



HIGH COURT OF AUSTRALIA

Public Information Officer

4 February 2004

A SOLICITOR v THE COUNCIL OF THE LAW SOCIETY OF NEW SOUTH WALES

The High Court of Australia today unanimously allowed in part an appeal by a solicitor struck off after convictions for sexual offences and ordered his name be reinstated to the Roll of Legal Practitioners.

The NSW Court of Appeal made declarations he was guilty of professional misconduct in two respects and that he was not a fit and proper person to be a legal practitioner and ordered his name be removed from the roll.

The solicitor, now 42, was convicted of four counts of indecent assault on two girls aged under 16 who are now his stepdaughters. A magistrate sentenced him to imprisonment. On appeal to the District Court this jail sentence was set aside and he was placed on a three-year good behaviour bond. At the time of the offences, April-May 1997, he and others had been made redundant by his law firm and his father had been diagnosed with mesothelioma. He was suffering depression and physical exhaustion from long hours as an instructor training Army special forces. He was a major in the Army Reserve but the convictions led to the end of that career. The offences involved undressing the girls and rubbing them on the back, buttocks and stomach and once touching one girl outside her vagina. The girls complained of two offences. The solicitor admitted the offences and sought psychiatric help. The District Court accepted the conduct was out of character, unlikely to recur and not the most serious examples of indecent assault and noted the support he had, including from the family of the girls' mother, whom he married in 2000. In that year, one stepdaughter made further allegations, which the solicitor denied. He was originally convicted but in 2001 his convictions were quashed on appeal.

These later charges were pending when the Law Society initiated proceedings by summons in the Court of Appeal in relation to the first set. The Law Society was unaware of them until the solicitor filed an affidavit in the proceedings in which he referred to the charges and his successful appeal. The Law Society then added a second charge of professional misconduct for failure to disclose.

The Court of Appeal found this charge to be made out, a finding upheld by the High Court because the solicitor's professional obligations required him to disclose facts material to the Law Society's decision on any action against him. However the Court overturned the Court of Appeal's finding that he was guilty of professional misconduct in relation to the original convictions. It held that the nature of the trust he breached was too remote from his professional practice and to characterise his personal misconduct as professional misconduct was erroneous. The Court also held that at the time of the Court of Appeal decision in March 2002 it could not be concluded that the solicitor was unfit to practise. The solicitor had not renewed his practising certificate for five years and the High Court held that this was as long as an appropriate suspension and no other sanction was required.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*