

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA

TITLE OF COURT : FULL BENCH

CITATION : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE -v- DIXON [2006] WASCA 27

CORAM : MALCOLM CJ
MURRAY J
STEYTLER J

HEARD : 15 DECEMBER 2005

DELIVERED : 15 DECEMBER 2005

PUBLISHED : 22 FEBRUARY 2006

FILE NO/S : LPD 3 of 2004

BETWEEN : LEGAL PRACTITIONERS COMPLAINTS
COMMITTEE
Appellant

AND

HAYDN WESLEY DIXON
Respondent

Catchwords:

Legal practitioners - Misconduct - Perjury by practitioner - Misconduct and
unfitness to practise warranting removal from Roll

Legislation:

Nil

Result:

Practitioner struck off the Roll

Category: B

Representation:

Counsel:

Applicant : Mr R J Davies QC & Ms C F M Coombs
Respondent : Mr J Gilmour QC

Solicitors:

Applicant : Minter Ellison
Respondent : In person

Case(s) referred to in judgment(s):

Re Maraj (A Legal Practitioner) (1995) 15 WAR 12

Case(s) also cited:

Quigley v Legal Practitioners Complaints Committee [2003] WASCA 228

Coe v NSW Bar Association [2000] NSWCA 13

Ziems v the Prothonotary of the Supreme Court of New South Wales (1957) 97
CLR 279

New South Wales Bar Association v Evatt (1968) 117 CLR 177

Re a Barrister and Solicitor (1979) 40 CLR 1

1 **JUDGMENT OF THE COURT:** This matter commenced as a report to the Full Court by the Legal Practitioners Disciplinary Tribunal made under the *Legal Practitioners Act 1893* (WA), s 29A(2)(a). The report was made in September 2003. It recommended that the respondent practitioner be struck off the roll of practitioners for established illegal and unprofessional conduct. The reasons of the Tribunal and its findings were incorporated in the report. At the same time, the Tribunal ordered that the practitioner, who was publicly identified by the Tribunal, be suspended from further practice pending the determination of this Court.

2 By the time the report came on for hearing before the Full Bench on 15 December 2005, the provisions of the *Legal Practice Act 2003* (WA) governed the matter procedurally, although the substantive law remained that provided under the *Legal Practitioners Act*, s 30, under which provision the report of the Disciplinary Tribunal is "conclusive as to all facts and findings therein mentioned or contained". This Court's power under that section is, having regard to the evidence provided by the report, to fine, suspend from practice or strike off the roll, the practitioner concerned. The Court has full power to make other remedial orders.

3 In *Re Maraj (A Legal Practitioner)* (1995) 15 WAR 12 at 25, Malcolm CJ, with whom Kennedy and Franklyn JJ agreed, said, after reviewing the decided authorities, that:

" ... the object of disciplinary proceedings is the protection of the public and the maintenance of proper standards in the legal profession, rather than punishment. It is clear from ... the authorities which have been repeatedly followed in this Court that when the question is whether a practitioner should be struck off the Roll the only question is whether the practitioner is a fit and proper person to remain a member of the legal profession."

4 There is, of course, a history providing the reasons why the matter did not come on for hearing at an earlier time, but the history is irrelevant for present purposes. The practitioner has not practised in this jurisdiction since the relevant determination of the Tribunal. He appeared by Senior Counsel who responsibly informed the Court that he was instructed that the making of the orders in terms of the motion before the Court was not opposed. Having reviewed the report of the Tribunal and the various supporting documents, this Court agreed. It therefore ordered that the name of the practitioner be struck off the roll, thereby finally removing his capacity to practice in this jurisdiction. These are our reasons for taking that course.

5 There were two related matters before the Disciplinary Tribunal. Both arose out of proceedings between the practitioner and his wife in the Family Court of WA. Early in 1992, Mrs Dixon commenced proceedings to obtain a property settlement and maintenance for herself and the four children of the marriage.

6 During the course of those proceedings, in certificates and a list of documents, the practitioner represented that he had given discovery of all documents relevant to his financial position. At all relevant times, however, in 1992, 1993 and 1997, the practitioner knew that there was money in accounts maintained at the Development Bank of Singapore in his name or in the name of the practitioner and his mother. There were actually two accounts which contained a total of about \$A60,000 at material times. The allegation was, of course, that the practitioner was guilty of unprofessional conduct in making those representations which were to his knowledge false, or recklessly as to their truth.

7 Further, the second matter referred to the Tribunal concerned knowingly false statements made in respect of the money in the accounts at the Development Bank of Singapore on a number of occasions between 11 November 1992 and 3 December 1997 when the practitioner swore falsely that he did not have any assets or income other than as disclosed in the affidavits, knowing as he did so that the affidavits failed to disclose the existence of the money to his credit, or to the credit of him and his mother, with the Development Bank of Singapore.

8 When the matter came to light in early 1998, the practitioner gave evidence before the Family Court admitting the non-disclosures, but he said that he did not believe he had any duty of disclosure because he had no beneficial interest in the money which he had given to his mother, although the accounts remained wholly or in part in his name. That was effectively his defence before the Tribunal, a defence which the Tribunal rejected. The evidence to which the Tribunal had regard included that of the practitioner's mother, who was able to say no more than that she had been told by her son that he had opened an account at the Bank and the money in it was for her use if she wished. She thought that if she had withdrawn money her son might have asked her what she needed it for. But in fact she had never sought access to the accounts.

9 The Tribunal concluded that at no time had there been a gift of any funds by the practitioner to his mother. On the other hand, the practitioner had himself been operating the accounts. The Tribunal concluded that the only possible explanation for his behaviour was that the practitioner

"deliberately chose to hide this money from disclosure to the Court" when he well knew of his obligation to disclose. The Tribunal considered that the practitioner's statement that he had nothing to disclose was clearly false and indeed deliberately false.

10 This was therefore a case of a practitioner who must have known that he had a duty to disclose his ownership of funds which would have a material impact upon the orders to be made by the Family Court in respect of the property settlement and maintenance. The evidence amply supported the conclusion of very serious unprofessional conduct in failing to make the necessary disclosure by deliberately concealing the true position from his wife, who was the applicant before the Family Court, and, more importantly, from the Court itself. Further, the practitioner was guilty of illegal conduct in the form of perjury committed by the deliberately false statements made in his affidavits. That was a form of perjury which related directly to the practitioner's duty as an officer of the Court and to the integrity of the proceedings before the Court.

11 In our opinion, the facts amply demonstrated the practitioner's unfitness to practice and demanded of the Court the response that he be struck off the roll of practitioners.