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**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**TITLE OF COURT** : FULL BENCH

**CITATION** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE -v- MIJATOVIC [2008] WASC 214

**CORAM** : MARTIN CJ  
BUSS JA  
BEECH J

**HEARD** : 6 OCTOBER 2008

**DELIVERED** : 6 OCTOBER 2008

**PUBLISHED** : 6 OCTOBER 2008

**FILE NO/S** : LPD 3 of 2007

**MATTER** : *Legal Practice Act 2003 (WA) and the Legal  
Practitioners Act 1893 (WA)*

and

A Practitioner of this Honourable Court

and

A Report (comprising reasons for decision dated 23  
May 2007, order dated 4 July 2007 and reasons for  
decision dated 18 July 2007) by the State  
Administrative Tribunal to the Full Bench of this  
Honourable Court under the *Legal Practice Act 2003*  
(WA), s 185(2)(a) and the *Legal Practitioners Act*  
*1893 (WA)*, s 29A(2)

**BETWEEN** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE  
Applicant

AND

TOMAS MIJATOVIC  
Respondent

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*Catchwords:*

Legal practitioners - Misconduct - Disciplinary proceedings - Application for practitioner to be struck off Roll of Practitioners - Principles justifying an order to strike off Roll of Practitioners - Turns on own facts

*Legislation:*

Nil

*Result:*

Practitioner struck off Roll of Practitioners

*Category:* B

**Representation:**

*Counsel:*

Applicant : Mr G H Murphy SC & Ms G L Roberts  
Respondent : No appearance

*Solicitors:*

Applicant : Legal Practice Board  
Respondent : No appearance

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

In re Davis (1947) 75 CLR 409  
Legal Practitioners Complaints Committee v Lashansky [2007] WASC 211  
Legal Practitioners Complaints Committee v Mijatovic [2007] WASAT 111

Legal Practitioners Complaints Committee v Thorpe [2008] WASC 9  
Legal Practitioners Conduct Board v Trueman [2003] SASC 58  
Mijatovic v Legal Practitioners Complaints Committee [2008] WASCA 115  
Re Maraj (A Legal Practitioner) (1995) 15 WAR 12  
Ziems v Prothonotary of the Supreme Court of New South Wales (1957) 97  
CLR 279

1 **MARTIN CJ:** The Legal Practitioners Complaints Committee (the  
Committee) moves the court for an order that Tomas Mijatovic (the  
practitioner) be struck off the roll of practitioners and that he be ordered to  
pay the costs of and incidental to the motion.

2 A letter has been produced to the court from solicitors acting on  
behalf of the practitioner, which advises that after taking the advice of  
eminent senior counsel, the practitioner consents to the orders sought, and  
will not appear upon the hearing of the motion, either personally or by  
representative.

3 The letter also advises that the practitioner unreservedly apologises  
to the Committee, the client who complained in respect of the  
practitioner's conduct and her family, and to the legal profession for the  
conduct which has given rise to these proceedings.

#### **The history of the proceedings**

4 The Committee brought three charges of unprofessional conduct  
against the practitioner before the State Administrative Tribunal (the  
Tribunal). The Tribunal found those charges upheld, in a decision  
delivered on 23 May 2007. The conduct of the practitioner which gave  
rise to those charges is canvassed in detail in the reasons for decision  
published by the Tribunal at *Legal Practitioners Complaints Committee v*  
*Mijatovic* [2007] WASAT 111. It is therefore unnecessary to condescend  
to great detail in relation to the practitioner's conduct in these reasons.

5 The practitioner appealed from the decision of the Tribunal. That  
appeal was largely unsuccessful, although the Court of Appeal  
unanimously held that certain findings of fact made by the Tribunal, to the  
effect that in a letter to his client of 2 May 2003 he had dishonestly  
asserted that he had been in Queensland, and that he had invented  
instructions from the client to commence an appeal, should not be acted  
upon by this court because the practitioner had been denied procedural  
fairness in relation to those findings (*Mijatovic v Legal Practitioners*  
*Complaints Committee* [2008] WASCA 115 [17] (Martin CJ) and [74]  
per Buss JA). Accordingly, those findings are excluded from  
consideration. However, the court proceeds otherwise on the basis of the  
findings made by the Tribunal and which are the subject of its report to  
the court.

### **Summary of findings made**

6 As I have mentioned, the practitioner was found guilty of three counts of unprofessional conduct. All counts arose from his retainer by a client who it is unnecessary to name for the purposes of these proceedings. The practitioner was engaged by the client in respect of proceedings in the Family Court of Western Australia.

### **The first charge**

7 In relation to the first charge, the Tribunal found that the practitioner was guilty of unprofessional conduct in that he had failed to ensure that the client's interests were properly protected and advanced in relation to the client's liability for costs payable to the practitioner, and improperly and calculatedly advanced his own interests in respect of costs in conflict with and to the detriment of the client's interests.

8 The conduct which was found by the Tribunal to give rise to this conclusion included concealment from the client of the content of a costs agreement which he procured her to execute on the basis that it was a document of a different character, that he made no disclosure to the client of the important and highly disadvantageous terms of the costs agreement which he procured her to execute, that he failed to advise her of the significant diminution of her rights under a previous costs agreement, and that he provided his client with no basis to determine the reasonableness of the lump sum figure for costs for which provision was made in the second costs agreement, and how that might compare with a figure assessed under the terms of the earlier costs agreement. The Tribunal found that the practitioner acted dishonestly in concealing the content of the costs agreement from the client at the time he procured its execution. The Tribunal concluded that in the course of this misconduct, the practitioner deliberately advanced his own interests in conflict with, and to the detriment of, the interests of his client (*Legal Practitioners Complaints Committee v Mijatovic* [2007] WASAT 111 [262]).

### **The second charge**

9 The second charge of which the Tribunal found the practitioner guilty was a charge of grossly overcharging the client. The conduct which gave rise to that conclusion was a charge of \$22,000 made by the client, when a reasonable fee for the services provided by the practitioner was \$5,500. The Tribunal found that the practitioner sought to take advantage of the vulnerability of the lay client at the time he rendered a grossly excessive charge for his services (*Legal Practitioners Complaints*

*Committee v Mijatovic* [2007] WASAT 111 [471]). The Tribunal also found that the conduct of the practitioner was aggravated by dishonest overstatement of the amount of work which he had done, and that he had relied upon fabricated records relating to that work during the course of the proceedings before the Tribunal.

### **The third charge**

10 The Tribunal found the practitioner guilty of a third charge of unprofessional conduct in that he communicated with a judicial officer in proceedings in which he was involved, in the period after the commencement of the hearing of the matter and prior to the continuation of the hearing on a subsequent day, on issues relevant to the proceedings and the evidence in and the conduct of the proceedings. This communication took place without the leave or request of the court, and without first notifying representatives of the other party to the proceedings that he proposed to make the communication, and of its terms, and without forwarding a copy of the communication to representatives of the other party to the proceedings prior to, or around the time that he sent the communication to the court.

11 The conduct of the practitioner which gave rise to this finding included the sending of a letter to a registrar of the Family Court which contained serious allegations of actual and perceived bias by the registrar, without providing notice to the representatives of the other party to the proceedings in respect of that communication.

### **The principles to be applied**

12 The principles to be applied when an application of this kind comes before the court are well established. The jurisdiction of the court to remove a practitioner from the roll is exercised not for the purpose of punishing the practitioner concerned, but for the protection of the public and the reputation and standards of the legal profession (*Legal Practitioners Complaints Committee v Thorpe* [2008] WASC 9 at [43]). Where application is made for an order removing a practitioner's name from the roll, the critical question to be addressed by the court is whether the practitioner is shown not to be a fit and proper person to be a legal practitioner of the court (*Thorpe*, at 43; *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 297 - 298). Fitness to practise law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges (*Thorpe* at [43]; *In re Davis* (1947) 75 CLR 409, 420). Some of the minimum standards expected of practitioners were identified by

Malcolm CJ in *Re Maraj (A Legal Practitioner)* (1995) 15 WAR 12, at 25:

Integrity, reliability and an appropriate level of efficiency in the administration of money held on trust are all qualities which any reasonably experienced practitioner may be expected to demonstrate, in addition to being professionally competent in pursuing his or her clients' interests.

13 It is also established that a prolonged period of unprofessional conduct may justify an order of removal from the roll, even if aspects of that conduct, taken individually and in isolation, would not of themselves justify such an order - see *Thorpe* at [44], *Legal Practitioners Conduct Board v Trueman* [2003] SASC 58 [13].

14 In this case, the conduct the subject of the charges found by the Tribunal took place over a period of about 10 months, and involved dishonesty, a lack of integrity, and a demonstrated propensity to use his position as a practitioner to take advantage of a vulnerable client in order to advance his own interests. The course of proceedings before the Tribunal demonstrated a singular lack of comprehension of proper standards of professional conduct on the part of the practitioner. This is a significant factor in assessing whether or not his name should be permitted to remain on the roll (*Thorpe* [45]; *Legal Practitioners Complaints Committee v Lashansky* [2007] WASC 211 [35]).

15 Given the findings made by the Tribunal and which were upheld by the Court of Appeal, there cannot be any doubt that the appropriate disposition of this motion is to direct the removal of the practitioner's name from the roll. By his conduct, he has demonstrated that he is not a fit and proper person to discharge the significant responsibilities reposed in legal practitioners, nor could he command the respect and confidence of his clients, fellow practitioners, or the court.

16 For these reasons, I would make orders in terms of the motion, and invite submissions as to the manner in which the costs to be paid by the practitioner should be assessed.

17 **BUSS JA:** I agree with the Chief Justice.

18 **BEECH J:** I also agree with the Chief Justice.