DELIVERED 5 OCTOBER 1990

IN RE A PRACTITIONER (P.A. PANKIEWICZ)

No. 920/90

Date of Hearing: 10 September 1990

FULL COURT

Coram: Jacobs A.C.J., Prior and Mullighan JJ.

REASONS FOR JUDGMENT OF THE FULL COURT

Jacobs A.C.J. (Prior and Mullighan JJ concurring)

Legal Practitioners Act 1981 - application by practitioner for removal of name from Roll - multiple charges of unprofessional conduct admitted by practitioner - no hearing before Tribunal - practitioner suffering serious psychiatric illness - profferred undertaking never to apply for readmission acceptable to Law Society - subsequent medical evidence questions practitioner's capacity to give that undertaking - subsequent application by Law Society for practitioner's name to be removed from Roll - practitioner's instructions and application not withdrawn - in special circumstances order made on joint applications of Law Society and practitioner without profferred undertaking.

Counsel for the Practitioner :	Ms. M.E. Shaw
Solicitors for the Practitioner :	Hume Taylor & Co.
Counsel for the Law Society of South Australia :	Mr. T.R. Anderson Q.C. with Ms. J.A. Whyte

Judgment No. 2505

IN RE A PRACTITIONER (P.A. PANKIEWICZ)

Reasons of the Full Court

Jacobs A.C.J.

Before the Court are two Notices of Motion filed in the same action. The initiating process was a Motion by the practitioner dated 14 August 1990 seeking to have his name removed from the Roll of Practitioners. Shortly before that motion was due to be heard, the Law Society on 29 August 1990 filed its own Notice of Motion seeking the same relief, namely that the name of the practitioner be struck off the Roll. Both applications came on for hearing together, and in the very unusual circumstances of this case the Court, after hearing submissions of counsel, made the order sought on the joint applications of the Society and the practitioner, reserving the publication of its reasons to a later date.

The practitioner's application was supported by a lengthy affidavit sworn on 14 August 1990. It briefly recounted his personal history both before and after his admission as a practitioner on 17 December 1983, with particular reference to the difficulties he had encountered in establishing and managing his practice and the consequent stress which aggravated those difficulties. In paragraph 15, the practitioner said (inter alia):-

> "15. As time went on I began to receive a number of complaints from the Law Society of South Australia. Some of these complaints I was able to resolve but others I did not resolve.
>
> . . .

> As a result of my failure to attend to various outstanding matters the Legal Practitioners Complaints Committee charged me with unprofessional conduct on the 14th of December 1989."

He annexed a complaint of the Legal Practitioners Disciplinary Committee to the Legal Practitioners Disciplinary Tribunal dated 14 December 1989 charging various breaches of the Legal Practitioners Act and Regulations, and other unprofessional conduct relating to his client's affairs. Some of the matters alleged a failure properly to maintain his Trust Account, including over-drawing the account, a failure properly to account to the client, and failure to comply with audit requirements.

It is not entirely clear why that complaint was not duly prosecuted, but the inference is that it was because the practitioner was suffering a severe psychiatric disturbance and was on the verge of a complete 'breakdown'. He refers in his affidavit to symptoms and conduct, some of it quite bizarre, that justify that conclusion, which is supported by subsequent medical reports.

On 1st May 1990, the Complaints Committee made a further 'consolidated' complaint to the Tribunal, repeating the seventeen charges in the first complaint, but adding two further counts of unprofessional conduct in September and November 1989 with respect to matters that had come to its notice since the date of the first complaint.

On 11 May 1990 the Council of the Society pursuant to its statutory powers appointed one of its senior officers as supervisor of the Trust Account of the practitioner, and on

25 June 1990 appointed the same officer to manage the practice.

By reason of the practitioner's ill-health the complaints had still not been heard when he made the application now before the Court, but in his affidavit he admitted most of the charges in the complaints. Three of the charges that are denied are not in themselves very serious and may be susceptible of an innocent explanation, but the matters which have been proved by his own admissions, or at least some of them, are sufficiently serious to have warranted disciplinary proceedings in this Court pursuant to Sec. 89 of the Legal Practitioners Act, had they been the subject of an inquiry before the Tribunal. Such an inquiry however was forestalled by the practitioner's application to this Court, filed contemporaneously with his admissions of unprofessional conduct.

In the recent decision of this Court in Re Williamson, it was held that it is inappropriate for a practitioner guilty of unprofessional conduct to make his own application to have his name removed from the Roll, and that disciplinary proceedings should properly be taken before this Court by the Law Society. In the present case, however, the practitioner in the affidavit filed in support of his own application purported to give an undertaking in the following terms:-

> "32. As a result of the matters contained herein I would ask that my name be removed permanently from the Roll of Practitioners of this Honourable Court. I have no desire to practice Law in the future and I believe that if

> I practiced Law in the future I would more than likely suffer from the same health problems as before. I am willing to give an irrevocable undertaking and give the same in this my affidavit not to apply for readmission to the Roll of Practitioners in this State or any other State of the Commonwealth of Australia."

Having regard to that undertaking, and the fact that the Tribunal has not had an opportunity to embark on an inquiry or make any formal recommendation for disciplinary action, the Society was at first prepared to support the practitioner's application. However, a subsequent medical report has not only thrown doubt on the validity of the undertaking, which in the circumstances the Court would certainly have required, but has also placed counsel for the practitioner in an embarrassing position. On 24th August 1990, Dr. R.D. Black, a consulting phsychiatrist, wrote to the practitioner's solicitors, after receiving a copy of the practitioner's affidavit, as follows:-

> "Mr. Pankiewicz remains currently under my clinical care. I am very concerned about his condition and his Reactive Depression and associated difficulties were described in my letter to you dated the 17th of July, 1990.
>
> I note your concern that certain material in the affidavit may be inappropriate. It is not within my field of expertise to make comment as to whether certain detail contained in affidavit is 'necessary' or 'unnecessary'. I am, though, very concerned about the content of the affidavit, particularly on page 12 of the affidavit and in paragraph 32. I would emphasize that your client is not only depressed, but severely disturbed that way. It is my opinion that the content of the affidavit in paragraph 32 reflects clearly his very depressed frame of mind. I note that in this section of the affidavit Mr. Pankiewicz apparently wishes to give 'an irrevocable undertaking' not to apply for readmission to the Roll of Practitioners, not only this State, but also in any other State of the Commonwealth of Australia. I am sure that this statement very

> certainly reflects the prevailing feelings of hopelessness which are Mr. Pankiewicz's experience. Such feelings of hopelessness, I emphasize, are part and parcel of his depressive illness. When he improves with treatment, and I believe that is likely, he will be able to see his life's difficulties in a much more optimistic and, I believe, realistic way.
>
> I have considered these matters carefully and I wish to give it as my opinion that Mr. Pankiewicz is not currently in an appropriate state of mind to give instructions in these matters."

It was that letter which prompted the Society to make its own application, invoking the inherent jurisdiction of the Court, and based on the practitioner's unqualified plea of guilty to the charges of unprofessional conduct which he has admitted. Counsel for the practitioner however maintained that her original instructions were unchanged, and she was prepared to proffer the practitioner's undertaking, but frankly recognised the difficulty which faced the Court in accepting that undertaking, having regard to the medical evidence, or in making an order solely on the practitioner's application without the undertaking. She, however, had no instructions to withdraw the practitioner's application, and although she had no instructions to consent to the Society's application, she very properly did not oppose it.

In the very unusual circumstances of this case, therefore, the Court has resolved to make the order sought on the joint applications of the practitioner and the Society, the application by the Society reflecting the serious view that is taken of the practitioner's misconduct. True it may be that there are some circumstances of extenuation, but they cannot conceal a continuing course of

conduct - some of which cannot be explained away on medical grounds - which not only renders the practitioner unfit to practice at present and in the foreseeable future, but would call upon any Court to exercise great caution should the practitioner ever seek to resile from his proferred undertaking.

The Law Society commendably did not seek an order for costs.

There will be an order abridging of time for hearing the notice of motion filed by the Law Society of 29 August, and that upon the joint application of the practitioner, by notice of motion dated 14 August 1990, and the Law Society, by notice of motion dated 29 August 1990, the name of the practitioner will be struck off the Roll of Legal Practitioners and there will be no order as to costs. We will publish formal reasons for the order in the unusual circumstances of this case.