

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

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

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and WROUGHTON  
[2013] WASAT 191 (S)

**MEMBER** : JUDGE T SHARP (DEPUTY PRESIDENT)  
MS V O'TOOLE (SENIOR SESSIONAL MEMBER)  
MR H DEMBO (SENIOR SESSIONAL MEMBER)

**HEARD** : 9 AUGUST 2013

**DELIVERED** : 27 NOVEMBER 2013

**SUPPLEMENTARY  
DECISION  
DELIVERED** : 25 JULY 2014

**FILE NO/S** : VR 110 of 2012

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

KAREN ALETHEA MULLALLY WROUGHTON  
Respondent

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*Catchwords:*

Legal practitioners - Unsatisfactory professional conduct - Instituting Court proceedings without any or adequate evidence to support the claim - Failing to provide any or adequate advice - Failing to respond in a timely manner to requests from another practitioner - Failing to keep a client informed - Appropriate penalty

*Legislation:*

*Legal Profession Act 2008 (WA), s 439, s 441*

*Result:*

Respondent reprimanded and ordered to pay costs

*Summary of Tribunal's decision:*

On 27 November 2013, the Tribunal made a finding of unsatisfactory professional conduct against Ms Karen Alethea Mullally Wroughton. The parties then made written submissions as to penalty. The Legal Profession Complaints Committee sought an order that the practitioner be reprimanded. The practitioner does not hold a local practising certificate. Accordingly, the Complaints Committee also sought a further order that if such a certificate is granted in the future, it must be made subject to a condition that for two years the practitioner may only practise under the supervision of a practitioner approved by the Legal Practice Board.

The Complaints Committee also applied for payment by the practitioner of the Committee's costs in relation to the proceedings.

The Tribunal considered the principles to be applied in relation to disciplinary penalties, the nature of the findings against the practitioner and the parties' respective submissions. Having considered those matters, the Tribunal concluded that the appropriate penalty in relation to the finding of unsatisfactory professional conduct was that the practitioner be reprimanded. Any condition imposed on a local practising certificate granted to the practitioner in the future should be a decision of the Legal Practice Board at the relevant time.

The Tribunal also ordered that the practitioner should pay the disbursements incurred by the Complaints Committee.

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms KF Banks-Smith  
Respondent : In person

*Solicitors:*

Applicant : Legal Profession Complaints Committee

Respondent : N/A

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

Legal Practitioners Complaints Committee and Benari [2005] WASAT 213 (S)  
Legal Profession Complaints Committee and Wroughton [2013] WASAT 191  
Medical Board of Western Australia and Roberman [2005] WASAT 81 (S)  
Quinn v Law Institute of Victoria Limited [2007] VSCA 122  
Re Maraj (a Legal Practitioner) (1995) 15 WAR 12

**REASONS FOR DECISION OF THE TRIBUNAL:**

*Introduction*

1 Following its decision delivered on 27 November 2013 (*Legal Profession Complaints Committee and Wroughton* [2013] WASAT 191) (**the original decision**) the Tribunal made the following orders:

1. There is a finding that Karen Alethea Mullally Wroughton is guilty of unsatisfactory professional conduct contrary to the *Legal Profession Act 2008* (WA) by failing to reach a reasonable standard of competence and diligence in that she:
  - (a) instituted and continued an action in the District Court on behalf of Mr Phillip Edward Coster without any evidence to support her client's claim;
  - (b) failed to provide adequate advice to Mr Coster:
    - (i) as to the merits and possible cost consequences to Mr Coster of commencing those proceedings in the light of the medical evidence in the possession of Mr Coster or the practitioner at that time; and
    - (ii) of the need to obtain expert medical evidence to support Mr Coster's claim;
  - (c) failed to respond in a timely manner to requests from other solicitors:
    - (i) for disclosure of the expert evidence upon which Mr Coster intended to rely;
    - (ii) to supply copies of Mr Coster's medical records from the Joondalup Health Campus; and
    - (iii) to have the matter listed for trial; and
  - (d) failed to keep Mr Coster adequately informed about the proceedings in the District Court.

2 The Tribunal also ordered that the applicant (**Committee**) and the respondent (**Practitioner**) file submissions on penalty, and that the question of penalty should be dealt with on the papers. The parties subsequently filed their written submissions in accordance with those directions.

*Applicable legislation*

3           As the Tribunal concluded in the original decision, it is the *Legal Profession Act 2008* (WA) (**Legal Profession Act**) which applies to the conduct engaged in by the Practitioner, even though that conduct occurred prior to 1 March 2009, the date when the Legal Profession Act commenced operation. Accordingly, the Tribunal may make any one or more of the orders under s 439 and s 441 of the Legal Profession Act.

*The principles to be applied*

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

5           The Practitioner, in addition, submits that 'the principles of justness, denunciation [and] the rehabilitation principles of sentencing' should 'apply by analogy to any penalty to be imposed by the Tribunal in this matter'. The Practitioner cites *Quinn v Law Institute of Victoria Limited* [2007] VSCA 122 as authority for this proposition.

6           To the extent that this case is authority for the proposition that the Tribunal should regard as relevant all the circumstances of the offending and that any penalty should not be manifestly excessive, we agree.

*The Committee's submissions*

7           The Committee asserts that the Practitioner in a letter to the Committee dated 5 March 2010 apologised unreservedly for any hurt, distress or inconvenience that her actions may have caused Mr Coster and his family. The Committee also notes that the Practitioner's conduct the subject of the original reasons occurred between 1 June 2007 and 14 May 2009, when the Practitioner was undertaking limited private practice work and was practising as a sole practitioner. The Committee submits that, so far as it is aware, the Practitioner has not since May 2009 undertaken any further private practice work and that she has not held a practising certificate since 30 June 2012.

8           The Committee concludes that, in its submission, a reprimand is a sufficient penalty so as to demonstrate, to both the profession and the public, that the conduct of the Practitioner will not be tolerated. The protection of the public can be achieved, should the Practitioner decide to recommence practising, by imposing a condition on any

practising certificate granted so that there would be an appropriate level of oversight of her work.

***The Practitioner's submissions***

9           The Practitioner maintains that she at all times cooperated with the Committee and its requests for information during the period of the Committee's investigation. She also points out that the Tribunal in its original decision did not make any findings of dishonesty, nor of any intention on the part of the Practitioner to cause detriment to her client. Further, the Practitioner points out that the Practitioner did not receive any financial benefit from her client, nor did she charge or seek to recover any costs from her client.

10           The Practitioner submits that in the particular circumstances of the matter, the Tribunal should impose no penalty because the Practitioner has already suffered from the effects of what she describes as an extremely stressful period of investigations, mediations and hearings. In the alternative, she submits that the Tribunal should impose a private reprimand which would serve the purpose of reminding her that if she were to find herself in the same circumstances she should not act in the same manner. A private reprimand would also remind her, she says, that she should respond to all correspondence in an appropriate timeframe, ensure sufficient evidence is available or not accept instructions and ensure that matters are progressed without unreasonable delay.

***The appropriate penalty***

11           While it is open to the Tribunal to decide not to impose any penalty, we do not accept the Practitioner's submission that it is appropriate to do so in this case. The Tribunal's finding against the Practitioner is a serious one and when the principles referred to earlier in these reasons are applied then a penalty must be imposed.

12           The Tribunal accepts that any penalty will have a punitive effect on a practitioner. However, the paramount consideration is to protect the public and to maintain the reputation of the profession.

13           In other circumstances, the Tribunal might conclude that a period of suspension could be an appropriate penalty for a finding of this nature. However, accepting that the Practitioner no longer holds a local practising certificate, this course of action is not open to us.

14           We consider that in these circumstances the appropriate disposition of this matter is that the Practitioner is publicly reprimanded.

15 Under s 439 of the Legal Profession Act, the Tribunal may, if there are special circumstances, order that the Practitioner is privately reprimanded. However, while we accept that the investigation process and disciplinary proceedings have been stressful for the Practitioner, the Practitioner has not persuaded the Tribunal that any such special circumstances exist.

16 If at some future time the Practitioner chooses to apply for a local practising certificate then it is open to the Legal Practice Board to refuse that application or to grant it subject to conditions if it considers it appropriate to do so. The Legal Practice Board will take into account all relevant circumstances at that time.

**Costs**

17 The well settled practice of the Tribunal is that, where disciplinary proceedings have been commenced in the public interest by a vocational regulatory body, and the vocational regulatory body has been successful in the prosecution of those proceedings, the respondent to the proceedings will ordinarily be ordered to contribute to the costs of the proceedings incurred by the vocational regulatory body; *Medical Board of Western Australia and Roberman* [2005] WASAT 81 (S) at [30]; *Legal Practitioners Complaints Committee and Benari* [2005] WASAT 213 (S) at [20] - [28].

18 In this case, the Committee seeks payment of its disbursements only, which comprise counsel fees totalling \$6,400 and filing and other fees totalling \$346.40, making a total of \$6,746.40. The Committee makes no application to recover any costs in respect of its own time and expenses in prosecuting the action.

19 The Committee submits that it has been entirely successful in its application brought against the Practitioner. It submits that the Practitioner's conduct in the course of the proceedings made them longer and more expensive than they needed to be and makes reference to the Practitioner's request for an adjournment on 31 May 2013, which was granted, causing a delay and expense.

20 In response, the Practitioner contends that the Committee's submissions should be totally disregarded because the Committee has not previously sought an order for costs against the Practitioner, nor did the Committee at any time seek leave to apply for costs.

21 This is not in fact the case. The Committee in its original application to the Tribunal sought an order for costs, and although the Tribunal did not make any orders with regard to submissions as to costs, it is entirely open to the Committee to make such submissions in the present context.

22 The Practitioner further submits that she is 'the single income earner of the family of five children and does not have any savings'. However, the Practitioner does not provide any further details of her financial circumstances, which she must do if she is seeking to persuade the Tribunal that an award of costs against her would cause financial hardship.

23 The Tribunal accepts that the Committee has incurred a liability in the form of disbursements to counsel and the disbursements for filing and witness summons fees paid to the Tribunal. The Tribunal considers that there is no reason to depart from the usual approach in relation to the payment of costs in successful vocational regulatory proceedings. We are satisfied that the quantum of costs claimed by the Committee, limited as it is to its proper disbursements, is entirely reasonable and should be allowed in the amount claimed.

***Orders***

24 The Tribunal therefore makes the following orders in these proceedings:

1. The respondent is reprimanded.
2. The respondent is ordered to pay the applicant's costs of the proceedings fixed in the sum of \$6,746.40 within 28 days or within any other period of time agreed to by the applicant.

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

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**JUDGE T SHARP, DEPUTY PRESIDENT**