

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

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

**CITATION** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE and WIESE [2007] WASAT 64

**MEMBER** : JUDGE J CHANEY (DEPUTY PRESIDENT)  
MR C RAYMOND (SENIOR MEMBER)  
MR J MANSVELD (MEMBER)

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 15 MARCH 2007

**FILE NO/S** : VR 184 of 2006  
VR 185 of 2006

**BETWEEN** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE  
Applicant

AND

ELIZABETH WIESE  
Respondent

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*Catchwords:*

Legal practitioner - Unprofessional conduct - Unsatisfactory conduct - Receipt of trust money - Failure to deposit to trust account - Penalty - No dishonesty - Breaches brought about by poor administration - Appropriate steps taken to avoid future breaches upon matters being brought to practitioner's attention - Parties proposing consent orders - Whether proposed orders appropriate

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*Legislation:*

*Legal Practice Act 2003 (WA), s 137, s 138*

*Legal Practitioners Act 1893 (WA), s 34, s 34A*

*Result:*

Practitioner fined \$3000 and ordered to pay costs of \$1000 on each complaint

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms P Le Miere

Respondent : Mr CD Clifton

*Solicitors:*

Applicant : Law Complaints Officer

Respondent : Martin De Haas Commercial Lawyers

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

Nil

**REASONS FOR DECISION OF THE TRIBUNAL:**

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

1           The Legal Practice Board brought two complaints against a legal practitioner, Ms Elizabeth Wiese. The first contained allegations that the practitioner received trust monies and failed to deposit them to the credit of the trust account on 13 occasions between March 2002 and August 2004. The second complaint was that, on five occasions between March 2002 and December 2004, she applied trust monies towards the payment of costs and disbursements without prior authority of the client or without serving a bill of costs within 14 days of applying the trust monies.

2           The practitioner admitted the allegations, and co-operated fully with the Legal Practitioners Complaints Committee. The Committee was satisfied that, in all cases, the practitioner would have been entitled to deposit the monies to her general account had she prepared the appropriate bills of costs, as in each case she had done work to a value substantially in excess of the amount paid by the clients.

3           In the circumstances, the Committee and the practitioner reached agreement as to an appropriate disposition of the complaint, namely the payment of a fine of \$3000 and costs of \$1000 in respect of each complaint. After considering the agreed facts surrounding the complaints, and the joint submissions from the Committee and the practitioner on the question of penalty, the Tribunal accepted that the agreed outcome was appropriate in that it met the public interest in relation to disciplinary penalties, and accordingly made orders in the terms agreed.

***The complaints***

4           The practitioner accepts that on various dates in 2002 and 2004, she was guilty of unprofessional conduct (in the case of dates before 1 January 2004) or of unsatisfactory conduct by way of unprofessional conduct in that she, being a practitioner under whose control trust monies were held, applied trust monies towards the payment of costs and disbursements charged against certain clients for whose use or benefit the trust monies were held without serving the appropriate bill on the client within 14 days in breach of the requirements of s 138 of the *Legal Practice Act 2003* (WA) or s 34A of the *Legal Practitioners Act 1893* (WA) (VR 185 of 2006).

5 Ms Wiese also accepts that, on various dates between March 2002 and August 2004, she was guilty of either unprofessional conduct (in the case of dates before 1 January 2004) or of unsatisfactory conduct by way of unprofessional conduct (in the case of dates on or after 1 January 2004) in that on or about those dates she received trust monies and failed to deposit them to the credit of a trust account in breach of the requirements of s 34 of the *Legal Practitioners Act 1893* or s 137 of the *Legal Practice Act 2003* as the case requires (VR 184 of 2006).

6 In respect of both complaints, no allegation of dishonesty was made against the practitioner.

***The proposed consent orders***

7 When the matter came before the Tribunal for an initial directions hearing, the Tribunal referred the matter to mediation. However, before the mediation took place, the parties conferred informally and reached agreement as to their view of an appropriate outcome. They then filed minutes of proposed consent orders which contained an acknowledgement by the practitioner of her guilt of unprofessional or unsatisfactory conduct, recited that no allegation of dishonesty is made against the practitioner, and proposed an order that the practitioner pay a fine of \$3000 to the Legal Practice Board together with costs to the applicant of \$1000 payable within 28 days. The same fine and costs were proposed in respect to each of the two matters.

8 Upon receipt of the minutes, the Tribunal advised the parties that it was not prepared to make the orders by consent in the absence of a clear understanding of the facts surrounding the allegations. Accordingly the Tribunal directed that the parties file a statement of agreed facts, and submissions justifying the proposed penalties.

***The agreed facts***

9 During 2006, the Legal Practice Board conducted a financial audit of the practitioner's practice and in the course of doing so, identified a number of trust accounting irregularities. Ultimately, those trust accounting irregularities gave rise to the two applications before the Tribunal.

**SAT Application VR 184 of 2006**

10 This application concerns the practitioner's receipt of funds from clients which should have been paid into a trust account, but were instead paid directly into the practitioner's general account. The allegation is one

of breach of either s 137 of the *Legal Practice Act 2003* or s 34 of the *Legal Practitioners Act 1893* (as the case may be).

- 11 The schedule below shows in column C the amounts of money the practitioner received. It shows in column D the proportion of those amounts which were trust moneys and which should have been deposited to the credit of a trust account. In each case where the amount of money set out in column D is less than the amount set out in column C, there was already an unpaid bill in respect of which a portion of the received funds was applied.

"A" Client	"B" Date	"C" Gross amount of monies received	"D" Trust monies not deposited to the credit of a trust account in breach of sections 34 or 137
Brooks, WB	5 March 2004	\$105	\$105
Broughton, N	27 August 2004	\$10 000	\$10 000
Gass, SS	28 May 2004	\$135	\$135
Hannaby, A	14 June 2002	\$10 700	\$6192
Parker, KA	14 May 2004	\$50	\$50
	11 June 2004	\$200	\$200
	6 July 2004	\$50	\$50
	5 August 2004	\$100	\$100
Pozzi, DT	6 July 2004	\$1000	\$1000
Reid, JM	27 June 2002	\$4950	\$4914
Roberts, M	9 March 2004	\$2000	\$500
	26 March 2004	\$1000	\$1000
Thompson, D	31 August 2004	\$2985	\$860

- 12 In the case of each and every amount set out in column D, work had been conducted upon the file of each client and there stood in each client's work in progress ledger work in progress substantially in excess of the

amount in column D. Bills were subsequently rendered which accounted for the amounts set out in column D.

**SAT Application VR 185 of 2006**

13 This application concerns the transfer of funds by the practitioner from the practitioner's trust account to the general account without rendering a bill in respect of those monies within 14 days contrary to the requirements of s 138 of the *Legal Practice Act 2003* or s 34A of the *Legal Practitioners Act 1893* as the case may be.

14 The schedule below shows the amount of trust money applied to the practitioner's general account in column C and the proportion of those monies which were applied in contravention of the legislation in column D.

<b>"A"</b> <b>Client</b>	<b>"B"</b> <b>Date</b>	<b>"C"</b> <b>Gross amount of trust monies applied</b>	<b>"D"</b> <b>Trust monies applied in breach of section 138 or section 34A</b>
Benvenuti, J	14 March 2002	\$4000	\$4000
Naylor, L	8 October 2004	\$10 872	\$1093
Tunney, K	15 October 2004	\$15 000	\$3021
	29 October 2004	\$5000	\$5000
	17 December 2004	\$15 000	<u>\$15 000</u>
			Tunney Total: <u>\$23021</u>

15 In each case where the amount set out in column D is less than the amount set out in column C, there was an unpaid bill which had already been rendered to the client in respect of which a portion of the funds was applied.

16 In each case, there was an outstanding work in progress in amounts which exceeded the amount of trust money transferred to the practitioner's general account without a bill having been rendered. Ultimately, bills

which accounted for all amounts transferred were rendered, although not within the time required by the legislation.

### **Investigation by the Committee**

17 The Legal Practitioners Complaints Committee conducted an investigation of the circumstances in which the sums set out in the two applications before the Tribunal were dealt with.

18 The Committee was satisfied that the way in which funds were dealt with arose as a result of poor administration and in some cases, a lack of appreciation of:

- a. the practitioner's responsibilities and,
- b. the fact that those responsibilities exist regardless of arrangements between the practitioner and the client.

19 The Committee was satisfied that there is no evidence of any dishonesty on the part of the practitioner.

### **Going forward**

20 The Committee was satisfied that the practitioner is unlikely to become involved in anything similar again because the practitioner:

- a. is now aware that poor administration of her practice has resulted in her committing serious breaches of the relevant legislation;
- b. has made her staff aware of the consequences of casual handling of client funds;
- c. personally checks the banking each day;
- d. has employed a competent bookkeeper who has an understanding of what trust funds are and how they are to be dealt with; and
- e. regularly (weekly) discusses the administration of client funds with that bookkeeper to ensure ongoing compliance.

*The parties' submission*

21 The parties filed joint submissions on penalty. After citing well established authority for the proposition that the object of disciplinary penalties is to protect the public and the reputation of the profession, the parties made the following submissions:

- "7. It is relevant to mitigation that the Legal Practitioners Complaints Committee is satisfied that there was no intention on the part of the practitioner to engage in any dishonest behaviour and as a result was prepared to agree to a penalty which was not insubstantial, but which was short of suspension.
8. It is submitted that the Tribunal should also take into account in assessing the penalty the following factors:
  - a. Of the 17 instances of application of funds contrary to the provisions of the *Legal Practitioners Act* or the *Legal Practice Act*, 9 of them concerned amounts of \$1,000 or less;
  - b. In no case was there any application of funds by the practitioner in her favour without an amount of work in progress having first been recorded against the client's ledger which exceeded the sum appropriated by a substantial margin. This was not a case of the practitioner 'paying herself' before the work had been done.
  - c. The fact that the work had been done prior to the sums being appropriated relegates the breaches of the relevant legislation to breaches of an administrative nature in the sense that compliance would have involved no more than the preparation of relatively simple documentation, which was completely within the practitioner's own control.
  - d. Accounts were ultimately prepared and rendered in all cases so that the practitioner's clients were never deprived of their right to a review of the accounts by taxation.

- e. The practitioner is unlikely to become involved in anything similar again because she:
  - i. Is now aware that poor administration of her practice has resulted in her committing serious breaches of the relevant legislation;
  - ii. Has made her staff aware of the consequences of casual handling of client funds;
  - iii. Personally checks the banking each day;
  - iv. Has employed a competent bookkeeper who has an understanding of what trust funds are and how they are to be dealt with; and
  - v. Regularly (weekly) discusses the administration of client funds with that bookkeeper to ensure ongoing compliance.
9. The matters set out above demonstrate that, going forward, the standard of operation of the practitioner's practice and therefore the standard of the profession as a whole will be improved to a satisfactory and the public will be protected.
10. The lack of dishonesty, subsequent efforts of the practitioner to ensure ongoing compliance and co-operation which the practitioner has shown toward the Legal Practitioners Complaints Committee make this an inappropriate case for any greater penalty."

### ***Conclusion***

22 Having considered the submissions of the parties, and the agreed facts, the Tribunal is of the view that, for the reasons identified in the parties' submission, the orders proposed by the Board with the consent of the practitioner meet the relevant objectives for disciplinary punishment. Accordingly, the Tribunal makes the following orders.

23 In respect to VR 184 of 2006:

1. That the practitioner, Elizabeth Wiese, was on or about 14 and 27 June 2002, 5, 9 and 26 March 2004, 14 and 28 May 2004, 27 June 2004, 6 July 2004, 5 and 27 August 2004 guilty either of unprofessional conduct (in the case of dates before 1 January 2004) or of unsatisfactory conduct by way of unprofessional conduct (in the case of dates on and after 1 January 2004) in that on or about those dates the practitioner received trust monies and failed to deposit the same to the credit of a trust account in breach of the requirements of s 34 of the *Legal Practitioners Act 1893* (WA) or of s 137 of the *Legal Practice Act 2003* (WA) as the case may be.
2. No allegation of dishonesty is made against the practitioner.
3. The practitioner pay a fine of \$3000 to the Legal Practice Board together with costs to the applicant of \$1000 payable within 28 days.

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In respect to VR 185 of 2006:

1. That the practitioner, Elizabeth Wiese, was on 14 March 2002 and the 8, 15 and 29 October 2004 and 17 December 2004 guilty of unsatisfactory conduct by way of unprofessional conduct in that she, being a practitioner under whose control trust monies were held, applied trust monies towards the payment of costs and disbursements charged against certain clients for whose use or benefit the trust monies were held without serving the appropriate bill on the client within 14 days in breach of the requirements of s 138 of the *Legal Practice Act 2003* (WA) or s 34A of the *Legal Practitioners Act 1893* (WA) as the case may require.
2. No allegation of dishonesty is made against the practitioner.
3. The practitioner pay a fine of \$3000 to the Legal Practice Board together with costs to the applicant of \$1000 payable within 28 days.

I certify that this and the preceding [24] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUDGE J CHANEY, DEPUTY PRESIDENT**