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**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

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

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and METAXAS [2018] WASAT 28 (S)

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

**HEARD** : 24 JANUARY 2018

**DELIVERED** : 29 AUGUST 2018

**FILE NO/S** : VR 124 of 2017

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

ARTHUR METAXAS  
Respondent

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*Catchwords:*

Legal practitioner - Careless conduct - Penalty and costs - Fine imposed

*Legislation:*

*Legal Profession Act 2008 (WA), s 438(2), s 438(3), s 438(4), s 439*

*Result:*

Practitioner reprimanded  
Practitioner to pay fine of \$24,000  
Practitioner to pay costs of Legal Profession Complaints Committee

*Category:* B

**Representation:**

*Counsel:*

Applicant : P Cahill SC with C Patterson  
Respondent : A Schlicht

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : Metaxas Legal

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

A Solicitor v Council of the Law Society of NSW [2004] HCA 1  
Barristers' Board v Darveniza [2000] QCA 253; (2000) 112 A Crim R 438  
Chamberlain v Law Society of the Australian Capital Territory (1993) 118 ALR  
54  
Council of the Law Society (NSW) v A Solicitor [2002] NSWCA 62  
Craig v The Medical Board of South Australia [2001] SASC 169  
Law Society of New South Wales v Foreman (1994) 34 NSWLR 408  
Law Society of New South Wales v Walsh [1997] NSWCA 185  
Legal Practitioners Complaints Committee v Thorpe [2008] WASC 9  
Legal Profession Complaints Committee and A Legal Practitioner  
[2013] WASAT 37(S)  
Legal Profession Complaints Committee and Amsden [2014] WASAT 57(S)  
Legal Profession Complaints Committee and Bower [2017] WASAT 47(S)  
Legal Profession Complaints Committee and in de Braekt [2013] WASAT 124  
Legal Profession Complaints Committee and Leask [2010] WASAT 133  
Legal Profession Complaints Committee and Metaxas [2018] WASAT 28  
Legal Profession Complaints Committee v Brickhill [2013] WASC 369  
Legal Profession Complaints Committee v Detata [2012] WASCA 2014

Legal Profession Complaints Committee v Lashansky [2007] WASC 211  
Legal Profession Complaints Committee v Love [2014] WASC 389  
Legal Profession Complaints Committee v Masten [2011] WASC 71  
Legal Profession Complaints Committee v O'Halloran [2013] WASC 430  
Legal Profession Complaints Committee v Pepe [2009] WASC 39  
Legal Profession Complaints Committee v Segler [2014] WASC 159  
New South Wales Bar Association v Cummins [2001] NSWCA 284; (2001) 52  
NSWLR 279  
New South Wales Bar Association v Evatt (1968) 117 CLR 177  
New South Wales Bar Association v Hamman [1999] NSWCA 404  
Paridis v Settlement Agents Supervisory Board [2007] WASCA 97; (2007) 33  
WAR 361  
Quinn v Law Institute of Victoria [2007] VSCA 122  
Re Maraj (a Legal Practitioner) (1995) 15 WAR 12  
Smith v New South Wales Bar Association [2014] WASAT 112(S); [1992]  
HCA 36; (1992) 176 CLR 256  
Stirling v Legal Services Commissioner [2013] VSCA 374  
Veterinary Practitioners Board of NSW v Johnson [2010] NSWADT 308  
Veterinary Surgeons Investigating Committee v Howe (No 2)  
[2003] NSWADT 159

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Introduction***

1 On 26 April 2018, in *Legal Profession Complaints Committee and Metaxas* [2018] WASAT 28 (*Metaxas*), the Tribunal made the following findings:

That the practitioner, Mr Arthur Metaxas between about 23 July 2014 and about 17 March 2015 engaged in professional misconduct within the meaning of s 403 and s 438 of the *Legal Profession Act 2008* (WA) in that his conduct of an application for leave to appeal and of an appeal to the Court of Appeal substantially or consistently fell short of the standard of competence that a member of the public is entitled to expect of a reasonably competent legal practitioner because Mr Arthur Metaxas failed to take all necessary steps to ensure that there was a proper factual basis for:

- (a) a proposed ground of appeal;
- (b) oral submissions made to the Court of Appeal in support of the application for leave to appeal and the appeal.

2 The Tribunal ordered that subject to any further order of the Tribunal, the question of penalty and costs was to be dealt with entirely on the documents.

3 The Tribunal now turns to the appropriate orders as to penalty and costs.

***Orders sought***

4 The Legal Professional Complaints Committee (Committee) seeks the following orders:

- 1. Consequent upon the findings of the Tribunal made on 26 April 2018 and the Tribunal's reasons for those findings *in*, the Committee seeks:
  - 1.1 pursuant to s 438(2)(b) and s 439(a) of the *Legal Profession Act 2008* (WA) (Act), an order that within 30 days of the Tribunal delivering its decision on penalty, the practitioner's local practising certificate be suspended for a period of 3 months;
  - 1.2 pursuant to s 438(2)(b) and s 439(d) of the Act, an order publicly reprimanding the practitioner;

1.3 pursuant to s 438(2)(b) and s 441(b) of the Act, an order that the practitioner undertake and successfully complete at his own expense, a specified course of further legal education, namely the Australian Advocacy Institute's Advocacy Skills Workshop to be held on 12-13 October 2018 in Sydney, and that the practitioner is to provide evidence of the successful completion of the course to the Legal Practice Board of Western Australia (Board) by way of a certification from the Australian Advocacy Institute within 30 days of completion of the course.

1.4 pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA), an order that the practitioner pay the Committee's costs in the sum of \$19,118.50, such costs to be paid to the Legal Practice Board of Western Australia within 21 days or as otherwise agreed between the practitioner and the Legal Practice Board.

5 Mr Arthur Metaxas accepts that orders 1.2, 1.3 and 1.4 are appropriate. Mr Metaxas' position is that a fine is appropriate rather than a period of suspension of three months or at all.

***Legal framework and principles***

6 Both parties agreed that the relevant principles are, as set out in ***Legal Profession Complaints Committee and Bower*** [2017] WASAT 47(S).

7 The purposes of Pt 13 of the *Legal Profession Act 2008* (WA) (LP Act) are, relevantly:

- (a) to provide for the discipline of the legal profession in this jurisdiction, in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally; and
- (b) to promote and enforce the professional standards, competence and honesty of the legal profession.

8 Sections 438(2) to 438(4) of the LP Act provide:

- (2) If, after it has completed a hearing in relation to a referral under this Part in respect of an Australian legal practitioner, the State Administrative Tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal may -

- (a) make and transmit a report on the finding to the Supreme Court (full bench); or
  - (b) make any one or more of the orders specified in section 439, 440 and 441.
- (3) If the State Administrative Tribunal transmits a report in respect of a legal practitioner to the Supreme Court (full bench) under subsection (2)(a), the Tribunal may, pending the determination of the Supreme Court (full bench), make the following orders -
- (a) an order that the Australian legal practitioner's local practising certificate be suspended for a specified period;
  - (b) an order that specified conditions be imposed on an Australian legal practitioner's local practising certificate restricting the entitlement of an Australian legal practitioner to practise for a specified period.
- (4) Where appropriate, a report forwarded under subsection (2)(a) may include either or both of the following -
- (a) a record of the evidence taken at the hearing;
  - (b) a recommendation that the name of the practitioner be removed from the local roll.

9 Section 439 of the LP Act provides:

The State Administrative Tribunal may, under section 438(2)(b), make any one or more of the following orders -

- (a) an order that the practitioner's local practising certificate be suspended for a specified period or cancelled;
- (b) an order that a local practising certificate not be granted to the practitioner before the end of a specified period;
- (c) an order that -
  - (i) specified conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and
  - (ii) the conditions be imposed for a specified time; and
  - (iii) specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;

- (d) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner.

10 Section 441 of the LP Act provides:

The State Administrative Tribunal may, under section 438(2)(b), make any one or more of the following orders -

- (a) an order that the practitioner pay a fine to the Board of a specified amount not exceeding \$25 000;
- (b) an order that the practitioner undertake and complete a specified course of further legal education[.]

### ***Disciplinary sanctions - general principles***

11 The jurisdiction of the Tribunal is protective rather than punitive, and such protection runs to both the public and the profession (*Re Maraj (a Legal Practitioner)* (1995) 15 WAR 12 at 25); *Legal Profession Complaints Committee v Love* [2014] WASC 389 (*Love* ) at [19]; *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408 (*Foreman*) at 440G-441A-B; *Legal Profession Complaints Committee and in de Braekt* [2013] WASAT 124 (*in de Braekt*) at [24]-[26]; *New South Wales Bar Association v Hamman* [1999] NSWCA 404 (*Hamman*) at [21] and at [77]).

12 The appropriate sanction is to be considered at the time of the making of the sanction and not by reference to the date of the unprofessional acts (*Legal Profession Complaints Committee and A Legal Practitioner* [2013] WASAT 37(S) (*A Legal Practitioner (S)*) at [23]; *Legal Profession Complaints Committee v Segler* [2014] WASC 159 at [7]; *A Solicitor v Council of the Law Society of NSW* [2004] HCA 1; (2004) 216 CLR 253 (*A Solicitor [2004] NSW*) at [15]; *Love* at [16]).

13 It is the practitioner's conduct that attracts any sanction (*A Legal Practitioner (S)* at [24]; *Smith v New South Wales Bar Association* [2014] WASAT 112(S); [1992] HCA 36; (1992) 176 CLR 256 at 267-268 and 271-272; *A Solicitor [2004] NSW*).

14 As the Tribunal explained in *A Legal Practitioner (S)* at [24]:

[I]n determining the appropriate penalty, care needs to be taken that the penalty reflects the matters with which the practitioner is charged and not other conduct including the defence of the action by the practitioner which is ultimately held to be unsuccessful: *Smith v New South Wales*

*Bar Association* [1992] HCA 36; (1992) 176 CLR 256 (*Smith*) at 267 - 268 and 271 - 272[.]

***Twelve matters for consideration***

15 In determining an appropriate sanction, twelve matters may require consideration. Those matters are interrelated and are not mutually exclusive. The list of matters is not exhaustive. The twelve matters are:

- 1) Any need to protect the public against further misconduct by the practitioner (***Legal Profession Complaints Committee and Amsden*** [2014] WASAT 57(S) (***Amsden (S)***) at [8]; ***Foreman*** at 440C; ***Hamman*** at [77]).
- 2) The need to protect the public through general deterrence of other practitioners from similar conduct (***Veterinary Practitioners Board of NSW v Johnson*** [2010] NSWADT 308 (***Johnson***) at [103]; ***Hamman*** at [77]).
- 3) The need to protect the public and maintain public confidence in the profession by reinforcing high professional standards and denouncing transgressions and thereby articulating the high standards expected of the profession (***Amsden (S)***) at [8]; ***Foreman*** at 444F; and ***Hamman*** at [77] and [79]), such that, even where there may be no need to deter a practitioner from repeating the conduct, the conduct is of such a nature that the Tribunal should give an emphatic indication of its disapproval (***Craig v The Medical Board of South Australia*** [2001] SASC 169 at [64]; ***Johnson*** at [103]).
- 4) In the case of conduct involving misleading conduct, including dishonesty, whether the public and fellow practitioners can place reliance on the word of the practitioner (***Johnson*** at [109]; ***Foreman*** at 445B - 445G).
- 5) Whether the practitioner has breached any:
  - a) Act;
  - b) Regulations;

- c) Guidelines or Code of Conduct, issued by the relevant professional body; and
  - d) whether the practitioner has done so knowingly.
- 6) Whether the practitioner's conduct demonstrated incompetence, and if so, to what level.
  - 7) Whether or not the incident was isolated such that the Tribunal can be satisfied of his or her worthiness or reliability for the future (*Foreman* at 442E-442G; *New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183; *Council of the Law Society (NSW) v A Solicitor* [2002] NSWCA 62 at [80]; *Chamberlain v Law Society of the Australian Capital Territory* (1993) 118 ALR 54 at 62 and 63).
  - 8) The practitioner's disciplinary history (*Legal Profession Complaints Committee v O'Halloran* [2013] WASC 430 at [93]);
  - 9) Whether or not the practitioner understands the error of his ways, including an assessment of any remorse and insight (or a lack thereof) shown by the practitioner, since a practitioner who fails to understand the significance and consequences of misconduct is a risk to the community (*Law Society of New South Wales v Walsh* [1997] NSWCA 185 per Beazley JJA (*Walsh*); *Legal Profession Complaints Committee v Lashansky* [2007] WASC 211 (*Lashansky*) at [31]-[52] and (second) at [35]; *Amsden (S)* at [8]; *Foreman* at 444E; *Love* at [9]).
  - 10) The desirability of making available to the public any special skills possessed by the practitioner.
  - 11) The practitioner's personal circumstances at the time of the conduct and at the time of imposing the sanction. However, the weight given to personal circumstances cannot override the fundamental obligation of the Tribunal to provide appropriate protection of the public interest in the honesty and integrity of legal practitioners and in the maintenance of proper

standards of legal practice (*Love* at [59]); *Paridis v Settlement Agents Supervisory Board* [2007] WASCA 97; (2007) 33 WAR 361 (*Paridis*) at [30(5)].

- 12) The Tribunal may consider any other matters relevant to the practitioner's fitness to practise and other matters which may be regarded as aggravating the conduct or mitigating its seriousness (*A Legal Practitioner (S)* at [25]). In general, mitigating factors such as no previous misconduct or service to the profession are of considerably less significance than in the criminal process because the jurisdiction is protective not punitive (*Walsh*).

### *General matters relating to sanctions*

16 Where there is a choice of sanctions, the Tribunal will choose that sanction which maximises the protection of the public (*Quinn v Law Institute of Victoria* [2007] VSCA 122 at [31]).

17 The dominant purpose of the disciplinary regulation of the legal profession is the protection of the public by the maintenance of proper standards within the profession. Hence, the impact which an appropriate penalty would have upon a practitioner guilty of misconduct, and personal hardship to a practitioner, are necessarily secondary considerations (see *Legal Profession Complaints Committee v Detata* [2012] WASCA 2014 at [47]; *Legal Profession Complaints Committee v Masten* [2011] WASC 71 at [29]; and *Legal Profession Complaints Committee and Leask* [2010] WASAT 133 at [54]).

18 There are circumstances in which a 'global' approach to sanction, rather than the imposition of separate sanction for each unprofessional act, may be more appropriate in vocational disciplinary proceedings namely, where the facts of the case are so inextricably woven as to make it difficult to meet a clear standard of prescription (*A Legal Practitioner (S)* at [5]; *Stirling v Legal Services Commissioner* [2013] VSCA 374 at [72]-[75]).

19 All of the above matters are to be considered in the context of the Tribunal's findings as to penalty, that is, how serious was the conduct and the agent's explanation for the conduct (*Paridis* at [30(1)]-[30(2)]).

### *Suspension*

20            Suspension is a less serious result than removal from the Roll of Practitioners and differs from removal from the Roll because suspension is for a specified limited period and the practitioner has a preserved right to resume practice without any further onus upon them to prove that they are a fit and proper person to practice (*A Legal Practitioner (S)* at [26]; *Legal Profession Complaints Committee v Pepe* [2009] WASC 39 at [12])

21            The proper use of suspension is in cases where the 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/she lacks the qualities of character which are the necessary attributes of a person entrusted with the responsibilities of a practitioner (*A Legal Practitioner (S)* at [26]; *Re A Practitioner* (1984) 36 SASR 590 at 593 per King CJ). That is, suspension is suitable where the Tribunal is satisfied that, upon completion of the period of suspension, the practitioner will be fit to resume practice (*A Legal Practitioner (S)* at [27]).

22            The practical effect of an order suspending a practitioner's registration is that at the end of the period of suspension, the practitioner is entitled to resume practice without having to prove to the Full Court that he/she is a fit and proper person.

### *The Committee's submissions on penalty*

23            The Committee submitted:

8.            The practitioner has been admitted to practice since 1976.
9.            The Tribunal found that the practitioner's failure to take all necessary steps to ensure that there was a proper factual basis for his grounds of appeal and oral statements to the Court of Appeal was sufficiently egregious and substantial as to amount to professional misconduct. (*Reasons*, [123], [126]).
10.          Careless misleading of a court or tribunal has the same potentially corrosive effect on the administration of justice as deliberate misleading. (*Park*, [27] - [30]: as cited in *Reasons*, [16]).
11.          The conduct occurred over a period of some seven months, between 23 July 2014, when the appeal grounds were filed, and 17 March 2015, when the appeal was heard. (*Reasons*, [80], [83]).

12. Throughout that period the practitioner failed, in a most fundamental way, to appreciate the fact and import of his obligation to take all necessary steps to ensure the accuracy of what is put before a court or tribunal. That is notwithstanding the opportunity for reflection in the course of preparing to appear before the Court of Appeal.
13. That failure persisted before the Tribunal, in the face of the proper standard of conduct having been brought to his attention via the Committee's investigation and subsequent application. The practitioner (wrongly) considered that the extent of his professional obligations was to demonstrate a factual basis for a submission to a court or tribunal. (Reasons, [23], [24]).
14. The Tribunal found, in any event, that the practitioner's contentions that he had a factual foundation for what was relevantly put to the Court of Appeal, lacked any merit. (Reasons, [50],[51], [53], [55], [57], [65], [70], [74], [77], [78], [85], [86], [88], [90],[91], [92], [93], [97], [99], [103], [106]).
15. The practitioner's insistence before the Tribunal that he had done nothing wrong is inconsistent with his acceptance of, and contrition for, wrongdoing. (Khosha, [210]).

### *Analysis of factors*

#### **Factor 1 Is there a need to protect the public against further misconduct by Mr Metaxas?**

24 The Committee submitted:

1. For the reasons already explained, the practitioner failed over an extended period to recognise and observe his obligation to take all necessary steps to ensure the accuracy of what was put before a court or tribunal. This posed a serious risk to the proper administration of justice.
2. The practitioner's continued lack of insight as to the standard of conduct required of him increases the risk that his conduct may be repeated.
3. In these circumstances, there is a clear need to protect the public against further misconduct by the practitioner.

25 Mr Metaxas submitted:

The practitioner has been practising for some 42 years with an unblemished record which indicates that this is a one-off incident. Any suggestion that the Respondent will continue such misconduct is

mere speculation. Further, the sanctions of a public reprimand and enrolment in the Advanced Advocacy Course is sufficient to safeguard.

26 The Tribunal has concluded that although Mr Metaxas failed over an extended period to recognise and observe his obligation that failure related to one matter. Mr Metaxas has an unblemished record prior to this and his conduct on this matter is a one-off. Having regard to Mr Metaxas' previous history, the Tribunal is satisfied there is a limited risk to protect the public against further misconduct by Mr Metaxas.

**Factor 2 Is there a need to protect the public through general deterrence of other practitioners from similar conduct?**

27 The Committee submitted:

The risks to the administration of justice occasioned by the type of misconduct in which the practitioner has engaged indicate the need to protect the public through the general deterrence of other practitioners from similar conduct.

28 Mr Metaxas submitted:

Again, the agreed penalties by the Respondent are sufficient to safeguard this need, i.e. the public reprimand and enrolment in the Advocacy course together with a fine.

29 The Tribunal accepts that there is a need to protect the public through general deterrence of other practitioners from similar conduct (see also Factor 3 below).

**Factor 3 Is there a need to protect the public and maintain public confidence by reinforcing high professional standards and denouncing transgressions?**

30 The Committee submitted:

Again, the risks to the administration of justice from such conduct indicate the need to protect the public and maintain public confidence in the profession by reinforcing high professional standards and denouncing the practitioner's behaviour.

31 Mr Metaxas submitted:

It is submitted in the context of the conduct of the Respondent that the sanctions submitted by the Committee and agreed to by the Respondent are sufficient. Suspension of the Respondent is unnecessary and not in proportion to the breach.

32 In its reasons in the breach hearing, the Tribunal emphasised the need for a practitioner to take all necessary steps to ensure that there is a proper factual basis for submissions both written and oral. Mr Mexatas' conduct requires a penalty that protects the public confidence by reinforcing high professional standards and denouncing transgressions by ensuring that there is a proper factual basis.

**Factor 4 Whether the public and fellow practitioners can place reliance on the word of Mr Metaxas**

33 The Committee submitted:

1. The Committee has not alleged, and the Tribunal has not made any finding of, dishonesty by the practitioner.
2. However, the result of the practitioner's misconduct, especially given his lack of insight and contrition, is that neither the public nor fellow practitioners can rely upon his word.

34 Mr Metaxas submitted:

It is noted that the Committee does not allege nor has there been any finding of but rather, there was careless conduct. References by fellow practitioners and clients would dispel the notion that the public or fellow practitioners could not place reliance on the word of the Respondent.

Further, if the Committee was genuine in its submissions (para 19 of the Committee's submissions), then it would have called for the Respondent to be struck off the roll for if neither the public nor fellow practitioners could rely upon his word, then this would be a most serious matter which would lead to a finding that the Respondent was not a fit and proper person to practise.

35 The Committee has not established a general pattern of misleading statements by Mr Metaxas. The Tribunal is obviously concerned that Mr Metaxas misled the Court of Appeal in a number of respects. However, the Tribunal did not find that Mr Metaxas was dishonest. He was careless.

**Factor 5 Whether Mr Metaxas has breached any Act, Regulations, Guidelines or Code of Conduct issued by the relevant professional body**

36 The Committee submitted:

- 1 The *Legal Profession Conduct Rules 2010* prohibit knowing or reckless misleading of a court (Conduct Rule 34(1)), but do not

directly address conduct of the type engaged in by the practitioner.

- 2 Conduct Rule 6(2)(a)(b) requires that a practitioner not engage in conduct which may be prejudicial to, or diminish public confidence in, the administration of justice. Conduct Rule 6(2)(c) requires that a practitioner not engage in conduct which may bring the profession into disrepute.

37 Mr Metaxas submitted:

It is seen here that the Committee accepted the conduct was careless (see para 20.1) and did not come under the Code of Conduct. That the conduct in paragraphs in 20.2 are of a general nature and non-specific.

38 The Tribunal accepts that there is no specific 'Conduct Rule' which applies to Mr Metaxas' conduct.

**Factor 6 Whether Mr Metaxas' conduct demonstrated incompetence and, if so, to what level**

39 The Committee submitted:

The practitioner's failure to recognise and observe, in such a fundamental way, his obligations to courts and tribunals to take all necessary steps to ensure the accuracy of what is put before them demonstrates a high degree of incompetence on his part.

40 Mr Metaxas submitted:

It is submitted that the practitioner's conduct was careless, as found by the Tribunal in failing to take all necessary steps. By reason of his long and distinguished legal career, this is the most appropriate categorisation of his conduct, not incompetence.

41 Mr Metaxas has had a long career. The Tribunal finds that Mr Metaxas' conduct was careless rather than incompetent and should be dealt with on that basis.

**Factor 7 Whether the incident was isolated such that the Tribunal can be satisfied of Mr Metaxas' worthiness or reliability for the future**

42 The Committee submitted:

1. The practitioner's conduct may be viewed as isolated in the sense of being confined to his conduct in the course of acting for a single client in relation to a single matter.

2. However, the Tribunal cannot from that circumstance be satisfied of the practitioner's worthiness or reliability for the future. As already explained, the practitioner persisted in his conduct, despite the opportunity for reflection, and maintained the position before the Tribunal that he had done nothing wrong. His lack of insight and contrition suggests that there is a risk he will engage in similar conduct in the future.

43 Mr Metaxas submitted:

This was an isolated incident in the course of acting for a single client in relation to a single matter. To allege that he maintains he did nothing wrong in simply defending the matter is not to the point. Further, the assertion that he will engage in similar conduct in the future is mere speculation. Further, the enrolment in the Advanced Advocacy course should allay any such fears.

44 Mr Metaxas' conduct was isolated to one matter although his conduct persisted over a period. On balance, the Tribunal has concluded that Mr Metaxas' conduct should be treated as an isolated incident and not reflective of his general practice of the law.

**Factor 8 Mr Metaxas' disciplinary history**

45 Mr Metaxas has no relevant disciplinary history.

**Factor 9 Whether or not Mr Metaxas understands the errors of his ways, including an assessment of any remorse and insight (or a lack thereof) shown by Mr Metaxas**

46 The Committee submitted:

As already explained, the practitioner has not at any time since the misconduct commenced to the present day, demonstrated any insight or contrition.

47 Mr Metaxas submitted:

The practitioner has agreed to a number of the sanctions put forward by the Committee which indicate remorse and acceptance of his conduct as found by the Committee. Further, in the ... affidavit by the Respondent, he expresses his genuine remorse for his conduct.

48 Mr Metaxas took a long time to show remorse and acceptance of his conduct. His lack of insight is of concern to the Tribunal. Having regard to Mr Metaxas' submissions on penalty and his acceptance of an appropriate sanction, the Tribunal accepts that Mr Metaxas has belatedly accepted the error of his ways.

**Factor 10 Are there any special skills possessed by Mr Metaxas**

49 The Committee submitted:

This factor has no relevance to the present case.

50 Mr Metaxas submitted:

The Respondent is an experienced legal practitioner who has over the past 42 years made significant contributions to both members of the public and various Boards on a pro bono basis. Further, he is mentoring a practitioner so as to give him the benefit of his experience and has organised other mentors to also assist the practitioner (see affidavit in respect of Ibrahim Kakay).

51 The Tribunal does not accept that pro bono contributions constitute a special skill. Pro bono contributions should be a standard feature of the practice of all practitioners.

**Factor 11 Mr Metaxas' personal circumstances at the time of the conduct and at the time of imposing the sanction**

52 The Committee submitted:

The Committee is not aware of any relevant circumstances

53 Mr Metaxas submitted:

As stated, Mr Metaxas has since November 2017 been a sole practitioner and any suspension would unduly interfere with his practice, not only in the short term but on a long term basis.

54 In order to rely on personal circumstances as a factor in mitigation a practitioner has to draw attention to specific factors above the general impact that a suspension will have on a practitioner's practice. Obviously a suspension will always impact on that practice.

**Factor 12 Are there any other matters related to Mr Metaxas' fitness to practice**

55 There are no other factors to be taken into consideration.

***Factual analysis***

56 The Committee submitted:

28. Conduct of the type engaged in by the practitioner poses a serious risk to the administration of justice. It is of the utmost importance that such conduct attracts a substantial penalty in

order to deter future such conduct by the practitioner himself and the profession generally. Further, a substantial penalty is required to maintain public confidence in the profession and protect the public.

29. The circumstances of the practitioner's:
  - 29.1 age and experience;
  - 29.2 persistence in the professional misconduct over several months;
  - 29.3 inability to achieve, let alone demonstrate, any insight into that misconduct; and
  - 29.4 lack of contrition,are seriously aggravating in terms of his conduct and the consequential penalty that should be imposed.
30. Against that background, the Tribunal should conclude that the practitioner is not presently fit to engage in legal practice, such that a period of suspension is warranted.
31. The Committee contends that a period of suspension of three months would be sufficient to achieve the disciplinary objectives of the Act. A deferral of the operation of the suspension for a period of 30 days should allow the practitioner sufficient time to organise the affairs of his practice so that existing clients are not prejudiced by the suspension order.
32. The practitioner's lack of understanding of his professional obligations and stark lack of insight into the impropriety of his conduct suggest that it would be appropriate for the Tribunal to also order the practitioner pursuant to s 441(b) of the Act to undertake and complete a relevant course of further legal education.
33. The Committee attaches to these submissions as Annexure A, information about the Australian Advocacy Institute and its advocacy training, including in respect to advocates' responsibility to deal with the facts and submissions skillfully and ethically. In particular, the Committee refers to the Advocacy Skills Workshop open to all legal practitioners to be held in Sydney on Friday 12 and Saturday 13 October 2018.

57

Mr Metaxas submitted:

By reason of the foregoing it is submitted that a suspension is not an appropriate sanction but rather a fine in lieu thereof is the more appropriate sanction.

5. He does so on the following basis:
- (1) the Respondent's unblemished professional record of 42 years in practice;
  - (2) the Committee did not allege nor did the Tribunal make any finding of dishonesty by the Respondent;
  - (3) that the nature of the misconduct was on the lesser scale of culpability being careless misleading, or possibly reckless misleading conduct (see para 21 of the Reasons for Decision [2018] WASAT 28 and in particular, the reference to ts 4 to ts 14, 14 January 2018 and para 122 of the same Reasons);
  - (4) the numerous references provided by the Respondent in respect of his character.
6. It is further submitted that a suspension of three months from practice would cause the Respondent unnecessary hardship and that the other orders in respect of penalty together with the imposition of a fine adequately protects the public interest.
7. The Respondent was formerly a partner in the multi-partnered firm, Metaxas & Hagar. However, recently, in November 2017 the Respondent set up his own legal practice in which he is the sole practitioner, known as Metaxas Legal. There is one other employee solicitor in the firm. Consequently, a suspension of the right to practice could have significant and long-lasting consequences, well beyond the three months suggested by the Committee.
8. Further, as stated in *Legal Profession Complaints Committee v Detata* ([2012] WACA 214 para 42):
- The penalty imposed by the Tribunal had two limbs. The first was a reprimand. A reprimand cannot and should not be viewed as the equivalent of no penalty at all. Other legal practitioners and members of the community generally would properly regard the imposition of a reprimand as a significant admonition of Mr Detata's conduct. However, it must also be observed that a reprimand is at the lower end of the range of penalties available to the Tribunal.
9. Given the Respondent's standing in the community and in particular, the legal profession, such a public admonishment will have a greater effect on the Respondent than in respect of a more junior practitioner.

10. It is to be noted in *Detata's* case, that the finding of professional misconduct emanated from a reckless disregard for an undertaking given by him, which is on a higher scale than careless.
11. In the present case, it is submitted that the professional misconduct ought be categorised as on the lesser scale, being careless rather than reckless.
12. It is accepted 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. Effective administration of justice depends on the honesty and reliability of practitioners. The penalty should act as a deterrent but should also reassure the public that professional misconduct on the part of the practitioners will not be tolerated (para 29, *Detata's* case supra).
13. It is also to be noted that in *Detata's* case, the Committee submitted that suspension of the practitioner's local Practising Certificate, at least for a short period was warranted. The Court of Appeal imposed a fine.
14. In that case, the practitioner breached an undertaking not to release any of the \$190,000 without prior agreement of the client. This undertaking was breached.
15. The Court found that the obligation of a legal practitioner to perform his or her undertaking is a solemn obligation of the utmost importance. Failure to perform that obligation will generally be regarded as professional misconduct, and depending on the circumstances, will often be regarded as serious professional misconduct.
16. The Court of Appeal set aside the penalty orders of the Tribunal and fined the practitioner \$10,000. Significantly, it held that the fine was sufficient to publicly denounce the practitioner's misconduct and it was unnecessary to reprimand the practitioner as well (Ibid para 70).
17. The Respondent has provided a number of references which indicate the high esteem in which he is held.
18. The references are by various persons, both in the legal profession and outside the legal profession.
19. In *Bower's* case ([2017] WASAT 47, page 113 para 72 (Reasons for Penalty), the value of references was stated as follows:

For testimonials to assume any weight, they must be based on a detailed understanding of the conduct that

occurred, and informed by a full appreciation of the lawyer's methods, not by opinions based upon a view from days past (*Supreme Court of New South Wales v P* [2003] NSWCA 320 at [14] per Young CJ, who remarked that it was pleasing to see that in contrast with many cases of this type each of the character referees appears to have been made fully aware, of all the relevant facts and circumstances of the opponent's offence... Evidence of the lawyer's good reputation and integrity carries greatest weight when the breach is a minor and isolated one, here presenting a compelling case that the lawyer's character as revealed by the breach is entirely out of character (*Law Society of New South Wales v Forman* (1994) 34 NSWLR 408, 444).

20. It is to be noted that the four referees all state that they have read the Reasons for Decision by the Tribunal.
21. Further, it is submitted that given there was no allegation or finding of dishonesty or deliberate misleading, but careless, the breach ought be categorised as minor and as stated by the Committee it is an isolated incident (para 22 of the Committee's submissions).
22. The Committee appears to be submitting that by reason of the fact that the Respondent defended this Tribunal hearing, this is a matter that should be taken into consideration (para 22.2 of the Committee's submissions).
23. However, whatever the stance the Respondent took in respect of the disciplinary proceedings ought be disregarded.
24. As the Tribunal explained in A legal practitioner(s) at [24]:

“In determining the appropriate penalty, care needs to be taken that the penalty reflects the matters with which the practitioner is charged and not other conduct including the defence of the action by the practitioner which is ultimately held to be unsuccessful: *Smith v New South Wales Bar Association* (1992) 176 CLR 256 at 267-268, and 271-272.”
25. This authority was cited with approval in the Reasons for Decision of the Tribunal in respect of penalty in the matter of *LPCC v Neil* ((2017) WASAT 48, page 40 para 16; and also *Bower's* case, page 103, para 15).

*Appropriate penalty*

58           The Tribunal has determined that a suspension is not appropriate in Mr Metaxas' case. A very significant factor is that in his long career he has not had any disciplinary sanctions. Mr Metaxas should have known better.

59           However, the Tribunal finds that Mr Metaxas is not a risk to the public. On the facts of the case, the major factor is to deter other practitioners from such conduct. That deterrence can be met by a public reprimand and a fine at the higher end of the scale and the proposed advocacy course.

60           The maximum fine is \$25,000. Mr Metaxas is fined \$24,000. The Tribunal notes that an increase to the fine by the legislature bears consideration.

*Costs*

61           Mr Metaxas has agreed to pay the Committee's costs fixed at \$19,118.50.

*Orders*

1.     The practitioner is publicly reprimanded pursuant to s 439(d) of the *Legal Profession Act 2008* (WA).
2.     The practitioner is to pay a fine of \$24,000 pursuant to s 438(2)(b) and s 441(a) of the *Legal Professional Act 2008* (WA).
3.     The practitioner is to pay the Legal Profession Complaints Committee's costs of fixed at \$19,118.50 pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA).
4.     The amounts specified in orders 2 and 3 are to be paid to the Legal Practice Board within 30 days of the date of this order or as otherwise agreed between the practitioner and the Legal Practice Board.
5.     Pursuant to s 438(2)(b) and s 441(b) of the *Legal Profession Act 2008* (WA), the practitioner is to undertake and successfully complete at his own expense, a course of further legal education, namely

the Australian Advocacy Institute's Advocacy Skills Workshop to be held on 12-13 October 2018 in Sydney (or an equivalent course as approved by the Legal Profession Complaints Committee) and that Mr Arthur Metaxas is to provide evidence of the successful completion of the course to the Legal Practice Board of Western Australia by way of a certification from the Australian Advocacy Institute within 30 days of completion of the course.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

JUSTICE J CURTHOYS, PRESIDENT

29 AUGUST 2018