

# LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

## **BETWEEN:**

LAW SOCIETY NORTHERN  
TERRITORY

Complainant

## **AND**

ASHA McLAREN

Respondent

## **REASONS FOR PENALTY**

24 June 2009

For the complainant: Ms Judith Kelly SC

For the respondent: Mr Vincent Close

Date of hearing: 11 June 2009

1. This matter came back before the Tribunal for submissions in relation to the orders that ought to be made following the determination by the Tribunal that the respondent had engaged professional misconduct.
2. The Tribunal has powers under section 525 of the *Legal Profession Act 2006* (NT) to make the order it considers appropriate pursuant to subsection (2) including any one or more of the orders set out in subsection (3).

3. The Tribunal received written submissions from both the complainant and the respondent and counsel for both parties made oral submissions to the Tribunal.
4. In addition, the respondent relied upon four references which were admitted as exhibit LP 2.
5. In essence, the submission of the respondent was that a reprimand and a fine would be an adequate penalty in the circumstances that would satisfy the protective purpose of the order as well as a punitive effect on the practitioner.
6. The respondent submitted her undertaking to enrol in an ethics course conducted by the College of Law in New South Wales.
7. The complainant submitted that the conduct of the respondent demonstrated a serious lack of insight and a lack of understanding of her ethical obligations as a solicitor and that as a consequence the appropriate penalty was the suspension of the respondent's right to practise while she completed an ethics course and her misconduct and lack of knowledge of ethical obligations made her a person unfit to practise until that lack of knowledge had been remedied.
8. The finding by the Tribunal that the respondent had engaged in professional misconduct is a serious matter and the facts upon which that finding was based go to fundamental concepts of the appropriate standard to be expected of a legal practitioner.

9. The principal concern of the Tribunal is to protect the public from similar conduct as that impugned<sup>1</sup>. Subsidiary concerns are personal and general deterrence by publicly marking the seriousness of the conduct of the practitioner<sup>2</sup> and the imposition of remedial education upon the practitioner.
  
10. The circumstances surrounding this matter did not involve members of the general public although they do involve three practitioners currently practising in the Northern Territory. At the time the complaints to the Law Society were not made public; to some extent those practitioners must have been accustomed to the ordinary “rough and tumble” of dealings with fellow practitioners these days and should have been better equipped to cope with the allegations against them than would the uninitiated. That observation does not diminish the seriousness of the misconduct and the damage done to the reputation of the profession as a whole when standards are breached. All the same, had a member or members of the public been the unwelcome recipient/s of allegations of dishonesty such as were made by the respondent, the Tribunal would have been more inclined to suspend the practising certificate of the respondent.
  
11. In the time since the respondent committed the conduct impugned, it is in her favour that there is no suggestion that any similar conduct has been engaged in by the respondent. Indeed, no evidence was presented before the Tribunal by either party concerning the antecedents of the respondent and so the Tribunal can make no finding concerning that aspect.

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<sup>1</sup> Law Society of New South Wales v Bannister (1993) 4 LPDR 24 at 28 per Shellar JA

<sup>2</sup> Law Society of New South Wales v Foreman (No 2) (1994) 34 NSWLR 408 at 440 -- 441

12. As mentioned above, the Tribunal was asked to suspend the practising certificate of the respondent for the period required to complete the ethics course(s) which figured in both parties' submissions. That period might have been as little as 6 weeks or as much as 12 weeks, depending on the manner in which the respondent applied herself to the courses. A suspension of up to 12 weeks would have had an adverse economic effect on the respondent's legal practice and would have required her to arrange for a locum to manage her practice, but more importantly would have had an adverse effect upon her clients as it could do no less than impede the progress of their matters. A suspension of greater than 12 weeks would probably have required the complainant to appoint a practice manager to care for the respondent's practice and would have likely meant that the respondent would not have received any income from her practice. As a consequence, the Tribunal does not consider that a period of suspension of the respondent's practising certificate is warranted.
  
13. Nonetheless, the Tribunal does consider that the respondent's conduct was a very serious contravention of her obligations as a legal practitioner and that conduct must have adversely impacted upon the three practitioners against whom she made the unsubstantiated complaints. Although the respondent was quite entitled to defend the complaint made against her, the Tribunal notes, again, that the respondent failed to call any evidence in support of that defence. Further, the submissions made by the respondent in respect of penalty tended to demonstrate that the respondent does not accept the essential wrongness of what she did. For instance, she submits "She now accepts that she may

have had some misunderstanding of the implications<sup>3</sup> contained in her letters and that the Tribunal has found that they amounted to an allegation of fraud<sup>4</sup>." Again, "The letters were a genuine error in drafting."<sup>5</sup> and "The Tribunal has found that the allegations made by the Respondent against the other solicitors were made without the authority of the Uniting Church. The Respondent has had great difficulty in accepting this finding. She now submits on the question of penalty that she formed the perception that she had authority and had at least some basis for doing so<sup>6</sup>."

14. It seems to the Tribunal that the circumstances of the respondent's intractable perception of her conduct and her apparent inability to accept its serious nature requires that the Tribunal should impose a substantial fine upon her.
15. The Tribunal does consider that the respondent has demonstrated a fundamental misconception of her obligations in relation to making allegations of dishonesty, whether tantamount to fraud or not, and the Tribunal considers both the public and the profession would benefit by the respondent being required to study an ethics course with an emphasis on a higher pass mark than one would set for an ab initio student.
16. Finally, the Tribunal considers that the respondent should publicly apologise to the practitioners against whom she made the unfounded allegations.
17. The orders made by the Tribunal are:

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<sup>3</sup> emphasis Tribunal

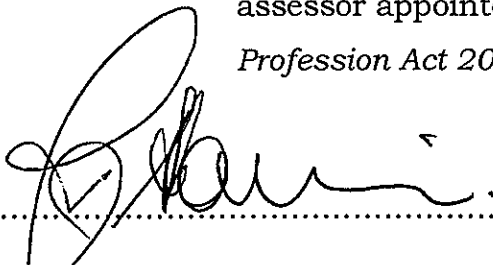
<sup>4</sup> Respondent Submissions 3 (a)

<sup>5</sup> Respondent Submissions 3 (b)

<sup>6</sup> Respondent Submissions 3 (c)

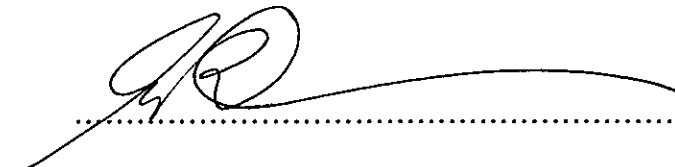
- 18.1 The respondent is to complete the two courses offered by the New South Wales College of Law namely "Professional Responsibility" and "Legal Ethics Bridging Course" to a pass mark of 75% and those courses are to be satisfactorily completed within four months of the date of this order.
- 18.2 If the respondent fails to comply with the requirements of 18.1 above then her practising certificate shall be ipso facto cancelled at the expiration of four months of the date of this order and she shall not be permitted to reapply for a practising certificate until the requirements of 18.1 are complied with.
- 18.3 The respondent is fined 150 penalty units, such sum to be paid within 28 days of the date of this order.
- 18.4 The respondent is to offer a sufficient apology to the solicitors against whom she made the allegations of impropriety in a form approved by the Tribunal. The complainant and the respondent are given liberty to provide a written submission to the Tribunal of a form of words that will comprise the apology within 28 days of the date of this order.
- 18.5 The respondent is ordered to pay, within four months of the date of this order, the complainant's costs on a standard basis pursuant to the provisions of the *Supreme Court Rules* either agreed or fixed by a costs

assessor appointed under section 366 of the *Legal Profession Act 2006* (NT).



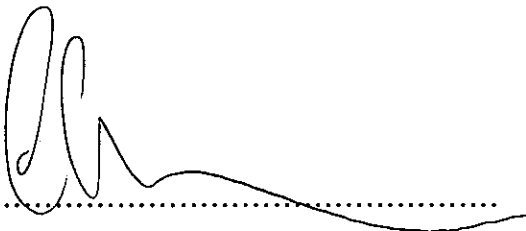
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IAN MORRIS



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EVE ROBINSON



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JOHN STEWART