

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**ACT** : LEGAL PROFESSION ACT 2008 (WA)

**CITATION** : LEGAL PROFESSION COMPLAINTS COMMITTEE  
and PENN [2015] WASAT 145

**MEMBER** : JUSTICE J C CURTHOYS (PRESIDENT)  
MR P McNAB (SENIOR MEMBER)  
MR P DE VILLIERS (MEMBER)

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 18 DECEMBER 2015

**FILE NO/S** : VR 18 of 2015

**BETWEEN** : LEGAL PROFESSION COMPLAINTS COMMITTEE  
Applicant

AND

CAROL PENN  
Respondent

---

*Catchwords:*

Legal practitioner - professional misconduct - overcharging

*Legislation:*

*Legal Profession Act 2008 (WA)*, s 403, s 408, s 448, s 448(1), s 449(1)

*Result:*

The practitioner engaged in professional misconduct by charging \$69,028.89 when a reasonable charge was \$28,959.80

*Summary of Tribunal's decision:*

The Tribunal found that the practitioner's conduct in charging \$69,028.89 when a reasonable charge was \$28,959.80 constituted professional misconduct.

*Category:* B

**Representation:**

*Counsel:*

Applicant : N/A  
Respondent : N/A

*Solicitors:*

Applicant : Law Complaints Officer  
Respondent : In Person

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

Nil

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Introduction***

1 On 20 January 2015, the Legal Profession Complaints Committee (the Committee) filed an application seeking an order that:

1. The Tribunal make a finding that the practitioner has engaged in professional misconduct and/or unsatisfactory professional conduct pursuant to s 438(1) of the *Legal Profession Act 2008* (WA);
2. Consequential orders pursuant to s 438(2) of the *Legal Profession Act 2008*; and
3. An order that the practitioner pay the Committee's costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004*.

2 The grounds were set out in Annexure A of the application.

3 The practitioner has consented to orders relating to grounds 1 and 3 and these reasons deal only with ground 2.

4 Ground 2 is that the practitioner, between about May 2011 and 6 December 2012, engaged in professional misconduct within the meaning of s 403 and s 408 of the *Legal Profession Act 2008* (WA) (LP Act), in the course of acting on behalf of the Executor by charging him professional fees of \$69,028.89 inclusive of GST for obtaining a grant of probate, administration of the Estate and representation in the Main Proceedings and Supreme Court proceedings CIV 1377 of 2011 and Supreme Court proceedings CIV 1379 of 2011 that were excessive and further or in the alternative included charges which were unreasonable and/or not properly chargeable in circumstances where a reasonable sum of costs to be charged for the work done by a reasonably competent and diligent practitioner was \$28,959.80 inclusive of GST.

5 It is necessary for the purposes of these reasons to give further details of the matters set out in the Committee's statement of facts and contentions. In essence, this determination simply turns on whether there was excessive charging by the practitioner.

6 In support of its allegation, the Committee filed the expert opinion of Mr Stuart Vivyan Forbes, who is a prominent costs expert in this jurisdiction. The Tribunal accepts that he is an expert and has the necessary qualifications to conduct an assessment of costs.

7 Mr Forbes noted that there is no evidence of any written costs  
agreement or an oral agreement to charge less than scale costs. He has  
therefore referred to the relevant scales that were in force at the time.  
Mr Forbes also notes that he has not been able to identify any novel or  
complex legal issues in these matters.

8 On the basis of his review of the file and the enclosed schedules,  
Mr Forbes estimates that the reasonable cost would amount to  
approximately \$28,750 to \$29,250 with the most probable amount being  
\$28,959.80 inclusive of GST but excluding disbursements.

9 The practitioner made submissions on ground 2 of the application,  
which were filed on 12 October 2015. The practitioner's submissions in  
relation to the allegation of overcharging are contained in paragraphs 18  
to 29.

10 The practitioner has provided her critique and summary of the  
assessment of costs conducted by Mr Forbes.

11 The practitioner states her belief that Mr Forbes has not had the  
opportunity of assessing the whole of the file that was once in her  
possession and she feels that his assessment is incomplete and therefore  
falls short of justifying what she actually billed.

12 It is the responsibility of the practitioner to provide any documents  
that a practitioner feels make any assessment incomplete. It is  
unsatisfactory to simply make a general assertion in the terms stated by  
the practitioner.

13 The practitioner concedes that once her critique of Mr Forbes'  
assessments is taken into account, the appropriate figure would be  
\$51,363.28.

14 In light of the ultimate conclusion the Tribunal has reached and the  
orders sought by the Committee, the Tribunal does not propose to go  
through every one of the several hundred items which are set out.

15 The Tribunal accept Mr Forbes' evidence as to an appropriate charge.  
The practitioner has overcharged.

16 The Committee submits that even on the practitioner's figure of  
\$51,363.28, there has been an overcharging of \$17,665.61 or 25.6%  
which would warrant a finding being made by the Tribunal that the

practitioner's charges were excessive. The Tribunal accepts that submission.

17 The Tribunal makes a finding in terms of ground 2 as set out above.

18 The Committee does not seek any penalty with respect to ground 2 and does not seek any order as to costs.

19 The reasons for that are that the penalty imposed in respect of grounds 1 and 3 (separately dealt with by the Tribunal) is sufficient in all the circumstances. Of particular importance is the fact that the practitioner has ceased to practise and that the practitioner is in very dire financial circumstances.

20 The Committee does not seek costs. Given the additional expense to which the Committee has been put by the practitioner disputing ground 2, when the Committee had indicated that it would not seek any penalty in respect of ground 2, it is generous of the Committee not to seek costs.

21 The Committee also seeks an order that any aggrieved person (s 448(1) of the LP Act) be heard as to whether a compensation order should be made against the practitioner pursuant to s 448 of the LP Act. It is not necessary to make such an order as a prerequisite to the application under s 448 of the LP Act (see s 449(1) of the LP Act).

***Order***

1. The practitioner had engaged in professional misconduct by charging \$69,028.89 when a reasonable charge was \$28,959.80.
2. There be no order as to costs.

I certify that this and the preceding [21] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

---

**JUSTICE J C CURTHOYS, PRESIDENT**