# SUPREME COURT OF SOUTH AUSTRALIA

(Full Court)

# LEGAL PROFESSION CONDUCT COMMISSIONER v MORCOM

**[2016] SASCFC 121**

**Judgment of The Full Court**
(The Honourable Chief Justice Kourakis, The Honourable Justice Bluc and The Honourable Justice Doyle)

**4 November 2016**

**PROFESSIONS AND TRADES - LAWYERS - MISCONDUCT, UNFITNESS AND DISCIPLINE - DISCIPLINARY ORDERS - STRIKING OFF AND ANCILLARY ORDERS**

**PROFESSIONS AND TRADES - LAWYERS - MISCONDUCT, UNFITNESS AND DISCIPLINE - GROUNDS FOR DISCIPLINARY ORDERS - CRIMINAL OFFENCE**

The Legal Profession Conduct Commissioner brings an application pursuant to s 89(1a) of the Legal Practitioners Act 1981 (SA) seeking an order striking the name of Gregory Donovan Gwynfor Morcom (the Practitioner) from the roll of practitioners.

The Commissioner relies upon the Practitioner's convictions for six counts of possession of child pornography (including three aggravated counts) and possession of a prescribed firearm without a licence. The Commissioner also relies upon the conduct of the Practitioner in breaching a suspended sentence bond, a supervised bail agreement and an undertaking not to practise.

Held by the Court:

1. In determining whether to exercise the Court's power to strike a practitioner's name from the roll, the ultimate issue is whether it has been demonstrated that the practitioner is not a fit and proper person to remain a legal practitioner (at [6]).

2. It is necessary and appropriate to make an order striking the Practitioner's name from the roll of legal practitioners (at [109]).

*Legal Practitioners Act 1981* (SA) ss 5, 88A, 89(1a), 89(2), referred to.

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**Plaintiff: LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MR M BARNETT - Solicitor: LEGAL PROFESSION CONDUCT COMMISSIONER**
**Defendant: GREGORY DONOVAN GWYNFOR MORCOM Counsel: MR N SILLS - Solicitor: MR N SILLS**

**Hearing Date/s: 03/05/2016, 23/05/2016, 30/05/2016**

**File No/s: SCCIV-15-1190**

**B**

*Law Society of South Australia v Rodda* (2002) 83 SASR 541, discussed.
*Law Society of South Australia v Le Poidevin* [1998] SASC 7014; *The Law Society of South Australia v Templeton* [2007] SASC 372; *R v Morcom* (2015) 122 SASR 154; *Cornall v Nagle* [1995] 2 VR 188; *Mericka v Rathbone* [2016] SASCFC 95; *Briginshaw v Briginshaw* (1938) 60 CLR 336, considered.

# LEGAL PROFESSION CONDUCT COMMISSIONER v MORCOM [2016] SASCFC 121

**Full Court: Kourakis CJ, Blue and Doyle JJ**

**THE COURT:**

1 This is an application by the Legal Profession Conduct Commissioner (the Commissioner) for an order striking the name of Gregory Donovan Gwynfor Morcom (the Practitioner) from the roll of practitioners maintained under the *Legal Practitioners Act 1981* (SA) (the Act).

2 The application is brought pursuant to s 89(1a) of the Act, or in the alternative in the inherent jurisdiction of the Court. The Commissioner relies upon the Practitioner's convictions for various offences, together with breaches by him of a suspended sentence bond, a supervised bail agreement and an undertaking not to practise. It is said that various of these matters involved unprofessional conduct by the Practitioner.

**The Court's power to strike off practitioners**

3 Under s 89(1a) of the Act, the Commissioner may institute disciplinary proceedings in the Supreme Court against a practitioner, without laying a charge before the Disciplinary Tribunal, if he is of the opinion that the name of the practitioner should be struck off the roll of legal practitioners "because the practitioner has been found guilty of a serious offence,[1] or for any other reason".

4 In any disciplinary proceedings against a legal practitioner, the Court may exercise any of the powers conferred by s 89(2). These include the power to strike the name of the practitioner from the roll of legal practitioners maintained under the Act.

5 Section 88A of the Act provides that these powers do not derogate from the inherent jurisdiction of the Supreme Court to control and discipline practitioners.

6 In determining whether to exercise the Court's power to strike a practitioner's name from the roll, the ultimate issue is whether it has been demonstrated that the practitioner is not a fit and proper person to remain a legal practitioner. The Court is concerned to protect the public, rather than punish a practitioner who has done wrong, although the removal of the practitioner's name from the roll will of course operate as a form of punishment. The Court protects the public, and the administration of justice, by preventing a person from acting as a legal practitioner when, and by demonstrating through the Court's

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[1] "Serious offence" is defined to include an indictable offence against a law of this State, the Commonwealth or a State or Territory of the Commonwealth.

order that, the person is, by reason of his or her conduct, not fit to remain a member of the profession. In determining whether a person is a fit and proper person to remain a member of the profession, the Court has regard to the role the profession plays in the administration of justice, and the trust and confidence of the public that this requires.[2]

7 The conduct relied upon in striking a practitioner's name from the roll may involve conduct in the course of his or her practice of the law, or it may involve criminal conduct unconnected with the practitioner's professional practice.

8 This reflects the two limbs of the definition of unprofessional conduct under s 5 of the Act,[3] namely:

> (a) an offence of a dishonest or infamous[4] nature committed by the legal practitioner in respect of which punishment by imprisonment is prescribed or authorised by law; or
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> (b) any conduct in the course of, or in connection with, practice by the legal practitioner that involves substantial or recurrent failure to meet the standard of conduct observed by competent legal practitioners of good repute;

9 In the case of conduct in the course of the Practitioner's legal practice, as Doyle CJ said in *Law Society of South Australia v Rodda*:[5]

> In a case concerned with conduct or misconduct by a practitioner in the course of the practice of the law, attention will naturally focus on the light that conduct or misconduct throws on the practitioner's competence, understanding of, and adherence to, professional standards. Even in such cases attention is not necessarily confined to these matters. Defects of character may also be revealed that will be relevant to the ultimate question to be considered.

10 In the case of criminal conduct extraneous to the practise of the law, wider considerations come into play. Doyle CJ explained:[6]

> In a case like this, where the court's concern is with the criminal conduct unconnected with the practitioner's profession, and with the defects of character or personality that are revealed by that conduct, issues of professional competence in the narrow sense do not arise. Nevertheless, the court must still consider whether the conduct and the convictions affect Mr Rodda's capacity to act as a practitioner, and how that conduct and those convictions would reflect on the legal profession were Mr Rodda permitted to remain a member of it. Two points were made in *Ziems* that are worth bearing in mind. First, as Fullagar J said (at 290), professional misconduct will usually have "a much more direct bearing on the question of a man's fitness to practise" than personal misconduct. And Kitto J said (at 298), while a conviction may "carry such a stigma that judges and

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[2] *Law Society of South Australia v Rodda* (2002) 83 SASR 541 at [20], [22]; *Law Society of South Australia v Murphy* (1999) 201 LSJS 456 at 460-461.

[3] As the relevant conduct occurred prior to the 1 July 2014 amendments to the Act, it is appropriate to consider this pre-amendment definition.

[4] "Infamous" in a professional context means shameful or disgraceful: *Law Society of South Australia v Le Poidevin* [1998] SASC 7014 at [21]-[22].

[5] *Law Society of South Australia v Rodda* (2002) 83 SASR 541 at [23].

[6] *Law Society of South Australia v Rodda* (2002) 83 SASR 541 at [25].

> members of the profession may be expected to find it too much for their self-respect to share with the person convicted the kind and degree of association which membership of the Bar entails", nevertheless, there will be many kinds of convictions "which do not spell unfitness for the Bar".

11 In *Law Society of South Australia v Rodda*, the practitioner had pleaded guilty to two counts of indecent assault of a minor. The Court held that while this offending did not reflect directly upon the practitioner's capacity to act as a practitioner, nevertheless the offences were of a kind that warranted his name being struck off the roll. Doyle CJ said:[7]

> But the offences are of a kind that damage the ability of Mr Rodda to maintain the relationship with other members of the profession that is an essential aspect of being a practitioner. Other practitioners would not readily place trust and confidence in a practitioner who has committed such a serious offence. Another practitioner could not assume that Mr Rodda accepts the high standard of conduct which membership of the legal profession requires. In the words of Dixon CJ in his dissenting judgment in *Ziems* (at 285-286), Mr Rodda could not "command the confidence and respect" of the court or of his fellow practitioners.
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> More significantly, the offences indicate that Mr Rodda lacks qualities that are essential for the conduct of legal practice. The offences involve a serious breach of the law, even though they might be regarded as impulsive and isolated. Mr Rodda took advantage of a vulnerable and immature young woman. That being so, Mr Rodda cannot be regarded as a person in whom clients, especially vulnerable persons, could place their complete trust. Nor could he command the respect of clients.
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> There is another factor. The reputation and standing of the legal profession in the public eye are important. Public confidence and trust in the legal profession is important to the effective functioning of the profession. That confidence and trust rest in part on the reputation and standing of the profession. The public could not view with respect, and have complete confidence in, a person with such serious and recent convictions. Were the court to continue to hold Mr Rodda out as a fit and proper person to remain a member of the profession, the standing of the profession as a whole would suffer. The public would rightly doubt the standards of a profession which permitted a person who has recently committed such serious offences to remain one of its members.
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> In summary, Mr Rodda's offences damage his ability to maintain professional relationships with other members of the profession. They disclose character defects that affect his capacity and fitness to be a practitioner. The public could not be expected to put complete trust in him. The offences are of a nature and seriousness such that the public would rightly consider that a profession that occupies the position of the legal profession, and maintains the high standards that it does, could not properly continue to regard Mr Rodda as a member of the profession.
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> For those reasons I am satisfied that the offences amount to professional misconduct. In the alternative, and the result is the same, I am satisfied that the offences are such that Mr Rodda is not a fit and proper person to remain a legal practitioner.

12 While s 89(1a) of the Act entitles the Commissioner to commence disciplinary proceedings in this Court without first laying a charge before the

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[7] *Law Society of South Australia v Rodda* (2002) 83 SASR 541 at [27]-[31].

Disciplinary Tribunal, as this Court has previously observed, it will not always be appropriate to proceed in this way. In cases where there is likely to be a dispute in relation to matters of fact, or the facts are complex or wide ranging, it will often be preferable that this Court have the benefit of a report from the Tribunal.[8] While the Commissioner in this case relies primarily upon matters emerging from the record of various court proceedings, some issues of disputed fact emerged in the course of the hearing. In hindsight, it would have been preferable that this matter proceed first before the Disciplinary Tribunal. However, having embarked upon the matter before the areas of dispute became apparent, it is appropriate that this Court proceed to determine the matter.

**The conduct of the Practitioner**

13 In support of his application, the Commissioner relies upon the Practitioner's convictions of the following "serious offences":

1. On 11 February 2014, six counts of possession of child pornography (including three aggravated counts),[9] committed on 21 October 2011.

2. On 10 April 2014, possession of a prescribed firearm (an imitation machine gun) without a licence,[10] also committed on 21 October 2011.

14 In addition, the Commissioner relies upon other conduct of the Practitioner said to constitute "any other reason" under s 89(1a), which he itemises and groups as follows:

*Offences constituting unprofessional conduct*

3. On 27 April 2012, the Practitioner was convicted of failing to comply with his bail agreement by testing positive for methylamphetamine on 4 April 2012.

4. On 10 August 2012, the Practitioner was convicted of two further counts of failing to comply with his bail agreement on 18 July and 2 August 2012.

*Other offences*

5. On 6 August 2013, the Practitioner was convicted of two offences contrary to the *Customs Act 1901* (Cth), being importing prohibited imports (12 "ice pipes" and an electric shock device) and making a false customs declaration on 17 January 2012.

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[8] *The Law Society of South Australia v Templeton* [2007] SASC 372 at [3]-[5].

[9] Contrary to s 63A of the *Criminal Law Consolidation Act 1935* (SA). These are major indictable offences.

[10] Contrary to s 11(1) of the *Firearms Act 1977* (SA). This is a major indictable offence.

6. On 11 December 2014, the Practitioner was convicted of possession of prescribed equipment and possession of prescription drugs (testosterone) without a prescription on 21 October 2011.

*Breach of undertaking not to practise*

7. On 30 January 2014, the Practitioner breached the undertaking given by him to the Supreme Court on 28 January 2014 not to practise the profession of the law.

*Breaches of bond and bail*

8. On 9 April 2015, the Practitioner admitted various breaches (committed between June and August 2014) of the suspended sentence bond entered into by him following his conviction for the child pornography and firearm offences.

9. In the period following these admissions, the Practitioner was released on a supervised bail agreement to afford him the opportunity to demonstrate that he could comply with conditions imposed on him by the Court. During this period the Practitioner committed further breaches of bail by testing positive for methylamphetamine and failing to engage with Correctional Services.

15 Having identified the items or heads of conduct relied upon, it is necessary to consider each of them in more detail. In so doing, it is to be borne in mind that under s 89(5) of the Act the Court may:

(i) receive in evidence a transcript of evidence taken in any proceedings before a court of any State and draw any conclusions of fact from the evidence that it considers proper; and

(ii) adopt, as in its discretion it considers proper, any findings, decision, judgment or reasons for judgment of any such court that may be relevant to the proceedings.

16 In the summary that follows, we have relied largely upon matters extracted from the court record, and upon which we consider it appropriate to rely. The only significant exception is in respect of the breach of undertaking issue, which was the subject of evidence before this Court. For this reason we address the breach of undertaking issue separately.

*Overview*

17 The Practitioner was admitted to practise in South Australia on 10 October 2005. He initially worked on a part time basis at Waye Chambers, before working at the Legal Services Commission for about a year from 2008. He then practised criminal law at Georgiadis Lawyers until 2011.

18 The Practitioner practised on his own under the firm name GM Law from 2011 to 30 June 2012, when he elected not to renew his practising certificate and ceased practice.

19 A practising certificate was re-issued to the Practitioner in about April 2013, and was renewed for the following year on and from 1 July 2013. The Practitioner continued to practise in the field of criminal law until he was suspended from practice by order of this Court made on 12 March 2014 (on account of a *prima facie* breach of his 28 January 2014 undertaking not to practise). The Practitioner remains suspended from practice, and his practising certificate expired on 30 June 2014.

20 As detailed below, since October 2011 the Practitioner has been the subject of a number of criminal charges that have proceeded through various courts. On 27 May 2014, he was sentenced to imprisonment for 12 months for possession of child pornography and possession of a firearm without a licence. The sentence was suspended upon his entering into a good behaviour bond for three years. That suspension was revoked on 1 July 2015.

21 On 22 February 2016, the Practitioner was released from prison on parole. In April 2016 he was arrested and returned to prison on account of breaches of his parole conditions.

22 The Practitioner was again released from prison on 29 May 2016. He remains on parole.

***Chronology of the Practitioner's conduct***

23 The Practitioner's premises were searched by police in October 2011. This resulted in his being charged with various offences, including possession of child pornography, possession of a prescribed firearm without a licence, possession of prescribed equipment, and possession of prescription drugs without a prescription. These charges ultimately resulted in the convictions relied upon by the Commissioner in items 1, 2 and 6 above.

24 The Practitioner was granted bail. In late 2011, his bail was varied to enable him to travel overseas from 22 December 2011 until mid-January 2012.

25 On 17 January 2012, on his arrival back at Melbourne Airport, the Practitioner was found to be in possession of 12 ice pipes and an electronic shock device. He also made a declaration to Customs that he was not in possession of prohibited or restricted goods. This conduct ultimately resulted in the convictions in item 5 above.

26 In January 2012, the Legal Practitioners Conduct Board (the Board) commenced an investigation into the Practitioner's conduct. That investigation has been ongoing. Following the 1 July 2014 amendments to the Act, the

Commissioner assumed responsibility for the investigation and the disciplinary action flowing from it.

27 On 27 April 2012, the Practitioner pleaded guilty in the Magistrates Court to a breach of a term of his bail relating to his positive test for an illicit substance, namely methylamphetamine, on 4 April 2012. This is item 3 above. A Magistrate convicted the Practitioner without imposing any further penalty.

28 On 10 August 2012, the Practitioner was convicted in the Magistrates Court of two further counts of failing to comply with his bail agreement, committed on 18 July and 2 August 2012 respectively. This is item 4 above. Again, a Magistrate convicted the Practitioner without further penalty.

29 On 13 May 2013, the Practitioner was arraigned in the District Court on the charges of possession of child pornography and possession of a firearm without a licence. The other charges remained in the Magistrate Court.

30 On 6 August 2013, the Practitioner was convicted by a Magistrate in Victoria of importing 12 ice pipes and an electronic shock device, and making a false declaration to Customs that he was not in possession of prohibited or restricted goods on 17 January 2012. The Magistrate imposed a fine of $8,000.

31 The Practitioner complains that the convictions were entered in his absence. His counsel in this Court suggested that the convictions, and the failure to have them overturned, were attributable to oversight or default on the part of the Practitioner's solicitors. In a history given to a psychologist, the Practitioner suggested that the items in his possession belonged to his then girlfriend. These complaints amount to no more than general assertion. In the absence of sworn evidence which addresses the matters raised in appropriate detail, it is appropriate to proceed on the basis that the Practitioner committed the offences of which he was convicted.

32 In December 2013, the Practitioner's District Court charges proceeded to trial. However, the trial was declared a mistrial.

33 In January 2014, the Board applied to the Supreme Court for an order suspending the Practitioner from legal practice. At a hearing on 28 January 2014, Parker J declined to suspend the Practitioner, but on condition that he give an undertaking to the Court not to practise from that day until the matter was next listed before the Supreme Court. The Practitioner gave that undertaking on oath.

34 On 30 January 2014, the Practitioner attended an interview of a Mr Pantazis by the police. For the reasons set out separately below, we are satisfied that the Practitioner's conduct on this occasion involved a breach by him of his undertaking not to practise law. This breach of undertaking is item 7 of the conduct relied upon by the Commissioner.

35 On 3 February 2014, the Board brought an application alleging a breach by the Practitioner of the undertaking he gave on 28 January 2014, by reason of his conduct on 30 January 2014 mentioned in the preceding paragraph. The application was heard by Parker J. The Practitioner was personally served with a copy of the application late on the evening of 3 February 2014, but did not appear at the hearing the subsequent day. Parker J delivered *ex tempore* reasons in which his Honour found that the evidence (in particular, a declaration of Detective Brevet Sergeant Shillabeer dated 4 February 2014[11]) established a *prima facie* case of a breach of the Practitioner's undertaking. His Honour made an interlocutory order suspending the Practitioner's practising certificate and right to practise from that date until further order. Parker J adjourned the matter to 12 March 2014, and gave each party liberty to apply on short notice. On 12 March 2014, Parker J made a final order to like effect. The Practitioner had been given an opportunity to be heard at the 12 March 2014 hearing, but he did not attend.

36 On 4 February 2014, the Practitioner was arraigned in the Supreme Court on the child pornography and firearm charges. The firearm charge was severed from the child pornography charge, to be heard at a later date. The child pornography charges proceeded to a jury trial before Sulan J, commencing on 6 February 2014. On 11 February 2014, the jury returned a verdict of guilty in respect of six counts of possessing child pornography (including three aggravated counts).

37 The Practitioner's subsequent appeal to the Full Court against his conviction of the child pornography charges was unsuccessful.[12]

38 On 10 April 2014, following a separate trial in the Supreme Court, the Practitioner was convicted of possessing a firearm without a licence.

39 On 27 May 2014, Sulan J sentenced the Practitioner for both the child pornography and firearm charges. His Honour started with a notional sentence of imprisonment for six months for the child pornography charges, and imprisonment for nine months for the firearm charge. His Honour reasoned that these notional sentences ought to be served cumulatively, giving a total period of imprisonment for 15 months. However, in imposing a single sentence of imprisonment utilising s 18A of the *Criminal Law (Sentencing) Act 1988* (SA), Sulan J reduced this by three months to 12 months to reflect time already spent in custody by the Practitioner. His Honour fixed a non-parole period of eight months. His Honour suspended the sentence upon the Practitioner entering into a bond to be of good behaviour for three years, to be under the supervision of a Community Corrections Officer during the first 18 months, and to undertake such course or treatment as required by that Officer. The Practitioner entered

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[11] This was not served on the Practitioner prior to the hearing before Parker J, but the Court was assured that it would be served on the Practitioner as soon as he could be located.

[12] *R v Morcom* (2015) 122 SASR 154.

into the bond and acknowledged that he understood the consequences if the bond were to be breached.

40 In his sentencing remarks, Sulan J explained the circumstances and nature of the Practitioner's offending. The images the subject of the six counts of child pornography were discovered on a desktop computer and a laptop computer found at the Practitioner's home when it was searched by the police on 21 October 2011. The Practitioner was living at the premises at the time, but also using it as his office. The counts of possessing child pornography related to images of children under the age of 16 years, with three counts of aggravated child pornography relating to images of children under the age of 14 years.

41 The images the subject of five of the six counts were located in a folder on the Practitioner's computer entitled "JessPhone". The image the subject of the sixth count was found amongst a collection of adult pornography on the Practitioner's laptop computer. At the time, the Practitioner was in a relationship with a woman named Jess, and it was suggested in the Practitioner's defence that the images may have come from her mobile phone, and that it could not be proved that the Practitioner was knowingly in possession of the relevant images. As Sulan J observed, the jury rejected this suggestion. The Practitioner did not give evidence at the trial.

42 In determining an appropriate sentence for the child pornography offences, Sulan J described the offending in the following terms:

> As to the child pornography counts I conclude that the nature and content of the pornography material was at the lower end of the scale for this kind of material as it did not depict any sexual activity and in a number of the photographs children were shown together with adults in the nude. That does not, of course, make the possession of such material excusable. But the material is at the lower end of the scale of pornographic material. The age of the children in the photographs varied. Some of the children in the photographs depicted standing with adults were very young children.

43 In relation to the firearm offence, the firearm was located during the same search. It was an imitation Uzi machine gun, found in a black laptop computer bag under a cabinet in the dining room area. No ammunition was located. The Practitioner's evidence at the trial on the firearm charge was that he was unaware the firearm was present. The defence case was to the effect that the firearm may have been left in the Practitioner's premises without his knowledge. The jury rejected the defence case.

44 When sentencing the Practitioner for this offence, Sulan J accepted that the firearm was an imitation firearm. He accepted that, although the firearm could have been converted into a firearm that could be used, there was no evidence that the Practitioner intended to do so. No explanation was provided by the Practitioner as to why he had the firearm in his possession.

45 The Practitioner continues to maintain his innocence of the child pornography charges. However, in circumstances in which he has been convicted by a jury, and his appeal against conviction was unsuccessful, there is no reason to proceed otherwise than on the basis that he committed the offences of which he has been convicted. We proceed on this basis, and on the basis that the nature and circumstances of the offending were as described by Sulan J in his Honour's sentencing remarks.

46 On 11 December 2014, the Practitioner pleaded guilty in the Magistrates Court to the residual charges from October 2011 (possessing prescribed equipment and possessing prescription drugs without a prescription). The Practitioner was convicted without further penalty.

47 Throughout the period from June to September 2014, the Practitioner breached the suspended sentence bond imposed by Sulan J on numerous occasions. At a hearing on 9 April 2015 before Bampton J, the Practitioner ultimately admitted the following breaches of bond:

- on 5 June, 18 July and 4 August 2014 by failing to inform the Community Corrections Officer of his correct address;
- on 11 June, 18 June and 27 June 2014 by failing to attend supervision promptly;
- on 18 June 2014 by failing to provide a urine sample;
- on 8 July 2014 and thereafter by failing to attend Owenia House;
- on 11 July, between July and August 2014, 2 September, 10 September and 19 September 2014 by failing to attend supervision; and
- on 18 July 2014 by failing to respond to phone calls.

48 These breaches of bond are item 8 of the conduct relied upon by the Commissioner.

49 Bampton J placed the Practitioner on a supervised bail agreement, and adjourned sentencing submissions for an extended period to allow the Practitioner to demonstrate his ability to comply with the conditions imposed pursuant to s 19B of the *Criminal Law (Sentencing) Act 1988* (SA).

50 On 22 May 2015, the Director of Public Prosecutions applied to revoke the Practitioner's bail on account of breaches that had occurred since bail had been granted on 9 April 2015. The Director alleged (and filed an affidavit from the relevant corrections officer to the effect) that the Practitioner had returned a positive urinalysis result for amphetamine and methylamphetamine within days of his 9 April 2015 admission of the breaches of bond and entering into the

supervised bail agreement; and that the Practitioner had otherwise failed to submit to any form of meaningful supervision. This conduct is item 9 of the conduct relied upon by the Commissioner.

51 On 29 May 2015, Bampton J heard evidence from the Practitioner in which he claimed that illness on his part explained his non-compliance with his bail agreement. He denied taking any illicit drugs, suggesting that the positive result may have reflected "residue" from some time ago. Bampton J did not accept the Practitioner's evidence, and revoked his bail. Her Honour adjourned the matter for sentencing submissions in relation to the admitted breaches of bond to 1 July 2015.

52 During the course of the sentencing submissions before Bampton J on 1 July 2015, the Practitioner acknowledged through his counsel that he had "an ongoing problem with methylamphetamine." The Practitioner's counsel submitted that the five weeks that the Practitioner had spent in custody since the revocation of his bail had enabled him to be drug free, and to see things differently. The Court was provided with a report from a psychologist, Dr Lim, who had seen the Practitioner on two occasions in April 2015, prior to his going into custody.

53 Dr Lim's report was dated 27 May 2015 and contained a detailed history taken from the Practitioner. It outlined his difficult upbringing, largely as a result of an alcoholic and abusive mother, and an absent father. It described the Practitioner's belief, commencing with the "raid" on his premises in October 2011, that he was being unfairly and systematically targeted by the police and the criminal justice system. In relation to his drug taking, the Practitioner reported that he had first tried illicit drugs at the age of 18; that he had eventually progressed to recreational ecstasy and cocaine use on weekends while at university; and that he began smoking methylamphetamine on a regular basis in 2012. The Practitioner was evasive about his methylamphetamine use at that time, although he said at one point that his use was daily when he had access to the drug. When asked if he wished to stop his drug use, the Practitioner replied "the intention is there, but I'm more likely to stop if I'm not forced to."

54 Dr Lim described the Practitioner as having "a tendency to alternate between making grandiose and aggressive statements regarding his achievements and his experiences with the police, as well as despair and helplessness at his current circumstances." Dr Lim gave as examples the Practitioner's claim that he had "the most brilliant legal mind, I've never lost a trial", his reference to the police being an "organised crime group", and to his feeling safer with the underworld. Dr Lim described the Practitioner as perceiving himself to be morally superior and above the law.

55 Dr Lim also described the Practitioner as:

> ... an individual who had a tendency to take on more than he can handle, he is typically quite impulsive, displays a lack of judgment in the face of criticism, and can react with hostility to perceived negative feedback. His interactions with others have historically been problematic as his sense of self-importance, hostility and narcissism can impede on his ability to reciprocate in relationships.

56 Dr Lim added that the Practitioner had a tendency to be resentful, hold grudges, and spot perceived inequities in the way he was treated. As such, his relationships with others were likely to be troubled by conflicts, accusations and jealousy.

57 Dr Lim's diagnosis was that the Practitioner was not suffering from any mental impairment or illness. Rather, the Practitioner's difficulties and dysfunction were consistent with a narcissistic personality disorder with anti-social and paranoid features. Dr Lim explained that the Practitioner's underlying personality dysfunction was likely to have emerged over time as a result of his difficult upbringing and parental neglect. While he had been able to overcome these challenges at times (for example, in completing his studies and becoming a practitioner), his life had since begun to "unravel due to a series of bad and on many occasions, anti-social decisions made which were driven by his grandiose sense of self-entitlement and his arrogant and haughty attitudes that underpin his narcissism."

58 Dr Lim concluded by noting the Practitioner's intelligence and academic achievements, but adding that individuals with an entrenched personality disorder were often unaware of the dysfunctional behaviour that they displayed. She recommended that the Practitioner be referred to an experienced clinical psychologist for long-term intensive intervention to assist him to develop insight into his personality dysfunction and to develop more constructive coping mechanisms to regulate his self-esteem and his behaviours. Dr Lim considered that this would enable him to coordinate his personal strengths in the future in order to have his emotional needs met in a socially appropriate manner. Dr Lim also recommended that the Practitioner be referred for drug and alcohol counselling to address his illicit substance abuse.

59 After hearing submissions, based in part upon the report of Dr Lim, Bampton J rejected the Practitioner's submissions that his breaches of bond and bail should be excused. Her Honour said:

> You have been given numerous opportunities to comply with the conditions of the suspended sentence bond, the bail agreement, and the supervised bail agreement. You have been given numerous opportunities to show that you can comply and are willing to comply. You have abused all those opportunities and abused the leniency extended to you by the Court on numerous occasions.
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> Your blatant disregard for Court orders and Community Corrections supervision has been profound and sustained. There are no proper grounds and the breaches are not, by their sheer number and repeated nature, trivial.

60 Bampton J revoked the Practitioner's suspended sentence bond and ordered that the sentence of 12 months imprisonment imposed by Sulan J be carried into effect and backdated to 29 May 2015 (the date of revocation of the Practitioner's supervised bail agreement).

61 On 6 August 2015, the Commissioner determined that the Practitioner was guilty of unprofessional conduct by reason of his criminal convictions and breach of undertaking to the Court. He also determined that the Practitioner's unprofessional conduct could not be adequately dealt with under s 77J of the Act; and that (having regard to his opinion that the Practitioner's conduct warranted his name being struck off the roll of legal practitioners) disciplinary proceedings under s 89(1a) seeking an order to this effect should be commenced. On 23 September 2015, the Commissioner commenced these proceedings.

62 On 22 February 2016, the Practitioner was released from prison on parole. His parole agreement contained a number of conditions, including that he abstain from alcohol, and that he not use, possess or administer any drug which cannot be legally obtained without a prescription from a legally qualified medical practitioner.

63 By letter dated 18 April 2016 from the Parole Board to the Commissioner, the Parole Board advised of three breaches of parole by the Practitioner:

- a breach of the "no alcohol" condition on 1 March 2016;
- a positive test for methylamphetamine and amphetamine on 30 March 2016; and
- a positive test for methylamphetamine and amphetamine on 8 April 2016.

64 As a result of the reported breaches, the Practitioner was arrested on 15 April 2016 under a warrant issued by the Parole Board and returned to prison.

65 On 29 May 2016, the Practitioner was released from prison on parole.

***The breach of undertaking not to practise***

66 As mentioned, the allegation of a breach by the Practitioner of his 28 January 2014 undertaking not to practise related to his conduct when attending a police interview of Mr Pantazis on 30 January 2014.

67 On the subsequent hearing before Parker J, and before this Court, the Commissioner relied upon a statement from Detective Brevet Sergeant Shillabeer dated 4 February 2014. Officer Shillabeer explained that at about 10.10 am on 30 January 2014, he and several other police officers attended and began to search the premises of Mr Pantazis pursuant to a general search warrant. Both Mr Pantazis and a Ms Stamatelopoulos were present. Officer Shillabeer

remained with Mr Pantazis and Ms Stamatelopoulos in the rear yard of the property while the search was being conducted.

68 Mr Pantazis received a phone call at about 11.20 am. When the phone call was completed, Officer Shillabeer inquired who the phone call was from, and Mr Pantazis said it was his lawyer, Greg Morcom, and that he was coming to the house. Shortly thereafter, the Practitioner arrived and introduced himself as Greg Morcom.

69 Upon his arrival, the Practitioner removed some paperwork from a satchel that he had been carrying, including a piece of paper on which he appeared to make some brief notes. He sat at the table next to Mr Pantazis and began asking Officer Shillabeer some basic questions regarding topics such as the time they had commenced the search, the section of the police he was from, and the nature of anything they had found in the house. Officer Shillabeer said that from this initial contact with the Practitioner, he was under the impression that the Practitioner was acting as Mr Pantazis' solicitor.

70 As the search continued, Officer Shillabeer had some further general conversation with the Practitioner. The Practitioner asked him questions about the serious firearm crime investigation section to which Officer Shillabeer belonged, the way in which searches are conducted, and the progress of the present search.

71 At one point, Officer Shillabeer informed the Practitioner that some items, including suspected drugs, had been located, and that they intended to interview Mr Pantazis once the search was completed. Just before 12.00 pm, the Practitioner advised Mr Pantazis that he had an appointment, and then inquired of Officer Shillabeer when the interview would occur because he wished to be present for it. The Practitioner explained that he could be back at the premises by 12.30 pm. Officer Shillabeer said that the interview would occur after the Practitioner returned. The Practitioner then asked Mr Pantazis whether he wanted the Practitioner to stay. Mr Pantazis said it was up to the Practitioner. The Practitioner replied "well it's your billable hours".

72 The Practitioner remained at the premises, and at around 1.30 pm Mr Pantazis was interviewed about some of the items located during the search. The interview was recorded on video.

73 In his statement, Officer Shillabeer said that at the commencement of the interview, when each person present introduced themselves, he asked the Practitioner his name and then asked him what his relationship with Mr Pantazis was. The Practitioner gave his name, and as to his relationship with Mr Pantazis said "I'm just observing, I'm on leave at the moment, so".

74 At the conclusion of the interview, Mr Pantazis was reported for a number of firearm offences. The Practitioner did not give any advice or otherwise say

anything of significance during the interview. At the end of the interview, when Officer Shillabeer asked Mr Pantazis whether he had anything to say, Mr Pantazis asked the Practitioner "Greg, anything to say?" The Practitioner did not make any comment.

75 Following the interview, Officer Shillabeer heard Mr Pantazis and the Practitioner having a conversation in which the latter explained the process of being reported by the police.

76 There was a second interview of Mr Pantazis later that afternoon. Again, the Practitioner was present, but again he did not give any advice or otherwise say anything of significance.

77 The Practitioner was still at the premises at 2.20 pm when Officer Shillabeer left. He had been present throughout, except for a brief period after the first interview when he went to get some lunch.

78 Officer Shillabeer concluded his statement by acknowledging that the Practitioner did not ever formally tell him that he was Mr Pantazis' solicitor. However, Officer Shillabeer did form the belief, by reason of the Practitioner's conduct and conversations, that the Practitioner was present as a legal representative of Mr Pantazis.

79 At the hearing before this Court, counsel for the Practitioner denied that the Practitioner breached the undertaking given to Parker J. In his affidavit which was tendered during the hearing, counsel for the Practitioner informed the Court that his instructions were that on the occasion of 30 January 2014 the Practitioner did not engage in any activities as a solicitor and, indeed "informed the police on video camera that he was not there in the capacity of a solicitor; he was simply there as a friend of the person being raided."

80 The hearing was adjourned to obtain a copy of the video, and to permit the parties to consider whether they wished to adduce further evidence on this issue.

81 On the resumption, the Commissioner tendered a video (and transcript) of the first interview. It confirmed the accuracy of Officer Shillabeer's account of the interview. In particular, it did not contain any statement by the Practitioner to the effect that he was present as a friend and not as a solicitor. It did, however, reveal that during the course of the first interview of Mr Pantazis by the police, the Practitioner at one point intervened with an observation about the "field testing" of drugs.

82 The Commissioner also tendered an affidavit of Officer Shillabeer dated 18 May 2016. He said that at no time on 30 January 2014 did the Practitioner indicate to him that he was present as a friend of Mr Pantazis. Officer Shillabeer added that he was aware at the time from colleagues in his branch of the South Australian Police that there was some limitation on the Practitioner's right to

practise law, but he did not know precisely the nature of the limitation at the time.

83 The Practitioner gave evidence before this Court in relation to the events of 30 January 2014. While maintaining that he was present only as a friend and observer, his evidence did not ultimately add to, or contradict, in any significant way the evidence of Officer Shillabeer.

84 The Practitioner said that he happened to be in the area on the day in question and telephoned Mr Pantazis to say that he would call in. When he learned of the search he told Mr Pantazis that he would attend, but only as a friend and observer. While he believed he told the police that he was present only as a friend and observer, he accepted that the video did not include any reference to his being present merely as a friend of Mr Pantazis. When asked by his counsel whether he took notes, the Practitioner's response was to the effect that he made a note of what Mr Pantazis and Ms Stamatelopoulos wanted for lunch because he had difficulty in remembering lunch orders. When pressed by counsel for the Commissioner in relation to Officer Shillabeer's suggestion that he (the Practitioner) took notes upon his arrival (and hence significantly earlier than his departure to get lunch), the Practitioner said that this was possible but he could not recall. The Practitioner did not deny the conversation or discussion attributed to him by Officer Shillabeer. He did not recall some aspects of the discussion, and acknowledged the general effect of other aspects. He said that he engaged in these discussions merely as a matter of his own interest in the matters discussed.

85 The Practitioner denied making any reference to "billable hours". He said that he would not likely have said what was attributed to him in this respect by Officer Shillabeer because he did not charge by reference to billable hours.

86 The Practitioner said that he did not think that he acted as a solicitor on that day. He said that his relatively casual attire and manner were more in the nature of what would be expected of a friend rather than a solicitor. In any event, he did not consider that he had any obligation to make it plain to the police that he was only present as a friend and observer, and not as Mr Pantazis' solicitor.

87 In our view, aspects of the Practitioner's evidence in relation to the events of 30 January 2014 were disingenuous and lacking in credibility. However, the reliability or otherwise of the Practitioner's evidence is ultimately of no consequence because he did not materially contradict the version of events given by Officer Shillabeer. The only qualification to this is in relation to the purported reference to billable hours. While having some reservations about the Practitioner's evidence, we do not propose to rely upon this aspect of Officer Shillabeer's evidence. Subject to this qualification, we accept and rely upon the version of events recounted by Officer Shillabeer.

88 On this version of events, we are satisfied that the Practitioner did engage in the practice of the law on 30 January 2014, and that he did so deliberately or with knowledge of what he was doing. We therefore conclude that he breached the undertaking he gave to Parker J two days earlier not to practise the law.

89 In reaching this conclusion, it is significant that in determining whether a person is practising law the test is an objective one. The issue is not determined by reference to what Officer Shillabeer or the Practitioner believed, or indeed by reference to what the Practitioner said (if anything) to Mr Pantazis as to whether he was acting as a legal practitioner.

90 As Phillips J explained in *Cornall v Nagle*,[13] in a passage recently applied by this Court in *Mericka v Rathbone*,[14] a person may engage in legal practice in any of the following ways:[15]

> (1) by doing something which, though not required to be done exclusively by a solicitor, is usually done by a solicitor and by doing it in such a way as to justify the reasonable inference that the person doing it is a solicitor. ...
>
> (2) by doing something that is positively proscribed by the Act or by Rules of Court unless done by a duly qualified legal practitioner. ...
>
> (3) by doing something which, in order that the public may be adequately protected, is required to be done only by those who have the necessary training and expertise in the law. For present purposes, it is unnecessary to go beyond the example of the giving of legal advice as part of a course of conduct and for reward.

91 As the first limb of the above articulation of the concept of practising law makes plain, a person may engage in legal practice by engaging in conduct that justifies the reasonable inference that the person is acting as a solicitor. It is also significant in the present context that a person may engage in legal practice without giving formal legal advice. Merely being present in a setting and context that gives rise to the inference that the person is present as a solicitor, and hence ready, willing and able to give advice or other legal assistance if it is requested or required, may suffice.

92 Here there were a number of features of the Practitioner's conduct on 30 January 2014 that justify the inference that he was present and acting as Mr Pantazis' solicitor. We disregard Mr Pantazis' statement to Officer Shillabeer that the Practitioner was his lawyer, because the evidence does not suggest that the Practitioner was aware that this had been said. However, it is significant that the Practitioner arrived after the police search was underway. He arrived with a satchel, and almost immediately began asking questions of the nature one might expect to be asked by a solicitor, and began taking notes. While his manner was at times casual, and he engaged in casual conversation

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[13] *Cornall v Nagle* [1995] 2 VR 188.
[14] *Mericka v Rathbone* [2016] SASCFC 95 at [141].
[15] *Cornall v Nagle* [1995] 2 VR 188 at 210.

with Mr Pantazis and Ms Stamatelopoulos, he nevertheless also continued to engage in discussion with the police. He enquired as to the progress of their search, and requested that he be present for the interview of Mr Pantazis. He ensured that he remained present for the two interviews that occurred.

93 Importantly, when asked about his relationship to Mr Panatzis at the commencement of the interview, the Practitioner did not take that opportunity to clarify his status as a mere friend. His statement that "I'm just observing, I'm on leave at the moment, so", was vague and cryptic. While the reference to being on leave perhaps hinted that he was not present in a paid or professional capacity, the Practitioner did not make this clear. Particularly in light of the undertaking he had given to the Supreme Court only two days earlier, it was incumbent upon the Practitioner to make express that he was not present as Mr Pantazis' solicitor.

94 The impression that the Practitioner was present as Mr Panatzis' solicitor was reinforced by the Practitioner's comment during the police interview about field testing, and by Mr Pantazis' query of the Practitioner at the conclusion of the interview whether any comment should be made by or on behalf of Mr Pantazis. It was also significant that the Practitioner subsequently explained to Mr Pantazis the concept of being reported by the police.

95 In summary, we consider that the Practitioner engaged in conduct that, in the context in which it occurred, justified the reasonable inference that he was present as Mr Pantazis' solicitor, ready to give Mr Pantazis whatever advice or assistance he might request or require. We are also satisfied that the Practitioner was aware of this at the time, and did nothing to correct the impression that he created. Indeed, the evidence supports the inference that both Mr Pantazis and the Practitioner understood that the Practitioner's presence was for the purpose of giving advice on Mr Pantazis' procedural rights. It was also understood that he would draw on his legal training and experience, if and when it might be required. It is also significant that the Practitioner made no suggestion, in the capacity as a mere friend, to Mr Pantazis that he be represented during the interview by a legal practitioner. The deliberate ambiguity in the Practitioner's answers to police about the purpose of his attendance and the circumstance that, ultimately, little was required of him, do not detract from the conclusion that by attending on Mr Pantazis during the search he was practising the law.

96 We are satisfied that the Practitioner knowingly engaged in legal practice on 30 January 2014, and thereby breached his undertaking to this Court not to practise the law. We are satisfied of this to the standard required by *Briginshaw v Briginshaw*.[16]

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[16] *Briginshaw v Briginshaw* (1938) 60 CLR 336.

***The Practitioner's methylamphetamine addiction and personality disorder***

97 The report of Dr Lim, summarised above, provides some insight into the Practitioner's drug addiction and psychological impairments.

98 The Practitioner was asked a number of questions in relation to his methylamphetamine use and addiction when giving evidence before this Court. He acknowledged that he had a history of use that became an addiction from about 2012, following the commencement of his legal difficulties. His usage began to increase and, while it fluctuated, he acknowledged periods of daily use.

99 The Practitioner said, however, that he no longer considered himself addicted to methylamphetamine. He said that he had not been addicted for the past year, essentially commencing with his lengthy period of imprisonment. He acknowledged relapsing into use soon after his release on parole on April 2016, although he attributed this to the emotional trauma he experience upon the death of his dog. He said that he had not used drugs in the seven or eight week period that he was in prison before being released on 29 May 2016 and giving evidence in this Court on 30 May 2016.

100 The Practitioner said that he did not consider that there was any danger of his resuming his drug use or addiction. He attributed this confidence on his part to his period in prison, which not only led him to be drug free but also enabled him to focus on, and strengthen, his Christianity. He believed that this had enabled him to come to terms with the anger, pain and feelings of persecution that he had experienced. He also recognised the importance of changing his social circles to remove himself from a culture of drug use.

101 The above suggests some level of insight on the part of the Practitioner into his difficulties, and some willingness to confront those difficulties. However, there remains a level of naivety in the Practitioner's understanding of, and approach to, his addiction, personality disorder and psychological impairments. While he may well have these matters under control for the time being, his history, Dr Lim's report and common experience compel the conclusion that he remains at significant risk of resuming his troubled ways if he does not undergo the type of counselling or therapy contemplated by Dr Lim.

**Conclusion**

102 The Commissioner has established a factual foundation for each of the nine heads of conduct upon which he relies in support of his application to have the Practitioner's name struck off the roll of practitioners.

103 Some of these individually constitute unprofessional conduct. For example, the child pornography and firearm offences are of a sufficiently shameful or disgraceful, and hence infamous, nature to constitute unprofessional conduct. The breach of the undertaking given to Parker J committed by the Practitioner also warrants the label of unprofessional conduct.

104 However, we do not need to reach a final view about which conduct constituted unprofessional conduct because in determining whether it is appropriate to make an order striking the Practitioner's name from the name of legal practitioners, the issue is whether the Practitioner is a fit and proper person to remain a member of the legal profession. This requires a focus on the totality of the proven conduct and character of the Practitioner.

105 The child pornography and firearm charges are both offences of a nature that carry such a stigma, and reveal such defects of character, that they tend to undermine the ability of the Practitioner to command the necessary respect of clients and other members of the legal profession. Allowing practitioners with convictions of this nature to continue to practise also carries a risk of damaging the reputation and standing of the legal profession in the public eye. As observed earlier, maintenance of public confidence and trust in the legal profession is important to the effective functioning of the profession.

106 The breach by the Practitioner of his undertaking not to practise, and the breaches of his suspended sentence bond and supervised bail agreement are of a different, but equally serious and significant, character. Their significance lies in their demonstration of the Practitioner's disregard for authority, including the authority of the Court. The number of these breaches, and the extended period over which they occurred, reveal a serious and concerning character flaw on the part of the Practitioner that is incompatible with the character required of a legal practitioner. That character flaw is explained by Dr Lim in her report as a personality disorder.

107 While the breaches of bond and bail may be explained by the Practitioner's drug addiction and personality disorder, that does little to reduce the significance of those breaches unless and until this Court can be satisfied that the Practitioner has addressed and overcome, or learnt to manage and compensate for, his addiction and personality disorder. Although he appears to have taken some recent steps in the right direction, we are not satisfied that his drug addiction and personality disorder have been, or are being, adequately addressed. Given the long standing and serious nature of the Practitioner's drug addiction and personality disorder, the Practitioner would need to demonstrate a lengthy period (measured in years) in which he has been crime and drug free, and that he has learnt to manage his personality disorder, before he could be considered a fit and proper person to remain a legal practitioner.

108 The cumulative effect of the Practitioner's criminal conduct; his disrespect for authority demonstrated through his breach of his undertaking and numerous breaches of bond and bail conditions; his longstanding use of, and addiction to, methylamphetamine; and his unaddressed personality disorder, mean that he is not a fit and proper person to remain a legal practitioner.

109 It is necessary and appropriate to make an order striking the Practitioner's name from the roll of legal practitioners. An order suspending the Practitioner

from practising the law, or any other order short of striking off, would not be sufficient to maintain confidence in the legal profession, and thus protect the public and the administration of justice.

## Order

110 The Court orders that the Practitioner's name be struck off the roll of legal practitioners maintained under the *Legal Practitioners Act 1981* (SA).