

The Law Society of the Northern Territory v Parish [2005] NTSC 10

PARTIES: THE LAW SOCIETY OF THE
NORTHERN TERRITORY

v

KENNETH PARISH

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
NORTHERN TERRITORY
EXERCISING TERRITORY
JURISDICTION

FILE NO: LA 18 of 2004 (20429268)

DELIVERED: 4 March 2005

HEARING DATE: 4 March 2005

EX TEMPORE REASONS OF: RILEY J

REPRESENTATION:

Counsel:

Appellant: J. Reeves QC
Respondent: No appearance

Solicitors:

Appellant: The Law Society of the Northern
Territory
Respondent: No appearance

Judgment category classification: B

Judgment ID Number: ril0503

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

The Law Society of the Northern Territory v Parish [2005] NTSC 10
No LA 18 of 2004 (20429268)

IN THE MATTER OF the *Legal
Practitioners Act of the Northern Territory*

BETWEEN:

**THE LAW SOCIETY OF THE
NORTHERN TERRITORY**
Appellant

AND:

KENNETH PARISH
Respondent

CORAM: RILEY J

EX TEMPORE
REASONS FOR DECISION

(Delivered 4 March 2005)

- [1] On 2 September 2003 the Law Society of the Northern Territory presented charges of professional misconduct against Mr Parish pursuant to the provisions of the Legal Practitioners Act. The misconduct alleged was failure on the part of Mr Parish to comply with the provisions of the Legal Practitioners Act relating to the keeping and auditing of funds held in a trust

account. The allegations cover the financial years from 1994/1995 through to 2000/2001.

- [2] Having lodged the complaints with the Legal Practitioners Complaints Committee, the Law Society inquired on a number of occasions as to the progress of the proceedings. It wrote a series of letters to the secretary of the Committee without receiving a response. Finally, on 8 December 2004, the secretary of the Committee wrote to the Law Society enclosing “evidence” produced to the inquiry on this matter together with the determination of the Committee.
- [3] The Law Society had not been aware that the Committee had convened to consider the matter. This was the first occasion on which the Law Society was informed that the matter had been heard.
- [4] The material placed before the Committee included detailed responses from Mr Parish to the allegations made against him. These had not been provided to the Law Society at any time prior to 8 December 2004.
- [5] In a general sense Mr Parish did not deny the allegations. In relation to some he indicated that he had no personal recollection and therefore could not admit them. In relation to others he acknowledged that they occurred and provided a detailed explanation of the circumstances that prevailed at the time. He submitted in writing that the charges should be dismissed pursuant to s 50(3)(b) of the Act or, if the Committee was not so inclined,

the Committee should find the charges constituted professional misconduct but take no further action.

- [6] Mr Parish did not appear before the Committee either in person or by counsel. Of course the Law Society did not appear, not being aware that the matter was to be considered.
- [7] The determination of the Complaints Committee was dated 2 November 2004. A subsequent letter suggested that it may have been made on 2 December 2004. The position is really not clear.
- [8] I have a copy of the determination and in it the Committee announced that it had inquired into the conduct described in the charges and made various determinations. In relation to two of the charges the Committee determined that they should be dismissed. In relation to the balance of the charges the Committee found that, whilst the contraventions were not wilful, having regard to the number of failures by Mr Parish, the failures must be regarded as reckless and therefore amounting to professional misconduct. In relation to those matters the Committee found him guilty of professional misconduct and proceeded to determine that no further action should be taken.
- [9] The Law Society appeals to this Court pursuant to the provisions of s 51B of the Legal Practitioners Act of the Northern Territory. The section provides that an appeal shall be instituted within one month from the date of the Complaints Committee making its determination.

- [10] If the determination was made on 2 November 2004 the appeal lodged would be out of time. This would be because the Law Society was not advised of the determination when it was made. Indeed, it was not advised until December 2004. In fact, as I have observed, the Law Society was not even aware that the Complaints Committee was to hear the matter.
- [11] In the circumstances I propose to extend the time in which an appeal can be instituted. I am satisfied that it is just and reasonable to dispense with the requirement that the appeal should be instituted within the time referred to and I so order.
- [12] The complaint of the Law Society rests upon the undisputed fact that the Legal Practitioners Complaints Committee did not notify the Law Society of the date of the inquiry, did not allow the Law Society an opportunity to call evidence, nor to cross-examine witnesses or make submissions. The Complaints Committee failed to comply with the requirement of s 50A of the Legal Practitioners Act in that it failed to provide seven days written notice of the time and place at which it intended to conduct the inquiry and it failed to afford the Law Society a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses and to make submissions to the Complaints Committee.
- [13] The Law Society also complains that the penalty determined by the Committee was manifestly inadequate.

- [14] The matter proceeded before this Court based upon the affidavit material provided on behalf of the Law Society which established the matters to which I have referred. Mr Parish, who was aware of the proceedings before this Court and had been served with the documents, elected not to appear and not to make any representations.
- [15] In all the circumstances it is clear that the Complaints Committee proceeded to hear the matter in breach of the requirements of the Act and in contravention of the right of the Law Society to be present and to be heard.
- [16] The Law Society has provided prima facie evidence that the findings of the Committee and the penalties imposed by the Committee may not accord with other results in similar cases. It may, as Mr Reeves QC has submitted to me, effectively set the bar far too low for such misconduct.
- [17] In the circumstances, the findings of the Committee and the penalties imposed must be set aside. The matter will be sent back to a differently constituted Committee for reconsideration pursuant to s 51B(3)(b) of the Legal Practitioners Act.
