

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PRACTICE ACT 2003 (WA)

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE and QUIGLEY [2005] WASAT 215
(S)

MEMBER : JUSTICE M L BARKER (PRESIDENT)
MS M CONNOR (MEMBER)
MR C EDMONDS SC (SENIOR SESSIONAL
MEMBER)

HEARD : 13, 14 AND 16 JUNE 2005

DELIVERED : 19 AUGUST 2005

**SUPPLEMENTARY
DECISION** : 21 SEPTEMBER 2005

FILE NO/S : VR 1 of 2003

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Applicant

AND

JOHN ROBERT QUIGLEY
Respondent

Catchwords:

Legal practice - Legal practitioner - Unprofessional conduct - *Legal Practitioners Act 1893 (WA)*

Legislation:

Legal Practitioners Act 1893 (WA),

Result:

Practitioner guilty of unprofessional conduct, reprimanded for unprofessional conduct; practitioner to pay fine and costs

Category: B

Representation:

Counsel:

Applicant : Mr R J Davies QC
Respondent : Mr MJ McCusker QC

Solicitors:

Applicant : Legal Practitioners Complaints Committee
Respondent : N/A

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

Legal Practitioners Complaints Committee and Quigley [2005] WASAT 215

Case(s) also cited:

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 On 16 September 2005, the Tribunal considered submissions as to penalty made on behalf of the Legal Practitioners Complaints Committee and Mr Quigley (the practitioner) concerning the finding of unprofessional conduct made against him in the Tribunal's reserved decision handed down on 19 August 2005.

2 The Tribunal made the following findings and orders:

- (1) The Tribunal finds the practitioner guilty of unprofessional conduct between 2 January 2001 and 4 February 2002 in that following the issuing of reference number 01 of 2001 against the practitioner by the Legal Practitioners Complaints Committee, the practitioner engaged in intimidatory and threatening behaviour towards the Committee, its members and the Law Complaints Officer.
- (2) The practitioner is reprimanded for his unprofessional conduct.
- (3) The practitioner pay a fine of \$8000 within 28 days.
- (4) The practitioner pay the Legal Practitioners Complaints Committee's costs of the proceedings fixed in the sum of \$18 750.

Question of Penalty

3 On 19 August 2005, the Tribunal delivered its reserved decision on the complaint of the Legal Practitioners Complaints Committee that John Robert Quigley (the practitioner) was guilty of unprofessional conduct as a result of certain conduct complained of between 2 January 2001 and 4 February 2002. The Tribunal found the practitioner guilty of unprofessional conduct in terms of par 1 of the reference to the Tribunal. See *Legal Practitioners Complaints Committee and Quigley [2005] WASAT 215*. The Tribunal then adjourned the proceedings to receive submissions on penalty.

4 Senior counsel for the Complaints Committee submitted that in light of the serious and persistent conduct of the practitioner, the Tribunal should transmit a report of its findings to the full bench of the Supreme Court to permit the court to consider the striking off of the practitioner from the Roll of Practitioners or the suspension of the practitioner for a

period exceeding two years. This is a course required under the *Legal Practitioners Act 1893* (WA) in the event the Tribunal considers that striking off or such suspension is warranted.

5 Senior counsel for the practitioner submitted that the type of penalty proposed on behalf of the Complaints Committee was not warranted. Senior counsel for the practitioner referred to numerous references on behalf of the practitioner that spoke of his commitment to the law and the community. Senior counsel also emphasised that apart from the penalty imposed in the first reference proceedings, the practitioner had an unblemished disciplinary record. Senior counsel submitted that in all the circumstances the practitioner's conduct, in this case, was serious but should be considered something of an aberration. He said that the practitioner was contrite, recognised the seriousness of his conduct, and was unlikely to conduct himself in this manner again.

6 The Tribunal has considered the submissions made on behalf of the Complaints Committee and the practitioner as to penalty and had considered the written references provided on behalf of the practitioner. The Tribunal does not believe that this is a matter that calls for the striking off the Roll of Practitioners or suspension from practice for more than two years. Accordingly, the Tribunal will not transmit a report about the practitioner's conduct to the full bench of the Supreme Court. Instead, the Tribunal will exercise its disciplinary powers under the *Legal Practitioners Act 1893* (WA) in the matter.

7 In considering penalty, the Tribunal has noted what it said in its reasons for decision in finding the practitioner guilty of unprofessional conduct, in that to the effect that his conduct may be explained, at least in part, by various forms of stress he was experiencing at the time, that does not excuse it. He exercised very poor judgment in acting in the way he did.

8 Nonetheless, the explanation of stress may be considered a mitigating factor. In that regard, the Tribunal also notes what Dr Kay has stated in his report, recently provided to the Tribunal, to the effect that he believes the practitioner's actions were a manifestation of a longer and deeper depressive illness which has probably contributed to his then undiagnosed lymphoma. The Tribunal notes that the practitioner has recently been diagnosed as having a rare skin form of lymphoma.

9 The Tribunal also takes into account the practitioner's previously unblemished record over many years of practice - unblemished, save for

the reprimand he received over the first reference matter that led to the current reference before the Tribunal. The Tribunal notes the many references which speak to the practitioner's commitment to the practice of law and to the community.

10 The Tribunal also notes that the practitioner is currently a Member of Parliament and not pursuing the practice of law as his primary vocation. He has told the Tribunal he uses his legal skills to assist people on a "pro bono" basis.

11 While the Tribunal does not believe striking off or disqualification is an appropriate penalty - because neither is needed either to protect the public or to register concern at the practitioner's failure to meet professional standards - the Tribunal does consider a form of penalty is required to mark the extent to which the practitioner departed from accepted professional standards. The penalty must indicate that a practitioner is not free to treat public professional bodies such as the Complaints Committee, its members and the Complaints Officer with disdain and to attempt to intimidate and threaten them in the way the practitioner did in this case.

12 The Tribunal accepts, however, that the practitioner is contrite and unlikely to engage in such conduct again.

Orders

13 In those circumstances the Tribunal makes the following findings and orders:

- (1) The Tribunal finds the practitioner guilty of unprofessional conduct between 2 January 2001 and 4 February 2002 in that following the issuing of reference number 01 of 2001 against the practitioner by the Legal Practitioners Complaints Committee, the practitioner engaged in intimidatory and threatening behaviour towards the Committee, its members and the Law Complaints Officer.
- (2) The practitioner is reprimanded for his unprofessional conduct.
- (3) The practitioner pay a fine of \$8000 within 28 days.
- (4) The practitioner pay the Legal Practitioners Complaints Committee's costs of the proceedings fixed in the sum of \$18 750.

I certify that this and the preceding [13] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUSTICE M L BARKER, PRESIDENT