

LEGAL PRACTITIONER (LAMSHED)

TRIBUNAL: Supreme Court of South Australia
CORAM: Doyle CJ, Millhouse and Williams JJ
JURISDICTION: Full Court
JUDGMENT NO: S5498 delivered 11th March, 1996.

PROFESSIONS AND TRADES

Legal practitioner guilty of forgery and uttering - Practitioner struck off roll on application of the Law Society - Practitioner's application to remove name from roll dismissed.

WILLIAMS J

The Court has before it two applications relating to Mr Brian Anthony Lamshed, a legal practitioner. The first application dated 1 November 1995 is the practitioner's own application to remove his name from the roll of Legal Practitioners. The second application dated 2 November 1995 is made by the Law Society of South Australia seeking an order that the name of the practitioner be struck off the roll. The two applications have been heard concurrently today. The facts are not in dispute.

The practitioner aged 54 was admitted to legal practise in South Australia in March 1969. Apart from about two years between 1980 and 1982 Mr Lamshed has been in legal practice continuously since his admission. Since 1985 and until recently he has practised on his own account particularly at Victor Harbor and other places. Mr Lamshed purchased a practice and thereby obtained a client called Haywood. Mr Lamshed took over an existing file from the vendor of the practice and took Haywood's instructions which required the practitioner to obtain for his client a title by adverse possession to one parcel of land. The process proved to be tedious and was not completed for about 5 or 6 years; eventually a possessory title was obtained.

In May 1992 Mr Haywood instructed the practitioner to seek title to another block in respect of which Haywood was asserting possessory rights. The registered proprietor George Henry Young died intestate some 50 years earlier. Whilst no subsequent dealings with the land had been registered Haywood claimed to have purchased the land in 1980 from an intermediate purchaser and as the result of a series of transactions which could be traced back to Young. It seems that the proper course to be followed upon these instructions was either:

- (a) to seek a vesting order under s37 of the *Trustee Act* on the basis that Mr Haywood was lawfully entitled, as purchaser of the land
- or (b) to assert a possessory title in accordance with ptVIIA of the *Real Property Act*

Having made many enquiries Mr Lamshed eventually placed the matter in the "too hard" category but he did not abandon it. Instead, Mr Lamshed without any authority set about securing a title for his client by means of a series of forged documents which were in fact executed by Mr Lamshed himself using the name of others. He perpetrated a fraud which involved three distinct steps using information which he had gleaned in the course of his legitimate enquiries concerning the late George Henry Young and his family.

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The first step in the fraud was taken on 29 November 1993 when the practitioner made application for letters of administration in the estate of Linda Ellen Manhire deceased (the daughter of the late Mr Young). The application was made in the name of Henry Leonard Manhire who was the widower of Mrs Manhire. Mr H.L. Manhire was one of those from whom Mr Lamshed had made enquiries but it is not suggested that the legal practitioner ever had any instructions on behalf of Mr Manhire. Mr Lamshed forged Mr Manhire's signature on the various common form documents necessary to support an application for letters of administration in the estate of Linda Ellen Manhire deceased. Letters of Administration issued on 20 December 1994 out of the Probate Registry of this Court.

The second step in the fraud involved a purported application dated 11 January 1995 in the estate of George Henry Young by Henry Leonard Manhire whereby it was asserted that Linda Ellen Manhire now deceased was the daughter of George Henry Young who (according to the application) died intestate a widower leaving children. Mr Lamshed also forged the signature of Mr Manhire on all the documents necessary to support this application. He also forged the signatures of relatives of the late Mrs Manhire purporting to give Mr Manhire authority to proceed in accordance with s65 of the *Administration and Probate Act*. Letters of Administration in the Estate of George Henry Young issued on 15 February 1995.

The third step in the fraud was the preparation of a transmission application dated 28 February 1995 purporting to transmit the land now in question at Belvidere to Henry Leonard Manhire. Again this document contains the purported signature of Henry Leonard Manhire as forged by Mr Lamshed. This document was accompanied by a transfer also dated 28 February 1995 from Henry Leonard Manhire to Mr Lamshed's client Haywood. The signature of Mr Manhire was again forged by the practitioner but the signatures of Haywood and his wife (accepting the transfer) were genuine. These documents were lodged for registration at the Lands Titles Office but registration had not been completed when the fraud was discovered.

It should be understood that Mr Haywood and his wife as clients of Lamshed were at all times entirely innocent of any wrongdoing.

The fraud came to light when Mr H.L. Manhire on about 1 June 1995 received a letter from Public Trustee requiring the filing of an administration account - a normal matter of routine - in his capacity as administrator. Mr Manhire (aged about 84 years) was concerned by this letter; Mr Manhire knew that his late wife was not intestate; she left a will dated 23 July 1974 appointing him to be executor but it had never been found necessary to prove this will. Mr Manhire then instructed his own solicitor to make investigations.

It is obvious from this recitation of facts that Mr Lamshed has demonstrated that he is unfit to be a legal practitioner; he has been guilty of unprofessional conduct - which in terms of s5 of the *Legal Practitioners Act* includes

"(a) an illegal act of any kind committed in the course of practice by the legal practitioner; and

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- (b) any offence of a dishonest or infamous nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law;"

Mr Lamshed cannot be allowed to continue as a practitioner. His conduct is disgraceful. He has demonstrated himself as lacking the personal integrity which is a fundamental characteristic required of a legal practitioner.

Upon the matter coming to light Mr Lamshed has made full admissions to the Law Society of South Australia which has promptly moved this Court to exercise in this instance its inherent disciplinary jurisdiction in accordance with s89(3) of the *Legal Practitioners Act*.

In the ordinary course the Court would expect the matter to be fully investigated upon complaint before the Legal Practitioners Disciplinary Tribunal. However the practitioner in the present case has made full admissions and there would appear to be no advantage in troubling the Tribunal when the facts are not in dispute and where the outcome is so inevitable.

There is one matter only of contention. The practitioner seeks to have an order made upon his own application. In my view the order should be made upon the application of the Law Society.

The circumstances in which this Court from time to time is called upon to exercise its jurisdiction over legal practitioners are diverse. The Court exercises its jurisdiction to strike a name off the roll of practitioners not as a punitive measure but in protection of the public interest. However it is important that in the present case, the circumstances in which the order has been made should be a clear matter of public record and that such order should be accompanied by a firm statement of the court's disapproval of the disgraceful conduct with which we have been confronted.

There are cases in which the court has permitted a practitioner's name to be removed on the practitioner's own application when professional unfitness has been apparent. However, unfitness for practice does not necessarily involve any wrong doing at all and each case must be judged on its own particular facts.

It would be wrong that the impression should be given that there is any redeeming feature in Mr Lamshed's case which would justify an indulgence being granted to the practitioner. The public interest requires that the Law Society's action be on record as the basis of the Court's action. The fact that the practitioner's application was made one day ahead of the Society's motion is not of significance.

Upon the Law Society's application I propose that an order be made that the name of the practitioner be struck off the roll of legal practitioners.

Upon the application of Mr Lamshed I would make no order.

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DOYLE CJ

I agree with the order proposed by Williams J and with his reasons, and I adopt his statement of the facts and I would add just this.

The practitioner has disclosed serious unprofessional conduct. It is clearly appropriate that an order be made removing his name from the roll of practitioners.

In such a case it will usually be appropriate that the order be made on application by the Law Society, rather than on the practitioner's own application. This court has consistently taken that view of late and I refer, in particular, to In re Williamson (1990) 158 LSJS 266.

Usually the removal of the practitioner's name should be after a hearing before the disciplinary tribunal, in which all facts emerge and findings as to professional conduct are made, but the present case is a clear and simple one and there is no need for that procedure to be followed. The practitioner has admitted a number of instances of forgery and the circumstances in which they occurred are plain. The court is able to say that the conduct involves deliberate wrongdoing and the court is satisfied that, with one possible minor exception, the full extent of the misconduct has been disclosed. Prosecutions are on foot by the appropriate authorities.

On the material disclosed by the affidavits filed by the Law Society and by Mr Lamshed, the court is able to make, and I would make, a finding that Mr Lamshed engaged in unprofessional conduct.

There are several reasons, in my opinion, why the matters should be dealt with on the society's application. The court's power to remove the name of a practitioner at the request of the practitioner is clear, but that procedure is not ordinarily appropriate in a case of unprofessional conduct which warrants removal from the roll.

The making of the order on the application by the Law Society marks the gravity of the matter and indicates the court's satisfaction that the seriousness of the matter is such that, whether the practitioner sought the order or not, the order was appropriate to be made.

The making of an order on the application by the Law Society also makes it clear, if it is only the formal order which is examined, that the matter was serious. This is of some assistance to others, particularly admitting authorities in other States, who might have cause to refer to the formal order of the court.

Accordingly, I would make the order sought by the Law Society and would make no order on the application by Mr Lamshed.

DOYLE CJ

The orders of the court are as follows.

In matter no.2231 of 1995, the following orders:

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On the notice of motion by the Law Society of South Australia, order

- (1) that the name of Brian Anthony Lamshed be struck off the roll of legal practitioners;
- (2) order that Brian Anthony Lamshed pay the Law Society of South Australia its costs of the application and order.

In the matter no. 2318 of 1995, the application by Mr Lamshed, orders as follows:

On the notice of motion by Brian Lamshed, order

- (1) that there be no order;
- (2) that the motion be dismissed;
- (3) that there be no order as to the costs of the notice of Motion.

MILLHOUSE J

I agree, except that I would not make any order for costs against Brian Anthony Lamshed.

WILLIAMS J

I agree that there should be the order proposed, including the order as to costs.

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