SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

LEGAL PRACTITIONERS CONDUCT BOARD v THOMSON

[2009] SASC 149

Judgment of The Full Court
(The Honourable Justice Bleby, The Honourable Justice Gray and The Honourable Justice Kelly)

28 May 2009

PROFESSIONS AND TRADES - LAWYERS - REMOVAL OF NAME FROM ROLL

PROFESSIONS AND TRADES - LAWYERS - MISCONDUCT, UNFITNESS AND DISCIPLINE - DISCIPLINARY PROCEEDINGS - INHERENT JURISDICTION OF COURT - SOUTH AUSTRALIA

Application to remove practitioner from Roll of Practitioners - practitioner found guilty of unprofessional and unsatisfactory conduct by Legal Practitioners Disciplinary Tribunal - jurisdiction of Court to discipline practitioners - consideration of medical unfitness - whether practitioner unfit to practise.

Held: practitioner unfit to practise - practitioner's name removed from Roll of Practitioners.

Legal Practitioners Act 1981 (SA) s 5, s 74, s 76 and s 89, referred to.
A Solicitor v The Law Society of New South Wales (2004) 204 ALR 8; *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279; *Law Society of SA v Murphy* (1999) 201 LSJS 456; *In Re a Practitioner* (1982) 30 SASR 27, considered.

Plaintiff: LEGAL PRACTITIONERS CONDUCT BOARD Counsel: MR S COLE - Solicitor: LEGAL PRACTITIONERS CONDUCT BOARD
Defendant: LORRAINE LUCIA THOMSON Counsel: MR RJ WHITINGTON QC WITH MS D ESZENYI - Solicitor: CAMATTA LEMPENS
Hearing Date/s: 04/08/2008
File No/s: SCCIV-07-859
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LEGAL PRACTITIONERS CONDUCT BOARD v THOMSON
[2009] SASC 149

Full Court: Bleby, Gray and Kelly JJ

1 **BLEBY J.** The facts relating to this application are set out in the reasons of Gray J. There is no need to repeat them.

2 On the medical evidence now before this Court it is apparent that the unprofessional conduct of the practitioner found by the Legal Practitioners Disciplinary Tribunal had its origin in the closed head injury suffered by the practitioner in the motor vehicle accident which occurred on 15 January 1988. It would appear that there was some organic brain damage resulting in ongoing post-traumatic stress disorder and depression. These have been aggravated from time-to-time by other stressors in the practitioner's life, particularly over the period covered by the findings of unprofessional conduct by the Tribunal. That aggravation was such that, for at least part of the period covered by those events, she became extremely depressed, psychotic and suicidal, such as to require hospitalisation.

3 It is common ground that, although her symptoms have improved since then, she presently remains unfit to practise law. This is not by reason of any moral turpitude but by reason of the unfortunate sequelae of the practitioner's head injury.

4 The conduct of a legal practice, even on the rather limited scale previously conducted by the practitioner, can be extremely stressful. The conduct found by the Tribunal demonstrates the effect that such stressors, and others, can have on this practitioner's conduct of her legal practice. It is such that she is incapable at present of being entrusted with the heavy responsibilities of a legal practitioner.

5 Counsel for the practitioner submitted, based on the observations of Dr Czechowicz in his report, that rather than striking the practitioner's name off the roll, the Court should direct that her practising certificate be suspended until such time that she is able to demonstrate to the Legal Practitioners Conduct Board or the Court as she may elect:

1 That her treating psychiatrist is of the opinion that she has recovered sufficiently from her psychological condition to resume practising law; and

2 That she has a legal practitioner who is able to supervise her and assist her to return to legal practice; and

3 That a suitable program for her return to practice has been agreed between herself, her supervising practitioner and her psychiatrist;

and in the event that the suspension of the practitioner's practising certificate is lifted, the practitioner's psychiatrist and, during any period of supervision, her supervisor is to report annually to the Legal Practitioners Conduct Board about her continuing ability to practise.

6 One of the difficulties with such a proposal is that the Legal Practitioners Conduct Board has limited statutory functions.[1] Determination of fitness to practise is not one of them. While, in theory, the Court could determine whether a practising certificate should be issued, the practitioner's proposal is entirely open ended.

7 The practitioner's post-traumatic stress disorder and depression which gave rise to the unprofessional conduct is now of reasonably long standing and continues. There is nothing to indicate that the condition will necessarily improve, however much one wishes, for the practitioner's sake, that it might. As in the case of *Law Society of South Australia v Murphy*[2] suspension from practice by denial of a practising certificate does not adequately reflect the significance of the conduct and of the present condition which makes the practitioner medically unfit to practise.

8 The practitioner's prognosis is uncertain. Other unforeseen events, whether connected with her head injury or not, may intervene. Time itself and absence from practice for an extended period may well be a relevant consideration to her fitness to practise, notwithstanding a partial or even, although on the evidence this is unlikely, a full recovery.

9 This is one of those cases where, if the practitioner seeks to re-enter legal practice, the Court will need to be satisfied on all of the evidence that she is a fit and proper person.

10 In those circumstances I agree that the appropriate order is that her name be removed from the roll of practitioners, recognising that, if conditions change and she can demonstrate her fitness to practise, a further application for admission may be made.

GRAY J.

11 This is an application to remove the name of a practitioner from the roll of legal practitioners.

12 The Legal Practitioners Conduct Board instituted the within disciplinary proceedings against the defendant, Lorraine Lucia Thomson, pursuant to

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1 See s 74 *Legal Practitioners Act 1981.*
2 [1999] SASC 83, (1999) 201 LSJS 456.

section 89(1) of the *Legal Practitioners Act 1981* (SA). The proceedings were taken on the recommendation of the Legal Practitioners Disciplinary Tribunal.

13 The jurisdiction of this Court to discipline practitioners is both statutory and inherent. Section 89 of the *Legal Practitioners Act 1981* (SA) provides:

> (1) Where the Tribunal after conducting an inquiry into the conduct of a legal practitioner recommends that disciplinary proceedings be commenced against the legal practitioner in the Supreme Court, the Board, the Attorney-General or the Society may institute disciplinary proceedings in the Supreme Court against the legal practitioner.
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> (2) In any disciplinary proceedings against a legal practitioner (whether instituted under this section or not) the Supreme Court may exercise any one or more of the following powers:
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> (a) it may reprimand the legal practitioner;
>
> (b) it may make an order imposing conditions on the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate)—
>
> (i) relating to the practitioner's legal practice; or
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> (ii) requiring that the legal practitioner, within a specified time, complete further education or training, or receive counselling, of a specified type;
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> (c) it may make an order suspending the legal practitioner's practising certificate (whether a practising certificate under this Act or an interstate practising certificate) until the end of the period specified in the order or until further order;
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> (d) it may order that the name of the legal practitioner be struck off the roll of legal practitioners maintained under this Act or the roll kept in a participating State that corresponds to the roll maintained under this Act;
>
> (e) it may make any other order (including an order as to the costs of proceedings before the Court and the Tribunal) that it considers just.
>
> (3) This Part does not derogate from the inherent jurisdiction of the Supreme Court to discipline legal practitioners.
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> ...

"Unprofessional conduct" is defined in section 5(1)(b) of the Act *inter alia* to mean:

> any conduct in the course of, or in connection with, practice by the legal practitioner that involves substantial or recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute;

14 In *A Solicitor v The Law Society of New South Wales*[3] the High Court made a number of observations with respect to the inherent and statutory jurisdictions of the New South Wales Supreme Court, which are of general relevance to the jurisdiction of this Court. The Court also discussed the nature of professional misconduct:[4]

> ... In *Myers v Elman*, Lord Wright distinguished conduct by a solicitor of litigation in a fashion amounting to professional misconduct which was not of so serious a character as to justify suspension or striking off from the Roll. Thus not all cases of professional misconduct justify or require a conclusion that the name of a practitioner should be removed from the roll. *Where an order for removal from the roll is contemplated, the ultimate issue is whether the practitioner is shown not to be a fit and proper person to be a legal practitioner of the Supreme Court* upon whose roll the practitioner's name presently appears.
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> ...
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> ... The dividing line between personal misconduct and professional misconduct is often unclear. Professional misconduct does not simply mean misconduct by a professional person. At the same time, even though conduct is not engaged in directly in the course of professional practice, it may be so connected to such practice as to amount to professional misconduct. Furthermore, even where it does not involve professional misconduct, a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not a fit and proper person to practise. And there may be an additional dimension to be considered. It was explained by Kitto J in *Ziems*:
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> > "It is not difficult to see in some forms of conduct, or in convictions of some kinds of offences, instant demonstration of unfitness for the Bar. *Conduct may show a defect of character incompatible with membership of a self-respecting profession; or, short of that, it may show unfitness to be joined with the Bench and the Bar in the daily co-operation which the satisfactory working of the courts demands.* A conviction may of its own force carry such a stigma that judges and members of the profession may be expected to find it too much for their self-respect to share with the person convicted the kind and degree of association which membership of the Bar entails. But it will be generally agreed that there are many kinds of conduct deserving of disapproval, and many kinds of convictions of breaches of the law, which do not spell unfitness for the Bar; and to draw the dividing line is by no means always an easy task."
>
> Professional misconduct may not necessarily require a conclusion of unfitness to practise, and removal from the roll. In that regard, it is to be remembered that fitness is to be decided at the time of the hearing. The misconduct, whether or not it amounts to professional misconduct, may have occurred years earlier. At the same time, personal misconduct, even if it does not amount to professional misconduct, may demonstrate unfitness, and require an order of removal. The statutory definition in s 127 involves both concepts, and, where it applies, must be given effect according to its terms. However, when the Supreme Court is exercising its inherent jurisdiction, it has the capacity to determine, and act on the basis of, unfitness, where appropriate, without any need to stretch the concept of professional misconduct beyond conduct having some real and substantial connexion with professional practice. In a statutory context where the power

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[3] *A Solicitor v The Law Society of New South Wales* (2004) 204 ALR 8.

[4] *A Solicitor v The Law Society of New South Wales* (2004) 204 ALR 8 at [12], [15] – [16], [20] - [21].

of removal depends upon a finding of professional misconduct, it may be appropriate to give the expression a wider meaning, similar to that in s 127. There is no such necessity in the present case. [emphasis added]

The Tribunal Proceedings

15 In the present proceedings, the practitioner accepted the findings of the Tribunal in their entirety. It should be said immediately that the allegations and findings do not involve any question of misappropriation of money or breach of trust. The practitioner was unrepresented before the Tribunal, but was represented by senior counsel throughout the appeal hearing.

16 The conduct giving rise to the present proceedings involved the affairs of five clients. The Tribunal concluded that the practitioner was guilty of misconduct in the manner in which she dealt with those clients. The practitioner failed to communicate with several clients for a number of months and was not contactable by telephone or facsimile. One client was unable to obtain an account of the practitioner's professional charges. The practitioner failed to communicate with another client with respect to court hearing dates, causing the client considerable anxiety and distress. These ongoing failures of the practitioner led the clients to complain to the Law Society and the Board. The Tribunal further found that the practitioner was abusive to a client and his secretary and was guilty of professional misconduct in that respect.

17 The Tribunal concluded that the practitioner failed to fully cooperate with the Board in its investigations and despite repeated requests over an extended period failed to provide a response to the Board with respect to complaints. The Tribunal found that the practitioner's failure to cooperate with the Board amounted to professional misconduct.

18 Following complaint to the Board it was said that the practitioner failed to cooperate with the Board. This ultimately led the Board to issue a section 76 (4a) notice.[5] The Tribunal concluded that the practitioner consistently failed to respond to the Board's correspondence.

19 The Tribunal found that the practitioner dealt with another legal practitioner in an offensive, insulting and grossly discourteous manner when dealing with a client's affairs. The Tribunal concluded that this conduct was not serious enough

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[5] (1) The Board may, of its own motion, make an investigation into the conduct of a legal practitioner or former legal practitioner who the Board has reasonable cause to suspect has been guilty of unprofessional or unsatisfactory conduct.

...

(4a) The Board may, by notice in writing, require a legal practitioner or former legal practitioner whose conduct is under investigation to make a detailed report to the Board, within the time specified in the notice, in relation to any matters relevant to the investigation.

(4b) A legal practitioner or former legal practitioner must comply with a requirement under *subsection (4a)*. $10 000 or imprisonment for one year.

to warrant a finding of unprofessional conduct. However, a finding of unsatisfactory conduct was made.

20 The practitioner in the course of acting for a client, who was the subject of a police enquiry concerning allegations of paedophilia, acted in an overbearing, aggressive and grossly discourteous manner toward police officers. The officers concerned were conducting a search of the client's home in the execution of their duties and had apparently entered the client's premises in the absence of the practitioner. When she arrived the search was underway, with video footage being filmed. The practitioner took objection to the police conduct and behaved in a loud and aggressive manner, made physical contact with the officer operating the video camera and was verbally abusive. The Tribunal considered that this conduct was unprofessional.

21 The Tribunal concluded:

> In our opinion the task of the Tribunal is to determine whether the practitioner is a fit and proper person to practise the law and in making that decision we are required to have regard to all of the evidence relating to the charge.
>
> It is appropriate to consider the totality of the conduct over the period of five years and, when this is considered cumulatively, we are of the opinion that it amounts to a serious breach of the practitioner's obligations as a legal practitioner. In each of the charges involving a failure to cooperate with the Board, we have found that the Practitioner provided no real or plausible evidence nor did she make any real attempt to respond to the Board's requirements.
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> We take into account the fact that the Practitioner has endeavoured to consult with other practitioners to assist her to overcome some of her difficulties, and the fact that as a sole practitioner, she was clearly under a good deal of pressure particularly whilst trying to deal with what seemed to be a major case interstate involving her personally, coupled with periods when she was unwell.
>
> At the end of the day it is the duty of this Tribunal not to seek to punish the practitioner, but to ensure that the Practitioner is a fit and proper person to continue practice in the law, and to ensure that the public is protected from practitioners who do not meet the high standards which the law requires.
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> We have considered the options that are open to the Tribunal, under s82 of the Act, and in our opinion our finding of unprofessional conduct, pursuant to the charge laid against the Practitioner, requires us to recommend that disciplinary proceedings be commenced against the legal Practitioner in the Supreme Court.

The Hearing in this Court

22 Counsel for the practitioner submitted that the Tribunal's findings did not warrant a removal order or suspension. It was submitted that this Court should order that the practitioner only practise the law under supervision.

23 During the hearing before this Court, counsel for the practitioner sought to adjourn the proceedings to enable medical evidence to be placed before the Court. It was said that the practitioner had suffered serious injuries in a motor vehicle collision in 1988 and that the long-term effects of head injuries sustained were likely to provide an explanation for much of her professional misconduct. The Board did not oppose an adjournment. As a consequence the matter was stood over for some months.

24 In February 2009, a psychiatric report of Dr Czechowicz and a neuropsychological report of Mr Field were provided. Supplementary written submissions made by the Board and the practitioner followed. The parties were content to rely on the written submissions. The Court did not require further oral submissions.

25 Counsel outlined the practitioner's background in considerable detail and contended that her personal circumstances warranted a lenient and merciful approach.

26 The practitioner was born in 1953. She left school at 14. Notwithstanding the award of a scholarship to study further, the practitioner was directed by her mother, a sole parent, to leave school and work to help support the family.

27 The practitioner married when aged 19 years. She moved with her husband from Brisbane to Sydney. She obtained secretarial work. She commenced night studies, matriculated and then undertook tertiary studies culminating in 1977 with the award of a commerce degree. She commenced work as a chartered accountant in 1980. The practitioner moved with her husband to Adelaide and established her own accountancy practice in 1982. She then commenced law studies part-time. In 1984 she remarried and took on a responsibility for two stepchildren. In 1997 she was admitted as a practitioner of this Court.

28 Thereafter, as a sole practitioner, she conducted an accountancy and a legal practice. She spent about one-fifth of her time on her legal practice and at relevant times had about 30 ongoing matters.

29 On 15 January 1988, the practitioner, when a pedestrian in a Brisbane suburb, was struck by a moving vehicle. The driver claimed to have lost control of the vehicle as a consequence of a mechanical failure. This accident led the practitioner into lengthy, costly and unsuccessful litigation. It is evident that the practitioner has been receiving medical treatment for many years. The only medical report provided to the Court was from Dr Czechowicz, the practitioner's treating psychiatrist.

30 Dr Czechowicz has treated the practitioner from September 2004. He has been consulted on many occasions. Dr Czechowicz formed the view that the practitioner suffered a closed head injury in the 1998 accident that has left her

with post-traumatic stress disorder and depression. In the course of his report, Dr Czechowicz opined:

> ... I became convinced that she did suffer brain damage at the time of the MVA as well as PTSD. I considered that this damage was significant and produced impairment so that Lorraine was unable to sustain the effort to work as an accountant and to work as a solicitor/barrister for which she was qualified. She is intelligent but I suspect did suffer some frontal impairment which is a problem that is difficult to delineate – even clinically this interacts with personality issues that include obsessive compulsive traits which means her attention to detail causes her to get lost – losing focus on the goals of what she is trying to achieve. This then causes distress, aggression and subsequent extensive failure including even to be able to care for herself.
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> ...
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> Ms Thomson has a psychiatric injury which is the result of cumulative physical and in the last five years especially, ongoing psychological stresses due to her inability to cope at work which is not so much directly due to cognitive impairment but a mental incapacity making things difficult which are based on emotional turmoil, anxiety and depression which at times turn into psychosis such as occurred in 2005 when she needed psychatric hospital inpatient treatment.
>
> Her psychiatric injury which is a combination of organic and psychological functions do impair her capacity to work with professional detachment. There are the results of post traumatic stress disorder, dysthymic disorder which arose from earlier brain damage as well as the psychological trauma of the life threatening accident.
>
> ...

31 Mr Field, a neuropsychologist, examined the practitioner on two occasions at the request of her solicitor. In his report of 9 September 2008, Mr Field observed:

> My findings are those of a series of memory and executive dysfunction, consistent with the presence of a closed head injury of moderate degree.
>
> Additionally I consider that Ms Thomson is also suffering from a major depressive disorder plus probable Post Traumatic Stress Disorder.
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> ...
>
> On assessment she demonstrates significant decrements of both learning and recall function and also milder decrements of executive function and in particular speed of information processing function. These results are consistent with the presence of decrements typically experienced following a moderate closed head injury. Additionally, given the length of time that has elapsed since the subject accident it [sic] highly likely that there will be no future spontaneous improvements in cognitive function. Given her self-reports, the presence of significant behavioural dyscontrol syndrome (which may be reflected in aggression and other impulsive behaviours) was suspected, although in the event Ms Thomson did not show any strong psychometric evidence for the presence of any behavioural or verbal dyscontrol syndrome.
>
> Ms Thomson also completed a DASS, which indicated the presence of very elevated scores on all three factors. This may be indicative of, although not certainly indicative of,

> the present [sic] of a Post Traumatic Stress Disorder. Even if this is not present, the presence of a major depression is certain. One could expect that a component of this depression is likely a reactive depression secondary to her current predicament. I suspect however that there is a PTSD which is causally related to her subject accident, and which may have been exacerbated by the multiple professional reversals she describes. ...
>
> The presence of a PTSD is of significance to the extent that this disorder together with a major depression could easily lead to some of the degree of behavioural dyscontrol embodied in the recent allegations against Ms Thomson.

Dr Czechowicz had no doubt that in fact she did suffer from a post-traumatic stress disorder.

32 Counsel identified a number of stressors said to have exacerbated the practitioner's depression and post-traumatic stress disorder. These included unsuccessful litigation arising from the motor vehicle accident, the burden of legal costs associated with those proceedings, litigation against the State of South Australia in relation to a property transaction, a complaint made to the Institute of Chartered Accountants and the Tax Agents' Board by a client who also complained to the Legal Practitioners' Conduct Board, a dispute concerning a strata property managed by the practitioner, an audit by the Law Society of the practitioner's legal practice, dispute and litigation concerning the practitioner's purchase of an accountancy practice, the interruption to the practitioner's office telephone service caused by contractors working in the vicinity of those premises, adverse publicity with respect to the complaints made against the practitioner, and the proceedings before the Legal Practitioners Conduct Board and the present proceedings, including the prospect of having to pay costs relating to those proceedings. It was further pointed out that the practitioner continues to suffer from chronic pain and fibromyalgia as a result of her injuries sustained in the motor vehicle accident.

33 Counsel informed the Court that a number of the above stressors led the practitioner to reduce her professional workload during 2004. It was said that she became extremely depressed, psychotic and suicidal during 2005. This led to hospitalisation where her care was supervised by Dr Czechowicz. Following her discharge from hospital she made significant improvements, but in Dr Czechowicz's opinion, continued to suffer from ongoing stress which exacerbated her post-traumatic stress disorder and her depression. The practitioner has not practised the law since 2004 and has relinquished her practising certificate.

34 It was submitted that the medical evidence and an understanding of the effects of the injuries sustained by the practitioner in the 1988 collision provided an explanation for the practitioner's unprofessional conduct. It was said that complaints against the practitioner particularly related to incidents which occurred during the period in which her ability to cope was rapidly declining. It was emphasised that the incidents did not reflect upon the practitioner's moral integrity and did not involve dishonesty, deceit or breaches of trust or

confidence. The Court was informed that the practitioner had not been the subject of any claim for negligence with respect to her conduct in any legal or accounting matter.

Removal from the Roll

35 Counsel for the Board submitted that the established misconduct in the circumstances called for an order for removal. It was contended that the medical evidence supported the conclusion that the practitioner was not fit to be entrusted with the duties and responsibilities of a legal practitioner and would remain unfit indefinitely.

36 It is relevant to recall that neither suspension nor removal from the roll is punishment for wrongdoing. The purpose is to maintain a proper standard and that is a necessarily high standard. As Dixon CJ observed in *Ziems v The Prothonotary of the Supreme Court of New South Wales*:[6]

> The jurisdiction the court exercises has nothing to do with punishment. The purpose of the power to remove from the roll of barristers is simply to maintain a proper standard, and that is a necessarily high standard, for the Bar is a body exercising a unique but indispensable function in the administration of justice.

Thus the ultimate question for the Court in the present case is whether the practitioner is a fit and proper person to be entrusted with the duties and responsibilities of a legal practitioner.

37 This Court has previously had occasion to consider the problems that arise when a practitioner is found guilty of unprofessional conduct but there is a medical explanation for that conduct.

38 In *Law Society of SA v Murphy* Doyle CJ observed:[7]

> The issue for the Court is whether, in view of the admitted conduct, Mr Murphy is fit to remain a member of the legal profession. If his conduct demonstrates that he is not, in my opinion the ordinary course must be an order that his name be removed from the Roll, even if something less would be an adequate punishment for him or even if something less is likely to ensure that he would not be able to practise as a practitioner.
>
> In saying this, I do not say that considerations of the practitioner's personal circumstances, and consideration of extenuating circumstances, are to be put to one side entirely. I merely emphasise the point that the court acts in the public interest and not with a view to punishment of the practitioner.
>
> The Court also has to consider the maintenance of public confidence in the profession, and must ensure that only those who have observed the required standards are permitted to remain members of the legal profession.

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6 *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 286.

7 *Law Society of SA v Murphy* (1999) 201 LSJS 456 at 461. (Millhouse and Prior JJ agreeing).

39 Doyle CJ accepted that the practitioner's conduct was, at relevant times, explained by clinical depression of gradual onset, which may also have played a part in the earlier conduct. The Court had been urged to accept an undertaking by Mr Murphy not to practise the profession of the law, rather than removing him from the roll of practitioners. Doyle CJ observed:[8]

> By allowing a practitioner to remain on the Roll of Practitioners, the Court holds the practitioner out as a fit and proper person to practise. There is a certain incongruity in allowing a practitioner to remain on the Roll even though it has been demonstrated that the practitioner is not a fit and proper person to remain a practitioner. ...
>
> In reaching a conclusion as to the order that should be made, I take account of my conclusion, expressed earlier, that the practitioner has been guilty of unprofessional conduct over a substantial period of time. Although no one item of conduct may amount to unprofessional conduct, the sustained neglect of clients' affairs is significant. I cannot say that the conduct that is not attributable to the depression would itself, if it stood alone, warrant removing the name of the practitioner from the Roll. But the depression to which some of the conduct is attributable itself indicates that the practitioner is not presently fit to practise, and that there is no reason to think that that condition will be of short duration.
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> In combination, the lack of any excuse for part of the conduct, and the fact that the explanation for the balance is a condition that makes the practitioner medically unfit to practise, and likely to remain so for some time, in my opinion lead to the conclusion that the practitioner's name should be removed from the Roll.
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> In my opinion, acceptance of the undertaking would not adequately reflect the significance of the conduct of the practitioner and the significance of his present condition.
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> As well, acceptance of the undertaking would mean that should Mr Murphy seek at some later time to obtain a Practising Certificate, he would not face the hurdle of establishing that he is fit to be a practitioner, but the lesser hurdle of satisfying the Court that he should be released from his undertaking.

40 A similar approach can be taken to the question of suspension of a practising certificate. Suspension may be appropriate where there is a reasonable prognosis that, with appropriate treatment or supervision, the practitioner is likely, within a finite time, to be fit to practise. This cannot be said of the practitioner at this time.

41 The medical evidence establishes there is no certainty that the practitioner will ever be fit to practise or, if she is, when that will be. As Dr Czechowicz observed:

> At this time the patient is incapable of doing legal work however, should her stresses reduce it would be beneficial to consider a rehabilitation program and include a limited capacity to practice [sic] law with restrictions of caseload and support including supervision. I have some expectation that it would be possible for Ms Thomson to be guided to return to legal practice in a limited way but at this stage I cannot make any

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[8] *Law Society of SA v Murphy* (1999) 201 LSJS 456 at 461 – 462.

prediction about the time when this is likely to occur. There were many stressors that contributed to exacerbation of symptoms of [post traumatic stress disorder] such as persistent adverse publicity through the media. It is difficult for rehabilitation to begin in [sic] Ms Thomson continues to face the potential of what she perceives as astronomical legal costs that were involved in the cases conducted against her.

At this stage I cannot estimate the level of permanent impairment as there has been no systematic course of rehabilitation possible as continuing stresses have not abated.

42 Mr Field supported this view:

The prognosis is guarded. I consider that Ms Thomson has long ago reached her best level of recovery from her closed head injury, although I do not consider that her deficits are necessarily of sufficient severity to prevent her continuation in her chosen career.

The prognosis of the major depression and [post traumatic stress disorder] is unknown. Although both of these are in principle remediable with good quality psychotherapeutic and mediation treatments, they are also notoriously resistant to treatment. This being the case there is considerable risk that Ms Thomson will not recover appreciably from these conditions even with appropriate treatment.

I believe that her condition does limit her ability to complete the usual duties of a legal practitioner as her memory dysfunction will be an obvious bar to the usual practice of managing clients' cases. Additionally, her significantly slowed speed of information processing is likely to lead to very impaired and limited ability to manage client workload and complete work in a timely way. Practically speaking she will tend to be slow and inefficient at completing work presented to her, and she would need to be very wary of work over-commitment.

The head injury is not remediable. There is a major depression and probable PTSD, both of which would respond to appropriate medications to an extent, and should also respond to appropriate psychotherapy. I would defer to psychiatric opinion regarding her likely degree of response to these treatments, and I suspect that she has already received some medication and psychotherapy therapy without much in the way of benefit.

43 These opinions when considered in their totality provide an insight into the practitioner's difficulties and her unfitness to be a member of the legal profession. The practitioner has suffered a serious closed head injury with frontal lobe damage leading to memory dysfunction. She has a post-traumatic stress disorder of long standing. She suffers from chronic anxiety and severe depression. She has been hospitalised as a consequence of these disabilities. When severe they have rendered her suicidal. These disabilities provide an explanation for the findings of unprofessional conduct. However, the conduct remains unprofessional. The disabilities are ongoing, and there is no prognosis as to when, and if, her symptoms may improve. The pressures associated with the work of a legal practitioner may lead to the maintaining of her disabling illness. The practitioner's ongoing disabilities lead me to the conclusion that she is unfit to practise and will remain so indefinitely.

44 In *In Re a Practitioner*,[9] King CJ observed that an order for removal did not necessarily close the door to a return to the legal profession for all time. As King CJ noted, after a period of time it might be able to be demonstrated that the practitioner had re-established herself in the esteem of the profession and in the eyes of the general public.

45 The totality of the evidence before the Court demonstrates that the practitioner does not have the necessary attributes of a person to be entrusted with the responsibilities of a legal practitioner. Accepting that the conduct was caused or contributed to by the practitioner's medical condition, the misconduct remained serious misconduct. As earlier observed, such conduct has a tendency to bring the profession into disrepute and to undermine the confidence of the public in the legal profession.

Conclusion

46 The practitioner's name should be removed from the roll of legal practitioners.

KELLY J.

47 I concur with the orders proposed and reasons given by Gray J.

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[9] *In Re a Practitioner* (1982) 30 SASR 27 at 32.