

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : VOCATIONAL REGULATION

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

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and SEGLER [2013] WASAT 117 (S)

**MEMBER** : JUDGE T SHARP (DEPUTY PRESIDENT)  
MS F CHILD (MEMBER)  
MR C PHILLIPS (SENIOR SESSIONAL MEMBER)

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 12 DECEMBER 2013

**FILE NO/S** : VR 43 of 2012

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

MARTIN LEE SEGLER  
Respondent

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*Catchwords:*

Vocational regulation - Legal practitioner - Professional misconduct - Penalty - Failing to pay trust money into a trust account - Misleading the Court - Report on findings to Supreme Court (full bench) - Costs

*Legislation:*

*Legal Profession Act 2008 (WA)*, s 403, s 428, s 428(1), s 438, s 438(3)(a), s 439, s 441, s 622

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*State Administrative Tribunal Act 2004 (WA), s 87, s 87(2)*  
*Legal Practice Act 2003 (WA)*

*Result:*

Report on Tribunal's findings made and transmitted to Supreme Court (full bench)

The Practitioner is to pay the applicant's costs in the amount of \$18,790.60 within four weeks of the date of publication of this decision.

*Summary of Tribunal's decision:*

The Tribunal has found that Mr Martin Lee Segler, a legal practitioner, is guilty of professional misconduct. The Tribunal required the parties to file submissions in relation to penalty and costs and directed, subject to any further order, that these issues were to be determined entirely on the documents.

The Tribunal determined that the appropriate professional disciplinary consequence of Mr Segler's professional misconduct in the circumstances of this case is to make and transmit a report on the finding to the Supreme Court (full bench). The Tribunal also ordered Mr Segler to pay costs in terms of the disbursements incurred by the Legal Profession Complaints Committee in the proceeding in the amount of \$18,790.60 within 42 days.

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms R Fogliani  
Respondent : In person

*Solicitors:*

Applicant : Legal Profession Complaints Committee  
Respondent : N/A

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

A Solicitor v The Council of the Law Society of NSW (2004) 216 CLR 253  
Barristers' Board v Darveniza [2000] QCA 253; (2000) 112 A Crim R 439  
In Re Davis (1947) 75 CLR 409  
Kyle v Legal Practitioners Complaints Committee [1999] WASCA 115  
Law Society (NSW) v Foreman (1994) 34 NSWLR 408  
Legal Practitioners Complaints Committee and Lashansky [2007] WASC 211  
Legal Practitioners Complaints Committee and Segler [2009] WASAT 205  
Legal Practitioners Complaints Committee v McKerlie [2007] WASC 119  
Legal Profession Complaints Committee and Lee-Steere [2010] WASAT 189  
Legal Profession Complaints Committee and Segler [2010] WASAT 135  
Legal Profession Complaints Committee and Segler [2013] WASAT 117  
Legal Profession Complaints Committee and Vanderfeen [2011]  
WASAT 118 (S)  
Legal Professional Complaints Committee and Skerritt [2012] WASAT 221  
Medical Board of Western Australia and Roberman [2005] WASAT 81 (S)  
Re Maraj (a Legal Practitioner) (1995) 15 WAR 12  
The Council of the Qld Law Society v Wright [2001] QCA 58  
The Legal Practitioners Complaints Committee v De Alwis [2006] WASCA 198  
Vogt v Legal Practitioners Complaints Committee [2009] WASCA 202

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Introduction***

1 Under s 428 of the *Legal Profession Act 2008* (WA) (**LP Act**), the Legal Profession Complaints Committee (**Committee**) referred multiple complaints concerning Mr Martin Lee Segler (**Practitioner**) to the Tribunal, seeking findings under s 438(1) of the LP Act that the Practitioner had engaged in professional misconduct.

2 In reasons delivered on 2 August 2013 (*Legal Profession Complaints Committee and Segler* [2013] WASAT 117) (*Segler*), the Tribunal made findings that the Practitioner was guilty of professional misconduct by:

- a) failing to pay trust money into a trust account;
- b) intentionally misleading the Court;
- c) one count of failing to reach or maintain a reasonable standard of competence and diligence; and
- d) failing to respond to the Committee's enquiries and summonses.

3 The Tribunal concluded in *Segler* that the remaining allegations had not been established.

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

***Statutory provisions relating to penalty***

5 The LP Act commenced operation on 1 March 2009. Although some of the instances of professional misconduct occurred during the operation of the *Legal Practice Act 2003* (WA) (**2003 Act**), by virtue of s 622 of the LP Act the provisions of the LP Act apply to conduct engaged in before 1 March 2009.

6 Section 438 of the LP Act relevantly provides as follows:

**438. Jurisdiction of State Administrative Tribunal**

- (1) The State Administrative Tribunal has jurisdiction to make a finding that an Australian legal practitioner has engaged in unsatisfactory professional conduct or professional misconduct.

- (2) If, after it has completed a hearing in relation to a referral under this Part in respect of an Australian legal practitioner, the State Administrative Tribunal is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the Tribunal may -
  - (a) make and transmit a report on the finding to the Supreme Court (full bench); or
  - (b) make any one or more of the orders specified in section 439, 440 and 441.
- (3) If the State Administrative Tribunal transmits a report in respect of a legal practitioner to the Supreme Court (full bench) under subsection (2)(a), the Tribunal may, pending the determination of the Supreme Court (full bench), make the following orders -
  - (a) an order that the Australian legal practitioner's local practising certificate be suspended for a specified period;
  - (b) an order that specified conditions be imposed on an Australian legal practitioner's local practising certificate restricting the entitlement of an Australian legal practitioner to practise for a specified period.
- (4) Where appropriate, a report forwarded under subsection (2)(a) may include either or both of the following -
  - (a) a record of the evidence taken at the hearing;
  - (b) a recommendation that the name of the practitioner be removed from the local roll.

7

Section 439 of the LP Act provides:

**439. Orders requiring official implementation in this jurisdiction**

The State Administrative Tribunal may, under section 438(2)(b), make any one or more of the following orders -

- (a) an order that the practitioner's local practising certificate be suspended for a specified period or cancelled;
- (b) an order that a local practising certificate not be granted to the practitioner before the end of a specified period;
- (c) an order that -
  - (i) specified conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and

- (ii) the conditions be imposed for a specified time; and
- (iii) specifies the time (if any) after which the practitioner may apply to the Tribunal for the conditions to be amended or removed;
- (d) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner.

8 Section 441 of the LP Act provides:

**441. Orders requiring compliance by practitioner**

The State Administrative Tribunal may, under section 438(2)(b), make any one or more of the following orders -

- (a) an order that the practitioner pay a fine to the Board of a specified amount not exceeding \$25 000;
- (b) an order that the practitioner undertake and complete a specified course of further legal education;
- (c) a compensation order;
- (d) an order that the complainant pay the amount of legal costs in dispute or that the amount of legal costs be reduced by a specified amount (not exceeding the amount in dispute);
- (e) an order that the practitioner provide specified legal services to the complainant either free of charge or at a specified cost;
- (f) an order that the practitioner undertake a specified period of practice under specified supervision;
- (g) an order that the practitioner do or refrain from doing something in connection with the practice of law;
- (h) an order that the practitioner's practice, or the financial affairs of the practitioner or of the practitioner's practice, be conducted for a specified period in a specified way or subject to specified conditions;
- (i) an order that the practitioner's practice be subject to periodic inspection for a specified period;

- (j) an order that the practitioner undergo counselling or medical treatment or act in accordance with medical advice given to the practitioner;
- (k) an order that the practitioner use the services of an accountant or other financial specialist in connection with the practitioner's practice;
- (l) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a specified person;
- (m) an order that the practitioner not apply for a local practising certificate before the end of a specified period.

***Principles to be applied in determining penalty***

9 The principles relating to the determination of penalty in legal profession disciplinary matters are well settled, and are not in contention between the parties.

10 In *Re Maraj (a Legal Practitioner)* (1995) 15 WAR 12, Malcolm CJ said at 25:

... [T]he object of disciplinary proceedings is the protection of the public and the maintenance of proper standards in the legal profession, rather than punishment. It is clear from ... the authorities which have been repeatedly followed in this Court that when the question is whether a practitioner should be struck off the roll [, ...] the only question is whether the practitioner is a fit and proper person to remain a member of the legal profession. [Citations omitted]

11 Where the motion is to strike 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; *A Solicitor v The Council of the Law Society of NSW* (2004) 216 CLR 253 at [15].

12 It has been held that honesty, fairness and integrity are essential prerequisites to the right to practise in law, and that fitness to practise law requires that the practitioner must command the personal confidence of his or her clients, fellow practitioners and judges; *Legal Practitioners Complaints Committee v McKerlie* [2007] WASC 119 at [8]; *In Re Davis* (1947) 75 CLR 409 at 420.

13 A practitioner's failure to appreciate the impropriety of his or her conduct may be a relevant factor in determining penalty: *Legal*

*Practitioners Complaints Committee and Lashansky* [2007] WASC 211 at [35] (*Lashansky*).

14 In determining the disciplinary outcome in a matter of this kind, the Tribunal must consider the effect which its order will have on the understanding, in the profession and in the public, of the standard of behaviour required of solicitors: *Law Society (NSW) v Foreman* (1994) 34 NSWLR 408 at 444.

15 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 439 at [38] (*Darveniza*).

16 In *Darveniza* at [33], 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 practises.

17 The misconduct constituted by intentionally misleading the Court is of a particularly serious nature. In *Vogt v Legal Practitioners Complaints Committee* [2009] WASCA 202 (*Vogt*) at [61], Owen, Wheeler and Newnes JJA said:

For a practitioner, in the course of his or her practice, intentionally to mislead anyone is a serious breach of the practitioner's professional duty. But the finding in the present case that the appellant intentionally misled the court is of particular significance. It goes to the very heart of a practitioner's duty as an officer of the court and therefore to the proper administration of justice.

18 The misconduct involving the failure to deposit trust money into a trust account is also very serious. Integrity in dealing with clients' money is crucial to a lawyer's continuing entitlement to practise; see for example *The Legal Practitioners Complaints Committee v De Alwis* [2006] WASCA 198 (*De Alwis*) at [106]

19 Therefore, the question to be determined by the Tribunal is whether the Practitioner is a fit and proper person to remain a member of the legal profession. If the Tribunal finds that the Practitioner remains a fit and proper person despite the findings of professional misconduct made against him, then a lesser penalty ought to be imposed.

*Submissions on penalty*

20 The parties make the following submissions on penalty in relation to each of the findings of professional misconduct made against the Practitioner.

**Failing to deposit trust money into a trust account**

21 In *Segler*, the Tribunal found the Practitioner had engaged in six instances of professional misconduct pursuant to s 403 of the LP Act between August 2007 and May 2010 by failing to deposit trust money into the credit of the Practitioner's trust account in contravention of, respectively, the 2003 Act and the LP Act.

22 The Committee submits that the six instances of professional misconduct display a sustained course of conduct over a number of years and a complete disregard for accepted standards of behaviour as a legal practitioner. The Committee says that the Practitioner's misconduct in this regard demonstrates that he is not a fit and proper person to remain on the roll.

23 The Committee says that although the Practitioner had conceded that his retainer was 'deficient', he conducted his defence on the basis that, had his clients read and understood the relevant retainers, then it would have been apparent to them that he was entitled to utilise their money for his own purposes. His position at the hearing was that this money was clearly paid by the clients simply to 'retain' his services. The Committee says that there was no basis for this interpretation; it was contrary to the evidence and it reflects upon the Practitioner's lack of insight regarding his impropriety.

24 The Practitioner says that, since the publication of the Tribunal's reasons for decision in *Segler*, he has had the opportunity to carefully review the judgment in *De Alwis* particularly as it relates to the crucial integrity required in dealing with clients' money. The Practitioner says that he now appreciates and understands that even in the absence of dishonesty, his errors of judgment were more serious and significant than he had earlier understood.

25 In mitigation of penalty, the Practitioner says that he did not misappropriate his clients' money for any purpose other than the purposes for which it was entrusted to him, or ever fail to account for that money.

**Failure to maintain a standard of competence and diligence**

26 The Tribunal also found that the Practitioner engaged in professional misconduct pursuant to s 403 of the LP Act between 13 May 2008 and 1 May 2009 in that the Practitioner in respect of a particular client substantially failed to reach or maintain a reasonable standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner. In this instance, the Practitioner's neglect of his client's matter resulted in default judgment being entered and costs awarded against his client.

27 The Committee says that the Practitioner's conduct, when considered in conjunction with the Practitioner's other conduct the subject of the remaining findings, demonstrates that the Practitioner is not a fit and proper person to remain on the roll. Although the Committee accepts that it would be unrealistic to expect that a legal practitioner would never make a mistake or miss an appointment or deadline, the Committee says that the Practitioner consistently failed to comply with court orders such that his client's interests were significantly prejudiced. Whether or not the Practitioner told the client that he had insurance for such eventualities is no excuse for his conduct.

28 Therefore, the Committee says that the Practitioner's neglect not only involved a disregard of his client's interests but also an abrogation of the Practitioner's duties as an officer of the Court.

29 The Committee points out that this is the second occasion on which the Practitioner has been found guilty of professional misconduct by neglecting his client's interests. In *Legal Profession Complaints Committee and Segler* [2010] WASAT 135 (*Segler [2010]*), the Tribunal found the Practitioner guilty of professional misconduct by, amongst other things, failing in December 2007 to file a statement of defence for his client, failing to inform his client that he had not filed the defence and then failing to serve a copy of the notice of change of address for service on his client or inform the client that he had ceased to act for him.

30 The Committee says that the Practitioner has failed to demonstrate an understanding of the seriousness of his conduct. The Committee says that the Tribunal should have no confidence that the Practitioner will not continue to act in disregard of his obligations as a legal practitioner.

31 The Practitioner in response says that he accepts without reservation his failure in this respect. However, with regard to penalty, he says that his behaviour was not systemic, and that he encouraged his client to seek

redress through his professional indemnity insurer. The Practitioner says that in his thirty years of legal practice, he has not had any other occasion to give a client this advice.

### **Misleading the court**

32 The Tribunal further found that the Practitioner had engaged in one instance of professional misconduct pursuant to s 403 of the LP Act by deliberately misleading or attempting to mislead the Family Court.

33 The Committee submits that, although the Tribunal's discretion is never limited as to the type of penalty that can be imposed in respect of particular conduct, the most serious conduct typically calls for the imposition of the most severe penalty. The Committee says that it is a matter of the utmost seriousness for the Practitioner to intentionally mislead the Court and must attract a substantial penalty.

34 The Committee says that, in Western Australia, there are few decisions in which a practitioner was found to have intentionally misled the court but was not struck off. The Committee says that this matter can be differentiated from those few cases. This is because there is no evidence that the Practitioner is usually regarded in the profession as honest and trustworthy, there is no evidence of relevant insight by the Practitioner and there has been no suggestion of any health issues of the type in *Legal Professional Complaints Committee and Skerritt* [2012] WASAT 221 that might mitigate penalty.

35 The Committee therefore argues that on this finding alone, the Tribunal should find that the Practitioner is not a fit and proper person to remain a legal practitioner. The Committee makes this contention for the following reasons:

- 1) the conduct in question involved three separate occasions during one hearing where the Practitioner misled the Family Court;
- 2) on the one occasion the Practitioner was directly questioned by her Honour Justice Crisford regarding compliance with court orders, he did not answer the question;
- 3) even though the Court was not in fact misled for any length of time, this is immaterial to whether the Practitioner is guilty of misconduct;

- 4) the Practitioner denied the gravamen of the offence throughout the proceedings, and is not entitled to the mitigating benefit of immediate remorse; and
- 5) the Practitioner was found to have knowingly misled the Court in *Segler [2010]*, and therefore has not learnt or accepted his vital obligation of complete honesty.

36 The Practitioner says that he has now had further opportunity to review the judgement in *Kyle v Legal Practitioners Complaints Committee* [1999] WASCA 115, referred to in *Segler*, and that he now appreciates and understands that his misrepresentations to her Honour Justice Crisford, whether technical or otherwise, were most serious and as such disgraceful.

#### **Failure to respond to the committee's enquiries**

37 The Tribunal also found that the Practitioner had engaged in one instance of professional misconduct pursuant to s 403 of the LP Act in that the Practitioner;

- a) failed to respond to the Committee's reasonable enquiries between 30 June 2010 and March 2011;
- b) failed to comply with summonses to produce documents issues on 18 August 2010 and 2 September 2010 in breach of the LP Act; and
- (c) failed to respond to a letter from the Committee's Senior Trust Account Inspector dated 9 June 2010 requesting confirmation of the findings set out in a 'Report on Examination of Office and Practice Records of Mr Martin Lee Segler dated 9 June 2010'.

38 The Committee does not seek an additional penalty in relation to the Practitioner's failure to adequately respond to the Committee's enquiries given that the Committee is seeking an order that the Tribunal make and transmit a report to the Supreme Court (full bench) with a recommendation that the Practitioner's name be struck off the Roll of Practitioners.

39 However, the Committee does point out that the Practitioner offered no explanation for his failure to cooperate other than that he was unwell at the time. The Tribunal found that this was not an adequate excuse for the Practitioner's conduct.

40 The Practitioner says since the publication of the Tribunal's decision in *Segler*, he has had the opportunity to review the judgment in *Legal Profession Complaints Committee and Lee-Steere* [2010] WASAT 189, and that he now appreciates and understands that, even in extenuating circumstances, his conduct in this regard was disgraceful.

41 The Practitioner says, with regard to penalty, that his illness at the time meant that he had diminished capacity to respond to the Committee's enquiries.

### **Submissions in conclusion**

42 As mentioned previously, the Committee seeks an order that a report be transmitted to the Supreme Court (full bench) with a recommendation that the Practitioner be struck off the Roll of Practitioners. The Committee says that the Practitioner's conduct demonstrates that he is not a fit and proper person to remain on the Roll of Practitioners. The Committee also says that, if the Tribunal accepts the Committee's contention that the Practitioner is not fit to remain on the Roll of Practitioners, then it is appropriate for the Practitioner to be suspended from practice pursuant to s 438(3)(a) pending the Court's determination of the question of strike off. However, the Committee does not seek such an order as the Practitioner does not currently hold a practising certificate.

43 The Practitioner, while accepting and expressing contrition for the findings of professional misconduct made against him, submits that the penalty sought by the Committee is manifestly excessive in the circumstances. The Practitioner says that he and his family have already paid a significant price as a result of the obligatory closure of his legal practice on 10 May 2012. He further submits that he has no livelihood, given that he has devoted 30 years of his life to the practice of law. The Practitioner also says that the publication of the Tribunal's decision in *Segler* has severely restricted any opportunity he would have of gaining employment in the legal field. Therefore, the Practitioner says, he would pose no risk to anyone of repeated professional misconduct. Finally, the Practitioner says that he remains in debt to his creditors, and would have little prospect of repaying any fine imposed.

### **Findings**

44 In *Segler [2010]*, the Tribunal set out at [15] the Practitioner's 'disciplinary history', which included the following adverse findings:

- In 2001, the Practitioner acknowledged that he was guilty of unprofessional conduct in that in 1997 he applied trust monies to payment of costs and disbursements and did not, within 14 days thereafter serve on the client a bill of costs claiming that trust monies had been applied towards the payment of those costs;
- In 2003, the Practitioner was found guilty of two complaints of undue delay and one count of gross overcharging. By way of penalty, the Legal Practitioners Disciplinary Tribunal ordered that the Practitioner only practise as an employed solicitor for two years and pay fines totalling \$7,500 together with costs;
- On 21 October 2009, the Tribunal found the Practitioner guilty of professional misconduct and unsatisfactory professional conduct; *Legal Practitioners Complaints Committee and Segler* [2009] WASAT 205 (*Segler* [2009]). The finding of professional misconduct arose from the Practitioner acting for a client between November 2006 and February 2007. He advised the client to carry out building projects at a time when the Practitioner knew that the client was unregistered as a builder and in the knowledge that, by so advising, he was encouraging the client to breach the relevant legislation. Further, the Tribunal found that the Practitioner was guilty of unsatisfactory professional conduct by, upon being asked by the Committee to provide his response to a complaint against him, the Practitioner gave a response that was deliberately misleading and designed to avoid giving a complete explanation. As a result, a penalty of three months suspension was imposed in relation to the finding of professional misconduct and a penalty of two months suspension for the finding of unsatisfactory professional conduct were imposed, the periods of suspension to be served concurrently.

45 In *Segler* [2010], the Tribunal considered that the Practitioner had demonstrated insight, understanding and remorse for his conduct. The Tribunal accepted that he had 'learned much by [his] mistakes'. The Tribunal therefore concluded that the appropriate penalty in that case was the imposition of a series of fines, a reprimand and the suspension of the

Practitioner's practising certificate for a total period of two months commencing on 14 December 2010.

46 The Practitioner's conduct complained about in *Segler [2009]*, *Segler [2010]* and *Segler* all occurred around the same time, prior to or at the time of the decision in *Segler [2009]*. The Tribunal in this case does not therefore consider that the Practitioner's 'disciplinary history' necessarily indicates a lack of insight and understanding in respect of his conduct.

47 However, what the Practitioner's record does show is a disturbing repetition in his behaviour, particularly in his attitude towards the Court. This leads us to question whether the Practitioner continues to command the personal confidence of his clients, fellow practitioners and judges.

48 The Tribunal's finding in particular that the Practitioner misled the Court raises serious questions as to the Practitioner's fitness to practise. Even a single event of intentionally misleading a Court may be sufficient to justify a report to the Supreme Court (full bench); *Legal Profession Complaints Committee and Vanderfeen* [2011] WASAT 118 (S) at [13]. A deliberate departure from a practitioner's duty to conduct himself or herself with honesty and candour must attract a substantial penalty; *Vogt* at [70].

49 As McMurdo P said in *The Council of the Qld Law Society v Wright* [2001] QCA 58 at [67]:

Breaches such as [misleading the Court] are hard to detect and once established to the requisite standard are deserving of condign punishment, not only as a deterrent but also to reassure the public that such conduct on the part of lawyers will not be tolerated.

50 In the Tribunal's view, the finding of misleading the court, without the other findings, would lead us to the conclusion that the Practitioner may lack the necessary quality of trustworthiness and integrity and may not be a fit and proper person to remain a member of the legal profession. When considered in the light of the other findings against the Practitioner, the Tribunal becomes firmly of that view.

51 On that basis, the Tribunal considers that the appropriate professional disciplinary consequence of the Practitioner's professional misconduct is to make and transmit a report on our findings to the Supreme Court (full bench). The report is to comprise the earlier reasons and these reasons and is to be transmitted with a copy of the exhibits and the

transcript of the proceeding. The Tribunal recommends that the Practitioner's name be removed from the Roll of Practitioners.

52 The Practitioner does not currently hold a practising certificate and accordingly there is no requirement for any further action pending the determination of the Supreme Court (full bench).

**Costs**

53 The Committee also seeks an order for costs pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA) (SAT Act).

**87. Costs of parties and others**

- (1) Unless otherwise specified in this Act, the enabling Act, or an order of the Tribunal under this section, parties bear their own costs in a proceeding of the Tribunal.
- (2) Unless otherwise specified in the enabling Act, the Tribunal may make an order for the payment by a party of all or any of the costs of another party or of a person required to produce a document or other material on the application of the party under section 35.
- (3) The power of the Tribunal to make an order for the payment by a party of the costs of another party includes the power to make an order for the payment of an amount to compensate the other party for any expenses, loss, inconvenience, or embarrassment resulting from the proceeding or the matter because of which the proceeding was brought.
- (4) Without limiting anything else that may be considered in making an order for the payment by a party of the costs of another party where the matter that is the subject of the proceeding comes within the Tribunal's review jurisdiction, the Tribunal is to have regard to -
  - (a) whether the party (in bringing or conducting the proceeding before the decision-maker in which the decision under review was made) genuinely attempted to enable and assist the decision-maker to make a decision on its merits;
  - (b) whether the party (being the decision-maker) genuinely attempted to make a decision on its merits.
- (5) The rules may deal with the effect of certain offers to settle, and responses, if any, to the offer, on the making of an order for the payment by a party of the costs of another party.
- (6) The Tribunal may order that the representative of a party, rather than the party, in the representative's own capacity compensate that

or any other party for costs incurred because the representative acted in, or delayed, the proceeding in a way that resulted in unnecessary costs.

54 The Tribunal's practice in disciplinary proceedings is that, normally, a vocational regulatory body that has been successful in vocational regulatory proceedings should receive an order for the payment of its costs; *Medical Board of Western Australia and Roberman* [2005] WASAT 81 (S) at [30]. There is no reason in the circumstances of this case to depart from the Tribunal's usual practice in relation to costs. An order for costs in favour of the Committee should therefore be made.

55 The quantum of costs sought, \$18,790.60 is reasonable in the circumstances.

### ***Orders***

56 The Tribunal makes the following orders:

1. Pursuant to s 438(2)(a) of the *Legal Profession Act 2008* (WA), a report be transmitted to the Supreme Court (Full Court) on the Tribunal's finding that the practitioner, Mr Martin Lee Segler, is guilty of professional misconduct. The report comprises the Tribunal's reasons in *Legal Profession Complaints Committee and Segler* [2013] WASAT 117 and these reasons and is to be transmitted with a copy of the exhibits and transcript of the proceeding.
2. Pursuant to s 87(2) of the *State Administrative Tribunal Act 2004* (WA), the respondent must pay to the applicant its costs of the proceeding in terms of disbursements in the amount of \$18,790.60 by the date 42 days from the date of these orders.

I certify that this and the preceding [56] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUDGE T SHARP, DEPUTY PRESIDENT**