[2009] WASAT 91

JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
STREAM	**:**	VOCATIONAL REGULATION
ACT	**:**	LEGAL PRACTICE ACT 2003 (WA)
CITATION	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE and SEGLER [2009] WASAT 91
MEMBER	**:**	JUSTICE J A CHANEY (PRESIDENT) MS D DEAN (MEMBER) MR M ODES QC (SENIOR SESSIONAL MEMBER)
HEARD	**:**	23 APRIL 2009
DELIVERED	**:**	11 MAY 2009
FILE NO/S	**:**	VR 211 of 2008
BETWEEN	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE Applicant AND MARTIN LEE SEGLER Respondent

Catchwords:

Legal Practitioners - Unprofessional conduct - Letter containing threats and inappropriate and intimidating demands - Whether unprofessional conduct

Legislation:

Civil Judgments Enforcement Act 2004 (WA)
Residential Tenancies Act 1998 (WA), s 69
Residential Tenancies Act 1987 (WA)

Result:

Practitioner guilty of unprofessional conduct

Category: B

Representation:

Counsel:

Applicant	:	Mr M Herron and Ms P Le Miere
Respondent	:	In Person

Solicitors:

Applicant	:	Law Complaints Officer
Respondent	:	Self-represented

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

In re Gent One and In re A Barrister (1920) 21 SR (NSW) 12
Kyle v Legal Practitioners Complaints Committee (1999) 21 WAR 56

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 The Legal Practitioners Complaints Committee brought proceedings against Mr Martin Lee Segler in relation to a letter written by him on 29 November 2007.

2 The letter, on Mr Segler's letterhead, was addressed to a real estate agent concerning the outcome of proceedings in the Magistrates Court which had been completed the previous day. Mr Segler had been a party to those proceedings and had represented himself in them. The letter demanded payment of the judgment in favour of Mr Segler and his wife and threatened that unless payment was made on the following day, an enforcement writ would be issued and further costs incurred. That demand was made, notwithstanding that the Magistrate's order did not require payment until seven days after the judgment. The letter also threatened that, subject to some further enquiries by Mr Segler, he proposed personally to refer the matter to the Director of Public Prosecutions with a recommendation that the landlord, a Mr Dortch, be indicted for perjury. The Committee contended that that threat was made without any adequate foundation.

3 Mr Segler accepted that he had no entitlement to take enforcement proceedings at the time threatened but attributed his mistake to his failure to note the specification by the Magistrate that the payment was to be made within seven days. He denied that the threat to complain of perjury was inappropriate or intimidatory.

4 The Tribunal determined that the unjustified threat, to take enforcement proceedings before the payment was due, amounted to unprofessional conduct. It did not accept that Mr Segler could reasonably have failed to appreciate the specification as to the time for payment, and concluded that, in any event, he should have addressed that question before making the threat that he did. It considered that the threat of criminal complaint was completely without foundation and could only be viewed as an attempt to intimidate and cause distress to Mr Dortch. Accordingly, it found the practitioner guilty of unprofessional conduct.

Introduction

5 The issue in these proceedings is whether a letter written by a legal practitioner, Martin Lee Segler, amounts to unprofessional conduct by

reason of it containing threats and inappropriate and intimidating demands.

6 The letter which is the subject of complaint is written on Mr Segler's letterhead and was dated 29 November 2007. It was addressed to Mr Hayden Groves, of Dethridge Groves Real Estate.

7 The previous day, Mr Segler had been involved in proceedings under the *Residential Tenancies Act 1987* (WA) in the Magistrates Court at Fremantle. Mr Segler and his wife were the plaintiffs in those proceedings, and Mr Charles Dortch was the defendant. Mr Dortch had been Mr and Mrs Segler's landlord in relation to a residential property. Mr and Mrs Segler had terminated the lease, and the landlord had withheld repayment of the bond monies paid pursuant to the lease. Dethridge Groves Real Estate were the real estate agents charged with management of the property on behalf of Mr Dortch. A Ms Buckley, apparently an employee of Deathridge Groves Real Estate, was permitted to assist Mr Dortch in the conduct of the proceedings in the Magistrates Court.

8 Mr and Mrs Segler were partially successful in the proceedings, receiving a judgment in their favour of $498.85 (inclusive of costs). Their claim had been for repayment of the whole of the bond monies, being $1,900. The Magistrate ordered that the $498.85 be paid to Mr and Mrs Segler within seven days.

9 The letter from Mr Segler, written and faxed on the following day, reads:

> Dear Mr Groves,
>
> RE: CHARLES DORTCH ats MARTIN SEGLER & SHARON SEGLER
> MAGISTRATES COURT FREMANTLE REGISTRY
> No FRE/RSTN/1160/2007
>
> I refer to the judgment entered by the Magistrate in respect of these proceedings as against your client Mr Dortch last evening in the sum of $498.85.
>
> Unless I receive at this office your cheque in that sum by no later than close of business tomorrow, that is 30 November 2007, please take notice that I will cause to issue a writ under section 74 of the *Civil Judgments Enforcement Act 2004*, which is the provision for enforcement of judgment by seizure and sale of the property.

> Such a writ will also seek interest on the judgment debt accruing daily at a statutory rate, and the costs of the bailiff's attendances to execute it.
>
> I also take this opportunity to confirm that a statutory declaration will be sought from Mr Kevin Joseph Hockley, affectionately known at the North Fremantle Football Club as "Tupps". Your client, Mr Dortch, gave sworn evidence having been warned as to the consequences of such, that he had never been to the club premises at Gill Fraser Oval, nor had he ever spoken to Mr Hockley.
>
> In the event that Mr Hockley declares otherwise under the relevant provisions of the *Oaths, Affidavits and Statutory Declarations Act 2005*, in those circumstances be assured that I will obtain a copy of the transcript of Mr Dortch's evidence to the Magistrate, and I will personally refer that matter to Mr Cock QC, the Director of Public Prosecutions for the State of Western Australia, with a recommendation that Mr Dortch be indicted for perjury.

10 As it happens, Ms Buckley appears to have drawn a cheque on the morning of 29 November 2007, and posted it under cover of a letter of the same date to Mr and Mrs Segler. After referring to the cheque, Ms Buckley's letter says:

> We note that the court required payment within 7 days however as an act of good will payment is being made with 24 hours of this judgement (sic).

11 The parties before us accepted that Mr Segler's letter and Ms Buckley's letter crossed in the mail, although it appears that Mr Segler's letter was sent by facsimile on the morning of 29 November 2007. Whether Ms Buckley's letter was actually posted prior to receipt of Mr Segler's letter may be uncertain, but the terms of Ms Buckley's letter certainly suggests that it was drafted prior to receipt of Mr Segler's letter, not least because it makes no mention of Mr Segler's letter.

12 The Legal Practitioners Complaint Committee (Committee) contends that the practitioner's comments in his letter of 29 November 2007 were inappropriate and intimidatory by:

(a) Demanding payment of the judgment sum before payment was due pursuant to the order of the Magistrate;

(b) Threatening court action against the landlord if he failed to comply with the time limit imposed by the practitioner;

(c) Threatening perjury procedures against the landlord at a time when the practitioner did not have the evidence to cause such proceedings to be instigated;

(d) Threatening to personally recommend to the Director of Public Prosecutions (DPP) that the landlord be indicted for perjury, as being suggestive that the practitioner may have some influence in the DPP decisions.

The practitioner's response

13 The practitioner denies that his conduct is unsatisfactory or unprofessional. He contends that the comments were neither inappropriate nor intimidatory in that:

(a) The agent had drawn and dispatched the trust cheque prior to the receipt of his letter so that the agent could not be said to have been intimidated after drawing and dispatching the cheque;

(b) In any event the threat was of no legal effect in that the time for payment had not arrived, a matter not noted by the respondent;

(c) The Magistrate preferred the evidence of Mrs Segler in preference to the evidence of the landlord and the agent;

(d) The warnings to the landlord as to perjury and the consequences of it 'were appropriate in the circumstances during cross-examination and thereafter';

(e) At no time did he suggest or could it be reasonably conferred that he had some influence over the decisions of the DPP.

14 In his response to the application, Mr Segler also sought to justify the threat to refer the perjury allegation to the DPP on the basis that:

> The respondent's wife had given evidence accepted by the Magistrate that she had been informed by Kevin Joseph Hockley that the landlord had attended North Fremantle Club premises at Gill Fraser oval and there had discussed with Mr Hockley her tenancy, which the landlord under cross-examination denied, his evidence being to the effect that he had never spoken to Mr Hockley nor attended those premises.

15 At the hearing before us, Mr Segler withdrew that contention, and accepted that his wife had not given any evidence about any conversation with Mr Hockley at the North Fremantle Club premises at the Gill Fraser oval.

The threat of enforcement proceedings

16 Mr Segler accepts that he had no basis to demand payment of the judgments by 30 November 2007, in light of the Magistrate's specification that payment was to be made within seven days of judgment.

17 There are three bases upon which Mr Segler contends that that demand was not inappropriate or intimidatory.

18 The first contention relies on the definition of 'intimidate' in *The Concise Oxford English Dictionary* (11th ed, 2006). Intimidate is defined as 'to frighten or overawe (someone) especially in order to make them do what one wants'. We were referred to a similar definition in the *Shorter Oxford English Dictionary* by the applicant.

19 As we understand Mr Segler's contention, it is that, if the recipient of the letter had already done what Mr Segler sought to have done, the words were incapable of frightening him into taking any action. That contention is unsustainable for several reasons.

20 The first, and most obvious, is that the allegation against Mr Segler is that his letter 'contained threats and inappropriate and intimidating demands'. Whether the letter should be construed in that way depends upon the words used, not upon whether it, in fact, induced fear or overawed its recipient. The corollary of Mr Segler's argument appears to be that the words may have been intimidatory if Ms Buckley had not drawn the cheque before reading the letter, but were not intimidatory because she had already done so. The proper characterisation of the threat for the purposes of assessing the propriety of Mr Segler's professional conduct cannot sensibly be determined by reference to the actions of the recipient of the letter prior to its receipt, of which Mr Segler was completely unaware.

21 The third difficulty with Mr Segler's proposition is that it focuses entirely on the descriptions of the demands as 'intimidating' and ignores the Committee's allegation that the threats were 'inappropriate and intimidating'.

22 In our view, the unjustified threat to take enforcement action, to seek payment of interests and costs on the enforcement proceedings, and to raise the spectre of the 'seizure and sale of the property', are all properly described as intimidatory demands. That that is so is reinforced by the fact that, notwithstanding that Mr Segler was acting in the proceedings in his personal capacity, the letter of demand was written on his professional letterhead. The language used reinforces the proposition that Mr Segler is endeavouring to utilise the weight of his professional qualifications to give force to the threat.

23 Even if the threat in relation to enforcement does not fit the definition of intimidation, in our view the threat, being incapable of being performed in the time frame suggested, was inappropriate.

24 The second contention that Mr Segler makes in relation to the enforcement threat is that, because in fact he could not have issued a writ under the *Civil Judgments Enforcement Act 2004* (WA) on 30 November 2007 as threatened, the judgment not yet having become payable, the threat was of no legal effect. It is, however, precisely that fact which makes the threat inappropriate and unjustified. It is hardly an answer to the complaint.

25 In his correspondence with the Committee in relation to this matter, Mr Segler asserted that he had a misunderstanding as to the time allowed in relation to this payment. He subsequently produced his notes of the Magistrate's reasons which contain no mention of the time for payment. Mr Segler asserted before the Tribunal that he had simply been unaware of the provision for payment within seven days, and his demand for payment by 30 November 2007 was therefore simply an error.

26 The Magistrate's reasons were given extemporaneously. At the conclusion of the reasons, there was some discussion as to the precise amount of the judgment. Eventually the judgment sum, and the recoverable costs, were identified. The precise amount of the judgment was the subject of discussion which covers several pages of transcript between the learned Magistrate, Ms Buckley and Mr Segler. Once the amount was settled, the following exchange took place (T:99 - T:100):

> HIS HONOUR: Yes. Do you want it to be paid into court or do you want it to be paid direct to you?
>
> SEGLER, MR: Paid to me and my wife.
>
> HIS HONOUR: Is your address now known to the other side?
>
> SEGLER, MR: It should be paid to 572 Hay Street, Perth, which is my professional address.
>
> HIS HONOUR: If you could just make a note of that, thanks - the address.
>
> BUCKLEY, MS: I do have that on record, thank you, your Honour.
>
> HIS HONOUR: I'll order that the above sum be paid to the applicants within seven days.
>
> BUCKLEY, MS: As soon as we get the order through from the court it can be done that day, so - - -

> HIS HONOUR: The order is effective as of today. I'll make it that it be - the order is effective as I pronounce it today. Is seven days an awkward period for you?
>
> BUCKLEY, MS: No. That's fine.
>
> HIS HONOUR: Within seven days. Thank you.
>
> BUCKLEY, MS: Can I in that case, so I don't have (indistinct) copy of the order within that seven days.
>
> HIS HONOUR: You should actually have a copy of the order within seven days anyway, I would think.
>
> BUCKLEY, MS: But it is 498.85 is what you're ordered?
>
> HIS HONOUR: The correct sum? The total is 498.85, being 472.15 plus 26.70 costs.
>
> BUCKLEY, MS: Thank you, your Honour.
>
> HIS HONOUR: All right. Thank you.

27 That exchange took place at approximately 6.30 pm on 28 November 2007. Mr Segler's letter was sent the following morning.

28 What can be noted from the passage in the transcript is that Ms Buckley foreshadowed that the judgment would be paid promptly (as indeed it was the following day) and that the period of seven days was adequate for payment.

29 In light of that exchange, in respect of which Mr Segler was an active participant, we find it difficult to accept that Mr Segler was unaware of the time specified for payment. However, even if it is accepted that the time for payment slipped his mind overnight, the terms of the demand were inappropriate. It would have been reasonable to assume that some time might be required of the agent to arrange payment by its client, Mr Dortch. Mr Segler advised at the hearing that he did not know where Mr Dortch lived, but thought he had moved to somewhere in the south-west. Mr Segler had no way of knowing whether Dethridge Grove Real Estate had funds in its trust account to meet Mr Dortch's debt, or whether it would have to arrange for Mr Dortch to provide the funds. To acquire payment to be made, effectively, on one day's notice with the threat of enforcement costs then being incurred was, in our view, an unreasonable demand. In making the demand, Mr Segler ought to have put his mind to what would have been a reasonable time for payment. Had he done so, he

might have recalled that, or enquired whether, time for payment had been allowed for the Magistrate.

30 Having determined that the demand for payment was inappropriate, we will turn to the question as to whether it was, for that reason, unprofessional conduct later in these reasons.

Threat of perjury proceedings

31 In our view, the threat to obtain a declaration from Mr Hockley and 'personally refer' the matter to Mr Cock QC with a recommendation for indictment was entirely without foundation.

32 To understand that conclusion, it is necessary to explain the nature of the proceedings in the Magistrates Court, and the issues which were live in those proceedings.

33 As already mentioned, the proceedings were commenced by Mr and Mrs Segler for return of the bond monies which had been withheld by the landlord. Mr and Mrs Segler had given notice of immediate termination of their lease, and vacated the premises on 10 May 2007. The landlord had withheld the bond of $1,900 and applied it to rent for the period 11 May 2007 to 30 May 2007, and certain expenses relating to water consumption, oven repairs and gate repairs. The total of all of those amounts was $2,457 with the result that the landlord's position was that Mr and Mrs Segler were indebted to him in the sum of $557. Mr and Mrs Segler claimed that they were entitled to have terminated the lease with the immediate effect from 10 May 2007, so that no further rent was payable, and that they were not liable for the costs of repairs to the oven and to the gate. There does not appear to have been any issue that Mr and Mrs Segler were liable for the sum of $67.85 for water consumption.

34 The notice of termination was given by Mr and Mrs Segler pursuant to s 69 of the *Residential Tenancies Act 1998* (WA). That section deals with notices where the premises the subject of a residential tenancy are destroyed or rendered uninhabitable or cease to be lawfully useable as a residence. The notice asserted that the premises were uninhabitable or had ceased to be lawfully useable in that:

(a) the bathroom and laundry concrete floors were not safe because they were too slippery;

(b) the hot water system to the shower in the laundry area had 'not been repaired so as to afford constant hot water'; and

(c) notwithstanding repeated requests, the oven door had not been repaired and the oven and grill were thereby left unusable.

35 An important issue at the hearing was, therefore, whether, by reason of those matters, the property was uninhabitable. If so, no further rent was payable after the termination. If, as the landlord contended, it could not be said that the property was uninhabitable, then a period of notice of termination of the lease was required, and the landlord was entitled to rent for that period. The landlord's entitlement to charge the tenant for repair to the oven door, and repair to the gate, was also an issue.

36 As already mentioned, Mr Segler represented himself and Mrs Segler at the hearing. He called Mrs Segler to give evidence. Her evidence dealt with the general state of the premises, and the particular defects said to have existed.

37 In the course of her examination, Mrs Segler was asked to identify a letter written by Mr Segler on his letterhead dated 14 June 2007. The letter demanded return of the bond, stated that Mr Segler would 'have no reticence whatsoever in litigating these matters should such be necessary'. On being asked to identify a copy of that letter (T:11), Mrs Segler said:

> Yes. And the reason a letter was sent to Mr Dortch is because Mr Dortch, upon our vacating, had approached people within the North Fremantle community. It is a very tight-knit community and we have lived there for 10 years, so we are quite well known, and he had approached members of the community, whose names I'm quite happy to provide and I'm sure he'll know them, and he expressed his shock and disappointment that we had left. He had claimed that he was unaware of our complaints, that he had not received any notification from the agent. He wanted us to stay on at the house. He was very appreciative of the works that we had put into the house, and he was very sorry about the whole - the way the matter had transpired. This information came back to me via neighbours, and I ---
>
> Specifically who? --- Specifically a neighbour across the road by the name of Christina, whose surname I've written down - Hamilton. Christina Hamilton, who is an American and claims to be a long time friend of Mr Dortch, who lives a few doors down. She told me that she and Mr Dortch, had a long conversation about it and that he was quite distressed over the matter.

38 There followed some discussion between Mr Segler and the Magistrate which culminated in the Magistrate accepting the evidence as Mrs Segler's reason for writing to Mr Dortch. The transcript leading to that conclusion records some of the Magistrate's comments as 'indistinct', but it is clear that the Magistrate had reservations about the admissibility of the evidence. Whether his concern went to relevance or hearsay, or both, is not apparent. The basis upon which the evidence was accepted is, with respect, questionable since it is based upon Mrs Segler being the author of the letter, when quite clearly the letter was written by Mr Segler.

39 In any event, that appears to be the sum total of Mrs Segler's evidence concerning conversations between Mr Dortch and 'people within the North Fremantle community'.

40 In cross-examination, Mr Dortch was asked about whether he had had any conversations with Christina Hamilton after Mr and Mrs Segler vacated their tenancy. In particular he was asked whether he had told Ms Hamilton that he was not aware of any complaints in relation to the house. Mr Dortch responded that he did not believe that he did say that to her, 'because I was aware that the oven door had been broken and I can't recall what else, but these matters do arise with houses, matters of maintenance'. He said that he did not recall specifically telling Christina Hamilton that he was not aware of the complaints about the property.

41 The transcript then reveals the following exchange (T:30 - T:31):

> Okay. You made a similar statement to a fellow called Tupps down at the North Fremantle bowling club, didn't you,
>
> Mr Dortch?---I have never set foot in the North Fremantle bowling club.
>
> Well, do you know the North Fremantle football club?---I've never set foot in that place either.
>
> You don't know a fellow - you've never, ever been down to the Gill Fraser reserve where the football oval is?---I have walked across the oval, and walked Brin's dogs across the oval. I've never actually gone inside the clubhouse ever.
>
> Right. So you have never spoken to a fellow called Tupps there?---Tupps?
>
> Yes. His real name is Kevin Joseph Hockley. You don't recall speaking to him about it?---No. Of course not. No.
>
> And complained to him that Dethridge Groves had not told you about anything that had happened?---No. No.

> Mr Dortch, do you know what an oath to tell the truth is?---Yes. I find that an objectionable statement, your Honour.
>
> HIS HONOUR: It's not a statement. It's just a question?---Well, a question. Yes. I know what an oath is, of course. I'm under oath now, Mr Segler.
>
> SEGLER, MR: Right; and you do appreciate that if you don't tell the truth there are serious consequences. You understand that, don't you?---I understand it, Mr Segler, and I don't appreciate your patronising attitude.

42 The Magistrate then sought clarification from Mr Dortch about when he had first learned about the complaints about the state of the premises, but concluded that he could not be sure whether he knew before or after the Segler's vacated the premises about their complaints.

43 The Magistrate gave his decision immediately. He found, on the balance of probabilities, that he was not satisfied that the damage to the oven and the gate were the responsibility of the tenants. He said he had credible evidence from Mrs Segler that the oven failed of its own accord and that there was no evidence to refute that. He made similar conclusions in relation to the damage to the gate.

44 The Magistrate did not specifically mention Mr Dortch's evidence at all. He certainly made no mention of the evidence concerning discussions between Mr Dortch and Mr Hockley. This is not surprising because its relevance is not apparent.

45 Mr Segler contends that the evidence was relevant to a question of credibility, and the credibility was critical to the case. We have some difficulty in that latter proposition. Mrs Segler was never cross-examined about her evidence concerning damage to the gate or the oven. The evidence relied upon by the landlord as suggesting that the damage in each case is the fault of the tenants appears to have been based upon a degree of speculation, and was not accepted by the Magistrate. The fact that Mr Dortch's conclusion was not accepted did not involve disbelieving Mr Dortch as to any admissible factual evidence.

46 Even if credibility was important, the questions put to Mr Dortch concerning his alleged conversation with Mr Hockley went nowhere in the case. Mrs Segler had given no evidence, even hearsay evidence, of that conversation.

47 The offence of perjury is found in s 124 of the *Criminal Code* (WA). The offence involves not only giving false testimony 'touching any matter

which is material to any question then pending in that proceeding, or intended to be raised in that proceeding'. We have considerable difficulty in seeing how the questions of whether Mr Dortch had ever been to the club premises at Gill Fraser oval, or had ever spoken to Mr Hockley, come within that description.

48 The letter of 29 November 2007 purported to 'confirm' that the statutory declaration would be sought from Mr Hockley. Subject to the content of that declaration, the threat to refer that matter to the DPP was made.

49 It is apparent that the statutory declaration was not sought from Mr Hockley. When the Committee wrote to Mr Segler on 15 January 2008, he responded by letter dated 13 February 2008. In that letter he said that he had sought a copy of the transcript from the Magistrates Court and that:

> So as soon as I have received that transcript, I propose to present such to Mr Kevin Joseph Hockley at the North Fremantle Football Club, for his comment in respect thereof. My wife, who gave evidence at that hearing (at which Mr Dortch was not successful notwithstanding Mr Groves' advice to you), had been informed by Mr Hockley of an approach to him by Mr Dortch in relation to our tenancy in his North Fremantle property.

50 That letter was written two and a half months after the letter the subject of complaint. The fact that, despite what is said in the 29 November letter, Mr Segler did not seek a statutory declaration before being approached by the Committee, strongly suggests that he did not, in fact, intend to carry out the threat.

51 In the course of his submissions to the Tribunal, Mr Segler said that he did speak to Mr Hockley about the matter at some point. He did not say when that occurred. He said that, upon speaking to Mr Hockley, he formed the view that he was too old and frail to be put through the process of giving evidence before the Tribunal, and also to be involved in criminal proceedings for perjury. It was apparent from Mr Segler's submissions that he had known Mr Hockley for some time.

52 It is impossible to discern any purpose in making the threat concerning perjury proceedings other than to cause distress and fear to Mr Dortch. Mr Segler submitted that it was his professional responsibility to report to appropriate authorities any serious illegal conduct, and that the letter was written consistent with that obligation. We do not accept that proposition. At the time he wrote the letter of 29 November 2007,

Mr Segler could have had no more than, at best, some hearsay suggestion that there had been a conversation between Mr Hockley and Mr Dortch. On his own case, he had not personally spoken to Mr Hockley about that conversation. The issue of Mr Dortch's conversation with Mr Hockley was, at very best, peripheral to the issues in the case. The evidence played no part in the outcome of the case. In these circumstances, even if Mr Hockley provided a declaration to the effect that he had had a discussion with Mr Dortch concerning the tenancy at the North Fremantle Football clubrooms, it is highly unlikely that the DPP would have considered it to be in the public interest to proceed with an indictment, even if it was thought a prima facie case of having given false evidence on that point was established.

53 Mr Segler has been in practice for over 28 years. In the hearing, he advised us that he principally practises in the area of criminal law. We do not consider that any reasonably experienced and competent practitioner in the criminal law area would have considered there to have been any reasonable prospect of there being an indictment against Mr Dortch in relation to the evidence concerning this alleged conversation with Mr Hockley.

54 Legal practitioners enjoy particular privileges in our society. Those privileges carry with them responsibilities. Communications by a lawyer concerning matters of law bear special force by reason of the qualifications and authority of the author. The proper role of a lawyer commonly involves the assertion of legal rights and obligations, and the explanation of the legal consequences of particular courses of action. That role frequently involves pressing claims for civil redress, and on occasion threatening criminal proceedings (see ***In re Gent One and In re A Barrister*** (1920) 21 SR (NSW) 12). However, threatening criminal proceedings where there is no adequate foundation is unacceptable. In our view, the threat of criminal action without an adequate foundation, in circumstances where it is designed simply to cause apprehension and distress, is conduct which falls so far short of the standards expected of practitioners of good repute and competence that it amounts to unprofessional conduct.

55 In this case, Mr Segler had no reasonable foundation for the threat made. We are satisfied that the threat was made for no purpose other than to cause anxiety or distress to Mr Dortch.

56 During the hearing, Mr Segler tendered the Code of Conduct relating to real estate agents. As we understand it, that document was tendered to

support a submission that the recipient of the letter, Mr Groves, was a licensed real estate agent, himself bound by rules of professional conduct, so that he should not be treated as a 'lay person'. As we understand Mr Segler, he was suggesting that the communication would not be intimidating to such a person. That submission is misconceived. Even if Mr Groves had a level of professional sophistication greater than the average citizen, it is reasonable to expect that he would take the threat by a lawyer as a serious matter of concern. His professional background might well lead him to assume that such a threat would not be made without adequate foundation. But more importantly, the threat was not made to Mr Groves, but to his client Mr Dortch. It is clear that the only inference open is that Mr Segler expected the letter to be referred to Mr Dortch. Pressed by the Tribunal, Mr Segler said that he sent the threat to Mr Groves because he did not know where Mr Dortch lived.

Use of the respondent's letterhead

57 Mr Segler's dispute with Mr Dortch involved Mr Segler's personal interests. He acted in person in the Magistrates Court. Correspondence in relation to the matter, including his letter of 29 November 2007, was on his professional letterhead.

58 The Committee drew to the Tribunal's attention an article contained in the May 2006 edition of the Law Society of Western Australia's magazine 'Brief'. The article concerned the use of professional letterhead in personal matters. It was published by the Committee.

59 In the article, reference is made to the UK Bar Council's website which includes the following observations:

> Members of the bar should not attempt to gain an advantage or put any pressure on other people by virtue of their position as barristers. It would not be appropriate for barristers to use their status as an implied threat to those with whom they are in dispute. Using Chambers' notepaper in correspondence about a personal dispute or when conducting personal business could well constitute an implied threat and leave the barrister open to a justified complaint of professional misconduct.

60 The article also makes reference to a view expressed by the Victorian Legal Ombudsman where it was said:

> ... However, if the lawyer uses the fact that they are a lawyer to intimidate others outside of legal practice, ... where the lawyer will say 'I'm a lawyer I'll see you in court', or 'I'll reserve my rights', that is intimidating, and we have a look at that from time to time because it's bullying.

61 In our view, those observations are well made. It is important that legal practitioners avoid circumstances which might be seen as overbearing members of the community by the use of the lawyer's status to gain personal advantage or to intimidate.

Was the threat of enforcement action unprofessional conduct?

62 In our view, the threat to issue a writ of enforcement, and inflict further cost and expense upon the landlord was conduct falling short of the standard of professional conduct observed or approved by members of the legal profession of good repute and confidence (***Kyle v Legal Practitioners Complaints Committee*** (1999) 21 WAR 56 at 71 - 72. That is because:

(i) The threat was without foundations since the monies were not payable, and even if Mr Segler had forgotten the time allowed for payment, he should have directed his attention to that question before making the threat;

(ii) In any event, the time allowed for payment was unreasonably short having regard to the reasonable steps that might have been required to make the payment;

(iii) The threat was made on Mr Segler's professional letterhead;

(iv) The discussion at the conclusion of the hearing suggested that the payment was likely to be made promptly without any need for enforcement proceedings; and

(v) Coupled with the balance of the letter, the whole communication can be seen to be an attempt to overbear and intimidate.

Conclusion

63 For the foregoing reasons, we are of the view that the complaint against Mr Segler is made out, and that he is guilty of unsatisfactory conduct by unprofessional conduct in writing the letter of 29 November 2007.

64 Certain submissions were made at the hearing by the parties concerning the appropriate penalty should the Tribunal find the allegation against Mr Segler to be established. The parties indicated that some further submissions might be required in the light of the Tribunal's

findings. Accordingly, it is appropriate that the Committee file and serve any submissions on penalty within 14 days of the date of the publication of these reasons, and that Mr Segler file and serve any submission in response on the question of penalty within 14 days of the service of the Committee's submissions. The Tribunal will then deal with the question of penalty on the papers unless it considers it necessary to hear further from the parties.

Orders

1. There is a finding that, in or about the month of November 2007, the respondent was guilty of unsatisfactory conduct by unprofessional conduct in sending a letter written on his letterhead containing threats and inappropriate and intimidating demands to one Hayden Groves, as agent for Charles Dortch.

2. The applicant is to file and serve any further submissions on penalty within 14 days of publication of these reasons.

3. The respondent is to file and serve any additional submissions on penalty within 28 days of the date of the publication of these reasons.

4. Subject to any further order of the Tribunal, the question of penalty is to be dealt with on the papers.

I certify that this and the preceding [64] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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JUSTICE J A CHANEY, PRESIDENT