

**THE LEGAL PRACTITIONERS'
DISCIPLINARY TRIBUNAL**

**REPORT FOR THE PERIOD
1 JULY 2003 - 30 JUNE 2004**

**5TH FLOOR
KINGS BUILDING
533 HAY STREET
PERTH WA 6000**

LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

This is the twelfth Report of the Legal Practitioners' Disciplinary Tribunal. It is submitted pursuant to S.31G(1)(b) of the *Legal Practitioners' Act 1893* and S.174 of the *Legal Practice Act 2003* which came into effect on 1 January 2004.

The Disciplinary Tribunal was established under the amendments to the Legal Practitioners Act 1893 which came into existence on 1 February 1993. Part IV of the Legal Practitioners Act contains the professional conduct and discipline provisions.

The function of the Disciplinary Tribunal is to hear and determine formal References made to it by the Legal Practitioners Complaints Committee or pursuant to Section 28C(2)(b) of the Legal Practitioners Act 1893 and Section 181(2) of the new Act. The Hon. Mr B W Rowland, QC commenced as Chairman on 1 October 1998. Upon the Chairman's retirement on 31 December 2003 the Hon. H Wallwork QC commenced as Chairman on 1 January 2004. Mr Wallwork is a former Supreme Court Judge.

A feature of the legislation is that non-lawyer Representatives of the Community have been sitting as members of the Tribunal since its inception. The former Barristers' Board had urged this development for over 11 years in the interests of greater public accountability and credibility of the disciplinary system. The Community Representatives available to sit on the Tribunal during the year under review were Mr J K Duncan, Mrs V Rivalland, Ms B Holland, Mr I Flack and Dr K Spillman. In October 2002 Mrs Rivalland was re-appointed for a term expiring on 31 December 2003 or on the commencement of the proposed State Administrative Tribunal (SAT) whichever occurs first. Pursuant to Schedule 2, Part C, Clause 4 of the Legal Practitioners Act 1893, Mr Duncan confirmed his willingness to continue on the Tribunal until 31 December 2003, or on the commencement of SAT whichever occurs first, his 6 year term having expired in November 2002. On 1 January 2004 Ms Holland, Mr Flack and Dr Spillman were appointed for a 12 month term expiring on 31 December 2004 or on the commencement of SAT, whichever occurs first.

During the course of this reporting year, the present Government announced significant changes which it proposed in relation to administrative appeals. It also foreshadowed amendments to the Legal Practitioners Act by the introduction of a new Legal Practice Bill. Dealing with the latter, it is pleasing to note that at long last the former Chairman's

continuing request for changes to the constitution and processes of the Tribunal have been recognised. They include making provision for the appointment of senior solicitors to sit on the Tribunal; the right of the community representative to a deliberative vote at the hearing of complaints; and the extension of the Chairman's power to sit alone to hear interlocutory or solely procedural matters. As well, provision has been made to make those appointed Senior Counsel eligible to sit as members. This will assist in easing the Tribunal's workload which previously had fallen on Queens Counsel and elected members of the Legal Practice Board.

The fundamental change proposed by the State Administrative Tribunal legislation is not a change which was supported by the former Chairman who still maintains the views he expressed when making a submission to those who proposed the change. However, he of course accepts that it is Government policy to bring the Tribunal into the SAT legislation.

In the latter part of 2002, it was announced that the proposed SAT was to be operative at the latest by 1 January 2004 and all renewed appointments of lay members as well as that of the Chairman were made for a period expiring 31 December 2003 or until the commencement of SAT, whichever occurs first. The former Chairman agreed to his re-appointment on that basis because he believed that it was important that this Tribunal should be taken over as a fully functioning body. Unfortunately as at December 2003 a commencement time for SAT was still not known and Mr Rowland was not prepared to continue after that date. However, Mr Wallwork was prepared to accept appointment until the change over to SAT.

There were two part heard matters which were commenced in 2003 and Mr Rowland continued to deal with these matters until they were completed in 2004. This was pursuant to Schedule 2 Part C 4(b) of the *Legal Practitioners Act 1893*. The new *Legal Practice Act 2003* continued this practice.

It is still a matter of concern that the great majority of practitioners who have been found guilty of either unprofessional conduct or neglect or delay or illegal conduct during this reporting period were sole practitioners. In some cases, it is unfortunate that the practitioner concerned did not seek advice from some senior member of the profession

which the Tribunal believes would have avoided some of the problems which that practitioner subsequently faced.

Some of the most serious breaches which came before the Tribunal involved the use of trust account monies for the practitioner's own purposes which in some cases amounted to misappropriation. Some of the breaches arose because the practitioners did not have a proper understanding of trust accounts and would have been greatly assisted by advice.

The Tribunal submitted 5 Reports to the Full Court of the Supreme Court recommending that each of these practitioners be struck off the Roll of Practitioners.

It is noted that the workload on Tribunal members has increased over the last few years. This does not necessarily indicate that more practitioners are offending. Rather it indicates that the hearings are becoming more complex and developing more into full scale trials with much of the interlocutory process that goes with a normal Court hearing. To a great extent this was difficult to avoid if we were to give natural justice to those who appear before the Tribunal.

References

During the year under review 57 new References were made to the Tribunal by the Complaints Committee. These 57 References concerned only 22 practitioners, as in a number of cases there were multiple References against the one practitioner. One Reference was withdrawn during the year under review before the commencement of a hearing.

During the current reporting year, References lodged in earlier years as well as some lodged in this reporting year have been dealt with. Urgent matters are given priority and dealt with as expeditiously as possible. In some serious cases where it appears that there may be procedural delays, the Complaints Committee has sought and obtained suspension orders from the Supreme Court pending the finalisation of complaints by the Tribunal. By this procedure the public obtains interim protection.

The formal References to the Tribunal are usually from the Legal Practitioners Complaints Committee. However, there is provision for a complainant to make his or her own Reference under Section 28C(2)(b) of the Legal Practitioners Act 1893 and S181(2) of the new Act if that complainant is aggrieved by the Complaints Committee's Decision not to institute formal proceedings. There have been no such complainant References to June 2004.

Hearings

Hearings were conducted and concluded by the Tribunal on References initiated by the Law Complaints Officer against fourteen practitioners during the year under review. A summary of these hearings and the outcome of each is attached.

It is to be noted in the attached summary that publication was ordered in all matters but one matter where allegations were proven.

Hearings were conducted also in part, against seven practitioners during the year under review. Outcomes of some of these hearings are yet to be determined, and are outside the ambit of this Report.

The Tribunal conducted hearings over a total of 21 days throughout the year. Additional time is always spent in meetings on Decisions when a Decision is reserved, and preparing and finalising Reasons for Decision and Reports of Decisions.

Hearings that were heard or completed after 30 June 2004 and up to 31 December 2004 will be the subject of a further report.

In general terms, it is my view based on the small number of serious allegations that come before the Tribunal that the profession generally remains in good standing within the Community.

Information Statement

Pursuant to Part V of the Freedom of Information Act 1992, the Tribunal is required to publish an information statement. The Attorney General has approved, in accordance with Section 97(1) of the said Act, publication of the statement by incorporation in an Annual Report. Accordingly, the information statement of the Tribunal is at the end of this Report. It has been prepared in accordance with the requirements of Section 94 of the said Act.

Accounts

The Disciplinary Tribunal does not administer any funds. Hence no accounts are provided with this Report.

Acknowledgments

The Tribunal depends for its membership and effective functioning on the voluntary services of all Queen's Counsel, Senior Counsel and the elected members of the Legal Practice Board (except those who are members of the Legal Practitioners Complaints Committee). The extent and value of these services is usually unnoticed. The willing cooperation and constructive contribution of the representatives of the Community has been universally respected and welcomed. The value of this combined contribution is to the ultimate benefit of the Community, the standing of the law as an institution, and the legal profession.

The Disciplinary Tribunal has again been ably assisted during this year by the work of the administrative staff. I should not close without noting with gratitude and appreciation the great support obtained from our Registrar Ms M-A Paton, BA (Hons), DipEd, MA, (UWA) and Clerk of Court, Mrs T Brodie.



H Wallwork QC
Chairman
December 2004

HEARINGS CONCLUDED 1/7/03 - 30/6/04

File No.	Ref No.	Practitioner	Nature of Hearing	Allegation	Hearing Date/s	Finding
13/00	R13/00	Mr CR McKerlie	S28C(1)	Unprofessional Conduct	22.8.02	13/00 – Dismissed.
3/02	R3/02			Unprofessional Conduct	27.3.03	3/02 – Proved.
4/02	R4/02			Neglect	28.3.03	4/02 – Proved in part.
5/02	R5/02			Illegal/Unprofessional Conduct	18.6.03	5/02 – Proved.
6/02	R6/02			Illegal/Unprofessional Conduct	15.8.03	6/02 – Proved.
7/02	R7/02			Unprofessional Conduct		7/02 – Proved.
8/02	R8/02			Neglect		8/02 – Dismissed.
9/02	R9/02			Unprofessional Conduct		9/02 – Proved.
10/02	R10/02			Illegal/Unprofessional Conduct		10/02 – Proved.
11/02	R11/02			Illegal/Unprofessional Conduct		11/02 – Proved.
12/02	R12/02			Illegal/Unprofessional Conduct		12/02 – Proved.
13/02	R13/02			Illegal/Unprofessional Conduct		13/02 – Proved.
14/02	R14/02			Illegal/Unprofessional Conduct		14/02 – Proved.
15/02	R15/02			Illegal/Unprofessional Conduct		15/02 – Proved.
16/02	R16/02			Illegal/Unprofessional Conduct		16/02 – Proved.
17/02	R17/02			Illegal/Unprofessional Conduct		17/02 – Proved.
						Report to the Full Court.
						Suspension pending outcome of Report.
						\$38,216.50 costs.
						Publication.
6/01	R6/01	Mr EN Stamatiou	S28C(1)	Neglect/Undue Delay	27.02.03	Reprimanded.
9/01	R9A/01			Neglect/Undue Delay	22.08.03	\$22,500 costs.
	R9B/01			Unprofessional Conduct		Publication.
14/01	R14A/01			Unprofessional Conduct		

File No.	Ref No.	Practitioner	Nature of Hearing	Allegation	Hearing Date/s	Finding
11/03	R11/03	Mr VG De Alwis	S28C(1)	Illegal/Unprofessional Conduct	12.06.03 16.06.03 29.08.03	Proved. Report to Full Court. Suspension pending outcome of Report. \$13,063 costs. Publication.
41/02 2/03	R41A/02 R41B/02 R2/03	Mr BG Grubb	S28C(1)	Unprofessional Conduct Unprofessional Conduct Unprofessional Conduct	14.07.03 15.07.03 16.07.03 09.02.04	Proved. Suspended from practice for 1 year from 9.2.04. For a period of 1 year after expiration of suspension not to practice on his own account. \$25,800 costs. Publication.
8/03	R8B/03		S28C(1)	Unprofessional Conduct	15.7.03 21.7.03 18.11.03	Dismissed.
6/03	R6/03	Mr M Seaman	S28C(1)	Unprofessional Conduct	03.09.03	Reprimanded. \$1,500 costs to be paid within 21 days. \$1,000 fine. Publication.
22/02	R22/02	Mr AR Fraser	S28C(1)	Illegal Conduct	17.10.03	Proved. Report to the Full Court. Suspension pending outcome of Report. Publication.

File No.	Ref No.	Practitioner	Nature of Hearing	Allegation	Hearing Date/s	Finding
13/03	R13/03		S28C(1)	Unprofessional Conduct	27.10.03 11.12.03	Dismissed.
3/03	R3/03	Mr BW Duckham	S28C(1)	Unprofessional Conduct	13.11.03 19.02.04	Reprimanded. \$1,500 fine. \$8,568.15 costs. Payment of both amounts within 3 months. Publication after 21 days.
40/02	R40/02	Ms PC Homer	S28C(1)	Neglect	03.12.03	Proved. Reprimanded. Upon application for a practice certificate, such certificate, if be issued must be subject to the following conditions namely, that for the first two years of the practitioner practising law, she do so in the office of a lawyer who has a practice certificate without restriction pursuant to the Legal Practitioners Act 1893 (WA) S16A(1)(b). \$7,880 costs. Publication.
17/03	R17/03		S28C(2)(b) (In person)	Neglect/Unprofessional Conduct	19.12.03	Dismissed.

File No.	Ref No.	Practitioner	Nature of Hearing	Allegation	Hearing Date/s	Finding
21/03	R21/03	Mr A Palumbo	S28C(1)	Illegal Conduct	19.12.03	Proved. Report to the Full Court. Suspension pending outcome of Report. \$1,000 Costs. Publication.
4/03 7/03	R4/03 R7/03		S28C(1)	Unprofessional Conduct Neglect	10.3.04	Reprimanded. \$500 costs. No publication.
35/02	R35/02	Mr JR Birman	S28C(1)	Unprofessional Conduct	21.4.04	Plea of guilty. Reprimanded. \$1,000 fine. \$500 costs. Publication.

FREEDOM OF INFORMATION ACT 1992 (FOI ACT)

Information Statement

Legal Practitioners Disciplinary Tribunal

1. This information statement is prepared and published pursuant to the requirements of Part 5 of the FOI Act and relates to the Legal Practitioners Disciplinary Tribunal (Disciplinary Tribunal). The structure of the Disciplinary Tribunal is set out in the Legal Practitioners Act 1893 Section 28E.
2. The function of the Disciplinary Tribunal is to hear and determine all matters referred to the Tribunal for hearing and to make and enforce such orders in respect of those matters as seem appropriate to the Tribunal. The functions are set out in Section 28D.
3. In the performance of its functions Representatives of the Community are members of the Disciplinary Tribunal and are appointed by the Attorney General after consultation with the Minister responsible for Consumer Affairs. Members of the public who have made a complaint to the Complaints Committee and who are aggrieved by the determination of the Complaints Committee, may initiate their own proceedings against a legal practitioner before the Disciplinary Tribunal pursuant to Section 28C(2)(b). Under Section 28C(3) if the Complaints Committee in its reasons for the determination finds the complaint is:
 - (a) to be trivial unreasonable vexatious or frivolous;
 - (b) to relate to conduct or events too remote in time to justify investigation; or
 - (c) to be a matter in which the complainant does not have a sufficient interest to justify that complaint,

no Reference initiating proceedings before the Disciplinary Tribunal shall be made and if made shall not be given effect, unless with the consent of the Attorney General.

4. The kinds of documents that are usually held by the Disciplinary Tribunal comprise its Reference file which contains correspondence, memoranda and the pleadings relating to the Reference, Decisions and the Report for Publication if publication is ordered, together with any newspaper reports where printed of such matters. The Disciplinary Tribunal has a set of notes for complainants wishing to make their own Reference under Section 28C(2)(b) explaining the procedure to be followed there.

There is no written law other than the FOI Act whereunder any of these documents may be inspected.

There is no law of practice whereunder any of these documents may be purchased. Copies of the above-mentioned notes may be inspected or obtained from the Registrar of the Tribunal free of charge. Copies of the said set of notes are available at the office of the Disciplinary Tribunal at 5th Floor, 533 Hay Street, Perth to any person who calls at that office or who otherwise

contacts the Tribunal with an enquiry concerning such References. Mary-Anne Catherine Paton of 5th Floor, 533 Hay Street, Perth, is the Officer to whom initial enquiries as to access to documents may be made and who has been directed to make Decisions under the FOI Act.

5. Access applications under the FOI Act may be made to the Disciplinary Tribunal in person at the address or by letter to 5th Floor, 533 Hay Street, Perth or by telephone 9325 1311 or by facsimile message 9325 2743.
6. The Disciplinary Tribunal has no procedures for amending under Part 3 of the FOI Act personal information in its document. Any application for amendment would be dealt with in accordance with Part 3.
7. The Disciplinary Tribunal has no "internal manual" as defined in Section 95 of the FOI Act. None of its functions affect or are likely to affect rights privileges or other benefits or obligations penalties or other detriment's to which members of the public are or may become entitled, eligible, liable or subject.