

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

BETWEEN:

**LAW SOCIETY NORTHERN
TERRITORY**

Applicant

AND

**MICHAEL JOHN
FREELAND**
Australian Legal Practitioner

Respondent

REASONS FOR DECISION

The Disciplinary Tribunal has found that the respondent recklessly made a false and misleading statement to the Law Society as to the nature of his supervised legal practice, and that this constituted unsatisfactory professional conduct within the meaning of section 464 of the Legal Practitioners Act and professional misconduct within the meaning of section 465(1) (see Reasons for Decision dated 24 December 2014). It may be noted that it was not suggested that the respondent's conduct was such as to justify a finding that he was not a fit and proper person to engage in legal practice.

Consequent on the findings made, the Tribunal may make orders it considers appropriate pursuant to section 525. It is well established that the object of disciplinary proceedings is to protect the public and to maintain the proper standards and reputation of the legal profession (*Bar Association v Evatt* (1968) 117 CLR 177, 183-184).

Misleading the Law Society by a legal practitioner is a serious matter and may have serious consequences. The false and misleading statement, lacking in candour, may have resulted in the respondent obtaining an unrestricted practising certificate without being properly qualified, to the detriment of the public, proper legal standards, and the reputation of the legal profession.

The respondent has tendered a number of references from a variety of persons, including members of the legal profession, which suggest that this conduct was out of

character, and that he is a person with a well developed social conscience who would be a valuable member of the legal profession.

The respondent's statements to the Law Society and his evidence before the Tribunal showed little insight as to the seriousness of his conduct. Through his Counsel he expressed regret, it being submitted that the main thrust of his evidence had been directed towards the allegation that he had knowingly made a false and misleading statement. If this was the case, it may have been expected that his defence would have been conducted on that basis.

The respondent no longer has a practicing certificate. He has not applied for one since he became aware that the Law Society would be pursuing this matter. It appears that he does not intend to practise law for the time being, whatever the outcome of this proceeding, and will continue to earn his living through other employment.

It is unlikely that the respondent will conduct himself in this manner again, and the circumstances are not sufficiently serious to warrant his removal from the local roll. However, they are sufficiently serious to require a period of suspension, or in this case, an order that a local practising certificate not be granted to him for a specified period. It needs to be made clear to him, and other practitioners, that such conduct cannot be tolerated. A period of one year should be a sufficient deterrent.

There is also a question as to his status in relation to the provision of an unrestricted practicing certificate. The requirement for supervised practice before the issue of an unrestricted practicing certificate is to ensure that a practitioner has sufficient training and experience to practise on his own account. This should ensure, inter alia, that he has an insight into what is required of a legal practitioner, and is able to analyse and solve, without supervision, the problems that arise in the course of legal practise. The respondent's conduct suggests that he is deficient in this respect. It is necessary to ensure that he has the required training and experience. For the protection of the public he must undergo supervised practice for the full period required, with no credit for the supervised legal practice undertaken.

The Law Society has sought costs, claimed in the sum of \$54,172. At first the respondent did not resist this application, except as to quantum, but he has subsequently argued that there are "exceptional circumstances" within the meaning of section 529(1). It may be accepted that exceptional circumstances means circumstances outside the ordinary course (see *A-G (Qld) v Francis* [2008] QCA 243, paragraph 40), and that they may include the personal circumstances of the respondent (see *Council of the Law Society of NSW v Hinde* [2011] NSWADT 20).

The circumstances said to be exceptional in this case were the age of the respondent (62 years), and his financial circumstances. It was also submitted that it was relevant that he had done nothing to prolong the proceeding or cause unnecessary costs to be incurred and that he had not benefited from his misconduct.

Consideration of his financial circumstances as disclosed shows that his income, and that of his partner, are just sufficient to maintain themselves and their numerous dependents in relatively modest circumstances and that their assets are not substantial. He is at an age that will limit his future earning capacity and there is also a possibility that the findings of this Tribunal may have adverse consequences in relation to his earning capacity. An order for the payment of costs will impose a substantial financial burden. While the Tribunal has sympathy for his predicament, these matters, whether taken together or on their own, are not out of the ordinary,

and they could not reasonably be said to constitute exceptional circumstances within the meaning of section 529(1).

It follows that the respondent must pay costs, including costs of the Law Society. An order for costs may be for a specified amount, or for an unspecified amount, in which case the basis on which the amount is to be determined must be specified (section 529(5)). In the absence of any other stipulations, costs appear to be entirely at the discretion of the Tribunal. There appears to be no provision for costs to be taxed or assessed, although it may be possible to have them assessed pursuant to Division 8 of the Act. If such a course were taken difficulties may arise if the Tribunal sought to constrain the discretion of the costs assessor.

The Law Society has filed, without objection, an affidavit affirmed on 15 April 2015 by its solicitor. This discloses that invoices have been issued in the sum of \$24,946.50 plus GST, which sum was said to include a considerable discount in favour of the Law Society. There remained an amount for work in progress, estimated at \$8,000.00 plus GST. It was not stated that this sum was discounted. Counsels fees were said to be \$17,725.50 as at 14 April 2015. This does not appear to have included the costs of the hearing on 15 April, and does not include the costs of the subsequent application heard on 30 April. The Law Society has not provided further particulars of the sum sought for costs, which have been requested by the respondent. The information provided is not sufficient to enable the Tribunal to properly assess the costs claimed. The Law Society's submissions suggest that, if the Tribunal is not willing or able to assess the costs with the information provided, further information will be provided so that the costs may be taxed or assessed at a later date. This will result in further costs being incurred, which the respondent can ill afford. Notwithstanding the difficulties, it is desirable that the Tribunal resolve the issue as to costs as efficiently and expeditiously as possible.

In doing so, consideration may be given to the information provided and the information available on the record. Prima facie, the issues before the Tribunal were relatively succinct. It is apparent from the Determination dated 27 November 2013, that the Law Society had carried out its own enquiries and was in a position to provide its solicitors with most of the information it would require to seek advice from Counsel and, if so advised, draft or settle a properly particularised Disciplinary Application. Once the proceedings were commenced, it was necessary to arrange for service. A directions hearing took place on 25 June 2014, at which directions were made in relation to the filing and serving of affidavits and lists of documents. These matters were subsequently attended to and a date was set for hearing. The hearing took place on 31 October 2014 and reasons for decision were published. There was a further hearing as to penalty and costs on 15 April 2015, and a subsequent hearing as to costs on 30 April 2015, at the request of the respondent.

It would be convenient, and appropriate, to assess costs pursuant to the scale provided in the Supreme Court Rules. There is no reason why costs should be otherwise than as between party and party. Allowances for general instructions, telephone calls, clerks fees, and disbursements, such as photocopying expenses, may be included in the solicitor's rate and in the uplift for care, skill and consideration. Counsels fees have been allowed in accordance with the discounted rate said to have been charged. \$2000 per day should approximate the hourly rate of \$300 in accordance with the scale for Counsels fees. There was no need for Counsel to appear on the directions hearing. It was appropriate that Counsel be assisted before the Tribunal by an instructing solicitor.

Solicitors fees:

Instructions (including conferences and reading all relevant material) - 5 hours x 260	\$1300
Brief to Counsel to advise - 1 hour x 260	260
Perusing Counsel's advice and seeking instructions - 1 hour x 260	260
Preparing Disciplinary Application - 1 hour x 260	260
Issuing and service - 1 hour x 260	260
Directions hearing - 1 hour x 260	260
Preparation of affidavits - 5 hours x 260	1300
Brief to Counsel to appear - 1 hour x 260	260
Conference with Counsel - 1 hour x 260	260
Attending before Tribunal 31/10/14 - 5 hours x 260	1300
Perusing reasons for decision - 1 hour x 260	260
Instructions for hearing on penalty - 1 hour x 260	260
Conference with Counsel - 1 hour x 260	260
Preparation of affidavit re costs - 1 hour x 260	260
Attending before Tribunal - 2 hours x 260	520
instructions re costs application - 1 hour x 260	260
Conference with Counsel - 1 hour x 260	260
Attending before Tribunal - 2 hours x 260	520
	8320
Care, skill and consideration - 20%	1664
	9984
	plus GST 998
	\$ 10982

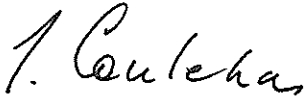
Counsels fees:

Advice	1295
Drafting application	660
Settling affidavits - 1 hour x 300	300
Preparation for hearing (including conferences) - 1 day	2000
Appearing on 31 October 2014 - 1 day	2000
Reading reasons for decision - 1 hour x 300	300
Preparation for hearing (including conferences) - 1 day	2000
Appearing on 15 April 2015 - 1 day	2000
Preparation for hearing on 30 April (including conferences) - 1 day	2000
Appearing on 30 April 2015 - 1 day	2000
	14555
	plus GST 1456
	\$ 16011

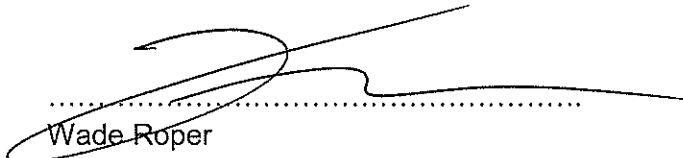
Total costs: \$10982 + \$16011 = \$ 26,993

The Tribunal makes the following orders:

1. A local practising certificate is not to be granted to the respondent for a period of twelve months from the date of this order.
2. The respondent is not to be issued with an unrestricted practising certificate until he has completed two years supervised legal practise, with no credit given for any supervised legal practice undertaken to date.
3. The respondent is to pay the applicants costs in the sum of \$26,993.



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Terry Coulehan - Chairman



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Wade Roper



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Heather King

Dated : 20 MAY 2015