

# SUPREME COURT OF SOUTH AUSTRALIA

(Full Court: Application)

## LEGAL PRACTITIONERS CONDUCT BOARD v JONES

[2010] SASCFC 51

### Judgment of The Full Court

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

12 November 2010

#### PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - PROFESSIONAL MISCONDUCT - TRUST MONEY

#### PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - DISCIPLINARY PROCEEDINGS - SOUTH AUSTRALIA - ORDERS

Application by Legal Practitioners Conduct Board to have a legal practitioner removed from roll of practitioners - Legal Practitioners Disciplinary Tribunal considered charge of unprofessional conduct and found the practitioner guilty - practitioner reprimanded and restrictive condition placed on practising certificate - Board appealed in Supreme Court to single judge and appeal allowed - judge recommended that disciplinary proceedings be commenced in this court - practitioner admitted unprofessional conduct before this court - no objection that this court act on findings of the Tribunal - evidence that unprofessional conduct occurred over a two-year period of high stress and anger - no evidence that cause of stress and anger has been addressed - explanations for conduct do not excuse the conduct - role of this court to protect the public interest and maintain professional standards.

Held: Application by Legal Practitioners Conduct Board granted - practitioner to be removed from roll of practitioners.

*Legal Practitioners Act 1981* s 41(1), s 76(4a), s 82(6)(a)(iii), s 86, s 89(2)(d), s 89(2)(c) and s 89(2)(d), referred to.

*The Law Society of South Australia v Murphy* (1999) 201 LSJS 456; *Legal Practitioners Conduct Board v Kerin* (2006-2007) 246 LSJS 371; *In re a practitioner* [1983-84] 36 SASR 590, applied.

*Legal Practitioners Conduct Board v Jones* [2009] SASC 347, discussed.

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**Applicant: LEGAL PRACTITIONERS CONDUCT BOARD**  
**LEGAL PRACTITIONERS CONDUCT BOARD**

**Respondent: JEFFREY EVAN JONES In Person**

**Hearing Date/s: 01/11/2010**

**File No/s: SCCIV-10-102**

**B**

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



**LEGAL PRACTITIONERS CONDUCT BOARD v JONES**  
**[2010] SASCF 51**

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

**THE COURT**

**Introduction**

1           The Legal Practitioners Conduct Board (“the Board”) has applied for an  
order pursuant to s 89(2)(d) of the *Legal Practitioners Act 1981* (SA) (“the Act”) that Mr Jones’ name be struck off the roll of legal practitioners maintained under the Act.

2           The Court may, pursuant to s 89(5) of the Act, accept and act on the findings of the Legal Practitioners Disciplinary Tribunal (“the Tribunal”). Neither Mr Cole, for the Board, nor Mr Jones, who represented himself, had any objection to the Court acting on the findings of the Tribunal.

3           On 23 March 2009 the Board charged Mr Jones with unprofessional conduct. Following an inquiry into his conduct, during which Mr Jones admitted the charge and all but one of the particulars, the Tribunal found Mr Jones guilty of the charge. On 4 September 2009 the Tribunal delivered a report containing its findings. It was satisfied that Mr Jones was guilty of unprofessional conduct. It reprimanded Mr Jones and imposed a restrictive condition on his practising certificate pursuant to s 82(6)(a)(iii) of the Act. The order of the Tribunal was that a condition be imposed on Mr Jones’ practising certificate, once renewed by him, that he not practise from the time of renewal for a period of 18 months, and that during that period he only practise as an employed solicitor under the supervision of a practitioner of not less than five years’ standing. The intention of the Tribunal was that Mr Jones not practise as a sole practitioner for a period of 18 months from the time of the renewal of his practising certificate. Although Mr Jones told the Court he had interpreted the condition in a different way, he accepted that the intention of the Tribunal was as stated above.

4           Pursuant to s 86 of the Act, the Board appealed against the decision of the Tribunal. It argued that the imposition of a condition on Mr Jones’ practising certificate was an insufficient penalty given the seriousness of his conduct. It submitted that the Tribunal ought to have made an order recommending that disciplinary proceedings be commenced against Mr Jones in the Supreme Court.

5           On 13 November 2009 Layton J allowed the Board’s appeal, quashed the decision of the Tribunal and recommended that disciplinary proceedings be commenced against Mr Jones in the Supreme Court: *Legal Practitioners Conduct Board v Jones* [2009] SASC 347.

6 On 19 January 2010 the Board commenced disciplinary proceedings against Mr Jones in the Supreme Court.

### Background

#### (i) *The facts and the charges*

7 At the time the Tribunal delivered its ruling Mr Jones was 56 years old. He is now 57. He was admitted to practice in 1992 and employed by the Legal Services Commission for most of 1993. Since then he has practised mainly as a sole practitioner. His practice was mainly for victims of crime, some criminal defence work and generally as a suburban solicitor.

8 The conduct the subject of the charge took place between about June 2006 and June 2008. The charge contained 18 allegations, including eight allegations that Mr Jones misappropriated money paid to him contrary to s 41(1) of the Act. It was alleged that Mr Jones did not deposit into his trust account moneys paid to him for his legal fees. The amounts misappropriated ranged from \$200 to \$2,400. Some of the allegations alleged multiple instances of misappropriation. In total it was alleged that Mr Jones misappropriated \$18,695. The offending occurred regularly and was deliberate.

9 The charge also contained two allegations that Mr Jones failed to respond to a Notice issued by the Board pursuant to s 76(4a) of the Act within the relevant time specified in the Notice; an allegation that he failed to respond to a Notice issued by the Board; an allegation that he failed to co-operate and be fully frank with the Board in its investigation of complaints made against him; two allegations that he lied, once to the Board and once to South Australia Police ("SAPOL"); three allegations that he produced false and misleading bills; and an allegation that he failed to disclose to the Legal Services Commission that he had already received payment from a client when submitting that client's application for legal funding.

10 The admitted lies were first to the Board in response to a request to explain the whereabouts of money paid to him by a client. When further information became available, Mr Jones admitted the lie he had told the Board and said it "was reckless and arrogant and very difficult to explain ... I lost sight of the fact that trust money is sacred". The second lie was in a letter Mr Jones wrote to SAPOL. He told the police that he had money in trust from a client which would be forwarded upon a guilty plea being accepted. He had no money in trust when he made that assertion.

11 Mr Jones told the Tribunal that he used the moneys that were not banked into his trust account to pay for expenses such as petrol, rent and stationery. He said that he had given receipts to his clients for all of the moneys that were received by him for his legal fees, and that he had returned or offered to return money for which he had not done work.

12 With respect to the allegations of misappropriation, it should be noted that the Board alleged a breach of s 41(1) of the Act. It did not allege that Mr Jones did not do the work for the amount misappropriated. That is to say the Board did not allege misappropriation “in a fraudulent sense”.

13 Mr Jones has not enjoyed a life free from difficulty. In 1975 he was seriously injured in an accident that left him paralysed from the waist down. Although he overcame this disability and learned to walk again, the accident had a profound impact on him, and led to the breakdown of his parents’ marriage.

14 His former wife also suffered from a disability. They married in 1980 but the marriage ended in 1997. She was a paraplegic and he cared for her during their marriage. They had two sons together, both of whom joined the armed forces in mid-2006.

15 In October 2006, shortly after the conduct the subject of the charge commenced, one of Mr Jones’ sons was deployed to a conflict zone, while the other was deployed on a patrol boat. This had a negative effect on Mr Jones. He told the Tribunal that he became angry and “fell out” with the law and his family. He worried about his sons coming home in a wheelchair, and he suffered from nightmares and a lack of sleep. This meant that he was unable to properly manage the administrative side of his practice. In his words, he “found that it was impossible to focus on the accounts”. Once he started receiving queries about his conduct, he said that he handled his anger by “picking fights” with the Law Society and the police. He did not seek help.

**(ii) The Tribunal’s decision**

16 The Tribunal accepted that Mr Jones’ personal circumstances were “sad and unusual” around the time the conduct the subject of the charge took place. It found that Mr Jones was remorseful and apologetic, and that he was keen to move on with the “next stage of his life”: at [60]. It also found that there was a “lack of any element of dishonesty when the breaches occurred”: at [61]. The Tribunal considered that there was no need for it to act to protect the public from Mr Jones practising in the future because a manager had been appointed to his practice and he had already voluntarily ceased practising on 14 August 2008. In light of these findings the Tribunal concluded that “the objects of the Act would be achieved and the public interest adequately protected” if conditions were attached to Mr Jones’ practising certificate: at [61].

**(iii) The appeal to the Supreme Court**

17 The Board appealed against the Tribunal’s decision. Section 86 of the Act provides a right of appeal to the Supreme Court against a decision of the Tribunal. On appeal, Layton J considered that the Tribunal erred in a number of respects. First, she found that the Tribunal erred in characterising Mr Jones’ conduct “as lacking any element of dishonesty”: at [26]. She noted that in neither his own admissions nor in the findings of the Tribunal was there a suggestion

that his conduct was inadvertent. Mr Jones was aware of his obligations and chose to ignore them over a long period. He acknowledged that he had lied at the hearing before the Tribunal. He also admitted the allegations that he had lied to the Board and SAPOL, and that he had been less than frank in responding to the Notices from the Board.

18 Second, Her Honour considered that the Tribunal erred in placing too much weight on the “stress and personal circumstances” of Mr Jones when deciding what order to make. She noted that Mr Jones’ conduct reflected a pattern of behaviour that occurred over a number of years, and that the conduct began before his sons were deployed overseas. She also noted that while stress might be used to explain “technical non-compliance”, it cannot explain or excuse the use of moneys that Mr Jones knew he was not entitled to: at [39].

19 Third, Layton J considered that the Tribunal erred in not having regard to a relevant instance of past disciplinary action taken by the Board against Mr Jones. In October 1999 Mr Jones received a reprimand from the Board for failing to co-operate fully with the Trust Account Inspector. Layton J saw this as a relevant matter that the Tribunal should have had regard to in reaching its conclusion about the seriousness of Mr Jones’ conduct.

20 Ultimately, Her Honour concluded at [53]-[54] that:

[53] In my view the order made by the Tribunal does not adequately address the seriousness of the conduct and the approach which should be taken to that conduct. I consider that the Tribunal on its own findings of fact should have exercised its discretion pursuant to s 82(6)(a)(v) to recommend that disciplinary proceedings be commenced against the practitioner in the Supreme Court.

[54] The protection of the public is not just limited to situations where clients have suffered loss and or damage in a financial or personal sense, as appears to be the respondent’s approach. Protection of the public interest includes ensuring that professional standards of legal practice are maintained and are seen to be maintained. The simple order for supervision of the respondent for 18 months of practice does not appropriately ensure protection of the public in relation to the future practice of the respondent, or that the Tribunal is treating the conduct as seriously as the respondent’s conduct warrants.

### **Consideration of the Board’s application**

21 Mr Cole summarised the offending conduct in his outline of argument. He said:

The unprofessional conduct is not just of a particular kind. It encompasses misappropriation of trust monies by not completing appropriate receipts/banking for monies received (thirty instances), failing to co-operate with and be fully frank with the Board (four instances), lying to the Board, lying to SA Police, deceptive conduct in relation to an application for legal aid, and creating false and misleading bills (three instances).

22 In his submissions before this Court Mr Cole elaborated on those matters. He emphasised that the pattern of behaviour extended over two years. He also referred to earlier reprimands given to Mr Jones, which were not referred to by the Tribunal but were mentioned by Layton J. The first of these was in August 1999 when Mr Jones was reprimanded for practising without a current practising certificate. It was only for a matter of a few months that he was without a certificate.

23 The second matter is more serious and more significant. Mr Jones was disciplined for his lack of co-operation with the Trust Account Inspector in October 1999. Then again in November 2005 Mr Jones made errors in respect of the amount of GST charged in his accounts. He was reminded of his obligations in relation to the accuracy of his accounting.

24 As a result of the disciplinary action Mr Jones was required to attend a trust account seminar to remind him of a practitioner's obligations. This should have provided a strong warning about the necessity to follow the strict procedures required in operating a trust account, in keeping with the expectations of the public.

25 Mr Cole relied on several authorities. He referred to *The Law Society of South Australia v Murphy* (1999) 201 LSJS 456, where Doyle CJ said at 460:

The Court is concerned to protect the public, not to punish a practitioner who has done wrong, although of course the removal of the practitioner's name from the Roll will operate as a punishment. The Court acts to protect the public and the administration of justice by preventing a person from acting as a legal practitioner, and by demonstrating that the person is, by reason of his or her conduct, not fit to remain a member of a profession that plays an important part in the administration of justice and in which the public is entitled to place great trust.

26 Another important aspect of this matter is the practitioner's attitude in misleading and failing to co-operate with the Board.

27 In *Legal Practitioners Conduct Board v Kerin* (2006-2007) 246 LSJS 371 at 382 White J said:

Conduct which involves the misleading of the Board is unprofessional conduct of a serious kind. This Court has emphasised on many occasions the obligation of practitioners to be cooperative with the Board and to answer its questions properly and honestly.

28 Mr Cole submitted that the combination of the admitted charges amounted to serious misconduct. He submitted that it showed both a disregard for regulatory requirements and for proper professional standards required of a legal practitioner. He submitted that the conduct overall meant that Mr Jones was not a fit and proper person to practise the law and that as a consequence his name should be removed from the roll.

29 Mr Jones did not dispute any of the facts alleged before the Tribunal. He told the Court that he had not tried to minimise his conduct. He said that he knew he had told lies and he knew he had acted dishonestly. He made the point that none of his clients had suffered loss or damage.

30 Mr Jones referred the Court to a letter he wrote to the Conduct Board in September 2008. He said this summed up his position. He said in that letter:

I am of the view that my performance declined markedly from about July 2006. I believe this can be linked to the fact that at that time both my sons had commenced training for overseas deployments with the Australian Defence Force. From October 2006 they have been deployed in Afghanistan, East Timor and on RAN patrol boats. This went on until May 2008.

...

At a critical moment, instead of putting my head down, doing my job and backing my family up, I lost focus. I also lost lifelong friends and began to set a bad example on behalf of my family and the legal profession as a whole. I am deeply regretful for this.

31 The only two realistic options open to this Court are to order that the name of the practitioner be struck off the roll pursuant to s 89(2)(d), or to order a suspension of the practitioner's practising certificate until further order, pursuant to s 89(2)(c).

32 The Court has limited information available as to how Mr Jones has coped and is likely to cope in the future with his anger management which he acknowledges has been the cause of most of his problems. A report from the psychologist Mr Upsdell dated 19 June 2009 is not of much assistance. It is clear that it only reports up to a time when Mr Jones was about to undergo counselling therapy. The Court has no independent report as to how successful the counselling was. Mr Jones stated that he would, if required, provide an updated report to the Court. In the view the Court takes, such a report would not be of assistance in any event.

33 The Court has to consider whether suspension, even until further order, as distinct from removal, is appropriate. The Court must look at the nature of the offending, and then decide what is appropriate in terms of the public interest. The Court regards the offending as serious. The repetitive nature of the offending is significant.

34 Mr Cole submitted that suspension was not appropriate. He submitted that, despite the seriousness of the offending, if Mr Jones was suspended, the public would see him as a person who was still regarded as a fit and proper person to be a legal practitioner. In the matter of *In re a practitioner* [1983-84] 36 SASR 590, King CJ said in discussing suspension at page 593:

I cannot regard suspension as an adequate response to the type of unprofessional conduct in which this practitioner engaged. The proper use of suspension is, in my opinion, for



those cases in which a legal practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner. Whilst it is true that the practitioner succumbed to temptations produced by his difficult personal and financial position at a time when his judgment might have been somewhat impaired by the emotional stress to which he was subject, there is no escape from the fact that he engaged in a course of fraudulent conduct extending over three and a half years and involving trust moneys. He has shown himself to be unfit to be a legal practitioner and, in my opinion, the only appropriate order is for him to be struck of the Roll of Practitioners.

- 35 Mr Cole submitted that suspension would not be appropriate and the Board was concerned that if that sanction was imposed it would amount to a lowering of the standard of professional practice in South Australia. Whilst the conduct of the practitioner in the case cited may have been even more serious than here, the comments of King CJ relating to suspension are relevant.

### **Conclusion**

- 36 It is the Court's view that the serious offending shows a disregard of the basics of legal practice. That includes a disregard of trust account procedures, a disregard of the importance of co-operation with the Board, deceptive conduct and a general lack of frankness. These are all breaches of what the Court regards as fundamental requirements for any legal practitioner. Whilst the circumstances in which Mr Jones found himself is a possible explanation for a disturbed state of mind, it cannot excuse his conduct and cannot be used to mitigate the seriousness of the offending. The Court agrees with Mr Cole that suspension would not be sending the right message to the general public. We agree that unlike a case of illness, where a practitioner needs some time for treatment, this matter calls for more than a temporary sanction. The public would be entitled, in the event of a suspension, to regard Mr Jones as a fit and proper person, albeit temporarily suspended, and that would not be appropriate in these circumstances.

- 37 In those circumstances the Court orders that the name of Mr Jones be struck off the roll of legal practitioners.

