

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court: Application)

LEGAL PRACTITIONERS CONDUCT BOARD v HEANEY

Judgment of The Full Court (*ex tempore*)

(The Honourable Justice Perry, The Honourable Justice White and The Honourable Justice Layton)

7 November 2005

PROFESSIONS AND TRADES - LAWYERS - REMOVAL OF NAME FROM ROLL

Application by the Legal Practitioners Conduct Board to remove a practitioner from the Roll of Practitioners - defendant found guilty of unprofessional conduct in his dealings with clients over a long period of time - conduct involved failing to maintain proper communications with clients; failing to conduct matters with reasonable diligence; allowing proceedings to be struck out; and failing to institute proceedings in time - application not opposed - order made.

Legal Practitioners Act 1982 s 89(2)(d), referred to.

Applicant: LEGAL PRACTITIONERS CONDUCT BOARD **Counsel:** MS R E DAVEY - **Solicitor:** MARY-LEE HUTCHINS

Respondent: DAVID WAYNE HEANEY **Counsel:** MR R HARRAP - **Solicitor:** HARRAP & ASSOCIATES PTY LTD

Hearing Date/s: 07/11/2005

File No/s: SCCIV-05-748

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LEGAL PRACTITIONERS CONDUCT BOARD v HEANEY
[2005] SASC 420

Full Court: Perry, White and Layton JJ

1 **Perry, White and Layton JJ. (ex tempore)** This is an application by the
Legal Practitioners Conduct Board ("the Board") for an order that the name of
the defendant, David Wayne Heaney, be struck off the roll of legal
practitioners. The application is not resisted.

2 The application is based upon the report of the Legal Practitioners
Disciplinary Tribunal ("the Tribunal") dated 11 May 2005. In the report the
Tribunal records its findings with respect to a charge of unprofessional
conduct, evidenced by a course of conduct on the part of the practitioner in the
/ course of his practice as a sole practitioner during the period between
approximately December 1994 and September 2004.

3 The conduct relied upon by the Tribunal in reaching its findings, was
conduct which occurred after 15 December 1998.

4 The charge was particularised in the form of 26 separate complaints
involving 22 clients, and a failure to co-operate with the Law Society in respect
of his trust account over a 16 month period.

5 The complaints alleged, amongst other things, that he had failed to
maintain adequate communications with the clients; failed to conduct matters
in accordance with his instructions with reasonable diligence; failed to effect
service of a number of proceedings or institute them within time; allowed a
number of proceedings to be dismissed for want of prosecution; and failed to
pay fees due to medical practitioners whom he had engaged, in a timely
manner.

6 There were, as well, a number of allegations of failure to co-operate with
the Board in their investigations of the various matters.

7 In a number of instances the practitioner made false statements in an
endeavour to conceal the true position.

8 The practitioner was admitted to practice in December 1984.

9 He has not practised since about the beginning of 2004.

10 The Tribunal had earlier found him guilty of unprofessional conduct with
respect to other matters. The report as to those matters is dated 22 December
2000 and resulted in a formal reprimand of the practitioner.

11 The matter dealt with at that time was similar in that it involved unprofessional conduct constituted by a course of conduct, more particularly his dilatoriness during the conduct of matters on behalf of three clients, in communications with the Board, and a failure to pay in a timely manner the fees of health professionals whom he had engaged.

12 In its present report, the Tribunal concludes:

... it indicates a failure by him to properly protect the interests of many clients. He has shown an inappropriate attitude in responding to the Board during its investigation. Also he did not properly co-operate with the Law Society's Trust Account regulatory officer and he failed to comply with the direction given to him by Ms Bishop, the manager of his practice appointed by the Law Society on 13 April 2004.

13 Needless to say, the offending conduct is serious, and demonstrates a persistent failure on the part of the practitioner properly to attend to his clients' affairs.

14 The powers of the Court to discipline, and in a proper case to strike off a practitioner, must be invoked where necessary to maintain public confidence in the profession and to protect the administration of justice and the interests of the public, by ensuring maintenance of the high standards required of those engaged in legal practice.

15 This is clearly a case in which it is proper to make the orders sought.

16 The order of the court is that the name of David Wayne Heaney be struck off the Roll of Legal Practitioners maintained under the *Legal Practitioners Act 1981*.

17 The Court orders that the practitioner pay the costs of and incidental to the application, to be taxed.