

In the matter of an application by Thong Sum Lee [2015] NTSC 22

PARTIES: IN THE MATTER OF:

THE LEGAL PROFESSION ACT (NT)

AND

IN THE MATTER OF AN
APPLICATION BY:

LEE, Thong Sum

FOR REMOVAL OF NAME FROM
THE ROLL OF PRACTITIONERS

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: 24 of 2015 (21512597)

DELIVERED: 16 April 2015

HEARING DATE: 9 April 2015

JUDGMENT OF: BARR J

CATCHWORDS:

PROFESSIONS AND TRADES – Legal practitioners — application by practitioner to remove own name from the roll of practitioners – Court’s inherent jurisdiction in relation to the control and discipline of legal practitioners includes power to remove a legal practitioner’s name from the roll – whether practitioner fit and proper person to practise the law – found physically unfit to practise – application granted, name removed from the

roll of practitioners maintained by the Supreme Court of the Northern Territory.

Legal Profession Act (NT) s 5(a), s 6(a), s 27(1), s 27(2), s 28(2), s 45, s 50(1), s 554

Legal Profession Act (NSW) s 126

Re B (a solicitor) [1986] VR 695, *The New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183-4; *Re B (a solicitor)* [1986] VR 695, *Legal Practitioners Conduct Board v Pertl* [2014] SASCF 88, referred to.

REPRESENTATION:

Counsel:

Applicant:	G Phelps
Law Society:	S Brownhill

Solicitors:

Plaintiff:	Ward Keller
Law Society:	M Lawton

Judgment category classification:	B
Judgment ID Number:	Bar1506
Number of pages:	5

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

In the matter of an application by Thong Sum Lee [2015] NTSC 22
No. 24 of 2015 (21512597)

BETWEEN:

IN THE MATTER OF:

THE LEGAL PROFESSION ACT (NT)

AND:

IN THE MATTER OF AN APPLICATION
BY:

THONG SUM LEE

FOR REMOVAL OF NAME FROM THE
ROLL OF PRACTITIONERS

CORAM: BARR J

REASONS FOR JUDGMENT

(Delivered 16 April 2015)

- [1] On 9 April 2015 I made a finding that the applicant is no longer a fit and proper person to practise the law in the Northern Territory because he is physically unfit to practise. I made an order that the applicant's name be removed from the roll of practitioners maintained by the Court.¹
- [2] I now provide reasons for my decision.

¹ The Registrar of the Supreme Court maintains a roll of persons admitted to the legal profession under the *Legal Profession Act*. That roll is referred to as the "local roll". If a person is admitted to the legal profession under the *Legal Profession Act*, his or her name must be entered on the local roll (s 27(1) and (2) *Legal Profession Act*).

- [3] By Originating Motion filed 25 March 2015 the applicant sought an order removing his name from the roll of practitioners in the Northern Territory. In his affidavit sworn 24 March 2015, the applicant explained that he was 65 years old and that he had effectively ceased practising as a legal practitioner on or about 1 July 2013 as a result of ill health.
- [4] The applicant has not held a practising certificate since 30 June 2013.
- [5] In a subsequent affidavit, sworn 7 April 2015, the applicant deposed to his serious heart condition. He had suffered four heart attacks prior to February 2015, and in that month he was hospitalised with pneumonia for six nights. He was physically and emotionally drained by his declining health and the events leading up to the filing of his application. He has been diagnosed with depression. The applicant's affidavit read, in part:

My fervent plea to the Court is: please grant the order subject of this application and let me move on, in the twilight of my life.

- [6] The Law Society Northern Territory did not oppose the practitioner's application, but sought and was given leave to appear on the hearing. The Court was considerably assisted by the written and oral submissions of Ms Brownhill of counsel, who appeared for the Law Society.
- [7] The Court's power to remove a legal practitioner's name from the roll is an aspect of the Court's inherent jurisdiction in relation to the control and discipline of legal practitioners. That inherent jurisdiction is not affected by

the *Legal Profession Act* (NT).² The power to ‘strike off’ is an incident of the power to admit. The name of a legal practitioner may be removed from the roll if the practitioner is, for any reason, not a fit and proper person to practise the law. Particular grounds may include misconduct and mental unfitness, but also physical unfitness to practise.³ The power to strike off or remove a practitioner’s name from the roll is for the protection of the community and not for punishing the practitioner.⁴

[8] The power to remove a legal practitioner’s name is not only exercised in disciplinary or adversary proceedings, but may also be exercised on the practitioner’s own application. The power can even be exercised on the ground that the practitioner wishes to retire from practice.⁵

[9] As can be seen from the facts in the present case, the application was made by the practitioner himself, on the ground that he was unfit through ill-health. Given that the applicant does not intend to return to the practice of the law or to take advantage in any other way of his standing as an admitted practitioner, it could be argued that there was no need for the exercise of the Court’s jurisdiction. Nonetheless, the applicant himself made the application, and it was not opposed by the Law Society. In all the circumstances, I considered that it was appropriate to make the order sought.

² *Legal Profession Act* (NT), s 554, provides that the inherent jurisdiction and powers of the Supreme Court in relation to the control and discipline of local lawyers are not affected by anything in Chapter 4 of the Act, i.e. the part of the Act which specifically deals with complaints and discipline.

³ *Re B (a solicitor)* [1986] VR 695 at 702.

⁴ *The New South Wales Bar Association v Evatt* (1968) 117 CLR 177 at 183-4; *Re B (a solicitor)* [1986] VR 695 at 698.

⁵ *Legal Practitioners Conduct Board v Pertl* [2014] SASFC 88 at [11].

[10] The Court might decline to make an order on the application of a practitioner if the public interest demanded that the Court (or the appropriate body) exercise its disciplinary jurisdiction, which could result in the making of orders additional to the removal of the practitioner's name from the roll. In this context, there is a disciplinary proceeding against the applicant pending in the Legal Practitioners Disciplinary Tribunal. The Law Society initiated the complaint which led to that proceeding. No hearing has yet taken place. In this Court, however, the Law Society did not make any submission to the effect that the public interest required that the disciplinary proceeding should continue to hearing or other conclusion. Rather, I was informed that, if this Court made the order sought by the applicant, the Law Society would seek the leave of the Tribunal to discontinue the disciplinary proceeding.

[11] Counsel for the Law Society submitted that the public interest would be protected by the making of the order sought by the applicant, pointing out that the applicant will no longer be entitled to a local practising certificate⁶ and will be prohibited from practising law in the Northern Territory.⁷ He will no longer be an officer of the Supreme Court.⁸ Moreover, he will not be entitled to use any of the following names or titles: "lawyer", "legal

⁶ Under s 50(1) *Legal Profession Act*, practising certificates can only be applied for by "Australian lawyers", i.e. persons admitted to the legal profession under the *Legal Profession Act* or a corresponding law (s 5(a) *Legal Profession Act*).

⁷ Australian lawyers who hold a current local practising certificate or a current interstate practising certificate are called "Australian legal practitioners" (s 6(a) *Legal Profession Act*). A person has to be an 'Australian legal practitioner' to be entitled to engage in legal practice in the Northern Territory (s 45 *Legal Profession Act*).

⁸ Pursuant to s 28(2) *Legal Profession Act*.

practitioner” or “solicitor”.⁹ He will not be able to make use of his “status as a person admitted to practice”.¹⁰ I accepted those submissions.

[12] I note finally that, given that the applicant has also been admitted in New South Wales, an additional consequence of the order made by me is that the Prothonotary in New South Wales will be required to remove the applicant’s name from the New South Wales roll of practitioners.¹¹

⁹ Relevantly, only an ‘Australian lawyer’ may use the title “lawyer”, and only an ‘Australian legal practitioner’ or an ‘Australian lawyer’ may use the titles “legal practitioner” and “solicitor” – see reg 4 and Schedule 1, *Legal Profession Regulations*, made under s 20(2) *Legal Profession Act*.

¹⁰ *Re B (a Solicitor)* [1986] VR 695 at 699.20.

¹¹ See s 126 *Legal Profession Act* (NSW).