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**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE -v- TOLSON [2020] WASC 158

**CORAM** : QUINLAN CJ  
CURTHOYS J  
HILL J

**HEARD** : 12 MAY 2020

**DELIVERED** : 12 MAY 2020

**PUBLISHED** : 12 MAY 2020

**FILE NO/S** : LPD 4 of 2019

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

HELEN MARIE TOLSON  
Respondent

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*Catchwords:*

Legal practitioners - Disciplinary proceedings - Removal from roll of practitioners - Professional misconduct - Money stolen from the trust account of law firm - Abuse of trust - Practitioner not a fit and proper person to remain a legal practitioner

*Legislation:*

*Legal Profession Act 2008 (WA)*

*Result:*

Order that the practitioner's name be removed from the roll of practitioners

*Category:* B

**Representation:**

*Counsel:*

Applicant : AJ Musikanth SC  
Respondent : No Appearance

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : In Person

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

Legal Profession Complaints Committee and Tolson [2019] WASAT 84  
Legal Profession Complaints Committee v Oud [2019] WASC 287

**JUDGMENT OF THE COURT:**

1           On 12 May 2020 the Court ordered that the name of the  
respondent, Helen Marie Tolson (the **practitioner**), be removed from the  
roll of legal practitioners.

2           These are our reasons for making that order.

3           The Legal Profession Complaints Committee (the **Committee**)  
applied by originating motion for orders that the practitioner be removed  
from the roll of practitioners pursuant to s 444(2)(b) of the *Legal  
Profession Act 2008* (WA) (the *Act*).

4           On 9 October 2019 the State Administrative Tribunal (the  
**Tribunal**) made orders, pursuant to s 438(2)(a) of the *Act*, that it make and  
transmit a report to this Court in the form of its reasons published on  
9 October 2019.

5           In due course, the report of the Tribunal was made to this Court on  
4 February 2020. The report was provided with a recommendation that the  
practitioner's name be removed from the roll of practitioners. Pursuant to  
s 444(1) of the *Act*, the report is taken to be conclusive as to all facts and  
findings mentioned or contained in the report.

**The findings against the practitioner**

6           The facts and findings of the Tribunal are set out in its reasons for  
decision in *Legal Profession Complaints Committee and Tolson*.<sup>1</sup>

7           The Tribunal's facts and findings may be summarised as follows.

8           Between about 23 September 2013 and 30 August 2017, the  
practitioner stole a total of \$1,967,741.51 from the trust account of the law  
practice of which she was an employee (the **Trust Account**). On  
27 November 2018, the practitioner pleaded guilty and was convicted of  
nine offences of stealing as a servant contrary to s 378(7) of the *Criminal  
Code*. She was sentenced to a term of imprisonment of 7 years and  
6 months for those offences.

9           The detail of the offences was as follows.

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<sup>1</sup> *Legal Profession Complaints Committee and Tolson* [2019] WASAT 84.

**First offence**

10 On 23 September 2013, the practitioner withdrew \$50,000 from the Trust Account of the firm by way of a bank cheque. Those funds were deposited into the bank account of the practitioner's husband's company which traded under a business name (**husband's business**).

11 The practitioner assisted with the running of her husband's business by doing the accounts. The business was not a client of the firm and was not entitled to any of the funds withdrawn.

12 The practitioner attempted to conceal the theft by recording the withdrawal as a payment against a deceased estate for which she acted as trustee. When the final distribution was due to the beneficiaries of that estate, the practitioner made a journal entry transferring funds from another deceased estate for which the practitioner also acted as trustee in order to balance the trust matter ledger.

**Second offence**

13 On 21 May 2015, the practitioner withdrew \$55,000 from the Trust Account comprised of two transfers of \$25,000 and \$30,000 respectively into bank accounts of her husband's business.

14 The withdrawal of these funds was funded by a bank cheque payable to a corporate client of the firm. That cheque was deposited into the Trust Account without the knowledge of the client, who believed that the funds were held in a term deposit account of a linked business entity.

**Third offence**

15 On 19 June 2015, the practitioner withdrew \$25,742.02 and deposited it into her husband's business bank account. The theft was also funded by the funds deposited at the time of the second offence. The practitioner attempted to conceal the theft by recording the withdrawal against a miscellaneous account that the practitioner had established.

**Fourth offence**

16 On 30 September 2015, the practitioner withdrew the sum of \$31,949.75 from the Trust Account and deposited it into her husband's business bank account. The practitioner attempted to conceal the withdrawal by recording it against one of the deceased estates for which she acted as trustee.

**Fifth offence**

17 On 2 March 2016, the practitioner withdrew the sum of \$26,000 from the Trust Account and deposited it into a further account held by her husband's business. The practitioner attempted to conceal this withdrawal by recording it against the trust fund of an elderly client of the firm for which the practitioner acted as trustee.

**Sixth offence**

18 On 31 March 2016, the practitioner withdrew the sum of \$250,000 from the Trust Account by way of seven separate bank cheques which were disposed of as follows:

- (a) \$9,650 was deposited into a credit card account in the name of the practitioner's husband;
- (b) \$3,940 was deposited into a credit card account held in the name of the practitioner;
- (c) \$6,231.50 was paid to a company related to the husband's business;
- (d) \$27,489.57 was deposited into a bank account of the husband's business;
- (e) \$43,000 was deposited into another account of the husband's business;
- (f) \$120,000 was paid to the Australian Taxation Office for a tax debt incurred by the company related to the husband's business; and
- (g) \$39,688.93 was used to purchase a new car registered to the practitioner.

19 The practitioner attempted to conceal this withdrawal by recording it against a deceased estate as 'settlement proceeds'.

**Seventh offence**

20 On 14 October 2016, the practitioner withdrew the sum of \$500,000 from the Trust Account, comprised of two bank cheques that were disposed of as follows:

- (a) \$456,000 was used to pay off a loan in the name of the family trust in relation to the company related to the husband's business; and

(b) \$44,000 was deposited into her husband's business bank account.

21 The practitioner also attempted to conceal this withdrawal by recording it against the deceased estate as 'settlement proceeds'.

**Eighth offence**

22 On 7 December 2016, the practitioner withdrew the sum of \$977,983.49 from the Trust Account. This amount was used to pay a number of bad and doubtful debts to the National Australia Bank owed by the practitioner and her husband.

23 The practitioner attempted to conceal this theft by recording it against the trust of the elderly client referred to in relation to the fifth offence.

**Ninth offence**

24 On 30 August 2017, the practitioner withdrew the sum of \$46,800 from the Trust Account which she used to purchase a new car registered to her husband.

25 The practitioner again attempted to conceal the theft by recording it against the withdrawal against the elderly client's trust.

**Characterisation of the practitioner's conduct**

26 In the course of sentencing the practitioner on 27 November 2018, Lonsdale DCJ characterised the practitioner's offending in the following way:

[Y]our offending was a very serious example of offending of this kind. There are a number of aggravating features. The most obvious aggravating feature is that you were a legal practitioner who your clients were entitled to trust. The gross breach of trust that you displayed towards them has no doubt destroyed their confidence in the legal profession and has the potential to ruin confidence in the legal profession more broadly.

...

Your dishonesty was gross. You engaged in a sophisticated plan to deceive your clients once they began to uncover your deception. You told a number of lies and you impersonated fictitious people, being persons that you had created to cover up your dishonesty.

I have heard that you had financial pressures, but none of that provides you with any mitigation. Whilst it is submitted that you were not motivated by greed because the money was used to relieve financial pressure in your life, this does not fully explain, in my view, your purchase of two brand new cars with money belonging to others.

Whilst on the whole I am prepared to accept that you were not motivated primarily by greed but more by a desire to ensure that your family was not financially ruined, there was, in my view, an element of greed in your offending, insofar as the funds you stole were used to your ultimate benefit.

It hardly needs to be said that your victims were very vulnerable. I have read the victim impact statement from [name]... who is the power of attorney for [Ms X], the elderly client of the firm. The effect that your offending has had on her has been profound. She says:

A solicitor has abused our trust and treated it as an opportunity to steal the life savings of an elderly person. This has had a lasting emotional and financial effect on our lives.

Now, the victim impact statement was written before restitution was made, so the victim impact statement must be understood in that light.

Now, Ms Tolson, the targeting of vulnerable people such as the elderly is despicable behaviour. As the community becomes more aware of the issue of elder abuse it is my view that the courts need to send a strong message that those who take advantage of the elderly will be dealt with by severe punishment. Both sentencing principles of punishment and general deterrence loom large in the sentencing process.

27 The Tribunal agreed with her Honour's characterisation of the conduct and concluded that the practitioner's conduct constituted professional misconduct.

### **Relevant principles**

28 The principles to be applied in an application such as this are well established. They were recently summarised by this Court in *Legal Profession Complaints Committee v Oud*<sup>2</sup> and include the following:

- (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;

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<sup>2</sup> *Legal Profession Complaints Committee v Oud* [2019] WASC 287 [17] (Quinlan CJ, Kenneth Martin & Smith JJ).

- (b) 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;
- (c) Fitness to practice law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges;
- (d) Removal from the roll 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;
- (e) 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.

#### **Application to the present case**

29 The practitioner's conduct, as revealed by the report of the Tribunal, is the antithesis of that which is expected of a legal practitioner.

30 Her conduct represented a gross abuse of her trust as a legal practitioner. It was a sustained course of dishonesty that took advantage of clients of her firm, including vulnerable clients, who had an entitlement to expect that their interests would be protected by the practitioner and not betrayed.

31 As Lonsdale DCJ recognised in her sentencing of the practitioner, the conduct of every individual legal practitioner affects the reputation of the legal profession as a whole. Disgraceful conduct such as that committed by the practitioner has the capacity to undermine confidence in the profession as a whole, to the detriment of the administration of justice generally. For this reason, such conduct must be met with a clear signal to the community that it will never be tolerated.

32 There can only be one possible conclusion in the present case. The practitioner is not a fit and proper person to remain a legal practitioner. Recognising this, the practitioner did not oppose the removal of her name from the roll of practitioners.

33 For these reasons the court was satisfied that the appropriate order, in order to protect the public and maintain the reputation and standards of the legal profession, was that the practitioner's name should be struck from the roll of legal practitioners.

34 As the motion was not opposed, the Committee did not seek an order for the costs of the motion. We, therefore, made no order as to costs.

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

AK

Research Associate to the Honourable Chief Justice Quinlan

12 MAY 2020