

# SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

## LEGAL PRACTITIONERS CONDUCT BOARD v SANTINI

[2007] SASC 52

Judgment of The Full Court (*ex tempore*)

(The Honourable Chief Justice Doyle, The Honourable Justice Duggan and The Honourable Justice David)

2 February 2007

### PROFESSIONS AND TRADES - LAWYERS - REMOVAL OF NAME FROM ROLL

Application by the Legal Practitioners Conduct Board to remove the name of a Solicitor from the roll of legal practitioners – evidence of unprofessional conduct – Solicitor acted in breach of existing ruling by Legal Practitioners Disciplinary Tribunal that he act only whilst under the supervision of another Solicitor or firm of solicitors – the prior charge from which the ruling arose concerned Mr Santini settling a claim for a sum less than his express instructions - solicitor conducted legal work for five persons, all members of one family, in breach of the order of the Tribunal – Mr Santini took instructions largely from the Father and was overborne by him – Mr Santini found it difficult to tell the members of the family that their claims had little prospect of success – he told the Father he had settled the claims when he had not and drew cheques against his personal account when he knew he did not have sufficient funds to honour the cheques – the Solicitor lacks the ability to deal appropriately with difficult situations involving clients – having regard to the circumstances of the case the Solicitor's name must be removed from the roll of legal practitioners – held: that the name of Gilbert Santini be removed from the roll of legal practitioners.

*Law Society of South Australia v Murphy* (1999) 201 LSJS 456; *Legal Practitioners Board v Morel* (2004) 88 SASR 401; *Legal Practitioners Conduct Board v Nicholson* (2006) 243 LSJS 293; *In re a Practitioner* (1984) 36 SASR 590, discussed.

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**Applicant: LEGAL PRACTITIONERS CONDUCT BOARD  
MANOS**

**Counsel: MR S COLE - Solicitor: E**

**Defendant: GILBERT SANTINI Counsel: MR B O'BRIEN**

**Hearing Date/s: 02/02/2007**

**File No/s: SCCIV-06-717**

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**LEGAL PRACTITIONERS CONDUCT BOARD v SANTINI**  
**[2007] SASC 52**

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

**DOYLE CJ (*ex tempore*):** The Legal Practitioners Conduct Board has applied for an order that Mr Santini's name be removed from the Roll of Practitioners.

The application is based on findings made by the Legal Practitioners Disciplinary Tribunal.

The circumstances set out in the reasons of the Tribunal are not disputed. The findings by the Tribunal, and the finding that the conduct in question is unprofessional conduct, are not disputed. The only issue is the order that this Court should make.

1 I am prepared to act on the findings in the report by the Tribunal.

2 I also act on the findings made by the Tribunal on a previous charge of unprofessional conduct against Mr Santini. I accept and act on the findings made by the Tribunal in its earlier reasons, dated 26 September 2002.

3 Before dealing with the charges now before the Court, it is convenient to refer to the earlier matter involving Mr Santini.

4 In that matter the Tribunal found that Mr Santini was guilty of unprofessional conduct during 1999. The Tribunal found that Mr Santini settled a damages claim brought by his client for the sum of \$4000. Mr Santini had explicit instructions from his client to settle for \$7500. He had no authority to settle for the amount for which he did settle. To make matters worse, Mr Santini concealed the true situation from his client for some time, although ultimately it came out that he had settled the claim contrary to his express instructions.

5 Mr Santini admitted the facts alleged against him. Not surprisingly, the Tribunal found that his conduct was unprofessional.

6 The Tribunal had before it a report from Dr Branson a psychiatrist. The Tribunal was satisfied that the client in question was a dominant personality, with whom Mr Santini could not cope. The Tribunal accepted that Mr Santini had gone through a difficult time in his personal life, a few years before the events in question. His marriage had broken down, and he had had difficulty in his relationship with his parents.

7 Dr Branson's report was to the effect that Mr Santini had a good level of insight into how and why he became involved in the unprofessional behaviour in question. The Tribunal was satisfied that Mr Santini had "come to grips with the situation and has rehabilitated himself well". Mr Santini was employed by a firm of solicitors, who supervised his work.

8 Mr Santini was 39 years of age, and had been practising law since 1985.

9 The Tribunal considered it was sufficient to reprimand Mr Santini. With his consent it imposed a condition upon his practising certificate that for a period of five years he could practice the law only while in the employ of another solicitor or firm of solicitors. This order was made on 26 September 2002.

10 As it turns out, the confidence of the Tribunal and of Dr Branson was misplaced.

11 Mr Santini left the employment of the firm of solicitors for whom he was then working in March 2003.

12 Without informing the firm, and without informing the clients in question of the order of the Tribunal, he continued to act for four members of one family, comprising the husband, the wife and two children, and for one other client. In acting for them he was in breach of the order of the Tribunal, because he was no longer employed by a practitioner.

13 His conduct in acting for those five persons was the subject of five charges of unprofessional conduct.

14 As to the family of four to whom I referred, he took instructions mainly from the husband, who seems to have been the dominating figure in the family. Mr Santini was unable to bring himself to tell the husband that the claims had little prospect of success, or at least were worth far less than the family members believed. Mr Santini was unable to deal with the difficult situation in which he found himself. He felt unable to pass the file on to another practitioner, because he thought that the family would complain against him. No doubt he also feared that any practitioner to whom he passed the files would expose his breach of the Tribunal order.

15 Matters got worse. Mr Santini pretended to the husband that he was negotiating a settlement of all four claims, and then told the family that he had settled the claims. Mr Santini's conduct in telling each of the four members of the family that he had settled their claims was the subject of four further counts of unprofessional conduct.

16 But matters got even worse. Under pressure from the family, Mr Santini drew cheques on his own account in payment of the settlement monies, at a time when he knew he did not have sufficient funds to meet the cheques. He said that he hoped to get funds from a family member before the cheques were presented. His conduct in drawing and delivering a cheque to each of the four family members was the subject of four further counts of unprofessional conduct.

17 Mr Santini said that he was simply overborne by the husband, and could not bring himself to tell the family the truth.

18 There can be no doubt that Mr Santini engaged in unprofessional conduct, over a period of some months. His conduct involved a serious departure from professional standards. He was in breach of the Tribunal order. He deceived his clients, and as to the family of four, engaged in further dishonesty by falsely telling them that he had settled his claims, and by delivering cheques to them.

19 Mr Santini's conduct takes on added significance in light of the fact that these events occurred in the latter part of 2003, only about 12 months after the Tribunal ordered that he not practise other than as an employee of a practitioner.

20 The Tribunal had before it reports from two psychiatrists, one of whom was Dr Branson, and one psychologist.

21 Dr Branson admitted candidly that, in light of the information that he had when preparing his latest report, his previous optimistic assessment of Mr Santini's prognosis was unjustified. Dr Branson reported that Mr Santini had not previously informed him about difficulties that he was experiencing in his work as a lawyer. As Dr Branson said, Mr Santini's history demonstrated that he is capable of denying his problems, even to himself.

22 The effect of the reports before the Tribunal is that while Mr Santini might have been depressed at an earlier time, he was not depressed when he engaged in the conduct in question. Dr Branson's opinion was that Mr Santini suffered from "an adjustment disorder, secondary to the various stresses with regard to his legal practice as well as interpersonal factors such as the end of his marriage".

23 The real problem, as I understand the reports before the Tribunal, is that Mr Santini lacks the ability to deal appropriately with difficult situations involving clients. He is unable or unwilling to be sufficiently assertive to give a client honest and realistic advice, when that advice is likely to be unpalatable to the client.

24 The significance of this personality problem is illustrated by the difficulty into which Mr Santini got himself when dealing with the family in question. His inability to provide proper advice led him into a series of deceptions.

25 It is clear from the reports that the problem is not a temporary one. As I have already said, it is not attributable to a temporary bout of depression.

26 Dr Branson reported that in his opinion Mr Santini needed to establish a satisfactory "therapeutic relationship" with a treating specialist, before he could be permitted to practise as a lawyer. I take him to mean that one would need to be satisfied that Mr Santini's condition was cured, or well on the way to being cured before he could be permitted to practise. Dr Branson also expressed the opinion that a period of supervision would be required.

27 The unprofessional conduct in question is sufficiently serious to require the Court to make an order for the removal of Mr Santini's name from the Roll of Practitioners.

28 Mr Santini's conduct demonstrates that his personality problems make him unfit to practise. He cannot discharge the responsibilities of a practitioner to a client. As things stand he lacks the ability to deal in a professional manner with difficult situations. That inability has caused him, and will cause him, to engage in deceptions and in unprofessional conduct, rather than confront the problem directly.

29 Mr Santini's personal circumstances, summarised in the reports before the Tribunal, entitle him to some sympathy. He had a difficult childhood and has had significant difficulties later in life. No doubt his loss of employment in 2003 put him in a difficult situation. He would have had difficulty in finding other employment, having regard to the condition that had been imposed on him.

30 But in deciding the application now before the Court, the Court must act in the public interest. The Court must consider the maintenance of public confidence in the legal profession and must ensure that only those who have observed the required standards are permitted to remain members of the legal profession: *Law Society of South Australia v Murphy* (1999) 201 LSJS 456 at 461; *Legal Practitioners Board v Morel* [2004] SASC 168; (2004) 88 SASR 401; *Legal Practitioners' Conduct Board v Nicholson* [2006] SASC 21; (2006) 243 LSJS 293.

31 The Court is not concerned with the question of punishment. If punishment was all that was in issue, it might be possible to take a more merciful course.

32 The Court's responsibility is to the public. It is clear that Mr Santini is not fit to practise. It is questionable whether that will change. The conduct of which Mr Santini has been found guilty cannot be described as a temporary aberration. There is no basis for thinking that his personality problem will be resolved in the near future, and one cannot be confident that it will be resolved at all.

33 In those circumstances suspension of the right to practise until further order is not appropriate. That might be appropriate if the conduct, which indicated Mr Santini's unfitness, was due to a temporary aberration or to a personality problem that was clearly temporary and likely to be resolved in the near future. That is not the case: cf *In re a Practitioner* (1984) 36 SASR 590 at 593; *Morel* at [62].

34 In those circumstances, as his unprofessional conduct demonstrates that he is unfit to remain a member of the legal profession, the only course open to this Court is to make an order that his name be removed from the Roll of Practitioners and I would so order.

35 DUGGAN J: I agree with the order proposed by the Chief Justice. I also agree with the reasons which he has given in support of the making of that order.

36 DAVID J: I also agree with the order made by the Chief Justice and I agree with the reasons that he has given in making that order.

37 DOYLE CJ: Accordingly the order of the Court is that the name of Mr Gilbert Santini be removed from the Roll of Practitioners.

38 The Court further orders that Mr Santini pay the costs of the Legal Practitioners Conduct Board of the application to the Court.