

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

STREAM : VOCATIONAL REGULATION

ACT : LEGAL PRACTICE ACT 2003

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE and WARD [2005] WASAT 309

MEMBER : JUDGE J CHANEY (DEPUTY PRESIDENT)
MR C RAYMOND (SENIOR MEMBER)
MS M CONNOR (MEMBER)

HEARD : 6 MAY 2005, 4 AUGUST 2005 AND
14 NOVEMBER 2005

DELIVERED : 5 DECEMBER 2005

FILE NO/S : VR 204 of 2005

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Applicant

AND

PETER JOHN WARD
Respondent

Catchwords:

Professions - Legal practitioner - Unsatisfactory conduct - Failure to attend to client's affairs - Failure to respond to enquiries from Legal Practitioners Complaints Committee - Psychological problems explaining conduct

Legislation:

Legal Practice Act 2003 (WA)

Result:

Conditions imposed on right to practise; Fines imposed; Practitioner ordered to pay costs

Category: B

Representation:

Counsel:

Applicant : Ms Coombs
Respondent : Self-represented

Solicitors:

Applicant : Legal Practitioners Complaints Committee
Respondent : Self-represented

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

Nil

Case(s) also cited:

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 The Legal Practitioners Complaints Committee (Complaints Committee) brought three complaints of unsatisfactory conduct against Mr Peter John Ward (the practitioner). Two of the complaints concern a failure to respond to written enquiries made of the practitioner by the Complaints Committee within the timeframe requested or within a reasonable timeframe. The third relates to neglect in the course of acting for a client, Ms B, in respect of Supreme Court proceedings. One of the complaints of failing to respond to the Complaints Committee relates to enquiries concerning the complaint in relation to Ms B.

2 The practitioner admitted all of the facts particularised in support of each complaint. He also accepted, quite correctly, that the facts particularised amounted to unsatisfactory conduct. Mr Ward told the Tribunal that his conduct occurred as a result of personal circumstances with which he was confronted at the time. His marriage had broken down not long before, and he had been affected by a reaction to his experiences while serving as a soldier in Vietnam.

3 The Tribunal was concerned to understand how the events came about and obtained an undertaking from the practitioner to undergo a psychological assessment before the penalty was determined. Mr Ward co-operated fully and a report was obtained from a clinical psychologist, Dr Darryl Menaglio. The report confirmed that Mr Ward had reacted adversely to past experiences in his life, and that that reaction had significantly contributed to the problems that gave rise to the complaints. Dr Menaglio strongly recommended continuing treatment.

4 In light of the report, the Tribunal concluded that there should be conditions imposed on Mr Ward's right to practice so that he was requested to undertake continuing treatment for up to two years, and his practice be audited every six months during that period. It also imposed fines for each of the three complaints. The issue for the Tribunal was what penalty is appropriate in relation to each complaint.

The facts of the first complaint

5 The particulars of the first complaint, which were admitted by the practitioner, are set out in the application as follows:

- "1. At all material times the practitioner acted for the client in respect of the proceedings. The client was defendant to the proceedings. The plaintiff sought an order for sale of a property held by the client and the plaintiff as tenants in common in equal shares, and distribution of the net proceeds of sale.
2. On or about 31 July 2003 the practitioner filed a defence in the proceedings which stated that the client agreed to the sale of the property but disagreed with the plaintiff's [*sic*] proposal as to how the proceeds of sale should be distributed.
3. By consent, the property the subject of the proceedings was sold and the proceeds of sale placed in a trust account under the control of the plaintiff's solicitor pending resolution of the proceedings.
4. By letter dated 8 March 2004 the plaintiff's solicitor sent to the practitioner a proposal for settlement of the proceedings. On or about 16 March 2004 and 18 March 2004 there were further communications between the practitioner and the plaintiff's solicitor.
5. By letter dated 24 March 2004 the practitioner advised the plaintiff's solicitor that on 26 March 2004 he expected to obtain instructions regarding a proposal for settlement of the proceedings.
6. In the period 27 March 2004 to 23 November 2004, the plaintiff's solicitor wrote to the practitioner in relation to the proceedings on the following dates:
 - a) 22 April 2004;
 - b) 5 May 2004;
 - c) 1 June 2004;
 - d) 24 June 2004;
 - e) 16 July 2004;
 - f) 15 October 2004;

- g) 22 October 2004; and
 - h) 29 October 2004.
7. The practitioner failed to respond to any of the correspondence from the plaintiff's solicitor referred to in paragraph 6.
8. In the period 27 March 2004 to 23 November 2004, the plaintiff's solicitor telephoned the practitioner's office on the following dates:
- a) 28 May 2004; and
 - b) 13 October 2004.

On each occasion the plaintiff's solicitor left a message asking the practitioner to return his call.

9. The practitioner failed to respond to any of the telephone messages from the plaintiff's solicitor referred to in paragraph 8.
10. In the period January to November 2004, the Court listed Order 29A Status Conferences in relation to the proceedings for the following dates:
- a) 29 January 2004. On this date the Status Conference was adjourned sine die [*sic*] and it was ordered that costs be in the cause.
 - b) 24 June 2004. On this date the Status Conference was adjourned to 22 July 2004 and the client was ordered to pay the plaintiff's costs of the day fixed at \$250 and payable forthwith.
 - c) 22 July 2004. On this date the Status Conference was adjourned sine die [*sic*] and the client was ordered to pay the plaintiff's costs of the day fixed at \$250 and payable forthwith.
 - d) 4 November 2004. On this day it was ordered, firstly, that the Status Conference be adjourned sine die [*sic*] to allow the plaintiff to bring an application for judgment and distribution of the

funds held on trust for the client and the defendant and, secondly, that the client pay the plaintiff's costs of that day fixed at \$250 forthwith.

11. The practitioner failed to attend any of the Status Conferences referred to in paragraph 10.
12. On 24 June 2004 the Court wrote to the practitioner requiring an explanation for his failure to attend the Status Conference on 24 June 2004.
13. The practitioner failed to respond to the correspondence from the Court referred to in paragraph 12.
14. The practitioner failed to perform any work on the file subsequent to March 2004.
15. The practitioner failed to inform the client of the correspondence received from the plaintiff's solicitor referred to in paragraph 6, failed to inform the client of the Status Conferences referred to in paragraph 10 and failed to inform the client of the outcome of those conferences."

6 This is a serious complaint. It involved not only the serious neglect of Ms B's affairs, but also an abrogation of the practitioner's obligations to the court by failing to attend status conferences and then failing to provide an explanation to the court when called upon to do so.

The facts of the second complaint

7 The second complaint of unsatisfactory conduct relates to the failure on the part of the practitioner to respond to enquiries from the Legal Practitioners Complaints Committee (Complaints Committee) in relation to his conduct of the Supreme Court matter relating to Ms B.

8 On 6 August 2004, the Law Complaints Officer wrote to the practitioner requesting certain information concerning Ms B's matter and requiring a response within 21 days.

9 On 10 September 2004, the Law Complaints Officer wrote to the practitioner requesting a response to the letter of 6 August 2004 within seven days.

10 On 12 October 2004, a legal officer from the Complaints Committee
wrote to the practitioner requesting a response to previous correspondence
from the Law Complaints Officer within seven days.

11 The practitioner failed to provide a response to any of the three
letters.

The facts of the third complaint

12 Sometime prior to 6 August 2004, the Complaints Committee was
engaged in enquiries as to whether there had been any unprofessional
conduct or neglect or undue delay in the course of the practitioner's acting
for a client, Ms T, in family court proceedings. The enquiries arose from
a complaint made by Ms T against the practitioner, although the substance
of that complaint forms no part of the matters presently before the
Tribunal. On 6 August 2004, a legal officer from the Complaints
Committee wrote to the practitioner requesting a response to the
complaint of Ms T within 14 days.

13 On 10 September 2004, the legal officer again wrote to the
practitioner requesting a response to her letter of 6 August 2004 within
14 days.

14 On 5 October 2004, the legal officer wrote to the practitioner
reminding him of his professional obligation to respond to the earlier
correspondence.

15 On 30 October 2004 and 10 November 2004, the legal officer wrote
further letters to the practitioner seeking his response.

16 The practitioner failed to provide a response to any of the letters
from the legal officer until 3 December 2004.

17 It has long been accepted that a failure by a legal practitioner to
respond to an enquiry from a professional disciplinary body amounts to
conduct warranting a professional sanction and, in the terms of the present
legislation, amounts to unsatisfactory conduct.

The practitioner's explanation

18 At the hearing on penalty, the practitioner represented himself. He
was admitted to practice in December 1979, and after completing his
restricted practice began to practise on his own account. He spent some
time in the 1980's working as a ministerial advisor but eventually returned
to practice as a sole practitioner. Initially, he worked from home, but in

1996 acquired a residential property in the southern suburbs of Perth from which he conducted his practice. He still practices from those premises, apparently with two other sole practitioners.

19 Mr Ward described his practice as "disavowing a commercial approach". He said that he takes a personal approach to his clients and spends much time counselling them. He does not charge by an hourly rate and said that a significant amount of his work is unpaid.

20 Mr Ward suggested that some personal aspect of his life had impacted upon his practice around the time of the events the subject of complaint. In particular, he referred to the breakdown of his marriage at the beginning of 2002 and the circumstances surrounding his separation. He said that his response was to consume himself in his work and give up other interests outside his practice as a way of distracting himself from his problems.

21 Mr Ward also made reference to his experience as a soldier in Vietnam. He said that for the past five to six years he has increasingly begun to think of the "possibilities of what might have happened" in Vietnam. He said that he was "not sure that I came through unscathed". Although he did not use the term, Mr Ward seemed to be, in effect, suggesting that he was suffering some form of post-traumatic stress disorder. He had not, however, sought any medical or psychological treatment in relation to those issues in his life.

22 In relation to the matter concerning Ms B, Mr Ward explained that it involved a property settlement between a separated de facto couple. He said that his client simply wanted the matter resolved, that her former partner was being very difficult about everything. The property over which the parties were fighting was eventually sold in March 2004. Because of the difficulties with the client's former partner, Mr Ward said that he became "pissed off with the matter" and "developed an aversion to the file". He said that things certainly got out of hand and he could not face the file.

23 When letters began to arrive from the court and subsequently from the law officer, his inability to deal with the file simply continued.

24 As to the Law Complaints Officer's letters concerning the client, Ms T, the practitioner said that his failure to respond was caused by his disappointment that Ms T should have complained about this handling of her affairs. He said that the response called for a great deal of detail and

he was "demoralised and pissed off by it" having been the subject of the complaint which he considered unjustified.

25 The Tribunal asked Mr Ward why it should not conclude that matters of this nature are likely to continue happening. He responded that he felt he was dealing better with the issues in his life that had previously caused him problems and was "happy about his present practice". He indicated, that if the Tribunal considered it appropriate that he obtain some psychological assistance, he would not resist, but he did not consider it necessary.

The Complaints Committee's attitude to penalty

26 Ms Coombs, who appeared for the Complaints Committee, indicated that she had come to the hearing intending to suggest that the appropriate disposition was a fine of \$3000 in relation to the first complaint, and \$1000 on each of the other complaints with an order for publication and for the payment by the practitioner of the costs fixed at \$1500. Ms Coombs indicated, however, that having now heard the practitioner's explanation, she was concerned as to his reaction to stress, and whether the penalties suggested would provide adequate protection of the public interest in that respect.

The need for psychological assessment

27 At the conclusion of the initial hearing, the Tribunal adjourned to consider the position. We determined that it was unsatisfactory to deal with the matter without the benefit of some psychological assessment of Mr Ward, given the explanations which he gave for his conduct, and given the concern that the Tribunal had to ensure that the disposition of the complaint resulted in adequate protection for the public from any similar conduct by Mr Ward in future.

28 Accordingly, the Tribunal reconvened and we explained to Mr Ward that we did not consider that the imposition of the fine alone was an appropriate penalty, at least without knowing something of the likelihood of ongoing problems in the face of any stress that Mr Ward may encounter in the future.

29 Mr Ward was entirely cooperative with the Tribunal, and gave an undertaking:

- (i) to consult as soon as practicable and at his own expense, a clinical psychologist approved by the Legal Practitioners Complaints Committee, and;

- (ii) to authorise and direct the clinical psychologist to report in writing to the Tribunal as to the practitioner's ability to discharge his professional responsibilities in the face of stress and as to what, if any, further consultations or treatment are recommended.

30 The matter was then adjourned to enable those consultations to occur.

31 In accordance with his undertaking, Mr Ward consulted Dr Darryl Menaglio, a clinical psychologist. Dr Menaglio conducted eight consultations with Mr Ward over a period of some months. He undertook behavioural observations, diagnostic interview, took a development history, and administered standardised psychological testing. He provided a very helpful report at the conclusion of that process. The report concluded that, in Dr Menaglio's opinion, unless Mr Ward avails himself of psychological treatment it is likely he will have difficulties in discharging his professional responsibilities in situations which trigger in him the responses which led to the problems which form the subject of the three complaints before the Tribunal. He recommended ongoing treatment focussing on the symptoms and thought processes that he had identified in his report.

32 Mr Ward told Dr Menaglio, as he had the Tribunal, that he was coping with his present practice without difficulty. The Complaints Committee had conducted an audit of Mr Ward's files when these matters emerged as a problem, and had itself confirmed there did not appear to be any other significant problems with Mr Ward's practice. There is no reason to believe that Mr Ward's account of the state of his practice is not accurate.

33 When the matter was reconvened following the receipt of Dr Menaglio's report, Mr Ward indicated that he held Dr Menaglio in high regard, and considered that he had developed a good relationship with him. He was content to continue under Dr Menaglio's treatment for so long as Dr Menaglio considered it necessary.

34 In the circumstances, we formed the view that the appropriate outcome of these complaints was to impose a condition on Mr Ward's right to practise requiring Mr Ward to undergo such treatment as Dr Menaglio recommends.

35 The Complaints Committee submitted, and we agree, that in addition to Mr Ward undergoing treatment with Dr Menaglio, it is appropriate that

there be a six monthly audit of his practice, at the practitioner's expense, by a person nominated by the Complaints Committee.

36 Counsel for the Complaints Committee submitted that, in light of the cost of Dr Menaglio's treatment to date, and his report, the ongoing costs of treatment, and the costs of six monthly audits, there should be no additional fines imposed as she had suggested at the conclusion of the first hearing. We do not agree. As we have observed above, the failure to attend to Ms B's affairs was a serious abrogation of the practitioner's obligations. His conduct not only involved a failure to progress his client's matter, but involved failure on four occasions to attend court, and a failure to respond to the requirement of the court to explain his failure to attend the last conference. While his psychological state provides some explanation for his conduct, it does not excuse it. In our view, as well as imposing conditions which protect the public while accommodating the practitioner's desire to continue in practice, some additional penalty is required to mark the seriousness of the conduct. It is necessary to demonstrate to the public that a breach by a legal practitioner of his duty to a client and to the court is treated seriously. The penalty should also deter both Mr Ward from succumbing to difficulties in future, and other practitioners generally from neglect of their client's affairs.

37 We do recognise that the conditions on Mr Ward's right to practise will result in expense for him. We also recognise that he is in the process of winding down his practice with a view to retirement, at least from full-time practice, within the reasonably near future. Taking those matters into account, we are of the view, that there should be a fine of \$1500 in respect of the first complaint, and \$250 on each of the second and third complaints. Those fines are considerably less than we would have imposed were it not for the explanation of the conduct and the conditions to be imposed on Mr Ward's ongoing right to practise.

Orders

38 The Tribunal orders that:

- (1) Pursuant to s 187(1)(b), Mr Ward's right to practise is conditional upon:
 - (i) his undergoing such treatment by Dr Darryl Menaglio (or such other clinical psychologist as is approved by the Legal Practitioners Complaints Committee) as Dr Menaglio (or any other approved clinical psychologist) recommends in relation to Mr Ward's

capacity to discharge his professional responsibilities. The treatment is to continue until such time as Dr Menaglio (or any other approved clinical psychologist) notifies the Legal Practitioners Complaints Committee that no further treatment is required, or for a period of two years, whichever is the earlier.

- (ii) for a period of two years, Mr Ward's practice is to be audited by a person nominated by the Legal Practitioners Complaints Committee every six months at Mr Ward's expense.
- (2) In relation to the complaint of unsatisfactory conduct by neglect when acting for his client, Ms B, the practitioner is to pay a fine to the Legal Practice Board of \$1500.
- (3) In relation to the complaint of unsatisfactory conduct between 6 August 2004 and 22 November 2004 by failing to respond to written enquiries made of him by the Legal Practitioners Complaints Committee in relation to his client, Ms B, the practitioner is to pay a fine of \$250 to the Legal Practice Board.
- (4) In relation to the complaint of unsatisfactory conduct between 6 August 2004 and 10 November 2004 by failing to respond to written enquiries made of him by the Legal Practitioners Complaints Committee in relation to his client, Ms T, the practitioner is to pay a fine of \$250 to the Legal Practice Board.
- (5) The practitioner is to pay the costs of the Legal Practitioners Complaints Committee fixed in the sum of \$2000.

I certify that this and the preceding [38] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

JUDGE J CHANEY, DEPUTY PRESIDENT