

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**TITLE OF COURT** : FULL BENCH

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE -v- in de BRAEKT [2013] WASC 124

**CORAM** : MARTIN CJ  
McKECHNIE J  
HALL J

**HEARD** : 26 OCTOBER 2012

**DELIVERED** : 12 APRIL 2013

**FILE NO/S** : LPD 1 of 2012

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

MEGAN MAREE in de BRAEKT  
Respondent

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*Catchwords:*

Legal practitioners - Disciplinary proceedings - Removal from Roll of Practitioners - Whether practitioner fit and proper person to remain a member of the legal profession - Discourteous and offensive behaviour

*Legislation:*

*Legal Profession Act 2008 (WA)*

*Result:*

Order that the practitioner's name be removed from the Roll of Practitioners

*Category:* B

**Representation:**

*Counsel:*

Applicant : Mr S Vandongen SC & Ms P Le Miere  
Respondent : No appearance

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : No appearance

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

A Solicitor v The Council of the Law Society of New South Wales [2004] HCA 1; (2004) 216 CLR 253  
Barristers' Board v Darveniza [2000] QCA 253; (2000) 112 A Crim R 438  
Butts v State 546 SE 2d 472 (GA, 2001)  
Clyne v New South Wales Bar Association (1960) 104 CLR 186  
In re Davis (1947) 75 CLR 409  
Kyle v Legal Practitioners Complaints Committee [1999] WASCA 115; (1999) 21 WAR 56  
Lander v Council of the Law Society of the Australian Capital Territory [2009] ACTSC 117  
Legal Profession Complaints Committee and Gandini [2011] WASAT 86  
Legal Profession Complaints Committee and in de Braekt [2011] WASAT 1  
Legal Profession Complaints Committee and in de Braekt [2012] WASAT 58  
Legal Profession Complaints Committee and in de Braekt [2012] WASAT 58(S)  
Legal Profession Complaints Committee and Segler [2010] WASAT 135  
Legal Profession Complaints Committee v Bachmann [2011] WASC 309  
Legal Profession Complaints Committee v Brennan [2010] WASC 198  
Legal Profession Complaints Committee v Masten [2011] WASC 71  
Practitioners Complaints Committee v Thorpe [2008] WASC 9  
Re Maraj (a legal practitioner) (1995) 15 WAR 12

The Council of the Queensland Law Society Inc v Wright [2001] QCA 58  
Vogt v Legal Practitioners Complaints Committee [2009] WASCA 202  
Ziems v Prothonotary of the Supreme Court of New South Wales [1957] HCA  
46; (1957) 97 CLR 279

**JUDGMENT OF THE COURT:****Introduction**

1 The Legal Profession Complaints Committee (the Committee) moves  
the court for an order that Megan Maree in de Braekt (the practitioner) be  
struck off the Roll of Legal Practitioners (the Roll).

2 The court has received a report from the State Administrative  
Tribunal (the Tribunal) in accordance with s 438(2)(a) of the *Legal  
Profession Act 2008* (WA) (the Act). Pursuant to s 444(1) of the Act, the  
report is to be taken to be conclusive as to all facts and findings  
mentioned or contained in the report.

3 The motion before the court is made pursuant to s 444(2) of the Act.  
That section provides that the court, upon reading a report from the  
Tribunal, and without any further evidence, may make a variety of orders  
including the removal of the name of a practitioner from the Roll.

**The findings of the Tribunal**

4 The findings of the Tribunal with respect to the practitioner's conduct  
are set out in *Legal Profession Complaints Committee and in de Braekt*  
[2012] WASAT 58 (Tribunal decision) and can be summarised as follows.

5 The Committee brought proceedings against the practitioner pursuant  
to s 438(1) of the Act, and sought a finding from the Tribunal that the  
practitioner had engaged in professional misconduct as defined in s 403 of  
the Act. The proceedings were brought in relation to five incidents of  
alleged misconduct by the practitioner:

- (a) knowingly (or alternatively, recklessly) misleading the Magistrates  
Court on 4 June 2009 and 6 July 2009 as to whether she had  
received a colour copy of a digiboard from the police (Incident A);
- (b) being persistently discourteous and offensive to Deputy Chief  
Magistrate Woods during a hearing in the Magistrates Court on 4  
June 2009 (Incident B);
- (c) sending discourteous and offensive emails to Detective Constable  
Andrew Broadley between 16 June 2009 and 29 June 2009  
(Incident C);

- (d) sending a discourteous, offensive and threatening email to Detective Inspector Paul La Spina on 30 June 2009 (Incident D); and
- (e) behaving in a discourteous and abusive manner to Mr Rajandran Kanapathy, a security supervisor at the Central Law Courts, in the course of carrying out her legal practice, on 16 January 2009 (Incident E).

### **Incident A – misleading the Magistrates Court**

6 The Committee's allegation with respect to this incident arose from the practitioner's conduct during a hearing in the Magistrates Court before Deputy Chief Magistrate Woods on 4 June 2009, and a further hearing before Magistrate Calder on 6 July 2009. The practitioner was representing a client accused of a number of criminal offences. On 4 June 2009, the practitioner made an application for the prosecutions to be dismissed on the ground that the prosecution had failed to disclose to the practitioner a copy of a digiboard (identification board) used by a witness in the course of identifying the accused. In response to the application, the prosecutor advised the court that a colour copy of the digiboard used by the prosecution had been posted to the practitioner, and that he was able to provide the practitioner with a black and white copy of the board. The practitioner then asserted that she had not received this copy, and insisted that a black and white copy would be insufficient. In reliance upon the practitioner's assertions, Deputy Chief Magistrate Woods ordered the prosecutor to disclose to the practitioner a colour copy of the digiboard before the next hearing. On 6 July 2009, at the next hearing before Magistrate Calder, the practitioner maintained that she had not received a colour copy of the digiboard.

7 However, the Tribunal found that the statements made by the practitioner to each magistrate were knowingly and intentionally misleading. The Tribunal found that colour copies of the two digiboards used in the proceedings against the practitioner's client had in fact been provided to the practitioner on four separate occasions between May and June 2009 - twice by registered post and twice by hand delivery. The Tribunal made this finding based on the testimony of police officers who had posted or hand delivered copies of the digiboards and registered post delivery receipts recording delivery of the boards to the practitioner which were tendered in evidence. The Tribunal found that the practitioner had wilfully and knowingly misled the court and had thereby engaged in professional misconduct.

**Incident B – discourtesy to Deputy Chief Magistrate Woods**

8 A further incident of misconduct was found to have occurred during the hearing before Deputy Chief Magistrate Woods on 4 June 2009. During the course of the hearing, the prosecutor requested an adjournment of the matter, because the victim had undergone an operation on the previous day. The prosecutor made brief submissions in support of the application. The practitioner then made submissions in opposition to the application, concluding with the remark 'those are my submissions'. The prosecutor then made brief submissions in reply. The magistrate was about to make a ruling on the application when the practitioner rose and endeavoured to make further submissions. The magistrate stopped her and asked her to take a seat. The practitioner refused this request, insisting that she be given the chance to finish her submissions. After asking the practitioner to sit a further three times, and being refused each time, the magistrate was forced to order the practitioner to take a seat at the back of the court and to direct that the matter be stood down, in order to regain control of the courtroom. After this order was made, the practitioner objected, and made an oral application for the magistrate to disqualify herself for bias, on the basis that her Honour had demonstrated bias against the practitioner by refusing to allow her to complete her submissions in reply, and instructing her to sit at the back of the court.

9 The Tribunal determined that the practitioner had engaged in an 'extraordinary display of discourteous and offensive behaviour' (Tribunal decision [119]) in refusing to comply with the reasonable requests of the magistrate. Further, the Tribunal considered that Deputy Chief Magistrate Woods had acted reasonably in directing the practitioner to cease making submissions, and in ordering that the matter be stood down and that the practitioner to take a seat at the back of the court, given the practitioner's conduct. The Tribunal further determined that in making an unfounded accusation of bias, the practitioner had engaged in disgraceful and dishonourable behaviour. Given these findings, the Tribunal determined that the practitioner was guilty of professional misconduct in relation to Incident B.

**Incidents C and D – discourteous, offensive and threatening emails to police officers**

10 Incidents C and D involved email correspondence between the practitioner and two police officers that took place between 15 June 2009 and 30 June 2009. On 15 June 2009, Detective Constable Andrew Broadley sent the practitioner an email in order to arrange delivery of two compact discs containing material relating to a criminal trial in which the

practitioner was engaged as defence counsel. The practitioner responded, requesting that the discs be left in her office mailbox. Detective Broadley replied, informing the practitioner that when the police delivered material relating to criminal proceedings, a signature on delivery was required. The practitioner objected to this requirement, and in a number of subsequent emails repeatedly insisted that the discs be left in her office mailbox. In the course of this correspondence between the Detective and the practitioner, she referred to him as a 'bully', suggested that his approach to confidentiality was 'ridiculous', argued that he was 'mak[ing] up' his own laws and abusing his position as a police officer, and made discourteous comments insinuating that Detective Broadley was ignorant of the law and denigrating his ability to perform simple tasks such as posting a letter (Tribunal decision [137]).

11 Following this exchange, Detective Broadley forwarded the correspondence with the practitioner to his superior, Detective Inspector Paul La Spina. On 29 June 2009, Detective Inspector La Spina sent an email to the practitioner explaining that in requesting a signature on service of the compact discs, Detective Broadley was only acting in accordance with standard police practice. The following day, the practitioner sent a reply email to Detective Inspector La Spina, calling his email 'rubbish', stating that it appeared he did not 'understand the law', and accusing both he and Detective Broadley of being 'obstructive and highly unprofessional' (Tribunal decision [144]). Further, in what the Tribunal found was a threat, the practitioner told Detective Inspector La Spina:

I look forward to cross-examining you sometime in the future, in a trial.  
(Tribunal decision [144]).

12 In their findings, the Tribunal found that both police officers had shown courtesy toward the practitioner in arranging the disclosure of the relevant material. On the other hand, the Tribunal characterised the practitioner's 'torrent of discourtesy' toward Detective Broadley as 'uncalled for and unnecessary' (Tribunal decision [137]). The Tribunal found that the consistently offensive and discourteous tone of the emails to Detective Broadley constituted professional misconduct. In relation to the email sent to Detective Inspector La Spina, even though it was a single email, the Tribunal found that given the email contained a threat, and was so discourteous and offensive, it 'transcended 'mere' unsatisfactory professional conduct and constituted professional misconduct' (Tribunal decision [149]).

**Incident E – verbal abuse of Mr Rajandran Kanapathy**

13 The final incident dealt with by the Tribunal was an exchange between the practitioner and Mr Rajandran Kanapathy, a court security supervisor, on 16 January 2009 at the Central Law Courts (CLC). The practitioner had previously expressed her dissatisfaction with the change in security policy at the CLC, which now required practitioners to submit to a security screening before entering the secure area. On the day in question, she entered the secure area of the CLC without going through the screening process, and proceeded to the notice board listing the daily list of matters. Mr Kanapathy, noticing this, instructed his co-worker, who was attending the security checkpoint, to approach the practitioner and ask that she comply with the security procedure. After his co-worker did as instructed, and requested that the practitioner pass through the security checkpoint, the practitioner indicated she did not wish to do so. Mr Kanapathy then approached the practitioner and politely asked her to comply with the standard security procedure. The practitioner refused to do so, citing a letter she had written to the Chief Magistrate protesting about the procedure. Mr Kanapathy then told the practitioner that if she received a reply from the Chief Magistrate that she was exempt from the search procedure she would be able to bypass the security checkpoint on her next visit to the CLC, however, on this occasion she would have to comply with the procedure. Mr Kanapathy gave evidence to the effect that following this the practitioner became abusive towards him, saying, among other things, words to the effect of:

- (a) 'Are you from Singapore? I know you're from Singapore, go back to your country, we don't need people like you here';
- (b) 'Singaporean prick';
- (c) 'prick' (approximately six times); and
- (d) that he had 'short man syndrome' (Tribunal decision [192]).

14 The Tribunal accepted the evidence of Mr Kanapathy, and other witnesses of the exchange between Mr Kanapathy and the practitioner who substantially corroborated Mr Kanapathy's evidence. The Tribunal found that the practitioner's 'extraordinary display of discourtesy and abusive conduct' constituted professional misconduct (Tribunal decision [193]).

**The Tribunal's views on penalty**

15           The Tribunal published reasons for its decision to transmit a report to this court with a recommendation that the practitioner's name be removed from the Roll (*Legal Profession Complaints Committee and in de Braekt* [2012] WASAT 58(S) (Penalty decision)). In those reasons, the Tribunal recounted the difficulties which had been experienced in dealing with the practitioner subsequent to the publication of its reasons for concluding that the practitioner was guilty of professional misconduct. Those difficulties are very similar to the difficulties experienced by this court, and which will be recounted below. In the result, the practitioner did not take advantage of the opportunities given to her by the Tribunal to file submissions on the subject of penalty.

16           The Tribunal regarded its finding that the practitioner had knowingly and intentionally misled the Magistrates Court on two occasions as particularly serious misconduct, because the practitioner had behaved dishonestly and seriously breached the confidence which the court is entitled to repose in legal practitioners. In the view of the Tribunal, those matters alone would have justified the conclusion that the practitioner was not a fit and proper person to remain a legal practitioner (Penalty decision [26]).

17           The Tribunal also concluded that while the other four findings of misconduct would not, if each were viewed in isolation, warrant the removal of the practitioner's name from the Roll, viewed collectively, those matters demonstrated a character and course of conduct on the part of the practitioner which was inconsistent with the privileges of practice as a member of the legal profession (Penalty decision [27]). In the view of the Tribunal, the practitioner had demonstrated a character and course of conduct that was discourteous, offensive and abusive to other participants in the justice system including police officers and court officials. In the view of the Tribunal, the maintenance of appropriate relationships between legal practitioners and others engaged in the proper functioning of the criminal justice system, such as police officers and court officials was a matter of considerable importance (Penalty decision [29]). The Tribunal also formed the view that the practitioner's conduct seriously undermined the reputation of the legal profession. The Tribunal therefore concluded that the findings of misconduct other than those relating to misleading the court were, of themselves, viewed collectively, sufficient to sustain the conclusion that the practitioner was not a fit and proper person to be a legal practitioner (Penalty decision [31]).

18 The Tribunal referred to three other matters which supported its conclusion that the practitioner was not a fit and proper person to remain in legal practice. The first was that the Tribunal considered the practitioner had given dishonest evidence to the Tribunal (Penalty decision [39]). Second, the Tribunal referred to what it described as 'an almost complete lack of insight and understanding as to the impropriety of her conduct' (Penalty decision [41]). Third, the Tribunal referred to adverse findings made against the practitioner in previous disciplinary proceedings: see *Legal Profession Complaints Committee and in de Braekt* [2011] WASAT 1. In those proceedings, the Tribunal found the practitioner guilty of unsatisfactory professional conduct which occurred in August 2007, when she made allegations of impropriety and unsatisfactory conduct against another practitioner without any reasonable foundation for those allegations.

### **The motion to strike off**

19 The motion to remove the practitioner's name from the Roll was lodged with the court in June 2012. In late July, the practitioner was given notice that the motion would be heard on 26 October 2012. On 22 October 2012, more than six months after the expiry of the period within which an appeal could be brought from the Tribunal's decision, the practitioner commenced proceedings in the Court of Appeal to seek an extension of time within which to lodge an appeal. However, despite repeated requests, the practitioner failed to lodge the documents necessary to support that application. On 10 January 2013, orders were made to the effect that if the practitioner did not file her case before 24 January 2013, the appeal would be dismissed. As the practitioner did not comply with that order, her application for an extension of time within which to appeal was subsequently dismissed.

20 In the week preceding the hearing of the motion to remove the practitioner's name from the Roll, the practitioner corresponded with officers of the court asserting that she would be unable to appear at the hearing for various reasons. The practitioner was advised that if she wished to apply for an adjournment of the hearing, it would be necessary for her to make an application to that effect. No application complying with the rules of this court was made. However, on the morning of the hearing, the practitioner sent to the court by facsimile a letter, an affidavit and a document on which she had written in hand:

I can't work out which form I have to use for an adjournment application.  
I apply for today's hearing to be adjourned.

21 In her letter, the practitioner advised that she would be unable to attend court, and that she was endeavouring to obtain an appointment with her medical practitioner. Subsequent to the hearing the practitioner supplied a medical certificate asserting that the practitioner was unfit to appear in court that day, but without disclosing any reason for that assertion. In the affidavit, the practitioner deposed to her inability to attend court, on the ground that she had been unable to cope since her practice certificate had been suspended. She further asserted that she had been suffering from chronic depression and a nervous breakdown. In the affidavit the practitioner contested the findings of fact made by the Tribunal.

22 When the motion came on for hearing, the practitioner did not appear, nor did any person appear on her behalf. The court indicated to counsel appearing on behalf of the Committee that it would receive any oral submissions the Committee wished to advance, but would defer delivery of any decision on the motion until such time as the practitioner's appeal against the decision of the Tribunal had been determined. The court further indicated that it would provide the practitioner with another opportunity to make submissions in response to any submissions made on behalf of the Committee once her appeal had been determined.

23 Following the dismissal of the practitioner's appeal from the decision of the Tribunal, the practitioner was advised that the court would receive any further submissions from her in relation to the motion to remove her name from the Roll, provided those submissions were received within the next month. No submissions were received.

### **General Principles**

24 The relevant principles are well settled. The court's jurisdiction with respect to the regulation of the legal profession in this state is to be exercised with the interests and protection of the public, and the reputation of the legal profession as its primary objects, and not for the purpose of punishing the practitioner: *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).

25 Where the motion is to strike 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) (Kitto J, Dixon CJ, McTiernan and Fullagar JJ agreeing); *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 practice 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).

26 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: *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] (Steytler P, Wheeler and McLure JJA agreeing); *Kyle v Legal 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 practices [33].

27 The misconduct that took place in relation to Incident A is of a particularly serious nature. As the Tribunal observed, on two separate occasions the practitioner acted dishonestly and in breach of her duties as an officer of the court. To adopt the reasoning of the Owen, Wheeler and Newnes JJA in *Vogt v Legal Practitioners Complaints Committee* [2009] WASCA 202:

For a practitioner, in the course of his or her practice, intentionally to mislead anyone is a serious breach of the practitioner's professional duty.

But the finding in the present case that the appellant intentionally misled the court is of particular significance. It goes to the very heart of a practitioner's duty as an officer of the court and therefore to the proper administration of justice [61].

28 In addition to the finding of misleading the court, the practitioner was found guilty of professional misconduct involving a number of instances of discourtesy and offensive behaviour towards a member of the judiciary, members of the police, and to court staff. Discourtesy, in many instances, will be insufficient to warrant a finding of professional misconduct. Even less frequently will that discourtesy result in, or contribute to, a finding that the practitioner should be removed from the Roll. However, the importance of courtesy in the legal system, and in the relationship between the legal profession, the court system, and general public should not be understated. While a practitioner should advocate fearlessly on behalf of the interests of their client, that is not an excuse for discourtesy. As Dixon CJ, McTiernan, Fullagar, Menzies and Windeyer JJ stated in *Clyne v New South Wales Bar Association* (1960) 104 CLR 186:

[I]t is not merely the right but the duty of counsel to speak out fearlessly, to denounce some person or the conduct of some person, and to use such strong terms as seem to him in his discretion to be appropriate to the occasion ... But, from the point of view of a profession which seeks to maintain standards of decency and fairness, it is essential that the privilege, and the power of doing harm which it confers, should not be abused (200).

29 Discourtesy can undermine the reputation and standing of the legal profession in our community, and the efficient function of the legal system itself. In *Lander v Council of the Law Society of the Australian Capital Territory* [2009] ACTSC 117, a case involving discourteous correspondence sent by a practitioner to a government department, Higgins CJ, Gray and Refshauge JJ held that:

[P]ractitioners should, in the course of their practice, conduct their dealings with other members of the community according to the same principles of honesty and fairness which are required in relations with the courts and other lawyers namely, to take all reasonable care to maintain the integrity of the legal profession by ensuring that the practitioner's communications are courteous and that the practitioner avoids offensive or provocative language or conduct [15].

30 To adopt the warning of Chief Justice Robert Benham of the Supreme Court of Georgia in *Butts v State* 546 SE 2d 472 (GA, 2001):

Civility is more than just good manners. It is an essential ingredient in an effective adversarial legal system such as ours. The absence of civility would produce a system of justice that would be out of control and impossible to manage: normal disputes would be unnecessarily laced with anger and discord; citizens would become disrespectful of the rights of others: corporations would become irresponsible in conducting their business: governments would become unresponsive to the needs of those they serve; and alternative dispute resolution would be virtually impossible (486).

### **The application of these principles**

31 This court is effectively bound to apply the findings of fact made by the Tribunal. We are not bound to follow the Tribunal's recommendation that the practitioner's name be struck from the Roll. However, in this case we agree with the Tribunal's conclusion that the practitioner is not a fit and proper person to remain on the Roll, and with the reasons given by the Tribunal for that conclusion.

32 As outlined, the Tribunal concluded that the seriousness of Incident A, which involved knowingly and dishonestly misleading the Magistrates Court on two occasions, warranted a determination that the practitioner should be removed from the Roll, irrespective of the other instances of misconduct (Penalty decision [26]). While there have been instances in this State where a practitioner has received a penalty other than removal from the Roll for knowingly misleading the court: *Vogt; Legal Profession Complaints Committee and Segler* [2010] WASAT 135; *Legal Profession Complaints Committee and Gandini* [2011] WASAT 86, there are a number of factors which militate against imposing a lesser penalty in this case. Firstly, the practitioner misled the Magistrates Court on two separate occasions, before two separate Magistrates. It is well established that a practitioner's misconduct is made more serious where it is repeated: *The Council of the Queensland Law Society Inc v Wright* [2001] QCA 58 [67] (McMurdo P, Davies JA and Helman J agreeing). Secondly, there are no extenuating or mitigating factors present here, such as inexperience, as was the case in *Legal Profession Complaints Committee and Gandini*, or duress as was the case in *Legal Profession Complaints Committee and Segler*.

33 In relation to Incidents B-E, the Tribunal determined that while the four instances of misconduct would not individually warrant a determination that the practitioner should be removed from the Roll, collectively they demonstrate:

[A] character and course of conduct on the part of the practitioner which is inconsistent with the privileges of practice as a member of the legal profession' (Penalty decision [27]).

34 We agree. In the course of the conduct that constituted Incidents B-E, the practitioner demonstrated a persistent disregard for the duties of a legal practitioner, the professional standards expected within the legal profession, and the need to maintain and respect the goodwill and trust reposed in the legal profession by the general public, and by those in regular contact with the legal profession, such as police and court staff.

35 Further, the practitioner has demonstrated a failure to understand the impropriety of her conduct, nor has she demonstrated any substantial regret or remorse. During the hearing before the Tribunal, the practitioner gave evidence that the Tribunal found to be untrue, and was argumentative and belligerent in her cross-examination of witnesses for the applicant. The practitioner's dealings with the Tribunal and with this court have been unsatisfactory in many respects. Irrespective of any distress or personal problems affecting the practitioner, she has not demonstrated any appreciation for the significance of her misconduct, and has maintained her assertions that she did not mislead the court, and that the other findings of misconduct were unjustly made. The practitioner's lack of appreciation of the impropriety of her conduct, and apparent lack of any insight into the reasons for her misconduct significantly increase the risk of its recurrence. This court can have no confidence that the practitioner would conduct herself satisfactorily in the future if she was permitted to remain on the Roll.

36 In this case, it is clearly in the public interest, both in terms of the protection of the public, and the maintenance of the reputation and standards of the legal profession, for the practitioner's name to be removed from the Roll. An order will be made to that effect.

**Costs**

37 The Committee sought an order that the practitioner pay the costs of the application to be taxed. However, this aspect of its application was not pressed. Ordinarily in these matters, if the practitioner does not oppose the orders sought, costs orders are not made, as the costs are regarded as being part of the cost of regulating the profession. In this case, although the practitioner mounted token resistance to the orders sought, that resistance did not materially add to the Committee's costs of the motion. Furthermore, from the correspondence the court has received from the practitioner in relation to her financial position, there appears no realistic

prospect of the practitioner paying any costs that she is ordered to pay as a result of these proceedings. Given all these circumstances, it is appropriate that no costs orders be made.

**Conclusion**

38 For these reasons, the court orders that the name of the practitioner be removed from the Roll of Practitioners but makes no order as to the costs of the application.