
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : LEGAL PROFESSION ACT 2008 (WA)

CITATION : LEGAL PROFESSION COMPLAINTS
COMMITTEE and LAWSON [2021] WASAT 152 (S)

MEMBER : JUDGE H JACKSON, DEPUTY PRESIDENT
MR D AITKEN, SENIOR MEMBER
DR E MARILLIER, MEMBER

HEARD : DETERMINED ON THE DOCUMENTS

DELIVERED : 22 JUNE 2022

FILE NO/S : VR 60 of 2019

BETWEEN : LEGAL PROFESSION COMPLAINTS
COMMITTEE
Applicant

AND

RICHARD JAMES LAWSON
Respondent

Catchwords:

Vocational regulation - Legal practitioners - Professional misconduct - False and misleading statements to client, Legal Profession Complaints Committee, Legal Practice Board and Supreme Court - False and misleading statements about junior practitioner - Penalty, costs and compensation order - Report to Supreme Court with recommendation that name of practitioner be removed from local roll of practitioners - Order that practitioner pay applicant's costs - Scope of jurisdiction to make compensation orders

Legislation:

Legal Profession (State Administrative Tribunal) Determination 2018
Legal Profession (State Administrative Tribunal) Determination 2020
Legal Profession Act 2008 (WA), s 438, s 438(2), s 438(2)(a), s 438(4)(a),
s 438(4)(b), s 439, s 440, s 441, s 448, s 449(1)(a)
State Administrative Tribunal Act 2004 (WA), s 60(2), s 87, s 87(2)

Result:

The Tribunal to make and transmit a report to the Supreme Court (Full Bench) with a recommendation that the name of the practitioner be removed from the roll of persons admitted to the legal profession under the LP Act.
The practitioner to pay the applicant's costs fixed at \$71,890.40.
Application for compensation order dismissed.

Representation:

Counsel:

Applicant : N/A
Respondent : N/A

Solicitors:

Applicant : Legal Profession Complaints Committee
Respondent : Lawson Legal

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

Bristol Custodians Ltd v Chief Commissioner of State Revenue (No 3)
[2013] NSWADT 171
Fasham Johnson Pty Ltd v Ware and Saunders [2004] VCAT 1708
Fletcher v The Salvation Army Australia [2006] VCAT 740
Khosa v Legal Profession Complaints Committee [2017] WASCA 192
Legal Profession Complaints Committee and Chang [2019] WASAT 67 (S)
Legal Profession Complaints Committee and in de Braekt [2012]
WASAT 58 (S); (2012) 80 SR (WA)
Legal Profession Complaints Committee and Lawson [2021] WASAT 152
Legal Profession Complaints Committee and Metaxas [2021] WASAT 82 (S);
(2022) 105 SR (WA) 81
Legal Profession Complaints Committee and Wroughton [2013]
WASAT 1919

Medical Board of Australia and Alizadeh [2007] WASAT 69
Medical Board of Western Australian and Roberman [2005] WASAT 81 (S)
Mihelcic v Toll Tasmania [2007] VCAT 1312
Quinlivan v Legal Profession Complaints Committee [2012] WASCA 263 (S)
Western Australian Planning Commission v Questdale Holdings Pty Ltd [2016]
WASCA 32; (2016) 213 LGERA 81
Young v Legal Profession Complaints Committee [2022] WASCA 52

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction, Constitution of the Tribunal, Procedural History, Overview of Relevant issues and Result

1 On 30 November 2021 the Tribunal published its reasons for
decision in *Legal Profession Complaints Committee and Lawson*
[2021] WASAT 152 (*Lawson; Primary Decision*).

2 These reasons are supplemental to the Primary Reasons and should
be read together with them. In these reasons we use terminology and
acronyms designed to anonymise certain persons that are consistent with
the Primary Reasons.

3 The Primary Reasons were published by the Tribunal as constituted
by Judge Parry, Senior Member Aitken and Member Marillier, who
heard the matter on 1 September and 12-16 and 21 October 2021.

4 The Primary Reasons record that the Tribunal found that the
respondent, Richard James Lawson (**practitioner**) had engaged in nine
counts of professional misconduct pursuant to s 438 of the *Legal*
Profession Act 2008 (WA) (LP Act).

5 By the Primary Reasons, the Tribunal also made orders for the filing
and serving of submissions in relation to penalty and costs and the listing
of the matter for directions on 1 February 2022.

6 On 31 January 2022, the parties consented to the making of orders
which vacated the directions hearing on 1 February 2022, provided for
the applicant to file and serve submissions in reply, and for the issues of
penalty and costs to be determined entirely on the documents, pursuant
to s 60(2) of the *State Administrative Tribunal Act 2004 (WA)*
(**SAT Act**).

7 Judge Parry retired with effect from 1 February 2022.
Judge Jackson was appointed to the position of Deputy President of the
Tribunal with effect from 31 January 2022.

8 These reasons have been prepared by a reconstituted Tribunal
comprising of the original two members, Senior Member Aitken and
Member Marillier, and Judge Jackson instead of Judge Parry.

9 Unless otherwise indicated, all subsequent references to 'the
Tribunal' and statements to the effect that 'we' are of a particular view as

well as references to 'our decision' are references to the reconstituted panel of Judge Jackson, Senior Member Aitken and Member Marillier.

10 These reasons are concerned with the issues of penalty, costs and an application for an order as to compensation.

11 The orders made on 31 January 2022 do not include in the list of relevant issues for determination an application for a compensation order notwithstanding that on 25 January 2022, solicitors for JR applied informally (by letter) for an order that the practitioner pay JR an unstated sum by way of compensation. JR is a former employee of the practitioner who was the subject of false and misleading representations made by the practitioner to the applicant and to the Legal Practice Board (**Board**) which were the subject of Grounds 7 and 8.

12 JR's application was copied to the parties. Both parties subsequently made submissions (albeit that the applicant's submissions of 4 February 2022 were in 'reply'), and neither of them addressed the application for compensation by JR.

13 The Tribunal has determined to accept the application and to determine the issue.

14 For the reasons set out below, and having had regard to the Primary Reasons as well as the written submissions and other materials provided by the parties and JR, we have determined that:

- (a) the appropriate penalty to be imposed is an order that the Tribunal make and transmit a report to the Full Bench of the Supreme Court with a recommendation that the name of the practitioner be removed from the local roll;
- (b) the practitioner is to pay the applicant's costs fixed in the sum of \$71,890.40; and
- (c) the application by JR that the practitioner pay her compensation is dismissed.

Restatement of the nature of the practitioner's conduct

15 It is convenient to briefly restate the nature of the practitioner's conduct which, by the Primary Reasons, the previously constituted Tribunal found constituted professional misconduct in relation to each of the nine grounds.

16 Of those nine grounds, all but Ground 6 concern the making of false
and misleading statements in circumstances where the practitioner
intended the recipient of the statement to be misled.

17 Grounds 1 and 3 concerned the preparation and issuing of an
itemised account to the practitioner's client (CL) for sums of ~\$27,500
(**disputed fees**) in circumstances where it was found that the itemised
account was false in that the practitioner claimed to have done work
(and a considerable amount of work) that he had not in fact done and
knew he had not done.

18 Grounds 4 and 5 concerned the swearing and filing of an affidavit
and the filing of a bill of costs in the Supreme Court, both of which were
associated with the disputed fees, and both of which were found to have
been false and misleading, effectively, for reasons that correspond with
those for Grounds 1 and 3.

19 Grounds 2, 7, 8 and 9 concerned the sending of correspondence to
the applicant (Grounds 2, 7 and 9) and the Board (Ground 8) which, in
each case, were also associated with the disputed fees and in each case
were found to have been false and misleading.

20 As noted above, Grounds 7 and 8 concerned false and misleading
statements regarding JR, who had done the vast majority of the work for
which the practitioner falsely claimed credit and sought payment for.

21 JR had been approached by the applicant as part of its investigation
into complaints made against the practitioner by CL and she had done no
more than answer the applicant's questions honestly and fairly. In order
to discredit JR's answers to the applicant, which were contrary to the
answers given by the practitioner, he alleged that her employment had
been terminated¹ for unprofessional conduct and also that the answers
given by JR to the applicant amounted to a fabrication by a problematic
employee 'with a history of psychological problems'. The Tribunal held
that there was no basis for those allegations, which were false and
misleading and intended to mislead the applicant.

22 The exception to the general statement that all of the grounds
concerned allegations of false and misleading statements is Ground 6,
which concerns a failure to promptly refund to CL the sum of

¹ At the time of the work in question, JR had been performing work for the practitioner on an unpaid basis. She was later employed by the practitioner and it was the termination of this employment that was the subject of false statements by the practitioner.

approximately \$5,000 being the difference between the original invoice and the bill of costs. Ground 6 was admitted by the practitioner.

The position of the parties as to penalty, costs and compensation

23 In short, the applicant seeks an order that the Tribunal make and transmit a report to the Full Bench of the Supreme Court with a recommendation that the practitioner's name be removed from the local roll of practitioners. The applicant also seeks an order that the practitioner pay the applicant's costs of the proceeding fixed in the amount of \$71,890.40.

24 Initially, the applicant also sought an order that the practitioner's local practising certificate be suspended pending the determination of recommendation as to strike off. However, the subsequent submissions of the practitioner advised that he had ceased legal practise upon the advice of his general practitioner and submitted that, therefore, the proposed suspension of his practising certificate 'is moot'. Accordingly, by way of submissions in reply, the applicant advised that it no longer sought an order of suspension.

25 The practitioner made no submissions in relation to the substantive penalty. In response to the submission by the applicant for an order as to its costs, the practitioner advised that he was, effectively, unemployed, had applied for a Centrelink pension, has no income with which to satisfy any costs orders made and that it would be unduly harsh or onerous to make such a costs order. In support of those submissions various financial documents were put to the Tribunal.

26 Finally, as noted above, an application was made on behalf of JR for a compensation order which was supported by submissions contained in the same letter that sought the order. No submissions were made as to a particular quantum sought.

Relevant legal principles as to penalty

27 Section 438(2) of the LP Act provides that the Tribunal may, after it has completed a hearing in relation to a referral under Part 13 of the LP Act in respect of an Australian legal practitioner, either make and transmit a report to the Full Bench of the Supreme Court on its finding that the practitioner is guilty of, amongst other things, professional

misconduct² or make any one or more of the orders specified in sections 439, 440³ and 441.

28 Amongst other things, s 439 of the LP Act permits the Tribunal to order that a local practising certificate be suspended for a specified period of time or cancelled, to make an order publicly reprimanding the practitioner, and to make an order that certain specified conditions be imposed on the practitioner's practising certificate.

29 The principles to be applied in determining the appropriate disciplinary sanctions are well established and were set out by the Court of Appeal in *Khosa*.⁴ Those principles include the following:

- (a) The Tribunal's jurisdiction in this regard is not to be exercised for the purpose of punishing the relevant practitioner but, rather, for the protection of the public and the maintenance of the reputation and standards of the legal profession;
- (b) The protection of the public includes both general deterrence of other practitioners who might otherwise be tempted to engage in the relevant conduct as well as deterrence personal to the relevant practitioner;
- (c) Where the Tribunal concludes that a practitioner is presently unfit to practise, a choice is presented between the alternatives of suspension and striking off. An order for suspension in those circumstances may only be made on the basis that, at the termination of the period of suspension, the practitioner will no longer be unfit to practise because, at that time, the practitioner's name will still be on the roll of practitioners and they may resume practise;
- (d) Suspension is a serious form of discipline which is usually imposed to discipline the legal practitioner, who has committed an act of unprofessional conduct but who, in the opinion of the Tribunal, at the end of the period of suspension, will be a fit and proper person to practise law;
- (e) In the context of suspension, present unfitness to practise may be understood to include a serious breach of professional obligations reflecting, to a significant degree, upon the practitioner's fitness to practise;

² Section 438(4) provides that a report forwarded under s 438(2)(a) may include either or both of a record of the evidence taken at the hearing and a recommendation that the name of the practitioner be removed from the local roll of practitioners.

³ Section 440 concerns orders requiring implementations in another jurisdiction and is therefore irrelevant to these proceedings.

⁴ *Khosa v Legal Profession Complaints Committee* [2017] WASCA 192 at [188] - [195].

- (f) However, where the Tribunal finds that the practitioner's present unfitness to practise reveals or discloses that the practitioner, in fact, lacks the character and trustworthiness necessary to discharge his or her obligations of legal practice or the practitioner is permanently or indefinitely unfit to practise, striking off will ordinarily be the appropriate response rather than suspension;
- (g) In seeking to understand the difference, it will be relevant to consider whether the practitioner appreciates or otherwise the impropriety of his or her conduct because a lack of appreciation of impropriety and a lack of insight increases the risk of recurrence of the improper conduct;
- (h) Fitness to practise for the purpose of penalty is to be determined at the time of the relevant hearing and not at the time of the misconduct.

30 As was said in the recent decision of the Tribunal in *Metaxas*:⁵

In summary, where an order for removal from the roll is contemplated, the ultimate question is whether the impugned conduct of the practitioner and all of the surrounding circumstances demonstrates that the practitioner is not a fit and proper person to remain a member of the legal profession. Where the conduct of the practitioner indicates that they lack the qualities of honesty and integrity, striking off is likely to be the penalty because those character deficiencies are unlikely to be remedied during a period of suspension. In contrast, suspension would generally be appropriate where:

- (a) the Tribunal considers that although the practitioner has fallen below the high standards required of a practitioner, the circumstances are such that [the Tribunal is satisfied that] their current unfitness to practise will be overcome during a period of suspension; or
- (b) although the practitioner is thought to be fit to practise, the seriousness of the practitioner's conduct [in this particular case] is such that the appropriate outcome is a period of suspension in order to protect the public, through general deterrence, and otherwise maintain the standards of the profession.

Determination as to penalty

31 As indicated above, the Tribunal has determined that the appropriate penalty is to order that the Tribunal make and transmit a report to the Full Bench of the Supreme Court with a recommendation that the name of the practitioner be removed from the local roll of

⁵ *Legal Profession Complaints Committee and Metaxas* [2021] WASAT 82 (S) at [15].

practitioners. We are of that view having regard to the following matters of relevance.

32 First, as indicated above, 8 of the 9 findings of professional misconduct were for knowingly seeking to mislead CL, the Supreme Court, the applicant and the Board.

33 With regard to Grounds 1 and 3, which concerned the preparation and issuing of an itemised account, the Tribunal found at [83] of the Primary Reasons that:

the practitioner's conduct was grossly unfair to CL and involved serious dishonesty and therefore serious impropriety affecting his character, which is indicative of a failure either to understand or to practise the precepts of honesty and fair dealing that are essential to the privilege and responsibilities of legal practice.

34 In relation to Grounds 4 and 5, the Tribunal noted that to intentionally seek to mislead a court is 'self-evidently serious professional misconduct'.⁶

35 At [103] of the Primary Reasons, in relation to Ground 2, the Tribunal found that the conduct involved:

serious dishonesty and therefore serious impropriety affecting his character, which is indicative of a failure either to understand or to practise the precepts of honesty and fair dealing which are essential to the privilege and responsibilities of legal practice. It also "undermine[d] the authority of a regulatory body" [being the applicant] to effectively investigate the complaint made by CL ... and thereby to seek to protect the public in their dealings with lawyers and to maintain the reputation and standards of the legal profession.⁷

36 The Tribunal agrees with the applicant's submissions that the findings at paragraph [103] of the Primary Reasons in relation to Ground 2 are equally applicable to Grounds 7 and 9.

37 The second point of relevance is that the dishonesty the subject of Grounds 1 to 5 and 7 to 9 cover a lengthy period of time. Ground 1 alleges the creation of a false and/or misleading itemised account dated 6 August 2011. Ground 9 alleges the preparation and sending of a letter to the applicant dated 13 November 2017. That is, the practitioner's dishonesty extended over a period of more than six years.

⁶ *Lawson* at [110].

⁷ Internal references omitted.

38 Indeed, and this is the third matter of relevance, the practitioner's dishonesty extended to the evidence given by him at the hearing before the previously constituted Tribunal. There are several instances at which the Primary Reasons record the finding that the practitioner had been dishonest in his evidence at the hearing. At [63] of the Primary Reasons, the Tribunal found:

[the practitioner] is not a truthful and credible witness in relation to any of the evidence he gave to the Tribunal in this matter, and we consequently do not accept any of his testimony unless it is consistent with other evidence we accept.

39 The fourth relevant matter is that the practitioner's dishonesty extends across several different fora. As noted above, the Primary Reasons record findings that the practitioner had been dishonest in his dealings with his client, CL, the applicant, the Board and, finally, the (previously constituted) Tribunal itself.

40 The fifth relevant matter is that the practitioner, when confronted with evidence inconsistent with his version of events as put forward by JR, sought to discredit JR in the manner described above. That is, the practitioner impugned JR's character by alleging that she had been dismissed from his employment for unprofessional conduct, that she had been a problematic employee with a history of psychological problems and that her version of events was a total fabrication.

41 Such an approach, in our view, goes well beyond dishonesty (by which we ought not be understood to diminish the significance of a finding of dishonesty).

42 The practitioner was an experienced legal practitioner whilst JR was, at the time of her employment, a new graduate from law school and at the time of the investigation remained a very junior practitioner. For a senior practitioner to falsely impugn the competence and honesty of a junior practitioner at the start of her legal career was utterly disgraceful and we condemn it in the strongest possible terms.

43 The sixth relevant matter is that the practitioner successfully engaged his wife in his falsity and deception. Grounds 7 and 8 concern the preparation and sending of a letter dated 28 May 2017 to the applicant

(Ground 7) and the Board (Ground 8) together with a witness statement dated 30 April 2017⁸ from the practitioner's wife (ML).

44 At [119] of the Primary Reasons, the previously constituted Tribunal found that ML's witness statement contained the statement that JR's employment 'was terminated due to unsatisfactory conduct and financial concerns. She departed Lawson Legal in a disgruntled manner and since, refuses to acknowledge me in public' which was false. The Tribunal found (at [120]) that JR's employment was terminated solely or primarily because she wanted a pay rise which Lawson Legal was unable to provide.

45 The seventh relevant matter is that the practitioner's dishonesty involved an attempt to obtain a personal benefit at the expense of his client, to whom he owed fiduciary duties to pursue his client's interests at the expense of his own.

46 The eighth relevant matter is that the practitioner has shown no remorse for his behaviour.

47 As was noted by the Court in *Khosa*, remorse is mitigating and the absence of remorse is not aggravating. However, the absence of remorse is relevant in determining the appropriate penalty.

48 We note also, as reiterated in *Khosa*, that the practitioner was entitled to contest the matter before the Tribunal and to require the applicant to prove that he was guilty of professional misconduct. However, in doing so, the practitioner is not entitled to any mitigation which would flow from a plea of guilty and the consequential indication of remorse which that would demonstrate.

49 The ninth relevant matter is that the practitioner appears to lack any insight into the error of his behaviour. None was indicated by the practitioner in his defence of the allegations. Again, we reiterate that he had a right to take that course of action but the corollary of it is that nothing indicating insight was put to the previously constituted Tribunal.

50 Equally, the practitioner's decision to refrain from making any submissions as to penalty means that there is nothing before us that indicates he has any such insight.

⁸ At [5] of the Primary Reasons, Ground 7 dates ML's statement as 23 May 2012, whereas at [115] it is dated as 30 April 2017. The latter date is correct; Exhibit 3, pages 470-472.

51 The tenth relevant matter is that, as noted by the applicant in its
submissions, the practitioner cannot be said to have a clean record in
relation to disciplinary action for dishonesty. In VR 104 of 2015, orders
were made on 29 August 2016 which provided for the suspension of the
practitioner's local practising certificate for a period of six months for
misconduct, which included the sending of an email to the brother of a
client which was false and misleading as well as intimidating
and threatening.

52 Again, the Tribunal proceeds on the basis not that the prior
disciplinary action amounts to an aggravating factor but, rather, that there
can be no mitigation for the practitioner on the basis of a clean record.

53 The applicant's submissions also note that the conduct the subject
of Ground 7 occurred on 28 May 2017, only a couple of months after that
period of suspension had concluded. As noted above, in *Khosa* the Court
held that suspension is a suitable penalty in circumstances where the
Tribunal is satisfied that at its conclusion the practitioner will be fit to
practise. Unfortunately, that did not eventuate in this case. In our view
this fortifies our conclusion that striking off is the appropriate sanction.

54 Taking all of those matters into account, we are satisfied that the
appropriate penalty is for an order that the Tribunal make and transmit a
report on the finding to the Full Bench of the Supreme Court pursuant to
s 438(2)(a) of the LP Act.

55 In our view that follows from the conclusion that the practitioner
has demonstrated that he is unfit for practise by engaging in dishonest
behaviour over a lengthy period of time and across several different fora
where the dishonest behaviour was designed to achieve a personal
benefit at the expense of his client. So much, in our view, would be
sufficient to warrant a recommendation that he be struck off. But as
noted above, he also involved his wife in his dishonesty which involved
the deliberate smearing of a young practitioner's reputation in order to
further pursue his dishonest ambition.

56 In our view, all of that, together with the failure of the practitioner
to appreciate the impropriety of his conduct or express any form of
remorse for it, requires a conclusion that he, 'lacks the character and
trustworthiness necessary to discharge the responsibilities of legal
practice [and] ... is permanently or indefinitely unfit to practise'.⁹

⁹ *Khosa* at [192].

57 Accordingly, in our view striking off rather than suspension is the appropriate response.

58 Finally on the question of penalty, the Tribunal notes that there appears to be no need for specific or personal deterrence due to the voluntary cessation of practise by the practitioner. However, should it be necessary to do so, we make clear our view that the behaviour in question must be condemned in a manner which addresses the need for general deterrence, which in our view requires the penalty described above.

Costs

59 As noted above, the applicant seeks an order that the practitioner pay the applicant's costs of the proceeding fixed in the amount of \$71,890.40.

60 The starting point in such an application is s 87 of the SAT Act, which states as follows:

- (1) Unless otherwise specified in this Act, the enabling Act, or an order of the Tribunal under this section, parties bear their own costs in a proceeding of the Tribunal.
- (2) Unless otherwise specified in the enabling Act, the Tribunal may make an order for the payment by a party of all or any of the costs of another party or of a person required to produce a document or other material on the application of the party under section 35.

61 As noted in *Questdale*,¹⁰ the effect of s 87(1) of the SAT Act is that each party in proceedings before the Tribunal is to bear its own costs, unless the Tribunal otherwise orders.

62 In *Roberman*¹¹ the Tribunal said that although the award of costs is a matter of discretion to be exercised in the circumstances of each case, where a regulatory body is successful in bringing a complaint of misconduct which justifies disciplinary action by the Tribunal, there will usually be a strong case for the exercise of that discretion in favour of the regulatory body.¹² That is because, as the Tribunal said, such regulatory bodies:

¹⁰ *Western Australian Planning Commission v Questdale Holdings Pty Ltd* [2016] WASCA 32 at [46] (per Murphy JA, Corboy J agreeing) and [51].

¹¹ *Medical Board of Western Australian and Roberman* [2005] WASAT 81 (S) (*Roberman*).

¹² *Quinlivan v Legal Profession Complaints Committee* [2012] WASCA 263 (S) (*Quinlivan*) at [10].

perform a function which promotes the public interest, and usually with limited resources. The financial burden of bringing disciplinary action if the body had no capacity to recover some or all of its costs may be such as to provide a disincentive to bring disciplinary action, or when brought, to ensure that the allegations against the practitioner concerned are properly and thoroughly presented. It is in the public interest that such bodies have an expectation that, if the allegations are made out, the offending professional will meet or at least contribute to the costs incurred in bringing the application.¹³

63 As was noted in *Quinlivan*, the observations of the Tribunal in *Roberman* have been cited with approval by the Court of Appeal several times. Most recently, in *Young*¹⁴ Buss P, (with whom Quinlan CJ and Beech JA relevantly agreed)¹⁵ repeated the relevant passages of the Tribunal in *Roberman* and the Court of Appeal in *Quinlivan* and said:

The proper exercise of the Tribunal's discretionary power under s 87(2) of the SAT Act to make an award of costs depends, of course, upon all the circumstances of the particular case. Ordinarily, as a matter of fact, the Tribunal will make an award of costs in favour of a regulatory body which is successful in bringing a complaint of misconduct in professional disciplinary proceedings. However, in each case, the discretionary power to make an award of costs must be exercised having regard to the circumstances of the particular case.

64 In this case, the applicant submits that it would be 'fair and reasonable for the practitioner to pay the applicant's costs in terms of the disbursements it has incurred in prosecuting the application' in light of 'the findings made by the Tribunal concerning the practitioner's conduct and the public interest in pursuing that conduct by way of disciplinary proceedings'.

65 The respondent's submissions as to costs go no further than noting that 'the starting point in any consideration of costs is that each party bears their own' and submitting that 'this ought to be the determination of the Tribunal in this case'.

66 With respect, given the authorities set out above, that submission is unhelpful. The Tribunal accepts and proceeds on the basis that the starting point for it is the statutory presumption in s 87(1) of the SAT Act. Nonetheless, it is well accepted that there is public interest in the bodies such as the applicant bringing an action such as this against practitioners. There is also a well accepted expectation by bodies such

¹³ *Roberman* at [30].

¹⁴ *Young v Legal Profession Complaints Committee* [2022] WASCA 52 (*Young*) at [261].

¹⁵ *Young* at [1].

as the applicant that if the allegations are made out, the 'offending professional will meet or at least contribute to the costs incurred in bringing the application.' Such well accepted propositions take the matter further than the starting point and cannot be dismissed or ignored by simply referring back to the starting point.

67 In our view, there was plainly a public interest in the applicant investigating the complaints and prosecuting the case against the practitioner. We also endorse the principles first set down in *Roberman* and, on that basis, find that there is a 'strong case for the exercise of [the Tribunal's] discretion in favour of [the applicant]'.
68

In our view, it is appropriate that the practitioner contribute to the costs incurred in bringing the application.

69 In that regard, we note that the applicant:

- (a) does not seek any costs in respect of its own legal officer's time in relation to the matter;
- (b) does not seek recovery of senior counsel's fees for her work in relation to the substituted Annexure A filed on 3 August 2020;
- (c) does not seek recovery of fees of junior counsel for her work in relation to the closing submissions; and
- (d) seeks only its disbursements by way of payments made to senior counsel, as well as its costs in relation to the application filing fee and the costs of transcripts for the hearing.

70 We accept that the costs associated with obtaining the transcript (being \$8,921.40) were necessary for the preparation of the applicant's written closing submissions.

71 We also accept that the costs claimed in relation to senior counsel's fees are reasonable and an order should be made that the practitioner pay them.

72 In *in de Braekt*¹⁶ the Tribunal noted that its usual practice is:

to determine the amount of work which was reasonable and necessary to properly prepare and present the case and then to apply, as a useful guide as to the maximum rates which might be allowed on a party/party basis, the relevant or daily rates specified in [the relevant Determination].

¹⁶ *Legal Profession Complaints Committee and in de Braekt* [2012] WASAT 58 (S) (*in de Braekt*) at [53].

73 In this case the applicant has prepared a table setting out the relevant disbursements and attached senior counsel's invoices.

74 In our view, there is nothing in those invoices which suggests the need to do anything other than accept them.

75 Senior counsel's fees of \$68,656.50 are based on an hourly rate of \$490 (inclusive of GST), which is lower than the relevant maximum hourly rate for senior counsel in the relevant costs Determinations.¹⁷

76 Further, we are of the view that the time recorded for the preparation of and presentation of the applicant's case was reasonable. Indeed, we agree with the handwritten note of an officer of the applicant, marked on the largest of senior counsel's invoices in support of the recommendation that the invoice be paid, that the invoice records a 'very reasonable time involved'. In circumstances where the hearing ran for four days and there were, in addition, written closing submissions as well as the attendance at a final hearing for which preparation was required, we are of the view that the costs incurred are very reasonable indeed.

77 Accordingly, an order should be made for the payment by the practitioner of the disbursements claimed by the applicant in the sum of \$71,890.40.

78 In so finding we note the submissions made on behalf of the practitioner that he is impecunious and that any order as to costs would be unduly harsh or onerous.

79 In our view the fact that an order as to costs would cause the practitioner to suffer financial hardship is not a reason to refrain from making such an order. That appears to be the position taken by other tribunals¹⁸ and is consistent with the principle that costs are awarded to compensate rather than to punish.¹⁹ Although previous decisions of this Tribunal do not appear to have always taken a consistent position in this regard,²⁰ in

¹⁷ *Legal Profession (State Administrative Tribunal) Determination 2018* and *Legal Profession (State Administrative Tribunal) Determination 2020*. The Tribunal has previously indicated that while those Determinations, strictly speaking, only apply to the regulation of fees between the lawyer and client in the absence of a written costs agreement, they provide a useful guide to rates which might be allowed in such matters. *in de Braekt* at [53]; *Legal Profession Complaints Committee and Chang* [2019] WASAT 67 (S) (*Chang*) at [126].

¹⁸ *Mihelcic v Toll Tasmania* [2007] VCAT 1312 at [33]; *Fasham Johnson Pty Ltd v Ware and Saunders* [2004] VCAT 1708 at [14] - [15]; *Fletcher v The Salvation Army Australia* [2006] VCAT 740 at [15]; *Bristol Custodians Ltd v Chief Commissioner of State Revenue (No 3)* [2013] NSWADT 171 at [23].

¹⁹ *Questdate* at [51].

²⁰ See, for example, the different approaches in *Medical Board of Australia and Alizadeh* [2007] WASAT 69 at [36] and *Legal Profession Complaints Committee and Wroughton* [2013] WASAT 191 [S] at [22].

our view, the preceding matters support the approach taken by this Tribunal in *Alizadeh*, albeit that the follow passage, and particularly the reference to the ‘general rule’, must be read in light of the Court of Appeal’s subsequent decision in *Questdale*:

It is inevitable that the burden of such an order [i.e. an order that the practitioner pay the costs of the vocational regulator] will result in some degree of hardship to a respondent, unless, as may sometimes be the case, the burden falls on an insurer. That is not a reason to depart from the general rule. The liability for costs forms a significant part of the disincentive to conduct of this nature, and of the demonstration of the seriousness of the conduct ...

Application for compensation order

80 As noted above, JR has applied for a compensation order pursuant to s 448 of the LP Act. That section provides, relevantly, as follows:

- (1) A compensation order is an order made to compensate a person (the aggrieved person) for loss suffered because of conduct of an Australian legal practitioner that is the subject of a complaint by that person or is investigated by the Complaints Committee of its own initiative.
- (2) A compensation order consists of one or more of the following —
 - (a) ...;
 - (b) ...;
 - (c) an order that the practitioner pay to the aggrieved person, by way of monetary compensation for the loss, a specified amount.

...

- (5) A compensation order under subsection (2)(c) requiring payment of an amount exceeding —
 - (a) \$25 000, except where paragraph (b) applies; or
 - (b) \$10 000, where the order is made by the Complaints Committee,

is not to be made unless the aggrieved person and the practitioner both consent to the order.

81 From the above, it is plain that a compensation order can only be made by the Tribunal 'to compensate a person ... for loss suffered

because of conduct of an Australian legal practitioner' where such conduct is the subject of investigation by the applicant.

82 So much appears to be reiterated in the terms of s 449(1)(a) of the LP Act. That subsection as a whole provides as follows:

Unless the aggrieved person and the Australian legal practitioner agree, a compensation order is not to be made unless the ... Tribunal is satisfied —

- (a) that the aggrieved person has suffered loss because of the conduct concerned; and
- (b) that it is in the interests of justice that the order be made.²¹

83 In our view, the 'conduct concerned' is conduct that is the subject of a complaint and/or investigation by the applicant.

84 In this case, the loss relied upon by JR is said to be 'her period of unemployment'.²²

85 The letter in support of the application for a compensation order states that JR ceased employment with the practitioner on or about 15 June 2012 and did not recommence working as a solicitor until January 2013. It is said that she was 'uneasy at taking further employment' due, apparently, to her fear of the practitioner.

86 While we are sympathetic to the plight of JR for what she has suffered through the false claims about her made by the practitioner, following the termination of her employment, during the applicant's investigation of the practitioner and in her cross-examination before the Tribunal, we are of the view that the Tribunal lacks jurisdiction to make a compensation order in this case.

87 That is because, as previously found by the Tribunal in the Primary Reasons, the loss of her employment was due to the financial circumstances of Lawson Legal and not because of any conduct of the practitioner that was the subject of investigation by the applicant.

88 The conduct of the practitioner that was the subject of investigation by the applicant was his dishonesty. That dishonesty began in relation to the costs claimed by the practitioner against his client CL and included

²¹ Underlining added.

²² Letter dated 25 January 2022 to the Tribunal from Bennett + Co on behalf of JR.

dishonest statements about the circumstances in which JR's employment was terminated.

89 But any loss suffered by JR as claimed in her solicitor's letter is due to the termination of her employment which occurred due to the financial circumstances in which Lawson Legal found itself at the time. The loss as claimed was not due to the practitioner's dishonesty, which came after the termination of her employment. Equally, the extent to which she felt uneasy about regaining employment due to any fear of the practitioner is not loss caused by the action of the practitioner that was the subject of investigation by the applicant.

90 The practitioner's behaviour towards JR might otherwise be said to warrant sanction by way of a payment from the practitioner to JR. However, on the basis of the material put to the Tribunal on behalf of JR, we are not satisfied that the relevant statutory criteria are engaged and must therefore dismiss the application.

Orders

91 Accordingly, the orders the Tribunal will make are as follows:

1. Pursuant to s 438(2)(a) and s 438(4)(a) and (b) of the *Legal Profession Act 2008* (WA), the Tribunal is to make and transmit a report on the findings of the Tribunal in these proceedings to the Supreme Court (Full Bench) with both a record of the evidence taken at the hearing and a recommendation that the name of the respondent be removed from the roll of persons admitted to the legal profession under the *Legal Profession Act 2008* (WA);
2. Pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA), the practitioner is to pay the applicant's costs of the proceeding fixed in the amount of \$71,890.40, such costs to be paid to the Legal Practice Board of Western Australia (**Board**) within 30 days or as otherwise agreed between the practitioner and the Board; and
3. The application for compensation pursuant to s 448 of the *Legal Profession Act 2008* (WA) is dismissed.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

RM

Associate to Deputy President Judge Jackson

23 JUNE 2022