

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

LEGAL PROFESSION CONDUCT COMMISSIONER v SEMAAN

[2017] SASCFC 19

Judgment of The Full Court (*ex tempore*)

(The Honourable Chief Justice Kourakis, The Honourable Justice Lovell and The Honourable Justice Doyle)

10 February 2017

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

PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND DISCIPLINE - PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT - FALSIFICATION OF DOCUMENTS AND TRANSACTIONS

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 - ORDERS

Application to strike a practitioner's name from the roll of legal practitioners.

The respondent practitioner applied for employment with a law firm having deliberately falsified the curriculum vitae and academic transcript used in support of that application to improve his prospects of employment. That application was made shortly after being admitted to practice. It was discovered that the practitioner had previously falsified his academic transcript in applying for a clerkship with the same firm.

At the time of applying to the law firm there is evidence showing that the practitioner suffered a major depressive disorder. However at the time the practitioner still knew the nature and quality of his actions and was able to control his conduct.

Plaintiff: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MR C MCCARTHY - Solicitor: LEGAL PROFESSION CONDUCT COMMISSIONER
Defendant: FADI SEMAAN Counsel: MS C O'CONNOR SC - Solicitor: SKYES BIDSTRUP

Hearing Date/s: 10/02/2017

File No/s: SCCIV-15-1089

B

Held per Curiam (Kourakis CJ, Lovell and Doyle JJ), allowing the application and striking the Practitioner's name from the roll of legal practitioners:

1. The forging of academic transcripts by a legal practitioner is serious professional misconduct.
2. That misconduct is fundamentally inconsistent with the duties and professional responsibilities of a legal practitioner. Those failures are not ameliorated by the Practitioner's inexperience and youth. If the Practitioner were allowed to practice it would erode the public's confidence in the profession.
3. The Practitioner's name is struck from the roll of legal practitioners.

Legal Practitioners Act 1981 (SA) ss 14AB, 89, referred to.

Legal Services Commissioner v PFM (Legal Practice) [2013] VCAT 827, considered.

LEGAL PROFESSION CONDUCT COMMISSIONER v SEMAAN
[2017] SASFC 19

Full Court: Kourakis CJ, Lovell and Doyle JJ

1 **THE COURT (*ex tempore*):** This is an application by the Legal Profession Conduct Commissioner (the Commissioner) seeking an order that the name Fadi Semaan (the Practitioner) be struck off the roll of legal practitioners. The Practitioner does not oppose that order.

2 In December 2010, the Practitioner was conferred a Bachelor of Laws and Legal Practice by Flinders University. He was engaged as an associate in the High Court of Australia during 2011.

3 In January 2012, towards the end of his associateship, the Practitioner applied to a law firm (the firm) for employment as a solicitor. He sent the firm a copy of his *curriculum vitae* (CV) by email on 17 January 2012. The Practitioner later admitted having falsified the part of his CV which set out his work experience.

4 On or about 2 February 2012, the Practitioner deliberately altered his academic transcript using computer imaging technology. On the altered transcript he:

- elevated his law degree to show that he had been conferred Honours when he had not;
- falsified 21 subject grades in his law degree, generally increasing his grades to distinctions and high distinctions; and
- forged a commerce degree, which he had never been awarded.

5 On 6 February 2012 the Practitioner was admitted to practice as a barrister and solicitor in the Supreme Court of South Australia. On 10 February 2012, four days after his admission, the Practitioner sent the altered transcript (dated 2 February 2012) to the firm by email in support of his application for employment.

6 It was the second time that the Practitioner had provided a falsified academic record to the firm. The first time was in 2010 on an unsuccessful attempt to obtain a clerkship. However, the Practitioner was successful on this second attempt and was employed by the firm on 2 April 2012. On 29 June 2012, he resigned from his employment.

7 On 14 August 2012 the firm discovered that the Practitioner's altered transcript was fraudulent after noting discrepancies between the transcript he had submitted in 2010 and the altered transcript submitted on 10 February. The firm reported the matter to the Law Society of South Australia, who then reported the

matter to the Legal Practitioners Conduct Board, pursuant to s 14AB of the *Legal Practitioners Act 1981* (SA) (the Legal Practitioners Act).

8 The Legal Practitioners Conduct Board, and later the Commissioner, instituted proceedings against the Practitioner for unsatisfactory professional conduct and professional misconduct. On 17 June 2015 the Legal Practitioners Disciplinary Tribunal found the Practitioner guilty of unprofessional conduct (contrary to the relevant legislation at the time) and recommended that disciplinary proceedings be commenced in the Supreme Court. Reasons for decision were published on 8 July 2015.

9 The Practitioner has not renewed his practising certificate since 2012.

10 The Practitioner provided medical evidence to the Legal Practitioners Disciplinary Tribunal in the form of a report from the psychologist Dr Nick Potts and a psychiatric report from Dr Craig Raeside. Both reports were compiled in 2014.

11 Dr Potts' report showed that the Practitioner had suffered three major depressive episodes. Dr Potts found no evidence of any other serious mental health condition. Dr Potts reported that the Practitioner's major depression was primarily triggered by lifestyle stressors.

12 Dr Raeside found no evidence that the Practitioner was suffering from a personality disorder. The history of the onset of his depression was consistent with a major depressive disorder. Dr Raeside did not accept that the Practitioner's major depressive disorder, even when he was experiencing illness, was severe enough to prevent him from knowing both the nature and quality of his actions. Nor did his symptoms render him unable to control his actions and conduct in altering his academic transcript. The depression may have motivated him to act in the manner he did but did not render him impaired in the way in which he did it, as the way in which the transcript was altered required premeditation. Further, it was uncertain how much the Practitioner's depression affected his day-to-day functioning. At times, it appeared that he functioned well in responsible positions.

13 The Practitioner's history did suggest to Dr Raeside the possibility of some maladaptive personality traits which affected the way in which he handled stress. These maladaptive traits probably arose from his family, childhood experiences and an undisclosed childhood trauma. Of greater importance was that whatever the nature of these maladaptive traits, their presence in combination with a susceptibility arising from his earlier depressive episodes left the Practitioner at considerable risk of further episodes of depression. Dr Raeside believed the Practitioner would almost certainly be exposed to high levels of stress, at least from times to time, when practising a legal career.

14 The Practitioner has sought only occasional treatment for his depressive illness. He has consulted a general practitioner to talk about his depressive symptoms including his flat mood, poor sleep, appetite and weight fluctuations. He has received some counselling in 2008, 2010 and 2012. He has refused medication, fearing its potential impact on his quality of work.

15 In written submissions provided to the Court, the Practitioner acknowledges that:

- the matter is a significant one involving serious misconduct;
- his junior position and lack of experience does not excuse nor ameliorate his misconduct; and
- he failed to uphold the legal practitioner's oath within days of having sworn it before the Court.

The Practitioner also agrees that there is nothing in the medical evidence which suggests that any of his underlying psychological issues were the cause of the offending conduct.

16 The forging of academic transcripts by legal practitioners is, for obvious reasons, serious professional misconduct.¹

17 The Practitioner's conduct is fundamentally inconsistent with the duties and professional responsibilities of legal practitioners. Those duties and responsibilities include:

- filing documents in courts;
- making discovery in litigation;
- accessing court files;
- taking oaths and affirmations;
- certifying documents;
- adducing testimonial and documentary evidence in court; and
- making submissions to courts.

18 To facilitate the performance of those duties and responsibilities, communications between legal practitioners and their clients are privileged from disclosure. That unique privilege is conferred on communications with legal practitioners because the legal profession maintains high ethical standards which

¹ *Legal Services Commissioner v PFM (Legal Practice)* [2013] VCAT 827.

ensure that lawyers conduct themselves honestly before the courts, between themselves and with third parties, even whilst advancing their clients' interests, and even though their instructions are inscrutable. Forgery and fraudulent misrepresentation are the antithesis of these ethical standards. Moreover, the Practitioner's conduct in dishonestly dealing with his academic transcript documents is prima facie a serious criminal offence.

19 The Practitioner's inexperience and youth do not ameliorate his misconduct because the failing from which it arose is, fundamentally, a moral one. Nor is his moral failing a product of his depression.

20 The Practitioner chose to engage in fraudulent dealings to advance his employment prospects. The public can have no confidence that, if allowed to practice as a lawyer, he would not act fraudulently to advance his clients' causes and thereby his own interests.

21 For these reasons, the Court orders that the Practitioner's name be struck from the roll of practitioners.