

SUPREME COURT OF SOUTH AUSTRALIA
(Full Court)

THE LAW SOCIETY OF SOUTH AUSTRALIA v COLLINGS

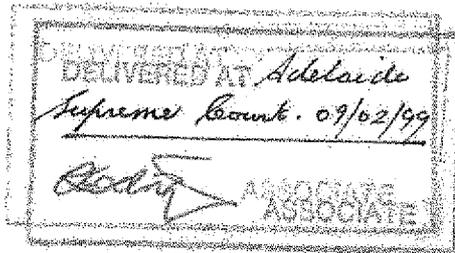
Judgment of the Full Court (ex tempore)
(The Honourable the Chief Justice, the Honourable Justice Millhouse and the Honourable Justice Prior)

9 February 1999

PROFESSIONS AND TRADES — LAWYERS — REMOVAL OF NAME FROM ROLL

Application to remove practitioner from the Roll of Legal Practitioners - practitioner was charged with and admitted to unprofessional conduct - the charges included: falsely representing to clients that he had taken proceedings and obtained a default judgment, making false statements on oath, the misappropriation of monies and practising without a current Practising Certificate.

Held: The matters are of such gravity as to lead to the conclusion that the practitioner is not a fit and proper person to remain a legal practitioner - practitioner's name to be struck off the Roll of Legal Practitioners.



Applicant THE LAW SOCIETY OF SOUTH AUSTRALIA:
Solicitors: DENISE JEAN WATKINS
Respondent DAVID MORRIS COLLINGS:
CAMATTA LEMPENS PTY LTD

Counsel: MR A MARTIN -
Counsel: MR S TILMOUTH QC - Solicitors:

Hearing Date/s: 09/02/99.
File No/s: SCGRG-98-1437

Judgment No. [1999] SASC 62

THE LAW SOCIETY OF SOUTH AUSTRALIA v COLLINGS
[1999] SASC 62

Full Court: Doyle CJ, Millhouse and Prior JJ

1 DOYLE CJ. This is an application by the Law Society of South
Australia for the striking off of the name of the practitioner, David Morris
Collings, from the Roll of Legal Practitioners. The application is not resisted
by the practitioner.

2 Mr Collings was charged before the Legal Practitioners Disciplinary
Tribunal with fifteen counts of unprofessional conduct. He admitted his guilt
before the Tribunal. The Tribunal, as is appropriate, has referred the matter to
this court for determination of the appropriate penalty.

3 Mr Collings has apparently not practised law since about April 1995, no
longer holds a Practising Certificate, and in an affidavit sworn in earlier
proceedings to have his name removed from the Roll, stated that he did not
intend to practice law for the foreseeable future.

4 In brief, the matters that Mr Collings has admitted involve the telling of
untruths to clients, deliberately or recklessly; the swearing of false affidavits
and the giving of false evidence, deliberately or recklessly; the dishonest
misapplication of funds provided to him by a client for a specific purpose and
practising without a Practising Certificate.

5 They are matters of such gravity as to lead inevitably to the conclusion that
Mr Collings is not a fit and proper person to remain a legal practitioner. They
require that his name be struck off the Roll of Legal Practitioners. They
demonstrate that he is unfit to be a legal practitioner.

6 The material before the court comprises the statement of charges before
the Tribunal, a statement of agreed facts supported by some material
documents, the transcript before the Tribunal where the practitioner admitted
his guilt, and a report from a psychiatrist.

7 The court is cautious about dealing with matters that could result in the
removal of a practitioner's name from the Roll, without there being a full
investigation of the facts before the Tribunal. The reason for this is that,
without that full investigation, there is a risk of the court not being fully
informed of the circumstances, and of the true gravity of the matters not
becoming apparent. This may become important in the event of an application
to be restored to the Roll.

8 However, in this case, it is clear that the matters that the practitioner
admits require that his name be removed from the Roll of Practitioners. The

statement of agreed facts, while not exploring every aspect of the matter, appears to provide sufficient detail for the court to be satisfied that it has an adequate understanding of the matters with which the practitioner is charged.

9 As the practitioner's conduct is described in the material before the court, and that material is available on the file, it is not necessary for me to record the facts in detail. However, it is appropriate that I should summarise them.

10 Four offences arise out of the practitioner acting for Mr F. The practitioner told Mr F that he had issued civil proceedings as instructed by Mr F. He did this on various occasions between February 1993 and September 1993. That was untrue. He caused his then employer to claim fees and disbursements from Mr F in the sum of \$270 for the preparation of those proceedings. Later, the practitioner's employment was terminated, but he continued to act for Mr F as a sole practitioner. On various occasions between September 1993 and June 1994 the practitioner told Mr F that he had obtained a default judgment, was enforcing that judgment and then had negotiated a settlement of the amount due in the sum of \$15,000. None of that was true. Later, the practitioner sent to Mr F a cheque for \$12,000, being the amount allegedly recovered, less fees claimed by the practitioner. That cheque was dishonoured and has not subsequently been met.

11 These incidents involve a course of deliberate deception by the practitioner of his client. They extended over a period of time. The court regards this conduct as serious.

12 A further four charges arise from events that occurred when the practitioner represented Ms S. In about May 1994, the practitioner informed a barrister, whom he had retained on behalf of Ms S, that he had obtained a default judgment in proceedings issued on behalf of Ms S. That statement was false. Later, the practitioner provided to the barrister an affidavit sworn by the practitioner in which the practitioner falsely stated that he had issued proceedings on behalf of the client, had obtained a default judgment and had issued proceedings to enforce the default judgment. Each of those statements was untrue.

13 Once again, the conduct involves the telling of lies, and, in this case, is made worse by the fact that false statements were made on oath.

14 Three further charges arise from the practitioner acting for Mr and Mrs P. The clients sent to the practitioner the sum of \$2,125, on the clearly understood basis that that amount was to be used to pay an account from counsel in that amount. The practitioner appropriated the money to his own purposes. The barrister was not paid, that, in itself, being professional misconduct, although not of the same gravity as the misappropriation of the money. While acting for

Mr and Mrs P, the practitioner practised for about four months when he did not hold a current Practising Certificate.

15 These matters also are serious. As to these, the practitioner does say that he did work for Mr and Mrs P, for which he had not rendered accounts, the work entitling him to charge an amount in excess of that that he misappropriated. That, however, does not alter the fact that the practitioner behaved dishonestly and is of very little weight by way of mitigation.

16 The final four charges relate to the practitioner acting for Mr S and Mrs S. In connection with proceedings to enforce a judgment against Mrs S, the practitioner swore an affidavit in which he stated, of his own knowledge, that a certain item of property did not belong to Mrs S. In later enforcement proceedings the practitioner admitted he did not know that matter of his own knowledge, and was relying entirely on instructions from his clients. In connection with enforcement proceedings against Mr S, the practitioner swore an affidavit stating that the practitioner had paid the sum of \$400 to the person seeking to enforce judgment against Mr S. The practitioner had no basis for making that statement. The only explanation offered is that the practitioner believed that his client had arranged to make the payment of the money. When being questioned on oath in relation to the matters involving Mr S and Mrs S, the practitioner gave sworn evidence that he held a Practising Certificate but at the time he did not hold such a certificate.

17 Once again, the practitioner has made statements on oath which he knew to be false or which he made recklessly, and has practised the law without holding a current Practising Certificate.

18 This brief summary discloses a course of conduct beginning in early 1993, and extending into early 1995. The deliberate or reckless deception of clients, and the deliberate or reckless making of false statements on oath, is a matter that can only be regarded as grave. The same applies to the misappropriation of the funds provided by Mr and Mrs P. Practising without a Practising Certificate may be regarded as of a lower order of gravity. However, as I have already said, when one looks at the conduct as a whole, one immediately concludes that the practitioner lacks an understanding of his obligations as a practitioner, and is not a fit and proper person to be a practitioner.

19 The court has been provided with a psychiatric report dated 7 August 1996. In that report, the psychiatrist, Dr Schreuder, states that the practitioner had suffered a major depressive disorder, commencing in late 1994 or early 1995. The psychiatrist expresses the opinion that he appeared to have recovered reasonably well by early to mid 1995, although some information later received by the psychiatrist suggested that there might still be on-going problems. In the practitioner's affidavit, referred to earlier, he refers to his loss

of employment in 1993, and some problems in his personal life, as affecting his ability to work and as contributing to his actions.

20 It should be pointed out that the psychiatrist expressed the opinion that the onset of the depressive disorder had been late in 1994 or early in 1995, at a time after much of the conduct referred to had occurred. However, the court can accept that the practitioner was experiencing problems in his life prior to that.

21 Nevertheless, the material put before the court provides no explanation for the serious misconduct of the practitioner. At best, it goes some way to mitigate the gravity of his conduct without in any way affecting the conclusion that one would otherwise reach that the practitioner is not a fit and proper person to remain a practitioner.

22 Accordingly, in my opinion, the order of the court should be that the name of David Morris Collings be struck off the Roll of Legal Practitioners. Mr Collings should be ordered to pay the costs of the Law Society of and incidental to the proceedings.

23 MILLHOUSE J. I agree that the practitioner should be struck off.

24 PRIOR J. I agree with the reasons given by the Chief Justice and with the orders he proposes.

25 DOYLE CJ. Accordingly the orders will be:

1. That the name of David Morris Collings be struck off the Roll of Legal Practitioners.
2. That Mr Collings pay the costs of the Law Society of and incidental to the proceedings.