[2014] WASAT 84

JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
STREAM	**:**	VOCATIONAL REGULATION
ACT	**:**	LEGAL PROFESSION ACT 2008 (WA)
CITATION	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE and LOVE [2014] WASAT 84
MEMBER	**:**	JUDGE T SHARP (DEPUTY PRESIDENT) MS F CHILD (MEMBER) MR H DEMBO (SENIOR SESSIONAL MEMBER)
HEARD	**:**	8 APRIL 2014
DELIVERED	**:**	4 JULY 2014
FILE NO/S	**:**	VR 159 of 2013
BETWEEN	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE Applicant AND DEAN RICHARD LOVE Respondent

Catchwords:

Vocational regulation - Legal practitioner - Finding of professional misconduct - Penalty - Practitioner's website - Misleading a member of the public in connection with her application for legal aid - Misleading Legal Aid WA as to the merits of a case - Fabricating information to Legal Aid WA - Report on finding to Supreme Court (full bench) - Costs

Legislation:

Legal Profession Act 2008 (WA), s 403, s 428, s 438(1), s 438(2)(a)
State Administrative Tribunal Act 2004 (WA), s 87(2)

Result:

Report on Tribunal's findings made and transmitted to Supreme Court (full bench)
The respondent is to pay the applicant's costs in the amount of $5,500 within 30 days of the date of publication of this decision

Summary of Tribunal's decision:

The Legal Profession Complaints Committee had previously brought a complaint to the Tribunal, alleging that Mr Dean Richard Love, a legal practitioner, is guilty of professional misconduct.

The allegation concerned a website devised by the practitioner called 'applyforlegalaid'. The practitioner's intention was that the website would contain no reference whatsoever to the practitioner. Instead, a visitor to the site would find only a blank application form for legal aid, bearing Legal Aid WA's logo, and in terms almost identical to Legal Aid WA's own application form. However, once the form was completed and the 'Submit' button pressed, the information inserted into the form would be forwarded, not to Legal Aid WA, but to the practitioner.

The practitioner would then use that information to complete and submit a true application form to Legal Aid WA, as if he were the applicant's lawyer. If the application was approved, the practitioner's expectation was that Legal Aid WA would then, in accordance with its normal practice, appoint the practitioner to act for the applicant. Only at that stage would the applicant become aware that the practitioner was involved.

In the particular case under consideration, the legal aid applicant did not fully complete the practitioner's form. The practitioner completed the Legal Aid WA form from the information he received, but he fabricated the missing information with details which he did not know to be true. He also certified to Legal Aid WA, again without any basis upon which to do so, that the applicant's legal case had merit.

The practitioner subsequently consented to a finding against him of professional misconduct. The parties then applied to the Tribunal to assess the appropriate penalty.

The Tribunal determined that the practitioner's conduct was disgraceful and dishonourable. It found that the appropriate professional disciplinary

consequence of Mr Love's professional misconduct in the circumstances of this case is to make and transmit a report on the finding to the Supreme Court (full bench), with a recommendation that the practitioner's name be removed from the roll of practitioners. The Tribunal also ordered Mr Love to pay the disbursements incurred by the Legal Profession Complaints Committee in the proceeding, $5,500, within 30 days.

Category: B

Representation:

Counsel:

Applicant	:	Mr AJ Musikanth with Ms P Le Miere
Respondent	:	Mr DR Clyne

Solicitors:

Applicant	:	Legal Profession Complaints Committee
Respondent	:	N/A

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

A Solicitor v Council of the Law Society of New South Wales (2004) 216 CLR 253
Barristers' Board v Darveniza [2000] QCA 253
In Re Davis (1947) 75 CLR 409
Law Society of New South Wales v Foreman (1994) 34 NSWLR 408
Legal Practitioners Complaints Committee v Lashansky [2007] WASC 211
Legal Practitioners Complaints Committee v McKerlie [2007] WASC 119
Legal Practitioners Conduct Board v Kerin [2006] SASC 393
Legal Profession Complaints Committee v O'Halloran [2013] WASC 430
Medical Board of Western Australia and Roberman [2005] WASAT 81 (S)
Re Maraj (a legal practitioner) (1995) 15 WAR 12 at 25

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 Under s 428 of the *Legal Profession Act 2008* (WA) (**LP Act**), the applicant (**Committee**) in an application dated 16 August 2013 referred three complaints concerning the respondent (**Practitioner**) to the Tribunal. The Committee sought findings under s 438(1) of the LP Act that the Practitioner had engaged in professional misconduct.

2 The Tribunal referred the matter to mediation. A minute of consent orders was subsequently filed with the Tribunal on 10 February 2014, in which the Practitioner:

- admitted the statement of facts and contentions set out in the application; and
- agreed that the contents of the Committee's book of documents is evidence of and relevant to his conduct the subject of the application.

3 On 19 February 2014, the Tribunal made an order with the consent of the parties that the Practitioner had engaged in professional misconduct within the meaning of s 403 of the LP Act. The Tribunal also ordered that it would hear the parties on penalty and costs on 8 April 2014.

The finding of professional misconduct against the Practitioner

4 The details which follow are as alleged by the Committee and are not disputed by the Practitioner.

The Practitioner's background

5 At all material times, the Practitioner was:

- an Australian legal practitioner within the meaning of the LP Act;
- the principal of Dean R. Love and Associates, Barristers & Solicitors (**Firm**); and
- the sole director of DRL Legal Pty Ltd (**DRLL**).

6 The Practitioner was also a member of the panel of private practitioners for the Legal Aid Commission of Western Australia (**LAWA**).

7 DRLL operated a website called www.drllegal.com.au.

Applying to LAWA for legal aid

8 The finding by the Tribunal of professional misconduct against the Practitioner concerns a website developed by the Practitioner called 'www.applyforlegalaid.com.au'. It is therefore necessary for the purpose of these reasons to outline briefly the usual process for making a legal aid application to LAWA.

9 Applications to LAWA for legal aid can only be made by a member of the public by either:

- completing and signing an application for legal aid using an approved form provided by LAWA and then submitting it directly to LAWA; or

- completing and signing an application for legal aid using an approved form provided by LAWA and then providing it to a legal practitioner with an instruction or request that the practitioner submit a request to LAWA for legal aid.

10 The application includes the following declaration (**Applicant's Declaration**) by the legal aid applicant:

> I ... have read the conditions of assistance available on the Legal Aid website (and provided to me) and acknowledge that it is an offence to:
>
> - Fail to provide information required of me which is relevant to this application for legal aid;
>
> - Provide a document to the Commission in connection with this application for legal aid that is false or misleading; and
>
> - Make a false or misleading statement either orally or in writing in relation to this application for legal aid.
>
> I therefore declare that all the information I have given is true and correct.
>
> Applicant's Signature Date

11 LAWA maintains a web interface entitled Grants Online (**GOL**) on which LAWA panel solicitors, and only those panel solicitors, may on behalf of clients or prospective clients apply for legal aid 'on line' by completing the legal aid application form available via the GOL interface (**GOL Aid Application**).

12 Guidelines have been issued by LAWA as to the terms and conditions of submitting a GOL Aid Application (**GOL Guidelines**). It is a condition of making a GOL Aid Application that practitioners agree to comply with the GOL Guidelines.

13 The GOL Guidelines provide that LAWA may make a grant of legal assistance for an application that meets the 'merits test' set out in Section 3 of Part 1 of the *Commonwealth Legal Aid Guidelines* which form part of the GOL Guidelines. The components of that test are a 'reasonable prospects of success test', a 'prudent self-funding litigant test' and an 'appropriateness of spending limited public legal aid funds test'.

14 A legal practitioner submitting a GOL Aid Application is required to certify that he or she has consulted with the relevant applicant and must provide his or her opinion as to the legal merits of the defence or claim the subject of the application.

15 In circumstances where a legal practitioner submits a GOL Aid Application on behalf of a client or prospective client, it is the usual practice of LAWA, if the grant of aid is approved, to appoint that practitioner to act on that person's behalf.

The 'applyforlegalaid' website is created

16 Between about January and March 2012, DRLL, through the Practitioner, acquired the domain names 'applyforlegalaid.com.au' and 'applyforlegalaidwa.com.au'. DRLL subsequently registered a new website named 'www.applyforlegalaid.com.au' (**Application Website**).

17 The Practitioner then engaged a web developer to develop the Application Website and expressly instructed that it was to have the following characteristics:

- upon accessing the Application Website, the only thing that was to appear was a document entitled 'Legal Aid Application Form' (**Application Form**) which included the logo of LAWA and which was in terms very similar to the GOL Aid Application;

- it was to allow a user to complete the Application Form online by answering questions in 'pop up boxes'. In particular, a person had to insert personal information about themselves and their financial and legal problems;

- it was not to include the Practitioner's email address to which the completed form would be sent; and

- when the icon marked ‘Submit’ is clicked or pressed, the completed form or at least its contents would be automatically sent to the Practitioner by email.

18 On or about 21 March 2012, the completed Application Website containing the Application Form was uploaded to an internet server.

An Application Form is submitted

19 Subsequently, on or about 29 March 2012, Ms P, the respondent in a child custody matter, accessed the Application Website. She completed some of the Application Form and clicked on the Submit button.

20 As a result, the Practitioner then received an email which contained the information which Ms P had inserted into the Application Form (**Email**). The Email was at that stage the Practitioner's only communication from Ms P and the the only contact the Practitioner had with Ms P. It was also the only information the Practitioner had received from her.

21 When the Practitioner received the Email, it did not contain:

- answers to or information about the questions numbered N1-N4 (Attempt to Negotiate), O3-O4 (Contact with the Department of Child Protection), V1-V4 (Family and Domestic Violence), F01-F02 or F04-F017 (Parenting Orders) in Ms P's Application;

- information which would provide reasonable grounds for the Practitioner to conclude that Ms P’s case had legal merit;

- the Applicant's Declaration; or

- any signature of Ms P or any authority to sign Ms P's Application on her behalf.

A GOL Aid Application for legal aid is made by the Practitioner

22 On or about 29 March 2012, the Practitioner prepared and submitted Ms P's application for legal aid using a GOL Aid Application which:

- provided answers to questions N1-N4, O3-O4, V1-V4, F01-F02 and F04-F017; and

- indicated that on 29 March 2012 Ms P had signed the Applicant's Declaration, declaring that all the information in Ms P's Application was true and correct.

Subsequent events

23 LAWA subsequently refused legal aid to Ms P and told her that her lawyer (meaning the Practitioner) had been advised of the decision.

24 Ms P informed LAWA in response that she had never heard of the Practitioner and that she believed she had submitted her application for legal aid online directly to LAWA.

25 In a letter dated 9 May 2012, LAWA:

- informed the Practitioner that a client had been misled into believing that she was applying directly for legal aid from LAWA; and

- requested the Practitioner to 'withdraw the online application form with the Legal Aid WA logo'.

26 By email dated 9 May 2012, the Practitioner instructed the web developer to remove the Logo from the Application Website and to insert in its place the logo of the Firm and the address and contact details of the Practitioner.

27 These instructions were complied with on the same day.

28 Also on that date the Practitioner by email:

- informed LAWA that he had instructed the web developer to remove the LAWA logo; and

- informed LAWA if there were other problems to let him know and that he would get the web developer to make changes.

29 In a letter dated 10 July 2012, LAWA informed the Practitioner, among other things, that it had resolved to give the Practitioner written notice of its intention to remove the Practitioner from LAWA's panel of private practitioners.

30 Around or on 14 July 2012, the Practitioner took down the Application Website.

The Tribunal's orders of 19 February 2014

31 The order of the Tribunal made by consent on 19 February 2014 was in the following terms:

> 1. The practitioner engaged in professional misconduct within the meaning of section 403 of the *Legal Profession Act 2008* (WA):
>
> (a) between about 21 March 2012 and 14 July 2012 by intentionally causing the publication of a webpage on a website www.applyforlegalaid.com.au (**Application Website**) that was likely to mislead and deceive a person using the Application Website to believe that they were completing and submitting an application for legal aid directly to the Legal Aid Commission of Western Australia (**LAWA**), when in fact the Application Website would send an email, containing completed personal information, to the practitioner's firm or company so that the practitioner could use the information to submit an application for legal aid to LAWA purportedly on that person's behalf in the expectation that he would be assigned legal aid to act on the person's behalf if legal aid was granted;
>
> (b) on or about 29 March 2012 when submitting to LAWA an application for legal aid for representation of Ms P [Request ID 126470] (**Ms P's Application**) in that he intentionally falsely represented to LAWA:
>
> (i) expressly, that Ms P had consulted with him and he was of the opinion that the application had legal merit; and
>
> (ii) implicitly, that he had reasonable grounds for believing that the application had legal merit,
>
> in circumstances where the practitioner had not consulted with Ms P and the practitioner had no reasonable grounds for forming an opinion as to whether the application had legal merit;
>
> (c) on or about 29 March 2012, when he caused Ms P's Application to be submitted to LAWA in a form which:
>
> (i) provided answers to questions N1-N4, O3-O4, V1-V4, F01-F02 and F04-F017 when Ms P had

not given him any information in relation to those matters; and

(ii) indicated that on 29 March 2012 Ms P had signed a declaration, which included a declaration that all the information in Ms P's Application was true and correct, when she had not done so.

2. The matter is otherwise adjourned for a hearing on penalty and costs on 8 April 2014.

Parties' submissions on penalty

32 The Committee filed its submissions on penalty and costs on 25 February 2014. The Committee also filed witness statements from Mr Raymond Collins, a retired manager from the Professional Standards Division of the Law Society of New South Wales and from Mr Mark Lewis, one of the Committee's legal officers, both dated 4 April 2014.

33 The Practitioner filed extensive submissions on penalty on 18 March 2014. However, upon the Committee's objection, those submissions were subsequently withdrawn save for paragraphs 383 to 394 inclusive (which deal with the Practitioner's financial circumstances) and paragraphs 711 to 721 inclusive (which comprise what the Practitioner refers to as his 'Final Submissions in this instance').

34 The Practitioner filed supplementary submissions on penalty on 2 April 2014 and, at the hearing, the Practitioner through counsel made oral submissions and submitted a number of character references.

35 The Committee's submission is, in essence, that the Practitioner is not a fit and proper person to remain a legal practitioner. The Committee submits that the Tribunal should make and transmit a report of its findings to the Supreme Court (full bench) with the recommendation that the Practitioner be struck off the roll.

36 The Committee also seeks an order from the Tribunal that the Practitioner's local practising certificate is not granted to the Practitioner until a determination is made by the Court.

37 The Practitioner acknowledges that the issue before the Tribunal is whether he should be struck off or whether a lesser penalty will be sufficient. In these circumstances, the Practitioner says that a suspension would be a more appropriate penalty.

38 The Practitioner says that any harm done as a result of his actions is, in real terms, minimal. He was at the time of the conduct an experienced practitioner of 13 years. He had relevant experience in the areas in which he was advising his clients. Any harm resulting from his actions was limited to the Practitioner obtaining more work for himself as opposed to other solicitors on the LAWA panel.

39 In relation to the finding that the Practitioner certified to LAWA that a matter had legal merit without meeting with the client in question, counsel for the Practitioner admits that this is a serious matter, but says that the Practitioner did have a general understanding of the issues involved (T:16; 08.04.14).

40 The Practitioner draws the Tribunal's attention to the fact that he 'pleaded guilty' early, and has completed four ethics courses in November 2013 of his own volition. Moreover, the Practitioner through counsel submits that he has not misled the Tribunal, which 'is usually the most significant thing that results in a suspension' (T:15; 08.04.14).

41 Further, the Practitioner says that he has undergone a psychiatric evaluation and has been diagnosed with ADHD. He does not submit, however, that this is an excuse in these proceedings.

42 At the hearing, counsel for the Practitioner reminded the Tribunal that the Practitioner has admitted his fault and continues to accept that he has done the wrong thing (T:15; 08.04.14). In this regard, the Practitioner through counsel said this:

> It was a stupid thing to do. It only lasted a fairly brief period of time. As soon as it was brought to Legal Aid's attention, they contacted him and he took it down and admitted his fault. And he has always admitted his fault. (T:15; 08.04.14)

43 The Practitioner submits that he ceased legal practice in November 2013, which has caused him significant financial hardship. He sold his office in Perth at a loss and says he has had no income at all.

44 However, the Committee takes exception to this submission. The Committee says that the Practitioner has continued the operation of his legal practice, despite saying in a letter that he wrote to the Legal Practice Board on 20 December 2013 that:

> I have ceased to practice (sic) both in WA and in New South Wales and have taken indefinite leave for personal reasons. I have not taken on any

> new clients since September, ceased work from November and have taken down my website.

45 The Practitioner sent a letter in similar terms to the Law Society of New South Wales, also dated 20 December 2013

46 The Committee says that the Practitioner's subsequent conduct was consistent with continuing to practise in New South Wales. In particular, the Committee referred to the affidavits of Mr Collins and Mr Lewis dated 4 April 2014.

47 Mr Lewis relevantly deposes that he called the Firm's Perth telephone number on 31 March 2014 but believed that the number was disconnected. He then called the Firm's Sydney telephone number on the same date. He asked to make an appointment with the Practitioner in Perth and was informed by whoever answered the call that appointments were only being made in the Practitioner's Sydney office.

48 Mr Collins deposes that he called the same telephone number in Sydney on 24 March 2014 and was informed as follows:

- he could have an appointment to speak with the Practitioner regarding a family law matter on 25 March 2014; and
- the initial hourly rate would be around $330.

49 Mr Collins says he was subsequently called back by the Practitioner, who informed Mr Collins that there had been a mistake and that the Practitioner was still on leave. Mr Collins then said that the Practitioner offered to give him informal advice over the phone. Mr Collins also says that the Practitioner offered to call him back on 7 April 2014, a day before the final hearing in this matter.

50 In response to this further allegation, counsel for the Practitioner raised the following points:

- The evidence of Mr Collins and Mr Lewis does not prove that the Practitioner was continuing to practise, but, at best shows that he had continued to engage his telephone answering service.
- The telephone answering service was simply relying on longstanding instructions in terms of quoting Mr Collins an hourly rate.

- During the last few months, the Practitioner had only been in Sydney on two occasions.

- The Practitioner steadfastly maintains that he has not misled anyone in relation to his statement that he was ceasing to practise.

51 The Committee did not ask the Tribunal to make any findings in respect of this issue. The Committee says that the purpose of raising this allegation was not to seek further findings against the Practitioner, but rather the Committee submitted that this further alleged conduct was relevant to the determination of penalty.

52 Finally, the Practitioner points to the numerous positive character references that he has received from senior practitioners practising in Western Australia.

53 The Practitioner concludes by submitting that his conduct was a bad error of judgment but that his conduct was not disgraceful or dishonourable. Therefore, the Practitioner says, a period of suspension would be a more appropriate penalty. Counsel for the Practitioner also informed the Tribunal that the Practitioner accepts that he should be supervised as an employee if and when he returns to practice.

Principles to be applied in determining penalty

54 The principles to be applied when determining the appropriate penalty in legal profession disciplinary matters are well settled, and are not in dispute between the parties in this matter.

55 The purpose of the penalty is not to punish the practitioner concerned, but to protect the public and to maintain the reputation and standards of the legal profession; ***Re Maraj (a legal practitioner)*** (1995) 15 WAR 12 at 25.

56 Therefore, the Tribunal must consider the effect of its order on the understanding, both in the legal profession and in the public, of the standard of behaviour required of lawyers; ***Law Society of New South Wales v Foreman*** (1994) 34 NSWLR 408 at 444F.

57 Where an order for the removal from the roll is contemplated, the practitioner concerned must be shown not to be a fit and proper person to be a legal practitioner; ***A Solicitor v Council of the Law Society of New South Wales*** (2004) 216 CLR 253 at [15].

58 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 (***Darveniza***) at [38].

59 Honesty, fairness and integrity are all essential characteristics expected of persons who practise law; ***Legal Practitioners Complaints Committee v McKerlie*** [2007] WASC 119 at [8] (***McKerlie***). Further, fitness to practise law requires that practitioners must have the personal confidence of their clients, fellow practitioners and judges; ***In Re Davis*** (1947) 75 CLR 409 at [420].

60 The willingness of a practitioner to engage in dishonest behaviour is of central relevance to the assessment of a practitioner's fitness to practise: ***McKerlie*** at [8].

61 In ***Darveniza***, Thomas JA at [33] observed that:

> [T]he 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.

62 Another factor relevant to the determination of penalty is a practitioner's ability or failure to understand the impropriety of his or her conduct; ***Legal Practitioners Complaints Committee v Lashansky*** [2007] WASC 211 at [35].

Findings on penalty

63 The Practitioner on his own admission intentionally deceived, misled and made false representations to LAWA. Ms P had not signed the Applicant's Declaration and some of the information which he included in his application on behalf of Ms P for legal aid was fabricated by the Practitioner. Even though the Practitioner had not given an express opinion to LAWA on the merits of Ms P's case, the Practitioner is familiar with the GOL Guidelines and knew that, by submitting an application, LAWA would believe that the application met the 'merits test' pursuant to the GOL Guidelines.

64 The legal aid system is publicly funded and is essential to the fair and just operation of Western Australia's judicial system. Its resources are limited. This deceptive behaviour in dealing with LAWA cannot be tolerated.

65 Further, the Practitioner on his own admission clearly intended to deprive other members of the profession, namely the other members of LAWA's panel of practitioners, of the opportunity of being instructed by LAWA. The Practitioner clearly regards his own interests to be of greater importance than those of the public and his fellow practitioners.

66 The Tribunal notes that the Practitioner has already been found by this Tribunal to have engaged in unsatisfactory professional conduct on three separate occasions in the past. Those findings were, in summary, that the Practitioner had failed to treat a client fairly and to protect that client's interest, that he fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner and that he acted recklessly and contrary to instructions from a third party in order to advance his own interests.

67 These past findings are not relied upon in order to punish the Practitioner. However, the Practitioner's past conduct is relevant to the consideration of whether the Practitioner is a fit and proper person to practise law because it illustrates that the Practitioner's misconduct is not an isolated incident; ***Legal Profession Complaints Committee v O'Halloran*** [2013] WASC 430 at [93].

68 While the Practitioner's conduct presently under consideration is of a different nature, this still suggests to the Tribunal a continued failure by the Practitioner to appreciate the standards of conduct required of him; ***Legal Practitioners Conduct Board v Kerin*** [2006] SASC 393 (***Kerin***) at [47] - [48].

69 The Practitioner's character referees, each a legal practitioner, all speak well of the Practitioner. However, it is clear from their letters that some of the witnesses (Mr Earnshaw, Mr Cooper, Mr Watters, Dr Davies and Mr Rebbeck) are not fully aware of the details of the findings which the Tribunal has recently made against the Practitioner or his disciplinary history. Mr Rynne expressed some knowledge of the Practitioner's disciplinary history but states that he has no information about the recent finding other than it is 'serious'. The same applies to Mr Singh, who says that he knows about the Committee's allegations, but does not express any knowledge of the Tribunal's recent finding.

70 Mr Cywicki and Mr Percy QC both say that they know the details of the recent finding of the Tribunal but make no mention of their knowledge or otherwise of the Practitioner's disciplinary history.

71 It is not apparent from the references from Mr Butcher and from Mr Lindsay that they have any detailed understanding of the Tribunal's finding against the Practitioner or awareness of his disciplinary history.

72 We can therefore give little weight to these references.

73 The Practitioner did not demonstrate any remorse for his conduct. He concedes only that his conduct was 'stupid' and seeks to excuse himself by saying that any harm from his actions was limited to being instructed in matters ahead of other members of LAWA's panel of solicitors. As far as his opinion to LAWA that Ms P's case had legal merit is concerned, his explanation that he had a general understanding of the issues involved is entirely unacceptable.

74 The Committee says that it is to his credit that the Practitioner consented to findings of professional misconduct. However, while this may be so, the Tribunal prefers the view that this action on the part of the Practitioner was motivated by a desire not to defend a complaint about him which was clearly and demonstrably indefensible.

75 We accept the Practitioner's submission that the Tribunal may take his financial hardship into consideration when assessing penalty. However, while we may take account of this, the fact that the Practitioner has suffered and may suffer financial hardship as a result of the Tribunal's findings is a secondary consideration when the Tribunal is fulfilling its obligation to make orders to protect the public and maintain public confidence in the legal profession.

76 The Tribunal's conclusion is that the Practitioner's conduct must be regarded as disgraceful and dishonourable and that he is not a fit and proper person to remain a legal practitioner. His conduct justifies a report being made and transmitted to the Supreme Court (full bench) pursuant to s 438(2)(a) of the LP Act with the recommendation that the Practitioner's name be removed from the roll of legal practitioners.

77 The Tribunal’s orders dated 19 February 2014 together with these reasons constitute that report.

78 The Practitioner does not currently hold a local practising certificate. The Committee has applied for an order from the Tribunal that the Practitioner's local practising certificate is not granted to the Practitioner until a determination is made by the Supreme Court.

79 Under what authority the Tribunal is expected make such an order is unclear from the Committee's submissions. The decision to grant a local practising certificate rests with the Legal Practice Board, not the Tribunal. Accordingly, that application is refused.

Costs

80 The Committee also seeks an order for the Practitioner to pay its costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA) (**SAT Act**).

81 Section 87 of the SAT Act relevantly provides as follows:

> **Costs of parties and others**
>
> (1) Unless otherwise specified in this Act, the enabling Act, or an order of the Tribunal under this section, parties bear their own costs in a proceeding of the Tribunal.
>
> (2) Unless otherwise specified in the enabling Act, the Tribunal may make an order for the payment by a party of all or any of the costs of another party or of a person required to produce a document or other material on the application of the party under section 35.
>
> …

82 The Tribunal's normal practice in disciplinary proceedings is to award costs to a successful vocational regulatory body. In ***Medical Board of Western Australia and Roberman*** [2005] WASAT 81 (S) at [30] the Tribunal held that, although the question of an award of costs is always a matter of discretion to be exercised in the circumstances of each case:

> … [w]here a regulatory authority successfully brings a complaint of conduct which, if proved, justifies disciplinary action by the Tribunal, there will usually be a strong case for the exercise of that discretion in the favour of the regulatory body. That is because such bodies perform a function which promotes the public interest, and usually with limited resources.

83 The Practitioner has described to the Tribunal his financial hardship arising from his decision to cease practising in November 2013.

84 However, we note that the Committee is not seeking to recover the costs of its own time and expenses in relation to this matter. Rather, the Committee seeks an order that the Practitioner pay a contribution to the costs it has incurred in having counsel prepare the submissions on penalty

and appear on its behalf. The amount of costs sought by the Committee is fixed in the sum of $5,500.

85 We see no reason in the circumstances of this case to depart from the Tribunal's usual practice in relation to costs in disciplinary hearings. The quantum of costs sought, $5,500, is reasonable in the circumstances.

Orders

1. Pursuant to s 438(2)(a) of the *Legal Profession Act 2008* (WA), a report be transmitted to the Supreme Court (full court) on the Tribunal's finding that a practitioner, Mr Dean Richard Love, is guilty of professional misconduct. The report comprises the Tribunal's orders dated 19 February 2014 and these reasons and is to be transmitted with a copy of the transcript of the hearing on 8 April 2014.

2. Pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA), the Practitioner must pay to the applicant its costs of the proceeding in terms of disbursements in the sum on $5,500 within 30 days of this order.

I certify that this and the preceding [85] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

_____

JUDGE T SHARP, DEPUTY PRESIDENT