

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

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LEGAL PROFESSION CONDUCT COMMISSIONER v ALDERMAN

[2015] SASCFC 11

Reasons for Decision of The Full Court

(The Honourable Justice Gray, The Honourable Justice Stanley and The Honourable Justice Parker)

10 February 2015

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

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

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

**PROFESSIONS AND TRADES - LAWYERS - PRACTISING
CERTIFICATES - OTHER MATTERS**

Application by the Legal Profession Conduct Commissioner to have the name of a legal practitioner removed from the Roll of Legal Practitioners. The practitioner accepted before the Legal Practitioners Disciplinary Tribunal that he had engaged in unprofessional conduct. In particular, the practitioner had practised the profession of law while not being a holder of a practising certificate, had failed to pay the fee invoices of counsel, and had misled the Legal Practitioners Conduct Board regarding his continuing practise of the law. Disciplinary proceedings were commenced in this Court in accordance with the Tribunal's recommendation. The practitioner consented to the making of a strike off order.

Held per the Court:

1. The name of the practitioner was struck off the Roll of Legal Practitioners.

**Plaintiff: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MR S THOMAS - Solicitor:
LEGAL PROFESSION CONDUCT COMMISSIONER**

**Defendant: PATRIC GRAHAM ALDERMAN Counsel: MS F NELSON QC - Solicitor: NORMAN
WATERHOUSE**

Hearing Date/s: 03/02/2015

File No/s: SCCIV-14-1332

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Legal Practitioners Act 1981 (SA) s 21(1)(a), s 76(4a) and s 89, referred to.
Legal Practitioners Conduct Board v Rowe [2012] SASCF 144; Legal Practitioners
Conduct Board v Phillips (2002) 83 SASR 467; Legal Practitioners Conduct Board v
Figwer [2013] SASCF 115, considered.

**LEGAL PROFESSION CONDUCT COMMISSIONER v ALDERMAN
[2015] SASCFC 11**

Full Court: Gray, Stanley and Parker JJ

THE COURT.

1 On 3 February 2015, this Court ordered that the name of Patric Graham Alderman be struck off the Roll of Legal Practitioners. Our reasons follow.

2 The application related to two charges alleging unprofessional conduct filed against Patric Graham Alderman, the practitioner, in the Legal Practitioners Disciplinary Tribunal. The practitioner caused replies to be filed in relation to both charges. When the proceedings were brought on for hearing on 4 September 2014, the practitioner, through his counsel, accepted that he had engaged in unprofessional conduct in respect of all the matters alleged against him. The practitioner further accepted that the appropriate course of action for the Tribunal was to refer the practitioner to this Court for disciplinary action.

3 On 16 September 2014, the Tribunal delivered its report, finding that the two charges of unprofessional conduct were made out and recommending that disciplinary proceedings be commenced pursuant to the *Legal Practitioners Act 1981* (SA). The Legal Profession Conduct Commissioner, pursuant to that recommendation, brought proceedings in this Court seeking a strike off order. The practitioner consented to the making of a strike off order.

4 On 5 June 1962, the practitioner was admitted as a legal practitioner in this Court. His practising certificate expired on 30 June 2008. The practitioner's right to practise was suspended until further order by this Court on 5 July 2013.

5 Two statements of agreed facts tendered before the Tribunal outlined the circumstances giving rise to the charges. Between 1 July 2008 and 31 January 2013, the practitioner practised the profession of law while not being a holder of a practising certificate, contrary to section 21(1)(a) of the *Legal Practitioners Act*. The practitioner continued to practise in relation to three proceedings in the District Court following the expiration of his practising certificate. His conduct included appearing on behalf of litigants at directions and interlocutory hearings, filing documents under the header "Alderman Consultant Solicitors" and swearing affidavits commencing with the words "I am the solicitor for the Plaintiffs". The practitioner agreed that he recklessly or carelessly misled the Legal Practitioners Conduct Board when, in 2009, he advised the Board that he had retired from legal practice and did not have the carriage of any further files.

6 It was further alleged by the Board that the practitioner acted in relation to a fourth District Court matter. The practitioner indicated to the Tribunal that he

did not admit that allegation as he had no recollection of being involved in the relevant matter. The Tribunal found that the allegation was made out in reliance on the court record, which noted the practitioner's presence in court as acting for the relevant party.

7 The practitioner, while acting in relation to the District Court proceedings, engaged counsel and failed, without reasonable excuse, to pay the fee invoices of those counsel. The practitioner failed to respond to a notice dated 24 June 2013 issued by the Board pursuant to section 76(4a) of the *Legal Practitioners Act* requiring him to provide to the Board a detailed report regarding a complaint concerning the non-payment of counsel fees. The practitioner knowingly, recklessly or carelessly misled the Board in a letter dated 4 March 2013 in which he wrote that he had not acted for anyone in a professional capacity as a solicitor since retiring from the profession. This conduct gave rise to the second charge of unprofessional conduct.

8 Senior counsel appearing on behalf of the practitioner before the Tribunal outlined his personal circumstances. The practitioner is aged 77 years. He ceased legal practise at a commercial law firm in Adelaide in the 1990s. He retained a practising certificate until 30 June 2008 and during that time did not practise in partnership with any other person, instead practising on his own account. He has served the legal community and the community generally in various capacities, including involvement with several Law Society bodies.

9 In relation to the conduct the subject of the charges, counsel emphasised that no allegation had been made that the practitioner had raised any invoices for the work that he had done or that he had profited from this work. In relation to one of the District Court matters, it was submitted that the practitioner erroneously believed that he was helping a friend in a rather acrimonious case. The practitioner was overwhelmed with sympathy for his friend and also believed that he was assisting the Court. It was also submitted that there was no suggestion that the legal work that the practitioner performed was in any way incompetent or that the persons he assisted were in any way disadvantaged by reason of his assistance.

10 In its report, the Tribunal observed:

This is an extremely sad case involving a senior practitioner with a largely unblemished record (with an exception of an instance referred to by the Conduct Board) who has served the legal community over a long period of time. Whilst no evidence was tendered at the hearing and the Tribunal was not asked to make any findings on the issue of whether the practitioner suffered from any mental issues related to his advancing age at the time of the alleged charges the Tribunal assumes on the basis of the limited observations of the practitioner during proceedings and the limited evidence before it that this is an issue on which evidence may be tendered in proceedings before the Supreme Court in order to assist the Court in its deliberations. This Tribunal has little choice but to make the findings/orders noted below given the seriousness of the conduct alleged, admissions made and the facts as found by the Tribunal.

11 In an affidavit filed in this Court, the practitioner referred to the above extracted passage of the Tribunal’s reasons and indicated that he did not intend to tender any evidence about whether he suffered from a mental or other health issue related to his age at the time of the matters giving rise to the charges. As earlier noted, the practitioner consented to his name being struck off the roll of practitioners.

12 Section 89 of the *Legal Practitioners Act* relevantly 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 Commissioner ... may institute disciplinary proceedings in the Supreme Court against the legal practitioner.

...

(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:

...

(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.

...

13 On the application to strike off, the Commissioner submitted that the practitioner was guilty of serious unprofessional conduct involving a lack of honesty and frankness with the Court. It was said that the protection of the public required an order striking the name of the practitioner from the Roll of Practitioners.

14 As earlier noted, the practitioner continued to act in District Court proceedings while not holding a practising certificate. Accordingly, he did not hold professional indemnity insurance for that period. It is a fundamental requirement of the regulation of the profession and the statutory insurance scheme that the public is protected by the requirement for practitioners to hold insurance. While the defendant asserts that he only acted for friends and acquaintances in order to assist, the fact remains that he acted without insurance and therefore exposed those persons to the prospect of having no recourse for any losses suffered should the matters have been conducted negligently.

15 As earlier noted, the practitioner misled the District Court on several occasions by swearing affidavits in which he deposed to being the “Solicitor for

the Plaintiffs”. It is of the utmost importance that Courts be able to rely on honest conduct by practitioners in relation to affidavits.¹

16 Also of concern is the conduct of the practitioner in his dealings with members of the Bar. On two occasions, he engaged counsel without informing counsel that he was no longer the holder of a practising certificate. Those counsel remain unpaid and there is apparently no prospect of their accounts being paid.

17 This Court acts in the public interest and not to punish the practitioner. The public interest is understandably demanding of proper behaviour and accountability from members of the profession. The conduct admitted and the interpretation placed upon it by the Tribunal demonstrates that the practitioner is not fit to remain a member of the profession. The ordinary course is the order sought by the Commissioner. Absent such an order, public confidence in the profession would be eroded. Only those who have observed the required standards expected of the profession are permitted to remain members of it.²

18 In *Legal Practitioners Conduct Board v Figwer*, this Court stressed the importance of maintaining public confidence in the legal profession:³

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 a legal practitioner 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.⁴

19 As noted by the Tribunal in its report, this is a sad case and an unfortunate way for a career of some distinction in, and service to, the legal profession to end.

Conclusion

20 On 3 February 2015, the name of the practitioner, Patric Graham Alderman, was struck off the Roll of Legal Practitioners maintained under the *Legal Practitioners Act*.

¹ *Legal Practitioners Conduct Board v Rowe* [2012] SASFC 144.

² *Legal Practitioners Conduct Board v Phillips* (2002) 83 SASR 467.

³ *Legal Practitioners Conduct Board v Figwer* [2013] SASFC 115, [11].

⁴ *Legal Practitioners Conduct Board v Lind* [2011] SASFC 104 at [14], (2011) 110 SASR 531 at 534.