

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PROFESSION ACT 2008 (WA)

CITATION : LEGAL PROFESSION COMPLAINTS
COMMITTEE and LEE-STEERE [2010] WASAT 189

MEMBER : JUDGE T SHARP (DEPUTY PRESIDENT)
MS F CHILD (MEMBER)
MR M ODES QC (SENIOR SESSIONAL MEMBER)

HEARD : 25 NOVEMBER 2010

DELIVERED : 24 DECEMBER 2010

FILE NO/S : VR 64 of 2010

BETWEEN : LEGAL PROFESSION COMPLAINTS
COMMITTEE
Applicant

AND

AUGUSTUS ERNEST LEE-STEERE
Respondent

Catchwords:

Legal practitioner - Professional misconduct - Knowingly misleading regulatory authority - Practising without being the holder of a current practice certificate - Failing to properly maintain trust account - Appropriate penalty

Legislation:

Legal Practice Act 2003 (WA), s 3, s 35, s 35(1), s 37(2), s 123, s 198(1), s 231, s 232

Legal Practice Board Rules 2004 (WA), r 51, r 52, r 52(1)(a), r 52(1)(b), r 53, r 57

Legal Profession Act 2008 (WA), s 421, s 438, s 438(2)(a), s 520(1)(a), s 520(1)(c)

State Administrative Tribunal Act 2004 (WA), s 56(1)

Result:

Practitioner suspended from practice for three years for professional misconduct

Category: B

Representation:

Counsel:

Applicant : Mr P Quinlan
Respondent : Mr G Donaldson SC

Solicitors:

Applicant : Legal Profession Complaints Committee
Respondent : N/A

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

A Solicitor v The Council of the Law Society of NSW (2004) 216 CLR 253
Barristers' Board v Darveniza [2000] QCA 253; (2000) 12 A Crim R 438
Legal Practitioners Complaints Committee and Segler [2009] WASAT 205(S)
Legal Practitioners Complaints Committee v Lashansky [2007] WASC 211
Legal Practitioners Complaints Committee v Pepe [2009] WASC 39

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 On 31 August 2010, the Tribunal on an application brought by the
Legal Profession Complaints Committee against a solicitor,
Mr Augustus Ernest Lee-Steere, found that Mr Lee-Steere engaged in
professional misconduct. The parties then made written submissions as to
penalty.

2 The Complaints Committee sought orders that the Tribunal make and
transmit a report of that finding to the Supreme Court (Full Bench) with
the recommendation that the practitioner's name be removed from the roll
of practitioners. The Complaints Committee also sought an order for
payment by the practitioner of its costs in relation to the proceedings.

3 The Tribunal considered the principles to be applied in relation to
disciplinary penalties, the nature of the findings against Mr Lee-Steere
and the parties' respective submissions. Having considered those matters,
the Tribunal concluded that the appropriate penalty in relation to the
finding of professional misconduct was that the practitioner be suspended
from practice for a period of three years. The Tribunal also ordered that
the practitioner should pay the costs claimed by the
Complaints Committee.

Allegations made against and admitted by the practitioner

4 In an application made to the Tribunal dated 22 April 2010 and an
amended application dated 20 July 2010, the applicant (**Committee**)
alleged that there is proper cause for disciplinary action against the
practitioner pursuant to s 438 of the *Legal Profession Act*
2008 (WA) (**Act**).

5 From the evidence before the Tribunal and by reason of the
admissions of the respondent (**practitioner**), the Tribunal found the
following relevant facts:

1.1 The practitioner was admitted to practice in
Western Australia on 2 February 1999 and held a practice
certificate for the financial year commencing on
1 July 2006 and ending on 30 June 2007.

1.2 Between January 2007 and October 2008, the practitioner
was a sole practitioner practising as 'Lee-Steere Legal'

and he maintained a trust account within the meaning of s 3 of the *Legal Practice Act 2003* (WA) (**LP Act**).

Complaint A - Practising without a practice certificate

- 2.1 By letter dated 21 June 2007 the practitioner applied to the Legal Practice Board (**Board**) for a practice certificate for the financial year commencing on 1 July 2007.
- 2.2 On 11 July 2007 the Board wrote to the practitioner advising him, amongst other things, that his practice certificate would not be issued until the Board had received an accountant's certificate relating to the operation of his trust account.
- 2.3 By facsimile letter dated 2 August 2007, the practitioner advised the Board that:
 - (a) at the time he was 'uncertificated', he had been on a camping trip in the North West from Saturday 30 June 2007 until the evening of Tuesday 31 July 2007;
 - (b) his trust account accountant was to conduct the trust account audit while the practitioner was away from Perth; and
 - (c) although his trust account accountant had told him that his audit certificate was then ready for collection, the practitioner could not pick it up until Monday 6 August 2007 as he was leaving immediately to travel to Jakarta to attend various matters not related to his legal practice.
- 2.4 In his letter of 2 August 2007, the practitioner sought the Board's confirmation that, if he delivered his audit certificate to the Board, he would be able to '*resume practicing [sic] immediately...*'. The practitioner intended to '*resume my practice related work as soon as I return to Perth on 6 August 2007*'.
- 2.5 By letter dated 21 August 2007 the Board advised the practitioner that it had still not received his audit accountant's certificate for his trust account. The Board also advised the practitioner that pursuant to s 37(2) of

the LP Act the practitioner's application for a practice certificate was incomplete and "*accordingly you are currently uncertificated*". The Board referred the practitioner to s 35(1) and s 123 of the LP Act.

2.6 The Board also advised the practitioner that he had to pay an additional \$500 because his incomplete application resulted in his application being treated as a 'late application'. The Board stressed that the practitioner's practice certificate would not be issued until the full fee is paid and the Board receives an original Accountant's Certificate for the practitioner's trust account.

2.7 By letter dated 19 September 2007 the Board again wrote to the practitioner and reminded him that his practice certificate expired on 30 June 2007 and that he was therefore '*uncertificated*'. The Board also reminded the practitioner that he could not engage in the practice of law without a current practice certificate and it set out the relevant sections of the LP Act. The letter continued:

In accordance with the Board's policy, practitioners suspected of practising whilst uncertificated for periods greater than 14 days are referred to the Professional Affairs Committee of the Board. The Board has not received notification from you that you no longer intend to practice, either at all or in this jurisdiction. Further, the Board has received advice that you have obtained insurance from Law Mutual to enable you to engage in practice.

2.8 The practitioner responded by letter dated 10 October 2007. In that letter the practitioner advised:

Upon my return to Perth on 6 August 2007 I left again for Indonesia for personal business... In the meantime I have not been practicing [sic] and my part of my shared office has been closed. I do intend to resume my sole practice once my family court matter has been resolved, which I now expect to occur. Please advise if you require further details of my absence...'

2.9 On 16 October 2007 the Board again wrote to the practitioner to remind him that he was '*currently uncertificated*' and the Board referred the practitioner to s 123 of the LP Act. The Board informed the practitioner

that further additional fees were due and payable because his application remained incomplete.

- 2.10 On 17 October 2007 the practitioner paid the balance of the late fee for his practice certificate, and by letter dated 22 October 2007 the Board sent the practitioner's practice certificate to him, issued with effect from 17 October 2007.
- 2.11 The practitioner was therefore uncertificated during the period from 1 July 2007 to 16 October 2007 (**the period**).
- 2.12 The practitioner engaged in legal practice during the period as follows:
- (a) between 30 July 2007 and 21 September 2007 the practitioner advised a client on a liquor licence application and prepared the necessary application;
 - (b) on 5 July 2007 and 11 July 2007 the practitioner appeared as counsel for a client in respect of an application for an extraordinary licence and unregistered firearm charges in the Magistrate's Court;
 - (c) on 27 July 2007 the practitioner appeared as counsel in criminal proceedings in the District Court;
 - (d) on 7 September 2007 and 25 September 2007 the practitioner appeared as counsel in the State Administrative Tribunal; and
 - (e) on 3 September 2007 the practitioner appeared as counsel in civil proceedings number 79/2007.
- 2.13 By letter dated 5 September 2008 the Committee requested that the practitioner advise it whether he had engaged in legal practice while uncertificated. By letter to the Committee dated 17 September 2008 the practitioner referred the Committee to his correspondence to the Board dated 2 August 2007 and 10 October 2007 referred to above.
- 2.14 By letter dated 18 November 2008 the Committee wrote to the practitioner requesting copies of the practitioner's

travel itineraries evidencing that he was overseas during the period. The practitioner did not provide the itineraries as requested.

- 2.15 On 17 February 2009 the Committee wrote to the practitioner and enclosed copies of invoices rendered by the practitioner for work performed during the period (**the invoices**). The Committee asked the practitioner to confirm, within ten days, whether the practitioner had practised whilst uncertificated, by performing the legal services recorded in the invoices. The practitioner did not respond within ten days or at all.
- 2.16 On 29 April 2009 the Law Complaints Officer issued a notice to provide written information pursuant to s 520(1)(c) of the Act and had it personally served on the practitioner. The Notice required the practitioner to deliver the information detailed in it, to the Law Complaints Officer on or before 5 pm on Tuesday 12 May 2009. The practitioner did not comply with the notice by 12 May 2009 or at all.
- 2.17 On 16 July 2009 the Law Complaints Officer issued a summons to produce documents pursuant to s 520(1)(a) of the Act and the summons was personally served on the practitioner on 17 July 2009. The summons required the practitioner to deliver the documents to the Law Complaints Officer on or before 5pm on Friday 7 August 2009. The practitioner did not comply with the summons by 5 pm on 7 August 2009 or at all.
- 2.18 In a letter to the Committee dated 8 September 2009, the practitioner acknowledged receipt of the notice and summons and noted that he had not yet delivered the requested files or provided a written response to either the notice or the summons. He stated that he was '*obtaining advice*'. The practitioner gave a personal undertaking to the Committee to provide '*the requested information to you by no later than Monday 14 September 2009...*'.
- 2.19 The practitioner did not comply with his personal undertaking and did not provide the information to the Committee by 14 September 2009 or at all.

- 2.20 In a letter dated 23 December 2009, the Committee advised the practitioner that its legal officer went to the practitioner's office on 29 October 2009 to collect the documents referred to in the notice and the summons but the practitioner was not at his office and the documents were not provided to the legal officer. The letter required the practitioner to produce the documents as required by the notice and the summons by 5 pm on Friday 15 January 2010. In the letter, the practitioner was cautioned that if he failed to respond as required, his failure may be referred to the Committee *'as a separate conduct issue'*. The practitioner did not provide the documents or comply with the notice or summons by 15 January 2010 or at all.
- 2.21 In a letter dated 5 March 2010, the Committee again requested that the practitioner comply with the notice and summons *'without delay and on Monday 8 March 2010'*. The practitioner did not produce the documents or otherwise comply with the notice or summons by 8 March 2010 or at all.

Complaint B - Trust account

- 3.1 On 8 December 2008 Ms Anna Young, Senior Trust Account Inspector of the Board completed an inspection of the practice's trust account, pursuant to s 198(1) of the LP Act. As a result of that inspection Ms Young prepared an Inspection Report dated 24 December 2008 (**the report**).
- 3.2 The report identified that between January 2007 and 8 December 2008, the practitioner:
- (a) failed to reconcile and prepare reconciliation statements for accounts maintained under r 52(1)(a) and (b) in breach of r 57 of the *Legal Practice Board Rules 2004 (WA)* (**Rules**) by:
 - (i) charging account keeping fees to the trust bank account from 2005 until March 2007; and
 - (ii) failing to sign trust bank and trust ledger reconciliations;

- (b) failed to maintain books of accounts in breach of r 52 and r 53 of the Rules in that he:
 - (i) failed to establish and maintain clients' trust ledgers on six client files identified in the report; and
 - (ii) maintained trust ledgers containing small or stagnant amounts to the credit of two people and the debit of another;
- (c) served bills of costs for a lump sum which did not include a notice as required by s 231 and s 232 of the LP Act; and
- (d) failed to keep an adequate record and receipts of general account deposits identifying from whom money was received and on account of which invoice or client, in breach of r 51 of the Rules as follows:

Date	Amount	Details
10/05/07	\$6,950.00	Cash Deposit
26/06/07	\$13,570.92	Cash Deposit
02/07/07	\$14,000.00	Cash Deposit
22/08/07	\$17,000.00	Cash Deposit
04/07/08	\$55,941.93	Cash Deposit
11/08/08	\$6,000.00	Net Bank Transfer
26/09/08	\$2,500.00	Cash Deposit
31/10/08	\$3,300.00	Net Bank Property People

3.3 The report was provided to the practitioner with a cover letter dated 24 December 2008. The practitioner was required to rectify the trust account matters referred to in the report, and requested to provide further information in relation to matters contained in the report within 28 days.

- 3.4 On 12 March 2009 Ms Young wrote to the practitioner requiring him to provide a '*comprehensive response*' to the report within seven days. The practitioner did not respond within seven days or at all.
- 3.5 In a letter dated 1 April 2009 Ms Young requested that the practitioner provide a response to her letter of 12 March 2009 within seven days.
- 3.6 By letter dated 24 April 2009, the practitioner responded to Ms Young's letters and advised that he had '*completed the action to be taken as recommended by your report*'. The practitioner set out the details of how he said he had complied with the recommendations and he enclosed evidence to substantiate compliance. However, the evidence confirmed that the practitioner had rectified the issues set out at s 3.2(a) - (c) above, but not s 3.2(d).
- 3.7 Ms Young wrote to the practitioner on 30 April 2009 and requested that he provide within seven days, information regarding the general account deposits referred to in s 3.2(d) above, together with complete trust ledger details for two named clients. The practitioner did not provide the information requested within seven days or at all.
- 3.8 By letter dated 24 August 2009 the Committee's legal officer wrote to the practitioner advising him that the Committee had determined to investigate his conduct pursuant to s 421 of the Act. The practitioner was asked to provide his response to the allegation that he had failed to properly maintain his trust account as referred to in the report and set out above. The letter enclosed a summons to produce documents and provide written information dated 24 August 2009 and issued by the Law Complaints Officer pursuant to s 520 (1)(a) and (c) of the Act (**the second summons**). The letter and second summons were personally served on the practitioner on 24 August 2009. The second summons required the written information to be delivered to the Law Complaints Officer on or before 5 pm, Monday 7 September 2009 and verified on oath or affirmation by the practitioner. The practitioner did not comply with the second summons by 7 September 2009 or at all.

- 3.9 By letter dated 8 September 2009 the practitioner gave the Committee his personal undertaking to respond to the second summons by 14 September 2009. The practitioner failed to comply with his personal undertaking and failed to provide the information and documents to the Committee by 14 September 2009 or at all.
- 3.10 In a letter dated 23 December 2009, the Committee required the practitioner to comply with the second summons by Friday 15 January 2010. The practitioner did not comply with the second summons by 15 January 2010 or at all.
- 3.11 In a letter dated 5 March 2010, the Committee again required the practitioner to comply with the second summons by 8 March 2010. The practitioner did not comply with the second summons by 8 March 2010 or at all.

6 Being satisfied, by reason of the facts found by the Tribunal as set out above and the practitioner's admission, that proper cause exists for disciplinary action against the practitioner, on 31 August 2010 the Tribunal ordered pursuant to s 56(1) of the *State Administrative Tribunal Act 2004* (WA) that the practitioner engaged in professional misconduct by:

- (a) contravening s 35, or s 123, or both, of the LP Act between 1 July 2007 and 16 October 2007 or thereabouts, by engaging in legal practice without being the holder of a current practice certificate;
- (b) knowingly misleading the Board and the Committee on 2 August 2007 and 10 October 2007 by falsely representing that he had not engaged in legal practice while uncertificated;
- (c) knowingly misleading the Board and the Committee on 17 September 2008 by falsely representing that he had not engaged in legal practice while uncertificated;
- (d) failing to respond to the Committee's reasonable enquiries;

- (e) failing to comply with a notice to provide written information issued on 29 April 2009 and summons to produce documents issued on 16 July 2009 and 24 August 2009 in breach of s 520(1) of the Act;
- (f) failing to comply with a personal undertaking provided to the Committee by letter dated 8 September 2009;
- (g) unreasonably delaying or neglecting to respond to the Senior Trust Account Inspector regarding requests for further information made by letters dated 12 March 2009 and 30 April 2009; and
- (h) failing to properly maintain the trust account of Lee-Steere Legal between January 2007 and October 2008.

7 The matter was then listed for hearing on the question of penalty and costs on 25 November 2010.

The parties' submissions as to appropriate action

8 The Committee submits that the Tribunal should:

- (a) order that a report be transmitted to the Supreme Court (Full Bench) with a recommendation that the practitioner be struck off the roll of practitioners;
- (b) order that the practitioner be suspended from practice until further order; and
- (c) order that the practitioner pay the Committee's costs in the sum of \$10,000.

9 The practitioner submits that the case does not call for a report to be transmitted to the Supreme Court with a recommendation that he be struck off the roll, and that in all the circumstances an appropriate penalty would be a suspension of practice for a period of no more than two years. The practitioner does not oppose the application for costs, nor the quantum of costs claimed.

The relevant principles

10 Where an order for removal from the roll is contemplated, the ultimate question is whether the material demonstrates that the practitioner is not a fit and proper person to remain a member of the legal

profession - *A Solicitor v The Council of the Law Society of NSW* (2004) 216 CLR 253 at [15].

- 11 In *Legal Practitioners Complaints Committee v Lashansky* [2007] WASC 211 at [19], the Court observed:

The Court's task, in these proceedings, is that of determining whether the respondent is a fit and proper person to remain on the Roll of Practitioners. In broad terms, the principles underlying proceedings of this kind are clear, and we do not understand them to be in dispute. Proceedings of this kind are not instituted in order to punish the practitioner, but to protect the public and maintain proper standards in the legal profession. 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 (see *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, *Re A Barrister and Solicitor* (1979) 40 FLR 1, *Re Maraj (a Legal Practitioner)* (1995) 15 WAR 12).

- 12 In *Legal Practitioners Complaints Committee v Pepe* [2009] WASC 39 (*Pepe*), Murray and Beech JJ were guided by the judgment of Thomas JA, McMurdo P and White J in *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 12 A Crim R 438 at 446 - 447 [38] where it was said:

Striking off is of course reserved for the very serious cases where the character and conduct of the practitioner is seen to be inconsistent with the privileges of further practice. Suspension is a less serious result, firstly because a limited period is specified and secondly because the right to resume practice is then preserved without any further onus upon the practitioner to prove that he or she is now a fit and proper person to practice.

The proper use of suspension is, in my opinion, for those cases in which a legal practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner. (In *Re A Practitioner* (1984) 36 SASR 590 at 593 per King CJ.)

- 13 In *Pepe* at [37] Murray and Beech JJ said:

Legal practice is not only a great privilege, but if the profession of the law is to maintain its capacity to serve the community in the way described, its practitioners must accept that they are subject to rigorous ethical standards. They must merit the trust and confidence in their propriety, of their clients, other legal practitioners, the courts and the community as a whole.

14 In *Legal Practitioners Complaints Committee and Segler* [2009] WASAT 205(S), the Tribunal summarised relevant principles at [6] - [7] as follows:

It is well settled, and was not in dispute before us, that the object of disciplinary proceedings is the protection of the public and the maintenance of proper standards in the legal profession, rather than punishment - *Re Maraj (a Legal Practitioner)* (1995) 15 WAR 12 at [24] - [25].

As the court in *Re Maraj* stated, the significance of the object in relation to the protection of the public is that, in order to protect the public and the reputation of the profession, the consequences for the practitioner may need to be more severe than they would be if the only object of the proceedings was one of punishment.

The practitioner's submissions

15 Counsel for the practitioner concedes that the Tribunal has only two alternatives as a result of the practitioner's conduct. The Tribunal should either:

- (a) make and transmit a report on the finding to the Supreme Court (Full Bench);
- (b) make an order that the practitioner's practising certificate be suspended for a specified period.

16 Counsel makes the point that the practitioner is a young practitioner and was a young practitioner at the time when the events in question took place. The practitioner is by his own admission unsuited to practising on his own account, but apparently felt compelled by his personal circumstances to do so when he simply did not have the necessary experience in the profession.

17 The practitioner failed to seek help from his fellow practitioners and, as a result, made judgments which turned out to be poor ones.

18 Counsel points out that the Tribunal had been given no evidence of any dishonesty in relation to the conduct of the affairs of the practitioner's clients and, on the contrary, counsel submits, it was the practitioner's single-minded approach to his practice that led him to giving an inappropriate level of priority to the requirements of the Board.

19 Counsel for the practitioner also concedes that the Tribunal's finding that the practitioner knowingly misled the Board and the Committee on

three occasions are serious indeed, and give rise to questions as to the practitioner's integrity. However, counsel submits that it is the practitioner's judgment in the way that he dealt with the Board and the Committee, not his integrity, that should be called into question.

The Committee's submissions

20 Counsel for the Committee concedes that what began as an almost routine enquiry from the Board should have continued to be a compliance matter and his conduct was that of a practitioner who found himself out of depth. However, the Committee does not see the practitioner's conduct as merely a manifestation of his difficulties with administrative tasks, because of the misleading impression that was proffered to the Committee and never corrected. This, in the Committee's submissions, raises a question of the practitioner's ability to deal honestly with a regulator and this leads the Committee to conclude that this is a case where the practitioner is not a fit and proper person to remain on the roll of practitioners.

21 Counsel for the Committee also point out the length of time during which the events in question occurred, the failure of the practitioner to cooperate with the Committee and the practitioner's 'retrospective account of events which occurred'.

Consideration

22 The reputation of the legal profession in the eyes of the public and among its members depends to a large extent upon the power and ability of the Board and the Committee to regulate effectively the activities of all legal practitioners. The purpose of the Act is expressly stated in its long title 'to provide for the regulation of legal practice in Western Australia'.

23 It is incumbent upon all legal practitioners to ensure that the above purpose is realised in all respects. To that end, legal practitioners are obligated to cooperate with the reasonable requests of their regulatory body to the fullest extent. It is a duty owed to the Board and the Committee in a measure not less than the duty owed by a practitioner to his or her client and to a Court or Tribunal.

24 In our view it is unacceptable, both to members of the public and to the profession, for a practitioner to undermine the authority of a regulatory body by ignoring its requests for information or failing to respond to those requests with alacrity and with complete honesty. To flaunt that authority is to fly in the face of the legislative intent and

disables the body from executing its statutory functions. Such conduct is viewed by this Tribunal in a most serious light and will not be countenanced.

25 The conduct and the inaction of the practitioner described above cried out for explanations which he gave in evidence at the last hearing (the penalty hearing). He deposed amongst other things that the reason he did not respond to the various requests for information by the Board and the Committee was that he was preoccupied with the affairs of his clients and did not have sufficient time to deal with the regulatory body's requests.

26 We need do little more than to state that explanation in order to reject it, particularly since the unanswered requests for information extended over a period of more than two years. As we stated above, the omission to respond to requests from the Board and the Committee within a reasonable time (and the time allowable must depend on the nature and extend of the information sought) manifests a total failure to appreciate the obligation of the practitioner to the regulatory body.

27 As indicated above, such behaviour can only be viewed in a most serious light - a fact which counsel for the practitioner, (correctly in our view) readily conceded. In our view, any pressure of work, no matter how severe, must yield to a request for information from the regulatory body. We have no doubt that should a practitioner find himself under such intense pressure, (such as for example, being actively involved in a lengthy trial), the regulatory body would favourably consider a reasonable extension of time to comply with its request.

28 We furthermore reject his evidence that he did not intend to mislead the Board when he informed it he was not practising while uncertificated. He deposed to the effect that he only intended to inform the Board that he was not carrying on 'normal' practice, and that his letter was badly worded. We find this explanation totally unconvincing and disingenuous.

29 Apart from the fact that he had admitted in his response that he knowingly misled the Board and that the Tribunal had made a finding to that effect, his evidence was self-serving and was merely an ex post facto attempt to 'water down' his role.

30 For the same reasons, we are unable to accept his evidence that he thought at the time that he could perform legal work while uncertificated as long as he did not charge fees for that work which, he deposed, was

rendered free of charge. In cross-examination, he admitted that he billed several clients for those services, one of them he states, in error.

31 The explanations which he gave were once again, not raised by him at any time prior to the penalty hearing and manifests a failure to appreciate his obligations to the regulatory body and to accept responsibility for what is, at best, a significant dereliction of his obligation towards the Board and the Committee.

32 Such conduct brings the profession into disrepute and does not constitute a standard of practice which members of the public and his colleagues can reasonably expect of a member of the legal profession.

33 It should be noted that no explanation was forthcoming as to the failure to properly maintain his trust account, even though there is no evidence that this resulted in a monetary loss for any of his clients. The fact that no money was shown to have been lost is in no way exculpatory but serves merely to mitigate the severity of the misconduct in relation to a significantly important aspect of a solicitor's practice.

34 It must be mentioned that some of the explanations given by the practitioner in his evidence at the penalty hearing found expression in a letter written to the Board dated on the day of that hearing and handed to the Tribunal that same day. As alluded to above, none of those explanations were forthcoming either in the practitioner's response or at the hearing on the merits. In fact, the practitioner chose not to lead any evidence at that hearing but contented himself with an admission of every allegation made in the Committee's complaint.

35 We agree with the contention by counsel for the Committee that the practitioner's problem began as 'a compliance issue'. Had he at the earliest stage not attempted to mislead the Board and had he admitted that he had practised while uncertificated, the practitioner would not have found himself in the serious position now confronting him.

36 As a result of poor judgment, he chose to dissimulate and to procrastinate which not only compounded the problem but, with the passage of time, like quicksand, placed him in a situation from which he was completely unable to extricate himself. The cumulative effect of his conduct fully justifies the concession made by his counsel that the only alternatives open to us is either to suspend him from practice or to recommend his removal from the roll.

37 We have given considerable thought to the appropriate penalty to be imposed on the practitioner. Serious consideration has been given to recommending that the name of the practitioner be removed from the roll of legal practitioners in terms of s 438(2)(a) of the Act.

38 However, in light of the fact that the practitioner was at the time relatively young and inexperienced, that he had not contravened the Act previously, that at the relevant time he was under matrimonial stress, and that his breaches of the Act are not at the most serious end the scale (although certainly close to it), we are of the view that this is a borderline case and that the public interest and the reputation of the profession will be appropriately served if he were suspended from legal practice for a substantial period.

39 On that basis, the Tribunal will make an order that a local practice certificate is not granted to the practitioner before the end of a period of three years from the date of the orders below. This period of suspension takes into account the period already elapsed during which the practitioner's practice certificate has been suspended.

Costs

40 We consider that, in accordance with the usual practice of the Tribunal in relation to vocational regulatory proceedings, it is appropriate that the practitioner be ordered to pay the costs of the Committee in relation to the proceedings. The practitioner does not argue otherwise. We consider that the amount claimed by the Committee is reasonable, and accordingly there should be an order that the practitioner pay the Committees' costs fixed at \$10,000.

Orders

1. In relation to the finding that the practitioner engaged in professional misconduct, the practitioner's local practising certificate is suspended for a period of three years to commence from the date of this order.

2. The respondent is to pay the applicant's costs fixed at \$10,000. Payment is to be made within three months of the date of these orders.

I certify that this and the preceding [40] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUDGE T SHARP, DEPUTY PRESIDENT