

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

**ACT** : LEGAL PRACTICE ACT 2003 (WA)

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and SORENSEN [2009] WASAT 104

**MEMBER** : JUSTICE J A CHANEY (PRESIDENT)  
MR C RAYMOND (SENIOR MEMBER)  
MR J MANSVELD (MEMBER)

**HEARD** : 20 MAY 2009

**DELIVERED** : 22 MAY 2009

**FILE NO/S** : VR 46 of 2009

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

PETER JOHN SORENSEN  
Respondent

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*Catchwords:*

Vocational Regulation - Legal profession - Failure to maintain trust records - Requesting auditor to issue unqualified audit certificate when qualifications appropriate - Misleading Legal Practice Board by forwarding misleading audit certificate - Proposed consent orders - Whether proposed penalty adequate - Role of the Tribunal in relation to consent orders in vocational matters

*Legislation:*

*Legal Practice Act 2003 (WA)*

*Legal Practice Board Rules 2004 (WA)*

*State Administrative Tribunal Act 2004 (WA), s 11(4)*

*Result:*

Condition imposed on practitioner's practice certificate

Practitioner fined \$5,000 and ordered to pay costs of \$1,500

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms PE Le Miere

Respondent : Self-represented

*Solicitors:*

Applicant : Legal Profession Complaints Committee

Respondent : Self-represented

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

Jemielita v Medical Board of Western Australia (unreported, WASC, Library No 920584, 13 November 1992)

**REASONS FOR DECISION OF THE TRIBUNAL:**

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

1           The Legal Profession Complaints Committee made allegations that a legal practitioner, Peter John Sorensen, had contravened the *Legal Practice Act 2003* (WA) and the *Legal Practice Board Rules 2004* (WA), that he had failed to properly maintain his firms trust records, that he requested his auditor to issue an unqualified accountant's certificate and that he misled the Legal Practice Board by forwarding an accountant's certificate which was, in the circumstances, misleading.

2           The Committee and the practitioner reached agreement as to the material facts, and as to a proposed disposition of the complaint. They filed a minute of proposed consent orders accordingly. On reading the agreed facts recited in the minute, and the proposed penalty, the Tribunal was concerned as to the adequacy of the penalty. In particular, the Tribunal was concerned that the proposed penalties may not achieve the purposes which underlie the imposition of penalties in vocational disciplinary proceedings. Accordingly, it declined to make the orders by consent. Rather, the parties were provided with an opportunity to justify the proposed penalties.

3           The parties identified a number of additional factors which led to the decision to propose the orders by consent. The Tribunal examined those additional matters and reached the conclusion that, in all the circumstances, it should not interfere with the settlement achieved by the parties. Accordingly, it made orders in terms of the proposed consent orders.

***The issue for determination***

4           The parties to these proceedings proposed orders by consent. The issue for determination by the Tribunal is whether the proposed orders should be made by the Tribunal, having regard to the nature of the practitioner's conduct, and the proper purposes of the imposition of disciplinary penalties.

***Background***

5           By an application made on 17 March 2009, the Legal Profession Complaints Committee (Committee) commenced proceedings in the Tribunal alleging that a legal practitioner, Peter John Sorensen, was, between about April 2004 and February 2007, guilty of unsatisfactory professional conduct by:

- (a) a contravention of the *Legal Practice Act 2003* (WA) and/or the *Legal Practice Board Rules 2004* (WA);
- (b) failing to properly maintain his firm's trust records;
- (c) requesting his auditor, Mr Renting of RJ Renting & Co, to issue him/his firm with an unqualified form 20 - Accountants Certificate; and
- (d) by intentionally, alternatively recklessly, misleading or attempting to mislead the Legal Practice Board by forwarding the certificate which, in the circumstances was misleading, as to the state of his trust account records when he knew it was misleading or had reckless disregard for whether it was misleading or not.

6           When the matter came on for initial directions, the practitioner was represented by Mr T Stephenson of counsel. Mr Stephenson advised that there were difficulties in making contact with Mr Sorensen, who was living in a remote location in Sulawesi, Indonesia. The directions hearing was adjourned in order to enable Mr Stephenson to review certain documents and to enable Mr Sorensen to put in place arrangements to participate in the Tribunal's proceedings in a way which avoided unnecessary delay.

7           When the matter next came on for directions, the Tribunal was advised that the parties were close to agreement as to a proposed outcome of the proceedings, and that they sought a short time to finalise proposed consent orders.

8           On 30 April 2009, a minute of consent orders was filed by the parties. In accordance with the usual procedures of the Tribunal in vocational matters, the consent orders recited the material facts upon which the proposed substantive orders were based. The purpose of this requirement by the Tribunal is to ensure that where parties reach agreement as to orders to be made in vocational proceedings, some explanation of the basis for the orders should be publicly available. That is important both to enable members of the public to understand the outcome of vocational disciplinary proceedings, and also to inform the members of the vocation as to the penalties which are attached to particular conduct which breaches professional standards.

9           The proposed minute of consent orders reads as follows:

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

By a written agreement between the parties set out herein and dated 28 April 2009 the parties agreed the terms upon which the proceedings could be settled.

The parties have agreed the following relevant facts:

1. At all material times the practitioner was:
  - (a) a legal practitioner within the meaning of the *Legal Practice Act 2003* (**the Act**); and
  - (b) a sole practitioner practising under the name of Peter J Sorensen (**the practitioner**).
2. The practitioner was admitted to legal practice in Western Australia on 15 July 1998. Between 1 July 2004 and 29 October 2006 he practised law without a practice certificate.
3. At all relevant times the practitioner maintained a trust account (**the trust account**) within the meaning of section 3 of the Act.
4. Between about April 2004 and February 2007 the practitioner did not take any steps to:
  - (a) ensure that the trust account was administered adequately or at all;
  - (b) undertake reconciliations of the trust account as required by Rule 57 of the *Legal Practice Board Rules 2004* (**the Rules**);
  - (c) maintain his client's trust ledgers as required by Rule 52 of the Rules;
  - (d) ensure that the practitioner kept trust receipts or payment records as required by Rule 52 of the Rules; and/or
  - (e) ensure that the requirements of section 140 of the Act were complied with in relation to the trust account.
5. On about 27 October 2006, the Legal Practice Board (**the Board**) brought to the practitioner's attention the fact that he had been practising without a practice certificate since 30 June 2004.
6. On about 27 October 2006 the practitioner took steps to obtain a practice certificate by:

- (a) Completing and submitting an application form and paying the requisite fee to the Board; and
  - (b) Complying with the necessary Law Mutual requirements.
7. On or about 27 October 2006 the Board advised the practitioner that a Form 20 - Accountant's Certificate (the Accountant's **Certificate**) regarding his trust account was required pursuant to s.147 of the Act and Rule 58 of the Rules and until it was received, it would not issue any practice certificate.
8. On about 2 November 2006, the practitioner's trust account was audited by R J Renting & Co (**Renting & Co**) in order for an Accountant's Certificate to be issued to the practitioner for the periods 1 April 2004 to 31 March 2005 and 1 April 2005 to 31 March 2006.
9. On or about 2 November 2006, in a meeting with the practitioner, Mr Renting raised various concerns about the practitioner's trust account and informed the practitioner that he was obliged to issue qualified Accountant's Certificates and communicate the deficiencies in the operations of the practitioner's trust account to the Board.
10. The practitioner, improperly, requested that Mr Renting issue unqualified Accountant's Certificates because:
  - (a) he had to represent a client at court the following day;
  - (b) if Mr Renting provided a qualified Accountant's Certificate, the practitioner believed he would not be issued with a practice certificate; and
  - (c) without a practice certificate the practitioner believed he would not be able to represent his client who would be disadvantaged as a result.
11. It was improper for the practitioner to ask for unqualified Accountant's Certificates because:
  - (a) he had been told by Mr Renting that the deficiencies in the operations of his trust account would result in him issuing qualified Accountant's Certificates; and
  - (b) the practitioner knew or ought to have known that his trust account had not been properly maintained as he had failed to take the steps set out in paragraph 4 above.
12. Mr Renting advised the practitioner that in the interest of the practitioner's client he would issue unqualified Accountant's Certificates. On or about 2 November 2006, the Board received

2 unqualified Accountant's Certificates from Renting & Co for the practitioner's trust account for the periods 1 April 2004 to 31 March 2005 and 1 April 2005 to 31 March 2006.

13. By the conduct referred to above, the practitioner caused the Board to be provided with the Accountant's Certificates referred to in paragraph 12 hereof when he ought to have known that the Accountant's Certificates should not have been unqualified.
14. In reliance upon the unqualified Accountant's Certificates, the Board issued the practitioner with a practice certificate with effect from 30 October 2006 to 30 June 2007.

10 After reviewing the minute, the President constituted the Tribunal as required by s 11(4) of the *State Administrative Tribunal Act 2004* (WA) to consider whether the consent orders should be made. In considering that question, the Tribunal is always mindful of the need to ensure that any negotiated settlement of a vocational complaint properly meets the public interest which disciplinary penalties are designed to serve. The general principles applicable to determining the appropriate penalty in disciplinary proceedings were identified by Owen J in *Jemielita v Medical Board of Western Australia* (unreported, WASC, Library No 920584, 13 November 1992) at 146 - 147 when his Honour said:

The primary consideration is the public interest. The consequence of an adverse finding is drastic for the practitioner. The purpose of providing such a drastic consequence is not punishment of the practitioner as such but protection of the public. The public needs to be protected from delinquents and wrong doers within professions. It also needs to be protected from seriously incompetent professional people who are ignorant of basic rules and indifferent to rudimentary professional requirements. See *Pillai v Messiter* (No 2) (1989) 16 NSWLR 197 at 201.

There is also a need to maintain the high standards and good reputation of the profession generally in the eyes of the community: See *Ziderman v General Dental Council* (1976) 1 WLR 330 at 333.

A further consideration is the need to deter others who may be of a like mind to transgress in the future: See *Giordano v Medical Board* (1983-84) 36 SASR 83 at 87.

11 On reading the minute of proposed orders, the Tribunal had two principal concerns. The first was that the agreed facts suggested that the finding which the Tribunal was invited to make in par 1(d) of the proposed orders was that Mr Sorensen had 'recklessly' misled the Board. The agreed facts suggested that the practitioner had specifically requested the auditor to issue a misleading accountant's certificate specifically for

the purpose of ensuring that the Board would issue a practice certificate, presumably because the practitioner believed that it would not do so if it were to receive a qualified accountant's certificate. The agreed facts also suggested that the practitioner then submitted the unqualified accountant's certificates to the Board in order to obtain his practice certificate. It was not apparent to the Tribunal how that conduct could be described as 'reckless' and not as 'intentional'.

12 The second concern which the Tribunal had was that, if it were the case that the practitioner had intentionally misled the Board, and had procured the auditor to falsify the accountant's certificate to that end, the conduct was of a seriousness which suggested that a fine of \$5,000, even with the limitation on the practitioner's future practice certificate, appeared to be an inadequate response to the conduct.

13 Accordingly, the Tribunal indicated to the parties that it was not prepared to make the orders sought by consent on the basis of the information then before it. The Tribunal invited the parties to explain or justify the proposed orders, and the matter was listed for that purpose.

#### *Additional submissions*

14 Counsel for the Board advised that these proceedings were related to earlier proceedings brought by the Committee against the practitioner in matter VR 52 of 2007. Those proceedings concerned a complaint against the practitioner for practicing without a practising certificate between 30 June 2004 and October 2006. Those proceedings had resulted in the practitioner paying a fine of \$3,500, and costs fixed at \$1,500. The events the subject of these proceedings all arose out of circumstances surrounding Mr Sorensen's attempts to remedy the situation which gave rise to the proceedings in VR 52 of 2007. Counsel indicated that the present application could well have been brought as part of the application in VR 52 of 2007, or at least at the same time, and that regard should be had to the outcome of VR 52 of 2007 addressing the totality of the penalties imposed upon Mr Sorensen as a result of the events which occurred during late 2006.

15 Counsel also advised that Mr Sorensen had a very limited practice. He practised as a sole practitioner, but the Board's enquiries in late 2006 indicated that he had acted for only some seven clients. While he maintained a trust account, during the period to which the audit certificates related, there had been only a few minor transactions on the trust account. There was no suggestion of any irregularity in the way that

Mr Sorensen handled clients' money or kept the accounts, save for some deficiencies of a bookkeeping nature.

16       The Board took the view that, to the extent that the complaint related to failures to properly maintain his trust account, the public interest was protected by the proposed order that, for a period of 2 years, Mr Sorensen's practice would be limited to practice only as an employed solicitor. He would therefore not have primary responsibility for the maintenance for the trust account. To the extent that, after that period, Mr Sorensen might seek an unrestricted practice certificate, Counsel indicated that the Board would, under current legislation, have the power to continue to impose a restriction if it were not satisfied that Mr Sorensen had had an opportunity to learn and properly understand the requirements for maintenance of a trust account.

17       With respect to the misleading conduct, Counsel for the Board suggested that the Board was satisfied with the finding that the conduct was reckless in the sense that it accepted that he simply did not think through the consequences of his action. The Board noted that the qualified accountant certificate which should have been submitted to the Board would not, in any event, have caused the Board to decline to issue a practice certificate. Notwithstanding the Board's submission, we remain of the view that the description of his conduct as reckless is not open on the facts as agreed. The fact that the misleading conduct was not necessary to achieve the end which the practitioner sought to achieve seems to us to be irrelevant. It is the purpose of the conduct, even if it is based on a mistaken view as to the need for the conduct, which is material.

18       Counsel for the Board also indicated that the Board was mindful of the fact that Mr Sorensen, by agreeing the outcome of the proceedings, had acknowledged his error and thereby shown insight into the nature of his conduct. The Board submitted that, given the practical difficulty of proceeding against Mr Sorensen because of his apparently limited access to telecommunication facilities, and the uncertainty as to whether he is likely to return to Australia, the settlement negotiated was, in the circumstances, appropriate. Counsel acknowledged that a fine of \$5,000 would be 'at the low end of the range' of penalties that might be imposed for the conduct of the nature involved in this case, but submitted that it did not fall outside that range.

19       Counsel for Mr Sorensen submitted that while Mr Sorensen is a man of mature years, he obtained his legal qualifications relatively late in life.

He was admitted to practice in July 1998. Counsel submitted that he was a relatively inexperienced practitioner who had not had the benefit of any lengthy period of supervision or guidance from a more experienced practitioner.

20 Mr Stephenson submitted that it was important to note that the motivation for seeking the accountant's certificate was to ensure that Mr Sorensen could represent a client at court the following day. It was submitted that it was not so much a matter of self interest, so much as a sense of obligation to the client, and his client's interest, which motivated the conduct. He further submitted that a fine of \$5,000 with costs fixed at \$1,500 would in fact be a substantial penalty to Mr Sorensen who has limited financial means, and is involved in litigation in Indonesia with a former business partner over events which have had a detrimental effect on his financial position. Counsel submits that when viewed with the penalty imposed in VR 52 of 2007, the costs payable in relation to that matter, and the costs proposed in relation to this matter, the penalty of a fine of \$5,000 is sufficient, in the circumstances, to demonstrate the unacceptability of the practitioner's conduct and to deter others from similar conduct.

### ***The Tribunal's conclusions***

21 It is important that legal practitioners observe the highest standards of honesty and propriety. That is so regardless of the size and nature of a lawyer's particular practice, and the requirement applies notwithstanding that dishonesty may serve a client's interest. Any dishonesty in connection with the practice of law should be met with a significant penalty. The intentional misleading of a registration authority might usually be expected to attract a penalty not less severe than suspension of a practice certificate. It was on that basis that the Tribunal's preliminary response to the minute of consent orders was that the penalty opposed did not adequately reflect the seriousness of the conduct.

22 In the circumstances of this case, however, we have decided that we should not decline to impose the penalties agreed between the Committee and the practitioner. There are several reasons for this. The first is that, notwithstanding that the conduct complained of occurred at the same time as, and was related to, the matters in proceedings VR 52 of 2007, the practitioner has been called upon to deal with a separate application to the Tribunal to resolve issues which might have been resolved in one set of proceedings or at least at the same time as the other application. Notwithstanding his absence from Australia and difficulties with

communication, the practitioner has obviously cooperated with the Committee in relation to these proceedings and facilitated the early resolution of the proceedings. That is to his credit, and does demonstrate an acceptance of his wrongdoing and some insight into his conduct.

23 We accept that the penalty of \$5,000 together with an obligation to pay costs of \$1,500 is likely to be a significant imposition on the practitioner. The amount of the fine must be seen in context of the practitioner's agreement to a restriction on his practice certificate which effectively deprives him of his right to practise on his own account. That aspect of the orders effectively suspends him from practising on his own account for a period of two years.

24 The Committee was no doubt mindful of the practical difficulties of conducting a fair hearing if the matter were to proceed, given the undoubted communication difficulties arising from the practitioner living in a remote location in Sulawesi, Indonesia. It is to the practitioner's credit that the settlement avoids the Committee incurring significant costs of proceeding to a hearing of the matter.

25 In all the circumstances, we consider that the making of the orders would not fail to meet the public interest which the principles underlying vocational disciplinary proceedings seek to serve. While we are not prepared to describe the finding in relation to misleading conduct as 'reckless' we are otherwise content to make the findings proposed by the parties on the basis of the materials before us, and for the reasons explained above, to impose the penalties agreed by the parties.

### ***Orders***

1. Peter John Sorensen (the practitioner) was between about April 2004 and February 2007 guilty of unsatisfactory professional conduct by:
  - (a) a contravention of the *Legal Practice Act 2003* (WA) and/or the *Legal Practice Board Rules 2004* (WA);
  - (b) failing to properly maintain his firm's trust records;
  - (c) requesting his auditor, Mr Renting of RJ Renting & Co, to issue him/his firm with an unqualified form 20 - Accountants Certificate; and

- (d) by misleading the Legal Practice Board by causing Accountant's Certificates to be forwarded to the Legal Practice Board which were inaccurate as to the state of his trust account records for the periods 1 April 2004 to 31 March 2005 and 1 April 2005 to 31 March 2006.
2. With respects to findings (a) and (b) it be a condition of the issuing of the practitioner's practice certificate for a period of two years from the date of this order that he shall practise only as an employed solicitor.
  3. With respect to findings (c) and (d) the practitioner pay a fine to the Legal Practice Board in the sum of \$5,000.
  4. The practitioner pay the applicant's costs fixed in the sum of \$1,500.
  5. The amounts specified in orders 3 and 4 are to be paid to the Legal Practice Board by the practitioner within 90 days or as agreed by the Legal Practice Board.

I certify that this and the preceding [25] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUSTICE J A CHANEY, PRESIDENT**