

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PROFESSION ACT 2008 (WA)

CITATION : LEGAL PROFESSION COMPLAINTS
COMMITTEE and BRICKHILL [2013] WASAT 130

MEMBER : JUSTICE J A CHANEY (PRESIDENT)
MR M SPILLANE (SENIOR MEMBER)
MS R MOORE (MEMBER)

HEARD : DETERMINED ON THE DOCUMENTS

DELIVERED : 14 AUGUST 2013

FILE NO/S : VR 126 of 2013

BETWEEN : LEGAL PROFESSION COMPLAINTS
COMMITTEE
Applicant

AND

TREVOR HOWARD BRICKHILL
Respondent

Catchwords:

Legal practitioners - Professional misconduct - Knowingly giving false evidence
- Counselling destruction of material that may have been used in evidence -
Conviction for offences - Consent order for reference to Supreme Court (Full
Bench)

Legislation:

Corruption and Crime Commission Act 2003 (WA)

Legal Profession Act 2008 (WA), s 428(1), s 404

Result:

Report transmitted to Supreme Court

Summary of Tribunal's decision:

Following the conviction of a legal practitioner, Mr Trevor Brickhill, of two offences against the *Corruption and Crime Commission Act 2003 (WA)*, the Legal Profession Complaints Committee referred Mr Brickhill to the Tribunal for a disciplinary penalty under the *Legal Profession Act 2008 (WA)*.

Mr Brickhill admitted the allegations against him, and consented to an order that the Tribunal transmit a report to the Supreme Court with a recommendation that Mr Brickhill's name be removed from the roll of legal practitioners. The Tribunal considered that the proposed consent orders were appropriate, and referred the matter to the Full Court of the Supreme Court.

Category: B

Representation:

Counsel:

Applicant : Ms PE Le Miere
Respondent : Mr PA Sheiner

Solicitors:

Applicant : Law Complaints Officer
Respondent : Roe Legal Services

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

Law Society (SA) v Rodda [2002] SASC 274

REASONS FOR DECISION OF THE TRIBUNAL:

1 The Legal Profession Complaints Committee (Committee) made a referral under s 428(1) of the *Legal Profession Act 2008* (WA) (LP Act) to the Tribunal in relation to a legal practitioner, Mr Trevor Howard Brickhill.

2 The complaint alleged that on 5 November 2010, Mr Brickhill gave evidence before the Corruption and Crime Commission which he knew was misleading in a material particular, and that on 29 June 2010, knowing that a document or thing was or may be required by the Corruption and Crime Commission, he counselled a person to destroy that document or thing with the intention of preventing it from being effectively used in evidence.

3 At the initial directions hearing before the Tribunal on 16 July 2013, the Tribunal was advised that the conduct alleged against the practitioner would be admitted. The Committee was directed to file with the Tribunal and provide to Mr Brickhill a bundle of the documents upon which it proposed to rely in the proceedings. Mr Brickhill was directed to file any responsive documents after receipt of the Committee's bundle. The matter was adjourned to a further directions hearing on 6 August 2013.

4 The Committee filed its book of documents as directed. It is apparent that the parties then conducted further discussions with a view to resolving proceedings without the necessity of a hearing. At the directions hearing on 6 August 2013, a minute of consent orders was provided to the Tribunal, and the matter was thereupon referred to a fully constituted Tribunal to deal with the proposed consent orders on the papers.

5 The terms of the minute of consent orders are as follows:

The Tribunal notes:

The Applicant ('the Committee') alleged that there is proper cause for disciplinary action against the Respondent ('the practitioner') pursuant to Section 438(1) of the *Legal Profession Act 2008*.

By a written agreement between the parties dated 06.08.2013 the parties agreed the terms upon which the proceedings could be settled.

The parties have agreed the following:

1. On 14 March 2013, the practitioner was convicted of:

- a. One offence under section 168 of the *Corruption and Crime Commission Act 2003* ('CCC Act') of knowingly giving misleading evidence ('first offence'); and
 - b. One offence under section 171 of the CCC Act of [counselling] a person to destroy material that was or may have been required to be used in evidence with the intention of preventing it from being effectively used in evidence ('second offence').
2. The practitioner was found guilty of the first and second offence on his own plea.
 3. On 14 March 2013 the practitioner was:
 - a. Fined \$ 10,000 in respect of the first offence; and
 - b. Sentenced to 12 months goal, suspended for 18 months, in respect of the second offence.

The Tribunal orders:

Being satisfied by reason of the practitioner's admissions that proper cause exists for disciplinary action against the practitioner, and in order to give effect to the agreed terms of settlement of the proceedings, it is on [] ordered pursuant to s 56(1) of the *State Administrative Tribunal Act 2004* (WA) that:

1. Trevor Howard Brickhill (practitioner) engaged in professional misconduct within the meaning of section 404 of the *Legal Profession Act 2008* in that:
 - 1.1 On 5 November 2010 at Perth, being a person giving evidence before the Corruption and Crime Commission ('CCC'), he gave evidence which he knew was misleading in a material particular by testifying that the extent of his conversation with Mr 'A' was to advise Mr 'A' to seek separate advice and by denying that he gave advice to Mrs 'A' or Mr 'F' about them transferring property; and
 - 1.2 On 29 June 2010 at Perth knowing that a document or thing was or may be required by the CCC of Western Australia he [counselled] a person to destroy that document or thing with the intention of preventing it from being effectively used in evidence.
2. Pursuant to s 438(4)(b) the Tribunal makes and transmits a report on the findings of professional misconduct to the Supreme Court of Western Australia (full bench) with a recommendation that the practitioner's name be removed from the roll of persons admitted to the legal profession under the *Legal Profession Act 2008*.

3. The practitioner pay the applicant's costs to the Legal Practice Board fixed in the sum of \$1,000 within 30 days of the making of this order unless other terms have been agreed with the applicant.

6 The offences of which Mr Brickhill was convicted are obviously serious and are directly concerned with his practice as a lawyer and with the proper administration of the law. The conduct involved is a clear demonstration of unfitness to practise law. The observations of Doyle CJ in *Law Society (SA) v Rodda* [2002] SASC 274 are apposite to the present case. In relation to a practitioner who had been convicted of serious offences (although unrelated to legal practice) Dolye J said at [29]:

There is another factor. The reputation and standing of the legal profession in the public eye are important. Public confidence and trust in the legal profession is important to the effective functioning of the profession. That confidence and trust rest in part on the reputation and standing of the profession. The public could not view with respect, and have complete confidence in, a person with such serious and recent convictions. Were the court to continue to hold Mr Rodda out as a fit and proper person to remain a member of the profession, the standing of the profession as a whole would suffer. The public would rightly doubt the standards of a profession which permitted a person who has recently committed such serious offences to remain one of its members.

7 It is to the credit of Mr Brickhill that he apparently recognises and accepts both the seriousness of his conduct and its consequences.

8 Based on his admissions by way of his signature on the minute of consent orders submitted to the Tribunal on 6 August 2013, we find that the practitioner engaged in professional misconduct within the meaning of s 404 of the LP Act in the way identified in para 1 of the proposed orders set out above. We consider that the order proposed by the parties that the Tribunal transmit a report on its findings to the Supreme Court (Full Bench), with a recommendation for removal of the practitioner's name from the roll, is an appropriate disposition of the matter by the Tribunal, and we propose to make the orders proposed by the parties.

The report will consist of these reasons, the Committee's book of documents filed with the Tribunal on 23 July 2013, and the minute of consent orders submitted to the Tribunal on 6 August 2013.

I certify that this and the preceding [8] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUSTICE J A CHANEY, PRESIDENT