

*Counsel*

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

**LEGAL PRACTITIONERS CONDUCT BOARD v TRUEMAN**

**Judgment of the Full Court**  
(The Honourable the Chief Justice, the Honourable Justice Duggan and the Honourable Justice Gray)

25 February 2003

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

Application by Legal Practitioners Conduct Board that defendant's name be removed from roll of practitioners - finding by Legal Practitioners Disciplinary Tribunal that defendant guilty of unprofessional conduct - large number of findings of separate occasions of unprofessional conduct involving delay in conduct of matters on behalf of clients, failure to comply with instructions from clients, failure to communicate with clients, lying to clients, failure to pay counsel fees, practising without a practising certificate, and failure to respond to requests by Legal Practitioners Conduct Board for information and explanations - Tribunal's findings of unprofessional conduct not challenged by defendant - application for removal of name from roll not opposed by defendant - order that name of defendant be removed from roll of practitioners.

*Legal Practitioners Act 1981 (SA) s89(5)(a); Legal Practitioners Conduct Rules r11.05, referred to.*

*Law Society of South Australia v Murphy (1999) 201 LSJS 456, considered.*

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**Plaintiff: LEGAL PRACTITIONERS CONDUCT BOARD**  
**Solicitors: MS D TRIBE**  
**Defendant: SCOTT MALCOLM TRUEMAN**  
**DONAL CRAIG & ASSOCIATES**

**Counsel: MS A MACDONALD -**  
**Counsel: MR G BARRETT QC - Solicitors:**

**Hearing Date/s: 31/01/2003.**

**File No/s: SCCIV-02-570**

**A1**

**Judgment No. [2003] SASC 58**

**LEGAL PRACTITIONERS CONDUCT BOARD v TRUEMAN**  
**[2003] SASC 58**

**Full Court: Doyle CJ, Duggan and Gray JJ**

1 DOYLE CJ: The Legal Practitioners Disciplinary Tribunal ("the Tribunal")  
has published a report, made after inquiring into complaints of unprofessional  
conduct made by the Legal Practitioners Conduct Board ("the Board") against  
Mr Trueman, a practitioner of the court.

2 The Tribunal reports that it has found that Mr Trueman has been guilty of  
unprofessional conduct.

3 The Tribunal recommends that disciplinary proceedings be commenced  
against Mr Trueman in the Supreme Court.

4 The Board has brought proceedings in this Court. The Board seeks an order  
that Mr Trueman's name be struck off the roll of legal practitioners.

5 The Tribunal's findings of unprofessional conduct are not challenged by  
Mr Trueman.

6 The Tribunal's findings are summarised in reasonable detail in the  
Tribunal's report. I am prepared to act on the report of the Tribunal: see  
s89(5)(a) of the *Legal Practitioners Act 1981 (SA)*. In the circumstances, it is  
sufficient to state the effect of the Tribunal's findings quite briefly. They may be  
found in more detail in its report.

7 The findings relate to the affairs of a substantial number of clients of  
Mr Trueman, to his dealings with three barristers and to his dealings with the  
Board.

8 In relation to the clients, a large number of findings of separate occasions of  
unprofessional conduct are made. The conduct involved delay in the conduct of  
matters on behalf of clients, failing to comply with instructions, failing to  
communicate with the clients, lying to the clients about progress in matters and  
lying about the reason for the failure to take certain steps. In relation to the  
Board, the conduct involved frequent failure to respond at all, or within a  
reasonable time, to requests by the Board for information or explanations. This  
group of findings is particularly serious. It is serious because of the prolonged  
and repeated failure to respond properly to inquiries from the Board. It is well  
established that the professional obligations of a practitioner include the  
obligation to cooperate with the Board when it exercises its statutory powers.  
Not only has the practitioner caused substantial harm to the interests of his  
clients, but when the Board attempted to investigate the matter he has been  
completely uncooperative on many occasions, causing further trouble and  
inconvenience.

9 In relation to the barristers, there are three findings of a failure to pay  
counsel fees contrary to r.11.05 of the *Legal Practitioners Conduct Rules*.

10 There is also a finding that Mr Trueman practised without a Practising  
Certificate, apparently for much of 1999. It is not completely clear what the  
position is in subsequent years. The Tribunal states that Mr Trueman has not  
practised for some time. His practising certificate was suspended by this Court in  
October 2000.

11 The conduct the subject of these findings took place between the latter part  
of 1994 and the latter part of the year 2000. A fair bit of the conduct appears to  
have occurred in 1995 and 1996, but the particulars indicate that it extended  
throughout the whole period indicated by me.

12 The Tribunal's findings disclose conduct that is quite unacceptable from a  
practitioner. The number of findings of unprofessional conduct, and the conduct  
involved, point to the conclusion that Mr Trueman's name must be removed from  
the roll of practitioners, subject of course to any explanation that is offered.

13 The reason for this is, first, the number of separate instances of  
unprofessional conduct, and second, the prolonged period of unprofessional  
conduct. Together these matters point to the conclusion that Mr Trueman is  
either unwilling to observe proper professional standards, or is unable to do so.  
The protection of the public, which is one of the fundamental bases upon which  
the Court acts, requires that Mr Trueman not be held out to the public as a fit and  
proper person to be a practitioner, in the light of such substantial unprofessional  
conduct, subject to any explanation offered by Mr Trueman.

14 The Tribunal had before it a report of 15 August 2000 from Dr Cotton, a  
psychiatrist who began to treat Mr Trueman in July 1996. Dr Cotton also gave  
evidence before the Tribunal in August 2000.

15 In his report Dr Cotton said that in 1996 Mr Trueman was suffering from  
"an acute agitated depressive illness with persistent suicidal ruminations". He  
had developed a "compulsive phobic avoidance" of dealing with complaints by  
clients and investigations by the Board. Dr Cotton told the Tribunal that, with  
treatment from Dr Cotton, Mr Trueman's mental health had improved since then,  
although there had been lapses. Dr Cotton's evidence was given in August 2000.  
At that time he told the Tribunal that he thought Mr Trueman would need to  
receive treatment for a further two years. He said that Mr Trueman could carry  
on practice provided he did not "take on contentious, difficult clients at an  
individual level." Not surprisingly, the Tribunal concluded that this view was too  
optimistic. There is nothing to indicate that, to any significant degree, the  
findings of unprofessional conduct related to clients who presented particularly  
difficult issues or who were particularly difficult to deal with. Moreover,  
commonsense suggested that it would be difficult for a practitioner to identify in  
advance clients of the kind referred to by Dr Cotton, and difficult to maintain  
practice on that basis. As well, in view of the number and nature of findings,

there remains a doubt whether Mr Trueman is capable of practising within those constraints, and a doubt about his capacity to cope with the demands of managing a practice.

- 16 The Tribunal also had before it a report of 12 October 2000 from Dr Flynn, also a psychiatrist. His report indicates that he agreed generally with Dr Cotton's diagnosis. However, he also makes the point that aspects of Mr Trueman's personality have influenced or contributed to his failure to manage his practice adequately, and his subsequent failure to deal with, or respond adequately to, complaints about his conduct. He agreed that there had been an improvement in Mr Trueman's psychiatric condition "in the very recent past." However, in his view that was linked to Mr Trueman's decision to stop practising. Dr Flynn expressed the view that Mr Trueman had "not shown a consistent ability to be aware of the importance of external stresses, modify them or implement worthwhile stress reduction strategies." As he said:

"This may also limit his ability to make a full and rapid recovery from his psychiatric condition or to show a sufficient composure and balance in his thinking to practise Law in a fit and unencumbered manner."

In general terms, Dr Flynn is cautious about the prospect of Mr Trueman reaching a stage at which he is capable of managing his own condition and coping with the stress of practice. The Tribunal notes that this opinion was not challenged before it.

- 17 It is evident that Mr Trueman suffered from, and that his behaviour was affected by, a psychiatric condition, of the kind described by Dr Cotton and Dr Flynn. The unprofessional conduct is not attributable to dishonesty or to deliberate neglect of professional responsibilities. Nevertheless, the facts lead to the conclusion that the effect of Mr Trueman's psychiatric condition was that for a number of years he was unable to conduct himself in accordance with proper professional standards. An improvement in his psychiatric condition has come only after he ceased practice, and with intensive treatment.

- 18 Mr Trueman has not yet fully recovered. While Dr Cotton is optimistic about Mr Trueman's prospects, it remains unclear what his final state of health will be, and how long it will be before the final stage is reached. I consider that Dr Flynn's caution is soundly based.

- 19 The evidence leads to the conclusion that while he continues to suffer from the psychiatric condition, he is not fit to conduct a legal practice. It remains to be seen whether he will fully recover, and whether, even if he does, the Court could then be satisfied that he is capable of coping with the demands of legal practice.

- 20 Under the circumstances I have no hesitation in concluding that his name must be struck off the roll of practitioners, despite the fact that his conduct may be substantially attributable to his psychiatric condition.

21 As I have already remarked, the decision of the Court to strike the name of a practitioner off the roll is not based on the need to punish the practitioner. The concern of the Court is with the interests and protection of the public, and with the standing and reputation of the profession with the public.

22 The order for removal of Mr Trueman's name should be made because the protection of the public requires it. The order is not made to punish Mr Trueman. If the Court were concerned only with punishment, it might be possible to take a more merciful course. The fact that he sought treatment for his condition, and the improvement in his condition, would be very significant if the Court's decision was based on considerations of punishment. But the Court is concerned with fitness to practice and with the public interest.

23 I should add that it does not follow that an order for the striking off of a practitioner's name should be made as a matter of course whenever unprofessional conduct is attributable to a significant degree to a psychiatric disorder or to some mental disturbance. What is significant about the present case is that the evidence demonstrates that Mr Trueman has suffered from a significant disorder for a long time. He has not yet recovered from it. That disorder has played a part in him committing many acts of unprofessional conduct over a lengthy period. The unprofessional conduct cannot be regarded as occasional or isolated lapses of behaviour by a practitioner who has otherwise coped with his disorder or condition. Nor can the unprofessional conduct be regarded as unlikely to be repeated if all goes well. Nor can the disorder be treated as of a temporary or episodic nature, reasonably likely to be capable of management if properly treated and properly approached by the practitioner. The evidence shows that Mr Trueman has been unable to cope with his condition, and that it has led him into a sustained and significant pattern of unprofessional conduct.

24 On this topic I refer, without repeating it, to what I said in *Law Society of South Australia v Murphy* (1999) 201 LSJS 456.

25 For those reasons I joined in the order, made at the hearing of the Board's application, that his name be struck off the roll of practitioners.

26 I record that it is to Mr Trueman's credit that he did not oppose the making of the order, and, as I have already mentioned, that he sought treatment for the condition early in the piece.

27 DUGGAN J: I agree with the reasons given by the Chief Justice for striking Mr Trueman's name off the roll of practitioners.

28 GRAY J: I agree and have nothing to add.