

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

**ACT** : LEGAL PROFESSION ACT 2008 (WA)

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and BRENNAN [2010] WASAT 46

**MEMBER** : JUSTICE J A CHANEY (PRESIDENT)  
JUDGE J PRITCHARD (DEPUTY PRESIDENT)  
MS S GILLETT (MEMBER)

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 7 APRIL 2010

**FILE NO/S** : VR 174 of 2009

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

DAMIEN GERARD BRENNAN  
Respondent

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*Catchwords:*

Legal practitioners - Disciplinary proceedings - Practitioner convicted of 70 counts of stealing and one count of attempting to gain benefit by fraudulent means - Appropriate penalty - Recommendation to full court that practitioner's name be removed from the roll

*Legislation:*

*Legal Profession Act 2008 (WA), s 438, s 438(2), s (438)(2)(a)*

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*Result:*

Report transmitted to Supreme Court (full bench)

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms P Le Miere  
Respondent : No appearance

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : No appearance

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

A Solicitor v Council of the Law Society of New South  
Wales (2004) 216 CLR 253  
Law Society of South Australia v Rodda (2002) 83 SASR 541  
Legal Practitioners Complaints Committee v McKerlie [2007] WASC 119  
Ziems v Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279

**REASONS FOR DECISION OF THE TRIBUNAL:**

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

1 A legal practitioner, Damien Gerard Brennan, was convicted on his plea of guilty in April 2009 of 70 counts of stealing from a client, or the client's estate, a total of \$896,787 and one count of attempting by fraudulent means to gain a benefit, namely the sum of \$73,790.02 being the proceeds of the sale of shares held in the client's name. The practitioner was sentenced to a period of seven and a half years imprisonment.

2 The Legal Profession Complaints Committee brought an application to the Tribunal seeking a finding that Mr Brennan had engaged in professional misconduct and seeking that the Tribunal make a report to the Supreme Court (full bench) with a recommendation that the practitioner's name be removed from the roll of legal practitioners. Mr Brennan made no submissions in relation to the application. The Tribunal agreed that the nature of Mr Brennan's conduct made it inevitable that a report should be transmitted to the Supreme Court in order for the Court to consider removal of the practitioner's name from the roll.

***The application***

3 The Legal Profession Complaints Committee (Committee) seeks a finding pursuant to s 438(1) of the *Legal Profession Act 2008* (WA) (LP Act) that a legal practitioner, Damien Gerard Brennan, has engaged in professional misconduct by illegal conduct. The conduct the subject of the complaint is that:

- Between 17 August 2001 and about 10 February 2006, Mr Brennan stole a total of \$767,245.30 the property of Josef Kopec;
- Between about 10 February 2006 and 3 May 2007 he stole a total of \$129,542 the property of the Public Trustee; and
- On 30 May 2007 at Busselton, he with the intent to defraud, by deceit or fraudulent means attempted to gain a benefit for himself, namely, the sum of \$73,790.02 being the proceeds of the sale of shares held in the name of Josef Kopec.

4 The Committee submits that the Tribunal should make and transmit a report on the finding of professional misconduct to the Supreme Court (full bench) pursuant to s 438(2) of the LP Act.

*The facts*

5 The Committee filed a summary of the relevant facts. In the book of documents provided to the Tribunal, there is a transcript of proceedings before McKechnie J at which Mr Brennan pleaded guilty to 71 of the 103 counts on the indictment, and those pleas were accepted by the prosecution in satisfaction of the indictment. The facts alleged by the prosecution in those proceedings were accepted by Mr Brennan through his counsel. We are satisfied that the summary of facts prepared by the Committee for the purposes of these proceedings is an accurate summary of the admitted facts. The summary reads as follows:

1. On 29 April 2009 the practitioner was convicted of 60 indictable offences under Section 378 of the Criminal Code of Western Australia of stealing the property of Josef Kopec and 10 indictable offences [sic] under Section 378 of the Criminal Code of Western Australia of stealing the property of the Public Trustee and 1 indictable offence under Section 409(1)(c) of the Criminal Code of Western Australia to defraud, by deceit or fraudulent means attempted to gain a benefit, namely the sum of \$73,790.02 being the proceeds of the sale of shares held in the name of Jozef Kopec for Damien Gerald Brennan.
2. The practitioner was found to have:
  - (i) In August 2001 stolen \$125,000 and on a further 58 occasions stolen from the client or his estate by taking money or causing to be taken money from the client's bank account and using it for his own benefit being a total of \$767,245.30
  - (ii) On about 12 April 2006 stolen \$15,000 and on a further 9 occasions stolen from the client's estate a total of \$129,542.
  - (iii) By deceit or fraudulent means attempted to gain a benefit, namely the sum of \$73,790.02 being the proceeds of the sale of shares held in the name of Jozef Kopec for Damien Gerald Brennan.
3. On 29 April 2009 the practitioner was found guilty of the offences on his own plea and was sentenced to seven and a half years imprisonment.

4. The facts giving rise to the offences committed by the practitioner are set out below.
5. The practitioner held an Enduring Power of Attorney (*EPA*) which enabled him to manage Jozef Kopec's (*the client*) affairs.
6. Pursuant to the EPA the practitioner was able to operate the client's bank account and sell and buy property in the name of the client. During this period the practitioner charged professional fees of \$71,349.36.
7. After the client's death on 13 February 2006 the practitioner continued to operate the client's bank account pursuant to the EPA although he knew the EPA had come to an end.
8. On 30 May 2007 the Law Complaints Officer (*LCO*), together with the Legal Officers of the Legal Practitioners Complaints Committee (*the LPCC*) and the Senior Trust Account Inspector without notice attended the practitioner's practice for the purpose of undertaking an inspection of his practice and to enquire into apparent anomalies in the practitioner's handling of the client's affairs.
9. The practitioner was unable to account for the apparent deficiency and left his office without informing the LCO of his intention to do so. He was subsequently telephoned by the LCO and refused to return to his office and declined to provide her with the client's chequebook.
10. On 30 May 2007 (the same day that the LPCC attended on the practitioner) the practitioner went to the offices of Pattersons, stockbrokers in Busselton. The practitioner instructed a stockbroker to sell 2,000 Westfarmers shares held by the client. He had no authority to do so as, by law, the power of attorney was revoked and the shares were deemed to have vested in the public trustee. The practitioner did not inform the stockbroker that the client had died and he no longer had any authority to deal with the client's property.
11. Pattersons, believing the practitioner still had authority to direct the sale of the shares and sold them on 30 May 2007 and a cheque for \$73,790.02 was sent to the practitioner's Busselton office.
12. On 31 May 2007 the Tribunal suspended the respondent from practice pursuant to Section 182 of the Legal Practice Act 2003 and issued orders freezing all bank accounts related to the practitioner's practice and all bank accounts in the name of the practitioner.
13. On or about 31 May 2007 the Legal Practice Board appointed a supervising solicitor to the practitioner's practice.

14. The practitioner was not able to obtain the benefit of the proceeds of the sale of the Westfarmers shares because the cheque was sent to his office and the supervising solicitor collected all mail coming into the practitioner's office.

***Principles to be applied***

6 Where an order for removal from the roll is contemplated, the ultimate question is whether it is demonstrated that the practitioner is not a fit and proper person to remain a legal practitioner: *A Solicitor v Council of the Law Society of New South Wales (2004) 216 CLR 253* at [15]; *Law Society of South Australia v Rodda (2002) 83 SASR 541* at 545.

7 Honesty and integrity are essential prerequisites to the right to practice law: *Legal Practitioners Complaints Committee v McKerlie [2007] WASC 119* at [8].

8 While not every incidence of unprofessional or illegal conduct will require the extreme penalty of striking off, there will be cases where the seriousness of the conduct demands such a disposition because it demonstrates unfitness to practice: *Ziems v Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279* at 298.

***The appropriate disposition***

9 In sentencing Mr Brennan, McKechnie J noted that the evidence overwhelmingly showed that the 71 offences were not impulsive but purposeful. He described the crimes as representing 'the worst possible offences for a solicitor'. His Honour said at [t:80]:

The offences must be seen in context. You were a solicitor engaged for the very purpose of protecting the financial affairs of Mr Kopec. You betrayed that trust for your own greed and gain. Moreover, you are not a first offender. You were a first offender in August 2001 but by May 2007 you were a serial offender.

10 With respect, we agree with his Honour's observations. This is a case of the clearest kind where the nature of the offences for which Mr Brennan has been convicted demonstrates unfitness to remain on the roll of local practitioners.

11 We find that the respondent is guilty of professional misconduct by illegal conduct as set out in [3] of these reasons. Accordingly, a report should be transmitted to the Supreme Court (full bench) pursuant to s 438(2) of the LP Act, and these reasons constitute that report.

*Order*

1. Pursuant to s 438(2)(a) of the *Legal Profession Act 2008* (WA), the Tribunal makes and transmits a report in the form of its reasons published on 7 April 2010 to the Supreme Court (full bench).

I certify that this and the preceding [11] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUSTICE J A CHANEY, PRESIDENT**