

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

LEGAL PROFESSION CONDUCT COMMISSIONER v KASSAPIS

[2015] SASCF 37

Judgment of The Full Court

(The Honourable Justice Gray, The Honourable Justice Sulan and The Honourable Justice Nicholson)

2 April 2015

**PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND
DISCIPLINE - GENERALLY**

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

Application to strike the name of the defendant from the roll of practitioners. The application was not opposed. The defendant was found by the Legal Practitioner's Disciplinary Tribunal to have engaged in unprofessional conduct within the meaning of section 5 of the Legal Practitioners Act. The charges related to defective trust accounting, inappropriate communications with clients, failing to assist the Legal Practitioners Conduct Board in its investigations and misleading the Court. The defendant suffers from a range of physical and mental medical conditions.

Whether it is appropriate to remove the name of the defendant from the Roll of Practitioners.

Held per Gray J (granting the application) (Sulan and Nicholson JJ agreeing):

1. It is of utmost importance that the Court can trust the content of affidavits.
2. To maintain confidence in the profession, the public must have confidence that money placed in a practitioner's trust account is safe and will be managed with care.
3. To maintain confidence in the profession, practitioners must conduct themselves in a professional manner.
4. This Court requires that practitioners maintain high standards in difficult circumstances.

Plaintiff: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MS S HURREN - Solicitor:
LEGAL PROFESSION CONDUCT COMMISSIONER

Defendant: JOHN PAUL KASSAPIS Counsel: MS S ABBOTT - Solicitor: D'ANGELO KAVANAGH

Hearing Date/s:

File No/s: SCCIV-13-1631

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5. The practitioner, by his own admission, engaged in unprofessional conduct. His unprofessional conduct was such that it materially disadvantaged a number of his clients and hindered the investigation into complaints concerning his conduct by the Board.

6. The practitioner's unprofessional conduct encompassed a number of different aspects of practice and occurred over an extended period.

7. The totality of the practitioner's conduct allows the conclusion that he was incapable of coping in practice.

8. The practitioner does not appear to be taking meaningful steps to overcome his mental health issues.

9. In all the circumstances, it is appropriate to remove the name of the defendant from the Roll of Practitioners.

Supreme Court (Civil) Rules 2006 (SA) r 399; Legal Practitioners Act 1981 (SA) s 5, s 31, s 41(1), s 76(3)(a), s 82(2) and s 89; Legal Practitioners Regulations 2009 (SA) r 33(2), referred to.

Legal Practitioner Conduct Board v Kerin [2006] SASC 395; Legal Profession Conduct Commissioner v Alderman [2015] SASCFC 11, considered.

LEGAL PROFESSION CONDUCT COMMISSIONER v KASSAPIS
[2015] SASFC 37

Full Court: Gray, Sulan and Nicholson JJ

GRAY J.

1 This is an application to strike the name of the practitioner, John-Paul
Kassapis from the Roll of Legal Practitioners.

2 The application is not opposed. The parties agreed that the application
should be determined on the papers, pursuant to rule 399(2) of the *Supreme
Court (Civil) Rules 2006*.

Background

3 The practitioner was born on 19 August 1976. He was admitted to practice
on 1 December 2003. Following his admission, the practitioner worked as a
solicitor at Tolis & Co, a small firm of solicitors. His practice primarily
consisted of personal injury matters, though he also practised in the areas of
family law, succession law and criminal law. In early 2005, shortly after being
made redundant at Tolis & Co, the practitioner commenced working for a sole
practitioner, George Mantzoros. While at Mantzoros & Partners, the practitioner
worked on personal injury, family law and succession law matters. In early
2007, the practitioner started his own firm, JPK Legal, and practised as a sole
practitioner. His practice primarily consisted of personal injury and family law
matters. In October 2007, he purchased the practice of another solicitor, Barbara
Rowe. He ceased to practise in 2010.

4 The practitioner has a history of medical problems. His physical ailments
include pericarditis, back problems, carpal tunnel syndrome, abdominal pains,
deep vein thrombosis and sleep apnoea. He has also suffered from depression
and anxiety. He has been treated for these conditions since he was aged about
17 years.

5 The practitioner was the subject of five charges of unprofessional conduct
pursuant to section 82(2) of the *Legal Practitioners Act 1981* (SA). These
charges involved 21 separate allegations.

6 Before the Legal Practitioners Disciplinary Tribunal, the practitioner did
not admit all of the allegations. However, he accepted that his conduct as a
whole amounted to unprofessional conduct. On 26 September 2013, following a
six day hearing, the Tribunal recommended that disciplinary proceedings be
commenced in this Court. Before turning to consider the application to strike off

the practitioner, it is convenient to summarise the charges made against him and the findings made in relation to those charges.

SM

7 The first and fifth charges related to the practitioner's conduct when acting for SM between November 2007 and 1 June 2008 in relation to a matrimonial property dispute. SM had been a client of Ms Rowe.

8 In respect of the first charge, it was alleged that the practitioner failed to account for trust monies, failed to properly account for professional charges rendered and had engaged in inappropriate communication with SM, including by the use of inappropriate language and by providing false statements to him. It was further alleged that the practitioner lied to the Legal Practitioners Conduct Board in the course of its investigation into SM's complaint.

9 Before the Tribunal, the practitioner accepted that he had failed to properly account for the trust monies and had failed to provide accounts and receipts to SM. The practitioner contended, however, that SM was a demanding and difficult client, which had exacerbated the stress he was experiencing.

10 The Tribunal concluded that the ledgers and bills provided to SM were confusing and inconsistent. The Tribunal considered SM's requests for clarification and further detail of his accounts were reasonable, and that the practitioner's responses to these enquiries did not provide a proper accounting. The Tribunal found that the practitioner's conduct amounted to unprofessional conduct pursuant to section 5 of the *Legal Practitioners Act*. The practitioner accepted that he communicated with SM in inappropriate terms.

11 The Tribunal found, however, that incorrect allegations made by the practitioner to the Board concerning, *inter alia*, the fabrication of emails by SM and the refusal by SM to pay counsel's fees were not made as intentionally false statements. The Tribunal found that the practitioner had not lied to or attempted to mislead the Board in respect of this charge.

12 In respect of the fifth charge, it was alleged that, on 3 and 4 March 2008, the practitioner had appropriated the sums of \$1,500.00 and \$500.00, respectively, from the trust account, contrary to sections 31(1) and 41(1) of the *Legal Practitioners Act*.¹ It was further alleged that the practitioner had failed to comply with the requirements concerning the auditing of trust records within four

¹ 31(1) A law practice must not commence legal proceedings to recover legal costs from a person until at least 30 days after the law practice has given a bill to the person in accordance with clauses 32 and 33.

41(1) The Supreme Court's power to adjudicate and settle a bill (but no other power of the Court under this clause) may, subject to any rule, order or direction of the Court, be exercised by the Registrar of the Court.

months of ceasing to practise - section 33(1)(b) of the *Legal Practitioners Act* and regulation 33(2) of the *Legal Practitioners Regulations 2009*.

13 The practitioner accepted that SM did not receive the relevant fee account or trust account statement. The Tribunal found that these were not sent by the practitioner. Further, the practitioner's records were found to be inadequate. The practitioner was found have breached sections 31(1) and 41(1) of the *Legal Practitioners Act*. The Tribunal concluded, however, that the practitioner believed that SM had been provided with an account which authorised the transfer of funds.

14 The practitioner admitted to failing to comply with the regulations with respect to auditing trust records within four months of ceasing practice. The Tribunal found that the practitioner's conduct amounted to unprofessional conduct pursuant to section 5 of the *Legal Practitioners Act*.

DMP

15 The second charge concerned the practitioner's conduct when acting for DMP, who instructed him to act for her in relation to an application for divorce in September 2009. It was alleged that, between 12 October 2009 and 12 April 2010, the practitioner misappropriated the sum of \$432.00 and failed to properly account to DMP for monies received from her. It was further alleged that the practitioner failed to respond to correspondence from and notices issued by the Board in the course of its investigation into DMP's complaint, contrary to section 76(3)(a) of the *Legal Practitioners Act*.

16 The practitioner prepared an application for divorce and had DMP swear an affidavit in support, notwithstanding that DMP had not at that time been separated from her husband for 12 months. The amount of \$432.00 was paid by DMP into the practitioner's firm account in respect of filing fees. The money was not transferred to the practitioner's trust account. No receipt was provided to DMP. The practitioner was unable to explain why this did not happen. He accepted that it was his responsibility. The practitioner had intended to file the application when DMP and her husband had been separated for 12 months. The application was never filed. When DMP terminated her instructions in 2009, the practitioner did not repay the amount of \$432.00. The Tribunal accepted that this was an oversight, but found that it amounted to a breach of section 31 of the *Legal Practitioners Act*.²

² 31(1) A law practice must not commence legal proceedings to recover legal costs from a person until at least 30 days after the law practice has given a bill to the person in accordance with clauses 32 and 33.

17 The practitioner had closed his practice by the time of the Board's investigation. He had not arranged for his mail to be forwarded and did not have a permanent address. The Board sought to effect personal service of the notice issued pursuant to section 76(3)(a) of the *Legal Practitioners Act*. The practitioner attempted to avoid service on a number of occasions. When finally served with the notice, the practitioner did not respond. The practitioner accepted that he failed to respond to correspondence from the Board and failed to respond to or comply with the notice

18 The Tribunal found that the practitioner's conduct amounted to unprofessional conduct pursuant to section 5 of the *Legal Practitioners Act*.

RH

19 The third charge addressed the practitioner's conduct between 10 January 2008 and 4 June 2008. The practitioner acted for RH to obtain a grant of probate for the will of JWH. In about January 2008, the practitioner advised RH that he could proceed to sell JWH's property in the Australian Capital Territory as a grant of probate would be issued by the date of settlement. In February 2008, the practitioner was informed that RH planned to put the property on the market. The practitioner's secretary indicated that the practitioner would be attending to the application for a grant of probate. In March 2008, the practitioner was informed that the property had been sold and that settlement would take place on 30 April 2008. He did not prepare an application for a grant of probate until 5 May 2008. On 26 May 2008, notwithstanding that the practitioner had not lodged any probate documents with the Supreme Court of the Australian Capital Territory, the practitioner advised Aussie Home Loans that documents had been sent directly to the Canberra Supreme Court Registry. On 4 June 2008, RH terminated the practitioner's instructions. At that time, the probate documents had not been lodged. It is to be understood that between March and June 2008 the practitioner had, on a number of occasions, indicated that progress was being made on the probate documentation. In fact, little was done. The practitioner, on numerous occasions, failed to return phone calls and respond to enquiries from RH and the solicitors retained by RH in Canberra to act on the sale of the property. The practitioner admitted this conduct.

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- (2) A court of competent jurisdiction may make an order authorising a law practice to commence legal proceedings against a person sooner if satisfied that—
 - (a) the law practice has given a bill to the person in accordance with clauses 32 and 33; and
 - (b) the person is about to leave this State.
 - (3) A court or tribunal before which any proceedings are brought in contravention of subclause (1) must stay those proceedings on the application of a party, or on its own initiative.
 - (4) This clause applies whether or not the legal costs are the subject of a costs agreement.

20 The practitioner contended that RH had acted against his advice in putting the property on the market. This contention was rejected by the Tribunal. The Tribunal concluded that the file was unclear as to whether the practitioner had advised RH that he could not sell the property until he had obtained a grant of probate. However, the Tribunal considered that RH's conduct in marketing the property was consistent with instructions provided to the practitioner that the property should be marketed by mid-late February. Further, it was consistent with the practitioner's representations that there would be no issue with marketing the property at that time as it would be straightforward to obtain a grant of probate prior to settlement.

21 It was alleged that the practitioner lied to RH and Aussie Home Loans and prepared and witnessed a false affidavit in support of the application for probate in circumstances where he knew or ought to have known that the affidavit contained false information. It was further alleged that the practitioner attempted to mislead the Board, or was reckless as to the accuracy of information contained in his correspondence to the Board, in relation to its investigation of RH's complaint.

22 The Tribunal found that the practitioner had made a number of incorrect statements concerning the status of the application for a grant of probate. The practitioner admitted that the affidavit contained false information. His evidence was that he did not read it thoroughly before executing it as witness. The Tribunal considered that the practitioner ought to have known that the affidavit contained false information given the extent to which he had completed other information within the document. However, the Tribunal was not satisfied that the practitioner had intentionally made a false statement. The Tribunal found that the practitioner had attempted to mislead the Board in relation to the reason for the delay in making the application for a grant of probate.

23 The Tribunal concluded that the practitioner's conduct amounted to unprofessional conduct pursuant to section 5 of the *Legal Practitioners Act*.

BL

24 The fourth charge concerned the practitioner's conduct between 27 October 2007 and 16 February 2008 when acting for BL, who was wishing to obtain a grant of probate for the will of MJB. It was alleged that the practitioner had failed to carry out BL's instructions in a timely and competent manner, had communicated with BL using threatening and offensive language and, following the termination of his retainer, behaved in a disrespectful and inappropriate manner towards BL's husband.

25 BL was a client of Ms Rowe. In November 2007, a review of the file confirmed that Ms Rowe had prepared all the necessary documentation for an application for a grant of probate. BL contacted the practitioner's office on a

number of occasions in December 2007 enquiring as to whether the application for probate had been lodged. The documents were lodged with the Registry on 25 January 2008. At this time, the practitioner was aware that MJB's house was to be sold at auction on 20 February 2008, with settlement to occur one month later. On 8 February 2008, the practitioner was informed by the Registry that the statement of assets and liabilities required amendment. These amendments did not require instructions from BL. However, the practitioner sought to re-swear the original affidavit. On 16 February 2008, after receiving a complaint from BL about the extent of the delay, the practitioner ceased to act. The practitioner denied that the delay in making the application for probate amounted to unprofessional conduct.

26 The practitioner accepted that the language used in the email in which he communicated his intention to cease to act for BL was threatening and offensive. The practitioner also accepted that he behaved disrespectfully and inappropriately toward BL's husband when he attended at the office of JPK Legal to collect BL's file to assist with instructing another solicitor.

27 The Tribunal found that the delays in combination with the decision to withdraw his services and the manner in which he communicated with BL and her husband amounted to unprofessional conduct pursuant to section 5 of the *Legal Practitioners Act*.

Medical Evidence

28 James Hundertmark, the practitioner's treating psychiatrist and Craig Raeside, a forensic psychiatrist retained by the Board, gave evidence before the Tribunal. The Tribunal found little difference between the opinions of Dr Hundertmark and Dr Raeside. The medical evidence established that, at the time of his alleged misconduct, the practitioner suffered from a chronic adjustment disorder with anxiety and depression in combination with a personality disorder with prominent narcissistic aspects. The Tribunal noted that, in Dr Raeside's view, the practitioner's condition could also, at times, be characterised as a major depressive disorder. Both psychiatrists accepted that the practitioner's ability to control his behaviour was diminished by his condition. However, the practitioner was able to take responsibility for his behaviour and could not be characterised as mentally incompetent. The medical evidence left open the possibility that the practitioner's medication and health conditions may have contributed to memory difficulties.

29 The Tribunal accepted that the practitioner's medical conditions, in part, explained his misconduct and inability to manage his practice. The Tribunal noted the seriousness of the practitioner's condition and the extensive treatment required to address his issues.

30 On 2 May 2014, with the permission of the practitioner, Dr Hundertmark provided a further report to the Board concerning the practitioner's course of treatment. In his report, Dr Hundertmark disclosed that the practitioner had failed to attend the majority of scheduled appointments, resulting in only "intermittent and ineffective" therapy. In Dr Hundertmark's view, "it was relatively clear that [the practitioner] was not intending to work diligently at therapy". The practitioner was "only very modestly cooperative" and there was "little therapeutic ground achieved during the sessions". The practitioner did not attend a course of dialectical behaviour therapy as recommended. In Dr Hundertmark's opinion, the narcissistic component to the practitioner's personality had the effect of "obstructing treatment" and the practitioner "had difficulty accepting responsibility for his behaviour in working through his errors in his legal practice in detail in the course of sessions."

31 The practitioner unilaterally ceased treatment in September 2013, citing an inability to pay the gap fees. However, in Dr Hundertmark's view:

... [The Practitioner] probably did not wish to proceed with insight orientated psychotherapy because he lacked the ego strength to work through the difficult issues that had arisen in the Court proceedings and in association with his disciplinary matters connected with particular cases.

Dr Hundertmark accepted that an experienced clinical psychologist could continue with the treatment program, if the practitioner was prepared to engage with that program.

32 Dr Hundertmark's view of the practitioner's condition was "marginally bleaker" than the view he held at the time of giving evidence before the Tribunal. He considered the break in treatment to be a negative prognostic factor. Dr Hundertmark considered that effective implementation of the treatment plan by another therapist could result in a "relatively good" outcome. However, he expressed concern at the practitioner's prospects:

... One would have thought that the serious nature of his position before the Tribunal would have been a significant motivating factor. Unfortunately I am unable to mention any useful protective factors that Mr Kassapis has demonstrated since giving evidence in December 2012. It remains my opinion that the treatment plan outlined before the Tribunal involving supportive psychotherapy to work through the Tribunal process, the use of antidepressant medication to stabilize his mood state, Dialectical Behaviour Therapy to give him specific treatment and assistance with issues such as emotional regulation, anger management treatment, and finally insight oriented psychotherapy over a period of a year to gain insight into his personality deficits was a sensible and useful treatment plan but unfortunately Mr Kassapis has been unable to comply with and persist at this overall treatment package.

Personal Circumstances

33 The Tribunal accepted that the practitioner was under stress during the period of his impugned conduct. He had incurred significant expenses in

purchasing accounting software and the practice of Ms Rowe. He had exceeded his overdraft account and was receiving demands from the bank. The practitioner was unable to employ a practice manager and, by 2009, was unable to afford to continue to employ his secretary. The practitioner's practice was not profitable and he became reliant on financial assistance from his parents.

34 The practitioner experienced significant difficulties managing the practice he purchased from Ms Rowe. He was forced to refer a number of files to the Law Society as they were too difficult for him to manage. Notwithstanding the considerable expenses incurred in purchasing accounting software, the practitioner was unable to establish a satisfactory accounting system. He ultimately resorted to a manual paper accounting system. The practitioner accepted that he was unable to cope with his practice.

35 The Tribunal accepted that the practitioner was suffering from significant health and financial difficulties at the time of his impugned conduct. The Tribunal found that he was unable to cope with his practice.

The Application

36 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.

37 The totality of the practitioner's misconduct allows the conclusion that he was incapable of coping in practice. The practitioner was operating under considerable pressure and was affected by a litany of health concerns. However, this neither wholly explains nor excuses his conduct. This Court requires that practitioners maintain high standards in difficult circumstances.³ The psychiatric evidence before the Court does not allow the conclusion that the practitioner is

³ *Legal Practitioner Conduct Board v Kerin* [2006] SASCF 393.

capable of practise. Further, the practitioner does not appear to be taking meaningful steps to overcome his mental health issues. In these circumstances, it is appropriate that the practitioner's name be removed from the Roll.⁴

38 The practitioner, by his own admission, engaged in unprofessional conduct. His unprofessional conduct was such that it materially disadvantaged a number of his clients and hindered the investigation into complaints concerning his conduct by the Board. The practitioner's unprofessional conduct encompassed different aspects of practice and occurred over an extended period. He failed to properly manage the trust account, he misled clients and he misled the Court by preparing a false affidavit. He failed to assist the Board in aspects of its investigations. Further, his behaviour toward clients and others on a number of occasions fell well below an acceptable standard. To maintain confidence in the profession, the public must have confidence that money placed in a practitioner's trust account is safe and will be managed with care. Public confidence in the profession is further diminished if practitioners do not conduct themselves in a professional manner. It is unacceptable for a practitioner to verbally abuse a client. It is of utmost importance that the Court can trust the content of affidavits to be accurate.

Conclusion

39 I would strike the name of the practitioner, John-Paul Kassapis from the Roll of Legal Practitioners.

40 **SULAN J:** I agree with the order proposed by Gray J, and with his reasons.

41 **NICHOLSON J.** I agree with the order proposed by Gray J for the reasons his Honour has given.

⁴ See *Legal Profession Conduct Commissioner v Alderman* [2015] SASFC 11.