

# **SUPREME COURT OF SOUTH AUSTRALIA**

(Full Court)

## **LEGAL PRACTITIONERS CONDUCT BOARD v POWER**

[2013] SASCFC 118

**Judgment of The Full Court**

(The Honourable Justice Sulan, The Honourable Justice Anderson and The Honourable Justice Blue)

31 October 2013

**PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT - GENERALLY**

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

**PROFESSIONS AND TRADES - LAWYERS - QUALIFICATIONS AND ADMISSION - FIT AND PROPER PERSONS**

The Legal Practitioners Conduct Board applies to the Supreme Court for an order that the name of the practitioner, Anthony Kurt Power, be struck off the Roll of Legal Practitioners. This follows a recommendation by the Legal Practitioners Disciplinary Tribunal that disciplinary proceedings be commenced against the practitioner in this Court.

The practitioner was charged by the Board with unprofessional conduct as he committed offences for which punishment by imprisonment is prescribed by law. These offences included indecent filming, indecent filming of a minor on a number of occasions and being in possession of child pornography. These facts are not in dispute and the practitioner pleaded guilty to all charges and was convicted in the District Court.

The practitioner opposes the order sought by the Board. He submits that he should be suspended with retrospective operation to 10 March 2010, the day he ceased to practise. He submits in the alternative that he should be suspended for a future period but taking into account the time he has been without a practising certificate.

Held (by the Court): The unprofessional conduct warrants the removal of the practitioner's name from the Roll of Practitioners (at [39-[40]).

---

**Plaintiff: LEGAL PRACTITIONERS CONDUCT BOARD Counsel: MR M BARNETT - Solicitor: LEGAL PRACTITIONERS CONDUCT BOARD**

**Defendant: ANTHONY KURT POWER Counsel: MS L POWELL QC - Solicitor: MICHAEL WOODS & CO**

**Hearing Date/s: 08/10/2013**

**File No/s: SCCIV-13-848**

**B**

*Legal Practitioners Act 1981 (SA); Summary Offences Act 1935 (SA), referred to.  
A Solicitor v The Council of the Law Society of New South Wales (2003) 216 CLR 253; In  
re a Practitioner (1984) 36 SASR 590, discussed.*

**LEGAL PRACTITIONERS CONDUCT BOARD v POWER**  
**[2013] SASFC 118**

**Full Court: Sulan, Anderson and Blue JJ**

1 **THE COURT:** The Legal Practitioners Conduct Board (“the Board”) seeks an order that the name of the practitioner, Anthony Kurt Power, be struck off the Roll of Legal Practitioners pursuant to s 89(2)(d) of the *Legal Practitioners Act 1981* (SA) (“the Act”). This follows a recommendation by the Legal Practitioners Disciplinary Tribunal (“the Tribunal”) pursuant to s 82(6)(a)(v) and s 89(1) of the Act that disciplinary proceedings be commenced against the practitioner in this Court.

2 The practitioner concedes that his conduct was unprofessional but opposes the order sought by the Board. He argues that a strike off order should not be made but that he should be suspended with retrospective operation to 10 March 2010, the day he ceased practice. In the alternative he argues that he should be suspended for a future period but taking into account the time he has been without a practising certificate.

**Background**

3 The practitioner was charged by the Board with unprofessional conduct on the basis that he committed offences of an infamous nature in respect of which punishment by imprisonment is prescribed by law. The offences with which the practitioner was charged were as follows:

- Between 31 December 2007 and 11 January 2008 at Stockport the practitioner engaged in indecent filming of a minor contrary to s 23AA(1)(a) of the *Summary Offences Act 1935* (count 3);
- Between 5 August 2008 and 18 July 2009 at Wynn Vale the practitioner engaged in indecent filming of a minor contrary to section 23AA(1) of the *Summary Offences Act 1935* (count 2);
- On 27 March 2010 at Wynne Vale the practitioner engaged in indecent filming contrary to s 23AA(1) of the *Summary Offences Act 1935* (count 1);
- On 28 March 2010 at Wynn Vale the practitioner was in possession of child pornography knowing of its pornographic nature and knowing that the victim of the offence was at the time of the offence under the age of 14 years, contrary to section 63A(1)(a) *Summary Offences Act 1935* (count 4); and
- On 28 March 2010 at Wynn Vale the practitioner was in possession of child pornography knowing of its pornographic nature, contrary to s 61A(1)(a) *Summary Offences Act 1935* (count 5).

4 The facts surrounding the offending are not in dispute. The practitioner pleaded guilty to all charges and was convicted in the District Court on 31 March 2011.

5 At the relevant time the practitioner was a member of the congregation of a Church at Golden Grove. He assisted the Church as a youth group leader. This involved running youth group meetings and accompanying youths on trips and Church camps.

6 The first count involved an act of indecent filming. The practitioner was living in Port Pire where he was working as a solicitor. He also kept a room in a house that he shared with two female house mates at Wynn Vale. He would stay at the Wynn Vale house most weekends. On 27 March 2010, the practitioner and his housemates hosted a party at the house. A number of their mutual friends who were members of the Church congregation attended the party, including a number of youths. At one point during the evening, a guest at the party discovered a hidden camera in the toilet cubicle. It was positioned so that the lens of the camera faced the toilet. Two males suspected the practitioner's involvement and confronted him in private. He admitted to installing the camera and using a wireless device to transmit the images to a laptop in his bedroom. The police were called to the house and the practitioner readily made admissions to them. He was arrested and taken to the Holden Hill Police Station. A number of adult persons who attended the party had been filmed without their consent.

7 While being interrogated at the Holden Hill Police Station, the practitioner told police that if they examined his laptop they would find footage from other occasions on which he filmed individuals in private situations and images of child pornography. Police subsequently examined the laptop which led to the charging of counts 2-5.

8 Count 2 concerned the filming of a minor in a toilet inside the Church. On or before 5 August 2008, the practitioner installed a hidden camera in the toilet which transmitted the footage to the practitioner's laptop. The toilet was used by male and female members of the congregation, including minors. Between 5 August 2008 and 18 July 2009, the practitioner indecently filmed two minors, K and N2. At the time K was 16 years of age and N2 was 14.

9 Sometime before 31 December 2007, the practitioner installed a hidden camera in the bathroom of a premises used as a Church camp at Stockport. The bathroom was used by members of the congregation, including minors. Count 3 relates to the filming of a minor N1 between 31 December 2007 and 11 January 2008. At the time, N1 was aged 12 years.

10 Counts 4 and 5 relate to images depicting child pornography located on the practitioner's computers. They contained approximately 4,300 pornographic still images involving children. Around 3,900 of those images involved children apparently under the age of fourteen years and approximately 1,600 involved

explicit sexual activity as defined in Category 7 of the COPINE Scale. A further 610 video files involving acts of child exploitation with children predominantly under the age of 14 years were also located.

11 At the time the practitioner committed the offences, the maximum penalty for engaging in indecent filming of a minor was imprisonment for four years or a fine of \$20,000 and for indecent filming was imprisonment for two years or a fine of \$10,000. The maximum penalty for possessing child pornography when an aggravated offence was imprisonment for seven years, and for a basic offence imprisonment for five years.

12 The practitioner was sentenced to 15 months' imprisonment with a non-parole period of four months. When sentencing the practitioner, the Judge remarked:

It is fair to point out that there is no suggestion that you deliberately set out to film minors. On the other hand, you must have known that there were minors at the location where you were filming and that it was inevitable that they would use the showers and bathrooms where you had placed cameras. The filming of colleagues and members of your church in circumstances where they were entitled to feel they had privacy was a gross breach of the trust they were entitled to place in you as a youth group leader and friend.

13 The Judge summarised the circumstances that led to the offending. He observed:

Unfortunately for you, you have grown up as a socially inept person. From your early schooling you have had difficulty in making friends and relating well to children of your own age. In my view, this has stunted your development as a sexual being. You probably matured somewhat late from a sexual point of view and as you reached the age of having sexual desires, to your dismay they turned out to be homosexual desires.

This was greatly perplexing to you. You had been brought up with values which taught that homosexuality was wrong yet your desires were such that you wished to experiment and tentatively try out your sexual desires. Your social ineptness and your extreme reticence made your feeble attempts in that direction tentative and clumsy and unfulfilled. A more outgoing individual in your circumstances may well have acted out his sexual desires by forthrightly engaging with males who had similar predilections.

For you, there was the added complication that your religious scruples forbade you from engaging in homosexual activities. In my view, in these circumstances, you engaged in the surreptitious photography and possession of the internet pornography as a rather poor substitute for engagement with other human beings and on the basis that having no contact with actual human beings meant that you actually were less blameworthy in the eyes of God.

14 The Judge noted the mitigating circumstances of the offending and the personal circumstances of the practitioner. He said:

I have noted your immediate admission of guilt in relation to the offending and your pleas in the Magistrates Court. Not only do you have no convictions at all but you have

engaged yourself unstintingly in the activities of your church and I have absolutely no doubt that you genuinely hold to the moral tenets that are part of the Christian teaching.

...

From the point of view of matters personal to you, it is difficult to conceive of a person more worthy of some leniency. Your good record, your good character, your involvement in the community, your unfortunate social backwardness, your genuinely held high moral principles and your genuine contrition all point in that direction.

...

I think I have had a good opportunity to judge you. I think you are genuine in your sincere regret. I think you are genuine in your protestations that the offending will not happen again and you are keen to rehabilitate yourself and get on with your life. All the pointers are in favour of your rehabilitation being well and truly underway.

- 15 A number of psychological reports were tendered during sentencing submissions. In her report of 24 October 2011, Tracy Morrell, a psychologist, discussed her diagnosis of the practitioner. She stated:

Given that Mr Power does not meet the diagnostic criteria for paedophilia, which is a paraphilia, the next step was to determine the underpinning antecedents and behaviours and treat them. The writer holds firm in her opinion that accessing both child and adult pornography was voyeuristic sexual behaviour and not predatory behaviour, used to explore Mr Power's homosexuality, given, to him, it was sinful in the eyes of God to act upon his sexual preference via a consenting relationship.

- 16 Ms Morrell discussed the tension between the practitioner's sexuality and his religious beliefs. She said:

Child pornography is a serious crime that victimises vulnerable and innocent children. The law must protect children from such potential harm. Mr Power didn't suddenly wake up one morning and choose to be homosexual, nor did he voluntarily decide what would arouse him sexually. Mr Power reported that had he had a choice, he would have preferred to be heterosexual, as this would have paired better with his religious beliefs and perhaps prevented the current situation. Mr Power is human and vulnerable to psychological unhealthiness and exercising poor judgment, just as everyone else is irrespective of their profession.

Maturation and sexual exploration helps people discover their own sexual orientation and interests. People differ in terms of the type of partner they find sexually appealing, the types of behaviour they find sexually stimulating, libido and the degree of difficulty that they experience in trying to resist sexual temptations and in their attitudes about whether or not such temptations should be resisted. Studies of child pornography and paedophiles suggest that sexual stimulation is not based on overt content but instead on what is on the mind of the offender at the time. Applied to Mr Power, judging his offending behaviour alone as being paedophilic discounts his mental process at the time which was, an inexperienced (virgin) young gay male in the pupae and experiential stage of his homosexuality, which in his mind, based on his conservative interpretation of Scripture, was a sin that must not be acted upon. Mr Power's unlawful behaviour was used in a voyeuristic sense for sexual exploration, and is not considered paedophilic or predatory behaviour. Mr Power has benefited from therapy which, as previously reported, is ongoing.

17 An updated report was prepared by Ms Morrell dated 22 February 2013 and tendered at the Tribunal hearing. She discussed the practitioner's ongoing treatment and progress:

Mr Power is still voluntarily accessing treatment with the writer but this is now infrequent due to restoration of good psychological functioning, in addition to the writer's clinical and professional opinion that he presents as an individual with about the same level of risk as others in the community of offending in similar fashion. Discharge, however, is considered imminent but at this time is one support avenue available to Mr Power with regard to psychological functioning and minimisation of risk. Once discharge occurs, Mr Power knows to return if needed and given the high level of treatment engagement he has shown throughout the nearly 3 years the writer has known Mr Power, she is confident he will return if indicated.

There is a small treatment focus at present on offending behaviour, but this pertains to rebuilding of Mr Power's life and maintenance of good psychological functioning, not the criminal aspect of the behaviour which is well understood. The major focus of current therapy is restoration of Mr Power's life post conviction and incarceration, relationship counselling and dealing with stressful issues that arise i.e., the continuing opinion of the Lutheran Church with regard to the practice of Homosexuality which is contradictory to other Religious denominations and the Law and; the implementation of the Church's Risk Management Covenant, which they must do to protect their community.

Discharge from Owenia House would imply that Mr Power is deemed rehabilitated. The writer would concur.

### Counsels' submissions

18 Counsel who appeared for the Board relied on the practitioner's convictions for the five offences to which he pleaded guilty in the District Court. Counsel emphasised that the offences occurred in circumstances involving a breach of trust, that is, the trust of his friends in the first instance and the further breach of trust in respect of the position he held in his Church as a youth worker.

19 Counsel referred to the fact that this was not an isolated instance and that apart from the matters charged there were also uncharged acts in different locations. The point was made that it required premeditation in each instance in setting up the camera in the various locations and that in itself, apart from the premeditation, showed a degree of sophistication and planning.

20 Counsel emphasised three matters as follows:

1. The discretion of the court extends beyond merely protecting the public or other members of the profession from being exposed to the practitioner's weaknesses but includes protecting the profession from what counsel described as the "reputational risk". Counsel referred to the decision of *Law Society (SA) v Rodda*<sup>1</sup> to which we will refer later.

---

<sup>1</sup> *Law Society (SA) v Rodda* (2002) 83 SASR 541.

2. The High Court requires a court to look at the whole position in relation to a practitioner's offending but the focus should be on the actual unprofessional conduct rather than on matters personal to the practitioner. That matter was emphasised in the decision of *Legal Practitioners Conduct Board v Figwer*<sup>2</sup> to which we will also refer.
3. Counsel argued that this was not a case for suspension.

21 Counsel for the practitioner relied heavily on the sentencing remarks of the sentencing Judge in the District Court. She referred to the fact that the Judge had the opportunity of observing the practitioner on many occasions during the whole sentencing process and was in a good position to form an opinion about the practitioner.

22 Counsel emphasised the frank admissions the practitioner made at the time his crime was discovered at the party, again when the police arrived, and finally in court.

23 Counsel referred to the voluntary relinquishment of a practitioner's practising certificate since March 2010.

24 Counsel also referred to a practitioner's attendance in the voluntary program at Owenia House for sexual offending treatment on his own initiative. She referred to the fact that he has also completed a degree in aviation at the University of South Australia and is likely to be offered study for a PhD in that discipline.

25 Counsel referred to the decision of the High Court in *A Solicitor v The Council of the Law Society of New South Wales*<sup>3</sup> which establishes that the fitness and propriety of a practitioner has to be decided at the time of the hearing, not at the time of the offending.

26 Counsel referred to the detailed references provided by members of the legal profession, including judicial officers, all showing the character and undoubted legal ability of the practitioner.

27 Counsel argued that at the present time some three and a half years after relinquishing his practising certificate the practitioner has shown through his efforts that he is now a fit and proper person to practise the law. She emphasised that the head sentence imposed by the sentencing Judge has now expired and that accordingly there is no reason why the practitioner cannot resume legal practice.

28 Although the approach and observations of the sentencing Judge are relevant matters to which this Court may have regard, the issues arising on an

---

<sup>2</sup> *Legal Practitioners Conduct Board v Figwer* [2013] SASC 135.

<sup>3</sup> *A Solicitor v The Council of the Law Society of New South Wales* (2003) 216 CLR 253.

application to strike off a practitioner are substantially different from those which a sentencing judge is required to consider. The mere fact that the sentence imposed by the District Court has expired is of little relevance to the issue to be determined by this Court.

### Consideration

29 The practitioner conceded before the Tribunal that his conduct was unprofessional. The Tribunal found the offences committed by the practitioner to be infamous and that his conduct was unprofessional.

30 The issue before this Court is whether that unprofessional conduct was of such a character as to require the practitioner's name to be struck from the Roll. When exercising disciplinary powers, the Court acts in the public interest to protect the public and the administration of justice. It is primarily concerned with protecting the public, not punishing the practitioner.<sup>4</sup> Section 89(2) of the *Legal Practitioners Act 1981* (SA) confers a range of powers on the Court, from reprimand to striking off. The Court will prevent a person from acting as a legal practitioner by striking him or her off the Roll to protect the public, when it is demonstrated 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.<sup>5</sup>

31 In *Law Society (SA) v Rodda*, this Court considered offences of an infamous nature in relation to unprofessional conduct. The Court observed:<sup>6</sup>

In a case like this, where the court's concern is with criminal conduct unconnected with the practitioner's profession, and with the defects of character or personality that are revealed by that conduct, issues of professional competence in the narrow sense do not arise. Nevertheless, the court must still consider whether the conduct and the convictions affect Mr Rodda's capacity to act as a practitioner, and how that conduct and those convictions would reflect on the legal profession were Mr Rodda permitted to remain a member of it. Two points were made in *Ziems* that are worth bearing in mind. First, as Fullagar J said (at 290), professional misconduct will usually have "a much more direct bearing on the question of a man's fitness to practise" than personal misconduct. And Kitto J said (at 298), while a conviction may "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", nevertheless, there will be many kinds of convictions "which do not spell unfitness for the Bar".

The offences in question do not reflect directly on Mr Rodda's capacity to act as a practitioner. They do not reveal any lack of competence, or any lack of understanding of the law.

---

<sup>4</sup> *Wentworth v NSW Bar Association* (1982) 176 CLR 239, 250-251; *Law Society of South Australia v Murphy* (1999) 201 LSJS 456, 460-461; *NSW Bar Association v Evatt* (1968) 117 CLR 177, 183-184.

<sup>5</sup> *Law Society of South Australia v Murphy* (1999) 201 LSJS 456, 460-461.

<sup>6</sup> *Law Society (SA) v Rodda* (2002) 83 SASR 541, [25]-[30].

But the offences are of a kind that damage the ability of Mr Rodda to maintain the relationship with other members of the profession that is an essential aspect of being a practitioner. Other practitioners would not readily place trust and confidence in a practitioner who has committed such a serious offence. Another practitioner could not assume that Mr Rodda accepts the high standard of conduct which membership of the legal profession requires. In the words of Dixon CJ in his dissenting judgment in *Ziems* (at 285-286), Mr Rodda could not "command the confidence and respect" of the court or of his fellow practitioners.

More significantly, the offences indicate that Mr Rodda lacks qualities that are essential for the conduct of legal practice. The offences involve a serious breach of the law, even though they might be regarded as impulsive and isolated. Mr Rodda took advantage of a vulnerable and immature young woman. That being so, Mr Rodda cannot be regarded as a person in whom clients, especially vulnerable persons, could place their complete trust. Nor could he command the respect of clients.

There is another factor. The reputation and standing of the legal profession in the public eye are important. Public confidence and trust in the legal profession is important to the effective functioning of the profession. That confidence and trust rest in part on the reputation and standing of the profession. The public could not view with respect, and have complete confidence in, a person with such serious and recent convictions. Were the court to continue to hold Mr Rodda out as a fit and proper person to remain a member of the profession, the standing of the profession as a whole would suffer. The public would rightly doubt the standards of a profession which permitted a person who has recently committed such serious offences to remain one of its members.

In summary, Mr Rodda's offences damage his ability to maintain professional relationships with other members of the profession. They disclose character defects that affect his capacity and fitness to be a practitioner. The public could not be expected to put complete trust in him. The offences are of a nature and seriousness such that the public would rightly consider that a profession that occupies the position of the legal profession, and maintains the high standards that it does, could not properly continue to regard Mr Rodda as a member of the profession.

32        These comments apply equally to this practitioner.

33        We accept that the practitioner is genuinely remorseful and has demonstrated contrition and insight into his conduct by his early guilty pleas in the criminal proceedings and his acknowledgement of unprofessional conduct before the Tribunal and before this Court. It is acknowledged that he has taken positive steps towards rehabilitation and addressing the conflict he faces between his religious beliefs and his sexuality. In our view, he is unlikely to re-offend. The practitioner is 30 years of age. He had a promising legal career ahead of him. We take into account the character references which speak to his good character and professional record.

34        Notwithstanding the practitioner's good character and the circumstances that led to the offending, this Court has recently emphasised the importance of

focussing primarily on the nature of the practitioner's conduct. In *Legal Practitioners Conduct Board v Figwer*, this Court said:<sup>7</sup>

It is important to recognise that, in exercising the powers conferred on the Court in disciplinary proceedings, the issue for the Court is whether the practitioner's unprofessional conduct demonstrates that he or she is not fit to remain a member of the legal profession. This requires consideration of what the High Court describes as "the whole position".<sup>8</sup> Nevertheless, the primary focus must be on the unprofessional conduct. After all, the very reason the practitioner was subject to disciplinary action is because of his or her unprofessional conduct. As Fullagar J said in *Ziems v The Prothonotary of the Supreme Court of New South Wales*,<sup>9</sup> in a different context, in considering whether a practitioner should be disbarred, the ultimate question is to be answered by establishing what the practitioner did and then characterising the conduct in order to determine whether he or she is disqualified from the practice of the profession. The practitioner's professional conduct, whether it preceded or succeeded the unprofessional conduct, while not an irrelevant consideration, is very much a secondary consideration. The same point can be made in relation to the practitioner's personal circumstances and any other extenuating circumstances.

35 In the matter of *Legal Practitioners Conduct Board v Clisby*<sup>10</sup> this Court dealt with an application to remove the name of a practitioner from the Roll but not for a case of infamous conduct. In their joint judgment, Doyle CJ and Stanley J said at [6]:

It is of the utmost importance that public confidence in the legal profession be maintained. Legal practitioners play an integral part in the administration of justice. The obligations which accompany a practitioner's position are commensurate with the responsibility involved. The duties of legal practitioners include a duty to uphold the law, a duty to the Court, a duty to clients and a more general duty to members of the public. The Court and the public demand high standards from practitioners. This is reflected in the legislative processes that regulate the admission of practitioners and govern their conduct.

[Footnote omitted]

36 They went on to say at [7]:

It is important to recognise that, in exercising the powers conferred on the Court in disciplinary proceedings, the issue for the Court is whether the practitioner's unprofessional conduct demonstrates that he or she is not fit to remain a member of the legal profession. This requires consideration of what the High Court described as "the whole position". Nevertheless, the primary focus must be on the unprofessional conduct. After all, the very reason the practitioner is subject to disciplinary action is because of his or her unprofessional conduct. As Fullagar J said in *Ziems v The Prothonotary of the Supreme Court of NSW*, in a different context, in considering whether a practitioner should be disbarred, the ultimate question is to be answered by establishing what the practitioner did and then characterising the conduct in order to determine whether he or she is disqualified from the practise of the profession. The practitioner's professional

<sup>7</sup> [2013] SASC 135, [12].

<sup>8</sup> *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, 266.

<sup>9</sup> (1957) 97 CLR 279, 288.

<sup>10</sup> *Legal Practitioners Conduct Board v Clisby* [2012] SASCFC 43

conduct, whether it preceded or succeeded the unprofessional conduct, while not an irrelevant consideration, is very much a secondary consideration. The same point can be made in relation to the practitioner's personal circumstances and any other extenuating circumstances.

[Footnotes omitted]

37 In that matter the practitioner had shown, in some seven or eight years since the commission of the offences, that he was a competent and professional practitioner. It was in these circumstances that the Court had to consider the appropriate penalty. Anderson J agreed with the appropriate penalty although delivering separate reasons. In the end result the practitioner, despite his continuation in practice without blemish for seven or eight years, had his practising certificate suspended for a period of two years from the date of the court order.

### Appropriate orders

38 In our view this is not a case for suspension. The gravity of the practitioner's unprofessional conduct warrants the removal of his name from the Roll of Practitioners. King CJ said in *In Re a Practitioner* at 593:

... 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.

39 By allowing a practitioner to remain on the Roll of Practitioners, this Court holds the practitioner out as a fit and proper person to practice.<sup>11</sup> The offences disclose character defects that affect the practitioner's capacity and fitness to be a practitioner. They involved a serious breach of the law. They are of a kind that damage a practitioner's ability to maintain a relationship of trust and confidence with other members of the profession and with clients. The public could not have complete confidence in a person with such serious and recent convictions. To continue to hold the practitioner out as a fit and proper person to remain a member of the profession would bring the profession into disrepute.

40 The practitioner surrendered his practising certificate in March 2010, immediately following his arrest and has not practiced since that time. He has indicated that he wishes to re-commence legal practice in due course. He has obtained an aviation licence through undertaking further university study. In considering this application, we have taken into account the fitness and propriety of the practitioner at the time of the hearing.<sup>12</sup> We do not consider that a suspension is sufficient either to protect the public or to maintain the public's

---

<sup>11</sup> *The Law Society of South Australia v Murphy* (1999) 201 LSJS 456, 461.

<sup>12</sup> *A Solicitor v Law Society of New South Wales* (2003) 216 CLR 253.

confidence in the proper regulation of the legal profession and the administration of justice. The practitioner's name should be removed from the Roll.

41 We take the view that because of his young age, his guilty pleas in the Criminal Court, his successful attendance of the course at Owenia House and his undoubted legal ability, the practitioner appears to be a candidate for re-admission to legal practice within a relatively short time. That would very much depend on what happens in the meantime. His actions and how he applies himself over the next few years are likely to be influential in any subsequent application for re-admission.

