

10 *Mary Le Mercier*

SUPREME COURT OF SOUTH AUSTRALIA
(Full Court: Doyle CJ, Bollen and Duggan JJ)

In The Matter of THE LEGAL PRACTITIONERS ACT 1981

Re: LE MERCIER

Judgment of the Full Court (ex tempore)

7 February 1997

PROFESSIONS AND TRADES — LAWYERS — REMOVAL OF NAME FROM ROLL

Application for order to remove practitioner's name from Roll of Practitioners - criminal offences
- drug addiction applicant not capable of practising - application granted.

Appellant **CHRISTOPHER PAUL LE MERCIER**; Counsel: **MR G PALASIS** - Solicitors: **ANDERSON SOLICITORS** RC
Other Party **THE LAW SOCIETY OF SOUTH AUSTRALIA**; Counsel: **MRS S BISHOP**

Hearing Date/s: **07/02/97.**

File No/s: **SCGRG-99-1776**

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Judgment No. **SG042**

IN THE MATTER OF THE LEGAL PRACTITIONERS ACT 1981
Re: LE MERCIER

Full Court: Doyle CJ, Bollen J and Duggan J

DOYLE CJ:

The applicant has applied for an order that his name be removed from the Roll of Practitioners. The Council of the Law Society has, after being served with the documents before the court, resolved to support the application.

The affidavit filed by the applicant discloses the commission of criminal offences during 1992 and 1993. The offences are fairly serious but were not connected with the practice of the profession of the law. All of the offences are related to the dishonest obtaining of money. The applicant's affidavit reveals that the offences were committed to enable the applicant to buy heroin to which he has been addicted since about 1988. The applicant is receiving treatment for his addiction, and the prospects of recovery are good, but at present the applicant says himself that he is not capable of practising as a solicitor or of maintaining permanent employment.

It is clear that the applicant is not fit to practise and that the offences that he has committed would warrant the removal of his name from the Roll, at least while he remains addicted to heroin. The court will not usually allow a practitioner to remove the practitioner's name from the Roll when the basis of the application is unprofessional conduct which would warrant an order striking the practitioner's name off. The reason for this is that it is preferable that the relevant conduct be brought before the Legal Practitioners Disciplinary Tribunal so that it can be fully investigated, and so that the court's decision is based upon clear findings as to the extent of the unprofessional conduct. Otherwise, a later application for reinstatement might proceed on the basis of an inadequate appreciation of the nature and seriousness of the conduct.

But in the present case, in my opinion, an exception can be made. The relevant conduct is unrelated to the practitioner's professional work. Dealing with it is entirely a matter for the police. There would be no advantage in the Legal Practitioners Disciplinary Tribunal investigating such matters even though they reflect upon the applicant's fitness as a practitioner. Moreover, the applicant has disclosed the sad story of his addiction and there seems little point in exploring that further. Should he recover and seek to be reinstated, the court can then consider any offences for which the applicant has been convicted. Conduct for which charges have not been laid can also be considered, but an investigation relating to those matters is not likely to be helpful.

The Legal Practitioners Conduct Board has informed the court that it is satisfied with the disclosure that the practitioner has made and that there are no outstanding complaints against him.

The applicant has not held a practitioner's certificate since 1991. There is no reason to think that any aspect of his work as a legal practitioner requires further investigation.

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Accordingly, while the applicant has acted in a manner which does reflect on his suitability to be a practitioner and could be charged accordingly before the tribunal, this is an appropriate case to make the orders sought on the practitioner's own application.

Accordingly, I would order that his name be removed from the Roll of practitioners.

BOLLEN J:

I agree.

DUGGAN J:

I agree.

DOYLE CJ:

Accordingly, the order of the court is:

1. That the name of Christopher Paul Le Mercier be removed from the Roll of practitioners.
2. That there be no order as to the Law Society's costs of the application.