Law Society v Rogerson

These are the reasons for the order made on 16 August 1999 that Andrew GordonRogerson be struck from the Roll of Legal Practitioners upon the ground that he is no longer a fit and proper person to practise as a legal practitioner (Legal Practitioners Act 1974 (NT) s52). At the same time it was ordered that the respondent pay the applicant's costs.

The applicant instituted the proceedings on its own motion, not relying on a recommendation of the Legal Practitioners Complaints Committee. It relied upon a finding made by Angel J. in the Supreme Court in proceedings between *Adolpho Tchia & Ors v Rogerson* reported at (1992) 111 FLR 1. An appeal by the respondent against those findings to the Court of Appeal was dismissed (1995) 123 FLR 126. We adopt those findings for the purposes of these reasons (s 52(5)(b)(ii) Legal Practitioners Act 1974 (NT)).

The findings were made as a result of an application for punishment of the respondent for contempt of court for acting in contravention of an injunction restraining him from contacting the plaintiffs in those proceedings who were former clients of the respondent. The evidence before his Honour upon the application for the injunction was that Mr Tchia was a director of two companies, and in about July 1991, had instructed the respondent to assist him with certain aspects of development of land in Darwin. He said that the respondent became interested in the project and sought to take up an interest on terms which, according to Mr Tchia, were unacceptable. He did, however, instruct the respondent's legal firm to prepare contracts relating to the sale and leasing of units in the proposed development. Circumstances arose whereby Mr Tchia believed he should terminate the retainer to those solicitors and he informed the respondent. Mr Tchia deposed that thereafter the respondent placed pressure on him in a variety of ways with a view to being again instructed to act in relation to the conveyancing transactions and threatened to sue him. The respondent lodged a caveat claiming an interest in the property and other pressure was exerted upon Mr Tchia by the respondent thereafter. Mr Tchia deposed that on 28 August 1992 the respondent contacted him and said that unless he agreed to sell an interest in the property upon the terms the respondent required, he would:

(a) write a letter on 31 August to all the proposed purchasers telling them that there were problems with the property and that they should not proceed with the purchase of any units;
(b) write to banks with a view to persuading them not to provide finance; and,
(c) if he was not again instructed to act in relation to conveyancing transactions, sue the Tchia interests for a substantial sum.

Mr Tchia deposed that on the evening of 31 August 1992 the respondent telephoned him continuing to exert pressure on him with a view to having the conveyancing work returned to his firm and it was in those circumstances that Mr Tchia approached his solicitors on the morning of 1 September.

Upon ex parte application made by Tchia and the associated companies on that date, his Honour ordered that the respondent be restrained and an injunction was granted restraining him from contacting, whether by himself, his servants, agents or otherwise, Mr Tchia or any of the associated companies other than through nominated solicitors who where acting on their behalf and from sending any of the letters which he had threatened to send. The injunction was to remain until 9am on 3 September 1992.

The respondent was ordered to attend before the Court at 9am on 3 September to show cause why the caveat he had in fact lodged against the property should not be removed.

Contempt proceedings were then instituted by the plaintiffs in that action against the respondent alleging that on 2 September he, in breach of the order made by Angel J, by his agent, one Raymond Reilly, contacted or sought to contact the plaintiff, Adlopho Tchia. It was alleged that the respondent had been served with the injunction order at about 4.50pm on 1 September.

The respondent contended that the personal service of the order for the injunction had been effected. He gave evidence upon oath denying any knowledge of the injunction before the act which was said to have been in breach of the order was committed. His Honour found that the defendant "knew of and had been served with the order, even if he turned a blind eye to its terms, purpose and general tenor".

His Honour also found in those contempt proceedings that the respondent:

- by deliberately locking his office door and turning off the facsimile machine intended to avoid service of the order, in the misguided belief that he had not already been served;

- gave answers to questions directed to him by the Judge which "were consciously evasive and misleading";

- deliberately attempted to mislead the court and gave false evidence;

- deliberately lied and consciously sought to mislead the court;

- acted out of self interest contrary to his duty as a legal practitioner for the former clients, to fellow legal practitioners and contrary to the injunction;

- and acted in contempt of the Court order.

His Honour also found in the course of the contempt proceedings that the respondent had made extortionate and grossly excessive demands of his former clients and the caveat lodged over the land was without merit and lodged for an ulterior motive, namely, to bring added pressure on the plaintiffs to comply with the respondent's demands. His Honour noted that when the plaintiffs application to remove the caveat came on for hearing, the respondent's counsel "readily and properly offered to consent to an order for removal being made, frankly acknowledging that the caveat was - unarguably - insupportable in law or equity".

Continued page 23.

80 as long as there was unanimity among the remaining jurors (see Brownlie v R (1997) 142 ALR 590).

For the present, if section 80 presents any difficulties in Commonwealth territories, it can be assumed that this only arises in the case of indictable offences created by Commonwealth legislation of Australia-wide application made in reliance (in whole or part) on a head of power other than section 122 of the Constitution. Of the recent High Court Justices to consider section 122, Gaudron J in particular has suggested in several cases that there may be some Commonwealth legislation applying in Commonwealth territories but not by force of that section. Relevant in this regard is the manner and extent to which the majority of the High Court were prepared to extend the requirement in section 51 (31) of the Constitution of just terms on any acquisition of property to an acquisition in a territory by Commonwealth legislation in Newcrest v Commonwealth (1997) 190 CLR 513. This may lend some support for at least a limited application of section 80 in territories. It remains possible that the 1922 warnings of Crown Law Officer E.T. Asche may yet prove to be soundly based, not just in the case of those limited category of Commonwealth offences, but also in the case of all indictable offences in Commonwealth territories. The latter position would require the overruling of R v Bernasconi. An opportunity to this effect was recently provided in Re the Governor of Goulburn Correctional Centre; Ex Pt Eastman (1999) HCA 44 (2 Sept 1999), but although Bernasconi was mentioned by most of the Justices

End Note:
The kind assistance of Mr John Seccombe, formerly of the Lands Branch in Darwin, in providing archival material for the preparation of this article is acknowledged.

**Graham Nicholson, formerly Senior Crown Counsel for the Northern Territory and first Crown Solicitor for the Northern Territory, now practicing as a barrister in the Northern Territory and Queensland, based on Magnetic Island near Townsville, and also Adjunct Professor of Law at both the Northern Territory University and at James Cook University Law Schools, lecturing in constitutional law, mining law and other subjects.*

Law Society v Rogerson *From page 21*

As to the respondent's deliberate attempt to mislead the court and giving of false evidence, his Honour said that he had reached the conclusion beyond reasonable doubt. The finding of contempt was also made applying that standard of proof.

The respondent was given ample opportunity to file any material in this Court in reply to this application, but did not do so. An application made at the commencement of the hearing of the application for an adjournment to enable material to be filed was refused.

The respondent had admitted to practice as a practitioner of this Court on 3 February 1987. He had been first admitted to practice as a barrister of the Supreme Court of England and Wales on 23 July 1981 and fulfilled the then requirements for admission to practice in this Court upon that basis. In his affidavit in support of the application he asserted that he was a fit and proper person to be so admitted, and the Legal Practitioners Admission Board reported that in its opinion there were no grounds upon which the Court might be satisfied that he was not of good fame and character.

The question for the Court now is whether he is a fit and proper person to remain on the roll of solicitors and practise as such (see the authorities cited by Isaacs J. in *Incorporated Law Institute of New South Wales v Foreman* (1994) 34 NSWLR 408 said:

"It is still true today, as it was in 1909, that high standards are expected of legal practitioners, particularly in their dealings with clients and the courts. This is so that members of the public, litigants, other practitioners and the courts themselves can have confidence in the integrity of those who enjoy special privileges as legal practitioners. This court is the guardian of the maintenance of those standards. It is still the case that the court accredits to the public legal practitioners who are put forward as people who can be trusted, whose word can be accepted as truthful; who will not involve themselves in shabby, deceptive and dishonourable deceit."

We consider that those passages are particularly apt to the present application.

It was our firm opinion that His Honour's findings demonstrate that:

- the respondent is not to be trusted by the public with the absolute confidence which must be reposed in persons fulfilling the duties of solicitors (*The Southern Law Society v Westbrook* (1910) 10 CLR 609 per O'Connor J at 619);

- the respondent would be unable to command the confidence and respect of the court, fellow practitioners and clients;

-the court would be completely unable to place any reliance upon what the respondent might say and do as a practitioner of the court. The courts should be entitled to accept without question assertions made by a solicitor, and if a solicitor is found to have deliberately lied to the court, then he has failed, in a fundamental respect, to adhere to the required standards. Once a finding that a solicitor has deceived a court has been made that provides compelling evidence of his unfitness to practice (per Clarke JA, O'Reilly v Law Society of New South Wales (1988) 24 NSWLR 204 at 230).

It is difficult to envisage a worse case of breach of oath taken by applicants for admission to practice that they will well and honestly conduct themselves in the practice of a legal practitioner of this court.