

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**TITLE OF COURT** : FULL BENCH

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE -v- BRICKHILL [2013] WASC 369

**CORAM** : MARTIN CJ  
McKECHNIE J  
EM HEENAN J

**HEARD** : HEARD ON THE PAPERS

**DELIVERED** : 9 OCTOBER 2013

**FILE NO/S** : LPD 2 of 2013

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

TREVOR HOWARD BRICKHILL  
Respondent

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*Catchwords:*

Legal practitioners - Disciplinary proceedings - Removal from Roll of Practitioners - Whether practitioner fit and proper person to remain a member of the legal profession - Knowingly giving false evidence - Counselling person to destroy evidence

*Legislation:*

*Legal Profession Act 2008 (WA), s 404, s 428, s 438, s 444*

*Result:*

Order that practitioner's name be removed from the Roll of Practitioners

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms P Le Miere & Ms D N Mahiepala  
Respondent : On the Papers

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : In person

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

A Solicitor v The 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  
In re Davis (1947) 75 CLR 409  
Kyle v Legal Practitioners Complaints Committee [1999] WASCA 115; (1999) 21 WAR 56  
Law Society (SA) v Rodda [2002] SASC 274  
Legal Practitioners Complaints Committee v Palumbo [2005] WASCA 129  
Legal Practitioners Complaints Committee v Thorpe [2008] WASC 9  
Legal Profession Complaints Committee v Bachmann [2011] WASC 309  
Legal Profession Complaints Committee v Brennan [2010] WASC 198  
Legal Profession Complaints Committee v Brickhill [2013] WASAT 130  
Legal Profession Complaints Committee v Fitzpatrick [2011] WASC 320  
Legal Profession Complaints Committee v Masten [2011] WASC 71  
Re B [1981] 2 NSWLR 372  
Re Maraj (a legal practitioner) (1995) 15 WAR 12  
Ziems v Prothonotary of the Supreme Court of New South Wales [1957] HCA 46; (1957) 97 CLR 279

**REASONS OF THE COURT:****Introduction**

1           The Legal Profession Complaints Committee (the Committee) moves  
for an order that Trevor Howard Brickhill (the practitioner) be struck off  
the Roll of Legal Practitioners (the Roll).

2           The court has received a report from the State Administrative  
Tribunal (the Tribunal) in accordance with s 438(2)(a) of the *Legal  
Profession Act 2008* (WA) (the Act). Pursuant to s 444(1) of the Act, the  
report is to be taken to be conclusive as to all facts and findings  
mentioned or contained in the report.

3           The motion before the court is made pursuant to s 444(2) of the Act.  
That section provides that the court, upon reading a report from the  
Tribunal, and without any further evidence, may make a variety of orders  
including an order removing the practitioner's name from the Roll.

4           The practitioner has filed a notice of his intention not to oppose the  
Committee's application, and consenting to his name being struck off the  
Roll. The parties also consented to the motion being dealt with on the  
papers, and without an oral hearing.

5           For the reasons which follow, the court orders that the name of the  
practitioner be removed from the Roll.

**The report from the Tribunal**

6           The Tribunal's report comprised its reasons (*Legal Profession  
Complaints Committee v Brickhill* [2013] WASAT 130), 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.  
The report establishes the following facts.

7           The practitioner was admitted to practice on 23 December 1988, and  
was formerly managing partner of the law firm Brickhills.

8           During 2010, the City of Stirling (the City) carried out an  
investigation into alleged misconduct on the part of a number of its  
employees. The practitioner represented an employee of the City during  
these investigations. The practitioner ceased to act for that employee at  
the conclusion of those investigations. In February 2010, the Corruption  
and Crime Commission (Commission) commenced an investigation into

allegations of misconduct by the City's staff, including the practitioner's former client.

9           On 29 June 2010, the practitioner met with his former client's wife, and counselled her to destroy computer records which may be relevant to the Commission's investigation.

10           Also on 29 June 2010, the practitioner telephoned his former client, and gave him advice about the transfer of properties in which he had an interest so to minimise the risk of attention from the Commission in relation to those properties, and to avoid seizure of such properties. This conversation was intercepted and recorded by the Commission.

11           On 5 November 2010, the practitioner appeared at a public examination before the Commission. He was questioned about the telephone conversation he had with his former client. Under oath, and not knowing that the conversation had been intercepted by the Commission, he testified that the extent of his conversation with his former client on 29 June 2010 was to advise him that he would need to seek separate legal advice. This was false.

12           The practitioner was charged that:

1.       on 5 November 2010, being a person giving evidence before the Corruption and Crime Commission gave evidence which he knew was misleading in a material particular, contrary to s 168 of the *Corruption and Crime Commission Act 2003* (WA) (First Offence); and
2.       on 29 June 2010, knowing that a document or thing was or may be required by the Corruption and Crime Commission, counselled a person to destroy that document or thing with the intention of preventing it from being effectively used in evidence, contrary to s 171 of the *Corruption and Crime Commission Act* (Second Offence).

13           The practitioner pleaded guilty to both charges. He was sentenced to a fine of \$10,000 for the first offence, and 12 months imprisonment, suspended for 18 months, for the second offence.

14           As a consequence of these convictions, the Committee referred a complaint regarding the practitioner to the Tribunal under s 428(1) of the Act. The complaint alleged that the practitioner committed the offences.

15 At a directions hearing before the Tribunal, the practitioner advised the Tribunal that the conduct alleged against him would be admitted. The Tribunal made directions regarding the exchange of documents and adjourned the matter for further directions.

16 At the next directions hearing, the parties provided consent orders to the Tribunal. The consent orders were signed by the practitioner. The orders noted the Committee's allegation that there was a proper cause for disciplinary action against the practitioner pursuant to s 438(1) of the Act, and that the parties had agreed that on 14 March 2013 the practitioner was convicted of the first and second offences after he pleaded guilty to both offences. The orders further noted the sentences imposed for both offences. The orders also noted that by written agreement, the parties agreed the terms upon which the proceedings could be settled.

17 In its report, the Tribunal found that based on his admissions, and by reason of his conviction of the first and second offences, the practitioner engaged in professional misconduct within the meaning of s 404 of the Act. The Tribunal made orders in the terms proposed by the parties, that:

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 ... 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.

### **The principles to be applied**

- 18 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).
- 19 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).
- 20 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).

21 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].

### **The application of these principles**

22 The offences committed by the practitioner were extremely serious. In *Ziems*, Kitto J observed:

It is not difficult to see in some forms of conduct, or in convictions of some kinds of offences, instant demonstration of unfitness for the Bar. Conduct may show a defect of character incompatible with membership of a self-respecting profession; or, short of that, it may show unfitness to be joined with the Bench and the Bar in the daily co-operation which the satisfactory working of the courts demands. A conviction may of its own force carry such a stigma that judges and members of the profession may be expected to find it too much for their self-respect to share with the person convicted the kind and degree of association which membership of the Bar entails (298).

23 The practitioner's convictions are of this kind. The legal profession is grounded on honesty and trust. In exchange for the privilege of practicing law, the practitioner had a duty in the public interest to act honestly and in a manner which furthers the administration of justice - *In re Davis*, 420 (Dixon J); *Re B* [1981] 2 NSWLR 372, 381 - 382. The convictions demonstrate a lack of integrity and honesty on the part of the practitioner which manifests a lack of fitness to discharge the duties of a legal practitioner.

24 The actions of the practitioner giving rise to his convictions have a particular significance because they occurred in connection with the administration of justice.

25 Interfering with the integrity of an investigation by counselling a person to destroy relevant evidence may well have a tendency to pervert the course of justice. In giving that advice, the practitioner clearly and consciously failed to meet the standards of conduct and integrity required of legal practitioners.

26 Similarly, knowingly giving false evidence before the Commission, under oath and where his evidence may have been significant to the course of the investigation conducted by the Commission, is evidence of a lack of honesty and integrity which is incompatible with his duties of honesty and candour arising from his membership of the legal profession. It is analogous to the offence of perjury, the commission of which will generally be inimical to continued membership of the legal profession.

27 To hold that a practitioner who has gone beyond the boundaries of ethical conduct to this extent, and holds these recent and serious convictions, is still fit to practice would be to undermine the public's confidence and trust in the legal profession, and the standing of the profession would suffer - see *Law Society (SA) v Rodda* [2002] SASC 274 [29].

28 It is to the practitioner's credit that, in consenting to the orders removing him from the Roll, he has apparently recognised and accepted the seriousness of his conduct and the necessary consequences of his actions.

29 However, this remains a clear case in which the protection of the public and the public interest in the maintenance of the reputation and standards of the legal profession compel the conclusion that the practitioner's name must be removed from the Roll of Practitioners.

30 In light of the practitioner's conduct and the seriousness of the offences which he has committed, the only appropriate course is to order that his name be removed from the Roll of Practitioners. There will be an order to that effect. The Committee does not seek an order for its costs in respect of these proceedings, and there will be no order as to costs.