

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

LEGAL PRACTITIONERS CONDUCT BOARD v DUDEK

[2006] SASC 255

Judgment of The Full Court

(The Honourable Chief Justice Doyle, The Honourable Justice Sulan and The Honourable Justice Vanstone)

23 August 2006

PROFESSIONS AND TRADES - LAWYERS - MISCONDUCT, UNFITNESS AND DISCIPLINE

Application by the Legal Practitioners Conduct Board to remove a legal practitioner from the Roll of Practitioners - respondent found guilty of unprofessional and unsatisfactory conduct - respondent accepted the findings - respondent suffered from a depressive illness at time of his misconduct - need to protect public confidence in the legal profession - conduct necessitates order of removal from Roll of Practitioners - application granted - respondent struck of Roll of Practitioners

Legal Practitioners Act 1981 s 76(4)(b), referred to.

Legal Practitioners Conduct Board v Phillips (2002) 83 SASR 467; *Legal Practitioners Conduct Board v Trueman* (2003) 225 LSJS 503, considered.

Applicant: LEGAL PRACTITIONERS CONDUCT BOARD **Counsel:** MS R E DAVEY - **Solicitor:** LAW SOCIETY OF SOUTH AUSTRALIA

Respondent: ANDREW DEAN DUDEK **Counsel:** MR J D EDWARDSON - **Solicitor:** ILES SELLEY LAWYERS

Hearing Date/s: 08/08/2006

File No/s: SCCIV-05-1301

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LEGAL PRACTITIONERS CONDUCT BOARD v DUDEK
[2006] SASC 255

Full Court: Doyle CJ, Sulan and Vanstone JJ

1 **DOYLE CJ:** An order should be made that the name of Mr Dudek be struck off the Roll of Practitioners. I agree with the reasons of Sulan J for so deciding.

2 **SULAN J:** The Legal Practitioners Conduct Board (“the Board”) has applied for an order that the name of Mr Andrew Dean Dudek be struck off the roll of legal practitioners.

3 The Board relied on the findings and reasons of the Legal Practitioners Disciplinary Tribunal (“the Tribunal”) that the practitioner was guilty of unprofessional conduct and unsatisfactory conduct. The Board had investigated a number of complaints made against the practitioner by the Commonwealth Director of Public Prosecutions, clients of the practitioner and a practitioner who had employed Mr Dudek.

4 At the commencement of the hearing before this Court, counsel for the practitioner advised the Court that his client had considered the findings of the Tribunal, and he no longer wished to resist the application that his name be removed from the roll of legal practitioners. Mr Dudek did not challenge the findings of the Tribunal and accepted the accuracy of its report without qualification. He stated that Mr Dudek now had a much clearer insight into the seriousness of his conduct, and that he unequivocally accepted the findings that had been made against him. Mr Dudek acknowledged that his conduct was well below the standard of behaviour expected of a practitioner and that it constituted unprofessional conduct.

5 The Court indicated that it would make the orders sought by the Board, but reserved its decision in order to provide written reasons for making the order.

Factual background

6 The practitioner was charged with five charges of unprofessional conduct relating to events which occurred between about June 2000 and October 2003.

7 In summary, the Tribunal concluded that on eight occasions Mr Dudek had failed to comply with a notice from the Board requiring him to report to the Board in relation to a matter that was under investigation, contrary to s 76(4)(b) of *The Legal Practitioners Act 1981* (“the Act”).

8 The Tribunal also concluded that the practitioner had failed to comply with an undertaking to the Magistrates Court to pay monies to Centrelink.

9 In addition, the respondent failed to account to eight clients for monies paid to him for various purposes. The amount involved a total of \$5650. When explanations were sought from the practitioner he misled his clients and, in one case, misled his employer, which caused professional embarrassment to the employer, who was then dealing with the client. To date, there has been no satisfactory explanation by Mr Dudek as to his failure to account.

10 Further, he failed to protect the interests of one of his clients in relation to that client's financial position. He acted to the potential detriment of his client. Mr Dudek had been instructed to assist a client who was in financial difficulties. In consideration of the client delivering a motor vehicle to Mr Dudek, he agreed to continue to make lease payments on the vehicle. Mr Dudek had been engaged to advise his client who was in financial difficulty in circumstances in which the client was under pressure from creditors. Mr Dudek failed to inform the financier of the change in possession, failed to make the payments and, in so doing, acted to the detriment of his client. In the circumstances, for Mr Dudek to enter into that commercial transaction with his client constitutes unprofessional conduct.

11 The Tribunal was concerned about the candour of Mr Dudek in his oral evidence. The Tribunal said:

The Tribunal had concerns in many instances about the candor of the Practitioner in his oral evidence as well as the information which he provided to explain his behaviour. In addition, the Practitioner appeared in general terms to display a careless approach to the need to account for monies which he received in cash from clients. He also appeared to lack professional appreciation of the requirements of the role of a legal practitioner. This was particularly apparent in the blurring of the relationship which he had with various firms of solicitors with whom he was either employed or was acting as a consultant simultaneously. He also displayed the same confusion and lack of clarity concerning his professional relationship with "*clients*", such that his own personal affairs and interests became inextricably intertwined with the professional responsibilities which he had in relation to his "*clients*".¹

12 The conduct of Mr Dudek constituted unprofessional conduct. There was a persistent neglect of the affairs of clients.

13 Part of the reason for Mr Dudek's conduct was explained by Dr Raeside, a psychiatrist, who examined Mr Dudek. In Dr Raeside's opinion, a number of stressors in Mr Dudek's life contributed to him avoiding issues which were unpleasant and likely to produce stress. He was suffering from a range of depressive and anxiety symptoms, caused partly by the substantial stress under which he was labouring during the time.

14 Dr Levy, a psychiatrist, reported that in 2003 Mr Dudek was overwhelmed with a number of issues which were impacting upon his life. He was anxious and

¹ *Legal Practitioners Conduct Board v Dudek* [2005] (Unreported, Legal Practitioners Disciplinary Tribunal, M S Fricker and G A Brown, 18 August 2005) [10]-[11].

very negative and had difficulty in motivating himself. He was not enjoying legal practice, and a combination of these factors would have had a negative impact on his ability to adequately perform and discharge his functions as a legal practitioner.

15 The evidence establishes that the practitioner was suffering from a psychiatric condition which contributed to his failure to discharge his professional responsibilities. He was unable to conduct himself in accordance with proper professional standards. It seems that his condition has improved since he ceased practice in 2002.

16 In *Legal Practitioners Conduct Board v Phillips*,² Prior J said:

This Court acts in the public interests and not to punish the practitioner. The public interest is understandably demanding of proper behaviour and accountability from members of the profession.³

17 In *Legal Practitioners Conduct Board v Trueman*,⁴ Doyle CJ referred to the practitioner's health problems which may have explained his inability over a prolonged period to maintain proper professional standards. The Chief Justice observed:

... 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 the fitness to practice and with the public interest.⁵

18 That statement is apposite to this case. The role of the Court is to ensure that the public is protected and that persons who practise law maintain the high professional standards required of legal practitioners. It is essential to ensure that the public who deal with the profession are protected, and that persons who practise are fit to do so and will maintain proper professional standards. It is the role of this Court to ensure that the confidence of the public in the honesty and integrity of legal practitioners is maintained.

19 The practitioner has failed to maintain those standards. His conduct requires that his name be struck off the Roll of Practitioners.

20 **VANSTONE J:** I agree.

² (2002) 83 SASR 467.

³ (2002) 83 SASR 467, 473.

⁴ (2003) 225 LSJS 503.

⁵ (2003) 225 LSJS 503, 506.

