



**IN THE LEGAL PRACTITIONERS
DISCIPLINARY TRIBUNAL**

Action No. 5 of 2020

Action No. 6 of 2020

Action No. 2 of 2021

IN THE MATTER OF:

**THE LEGAL
PRACTITIONER'S ACT 1981**

- and -

ATANAS MICHAEL RADIN

REASONS FOR DETERMINATION ON PENALTY

Reasons for Decision in the above proceedings were delivered on 5 January 2023.

Argument with respect to the determination of penalty arising from the Tribunal's decision was heard on 26 April 2023. Submissions were made on behalf of Commissioner and the practitioner.

The Commissioner also sought an order for lump sum costs of the proceedings fixed in the amount of \$48,000.

The Commissioner sought that the Tribunal recommend that disciplinary proceedings be commenced against the practitioner in the Supreme Court.

The practitioner, as we will refer to later in these reasons, adopted a fairly pragmatic approach to the issue of penalty and costs.

There are other extant proceedings in the Tribunal against the practitioner, Action 9 of 2019, not yet finalised, before a differently constituted Tribunal.

We do not propose to repeat the findings made in the Reasons for Decision, however we rely upon them and incorporate them in our determination as to penalty.

Action No. 5 of 2020 Unpaid Counsel Fees.

The Charge alleged 6 counts of failure to pay counsel fees. Five of the Counts were proven to the satisfaction of the Tribunal.

The Tribunal determined that the failure by the practitioner to pay counsel fees as alleged in Counts 1, 2, 3, 5 and 6 each separately amounted to professional misconduct. The Tribunal noted that a failure to pay counsel that involved a misappropriation of funds intended for that purpose would of course be seen as more serious. Nevertheless, a failure to pay counsel merely because a client has not paid the solicitor will still amount to professional misconduct.¹

Action No. 6 of 2020 Lambert

The charge comprised three counts and related to the conduct of the practitioner concerning the manner in which he and Steven Clark, who practised together through an incorporated legal practice known as Juris Prudence II Pty Ltd, operated the Clark Radin Lawyers Trust Account.

The Tribunal found with respect to Counts 1 and 2, which related to the practitioner misleading the Law Society and Mr Lambert about reimbursing the Trust Account, that the information provided by the practitioner to the Law Society and Mr Lambert was either knowing or recklessly made and was incorrect and misleading.²

¹ Reasons for decision para 47

² Ibid paras 88, 93-95

The Tribunal determined that the practitioner's conduct with respect to the communications to the Law Society and Mr Lambert constituted unprofessional conduct on the part of the practitioner as it involved substantial failure to meet the standard of conduct observed by competent legal practitioners of good repute.³ The Tribunal noted its concern that the practitioner, in addition to distancing himself from the transactions by ascribing responsibility to Clark, sought also to ascribe blame to Mr Wigzell, an employee who had passed away.

With respect to Count 3, the Tribunal found that the practitioner positively misled Ms Zuvela in a conversation with her and that his conduct constituted unprofessional conduct as it involved substantial and recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute.

Action No. 2 of 2021 Tax and Superannuation

The action comprised 3 Counts.

Count 1 related to the practitioner's failure to fulfil his financial and professional obligations to ensure that the two companies which were associated with the legal practice which traded as Radin Legal, namely Radin Legal Pty Ltd which employed the professional staff and Radtra Pty Ltd which employed the administrative staff, paid the amounts required under the Superannuation Guarantee (Administration) Act 1992 for each of its employees.

³ Ibid para 97

Count 2 alleged that the practitioner failed to fulfil his financial and professional obligations in that he did not ensure that each of the two companies paid the amounts required for PAYG and GST.

Count 3 alleged that the practitioner submitted to the Law Society of South Australia in late September 2016 a statement regarding receipt or holding of trust money with respect to Radin Legal Pty Ltd and that the practitioner knowingly caused to be included in that statement information that was false and misleading in a material particular. The practitioner had signed and certified the statement as complete and correct.

With respect to Counts 1 and 2, the practitioner did not dispute the existence of the taxation and superannuation liabilities, however stated that he had acknowledged the financial difficulties of the entities and that he had attempted to negotiate and re-negotiate payments (to the ATO).

The Tribunal concluded that the practitioner had been remiss over a substantial period of time in meeting his obligations by the companies to the practices, employees and to the ATO.⁴

The total quantum of the unpaid liabilities of both companies for Superannuation entitlements was \$49,770 and for taxation liabilities was \$327,358.

The Tribunal determined that the practitioner's failure to comply with the statutory and legal obligations in relation to tax and superannuation involved a substantial and consistent failure to reach or maintain a reasonable standard of competency and diligence and that the conduct amounted to professional misconduct.

⁴ Ibid para 135

With respect to Count 3, which related to a Regulation 48 Statement regarding receipt and holding of trust money, the practitioner ticked the box indicating “Yes” to a question which asks “Are taxes and superannuation up to date?” (for the period 1 July 2015 to 30 June 2016).

The document was certified by the practitioner on 22 September 2016. The Tribunal determined that the answer of “Yes” to the question was false and his certification was false.⁵

The Tribunal determined that the practitioner’s conduct manifested a serious departure from his professional and statutory obligations such that the practitioner should be considered to be not a fit and proper person to practise the profession of the law.⁶

As such the practitioner’s conduct constituted professional misconduct.

DETERMINATION

The findings of the Tribunal, considered overall with respect to all Actions, chronicle a pattern of behaviours by the practitioner over a significant period of time where he has fallen well short of the standard expected of legal practitioners. The practitioner’s conduct constituted a substantial and consistent failure to reach or maintain a reasonable standard of competency and diligence.

The pattern of behaviours included making false representations, misleading clients and the Law Society, certifying a false document, not maintaining accurate Trust Account Records, failing to pay counsel fees and failing to pay taxes and the superannuation entitlements of his staff.

⁵ Ibid para 156

⁶ Ibid para 161

The submissions made on behalf of the Commissioner invited the Tribunal to recommend that disciplinary proceedings be commenced against the practitioner in the Supreme Court pursuant to s.82(6)(v) of the Legal Practitioners Act (LPA), given the substantial course of conduct over a significant period of time and the findings of the Tribunal as to professional misconduct. The other powers available to the Tribunal pursuant to s.82(6) LPA did not provide appropriate penalties. They were not adequate bearing in mind the nature and duration of the conduct of the practitioner and bearing in mind the requirement for specific and general deterrence.

The practitioner does not currently hold a practising certificate, however he is at liberty to apply for a further practising certificate.

In the submissions made by the practitioner, the practitioner submitted that the penalty imposed by the Tribunal should be, in essence, a penalty other than the Tribunal recommending that disciplinary proceedings be commenced in the Supreme Court.⁷

Somewhat pragmatically, the practitioner submitted that his anticipation was that the Tribunal was likely to accept the submissions of the Commissioner, nevertheless he submitted that there should be a different penalty.

Having said that, the practitioner was alive to the need, from his perspective, for the determination of penalty with respect to all matters, including the aforementioned Action 6 of 2019 (that is before a differently constituted Tribunal), to be heard in the same place as part of the same proceedings.

As the practitioner stated, logically he might be best served in determining ... "to the extent that it does go as I anticipate, whether I am going to defend proceedings of that

⁷ Transcript 26 April 2023 p21

nature and then focus on stating my case to the Court rather than taking up time in the Tribunal”.

The practitioner submitted that the Tribunal should at least contemplate dealing with him other than by recommending that disciplinary proceedings be commenced in the Supreme Court. The practitioner did submit that the Tribunal might consider, notwithstanding the seriousness of the matters which had been established, that something like a reprimand would be appropriate.

The practitioner also raised other matters which he would put as to penalty, specifically relating to the circumstances that he and his practice were in at the time that these serious errors in judgment were made.⁸

The Tribunal did take into account in its Reasons for Decision and findings the evidence of the practitioner as to the state of the practice at the relevant times. This included the ill health of Mr Clark, the need for the practitioner to undertake tasks he had not hitherto undertaken, the pressure of work and financial stress upon the practice, and his endeavour to involve the staff by keeping them informed about the difficult financial position of the practice.

Having regard to the powers of the Tribunal contained in s.82(6) LPA, the Tribunal does not consider that it is appropriate to exercise the powers available to it pursuant to ss.82(6)(a)(i)-(iv) LPA given the findings made by the Tribunal in its determination including those specifically referred to in these reasons.

A reprimand does not sufficiently acknowledge the seriousness of the practitioner's conduct.

⁸ Ibid p19

The practitioner has made it abundantly clear that he is in impecunious circumstances. The Tribunal considers that a fine would be an inappropriate penalty in any event given the gravity of his conduct.

For the reasons traversed in the preceding paragraphs, the Tribunal does not consider that the imposition of conditions on the Legal Practitioners Practising Certificate would be appropriate nor that he be suspended from practising for a period not exceeding 12 months.

The practitioner made no submissions about what conditions might be appropriate.

We note that the practitioner does not currently hold a practising certificate. There is nothing precluding him from reapplying.

The Tribunal determines that the appropriate penalty to be imposed is to exercise its powers pursuant to s.82(6)(v) LPA and recommends that disciplinary proceedings be commenced against the practitioner in the Supreme Court.

COSTS

On the issue of costs, the counsel for the Commissioner sought a lump sum amount of \$48,000 for costs.

Pursuant to s.85(1) LPA the tribunal may make such order as to costs as the Tribunal considers just and reasonable.

In the submissions made on behalf of the Commissioner, it was asserted that the costs (not including) the costs of the hearing on penalty, were substantially comprised of costs incurred by the Commissioner for counsel fees in the sum of approximately \$35,000.

In the course of his submissions, the practitioner indicated that he did not want to speak against the quantum of the costs as such, in particular the lump sum. He had been provided with copies of an invoice from Mr McCarthy and so forth.⁹

The practitioner acknowledged that the sum sought was a discounted sum.

The principal position taken by the practitioner was that he opposed the making of an order for costs.

Having heard the submission of counsel for the Commissioner and the submissions and concession made by the practitioner, the Tribunal accepts that the appropriate way forward, if it were to make an order for costs, would be to fix a lump sum in the amount of \$48,000.

The submissions of counsel for the Commissioner¹⁰ emphasised a number of matters including that costs normally follow the event.

Counsel for the Commissioner further submitted that during the course of the proceedings the practitioner filed no answering documents in breach of repeated orders to do so.

The record speaks for itself in that regard.

Many delays in the proceedings were caused by the failure of the practitioner to engage meaningfully with the Tribunal.

Clearly the failure to file any responding documents put the Commissioner to significant expense and trouble to prepare the matter fully for trial.

⁹ Ibid p 22

¹⁰ Ibid p12

There were negotiations between the parties to resolve the matter which were unsuccessful.

Following some discussions between the practitioner and Counsel for the Commissioner, it was acknowledged by the Commissioner, and the concession was made. that one topic was resolved as a result of the negotiations i.e. the negotiations were not completely fruitless.

Counsel submitted that on all bar one count, that being one of the 6 counts in relation to the non-payment of counsel fees, the Commissioner's case was successful, or to put it another way, barring one small respect, the practitioner was wholly unsuccessful in his challenge to the charges.

It was submitted on behalf of the Commissioner that in accordance with ***DK v. AE & Anor (No. 2) (2020) SASC 28***, the judgment of Nicholson J on 3 March at para. 17, Nicholson J observed –

“Further, ordinarily the party's impecuniosity is no bar to an adverse costs order being made against the party.”

Counsel also referred to ***Sullivan v. Krepp (2023) SASC 4*** – a decision of Auxiliary Judge Norman where Judge Norman said –

“A lump sum taxation is appropriate when the litigation between the parties has already consumed excessive and disproportionate resources, or where full recovery of taxed costs is not anticipated or is questionable.”

With respect to the lump sum figure, it was submitted by counsel for the Commissioner that the fees charged are as set out by the Commissioner and published as a recommended rate which was either Supreme Court or less but not higher.

As noted previously, the quantum of costs claimed by the Commissioner is not in dispute.

The submissions of the practitioner on the issue of costs were somewhat, as he called it, pragmatic in nature.¹¹ The practitioner had been, over many years, in an extremely poor financial position. He had been very open with the Commissioner about that. The practitioner submitted that there was no prospect of him being able to comply with an order for costs. Inferentially, there was no point in making the order.

DETERMINATION ON THE ISSUE OF COSTS

Having heard the submissions from the practitioner and on behalf of the Commissioner, the Tribunal considers that this is an appropriate matter in which to make an order for costs.

There can be no doubt that the proceedings have been lengthy and they have been conducted by the Commissioner in a very careful manner over a lengthy period of time. The Commissioner has been required to make the running.

We accept that there may have been partial agreement by negotiation with respect to the resolution of one matter, however the practitioner's presentation before the Tribunal has been one where much of his evidence has been exculpatory in nature or by way of explanation. Much of his evidence related to matters which in many respects were relevant to mitigation of penalty rather than culpability.

¹¹ Ibid p 22

In all of the circumstances, we propose to make an order for costs in the lump sum amount sought by the Commissioner.

We accept that the figure proposed is not indemnity in the real sense of that word in that it has inbuilt, as acknowledged by the practitioner, a significant discount.

In making our determination, we are cognisant of the very clear evidence of the practitioner that he is unlikely to be able to make a payment of the costs.

We propose to make an order for costs and to grant a somewhat lengthy period of time in which payment is to be made, to give the practitioner some opportunity to negotiate with the Commissioner.

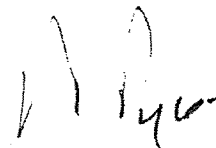
ORDER

1. The Tribunal recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court.
2. The practitioner do pay the Commissioner's costs of and incidental to these proceedings fixed in the sum of \$48,000 on or before 30 November 2023.

Dated 17 July 2023



Professor G Davis



M Pyke KC