

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : THE FULL COURT (WA)

CITATION : RE A PRACTITIONER [2004] WASCA 287

CORAM : MALCOLM CJ
MURRAY J
MCKECHNIE J

HEARD : 12 NOVEMBER 2004

DELIVERED : 12 NOVEMBER 2004

FILE NO/S : LPD 4 of 2004

MATTER : *Legal Practitioners Act 1893 (WA)*

AND

A Practitioner of this Honourable Court

AND

An undated report by the Legal Practitioners
Disciplinary Tribunal to the Full Court of this
Honourable Court under the *Legal Practitioners Act*,
s 29A(2)(a) and s 30 and the *Legal Practice Act*,
s 185(2)(a) and s 194

Catchwords:

Legal practitioners - Report of illegal and unprofessional conduct - Principles justifying an order to strike off Roll of Practitioners - Turns on own facts

Legislation:

Nil

Result:

Order that practitioner be struck from Roll of Practitioners

Category: B

Representation:

Counsel:

Applicant : Ms C F M Coombs
Respondent : No appearance

Solicitors:

Applicant : Minter Ellison
Respondent : No appearance

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

Re a Barrister and Solicitor Re Legal Practitioners Ordinance 1970 (ACT)
(1979) 40 FLR 1
Re Maraj (a Legal Practitioner) (1995) 15 WAR 12

Case(s) also cited:

Nil

MALCOLM CJ
MURRAY J
MCKECHNIE J

1 **MALCOLM CJ:** I agree with the reasons which have been pronounced
by McKechnie J and with the terms of the order which he proposes.
There is nothing which I could usefully add to those reasons.

2 **MURRAY J:** I agree also. It seems to me that this practitioner has been
guilty over an extended period of time of both unprofessional conduct of
the most serious kind and of illegal conduct. The case leaves the Court
with no choice but to make the order striking the practitioner from the
roll.

3 **MCKECHNIE J:** The Court has before it a notice of motion transmitting
a report from the Legal Practitioners Disciplinary Tribunal recommending
that the practitioner be struck off the Roll of Practitioners. The
practitioner has not been served with the notice of motion. On 20 October
2004, Master Sanderson gave leave to dispense with service for reasons
which will shortly appear. The practitioner was not represented, nor did
he appear at the hearing before the Tribunal.

4 Prior to March 1998 the practitioner carried on practice as a solicitor
in Geraldton. At some time prior to 13 March 1998 the practitioner
disappeared from his practice without notice to his clients or the Legal
Practice Board. It appears that at around about March 1998 the
practitioner left Australia, has resided in various countries and may have
changed his name.

5 On 13 March 1998, on the application of the Legal Practitioners
Complaints Committee, the Court suspended the practitioner from
practice pending inquiry. The Legal Practice Board then appointed a
supervising solicitor who conducted a careful investigation into the affairs
of the practice. It became apparent that the practitioner may have stolen
or otherwise misappropriated money belonging to various clients over a
period of three years.

6 In due course the Legal Practitioners Complaints Committee
proceeded against the practitioner before the Tribunal on nine references
alleging illegal or unprofessional conduct as the Act then required. On
21 February 2003 a person, who described himself as the practitioner,
telephoned the Law Complaints Officer and said he was telephoning to
ascertain whether he had been struck off. The Officer said she recognised
the voice on the telephone as that of the practitioner. The practitioner, in
the course of a telephone conversation to which I have referred, advised
the Law Complaints Officer that he would not return for the hearing and

that she would not hear from him again. He appears to have carried out this advice.

- 7 The Tribunal in its careful Reasons for Decision dated 18 June 2003 dismissed one reference, made findings of illegal conduct on two references, unprofessional conduct on one reference and illegal and unprofessional conduct on five references. It is perhaps sufficient by way of summary to repeat the Tribunal's general findings which are as follows:

"It is abundantly clear and we find that over a period of approximately 2 years prior to his leaving the practice, the practitioner has consistently received money on account of costs directly into his general account and to the extent, that at times, he has received money on behalf of his clients or from his clients which had been paid into his trust account he has not properly accounted to his clients for that money in breach of the Legal Practitioners Act in circumstances which in our view and in some cases amounts, to stealing."

- 8 The principles to be applied in applications such as this are well known and I simply refer to, without quoting from, the judgment of the Full Court in *Re a Barrister and Solicitor Re Legal Practitioners Ordinance 1970 (ACT)* (1979) 40 FLR 1 at 24 to 25 and in *Re Maraj (a Legal Practitioner)* (1995) 15 WAR 12.

- 9 The object of disciplinary action is the protection of the public and the maintenance of proper standards and the reputation of the profession. In this case the actions of the practitioner went to the heart of his practice and were a betrayal of the clients who depended upon him. It is of singular importance that practitioners should be scrupulous in dealing with their clients' money. In my opinion, the inevitable result of the practitioner's conduct is that the protection of the public, and the maintenance of proper standards, requires an order that the practitioner be struck from the Roll of Practitioners of this Court.