

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CIVIL

CITATION : RE A PRACTITIONER; EX PARTE THE LEGAL
PRACTITIONERS DISCIPLINARY TRIBUNAL
[2001] WASCA 204

CORAM : KENNEDY J
WALLWORK J
PIDGEON AUJ

HEARD : 18 JUNE 2001

DELIVERED : 18 JUNE 2001

FILE NO/S : LPD 4 of 2001

MATTER : The *Legal Practitioners Act 1893*

and

A Practitioner of this Honourable Court

and

A 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

Catchwords:

Legal practitioners - Practitioner convicted of stealing \$291,422.75 from an Association of which he was a member - Practitioner not a fit and proper person to practise law - Practitioner struck off the roll

Legislation:

Nil

Result:

Practitioner struck off the roll

Representation:

Counsel:

Applicant : Mr B J H Goertze
Practitioner : No appearance

Solicitors:

Applicant : Minter Ellison
Practitioner : No appearance

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

New South Wales Bar Association v Evatt (1968) 117 CLR 177
Re a Barrister and Solicitor (1979) 40 FLR 1

Case(s) also cited:

Re A Practitioner [2001] WASCA 154
Re A Practitioner, unreported; FCt SCt of WA; Library No 970354; 18 July 1997
Re A Practitioner, unreported; FCt SCt of WA; Library No 970467; 19 September 1997
Re A Practitioner, unreported; FCt SCt of WA; Library No 980654; 12 November 1998
Re Davis (1947) 75 CLR 409
Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279

1 **KENNEDY J.** : The Legal Practitioners Disciplinary Tribunal ("the Tribunal") has moved this Court for an order that Maurice Eugene Frichot ("the practitioner") be struck off the Roll of Practitioners of this Court or otherwise dealt with pursuant to s 30(2) of the *Legal Practitioners Act 1893*. The practitioner did not appear, and he was not represented, at the hearing of this application. He did, however, write to the solicitors acting for the Tribunal, acknowledging receipt of the relevant documents and also admitting his guilt of the charges brought against him in the District Court of Western Australia, which formed the basis for disciplinary proceedings brought against him. Furthermore, he apologised to the Tribunal for his conduct in breaking the standards required to be kept by members of the legal profession.

2 On 24 November 2000, the practitioner had pleaded guilty in the District Court to having, between 18 December 1997 and 27 March 2000, committed 92 offences of stealing from the Australian Paralympic Federation Incorporated. The total amount stolen by the practitioner was the sum of \$291,422.75. He was sentenced by the learned District Court Judge to an effective term of imprisonment of 3-1/2 years. An order was made for his eligibility for parole.

3 Pursuant to s 28C(1) of the *Legal Practitioners Act*, the Legal Practitioners Complaints Committee instituted proceedings before the Disciplinary Tribunal against the practitioner in relation to his convictions. In his answer, filed in the Tribunal, the practitioner admitted his convictions and wrote to the Registrar of the Tribunal apologising for his action and for any odium he may have brought on the profession.

4 Inevitably, the Tribunal found the practitioner to have been guilty of the illegal conduct as alleged. It noted that the practitioner was a member of the Board of the Australian Paralympic Federation Incorporated which later became known as the Australian Paralympic Committee Incorporated, the primary responsibility of which was the raising of funds to assist competitors competing in the Paralympic Games. He was the sole signatory to a trust account established by the Committee for the receipt of the funds collected by it. The stolen monies were used by the practitioner to pay his personal expenses and to subsidise his gambling addiction. As the Tribunal found, the thefts represented a gross breach of trust committed by a lawyer of apparently high standing in the community. His conduct was such as to breach the essence of the practice of the profession.

5 The Tribunal concluded that, notwithstanding the practitioner's previous unimpeachable record, he was not a fit and proper person to practice the law.

6 The role of this Court is to maintain the integrity of the profession. It is no part of its function to impose further punishment upon the practitioner. In the frequently quoted authority of *Re a Barrister and Solicitor* (1979) 40 FLR 1, Blackburn CJ, Connor and Davies JJ said, at 24 - 25:

"The object of disciplinary proceedings is the protection of the public and the maintenance of proper standards in the legal profession. Disciplinary proceedings are not taken by way of punishment, per Barwick CJ in *Harvey v Law Society of New South Wales* [(1975) 49 ALJR 362 at 364], or to exact retribution, per Fox, Blackburn and Woodward JJ in *Ex parte Attorney General for the Commonwealth; Re a Barrister and Solicitor* [(1972) 20 FLR 234 at 244]. In the former case, Barwick CJ said that the function of the court is '... to examine the material proffered to it in order to determine whether that material establishes that the solicitor has failed, by action or inaction, to maintain in his conduct the standards required of him as a member of the profession. The Court's duty is to ensure that those standards of the profession are fully maintained' [(1975) 49 ALJR at 364]. In the latter case, Fox, Blackburn and Woodward JJ said that the object of disciplinary action is '... to protect the public and the reputation of the profession' [(1972) 20 FLR 244]. Their Honours discussed the principles to be applied in determining whether the conduct of the practitioner has been of such a nature as to justify the intervention of the court. We respectfully adopt the principles enunciated by their Honours. Their Honours said: 'When it is a question of removal from the roll, there is, in the end, a single question, namely whether the legal practitioner who has been charged is a fit and proper person to remain a member of the profession (see per Latham CJ in *re Davis* [(1947) 75 CLR 409 at 416]. In *Ziems v Prothonotary of the Supreme Court of New South Wales* [(1957) 97 CLR 279 at 298], Kitto J said that the issue is not capable of more precise statement.' [(1972) 20 FLR at 243]."

PIDGEON AUJ

7 This point was emphasised by Barwick CJ, Kitto, Taylor, Menzies and Owen JJ in *New South Wales Bar Association v Evatt* (1968) 117 CLR 177, at 183 - 184, in relation to the striking off of a barrister:

"The power of the Court to discipline a barrister is, however, entirely protective, and notwithstanding that its exercise may involve a great deprivation to the person disciplined, there is no element of punishment involved."

8 It is essential that, both in the active practice of the law, and outside the practice of the law insofar as it reflects adversely upon their practice, practitioners observe the highest standards of ethical conduct. Only if they do so can the public, the profession at large and the courts have confidence that the law is being properly administered, and the interests of the public safeguarded. All persons dealing with legal practitioners are entitled to be secure in the knowledge that they can do so with absolute confidence in the integrity of those practitioners. Such a relationship requires the utmost good faith on the part of the practitioner, who stands in a fiduciary relationship to the client. Nor should it be forgotten that the practitioner is an officer of the court, and accordingly owes a duty to the court to ensure that his or her conduct is beyond reproach.

9 In the circumstances of this case, the conduct of the practitioner has been such as to permit of only one course of action. Notwithstanding the practitioner's previous unimpeachable record, as the Tribunal found, he has demonstrated that he is no longer a fit and proper person to practise the law. I would direct that the name of Maurice Eugene Frichot be struck off the Roll of Practitioners of this Court.

10 **WALLWORK J:** I agree.

11 **PIDGEON AUJ :** I agree.