

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

**ACT** : LEGAL PROFESSION ACT 2008 (WA)

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and CAINE [2010] WASAT 178 (S)

**MEMBER** : JUDGE T SHARP (DEPUTY PRESIDENT)  
MS S GILLETT (MEMBER)  
MR C EDMONDS SC (SENIOR SESSIONAL  
MEMBER)

**HEARD** : 8 SEPTEMBER 2010  
WRITTEN SUBMISSIONS  
24 SEPTEMBER 2010  
11 OCTOBER 2010

**DELIVERED** : 8 DECEMBER 2010

**SUPPLEMENTARY  
DECISION** : 14 JULY 2011

**FILE NO/S** : VR 201 of 2009

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

CORRIN LINDSAY CAINE  
Respondent

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*Catchwords:*

Legal practice - Legal practitioner - Disciplinary proceedings - Practitioner guilty of unsatisfactory professional conduct - Penalty

*Legislation:*

*Legal Profession Act 2008 (WA)*

*State Administration Tribunal Act 2004 (WA), s 87(1), s 87(2)*

*Result:*

Practitioner fined, reprimanded and ordered to pay costs

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms P Le Miere  
Respondent : Mr RJ Butcher

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : Butcher Paull & Calder

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

Legal Practitioners Complaints Committee and Benari [2005] WASAT 213 (S)

Legal Profession Complaints Committee and Caine [2010] WASAT 178

Medical Board of Western Australia and Roberman [2005] WASAT 81 (S)

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Introduction***

1 Under the *Legal Profession Act 2008* (WA) (**LP Act**), the Legal Profession Complaints Committee (**Committee**) alleged that Mr Caine (**Practitioner**) had engaged in unsatisfactory professional conduct or professional misconduct, or both, based on five grounds. In reasons delivered on 8 December 2010 (*Legal Profession Complaints Committee and Caine* [2010] WASAT 178), the Tribunal made findings that the Practitioner was guilty of unsatisfactory professional conduct under the LP Act on two grounds, namely:

- 1) continuing to act for his client without obtaining her consent to informing the court of the incorrect statement in her testimony; and
- 2) suggesting to a witness proposed to be called by the Practitioner that the witness confer with other proposed witnesses with the objective of rendering the evidence the witness proposed to give on critical issues of fact consistent with the evidence proposed to be given by such other witnesses.

2 The parties then made submissions concerning the appropriate disciplinary outcome and the question of costs.

***The principles to be applied***

3 The principles are well settled and not in dispute between the parties. The object of disciplinary proceedings is the protection of the public and the maintenance of proper standards in the legal profession, rather than punishment. The effective administration of justice depends on the honesty and reliability of practitioners. The penalty should act as a deterrent, but should also reassure the public that such conduct on the part of the practitioners will not be tolerated.

***The Committee's submissions***

4 The Committee submits that the acts of unsatisfactory professional conduct which the Practitioner has been found to have engaged in, go to the very heart of the administration of justice. In relation to the first ground, in allowing his witness to give evidence that the Practitioner knew as a fact to be untrue, he was in effect allowing the court to be misled.

5           In the Committee's submission, where a practitioner has been found to have sought to mislead the court the appropriate penalty is, at a minimum, a period of suspension. However, the Committee concedes that the Practitioner's conduct could be described as a serious error of judgment in allowing the evidence of a witness to not be corrected. This, the Committee accepts, can be seen differently from a sustained or deliberate course of conduct on the part of the Practitioner to mislead the Court.

6           In relation to the second ground, the Committee submits that the finding suggests a lack of integrity and honesty on the part of the Practitioner. The Committee also says that the Practitioner has not shown any acknowledgement that he has failed to maintain a proper standard of professional conduct or, indeed, that he has any comprehension of or insight into why his conduct fails to meet the proper standard of professional conduct.

7           The Committee suggests that a substantial fine and a reprimand is an appropriate disposition of the matter, in particular because the Practitioner has no prior disciplinary record and, to a lesser extent, the Practitioner has retired from practice.

***The Practitioner's submissions***

8           The Practitioner was admitted to practice in 1967 and has not until now been the subject of any disciplinary proceedings.

9           The Practitioner, obviously, accepts that he has been found guilty of unsatisfactory professional conduct on two grounds, but he points out that these were single incidents and do not amount to a sustained course of misconduct.

10          As far as the first ground is concerned, the Practitioner acknowledges that a prudent course of action would have been to seek instructions from his client to disclose to the court that aspects of her evidence were in part contrary to his instructions and in part false to his own knowledge. He maintains, and the Tribunal accepted, that it was his belief at the time that the error would later be corrected during the court proceedings.

11          So far as the second ground is concerned, the Practitioner maintains that he never intended that a witness fabricate or concoct his evidence or give evidence that he would not have otherwise truthfully given. He concedes, however, that the wording of the letter which he sent to the witnesses was inappropriate.

12 The Practitioner considers that in relation to both grounds a  
reprimand or a fine would be an appropriate penalty.

***Disciplinary outcome***

13 In relation to the first ground, the Tribunal observed in the original  
reasons that the Practitioner's conduct, to a substantial degree, fell short of  
the standards of the profession. However, the Tribunal accepted that  
the Practitioner made a decision which may be described as an error of  
judgment rather than deliberately misleading the Court.

14 Nonetheless, the Practitioner did mislead the Court and the Tribunal  
would ordinarily consider that at least a period of suspension would be an  
appropriate penalty for conduct of this kind.

15 Having said that, the Practitioner has retired, presumably  
permanently, from legal practice and so the issue of the protection of the  
public assumes less importance. Taking account also of the fact that  
the Practitioner has not previously been the subject of disciplinary  
proceedings during the many years of his legal career, and the fact that  
the Practitioner now has a record of unsatisfactory professional conduct  
against his name, a serious matter in a professional environment,  
the Tribunal considers that the Practitioner should be fined \$4,000 and  
reprimanded.

16 In relation to the second ground, in the original reasons the Tribunal  
seriously considered making a finding of professional misconduct, but  
instead made a finding of unsatisfactory professional conduct. It is noted,  
however, that the Practitioner in his submissions, has conceded at least to  
some extent that his conduct was inappropriate and fell short of the  
standards of the profession.

17 Taking into account the same considerations in relation to the penalty  
in respect of the first ground, the Tribunal considers that the Practitioner  
should be fined \$4,000 and reprimanded.

***Costs***

18 Under s 87(1) of the *State Administrative Tribunal Act 2004* (WA)  
(**SAT Act**), the ordinary rule of the Tribunal is that costs will not be  
awarded. However, under s 87(2) of the SAT Act, the Tribunal has a  
broad discretion to award costs in appropriate circumstances.

19 Generally, disciplinary proceedings before the various vocational  
regulatory bodies that are successfully prosecuted against an affected

person result in the affected person being ordered to pay costs. The reason for this is, simply, that it is in the public interest that a vocational regulatory body supervise conduct and, where appropriate, refer conduct of concern to this Tribunal.

20 The terms of the cost order needs to be assessed in each case. Some of the factors to be considered are the number of complaints against the affected person and whether or not the vocational regulatory body has been successful. In some cases, allowance needs to be made so that the affected person is not obliged to meet all of the costs incurred by the vocational regulatory body.

21 This approach is consistent with the approach taken by the Tribunal in the past - see for example, *Medical Board of Western Australia and Roberman* [2005] WASAT 81 (S) at [30]; *Legal Practitioners Complaints Committee and Benari* [2005] WASAT 213 (S) at [20] -[28].

22 In this case, the Tribunal considers that the Practitioner should contribute to the costs incurred by the Committee in bringing these disciplinary proceedings. However, while we accept the relative complexity of the complaint brought against him, we also have regard to the fact that the Practitioner successfully defended part of the complaint brought against him. The Tribunal considers that the Practitioner should contribute only part of the costs incurred by the Committee in bringing these disciplinary proceedings.

### **Orders**

23 The Tribunal therefore makes the following final orders in these proceedings:

1. In relation to the finding that the Practitioner failed to intervene when his client gave evidence which he knew to be incorrect, the Practitioner is reprimanded for his conduct and fined \$4,000 which sum is to be paid within 28 days.
2. In respect of the finding that the Practitioner suggested to a witness that he confer with other witnesses with a view to his evidence being consistent with those other witnesses, the Practitioner is fined \$4,000, which sum is to be paid within 28 days.

3. The Practitioner is to pay on account of costs and disbursements of the proceedings the sum of \$10,000 to the Legal Profession Complaints Committee within 28 days.

I certify that this and the preceding [23] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUDGE T SHARP, DEPUTY PRESIDENT**