

SUPREME COURT OF SOUTH AUSTRALIA

(Full Court: Application)

LEGAL PROFESSION CONDUCT COMMISSIONER v STRAPPAZZON

[2017] SASFC 112

Judgment of The Full Court

(The Honourable Chief Justice Kourakis, The Honourable Justice Stanley and The Honourable Justice
Nicholson)

25 July 2017

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

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

**PROFESSIONS AND TRADES - LAWYERS - MISCONDUCT,
UNFITNESS AND DISCIPLINE - DISCIPLINARY ORDERS - STRIKING
OFF AND ANCILLARY ORDERS**

**PROFESSIONS AND TRADES - LAWYERS - PRACTISING
CERTIFICATES - CANCELLATION AND SUSPENSION**

Application by consent pursuant to s 89(1b)(b) of the Legal Practitioners Act 1981 (SA) to have the defendant's name struck off the roll of legal practitioners.

Among other things, the defendant has: been found guilty of unprofessional conduct; unreasonably delayed a client's matter; failed in his obligations relating to trust accounting; failed to provide information to the Law Society when required; failed to undertake mandatory continuing professional development; practised while not holding a practising certificate; made misleading representations to the Legal Profession Conduct Commissioner; and, been convicted of tax offences and charged with further offences.

Held per the Court (Kourakis CJ, Stanley and Nicholson JJ):

**Plaintiff: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MR A COLLETT - Solicitor:
LEGAL PROFESSION CONDUCT COMMISSION**

**Defendant: ALFONSO PAUL STRAPPAZZON Counsel: MR T BOURNE - Solicitor: BOURNE
LAWYERS**

Hearing Date/s:

File No/s: SCCIV-17-473

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1. The defendant's name is struck off the roll of legal practitioners.

Legal Practitioners Act 1981 (SA) s 89, referred to.

LEGAL PROFESSION CONDUCT COMMISSIONER v STRAPPAZZON
[2017] SASFC 112

Full Court: Kourakis CJ, Stanley and Nicholson JJ

1 **THE COURT:** This is an application by consent, pursuant to s 89(1b)(b) of the *Legal Practitioners Act 1981* (SA) (the LPA), to have the defendant's name struck off the roll of legal practitioners. The application proceeds on the following Statement of Agreed Facts, some facts have been updated to reflect the matter at the time of publishing.

Rosato and Cook matters

2 The Commissioner filed charges in the Legal Practitioners Disciplinary Tribunal (the Tribunal) against the defendant as follows:

- an amended charge in the matter of Rosato, action number 4 of 2014, on 15 May 2014, alleging unprofessional conduct by the defendant;
- a charge in the matter of Cook, action number 8 of 2014, on 12 June 2014, alleging unprofessional conduct by the defendant;
- a further charge in the matter of Rosato, action number 5 of 2015, on 19 May 2015, alleging unprofessional conduct against the defendant.

3 The charges referred to in paragraph 1 above were heard together by the Tribunal. The Tribunal reserved its decision in all matters on 18 January 2016.

4 The Tribunal delivered reasons on 12 April 2017 and found the defendant guilty on all counts in all three matters. The Tribunal recommended that disciplinary proceedings be commenced in this Court.

5 On 3 July 2004 Mr Rosato sustained injuries at work. He consulted and instructed the defendant in respect of those injuries on 16 July 2004. On 3 July 2007 the defendant issued a summons and statement of claim in respect of Mr Rosato's injuries in the Adelaide Magistrates Court.

6 Between 1 April 2009 and 28 November 2012 the defendant unreasonably delayed the prosecution of Mr Rosato's claim for damages for personal injury.

7 The defendant, as solicitor for the plaintiff in the proceedings brought on behalf of Mr Rosato, failed to abide by the orders of the Court in relation to the filing of various documents as well as completing disclosure.

8 In July 2012 the defendant formulated Mr Rosato's claim in the action without taking Mr Rosato's instructions and without any authority to formulate the claim for the amount specified.

9 The defendant failed to inform Mr Rosato that the Court had issued Notices of Intent to Inactivate the Action on 22 August, 10 October and 17 October 2011, or of the application to reinstate the action filed on his behalf, or of costs orders made against Mr Rosato on 17 May and 28 November 2012.

10 The defendant swore an affidavit on 14 February 2011 in support of an ex parte application he had filed on behalf of Mr Rosato to have the Court reinstate the action. That affidavit contained statements which were potentially misleading to the Court and were designed to put the defendant's own conduct in the best light possible in the circumstances.

11 Between March 2007 and September 2012 the defendant unreasonably delayed the prosecution of Mr Cook's claim for property damage sustained in a motor vehicle accident in 2006, which delay constituted unprofessional conduct on the defendant's part.

Complaint of Mr Graham Lloyd

12 Mr Lloyd instructed the defendant in January 2011 to pursue a claim against his late father's estate under the *Inheritance (Family Provision) Act 1972* (SA). Under this Act the time limit for the commencement of proceedings was 6 months from the grant of Probate over the estate, which was made on 1 March 2011.

13 The defendant unreasonably delayed the prosecution of Mr Lloyd's claim and did not issue proceedings within the time limit for the claim or, ultimately, at all. Where occurring prior to 1 July 2014, this conduct by the defendant constituted unprofessional conduct and thereafter constituted professional misconduct, in accordance with the definitions contained in the LPA.

Combined trust account

14 The defendant has practised as a sole practitioner since approximately 1984. The defendant has at all relevant times operated a Trust account with the Commonwealth Bank of Australia during the course of his legal practice.

15 Pursuant to section 53 of the LPA the defendant was obliged to make deposits of money from his Trust Account into the Combined Trust Account within 14 days after 31 May 2012, 2013 and 2014. He failed to do so on each of the three occasions, and did not give the Law Society a notice of withholding on any of those occasions.

16 The defendant was requested to provide certain information to the Law Society to allow it to calculate the appropriate amount of interest payable by the defendant on the deposits which should have been made by him in 2012 and 2014 pursuant to section 53(8) of the LPA and he failed to supply that information.

Overdrawing the defendant's trust account

17 The defendant overdrawed his general Trust account on several occasions between August and October 2012, as follows:

- The defendant's Trust account was overdrawn by the amount of \$8,650.16 from 8 to 9 August 2012.
- The defendant's Trust account became overdrawn again, by the amount of \$5,397.94 between 28 September and 1 October 2012.
- The defendant's Trust account was further overdrawn in the amount of \$5,493.69 on 2 October 2012.
- The defendant's Trust account was further overdrawn in the amount of \$5,622.69 on 3 October 2012.

Overdrawn client trust ledgers

18 Between 2011 and 2013 the defendant caused the Trust ledger accounts of five of his clients to become overdrawn by various, mostly small amounts, and in two of those instances to remain overdrawn for protracted periods in excess of 12 months.

Failure to provide information and documents to the Law Society

19 The defendant failed on six occasions between March 2013 and June 2014 to respond to requests for information and documents from an employee of the Law Society who was an inspector appointed pursuant to section 35 of the LPA (as it then was), which failure was an offence under section 35(3) of the Act.

Failure to undertake mandatory continuing professional development

20 Notwithstanding being admitted to practice, between 1 April 2013 and 31 March 2014 the defendant undertook no activity which would qualify as Mandatory Continuing Professional Development for the purposes of the *Legal Practitioners Education and Admission Council Rules 2004*, in breach of rule 3A.2 of those Rules.

Practising the law whilst not holding a practicing certificate

21 The defendant knew at the time that during the period between 1 July and 27 August 2014 he held no practising certificate and no professional indemnity insurance and that as a result he was not entitled to practise the law during that time.

22 The defendant practised the law between 1 July 2014 and 27 August 2014, including carrying out the following activities constituting legal practice.

Matter of Clutton re father's estate

23 On 1 July 2014, the defendant attended one of the Executors who was checking on progress and explained the process of Probate to him, and advised that funds from bank accounts had been paid and Lands Titles Office transfers were to be lodged shortly.

24 On 3 July 2014, the defendant attended on the deceased's widow for signing and Witnessing of Lands Titles Office transfers, and he explained to her the procedure for finalising the estate.

Matter of Dang re matrimonial property

25 On 3 July 2014, the defendant attended his client to discuss sealed family law Minutes of Order, and the client's ex-wife's entitlements.

26 On 29 July 2014, the defendant attended his client to discuss the amount to pay to his client's ex-wife, and the settlement statement regarding property.

Matter of Day re matrimonial property

27 On 3 July 2014, the defendant attended his client to swear a Federal Circuit Court Response, Affidavit and Financial Statement.

28 On 3 July 2014, the defendant wrote a letter to the wife's lawyer serving his client's answering documents pursuant to an order of the Court.

29 On 8 July 2014, the defendant appeared in the Federal Circuit Court before Judge Cole. The defendant negotiated a property settlement and drew up draft orders. These Orders were made by consent. The defendant attended his client afterwards to discuss the outcome.

30 On 11 July 2014, the defendant wrote a letter to his client confirming the Consent Orders, reporting on the issue of spousal maintenance, confirming a future appointment with him and enclosing his account for work performed up to and including 8 July 2014.

Matter of Higgins re matrimonial property

31 On 18 July 2014, the defendant attended his client and discussed the client's financial situation, superannuation and debts. The defendant agreed that he would speak to the wife's lawyer, and keep his client informed.

32 On 25 July 2014, the defendant had a telephone attendance on the wife's lawyer discussing the matter. He advised the wife's lawyer that his client was considering bankruptcy and would not defend the wife's proceedings.

Matter of Kerrison re father's estate

33 On 8 July 2014, the defendant attended the Executor and took instructions for a Probate application, including details of assets and liabilities of the estate.

34 On 8 July 2014, the defendant sent four letters to asset holders, advising that he acted for the executor, and seeking information about each asset held and the requirements for its release.

Matter of Schlink re assault

35 On 25 August 2014, the defendant had a telephone attendance on the Police Prosecutor to discuss the Pre-trial conference, and the fact that the victim was seeking compensation.

Matter of Kerjean Pty Ltd re conveyance

36 The defendant acted for the company which was the vendor in a property conveyance. Between 4 July and 21 July 2014, the defendant took all the usual steps in a conveyance leading up to settlement that occurred on 21 July 2014. The defendant was not a registered conveyancer.

Making misleading representations to the Law Society

37 The defendant declared a Statutory Declaration on 26 November 2014 and submitted the same to the Law Society in support of an application by him to have the commencement date of his practising certificate granted on 28 August 2014, backdated to 1 July 2014.

38 The Statutory Declaration, among other things, purported to describe the extent of the defendant's activities in his legal practice between 1 July and 27 August 2014 when he did not hold a practising certificate. Paragraph 5 of the Statutory Declaration included the following:

Between the period 1 July 2014 until 27 August 2014, I continued to practise, but only in 'caretaker mode'. I returned telephone calls, answered letters and serviced files if they required urgent attention.

39 This description of the defendant's activities in his practice between 1 July and 27 August 2014 was misleading because the defendant had done much more than the activities he described in paragraph 5 of his Statutory Declaration. He had carried out the activities set out in paragraphs [23]-[36] above.

Making misleading representations to the Legal Profession Conduct Commissioner

40 The defendant wrote a letter to the Commissioner dated 3 May 2016 purported to contain details of the extent of the defendant's activities in his practice between 1 July and 27 August 2014. This letter included the following:

I would attend the Post Office each morning to clear my PO Box. After collecting my mail, I would open any letters and read them. If a response to the letters was required, I would telephone to advise that a response would be forthcoming in due course. Whilst in the office, if I received a telephone message, I would attempt to return it and advise that if action was required, this would be attended to in due course. I also attended to administrative tasks. I also read through my files from time to time.

41 This description of the defendant's activities in his practice between 1 July
and 27 August 2014 was misleading because the defendant had done much more
than the activities he described in it, including the activities set out in paragraph
[23]-[36] above.

Breach of Notice pursuant to clause 4(1) of schedule 4 of the Act

42 The defendant was personally served with a Notice pursuant to clause 4(1)
of schedule 4 of the LPA on 23 March 2016. This Notice required the defendant
to provide certain specified documents and information to the Commissioner by
5.00 pm on 27 April 2016.

43 The defendant did not provide any of the required documents or
information to the Commissioner by 5.00 pm on 27 April 2016, which constitutes
an offence under clause 4(3) of the Schedule.

44 The documents were provided on 4 May 2016.

Convictions for 'tax offences' – old offences

45 On 8 August 2003 the defendant was convicted under section 8C of the
Taxation Administration Act 1953 (Cth) (the Tax Act) of 3 counts of failing to
lodge his income tax returns for the financial years ended 30 June 1999, 2000
and 2001. A fine of \$2,500 was imposed.

46 On 7 October 2005 the defendant pleaded guilty and was convicted under
section 8C of the Tax Act of 3 counts of failing to lodge his income tax returns
for the financial years ended 30 June 2002, 2003 and 2004, and 9 counts of
failing to file GST returns. He was fined \$3,000 on each count, a total of \$36,000
plus court fees.

47 On 7 April 2006 the defendant was convicted of 3 counts of failing to
comply with an order made under section 8G of the Tax Act to lodge outstanding
returns and he was fined \$1,000.

48 On 7 April 2006 the defendant was also convicted under section 8C of the
Tax Act of 5 counts of failing to lodge his GST returns for periods between 2004
and 2005, and was fined a further \$6,000.

49 On 7 April 2006 the defendant was also convicted of 9 counts of failing to
comply with an Order made under section 8G of the Tax Act and fined a further
\$25,000.

50 On 10 November 2006 the defendant was convicted under section 8C of the
Tax Act of 1 count of failing to lodge his income tax return for the financial year
ended 30 June 2005 and 1 count of failing to provide information to the
Australian Taxation Office as requested by a notice from the Commissioner of
Taxation. The defendant was fined a total of \$3,500 for these offences.

51 The offences of which the defendant was convicted as detailed in paragraphs 30 to 35 above are all ‘tax offences’ within the definition contained in section 5(1) of the LPA as all were convictions under the Act. They are summary offences and therefore do not fall within the definition of a ‘serious offence’ in section 5(1).

Failure to show cause

52 As a consequence of the convictions referred to in paragraphs 30 to 35 above, the defendant was required by s 20AG of the LPA to show cause why he should be permitted to continue to hold a practising certificate when he applied for a practising certificate after 1 July 2014.

53 The defendant failed to show cause in 2014 or at any time since, when seeking to renew that practising certificate. This failure invokes the jurisdiction of the Supreme Court under section 20AI(1) of the LPA, inter alia, to suspend or cancel the defendant's practising certificate.

Tax offences – new offences

54 The defendant is currently charged in the Adelaide Magistrates Court under section 8C of the Tax Act with 6 counts of failing to file his income tax returns for the financial years ended 30 June 2009 to 2014 inclusive. On 18 November 2016 the defendant entered pleas of guilty to each of the 6 counts.

55 On 31 March 2017 the matter was adjourned to 28 July 2017 to afford the defendant a final opportunity to file the required returns prior to submissions and sentencing.

Brother’s estate

56 The defendant was the sole executor of the estate of his late brother who died in June 2004. The sole beneficiaries of his brother’s estate were his three children, triplets born in 1989 who were to inherit the estate at the age of 25 years in 2014.

57 In March 2007 the defendant withdrew \$40,921.21 from the estate being part of the beneficiaries' one-third share of the net proceeds of the sale of his brother’s house of approximately \$260,000.00 and used it to pay a personal tax debt to the Australian Taxation Office.

58 The defendant did not have the authority of the triplets, who were then 17 years of age, nor of their mother and guardian to withdraw trust money from the estate and use it in this way and did not tell any of them he had made the withdrawal.

59 The defendant maintains that he had his brother’s verbal permission to use funds from his estate to pay the defendant's tax debt which authority was given to him some 3 years before his brother’s death. The defendant admits that neither he

nor his brother put anything in writing to record this agreement, which the defendant asserts also provided that the funds advanced to the defendant from the estate would be repaid by him prior to the distribution of the estate to the beneficiaries.

Mother's estate

60 The defendant was the sole executor of the estate of his late mother who died in July 2009. The beneficiaries of the estate were the defendant, his sister and the children of his late brother.

61 Between August 2010 and January 2014 on three occasions the defendant took amounts of money from the funds held in Trust for his mother's estate and transferred them into the Trust account ledgers of other, unrelated clients of his practice. These amounts were never re-credited to his mother's estate. The defendant asserts that it was his intention that those amounts would be offset against the bequest due to him when the estate was distributed.

Conclusion

62 We are satisfied on those facts that the order should be made. The order of the Court is:

1. The defendant's name is struck off the roll of practitioners.