

**SUPREME COURT OF SOUTH AUSTRALIA**  
(Full Court)

**LAW SOCIETY OF SOUTH AUSTRALIA v RUSSELL**

**Judgment of the Full Court (ex tempore)**  
(The Honourable the Chief Justice, the Honourable  
Justice Mullighan and the Honourable Justice Martin)

**7 September 1999**

**PROFESSIONS AND TRADES — LAWYERS — REMOVAL OF NAME FROM ROLL**

Application for order to remove practitioner's name from Roll of Practitioners - Three counts of unprofessional conduct including failure to disclose interest in business to client; fabrication of court attendances - Relevance of conviction for fraudulent conversion and previous fine and suspension for unprofessional conduct - Practitioner failed to attend before Tribunal or an appeal - Ability of Court to accept findings of Tribunal.

*Legal Practitioners Act* s 89(5), referred to.

*O'Reilly v Law Society of New South Wales* (1998) 24 NSWLR 204; *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, considered.

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**Applicant THE LAW SOCIETY OF SOUTH AUSTRALIA: Counsel: MS L POWELL**  
**Respondent PETER GLENN RUSSELL: No Attendance**

**Hearing Date/s: 06/09/99.**

**File No/s: SCGRG-99-722**

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**Judgment No. [1999] SASC 389**

**LAW SOCIETY OF SOUTH AUSTRALIA v RUSSELL**  
**[1999] SASC 389**

**Full Court: Doyle CJ, Mullighan and Martin JJ (ex tempore)**

1 DOYLE CJ: The Law Society of South Australia has applied for an order that the name of Peter Glenn Russell, a legal practitioner, be struck off the roll of legal practitioners maintained under the *Legal Practitioners Act* 1981. The practitioner, although served with proceedings and given notice of today's hearing, has not attended at court. Accordingly the court has had no explanation from him.

2 The practitioner does not hold a current practising certificate. He has been declared bankrupt. It seems that he has not practised as a practitioner for several years.

3 The application by the Society is made on the basis of the following matters.

4 By decision dated 13 July 1998, the Disciplinary Tribunal published reasons for finding the practitioner guilty on three counts of unprofessional conduct. Despite being given adequate notice of the hearing and an adequate opportunity to attend, the practitioner did not attend before the Tribunal.

5 Accordingly, the Tribunal also had no explanation from the practitioner for the charges of unprofessional conduct that it had found proved. The Tribunal recommended that disciplinary proceedings be instituted in this Court.

6 The Court has power to accept and to act upon the findings of the tribunal: see s 89(5) of the *Legal Practitioners Act*. I propose to do so.

7 The first count charged the practitioner with unprofessional conduct in that he carried on the business of an inquiry agent under a firm name that suggested no link with him, and that without informing his client of his interest in the business, on three occasions involving three different clients, he caused that business to carry out work for the client and to charge for the work, the practitioner failing to inform his client of his interest in the firm.

8 The Tribunal found that the practitioner had acted as alleged. The amounts paid by the clients were approximately \$2,100, \$680 and \$1,770. There was no disclosure of the practitioner's link to the firm. Some correspondence that was tendered suggests a studious failure by the practitioner to disclose the link. It was not, of course, unprofessional conduct for the practitioner to conduct another business, but, as the Tribunal found:

“Where a practitioner conducts some other business and invites his or her clients to deal with that business, he or she must disclose to the clients concerned, the fact that the practitioner is the proprietor or one of the proprietors of that business or, as the case may be, the general nature of his or her involvement in that business.”

9 To fail to make that disclosure is to permit an undisclosed conflict of interest and duty to exist. The practitioner was not at liberty to deal with his clients through the investigation firm without obtaining the client's informed consent. That required at least disclosure of his interest in the firm. It would also require advice to the client about rates charged in the market for the services provided by the firm. The practitioner could not secure profitable business from his client without giving the client the chance to decide whether the client should place business with the firm: see *O'Reilly v Law Society of New South Wales* (1988) 24 NSWLR 204.

10 Although the amounts of money involved by way of payment to the firm are not substantial, the circumstances suggest that the practitioner lacks an understanding of his obligations to his clients. The conduct of the practitioner involves a significant departure from the proper standard of behaviour.

11 The second count charged the practitioner with unprofessional conduct in appropriating for his own use \$300 held in trust on account of fees without rendering an account to the client. The Tribunal found the practitioner guilty. This conduct involves a disregard of proper procedures in dealing with the money of the client. In isolation it might not be particularly serious, but as will appear, this is one of several instances of unprofessional conduct.

12 The Tribunal also found that the practitioner had fabricated two cost entries in his file before submitting the file to an expert retained to prepare a bill of cost in taxable form. I regard this as a very serious matter. The fabricated entries must have been intended by the practitioner to result in a claim for fees with a view to recovering costs from the practitioner's client in court proceedings. As each entry was of an attendance at court of five hours, the fees involved must have been well in excess of \$1,000. The entry could not have been due to any misunderstanding about taxable costs. The Tribunal found that the practitioner simply did not attend court as claimed. The conduct, therefore, involves an element of fraud on the part of the practitioner. It is a serious departure from professional standards of honesty.

13 These instances of unprofessional conduct occurred between 1990 and 1992, although the Tribunal did not make its decision until July 1998.

14 Apart from these matters, the Society has proved that on 13 October 1998 the practitioner pleaded guilty to a charge of fraudulent conversion of the sum

of \$23,100. The offence occurred between February and July 1996. The offence did not occur in the course of the practitioner's practice. What follows is drawn from the sentencing remarks.

15 The practitioner was the manager of a company in which his family had a major interest. The company was in financial difficulty. The company received money to conduct a training program for unemployed young people. The practitioner caused about \$23,000 of that money to be applied to the company's purposes when the company was not entitled to do so. The District Court Judge said that there was no real prospect of restitution. The practitioner had been declared bankrupt in August 1996. The practitioner was sentenced to imprisonment for 18 months with a non-parole period of 12 months. However, influenced by the practitioner's age, which was 51 years, and good record, the Judge suspended that sentence upon the practitioner agreeing, among other things, to enter into a bond to be of good behaviour for three years.

16 The commission of an offence otherwise than in the course of legal practice does not necessarily reflect upon the fitness of a person to be a practitioner and does not necessarily constitute unprofessional conduct. However, this offence involved serious dishonesty. Its character is such as to give rise to a real doubt whether the practitioner can be trusted with the money of other persons. For those reasons, it is relevant to his fitness to be a practitioner. As well, it is an offence that makes it difficult, impossible really, for the Court to continue to regard the practitioner as someone fit to be held out to the public as a legal practitioner.

17 In my opinion, the nature of the offence is such that it amounts to unprofessional conduct and indicates that the practitioner is not a fit and proper person to be a practitioner: see *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279.

18 When these matters are taken into account, they indicate to me that the practitioner is unfit to remain a practitioner. They lead to the conclusion that the practitioner lacks an understanding, in important respects, of his obligations to clients, and cannot be held out to the public as a person fit to be trusted to handle their affairs in their best interests and in an honest fashion.

19 Although admitted only in 1985, the practitioner is about 52 years of age, and so cannot put these matters down to immaturity or inexperience. As well, the practitioner was found guilty by the tribunal in September 1984 of unprofessional conduct committed in 1990. That conduct involved the deliberate alteration of written settlement instructions given by a client. The practitioner was fined and suspended for three months.

20 The practitioner is not to be punished a second time for this offence, but the earlier offence is relevant because it indicates that he has previously been involved in a serious instance of unprofessional conduct, and in that respect, his record is relevant in considering the course now to be followed.

21 I consider that the court should remove his name from the roll of practitioners. In doing so, the court acts in the public interest, not with a view to punishment. The public interest requires that the practitioner not be able to practise as a practitioner.

22 For those reasons I would order that the name of practitioner be removed from the roll of practitioners.

23 MULLIGHAN J: I agree.

24 MARTIN J: I agree.

25 DOYLE CJ: Accordingly, the order of the court is that the name of Peter Glenn Russell be removed from the roll of legal practitioners maintained by the court.

26 Secondly, order that Mr Russell pay the costs of the Law Society of and incidental of the application.