

**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA

**TITLE OF COURT** : FULL BENCH

**CITATION** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE -v- DE PARDO [2007] WASC 266

**CORAM** : MARTIN CJ  
MURRAY J  
NEWNES J

**HEARD** : 19 OCTOBER 2007

**DELIVERED** : 19 OCTOBER 2007

**PUBLISHED** : 12 NOVEMBER 2007

**FILE NO/S** : LPD 4 of 2007

**BETWEEN** : LEGAL PRACTITIONERS COMPLAINTS  
COMMITTEE  
Applicant

AND

NINO ANTHONY DE PARDO  
Respondent

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*Catchwords:*

Legal practitioners - Disciplinary proceedings - Removal from Roll -  
Practitioner's illegal conduct occurred whilst suffering from mental illness

*Legislation:*

*Legal Practice Act 2003 (WA), s 185(2)*  
*Legal Practitioners Act 1893 (WA), s 29A(2)*

*Result:*

Practitioner struck off the Roll

*Category:* B

**Representation:**

*Counsel:*

Applicant : Mr J McGrath & Ms K E Le Miere  
Respondent : No appearance

*Solicitors:*

Applicant : Legal Practitioners Complaints Committee  
Respondent : No appearance

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

Barristers' Board v Darveniza [2000] QCA 253; (2000) 112 A Crim R 438

Coe v New South Wales Bar Association [2000] NSWCA 13

Legal Practitioners Complaints Committee v De Pardo [2007] WASAT 211

Legal Practitioners Complaints Committee v Palumbo [2005] WASC 129

Re Davis (1947) 75 CLR 409

Stanoevski v The Council of the Law Society of New South Wales [2005]  
NSWCA 428

Ziems v Prothonotary of the Supreme Court of New South Wales (1957) 97  
CLR 279

**MARTIN CJ:**

(This judgment was delivered extemporaneously on 19 October 2007 and has been edited from the transcript)

1 Pursuant to s 29A(2) of the *Legal Practitioners Act 1993* (WA) and s 185(2) of the *Legal Practice Act 2003* (WA), the Legal Practitioners Complaints Committee moves the Court for orders that Nino Anthony De Pardo be struck off the Roll of Practitioners and that he pay the costs of, and incidental to, the motion. The Court has before it a reference from the State Administrative Tribunal which includes the reasons for decision of that Tribunal, its recommendations and the various documents that were in evidence before the Tribunal and which sustained its findings.

2 The Tribunal found that Mr De Pardo was guilty of illegal conduct in that 'on 28 October 2003 at Perth he directed an officer of the Commonwealth Services Delivery Agency (Centrelink) that aged pension payments payable for the sole benefit of Renato De Pardo, his father, were to be paid into a bank account operated by El Nino Developments Pty Ltd, with the intention of dishonestly causing a loss to a Commonwealth entity, namely, the amount of \$17,328.09 from Centrelink' (*Legal Practitioners Complaints Committee v De Pardo* [2007] WASAT 211 at [6]).

3 The Tribunal also found 'that the practitioner was guilty of unsatisfactory conduct by illegal conduct in that between 30 March 2005 and 3 August 2005 at Perth he, by a deception, namely by completing and signing a Sale of Property Questionnaire form using his late father's forged handwriting and signature and lodging that form with Centrelink, dishonestly obtained property belonging to Centrelink, namely money transfers in the amount of \$4,857.82 for El Nino Developments Pty Ltd with the intention of depriving Centrelink of the said property' (at [7]).

4 The Tribunal also accepted submissions put by the Legal Practitioners Complaints Committee with relation to the conduct which lay behind those findings, and in particular the Tribunal accepted and found that Mr De Pardo 'knowingly received \$22,000 of public money which he knew he was not entitled to', and also found that the practitioner 're-directed the periodic payments by Centrelink to his own company's bank account' and that he had 'forged his father's handwriting and signature to secure ongoing payments of public monies he knew he was not entitled to receive' (at [10]).

5 As a consequence, the Tribunal found that the conduct, which involved dishonest conduct, had continued for nearly two years, during which period the practitioner had received periodic payments of the pension. The Tribunal characterised the offending conduct as a 'continuing series of acts of dishonesty' which 'only ceased when Centrelink discovered the fraud' (at [10]). The Tribunal concluded that the conduct of Mr De Pardo was 'utterly inimical to the maintenance of professional standards in the legal profession' (at [14]).

6 The Tribunal observed that '[a] lawyer who acts dishonestly and fraudulently in the manner that this practitioner has acted cannot claim to be a fit and proper person to practise law.' Its view was that '[i]f practitioners who conduct themselves in this way are permitted to continue in the practice of the law, the public's confidence that lawyers they consult maintain high standards of honesty and integrity would be completely undermined' (at [14]). I respectfully agree with those observations by the Tribunal.

7 The Tribunal therefore made a recommendation to this Court that Mr De Pardo be struck off the Roll of Practitioners. The Court has received a letter dated 17 October 2007 from Mr Bougher a solicitor acting on behalf of Mr De Pardo, who advises the Court that Mr De Pardo does not oppose the order being sought. The letter further advises that Mr De Pardo has accepted 'the inevitable' following his conviction of criminal charges.

8 The Court is advised by Mr Bougher that Mr De Pardo 'remains embarrassed and extremely hurt by the situation he has brought upon himself, and the attendant hurt and disappointment experienced by his family, friends and colleagues', and asks 'that his actions be accepted as those of a person who was (and remains) unwell.' Mr De Pardo 'nevertheless accepts the consequences of his actions for which he will always be ashamed and remorseful.' Mr Bougher's letter was accompanied by a letter from a Dr Stephen Proud, consultant psychiatrist, who advises that Mr De Pardo has been his patient for a number of years.

9 Mr Proud expresses the view that Mr De Pardo 'suffers from chronic depression that affects, *inter alia*, his cognitive faculties, including concentration, short-term memory and judgement.' Apparently Mr De Pardo's 'depression started after he developed severe side effects from treatment for a back injury. However, the deaths of his mother and father significantly aggravated his depression causing him to act irrationally and with poor judgement.' Dr Proud observes that his actions

as that time 'strained his personal relationships but more importantly led him to act recklessly and self destructively with respect to Centrelink', which in turn resulted in his conviction and this application to remove his name from the Roll.

10 Dr Proud observes that Mr De Pardo has not worked as a legal practitioner for some years because of the 'debilitating effect of his major depression', and expresses the view that 'it is highly unlikely that he will ever be able to practise again', whatever position is adopted in relation to his legal capacity to do so.

11 The authorities in this area establish that the jurisdiction to strike off practitioners is exercised primarily for 'protective rather than punitive purposes' (*Stanoevski v The Council of the Law Society of New South Wales* [2005] NSWCA 428 (per Mason P, with whom McColl JA and Brownie AJA agreed)), at least where the application arises from conduct which is also criminal in nature.

12 Where conduct is also criminal in nature, punishment is essentially the province of criminal law and the role of the Court is focused upon the protection of the community and the proper maintenance of standards of legal practice (see *Legal Practitioners Complaints Committee v Palumbo* [2005] WASC 129). It follows that where, as in this case, the misconduct has a medical origin, whilst that may be a cause for sympathy, that medical origin will only be relevant to the disposition of the case if the Court is able to conclude that the medical condition that gave rise to the misconduct has been cured or alleviated such that the risk of further misconduct is reduced. Unfortunately, this is plainly not such a case.

13 Whether or not a practitioner should be struck off the Roll depends essentially upon the answer to the question of whether he or she is a fit and proper person to remain a member of the profession (*Re Davis* (1947) 75 CLR 409 at 416). Where the conduct giving rise to the motion to remove the practitioner from the Roll is illegal, much will depend upon the nature of the conduct engaged in. The considerations properly brought to bear in cases of that kind have been enunciated by the High Court in the well-known case of *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 288. Those considerations need not be repeated.

14 The authorities also establish that conduct involving dishonesty is generally regarded very seriously by a Court considering the question of whether or not a practitioner should remain on the Roll, even where that

MARTIN CJ  
MURRAY J  
NEWNES J

dishonesty occurs outside professional practice, as in this case (see *Coe v New South Wales Bar Association* [2000] NSWCA 13). As Steytler P observed in *Palumbo's* case (at [23]), 'honesty and integrity are essential prerequisites to a right to practise law.'

- 15 In that case, his Honour cited with approval a decision of the Court of Appeal of Queensland in *Barristers' Board v Darveniza* [2000] QCA 253; (2000) 112 A Crim R 438 in which Thomas JA (with whom McMurdo P and White JA agreed) observed:

Generally speaking the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practises.

- 16 This is, in my view, such a case. The conduct established clearly raises questions as to the honesty and integrity of Mr De Pardo, and therefore the trustworthiness which the Court and members of the community would be able to repose in him were he permitted to continue to practise. It seems to me to follow that an order in the terms sought removing Mr De Pardo's name from the Roll of Practitioners is inevitable, and I would make such an order.

- 17 In relation to costs, Mr De Pardo has at all times, both before the Tribunal and before this Court, accepted the inevitability of the order that I would propose to make and has consented to the orders made by the Tribunal and to be made by this Court. He was ordered by the Tribunal to pay the costs of the proceedings before it. Although in legal proceedings, costs normally follow the event, there seems to me to be a respectable argument to the effect that given the acquiescence of Mr De Pardo in all the proceedings to date, the costs of these proceedings should be regarded as part of the cost of the regulatory process and borne by the legal profession as a whole rather than visited upon the practitioner. So for those reasons, I would propose that no order be made with respect to the costs of the motion.

- 18 **MURRAY J:** I agree with his Honour's reasons and the orders proposed. I have nothing to add.

- 19 **NEWNES J:** I also agree and have nothing to add.