[2015] WASAT 107 (S)

JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
ACT	**:**	LEGAL PROFESSION ACT 2008 (WA)
CITATION	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE and KHOSA [2015] WASAT 107 (S)
MEMBER	**:**	JUSTICE J C CURTHOYS (PRESIDENT) MS R MOORE (MEMBER) MS A DAVIES (SENIOR SESSIONAL MEMBER)
HEARD	**:**	29 FEBRUARY 2016
DELIVERED	**:**	16 MAY 2016
FILE NO/S	**:**	VR 34 of 2015
BETWEEN	**:**	LEGAL PROFESSION COMPLAINTS COMMITTEE Applicant AND MANRAJ SINGH KHOSA Respondent

Catchwords:

Suspension - Knowing breach of undertaking

Legislation:

Legal Profession Act 2008 (WA), s 403, s 438, s 438(2)(b), s 439, s 440, s 441, s 441(1)(a)
State Administrative Tribunal Act 2004 (WA), s 87(1), s 87(2)

Result:

The practitioner be suspended for six months and pay the Legal Profession Complaints Committee's costs of $8,367

Summary of Tribunal's decision:

The Tribunal found that Mr Manraj Singh Khosa, a legal practitioner, was guilty of professional misconduct. The matter was listed for a penalty and costs hearing on 29 February 2016.

The Tribunal determined that the practitioner be suspended for six months and pay the Legal Profession Complaints Committee's costs of $8,367.

Category: B

Representation:

Counsel:

Applicant	:	Mr A Musikanth
Respondent	:	Mr RI Viner QC and Ms RJ Lee

Solicitors:

Applicant	:	Law Complaints Officer
Respondent	:	Law on Newcastle

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

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
Kyle v Legal Practitioners' Complaints Committee [1999] WASCA 115
Law Society of New South Wales v Foreman (1994) 34 NSWLR 408
Law Society of New South Wales v Walsh [1997] NSWCA 185
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 Khosa [2015] WASAT 107
Legal Profession Complaints Committee and Wells [2014] WASAT 112 (S)
Legal Profession Complaints Committee v Detata [2012] WASCA 214
Legal Profession Complaints Committee v Lashansky [2007] WASC 211
Legal Profession Complaints Committee v Love [2014] WASC 389
Legal Profession Complaints Committee v Waters [2015] WASC 141
Legal Profession v O'Halloran [2013] WASC 430
Medical Board of Western Australia and Roberman [2005] WASAT 81 (S)
New South Wales Bar Association v Evatt (1968) 117 CLR 177
NSW Bar Association v Hamman [1999] NSWCA 404
Paridis v Settlement Agents Supervisory Board [2007] WASCA 97
Re A Practitioner (1984) 36 SASR 590
Western Australian Planning Commission v Questdale Holdings Pty Ltd [2016] WASCA 32

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 On 23 September 2015, following a one day hearing, the Tribunal found Mr Manraj Singh Khosa, a legal practitioner, guilty of professional misconduct pursuant to s 403 and s 438 of the *Legal Profession Act* 2008 (WA) (LP Act) - see ***Legal Profession Complaints Committee and Khosa*** [2015] WASAT 107 (***Khosa***). On 29 February 2016, there was a further one day hearing to address the issue of an appropriate penalty.

2 The Tribunal is empowered pursuant to s 438(2)(b) of the LP Act to make any one or more of the orders specified in s 439, s 440 and s 441 of the LP Act. This includes an order pursuant to s 439(a) of the LP Act that the practitioner's local practicing certificate be suspended for a specified period of time.

3 In the circumstances of this case, for the reasons set out in this decision, the appropriate period of suspension is six months. Mr Khosa must also pay the Committee's costs of $8,367.

The practitioner's conduct

4 The Tribunal found that, on or about 1 March 2013, Mr Khosa, engaged in professional misconduct in that he released an executed withdrawal of caveat form to Silver Force Pty Ltd and/or Ms Stephanie Douglas (clients) for lodgment at Landgate in circumstances where:

(i) Mr Khosa undertook to Mr Gough and Minter Ellison that the executed withdrawal of caveat form would not be lodged at Landgate and further, that he would not (it being necessarily implicit) release the caveat withdrawal to the clients until such time as the issue of costs relating to the claim by Roderick Gordon Murchison (the first plaintiff) in District Court proceedings No. CIV 2122 of 2011 relating to a loan of $150,000 by the first plaintiff to the clients had been resolved;

(ii) The issue of costs relating to the first plaintiff's claim had not been resolved as of 1 March 2013, when Mr Khosa released the caveat withdrawal to his clients for the purpose of the caveat withdrawal being lodged with Landgate; and

(iii) Mr Khosa released the caveat withdrawal to the clients for lodgement at Landgate in the knowledge that it was in breach of the undertaking referred to above.

5 Mr Khosa's position was that he had believed that his undertaking had been released and was not relied upon. However, after careful consideration of the evidence, the Tribunal drew the inference that Mr Khosa had not in fact believed at the time that he had been released from his undertaking. As such, Mr Khosa was found guilty of knowingly breaching an undertaking.

The orders sought by the parties

6 In submissions filed on 14 October 2015, the Committee sought the following orders:

> (a) the Tribunal make and transmit a report on the finding to the Supreme Court (Full Bench) with a recommendation that the name of the practitioner be removed from the Roll of Practitioners pursuant to s 438(2)(a) and 438(4) of the *Legal Profession Act 2008*;
>
> (b) within 30 days of the date of those orders, that the practitioner's local practicing certificate be suspended until the determination of the Supreme Court (Full Bench) pursuant to s438(3)(a) of the *Legal Profession Act 2008*; and
>
> (c) the practitioner pay the Committee's costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA) in a sum to be fixed, such costs to be paid to the Legal Practice Board within 21 days or as otherwise agreed between the practitioner and the Legal Practice Board.

7 In submissions filed on 6 November 2015, Senior Counsel on behalf of Mr Khosa, submitted that the circumstances do not warrant Mr Khosa being removed from the Roll of Practitioners. Instead, Senior Counsel submitted that a fine was appropriate.

Legal framework and principles

8 The Supreme Court of Western Australia recently revisited the applicable principles in ***Legal Profession Complaints Committee v Waters*** [2015] WASC 141 (***Waters***). In ***Waters***, the practitioner had, inter alia, sworn an affidavit knowing it to be false in circumstances where it had potential to mislead the court, knowingly mislead his client as to certain facts and knowingly mislead the Committee as to certain facts. Martin CJ, McKechnie and Beech JJ said at paragraphs [7]-[8]:

> The principles to be applied in applications of this kind were set out by this court in *Legal Profession Complaints Committee v Brickhill* as follows:
>
> > The principles to be applied in an application of this kind are well established. 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: *Re Maraj (a legal practitioner)* (1995) 15 WAR 12, 25 (Malcolm CJ, Kennedy and Franklyn JJ agreeing); *Ziems v Prothonotary of the Supreme Court of New South Wales* [1957] HCA 46; (1957) 97 CLR 279, 286 (Dixon CJ, McTiernan, Fullagar and Kitto JJ agreeing); *Legal Profession Complaints Committee v Masten* [2011] WASC 71 [16] (Martin CJ, Murray and EM Heenan JJ); *Legal Profession Complaints Committee v Brennan* [2010] WASC 198 [10] (Martin CJ, Murray and Hall JJ agreeing); *Legal Profession Complaints Committee v Fitzpatrick* [2011] WASC 320 [43] (Martin CJ, EM Heenan and Jenkins JJ).

Where the motion is to remove a practitioner from the Roll, the critical question for the court is whether the practitioner is shown not to be a fit and proper person to be a legal practitioner: *Ziems* (297 - 298); *A Solicitor v The Council of the Law Society of New South Wales* [2004] HCA 1; (2004) 216 CLR 253 [15] (Gleeson CJ, McHugh, Gummow, Kirby and Callinan JJ); *Legal Practitioners Complaints Committee v Thorpe* [2008] WASC 9 [43] (Steytler P, Wheeler JA and Newnes J). Fitness to practice law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges: *In re Davis* (1947) 75 CLR 409, 420 (Dixon J); *Legal Practitioners Complaints Committee v Thorpe* [43] (Steytler P, Wheeler JA and Newnes J); *Legal Profession Complaints Committee v Brennan* [11] (Martin CJ, Murray and Hall JJ agreeing).

Striking off is an order reserved for very serious cases, where the character and conduct of the practitioner is seen to be 'inconsistent with the privileges of further practice': *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 112 A Crim R 438 [38] (Thomas JA, McMurdo P and White J agreeing).

Integrity and honesty are essential characteristics expected of a practitioner, and therefore, the court has generally taken a very serious approach when dealing with dishonesty by a practitioner: *Brennan* [15]; *Legal Profession Complaints Committee v Bachmann* [2011] WASC 309 [47] (Martin CJ, EM Heenan and Jenkins JJ); *Legal Practitioners Complaints Committee v Palumbo* [2005] WASCA 129 [22] - [23] (Steytler P, Wheeler and McLure JJA agreeing); *Kyle v Legal Practitioners Complaints Committee* [1999] WASCA 115; (1999) 21 WAR 56 [69] (Parker J); *Re Maraj* (25) (Malcolm CJ, Kennedy and Franklyn JJ agreeing). In *Barristers' Board v Darveniza*, Thomas JA observed that:

> [T]he quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practices [33].

Suspension

9 Suspension is a less serious result and differs from removal of a practitioner from the Roll because suspension is for a specified limited period.

10 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 the practitioner lacks the qualities of character which are the necessary attributes of a person entrusted with the responsibilities of a practitioner (***Legal Profession Complaints Committee and A Legal Practitioner*** [2013] WASAT 37 (S) (***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]).

Breach of undertaking

11 The Court of Appeal considered the appropriate penalty to be imposed for a breach of an undertaking most recently in ***Legal Profession Complaints Committee v Detata*** [2012] WASCA 214 (***Detata***). In ***Detata***, the client of the practitioner had pleaded guilty to fraud in connection with the sale of a business to a Mr Faulds. At the time of entry of the plea, the sentencing judge had observed that reparation was to be a significant factor in the sentencing process. The judge had also suggested that some sort of security to Mr Faulds in respect of his claim for damages would be a significant factor in the sentencing process. For this reason the wife of the practitioner's client paid money to the practitioner's firm and the practitioner gave a personal undertaking to the plaintiff that such money would be held on trust and not released without agreement from the plaintiff. When the reparation order was made, half was paid to Mr Faulds. The practitioner's client's wife then requested release of the remaining half, which the practitioner authorised, without agreement from Mr Faulds.

12 Martin CJ, Pullin and Murphy JJA allowed the appeal. Their Honours found that the Tribunal's imposition of a reprimand and

imposition of a condition restricting the practitioner's practice for two years was manifestly inadequate and instead imposed a fine of $10,000.

13 The Tribunal had found that Mr Detata acted 'deliberately or recklessly' in releasing the undertaking (see ***Detata*** at [22]) but, on appeal, the Committee did not challenge the aspect of the Tribunal's decision to proceed to impose a penalty on the basis that Mr Detata had acted recklessly. Therefore the Court of Appeal imposed a penalty on the same basis (***Detata*** at [28]). The Court of Appeal took this to mean that Mr Detata was entirely indifferent to whether authorisation of the disbursement of trust finds was in breach of the undertaking (***Detata*** at [63]).

14 The Court of Appeal said that the importance of practitioners performing their undertakings could not be overstated (***Detata*** at [48]). Among other points, the Court said that it is vital that practitioners perform their undertakings, regardless of whether the undertaking was provided in error or oversight, irrespective of any change in circumstances and no matter how radical and irrespective of any hardship to the practitioner (***Detata*** at [52]). The Court of Appeal explained that this is necessary to maintain public confidence in the integrity of the legal system and for the maintenance of the confidence that practitioners have in dealing with each other (***Detata*** at [53]).

15 The Court of Appeal regarded the following aspects of the factual circumstances as pertinent to the evaluation of the seriousness of the practitioner's misconduct and the assessment of an appropriate penalty:

1) That the undertaking given by the practitioner was clear and unambiguous. There was no doubt that these terms were known to the practitioner;

2) There was no doubt that the undertaken was given on behalf of the practitioner, the firm and the client ([61]);

3) The undertaking was provided for the purpose of obtaining a benefit for the practitioner's client in the form of a discount in sentence but once the benefit was received, the practitioner breached the undertaking, thereby leaving Mr Faulds without security for additional damages which might have been awarded in a civil claim;

4) There was no evidence that the practitioner was remorseful. Indeed, to the contrary, the practitioner denied that he was guilty of misconduct and gave an explanation for his behaviour which the Tribunal found provided no reasonable justification for it ([64]); and

5) The undertaking involved a substantial amount of money ($150,000). It was important to the party to whom it was provided and it was breached without reasonable justification or excuse ([65]).

16 The Court concluded that these considerations meant that the practitioner's conduct could not be regarded as being at the lower end of the range of seriousness of cases involving a breach of undertaking.

17 The Court said that the impact that an appropriate penalty would have upon a practitioner guilty of misconduct and personal hardship to a practitioner are secondary considerations. The Court reiterated that 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. In any event, there was no evidence to enable the assessment of the impact of a fine [47].

18 In ***Legal Profession Complaints Committee and Wells*** [2014] WASAT 112 (S) (***Wells (S)***), the Tribunal identified twelve possible considerations in determining an appropriate sanction. Those matters are interrelated and are not mutually exclusive. The list of matters is not exhaustive. Not every matter will need to be considered in every case. 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]; ***Law Society of New South Wales v Foreman*** (1994) 34 NSWLR 408 (***Foreman***) at 440C; ***NSW Bar Association v Hamman*** [1999] NSWCA 404 (***Hamman***) at [77]).

2) The need to protect the public through general deterrence of other practitioners from similar conduct (***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 at [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 if its disapproval (***Craig v The Medical Board of South Australia*** [2001] SASC 169 at [64]);

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 (***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 (***A Solicitor [2002] NSW***) 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 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; ***Legal Profession Complaints Committee v Love*** [2014] WASC 389 (***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]); and

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***).

19 All of the above matters are to be considered in the context of the Tribunal's findings as to liability, that is, how serious was the conduct and the practitioner's explanation for the conduct (***Paridis v Settlement Agents Supervisory Board*** [2007] WASCA 97 at [30(1)][30(2)]).

20 In ***Wells (S)***, the Tribunal also stated at [17]-[19]:

> 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 (*Segler*) 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]).

Consideration

21 Where a practitioner is to be struck off it must be established that the practitioner is not a fit and proper person to be a legal practitioner.

22 The facts are set out in detail in ***Khosa***. In summary, at a settlement meeting, Mr Khosa gave an undertaking not to release a withdrawal of caveat until costs had been paid by his client. This was in circumstances where, as the Tribunal stated in ***Khosa*** at [36], Mr Khosa was justified in his belief that Mr Gough's demand was unreasonable. Nevertheless, on 22 February 2013 Mr Khosa gave the undertaking. As the Tribunal found in ***Khosa*** at [39], he was in no doubt as to its terms and his undertaking was unambiguous. However, he had not been able to obtain instructions from his client prior to giving the undertaking (***Khosa*** at [37]). When informed, his client was unhappy about it (***Khosa*** at [47]) and, on 1 March 2013, Mr Khosa released the withdrawal of caveat forms without costs having been paid by Mr Khosa's client (***Khosa*** at [90]).

23 Mr Khosa's position was that he had believed that his undertaking had been released and was not relied upon. However, after careful consideration of the evidence, the Tribunal drew the inference that Mr Khosa had not in fact believed at the time that he had been released from his undertaking. As such, Mr Khosa was found guilty of knowingly breaching an undertaking.

24 These circumstances are to be distinguished from those in ***Detata*** in an important respect. The conduct, in respect of which the penalty was assessed, was not reckless. Mr Khosa's conduct was more serious. Mr Khosa knowingly breached an undertaking. In ***Kyle v Legal Practitioners' Complaints Committee*** [1999] WASCA 115, where the practitioner had caused the Court to believe that a person had signed a deed when the practitioner knew that that person had not, Ipp J explained at [8] that, in such circumstances where deliberate conduct is coupled with knowledge, it is implicit that an intention to deceive or dishonesty is involved. Similarly, knowing that the undertaking had not yet been discharged, Mr Khosa's deliberate act necessarily involved a degree of dishonesty.

25 While the Tribunal recognises that the situation in which Mr Khosa found himself was difficult and, in particular, that Mr Khosa was justified in his belief that Mr Gough's demand was unreasonable, the standard required by the legal profession, clearly required Mr Khosa to perform his undertaking. To refer back to the language of the Court of Appeal in ***Detata***, it was *vital* that Mr Khosa perform the undertaking, once given, irrespective of whether it had been given in error or and irrespective of hardship to him.

26 Further, the Tribunal does not accept Senior Counsel's submissions that Mr Khosa did not receive any benefit for his action in releasing the withdrawal of caveat. Mr Khosa had given the undertaking to ensure for his client that the settlement did not fall over at the eleventh hour. Once this benefit had been received, Mr Khosa breached the undertaking. A further benefit was then received by Mr Khosa; namely placating his unhappy clients.

Other primary considerations

27 Senior Counsel for Mr Khosa submitted on behalf of Mr Khosa that the transgression is isolated (Khosa submissions [20]).

28 Counsel for the Committee submitted that this transgression is not an isolated incident [Committee submissions [36] and pointed to the consent orders made in VR 37 of 2015.

29 This matter and VR 37 of 2015 were listed together and arose out of another situation with the same client around the same period of time. However, the misconduct in this case and the misconduct in VR 37 of 2015 is different in nature. It cannot strictly be said, therefore, that the transgression in this case is an isolated act of misjudgment. However, the problems did arise in connection with the same client, the transgression in VR 37 of 2015 was relatively minor and the matter was resolved by consent. Therefore the circumstances are akin to an isolated act of misjudgment.

30 Counsel for the Committee submitted that Mr Khosa has demonstrated neither remorse nor any degree of insight into his conduct. Counsel pointed to Mr Khosa's conduct before the Tribunal including his conduct by asserting that he believed that he had been released from the undertaking (Committee submissions [32]).

31 Senior Counsel for Mr Khosa submitted on behalf of Mr Khosa that Mr Khosa was remorseful. Senior Counsel submitted that a lack of remorse is not shown by a practitioner seeking to defend himself against allegations of misconduct (Khosa submissions [24]).

32 Through Senior Counsel, Mr Khosa has acknowledged the importance of an undertaking (Khosa submissions [17]) and indicated that he will never allow himself to be put in the same position again (Khosa submissions [21]).

33 The Tribunal considers that the nature of Mr Khosa's defence did indicate an absence of remorse in that his position was that he believed that he had been released from the undertaking (Khosa submissions [57]), which the Tribunal rejected (Khosa submissions [110]). Mr Khosa's defence is not otherwise relevant to the consideration of an appropriate penalty.

34 Acceptance of wrong-doing can be painful and occur over time.

35 The Tribunal accepts that Mr Khosa has shown a degree of insight into his transgression in that he has acknowledged the importance of an undertaking and indicated that he will never allow himself to be put in the same position again. However, Mr Khosa has not yet demonstrated remorse. Remorse necessitates acceptance of wrong-doing. Until Mr Khosa accepts that, with whatever degree of self-deception or self-justification may have been involved, he knew the undertaking had not been released, he will not be remorseful.

36 The Tribunal also places some weight on Mr Khosa's references, even though they are expressed in general terms and without acknowledgment of the finding of professional misconduct, because they do point to good character.

Other considerations

37 Senior Counsel's submissions are that Mr Khosa's experience with Angove Law and the non-legal director Stephanie Douglas, the Silver Force litigation and that client's non-payment of fees, together with subsequent conduct of Mr and Mrs Douglas, left Mr Khosa and his wife, who also works at Mr Khosa's practice, in dire financial circumstances. This is supported by the profit and loss statement filed on 8 March 2016 which shows the practice making a loss of $7,389 in the period of July 2015 to February 2016.

38 There is no evidence as to mortgage default notices received in respect of the family home. However, the Tribunal has no doubt that not generating income for a period of time has dire financial consequences.

39 The Tribunal accepts that Mr Khosa's practice is not currently operating at a profit and therefore that it is not generating an income.

Conclusion

40 The Court's decision in ***Detata*** makes clear the seriousness of a breach of an undertaking.

41 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 the practitioner lacks the qualities of character which are the necessary attributes of a person entrusted with the responsibilities of a practitioner.

42 While a degree of dishonesty was involved in knowingly breaching an undertaking, honest practitioners can occasionally make a serious mistake. This kind of mistake, without more, does not define them.

43 The Tribunal is satisfied that upon completion of a period of suspension, he will be fit to resume practice.

44 For these reasons, even though the professional conduct is not at the lower end of the range of seriousness of cases involving a breach of undertaking, it has not been established that Mr Khosa is not to be a fit and proper person to be a legal practitioner so as to justify an order that his name be removed from the roll of practitioners.

45 Mr Khosa's breach of undertaking, in all of the circumstances, is not misconduct that falls within the lower end of the seriousness scale. While Mr Khosa's breach of undertaking is akin to an isolated act of misjudgment, the undertaking given by him was unambiguous and he was in no doubt as to its terms. He provided the undertaking to ensure the settlement did not fall over at the eleventh hour. Once this benefit had been received, Mr Khosa knowingly, not recklessly, breached the undertaking without reasonable justification or excuse. A further benefit was then received by Mr Khosa; namely placating his unhappy clients. The undertaking secured costs and was therefore important to the party to whom it was given.

46 The practitioner is not remorseful. Indeed, to the contrary, the practitioner denied that he was guilty of misconduct and gave an explanation for his behaviour that the Tribunal did not accept. The practitioner has only taken a step towards remorse in that he has acknowledged the importance of an undertaking and indicated that he will never allow himself to be put in the same position again.

47 The Tribunal regards Mr Khosa's conduct as more serious than that of Mr Detata for the reasons stated above.

48 The Tribunal has determined that a period of suspension of six months is appropriate. A period of suspension of six months shows the Tribunal's emphatic disapproval.

49 It is also appropriate that Mr Khosa be reprimanded.

50 The Tribunal appreciates the significant personal impact this will have on Mr Khosa, but a lesser period of suspension would not amount to a significant deterrent to other practitioners.

Costs

51 Section 87(1) and s 87(2) of the *State Administrative Tribunal Act 2004* (WA) provides:

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

52 In ***Western Australian Planning Commission v Questdale Holdings Pty Ltd*** [2016] WASCA 32, Murphy JA (Martin CJ and Corboy J agreeing) stated:

> 46 The effect of s 87(1) of the SAT Act is, relevantly, that each party in proceedings before the Tribunal is to bear its own costs, unless the Tribunal otherwise orders.
>
> ..
>
> 51 Section 87(2) is to be construed in the context that the legal rationale for an order for costs is not to punish the person against whom the order is made, but to compensate or reimburse the person in whose favour it is made. That rationale is evident in s 87(3) of the SAT Act. Accordingly, even in a statutory context where the presumptive position is that no costs will be ordered, generally speaking, the question is whether, in the particular circumstances of the case, it is fair and reasonable that a party should be reimbursed for the costs it incurred. The onus is on the party seeking an order in its favour.

53 In ***Medical Board of Western Australia and Roberman*** [2005] WASAT 81 (S) at [30], the Tribunal stated:

> Section 87(2) gives the Tribunal the discretion to order the payment by a party of all or any of the costs of another party. Where a regulatory authority successfully brings a complaint of conduct which, if proved, justifies disciplinary action by the Tribunal, there will usually be a strong case for the exercise of that discretion in favour of the regulatory body.

> That is because such bodies perform a function which promotes the public interest, and usually with limited resources. The financial burden of bringing disciplinary action if the body had no capacity to recover some or all of its costs may be such as to provide a disincentive to bring disciplinary action, or when brought, to ensure that the allegations against the practitioner concerned are properly and thoroughly presented. It is in the public interest that such bodies have an expectation that, if the allegations are made out, the offending professional will meet or at least contribute to the costs incurred in bringing the application. The question of an award of costs is, of course, a matter of discretion to be exercised in the circumstances of each case.

54 Having considered all the circumstances, the Tribunal is satisfied that Mr Khosa should pay the Committee's costs since the Committee was acting in the public interest in a disciplinary matter. It is fair and reasonable that the Committee should be reimbursed for the costs it has incurred.

55 The Tribunal has considered the Committee's schedule of costs and is satisfied that they are reasonable.

56 Accordingly, Mr Khosa should pay the Committee's costs of $8,367.

Orders

57 The Tribunal orders that:

1. Mr Manraj Singh Khosa is suspended from practice for a period of six months from 16 June 2016.

2. Mr Manraj Singh Khosa is reprimanded pursuant to s 439(d) of the *Legal Profession Act 2008* (WA).

3. Mr Manraj Singh Khosa is to pay the Legal Profession Complaints Committee's costs of $8,367 by 16 June 2016.

I certify that this and the preceding [57] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUSTICE J C CURTHOYS, PRESIDENT