
JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : FULL BENCH

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE -v- WALTON [2006] WASC 213

CORAM : MARTIN CJ
MURRAY J
McKECHNIE J

HEARD : 1 SEPTEMBER 2006

DELIVERED : 1 SEPTEMBER 2006

FILE NO/S : LPD 3 of 2006

MATTER : *Legal Practice Act 2003 (WA)* and *Legal Practitioners Act 1893 (WA)*

and

A Practitioner of this Honourable Court

and

Report dated 6 June 2006 by the State Administrative Tribunal to the Full Bench of this Honourable Court under the *Legal Practice Act 2003 (WA)*, s 185(2)(a) and s 194 and *Legal Practitioners Act 1893 (WA)*, s 29A(2) and s 30

Catchwords:

Legal practitioners - Report from State Administrative Tribunal - Practitioner insinuating herself into litigation in which she was not a party - Disclosure of confidential information

Legislation:

Nil

Result:

Order that practitioner be struck off the Roll

Category: B

Representation:

Counsel:

Applicant : Mr J Gilmour QC & Ms G L Roberts
Respondent : No appearance

Solicitors:

Applicant : Law Complaints Officer
Respondent : No appearance

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

Legal Practitioners Complaints Committee and Walton [2006] WASAT 155

Case(s) also cited:

A Solicitor v Council of the Law Society of NSW (2004) 216 CLR 253

Re a Barrister and Solicitor (1979) 40 FLR 1

Re Maraj (a Legal Practitioner) (1995) 15 WAR 12

Ziems v The Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279

MARTIN J
MURRAY J
McKECHNIE J

1 **MARTIN CJ:** For the reasons given by McKechnie J, I agree that the applicant has standing to commence these proceedings, and also for the reasons given by his Honour agree that the conduct of the practitioner, as revealed by a report from the Tribunal that we have received, leaves me in no doubt that the only appropriate disposition of this case is an order that the practitioner be struck off the Roll, together with the ancillary compensation orders to which his Honour has referred, together with a further order that the respondent pay the costs of and incidental to the motion to be taxed.

2 **MURRAY J:** I agree with the reasons of McKechnie J.

3 **McKECHNIE J:** The Court has before it a motion dated 28 June 2006 by the Legal Practitioners Complaints Committee to strike the practitioner off the Roll. The practitioner is not present this afternoon, having been called. There is an affidavit of service on the practitioner.

4 The practitioner has filed a conditional appearance which is particularised as follows:

- "1. The proper Applicant is the Legal Practice Board.
2. The Board may only delegate its function to a committee established under s 10 of the Act and such committee by s 11(3) may not delegate its function. The applicant has established under s 162 of the Act.
3. The Applicant's function pursuant to s 164f(ii) of the Act is limited to interim applications subject to s 182(2) in terms of s 182(1).
4. The Applicant seeks final orders (other than in terms of s 149).
4. The Application is therefore instituted and maintained *ultra vires* the statutory powers of the Applicant and is a nullity.
5. The Application should be set aside for procedural irregularity and/or informality."

5 In addition to filing the conditional appearance the applicant wrote by fax today to the Law Complaints Officer saying:

"I confirm my intention to bring a formal application supported by affidavit, in respect of the condition (*sic*) appearance filed and served 28 August 2006 in this matter in the Supreme Court, within 14 days hereof.

The application listed 2.15 pm today should therefore be adjourned pending the outcome of the chambers application to be listed by me shortly, & Counsel, Mr Gilmore (*sic*) QC notified accordingly"

6 Accordingly that fax establishes that the practitioner was well aware of the application today. It is not a matter upon which evidence is required, it being a matter of statutory construction and the inherent processes of the Court.

7 Under the *Legal Practice Act 2003* (WA) the State Administrative Tribunal on making a finding in respect of a legal practitioner may make and transmit a report on the finding to the Supreme Court (full bench): (s 185(2)(a)). By s 194(2):

"The Supreme Court (full bench) may, upon motion and upon reading the report, and without any further evidence, fine, suspend from practice, or strike off the Roll of Practitioners the legal practitioner ..."

8 By order of 16 June 2006 the State Administrative Tribunal ordered:

"7. Having made these findings in respect of the practitioner pursuant to the *Legal Practitioners Act 1893* and *Legal Practice Act 2003*, the Tribunal makes and transmits a report on the findings to the Supreme Court (full bench).

8. The report transmitted by the Tribunal to the Supreme Court (full bench) is constituted of the reasons for decision given orally by the Tribunal on 6 June 2006 as edited by the President of the Tribunal."

9 The Legal Practitioners Complaints Committee is not a committee of the Legal Practice Board under s10 of the *Legal Practice Act*. It is a separate statutory authority established under s 162. Its functions are set out in s 164 and by s 164(1)(f) include instituting professional disciplinary

proceedings against a legal practitioner before the State Administrative Tribunal. It may supervise the work of the Law Complaints Officer, an office established under s 167.

10 The Legal Practitioners Complaints Committee was the applicant before the State Administrative Tribunal. By the *Interpretation Act* s 50(1) where a written law confers upon a person power to do or enforce the doing of any act or thing, all such powers can also be deemed to be conferred on the person as are reasonably necessary to enable him to do or enforce the doing of the act or thing.

11 The Legal Practitioners Complaints Committee therefore has the statutory function to take proceedings in the State Administrative Tribunal. That Tribunal may, as an option, transmit a report to the Supreme Court, as here. If it does, it is a necessary incident of the power of the Legal Practitioners Complaints Committee to bring a motion in the Court to enforce the Administrative Tribunal proceedings.

12 Further, it is clear from a reading of s 164, a section to which the practitioner refers, that the interim restrictions on practice referred to by the practitioner are additional powers granted to the Legal Practitioners Complaints Committee. They are not limiting the powers otherwise expressed in s 164. I take the power to file a motion in this Court as an incident of the power granted by s 164(1)(f).

13 In any event, neither the *Supreme Court Act* nor the *Legal Practice Act* prescribe a category of persons who may bring a motion under s 194 of the *Legal Practice Act*. Having regard to the statutory provisions I have set out, clearly the Legal Practitioners Complaints Committee has standing to bring this motion.

14 For these reasons, for my part, I would overrule the conditional appearance.

15 I turn to the body of the motion. The Tribunal found the practitioner guilty of six complaints of unsatisfactory conduct. Those findings, which are conclusive, are contained within the Tribunal's decision: *Legal Practitioners Complaints Committee and Walton* [2006] WASAT 155. They are set out and do not need to be repeated. The Tribunal also made reference to the relevant legal principles which are well settled.

16 The findings on VR 21, 23, 24 and 25 go to the heart of legal practice. Each one of them, in my opinion, renders the practitioner unfit

to practise in the public interest. Their combined effect confirms that view.

17 VR 22 and 26 are in a slightly different category. They are separate matters of unprofessional conduct.

18 VR 22 involved failing to render a bill of costs, although in a settlement statement given to the client the amount of costs was recorded. The Tribunal noted that there was no suggestion of dishonesty or failure to account to the client.

19 VR 26 involved writing a letter of breathtaking insult to the Chief Judge of the District Court. By itself, though discreditable, the conduct may not have warranted striking off.

20 However, it must be seen in conjunction with the other matters. Those other matters, in summary, involved the practitioner insinuating herself into litigation to which she was not a party causing unnecessary costs and delay.

21 The practitioner's unprofessional conduct extended to a cardinal sin for lawyers, that of disclosing confidential information. The circumstances were made more serious because the confidential information about her former client was disclosed without his consent to the other party in the litigation.

22 Finally, the practitioner attempted to claim over \$200,000 from her former client, essentially to cover her intermeddling in the litigation.

23 The Tribunal concluded at [101]:

"We think that reference is necessary because the course of conduct of the practitioner, in respect of which we have made findings, really is utterly deplorable and, in our view, no member of the public could have any confidence that a practitioner who conducts herself or himself in this way can act professionally or satisfactorily for them."

24 The findings of the Tribunal as to the actions of the practitioner amply support this conclusion. The practitioner's actions show that she has lost all judgment and balance and that she has engaged in conduct that is reprehensible over a considerable period.

25 The practitioner's behaviour, as evidenced in the references and the findings, in my opinion, shows that the practitioner is not a fit and proper

person to remain on the Roll. Neither the courts nor other lawyers can have any confidence in her as a practitioner and, importantly, the public requires protection from her and her actions.

26 The Tribunal found as a direct result of the practitioner's actions her former client had incurred unnecessary legal costs of \$1856.80. His lawyers incurred costs of \$1189 which were not passed on by the firm. Each has signed a renunciation of rights.

27 I would make the following orders:

1. The practitioner be struck off the Roll of Practitioners;
2. the practitioner pay compensation to the Legal Practice Board as follows:
 - For the benefit of Thomas Hughes, the sum of \$1856.80;
 - for the benefit of Hammond Worthington, the sum of \$1189.