

In the Matter of David Andrew McKean

Case Number: SCT/39

Date of Hearing: 2 July 2002

Appearing Before: Mr P Short (Presiding Member/Practitioner Member)

Mr P Cooper (Practitioner Member)

Ms E Jordan (Lay Member)

Penalty: Struck Off

Charge

On 3 August 1999 pursuant to an Order of the Administrative Decisions Tribunal, Legal Services Division, the name of David Andrew McKean born 13 August 1947 was struck off the roll of Legal Practitioners of the Supreme Court of New South Wales.

Particulars

1. The Administrative Decisions Tribunal Judgment records that:

(a) On 4 November 1994 the Practitioner was convicted by Shadbolt J sitting at the Sydney District Court Downing Centre on each of two counts of maliciously inflicting grievous bodily harm with intent.

(b) The facts outlined in the judgment of His Honour Judge Shadbolt are that on 28 September 1992 the Practitioner went to the house of his estranged de facto wife, in contravention of a domestic violence order and following certain threatening telephone calls which he made. The Practitioner broke in and stabbed the de facto and one of the children, a five year old girl. The latter received a chest wound which was 1½ inches long. The Judge found that there was no provocation and that both victims were in an utterly defenceless position. The child was seriously affected and possibly suffered from post traumatic stress syndrome which would remain for some time.

(c) The Practitioner was sentenced to imprisonment for three years and one day with an additional term of three years, minus one day, making in all six years. The Practitioner was released on parole on 22 April 1996.

(d) His Honour summarised the medical evidence which was given, as follows:

"The prisoner is an alcoholic of long standing whose addiction has reached such proportions that Dr B regards him as suffering from Korsakoff's Syndrome, Dr P as somewhat less damaged than that but obviously brain damaged particularly in his frontal lobes and Mr P says he now has an IQ of 87. For A Solicitor of the Supreme Court of Queensland and the Northern Territory his fall from the top 1% of intelligence to his present condition is utterly tragic."

(e) The Practitioner conceded in the hearing before the Legal Services Tribunal that the conduct of which he was charged, which comprised the offences for which he was convicted, constituted professional misconduct.

(f) The said Tribunal, after review of the evidence and the authorities reached the firm conclusion that the practitioner was not fit to be held out as a member of the legal profession and that it must order that the Practitioner's name be removed from the roll.

2. A David Andrew McKean was admitted in Queensland as a Solicitor on 23 March 1971. He has not held a Practising Certificate since 1983.

3. The Queensland Law Society Inc ("the Society") received a letter from him on 30 May 1991 giving an address in NSW.

4. The Law Society of New South Wales has advised the Society that the New South Wales Law Society membership records show the address of the practitioner as in the State of New South Wales.

5. The records of the Society show that the Practitioner has not held a Practising Certificate since 1983 and that he was also admitted to the Northern Territory where he practised for a period from 1993. The Society's records also show that he may have been working for the ALS Limited (Wagga Wagga Office) in September 1990.

6. The records of the Law Society of New South Wales show that the David Andrew McKean who was struck off in New South Wales was born in Queensland, was admitted in New South Wales 28 September 1990, did work for the ALS from 3 October 1990 to 30 June 1991 and practised as a sole practitioner from 28 October 1991 to 30 June 1993.

7. The David Andrew McKean struck off the roll of Legal Practitioners of the Supreme Court of New South Wales appears to be one and the same David Andrew McKean admitted in Queensland on 23 March 1971. The Council alleges that the Practitioner has been struck off an interstate roll and that in the event of such charge being proved to the satisfaction of the Tribunal seeks an order that his name be struck off the roll of Solicitors of the Supreme Court of Queensland pursuant to section 6T of the Queensland Law Society Act 1952.

Appearances

(a) For the Council of the Queensland Law Society Incorporated:
Mr P Ryan, Solicitor of Messrs Biggs & Biggs, Solicitors.

(b) For the Practitioner:
The Practitioner appeared in person.

Findings and Orders

1. The Practitioner having admitted the facts set out in the Notice of Charge dated 24 May 2000, the Tribunal finds those facts proved.
2. The Tribunal orders that the name of David Andrew McKean be struck from the Roll of Solicitors of the Supreme Court of Queensland.
3. The Tribunal makes no orders as to costs.

Reasons

The Practitioner David Andrew McKean was admitted in Queensland in 1971, but has not held a Practising Certificate in this state since 1983. He was admitted in NSW in 1990. In 1994 he was convicted of a serious criminal offence, namely two counts of maliciously inflicting grievous bodily harm with intent, in the NSW District Court and sentenced to about six years jail. He was struck off the Roll in NSW on 3 August 1999, after conceding that the offences leading to his conviction, constituted professional misconduct.

The Queensland Law Society applies pursuant to section 6T for the corresponding Order in this State. This Tribunal is authorised under section 6T to order the Practitioner be struck off the Queensland Roll, unless the Practitioner satisfies the Tribunal that he should not be struck off. In other words the onus is on the Practitioner to show that we should not follow the NSW Order. Mr McKean tendered a bundle of documents at short notice, which were admitted without objection from the Queensland Law Society, that showed he was proceeding with a number of educational courses and was receiving medical treatment from a psychiatrist and psychologist. This evidence shows that Mr McKean is in the process of rehabilitating himself, and he said in submissions, that the evidence was to be used in an application in Sydney for consent to be employed in a legal office in NSW.

In our view the decision to strike off the solicitor in NSW, being an Order of the appropriate Tribunal, after an open hearing, should be followed by a corresponding decision here, unless Mr McKean can demonstrate a good and sufficient reason why we should not follow the NSW decision. Section 6T clearly places the onus of satisfying us otherwise on the Practitioner. The attempts to rehabilitate himself since the offence are commendable, and would be relevant to any subsequent application to be employed in a legal office in Queensland or NSW, or indeed, on any subsequent application to be readmitted. However they do not, in our view, demonstrate any reason why the NSW decision should not be now followed in Queensland, and we have accordingly made the appropriate orders to strike off the name of the Practitioner from the Queensland Roll.