

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

BETWEEN:

**LAW SOCIETY NORTHERN
TERRITORY**

Applicant

AND

MICHAEL JOHN FREELAND
Australian Legal Practitioner

Respondent

REASONS FOR DECISION

1. At the commencement of the hearing of this application the applicant tendered the following documents:

1. Affidavit of Danielle Sawyer dated 6 August 2014.
2. Copy documents contained in a Tribunal Book.
3. A Confidential Memorandum dated 27 November 2013.
4. Council Minutes B - Regulation.
5. Affidavit of Megan Lawton dated 6 August 2014.
6. Affidavit of Kellie Grainger dated 6 August 2014.
7. Affidavit of Kellie Grainger dated 24 October 2014.

2. Section 73(1) of the Legal Profession Act provides that that the holder of a local practising certificate must engage in supervised legal practice until the holder has completed a specified period or periods of supervised legal practice. The period or periods must be worked out under the regulations (section 73(2)). Regulation 12 of the Legal Practitioner's Regulations specifies how the required periods may be worked out in full time or part time supervised practise. The examples provided suggest that full time employment comprises at least 35 hours per week and that time worked in excess of 35 hours is not included in the calculations.

3. On 9 May 2012 the respondent, an Australian legal practitioner within the meaning of the Legal Profession Act, submitted an application for an unrestricted practising certificate to the Law Society

and, on 25 June 2012, he provided a statutory declaration in support of the application. In paragraph 3 of the statutory declaration he declared that he had engaged in supervised legal practise under the supervision of an Australian Legal Practitioner and he specified three firms, the dates of the supervised legal practice and the names of the supervisors, which included Robert Welfare. In paragraph 4 he declared that the period of supervised legal practice was completed on a full time basis. He also declared that he had taken extended leave during his employment, going to sea for Border Protection Duties on 3 separate occasions for a combined period of 55 days, and that he had engaged in supervised legal practise for a period equivalent to 18 months calculated pursuant to Regulation 12(2).

4. Kellie Grainger was the applicant's Manager Regulatory Services. On 25 June 2012 she had a number of telephone discussions with the respondent. During the course of these conversations he informed her that he had started with Robert Welfare part-time but had ended up full time. He did most "stuff" at night and was working 40 hours per week. Ms. Grainger asked how he was supervised and he said he was supervised in the afternoons and by email. She also told him that according to the Law Society records he was only insured for part time work and he said they thought that this meant at least 15 hours per week.

5. Ms. Grainger had a further telephone conversation with the respondent on 26 June 2012 when he said that he had not been in a paid position and that sometimes he did a lot of hours and at other times he did very few. He said the the hours fluctuated and he did a lot of work from home.

6. By email dated 26 June 2012 Ms. Grainger asked a number of questions of the respondent. He responded that he was committed to a minimum of 15 hours per week. The hours were dependent on the work needed to be done. Sometimes a lot of hours were necessary, sometimes few hours. There was no specific date of an increase or decrease. In the first week he was flat out. He said that times varied. He would usually start 1630 to 1700 and he would stay in the office until he had finished interviewing clients usually 1800 and 1900. He would finish in the office between 2100 and 2200 and go home. At home he would work on anything that needed working on, usually between 2300 and 0300. If there is no need to go to the office he would work from home. He was connected to the office filing system at home. When there was little on he researched legislation and practice procedures relevant to his file load. He would also utilise his other employment down time. He listed the areas of law that he practised and the tasks undertaken. He said that he undertook this work at different places including office, home, client's home and detention centre. Mr. Welfare supervised by reading and commenting on correspondence and they regularly discussed files and procedures on a weekly basis, and more frequently when required.

7. By letter dated 9 October 2012 the Law Society advised that it was proceeding with an investigation as to the respondent's lack of candour and he was requested to respond to the allegation that he had declared that his employment in supervised legal practice was on a full time basis when he was aware that at least one period of employment was not completed on a full time basis. He responded, by email dated 21 December 2012. When he started with Mr. Welfare he was told he had to do a minimum of 15 hours per week to qualify toward an unrestricted practising certificate. In the first week it became obvious that he was well in excess of this minimum. He acknowledged that he had a full time position elsewhere and he repeated the information previously provided in relation to his work with Mr. Welfare. He added that after he went home he would have an hour to an hour and a half sleep before getting up to work from 2300 to 0300. He said that the work outside billing times was not recorded and are estimations based on his memory. The fact that he was insured as part time was an administrative oversight. He said that until he came to sign the statutory declaration whether he was full time or part time was not on his

mind. When he signed the statutory declaration he believed it to be true and he still believed it to be true.

8. In a letter dated 4 November 2013 to the Law Society the respondent addressed the accusation as to lack of candour. He said that at the time of his application he went through his working circumstances with personnel at the front desk of the Law Society and was lead to believe that his circumstances would be accepted as full time work. Before signing the declaration he had asked Mr. Welfare whether he considered he was working on a full time basis and Mr. Welfare had said he did consider him to be working for the firm on a full time basis. He said that he was totally candid with the Law Society in declaring the leave when on Border Protection duties. He also stated that that there was no reason why he would want to get his unrestricted practising certificate earlier than he was entitled to.

9. Megan Lawton was the Chief Executive Officer of the Law Society at the relevant time. Her affidavit does not purport to be sworn or affirmed, however it was tendered without objection. Ms. Lawton says that the respondent spoke to her on 31 August 2011 by telephone when he enquired as to the requirements to end the supervision attached to his restricted practising certificate. She told him he was required to complete full time employment at 35 hours per week for 18 months and that his employment at the Department of Fisheries would not be included as it was not legal practise and not supervised by an Australian legal practitioner.

10. Danielle Sawyer was the Licensing Officer for the Law Society at the relevant time. She has deposed that the respondent attended the front counter from time to time wearing a Department of Primary Industries and Fisheries uniform. She recalls speaking to the respondent about his application for an unrestricted practising certificate and his completion of an application for such a certificate at the reception counter. He asked her whether his application was good enough to get him an unrestricted certificate and she looked at the data base and told him that he should be ok but it was not for her to approve and he would be advised if there were any problems. She said that the respondent did not mention his arrangements with Mr. Welfare or the hours that he worked.

11. The respondent has affirmed in an affidavit dated 18 August 2014 that at the time of signing the declaration of 25 June 2014 he fully believed that the declaration was true. He reiterated this believe in cross-examination before the Tribunal.

12. The applicant alleges that the respondent was not engaged in supervised legal practice on a full time basis during the course of his employment with Robert Welfare and that he was aware, or should reasonably been aware, that the contents of the statutory declaration would be used in determining his eligibility for an unrestricted practising certificate. It is further alleged that the respondent had, pursuant to rule 32.1 of the Rules of Professional Conduct and Practice and section 694 of the Act, an obligation to be open and frank with the applicant and not make false or misleading statements to the applicant in its capacity as a regulatory body. Section 694 provides that Legal profession rules are binding on Australian lawyers and Rule 32.1 requires a practitioner to be open and frank in his dealings with the Law Society.

13. It is alleged that the respondent, by making and providing the statutory declaration, was not open and frank in his dealings with the Law Society in breach of rule 32.1, and/or knowingly or recklessly made false or misleading statements to the applicant. This conduct is alleged to constitute professional misconduct pursuant to section 465(1) or unsatisfactory professional conduct pursuant to section 464.

14. It is difficult to understand how the respondent could have unequivocally claimed that his arrangement with Mr. Welfare constituted full time supervised legal practice. He was engaged in full time employment with the Department of Primary Industries and Fisheries, there was apparently no requirement to work more than 15 hours per week for Mr. Welfare, he was not paid, and his hours of work varied. There appears to have been no agreement between himself and Mr. Welfare as to full time supervised legal practice. No records have been disclosed as to his actual hours of work and he appears to have made no tally, except in the most general way, and concluded that, because he worked more than 35 hours on occasions, on average he worked on a full time basis. The regulations do not provide a basis for such a conclusion. This was an extraordinary arrangement and it required proper analysis. On the available evidence, and on any reasonable construction, the period he served under the supervision of Mr. Welfare was not on a full time basis. The fact that he continues to maintain that it was full time supervised practice reflects poorly on his credibility.

15. The respondent said that he sought the opinion of Mr. Welfare as to whether he was employed full time or part time. Mr. Welfare did not give evidence and the basis of his opinion is not known. Whatever the basis was, there is no suggestion that Mr. Welfare advised the respondent that he did not need to disclose the circumstances of his employment to the Law Society. Further, the fact that the respondent sought the opinion of Mr. Welfare suggests that the respondent had doubt as to whether he was full time or part time. The Tribunal does not accept that this was not in his mind at the time he made the declaration.

16. The respondent also said that his circumstances were known to the Law Society, through Ms. Lawton and Ms. Sawyer. Apart from the fact that they were aware of the respondent's employment by the Department of Primary Industries and Fisheries, their evidence does not support this assertion. Neither were required for cross-examination. In any event, their knowledge does not relieve the respondent of an obligation to provide the correct information in his application and statutory declaration. Insofar as his supervised legal practise was part time, the pro forma document required him to provide details as to the name of his employer and the number of hours worked per week. In failing to provide this information the respondent was not open and frank with the Law Society as required by Rule 32.1.

17. The statement made to the Law Society by the respondent that the period of supervised legal practice was completed on a full time basis was, insofar as the period involving Mr. Welfare was concerned, false and misleading. The respondent is an Australian legal practitioner and his conduct occurred in the practice of law. His lack of candour fell short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner. The Tribunal is satisfied that his conduct constituted unsatisfactory professional conduct within the meaning of section 464 of the Act.

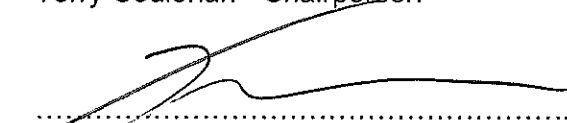
18. The allegation that the respondent deliberately made a false and misleading statement is of a serious nature. With this in mind, and in accordance with the principles outlined in *Briginshaw v Briginshaw* (1938) 60 CLR 336, he may be given the benefit of the doubt. However, it is also alleged that he made the statement recklessly. This requires that a particular state of mind, wilful indifference to the truth, be established, and the test is subjective (see *Giudice v LPCC* [2014] WASCA 115 paragraphs [42] - [45]). The evidence establishes that he had doubts as to the nature of his employment. He apparently obtained some support from Mr. Welfare, but this did not relieve him of his duty of candour which required him to put all the relevant information before the Law Society. The Tribunal is satisfied that he was wilfully indifferent to the truth and recklessly made a


false and misleading statement to the Law Society. His conduct constituted professional misconduct within the meaning of section 465(1).

19. The Tribunal will reconvene to hear the parties submissions as to what appropriate orders should be made pursuant to section 525 or otherwise.

Dated : 24 December 2014


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Terry Coulehan - Chairperson


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Wade Roper


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Heather King