

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : FULL BENCH

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE -v- STEVENS [2006] WASC 314

CORAM : MARTIN CJ
MURRAY J
HASLUCK J

HEARD : 19 DECEMBER 2006

DELIVERED : 19 DECEMBER 2006

FILE NO/S : LPD 5 of 2005

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Appellant

AND

CLARENCE JAMES STEVENS
Respondent

Catchwords:

Legal practitioners - Disciplinary proceedings - Practitioner struck off Roll in New South Wales - Liability to be struck off in Western Australia - Turns on own facts

Legislation:

Nil

Result:

Practitioners struck off Roll of Practitioners

Category: B

Representation:

Counsel:

Appellant : Mr P C Doherty
Respondent : In person

Solicitors:

Appellant : Minter Ellison
Respondent : In person

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

Re Maraj (1995) 15 WAR 12

MARTIN CJ
MURRAY J

1 **MARTIN CJ:** I agree with Murray J, but I would just add that for my part, I accept the submission made by Mr Stevens to the effect that the delays involved in bringing this matter before this Bench were most unsatisfactory. I know it is cold comfort to Mr Stevens, but insofar as those delays occurred within this Court, I have asked for arrangements to be made to prevent them from re-occurring. I would hope that each of the Legal Practitioners Complaints Committee and the State Administrative Tribunal can also review their procedures to ensure that delays of this magnitude do not re-occur. In my opinion, it is highly desirable, both from the perspective of the public interest and from the perspective of interest of the practitioner concerned, for these matters to be dealt with much more expeditiously than has unfortunately occurred in this case. I otherwise agree with Murray J, for the reasons he gives, that the appropriate order is to remove the practitioner's name from the Roll.

2 **MURRAY J:** This is a matter which comes before the Full Bench under section 204 of the *Legal Practice Act 2003* (WA). Section 204(3) provides that a legal practitioner admitted to practice in this State who was in any other jurisdiction struck off the Roll of Practitioners or suspended from practice, under par (b) "is liable upon the report of the State Administrative Tribunal to the Supreme Court (Full Bench) to be struck off the Roll or suspended from practice, as the case may require".

3 I commence by observing that under s 204 there is a discretionary judgment to be made by the Full Bench within the framework of the disciplinary processes provided by the Act. That places the matter squarely within the ordinary framework of the disciplinary processes of the Court to govern the conduct of practitioners of the Court and to deal with the maintenance of professional standards, the protection of the public in broad terms, and the reputation of the profession. All of those matters may boil down to the simple proposition, where there is a question of being struck off the Roll, whether the practitioner is at the time when the matter comes to be considered by the Full Bench, on the materials before it, a fit and proper person to remain a member of the profession. The authorities are many. They need not, I think, be referred to, except that I would simply note the discussion in the decision *Re Maraj* (1995) 15 WAR 12 24 - 25.

4 The additional element, of course, when the matter is being dealt with under s 204, is that the legal practitioner admitted to practice in this State has been struck off the Roll or suspended from practice in the other jurisdiction. That leads me to observe that so far as this case is concerned the matter comes here after a striking off in New South Wales in

September 2003 in relation to matters concerning the non-lodgment of income tax returns and the processing of the respondent through the courts in New South Wales, a reference by the Legal Practitioners Complaints Committee in this State which culminated in a hearing by the State Administrative Tribunal conducted on 4 August 2005 and which resulted in a report of the Tribunal. I think Mr Stevens is correct so far as this Full Bench is concerned; the findings made by the Tribunal provide the factual material upon which this Court may act.

5 The Tribunal reported that its conclusion was that the striking off was properly to be regarded as unsatisfactory conduct within the meaning of the *Legal Practice Act*, and in view of the history in New South Wales, the Tribunal observed at [31] - [33] that because the practitioner's name had been struck off the Roll in New South Wales, it should also be struck off the Roll in Western Australia. It therefore determined to make and transmit to this Full Bench, a report in the form of its reasons, to which it annexed the findings and the judgment of the Court of Appeal in New South Wales and incorporated that material in the report made. The Tribunal observed that it considered that there was no alternative, but that the practitioner's name be struck off the Roll in Western Australia. That report was made on 17 August 2005 and the matter comes, finally, before the Court today.

6 So the question is one of judgment to be made today and the materials before the Court factually are clear. In my opinion, it may be the case that the Court might be persuaded to hold its hand in relation to disciplinary proceedings of this kind if there was affirmative material before the Court which demonstrated that the proper view of the case was different, at the time when it comes before this Full Bench, from the way in which it appeared when the practitioner was struck off the Roll in the other jurisdiction - in this case, in New South Wales - and when the matter was before the reporting Tribunal in this State.

7 The passage of time has been referred to by Mr Stevens. Without more, that seems to me to provide insufficient justification or capacity for this Court to revise the judgment which it would otherwise make. As to that, it seems to me that the conduct which was established to have been committed by the practitioner was of a kind, and the convictions demonstrate that the conduct was of a kind, that amply justified the view that the unprofessional conduct involved was so grave as to warrant striking off.

MURRAY J
HASLUCK J

- 8 To my mind, it would not be an adequate response on the part of this Court to make an order of suspension from practice. I, like the Tribunal, can see no alternative upon the basis of the materials before this Full Bench to the making of an order which would strike the practitioner's name off the in Western Australia.
- 9 **HASLUCK J:** I agree with Murray J and have nothing to add.