

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

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LEGAL PROFESSION CONDUCT COMMISSIONER v FREER

[2024] SASCF 5

Judgment of The Full Court (*ex tempore*)

(The Honourable President Livesey, the Honourable Justice Bleby and the Honourable Justice B Doyle)

17 December 2024

**PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE
- PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL
CONDUCT - CRIMINAL OFFENCES**

**PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE
- PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL
CONDUCT - FALSIFICATION OF DOCUMENTS AND TRANSACTIONS**

The Legal Profession Conduct Commissioner (the **Commissioner**) seeks orders that the name of Mark Adam Freer (the **practitioner**) be struck off the roll of legal practitioners maintained under the *Legal Practitioners Act 1981* (SA) (the Act), and that he pay costs.

The practitioner was admitted to practice in South Australia in February 2011.

In June 2021, the practitioner pleaded guilty to a charge of fabricating evidence, contrary to s 243 of the *Criminal Law Consolidation Act 1935* (SA) (the CLCA). In September 2022, the practitioner was found guilty by a jury of a charge of aggravated theft, contrary to s 134(1) of the CLCA. Both offences were committed in circumstances directly related to the practitioner's practice as a legal practitioner.

Earlier, in March 2016, the practitioner misappropriated a client's money for his own benefit. In July 2017 the practitioner made a false statutory declaration without speaking to or meeting with the declarant which enabled a fraudulent loan transaction. The Commissioner determined that both incidents comprised evidence of professional misconduct which could not adequately be dealt with under s 77J of the Act.

The practitioner consented to strike-off.

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

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

Counsel: MR A KEANE -

Respondent: MARK ADAM FREER No Attendance

Hearing Date/s: 17/12/2024

File No/s: CIV-24-010550

A

1. Where a legal practitioner has been found guilty of serious offending involving dishonesty and the misappropriation of trust monies, that will usually demonstrate a fundamental defect in the practitioner's character, rendering the practitioner unfit to practise.
2. The practitioner's professional misconduct, when viewed as whole, represents a serious departure from the standards reasonably expected from members of the legal profession over a lengthy period. The Court cannot be confident that the practitioner is capable of fulfilling the essential obligations associated with the practice of law.
3. The Court must, where possible, protect the public from legal practitioners who act without honesty and integrity. It is essential that the community and the Court be able to rely upon the integrity and trustworthiness of legal practitioners.

Criminal Law Consolidation Act 1935 (SA) ss 134, 243; *Legal Practitioners Act 1981 (SA)* ss 5, 77J, 88A, 89, referred to.

Barristers Board v Young [2001] QCA 556; *Coe v New South Wales Bar Association* [2000] NSWCA 13; *Freer v The King* [2023] SASCA 69; *In re A Practitioner* [1941] SASR 48; *In re A Practitioner* (1982) 30 SASR 27; *Legal Profession Conduct Commissioner v Moore* [2022] SASCFC 2; *Legal Profession Conduct Commissioner v Radin* [2024] SASCFC 1; *Legal Profession Conduct Commissioner v Thomas* [2017] SASCFC 159; *Pty Ltd v Trustworthy Nominees Pty Ltd* [2021] QSC 95; *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, considered.

**LEGAL PROFESSION CONDUCT COMMISSIONER v FREER
[2024] SASFC 5**

Full Court – Livesey P, Bleby and B Doyle JJ

THE COURT (*ex tempore*):

Introduction

1 By an originating application dated 5 November 2024, supported by an affidavit sworn on 4 November 2024, the Legal Profession Conduct Commissioner (the **Commissioner**) seeks the following orders concerning Mark Adam Freer (the **practitioner**):

1. that the name of the practitioner be struck off the roll of legal practitioners maintained under the *Legal Practitioners Act 1981* (SA) (the **Act**); and
2. that the practitioner pay the Commissioner’s costs to be agreed or taxed.

2 Before this matter was set down at a callover on 29 November 2024, the practitioner indicated that he consented to an order striking his name from the roll and he asked to be excused from further attendance.

3 For the reasons that follow, orders will be made in terms of the Commissioner’s application.

Jurisdiction

4 The Commissioner relies on s 89(1a) of the Act, which is in the following terms:

89—Proceedings before Supreme Court

...

- (1a) If the Commissioner is of the opinion that the name of a legal practitioner should be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act because the practitioner has been found guilty of a serious offence, or for any other reason, the Commissioner may, without laying a charge before the Tribunal, institute disciplinary proceedings in the Supreme Court against the practitioner.

5 The Commissioner also relies, insofar as it may be necessary, on the inherent jurisdiction of this Court which is preserved by s 88A(2) of the Act.

6 As will be seen, the practitioner was the subject of criminal proceedings in the District Court and the Commissioner has invited this Court to adopt the findings made in the District Court concerning the sentence imposed by Judge Slattery on 31 January 2024, relying on s 89(5)(b) of the Act.

Relevant background

7 The practitioner is a “legal practitioner” within the meaning of s 5 of the Act because he is a person who was duly admitted and enrolled as a barrister and solicitor of the Supreme Court of South Australia. The practitioner was admitted in South Australia on 16 February 2011.

8 The practitioner was born on 28 May 1971 and is currently 53 years.

9 The practitioner ceased legal practice during September 2016 and has not since held a practising certificate.

10 On 29 June 2021, the practitioner pleaded guilty to a charge of fabricating evidence, contrary to s 243 of the *Criminal Law Consolidation Act 1935* (SA) (the CLCA). The practitioner admitted creating and filing a false affidavit with the intention of influencing the outcome of judicial proceedings.

11 On 14 September 2022, the practitioner was found guilty by a jury of a charge of aggravated theft, contrary to s 134(1) of the CLCA. The practitioner’s appeal against conviction was dismissed by the Court of Appeal on 15 June 2023.¹

12 The aggravated theft charge concerned the practitioner’s dealings with two bank cheques totalling \$67,500 in 2014. These had been provided to him by his cousin, a client, in the expectation that they would be deposited into the trust account of the practitioner’s employer. The practitioner did not deposit the cheques into this trust account. Rather, he opened a new bank account in the name of a business he controlled. He deposited the cheques into that account and misappropriated the money for his own benefit until the account was overdrawn in January 2016.

13 On 12 February 2024, Judge Slattery made the following sentencing remarks:

The swearing of a false affidavit in the name of another and the opportunistic theft by you as a solicitor of moneys from a client and close family member are extraordinary breaches of trust which constitute a gross departure from the expected conduct of legal practitioners in whom such trust is placed. Such conduct brings the legal profession into disrepute in the eyes of the wider community.

...

... your offending strikes at the heart of public confidence in the legal profession and the administration of justice generally. It should be made clear to other legal practitioners in the community that such offending is inexcusable and is to be regarded as the most serious breaches of the professional obligation to which all legal practitioners are beholden.

14 After the practitioner was released on parole in June 2024, on 23 August 2024, the Commissioner determined that the practitioner’s conduct evidenced

¹ *Freer v The King* [2023] SASCA 69.

professional misconduct and demonstrated that the practitioner was not fit to practise.

15 In addition, on 20 July 2017, the practitioner made a statutory declaration in which he admitted witnessing signatures on a loan agreement and associated documents without ever meeting with or speaking to the declarant. That conduct enabled a fraudulent loan transaction to be completed and a mortgage to be registered on the title of an innocent party. As a consequence of proceedings in the Supreme Court of Queensland, the mortgage and all associated loan and security documents witnessed by the practitioner were declared void and of no effect.²

16 On 26 June 2024, the Commissioner determined that this comprised evidence of professional misconduct which could not be adequately dealt with under s 77J of the Act, and that it called into question the practitioner's fitness to practise.

17 Earlier, in March 2016, the practitioner received trust monies from a client in the sum of \$15,790, on account of anticipated fees and disbursements concerning an application for a prospective marriage or partnership visa. The practitioner did not complete the visa application and misappropriated the client's money for his own benefit.

18 On 15 August 2024, the Commissioner determined that this comprised evidence of professional misconduct which could not be adequately dealt with under s 77J of the Act.

19 As has been seen, the Commissioner relied upon s 89(1a) of the Act because he formed the opinion that the name of the legal practitioner should be struck-off "because the practitioner has been found guilty of a serious offence, or for any other reason", in which case he may institute disciplinary proceedings in this Court without first laying a charge before the Tribunal.

Relevant principles

20 The ultimate question for this Court is whether at the time of this application the practitioner is fit to remain a member of the legal profession.³

21 The law and the community require that legal practitioners exhibit honesty and integrity in connection with their dealings concerning trust accounts, trust monies and the affidavits or declarations which they are empowered to take. It is essential that the community be able to rely upon the honesty and trustworthiness of legal practitioners. That is essential to the professional practice of the law.

22 A legal practitioner's trust account has always been regarded as sacred. Where a client's trust money is deliberately used by a legal practitioner for a

² *Tycho Pty Ltd v Trustworthy Nominees Pty Ltd* [2021] QSC 95.

³ *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 297-298 (Kitto J).

purpose other than the purpose for which the client entrusted it to the legal practitioner, the legal practitioner is regarded as having acted dishonestly.⁴ Where a legal practitioner has been found guilty of serious offending involving dishonesty and the misappropriation of trust monies, that will usually demonstrate a fundamental defect in the practitioner's character, rendering the practitioner unfit to practise.

23 Where a legal practitioner is proved to have dishonestly misused trust monies for the practitioner's own benefit, this Court will usually regard the breach of trust involved as especially serious, entailing a failure to adhere to the high standards expected of legal practitioners.⁵ Similarly, convictions for aggravated theft and perjury associated with the fraudulent misappropriation of trust monies have been regarded as demonstrating a gross breach of trust, requiring an order striking the practitioner's name from the roll.⁶

24 Where a legal practitioner has knowingly sworn a false affidavit, that will usually call into question the practitioner's fitness to practise the profession of the law.⁷ Proof that a practitioner swore a false affidavit and took a false statutory declaration and, in addition, dishonestly misappropriated trust monies, will usually require striking-off.⁸

Determination of the Commissioner's application

25 That the practitioner does not oppose strike-off is relevant to, but not determinative of, the resolution of the Commissioner's application.

26 The practitioner misappropriated trust monies on two occasions, spanning two years between 2014 and 2016. As well, in 2016 the practitioner swore and filed a false affidavit with the intention of influencing the outcome of judicial proceedings and, separately, in 2017 he falsely witnessed a statutory declaration, enabling a fraudulent mortgage and loan transaction.

27 This conduct represents a course of dishonest dealings and professional misconduct over a lengthy period, incompatible with the high standards the law and the community rightly expect from legal practitioners. The practitioner's professional misconduct, when viewed as whole, represents a serious departure from the standards reasonably expected from members of the legal profession.

28 The Court cannot be confident that the practitioner is capable of fulfilling the essential obligations associated with the practice of law.

⁴ *In re A Practitioner* [1941] SASR 48, 51; *In re A Practitioner* (1982) 30 SASR 27, 31 (King CJ).

⁵ *Legal Profession Conduct Commissioner v Moore* [2022] SASCF 2, [44] (Livesey P, Doyle and David JJ); *Legal Profession Conduct Commissioner v Radin* [2024] SASCF 1, [50]-[51] (Livesey P, Bleby and David JJ).

⁶ *Legal Profession Conduct Commissioner v Thomas* [2017] SASCF 159, [35]-[37] (Kourakis CJ, Blue and Stanley JJ).

⁷ *Coe v New South Wales Bar Association* [2000] NSWCA 13, [10] (Mason P).

⁸ *Barristers Board v Young* [2001] QCA 556, [15]-[18] (de Jersey CJ with whom Davies JA agreed).

29 The Court must, where possible, protect the public from legal practitioners
who act without honesty and integrity. It is essential that the community and the
Court be able to rely upon the honesty and trustworthiness of legal practitioners.

30 In all of these circumstances, it is clear that the maintenance of public
confidence in the legal profession requires that an order be made striking the
practitioner's name from the roll maintained by this Court.

Conclusion

31 There will be an order striking the practitioner's name from the roll.

32 The practitioner must pay the Commissioner's costs to be agreed or taxed.