[2005] WASAT 210

JURISDICTION	**:**	STATE ADMINISTRATIVE TRIBUNAL
STREAM	**:**	VOCATIONAL REGULATION
ACT	**:**	LEGAL PRACTICE ACT 2003 (WA)
CITATION	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE and STEVENS [2005] WASAT 210
MEMBER	**:**	JUSTICE M L BARKER (PRESIDENT) MR D R PARRY (SENIOR MEMBER) MS D DEAN (MEMBER)
HEARD	**:**	4 AUGUST 2005
DELIVERED	**:**	17 AUGUST 2005
FILE NO/S	**:**	VR 7 of 2004
BETWEEN	**:**	LEGAL PRACTITIONERS COMPLAINTS COMMITTEE Applicant AND CLARENCE JAMES STEVENS Respondent

Catchwords:

Legal Practice - Legal practitioner struck off roll of practitioners in NSW - Application for practitioner's name to be struck off Roll of Practitioners in WA - Report to be transmitted to the Supreme Court (full bench) pursuant to s 204(6) of the Legal Practice Act 2003 (WA)

Legislation:

Legal Practice Act 2003 (WA), s 204, s 204(3), s 204(6), s 204(7)

State Administrative Tribunal Act 2004 (WA), s 167(4)
State Administrative Tribunal (Conferral of Jurisdiction) Act 2004 (WA), Div 72
Taxation Administration Act 1953 (Cth), s 8C(1)(a), 8C(1)(aa)

Result:

Report transmitted to the Supreme Court (full bench) pursuant to s 204(6) of the Legal Practice Act 2003 (WA)

Category: B

Representation:

Counsel:

Applicant	:	Mr B Goetze
Respondent	:	Self-represented

Solicitors:

Applicant	:	Minter Ellison
Respondent	:	Self-represented

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

New South Wales Bar Association v Stevens [2003] NSWCA 261

Case(s) also cited:

Nil

REASONS FOR DECISION OF THE TRIBUNAL:

Summary of Tribunal's decision

1 On 9 September 2002, Clarence James Stevens was struck off the roll of practitioners in the State of New South Wales by the New South Wales Court of Appeal.

2 The Legal Practitioners Complaints Committee in Western Australia, where Mr Stevens was also admitted to practice law at material times, applied for Mr Stevens' name also to be struck off the Roll of Practitioners in Western Australia.

3 The disciplinary proceedings brought by the Complaints Committee under the *Legal Practice Act 2003* (WA) were commenced in the Legal Practitioners Disciplinary Tribunal in 2004, but, on the commencement of the State Administrative Tribunal, were transferred to the Tribunal under the *State Administrative Tribunal Act 2004* (WA) s 167(4).

4 The Tribunal, on the application of the Complaints Committee and with the consent of the practitioner, noted that it would make a report to the Supreme Court (full bench) to the effect that the practitioner's name should be struck from the Roll of Practitioners in Western Australia.

5 The Tribunal also ordered that, pending the Supreme Court (full bench) dealing with the matter, the practitioner should be suspended from practice in Western Australia and pay costs of $250 in connection with the proceedings in the Tribunal.

Reference to the Tribunal

6 The *Legal Practice Act 2003* (the Act) currently regulates legal practice and legal practitioners in the State of Western Australia. Complaints and discipline concerning legal practitioners are governed by Part 12 of the Act. Section 162 of the Act establishes the Legal Practitioners Complaints Committee. By the Act s 164(1)(f), the functions of the Complaints Committee include the function, "if the Complaints Committee considers it appropriate to do so, and whether or not it has conducted an inquiry, to institute professional disciplinary proceedings against a legal practitioner before the State Administrative Tribunal".

7 Prior to 1 January 2005, when the State Administrative Tribunal came into operation, s 164(1)(f) gave the Complaints Committee the same function but provided for the institution of professional disciplinary

proceedings against a legal practitioner before the Legal Practitioners Disciplinary Tribunal.

8 Since 1 January 2005, pursuant to the terms of the *State Administrative Tribunal Act 2004* (WA) (SAT Act) and *State Administrative Tribunal (Conferral of Jurisdiction) Act 2004* (WA), the State Administrative Tribunal (the Tribunal) has replaced the Legal Practitioners Disciplinary Tribunal for the purpose of complaints and discipline under the Act. Under the SAT Act s 167(4), matters that were pending before the Disciplinary Tribunal as at 1 January 2005, have been transferred to the Tribunal.

9 By reference to the Disciplinary Tribunal dated 29 June 2004, the Complaints Committee allege:

> "That the practitioner, Clarence James Stevens, was guilty of unsatisfactory conduct by unprofessional conduct in that in or about September 2003 he was subject to an order that his name be removed from the New South Wales roll of practitioners upon a finding by the New South Wales Court of Appeal that he had been guilty of unprofessional misconduct."

10 The particulars of the allegation note that "the practitioner was admitted to the New South Wales Bar [on] 14 March 1975 [and] was appointed Queens Counsel for the State of New South Wales in November 1991. He was admitted in Western Australia on 2 September 1997".

11 The particulars state that "[u]ntil 22 May 1996 the practitioner did not lodge any Income Tax Returns for any of the financial years ending 30 June 1985 to 30 June 1995 [and that] until 12 June 2001 the practitioner did not lodge Income Tax Returns for the financial years ending 30 June 1999 or 30 June 2000".

12 The particulars further note that "[u]ntil 7 April 2002 the practitioner paid no income tax for the period from 1 July 1976 to 30 June 2000", and that "[o]n 11 July 2001 the practitioner was convicted in the New South Wales Local Court of two offences against the *Taxation Administration Act 1953* (Cth) s 8C(1)(a) for failing to lodge income tax returns for the years 1999 and 2000".

13 The particulars also note that "on 4 September 2002 the practitioner was convicted in the New South Wales Local Court of one offence against *Taxation Administration Act 1953* (Cth) s 8C(1)(aa) for failing to provide

information to the Australian Taxation Office after being served with a notice".

14 On 18 September 2003, the New South Wales Court of Appeal had regard to these factual matters and declared that the practitioner had been guilty of professional misconduct and ordered that the practitioner's name be removed from the roll of practitioners in New South Wales.

15 The Complaints Committee's reference to the Disciplinary Tribunal, which was transferred to the Tribunal, is annexed to these reasons as annexure A.

16 By reason of the operation of the State Administrative Tribunal legislation referred to, on 1 January 2005 the reference to the Disciplinary Tribunal was transferred to the Tribunal.

17 On 4 August 2005 the reference came on for hearing before the Tribunal.

The practitioner's answer

18 Before the Tribunal, the practitioner accepted that, pursuant to the *Legal Practice Act 2003* s 204, by reason of his being struck off the roll in New South Wales, it followed that his name should also be struck off the roll in Western Australia.

19 In those circumstances, the practitioner consented to orders being made that would have this result, including an order that:

> "The State Administrative Tribunal do make a finding that the practitioner was guilty of unsatisfactory conduct by unprofessional conduct in that in or around September 2003 he was subject to an order that his name be removed from the New South Wales roll of practitioners upon a finding by the New South Wales Court of Appeal that he had been guilty of professional misconduct."

20 The practitioner noted he has not practised law in Western Australia since he was struck off the roll of practitioners in New South Wales on 9 September 2003.

The Tribunal's powers where a legal practitioner is struck off in another jurisdiction

21 The *Legal Practice Act 2003* s 204(3) provides that:

22 "a legal practitioner admitted to practice in [Western Australia] who was, in any other jurisdiction, struck off the roll or suspended from practice -

(a) is not while so struck off or suspended entitled to engage in legal practice in this State, whether or not as an employee, unless the [Legal Practice] Board has consented to his or her doing so; and

(b) is liable upon the report of the State Administrative Tribunal to the Supreme Court (full bench) to be struck off the Roll of Practitioners, or suspended from practice, as the case may require."

23 By s 204(6), "[t]he Complaints Committee may refer any matter to which this section relates to the State Administrative Tribunal, which has jurisdiction to make a finding, and power to make and transmit to the Supreme Court (full bench) a report, with respect to the matter".

24 By s 204(7) of the Act, for the purposes of subsection (6), the provisions of Part 12 apply as though being struck off the roll or suspended from practice in another jurisdiction "constituted unsatisfactory conduct".

25 By reason of s 204(7) of the Act in particular, as counsel before the Complaints Committee explained and the practitioner acknowledged at the hearing in the Tribunal on 4 August 2005, the decision of the New South Wales Court of Appeal to strike the practitioner off the roll in that State is the act that constitutes unsatisfactory conduct for the purposes of the Act in Western Australia.

The question of "unsatisfactory conduct"

26 By reason then of the terms of *Legal Practice Act 2003* s 204(7), the fact that the practitioner was struck off the roll of practitioners in New South Wales constitutes unsatisfactory conduct for the purposes of the Act in this State.

27 The fact that the practitioner was struck off by the New South Wales Court of Appeal on 9 September 2003 is admitted by the practitioner.

28 Attached to these reasons, as annexure B, is a copy of the judgment of the New South Wales Court of Appeal dated 18 September 2003 in the matter of ***New South Wales Bar Association v Stevens*** [2003] NSWCA 261, in which is set out the finding that the practitioner was guilty of professional misconduct and should have his name struck from the roll of

practitioners in that State. The factual circumstances leading to that finding are also set out in the judgment.

29 The judgment of the New South Wales Court of Appeal in ***New South Wales Bar Association v Stevens*** *(supra)* is incorporated by reference into these reasons for decision and is relied upon by the Tribunal in these proceedings.

Findings by the Tribunal concerning unsatisfactory conduct

30 In these circumstances, and by the consent of the practitioner, the State Administrative Tribunal finds that the practitioner was guilty of unsatisfactory conduct by unprofessional conduct in that, in or about September 2003, he was subject to an order that his name be removed from the New South Wales roll of legal practitioners upon a finding by the New South Wales Court of Appeal that he had been guilty of professional misconduct.

Tribunal's view of the necessary disciplinary outcome

31 It follows that, because the practitioner's name has been struck off the roll of practitioners in New South Wales, it should also be struck off the Roll of Practitioners in Western Australia.

32 The Tribunal, therefore, makes and transmits to the Supreme Court (full bench) these reasons as a report for the purposes of *Legal Practice Act 2003* s 204(6) with respect to the matter.

33 The Tribunal considers there is no alternative but that the practitioner's name be struck off the Roll of Practitioners in Western Australia.

Conclusion

34 The Tribunal finds the practitioner guilty of unsatisfactory conduct by unprofessional conduct in that in or around September 2003 he was subject to an order that his name be removed from the New South Wales roll of legal practitioners upon a finding by the New South Wales Court of Appeal that he had been guilty of professional misconduct.

35 By virtue of the terms of the *Legal Practice Act 2003* s 204 the Tribunal considers it should make and transmit a report on the finding it has made to the Supreme Court (full bench) pursuant to s 204(6) to permit the Court to consider striking the practitioner’s name off the Roll of Practitioners.

36 These reasons constitute the making of the report on the finding of the Tribunal for the purposes of s 204(6) of the Act and they will be sent to the Chief Justice.

37 The Tribunal also considers that pending the determination of the report to the full bench of the Supreme Court the practitioner named be suspended from practice and that the practitioner named pay the Complaints Committee costs fixed in the sum of $250, both of which orders the practitioner has also consented to.

Findings and Orders

38 The Tribunal makes the following findings and orders, by consent:

(1) The State Administrative Tribunal finds that Clarence James Stevens (the practitioner) was guilty of unsatisfactory conduct by unprofessional conduct in that in or around September 2003 he was subject to an order that his name be removed from the New South Wales roll of practitioners upon a finding by the New South Wales Court of Appeal that he had been guilty of professional misconduct.

(2) The Tribunal makes and transmits a report on the finding it has made to the Supreme Court (full bench) which report, for the purposes of the *Legal Practice Act 2003* s 204(6), is constituted by these reasons for decision.

(3) Pending determination of the Supreme Court (full bench) in relation to the report transmitted to it by the Tribunal, the practitioner is suspended from practice.

(4) The practitioner pay the Legal Practitioners Complaints Committee's costs of and incidental to the hearing and determination in the Tribunal, fixed in the sum of $250.

(5) The decision and reasons of the Tribunal may be published.

I certify that this and the preceding [38] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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JUSTICE M L BARKER, PRESIDENT

Annexure A

IN THE LEGAL PRACTITIONERS
DISCIPLINARY TRIBUNAL

No. R22 of 2004

In the matter of the Legal Practice Act 2003

AND

In the matter of a Reference by the Legal Practitioners Complaints Committee concerning

CLARENCE JAMES STEVENS

a practitioner.

REFERENCE TO THE TRIBUNAL

Date of Filing:

Filed on behalf of the Legal Practitioners Complaints Committee

Prepared by: Law Complaints Officer

Address for Service:
2nd Floor
Colonial Building
55 St Georges Terrace
PERTH WA 6000

Tel: 9461 2299
Ref: kw/df/43802a.ref

Name of Practitioner: Mr C J Stevens
Address of Practitioner: 68 Carabella Street
KIRRIBILLI NSW 2061

REFERENCE

THAT the practitioner CLARENCE JAMES STEVENS was guilty of unsatisfactory conduct by unprofessional conduct in that in or around September 2003 he was subject to an order that his name be removed from the New South Wales roll of practitioners upon a finding by the New South Wales Court of Appeal that he had been guilty of professional misconduct.

PARTICULARS

1. The practitioner was admitted to the New South Wales Bar in 14 March 1975. He was appointed Queens Counsel for the State of New South Wales in November 1991. He was admitted in Western Australia on 2 September 1997.

2. Until 22 May 1996 the practitioner did not lodge any Income Tax Returns for any of the financial years ended 30 June 1985 to 30 June 1995.

3. Until 12 June 2001 the practitioner did not lodge Income Tax Returns for the financial years ending 30 June 1999 or 30 June 2000.

4. Until 7 April 2002 the practitioner paid no income tax for the period from 1 July 1976 to 30 June 2000.

5. On 11 July 2001 the practitioner was convicted in the New South Wales Local Court of 2 offences against Section 8C(1)(a) of the *Taxation Administration Act* 1953 (NSW) for failing to lodge Income Tax Returns for the years 1999 and 2000.

6. On 4 September 2002, the practitioner was convicted in the New South Wales Local Court of one offence against Section 8(C)(1)(aa) of the *Taxation Administration Act* 1953 (NSW) for failing to provide information to the Australian Taxation Office after being served with a notice.

7. On 18 September 2003 the Supreme Court of New South Wales Court of Appeal on the basis of the matter outlined at paragraphs 1-6 above:

(a) declared that the practitioner had been guilty of professional misconduct, and

(b) ordered that the practitioner be removed from the Roll of Practitioners.

Dated the 29th day of June 2004

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Law Complaints Officer

For Legal Practitioners
Complaints Committee

Annexure B

NEW SOUTH WALES BAR ASSOCIATION v STEVENS — BC200305457

SUPREME COURT OF NEW SOUTH WALES COURT OF APPEAL

MEAGHER, SHELLER AND IPP JJA

CA 41003/02

9 September 2003, 18 September 2003

Nsw Bar Association v Stevens [2003] NSWCA 261

60 Paragraphs

Legal Practitioner — Barristers — Removal from the Roll of Legal Practitioners — Professional misconduct — Fit and proper person — Failure to lodge tax returns — Where orders consented to and findings made

Legislation cited:

Taxation Administration Act 1953

Cases cited:

New South Wales Bar Association v Cummins (2001) 52 NSWLR 279

New South Wales Bar Association v Young [2003] NSWCA 228

A barrister failed to lodge tax returns and to pay income tax for close to 20 years. The Bar Association brought a summons seeking declarations that the barrister was not a fit and proper person to remain on the Roll of Legal Practitioners and was guilty of professional misconduct and an order that the barrister's name be removed from the Roll of Legal Practitioners. On the first day of the hearing, the barrister consented to the making of the declarations sought and an order removing his name from the Roll. Notwithstanding that consent, the Court considered it of particular significance that the Court should record its findings:

Held: (per Sheller JA, Meagher and Ipp JJA agreeing)

A history of default in paying tax and lodging tax returns, bespeaks a lack of integrity which the public has a right to expect in a barrister and is a failure of the barrister's legal and civic responsibilities. Such conduct is sufficient to justify a finding of professional misconduct and that the barrister is not a fit and proper person to remain on the Roll of Legal Practitioners: New South Wales Bar Association v Cummins (2001) 52 NSWLR 279; New South Wales Bar Association v Young [2003] NSWCA 228.

Meagher JA

[1] I agree with Sheller JA.

Sheller JA

[2] The opponent, Clarence James Stevens, was born on 4 March 1952 and admitted to the New South Wales Bar on 14 March 1975. He began practice as a barrister on 1 October 1977. On 20 November 1991 he was appointed Queen's Counsel for the State of New South Wales.

[3] Until 2 February 1996 the opponent did not lodge any income tax returns for any of the financial years ending 30 June 1977 up to and including 30 June 1984. Until 22 May 1996 the opponent did not lodge any income tax returns for any of the financial years ended 30 June 1985 up to and including 30 June 1995. Until 12 December 2001 the opponent did not lodge income tax returns for either of the financial years ending 30 June 1999 and 30 June 2000. Until 7 April 2002 the opponent paid no income tax for the period from 1 July 1976 to 30 June 2000. Since 7 April 2002 the opponent has made payments towards his taxation indebtedness accruing from 1 July 1976.

[4] By 13 September 2002 the opponent's balance of indebtedness, after taking account of penalties and interest and payments made by him to that date, was $1,676,222.98.

[5] On 29 October 2002 the New South Wales Bar Association filed a summons in this Court claiming:

1. A declaration that the opponent has been guilty of professional misconduct;

2. A declaration that the opponent is not a fit and proper person to remain on the roll of legal practitioners;

3. An order that the name of the opponent be, and hereby is, removed from the roll of legal practitioners;

4. An order that the opponent pay the costs of and incidental to these proceedings;

5. Further or other orders.

No particulars were filed but the claimant relied upon the opponent's failure to lodge income tax returns and failure to pay income tax over many years.

[6] In New South Wales Bar Association v Cummins (2001) 52 NSWLR 279 at 286 Spigelman CJ, with whose judgment Mason P and Handley JA agreed, referred to the key admission in the statement of agreed facts that for thirty-eight years Mr Cummins had not lodged any taxation returns relating to his professional practice, or for any other personal income. The Chief Justice said:

"This failure was an inexcusable pattern of illegal conduct in complete defiance of his civic responsibilities. Mr Cummins put no evidence before the Court which could explain, let alone excuse, this conduct. For almost four decades, Mr Cummins took advantage of the full range of public services made available by taxation, not least in the provision of the court system in which he earned his income. He left the burden of all this to his fellow citizens. Throughout the four decades he engaged in the rank hypocrisy of advocating that other people should perform their legal obligations, while systematically refusing to perform his own.

In the present case, unlike other cases, the barrister did not admit that his actions have jeopardised the reputation and standing of the legal profession. There is no doubt, however, that he has done so. The conduct of a barrister, particularly a barrister who has received the distinction of a commission as one of Her Majesty's counsel, who has behaved in such complete disregard of his legal and civic obligations, was necessarily such as to bring the entire legal profession into disrepute."

[7] In considering what is meant by the expression "professional misconduct" in this context, the Chief Justice said at 289:

"There is authority in favour of extending the terminology 'professional misconduct' to acts not occurring directly in the course of professional practice. That is not to say that any form of personal conduct may be regarded as professional misconduct. The authorities appear to me to suggest two kinds of relationships that justify applying the terminology in this broader way. First, acts may be sufficiently closely connected with actual practice, albeit not occurring in the course of such practice. Secondly, conduct outside the course of practice may manifest the presence or absence of qualities which

are incompatible with, or essential for, the conduct of practice. In this second case, the terminology of 'professional misconduct' overlaps with and, usually it is not necessary to distinguish it from, the terminology of 'good fame and character' or 'fit and proper person'."

[8] Turning to the case against Mr Cummins the Chief Justice said at 291:

"The preparation and filing of tax returns is closely related to the earning of income, including professional income. The link is 'sufficiently close' to justify a finding of professional misconduct on the basis of Mr Cummins' failure to lodge returns for thirty-eight years.

Similarly, and alternatively, the extent of Mr Cummins' failure to observe his legal obligations and civic responsibilities by such a systematic course of improper conduct over such a long period of time is of such gravity as to constitute professional misconduct, for the reasons I have mentioned above in relation to fitness.

...

As in this case of the declaration of unfitness, in my opinion, the maintenance of the confidence of the public in the legal profession makes it appropriate to formally declare that Mr Cummins' conduct was professional misconduct."

[9] The essential facts in New South Wales Bar Association v Young [2003] NSWCA 228 were that for many years the barrister had not filed returns or paid tax. Meagher JA, with whom Ipp JA agreed, said:

"9 ... Deliberately to ignore one's obligations in this manner bespeaks a lack of integrity, particularly if one is not ignorant of the consequence, and a lack of integrity justifies removal of Mr Young's name from the roll. This has been held in New South Wales Bar Association v Cummins (2001) 52 NSWLR 279 and in New South Wales Bar Association v Somosi [2001] NSWCA 285."

[10] After listing various subjective matters favourable to the barrister, his Honour continued:

"11 However, all these facts together do not derogate from the fact that non-filing of the tax returns is incompatible with that degree of integrity, which the public has the right to expect in a barrister."

[11] Ipp JA said:

"15 For a time I was swayed by the forceful submissions of Mr Brereton SC, who put the case for Mr Young with great eloquence and skill. But on re-reading New South Wales Bar Association v Cummins (2001) 52 NSWLR 279 and New South Wales Bar Association v Somosi [2001] NSWCA 285, I concluded that, by failing to file his income tax returns for so many years, Mr Young was, to his knowledge, concealing his income and thereby displaying a lack of integrity. The result of the case as proposed by Meagher JA is therefore inevitable."

[12] When the claimant's summons was called on for hearing on 9 September 2003 an affidavit of that date made by opponent was filed and read. In that affidavit the opponent deposed as follows:

"1. In relation to relief sought by the Claimant in the summons I state the following.

2. Since 10 May 2003 I had determined not to seek a renewal of my Practising Certificate for the 2003-2004, year or for a number more years, regardless of the outcome of these proceedings. So I had no difficulty in immediately giving instructions to senior counsel who appeared for me before Giles JA on 27 May 2003 to give an undertaking to the Court that I would not be seeking to renew my Practising Certificate prior to the determination of these proceedings.

3. I have always been conscious of the expectations on counsel in any proceedings and of the trust the Court reposes in counsel. I have never consciously sought to do anything which would bring the Bar into disrepute.

4. From September 2002, when I first received the Draft Bar Council report and was asked to comment upon it, I have found and continue to find the process of addressing my shortcomings and particularly the views of my peers, both humbling and a considerable mental burden.

5. I have continued to reflect on what I did and did not do, and what I ought to have done, as well as what has been said by the Court of Appeal in the cases of other counsel, most recently in New South Wales Bar Association v Young [2003] NSWCA 228.

6. It is very chastening to now feel I have not measured up to the standards expected of me. I sincerely apologize to the members of the Bar and to this Honourable Court that I have not measured up to the standards they were entitled to expect of me.

7. Accordingly, with the sincere desire to attempt to redress my inadequacies of conduct in my taxation affairs and possibly by so acknowledging it thereby to reduce any further damage I may have caused to the profession, I acknowledge I am not currently fit and proper to practise as a barrister, by reason of my failure to lodge tax returns during the period 1977 to 1995, and the late lodgement of my 1999 and 2000 returns.

8. Regardless of the decision of this Court, I am determined that I shall:

a) ensure my current taxation affairs are placed in a proper order;

b) ensure that my future taxation affairs are maintained in proper order;

c) deal with my Trustee in Bankruptcy in a way which should minimize any loss suffered by my creditors due to the bankruptcy;

d) continue to remain under the care of my treating psychiatrist as long as is necessary; and

(e) attempt to make up to my wife and family for the effect my prior conduct has had on them.

9. I do not oppose the relief sought in the Summons."

[13] Mr Brereton SC, counsel for the opponent, consented to the Court's making orders 1 - 4 in the summons.

[14] I am satisfied that the making of these orders was inevitable on the evidence of failure to lodge income tax returns over a period of about twenty years, with the consequence that the opponent paid no income tax during that period, while earning professionally what was agreed to have been a substantial income. However, as the Chief Justice pointed out in New South Wales Bar Association v Cummins at 285 in a case such as the present, where there is no substantive contest as to the ultimate order which the Court should make, it is of particular significance that the Court should record its findings. This may become relevant and will be available in the event the opponent applies to have his name restored to the roll of legal practitioners.

The opponent's affidavit of 22 May 2003

[15] The opponent's affidavit of 22 May 2003 was relied on by the opponent and taken as read. The opponent's history, career and practice at the Bar, described in the first parts of his affidavit, followed the pattern of most busy and successful barristers. Clearly he had a wide ranging practice which extended outside New South Wales to other States and Territories and occasionally overseas. It is significant that from about 1981 the opponent received briefs "on behalf of the Commonwealth, Ministers, Departments and officers of the Commonwealth". The opponent said that in some of his years at the Bar up to 50 per cent of his cases were either for or against the Commonwealth. This

confirms the obvious, that the opponent throughout the years that he failed to lodge income tax returns and failed to pay any income tax would have been well aware of his obligations to do so and the consequences of not doing so in terms both of illegality and defiance of civic responsibilities which the Chief Justice so eloquently describes.

[16] The opponent went on to describe the ways in which he was involved in the affairs of the Bar Association and particularly as Chair of the Education Committee from 1999 until 2002. Again, this is not atypical of many barristers. The claimant accepts that the opponent's active participation in the affairs of the Bar stands to his credit.

[17] Like many other barristers the opponent engaged in pro bono work and conducted cases for public interest bodies. He named pupils who came under his tutelage.

[18] In July 1984 the opponent was injured when he slipped on some stairs at a hotel swimming pool. He has suffered a degree of pain ever since and has had to use medication for pain relief from time to time.

[19] The opponent described investments he had made under the headings "The Drum Reconditioning Investment", "The Shredders Investment", "The Merglobe Investment" and "The Tea Trees Investment". In his oral submissions Mr Brereton referred to the opponent's fair share of commercial disaster when it came to commercial endeavours which he had sought to undertake. I do not think there is anything to be gained by reciting the details of these disasters which were spread over the years from early 1987 to late 1999. Interwoven with them was what counsel described as a fair share of personal tragedy suffered by the opponent and his wife, Thalia Ann Stevens, who also made an affidavit which the opponent relied on and to which I shall return.

[20] In short, Mrs Stevens' brother, a partner in one of the business ventures, became seriously ill and died on 17 October 1987 leaving four young children still at school and a widow whom the opponent supported financially, at least until April 1990. Early in the marriage the opponent had given support to another of Mrs Stevens' brothers, who was very seriously injured, his wife and family. A sister of Mrs Stevens was killed in a motor vehicle accident. Mrs Stevens described the opponent as very caring, compassionate and totally unselfish. After her sister's death, Mrs Stevens' mother was diagnosed with cancer and lived with the opponent and his wife for some time. Their two children, one born in February 1974 and one in May 1977, also suffered childhood health problems.

[21] In reciting his commercial history the opponent, under the heading "The Tea Tree Investment" said that in 1994 he was invited to be a director and investor in a trust which was to purchase a property upon which a tea tree plantation would be established. In early 1995 when the opponent was a director of Australian Tea Tree Management Ltd, a property was identified on the Atherton Tablelands. The opponent invested $200,000 which he borrowed from the National Australia Bank. In December 1996 a prospectus for a tea tree plantation was issued and the opponent invested a further $94,000. In October 1997 directors' fees were paid and the opponent received "$60,000 gross, from which tax was deducted." He applied the net income from those fees and other funds to invest in further units. In his affidavit he said:

"My investments were made both to show support for the project, and also to obtain a future stream of income, unrelated to my activities as a barrister, when the tea trees were harvested. I anticipated in due course being able to sell down my interest to The Oil Fields Group to discharge all my liability to the ATO."

[22] Having described the events of this particular venture thereafter the opponent said:

"94 I cannot now see how any funds will be returned to me in respect of the money invested, either from the original investments of the companies, or from the various 'fields of tea trees'. The eleven units of hardwood continue to be maintained by ITC Ltd, and will be harvestable from approximately 2013.

95 Dealing with the various Oil Fields Group problems also distracted me from resolving my tax problems. There was only so much I could focus on, problem-wise, without collapsing completely. The Oil fields Group investment was meant to solve my problems, but its problems caused me to become more depressed and less able to address anything involving me personally."

[23] In my opinion, the opponent's investment of well over $300,000, much of it borrowed, when the opponent I am satisfied was well aware that he was obliged to pay income tax for the previous nineteen years, demonstrates a very high level of financial and civic irresponsibility.

[24] Under the heading "My failure to lodge Tax Returns" the opponent said:

"97 I do not now recall precisely why I did not lodge returns for the years ending 30 June 1977 or 30 June 1978. there was certainly no conscious decision on my part that, having come to the Bar, I would cease to lodge tax returns."

[25] The opponent recited various sources of stress resulting from the personal tragedies to which I have adverted. He said:

"Also, I thought that I would probably be entitled to refunds of tax in respect of 1977 and 1978 because I was employed on PAYE basis until 30 September 1977, and had little taxable income over my first eight months at the Bar. Because I did not lodge a return for those years, no assessment for provisional tax issued."

[26] After he came to the Bar it seems the opponent maintained no systematic details of income or expenditure. He said that between 1977 and 1982 he was aware that his taxation affairs were not in order. The opponent deposed as follows:

"99 ... But by the early 1980s I was becoming more and more concerned that my affairs were not in order, and, by the mid 1980s, I had put some money aside, to use to meet my tax obligations when they were finally determined, in deposits with either the National Australia Bank or the Commonwealth Banking Corp. These were ultimately lost in one or other of my unsuccessful investments. I no longer have any documents available to corroborate this."

[27] Again, this, in my opinion, demonstrates both financial and civic irresponsibility.

[28] In mid-1983 another barrister recommended an accountant, Warwick Martin, of the firm Martin & Allum of Parramatta, to the opponent. In 1983 he attended their offices and met Mr Martin, whom he told "I've not lodged returns since 30 June 1976, and I want to get all of my affairs put in order." The affidavit continued:

"102 He told me what material would be required, and that I needed to make a number of changes to the way I maintained financial and practice records, so that, in the future, the necessary material could be more easily be [sic] sorted out and addressed. He told me: 'Our staff can do the bookkeeping and maintain it on our computer system each year. We will need all of the records, and we'll then return the primary records that don't relate to tax or deductions. It won't be necessary for you to keep any books, other than the primary documents; all that can be done by us'. I was happy to adopt that approach."

[29] I find it hard to extract what was intended by this short statement and who, if anybody, was to keep such a basic record for a barrister as a cash book. Nothing more exact appears in the following part of the affidavit. The opponent said he was initially impressed by Mr Martin and his practice. Mr Martin told him: "There's nothing especially unusual about your situation", which the opponent found a great relief. Mr Martin told him: "We will be able to sort it all out with the right people at the ATO [Australian Taxation Office]. What is required is for all the returns to be done and brought up-to-date and lodged all together." The opponent's mind was impressed with the idea that all the

returns would be completed and lodged together. As appeared in what follows, none was lodged until February 1996. This 'strategy', as it was described, I shall return to.

[30] The opponent remembered such incidents as Mr Martin saying he needed more material and removing a drawer from the opponent's desk and pouring the contents into a large plastic garbage bag which he took with him. He said that problems with Mr Martin began to appear from the late 1980s. In 1987 the opponent said he was invited by Mr Martin and Mr Allum to join the enterprise described as "The Shredders Investment" to which I have already adverted. The opponent said: "Interests associated with Don, Warwick and me were to hold 45 per cent of the company. We were each initially to put up $25,000 and I would gain a shareholding of between 15 per cent and 20 per cent upon my being able to effect a facility with NZI of either $750,000 or $1,000,000." Again to consider engaging in such a venture, (albeit that the opponent swears "I intended the investments to be successful, and thus not adversely to affect my capacity to meet my obligations, including those to the ATO"), when I am satisfied from his own evidence that the opponent knew and had known for some years that his taxation affairs were not in order, demonstrates a high degree of financial and civic irresponsibility.

[31] The opponent referred to the amnesty said to have been announced in mid-1988 by the ATO. The exact terms of this amnesty are not referred to in the affidavit. The opponent said that he received assurances from Mr Martin up until some time in the 1990s that he was covered by the amnesty and he felt that a huge weight had been lifted from him. The opponent received accounts from Martin & Allum which he paid and which Mr Brereton told us, for the period between July 1991 and May 1996 totalled $119,000. Nowhere is there any indication of the work done by Martin & Allum in return for these payments. The opponent said that in the 1990s tension developed between Mr Martin and him.

"I had never kept copies of what I gave to the accountants. I felt I was locked into them because they had so much, had put material on their computer systems, and had all of my records. In addition, I had paid them thousand of dollars in fees, and did not want the trouble or expense of starting from scratch with new accountants. I pressed him more regularly for an answer as to what was happening with the tax returns, at least each time I received a fee invoice, and often at closer intervals."

[32] The opponent said that he was not blunt enough about requiring delivery of completed work. In 1992 Mrs Stevens became involved in dealing with the accountants. The opponent said:

"Any reference to 'tax' or 'accountants' in our household had become a great source of aggravation and tension. Thalia was becoming very agitated, and said that she wanted to be on their doorstep to insist that the work be done and the returns submitted. I think I began to be overwhelmed by the problem, and to go into 'denial'."

[33] By this stage the opponent had still not received any documentation for submission to anyone and, as I read his affidavit, accepted that it now seems inconceivable that it could have gone on for so long. Meetings took place with Mr Allum and the opponent came to understand that the amount of tax payable up to 1993 was in the order of $500,000 which he said was then within his capacity to pay.

[34] Although returns were submitted for Mrs Stevens, little seems to have happened by late September or October 1994 when another meeting was held. At some stage in the 1994/1995 financial year, draft returns for some years were provided to the opponent.

[35] In 1995 Mr Allum said that he was retiring from practice and the opponent began dealing with a partner called Norbert Cornell. The opponent said that he raised concerns about the "strategy" with either Mr Allum or Mr Martin probably after he "appreciated" that any benefit under the amnesty was probably or inevitably lost. The opponent said they told him that their "strategy" remained the correct strategy and that penalties and interest should be significantly reduced because the opponent was doing everything

voluntarily. The strategy as events showed was to delay indefinitely the lodging of income tax returns for many years. I am satisfied that the acceptance by a barrister, with experience in taxation law, who in November 1991 became Queen's Counsel, that such a strategy was proper, appropriate or legal, amounted to serious professional misconduct. However, the claimant did not particularly rely upon this misconduct and it is unnecessary to say more about it.

[36] In his affidavit the opponent went on to describe discussions with accountants, the receipt of assessments and attempts to negotiate some arrangement or settlement of the tax debt. The opponent sought and obtained the assistance of legal practitioners and was given various estimates of the amount of tax due.

[37] By early 1997 the opponent had severed all ties with his former accountants and engaged another. He said that his tax returns for the financial years ended 1996, 1997 and 1998 were lodged on time. On 11 July 2001 the opponent was convicted in the Local Court of two offences against s8C(1) (a) of the Taxation Administration Act 1953 for failing to lodge income tax returns for the years 1999 and 2000. He was fined $1,500 and ordered to pay court costs of $133. He was further ordered to lodge the returns on or before 11 September 2001.

[38] On 4 September 2002 the opponent was convicted in the Local Court of one offence against s8C(1) (aa) of the Taxation Administration Act for failing to provide information to the ATO after being served with a notice. He was fined $550 and ordered to pay court costs of $98.90. He appealed to the District Court from this conviction and to date this appeal has not been heard.

[39] I do not propose to dwell upon the material the opponent has put forward to explain how these defaults, if they were defaults, occurred. Nor do I propose to dwell on the opponent's failure to notify the Bar Association of the conviction of 11 July 2001. The opponent said that he realised that his view that he should have done so was wrong and said:

"At the time, anything to do with taxation caused me gross and irrational anxiety. I was in a generally stressed state; I was not coping as well as I ought to have been with my circumstances; and I was probably inclined to minimise in my own mind the gravity of the outcome of the prosecution, and to see it in the least unfavourable light that I could."

[40] He did disclose the tax offences of 11 July 2001 in his application for a practising certificate dated 20 June 2002. The opponent dealt with the topic of disclosure in his practising certificate application in a paragraph under that heading. He was aware of New South Wales Bar Association v Cummins.

"I did not refer to my non-lodgement of returns during the period until 1994, because - at least to my mind - my position was radically different from that of Mr Cummins. As I then understood Cummins' case, the essence of it was that he had used bankruptcy to avoid having to pay his tax debt. In contrast, I had, voluntarily, taken steps to bring my affairs into order over the period since 1983, albeit, I accept, not sufficiently pro-active. He had not lodged returns for 38 years, nor had he initially obtained a tax file number. All my returns have been lodged. I had always had a tax file number and an ABN. I was not bankrupt. I did not intend, and had not intended, to flout my income tax obligations. I did not wish to have a judgment against me, let alone go bankrupt; and I was negotiating with the ATO to endeavour to find a way in which my liability could be satisfied. He only engaged accountants when contacted by an officer of the ATO. He then had them prepare returns but only for the preceding eight years. In other words, as I understood Cummins' case, he was said to have used bankruptcy to avoid paying his tax obligations; I was seeking to avoid bankruptcy and to pay my tax obligations."

[41] To comment upon this statement I set out the summary of New South Wales Bar Association v Cummins found in the headnote (52 NSWLR at 279-280). The Court gave its judgment on 31 August 2001. I have omitted the references to authority.

"Legal Practitioners - Barristers - Removal from Roll - Professional misconduct - Fit and proper person - Failure to lodge tax returns - Appropriateness of declarations - Where orders consented to and findings made.

Legal Practitioners - Misconduct, unfitness and discipline - Grounds for order - Failure to lodge tax returns for 38 years - Barrister - Systematic course of improper conduct - Declarations as to unfitness and professional misconduct made.

Legal Practitioners - Disciplinary proceedings - Power of court - Declaratory relief - When appropriate - Barrister - Failure to lodge tax returns for 38 years - Consent to removal from roll - Findings of unfitness and professional misconduct - Public interest served by making declarations.

A barrister failed to lodge a taxation return for thirty-eight years. The Bar Association brought proceedings seeking declarations that the barrister was not a fit and proper person to remain on the Roll of Legal Practitioners and was guilty of professional misconduct as well as an order that the barrister's name be removed from the Roll of Legal Practitioners. On the first day of the hearing, the barrister consented to an order removing his name from the Roll. Notwithstanding that consent, the Court proceeded to hear the matter in relation to the declarations.

Held: (1) Professional misconduct may include acts which do not occur in the ordinary course of practice but which are sufficiently closely connected to practice or which manifest the presence or absence of qualities which are incompatible with, or essential for, the conduct of practice.

(2) The preparation and filing of taxation returns is sufficiently closely connected with the practice of a barrister as to justify a finding of professional misconduct on the basis of failure to lodge taxation returns for thirty-eight years.

(3) The extent of the barrister's failure to observe his legal obligations and civic responsibilities by such a systematic course of improper conduct over such a long period of time was of such gravity that he must be regarded, at the present time, as being permanently unfit to practice and of being guilty of professional misconduct.

(4) In the circumstances, the maintenance of the confidence of the public in the legal profession made it appropriate for the Court to make a formal declaration that the barrister was not a fit and proper person and his conduct constituted professional misconduct."

[42] Neither the catch phrases nor the headnote makes any reference to Mr Cummins' bankruptcy. A reading of the text of the Chief Justice's reasons for judgment shows that the opponent's stated understanding that the essence of Cummins' case was that he had used bankruptcy to avoid having to pay his tax debt was without foundation. Quite simply it is wrong. It could not have been an understanding based on reading the judgment.

[43] The opponent said that he did not intend the disclosure made as part of the process of renewing his practising certificate to be false or misleading, nor did he intend to conceal the true facts from the claimant. Under the heading "My attitude to payment of tax" the opponent said:

"166 I accept that it is the obligation of every citizen, including me, to pay the appropriate taxes. From the moment when I first took steps to have my affairs put in order, I was expecting that my accountants would reach an agreement with the ATO which would determine how much was payable, and when it would be paid, and I intended to pay it. It was never my intention to avoid paying tax properly payable by me. I was always aware that delay in lodgement meant that interest and penalties would apply, except for the opportunity under the amnesty.

167 I became more and more anxious about the problem not being resolved, and I found it extremely difficult to cope with the tensions it caused. At the time, I just hoped that it would seen be sorted out without adverse repercussions. I recall saying to Warwick at some time, probably in 1990, something like 'There are no tax offences we have committed, are there?' He then said something like 'The ATO take the view that they first issue you with a final notice, and it is only then that you would need to worry. That is why everything has to be given to them at the same time.' I could have researched the matter myself, but long before that conversation my anxiety levels were clouding my objectivity. I also assumed that this was something the accountants needed to address regularly, and that they would know what they were talking about.

168 I have always tried to have some control in cases in which I was involved, particularly for the purposes of developing or maintaining an overall or ultimate strategy. While things may not go as you would like, at least you feel you have some element of control. I never felt I had that, either when I was trying to have my tax returns brought up to date, or when I was later dealing with the ATO. On one level I was extraordinarily relieved when I made initial contact with and had my early meetings with Warwick Martin. By the time I was incrementally developing misgivings about Warwick, I felt I was completely locked in and had no choice but to persevere with him. I initially viewed changeover to Don Allum, which was principally driven by Thalia, as a great solution. I wanted it to work out successfully, and in a way I did not want to have doubt about what Don was doing. I saw what he did at the time as a step towards an ultimate solution. Relatively speaking, my work was a small part of their practice. It was only in 1994 and 1995 when Don was asking us questions about things relevant to returns for the 1980s that Thalia and I became angrier, but that anger was directed principally to what had not been done by Warwick, for which substantial sums had already been paid.

169 From 1983, my efforts - albeit inadequate - were directed to putting my affairs in order so that I could meet my tax obligation. My intention was to meet it. It was never my intention to avoid paying what was properly due from me.

[44] I do not regard these paragraphs as providing any satisfactory explanation of the opponent's professional misconduct. It is hard to believe that a person shortly to become Queen's Counsel and with experience in taxation law could have been led to believe in 1990, that he had committed no tax offences when he had failed to lodge any income tax returns for a period of about thirteen years.

[45] The opponent said that in February 2002 Blake Dawson Waldron, who were then acting for him, tendered $825,000 to the ATO, initially upon terms which the ATO would not accept, but ultimately in April 2002 absolutely. Since then, in addition to his BAS/GST obligations and quarterly PAYG instalments, he has made the following payments to the ATO in reduction of his indebtedness:

"$35,000 on 20 June 2002

$1,000 on 26 September 2002

$5,000 on 28 October 2002

$50,000 on 6 December 2002

$37,300 on 19 December 2002

$50,000 on 6 March 2003

$100,000 on 6 April 2003

A total of $278,300.

[46] We were told from the Bar table that the amount now owing is about $1,000,000 of which about $600,000 is the primary tax and the balance penalties, interest and the like.
[47] I need not dwell upon what the opponent says about his property and his disposal of it. On receipt of a bankruptcy notice served on behalf of the ATO on 13 February 2003, the opponent made a proposal which the ATO rejected. Subsequently a creditor's petition was served. On 16 April 2003 the opponent became bankrupt on his own petition.
[48] The opponent described his reaction to the Bar Association's determination to cancel his practising certificate on 10 October 2002. In 1996 his treating general practitioner diagnosed him with depression but the opponent did not consent to treatment with anti-depressants until February 2000. In late 2002 he was referred to Associate Professor Roger Bartrop for further treatment. Professor Bartrop considerably increased his medication. The opponent said that if he had to do anything in relation to his own affairs it was as if he was "operating in a fog".
[49] There was tendered on the opponent's behalf a report by Professor Bartrop of 7 March 2003. The diagnoses were major depression, essential hypertension and past intervertebral disc injury. Professor Bartrop said:
"Thus I am impressed by Mr Stevens's stoicism in the face of the debilitating effects of his major depression: this has obviously sapped his emotional strength. It is remarkable that his obvious high intelligence and motivation to perform well for his clients, and to keep the high esteem of his peers in the Bar Association, has not resulted in any significant period away because of illness. Thus he continued, albeit with some difficulty, in his practice and in the maintenance of sustaining relationships in his personal sphere. He obviously struggled to maintain functioning in these domains without treatment before 1999. It was testimony to his knowledge and passion for the Law as a vocation, as well as his strength of character that Mr Stevens still performed successfully for so many of his clients.
There are many issues pertaining to his relationship with the Australian Taxation Office, which have a long history. It is quite conceivable that he could allow this situation to get into serious arrears, when not being able to use his cognitive powers to the full. As the situation became one needing quite considerable powers of attention, and needing the ability to master ever-expanding perimeters encompassing the facts over man years, it is entirely appropriate to attribute this to a chronic and relapsing illness such as major depression."
The professor opined that with proper treatment complete recovery could be expected.
[50] Also tendered was a report by Ralph J Schureck, Director of the Institute of Psychiatric Evaluation. Dr Schureck stated:
"Most people of normal intelligence make income returns because they accept the need for income tax to provide the services from which all benefit, are aware that taxes are legally enforceable and know that failure to declare income for the purposes of assessment will ultimately be discovered and attract very stringent penalties.
Many people, while rejecting the idea that they should pay tax, make returns and do so because they fear the consequences of noncompliance.
Some people, rejecting both the moral and legal necessity of compliance, avoid it by resort to various stratagems, with varying degrees of success.
Intensive examination of Mr Clarence Stevens fails to place him in any of these categories, and the inevitable question arises as to why this highly intelligent, successful and moral man should be in the situation in which he finds himself.
In my opinion, Mr Stevens' actions and, more importantly, failure to act are attributable initially to a personality disorder and, later, to frank psychiatric illness, as these are clinically defined."
[51] The opponent concluded his affidavit as follows:
"204 It is a matter of shame and despair to me that I have not been able to bring my affairs under control. Initially with the accountants and then with the ATO, I felt unable to make any significant progress, and ultimately I was felt in a state of helplessness, approaching panic. I was at least aware that I needed some objective advisers and representatives, and by involving legal representatives and new accountants, I thought that the ATO would understand I was genuine in offering them everything I had, and

more. But as with the representations made by Mike Aitken, Richard Gelski likewise said that he found that the ATO just would not negotiate. Even with the new professionals I had engaged, I continued to feel helpless and depressed. I did not want to succumb to bankruptcy, at any cost. The only alternative I could see to bankruptcy was that of speculative investments, which ultimately left me worse off.

205 If the opinion is ultimately formed, contrary to what I say, that I deliberately flouted my income tax obligations for twenty years, I totally accept it would outweigh all other considerations and would mean I am not a fit and proper person to retain a Practising Certificate, or to remain on the Roll of Practitioners. I accept that such conduct could be regarded as disgraceful or dishonourable by barristers of good repute and standing.

206 My own view is that, in the context of a series of family difficulties, I gave insufficient attention to my tax affairs in the early years. From the early 1980s I tried to remedy the position, but became too dependent on non-performing accountants. I readily accept that I ought to have taken more proactive and decisive action, sooner, concerning the accountants. At the same time, in the hope of diversifying my financial base, I embarked on a series of investment projects which, at the time, seemed very promising, but turned out to be close to ruinous. When they deteriorated, each occupied a substantial part of my time and attention in seeking to resolve the problems in a way which saw all creditors satisfied in priority to my own interests, but further diverted my attention from getting my taxation affairs in order.

207 I do not seek to excuse myself from all criticism, or to blame others for omissions that are ultimately mine personally, but I do believe the inadequacy of my accountants' performance is relevant - both in illustrating that I did not deliberately flout my taxation obligations, nor intend to avoid them, but always intended to bring my affairs into order and meet those obligations; and in forming the view, when I considered the terms of my disclosure, that the earlier history of non-lodgement of returns was not relevant to what I was required to disclose. I have tried, and I intend to keep trying, to meet all my obligations to others, of which the ATO is at the forefront.

208 I have done the best I can, in my professional practice and in my activities associated with the Bar, to honour and act in accordance with its ethics and traditions, which I have always held in the highest regard. The last thing I have ever wanted is to bring shame or dishonour to the legal profession or the Bar. It is a matter of great distress to me that, however unintentional it has been on my part, my shortcomings have obviously hurt the profession of which I have been so proud to be a member, and for that I wish to apologise to the Court and the Bar."

Mrs Stevens' affidavit of 24 June 2003

[52] In her affidavit of 24 June 2003 Mrs Stevens described in some detail the early years of the marriage and referred to incidents of family members' deaths and illnesses and the commitment of the opponent both at work and on the domestic front. The opponent "was always available to us when he was needed". To her observation the opponent attended to money management and finances only after the preparation and conduct of cases and meeting the enormous demands on the home front. The opponent gave freely of his time and expertise to help many people. Mrs Stevens described in detail their property dealings and finances and the tax issues and accountants they employed.

[53] In August 1987 they established a family trust. Her income, which came from her work as a teacher, was used to service borrowings and to acquire investments on behalf of the trust. The opponent contributed to the trust by paying rent to the trust which owned his Chambers, and fees for the provision of administrative services to him. The trust invested in land. Mrs Stevens described the Drum Reconditioning Investment as a debacle. In 1992 with "the disposal of the 'Drums' ", Mrs Stevens said that the tax issue was once again the focus of their attention and anxiety. This caused family friction, particularly in relation to Mr Martin and his fees. Mrs Stevens thought The Oil Fields Investment was a bad idea and said so. The opponent said: "I will never make enough

money from the law to pay the ATO and this will drag on forever." By about April 2001, the Oil Fields was heading for catastrophe. Mrs Stevens said:

"The tax situation was still bothering Clarrie, even though at this time the Oil Fields tended to override the tax question. The Oil Fields proved to be another disaster. It was like living through the Drum Reconditioners all over again. For a while it replaced tax as the major source of angst and distress in our lives."

[54] Mrs Stevens described the attempts that were made to pay the tax debt. In March 2003 when Mrs Stevens learnt that the ATO intended to proceed with bankruptcy proceedings against the opponent she was devastated.

"...everything that Clarrie and I had been working towards would become a waste of effort; with over $1.2million already paid to them, wouldn't they give us time to find the rest?"

[55] When it became obvious that bankruptcy was inevitable, Mrs Stevens decided to withdraw her offer of handing over all her remaining assets to the opponent to pay the ATO because it seemed pointless.

Further particulars

[56] The claimant was permitted to file further affidavit material said to be relevant to additional particulars of matters in support of the orders claimed. The Court permitted this material to be filed in Court together with further affidavit material from the opponent. The parties agreed that controversial matters in this further affidavit material filed by each side was not necessarily admitted by the other. The additional particulars charged the opponent with knowingly failing to declare, in his income tax returns, income which he had received during three separate years of income. We were not asked to decide whether these allegations were well founded and I do not do so. I have not read the affidavits filed by either side, said to be relevant to these charges, and propose to say no more about them.

Referees

[57] Affidavits by way of character references by four practising barristers were relied upon by the opponent. I have read them all. They speak in unqualified terms of the opponent's generosity in helping others and his participation in the activities of the New South Wales Bar Association. They also speak of his competence and capacity as a barrister. One in particular speaks of the profound effect on the opponent, of the claimant's taking action against him. The opponent is a person held in high regard by these deponents and no doubt by many others. Nothing has been put which detracts from the force of this evidence which I accept. However, as was pointed out by Meagher JA in Young's case such evidence is of small assistance when the Court is dealing with a history of default, such as the present, in the opponent's civic obligations to lodge income tax returns and pay taxation.

Conclusion

[58] On the material which has been put before the Court, the significant parts of which I have summarised or referred to in these reasons for judgment, the Court had, in my opinion, no choice but to make the orders it did. The claimant has established that by failing to lodge income tax returns and failing to pay income tax during the periods referred to the opponent has been guilty of professional misconduct and is not a fit and proper person to remain on the roll of legal practitioners. To his credit the opponent when the proceedings were called on for hearing did not oppose this course.

Declarations and orders

[59] The Court made the following declarations and orders:

1. A declaration that the opponent has been guilty of professional misconduct.

2. A declaration that the opponent is not a fit and proper person to remain on the Roll of Legal Practitioners.

3. An order that the name of the opponent be, and hereby is, removed from the Roll of Legal Practitioners.

4. An order that the opponent pay the costs of and incidental to these proceedings.

Ipp JA

[60] I agree with Sheller JA.

Order

1. A declaration that the opponent has been guilty of professional misconduct

2. A declaration that the opponent is not a fit and proper person to remain on the Roll of Legal Practitioners

3. An order that the name of the opponent be, and hereby is, removed from the Roll of Legal Practitioners

4. An order that the opponent pay the costs of and incidental to these proceedings.

Counsel for the claimant: P R Garling SC/C A Adamson
Solicitors for the claimant: Hicksons
Counsel for the opponent: P LeG Brereton SC/M K Meek
Solicitors for the opponent: Beazley Singleton

END OF JUDGMENT