

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court: Doyle CJ, Olsson and Duggan JJ: Application)

Re: A PRACTITIONER: M S KEMP

Judgment of the Full Court (ex tempore)

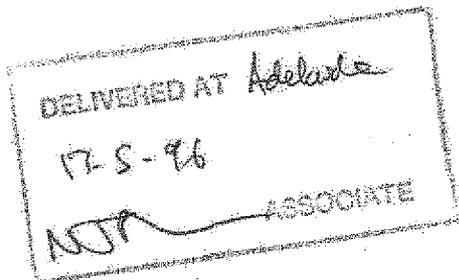
13 May 1996

PROFESSIONS AND TRADES — LAWYERS — MISCONDUCT, UNFITNESS AND DISCIPLINE

PROFESSIONS AND TRADES — LAWYERS — REMOVAL OF NAME FROM ROLL

Solicitor - fraudulent conversion of clients' monies - application to strike off made by Law Society directly to the Court - normally not a convenient way of proceeding - appropriate here because of various factors including the lack of resistance to the application by the practitioner - name struck off roll.

Re Williamson (1990) 158 LSJS 266; *Re Lamshed* (unreported, SAFC 11.3.96), applied.



Appellant THE LAW SOCIETY OF SOUTH AUSTRALIA: Counsel: MR I POLSON - Solicitors: LAW SOCIETY OF SOUTH AUSTRALIA
Respondent MICHAEL STEPHEN KEMP: In Person

Hearing Date/s: 13/05/96.

File No/s: SCGRG-96-691

B

Judgment No. S5629

RE: A PRACTITIONER (Michael Stephen Kemp)

Full Court

DOYLE CJ:

This is an application by the Law Society of South Australia to have a practitioner's name struck off the roll of legal practitioners.

Usually proceedings seeking an order to strike a practitioner's name off the roll should be initiated after a hearing before the Legal Practitioners Disciplinary Tribunal. In this way the court will be fully informed of any findings against the practitioner and hence fully informed of the practitioners's misconduct.

The present application is made directly to the Full Court and is made on affidavit. Once again, usually that is not a convenient way of proceeding and of providing the court with information about the alleged misconduct.

But in the present case, in my opinion, it is appropriate that the proceedings should have been brought in this fashion and appropriate for the court to make an order on the affidavit material.

First of all, because the practitioner does not resist the order striking him off the roll. Accordingly the court is not in the difficulty of deciding a contested application without the benefit of a full report from the Legal Practitioners Disciplinary Tribunal.

Secondly, the application is made by the Society. If the application is made by a practitioner and an order then made, it might be thought later that the order was made on a basis which would support the less serious step of removing the practitioner's name at the practitioner's own request. That is not the case here because, as I said, the application is made by the Society.

Thirdly, the material before the court discloses quite clearly the basis of the application. The material discloses in clear detail misappropriation by the practitioner of monies of clients. The nature and extent of the misappropriation is such that it constitutes serious professional misconduct and indeed criminal conduct. The practitioner has already pleaded guilty to charges of fraudulent conversion involving an amount somewhere between \$300,000 and \$400,000.

In such a case it is appropriate that action be taken promptly to remove the practitioner from the roll and that is a further reason for the manner in which these proceedings have been brought.

It is not clear that all wrongdoing by the practitioner has been disclosed. One can never be sure that all wrongdoing has been brought to light. But it is clear that on the admitted facts the practitioner's name should be struck off the roll whether the practitioner regarded that course as appropriate or not.

In dealing with the matter in this way the court acts consistently with its decision in *Re Williamson* (1990) 158 LSJS 266 and *Re Lamshed* (unreported - Full Court 11 March 1996).

Accordingly I would on the application by the Law Society dated 22 March 1996 order that the name of Michael Stephen Kemp be struck off the roll of legal practitioners and I would further order that the practitioner pay the costs of the Law Society.

OLSSON J: I agree.

DUGGAN J: I agree with the orders proposed by the Chief Justice and the remarks made by him.

DOYLE J: Accordingly the order of the court is:

1. That the name of Michael Stephen Kemp be struck off the roll of legal practitioners.
2. That Michael Stephen Kemp pay the costs of the Law Society of the application and order.