IN THE COURT OF APPEAL [1998] QCA 409

SUPREME COURT OF QUEENSLAND

Appeal No. 5511 of 1998

Brisbane

[A-G & Minister for Justice v Gregory]

BETWEEN:

THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Appellant

AND:

GREG GREGORY

Respondent

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de Jersey CJ
McMurdo P
White J

Judgment delivered 4 December 1998.

Separate reasons for judgment of each member of the Court; each concurring as to the orders made.

APPEAL ALLOWED. SET ASIDE ORDER OF THE SOLICITORS COMPLAINTS TRIBUNAL MADE ON 13 MAY 1998 THAT THE PRACTITIONER BE SUSPENDED FROM PRACTICE AS A SOLICITOR OF THE SUPREME COURT OF QUEENSLAND FOR A PERIOD OF TWO YEARS COMMENCING ON 15 JUNE 1998. ORDER IN LIEU THAT THE NAME OF THE PRACTITIONER BE STRUCK OFF THE ROLL OF SOLICITORS.

CATCHWORDS: **ETHICS - professional misconduct - instructing solicitor in criminal trial - attempt to suborn Crown witness - inducement to perjure -**

contempt of court - fit and proper person to practice - striking off.

District Court Act 1967, s.129
Queensland Law Society Act 1952, s.62.

Clyne v New South Wales Bar Association (1960) 104 CLR 186
Edwards v Nobel (1971) 125 CLR 296
Harvey v Law Society of New South Wales (1975) 49 ALJR 362
House v R (1936) 55 CLR 499
Lovell v Lovell (1950) 81 CLR 513
Queensland Law Society Incorporated v Bax CA No.7088/1997 (unreported)
Queensland Law Society Incorporated v A Solicitor [1989] 2 Qd R 331
The Minister for Justice and Attorney-General v Brown CA No.241/1992 (unreported)
Zeims v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279

Counsel:	Mr P Keane QC, with him Mr G Cooper, for the appellant. Mr A Glynn SC for the respondent.
Solicitors:	B T Dunphy Crown Solicitor for the appellant. Price & Roobottom for the respondent.
Hearing Date:	19 November 1998

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[A-G & Minister for Justice v Gregory]

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Appellant

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Respondent

REASONS FOR JUDGMENT - de JERSEY CJ

Judgment delivered 4 December 1998

1 **I have had the advantage of reading the reasons for judgment of White J. I agree with those reasons, and that the respondent should be struck off the Roll of Solicitors.**

2 **In exercising this present jurisdiction, the court focuses on one principal consideration: through its imprimatur, holding out to the public, as persons fit to practice as solicitors, only those who may reasonably be expected to display appropriately high standards of integrity and competence. The supervisory responsibility rests initially with the Solicitors' Complaints Tribunal. The court's capacity to intervene subsequently depends on that Tribunal's having erred in its discretionary approach, in one of the**

respects discussed in House v. R (1936) 55 C.L.R. 499, 504-5.

3 **We were urged that the Tribunal was entitled, in ordering a suspension, to have given weight to circumstances personal to the respondent, including his remorse, comparative inexperience in the criminal jurisdiction, and own psychiatric disorder. One does, however, reach a point where the gravity of the misconduct is so patently demonstrative of unfitness to practice as to render circumstances personal to the respondent of little if any moment. Of course such circumstances can rightly assume considerable significance in the process of sentencing in the criminal court. But the considerations facing the Tribunal in these proceedings were substantially different, focussing, as I have said, on fitness to practice, and therefore embracing the need to protect the public and, in a correlative way, the court.**

4 **A solicitor who attempts to suborn a witness in criminal court proceedings strikes audaciously into the heart of the judicial process. Whether committed on the spur of the moment, as said to have occurred here, or with more premeditation, such misconduct will inevitably establish unfitness to practice. That is because it demonstrates the absence of critically important qualities: honesty, objectivity, respect for the court and respect for the process. In the absence of some quite exceptional circumstance - which I am presently at a loss to imagine - such conduct should lead to the striking off of the offender. The appropriate course is that he should then be left, before reapplying for admission - if he wishes to take that course - so to conduct himself as to demonstrate redevelopment of the qualities he must for the present be taken to lack.**

5 **That the Tribunal ordered a suspension in these circumstances is of itself indicative of error, justifying this court's intervention. I agree that the respondent must**

be struck off the Roll of Solicitors.

IN THE COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

Appeal No. 5511 of 1998

Brisbane

Before de Jersey C.J.
McMurdo P.
White J.

[A-G & Minister for Justice v. Gregory]

BETWEEN:

THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Appellant

AND:

GREG GREGORY

Respondent

REASONS FOR JUDGMENT - McMURDO P.

Judgment delivered 4 December 1998

1 I have read the reasons for judgment of White J. and agree with them.

2 I would only add by way of emphasis the following brief comments. The conduct of the respondent in attempting to suborn a Crown witness in these circumstances was such that the only appropriate order is that he should be struck off the Roll of Solicitors.

3 This does not preclude him from reapplying to the Court for admission as a solicitor at some future time, if he can establish his rehabilitation.

4 I agree with the orders proposed by White J.

IN THE COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

Appeal No. 5511 of 1998

Brisbane

Before de Jersey CJ
McMurdo P
White J

[A-G & Minister for Justice v Gregory]

BETWEEN:

THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Appellant

AND:

GREG GREGORY

Respondent

REASONS FOR JUDGMENT - WHITE J

Judgment delivered 4 December 1998

1 The Attorney-General and Minister for Justice appeals against an order of the Solicitors Complaints Tribunal ("the Tribunal") given on 13 May 1998 pursuant to s.6Z of the Queensland Law Society Act 1952 that the respondent practitioner ("the practitioner") be suspended from practice as a solicitor of the Supreme Court of Queensland for a period of two years commencing on 15 June 1998. The appellant seeks an order in lieu that the name of the practitioner be struck off the roll of solicitors of the Supreme Court of Queensland.

2 The Tribunal found the practitioner guilty of professional misconduct. The practitioner had admitted before the Tribunal the facts which were the subject of the charge and that they constituted

professional misconduct.

3 The charge brought by the Council of the Queensland Law Society dated 6 April 1998 against the practitioner was:

> "That on the 17 day of October 1997 the Solicitor was found guilty of contempt of the District Court of Queensland pursuant to Section 129 of the *District Courts Act* 1967 in that he deliberately sought, via a conversation with her, to influence one LYNDA IRENE ROBINS, a Crown witness in the trial of one Ben Rehavi, to change her proposed evidence so that it was more favourable to Rehavi for whom the solicitor then acted in the said trial."

At the time of the conduct which was the subject of the charge the practitioner was employed with a firm of solicitors at Burleigh Heads, and was instructing solicitor in a criminal trial in the District Court in which the firm's client, Ben Rehavi, was charged with the offence of unlawfully doing grievous bodily harm to another. This charge arose out of an incident at a night club on the Gold Coast which was witnessed by Lynda Irene Robins who was employed as a bar attendant.

4 In considering the charge the Tribunal had the transcript of evidence of Lynda Irene Robins given before his Honour Judge Forno QC on 17 October 1997, the transcript of findings by his Honour on that day and the transcript of his Honour's sentencing remarks dated 31 October 1997. The Tribunal also had a bundle of personal references in respect of the practitioner, medical reports from Dr Joseph Ziukelis, the practitioner's consulting psychiatrist, which had been tendered before his Honour and extensive written submissions prepared on behalf of the practitioner.

5 The facts as found by his Honour and adopted by the Tribunal were that on 8 October 1997 the practitioner was instructing solicitor at the commencement of the trial of his firm's client, Ben Rehavi. The trial had been adjourned until 2 p.m. so that some procedural matters could be dealt with. The jury was empanelled in the afternoon and the trial was further adjourned until 10 a.m. the following day. The next morning his Honour was approached by the prosecutor and defence counsel and shown a statement taken from Ms Robins and told that a statement was being

obtained from a Mr Ray Zawadski, another witness at the trial. Later in the day his Honour read the two statements into the record and charged the practitioner who was in court with contempt of the District Court and adjourned the further hearing of the charge until 17 October 1997 so that evidence could be heard from Ms Robins and Mr Zawadski. The trial against Rehavi was discontinued.

6 On 17 October the practitioner appeared represented by Senior Counsel. The two witnesses and the practitioner gave evidence and were cross examined. His Honour accepted the evidence of Ms Robins as to what had occurred in preference to that of Mr Zawadski and the practitioner where it differed. Her evidence was to this effect: on the morning of 8 October Ms Robins was waiting outside the court room to be called as a witness in the trial against Rehavi. She recognised the practitioner who was in the company of Rehavi as a person who was a regular client at the night club where she used to work and where the incident the subject of the criminal charge occurred. In the afternoon at about 3 p.m. she was sitting outside the court room with Mr Zawadski, who was a security officer at the night club. She said that they were filling out their witness expense forms when the practitioner approached Mr Zawadski and said:

> ""Hello" and I said, "Hello" to the gentleman saying "Do you remember me?" and he said, "Yes, but I don't like you" I said, "I understand that". Then - sorry.
>
> Did you hear Ray have any conversation with the gentlemen at all? -- I kept filling out my form and Ray asked how things were going or what was happening, and the gentleman said that Ben was going to go to gaol and that his wife was pregnant and that it all depended on what the bar girl said. And I was still filling out my form. I didn't react. He said it again, "Depending on what the bar girl said" and I looked up and I said "Yes, I heard you the first time".
>
> When he said that, those words, did he say it in a different manner at all? -- No, he just said it the same.
>
> Who was he directing this conversation to? -- Ray, but he was saying it loud

enough so that I could hear.

HIS HONOUR: How far away was he? -- He was about three seats, which was about four foot.

Just by way of background, you'd been called as a witness in the trial of the Queen against Ben Rehavi, had you? -- Yes.

In relation to things -----? -- That happened in the nightclub.

----- that you saw at the nightclub? -- Yes.

Yes.

MR WHITBREAD: And in relation to this person, Mr Gregory, did you understand he had any role in those proceedings? -- I saw him with Ben, so I guessed that he had something to do with Ben, because he - sorry, he was there all day with Ben.

When you say, "something to do with Ben", what sort of thing did you think he had to do with Ben? -- I wasn't quite sure at the time, but now I know he's a solicitor.

Was there any further conversation that you could hear or that occurred after what you've told us? -- Yes.

What was that? -- Ray said, "Is there $10,000 in it for us?" and I said jokingly, "That's an idea." and the gentleman said, "We can arrange something".

When Ray said that did you form any view as to how - whether Ray meant that or not? -- No, Ray is the sort of person that would joke around like that.

HIS HONOUR: In what manner - you said the gentleman, you mean the man you thought was the solicitor? -- Yes, yes.

The person you pointed out earlier, in what manner did he say, "We can arrange something."? -- He just said it flatly, no expression, not in a joking manner. He just said, "We can arrange something" and I just said, "No".

Who was he looking at, if anybody? -- He looked at me when he said, "We can arrange something".

MR WHITBREAD: What did he do then after he said that? -- He was called away.
Did you have any further conversation with him? -- He walked back past and said,

> "Do you live in Cairns?", and I said, "Yes", then he was called away again.
>
> How long after this initial conversation did he walk back past you and say that? -- Probably about five minutes.
>
> Did he say that to you? -- Yes.
>
> What did you do? How did these comments make you feel? -- Uneasy, intimidated, like it would be my fault, in a way.
>
> What would be your fault? -- If Ben went to gaol.
>
> How did you treat the comments that the solicitor made, that Mr Gregory made? -- I just knew I had to tell somebody about it, but I knew that it wasn't going to be my fault, that I was just there to tell what I saw." R16-17.

7 Ms Robins then told the detective investigating the offence of this encounter and gave a statement. Whilst the practitioner agreed that he spoke to Zawadski, a man whom he knew, outside the court room he denied that he knew who Ms Robins was and said that the words that he responded to Zawadski when he mentioned the sum of $10,000 were "that couldn't be arranged". His Honour had no doubt that the conversation progressed in the way Ms Robins claimed. He said that he was of the clear view that both Zawadski and "particularly Gregory" had tailored their evidence to fit in with parts of Robins' evidence. His Honour noted that it was common ground that Ms Robins was an important witness for the Crown at the trial since she was the only person on the material who claimed to have seen in detail Rehavi thrust a glass into the face of the complainant at the night club where she worked. He concluded:

> "I find Gregory deliberately sought, via the conversation detailed in Ms Robins' evidence, to influence her to change her proposed evidence so that it was more favourable to Rehavi. If she had done so a travesty of justice may have occurred.
>
> I find specifically that Gregory, in relation to the reference to $10,000 said, in a serious fashion to Robins, was looking at her, "that can be arranged"."

8 His Honour adjourned the sentence until 31 October 1997 having found the practitioner

guilty of contempt of court. On that date, after setting out matters personal to the practitioner concerning his lack of planning to carry out the offence, his remorse and otherwise good character, fined him $4,000.

9 The following facts were also before the Tribunal. The practitioner is aged 41 years and was admitted to practice as a solicitor in 1987 after completing a Bachelor of Arts degree and a Bachelor of Laws degree. He commenced his professional career as an articled clerk working mainly in the commercial and conveyancing field. During that time he received no training in criminal law. On completion of his articles he set up his own firm at West End in Brisbane in which he undertook no criminal work. Between 1990 and 1993 he had a psychiatric breakdown and did not practise law. He was treated by Dr J K Ziukelis, a psychiatrist, between 28 October 1991 and 25 February 1994 and thereafter his treatment was continued by Dr D O'Brien, his local doctor. Dr Ziukelis resumed his care during October 1997. Dr Ziukelis reported that initially the practitioner had suffered distressing auditory hallucinations which caused him increasing difficulty in conducting his work. He precipitously returned to Cyprus leaving behind unfinished business. His condition caused the Cypriot authorities to hospitalise him and return him to Australia. Dr Ziukelis diagnosed him as suffering from paranoid schizophrenia for which he was treated with medication.

10 In late 1993 the practitioner apparently felt sufficiently well to recommence legal practice and worked as a partner in a firm at the Gold Coast. In that capacity he was involved in commercial and conveyancing matters, some family law and a small amount of criminal law. The latter consisted of appearances in the Magistrates Court and pleas of guilty. This practice failed in 1995. The practitioner commenced work with another Gold Coast firm as an associate for two

years doing much the same kind of work. At the time of the offence he had done between three and four summary trials. In July 1996 he joined a firm at Burleigh Heads doing similar work. He lost that employment after the contempt offence.

11 Dr Ziukelis reported that the practitioner revealed no evidence of symptoms suggesting any return of his previous paranoid schizophrenia when he examined him in October 1997. He thought that medication may have played some part in affecting the practitioner's judgment in respect of the conduct giving rise to the offence. The practitioner described to Dr Ziukelis a period of four days of insomnia and preoccupation prior to going to court for this trial. As a consequence and on medical advice he doubled his dose of medication to deal with this anxiety.

12 The Tribunal's reasons for the orders which it made are brief and may conveniently be set out in full:

> "The Tribunal has had the benefit of considering the transcript of proceedings before "His Honour Judge Forno QC" when he sentenced Mr Gregory and imposed a fine of $4,000.00. The Tribunal also had the benefit of the addresses of the solicitor for the Queensland Law Society Incorporated and the solicitor for the Practitioner.
>
> The Practitioner is a man of 41 years and was admitted as a solicitor of the Supreme Court of Queensland on 2 February 1987. He has had some but not extensive experience in the criminal jurisdiction. The Tribunal has been advised by his solicitor that the trial in question was his first District Court jury trial. There is no doubt that an offence of this nature committed by a solicitor is very serious indeed, so serious that consideration must be given to an order for striking off.
>
> This Tribunal is satisfied that the offence was committed on the spur of the moment, that the Practitioner did not fully appreciate at the time the seriousness of what he did and that his judgment was clouded and pressured. The Tribunal is also satisfied that he sincerely regrets his actions.
>
> In makings its orders this Tribunal must be mindful of the protective nature of its jurisdiction as well as its punitive role. The solicitor for the Society has submitted that the matter under consideration did not warrant striking off and that the Tribunal should impose a suspension or fine. The solicitor for the Practitioner made

submissions with respect to a number of the orders available under Section 6R of the Act.
The Tribunal, by a majority, decided not to order a striking off."

13 This is an appeal from the exercise of a discretion by the Tribunal in respect of the penalty imposed for professional misconduct. The Tribunal may impose against a practitioner a variety of orders including an order that the practitioner be struck off the roll of solicitors, or be suspended from practice with or without condition, s.6R(1)(a) and (b). This court will only interfere if the Tribunal has made some error in exercising its discretion, House v R (1936) 55 CLR 499 per Dixon Evatt and McTiernan JJ at 504-5; Lovell v Lovell (1950) 81 CLR 513 per Latham CJ at 519-534; Edwards v Nobel (1971) 125 CLR 296 at 304; The Minister for Justice and Attorney-General v Brown CA No. 241 of 1992, unreported decision of 11 June 1993 at 4.

14 His Honour Judge Forno's findings were urged upon the Tribunal on behalf of the practitioner and the Tribunal clearly took them into account and in particular that the offence was committed on the spur of the moment without any plan to put pressure on a vital Crown witness; that although the offence was deliberate the practitioner did not fully appreciate at the time the seriousness of the offence, and that he was remorseful. The Tribunal's reference to those matters in the reasons leads to the inference that they were the governing factors which caused it to impose the penalty which it did. A passing reference is made in the reasons to "the protective nature" of the jurisdiction whilst mentioning its " punitive role". I am persuaded that the Tribunal gave too much weight to factors personal to the practitioner and too little to the protection of the public and thereby fell into error.

15 Proceedings before the Tribunal for professional misconduct are of a different kind from those before a court sentencing in respect of an offence pursuant to s.129 of the District Courts Act

1967. In a case of this nature the governing principle for the Tribunal to consider is the protection of the public and the standing of the profession, not issues of punishment, Zeims v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279 per Dixon CJ at 286 and Fullagar J at 289; Clyne v New South Wales Bar Association (1960) 104 CLR 186 at 202; Harvey v Law Society of New South Wales (1975) 49 ALJR 362 per Barwick CJ at 364; Queensland Law Society Incorporated v A Solicitor (1989) 2 Qd R 331 per Williams J at 340; Minister for Justice and Attorney-General v Brown CA No. 241 of 1992, unreported decision of 11 June 1993 at 4 and 6; Queensland Law Society Incorporated v Bax CA No. 7088 of 1997 unreported decision of 12 May 1998 per Pincus JA at 16 of his Honour's reasons.

16 Mr Glynn SC who appeared for the practitioner drew attention to observations in the recent Queensland cases of Brown and Bax that the persistence of the unprofessional conduct was an aggravating feature and contrasted it to the fleeting nature of the fall from grace by this practitioner. Of that submission it may be commented that the witness Robins acted swiftly to report her concern to those in authority. The conduct engaged in here strikes at the very heart of the administration of justice by seeking to induce perjury.

17 The community can rightly be uneasy if an attempt to influence a key witness by one who is in a privileged position as an officer of the court, is not treated with the gravity which that conduct deserves. It is not to the point that this was the practitioner's first criminal jury trial. An understanding as fundamental as the integrity of a witness's evidence from influence or corruption is not learned with experience. One might venture to suggest that a member of the public would know so. A practitioner of mature age and 10 years experience, even without the benefit of a great deal of litigation work, who makes such a basic error of judgment is not a fit and proper person to practice. The comment by the

practitioner's treating specialist that the heavy dosage of medication which the practitioner took to settle his anxieties may have clouded his judgment does not answer the concern. Neither do undertakings not to practice in litigation or criminal law. The appropriate course is to strike the practitioner from the roll of solicitors leaving it open to him to apply to be restored when he can demonstrate to the satisfaction of the court that the state of his health and any other relevant matters make him a fit and proper person to be entrusted with the duties, responsibilities, and privileges of a solicitor in this State.

18 I would allow the appeal and set aside the order of the Solicitors Complaints Tribunal made on 13 May 1998 that the practitioner be suspended from practice as a solicitor of the Supreme Court of Queensland for a period of two years commencing on 15 June 1998. I would order in lieu that the name of the practitioner be struck off the roll of solicitors.