[2005] WASAT 215

JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
STREAM	**:**	VOCATIONAL REGULATION
ACT	**:**	LEGAL PRACTICE ACT 2003 (WA)
CITATION	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE and QUIGLEY [2005] WASAT 215
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
FILE NO/S	**:**	VR 1 of 2003
BETWEEN	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE Applicant AND JOHN ROBERT QUIGLEY Respondent

Catchwords:

Legal practice - Legal practitioners - Unprofessional conduct - Whether practitioner engaged in intimidatory and threatening behaviour towards the Legal Practitioners Complaints Committee, its members and Law Complaints Officer - Whether disciplinary proceedings maintained for improper purpose or under dictation

Legislation:

Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 (WA)
Bill of Rights 1689 (UK), Article 9
Interpretation Act 1984 (WA), s 36, s 37
Legal Practice Act 2003 (WA), Pt 12, s 162, s 164(1)(f)
Legal Practitioners Act 1893 (WA), s 25, 25(1)(c), s 27(2), s 27(3), s 28(1), s 29A
Parliamentary Privileges Act 1981 (WA), s 1
Parliamentary Privileges Act 1987 (Cth), s 16(2)
State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 (WA), Div 72
State Administrative Tribunal Act 2004 (WA), s 167(4)

Result:

Practitioner guilty of unprofessional conduct; penalty to be determined

Category: B

Representation:

Counsel:

Applicant	:	Mr R J Davies QC
Respondent	:	Self-represented

Solicitors:

Applicant	:	Legal Practitioners Complaints Committee
Respondent	:	Self-represented

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

Kyle v Legal Practitioners Complaints Committee (1999) 21 WAR 56
Legal Practitioners Complaints Committee and Quigley, unreported decision of the Legal Practitioners Disciplinary Tribunal, April 2002
Quigley (A Practitioner) v The Legal Practitioners Complaints Committee [2003] WASCA 228

Case(s) also cited:

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 In 2003 the Legal Practitioners Complaints Committee referred a complaint to the then Legal Practitioners Disciplinary Tribunal concerning the professional conduct of Mr Quigley (the practitioner) in the course of responding to an earlier reference that the Complaints Committee had made to the Disciplinary Tribunal about statements made by the practitioner on the Howard Sattler radio programme in January 2000.

2 The Complaints Committee complained that in the course of responding to that earlier reference, the practitioner engaged in intimidatory and threatening behaviour towards the Complaints Committee, its members and the Law Complaints Officer.

3 The Complaints Committee also complained that by his conduct, the practitioner sought to fetter the jurisdiction of the Complaints Officer and the Committee in carrying out its statutory obligations by threatening to institute legal proceedings against the Committee, its members and the Complaints Officer.

4 The Tribunal received detailed documentary and other evidence concerning the conduct of the practitioner complained of between 2 January 2001 and early February 2002.

5 In letters from the practitioner to the Complaints Committee, its members and the Law Complaints Officer, the practitioner complained that matters alleged against him in the reference were incorrect and invited the Complaints Committee to withdraw its reference against him.

6 When in particular, the Complaints Committee failed to withdraw the reference against the practitioner, but amended the terms of the reference, the practitioner embarked on a course of conduct, including the writing of a number of letters, towards the Committee, its members and the Law Complaints Officer, as well as the Disciplinary Tribunal, asserting that the Committee, its members and the Law Complaints Officer had commenced and maintained the disciplinary proceedings against him for an improper purpose and that they continued to maintain the disciplinary proceedings against him at the dictation of Mr T E O'Connor QC, the then Chairman of the Anti-Corruption Commission. Mr O'Connor QC had initially lodged a written complaint about what Mr Quigley had said on the Howard Sattler radio programme in 2000 and his complaint had led to the

Complaints Committee making its own investigations into the practitioner's professional conduct in speaking on that radio programme.

7 As of 1 January 2005, the current reference was transferred from the Legal Practitioners Disciplinary Tribunal to the State Administrative Tribunal.

8 The Tribunal heard evidence relating to the Complaints Committee's complaints against the practitioner on 13, 14 and 16 June 2005.

9 The Tribunal found that the Complaints Committee's complaints against the practitioner were justified and found the practitioner guilty of unprofessional conduct as alleged in the first complaint in the reference, in that the practitioner had engaged in intimidatory and threatening behaviour towards the Committee, its members and the Complaints Officer. In these circumstances, the Tribunal did not find it necessary to deal with the second complaint.

10 The Tribunal found that there was no reasonable basis, or any basis, to the practitioner's allegations that the Complaints Committee, its members or the Law Complaints Officer had at any time acted with an improper purpose in bringing and maintaining the earlier disciplinary proceedings against the practitioner, or that they had acted at the dictation of Mr O'Connor QC in maintaining the disciplinary proceedings.

11 The Tribunal published reasons for its findings and indicated it would hear submissions from the Complaints Committee and Mr Quigley as to penalty.

Reference to Tribunal

12 The *Legal Practice Act 2003* currently regulates legal practice and legal practitioners in the State of Western Australia. Complaints and discipline concerning legal practitioners are governed by Part 12 of the Act. Section 162 of the Act establishes the Legal Practitioners Complaints Committee. By the Act s 164(1)(f), the functions of the Complaints Committee include the function, "if the Complaints Committee considers it appropriate to do so, and whether or not it has conducted an inquiry, to institute professional disciplinary proceedings against a legal practitioner before the State Administrative Tribunal".

13 Prior to 1 January 2005, when the State Administrative Tribunal came into operation, s 164(1)(f) gave the Complaints Committee the same function, but provided for the institution of professional disciplinary

proceedings against a legal practitioner before the Legal Practitioners Disciplinary Tribunal.

14 Prior to 1 January 2004, when the *Legal Practice Act 2003* came into operation, complaints and discipline concerning legal practitioners was governed by the *Legal Practitioners Act 1893* (WA). Under the 1893 Act, the Complaints Committee had similar functions to those it was given under the *Legal Practice Act 2003* and the Complaints Committee was empowered to institute professional disciplinary proceedings in the Legal Practitioners Disciplinary Tribunal.

15 However, the standard of professional conduct expressed in the 1893 Act was and is different from that expressed in the 2003 Act. Under s 29A of the 1893 Act, the Disciplinary Tribunal was empowered to make a finding that a practitioner was guilty of, among other types of conduct, "unprofessional conduct".

16 By an amended reference to the Disciplinary Tribunal dated 29 October 2003, the Complaints Committee alleged, having regard to the 1893 Act that:

> "1. The practitioner was guilty of unprofessional conduct between 2 January 2001 and 4 February 2002 at Perth in that following the issuing of reference Number 01 of 2001 [the first reference]… issued out of the Legal Practitioners Disciplinary Tribunal ([Disciplinary] Tribunal) against the practitioner by the Legal Practitioners Complaints Committee ('the Committee'), the practitioner engaged in intimidatory and threatening behaviour towards the Committee, its members and the Law Complaints Officer ('the Complaints Officer').
>
> 2. Further, that the practitioner was on or about 1 February 2002 guilty of unprofessional conduct at Perth in that following the issuing of the [first] Reference out of the [Disciplinary] Tribunal against the practitioner by the Committee the practitioner sought to fetter the jurisdiction of the Complaints Officer and the Committee in carrying out its statutory obligations by threatening to institute legal proceedings against the Committee, its members and the Complaints Officer."

17 The Complaints Committee in the reference particularised each of these allegations against the practitioner.

18 As to the first allegation, the particulars given comprise portions of the text of the following documents, conduct or statements:

(1) A letter dated 25 June 2001 from the practitioner to the Complaints Officer and the Committee.

(2) A letter dated 1 November 2001 from the practitioner to the Registrar of the Disciplinary Tribunal, a copy of which was sent to the Complaints Officer and the Committee.

(3) A letter dated 16 November 2001 from the practitioner to the Complaints Officer and the Committee.

(4) A letter dated 17 December 2001 from the practitioner to the Committee and the Complaints Officer.

(5) A letter dated 17 December 2001 from the practitioner to the Registrar of the Disciplinary Tribunal, a copy of which was sent to the Complaints Officer and the Committee.

(6) A second letter dated 17 December 2001 attached to a copy letter dated 18 December 2001 to the Registrar of the Disciplinary Tribunal, from the practitioner to the Committee and Complaints Officer.

(7) A third letter dated 17 December 2001 from the practitioner to the Complaints Officer and the Committee.

(8) The terms of a telephone message transmitted on 19 December 2001 by the practitioner to the Complaints Officer.

(9) A letter dated 21 December 2001 from the practitioner to the secretary of the Disciplinary Tribunal with a copy to the Committee.

(10) A letter dated 16 January 2002 from the practitioner to the Complaints Officer and the Committee.

(11) A letter dated 18 January 2002 from the practitioner to the Complaints Officer and the Committee.

(12) The conduct of the practitioner whereby he instructed his solicitors to write and despatch a letter dated 30 January 2002 to each of the Chairman of the Committee, the Committee Attention Ms D Howell and the Honourable Attorney General for Western Australia.

(13) The conduct of the practitioner on 1 February 2002 in swearing an affidavit that was filed in the Disciplinary

Tribunal, detailing a proposed writ of summons with copies annexed thereto of letters dated 30 January 2002 to each of the Chairman of the Committee, the Committee attention Ms D Howell and the Honourable, the Attorney General when the Reference was still to be heard by the Disciplinary Tribunal and was listed for hearing on 5 February 2002.

(14) Relevant portions of the affidavit.

19 As to the second allegation, the Committee relied on the particulars in paragraphs (12), (13), and (14) of the preceding paragraph.

20 The reference, with all relevant particulars, including the text, conduct or statements complained of, is attached to these Reasons for Decisions as Annexure A.

21 The reference, as instituted under the 1893 Act, was effectively continued before the Disciplinary Tribunal under the 2003 Act. This followed from the combined effect of the *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* (WA) and *Interpretation Act 1984* (WA) s 36 and s 37.

22 By reason of the operation of *State Administrative Tribunal Act 2004* s 167(4)(c) on 1 January 2005 the reference was transferred to the State Administrative Tribunal.

23 The Tribunal has the same powers in relation to the matter as the former Disciplinary Tribunal could have exercised in respect of it under the 1893 Act.

24 On 13, 14 and 16 June 2005, the reference was heard before the Tribunal. The Complaints Committee was represented by Senior Counsel and the practitioner was self-represented.

The Practitioner's answer

25 The practitioner's answer to the reference developed in stages.

26 By the practitioner's letter to the Registrar of the Disciplinary Tribunal dated 4 February 2004, the practitioner explained that he had undertaken to file his answer with the Disciplinary Tribunal by that day, but that unfortunately he had been unable finally to edit his answer and "it will take some little while yet". In those circumstances he requested an extension to 9 February 2004 in which to lodge the "final version" of his answer. In the meantime, he forwarded to the Disciplinary Tribunal a

draft of his answer. That draft comprised some 10 pages and was signed by the practitioner on the last page.

27 At the commencement of the hearing in this Tribunal, the practitioner stated that he thought his answer admitted that he wrote the letters complained of, although he was not sure about the letters said to have been written by his solicitors at the relevant times. He was unsure whether he signed those letters or if his solicitor had signed them. He said, however, that if he didn't sign the solicitor's letters they were written on his instructions.

28 The practitioner also admitted leaving the telephone message for the Complaints Officer just prior to Christmas 2001, as alleged in particular (8).

29 The practitioner then confirmed that his formal answer to the reference was a letter signed by him and dated 9 February 2004 and received by the Disciplinary Tribunal on 10 February 2004. The practitioner explained that the letter set out the relevant factual matters that he wished to bring to the Tribunal's attention and that it was made as a "pleading". The practitioner's answer as declared by him on 9 February 2004 is Attachment B to these reasons for decision.

30 It cannot be said that, by his written answer to the reference or his oral admissions at the hearing the practitioner admitted he was guilty of unprofessional conduct as alleged in the reference.

31 Rather, by his written and oral evidence, the practitioner appeared to suggest that: the conduct complained of by the Complaints Committee did not amount to unprofessional conduct because of the particular circumstances in which he wrote the letters and otherwise acted as he did; or that those particular circumstances excused his conduct.

32 The practitioner wished to emphasise that he believed, at material times, that the Complaints Committee had wrongly or unfairly maintained against him the first reference alleging unprofessional conduct and that should be taken into account when assessing his conduct.

33 In the first reference, the Committee had complained that, in an interview on the Howard Sattler radio programme on 11 January 2000, involving matters in which the practitioner was or had been professionally engaged, the practitioner had failed to give an objective account of a matter (referred to as the "boat allegation") in a restrained manner

consistent with the maintenance of the good reputation and standing of the legal profession.

34 The practitioner said he believed the first reference had been commenced and maintained against him by the Complaints Committee at the instigation of Mr T E O'Connor QC, the then Chairman of the Anti-Corruption Commission.

35 The first reference was heard by the Legal Practitioners Disciplinary Tribunal in February 2002 and was concluded with a finding by the Disciplinary Tribunal on 13 May 2002, that the practitioner had engaged in unprofessional conduct as alleged in the first reference because:

> "… far from giving an objective account of the matter in which the Practitioner was or had been engaged in, the Practitioner, in the course of implementing his instructions through the forum of a popular morning talk-back programme in Perth, gave a misleading account of the matter in a highly sensational manner."

See ***Legal Practitioners Complaints Committee and Quigley,*** unreported decision of the Legal Practitioners Disciplinary Tribunal, April 2002, page 38.

36 The Disciplinary Tribunal reprimanded the practitioner and ordered him to pay the Complaints Committee's costs in the proceedings.

The essence of the Complaint Committee's case against the practitioner

37 The Complaints Committee acknowledges that, at material times, the practitioner was the subject of the first reference to the Disciplinary Tribunal. The Committee says, however, that the practitioner's conduct towards the Complaints Committee, its members and the Complaints Officer during the course of the conduct of the first reference proceedings in the Disciplinary Tribunal, amounted to unprofessional conduct; and the fact that the practitioner may have considered the maintenance of the first reference was wrong or unfair to him personally, did not justify his conduct at the time, and that his conduct was entirely unprofessional.

The practitioner's course of conduct

38 The first matter that the Complaints Committee relies on, as part of the sequence of letters and other conduct between 2 January 2001 and 4 February 2002, as constituting intimidatory and threatening behaviour towards the Committee, its members and the Complaints Officer, is a

letter dated 25 June 2001 that the practitioner wrote to the Complaints Officer and the Committee. No other conduct between 2 January 2001 (which is the commencement of the relevant period identified in the reference) and the letter dated 25 June 2001, is the subject of any particulars. What happened on 2 January 2001 is that the first reference was referred to the Disciplinary Tribunal.

39 Accordingly, by the time the practitioner wrote the letter dated 25 June 2001 to the Complaints Officer and the Committee, he had been engaged in the first reference disciplinary proceedings for a period approaching six months.

40 A little more should be said about the first reference proceedings. As we have already noted, on 13 May 2002 the Disciplinary Tribunal found the practitioner guilty of unprofessional conduct as alleged in the first reference and reprimanded the practitioner. The practitioner appealed against the Disciplinary Tribunal's decision to the Full Court of the Supreme Court of Western Australia, which unanimously dismissed the appeal: ***Quigley (A Practitioner) v The Legal Practitioners Complaints Committee*** [2003] WASCA 228. As Parker J explained in The Full Court at [5] of his reasons, the conduct the subject of the adverse finding of the Tribunal constituted remarks made by the appellant in the course of an interview he gave, on the instructions of a client, then Detective Sergeant Coombs of the Western Australian Police Force, on a morning talk-back radio programme hosted by Mr Howard Sattler. At the time of this interview the appellant was also an endorsed candidate for the forthcoming State Parliamentary Election, having been endorsed by the then main opposition party.

41 On 11 January 2000, the practitioner took part in the Howard Sattler radio programme. On 7 February 2000, the practitioner met with Mr T E O'Connor QC, the then President of the Anti-Corruption Commission. Following this meeting Mr O'Connor made a written complaint about the practitioner's behaviour to the Complaints Committee.

42 Mr O'Connor's complaint against the practitioner, which was made on behalf of the Anti-Corruption Commission was dated 17 February 2000. It included allegations that (1) whilst the practitioner stated there had been no cover up by the Premier, he well knew that Mr Boucher had been appointed to inquire into the matter and that the practitioner had appeared before him (2) the 'boat allegation' had been investigated by Mr Boucher and found to be without substance. The complaint annexed a large volume of material including the Boucher Report.

43 The Complaints Committee eventually proceeded under the *Legal Practitioners Act 1893* (WA), s 25(1)(c) itself to inquire into the conduct of the practitioner to determine whether his conduct may constitute unprofessional conduct. By letter dated 28 April 2000, the Complaints Committee advised the practitioner that the Committee had resolved to inquire into his conduct of its own volition. At that stage, the practitioner practised law with the law firm, Hammond Worthington Lawyers and the Committee's letter was directed to him at that firm.

44 By letter dated 30 May 2000 the practitioner, on Hammond Worthington letterhead, wrote to the secretary of the Complaints Committee advising that he had retained Senior Counsel to undertake the task of settling an answer and asking, on the advice of Senior Counsel, whether the inquiries made of the practitioner by the Committee were made of its own volition under s 25(1)(c) of the *Legal Practitioners Act 1893* so that the answer given by the practitioner would be for the Committee's "eyes only" and that it would not be forwarded to "any other person". The practitioner went on to point out that the reason he asked this was to ensure that his reply would be seen only by the Complaints Committee and would not be provided to the Anti-Corruption Commission.

45 By letter dated 6 June 2000, Ms D Howell, the Complaints Officer, responded to the practitioners letter advising:

> "The Committee will not undertake not to publish your response or any part thereof to any person outside the Committee - it does not know what, if any, inquiries may be necessary arising out of that response.
>
> As earlier advised, the Committee enquiring of its volition into the conduct matters raised in Mr O'Connor's letter of complaint. The Committee will not send a copy of your response to Mr O'Connor QC at this time, as it intends to deal with it at its meeting this month.
>
> However, there may be points arising out of your response, which the Committee will want to ask Mr O'Connor QC to explain and for this reason it may be necessary to send a copy of your response, or part thereof, to him. However, in that event, before referring any of your response to Mr O'Connor (or any other person outside of the Committee) the Committee will

> provide you with adequate notice of its intention to do so, so that you can consider your position.
>
> Please let us have your response within the next 48 hours. If you will not provide the Committee with a response, the Committee will deal with the matter in the absence of information from you on it."

46 On this basis, the practitioner provided the Complaints Committee with his response.

47 Later, the Complaints Committee indirectly disclosed part of the practitioner's response to Mr O'Connor by providing to Mr O'Connor, an advice from Mr Zelestis QC to the Complaints Committee dated 14 September 2000 which referred to it.

48 Not long after the indirect disclosure of the practitioner's response to Mr O'Connor, the practitioner received a compulsory notice from the Anti-Corruption Commission requiring him to appear before it. Litigation concerning the efficacy of the compulsory notice followed. The Tribunal understands that the notice was subsequently withdrawn by the Anti-Corruption Commission.

49 The first reference was then issued on 2 January 2001.

50 The first reference, before it was later amended, did not repeat all of the complaints set out in the initial letter of complaint made by Mr O'Connor to the Complaints Committee, but was limited to whether the practitioner knew that the "boat allegation" was unfounded.

51 The practitioner's answer to the first reference dated 23 February 2001, included the response, in effect, that there was evidence that there was no real investigation by Mr Boucher and that his report was a "whitewash".

52 On 18 July 2001, the first reference was amended by the Complaints Committee. However, before that amendment was made the practitioner wrote the first letter now complained of in this reference, which was dated 25 June 2001. It was addressed to the Complaints Officer and the Complaints Committee. In it, as may be seen from the extracts set out in the particulars in Annexure A to these reasons, the practitioner expressed concern about the process which had led to the first reference being brought against him. He indicated he intended to take his concerns "to the

public but to do so within the confines of the law and proper behaviour by both a legal practitioner and Member of the Legislative Assembly".

53 At the time the practitioner spoke on the Howard Sattler radio programme, he was not a Member of Parliament but a practising lawyer. He was, however, also an endorsed candidate for the Australian Labor Party for the forthcoming State General Election. In early 2001, at the State General Election, the practitioner was elected to the State Parliament as a member of the Legislative Assembly. Thus, at the time he wrote the letter dated 25 June 2001, he had the dual status of a legal practitioner and a Member of the Legislative Assembly.

54 The terms of the letter do not require any further particular comment, save to say that the practitioner, at that point, had become aware that the Complaints Committee had obtained the advice of Mr Zelestis QC, an independent barrister, which appeared to be favourable to the practitioner's position, and the practitioner had his own advice from Mr McCusker QC. As a result, the practitioner invited the Committee to discontinue the first reference disciplinary proceedings against him. The practitioner went so far as to suggest a deadline for the withdrawal of the proceedings by the Complaints Committee. On its own, this letter could hardly be suggested to be intimidatory or threatening. Senior Counsel of the Complaints Committee did not suggest that, on its own, it was. However, he said it was the relevant starting point from which to consider the whole course of conduct complained of in the present reference.

55 The Complaints Committee did not act on the practitioner's suggestion to discontinue the first reference. Rather, as noted, the first reference was amended on 18 July 2001 to include the following relevant particulars:

(1) That at all material times the practitioner acted for certain police officers;

(2) The practitioner well knew that (a) the Premier had not covered up the allegations and (b) those allegations had not otherwise been covered up;

(3) That on 3 September 1998 Mr Boucher received Statutory Declarations from police officers including Mr Coombs;

(4) The practitioner's clients had given evidence to Mr Boucher that the Boat Allegation was false.

56 Further and better particulars of the amended first reference were also provided, including that, "as best as the Legal Practitioners

Complaints Committee is able to say", the practitioner represented the officers at the Boucher Inquiry. This particular was provided in response to a request for particulars from the practitioner. No further particulars were sought or provided in relation to the particular in (2) above.

57 At this point, from the practitioner's point of view, the first reference disciplinary proceedings were not going away; if anything they were intensifying. The Committee provided a Further Amended Reference dated 1 November 2001which, amongst other things, deleted particular (4) above. On 1 November 2001 the practitioner wrote to the Registrar of the Disciplinary Tribunal, with a copy to the Complaints Officer and the Committee, in which he referred to the:

> "…second back flip by the Law Complaints Officer requiring an amended term of reference, thus making it important that this matter be formalised by way of an amended term of reference, because in the fullness of time I shall be demanding that an external agency fully investigate the conduct of the Law Complaints Officer. I shall allege serious impropriety against her and the Committee."

58 The practitioner then filed a "substituted defence" dated 15 November 2001, which included the following relevant answers:

(1) The practitioner attended a preliminary meeting with Mr Boucher, but otherwise denies that he represented the officers at the Boucher Inquiry;

(2) That he denies knowing that the Premier had not covered up the allegations and that the allegations had not otherwise been covered up;

(3) On the instructions of his clients, the Boucher Inquiry did constitute a cover up.

59 By this time, it appears the practitioner felt that the first reference were being maintained at the instigation of Mr O'Connor QC.

60 He also appears to have considered that the Complaints Committee should have been making its own, separate inquiries into what his clients' instructions to him at material times were, or properly considering his clients' statutory declarations as to their instructions or otherwise conferring with his clients about the question of instructions. The practitioner seems to have thought that, if the Committee had done any of those things, they would have appreciated that he acted on his clients'

instructions and that the allegations against him were false and should be withdrawn.

61 In this context, by letter dated 16 November 2001, the practitioner wrote to the Complaints Officer and the Committee and complained about a denial of "natural justice" by the making of the first reference, without letting him explain the nature of the relationship between himself, police officers and other persons and the Boucher Inquiry. The practitioner considered he was the subject of a "false term of reference" and said that he would complain to the Commissioner of Police that the Committee, Complaints Officer and counsel were attempting to pervert the course of justice by prosecuting the first reference, the substance of which they knew to be untrue, and had no reason to believe was true.

62 In this letter dated 16 November 2001, the essence of the practitioner's beliefs at that point come through strongly. He suggested that the first reference initially filed was found to be wanting in the opinion of Mr Zelestis QC "who told you there was no reasonable prospect of success on that reference". As a result, the practitioner believed that the term of reference was amended "without ever coming to me to seek an explanation, without ever going to my clients to seek an explanation, and basing this new term of reference on your own invention and misrepresentation."

63 In this letter, the practitioner also stated that he wished to have the opportunity to reveal what he considered to be a "perversion of the course of justice" by having the opportunity in the Disciplinary Tribunal to produce evidence from the Complaints Officer. He requested the attendance of the Complaints Officer at a forthcoming hearing, in the following terms:

> "Could you kindly ensure that at the next calling of this matter, the Law Complaints Officer is available to take the witness stand and swear if she dare, that she believes that all the matters in the reference are, to the best of her knowledge and belief to be true, and to afford me the opportunity to cross-examine her."

64 Not long after this, the Complaints Committee, by letter dated 30 November 2001, agreed, in effect, that the practitioner had not acted for the police officers at the Boucher Inquiry, so that this would not be in issue at the hearing. That letter also indicated that further agreement on other matters might be reached.

65 The practitioner then, by letter dated 17 December 2001, wrote to the Committee and the Complaints Officer noting that it was "foolish" for them to allege that he was acting for six police officers for the Boucher Inquiry without ever asking him or his clients whether in fact that was true, and that "I very much look forward to personally cross examining you as to why the Committee did this."

66 The practitioner then went on in the letter dated 17 December 2001 to note his letter to the Disciplinary Tribunal, and that:

> "I will lodge a complaint of unprofessional conduct against you personally and against each member who sat on the Committee and voted to make these false allegations against me without every (sic) having to seek to clarify the truth of what they are saying that either me as the practitioner or the police in respect of whom they are making the allegations."

67 The practitioner, in this letter dated 17 December 2001, also expressed the view that the Committee was *prima facie* guilty of negligence, and that it had demonstrated "malice against me".

68 In the letter, the practitioner again noted that he required the Complaints Officer, and each Committee member, to attend the Disciplinary Tribunal hearing so that he could personally conduct cross-examination of each of them.

69 By this stage, there is little doubt that the practitioner believed the Complaints Committee was maintaining something of a vendetta against him and that it was motivated to do so by the complaint of Mr O'Connor and without regard to the need to investigate properly the matters the subject of complaint against him in the first reference.

70 It may be noted in passing, that while the practitioner was personally writing these letters - and it must be said that their content show no signs of having been tempered by his legal advisors in any way - the practitioner was still being formally represented in the disciplinary proceedings by counsel.

71 By a separate, second letter, dated 17 December 2001, the practitioner wrote to the Registrar of the Disciplinary Tribunal, with a copy to the Complaints Officer and the Committee, alleging that the Committee's conduct was unprofessional and that he would be making a complaint of unprofessional conduct against each member of the

Committee, who was "responsible for this web of untruths that they have sought to peddle against me".

72 In his third letter dated 17 December 2001, the practitioner stated that he "suspected that the amended reference was in fact drawn by Mr Gilmour QC and not by the Committee". He then alleged that Mr Gilmour QC, like members of the Committee earlier, knew the allegations in the amended first reference were untrue or that there was no reasonable basis for them. It appears that Mr Gilmour, an independent barrister, had been retained by the Committee to advise in relation to the first reference.

73 In the second letter dated 17 December 2001, the practitioner again advised the Registrar (with copies to the Complaints Officer and the Complaints Committee) that he wished to cross examine them "on oath" in respect of the "false allegations against me" contained in the first reference.

74 In this separate, third letter, dated 17 December 2001, which was attached to a copy of a letter dated 18 December 2001 to the Registrar of the Tribunal, the practitioner wrote to the Committee and the Complaints Officer making "a formal complaint of unprofessional conduct against the Law Complaints Officer… and against each member of the Committee, being the Committee that resolved to make a new reference to the Disciplinary Tribunal on or about 14 July 2001".

75 Then, two days later, on 19 December 2001, the practitioner telephoned the Committee's office and asked the receptionist if he could speak to the Complaints Officer. When advised that the Complaints Officer was not available, the practitioner asked the receptionist to pass on a message to the Complaints Officer to this effect:

> "I want to wish my co-accused a very Merry Christmas and I relish the thought of the litigation next year."

76 At this point the practitioner seems to have thought that he was already in litigation with the Committee, its members and the Complaints Officer by reason of his letters stating he would be taking action against them or perhaps he simply thought the first reference was "the litigation".

77 Then, by letter dated 21 December 2001, the practitioner wrote to the Disciplinary Tribunal, with a copy to the Committee, and referred to seeing the members of the Committee "charged with perjury".

78 Lest there be any thought that the practitioner intended to leave his threats of external inquiry into the activities of the Complaints Committee and the Complaints Officer fall by the wayside in the new year, by letter dated 16 January 2002 the practitioner wrote to the Complaints Officer and the Committee to this effect:

> "…please be assured that I do not intend to leave this matter at Complaint Committee level. I intend to take my complaint to the Ombudsman and possibly the Anti-Corruption Commission on a complaint of serious misconduct in that the Committee have made several allegations against me which they knew to be false or to have no reason to believe to be true."

79 Then, two days later, by letter dated 18 January 2002, the practitioner wrote to the Complaints Officer and the Committee stating that:

> "Given the deceitful and malicious way, in which Ms Howell and the Committee have conducted themselves against me in this matter thus far, I regard this latest delay in acknowledging my complaint to be a very serious circumstance of unprofessional conduct.
>
> Kindly acknowledge receipt of this complaint by return and set out the manner in which the Committee proposes to deal with it."

80 The practitioner then instructed his solicitors to write and despatch a letter dated 30 January 2002 to each of the Chairman of the Committee, the Committee attention Ms D Howell, and the Attorney General of Western Australia in nearly identical terms, to the effect that "the Committee has acted negligently [against the practitioner] in the discharge of its statutory duty, and has acted with malice against [him]".

81 This letter again set out something of the beliefs of the practitioner so far as the prosecution of the first reference was concerned. They were in terms quite similar to those set out in his third letter dated 17 December 2001. The purpose of the letter was stated to be the giving of formal notice to the recipients, under the *Crown Suits Act 1947* (WA), that the practitioner "presently intends to institute by way of a Writ of Summons out of the Registry of the District Court of Western Australia, an action of damages arising out of the Committee's negligent discharge of its duty".

82 On 1 February 2002, the practitioner swore an affidavit and filed it in the Disciplinary Tribunal, detailing his proposed writ of summons and

annexed to the affidavit copies of the letters dated 30 January 2002 to each of the Chairman of the Committee, the Committee Attention Ms D Howell and the Attorney General. He did this at a time when the first reference was yet to be heard, but was listed for hearing on 5 February 2002.

83 What the particular purpose of filing the affidavit in the Disciplinary Tribunal was at that time, is difficult to say, other than that the practitioner wished to escalate the dispute, as he perceived it, between himself and the Committee, its Members and the Complaints Officer. Perhaps he hoped the Complaints Committee could succumb to pressure and decide to withdraw the first reference disciplinary proceedings soon to be heard in the Disciplinary Tribunal.

84 As it transpires the Disciplinary Tribunal proceeded to hear and determine the matter and handed down its decision on 13 May 2002, making the finding of unprofessional conduct referred to earlier.

85 The Disciplinary Tribunal found that the practitioner had given a misleading account in a highly sensational manner of matters pertaining to the Boucher Inquiry. By speaking of "cover up" in relation to certain allegations, without referring to the fact that there had been an inquiry by Mr Boucher, this gave rise to the misrepresentation. The Disciplinary Tribunal, at page 37 of its Reasons for Decisions, observed that:

> "The statements made by the Practitioner, the subject of this complaint, made no mention of that reference to Boucher Inquiry. It was accepted by his Counsel that the practitioner had read the report produced by Mr Boucher. The particular matter under discussion on the Sattler program was the subject matter of a reference referred to Mr Boucher. His report was tabled in Parliament. No mention was made by the Practitioner that Mr Boucher had given reasons why he had made findings in relation to one officer and said he could not make findings against the other giving reasons. No mention was made by the Practitioner that the Union and its officers formally advised Mr Boucher that unless he was prepared to include other matters in his inquiry, they would not participate. No mention was made that the Practitioner was given instructions not to attend the inquiry, either for the Union or for any officer and therefore he had not produced the evidence which he said that he had."

86 However, on the question of whether or not there had been a "cover up", the Disciplinary Tribunal noted that:

> "Views may well differ on whether there was a 'cover up' in general terms of many of the complaints being made by the Police Union and certain officers. A Practitioner is certainly entitled to assert his clients' views. However he is, in our opinion, obliged not to mislead and wholly misrepresent by omission the events which give a balanced account of what actually occurred.
>
> When asked by Mr Sattler what did the Premier do as a result of the letter sent by the Practitioner 'two years ago', the practitioner could have and we find should have, stated that the Premier established the Boucher Inquiry. He could have then stated his clients' instructions with respect to that inquiry and explained his own views (so long as he had done it in an objective way)."

87 As a result, the Disciplinary Tribunal had "no hesitation" in finding the practitioner engaged in unprofessional conduct as alleged.

88 Following the Disciplinary Tribunal's decision, the practitioner appealed to the Supreme Court. The appeal was heard on 6 May 2003 and a reserved decision was delivered on 25 September 2003. The appeal was dismissed.

89 Prior to the disposition of the appeal proceedings, solicitors for the Complaints Committee wrote to the practitioner by two letters each dated 23 January 2003. In the first, the practitioner was advised of the Committee's decision to dismiss the practitioner's complaints of unprofessional conduct against the Committee and the Complaints Officer, including for proceeding against him without proper grounds and delay in dealing with that complaint. In the second, his response was sought to the matters the subject of the present reference. The second letter raised with the practitioner the manner in which he had conducted himself in the course of the first reference disciplinary proceedings in terms which are repeated in the particulars to this reference.

90 The practitioner responded by email dated 2 September 2003 to the Complaints Committee's request for a response. The text of the email answer is attached as Annexure C to these reasons for decision. In his email, as in the proceedings before this Tribunal, the practitioner acknowledged being the author of the various letters complained of. He

also regretted "some of the phraseology and tone" used in parts of the correspondence. He then stated:

> "I … unreservedly apologise for any particular offence taken by the Law Complaints Officer or anybody else.
>
> At the time of writing the letters I was sick and had just been prescribed a new course of medication under specialist supervision.
>
> At the time of writing the letters I was under enormous stress on this litigation. After having spent $60 000 in legal fees on this matter up to the end of 2001 the case against me was radically changed and a new complaint substituted by the [T]ribunal. I could therefore not afford to keep conducting the matter through solicitors, as I did not have the financial resources (whereas you had at your disposal taxpayers resources to assist you). I therefore had to do the best I could in very difficult circumstances and in retrospect did not make a good fist of the correspondence, a matter that I now regret and have apologised for."

91 The practitioner went on in his email to explain the reasons for his "sense of grievance" at the time. However, he then stated:

> "I do not put these matters forward as justification for the untoward manner and tone of my letters but I stress I believed I had a genuine and serious grievance which I was desperately trying to address and that my sense of proportion was undoubtedly effected by my illness and medication and I certainly would not write those letters now and would not write them again."

92 The practitioner then added:

> "For very good reason I do not now wish to go back through each letter paragraph by paragraph seeking to justify what is genuine grievance and what is excess rhetoric deserving particular apology now that I can see things in a more balanced light."

The practitioner's oral evidence to the Tribunal

93 The practitioner gave evidence to the Tribunal and was cross-examined by Senior Counsel for the Complaints Committee. His

testimony repeated in substance the various allegations and his belief that he had "a genuine and serious grievance" of the type asserted earlier in the correspondence to which reference has already been made.

94 The practitioner also gave the Tribunal to understand that, at material times, not only did he consider that the first reference was commenced and maintained against him by the Complaints Committee and the Complaints Officer at the instigation of Mr O'Connor, but that it represented something of a conspiracy by certain persons who were members of the Complaints Committee or its adviser, and who were, at the same time, members of the Liberal Party. He believed they were set to cause him maximum grief in his campaign to be elected to the State Parliament as an endorsed Australian Labor Party candidate.

95 The practitioner also implied that by his conduct he was also seeking to effect changes to the way matters of legal complaint and discipline under the *Legal Practitioners Act 1893* were conducted by the Complaints Committee. He considered he had experienced, at the hands of the Complaints Committee, the same kind of denial of natural justice that others, before him, had complained of. As a result he was anxious to reform the process by which complaints against legal practitioners were investigated and acted upon by the Committee.

96 The practitioner also raised a question, whether, because he was a Member of Parliament, and had addressed questions relating to his circumstances in the Parliament and using his Parliamentary letterhead, it was open to the Tribunal to consider his case having regard to the law of Parliamentary privilege.

The question of Parliamentary privilege

97 In written submissions made by the practitioner prior to the hearing in the Tribunal, the practitioner had raised the question whether the reference was "in contempt of Parliament". In a letter to the Associate of the President, dated 18 April 2005, for example, the practitioner raised this issue and stated there were two bases for doing so:

(1) The reference sought to discipline him for the contents of a speech he made in the Legislative Assembly.

(2) That the reference sought to discipline him for letters he had written as a member of Parliament, on letterhead provided by the Parliament, and in terms which made it abundantly clear he was writing as the Member for Innaloo

> and at no stage in the correspondence did he hold out that he was writing the letters as a legal practitioner.

98 The practitioner went on to explain that when he rose in the Legislative Assembly to raise this breach of privilege and contempt, he chose only to put a case forward on the basis of (1) as he was not then in possession of true copies of the original letters that he wrote, which were the subject of (2).

99 At an earlier stage of those proceedings, before its amendment, one of the particulars given by the Complaints Committee was that on 27 June 2001 the practitioner as a member of the Legislative Assembly gave a personal explanation to the Legislative Assembly of the events leading to his prosecution by way of the first reference and that he tabled a copy of the first reference and relevant documents in the Parliament.

100 However, the Complaints Committee later amended the present reference, by amended reference dated 29 October 2003 and removed that objectionable particular. Consequently, there is no longer any basis to a claim of contempt of Parliament on basis (1).

101 As to basis (2) suggested by the practitioner, on 13 June 2005 at the commencement of the hearing, the practitioner told the Tribunal that having discussed the question of Parliamentary privilege with "the Clerks", by which the Tribunal understood him to mean certain of the Clerks to the Parliament who are well versed in the law of Parliamentary privilege, he had been advised that he should not be arguing the question of Parliamentary privilege before the Tribunal. Apparently, the advice he received was that the "judge of the privilege of the Chamber, will be the Chamber itself".

102 The practitioner told the Tribunal:

> "Now having spoken to the Clerks, what is clearly covered by Parliamentary privilege is speeches made in the House. And actions undertaken outside of the Chamber, which are closely connected and intended to be closely connected to proceedings that are going to happen within the Chamber, or anticipated to happen within the Chamber, there's all degrees of Parliamentary privilege. It would be my contention that that letter of 25 June 2001 has that nexis with the speech I made in Parliament, and the force of that argument is underpinned by the fact that both the Committee and the Chairman of the previous Tribunal… both said well they'd only ever issued the reference with that in

> it to keep it's temporal context, that is to put the Parliamentary speech into -- that's what he threatened to do in the letter, he in fact did. We are not seeking to have him punished for what he did in the Parliament, we are seeking to have him punished, or have him disciplined for what is in the letter that preceded what he said in Parliament, and giving notice that he was going to raise it in Parliament, so we keep that in."

103 After further addressing the question of what the view of the Clerks of the Parliament apparently is, and whether or not the first letter, the subject of the current particulars, that of 25 June 2001, could be considered by the Tribunal because it suggested that the practitioner might raise the issues referred to in it in the Parliament, Mr Quigley made it plain that he did not wish to press the issue of Parliamentary privilege in these proceedings in the Tribunal. He said:

> "I don't want to argue it here, I want to argue it up there."

104 The Tribunal is of the view, as it expressed at the time that Mr Quigley made these comments or observations to it at the commencement of the hearing, that there is no issue of Parliamentary privilege surrounding the letter dated 25 June 2001. That letter simply advised the Complaints Officer and the Committee that the practitioner intended "to take my concerns to the public, but to do so within the confines of the law and proper behaviour by both a legal practitioner and a Member of the Legislative Assembly.".

105 Nor does the Tribunal consider the fact that the practitioner chose to write to the Complaints Officer, the Committee and others on letterhead disclosing that he was a Member of the Legislative Assembly raises any question of infringement of Parliamentary privilege by this Tribunal in considering this reference.

106 The *Parliamentary Privileges Act 1891* (WA), s 1 endows the Houses of Parliament and their Members with all the privileges of the English House of Commons. The Parliamentary privilege often considered to be the single most important privilege is that enshrined in Article 9 of the Bill of Rights 1689, enacted by the English Parliament shortly after the accession of William III and Mary II to the throne. Article 9 provides:

> "That the freedom of speech and debates for proceedings in Parliament ought not to be impeached or questioned in any court or place of out Parliament."

107 The responsibility for enforcing Article 9 falls on Houses of Parliament and also on courts of law: see generally Campbell E, "Parliamentary Privilege", Federation Press 2003, Ch 3. Courts recognised that Article 9 confers an immunity from legal liability for things said or done in the course of Parliamentary proceedings. Courts have also construed Article 9 as having placed proscriptions on the uses which maybe made by them of evidence of Parliamentary proceedings. What is often said to be unclear is what is covered by the expression "proceedings in Parliament" and what is meant by "impeached or questioned in any court … ".

108 So far as the practitioner is concerned, there is no question of these disciplinary proceedings looking at anything that he did or that happened physically inside the Parliament. However, it is sometimes said that the functions of Members of Parliament may go beyond participation in the formal proceedings of Parliament and some of their other activities can fall within the expression "proceedings in Parliament".

109 Members of Parliament, for example, provide assistance to constituents and gather information which may be relevant to Parliamentary business. In the course of performing their functions, Members may correspond with Ministers, and other agents of the executive arms of government and with members of the public. In their electorate and parliamentary offices many Members will maintain records of such correspondence and other files pertaining to their work as Parliamentarians.

110 Interestingly, s 16(2) of the *Parliamentary Privileges Act 1987* (Cth) amplifies the meaning of proceedings in Parliament, for the purposes of Article 9 of the Bill of Rights, by stating that proceedings in the Federal Parliament include "the preparation of a document for the purposes of or incidental to the transacting of any … business of" of a House or Committee of the Federal Parliament.

111 However, apart from Article 9, there is no express statutory provision in Western Australia equivalent to s 16(2) of the Commonwealth Act.

112 The law relating to whether the correspondence or records of Members of Parliament is privileged in Court and related proceedings is discussed in Professor Campbell's book, "Parliamentary Privilege" *(supra)* at Ch 3. In Ch 3 at page 48, Professor Campbell notes that:

> "In some circumstances, action taken in relation to the correspondence or records of the Member of Parliament may be

> adjudged by a House to be in contempt of Parliament in that it is an improper interference in members' free performance of their duties as members [footnote omitted]…
>
> Action which may potentially be adjudged by a House (or its Committee of Privileges) to be in contempt of Parliament include execution by law enforcement officers of search warrants, resulting in the seizure of documents or other materials in the possession of a Member of Parliament [footnote omitted]. The mere initiation of court proceedings against a Member of Parliament in respect of the Member's correspondence, or the threat of such proceedings, may likewise be adjudged to be in contempt of Parliament if the action is assessed to be an improper interference with a Member's free performance of his or her functions as a Member of Parliament."

113 In the Tribunal's view there is nothing in this reference or the course of proceedings in this Tribunal concerning the practitioner's conduct in the course of the first reference, that directly or indirectly bears upon his free performance of his duties at material times as a Member of Parliament. At all times, the inquiry has been into the practitioner's conduct as a legal practitioner in the course of the conduct of the first reference disciplinary proceedings. The fact that the practitioner chose to write certain correspondence on his electorate letterhead, is neither here nor there. The content of the correspondence is entirely about the first reference disciplinary proceedings.

114 The Tribunal does not consider that the more general interest in reforming the processes of legal discipline and complaint in Western Australia that the practitioner said he harboured at material times, somehow converted his correspondence to do with the first reference disciplinary proceedings into his personal conduct as a legal practitioner, into a parliamentary matter. It is not open to suggest that this Tribunal's consideration of the correspondence he wrote somehow constitutes an improper interference in the free performance of his duties as a Member of Parliament.

115 In the Tribunal's view, so far as these disciplinary proceedings are concerned, no question of Parliamentary privilege or contempt of Parliament arises.

The question of unprofessional conduct

116 While, as we have noted, matters of complaint and discipline under the *Legal Practice Act 2003* (2003 Act) are now dealt with by the State Administrative Tribunal, when this reference was commenced against the practitioner, the *Legal Practitioners Act 1893* (1893 Act) governed questions of legal complaint and discipline. Notwithstanding, the replacement of the 1893 Act by the 2003 Act, the conduct of the practitioner complained of in this reference is governed by the 1893 Act.

117 By s 29A of the 1893 Act, in the exercise of its professional disciplinary jurisdiction, this Tribunal may make a finding that a practitioner has been guilty of "unprofessional conduct". As explained in ***Kyle v Legal Practitioners Complaints Committee*** (1999) 21 WAR 56 71-72 and confirmed in ***Quigley v Legal Practitioners Complaints Committee*** (supra) at [12]:

> "The notion of unprofessional conduct first found its place in s 20 of the Act when it was enacted in 1893. The court has long accepted and applied, in this context, the understanding of the notion of unprofessional conduct which was expressed by the Full Court of the South Australian Supreme Court in *Re A Practitioner of the Supreme Court* [1927] SASR 58; see for example in *Re A Practitioner*, unreported; FCt SCt of WA (Wallace, Brinsden and Smith JJ); Library Number 4989; 18 July 1983. It was usefully summarised at [3] by the Full Court as conduct that would reasonably be regarded as disgraceful or dishonourable by practitioners of good repute and competence, or that, to a substantial degree, fell short of the standard of professional conduct observed or approved by members of the profession of good repute and competence. The first limb of this summary includes, but is not confined to, conduct which occurs in the course of legal practice. The other limb necessarily relates to conduct in the course of legal practice because of the reference to 'professional conduct'. While the words should not be taken as necessarily an exhaustive or codified statement, the essence of the notion of unprofessional conduct is usefully revealed in these decisions."

118 In this reference the Complaints Committee puts its case on both limbs, that is to say, that the practitioner's course of conduct in relation to the Complaints Committee, and its members and Complaints Officer, is both "disgraceful and dishonourable" and "to a substantial degree fell

short of the standard of professional conduct observed or approved by members of the profession".

119 In this case, it is clear that the practitioner strongly felt that he was the subject of an unjustified complaint about his conduct, following the complaint of Mr T E O'Connor QC to the Complaints Committee about what he, the practitioner, had had to say on the Howard Sattler radio programme. It is another question, however, whether the practitioner was justified in feeling as aggrieved as he apparently did by the commencement and maintenance of the first reference proceedings. And it is an entirely separate question whether however strongly the practitioner felt, he was, acting professionally, entitled to express his grievance to the Committee in the manner and in the language that he did.

120 It is clear that as a result of the early communications of the practitioner with the Committee, the initial reference was amended and it was accepted eventually that the practitioner did not appear for certain police officers at the Boucher Inquiry. When this was accepted by the Committee, the practitioner seems to have thought that the primary allegation of unprofessional conduct should have gone away altogether. However, as the ultimate finding of the Disciplinary Tribunal makes clear, the allegation of unprofessional conduct had to do with the question of how the "boat allegation" had been dealt with and the practitioner's failure to make any reference to the fact that the Boucher Inquiry had been held.

121 In other words, the question of whether the practitioner appeared for or represented, certain police officers at the Boucher Inquiry, in a formal way, was material to the first reference as initially brought against him, but had little to do with the success or failure of the disciplinary proceedings as a whole. Yet, the practitioner seemed, at material times, to believe that it was and fastened on to that aspect of the allegations made against him in the first reference in its early days. He believed that the Committee had the obligation to conduct a separate inquiry, prior to a hearing in the Disciplinary Tribunal, to ascertain the truth or otherwise of the assertion that he appeared for the police officers at the Boucher Inquiry. He believed that the Committee, at the very least, should have conducted its own investigations about that and have, for example, interviewed him and heard his side of the story, or interviewed the police officers to ascertain whether the practitioner appeared for them at the Boucher Inquiry.

122 Whether or not such prior investigations must be conducted by the Complaints Committee under the terms of the *Legal Practice Act 2003*

now or under the *Legal Practitioners Act 1893*, as it then stood, is really a matter for the Complaints Committee in good faith to decide in its handling of matters before it.

123 Under the 1893 Act, the Complaints Committee was empowered by s 27(2) to determine its own procedures. By s 27(3) it was not bound by rules of evidence and could inform itself in any manner as it considers just. It could initiate proceedings in the manner prescribed by the Rules. These provided for a Reference by the Committee (not by statutory declaration) and a Reply to the "allegations" in the Reference by the practitioner. The Reference is in the nature of a pleading. There was nothing in the 1893 Act that required either the Complaints Committee or the Complaints Officer, before referring a matter to the Disciplinary Tribunal to form a concluded view as to whether facts asserted in the reference are true. The process of discipline then, as now, is that the Complaints Committee acting in good faith and based on what it considers to be reliable information before it, forms the view that there is a matter justifying a complaint to the Tribunal so that the Tribunal can decide where the truth lies and whether a practitioner has breached any relevant professional standard.

124 It is not the case, in the view of the Tribunal, that the Complaints Committee and the Complaints Officer, at the time it commenced the first reference disciplinary proceedings, was bound to accord the practitioner "natural justice" in the form of a hearing in the terms the practitioner seems to have thought it should have. While a body like the Complaints Committee may well be obliged to act in a procedurally fair way towards an affected person it was not obliged to give the practitioner a hearing when he agitated the "appearance" issue in his correspondence to the Committee.

125 In this case, all the evidence suggests that the Complaints Committee, having received the initial written complaint from Mr O'Connor on behalf of the Anti-Corruption Commission, considered the matter, sought a response from the practitioner (which it received) and then took the advice of a senior independent barrister concerning the matter. The Complaints Committee seems to have been initially advised by the senior independent barrister, Mr Zelestis QC, that its complaint of unprofessional behaviour may not succeed against the practitioner. Nonetheless, it seems to have appeared to the Committee that there were proper grounds of complaint, on its own inquiry into the matter, and to cause the reference to be amended in appropriate ways. That view was ultimately vindicated by the Disciplinary Tribunal.

126 About the Committee's conduct, the Complaint's Officer's conduct and the conduct of independent counsel, such as Mr Gilmour QC who advised the Committee at material times, the practitioner has no proper grounds of complaint. His assertions of belief in some conspiracy between some members of the Complaints Committee and independent counsel that they were set to embarrass him, because of his desire to be elected to the State Parliament, has absolutely no foundation and again reflects very poorly on the judgment of the practitioner.

127 Mr Quigley's belief that the Committee and its independent counsel were, at material times, being dictated to by Mr O'Connor QC and the Anti-Corruption Commission is also baseless.

128 The most that can be said, because it is simply a matter of fact, is that Mr O'Connor QC on behalf of the Anti-Corruption Commission initially lodged a written complaint with the Complaints Committee about the conduct of the practitioner when speaking on the Howard Sattler radio programme. But after that point, the Committee itself initiated the inquiry based no doubt on the information provided by Mr O'Connor QC, and made the reference to the Disciplinary Tribunal. The fact that the Complaints Committee may have sought further information from Mr O'Connor QC concerning aspects of the subject matter of the complaint, is to be expected in all of the circumstances of the case, given that the Anti-Corruption Commission and Mr O'Connor QC were possessed of particular knowledge in relation to the Boucher Inquiry and the apparent involvement or dealings with it by the practitioner.

129 If a person in the position of a practitioner believed that a public authority, such as the Complaints Committee, was acting without good faith, abusing its powers or the like, it would no doubt be open to the practitioner to seek legal redress in a court of appropriate jurisdiction, such as the Supreme Court or, if the person believed that the general law was being infringed or not being properly administered, to complain to competent authorities, such as the Police Commissioner or the Ombudsman.

130 In this case, the practitioner seems to have considered all these possibilities because he ultimately gave notice under the *Crown Suits Act 1947* (WA) that he intended to commence legal proceedings against the Committee, its members, the Complaint's Officer and the Attorney General in respect of the conduct of the Committee in lodging the first reference which he considered to be a "perversion of the course of justice".

131 If, in some extraordinary circumstances, there were proper grounds for the practitioner to raise these allegations, it would not be inappropriate for him to raise them directly with the Complaints Committee. However, the Tribunal believes that before a practitioner could direct such serious allegations against the Complaints Committee, or its members, or the Complaints Officer, the practitioner would need to demonstrate reasonable and genuinely held grounds for his allegations.

132 In this case the practitioner, as we have explained, initially raised with the Committee, its members and the Complaints Officer, what he considered to be factual errors. As well, as time went, by he raised the question of the disciplinary proceedings having been instituted for an improper purpose and maintained under dictation.

133 There is nothing wrong with the practitioner writing to the Committee and the Complaints Officer to seek to correct what he considered were factual areas in the allegations made against him. As we have noted, he eventually had some success on the question whether it could rightly be said he had appeared for certain police officers at the Boucher Inquiry.

134 As to the allegation that the practitioner, at material times, acted for the police officers in the Boucher Inquiry, there is no evidence that the inclusion of this allegation in the first reference, or the further and better particulars given by the Committee was in either respect, improper. No doubt there was a sufficient foundation for it in the complaint from Mr O'Connor or in the papers provided with it.

135 The allegation may have been wrong. But that error, of itself, did not justify the practitioner then writing to the Committee and the Complaints Officer, as he did, to assert that the continuation of the proceedings against him involved "peddling lies". That was unjustified.

136 As to the allegation that the practitioner well knew that there was no "cover up" by the Premier, again there was no evidence that the inclusion in the first reference of this allegation was, in any respect, improper. This claim had been made by Mr O'Connor with documents in support. Whether or not it was true, was a matter ultimately to be decided by the Disciplinary Tribunal. Again, there was no justification for the practitioner to say in his correspondence to the Committee and the Complaints Officer that, by maintaining this allegation in the proceedings, they were "peddling lies" and "perverting the course of justice". That also was unjustified.

137 As to the allegation that the practitioner well knew that there was no cover up otherwise, this was a bare assertion of his knowledge. The foundation for it from the Committee's point of view was that the Boucher Inquiry had called for evidence, the Police Union had not cooperated but an investigation had been held and a Report made. There is no evidence that the inclusion of this allegation in the first reference was, in any respect, improper. Again, the dispute as to the matter of knowledge would fall to the Disciplinary Tribunal to decide. That the Committee maintained the allegation in the first reference was no justification for the practitioner to assert in his correspondence to the Committee and the Complaints Committee that they were "peddling lies" and "preventing the course of justice".

138 As to the allegation that the practitioner's client had given evidence at the Boucher Inquiry, there was no evidence that the inclusion of this particular in the further and better particulars provided by the Committee was, in any respect, improper. It may be inferred that support for this again came from Mr O'Connor's complaint and papers. It was another fact disputed by the practitioner in his answer and in his correspondence that would have to be decided by the Disciplinary Tribunal. Indeed, the error relating to this matter was, as we have noted, later acknowledged by the Complaints Committee and the allegation (initially in par 5f) was deleted. Again, these events cannot give rise to any justification for the practitioner asserting in his correspondence to the Committee and the Complaints Officer that they were "peddling lies" or "perverting the course of justice". Once the fact as asserted by the practitioner had been agreed, there was even less - indeed no - justification for the practitioner to maintain these assertions.

139 It is another thing, moreover, to go from asserting factual errors to maintaining claims of improper purpose and acting under dictation and otherwise acting in the manner which the practitioner alleged.

140 What appears to have happened is that, because the practitioner felt that the whole of the first reference proceedings against him were unjustified, he, in effect, converted each of his concerns about the factual errors he believed the Committee had made in the reference against him, into grounds for believing that the Committee were motivated to maintain the disciplinary proceedings for an improper purpose and that they were acting under dictation from Mr O'Connor QC.

141 In fact, there is no evidence to support the practitioner's complaint about the Complaints Committee acting with an improper purpose and acting under dictation.

142 While Mr O'Connor QC on behalf of the Anti-Corruption Commission lodged a written complaint with the Committee about the practitioner's conduct on the Howard Sattler radio programme, the fact is that the Committee pursued its own investigations under s 25 of the 1893 Act soon after receiving that Complaint.

143 The practitioner's particular complaint that the Committee breached an undertaking not to provide his initial response to the complaint to the Anti-Corruption Commission and Mr O'Connor QC has been explained by the evidence we have received. Disclosure was made inadvertently, in that the opinion that the Committee requested from Mr Zelestis QC and which referred to the practitioner's response, was given to Mr O'Connor QC when the Committee was seeking further information. There was no deliberate breach of an undertaking by the Committee not to show that response to the practitioner before discussing its proposed disclosure with him.

144 Nor can the fact that the Complaints Committee amended the first reference from time to time, be relied upon by the practitioner as evidence of some conspiracy against him. It is clear that the complaint against him was reformulated after Mr Zelestis' advice. And the first reference was amended, in part, by the practitioner's own demands that it be amended.

145 As we have already found, there is no evidence to support a conspiracy against him on the basis that he was denied "natural justice" or procedural fairness. Under the Rules governing disciplinary proceedings under the 1893 Act, the practitioner had the opportunity to initially respond to the Committee's concerns, he filed an answer in the disciplinary proceedings and he had the opportunity, which he exercised, to give evidence to the Disciplinary Tribunal and he was represented by senior counsel before it.

146 The practitioner also said he believed the Complaints Committee intended to exclude Statutory Declarations from police officers at the hearing before the Disciplinary Tribunal. This is not borne out by any of the facts before us and seems to be contradicted by the Complaints Committee's letter dated 30 November 2001.

147 Nor is there anything else to suggest that the Committee, its members or the Complaints Officer acted in bad faith or for an improper purpose, or

with any intent to "pervert the course of justice" or that it maintained the proceedings at the instance of Mr O'Connor QC.

148 We have not recited every assertion made by the practitioner in the referenced correspondence. There were in addition, claims that the Committee and its Officer were guilty of "serious impropriety", "arrogance and foolishness", "invention and misrepresentation", "unprofessional conduct", "deceit and malice", "perjury". These were allegations of the most serious nature made against individuals endeavouring to discharge their onerous responsibilities, much of it voluntarily, under the State's legal disciplinary system. It is hard to conceive of circumstances where such allegations might have been justified. There was nothing put before the Tribunal by the practitioner which went any way to supporting them.

Findings by the Tribunal

149 The Tribunal finds the practitioner guilty of unprofessional conduct in the terms of the first complaint in the reference. It is enough, we think, to say that the unprofessional conduct falls under the first limb described by the Full Court in ***Kyle v Legal Practitioners Complaints Committee*** *(supra)*. It is conduct that would be reasonably regarded as disgraceful or dishonourable by practitioners of good repute and competence.

150 The practitioner did not have reasonable or any grounds to justify the making of the allegations against the Committee, its members and the Complaints Officer, that they were maintaining disciplinary proceedings against him for an improper purpose or at the dictation of Mr O'Connor QC or otherwise acted in the manner asserted by the practitioner.

151 In the circumstances, it is reasonable to conclude that the practitioner believed that by asserting his position aggressively with the Committee, its members and the Complaints Officer, the disciplinary proceedings against him might dissipate and, in due course, be withdrawn.

152 The Complaints Committee's allegation that the practitioner engaged in "intimidatory and threatening behaviour" towards the Committee, its members and the Complaints Officer is made out.

153 The practitioner, in many respects, seemed to acknowledge before us that his conduct, at material times, went beyond the pale in terms of what would be expected of a practitioner in responding to disciplinary proceedings.

154 The Tribunal considers that, when engaged in disciplinary proceedings, it is improper for a legal practitioner to engage in a tactical assault on the Complaints Committee, its members and the Complaints Officer of the type Mr Quigley engaged in. The Complaints Committee, members and the Complaints Officer perform an important public function. What the practitioner says, more by way of mitigation of his conduct than in excuse of it, is that, at material times during the conduct of the first reference disciplinary proceedings, he was under enormous personal, professional and financial stress and was receiving medical treatment and taking medicating. His submissions and evidence to the Tribunal were all to this effect. His email response to the Complaints Committee dated 2 September 2003, confirms the practitioner's submissions and evidence in this regard. What he said in that email bears repetition here:

> "I… unreservedly apologise for any particular offence taken by the Law Complaints Officer or anybody else.
>
> At the time of writing the letters I was sick and had just been prescribed a new course of medication under specialist supervision.
>
> At the time of writing the letters I was under enormous stress on this litigation [the reference to the first reference disciplinary proceedings] after having spent $60 000 on legal fees on this matter up until the end of 2001 the case against me was radically changed and a new complaint substituted by the [T]ribunal. I could therefore not afford to keep on conducting the matter through solicitors as I did not have the financial resources (whereas you have at your disposal taxpayers resources to assist you). I therefore had to do the best I could in very difficult circumstances and in retrospect I did not make a good fist of the correspondence, a matter I know regret and have apologised for."

155 What the practitioner states in this email response does not in any way change the character of the conduct complained of. It was unprofessional conduct. The fact that the practitioner may have been under various forms of stress at the time, and was sick, does not excuse his conduct. He maintained his intemperate language and conduct over a period of some eight months from late June 2001 to the time of the hearing before the Disciplinary Tribunal in February 2002. He now regrets his conduct.

Conclusion and orders

156 The Tribunal finds the practitioner guilty of unprofessional conduct as alleged in par 1 of the reference.

157 Having made this finding the Tribunal is not satisfied that a finding in terms of par 2 of the reference is appropriate. It repeats in substance matters encompassed in the particulars pertaining to the first allegation.

158 We will now hear from the Complaints Committee and the practitioner on the question of penalty.

I certify that this and the preceding [158] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

_____

JUSTICE M L BARKER, PRESIDENT

Annexure A

THE LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

R 26 of 2003

In the matter of the Legal Practitioners Act 1893

AND

In the matter of a Reference by the Legal Practitioners Complaints Committee concerning

JOHN ROBERT QUIGLEY

a practitioner

AMENDED REFERENCE

Date of filing: October 2003

Date of document: 29 October 2003

Filed on behalf of Legal Practitioners Complaints Committee

Prepared by:

Minter Ellison
Lawyers
Level 49
152-158 St George's Terrace
PERTH WA 6000

Telephone No: 9429 7444
Reference: BJG: 60-1119211

Name of Practitioner: Mr J R Quigley

Address of Practitioner: 315 West Coast Drive
TRIGG WA 6029

AMENDED REFERENCE

The practitioner was guilty of unprofessional conduct between 2 January 2001 and 4 February 2002 at Perth in that following the issuing of Reference No 1 of 2001 ('the Reference') issued out of the Legal Practitioners Disciplinary Tribunal ('the Tribunal') against the practitioner by the Legal Practitioners Complaints Committee ('the Committee'), the practitioner engaged in intimidatory and threatening behaviour directed towards the Committee, its members and the Law Complaints Officer ('the Complaints Officer')

PARTICULARS

1. (a) By letter dated 25 June 2001, the practitioner wrote to the Complaints Officer and the Committee as follows:

> 'I am very concerned about the process which has led to the Reference being brought against me, that I intend to take my concerns to the public, but to do so within the confines of the law and proper behaviour by both a legal practitioner and Member of the Legislative Assembly.
>
> So gravely concerned am I about the consequences of the inevitable publicity to the reputation of my profession and the collateral damage it will do to the reputation of others, I have in advance discussed my concerns with both the leaders of the judiciary and my profession.
>
> I explained my intended course of action to the judiciary, not to seek advice or assistance in any manner, but to simply forewarn then so that they might not to (sic) harshly judge me

when this whole story breaks publicly, but realise that I prosecuted my case publicly because I have lost confidence in certain aspects of the system.

I must say that I received a most sympathetic hearing from members of the judiciary.

I have also explained my case to leaders of my profession for the same reason, not that they should intervene in the process in any way whatsoever, but just that in advance of the publicity, that they will understand what is occurring and why it is occurring. I must say that whilst the judiciary did not comment on my circumstances, and nor should they, the leaders of my profession were absolutely astonished at the reference and very concerned for the collateral damage that is going to be occasioned to our profession when this whole story becomes public very soon.

Members of the judiciary and leaders of my profession now well understand that I do not wish to take this course of action, but it is being forced upon me by the Committee and I plead with the Committee, not so much for my sake, as I am not scared of the process, nor am I fearful of a conviction, but on behalf of my profession, and on behalf of people within my profession who will suffer collateral damage, that the Committee once again reconsider the submission made to it by Mr McCusker QC and the opinion provided to it by Mr

Zelestis QC, and immediately notify me that the reference will be discontinued.

If it were the case that I was to be advised by the Committee no later than 5:00 p.m. tomorrow, that upon a re-think of all of the circumstances, it was resolved to drop the reference, then for my part I will be making no further comment about that other than an expression of gratitude that the Committee was able to review the known facts and made a wise decision, and had within the Committee the wisdom to withdraw the reference.

It might be however, that the Committee is still minded to review the matter, but unable to do so within the timeframe that I have indicated, and would wish to tell me by 5:00 p.m. tomorrow that it needs until 2:00 p.m. on Wednesday to give me a decision on this final request for a review.

Because I had the interests of the profession as a whole at heart, I would of course be minded to extend the time limit for that period of time, but I could not go beyond that period of time under any circumstances.'

~~(b) At 2.41pm on Wednesday 27 June 2001, the practitioner, who is a member of the Legislative Assembly in the Parliament of Western Australia, gave a personal explanation to the Legislative Assembly of the events leading to his prosecution by way of the Reference and tabled a copy of the Reference~~

~~and relevant documents.~~

2. (a) On 1 November 2001, the practitioner wrote to the Registrar of the Tribunal and sent a copy thereof to the Complaints Officer and the Committee as follows:

> '…
>
> I note that this is the second back flip by the Law Complaints Officer requiring an amended term of reference, thus making it important that this matter be formalised by way of an amended term of reference, because in the fullness of time I shall be demanding that an external agency fully investigate the conduct of the Law Complaints Officer. I shall allege serious impropriety against her and the Committee.
>
> …
>
> I very much look forward to the hearing of the substantive issues before the Tribunal but not before I have dealt properly with all of the preliminary matters and they have been reduced to writing so that they constitute proper evidence for an investigation to be conducted by an external agency.'

(b) It is a circumstance of aggravation that the practitioner sent this letter to the Tribunal in the terms referred to above when the Reference was still to be determined by the Tribunal.

3. By letter dated 16 November 2001 the practitioner wrote to the Complaints Officer and the Committee as follows:

'The Committee's conduct in referring me on this reference, without affording me natural justice of to (sic) explain my relationship between myself, the 6 drug squad officers, other persons and the Boucher Inquiry, was regrettable.

The Committee and yourself then went and caused to be filed a reference which is full of invention and serious misrepresentation, is regrettable in the extreme (sic).

After you presented your reference, I then wrote to the Committee asking them to afford me natural justice and to seek an explanation from you before proceeding with the reference. The fact that you and your Committee flatly refused this, was absolutely disgraceful.

Disgraceful it may well be, but I also allege that as you have chosen to send a reference to the Tribunal that is full of inventive fiction which you pedal falsity as fact, together with a serious misrepresentation of the letter, and then to afford me the opportunity to cross-examining, an occasion that I look forward to with relish, from Mr Dean to the Solicitor General, and bearing in mind that that misrepresentation was made by legal practitioners, who would have known the truth of what that letter meant, in my view constitutes unprofessional conduct vis-à-vis the *Legal Practitioners' Act*, serious and improper conduct vis- à - vis the definition of that terminology in the Anti-Corruption Commission legislation (sic).

I have determined that should you or your Committee take one further

step to prosecute me on this false term of reference, I shall complain to the Commissioner of Police that the Committee, its Law Complaints Officer and its Counsel, are attempting to pervert the course of justice by prosecuting a reference, the substance of which they know to be untrue, and have no reason to believe is true.

I am well past the point of asking the Committee to reconsider matters, because as for example, your first reference was destined to failure, you already had obtained the opinion of Mr Zelestis QC who told you that there was no reasonable prosect (sic) of success on that reference, yet you persisted with it until just shortly before the hearing date, when you dropped it like a hot potato, because you had no reasonable belief that it could succeed. To maintain it in those circumstances was an abuse of process.

You then instituted a new term of reference without ever coming to me to seek an explanation, without ever going to my clients to seek an explanation, and basing this new term of reference on your own invention and misrepresentation.

I believe that commonsense should prevail at this point, and that you should notify me that you are desisting with the term of reference.

However, I am a realist, and am far beyond the point of ever believing that reasonableness is going to flow from the Committee towards me, so I am making my position absolutely clear, that is, that I want an urgent hearing before the Tribunal. Should any steps be taken to

prosecute me on this false term of reference, I will be asking the Commissioner of Police to investigate an attempt to pervert the course of justice by all members of the Committee, the Law Complaints Officer, and take out and execute the appropriate search warrants to find out in whose office was this reference fabricated, and who was responsible for peddling these lies to the Disciplinary Tribunal.

Could you kindly ensure that at the next calling of this matter, the Law Complaints Officer is available to take the witness stand and swear if she dare, that she believes that all the matters in the reference are, to the best of her knowledge and belief to be true, and to afford me the opportunity to cross-examine her.'

4. By letter dated 17 December 2001, the practitioner wrote to the Committee and the Complaints Officer as follows:

'It appears that your arrogance is only surpassed by your foolishness.

It was very foolish to put your name to a document alleging that I was acting for 6 police officers before the Boucher Inquiry without Mr Boucher's report noting any appearance by me and without ever asking me, as the practitioner, or the clients whether in fact it was true or not. I very much look forward to personally cross examining you as to why the Committee did this.

…

You will note from my letter to the Tribunal that I will lodge a complaint of unprofessional conduct against you personally and against each member

who sat on the Committee and voted to make these false allegations against me without every (sic) having to seek to clarify the truth of what they are saying that either me as the practitioner or the police in respect of whom they are making the allegations (sic).

The conduct of the Committee is not only a prima facie case of negligence in that the Committee will fully (sic) refuse to hear from me and now seeks to change the reference, but also demonstrates malice against me.

At the hearing of the reference against myself I intend to require you, as the Law Complaints Officer, and each member of the Committee to attend the hearing for the purpose of me personally conducting a cross examination of yourself and each member of the Committee. At the conclusion of the term of Reference, I will be ready to prosecute my complaint of unprofessional conduct against you and the Committee before the Legal Practice Board' (sic).

5. (a) By letter dated 17 December 2001, the practitioner wrote to the Registrar of the Tribunal and sent a copy thereof to the Complaints Officer and the Committee as follows:

> 'The Committee's conduct is unprofessional and I am making that allegation to the Legal Practice Board against each and every member at the end of this inquiry.
>
> …
>
> I am this day making a complaint of unprofessional conduct against each practitioner that sits on this committee and who have been responsible for this web of untruths that they have sought to peddle

against me.'

(b) It is a circumstance of aggravation that the practitioner sent this letter when the Reference was still to be determined by the Tribunal.

6. By a second letter dated 17 December 2001 attached to the copy letter dated 18 December 2001 to the Registrar of the Tribunal, the practitioner wrote to the Committee and the Complaints Officer as follows:

> 'By this letter I wish to make a formal complaint of unprofessional conduct against the Law Complaints Officer, Ms Di Howell and against each member of the Committee, being the Committee that resolved to make a new reference to the Disciplinary Tribunal on or about 14 July 2001.
>
> My complaint is that both the Law Complaints Officer and each member of the Committee were grossly negligent in resolving to make allegations about me to the Legal Practitioners Disciplinary Tribunal, being allegations which they either:
>
> (a) knew to be untrue; or
>
> (b) had no reasonable basis to believe the allegations as being true.
>
> Quite obviously this matter is not ready for investigation or final determination for a number of reasons including:
>
> (c) I need to be informed by return mail of the name of each member of the Committee that resolved to make the new reference on 14 July 2001 so that I can formally make the complaint against each member, in the meantime, as I am

aware that Mr Buss QC and Mr Sharpe were on the Committee, by this letter I make formal complaint against each of those two practitioners as well as the Law Complaints Officer. Could you kindly provide me by return with the names of the other Committee members who were party to the resolution.

(d) That there still exists in the reference forwarded to the Legal Practitioners Disciplinary Tribunal, many false allegations made by the Committee and the Law Complaints Officer against me and in respect of these allegations the Law Complaints Officer and each member of the Committee either:

(i) knows the allegations to be untrue; or

(ii) has no reasonable basis for believing the allegations they are making were true.

(e) As many of these matters are in the process of litigation between the Committee and myself as the practitioner it would be entirely inappropriate for my complaint to be investigated and a determination made prior to the completion of the litigation against me, being reference R1 of 2001.

I suspect that the amended reference was in fact drawn by Mr Gilmour QC and not by the Committee and I base this on conversations that have been reported to me by Counsel at Sir

> Francis Burt Chambers of what Mr Gilmour QC had revealed to those counsellors as to the circumstances under which this reference was drawn.
>
> If that is the case and Mr Gilmour is responsible for drawing the reference then I make an allegation against him that he unprofessionally in drawing an allegation against a practitioner which he either: (sic)
>
> (a) knew to be untrue; or
>
> (b) had no reasonable basis for believing the allegations he was drawing were true.
>
> …
>
> I shall of course co-operate with you in every respect in the course of this investigation but seek your assurance that this complaint will not be determined until I have completed disposing with Reference R1 of 2001 in the forthcoming hearing before the Tribunal.
>
> I look forward to receiving your advice by return mail as to the names of the other members of the Committee, who were responsible for the false allegations made against me on or about 14 July 2001.'

7. By a third letter dated 17 December 2001, the practitioner wrote to the Complaints Officer and the Committee as follows:

> 'I wish to cross examining (sic) on oath both yourself and Committee members who were responsible for making the false allegations against me contained in Reference R1 of 2001. When finalising dates for hearing of the reference kindly ensure that they do not clash with appointments or obligations of all of the Committee Members who voted to make the new reference against me on 14 July 2001. I have a legitimate forensic purpose to achieve in examining both yourself and each member of the Committee at the forthcoming hearing. Kindly confirm the names of each of the Committee members by return.'

8. On 19 December 2001, the practitioner telephoned the Committee's office and asked the receptionist if he could speak to the Complaints Officer. When advised that the Complaints Officer was not available, the practitioner asked the receptionist 'to pass on a message' as follows:

> 'I want to wish my co-accused a very Merry Christmas and I relish the thought of the litigation next year.'

9. On 21 December 2001, the practitioner wrote to the Secretary (sic) of the Tribunal and sent a copy to the Committee, as follows:

> 'The Chairman perhaps misunderstands my position. I do not care one wit if the reference is amended or not because I am firm in my resolve that should there by any witness who should wish to swear the truth of what's contained in the further particulars, I shall see them charged for perjury.'

10. By letter dated 16 January 2002 the practitioner wrote to the Complaints Officer and the Committee as follows:

> '… Please be assured that I do not intend to leave this matter at Complaint

> Committee level. I intend to take my complaint to the Ombudsman and possibly the Anti-Corruption Commission on a complaint of serious misconduct in that the Committee have (sic) made several allegations against me which they knew to be false or had no reason to believe to be true.
>
> I look forward to receiving, by return, formal acknowledgment of receipt of my complaint of 17 December 2001 and acknowledgment that this complaint now includes Mr Ted Sharpe.
>
> I also look forward to receiving by return the names of the other Committee members who voted on or about 14 July 2001 to make this obnoxious reference containing the false allegations against me.'

11. By letter dated 18 January 2002, the practitioner wrote to the Complaints Officer and the Committee stating as follows:

> 'Given the deceitful and malicious way, in which Ms Howell and the Committee have conducted themselves against me in this matter thus far, I regard this latest delay in acknowledging my complaint to be a very serious circumstance of unprofessional conduct.
>
> Kindly acknowledge receipt of this complaint by return and set out the manner in which the Committee proposes to deal with it.
>
> In all of these matters where the Committee has flicked away my complaints, I intend to request that they be reviewed by your agency (I am not doing that yet). I intend to take the matter to the Ombudsman and the Anti-Corruption Commission, the former on the basis of obvious complaint about the way that this beauracracy (sic) is dealing

with me and the latter on the basis that you have engaged in serious and improper conduct against myself with your false allegations and refusal to acknowledge my letters.

Kindly record this complaint officially in your register of complaints as I fully intend to have these matters taken up by the outside agencies and shall petition the Standing Committee on Justice and Law in the Legislative Assembly to investigate this matter.'

12. (a) The practitioner instructed his solicitors to write and dispatch a letter dated 30 January 2002 to each of the Chairman of the Committee, the Committee Attention Ms D Howell and the Honourable Attorney General in and for the State of Western Australia in near identical terms, the substance of which as stated in the letter to the Chairman of the Committee is as follows:

> 'We act on behalf of John Robert Quigley, a legal practitioner.
>
> The Committee has made a Reference to the Tribunal in circumstances where the Committee has acted negligently against the discharge of its statutory duty, and has acted with malice against Mr Quigley.
>
> As you know, the Reference contains a mixture of allegations, some of which the Committee knows as a positive fact not to be true, and other allegations which the Committee has no reasonable basis for believing them to be true.
>
> The Committee obtained advice from Senior Counsel, Mr Zelestis QC, who provided an opinion to the Committee. Mr Zelestis's

opinion to the Committee was that there was no case against Mr Quigley in respect of which the Committee could hold out any reasonable prospect of success.

The purpose of this letter is to provide you with formal notice as per the requirements of the *Crown Suits Act*, that Mr Quigley presently intends to institute by way of a Writ of Summons out of the Registry of the District Court of Western Australia, an action for damages arising out of the Committee's negligent discharge of its duty.

The Committee had received Mr Zelestis QC's opinion that there was no case against Mr Quigley with any reasonable prospect of success. Further, given that the Committee resolved to proceed notwithstanding, and that the Chairman of the Panel, Mr Pullin QC as he then was, advised his Panel that he would go and see Mr Zelestis QC personally to instruct him to instigate a Reference, it will be alleged in the pleadings that the Committee acted maliciously against Mr Quigley. Mr Quigley is entitled not only to damages for loss and injury he has sustained by reason of this false Reference against him, but also entitles him to exemplary damages against the Committee.

We are also serving a notice under the *Crown Suits Act* against the Law Complaints Officer, Ms Di Howell and against the State of Western Australia whom we allege also bears responsibility and liability for the negligence and malicious conduct of the Committee

against our client.'

(b) It is a circumstance of aggravation that on 1 February 2002, the practitioner swore an affidavit, which was filed in the Tribunal, detailing his proposed writ of summons and annexed thereto copies of the letters dated 30 January 2002 to each of the Chairman of the Committee, the Committee Attention Ms D Howell and the Honourable Attorney General when the Reference was still to be heard by the Tribunal and was listed for hearing on 5 February 2002.

(c) The affidavit deposed, inter alia, as follows:

> '15. I have discussed the matter with Senior Counsel and taken legal advice as to my situation, and have been encouraged to institute an action for damages for the injuries that I have sustained by reason of:
>
> (a) the malicious actions of the Law Complaints Officer and the Legal Practitioners Complaints Committee; and
>
> (b) damages based on an action of negligence against the Law Complaints Officer, the Legal Practitioners Complaints Committee and the State of Western Australia,
>
> to recover damages for the injuries I have sustained and the expenses I have incurred
>
> …

18. I have been advised by my Counsel that under the *Crown Suits Act*, before commencing legal proceedings against Mr Ted Sharpe and others, I have to serve a notice of my intention to sue and shortly state the basis upon which the legal action will be based. I instructed my solicitors to prepare that notice and to dispatch it to the Legal Practitioners Complaints Committee, the Law Complaints Officer and the Attorney General of Western Australia. I maintain the State of Western Australia is also vicariously liable for the negligence of the Law Complaints Officer and the Legal Practitioners Complaints Committee.

19. I am advised by my solicitors and Counsel, that once I have ascertained the names of each member of the Legal Practice Committee which had anything to do with referring me to the Tribunal, I shall have to join each of those to the action and one of those practitioners will inevitably be Mr Ted Sharpe of Freehills.

20. Annexed hereto and marked "JRQ1" is a true copy of the notice that I have sent to the Legal Practitioners Complaints Committee.

21. Annexed hereto and marked "JRQ2" is a true copy of the notice that I have sent to the Law Complaints Officer.

22. Annexed hereto and marked "JRQ3" is a true copy of the notice I have sent to the Attorney General of Western

Australia.

23. I have not been in a position to identify each member of the Law Complaints Committee against whom the action will be commenced, because despite my several requests of the Law Complaints Officer for her to identify the Committee Members, the Law Complaints Officer has declined to answer my correspondence and identify those members.

24. I have lodged a separate complaint of unprofessional conduct against the Law Complaints Officer for her failure to even respond to my correspondence seeking the names of each member of the Legal Practitioners Complaints Committee.'

13. In the event, the Tribunal found the Reference to be proven.

FURTHER that the practitioner was on or about 1 February 2002 guilty of unprofessional conduct at Perth in that following the issuing of the Reference out of the Tribunal against the practitioner by the Committee the practitioner sought to fetter the jurisdiction of the Complaints Officer and the Committee in carrying out its statutory obligations by threatening to institute legal proceedings against the Committee, its members and the Complaints Officer.

PARTICULARS

The Applicant repeats paragraphs 12(a), 12(b) and 12(c) hereof.

DATED the day of October 2003.

Law Complaints Officer
for and on behalf of the Legal Practitioners
Complaints Committee

Annexure B

IN THE STATE ADMINISTRATIVE TRIBUNAL

Matter title: LPCC v Quigley
Matter number: VR 1 of 2003
EXHIBIT: 2 tendered by: Mr Davies
for: LPCC identified by: Mr Davies
Date: 13/6/05

John Quigley LLB MLA
MEMBER FOR INNALOO

160 Scarborough Beach Road, Scarborough WA 6019
PO Box 101, Scarborough WA 6922
Tel: (08) 9341 2995 Fax: (08) 9341 7111
e-mail: jquigley@mp.wa.gov.au

RECEIVED
10 FEB 2004
LEGAL PRACTICE BOARD

Legal Practitioners Disciplinary Tribunal
5th Floor Kings Building
533 Hay Street
PERTH WA 6000

WESTERN AUSTRALIA LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL SEAL

BY FACSIMILE: 9325 2743

Dear Sirs,

REFERENCE NUMBER NO: R26/003

The letters that I wrote referred to in this reference were written by me as a Parliamentarian to an agency, the LPCC, which for the reasons set out below, I believed to be acting improperly and dishonestly in its dealings with me.

Furthermore I had an honest and reasonable belief that the LPCC had been unduly influenced by a political enemy of mine Terry O'Connor QC who's stated purpose was to make a complaint to the LPCC to destroy me.

The improper conduct of the LPCC, which I believe in part, was being driven by O'Connor QC caused me to suffer physical illness requiring medication and caused me serious incapacity and significant interference with my parliamentary duties.

As the conduct of the LPCC was having an adverse impact upon my public creditability based on an untrue allegation I was entitled to then respond to this agency as a politician. All correspondence referred to was written, I am sure, on my Parliamentary letterhead as I was responding to an untrue attack upon me as a parliamentarian by a state agency.

Quite separately the conduct of my legal affairs between myself and the LPCC were being handled by my solicitors and counsel.

In knowingly bringing a serious false allegation against me the LPCC was not performing its statutory function for a proper purpose.

It was in these circumstances and while still, as a Parliamentarian, I wrote the letters. I shall now set out the full circumstances of what I believe was a political attack and why as a Parliamentarian I'm allowed to respond.

Representing approximately 25,500 electors in the suburbs of Trigg, Scarborough, Karrinyup, Doubleview, Innaloo, Woodlands, Gwelup, Stirling, Balcatta and Osborne Park.

1 I was elected a Member of the Legislative Assembly for the State of Western Australia on 10 February 2001 and continued to be the Member for Innaloo in the Legislative Assembly.

2 In the years leading up to 2001 I was defence counsel in a series of cases where serious charges were initiated by the ACC against police following upon ACC investigations. The majority of these cases collapsed because of the hopeless performance of the ACC in their method of investigation or the evidence of an exculpatory nature that they tried to hide from the courts.

3 Upon instructions from my clients I had made a number of public statements highly critical of the ACC and its former chairman Mr O'Connor QC. Mr O'Connor QC responded with a number of false statements seeking to cover up the now defunked ACC's performance.

4 I was publicly calling for a Royal Commission into both police corruption and the way it was investigated by the ACC. Mr O'Connor QC publicly and stridently opposed me because I believed he knew that such a Royal Commission and review of his agency would almost certainly see him out of office, and the disbandment of his agency.

5 As I was convinced that there was a need for a Royal Commission into police and the method in which corruption was investigated I joined the Australian Labor Party and sought preselection for the State Seat of Innaloo.

6 After being preselected as the ALP candidate for Innaloo I appeared as defence council for a detective sergeant of police who had been charged with possession of narcotics with intent to sell and supply.

The prime evidence in support of the charge was a photograph of drugs in the sergeant's draw. However a video of the search of the police office revealed that the drugs were not in the draw at the start of the search as shown in the photograph.

7 As soon as I drew the video footage to the attention of the Director of Public Prosecutions he ordered that the case be dropped.

8 The Police Union instructed me to attend at the office's of Mr O'Connor QC and make a formal complaint about the conduct of the ACC.

9 I immediately attended upon Mr O'Connor QC and made the complaint to him personally. I produced the video footage showing the absence of drugs in the draw at the start of the search. During the conversation Mr O'Connor QC appeared to become angry and amongst other things told me to "Get fucked" and "To fuck off out of his office".

2

10 Whilst gathering belongings together Mr O'Connor QC pointed at his desk and said "I am going to my desk to make a complaint about you that will destroy you" or words to that effect. I left his office.

11 When I left his office having been personally abused and intimidated I felt very apprehensive as to what he might do given that he;

a. Publicly opposed the Australian Labor Party's policy on calling a Royal Commission
b. Was a former senior office holder in the party of my political opponents, the Western Australian Liberal Party;
c. Was a member of the Legal Practice Board.

12 Given all of these circumstances I was concerned that Mr O'Connor QC would use his office to improperly influence the LPCC and others with a view to damaging my public credibility.

13 Although the first reference against me came as a reference from the Committee pursuant of section 25 (1) (c) of the Legal Practitioners Act, it did not start that way.

14 Within a short time of me having made the complaint to Mr O'Connor QC on behalf of my clients and being threatened and intimidated by him I received a letter from the LPCC forwarding the ACC's complaint against me for a reply.

15 Mr O'Connor QC's complaint made the untrue assertions against me that I had represented certain police officers before the Boucher inquiry and that by reason of the instructions they gave me I had knowingly told untruths during an interview on the Howard Sattler Program.

That is that I lied to the public of Western Australia. Although this was untrue it was potentially very politically damaging.

16 I was alarmed to read a report in the West Australian Newspaper that I as the ALP candidate for Innaloo was under investigation by the LPCC on a complaint made by Mr O'Connor QC. This information was leaked to the media by either the LPCC or the ACC and was done in an improper attempt to damage my public creditability during my election campaign

I made a formal complaint to the LPCC about the leakage of the information but my complaint was dismissed.

17 Upon advise from Queens Counsel I wrote to the Committee seeking clarification as to whether they were receiving the complaint as a private complaint from Mr O'Connor QC or from the agency of the ACC. I took this precaution because I believed that Mr O'Connor QC would seek to improperly use the complaint process to start an ACC investigation into me and my clients with a view to inflicting further damage to my public credibility.

3

18 Queens Counsel also advised that this information was required for two reasons:
(i) to engage Mr O'Connor QC or the ACC in further litigation concerning jurisdiction and function; or
(ii) to make a complaint to the parliamentary committee which oversaw Mr O'Connor QC and the ACC.

19 After several months the LPCC wrote to me advising me that they had taken the matter up as their own investigation, which was now no longer, a matter of Mr O'Connor QC's complaint. They then quoted verbatim Mr O'Connor QC's original complaint and forwarded his attachments.

20 I firmly believed Mr O'Connor QC would improperly use the complaint process to somehow put me under examination before the ACC. Upon Queens Counsel's advise prior to providing my response to the LPCC I sought a written undertaking that my answer would not be published to any third party, in particular to Mr O'Connor QC.

21 I received a written undertaking from the LPCC after which I filed my answer.

22 Within a short passage of time of having furnished my answer to the Committee I was served with a notice by the ACC to appear before it and answer questions, the subject matter of which notice was given; it directly related to matters that I had provided to the LPCC.

23 This confirmed to me that the LPCC were either improperly acting in concert with Mr O'Connor QC to inflict damage to me or were coming under the improper influence of Mr O'Connor QC.

24 As the notice served upon me by Mr O'Connor QC sought to breach claims of Legal Professional privilege my former clients were put to considerable expense of initiating Supreme Court Proceedings to injuct Mr O'Connor QC from examining me at the ACC on the contents of my answer provided to the LPCC. The monetary damage suffered by my former clients was directly attributable to the improper conduct of the LPCC breaching their written undertaking to me and improperly publishing my answer to Mr O'Connor QC.

25 Documents I obtained from the LPCC pursuant to the FOI legislation evidenced that the answer that I provided to the LPCC was provided to Mr O'Connor QC who then on the same day summonsed me to appear before him.

26 The documents obtained pursuant to FOI also showed the LPCC had met with Mr O'Connor QC to discuss my answer with him and that Mr O'Connor QC urged that despite some views to the contrary a reference should be made against me to the tribunal. By way of contrasting

treatment the committee would not even disclose to my Counsel or me the criteria upon which matters were to be dealt with summarily before the committee or sent by reference to the LPDT.

27 Whilst I accept that my failure to give a fair and balanced account to the media of a matter that I was involved in constitutes unprofessional conduct the tribunal accepted that such conduct was not premeditated and there was no evidence that it was. It was at the lower end of professional misconduct and could have been dealt with by the committee but I believe that Mr O'Connor believed that if he could urge the LPCC to send the complaint by reference to the LPDT rather than deal with me summarily I would suffer greater damage which would include large legal costs and significant distraction from my election campaign.

28 As a parliamentarian I believed that two state agencies were acting in concert to inflict maximum political damage upon me or that the LPCC was coming under the improper influence of the ACC. As a parliamentarian I was perfectly entitled to write letters to that stage agency pointing out the consequences to their creditability of maintaining their support for Mr O'Connor QC's improper urgings whilst at the same time refusing to even disclose to me the criteria upon which references were made.

29 The reference against me did not include Mr O'Connor QC's original allegation that I had lied to the public, which was the most serious and damning allegation that had been made against me.

30 At the directions hearing shortly before the hearing date the LCO, represented by Mr Gilmore QC, sought to amend the reference by reviving Mr O'Connor QC's old and untruthful allegation that I had lied to the public of Western Australia concerning instructions I had received from police clients.

31 The LPDT permitted the amendment to include this allegation on the undertaking by the LCO that the LPCC had in fact met and resolved to include this allegation in the new reference. A search of all documents obtained on my file pursuant to a request under FOI showed that no minute existed of any such meeting taking place and no file note existed of what materials had been put before the LPCC to convince them to make this new reference. In deed the LPCC was not and has never been in possession of any evidence proving or implying that I had acted at the Boucher Inquiry for the police and had received instructions contrary to what I had stated on radio.

32 As a Parliamentarian, I was very concerned that a Statutory Authority could meet in secret without having any evidence put forward yet still vote to make this charge against me that as a practitioner I had lied to the public.

33 The LPCC made that part of the reference in bad faith and I honestly and reasonably believe that Mr O'Connor QC, by reason of his membership of the LPB, was able to induce his colleagues on the LPCC into this improper course of action.

34 In addition to the secret and improper communication that the LPCC was having with Mr O'Connor QC it also failed to accord me natural justice in that it failed to seek an explanation from my clients or me whether or not I had received the alleged instructions prior to initiating the prosecution against me, alleging in part that I had lied to the public.

35 Between the time that the reference was amended to include this new false, yet very serious allegation and the commencement of the hearing those police and former police who it was alleged had given me instructions in relation to the Boucher Inquiry, dispatched Statutory Declarations to the LPCC and the LPDT deposing that the allegations were false.

36 I was advised by my solicitors and I honestly believed that the consistent attitude of Mr Gilmore QC to these Statutory Declarations was an intent to have them excluded from the evidence that would be before the LPDT. This attitude was adopted despite the fact that the content of the Statutory Declarations was exculpatory vis a via the most serious part of the reference which alleged that I had lied to the public.

37 As a parliamentarian I was appalled that a Statutory Authority would instigate and maintain a pleading before a Disciplinary Tribunal when it knew that it had no evidence to support its most damning allegation and would seek to exclude evidence which showed that their allegation was untrue is serious and improper conduct. The Statutory Authority had entirely failed in its obligations as a prosecuting authority to ensure that all relevant evidence would be put before the LPDT.

38 As a parliamentarian I am fully entitled to point out my course of intended action in the face of their improper actions.

39 As a Parliamentarian I regard such conduct by Statutory Authority as serious and improper conduct and a very good example of why there needs to be further legislative reform of the governments structures and procedures relating to the Legal Profession.

40 I was also mindful that Mr O'Connor QC briefed Mr Gilmore QC more often than not in litigation where I was instructed to resist improper conduct of the ACC. In particular during 2000 after Mr O'Connor QC had made his complaint I represented 5 senior police officers at a preliminary hearing where Mr O'Connor QC had briefed Mr Gilmore QC to resist every summons for documents that I sought to obtain from the ACC. Once the court ruled that I was to see what was in Mr Gilmore's brief, in terms of the ACC documents, I showed those to the DPP and the DPP sent counsel down to the court to stop the prosecution forthwith.

41 Mr Gilmore QC on that occasion was acting for a Statutory Authority and received instructions which he was prepared to further in a court that is to keep relevant exculpatory evidence from the court in defiance of his obligations as a counsel for a prosecuting authority.

42 So when I saw the new reference made by the LPCC drawn and settled by Mr Gilmore QC charging that I had acted for certain police, received certain information and therefore told lies to the public I honestly and reasonably believed that Mr O'Connor QC had improperly influenced the LPCC or Mr Gilmore QC (who the ACC and the LPCC both briefed) to make this serious and improper allegation against me.

43 I had a right to expect that the LPDT would require the LCO to verify the reference by statutory declaration according to the rules but the LPDT did not insist upon this. This lead me as a Parliamentarian to conclude the LPDT is not sufficiently independent of the LPB or the LPCC to insist on even handed treatment as it failed to accord even handed treatment to both the LPCC and practitioners appearing before it. For example in my case whilst the LPDT insisted that I verify my answer on Statutory Declaration it did not require the LCO to do so as I suspect the LPDT by then expected that had the LCO verified the reference by statutory declaration she would have almost certainly been prosecuted under the Criminal Code for making a false declaration.

44 As a parliamentarian I cannot be criticised for pointing this out to an errant agency.

45 The conduct of the LPDT against me in this regard has helped me as a parliamentarian make the case that the LPDT itself need be disbanded and replaced by a truly independent statutory body. This will likely happen in 2004 when the legislative assembly, the chamber in which I sit, gets to consider the final amendments made in the legislative council to the State Administrative Tribunal Bill.

46 As a parliamentarian I have also sought to use the correspondence and the LPCC's response thereto to cause others to give consideration to further possible legislative amendments to the Legal Practitioners Act concerning the manner in which disciplinary matters are instigated. I have for example by causing this reference to be tabled in the legislative assembly made a start for parliamentarians to re-examine the manner in which the LPCC is operating.

47 In this particular reference the LPCC first sought me to explain my conduct in writing these letters over 12 months after they themselves ahd received them. It was not even the LPCC who wrote to me seeking an explanation but solicitors acting for the LPCC on the full court appeal that I had instigated. The solicitors waited until after I had entered the full court for hearing before first raising with me the correspondence that had been with the committee over the past 12 months.

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48 If the LPCC was properly exercising its statutory authority and not being vindictive against me then surely it would have raised its concerns in a timely manner.

49 As a parliamentarian I have complained to the Ombudsman about my allegations of impropriety against the LPCC as raised in this answer and against the LPTD concerning the matter in which the last reference was listed for hearing requiring me to brief a new counsel at short notice and incur many extra thousands of dollars in legal expenses.

50 At the time of writing the letters I was a parliamentarian whose public credibility was under attack by two agencies making false allegations against me. And which had as I said induced physical sickness requiring medication.

51 The stress and medication did not agree with me and I was unwell at the time that I wrote the letters. In less stressful circumstances and not labouring under physical illness I would have couched my language as a parliamentarian somewhat differently

52 I have already tendered my written apology for any personal offence that my chosen words may have caused.

53 I do not resile however from the serious allegations that I make against the agency.

54 After the Full Court dismissed my appeal I received wise counsel from my senior parliamentary colleagues not to pursue my complaints against the LPDT as that would soon be replaced with SAT and not to pursue my complaints against the LPCC but to get on with discharging my parliamentary duties and obligations to my electorate.

55 It is advice that I accepted however now that the LPCC after such a significant delay instigated these new matters against me I require statutory authorities independent of the legal fraternity to adjudge whether the conduct of the LPCC and to a far lesser extent the LPDT has been fair and reasonable towards me.

8

I, John Robert Quigley, member of the Legislative Assembly in the State of Western Australia do, pursuant to the provisions of the Evidence Act of Western Australia, hereby solemnly and sincerely declare that the contents of this document are true and correct to the best of my recollection, knowledge and belief.

J R Quigley

9 February 2004
Made and declared before me D. MANNERS JP at SCARBOROUGH on Monday 9 February 2004.

DAVID MANNERS
Justice of the Peace
168 Scarborough Beach Road
Scarborough
Western Australia 6019

#2455

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Annexure C

135 (10)

Legal Practitioners Complaints Committee

RECEIVED
2 SEP 2003
LP COMPLAINTS COMMITTEE

From: John Quigley <jquigley@mp.wa.gov.au>
To: <lpcc@bigpond.com>
Sent: Tuesday, 2 September 2003 9:41 AM
Attach: Final ver ltr of 2.9.03.doc; JRQ to LPCC 2.9.03
Subject: My Answer for the Committee's Attention

Please find forwarded my response for the committee's attention.

2/09/03

The Law Complaints Officer
Legal Practice Complaints Committee of W.A.

I acknowledge receipt of your letter requesting that I furnish you with a response by today to the issues raised in the letter of Minter Ellison dated 24 January 2003 "the letter". My task is made very difficulty by reason of the fact that after being assaulted at my office by a constituent my electorate officer, who is my only fulltime help, has been on sick leave. I have therefore had no assistance at my office even with tasks such as typing but have had to continue to satisfy all of my parliamentary duties.

I am concerned that the committee should assist upon answer to the issues raised in the letter when there is litigation still on foot between the law complaints officer and myself. I note that Mr Heenan QC, as he then was, stated in his lead judgement for the Disciplinary Tribunal in Re Cole that complaints matters should not be heard and determined during the course of litigation whilst noting that no objection had been taken by the practitioner. Notwithstanding this you insist upon an answer at this point in time and I therefore must comply.

I am concerned that not only did this matter arise during the course of litigation but it was first raised with me two years after I wrote the letters. The matter was raised not by the law complaints officer at the time but by the solicitors who are acting for the complaints officer in current litigation with me.

I admit being the author of the letter's referred to in the letter

I regret some of the phraseology and tone used in parts of my correspondence and unreservedly apologise for any particular offence taken by the law complaints officer or anybody else.

At the time of writing the letters I was sick and had just been prescribed a new course of medication under specialist supervision.

At the time of writing the letters I was under enormous stress on this litigation. After having spent $60,000 in legal fees on this matter up until the end of 2001 the case against me was radically changed and a new complaint substituted by the tribunal. I could therefore not afford to keep on conducting the matter through solicitors, as I did not have the financial resources (whereas you had at your disposal tax payers resources to assist you). I therefore had to do the best I could in very difficult circumstance and in retrospect did not make a good fist of the correspondence a matter that I now regret and have apologised for.

Given that I am in public life and given the fact that the committee on its own admission has seriously breached it's undertakings to me concerning privacy. Namely that after giving me a written undertaking that they would not allow any person outside of the committee to view my reasons it was forwarded to Terry O'Connor QC on the day that you received it. I do not want to forward any

medical report setting out full medical history less that also find its way into the public arena to be used by my political opponents.

I am very nervous about supplying a full medical report, which will of necessity have to set out very private medical details concerning my health.

I have and do again unreservedly apologised for any offence taken to the letters written whilst I was ill.

My sense of grievance which caused me to write the letters was based in part on the fact that my professional colleagues on the committee, as your counsel admitted at the hearing were making the reference against me without according me natural justice as is usually afforded practitioners before a reference is made.

My sense of grievance was aggravated by the fact that the reference was in part supported my untrue allegations that I had been acting for particular client's and was in receipt of particular instructions from them. Whereas before the Tribunal your counsel said that the complainant was not asserting those paragraphs in the reference to be true.

I was aggrieved because I had to spend a lot of time and money to meet allegations that the complainant would inform the tribunal were not to be accepted as the truth. If afforded natural justice by my colleagues there would have been no reason to write in the first place.

I do put these matters forward as justification for the untoward manner and tone of my letters but I stress I believed I had a genuine and serious grievance which I was desperately trying to address and that my sense of proportion was undoubtedly effected by my illness and medication and I certainly would not write those letters now and I would not write them again.

For very good reason I do not now wish to go back through each letter paragraph by paragraph seeking to justify what is genuine grievance and what is excessive rhetoric deserving particular apology now that I can see things in a more balanced light.

However if the committee feels that my answer is insufficient then of course I will have to do it but I will need time to engage solicitors (if resources permit and to obtain medical reports etc)

Whilst recognising at once that it is your hands entirely how far this matter goes from here I would ask that you on this occasion have respect for the strict confidentiality of my reply.

Yours faithfully

John Quigley
2nd Sept 2003