callinan JJ); *Legal Practitioners Complaints Committee v Thorpe* [2008] WASC 9 [43] (Steytler P, Wheeler JA and Newnes J). Fitness to practise law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges: *In re Davis* (1947) 75 CLR 409, 420 (Dixon J); *Legal Practitioners Complaints Committee v Thorpe* [43] (Steytler P, Wheeler JA and Newnes J); *Legal Profession Complaints Committee v Brennan* [11] (Martin CJ, Murray and Hall JJ agreeing).

Striking off 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': *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 112 A Crim R 438 [38] (Thomas JA, McMurdo P and White J agreeing).

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: *Brennan* [15]; *Legal Profession Complaints Committee v Bachmann* [2011] WASC 309 [47] (Martin CJ, EM Heenan and Jenkins JJ); *Legal Practitioners Complaints Committee v Palumbo* [2005] WASCA 129 [22] - [23] (Steytler P, Wheeler and McLure JJA agreeing); *Kyle v Legal*

³ *Legal Profession Complaints Committee v Brickhill* [2013] WASC 369 [18] - [21].

Practitioners Complaints Committee [1999] WASCA 115; (1999) 21 WAR 56 [69] (Parker J); *Re Maraj* (25) (Malcolm CJ, Kennedy and Franklyn JJ agreeing). In *Barristers' Board v Darveniza*, Thomas JA observed that:

[T]he quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practises [33].

7 The critical question is, therefore, whether Mr Segler is a fit and proper person to be a legal practitioner. That question is to be decided at the time of the hearing, not at the time the conduct was engaged in: *A Solicitor v Council of the Law Society of NSW*.⁴

The practitioner's disciplinary history

8 In its report, the Tribunal referred to an earlier decision of the Tribunal in which findings of unsatisfactory professional conduct and professional misconduct had been made against Mr Segler - *Legal Profession Complaints Committee and Segler*⁵ (*Segler* [2010]) and to the recital of Mr Segler's then disciplinary history contained in the penalty decision on that matter,⁶ where the Tribunal identified the following adverse findings:

The LPCC emphasised 'the practitioner's disciplinary history' which includes the following adverse findings:

- in 2001, the practitioner acknowledged that he was guilty of unprofessional conduct in that in 1997 he applied trust monies to payment of costs and disbursements and did not, within 14 days thereafter, serve on the client a bill of costs claiming that trust monies had been applied towards the payment of those costs;
- at the same time, in 2001, the practitioner acknowledged that he was guilty of neglect and undue delay in relation to the same client. The Legal Practitioners Disciplinary Tribunal accepted that the breaches were serious but in view of matters personal to the practitioner and the fact that he had already paid indemnity costs of \$11,000 to the client (incurred by having to seek an extension of the time to make a claim under the *Inheritance (Family and Dependents Provision) Act 1972* (WA)) caused by the practitioner's failure to make a claim in time), imposed only moderate fines totalling \$1,250;

⁴ *A Solicitor v Council of the Law Society of NSW* [2004] HCA 1; (2004) 216 CLR 253 [21].

⁵ *Legal Profession Complaints Committee and Segler* [2010] WASAT 135.

⁶ *Legal Profession Complaints Committee and Segler* [2010] WASAT 135 (S) [15].

- in 2003, the practitioner was found guilty of three complaints in respect of another matter involving the failure to properly make a claim under the *Inheritance (Family and Dependents Provision) Act 1972* (WA) between 1997 and 1999. There were two complaints of undue delay and one count of gross overcharging. By way of penalty, the Legal Practitioners Disciplinary Tribunal ordered that the practitioner only practise as an employed solicitor for two years and pay fines totalling \$7,500 together with costs;
- on 11 May 2009, the practitioner was found guilty of unprofessional conduct in relation to a letter he sent on 29 November 2007 in his personal capacity, but using his professional letterhead, which contained threats and inappropriate and intimidating demands, in relation to legal proceedings in which the practitioner was a party: *Legal Practitioners Complaints Committee and Segler* [2009] WASAT 91. In supplementary reasons delivered on 2 July 2009, the Tribunal reprimanded the practitioner, fined him \$2,500 and ordered him to pay costs;
- on 21 October 2009, the Tribunal found the practitioner guilty of unprofessional conduct and unsatisfactory professional conduct: *Legal Practitioners Complaints Committee and Segler* [2009] WASAT 205. The finding of professional misconduct arose from the practitioner acting for a client between November 2006 and February 2007 in which he advised the client to carry out building projects at a time when the practitioner knew that the client was unregistered as a builder and in the knowledge that, by so advising, he was encouraging the client to breach s 4 of the *Builders' Registration Act 1939* (WA). Further, the Tribunal found that the practitioner was guilty of unsatisfactory professional conduct by, upon being asked by the LPCC to provide his response to a complaint against him, the practitioner giving a response that was deliberately misleading and designed to avoid giving a complete explanation. In supplementary reasons delivered on 11 March 2010, a penalty of three months suspension was imposed in relation to the finding of professional misconduct and a penalty of two months suspension for the finding of unsatisfactory conduct. The periods of suspension were ordered to be served concurrently: *Legal Practitioners Complaints Committee and Segler* [2009] WASAT 205 (S)

9 Having noted that history, the Tribunal imposed the following penalties in relation to its findings:⁷

The Tribunal does not consider that its findings of unsatisfactory professional conduct and professional misconduct against the practitioner, individually or collectively and having regard to the practitioner's disciplinary history, indicates that the practitioner is not a fit and proper

⁷ *Legal Profession Complaints Committee and Segler* [2010] WASAT 135 (S) [45].

person to be a legal practitioner. However, the Tribunal considers that the maintenance of proper standards in the legal profession and the protection of the public in their dealings with lawyers requires the imposition of the following penalties under s 438(2)(b), s 439(a) and s 441 of the LP Act:

- the payment of a fine of \$2,000 to the Legal Practice Board for unsatisfactory professional conduct by the practitioner by suing the first client for recovery of a disbursement (counsel's fees) without having served on the first client a bill for the disbursement and failure to discontinue those proceedings, contrary to s 230(1) of the 2003 Act;
- the payment of a fine of \$1,500 to the Legal Practice Board for unsatisfactory professional conduct by the practitioner by failing to comply with a written request dated 18 January 2008 from the first client's solicitor to lodge four bills of costs dated 10 January 2008 with a taxing officer, contrary to s 237(1) of the 2003 Act;
- the payment of a fine of \$1,500 to the Legal Practice Board for unsatisfactory professional conduct by the practitioner by failing to advise the second client that the practitioner had received an itemised bill of costs, and to seek the second client's instructions as to whether the practitioner should serve on the law firm that had served the itemised bill of costs a written notice of intention to have the bill taxed within 30 days of service of the itemised bill, that is, on or before 5 October 2007;
- the reprimand of the practitioner and the payment of a fine of \$2,500 to the Legal Practice Board for professional misconduct by the practitioner by sending a letter containing improper threats and inappropriate demands to the first client;
- the suspension of the practitioner's local practising certificate for a period of two months for professional misconduct by the practitioner by, in order to advance his own interests, knowingly and intentionally misleading Magistrate Musk on 11 January 2008 during the hearing of an ex parte application filed by and on behalf of the practitioner for an interim violence restraining order against the first client, by asserting that the first client had a criminal record when that was not the case; and
- the suspension of the practitioner's local practising certificate for a period of one month for professional misconduct by the practitioner by, in relation to the second client, failing to file a statement of defence by 27 December 2007, or at all, to inform the second client that the plaintiff law firm was entitled to apply for default judgment without further notice, and to serve a copy of the notice of change of address for service on the second client or to inform the second client that the practitioner had ceased to act for him.

The respondent's unfitness to practise

10 The findings made by the Tribunal, particularly when viewed against Mr Segler's disciplinary history, demonstrate that he is not a fit and proper person to remain on the roll of practitioners.

11 The finding that Mr Segler misled the Family Court is of particular significance. A finding that a practitioner has misled the court raises serious questions as to the practitioner's fitness to practise - *O'Reilly v Law Society of New South Wales*.⁸ As McMurdo P said in *The Council of the Queensland Law Society Inc v Wright*:⁹

This duty of candour and fairness is quintessential to the lawyer's role as officer of the court; the court and the public expect and rely upon it, no matter how new or inexperienced the practitioner. Breaches such as this are hard to detect and once established to the requisite standard are deserving of condign punishment, not only as a deterrent but also to reassure the public that such conduct on the part of lawyers will not be tolerated.

12 In *Vogt v Legal Practitioners Complaints Committee*,¹⁰ the Court described the intentional misleading of the Court by a practitioner as 'a matter of the utmost seriousness', and said:

The effective administration of the justice system and public confidence in the system depends upon the absolute and unconditional discharge by practitioners of their duty of honesty and candour to the court.

13 The finding of misleading a court is the second such finding that has been made against Mr Segler. The present case involved three separate occasions of misleading the Family Court within the one hearing. A finding of misleading the Magistrates Court was made against him in 2010. In addition, a finding was also made in 2009 that Mr Segler misled the Committee. In light of the findings of misleading the Family Court, considered against the background of the previous findings of misleading conduct, there can be no confidence that Mr Segler can be relied upon to display the requisite candour, honesty and frankness expected of a legal practitioner.

14 The finding in the Glusica matter is of a serious failure by Mr Segler to fulfil his duty to his client, which resulted in serious adverse consequences to the client. His breaches of that duty occurred in the context of failures to comply with orders of the Court for the filing of a

⁸ *O'Reilly v Law Society of New South Wales* (1988) 24 NSWLR 204.

⁹ *The Council of the Queensland Law Society Inc v Wright* [2001] QCA 58 [67].

¹⁰ *Vogt v Legal Practitioners Complaints Committee* [2009] WASCA 202 [70].

statement of claim. Mr Segler has previously been subject to a finding of neglect and undue delay in relation to a client's affairs in 2001 and the finding in *Segler* [2010] of professional misconduct by failing to file a defence on behalf of a client in 2007. By itself, the finding in relation to the Glusica matter would not establish unfitness to practise, but in the context of the other findings the subject of the report, and Mr Segler's disciplinary background, it reinforces the conclusion that we have reached.

15 Although it is true, as Mr Segler submits, that his misapplication of trust money did not involve dishonesty, nor did it cause loss to the clients, any failure by a legal practitioner to handle trust money in accordance with the applicable legislative requirements is a serious matter (see *Legal Practitioners Complaints Committee v De Alwis*¹¹). Mr Segler paid his clients' money into his general account. The payments were on account of work to be done. Mr Segler had no entitlement to the funds until that work was done. By receiving the funds for his personal use before he was entitled to do so, he gained a benefit and circumvented the well-known and important requirements which govern trust monies held by solicitors and the application of those monies to pay legal costs. Further, his conduct revealed a failure to appreciate the fundamental obligations of a practitioner in handling client funds. Moreover, as the Tribunal observed, it cannot be said that that arose from any inexperience.

16 We accept the Committee's submission that the findings against Mr Segler in relation to his failure to deposit trust monies in a trust account, and his failures to respond to communications and a summons from the Committee, when seen with the other findings, are indications that Mr Segler is not a fit and proper person to remain on the roll.

Mr Segler's submissions

17 Mr Segler provided written submissions in opposition to the Committee's motion. He chose not to supplement those written submissions at the hearing of the Committee's motion.

18 Mr Segler's written submissions fall broadly into three propositions.

19 The first is that it is unfair and unreasonable 'to focus solely upon his aberrant mistakes at the expense of his achievements' having regard to the purpose of disciplinary sanction, namely to protect the public and the reputation of the profession rather than to punish.

¹¹ *Legal Practitioners Complaints Committee v De Alwis* [2006] WASCA 198 [105] - [107].

20 The second proposition is that the 'relentless prosecution' of Mr Segler by the Committee (and its predecessor Legal Practitioners Complaints Committee) since 2001 is a result of Mr Segler counselling his former employer not to accede to a request, by a senior practitioner, made in or around 1998, to take certain action against another practitioner. The senior practitioner later became a member of the Legal Practitioners Complaints Committee and subsequently the chair of the Committee. The clear inference of Mr Segler's submissions is that, angered by Mr Segler giving advice contrary to the senior practitioner's advice, the latter influenced the Committee to pursue Mr Segler by prosecuting complaints before the relevant disciplinary tribunal.

21 The third proposition was that the conduct that led to various of the findings dealt with in the report, or earlier findings of professional misconduct, did not warrant striking his name from the roll. That proposition rested on submissions which sought to minimise or even justify the conduct that led to the findings.

22 Mr Segler completed his submissions with the assertion that he had already 'been the recipient of significant, if not manifestly excessive, punishment for any indiscretions as judged by the State Administrative Tribunal. This honourable Court could not be aligned with an agenda to further punish me'.

23 We do not consider that Mr Segler's submissions go any way towards a different conclusion from that which we have reached as to his fitness to practise. To the contrary, his perspective on his previous conduct, and on the breaches the subject of this application, reveal and reinforce his unfitness to practise.

24 In arguing that the Court should have regard to his achievements, Mr Segler refers to the observation of DeBelle J in *Legal Practitioners Conduct Board v Boylen*¹² where his Honour said that

When considering the conduct of the practitioner, it is necessary to examine every fact which may throw light on the ultimate issue whether he or she is a fit and proper person to practise.

25 To that end, Mr Segler pointed to his legal career since admission in May 1980. He identified some 14 cases over that period in which he had appeared in various jurisdictions. As counsel for the Committee pointed out, in three of those decisions (*Mourish v Wynne*,¹³ *Casella v Hewitt*,¹⁴

¹² *Legal Practitioners Conduct Board v Boylen* [2003] SASC 241 [51].

¹³ *Mourish v Wynne* [2009] WASC 85.

and *RGB Integration Pty Ltd v Audiovisual Imagenation Pty Ltd*¹⁵) express or implied criticisms of Mr Segler can be found. There is nothing remarkable about the other cases referred to which would impact on our conclusions based on the findings that have been made against Mr Segler.

26 It can be accepted that the first conduct by Mr Segler which led to disciplinary proceedings occurred in 1997, some 17 years after he was admitted to practise law, and that, during his time as a practitioner, he has undertaken some community and pro bono legal services. Those matters do not, however, outweigh the seriousness of the findings against him in the report, especially when viewed against his very poor disciplinary record of the last 13 years.

27 The assertion that Mr Segler has been treated unfairly as a result of some kind of vendetta by the senior practitioner is particularly concerning. Mr Segler's submission does not disclose any reasonable basis on which such an inference can be drawn. We were advised by counsel for the Committee that it is a matter of record that the practitioner in question did not become a member of the Complaints Committee until some years after the first complaints against Mr Segler were made and dealt with, and it was a further two years before he became the chair of the Committee. At the hearing of this matter, counsel for the Committee invited Mr Segler to withdraw his submission and proffer an apology for it. It was an invitation that should have been accepted. Mr Segler chose not to accept the invitation, nor to attempt to justify his assertions.

28 That submission demonstrates a concerning lack of insight on Mr Segler's part and reveals a significant failure to accept responsibility for the conduct the subject of adverse findings against him. His submissions which seek to justify or minimise the conduct the subject of adverse findings raise the same concern. The attempt by Mr Segler through his submissions to minimise the seriousness of his conduct, and to suggest that at least some of the findings against him should not have been made, demonstrates a failure to appreciate the effect of s 444(1) of the LP Act and indicates a failure on Mr Segler's part to accept responsibility for his actions.

29 Mr Segler submitted two references from former clients attesting to their views as to his good character and confidence, and a letter from his wife which spoke of the consequences which flowed from Mr Segler closing his practice in May 2010 after being suspended by the Tribunal.

¹⁴ *Casella v Hewitt* [2008] WASCA 13.

¹⁵ *RGB Integration Pty Ltd v Audiovisual Imagenation Pty Ltd* [2009] WADC 165.

The letter criticised the Committee for its pursuit of Mr Segler and urged the Court to have regard to Mr Segler's achievements rather than focus on his failings. There is little doubt that the multiple proceedings brought against Mr Segler in recent years have resulted in hardship for him and ultimately led to his ceasing to practise. Because the object of disciplinary proceedings is the protection of the public and the maintenance of proper standards of the profession, consequences to the practitioner concerned may often seem harsh. That is not a reason for the court to refrain from doing what is necessary to achieve those objects. The matters addressed in Ms Segler's letter do not overcome our conclusion that Mr Segler is not a fit and proper person to remain on the roll.

Conclusion

30 There should be an order that Martin Lee Segler's name be removed from the roll of practitioners.