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**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**TITLE OF COURT** : FULL BENCH

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE -v- BOWER [2019] WASC 281

**CORAM** : QUINLAN CJ  
KENNETH MARTIN J  
SMITH J

**HEARD** : 31 JULY 2019

**DELIVERED** : 31 JULY 2019

**PUBLISHED** : 8 AUGUST 2019

**FILE NO/S** : LPD 2 of 2019

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

RONALD WILLIAM BOWER  
Respondent

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*Catchwords:*

Legal practitioner - Solicitor - Application for removal of practitioner's name from roll of legal practitioners - Whether fit and proper person to be a legal practitioner - Professional misconduct - Serious findings of dishonesty - Misleading the court on oath - Misleading the client - Inappropriate charging of the client - Failure to keep the client informed - Whether appropriate remedy is removal from the roll of practitioners

*Legislation:*

*Legal Profession Act 2008* (WA), s 403, s 438, s 439, s 440, s 441, s 444(2)

*Result:*

Order for removal from the roll

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms P E Cahill SC  
Respondent : Mr G M G McIntyre SC

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : In person

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

A Solicitor v Council of the Law Society of New South Wales [2004] HCA 1;  
(2004) 216 CLR 253  
Barristers' Board v Darveniza [2000] QCA 253; (2000) 112 A Crim R 438  
Bower v Legal Profession Complaints Committee [2018] WASCA 222  
Council of the New South Wales Bar Association v Sahade [2007] NSWCA 145  
In re Davis [1947] HCA 53; (1947) 75 CLR 409  
Khosa v Legal Profession Complaints Committee [2017] WASCA 192  
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 Complaints Committee v Thorpe [2008] WASC 9  
Legal Profession Complaints Committee and A Legal Practitioner [2013]  
WASAT 37 (S)  
Legal Profession Complaints Committee and Bower [2017] WASAT 47  
Legal Profession Complaints Committee and Bower [2017] WASAT 47 (S)

Legal Profession Complaints Committee v Brickhill [2013] WASC 369  
Legal Profession Complaints Committee v in de Braekt [2013] WASC 124  
Legal Profession Complaints Committee v Love [2014] WASC 389  
Legal Profession Complaints Committee v Segler [2014] WASC 159  
Legal Profession Complaints Committee v Waters [2015] WASC 141  
Vogt v Legal Practitioners Complaints Committee [2009] WASCA 202  
Ziems v Prothonotary of the Supreme Court of New South Wales [1957] HCA  
46; (1957) 97 CLR 279

**JUDGMENT OF THE COURT:****Introduction**

1           On 31 July 2019, the court ordered that the respondent's name, Mr Ronald William Bower, be removed from the roll of legal practitioners. These are our reasons for making this order.

2           Mr Bower was admitted to practice in Western Australia on 23 December 1983. He was the sole principal of a law firm, Corser & Corser. As principal, Mr Bower retained oversight and overall responsibility for proceedings in two matters which were the subject of professional misconduct proceedings in the State Administrative Tribunal (Tribunal), pursuant to s 403 and s 438 of the *Legal Profession Act 2008* (WA).

3           The misconduct proceedings related to two separate and unrelated proceedings commenced in the District Court. The first of those proceedings were commenced on behalf of a Mr P, and the second was an action commenced on behalf of SH.

4           On 17 March 2017, in *Legal Profession Complaints Committee v Bower*, the Tribunal found Mr Bower guilty of professional misconduct in relation to Mr Bower's:<sup>1</sup>

- (a)   delays in the conduct of the files in both proceedings and the efforts he made to conceal those delays; and
- (b)   conduct in relation to the filing of four affidavits that contained false and misleading statements (one of which was sworn by Mr Bower and three of which were sworn by an employee of Corser & Corser, Mr S).

5           On 5 May 2017, in *Legal Profession Complaints Committee and Bower*,<sup>2</sup> the Tribunal determined that the appropriate professional disciplinary consequence of Mr Bower's professional misconduct in the circumstances was to make and transmit a report on the finding to the full bench of the court with a recommendation that Mr Bower's name be removed from the roll of practitioners.

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<sup>1</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 [499] - [513].

<sup>2</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S).

6 The Tribunal also determined that Mr Bower's practicing  
certificate should be suspended pending the determination of the  
decision of the full bench.

7 Mr Bower appealed from the findings of professional misconduct  
and the order for transmission of a report to the full bench. The Court  
of Appeal dismissed both appeals on 21 December 2018.<sup>3</sup>

8 On 5 April 2019, the Legal Profession Complaints Committee (the  
Committee) lodged an amended notice of originating motion to remove  
Mr Bower from the roll of practitioners of the court, pursuant to  
s 444(2)(a) of the *Legal Profession Act*.

9 On 26 April 2019, the Committee filed a notice of intention not to  
oppose the motion, signed by Mr Bower, in which it is stated that  
Mr Bower does not intend to be heard on the hearing of the amended  
notice of motion, and does not oppose the removal of his name from the  
roll of practitioners. Notwithstanding this concession, the court must  
be satisfied that the removal of Mr Bower's name from the roll is an  
appropriate order to be made.

10 Upon the Committee's application, this court (the full bench) has  
power to order the removal of a practitioner's name from the (local)  
roll, or to make any of the orders that the Tribunal could have made  
under s 439, s 440 and s 441 of the *Legal Profession Act*. Those orders  
include an order suspending the practitioner's local practising  
certificate, an order specifying conditions be imposed on the  
practitioner's practising certificate and orders recommending that the  
practitioner's interstate practice certificate be suspended.

**The facts relating to the practitioner's conduct**

11 The Tribunal found that Mr Bower engaged in professional  
misconduct in the following circumstances:<sup>4</sup>

1. [I]n about April 2011, Mr Ronald William Bower caused an  
affidavit to be prepared, sworn and filed in District Court of  
Western Australia proceedings CIV 256 of 2010 in  
circumstances where:
  - (a) Mr Ronald William Bower knew the affidavit to be  
false and misleading in material respects; and

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<sup>3</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222.

<sup>4</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S) [5].

- (b) Mr Ronald William Bower intended that the District Court of Western Australia be misled by the affidavit.
2. [I]n about August 2010, Mr Ronald William Bower deliberately permitted an email sent to a client, Mr P, about the status and progress of the proceedings to remain uncorrected in circumstances where:
  - (a) Mr Ronald William Bower knew the email to be false and misleading in material respects; and
  - (b) Mr Ronald William Bower intended that Mr P be misled about the true status and progress of the proceedings;
3. [B]etween about November 2010 and May 2011, Mr Ronald William Bower sent emails to Mr P about the status and progress of the proceedings in circumstances where:
  - (a) Mr Ronald William Bower knew the emails to be false and misleading in material respects; and
  - (b) Mr Ronald William Bower intended to mislead Mr MP about the true status and progress of the proceedings.
4. [B]etween about May 2010 and April 2011 ... Mr Ronald William Bower failed to take reasonable steps, as the principal of the law firm retained by Mr P, in respect of the proceedings to ensure that the proceedings were progressed without undue delay.
5. [B]etween about June 2010 and November 2011, Mr Ronald William Bower failed to take reasonable steps, as the principal of the law firm retained by Mr P, in respect of the proceedings to ensure that:
  - (i) Mr P was given timely, accurate and complete information about the significant developments and progress in the proceedings;
  - (ii) Mr P was informed:
    - (a) that a representative of the law firm did not appear at a directions hearing held in the proceedings on 30 July 2010 and that consequently the court had made a costs order against Mr P;
    - (b) whether there was any basis for Mr P to apply to the court to have that costs order set aside or varied;

- (c) that the law firm had not complied with the directions made by the court for the filing of pleadings;
  - (d) that the proceedings had become inactive on about 20 November 2010 and why; and
  - (e) of the consequences of the proceedings having become inactive.
6. [I]n about July 2011, Mr Ronald William Bower engaged in professional misconduct within the meaning of s 403 and s 438 of the Legal Profession Act 2008 (WA) by issuing an invoice to Mr P which included fees charged for work undertaken in applying to the District Court of Western Australia pursuant to r 45 of the *District Court Rules 2005* (WA) to, in effect, order that the proceedings were no longer inactive in circumstances where the proceedings had become inactive because of undue delay by the law firm retained by Mr P in respect of the proceedings, of which Mr Ronald William Bower was the principal.
7. [I]n about May 2011, Mr Ronald William Bower caused to be filed in the District Court of Western Australia, two affidavits in proceedings CIV 2534 of 2009 which were false and misleading in material respects in circumstances where:
- (a) Mr Ronald William Bower knew the affidavits to be false or misleading in material respects; and
  - (b) Mr Ronald William Bower intended that the District Court of Western Australia be misled by the affidavits.
8. [I]n about May 2011, Mr Ronald William Bower, swore an affidavit and caused it to be filed in District Court of Western Australia proceedings CIV 2534 of 2009 in circumstances where:
- (a) Mr Ronald William Bower knew the affidavit to be false and misleading in material respects; and
  - (b) Mr Ronald William Bower intended that the District Court of Western Australia be misled by the affidavit.

12 The findings made by the Tribunal referred to in 1, 2, 3, 7 and 8 included serious findings of dishonesty. These were that Mr Bower:<sup>5</sup>

- 1) knowingly swore and caused to be filed an affidavit containing false or misleading evidence with the intention of misleading the District Court: *Bower* at [506] and [513(8)];
- 2) caused three affidavits to be prepared, sworn (by another) and filed that he knew contained false and misleading evidence and with the intention of misleading the District Court: *Bower* at [499], [505], [513(1)] and [513(7)];
- 3) sent email communications to a client between November 2010 and May 2011 which he knew to be false and misleading and with the intention to mislead the client: *Bower* at [501] and [513(3)]; and
- 4) deliberately permitted an email sent to the client to remain uncorrected when the practitioner knew the email to be false and misleading and intended that the client be misled by the email: *Bower* at [500] and [513(2)].

13 The Tribunal found that Mr Bower's conduct in misleading the court on oath was extremely serious conduct by any measure and that his conduct in misleading the client, although less serious by reason of the fact that it was not on oath and to the client rather than the court, was also extremely serious misleading conduct.

14 The Tribunal also found that Mr Bower's conduct in misleading the court and his client over a prolonged period established that he could not be trusted to deal fairly within the system in which he practises.<sup>6</sup>

15 From about 12 November 2009, Corser & Corser was retained by Mr P in relation to a dispute with Mr P's previous employer arising from the termination of Mr P's contract of employment.

16 Mr S was involved in the conduct of the Mr P action from around 17 May 2010 and the SH action from June or July 2010 to around 30 March 2011.

17 There were lengthy periods in which Mr S was away from the office (on grounds of ill health) and periods during which, whilst at the

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<sup>5</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S) [34]; the references to *Bower* in this passage are to the decision of the Tribunal: *Legal Profession Complaints Committee and Bower* [2017] WASAT 47.

<sup>6</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S) [35] - [36].

office, he did not work on the files for the P and SH actions. Mr S did not have the sole conduct of the Mr P or H actions at material times.

18 Corser & Corser was a small office, and Mr Bower knew that Mr S was frequently absent. During the periods in question, including the periods in which Mr S was absent, Mr Bower had significant involvement in the conduct of both actions.

19 The true position in respect of the P action was that Mr Bower had the carriage of the P action up to 14 June 2010 and throughout December 2010. Between May 2010 and late March 2011, Mr Bower was involved in the conduct of the P action.

20 The true position in respect of the SH action was that Mr Bower had been involved in the conduct of the SH action at material times including the period between 23 September 2010 and 23 February 2011.

21 The Court of Appeal upheld the finding of the Tribunal that Mr Bower caused an affidavit to be filed and sworn in the P action by Mr S, on 18 April 2011, that conveyed the following representations:<sup>7</sup>

1. Mr S had the sole conduct of the P Action between 18 May 2010 and late March 2011 in the sense that Mr Bower had no involvement in the matter during the period that Mr S had conduct of the matter.
2. Mr P's travel overseas between 17 and 24 September 2010 and 5 and 15 October 2010 contributed to the delay until 3 December 2010 in filing the reply and defence to counterclaim.

22 The Court of Appeal also upheld the Tribunal's finding that Mr Bower caused an affidavit to be prepared and sworn in the SH action by Mr S, on 1 April 2011, that conveyed the following representations:<sup>8</sup>

1. Mr S had the sole conduct of the SH Action at all material times, including the period between 23 September 2010 and 23 February 2011.
2. Between 23 September 2010 and 17 January 2011 neither the practitioner nor any other legal practitioner working at Corser &

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<sup>7</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222 [302] (Buss P, Murphy & Mitchell JJA)

<sup>8</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222 [323] (Buss P, Murphy & Mitchell JJA).

Corser was aware of the content of the 23 September 2010 orders and the fact and extent to which the orders within it had not been complied with.

23 The Court of Appeal upheld the Tribunal's finding that Mr Bower intended the expression 'sole conduct' to mean, in effect, that no other lawyer was involved in the conduct of the matter at the material time.<sup>9</sup>

24 The Court of Appeal also relevantly observed that, ordinarily, an affidavit sworn by an employed solicitor in an interlocutory application would say that the solicitor has the conduct, or (perhaps more conventionally) the day to day conduct of the action, subject to the supervision of the solicitor's principals.<sup>10</sup>

25 The Court of Appeal also upheld the finding made by the Tribunal that Mr S's affidavit of 1 April 2011 represented that neither Mr Bower nor other practitioners were aware of orders made by the court, and of the non-compliance with those orders.<sup>11</sup> The Court of Appeal observed that the structure and effect of the affidavit was that Mr S had the sole conduct of the file; Mr S sought, unsuccessfully, to attend to compliance with the court's orders; and Mr S failed to alert others at Corser & Corser that he, being the sole person with the conduct of the matter, was failing to meet the obligations imposed by the court.<sup>12</sup>

26 The Court of Appeal further observed that the purport of the affidavit was to put the blame squarely at the feet of Mr S, and leave no room for the court to infer that there had been delays which could not be satisfactorily explained by Mr S's medical condition.<sup>13</sup>

27 The third affidavit that the Tribunal found Mr Bower had caused to be prepared, and sworn by Mr S, that he (Mr Bower) knew contained false and misleading evidence with the intention of misleading the District Court was an affidavit sworn by Mr S on 26 May 2011 in the SH action.

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<sup>9</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222 [335] (Buss P, Murphy & Mitchell JJA)

<sup>10</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222 [327] (Buss P, Murphy & Mitchell JJA)

<sup>11</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222 [336] (Buss P, Murphy & Mitchell JJA).

<sup>12</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222 [336] (Buss P, Murphy & Mitchell JJA).

<sup>13</sup> *Bower v Legal Profession Complaints Committee* [2018] WASCA 222 [336] (Buss P, Murphy & Mitchell JJA).

28 The Court of Appeal observed that the Tribunal found, in effect, that Mr S's affidavit conveyed the following representations:<sup>14</sup>

1. Neither Mr Bower nor any other legal practitioner working at Corser & Corser was aware of the contents of the Affidavits Order (of 24 February 2011).
2. Neither Mr Bower nor any other legal practitioner working at Corser & Corser was aware of the fact that the Affidavits Order had not been complied with.

29 The Tribunal also found that Mr Bower knowingly swore and caused to be filed an affidavit containing false and misleading evidence with the intention of misleading the District Court. This was an affidavit sworn in the SH action by Mr Bower on 27 May 2011. The Court of Appeal observed that the Tribunal found, in effect, that Mr Bower's affidavit of 27 May 2011 conveyed the following impressions:<sup>15</sup>

1. Mr Bower had not had any, or any significant, involvement in the conduct of the Action between about mid June 2010 and early April 2011.
2. When Mr Bower attended the directions hearing held by the District Court on 18 January 2011, he believed the matter could be entered for trial without delay.
3. Mr Bower was unable to ascertain promptly after 1 April 2011 what needed to be done in order to enter the matter for trial.

30 The Tribunal found that this affidavit was false and misleading because it represented that Mr Bower did not have any significant involvement in the matter up to 1 April 2011, after he handed it over to Mr S in mid-2010 because he represented that, on 18 January 2011, he believed that the matter could be entered for trial without delay.

31 All of the false and misleading emails sent to a client found to be false and misleading were emails sent to Mr P. These emails were numerous and extended over a lengthy period of time. Each email concealed the true:

- (a) position of the work that had been carried out by Corser & Corser on behalf of Mr P; and

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<sup>14</sup> *Bower v Legal Profession Complaints Committee* [2018] WASC 222 [340] - [342] (Buss P, Murphy & Mitchell JJA).

<sup>15</sup> *Bower v Legal Profession Complaints Committee* [2018] WASC 222 [347] - [348] (Buss P, Murphy & Mitchell JJA).

- (b) reason for delays and continuing defaults in complying with the case timetable and District Court orders.

32 For example, one of the emails sent by Mr Bower was an email sent to Mr P on 25 November 2010. The Tribunal found that this email was false or misleading, or both, as alleged by the Committee, in that:<sup>16</sup>

- 1) the email represented that sometime in the few weeks before 24 November 2010, Lawton Gillon had served a pleading in the P Action on Corser & Corser;
- 2) the true position was that Lawton Gillon had not served any pleading in the P Action on Corser & Corser since 27 August 2010;
- 3) the email represented that sometime in the few weeks before 24 November 2010, Corser & Corser had served a pleading in the P Action on Lawton Gillon;
- 4) the true position was that Corser & Corser had not served any pleading in the P Action on Lawton Gillon since about 19 August 2010;
- 5) the email represented that Mr P had not to that point defaulted in any procedural requirement imposed by the District Court with respect to the conduct of the P Action;
- 6) the true position was that at 25 November 2010, Mr P:
  - i) had defaulted in compliance with paragraph 1 of the 17 May order;
  - ii) had not appeared (through his legal representative) at the directions hearing on 30 July 2010;
  - iii) had not entered the P Action for trial within 120 days of the filing of the defence;
  - iv) had not complied with paragraph 2 of the 27 August order; and
  - v) had not entered the P Action for trial by 1 November 2010 in accordance with the milestone set by paragraph 4 of the 27 August order;
- 7) the email represented that the P Action remained active;

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<sup>16</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 [172], [174].

- 8) the true position was that the P Action had become inactive pursuant to r 44 of the DCR;
- 9) the email represented that Mr P was at that time permitted in the P Action to:
  - i) file and serve the reply and defence to counterclaim that Corser & Corser was preparing;
  - ii) seek and give discovery; and
  - iii) avail himself of other pre-trial processes;
- 10) the true position was that, by the operation of r 44 of the DCR, Mr P was not permitted to do those things without the leave of the Court.

33 The Tribunal also found that when Mr Bower made representations in that email, he acted recklessly, not caring whether Mr P was misled.<sup>17</sup>

34 The Tribunal found that it was a significantly aggravating factor that a solicitor employed by Mr Bower (Mr S) swore three misleading affidavits that were sworn after Mr Bower sent memos to Mr S, on 29 March 2011, telling him to include certain statements in his affidavit. In the memo Mr Bower stated:<sup>18</sup>

I have considered the affidavits filed by both sides in the current application to extend time.

I have also looked at your as-yet unsworn draft affidavit in the WP system.

We will not discharge our onus of proof with the currently-filed affidavit as to your inability to attend to the file in compliance with the timetable. Your evidence is too brief, general and lacking in particulars. It is in the nature of brief statements of conclusions. It lacks original factual material.

In particular, your affidavit evidence needs the following additional detail:

1. A medical certificate from a treating doctor, certifying that
  - a. you are presently unwell in some identified manner that precludes you from attending efficiently to work duties; and which

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<sup>17</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 [175] - [182].

<sup>18</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 [442].

- b. certifies that that has been the position in the specific periods in which the procedural defaults arose.

The doctor's letter also needs to say

- the date when he first saw you as a patient in respect of the illness to which we attribute the inability to keep up with the timetable.
  - That he is continuing to treat you.
  - That he is seeing you on an approximately weekly or fortnightly basis or whatever the intervals are.
  - That he is of the opinion that as a result of the symptoms of your illness, it is understandable that you may have mis-judged your capacity to perform work and to meet work-related deadlines in the period October 2010 to the present time [or whatever is the correct time period].
2. Specific statements from you to the effect that when you were absent due to ill health and the procedural deadlines were passing, you overlooked the need to alert others within the firm to the need to attend to the directions timetable. [10]
3. If it is correct, statements from you that you thought that you would be able to attend to the necessary work yourself within the time limits of the directions timetable, but that you found that you were unable to do so. [9]
4. Statements from you that you judged that you would be able to return to work promptly after first becoming unwell and that for that reason you did not notify me that you anticipated being absent from work for any appreciable extended period of days. [19]

There were periods within the overall period since October 2010 when neither C nor I knew where you were or how to contact you. I do not wish to refer to that, expressly, in my own affidavit.

But we need to cover the fact that neither you nor I did what was necessary to keep up with the timetable. It will be appropriate and sufficient if you provide detailed information as to your belief that you would not be absent for a lengthy period and that you could keep up with the timetable in this matter; and for me to say that I knew of nothing to indicate that you would not be able to do so.

I am therefore requesting you to urgently draft the appropriate affidavit and to equally urgently request a suitable letter from the doctor.

As an alternative, please provide me with an executed written authority to seek a medical report and I will use it to request Dr P. S. to supply a report addressing the points mentioned above.

I am quite sure that if we do not deal with this matter urgently and in this manner, we will lose the application and I will need to write a large cheque to Rocca and refund already-paid fees to [Mr Mullins], and also to notify Law Mutual about the matter. Obviously I wish to avoid all of those possible results.

Please attend to these tasks before commencing anything else.

Please complete these requests during Wednesday 30 March.

35 In respect of this conduct the Tribunal found:<sup>19</sup>

It is a significantly aggravating factor in this case that a solicitor employed by Mr Bower swore three misleading affidavits. As Mr Bower well knew at the time those affidavits were sworn by Mr S, Mr S was suffering from symptoms of bi polar disorder. Mr Bower knew of Mr S' symptoms not least because of his letter of 30 March 2011 to a psychiatrist: *Bower* at [289]. Mr Bower had effectively instructed Mr S as to part of the contents of the misleading affidavits, including those parts that were relevantly misleading: *Bower* at [440] - [442]. Mr Bower thus placed Mr S in an invidious position. Even if Mr S was not suffering from bi polar disorder like symptoms, it is likely that it would have required significant courage to stand up to Mr Bower, his employer.

36 The Tribunal had regard to the other findings that did not involve misleading conduct which went to the delay in failing to properly inform the client and inappropriate charging (for work involved in removing the action from the inactive list) and found that given the gravity of the dishonesty findings and the close factual relationship to the other misconduct findings this was a situation in which it was both a convenient and preferable option to impose a global penalty.<sup>20</sup>

37 The Tribunal was satisfied that Mr Bower was not a fit and proper person to be a legal practitioner and in particular that the Tribunal found that Mr Bower's conduct shows:<sup>21</sup>

- (a) that he cannot command the personal confidence of his or her clients, fellow practitioners and judges;

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<sup>19</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S) [63]; the references to *Bower* in this passage are to *Legal Profession Complaints Committee and Bower* [2017] WASAT 47.

<sup>20</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S) [85] applying *Legal Profession Complaints Committee and A Legal Practitioner* [2013] WASAT 37 (S) [18] - [19].

<sup>21</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S) [79] - [80].

- (b) his character and conduct was inconsistent with the privileges of further practice; and
- (c) his conduct establishes that he lacks the integrity and honesty which are the essential characteristics expected of a practitioner.

**Relevant legal principles - removal of a practitioner's name from the roll of practitioners**

38 It is well-established that:

- (a) The court's jurisdiction with respect to the regulation of the legal profession is not to be exercised for the purpose of punishing the practitioner concerned, but for the protection of the public and the maintenance of the reputation and standards of the legal profession.<sup>22</sup>
- (b) Account must also be taken by the court of the effect which its order will have on the understanding, in the profession and amongst the public, of the standard of behaviour required of legal practitioners.<sup>23</sup>
- (c) Where the order sought is for the removal of a practitioner's name from the roll, the critical question for the court is whether the practitioner is shown not to be a fit and proper person to remain a legal practitioner.<sup>24</sup> Such an order is reserved for very serious cases where the character and conduct of the practitioner is seen to be 'inconsistent with the privileges of further practice'.<sup>25</sup>
- (d) Fitness to practise law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges.<sup>26</sup> Honesty, fairness and integrity are essential prerequisites to the right to practise law. The quality

<sup>22</sup> *Legal Profession Complaints Committee v Brickhill* [2013] WASC 369 [18] (Martin CJ, McKechnie & EM Heenan JJ); *Legal Profession Complaints Committee v Waters* [2015] WASC 141 [7] (Martin CJ, McKechnie & Beech JJ).

<sup>23</sup> *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408, 444 (Mahoney JA).

<sup>24</sup> *Ziems v Prothonotary of the Supreme Court of New South Wales* [1957] HCA 46; (1957) 97 CLR 279, 297 - 298 (Kitto J); *A Solicitor v Council of the Law Society of New South Wales* [2004] HCA 1; (2004) 216 CLR 253 [15] (Gleeson CJ, McHugh, Gummow, Kirby & Callinan JJ); *Legal Practitioners Complaints Committee v Thorpe* [2008] WASC 9 [43] (Steytler P, Wheeler JA & Newnes J); *Legal Profession Complaints Committee v in de Braekt* [2013] WASC 124 [25] (Martin CJ, McKechnie & Hall JJ); and *Legal Profession Complaints Committee v Love* [2014] WASC 389 [14] (Beech, Kenneth Martin & Edelman JJ).

<sup>25</sup> *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 112 A Crim R 438 [38] (Thomas JA).

<sup>26</sup> *In re Davis* [1947] HCA 53; (1947) 75 CLR 409, 420 (Dixon J); *Legal Practitioners Complaints Committee v Thorpe* [2008] WASC 9 [43] (Steytler P, Wheeler JA & Newnes J).

most likely to result in removal of a practitioner's name from the roll 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 in which he or she practises.<sup>27</sup> The willingness to engage in dishonest behaviour is of central relevance to an assessment of a practitioner's fitness to practise.<sup>28</sup>

- (e) It is 'a matter of the utmost seriousness' for a practitioner to intentionally mislead a court.<sup>29</sup> The administration of justice and public confidence in the system depends upon the assumption and expectation that practitioners will conduct themselves before the court with honesty and candour.<sup>30</sup>
- (f) A practitioner's failure to understand the impropriety of his or her conduct may be a factor of great importance in determining whether their name should be permitted to stay on the roll.<sup>31</sup>

### **Consideration of whether the practitioner is a fit and proper person**

39 It is fundamentally important that our decision be informed by the aim of guarding the interests and the protection of the public, and the reputation of the legal profession, and not by any notion of punishing the practitioner.<sup>32</sup>

40 The public is entitled to demand that practitioners maintain the highest standards of honesty and integrity in their dealings with the court and their clients.

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<sup>27</sup> *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 112 A Crim R 488 [33] cited in *Legal Profession Complaints Committee v Brickhill* [2013] WASC 369 [21] (Martin CJ, McKechnie & EM Heenan JJ); *Khosa v Legal Profession Complaints Committee* [2017] WASC 192 [192] (Murphy & Beech JJA); *Legal Practitioners Complaints Committee v McKerlie* [2007] WASC 119 [8] (Martin CJ).

<sup>28</sup> *Council of the New South Wales Bar Association v Sahade* [2007] NSWCA 145 [58] (Basten JA, Mason P & Santow JA agreeing).

<sup>29</sup> *Legal Profession Complaints Committee v Segler* [2014] WASC 159 [11], [12] (Martin CJ, Beech & Chaney JJ); *Legal Profession Complaints Committee v Waters* [2015] WASC 141 [8] (Martin CJ, McKechnie & Beech JJ).

<sup>30</sup> *Vogt v Legal Practitioners Complaints Committee* [2009] WASC 202 [70] (Owen, Wheeler & Newnes JJA).

<sup>31</sup> *Legal Practitioners Complaints Committee v Lashansky* [2007] WASC 211 [35] (Wheeler, McLure JJA & EM Heenan J).

<sup>32</sup> *Legal Profession Complaints Committee v Love* [2014] WASC 389 [30] (Beech, Kenneth Martin & Edelman JJ).

41 We have had regard to the matters raised before, and considered by, the Tribunal involving personal issues and past good conduct of Mr Bower. These were:<sup>33</sup>

- (a) the fact that Mr Bower had suffered a major depressive illness in 2006 and had suffered stress and anxiety in 2012;
- (b) had undertaken pro bono and community work; and
- (c) that Mr Bower provided 30 character references to the Tribunal from people who were aware of the misconduct findings made against Mr Bower.

42 Whilst these are matters that could, in other circumstances, be regarded as mitigating Mr Bower's conduct, they do not take account of the principle that the court's jurisdiction to remove a practitioner's name from the roll is principally for the protection of the public.

43 After careful consideration of the circumstances of this matter we came to the view that Mr Bower is not a fit and proper person to practice law.

44 The conduct of Mr Bower was conduct of the most serious kind and was deliberately destructive of the trust and confidence that the court, clients and the public, are entitled to demand from practitioners.

45 Mr Bower's dishonest conduct occurred across two separate matters and over a period of several months between August 2010 and May 2011. His conduct was protracted, intentional and, insofar as Mr Bower contributed to the deliberately misleading content of the affidavits filed by Mr S, is conduct that can be properly characterised as conduct that took advantage of a vulnerable employee.

46 Mr Bower was not a junior practitioner at the time he engaged in the dishonest conduct. He was admitted in 1983 and was the sole principal of his legal practice. He was not acting at the direction of, or under pressure from, any other practitioner.

47 Mr Bower's dishonest conduct was motivated by self-interest. His dishonesty was to benefit himself and his firm's defaults and to avoid the consequences of his own defaults being sheeted home to him. Mr Bower's conduct is incompatible with the duties of honesty and candour expected from all members of the legal profession.

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<sup>33</sup> *Legal Profession Complaints Committee and Bower* [2017] WASAT 47 (S) [64] - [75].

48 Mr Bower did not admit the impropriety of his conduct and pursued his defence to a final determination. Relevantly, none of the arguments put on behalf of Mr Bower, against the findings made by the Tribunal, were upheld by the Court of Appeal.

49 Up until he made submissions in mitigation of penalty, Mr Bower continued to deny the gravamen of the most serious charges of dishonest conduct made against him. In these circumstances, the Tribunal properly made a finding that Mr Bower was not remorseful for his conduct and plainly lacked insight into his conduct.

### **Conclusion**

50 In our opinion, the only appropriate order is that Mr Bower's name be removed from the roll of legal practitioners.

### **Costs**

51 Although the originating motion lodged by the Committee seeks its costs, the court was informed that this order is not pressed.

52 As this court has noted in previous cases, where the practitioner does not oppose the order sought by the Committee, it is appropriate to regard the costs of these proceedings as part of the costs of regulating the profession, and to make no order as to costs.

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

EH

Research Associate/Orderly to the Honourable Justice Smith

8 AUGUST 2019