

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

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

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and BATES [2012] WASAT 150

**MEMBER** : JUSTICE J A CHANEY (PRESIDENT)  
JUDGE D R PARRY (DEPUTY PRESIDENT)  
MS S GILLETT (MEMBER)

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 20 JULY 2012

**FILE NO/S** : VR 211 of 2011

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

KENNETH PAUL BATES  
Respondent

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*Catchwords:*

Legal practitioners - Disciplinary proceedings - Unsatisfactory professional conduct - Breach of duty of disclosure - Failure to ensure evidentiary foundation to support submission - Failure to lead relevant evidence - Proposed consent orders - Whether penalty appropriate

*Legislation:*

*Legal Profession Act 2008 (WA)*

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*Result:*

Consent orders made

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms P Le Miere  
Respondent : Mr G Donaldson SC

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : Francis Burt Chambers

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

Legal Profession Complaints Committee and Love [2011] WASAT 13

**REASONS FOR DECISION OF THE TRIBUNAL:**

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

1           Following a process of mediation in the Tribunal, the parties proposed consent findings and orders in relation to an allegation that a legal practitioner, Mr Kenneth Paul Bates, had failed in various duties as prosecuting counsel in the course of a trial for wilful murder. The consent orders were referred to a Tribunal constituted by three members, as required by the *Legal Profession Act 2008* (WA), for consideration as to whether the proposed orders should be made.

2           The Tribunal, on reviewing the proposed orders and the agreed facts setting out the basis of the proposed finding of unsatisfactory professional conduct, was not initially prepared to make the orders proposed. Further information was sought from the parties as to the circumstances in which the failures occurred, and in particular whether the failures were intentional or inadvertent.

3           The parties then submitted an amended minute of proposed orders, containing additional relevant facts. In addition, the practitioner provided a statement as to how the failures occurred.

4           In light of that further information, the Tribunal was satisfied that the proposed orders fell within an acceptable range of penalties for the conduct in the circumstances in which it occurred. Accordingly, it made the orders proposed by consent.

***Background***

5           On 29 November 2011, the Legal Profession Complaints Committee (Complaints Committee) made an allegation against a practitioner, Mr Kenneth Paul Bates, that he had engaged in unsatisfactory professional conduct in relation to conduct as a prosecutor on behalf of the Crown on a charge of wilful murder against one Andrew Mallard that was heard in the Supreme Court between 2 November 1995 and 15 November 1995.

6           At the initial directions hearing, the matter was referred to mediation before a senior member of the Tribunal. After three mediation sessions, the parties reached agreement as to the relevant facts, and as to what they considered to be an appropriate disposition of the complaint. Accordingly, they filed a minute of consent orders, which, in accordance with the Tribunal's usual requirements, set out the relevant facts that had been agreed and the proposed findings and orders.

7 The Tribunal's approach to the making of orders following mediation in vocational disciplinary matters was recently explained by the Tribunal in *Legal Profession Complaints Committee and Love* [2011] WASAT 13 (*Love*) at [7] - [22]. It is not necessary to reiterate what was said in that case, other than to say that the approach explained in *Love* was the approach taken by the full Tribunal in this case. That approach requires that the Tribunal be satisfied that the penalty proposed falls within the range of appropriate penalties having regard to the purposes to be served by the imposition of vocational disciplinary penalties. Upon review of the initial minute, the Tribunal was not satisfied that it had sufficient information to satisfy itself that the proposed penalty was appropriate. In particular, the Tribunal considered it critical to the determination of that question to know more of the circumstances which led to the conduct complained of, and especially whether the conduct was intentional. The Tribunal's preliminary view was that, if the conduct was intentional, the proposed penalty appeared inadequate.

8 Accordingly, the parties were invited to provide further information. As a result, an amended minute of consent orders was provided. In addition, Mr Bates provided a note of his explanation of his conduct which he indicated he was willing to verify on oath. The Tribunal did not consider it necessary to convene a hearing for that purpose, and accepts the truth of Mr Bates' explanation.

9 The amended minute provided by the parties differed from the original minute in two respects. The first was that under the section 'The Tribunal notes' the Complaint Committee's position was more fully explained, and in particular that no allegation of deliberate conduct was made by the Complaints Committee. The second was to add a section immediately prior to the proposed orders under the heading 'Factors relating to Penalty'. The amended minute of consent orders reads as follows:

### ***Minute of Consent Orders***

On the application of the parties to settle the proceedings determined by [President Justice J Chaney, Deputy President Judge D Parry and Member Ms S Gillett]:

#### **The Tribunal notes:**

The Legal Profession Complaints Committee ('the Committee') alleged that there is proper cause for disciplinary action against the practitioner pursuant to Section 438 (1) of the *Legal Profession Act 2008*.

It is not alleged by the Committee in its application that the practitioner's conduct was deliberate.

The Committee's position is that, in those circumstances, the appropriate finding is of unsatisfactory professional conduct rather than of professional misconduct.

Nevertheless, for the reasons set out below, the Committee's position is that the seriousness of the practitioner's conduct warrants a public reprimand and the imposition of the maximum fine available under the Legal Practitioners Act 1893 ('the 1893 Act') in order to achieve the disciplinary objectives of maintaining and enforcing appropriate standards of professional conduct.

The parties have agreed the following relevant facts:

1. At all material times, the practitioner was:
  - (i) an Australian lawyer, within the meaning of the *Legal Profession Act 2008*;
  - (ii) a senior prosecutor with the Office of the Director of Public Prosecutions for Western Australia.

**Matters leading up to trial**

2. On 23 May 1994 Pamela Susanne Lawrence was murdered at her shop in Mosman Park (*shop*).
3. On 23 and 24 May 1994, Dr Clive Cooke, the then Chief Forensic Pathologist with the Western Australian Centre for Pathology and Medical Research, conducted a post mortem examination of Mrs Lawrence's body and prepared a Post Mortem Report dated 24 May 1994 (*Post Mortem Report*) which set out details of 12 lacerations to Mrs Lawrence's head including diagrams depicting the location of each of those lacerations.
4. The Post Mortem Report included 2 addenda, one of which was dated 24 May 1994, indicating that Dr Cooke had been shown a metal bar and a comparison was made between some of the injuries to Mrs Lawrence's scalp and the end of the bar. This comparison was a visual comparison made by Dr Cooke between a copper anode from the shop or the shed at the back of the shop and some of the injuries to Mrs Lawrence's scalp.
5. On 24 May 1994, Andrew Mark Mallard was arrested and charged by police with an unrelated offence and remanded for psychiatric assessment to Graylands Hospital until he was released on bail on 10 June 1994.

6. Mr Mallard was interviewed by police while he was in Graylands Hospital and following his release from hospital. On 10 June 1994, Mr Mallard was interviewed by police, in particular Detective Sergeant Caporn and during the course of that interview, Mr Mallard:
  - (i) repeatedly denied any involvement in the murder of Mrs Lawrence;
  - (ii) admitted, then later denied, that he had entered the shop on the day of Mrs Lawrence's murder;
  - (iii) answered questions from the police in the third person saying, in effect, that the murderer hit Mrs Lawrence with a wrench obtained from a shed at the back of the shop;
  - (iv) subsequently said that the answers he had given in the third person 'must be' lies and that 'it's all lies'.
7. On 16 June 1994, a visual comparison was made by Dr Cooke between either an excise of some of the injuries to Mrs Lawrence's head or photographs of the head wounds and a plumber's wrench but the wounds were not found to be compatible with a plumber's wrench.
8. On 17 June 1994, Mr Mallard was interviewed again by police, in particular Detective Sergeant Brandham, and during the course of that interview drew a sketch of a wrench with the word 'Sidchrome' written on it (*sketch*) and also stated, to the effect, that:
  - (i) he had hit Mrs Lawrence possibly 12 times with a wrench taken from the shed at the back of the shop, but later denied that he had been in the shed;
  - (ii) the wrench was a pipe wrench (also known as a plumber's wrench) which was rusty, had a ratchet system, was big and was a Sidchrome;
  - (iii) he got the wrench from near the gas bottles in the shed at the back of the shop;
  - (iv) the wrench was similar to the sketch;
  - (v) he did not murder Mrs Lawrence;
  - (vi) everything he had told the police was made up and lies.
9. On 24 June 1994 Dr Cooke, in the presence of the police and Mr Bernard Lynch, the then Principal Chemist, Physical Evidence Section, Forensic Science Laboratory, conducted a series of tests in

which a pig's head was struck with a copper anode and, later, with a crescent wrench or similar (ie not a pipe wrench) (**pig's head testing**). As a result of those tests, Dr Cooke formed the view that neither the copper anode nor the wrench could have caused the injuries to Mrs Lawrence's head.

10. On 19 July 1994 Mr Mallard was charged with the wilful murder of Mrs Lawrence.
11. Mr Lynch prepared a report for the police dated 30 August 1994 (**Chemical Report**) on the foreign matter found in specimens from the head wounds of Mrs Lawrence. He found that each of the specimens contained minute amounts of dark blue coloured smears which contained the pigment Prussian Blue in an orthophthalic alkyd enamel and that iron or iron oxide particles were present in the smears.
12. The Chemical Report contained comments by Mr Lynch that Prussian Blue was a pigment once commonly used in paints and artist colours and that the presence of iron or iron oxide particles suggested that they originated from an iron or steel implement either painted or with blue paint marks present.
13. By letter dated 21 October 1994 to Mr McKechnie QC, the then Director of Public Prosecutions, the police requested that a prosecutor be assigned to prosecute Mr Mallard at the preliminary hearing and attached a 30 page comprehensive summary of facts (**Comprehensive Summary**) signed by Detective Sergeant Shervill and the prosecution brief (**Prosecution Brief**).
14. The Comprehensive Summary, at page 29, referred to the murder weapon and, in essence, stated:
  - (i) the type of murder weapon used in the crime had not been identified or located;
  - (ii) Dr Cooke had compared a copper anode to Mrs Lawrence's wounds and considered that some of the wounds may have been caused by an anode of similar shape but an experiment conducted in conjunction with Mr Lynch where a pig's head was hit using a copper anode showed that the anode left wounds of a similar shape to some of those sustained by Mrs Lawrence but the copper residue left in any wounds inflicted by a copper anode was not consistent with the copper residue found in Mrs Lawrence's wounds and therefore it was considered that a copper anode was not the murder weapon;
  - (iii) during the pig's head experiment, a crescent wrench was also tested which inflicted dissimilar wounds to those sustained by Mrs Lawrence.

15. The Prosecution Brief:
  - (i) contained a copy of the Post Mortem Report and the Chemical Report;
  - (ii) did not contain any expert report on, or witness statement referring to, the comparison between the plumber's wrench referred to in paragraph [7] above or the pig's head testing;
  - (iii) did not contain any forensic evidence linking Mr Mallard to the murder.
16. On or about 28 October 1994, the preliminary hearing of the charge against Mr Mallard (*preliminary hearing*) was allocated to the practitioner.
17. Between 16 and 18 January 1995 the preliminary hearing took place and at the conclusion of the hearing Mr Mallard was committed for trial in the Supreme Court.
18. At the preliminary hearing, during his opening of the prosecution case, the practitioner referred to the murder weapon as a 'metal object'.
19. On 1 March 1995 an indictment was issued against Mr Mallard on the charge of the wilful murder of Mrs Lawrence.
20. On a date unknown, the trial of Mr Mallard for the wilful murder of Mrs Lawrence was set down to commence in the Supreme Court on 2 November 1995 (*trial*).
21. A few days prior to 3 October 1995, Detective Sergeant Brandham spoke to the practitioner about a conversation Detective Sergeant Brandham had with Detective Sergeant Shervill on 17 June 1994 when Detective Sergeant Brandham took a break from interviewing Mr Mallard. The practitioner made notes of what he (the practitioner) was told by Detective Sergeant Brandham a few days prior to 3 October 1995 which notes include, relevantly the following words:

*'spanner drawn - doesn't match injuries*  
*- blue copper- in the wounds'*
22. On 3 October 1995, a voir dire was held to determine the admissibility at trial of the evidence of police interviews with Mr Mallard (*voir dire*). At the voir dire, the defence submitted that the confessional material the subject of the police interviews was not admissible on the grounds that it was not voluntary and that Mr Mallard was suffering from a psychiatric disorder.
23. At the voir dire Dr O'Dea, then a Principal Forensic Psychiatrist based at Graylands Hospital, gave evidence that when Mr Mallard

was first admitted to Graylands Hospital on 25 May 1994 he diagnosed Mr Mallard as suffering from a mood disorder in which he was then in a manic phase.

24. At the conclusion of the voir dire, his Honour Justice Murray ruled that the evidence of the police interviews with Mr Mallard was admissible at trial.
25. At some time shortly prior to the trial, the practitioner spoke with Mr Lawrence, Mrs Lawrence's husband, concerning his evidence and learned that Mr Lawrence was not sure, but thought that an adjustable spanner or wrench may have been missing from the shed at the back of the shop.
26. The practitioner did not at any time prior to Mr Lawrence giving evidence at the trial:
  - (i) attempt to ascertain from him whether the spanner or wrench as drawn by Mr Mallard was the kind of tool which Mr Lawrence was not sure but thought may have been missing from the shed at the back of the shop;
  - (ii) attempt to ascertain from him whether the spanner or wrench Mr Lawrence was not sure but thought may have been missing from the shed at the back of the shop was painted blue or had blue paint marks on it.
27. On or about 27 October 1995, the practitioner had a conference with Dr Cooke concerning his evidence for the trial. During that conference, the practitioner did not show Dr Cooke the sketch and did not seek to ascertain from Dr Cooke his opinion as to whether the wrench in the sketch could have caused Mrs Lawrence's injuries.
28. In or about late October 1995, the practitioner had a conference with Mr Lynch concerning his evidence for the trial. During that conference, Mr Lynch discussed with the practitioner the pig's head testing of the anode but not the pig's head testing of the wrench and the practitioner did not show Mr Lynch the sketch and did not seek to ascertain from Mr Lynch his opinion as to whether the wrench in the sketch could have caused Mrs Lawrence's injuries.
29. On or about 31 October or 1 November 1995, the practitioner decided to open the Crown's case at the trial on the basis that the wrench as sketched by Mr Mallard during the interviews with the police was the murder weapon.
30. At the time the practitioner made the decision referred to in paragraph [29] above, he knew that the reliability of the confessional material the subject of the police interviews (including

the sketch) would be or was likely to be a central issue at the trial due to:

- (i) the lack of forensic evidence linking Mr Mallard to the murder;
- (ii) Mr Mallard's psychiatric condition;
- (iii) the fact that in the course of the police interviews Mr Mallard had denied murdering Mrs Lawrence;
- (iv) the fact that in the course of the police interviews Mr Mallard had disavowed the confessional material;
- (v) the inconsistency between, and inaccuracy of, some of the statements made by Mr Mallard during the course of the police interviews.

**Particulars of inconsistent and/or inaccurate statements**

- (a) Mr Mallard said in the interview on 17 June 1994 that he hit Mrs Lawrence above the left eye (by indicating to that area on his own head) and on her cranium (indicating the top rear of head) whereas the Post Mortem Report refers to 5 lacerations to the right frontal region;
- (b) Mr Mallard said in the interview on 17 June 1994 that he hit Mrs Lawrence on top of the cranium;
- (c) Mr Mallard said in the interview on 17 June 1994 that the wrench came from near the gas bottles in the shed at the back of the shop when there were no gas bottles in the shed;
- (d) Mr Mallard said in the interview on 17 June 1994 that he had taken the wrench from the shed at the back of the shop but then later said that in the same interview he had never been in the shed and that he must have got the wrench from somewhere else;
- (e) Mr Mallard said in the interview on 17 June 1994 that Mrs Lawrence was wearing dark slacks and a jumper and later that she was wearing a skirt of some kind;
- (f) Mr Mallard said in the interview on 17 June 1994 in effect that the reason he hit Mrs Lawrence was because he was under the influence of drugs but when it was put to him he had only just been

released from the lock up and had no money then said maybe he was not.

### **Trial**

31. The trial of the charge against Mr Mallard commenced in the Supreme Court at Perth on 2 November 1995 before his Honour Justice Murray and a jury (*trial*). The practitioner prosecuted the trial.
32. On 2 November 1995, the practitioner opened the prosecution case on the basis that Mr Mallard murdered Mrs Lawrence with a wrench. Further, that Mr Mallard:
  - (i) obtained the wrench from the shed at the back of the shop;
  - (ii) drew the wrench during an interview with the police.
33. During the course of the trial, the practitioner:
  - (i) tendered the sketch as an exhibit in the Crown's case;
  - (ii) called Detective Sergeant Brandham to give evidence of the police interviews with Mr Mallard on 17 June 1994;
  - (iii) questioned Dr Cooke and Mr Lynch about the pig's head testing of the anode;
  - (iv) questioned Mr Lawrence about whether he had checked to see if any of the tools in the shed at the back of the shop were missing after Mrs Lawrence had been murdered, and asked Mr Lawrence to describe the spanner or wrench that Mr Lawrence thought may be missing.

### **Facts and Contentions**

34. At all material times, the practitioner was bound by the Crown's duty of disclosure which was a continuing obligation requiring the Crown to give full disclosure to the defence of all relevant evidence except in limited circumstances which did not apply in this matter.
35. The practitioner failed to comply with his duty of disclosure as a prosecutor in that he failed to disclose to Mr Mallard or his counsel from in or around late September 1995 until the conclusion of the trial what he was told by Detective Sergeant Brandham about Mrs Lawrence's injuries not matching the wrench in the sketch, as referred to in paragraph [21] above.
36. The failure referred to in paragraph [35] above, occurred in circumstances where the likelihood of the wrench in the sketch

being the murder weapon was of central importance to the prosecution case as advanced in opening at the trial.

37. As at the commencement of the trial, the murder weapon had not been located and the evidence available to the practitioner in his written materials as to the identity of the murder weapon was:
- (i) Mr Mallard's statement to the police that he hit Mrs Lawrence with a wrench he had obtained from the shed at the back of the shop;
  - (ii) the sketch;
  - (iii) the statement in the Comprehensive Summary that a crescent wrench inflicted dissimilar wounds to those sustained by Mrs Lawrence;
  - (iv) his notes of what Detective Sergeant Brandham had told him of his conversation with Detective Sergeant Shervill that the wrench as sketched by Mr Mallard did not match Mrs Lawrence's injuries;
  - (v) the Chemical Report which contained Mr Lynch's comments that the weapon was an iron or steel implement either painted or with blue paint marks;
  - (vi) Dr Cooke's evidence at the preliminary hearing that based on Mrs Lawrence's injuries the murder weapon was a blunt instrument;
  - [(vii)] Mr Lawrence's statement or evidence that he was not sure but thought that an adjustable spanner or wrench may have been missing from the shed at the back of the shop.
38. The only evidence which supported the contention that the murder weapon was a wrench, as opposed to a blunt instrument made of iron or steel and painted blue, was:
- (i) the police statements as to Mr Mallard's interviews;
  - (ii) the sketch;
  - (iii) Mr Lawrence's evidence that he was not sure but thought that an adjustable spanner or wrench may have been missing from the shed at the back of the shop.
39. At the time of preparing the matter for trial and during the trial, the practitioner knew, that the reliability of Mr Mallard's statements to the police would be or was likely to be a central issue at trial for the reasons set out in paragraph [30] above.

40. Prior to deciding to open the prosecution case on the basis of the wrench being the murder weapon, and then proceeding to do so, the practitioner failed to review all of the information and materials available to him to ascertain whether there was:
- (i) any evidence independent of Mr Mallard's statements to the police to support the proposition that Mr Mallard murdered Mrs Lawrence with a wrench;
  - (ii) any evidence to support the proposition that Mrs Lawrence had not been murdered with a wrench;
  - (iii) any further evidence which needed to be disclosed to the defence consequent upon deciding to open the prosecution case in that way.
41. Prior to deciding to open the prosecution case on the basis of the wrench being the murder weapon, and then proceeding to do so, the practitioner failed to question:
- (i) Dr Cooke, about whether the wrench in the sketch could have been the murder weapon;
  - (ii) Mr Lynch about whether the wrench in the sketch could have been the murder weapon;
  - (iii) Mr Lawrence about whether the wrench in the sketch was the kind of spanner or wrench which Mr Lawrence was not sure but thought may have been missing from the shed at the back of the shop;
  - (iv) Mr Lawrence about whether the spanner or wrench Mr Lawrence was not sure but thought may have been missing from the shed at the back of the shop was painted blue or had blue paint marks on it.
42. Having opened the prosecution case on the basis that the murder weapon was the wrench in the sketch, the practitioner did not tender any document or lead any evidence from any witness in respect of that proposition which was independent of the statements made by Mr Mallard to the police.
43. At no time during the course of the trial did the practitioner withdraw his submission that the wrench in the sketch was the murder weapon.

#### **Factors relating to Penalty**

44. The range of penalties available to the Tribunal to be imposed in respect of the practitioner's conduct are those contained in the 1893 Act, given the conduct occurred in 1994.

45. As noted above, the Committee does not allege, nor has there been a finding, that the practitioner's conduct was deliberate.
46. In those circumstances, no question arises as to the practitioner's fitness to remain in practice, nor is a penalty of suspension appropriate.
47. The conduct is nevertheless sufficiently serious to warrant the imposition of a public reprimand and the maximum fine that could be imposed under the 1893 Act, having regard to the attendant risks to accused persons, and the potentially serious consequences, where a criminal prosecutor, in the manner set out in the agreed facts, fails to a substantial degree to meet the standard of professional conduct observed or approved of by members of the legal profession of good repute and competence.

**The Tribunal orders:**

Being satisfied by reason of the practitioner's admission that proper cause exists for disciplinary action against the practitioner, and in order to give effect to the agreed terms of settlement of the proceedings, it is on 20 July 2012 ordered pursuant to s.56(1) of the *State Administrative Tribunal Act 2004* (WA) that:

1. The practitioner KENNETH PAUL BATES (practitioner) engaged in unsatisfactory professional conduct between September and November 1995 in that his conduct as the prosecutor on behalf of the Crown of a charge of wilful murder against Andrew Mallard which was heard before Murray J in the *Queen v Andrew Mark Mallard* between 2 and 15 November 1995, to a substantial degree, fell short of the standard of professional conduct observed or approved of by members of the legal profession of good repute and competence, in that:
  - (i) he failed to comply with the prosecutor's duty of disclosure;
  - (ii) he failed to review his written materials and ascertain that there was a reasonable evidentiary foundation to support a material submission of fact (being in this case a submission to the effect that the murder weapon used by Mr Mallard was a wrench as sketched by Mr Mallard in the course of a police interview) before advancing that material submission of fact during his opening address at the trial;
  - (iii) in the circumstances set out at paragraph 30 of the agreed facts he failed to lead evidence additional to evidence of statements made by Mr Mallard to the police about,

amongst other things, the murder weapon, in respect of a material submission of fact advanced during his opening address at the trial that the murder weapon used by Mr Mallard was a wrench as sketched by Mr Mallard in the course of a police interview;

(iv) in the circumstances set out in (iii) above, and having failed to lead evidence additional to evidence of statements made by Mr Mallard to the police in respect of the submission of fact advanced during his opening address that the murder weapon used by Mr Mallard was a wrench as sketched by Mr Mallard in the course of a police interview, he failed to expressly withdraw the submission at any time prior to the conclusion of the trial.

2. The Practitioner be reprimanded.
3. The practitioner pay a fine to the Legal Practice Board in the sum of \$10,000.
4. The practitioner pay the applicant's costs fixed in the sum of \$3,500.
5. The amounts specified in orders [3] and [4] are to be paid to the Legal Practice Board by the practitioner within 28 days or as agreed by the Legal Practice Board.

10 By way of explanation, Mr Bates noted that the only reference to pig's head testing was a two line reference on page 29 of a 30 page report from the investigating officer referred to at paragraph 14 of the minute of consent orders which read:

During the experiment, a crescent wrench was also detected which inflicted dissimilar wounds to those sustained by Lawrence.

11 Mr Bates said that he read that report in January 1995, but from that time until the conclusion of the trial he did not go back to that paragraph and did not recall it. He said that, from around late September 1995, until the conclusion of the trial, he did not recall what he had been told by Detective Sergeant Brandham about Mrs Lawrence's injuries not matching the wrench in the sketch. The note (referred to in paragraph 21 of the minute of consent orders) was part of a long hand-written proofing note prepared in the expectation that Detective Sergeant Brandham would have to give evidence in chief at the voir dire in regard to the interview process. However, Detective Sergeant Brandham was permitted to give his evidence simply by producing his statements, and therefore the practitioner had no cause to refer back to the proofing note for the purposes of the voir dire. Thereafter, Mr Bates said, he did not go back to the proofing note for the purpose of preparing for and conducting the trial

which commenced on 2 November 1995. The practitioner said that the trial was lengthy and complex and required him to be intensely focused on issues other than the evidence which was not disclosed. He said that his workload at the time was heavy, and he had limited time to prepare what was his first murder trial.

- 12 Having regard to the factors relating to penalty identified by the parties in the minute, (including that the conduct occurred almost 17 years ago), and to the fact that there is no suggestion of any deliberate misconduct by the practitioner, and the fact that what is proposed is the maximum fine available under the legislation which applied at the time, we consider that the proposed penalty is within the appropriate range, and accordingly the proposed orders should be made.

I certify that this and the preceding [12] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUSTICE J A CHANEY, PRESIDENT**