[2009] WASC 39

JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CIVIL
TITLE OF COURT	**:**	FULL BENCH
CITATION	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE -v- PEPE [2009] WASC 39
CORAM	**:**	MURRAY J EM HEENAN J BEECH J
HEARD	**:**	4 FEBRUARY 2009
DELIVERED	**:**	25 FEBRUARY 2009
FILE NO/S	**:**	LPD 1 of 2008
BETWEEN	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE Applicant AND JOSEPHINE PEPE Respondent

Catchwords:

Legal practitioner - Disciplinary proceedings - Practitioner convicted of attempt to pervert the course of justice - Practitioner found guilty of unsatisfactory conduct by reason of illegal conduct - Punishment - Whether practitioner to be struck off Roll of Practitioners

Legislation:

Nil

Result:

Respondent struck off Roll of Practitioners

Category: B

Representation:

Counsel:

Applicant	:	Ms P E Cahill & Ms P Le Miere
Respondent	:	Mr L M Levy SC & Mr M R Hall

Solicitors:

Applicant	:	Legal Practitioners Complaints Committee
Respondent	:	Hall & Hall Lawyers

Case(s) referred to in judgment(s):

A Solicitor v Law Society (NSW) [2004] HCA 1; (2004) 216 CLR 253
Barristers' Board v Darveniza [2000] QCA 253; (2000) 12 A Crim R 438
Legal Practitioners Complaints Committee v Pepe [2008] WASAT 246
Re Maraj (A legal practitioner) (1995) 15 WAR 12
Re Stokes; Ex parte Stokes [2008] WASC 269
The Law Society of SA v Rodda [2002] SASC 274; (2002) 83 SASR 541
Ziems v Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279

1 **MURRAY & BEECH JJ**: This is an application by the Legal Practitioners Complaints Committee for an order that the respondent solicitor be struck off the Roll of Practitioners upon the finding of the State Administrative Tribunal (SAT) in a report transmitted to this court under s 185(2)(a) of the *Legal Practice Act 2003* (WA) that the respondent was guilty of unsatisfactory conduct.

2 The unsatisfactory conduct, within the meaning of that term in s 3 of the Act, was illegal conduct. The finding embodied in the Tribunal's order made on 15 August 2008 was that the illegal conduct occurred when the respondent 'counselled a person not to give evidence at a District Court trial and in doing so attempted to pervert the course of justice'. The finding was made with the consent of the respondent. The SAT made and transmitted its report to this court in the form of the reasons for decision it gave on 24 October 2008: ***Legal Practitioners Complaints Committee v Pepe*** [2008] WASAT 246.

3 By s 194(1) of the Act, such a report, 'is to be taken to be conclusive as to all facts and findings mentioned or contained in the report'. Under s 194(2), this court, although it may receive further evidence (and we did so) may, upon the basis of the reported facts, fine, suspend from practice, or strike off the Roll of Practitioners, the legal practitioner who is the subject of the report.

4 It was not suggested in this case that a fine would be an appropriate disposition by this court, but in response to the applicant's motion seeking a strike-off order, the respondent submitted that a lengthy suspension from practice would, in the circumstances, be an appropriate disposition. In that regard, it is noted that s 194(2) does not limit the period of suspension, in contrast to the powers of the SAT, which, under s 187(1)(a)(i), include a power to suspend the practitioner from practice for a period not exceeding 2 years.

The relevant legal principles

5 By s 203(1) of the Act, a legal practitioner struck off the Roll of Practitioners is simply not entitled to engage in legal practice until he or she has been readmitted to practice. That may be brought about by an application to this court under s 34. The application must be supported by a certificate of the Legal Practice Board that the Board is satisfied that the applicant for readmission is, in the opinion of the Board, a fit and proper person to be readmitted.

6 The nature of the onus borne by such an applicant and the way in which the Full Bench will approach the task of determining whether an applicant is a fit and proper person to be readmitted was discussed recently by Martin CJ, Murray and Templeman JJ agreeing, in ***Re Stokes; Ex parte Stokes*** [2008] WASC 269 at [32] - [33]:

> An applicant who has been previously struck from the roll must bear a much heavier and distinctly different onus to that borne by an applicant seeking admission for the first time. In the case of an applicant for readmission, the applicant carries the onus of proving that there is no significant prospect of repetition of the conduct of the kind which resulted in the removal of his or her name from the roll - see ***Gregory v Queensland Law Society Inc*** [2002] 2 Qd R 583 at [18]. In this context it is worth repeating that the jurisdiction of the court in respect of the maintenance of the roll of practitioners is not a jurisdiction exercised for the purpose of punishing practitioners, but for the purpose of protecting the community (***Clyne v The New South Wales Bar Association*** (1960) 104 CLR 186 at 201 – 202), which depends upon the provision of legal services by practitioners of appropriate character, honesty and integrity.
>
> However, if the court can have the requisite confidence that there will be no significant risk of repetition of the misconduct which resulted in the removal of the practitioner's name from the roll, there is a public interest in the restoration of the names of such persons to the roll. That public interest derives in part from the fact that such persons will be in a position to serve the community by providing legal services, but also from the encouragement of rehabilitation and redemption of those whose conduct has, in the past, prevented them from conducting their profession – see Kirby P in ***Kotowicz v Law Society of New South Wales***, unreported; NSWCA; 7 August 1987.

7 It is important to bear in mind that it is not only at the stage of determining the appropriate penalty for unsatisfactory conduct, but also at the stage of determining whether an applicant is a fit and proper person to be readmitted, that this court will consider that its disciplinary power and jurisdiction is not to be exercised for punitive purposes, but for the maintenance of proper standards in the legal profession and for the protection of the public in their dealings with lawyers.

8 In ***Re Maraj (A legal practitioner)*** (1995) 15 WAR 12 at 25, Malcolm CJ, Kennedy and Franklyn JJ agreeing, said:

> … the object of disciplinary proceedings is the protection of the public and the maintenance of proper standards in the legal profession, rather than punishment. It is clear from … the authorities which have been repeatedly followed in the Court that when the question is whether a practitioner should be struck off the Roll, the only question is whether the practitioner is a fit and proper person to remain a member of the legal profession.

9 A variation upon that theme is the need for this court to ensure that its disposition of the case is consonant with the need to preserve the standing and reputation of the profession of the law in the eyes of the community. ***The Law Society of SA v Rodda*** [2002] SASC 274; (2002) 83 SASR 541 was a case of a lawyer who had been convicted of sexual offences in circumstances which did not directly reflect upon the respondent's capacity to act as a legal practitioner. Nonetheless, he was struck off because, as Doyle CJ put it, at 546 [29]:

> 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.

As will be seen, in our view those observations are apposite in this case.

10 In other words, the purpose of the maintenance of proper standards in the legal profession for the protection of the public may require this court to consider matters, particularly the seriousness of the offending behaviour, which go beyond what might strictly be required to secure the outcome that the practitioner is appropriately punished and would be unlikely to offend in the same manner again. Not every instance of unprofessional or illegal conduct will require the extreme penalty of striking off, or even suspension from practice, but there will be cases where the seriousness of the conduct demands such a disposition because it demonstrates unfitness for practice: ***Ziems v Prothonotary of the Supreme Court of NSW*** (1957) 97 CLR 279, 298.

11 In the final analysis, however, the question remains that with which this discussion of the applicable principles started - easy to state, but not always so easy to apply. As it was put by the High Court in ***A Solicitor v Law Society (NSW)*** [2004] HCA 1; (2004) 216 CLR 253 at 265 [15]:

> Where an order for removal from the Roll is contemplated, the ultimate issue is whether the practitioner is shown not to be a fit and proper person to be a legal practitioner of the Supreme Court upon whose roll the practitioner's name presently appears.

It is plain that under the statute, the judgment of the Full Bench upon that issue is to be made as at the time when the court is called upon to exercise its disciplinary powers.

12 Where the choice presented is, as in this case, effectively between suspension and striking off, useful guidance can be obtained from the judgment of Thomas JA, McMurdo P and White J agreeing, in ***Barristers' Board v Darveniza*** [2000] QCA 253; (2000) 12 A Crim R 438 at 446 - 447 [38]:

> Striking off is of course reserved for the very serious cases where the character and conduct of the practitioner is seen to be inconsistent with the privileges of further practice. Suspension is a less serious result, firstly because a limited period is specified and secondly because the right to resume practice is then preserved without any further onus upon the practitioner to prove that he or she is now a fit and proper person to practice.
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> > 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. (In ***Re A Practitioner*** (1984) 36 SASR 590 at 593 per King CJ.)

The facts

13 The material facts may be taken from an agreed statement of facts placed before the SAT and from their findings made, having regard to the whole of the evidence before them. In addition, as will appear, we considered it to be appropriate to take in to evidence additional material tendered by the respondent, in the form, firstly, of a series of references, particularly by members of the respondent's family and friends, and secondly, a further medical report made after the judgment of the SAT for the purpose of bringing up to date, evidence before that tribunal.

14 In 2006, the respondent was in a relationship, an abusive and violent relationship, with a man named Murray. He and others were indicted for a conspiracy to cause a pregnant woman to miscarry with intent to do her bodily harm. The indictment came on for trial in the District Court. Despite the obvious conflict of interest, the respondent acted as Murray's solicitor. She briefed senior counsel, Mr Shirrefs SC. Murray was apparently a very jealous man, suspicious of any contact between the respondent and a member of the opposite sex. He came to consider that she was having an affair with counsel. He accused her of doing so.

15 Murray's trial commenced on 21 August 2006. There was publicity in the media. As a result of a number of matters, the trial was aborted on 22 August and it was to recommence before a different jury on 23 August 2006.

16 The respondent had a client named Fitzgerald. He was a former policeman and, in August 2006, was serving a sentence of imprisonment, having been convicted of a corruption offence. He saw the media reports about Murray, contacted the police and told them he had useful information.

17 On 22 August 2006, police officers took a statement from Fitzgerald at Casuarina Prison. In summary, Fitzgerald said that he had witnessed a conversation between Murray and his co-conspirators in which terminating a woman's pregnancy by violence was discussed. The importance of this statement, if given in evidence at the trial of Murray, is obvious. The respondent appreciated that it would set at naught counsel's hope that a successful no-case submission might be advanced on Murray's behalf.

18 The existence of the statement had been brought to the respondent's notice and to the notice of defence counsel by prosecuting counsel on the morning of 23 August 2006. The respondent was told that consideration was being given to calling Fitzgerald to give evidence. Apart from the impact of that evidence upon the trial process, the respondent feared, whether with or without justification, that when Murray learned of the statement made by Fitzgerald, knowing of the solicitor/client relationship between the respondent and Fitzgerald, he would assume a conspiracy between the respondent, defence counsel and Fitzgerald, to have him convicted and thus remove him from the scene. She feared that she 'would be severely dealt with' by Murray. As we understand it, she feared that Murray would physically punish her on the ground of his paranoid belief.

19 The respondent was able to make telephone contact with Fitzgerald. She telephoned unsuccessfully. Shortly after that, he called her. Despite the fact that the telephone operator at the prison told the respondent that the conversation would be recorded, and motivated by her concern about the outcome of Murray's trial, and, as we understand it, by her concern for her own safety, the respondent discussed with Fitzgerald whether he should adhere to his statement and give evidence. The record made of the conversation is in evidence before us.

20 Listening to it bears out the finding of the SAT that the respondent was not motivated by concern for the position of her client Fitzgerald. The content of the conversation need not be reproduced here. That what was said by the respondent constituted an attempt to pervert the course of justice in the trial of Murray is undoubted.

21 The respondent's tone of voice during the telephone conversation is emotional, but what she says is clear. She commences by telling Fitzgerald that the prosecution case against Murray is weak without his evidence. She asks if he can change his mind, withdraw his statement and decline to give evidence. He asks how he might go about that. She suggests that he might say that he has the details wrong and he does not wish to give evidence. She endeavours to persuade him to do as she asks by telling him that to give such evidence will not benefit him by causing any reduction of his sentence, but will harm her.

22 She almost pleads with him to retract the statement. She tells him it will be difficult for him in court if he gives such evidence. There will be media publicity, and she implies that Fitzgerald's life will be difficult in prison. She effusively expresses her gratitude when, as the conversation is terminated, Fitzgerald tells her to leave it with him and he will see what he can do.

23 On 25 August 2006 he retracted his statement. Later, in October 2006, Murray was tried and acquitted. Fitzgerald was not called as a witness.

24 The respondent was indicted with the offence of attempting to pervert the course of justice on 29 October 2007. She elected trial by judge alone and the indictment was tried by Fenbury DCJ on 24 and 25 June 2008. On 2 July 2008, for reasons then published by his Honour, she was convicted. On the following day she voluntarily ceased to practise as a legal practitioner and she has not attempted to resume legal practice since then. On 11 August 2008, she was sentenced to 12 months imprisonment suspended for 12 months.

25 Fenbury DCJ found that the respondent attempted to pervert the course of justice by seeking to dissuade Fitzgerald from giving evidence by improper means. She tried to make him feel guilty in giving evidence. She tried to make him feel sorry for her and her partner Murray. She tried to frighten him by saying he would be charged when there was no evidence she had any basis upon which to offer that view. She told him

that he would be likely to suffer personally if he were to go through with it and give evidence in court.

Matters personal to the respondent

26 We had before us a series of references by fellow lawyers, all tendered to the District Court in the sentencing proceedings. Without exception, they testify to the respondent's time in practice as being one in which, particularly in the field of the criminal law, she displayed considerable ability and provided valuable service to her clients, without there being any suggestion of professional impropriety until the incident the subject of these proceedings.

27 In addition, we received in evidence a further collection of references from the respondent's mother, her brother and sister, sister-in-law and friends. These people also speak highly of the respondent's character and personal qualities. Their testimonials confirm the destructive nature of the relationship between her and Murray which, finally, after the conclusion of the matters with which these proceedings are concerned, she has been able to end. It is evident that the respondent has made, and continues to make, considerable efforts towards her rehabilitation in circumstances made more difficult by her incapacity to obtain any employment once the offence which she committed is revealed to a prospective employer.

28 The other material upon which the respondent places particular reliance is a series of three medical reports by Dr Wu, consultant psychiatrist, who had been treating the respondent since July 2004. In the year that followed the initial consultation there was some in-patient treatment as well as as an outpatient. She was again referred to Dr Wu after a relapse, presenting similar symptoms, in early 2007.

29 On both occasions her problems were said to result from psychosocial stresses, 'leading to a breakdown in her emotional capacity to cope, and manifesting in symptoms of depression and anxiety'. She was said to be 'heavily dependent on alcohol as a means of coping'. It is clear that the second referral resulted from the breakdown of the relationship with Murray. Again, there was some in-patient treatment required, as well as the prescription of a number of different medications. Dr Wu's first report is dated 26 July 2007.

30 In Dr Wu's opinion, the respondent has a vulnerable personality which makes her subject to depression and panic attacks. At such times, she is inclined to self-medicate with alcohol, but she is vulnerable to alcohol dependence and Dr Wu therefore recommended that she should

keep up the prescribed medication, engage in a program of psychological counselling and commit to totally abstain from alcohol.

31 Dr Wu made a further report, dated 3 September 2008. It was provided to her solicitors, evidently to be used in the SAT proceedings. At that time, Dr Wu said he had not seen the respondent since 26 July 2007, immediately before he made his first report. She told Dr Wu that she was in control of her drinking habit. She was not completely abstaining from the use of alcohol. She seemed to Dr Wu to be much better, although she had not sought any psychiatric or psychological treatment, 'but had used work, exercise and travel, with the support of friends and family, to keep herself well and to keep her mood buoyant'.

32 Her psychological state remained the same. As Dr Wu said, '[S]he does have personality vulnerabilities and does meet with difficulties in her personal and professional life due to her emotional state clouding her rational mind at times.' Dr Wu observed that the respondent did not propose to consult him or otherwise seek medical treatment. He recommended that she continue with her current antidepressant medication.

33 That report was updated by Dr Wu in his short report dated 2 February 2009, obtained for use in the proceedings before us. Again, Dr Wu had not seen the respondent since he reviewed her situation for the purpose of his previous report. She reported to him that she was confident that she was now merely an occasional social drinker and that otherwise her personal life appeared to be going well. Dr Wu thought it was evident that the respondent was, 'in remission from her previously mentioned problems and had made gains in recovery and rehabilitation'. He regarded her as fit to resume work, 'as an independent legal professional'.

The order to be made

34 Against that background we turn to a consideration of the way in which, in our view, this court should respond to the finding of unsatisfactory conduct by the commission of the offence of attempting to pervert the course of justice, in all the circumstances of the case, and having regard to the respondent's personal circumstances and her psychological history, both before the offence was committed and since then.

35 As to that, it may be accepted that the respondent is today in a stable situation and relatively well. She appears to be coping, as a result of her own endeavours and with the support of family and friends, despite the

difficulty that she is apparently unable to obtain employment in any capacity. One can only sympathise with the situation in which she finds herself. However, as we understand the evidence of Dr Wu, she remains a vulnerable personality whose rational thought processes may be disturbed and who may make serious errors of judgment at times of severe stress. The evidence supports the conclusion that that is precisely what caused her to commit the offence of which she was convicted.

36 The seriousness of that offence, in its factual context and in the context of the present proceedings, cannot, in our opinion, be overstated. To be a member of the practising legal profession is a great privilege. It offers the opportunity to serve the community in a profoundly important way. The administration of justice according to law lies at the heart of the community's health and wellbeing. In social terms, there can hardly be a more important function that a citizen may perform than to participate in that process.

37 Legal practice is not only a great privilege, but if the profession of the law is to maintain its capacity to serve the community in the way described, its practitioners must accept that they are subject to rigorous ethical standards. They must merit the trust and confidence in their propriety, of their clients, other legal practitioners, the courts and the community as a whole.

38 What the respondent did, when she attempted to pervert the course of justice, amounted to a complete abandonment of those standards of behaviour required of legal practitioners. And she did it in the course of purportedly acting as the solicitor for both Murray and Fitzgerald. She initiated the contact leading to the commission of the offence. She attempted to strike down the processes of the law and the courts for her own personal reasons and benefit, without regard for the hazard of his implication in the process of perverting the course of justice, which she created for Fitzgerald.

39 In our opinion, whatever the future might hold for the respondent in respect of her capacity to again be admitted to the practising profession, the only order which this court may make is to strike her off the Roll of Practitioners. In essence, in our view, this case is one which is appropriately described in the words of Doyle CJ in ***Rodda*** at 546 [29].

40 **EM HEENAN J**: I have had the advantage of reading in draft the reasons of Murray and Beech JJ in this case. Their Honours' detailed account of the facts relieves me of the task of describing them other than for the

purposes of considering their overall significance in the entire context for the decision which this court is required to make. I also adopt, with grateful respect, the review of the authorities and principles derived from them which their Honours have set out.

41 On this basis, I turn directly to the issue for decision. ***Ziems v Prothonotary of the Supreme Court of NSW*** (1957) 97 CLR 279 is binding authority for the proposition that conviction of a criminal offence, and even imprisonment imposed following that conviction, is not conclusive in proceedings such as these, upon the final issue of whether or not the respondent is not a fit and proper person to remain on the roll of legal practitioners and therefore should have her name removed from the roll. Taylor J observed that the vital question was not whether the practitioner had been convicted of an offence against the criminal law, but whether his conduct had been such as to show that he is unfit to remain a member of his profession. Kitto J observed:

> The conviction is of an offence the seriousness of which no one could doubt. But the reason for regarding it as serious is not, I think, a reason which goes to the propriety of the barrister's continuing a member of his profession. The conviction relates to an isolated occasion, and, considered by itself as it must be on this appeal, it does not warrant any conclusion as to the man's general behaviour or inherent qualities … It is not a conviction of a premeditated crime. It does not indicate a tendency to vice or violence, or any lack of probity. It has neither connexion with nor significance for any professional function. Such a conviction is not inconsistent with the previous possession of a deservedly high reputation, and, if the assumption be made that hitherto the barrister in question has been acceptable in the profession and of a character and conduct satisfying its requirements, I cannot think that, when he has undergone the punishment imposed upon him for the one deplorable lapse of which he has been found guilty, any real difficulty will be felt, by his fellow barristers or by judges, in meeting with him and co-operating with him in the life and work of the Bar (299 - 300).

42 That decision and those observations oblige this court to look at all the circumstances of the conduct resulting in the respondent's conviction, and to treat the significance of her conduct, rather than the fact of conviction or penalty, as the factor which requires evaluation for determining whether or not an order should be made for the removal of her name from the roll.

43 It is not insignificant that, despite the gravity of the offence of which the respondent was convicted, and the tendency of such an offence to subvert the course of justice, the penalty which was imposed by the learned trial judge after hearing all the evidence and receiving further

evidence on the plea of mitigation, was not a sentence of immediate imprisonment but a sentence of suspended imprisonment. Quite obviously the reasons for such a disposition included the respondent's previous good character, and the impulsive features of the respondent's behaviour which all occurred within a short space of time - less than 24 hours. Moreover, it has not been found that in this case the course of justice was actually perverted. There was no evidence or finding that the prosecutor had made any decision to call the prisoner Fitzgerald, as a witness at the trial, or had abandoned or discarded any plan to do so because of the actual or suspected results of the practitioner's conduct.

44 In light of those factors, and in contrast to the situation in ***Ziems***, this offence was committed in the course of the practitioner's profession, and indeed in relation to the conduct of proceedings then pending. Even though the conduct was sudden and perhaps impetuous, it was nevertheless deliberate and intentional with the aim of securing an advantageous result for a person with whom the practitioner was, at the time, emotionally involved.

45 Kitto J, at page 298 of ***Ziems***, identifies and emphasises the lofty ends which a practitioner must serve, and the delicate nature of the relationship between a practitioner and the court, and the exceptional privileges and obligations which a practitioner must discharge. His Honour made the points that there may be a conviction of such a force and with such stigma that it demonstrates an unfitness for practice, but that there will generally be other forms of conduct deserving disapproval, which to do not necessarily spell unfitness for the bar. In the former case are convictions which reveal a defect of character incompatible with membership of the profession and the submission for the applicant is that this conviction is one of those.

46 This distinction between the stigma of the criminal conviction itself, on the one hand, and the character or fitness of a practitioner to remain on the roll, is very seldom as apparent or distinct as it was in ***Ziems***. That was a case of manslaughter arising from careless driving, under very extenuating circumstances which reflected very little, if at all, upon the reputation and good character of the barrister. More often, as in this case, the stigma of a conviction does connote some defect in character of the offender, and the circumstances of its commission also frequently reveal that there are serious shortcomings of character. But the imperative in ***Ziems*** still requires this court to view the ultimate question of fitness to remain a practitioner, or some future prospect of re-establishing such fitness, in the perspective of all the circumstances of the particular case.

47 I am satisfied that in this case the nature of the offence, and the intentional and deliberate attempt by improper means to persuade a potential witness not to give evidence, reflects a grave breach of the practitioner's professional obligations. That this occurred when she was acting for an accused person with whom she was closely involved, and when she sought to influence the witness, who was also a client, reveals that she was insensitive to and had disregarded serious professional conflicts of interest. This too reflects adversely upon her fitness to practice. That she got herself into a position of acting professionally for the man who was her partner at the time, and with whom there appears to have been a most unsatisfactory and dysfunctional relationship; that she only recognised the need to engage other more senior counsel to appear with her, after being strongly advised to do so by professional colleagues; and that she would put out a large amount of her own money for the engagement of the senior counsel; all show how severely her position was compromised and, more importantly, how inadequate in these respects was her personal professional judgment.

48 As counsel for the applicant submitted, the unswerving performance of professional obligations of legal practitioners, and the need for the courts and the profession to trust the integrity of a practitioner is extremely important because, in many cases, in the nature of advice given, submissions made or evidence disclosed, there will be little if any effective supervision of the conduct of a practitioner as many of those duties are performed under privilege. The need for such trust to be extended with confidence to a practitioner, by fellow practitioners, courts and the public, is so great that it forms an essential part, not only of the practice of the law, but of the administration of justice. If conduct is discovered, or defects are exposed, which reveal that such trust cannot, or cannot confidently, be extended to the person concerned, then by that very fact the person can no longer be regarded as a fit and proper person to discharge the serious responsibilities of practice.

49 So far I have been proceeding on the basis that a person's character is, largely speaking, constant and unchanging, so that if one sees some serious defect in character exposed, as it has been in this case, that reveals a permanent unfitness to practice. But of course, that is not always so because character and personality are not immutable. Each can be subject to changes and disruptions by other factors over which the individual may have only limited, or sometimes no, control. For example, if a practitioner were to contract a serious illness, some neurological disorder which seriously incapacitated mental function, or even some serious psychiatric disorder, the result could easily be that the effects of that

illness rendered the individual no longer fit to practice. If under the influence of such a disease the practitioner committed some major professional indiscretion, then a court would not hesitate to remove his or her name from the roll, not because of a defect of character, but because the person was no longer constitutionally capable of the demands of practice. Even age and accompanying dementia may produce such an effect although, in such cases the individual, either alone or with the advice of compassionate colleagues, may decide that an honourable retirement is the best course - and few would disagree.

50 There are other factors which may produce an unfitness to practice which are not, or which may turn out not to be, permanent in their effect. Alcoholism and drug dependence may sometimes be examples of these where, after effective treatment, personal endeavour and a sufficient period of demonstrated abstinence, it is proper to say that the individual can be regarded as recovered from the condition which caused or contributed to his or her unfitness to practice. The period which must elapse before such an opinion can be held with sufficient confidence may be long or short according to the nature of the condition and the response of the practitioner, but there are certainly examples where such recoveries have been made, and useful careers re-established.

51 In the present case it is clear that the respondent, at the time of her offence, had a chronic condition of personality disorder, associated dependence and depression. She had been on medication for that condition for more than three years and had been hospitalised for it in 2004, and again after the offence in 2007. Her relationship with the man Murray, and her readiness to resort to unlawful conduct in the misguided thought that this could be helpful, shows how dependent she had become on him. She was obviously unsuited to sole practice in the area of criminal law, but in a different area of practice, under supervision and with the benefit of professional colleagues at hand to lend advice and oversee her performance, there may be some prospect in the future of resuming a legal career. But it is not for this court even to attempt forecasts of such a kind. Our present obligation is to protect the public interest and the reputation and function of the profession.

52 Whether it may be possible for the respondent to recover from the effects of her long standing illness, and obtain a greater degree of confidence and independence of character will be for time to reveal. There is a mechanism under s 34 of the *Legal Practice Act 2003* (WA) where application for re-admission by a person whose name has been removed from the roll may be made which involves a prior investigation

by the Legal Practice Board of whether or not the person is then a fit and proper person for re-admission. The fact of the respondent's conviction and the order which I agree this court must make on this motion should not in any way obscure the possibility in the future of that occurring or of the result of such an inquiry should it ever be necessary.

53 For the present, however, I am satisfied that the conduct of the respondent and the events leading to the commission of her offence, even though that was almost certainly influenced very considerably by the conditions from which she has been suffering for many years, reveal an unfitness to practice and, therefore, that her name should be removed from the roll of practitioners.