

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : (FULL BENCH)

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE -v- WESTON [2005] WASCA 81

CORAM : MALCOLM CJ
STEYTLER P
WHEELER JA

HEARD : 15 APRIL 2005

DELIVERED : 15 APRIL 2005

FILE NO/S : LPD 6 of 2004

MATTER : *The Legal Practitioners Act 1893*

and

The Legal Practice Act 2003

and

A Practitioner of this Honourable Court

and

An undated Report by the Legal Practitioners
Disciplinary Tribunal to the Supreme Court (Full
Bench) under the *Legal Practitioners Act*, s 29A(2)(a)
and s 30 and the *Legal Practice Act*, s 185(2)(a) and
s 194 as amended

Catchwords:

Legal practitioners - Removal from Roll - Report by Legal Practitioners Disciplinary Tribunal of unprofessional or illegal conduct, gross overcharging and neglect - Whether practitioner fit and proper person to remain member of legal profession - Turns on own facts

Legislation:

Legal Practice Act 1893 (WA), s 28C, s 29A(2)(a), s 30, s 34
Legal Practice Board Rules 1949 (WA)

Result:

Practitioner struck off the Roll of Practitioners of the Supreme Court of Western Australia

Category: B

Representation:

Counsel:

Applicant : Mr B G H Goetze
Respondent : No appearance

Solicitors:

Applicant : Minter Ellison
Respondent : No appearance

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

Re A Barrister and Solicitor (1979) 40 FLR 1
Re Davis (1947) 75 CLR 409
Re Maraj (a Legal Practitioner) (1995) 15 WAR 12
Ziems v The Prothonotary of the Supreme Court of New South Wales (1957)
97 CLR 279

Case(s) also cited:

New South Wales Bar Association v Evatt (1968) 117 CLR 177

Re A Barrister & Solicitor; Ex parte Attorney-General for the Commonwealth
(1972) 20 FLR 234

Re A Practitioner [2004] WASCA 287

The Trustees of the Legal Contribution Board Trust v Bailey & Ors [2004]
WASC 175

MALCOLM CJ
STEYTLER P

1 **MALCOLM CJ:** I agree with the reasons stated by the President of the
Court of Appeal, Steytler P. There is nothing that I would wish to add.

2 **STEYTLER P:** This is a motion brought on behalf of the Legal
Practitioners Complaints Committee for orders that a legal practitioner,
Robert Peter Weston, be struck off this Court's roll of practitioners and
that he pay the costs of and incidental to the motion to be taxed.

3 The motion relies upon a report which is seemingly dated 26 June
2003 prepared by the Legal Practitioners Disciplinary Tribunal under
s 29A(2)(a) and s 30 of the *Legal Practice Act 1893* (WA). The motion
and the report have been served on the practitioner's solicitor,
Mr A J Goldfinch of Goldfinch and Co. However, the practitioner has
instructed his solicitor that he chooses not to appear at the hearing of the
motion, whether in person or by his solicitor.

4 The Tribunal's report and its attachments, including its reasons for
recommending that the practitioner be struck off the roll, reveal that the
Tribunal was called upon to hear 17 references initiated under s 28C of
the *Legal Practice Act* in respect of the practitioner. These involved
various allegations of unprofessional or illegal conduct, gross
overcharging and neglect. The references were heard by the Tribunal on
23 October 2002. The practitioner, who made written answers to the
references but chose not to be present during the hearing, was found guilty
in each case.

5 The references and the relevant evidence led in support of them are
summarised in the Tribunal's reasons for decision given on 5 December
2002. It is necessary for present purposes to give only a few examples of
the more serious findings against the practitioner.

6 References 16A, B and C of 2001 allege illegal or unprofessional
conduct by the practitioner in respect of his trust account.

7 On or about 6 October 1998 he received a cheque for \$29,225 from
an agent acting on the sale of a property owned by two clients, referred to
in the reasons as clients A and B, and their mother. That sum was the
balance of a deposit on the sale after deducting the agent's commission.
The practitioner paid this sum into his trust account. However, without
any direction from either client A or B and without any authority from
their mother, that sum was withdrawn from his trust account.

8 Then, on 12 May 1997, he received a sum of \$3650 on account of costs from client A. He failed to pay that amount into his trust account, as he should have done, until it could be dealt with as directed by client A. Instead, that sum was paid into an account in the name of the Weston Trust, which is a private trust of the practitioner unrelated to his practice trust account. That sum has never been accounted for to client A by the practitioner.

9 In his written answer to these references, the practitioner acknowledged that the sum of \$29,225 had been deposited into his trust account. However, he said that, without his authority, his bank advised his accounts manager, who was his common law wife, Ms Lucy Marks, that funds from the trust account could be transferred to his general account by telephone and, again without his authority or knowledge, the sum of \$29,225 was so transferred. He said that this was not discovered by him because his premises were burgled in January 1999 and his computer system, including computerised accounts systems, were stolen. He said that Ms Marks, upon whom he had relied to manage his practice, had then been suffering from a mental illness. He said that he did not know what had happened to the sum of \$3650.

10 The Tribunal found that, under rule 99 of the *Legal Practice Board Rules 1949* (WA) dealing with the reconciliation of trust accounts, the practitioner was required to reconcile his trust account at least once in every month and at intervals of no longer than six weeks. It went on to say that the practitioner was primarily responsible for ensuring that s 34 of the *Legal Practice Act* was complied with and that he should, prior to the burglary, have reconciled his trust account and noted any discrepancies. Had he done so, he should have found by late November 1998 at least, when the first telephone transfer from his trust account had already occurred, that such transfers were occurring. The Tribunal said that he should also have known that the money was missing from his trust account when he prepared settlement statements in February 2000.

11 Reference 22 of 2001 alleged that the practitioner was guilty of unprofessional conduct in or about March 2001 by abandoning his practice without ensuring that it would be properly administered.

12 A trust account inspector had been employed by the Legal Practice Board to review the trust records of the practitioner. She endeavoured to do so from 8 September 2000 onwards. Towards the end of 2000 the practitioner told the inspector that he was going to New Zealand for Christmas and that he would be returning to his practice in Mandurah on

16 January 2001. However, when on 13 March 2001 the inspector attended at the practitioner's office in Mandurah, she found it to be empty. She was told that the practitioner's new address was in Hay Street in West Perth and that he was then temporarily out of the jurisdiction.

13 However, inquiries at the address given to the inspector revealed that the practitioner did not have an office there but merely a facility for the redirection of telephone calls and mail. The practitioner had not advised the Legal Practice Board that he was moving his office from Mandurah to Perth or that he no longer intended to practise law in Western Australia.

14 On 6 April 2001 the Legal Practice Board appointed a supervising solicitor to the practitioner's practice. The solicitor discovered that many of the practitioner's files had been lost or destroyed. He was told by Ms Marks that she had destroyed files in an attempt to conceal the fact that she had been stealing from the trust account.

15 The supervising solicitor made inquiries concerning some 23 matters with which the practitioner had been dealing. These were either dealt with by the supervising solicitor or referred to other solicitors. Some of these matters involved clients who had made complaints to the Legal Practitioners Complaints Committee. In some cases clients' files had simply been posted to them without any covering letter and in others no file could be found.

16 In his answer to the reference the practitioner did not deny the various facts alleged against him but nevertheless claimed that he had not abandoned his legal practice. He said that he had always planned to return to New Zealand, being his country of origin, and that from October 2000 he had commenced to advise clients that he was ceasing his practice in Mandurah. He said, in effect, that he had wound his practice down in an orderly fashion, albeit, he said, this was interrupted in March 2001 when Ms Marks closed his practice without his authority while he was out of the jurisdiction. He said that he was forced to fly to New Zealand to prevent her suicide and to take custody of five children.

17 The Tribunal did not accept the practitioner's answer. It said that in a number of the references the evidence of the clients was that the practitioner had simply left their matters incomplete and left the jurisdiction without stating to them that he was leaving.

18 Reference 18 of 2001 alleged that the practitioner was guilty of illegal and/or unprofessional conduct between about October 1998 and February 2000 when he failed to retain client moneys in his trust account

until such time as they were or could be dealt with as directed by his clients or according to law.

19 From about June 1998 the practitioner had acted for the executors and administrators of the estates of two people described by the Tribunal as Mr and Mrs B, who had been killed in a car accident. From about July 1998 onwards, the practitioner received a total of \$185,964.41 into his trust account for and on behalf of his clients. From the amounts so received he lawfully withdraw amounts totalling \$27,670.19 from his trust account on behalf of his clients, but on dates unknown the balance, some \$158,294, was withdrawn from his trust account without directions from his clients.

20 In his answer to this reference the practitioner admitted these facts but said that the sum of \$158,294 was removed from his trust account without his authority by Ms Marks. He said that the removal was effected by way of an unauthorised transfer of funds to his general account by telephone. The money was then withdrawn from his general account by Ms Marks. Once again, the practitioner relied upon the burglary in January 1999 as a justification for his failure to discover what had been done.

21 The Tribunal, after referring to evidence which, it said, cast grave doubts on the practitioner's answer to this and other references, concluded that the practitioner's answer, blaming Ms Marks for all of the deficiency, could not be sustained. It went on to say:

"It is quite apparent, and we so find, that the practitioner is guilty of illegal conduct. The evidence shows that his trust account has not been properly monitored and in the absence of his attending to explain the discrepancies in the account, it is clear that his explanation of deficiencies blamed by him on his Accounts Manager cannot alone justify these deficiencies. This reference discloses extremely serious breaches of a solicitors [*sic*] obligations."

22 It is unnecessary to give further examples of the practitioner's conduct the subject of the various references. It is enough to say that the Tribunal's findings more than bear out its conclusion that the practitioner's conduct, as found in respect of the references concerning the unauthorised taking of money from his trust account, clearly indicates that he is guilty of serious illegal and unprofessional conduct and that he is not fit to practise.

STEYTLER P
WHEELER JA

23 I agree also with the Tribunal's conclusion that the practitioner's conduct in neglecting his clients and abandoning his practice without notice to many of them, taken together with his conduct in grossly overcharging one of his clients, the subject of one of the references, also indicates his unfitness to practise.

24 It is well recognised that the object of disciplinary proceedings in this context is the protection of the public and the maintenance of proper standards in the legal profession rather than punishment. See, for example, *Re A Barrister and Solicitor* (1979) 40 FLR 1 at 24 - 25, per Blackburn CJ and Connor and Davies JJ. Consequently, when the question arises whether a practitioner should be struck off the roll, the answer to it ordinarily turns upon the answer to the question whether the practitioner is a fit and proper person to remain a member of the legal profession. See, *Re Davis* (1947) 75 CLR 409 at 416; *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 288 and *Re Maraj (a Legal Practitioner)* (1995) 15 WAR 12 at 25.

25 The illegal and unprofessional conduct of which the practitioner was found guilty by the Tribunal was, as I have already said, quite plainly such as to demonstrate his unfitness to remain a member of the legal profession. I am consequently of the opinion that his name should be struck off the roll of practitioners of this Court.

26 **WHEELER JA:** I agree with Steytler P and I have nothing to add.