

# SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

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## LEGAL PROFESSION CONDUCT COMMISSIONER v HARRAP

[2024] SASCF 2

**Judgment of The Full Court** (*ex tempore*)

(The Honourable Acting Chief Justice Livesey, the Honourable Justice Bleby and the Honourable Justice S David)

**26 July 2024**

### PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - DISCIPLINARY PROCEEDINGS - GENERALLY

The Legal Profession Conduct Commissioner sought an order that the name of the respondent (the practitioner) be struck from the roll of legal practitioners maintained by this Court.

The practitioner consented to the application and asked to be excused from attending the hearing.

Following an ICAC investigation, the practitioner was charged with one count of conspiracy to improperly exercise power held in public office whilst a sitting magistrate, and two counts of deception concerning two traffic infringements. The conspiracy charge related to a secret arrangement made with the solicitor for a party to hear the party's case and impose an agreed sanction. The deception charges related to the protection of the practitioner's driver's licence by putting forward other people as the drivers of the practitioner's car on the days he was detected speeding.

In December 2020, the practitioner was sentenced having pleaded guilty. The sentence was appealed, and the practitioner was re-sentenced by the Court of Appeal to a term of imprisonment of 21 months and a non-parole period was fixed at 12 months, both backdated to when the practitioner was first taken into custody. The practitioner has now served his sentence.

Held (the Court) striking the practitioner's name from the roll of practitioners:

1. The primary function of disciplinary powers such as strike off are to protect the public and the administration of justice rather than merely to punish an individual practitioner.

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**Applicant: LEGAL PROFESSION CONDUCT COMMISSIONER**  
**Solicitor: LEGAL PROFESSION CONDUCT COMMISSIONER**

**Counsel: MR A KEANE -**

**Respondent: ROBERT BRUCE HARRAP**

**Hearing Date/s: 26/07/2024**

**File No/s: CIV-24-006541**

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2. There are cases where the misconduct by a practitioner is so serious and its capacity to undermine confidence in the legal profession so clear, that no order short of striking off is appropriate notwithstanding what is otherwise a creditable career of service to the community.
3. In connection with each charge, the offending involved dishonest conduct by a sitting magistrate. When the offending is viewed as a whole, as it must be, the absence of personal integrity and the disregard for the law are striking. No sanction short of strike-off would be appropriate.
4. The order for strike-off must be made in the exercise of this Court's supervisory jurisdiction over the legal profession, to reassure the community about the standards of conduct and propriety the Court expects from legal practitioners, especially serving judicial officers.

*Legal Practitioners Act 1981 (SA) s 89, referred to.*

*Einfeld v The Queen (2010) 200 A Crim R 1; Law Society of South Australia v Murphy [1999] SASC 83; Legal Practitioners Conduct Board v Clisby [2012] SASCF 43; Legal Profession Conduct Commissioner v Kaminski [2021] SASCF 39; Legal Profession Conduct Commissioner v Mancini [2022] SASCF 1; Legal Profession Conduct Commissioner v O'Bryan [2023] SASCF 2; Legal Profession Conduct Commission v Radin [2024] SASCF 1; R v Harrap (2021) 138 SASR 569, considered.*

**LEGAL PROFESSION CONDUCT COMMISSIONER v HARRAP  
[2024] SASCF 2**

**Full Court – Civil: Livesey A/CJ, Bleby and David JJA**

**THE COURT (*ex tempore*):**

**Introduction**

1 By an originating application dated 16 July 2024 the Legal Profession  
Conduct Commissioner (the **Commissioner**) seeks an order that the name of the  
respondent, Mr Robert Bruce Harrap (the **practitioner**), be struck from the roll of  
legal practitioners maintained by this Court.

2 The application is made pursuant to s 89(1)(b) of the *Legal Practitioners Act*  
*1981* (SA) and pursuant to the Court’s inherent jurisdiction.

3 The application is made with the consent of the practitioner. In  
correspondence to the Commissioner dated 13 June 2024, the practitioner  
requested that his name be removed, “effective immediately”. He explained:

I do not wish to make any further submission to the Commissioner as I take full  
responsibility for my past actions and consider this to be the most appropriate course of  
action.

It is my submission that this request will result in the finality of the investigation currently  
being conducted.

4 Though the practitioner consents to this application it is nonetheless  
necessary for this Court to independently review the application and the material  
produced in support of it and form its own view. The practitioner asked to be  
excused from attending the hearing today, due to what he described as his mental  
health issues. The practitioner was excused from attending today.

5 For the following reasons, the practitioner’s name will be struck from the  
roll.

**Background to the application**

6 After commencing legal practice as a solicitor in 1982, the practitioner  
practiced on his own account as a criminal lawyer until he was appointed a  
magistrate in 2007. He has not held a practising certificate since.

7 Within a few years of his appointment, the practitioner was given supervisory  
responsibilities as the Regional Manager of the Elizabeth Magistrates Court. For  
most of the remainder of his service as a magistrate, the practitioner held  
supervisory positions in charge of the Criminal Division in the Magistrates Court  
at Adelaide, Berri and finally, Christies Beach.

8 On 27 July 2020, the practitioner pleaded guilty to one count of conspiracy to improperly exercise power held in public office and to two counts of deception.

9 The practitioner was sentenced on all matters in the District Court on 4 December 2020. Subsequently, the Director of Public Prosecutions (SA) applied for permission to appeal on the ground that the sentences were manifestly inadequate. The practitioner applied for permission to appeal on the ground that the sentences were manifestly excessive.

10 These respective applications for permission were resolved by the Court of Appeal by a judgment delivered on 14 April 2021. Broadly:<sup>1</sup>

1. The practitioner's application for permission to appeal against the sentences imposed for the deception offending was granted and the appeal allowed on the ground that they were manifestly excessive. The Director's application for permission to appeal those sentences was dismissed.
2. The Director's application for permission to appeal the conspiracy sentence was granted and the appeal was allowed on the ground that it was manifestly inadequate.
3. Lovell JA (with whom Livesey JA agreed) imposed a final sentence of 21 months' imprisonment and fixed a non-parole period of 12 months, both backdated to when the practitioner was first taken into custody.

### **The circumstances of the offending**

11 The offending is described in some detail in the reasons of the Chief Justice in the Court of Appeal.<sup>2</sup>

12 For present purposes, an overview of the offending is sufficient. The conspiracy represented an arrangement made between the practitioner and a former domestic partner, a solicitor Ms Moyse, to list a matter before the practitioner. The matter concerned an administrative appeal made by a client of Ms Moyse against the cancellation and disqualification of the client's provisional driver's licence. In a telephone conversation intercepted by the office of the Independent Commissioner Against Corruption (ICAC) the practitioner and Ms Moyse discussed the procedure for making the application and agreed that the practitioner would arrange to have the matter listed before him. It was agreed that he would grant the application after giving a stern lecture. The practitioner added that, if for any reason he could not hear the application, he would influence his colleague, another magistrate, to grant the application.

13 The deception offending concerned traffic infringement notices forwarded to the practitioner for two speeding offences committed by him with the use of a car from the Courts Administration Authority (CAA) fleet of government vehicles.

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<sup>1</sup> *R v Harrap* (2021) 138 SASR 569.

<sup>2</sup> *R v Harrap* (2021) 138 SASR 569, 575-581.

The use of the car was allocated as part of the practitioner's remuneration as a magistrate. The practitioner was fearful that the accruing of demerit points associated with these infringements would result in the loss of his driver's licence. Accordingly, he persuaded his domestic partner at the time, a Sergeant of Police, to allow him to nominate her as the driver at the time of the first offence. He then persuaded his magistrate's clerk to allow him to nominate her as the driver at the time of the second offence. He obtained their licence details and then sent email correspondence nominating them as the drivers of his vehicle on those occasions.

14 As was anticipated, this had the effect of deceiving a business administration officer of the CAA who swore statutory declarations which were false.

15 In connection with the ICAC investigation, a statement was obtained from the practitioner's magistrate's clerk and text messaging between the practitioner and his domestic partner was obtained.

16 The Court of Appeal viewed the conspiracy charge as more serious than the deception charges, though all were serious given that they were committed by a sitting magistrate. In relation to the offending, the Chief Justice said:<sup>3</sup>

... The object of the conspiracy was to have Mr Harrap control the listing ... so that he could hear it, ostensibly in accordance with his oath, without favour or partiality, when in fact the outcome had been scripted in a private conversation between himself and Ms Moyse ... It is difficult to conceive of an abuse of judicial office more serious in the nature of its commission. Only the minor character of [the administrative appeal] and the absence of any direct material benefit flowing to Mr Harrap, operate to deny the offence being dealt with as amongst the most serious conspiracies which might be committed by a judicial officer ...

The deception offences are undoubtedly grave. Mr Harrap hoped to gain a significant benefit by saving on taxi fares and to avoid the great personal inconvenience and restriction on his freedom of movement that the loss of his licence would cause. Moreover, his offending entailed deceiving [the business development officer] into unwittingly swearing false declarations for the purpose of obstructing the proper application of the statutory demerit point scheme of the *Motor Vehicles Act 1959* (SA) to Mr Harrap's offending. Again, condign punishment was necessary ...

17 In the course of his reasons, Lovell JA explained why the sentencing judge erred in characterising the deception charges more seriously than the conspiracy charge:<sup>4</sup>

There is an obvious distinction between the offending. The deception charges could be committed by any member of the community. While the offending is made more serious by Mr Harrap's position as a Magistrate, this offending did not involve the use, or abuse, of his judicial power. I accept, as observed by Kourakis CJ, that the offence did involve the influence and trust that Mr Harrap enjoyed because of his judicial office. However, while he, reprehensibly, pressured his clerk into assisting him to commit the offence, the pressure

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<sup>3</sup> *R v Harrap* (2021) 138 SASR 569, [15]-[16].

<sup>4</sup> *R v Harrap* (2021) 138 SASR 569, [115] (Lovell JA).

came from his power over her employment rather than his use or abuse of his judicial power. The same cannot be said of the conspiracy charge.

18 Later, Lovell JA explained his view of the conspiracy offending:<sup>5</sup>

The gravamen of the offending of Mr Harrap and Ms Moyle is that they entered into a secret arrangement to fix or rig the outcome of a judicial proceeding. The fact that the outcome can be seen, objectively, to have been one that was likely to have occurred in any event appears to have distracted counsel and the Sentencing Judge from correctly characterising the offending. To decide the case by preferring his personal relationship with Ms Moyle rather than obeying his judicial oath undermined the rule of law. The agreement between Mr Harrap and Ms Moyle struck at the very heart of the justice system and their conduct was a betrayal of their respective obligations. Undoubtedly their conduct, when brought to the public's attention, seriously undermined the community's trust in the justice system.

19 In brief concurring reasons, Livesey JA explained his approach:<sup>6</sup>

In the circumstances described, the conspiracy offending was more serious than the deception offending because secret arrangements between the court and one of the parties regarding the outcome of litigation necessarily undermines public confidence in the judiciary and the administration of justice. In the case of the deception offending, that they were committed by a Magistrate makes them more serious than if committed by someone who was not expert in the law, sworn to uphold it. There is, nonetheless, a need to avoid "accentuated sensitivity" concerning this element.<sup>7</sup> These considerations were not reflected in the sentences imposed on Mr Harrap. The conspiracy sentence was seriously inadequate and the deception sentences were excessive. As for the Freeman deception, this was a second deception offence which depended upon an imbalance of power between a Magistrate and his clerk. Accordingly, it was more serious than the Foulkes deception. Nonetheless, as both deception offences represented a course of conduct designed to protect Mr Harrap's driver's licence, with the offences committed a few days apart, there was obvious scope for concurrency.

20 The practitioner has now served his sentence of imprisonment.

### **The determination of the Commissioner's application**

21 In this case, it is the nature of the offending which was punished, as explained by the Court of Appeal, that furnishes the basis for this Court to determine whether it is necessary to make an order striking the practitioner's name from the roll.

22 It may be accepted that, but for this offending, the practitioner was otherwise of good character and made significant contributions to the community. In the course of his sentencing hearing there was a large number of character references, including two from retired magistrates. The practitioner was described as an effective court manager and he enjoyed good working relationships with other

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<sup>5</sup> *R v Harrap* (2021) 138 SASR 569, [131] (Lovell JA).

<sup>6</sup> *R v Harrap* (2021) 138 SASR 569, [145] (Livesey JA).

<sup>7</sup> *Einfeld v The Queen* (2010) 200 A Crim R 1, [80]-[83] (Basten JA): that is, just as it is necessary to avoid the perception that "members of the legal profession ... protect their own", it is necessary to avoid dealing "more harshly than ... appropriate with those from within their own ranks who transgress".

magistrates, court staff and lawyers. Many attested to the high regard and confidence in which the practitioner was held.

23 There are cases where the misconduct by a practitioner is so serious and its capacity to undermine confidence in the legal profession so clear, that no order short of striking-off is appropriate notwithstanding what is otherwise a creditable career of service to the community.<sup>8</sup>

24 Disciplinary powers such as strike-off are exercised so as to protect the public and the administration of justice, rather than merely to punish an individual practitioner. As was recently explained:<sup>9</sup>

It is necessary to protect the public from legal practitioners who lack personal integrity and who are indifferent to rudimentary professional standards.<sup>10</sup> It follows that because the Court is acting in the public interest and not with a view to punishment, the personal circumstances of and any extenuating circumstances relating to a practitioner are of less importance than if punishment was the only objective.<sup>11</sup>

25 An important purpose of making orders in the exercise of this Court's disciplinary jurisdiction is to publicly deter others from engaging in similar misconduct. Associated purposes include the need to maintain professional standards and to preserve public confidence in the legal profession.

26 It is evident from the reasons of the Court of Appeal that the criminal wrongdoing of the practitioner represented very stark and serious failures to adhere to the standards the community reasonably expects of legal practitioners, particularly judicial officers. In connection with each charge, the offending involved dishonest conduct by a sitting magistrate. When the offending is viewed as a whole, as it must be, the absence of personal integrity and the disregard for the law are striking. No sanction short of strike-off would be appropriate.

27 Whilst the practitioner no longer holds a practising certificate, for so long as his name remains on the roll he is effectively being held out by this Court as fit to practise the profession of the law.<sup>12</sup>

28 It follows that the order for strike-off must be made in the exercise of this Court's supervisory jurisdiction over the legal profession, to reassure the community about the standards of conduct and propriety the Court expects from legal practitioners, especially serving judicial officers.

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<sup>8</sup> *Legal Profession Conduct Commissioner v Mancini* [2022] SASCFC 1; *Legal Profession Conduct Commissioner v O'Bryan* [2023] SASCFC 2.

<sup>9</sup> *Legal Profession Conduct Commission v Radin* [2024] SASCFC 1, [109] (Livesey P, Bleby and David JJA).

<sup>10</sup> *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43, [8].

<sup>11</sup> *Law Society of South Australia v Murphy* [1999] SASC 83, [30] (Doyle CJ); *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43, [7].

<sup>12</sup> *Legal Profession Conduct Commissioner v Kaminski* [2021] SASCFC 39, [12] (Livesey P, Bleby and David JJA); *Legal Profession Conduct Commissioner v Radin* [2024] SASCFC 1, [115] (Livesey P, Bleby and David JJA).

## **Conclusion**

29           The practitioner's name will be struck from the roll of legal practitioners held by this Court.