

Cross-Examination as to Credit

The Bar Council recently had to deal with one of its members against whom a complaint was made in relation to a breach of Rule 52 concerning cross-examination as to credit.

That rule provides:

1. A barrister shall not ask questions in cross-examination which go only to credit and which attack the character of the witness unless he has reasonable grounds for believing that the imputation conveyed by the questions is well-founded or true and where the answers to such questions might materially affect the credibility of the witness.
2. For the purposes of this rule a barrister prima facie has reasonable grounds for believing that an imputation is well-founded or true if a solicitor instructs him that in the solicitor's opinion the imputation is well-founded or true but in all other cases where a person informs a barrister that the imputation is well-founded or true, the barrister shall make such enquiries as are practicable in the circumstances to satisfy himself that there are in fact reasonable grounds for believing that the imputation is well-founded or true.

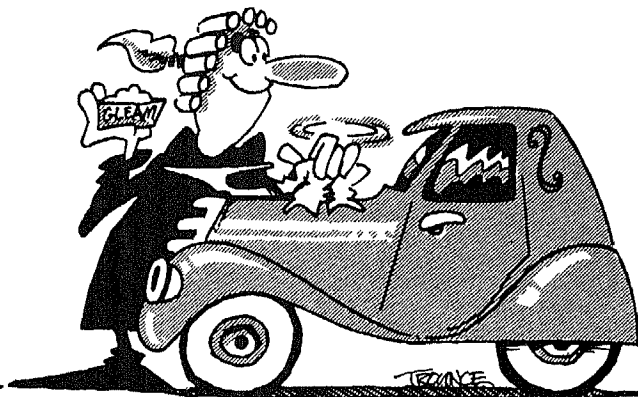
In the case in question a witness had previously been charged with false swearing. The charges had been dropped and had never come to trial. The barrister asked the witness whether charges had been laid against him and the witness replied advising that the charges had been withdrawn. The barrister then asked him whether the subject matter of the charges was false swearing.

The Council took the view that the barrister was in breach of the rule. His instructions extended merely to the fact that the charges had been laid, not as to the truth of the underlying allegation. The fact that charges have been laid is not a matter which, in the opinion of the Council, is capable in any circumstances of going to a witness' credit within the meaning of rule 52. If a person has been convicted, of course, that matter goes to his credit and similarly, if there are instructions as to the truth of the underlying allegation, those facts may go to his credit. The mere fact that a person has been charged, however, is not in the same category, a fortiori where the charges have been withdrawn.

On this occasion the Council took a lenient view and decided that a reprimand was the appropriate sanction. In future cases, however, now that this ruling has been published, a stricter view is likely to be taken of similar breaches of the rule. □

ENGINEERING - ENVIRONMENT
Campbell Steele, M.A.: Cert. Env. Impact Assess.;
C.Eng., F. Inst. Eng. Aust.,
Mem. Aust. Env. Inst., Aust. Acoust. Soc.
Expert Witness
17 Sutherland Crescent, Darling Point
Phone (02) 328.6510

Prestige Car Insurance for Barristers



Are you paying too much for insurance on a high value car with a low risk of damage?



Don't renew your current policy without talking to us. We have negotiated a facility which recognises that Barristers are a better-than-average risk.



CONTACT:
Steeves Lumley Pty. Ltd.
Insurance Brokers,
88 Walker Street,
North Sydney 2060.

Phone: 959 3344
Fax: 959 3494