

SOUTH AUSTRALIAN FULL COURT

(Full Court)

LEGAL PRACTITIONERS CONDUCT BOARD v LE POIDEVIN

Judgment of the Full Court (ex tempore)

(The Honourable the Chief Justice, the Honourable Justice Lander and the Honourable Justice Bleby)

5 July 2001

PROFESSIONS AND TRADES — LAWYERS — REMOVAL OF NAME FROM ROLL

Application for removal of a practitioner from Roll of Legal Practitioners - application made to Full Court subsequent to finding of unprofessional conduct made against defendant - findings of unprofessional conduct by Legal Practitioners Disciplinary Tribunal - unprofessional conduct relates to acting as a practitioner without a practicing certificate - further refusal to comply with request from Board for information relating to that conduct - consideration of appropriate order in the circumstances of the defendant's conduct and earlier unprofessional conduct.

Legal Practitioners Act, 1981 s76, s89(2), s89(5), referred to.

Law Society of South Australia v Jordan (1998) 198 LSJS 434; *Law Society of South Australia v Murphy* (1999) 201 LSJS 456, applied.

Applicant: LEGAL PRACTITIONERS CONDUCT BOARD

Counsel: MR P SLATTERY -

Solicitors: MS A RATHBONE

Defendant: DEAN LE POIDEVIN Counsel: NO APPEARANCE

Hearing Date/s: 05/07/2001.

File No/s: SCCIV-00-573

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Judgment No. [2001] SASC 242



LEGAL PRACTITIONERS CONDUCT BOARD v LE POIDEVIN
[2001] SASC 242

Full Court: Doyle CJ, Lander and Bleby JJ

(Ex Tempore)

1 **DOYLE CJ:** This is an application by the Legal Practitioners Conduct Board (“the Board”) for an order that the name of the defendant be struck off the roll of legal practitioners. It is proved by affidavits that the amended summons has been served on the defendant, as has a case book containing a copy of the documents relied upon in the application by the Board to this Court.

2 The defendant has not appeared. He has been called within the precincts of the court. The application is based on findings made by the Legal Practitioners Disciplinary Tribunal (“the Tribunal”), after a hearing of charges of unprofessional conduct laid against the defendant.

3 In my opinion it is appropriate for the court to accept and to act on the findings of the Tribunal, pursuant to the power conferred on the court by s89(5)(a) of the *Legal Practitioners Act* 1981 (“the Act”): see *Law Society of South Australia v Jordan* (1998) 198 LSJS 434 at 474-5.

4 The defendant was admitted as a practitioner on 20 December 1976. On 23 December 1998, the Full Court suspended the defendant’s right to practise the profession of the law, for two years from that date. That order was made on the basis of findings by the Full Court of unprofessional conduct, which findings were in turn based on findings by the Tribunal.

5 The relevant conduct had occurred in March 1994, February 1995 and February 1996. It suffices to say that the Full Court found the defendant guilty on four counts of unprofessional conduct.

6 The first count was based on the defendant’s conviction of certain criminal offences. Having regard to the conduct involved, and to the circumstances of the offences, the Full Court found that the conduct in question was “infamous” and accordingly fell within the statutory definition of unprofessional conduct.

7 The second count of unprofessional conduct related to conduct of the defendant during the course of his trial on the charges in question. During that trial, the defendant made remarks that scandalised this Court in that they reflected on a Judge of the Court.

8 The third count of unprofessional conduct was based on disparaging remarks made by the defendant about a firm of practitioners during his trial.

9 The fourth count was based on a false statement, in an affidavit sworn by the defendant, in support of an application for a practising certificate.

10 The Full Court said that the defendant's conduct amounted to a serious departure from the standard of behaviour acceptable for a member of an honourable profession. The Full Court did not consider striking off to be an appropriate penalty. Wicks J, with whose reasons the other members of the court agreed, commented that 'The conduct complained of has been largely due to his inability to control his temper in circumstances which he found to be stressful'. This comment related to the criminal offences as well.

11 I now turn to the present matter. The defendant has not held a practising certificate since his last practising certificate expired on 31 December 1994. The defendant, although served with a notice of enquiry issued by the Tribunal, did not appear before the Tribunal in relation to the present charges. The tribunal found the defendant guilty of unprofessional conduct in that he had practised the profession of law in November 1998, without holding a practising certificate. The Tribunal made that finding on the basis of a letter dated 19 November 1998, written to a firm of solicitors, in which the defendant stated that he acted for the defendants in an action in the Port Adelaide Magistrates Court. With the letter was a copy of the Defence to be filed in the action. The Tribunal also found that the defendant filed a defence in an action on 19 November 1998, the offence describing him as the solicitor for the defendants.

12 This is a clear instance of conduct prohibited by the Act. The maximum penalty for this offence is a fine of \$10,000. The tribunal further found that the defendant was guilty of unprofessional conduct in that he had failed to respond, in any way, to proper requests, by the Board, for information. The Board wrote to the defendant on 19 May 1999, 3 June 1999 and 6 July 1999. The letters sought a response from the defendant to the allegation, that he had practised the profession of the law while not holding a practising certificate by reason of the conduct referred to above. The obligation of a practitioner to respond appropriately to inquiries, made by the Board, is well established. The defendant's disregard of these requests for information clearly amounts to unprofessional conduct.

13 The Tribunal also found that the board had served on the defendant two notices under s76 of the Act which respectively required the defendant to produce to the Board his file or files relating to the acts in the Port Adelaide Magistrates Court and required him to respond to a series of questions administered to him in relation to the conduct of that action.

14 Once again, the defendant simply ignored the statutory requirements made of him. The Tribunal was satisfied that the failure to respond to the letters and to the statutory notices constituted unprofessional conduct. I agree: see *Law Society of South Australia v Jordan* at 476.

15 The unprofessional conduct found against the defendant is serious. To practise the profession of the law without holding a practising certificate is a serious matter. In view of the period of time that had elapsed since the defendant last held a practising certificate, and absent any explanation from him, I infer that this conduct occurred deliberately and knowingly. Likewise, the defendant's disregard of the letters and statutory notices without any apparent explanation or excuse, indicates a flagrant disregard of his obligations as a practitioner of the Court and a clear failure to meet standards of conduct reached by practitioners of good repute.

16 In the circumstances, these instances of unprofessional conduct cannot be excused as mere oversights or as resulting from the pressure of circumstances. It is also significant that the defendant was practising without a practising certificate in November 1998, some six months after the Tribunal had made findings against him and very shortly before the Full Court was to consider the previous application to have his name removed from the roll. This suggests that the defendant is prepared to disregard completely his legal and professional obligations.

17 I turn to the question of the orders that the Court should make. The powers conferred on the Court are conferred in the public interest and it is the protection of the public which must be the main consideration.

18 The conduct of the defendant, absent any explanation, suggests that he has no regard at all for his obligation as a practitioner. He is not to be punished twice for the same matter, but when the present matters are viewed in the context of the earlier findings of unprofessional conduct it suggests to me the defendant is no longer fit to remain a practitioner of this Court.

19 I am satisfied he has no intention of observing the standards of conduct required of him. There is no reason to think a further period of suspension will have any effect on his conduct.

20 The protection of the public requires that the Court make it clear that he is not fit to remain a practitioner: see *Law Society of South Australia v Murphy* (1999) 201 LSJS 456 at 461-462. Accordingly, I would make an order removing the defendant's name from the roll of practitioners.

21 I agree with the reasons to be delivered by Lander J.

22 **LANDER J:** The Legal Practitioners Conduct Board ("the Board") seeks an order of this Court that the name of the defendant be struck off the roll of legal practitioners. It relies on a report of the Legal Practitioners Disciplinary Tribunal ("the Tribunal") in which that Tribunal found the practitioner guilty of unprofessional conduct in three respects. First, in practising the profession of law in November 1998 without holding an appropriate practising certificate.

Secondly, in failing to respond to any requests by the Board made on 19 May 1999, 3 June 1999 and 6 July 1999. Thirdly, in failing to respond to statutory notices given in August 2000 under s76 of the *Legal Practitioners Act* 1981 ("the Act").

23 The Tribunal concluded that in all three respects the practitioner had been guilty of unprofessional conduct in that his conduct fell short of, to a substantial degree, the standard of professional conduct observed or approved of by members of the profession of good repute and competency.

24 The Tribunal recommended that disciplinary proceedings be commenced against the legal practitioner in this Court. These are those proceedings. This Court may act on the findings of the tribunal and, in my opinion, should do so: *Law Society of South Australia v Jordan* (1998) 198 LSJS 434 at 474.

25 Ordinarily a legal practitioner would not be liable to be struck off the roll of practitioners for practising the legal profession without a practising certificate, provided that such practise was inadvertent. Usually failure to respond to a proper request by the Board would also not result in striking off. The failure to respond to statutory notices issued under s76(4)(a) of the *Act* is more serious but again, by itself, would not usually result in striking off.

26 The circumstances surrounding these acts of unprofessional conduct are relevant in determining the seriousness of the conduct.

27 The legal practitioner had previously been before the Tribunal which found him guilty of unprofessional conduct in respect of four separate matters. The Board brought those matters to the attention of this Court. On 23 December 1998, the Full Court suspended the defendant's right to practise the profession of the law for two years. That suspension expired some seven months ago. For the last seven months the practitioner has been eligible to apply for a practising certificate.

28 The first act of unprofessional conduct, with which we are concerned, was committed in November 1998 when the practitioner knew that he had been found guilty of unprofessional conduct in May 1998 in respect of the four matters which were then waiting to be heard by the Full Court. It was also committed in circumstances where he had not held a practising certificate for four years.

29 The practitioner has not deigned to give any explanation for his conduct in practising the profession without a practising certificate in November 1998. It may be inferred, because he had not held a practising certificate for four years, and he had been shortly before found to have committed unprofessional conduct by the Tribunal, that his actions were not inadvertent. I am prepared to infer, in all the circumstances, that he deliberately practised the law knowing that he did not have a practising certificate.

30 The second and third acts of unprofessional conduct with which we are
concerned were committed after he had been suspended from practising the
profession for a period of two years. The legal practitioner must have known the
seriousness of his failure to respond and his failure to comply with his
obligations under the Act.

31 Again, in my opinion, absent an explanation, which has not been
forthcoming, it may be inferred that his conduct was deliberate.

32 In summary, therefore, the legal practitioner has committed these three
further acts of unprofessional conduct in circumstances where he knew he was
not entitled to practise the law; where he knew he did not hold the relevant
practising certificate; where he knew he had been found to have committed four
separate acts of unprofessional conduct by the Tribunal; where he knew there
were proceedings before the Supreme Court for disciplinary action; and in
respect of the second and third of these matters where he knew that he had been
suspended from practising the profession of the law for two years.

33 In my opinion, the practitioner has shown a complete disregard for the
authority of this Court and of the bodies, namely the Board and the Tribunal,
which have been erected to ensure standards of professional conduct in the legal
profession.

34 In my opinion, the legal practitioner must be disciplined by this Court. The
Court has all of the powers given to it under s89(2) of the Act, including the
power to reprimand; to impose conditions on the legal practitioner's practising
certificate; to suspend the legal practitioner's practising certificate for a period or
until further order; to strike off the name of the legal practitioner from the roll of
legal practitioners; or to make any other order that this Court thinks just.

35 In my opinion, the legal practitioner has not responded appropriately to the
previous order of this Court suspending him from practising for two years. A
limited term of suspension therefore would not be adequate for these three further
serious acts of unprofessional conduct.

36 The question remains whether it would be sufficient to suspend him from
practise until further order or whether it is necessary to strike his name off the
roll.

37 Striking off is reserved for the most serious cases of unprofessional
conduct, where the court is satisfied the person found guilty of unprofessional
conduct is not fit and proper to remain on the roll of legal practitioners.
Suspension is a serious form of discipline which is usually imposed to discipline
the legal practitioner, who has committed an act of unprofessional conduct but,
who, in the opinion of the court, at the end of the period of suspension, will be a
fit and proper person to practise the law.

38 Unfortunately, I have reached the conclusion that having regard to the previous acts of unprofessional conduct and these more recent acts, which were committed in the circumstances to which I have referred, that the legal practitioner is not a fit and proper person to practise the law.

39 In those circumstances it is the duty of the court to make an order which will protect the public, the legal profession and the administration of justice by removing his name from the roll of legal practitioners.

40 I agree with the order proposed by the Chief Justice.

41 **BLEBY J:** I agree with the order proposed by the Chief Justice. I agree with his Honour's remarks and those of Lander J. I have nothing to add to those.

42 **DOYLE CJ:** The orders of the court are:

1. That the name Dean Kiverton Le Poidevin be removed from the roll of practitioners.
2. That the defendant Dean Kiverton Le Poidevin pay to the plaintiff its costs of the application to the Court.