

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : FULL BENCH

CITATION : LEGAL PROFESSION COMPLAINTS
COMMITTEE -v- LEASK [2011] WASC 310

CORAM : MARTIN CJ
EM HEENAN J
JENKINS J

HEARD : 30 AUGUST 2011

DELIVERED : 15 NOVEMBER 2011

FILE NO/S : LPD 2 of 2010

BETWEEN : LEGAL PROFESSION COMPLAINTS
COMMITTEE
Applicant

AND

DAVID CHARLES LEASK
Respondent

Catchwords:

Legal practitioners - Disciplinary proceedings - Consent orders - Turns on own facts

Legislation:

Interpretation Act 1938 (WA)
Legal Practice Act 2003 (WA)
Legal Profession Act 2008 (WA)

Result:

Reasons given for consent orders

Category: B

Representation:

Counsel:

Applicant : Mr M E Herron
Respondent : Mr D R Clyne

Solicitors:

Applicant : Legal Profession Complaints Committee
Respondent : Mr D R Clyne

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

A Solicitor v The Council of the Law Society of New South Wales [2004] HCA 1; (2004) 216 CLR 253
Barristers' Board v Darveniza [2000] QCA 253; (2000) 112 A Crim R 439
In re Davis (1947) 75 CLR 409
Legal Practitioners Complaints Committee v De Pardo [2007] WASC 266
Legal Practitioners Complaints Committee v Lashansky [2007] WASC 211
Legal Practitioners Complaints Committee v Palumbo [2005] WASC 129
Legal Practitioners Complaints Committee v Thorpe [2008] WASC 9
Legal Profession Complaints Committee v Brennan [2010] WASC 198
Legal Profession Complaints Committee v Leask [2010] WASAT 133
Legal Profession Complaints Committee v Masten [2011] WASC 71
Re Maraj (a legal practitioner) (1995) 15 WAR 12
Ziems v Prothonotary of the Supreme Court of New South Wales [1957] HCA 46; (1957) 97 CLR 279

1 **JUDGMENT OF THE COURT:** The Legal Profession Complaints Committee (the LPCC) has lodged a motion with the court seeking an order that the name of David Charles Leask (the practitioner) be struck off the Roll of Practitioners (the Roll). However, in circumstances which we will explain, the LPCC no longer seeks that order, but instead moves the court for orders in the following terms:

1. Upon the respondent's undertaking not to apply for a practising certificate before 1 July 2015, then pursuant to s 439(b) of the *Legal Profession Act 2008* (WA), a practising certificate not be granted to the respondent before 1 July 2015.
2. Upon the application to the Legal Practice Board by the respondent for a practising certificate, the respondent provide:
 - (a) an affidavit sworn by an Australian legal practitioner stating that the respondent will be employed by the said legal practitioner who will supervise the respondent's work during the course of such employment; and
 - (b) a report from a medical practitioner regarding the respondent's fitness to hold a practising certificate.
3. Pursuant to s 439(c) of the *Legal Profession Act 2008* (WA), a condition be imposed on any practising certificate granted to the respondent restricting the respondent to supervised legal practice.
4. The application be otherwise dismissed.
5. The respondent pay the applicant's costs of the motion to be taxed.

2 The practitioner consents to an order in these terms. However, because the jurisdiction which the court exercises in respect of the supervision of legal practitioners is exercised primarily in the public interest, agreement between the LPCC and the practitioner as to the disposition of cases such as this, while relevant, will not be determinative of the proceedings. Rather, in every case, the court must form its own view as to the appropriate disposition. However, in this case, for the reasons which follow, the court agrees with the disposition proposed by the parties, and will make orders in those terms.

The report from the Tribunal

3 The court has received a report from the State Administrative Tribunal (the Tribunal) pursuant to s 438 of the *Legal Profession Act 2008*

(WA) (the Act). By reason of s 444 of the Act, that report is to be taken to be conclusive as to all facts and findings mentioned or contained in the report. As it happens, in this case, the Tribunal proceeded on the basis of a statement of agreed facts in which the practitioner admitted the allegations which had been made against him. We will turn shortly to those agreed facts.

The applicable legislation

4 The Act commenced operation on 1 March 2009. It repealed the *Legal Practice Act 2003* (WA) (the 2003 Act). The conduct of the practitioner which gave rise to the commencement of proceedings against him in the Tribunal by the LPCC occurred during the currency of the 2003 Act (*Legal Profession Complaints Committee v Leask* [2010] WASAT 133). However, the proceedings against him in the Tribunal were commenced under the Act. That course is permitted by s 621(3) of the Act. Neither party suggests that the regime which operated under the 2003 Act would be any different in its application to the conduct of the practitioner than the regime applicable under the Act. Accordingly, no question arises with respect to the accrual of rights under the repealed Act, pursuant to s 37 of the *Interpretation Act 1984* (WA).

Context

5 The practitioner is 56 years of age. He was born and lived in England until 1990 when he emigrated to Australia with his family. He was admitted to practise in Western Australia on 4 March 1992.

6 The practitioner served his articles with a small suburban firm, although his articles were transferred to a large city firm where he remained until December 1995. The practitioner rose to the position of Senior Associate with that firm, and had some tentative discussions with the members of that firm about the prospects of partnership. The practitioner then joined a smaller firm practising in Fremantle, where he remained until October 1998, when he set up practice on his own account under the name Leask & Co in Fremantle.

The agreed facts

7 The facts agreed between the LPCC and the practitioner can be summarised as follows.

The Mr B matter

8 In about September 1997, in his capacity as an employee of the firm in Fremantle to which we have referred, the practitioner received instructions from a client, Mr B, in respect of a claim for personal injuries suffered while travelling to work. Between September 1997 and October 1998, the practitioner gave advice to the client in respect of his rights generally, and in particular with respect to his entitlements under a policy of insurance issued by an insurance company.

9 As we have mentioned, in October 1998, the practitioner ceased employment and commenced to practise on his own account. About a year later, Mr B engaged the practitioner to act for him in place of the firm which had previously employed the practitioner. By then the insurer had refused to indemnify the client for losses arising from his injuries.

10 In November 1999, the practitioner gave written advice to Mr B in which he advised the commencement of proceedings in the District Court against the insurer. Between November 1999 and August 2000, the practitioner continued to negotiate with the insurer and to take various steps in the progress of Mr B's claim, including obtaining medical evidence as to the level of disability he sustained.

11 By letter dated 7 November 2001, the practitioner gave further advice to Mr B as to his prospects of success, and again recommended the commencement of proceedings against the insurer. Shortly thereafter, Mr B gave instructions to the practitioner to commence the proceedings that had been recommended.

12 However, the practitioner did not commence the proceedings until 19 February 2003, when a writ was issued in the District Court of Western Australia. The practitioner attempted to cause the writ to be served on the insurer by registered post, and although the writ was received by the insurer, it did not enter an appearance. However, the practitioner failed to take any further steps to ensure effective service of the writ, or to apply for judgment against the insurer in default of appearance, or indeed to take any further steps in relation to the prosecution of proceedings.

13 Some years later, in October 2005, the practitioner obtained a medical report on behalf of Mr B, and paid the fee required by the medical practitioner concerned.

14 Between 2003 and 2008, Mr B made numerous inquiries of the practitioner as to the state of his proceedings. During the course of their

telephone conversations, the practitioner made a number of representations to Mr B as to the state of the proceedings, including representations to the effect that the proceedings would be concluded within the next few weeks, and that a judgment of the court was imminent. These representations were made on eight occasions over the course of more than four years.

15 The practitioner accepts that the representations were made to Mr B at a time when he knew each of them to be false and/or misleading, and with the intention of deceiving and misleading Mr B as to the progress of the proceedings which he had commenced on his behalf.

16 Between December 2005 and February 2008, the practitioner made nine payments of \$1,000 and one payment of \$1,500 to Mr B, informing Mr B that they were to 'ease the financial pain' and to 'keep you going' and to 'tide you over' whilst awaiting delivery of the judgment of the court.

The Mrs K matter

17 In about August 2002, the practitioner was retained by a client, Mrs K, in respect of a claim for damages for personal injury which she suffered when she fell while at an entertainment complex. Between August and October that year, the practitioner corresponded with the proprietor of the complex and its insurer relating to Mrs K's claim. In late October, the insurer advised the practitioner by letter that liability was refused.

18 The practitioner took no further steps to progress Mrs K's claim until February 2006, when he issued a writ in the District Court of Western Australia claiming damages for personal injury. Between March and October 2006, the practitioner corresponded with the solicitors for the defendant, and his client, and otherwise attended to the progress of the proceedings.

19 The practitioner sought an order extending the date for entry of the matter for trial. However, a registrar of the court advised the practitioner that orders could not be made in the terms sought by consent, because the proceedings were inactive. However, the practitioner did not inform his client that the proceedings were inactive, nor take any step to apply to have the matter put back in the active list.

20 During 2007 and 2008, the practitioner received correspondence from the solicitors for the defendant. He neither responded to that correspondence, nor advised his client of its terms. Amongst the

correspondence were letters threatening to commence proceedings to dismiss Mrs K's claim for want of prosecution.

21 On 20 August 2008, an application to dismiss Mrs K's claim for want of prosecution was lodged and served on the practitioner. The practitioner appeared on the application which was dismissed. However, the practitioner did not advise his client that the application had been made, or explain to her its significance, or inform her of the outcome of the application, until some days after the application had been dismissed, when Mrs K telephoned him.

22 Shortly thereafter, the practitioner entered the proceedings for trial, and a pre-trial conference was scheduled. However, the solicitors for the defendant filed and served a notice of appeal from the decision dismissing the defendant's application to dismiss Mrs K's proceedings for want of prosecution.

23 On 17 September, a representative of the LPCC conducted an inspection of the practitioner's legal practice and directed the practitioner to write to Mrs K informing her of the appeal. The practitioner carried out that direction on 22 September 2008.

24 Shortly thereafter, at a pre-trial conference, Mrs K accepted an offer to compromise her claim.

25 The practitioner accepted that he had failed to maintain a reasonable standard of competence and diligence in his prosecution of the proceedings on behalf of Mrs K.

The findings of the Tribunal

26 The Tribunal concluded from these facts that the practitioner was guilty of professional misconduct within the meaning of that expression provided by s 403 of the Act in that:

- (a) he had failed to carry out work on behalf of Mr B between February 2003 and June 2008;
- (b) he had knowingly misled Mr B as to the status of his claim between 2003 and 2007, and
- (c) he had failed to carry out work for Mrs K between November 2006 and September 2008.

The previous disciplinary proceedings

27 During 2006, two separate applications were referred to the Tribunal by the LPCC in relation to the practitioner. Both matters were referred to mediation, at which an agreement was reached with respect to the allegations made, the facts relevant to those allegations, and the appropriate disposition of the proceedings.

28 In the first matter, the practitioner admitted that he did not respond to a legal officer assisting the LPCC in relation to a complaint that had been received. He consented to an order that he pay a fine of \$1,500 and the LPCC's costs in respect of that matter.

29 In the second matter, commenced against him in 2006, the practitioner admitted that he made a number of representations to a client which were not correct. Those representations included a representation to the effect that he had sent a notice of intention to claim damages, when the notices had not been sent, a representation that he was awaiting advice from a barrister, when in fact he had not briefed a barrister, and that he would apply for judgment within a few weeks, when he knew that he was not in a position to do so. Further, the practitioner advised his clients that a statement of claim had been completed when he knew that was not true. In respect of this matter, the practitioner admitted that he was guilty of undue delay and unprofessional conduct, and consented to an order that he pay a fine of \$7,000 and the LPCC's costs.

The psychiatric evidence

30 The Tribunal received evidence from Dr Bryan Tanney, who is a psychiatrist. That evidence took the form of a written report augmented by oral evidence. Dr Tanney had seen the practitioner on two separate occasions for one and a quarter hours each prior to giving his evidence. Dr Tanney expressed the view that there was a valid psychological explanation for the practitioner's behaviour, although it did not involve major mental disorder, or personality disorder. He expressed the view that the practitioner's strongest personality dimension was in the 'avoidant - obsessive' spectrum. In his view, in order to avoid emotional conflict and distress, the practitioner mobilised personality defences characterised by avoidance.

31 Dr Tanney expressed the view that the practitioner had sufficient cognitive problem-solving skill to recognise and avoid situations in the future of the kind that had led to the proceedings against him. However, he suggested that cognitive-based psychological counselling would be of

assistance to the practitioner. However, during his oral evidence, Dr Tanney resiled from the opinion that it was unlikely the practitioner would ever again allow a situation which led to the complaint by Mr B to begin or evolve to the extent to which it did.

32 The Tribunal found that in the course of his oral evidence, Dr Tanney explained that it was part of the practitioner's character to procrastinate. As the Tribunal observed, that is not of itself unusual, but in the case of the practitioner, problems arose because of personality vulnerabilities which triggered his avoidance tendency.

33 The Tribunal expressed its conclusion in the following terms:

It is clear from Dr Tanney's report and oral evidence that the practitioner has an 'avoidant - obsessive' personality which leaves him vulnerable when, as yet largely unidentified triggers cause him to suffer mental blocks. It is a part of his personality to procrastinate. Further, the practitioner needs assistance to identify those triggers and to participate in a relapse prevention program. While that would ordinarily involve cognitive therapy or cognitive problem-solving for three to five months, there would then also need to be reinforcing sessions or maintenance sessions, as well as self-monitoring and monitoring by other people who would report to the therapist.

Without these steps having already been satisfactorily and substantially completed, the practitioner represents a risk to the public. Dr Tanney cannot at this stage identify all of the triggers which might activate the practitioner's vulnerability. In the case of Mr B, it was, at least initially, his reaction to something as insignificant as the filing of a document with an incorrect heading.

It is with considerable empathy for the practitioner that we reach the conclusion that the only appropriate course is to transmit a report to the Supreme Court (Full Bench) recommending his removal from the role of practitioners, that being a course which was equally available under the 2003 Act. The references provided by the practitioner, and the further background provided by Dr Tanney of the practitioner's approach to practice, leave us in no doubt that Mr Leask is an inherently good person who has generally been a credit to the legal profession [55] - [57].

The proceedings before the court

34 As we have mentioned, the LPCC brought a motion before the court to remove the practitioner's name from the Roll. Those proceedings were first listed for hearing on 9 February 2011. There was no appearance on behalf of the practitioner at that hearing. Email correspondence was placed before the court in which it was apparent that the practitioner was asserting that he had not been served with the proceedings. However, it

was clear from that correspondence that he had been given notice, and adequately served with the motion.

35 At all events, the matter was adjourned to 24 February 2011, at which time the practitioner appeared on his own behalf. He apologised to the court for his failure to appear at the previous hearing. During that hearing there was discussion with counsel representing the LPCC as to the ultimate disposition of the case. The court expressed the tentative view that the case was not necessarily one of those in which the striking off of the practitioner was a foregone conclusion. At least in part, the court was motivated to express that view by the diffidence with which the Tribunal had expressed its conclusions.

36 In that context, the practitioner advised the court that he was willing to undergo treatment of the kind that had been foreshadowed by Dr Tanney, and referred to in the decision of the Tribunal. However, he pointed out that he faced logistical difficulties in obtaining access to such treatment, given that he was working as a paralegal in Ho Chi Minh City, for a law firm based in Singapore. He expressed a preference for undergoing treatment in Perth.

37 The hearing was concluded on the basis that the matter would be adjourned for approximately six months, during which the practitioner would investigate the opportunities for treatment, and provide further evidence to the court as to the steps he had taken in that regard.

38 The matter came back before the court on 30 August 2011. Prior to the resumed hearing, the court was provided with two affidavits from the practitioner, an affidavit from the practitioner's employer and a report from a clinical psychologist, Mr Denis McCarthy. We will summarise the effect of that information.

39 Mr Tan Heng Thye is the principal of CSP Legal LLC (CSP Legal), which is a Singapore law firm with branch offices in Vietnam. CSP Legal currently employs the practitioner. The practitioner works in the Ho Chi Minh City office of CSP Legal. Mr Tan was aware of the allegations which had been made against the practitioner in the proceedings which had been commenced in the Tribunal at the time he interviewed and agreed to employ the practitioner in April 2010.

40 Mr Tan has deposed that the practitioner told him at the time he was interviewed for prospective employment, that he did not wish to continue working as a sole practitioner, whatever the outcome of the proceedings in

the Tribunal because he had been unable to cope with work as a sole practitioner.

41 The practitioner commenced duties in the Ho Chi Minh City office of CSP Legal in early June 2010, and has continued to work in that capacity since then. Mr Tan works closely with the practitioner, and reviews all the work done by him before it is sent out to clients. He does not permit the practitioner to meet with clients alone, or to handle management matters.

42 Mr Tan has worked closely with the practitioner and has formed the view that he is diligent, methodical, displays good judgment and is generally competent in the professional work that he has been given. Mr Tan considers that he has made a valuable contribution to his firm. Mr Tan further deposes that the practitioner has kept him generally informed in relation to the progress of the Tribunal proceedings and the proceedings before the court, and his various attempts to obtain cognitive behavioural therapy, which we will shortly relate.

43 Mr Tan would like to continue employing the practitioner, although anticipates that there would be difficulties in that regard if the practitioner were struck off under the provisions of the legislation governing the legal profession in Singapore.

44 In his first affidavit, sworn 2 August 2011, the practitioner confirmed that he had advised Mr Tan of the complaints that had been made against him, and of the progress of those proceedings, and of the proceedings in this court.

45 The work done by the practitioner in Vietnam involves assisting foreign investors in Vietnamese enterprises, including the drafting of transactional documentation such as sale and purchase agreements, share-holder and loan agreements and associated security documentation. As commercial documents are routinely required to be produced in both Vietnamese and English, he assists Vietnamese legal managers in CSP Legal's Ho Chi Minh City office to prepare English translations of Vietnamese documents, although the practitioner does not speak Vietnamese. The practitioner confirms in his affidavit that all his work is checked by Mr Tan before it leaves the office.

46 The practitioner is also engaged in drafting pleadings, applications, affidavits, submissions and advice in relation to proceedings in the Singapore International Arbitration Centre, and occasionally provides assistance to the legal managers in the Ho Chi Minh City office with

respect to the preparation of preliminary documentation for proceedings in Vietnamese courts, although all work for CSP Legal's clients in Vietnam is ultimately briefed out to Vietnamese domestic lawyers.

47 After the hearing on 24 February 2011, the practitioner attempted to locate a psychologist in Ho Chi Minh City who could provide cognitive behavioural therapy as recommended by Dr Tanney in the evidence which he had given to the Tribunal. However, the practitioner was only able to locate one psychologist who might be prepared to provide cognitive behavioural therapy in Ho Chi Minh City. The practitioner met with that psychologist in late March. According to the practitioner, that psychologist's view was that cognitive behavioural therapy was of only of assistance to patients suffering from depression. As the practitioner was not suffering depression, in the view of this psychologist, cognitive behavioural therapy had little to offer him.

48 As the practitioner could not identify any psychologist in Ho Chi Minh City who would be prepared to provide the therapy he sought, he undertook inquiries to locate a psychologist in Perth who would be prepared to provide that therapy via the medium of Skype communication.

49 To that end, the practitioner requested email advice from Dr Tanney on a number of occasions, but received no reply. As a result, in early April 2011, he attempted to contact a number of Perth psychologists he had identified by searches on the internet. In his affidavit he lists the various psychologists he contacted. More than 10 were contacted. For various reasons which are set out in detail in the practitioner's affidavit, only one of the psychologists contacted, Mr Denis McCarthy was willing and able to provide the services which the practitioner sought.

50 The practitioner met with Mr McCarthy in his rooms in Fremantle in early July 2011. Cognitive behaviour therapy was administered by Mr McCarthy on that occasion, and on another occasion during the practitioner's visit to Perth. Since returning to Vietnam, the practitioner has had weekly sessions involving cognitive behaviour therapy using Skype, although Mr McCarthy has advised that after about eight weekly sessions, he would propose to move to monthly sessions for a further period of about one year.

51 In his second affidavit sworn 23 August 2011, the practitioner expresses the view that the course of cognitive behaviour therapy has enabled him to understand the psychological and neurophysiological causes of his procrastination and avoidance behaviour, which he was

previously unable to understand or adequately combat. The practitioner expresses confidence in his capacity to recognise situations which might replicate the problems he experienced in the past, and avoid falling into a pattern of either procrastination behaviour or avoidance behaviour.

52 The court also received a report from Mr McCarthy. In that report, Mr McCarthy describes the therapy which he has provided during his sessions with the practitioner, and which has focused upon addressing the procrastination and avoidance issues which have developed in the past. Mr McCarthy is of the view that as a result of the therapy he has provided, the practitioner now has a much greater insight into his procrastination, and the factors that lead to it, and has developed techniques in order to deal with those situations. Mr McCarthy was pleased with the progress which the practitioner had made at the time of his report.

53 The court has been provided with a copy of s 78 of the *Legal Profession Act* of Singapore. That section provides that no solicitor subject to the Act is to employ a practitioner who has been struck off a Roll of legal practitioners, or suspended from practising as a legal practitioner, and who remains suspended anywhere in the world, without the prior approval of the Supreme Court of Singapore obtained by an originating summons served upon the Attorney General and upon the Law Society of Singapore.

54 Each of the practitioner and Mr Tan have deposed that if the practitioner is struck off or suspended, it is very likely to have the consequence that the practitioner's employment with CSP Legal will be terminated, because of the difficulty of obtaining the approval of the Supreme Court of Singapore, and the adverse publicity for the firm that would be associated with an application for approval.

The applicable principles

55 The relevant principles in an application of this kind are well established. The jurisdiction of the court to remove a practitioner from the Roll of Practitioners is not exercised for the purpose of punishing the practitioner concerned, but for the protection of the public and the maintenance of the reputation and standards of the legal profession: *Re Maraj (a legal practitioner)* (1995) 15 WAR 12, 25 (Malcolm CJ, Kennedy and Franklyn JJ agreeing); *Ziems v Prothonotary of the Supreme Court of New South Wales* [1957] HCA 46; (1957) 97 CLR 279, 286 (Dixon CJ, McTiernan, Fullagar and Kitto JJ agreeing); *Legal Profession Complaints Committee v Brennan* [2010] WASC 198 [10] (Martin CJ, Murray and Hall JJ agreeing); *Legal Profession Complaints*

Committee v Masten [2011] WASC 71 [16] (Martin CJ, Murray and EM Heenan JJ). Since the object is to protect the public and the reputation of the profession, the consequences for the practitioner may be either more or less severe than they would be if the only object of the proceedings was one of punishment: *Legal Practitioners Complaints Committee v Lashansky* [2007] WASC 211 [19].

56 The critical question to be addressed by the court is whether the practitioner has been shown not to be a fit and proper person to be a legal practitioner: *Ziems* (297 - 298); *A Solicitor v The Council of the Law Society of New South Wales* [2004] HCA 1; (2004) 216 CLR 253 [15]; *Legal Practitioners Complaints Committee v Thorpe* [2008] WASC 9 [43]. Fitness to practise law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges: *In re Davis* (1947) 75 CLR 409, 420 (Dixon J), *Thorpe* [43], and *Brennan* [11]. Fitness to practice is to be decided at the time of the hearing, not as at the time the relevant conduct was entered into: *A Solicitor v The Council of the Law Society of New South Wales* [21].

57 Striking off is an order reserved for very serious cases, where the character and conduct of the practitioner is seen to be 'inconsistent with the privileges of further practice': *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 112 A Crim R 439 [38]. In that case, Thomas JA observed that 'the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practises': *Darveniza* [33]. It has also been observed elsewhere that honesty and integrity are essential characteristics required of legal practitioners, and the court has generally taken a very serious approach to cases in which a practitioner's conduct has involved dishonesty: see *Brennan* [15], *Legal Practitioners Complaints Committee v Palumbo* [2005] WASCA 129 [23]; *Legal Practitioners Complaints Committee v De Pardo* [2007] WASC 266 [14].

The application of these principles

58 Speaking very generally, the misconduct established against the practitioner in the most recent proceedings in the Tribunal, and in the proceedings brought against the practitioner in 2006, involves three cases in which the practitioner failed to do work on behalf of his clients in a timely fashion, no doubt due to the presence of circumstances which, in some cases, induces the practitioner to procrastinate. In two of those cases, the practitioner attempted to conceal his procrastination by lying to

his clients about the progress of the proceedings which he represented he was conducting on their behalf. The practitioner also failed to respond in a timely fashion to a request for information from the LPCC - presumably another instance of induced procrastination.

59 The case has some unusual features. As the Tribunal noted, the instances of procrastination established in the proceedings against the Tribunal are relatively few in number and occurred in a context in which the practitioner was otherwise conducting his practice in a most satisfactory manner and was generally held in high regard by his other clients, and his professional colleagues. He had a reputation for competence and ability, and for undertaking pro bono work for worthy clients, and for charging modest fees. And, of course, in the case involving Mr B, the practitioner paid a significant amount of his own money to Mr B in order to 'tide him over' until his claim was resolved. As the Tribunal noted, there is no suggestion that these payments were made to Mr B in an attempt to induce him not to lodge a complaint with the LPCC - rather they appear to have been motivated by the practitioner's feelings of guilt as a consequence of having failed to deliver the services which he represented he had provided. That behaviour is consistent with the views of each of Dr Tanney and Mr McCarthy who attribute the practitioner's procrastination and avoidance behaviour to a psychological characteristic.

60 The court is satisfied that the practitioner has developed insight and awareness of the circumstances that are likely to induce procrastination or avoidance behaviour, and is aware of his vulnerability to behaviour of that kind. He has made it clear to his current employer, and to the court, that he has no intention of practising on his own account at any time in the future. He accepts that it is appropriate for him to practise only under the supervision of another lawyer. In addition, the practitioner has undertaken the course of therapy recommended by Dr Tanney, which is continuing. The development of insight and the course of therapy lead the court to the view that the risk of the practitioner developing the characteristics of procrastination and avoidance that have been manifested in the past is low, providing that the practitioner works only in a supervised environment.

61 The most serious and worrisome aspect of the practitioner's misconduct is the fact that he misrepresented to two of his clients the work which he had done on their matters. However, there are some unusual aspects of that part of his case as well. A common feature of cases in which practitioners have been found guilty of misrepresenting the

work done to their clients is that the misrepresentations have been made for the purpose of financial gain, in the form of inflated or false accounts for services rendered. That is not an aspect of this practitioner's conduct. To the contrary, in the case of Mr B, the practitioner incurred a significant financial loss as a consequence of the payments which he made to Mr B from his own funds.

62 The lack of any apparent motivation in the form of financial gain for the misrepresentations made by the practitioner and the lack of any evidence to suggest that misrepresentation or dishonesty is a frequent or common characteristic of the practitioner's behaviour, lead the court to the conclusion that the practitioner is not intrinsically dishonest, nor lacking in integrity. He has plainly been frank and forthright in all his dealings with his current employer.

63 The court also notes that the practitioner has gone to very considerable lengths in order to obtain the course of therapy which was recommended by Dr Tanney. This reinforces our conclusion that the practitioner has developed insight into the problems which he has experienced in the past, and is committed to overcoming those problems in the future.

64 The orders proposed by the LPCC and the practitioner have a number of features. First, pursuant to the orders, it will not be possible for the practitioner to return to legal practice in Western Australia before 1 July 2015 at the earliest. Second, the practitioner's return to the legal profession is subject to the Legal Practice Board resolving to grant the practitioner a practising certificate after receiving a report from a medical practitioner regarding the practitioner's fitness to hold such a certificate. Third, as a result of the conditions to be imposed on any practising certificate granted to the practitioner, he will not be able to practise on his own account in Western Australia at any time in the future. Fourth, because the practitioner will neither be struck off nor suspended from practice, there will be no impediment to his continued employment by CSP Legal in Ho Chi Minh City.

65 It is the view of the court that the orders proposed strike an appropriate balance between the need to protect the public, and the public interest in the maintenance of the reputation and standards of the legal profession on the one hand, and the desirability of enabling the practitioner to live a useful and productive life, and assist those who are in need of legal services on the other. The conditions which will attend any future involvement of the practitioner in the legal profession are, in our

view, sufficient to reduce the risk of any repetition of the behavioural characteristics which brought the practitioner to the attention of the court to acceptable levels.

66 For these reasons, there will be orders in the terms proposed, and which we have set out above.