

Practicing in NSW without a NSW practising certificate

Daniel Habashy reports on *Council of New South Wales Bar Association v Siggins* [2021] NSWCA 40

The Court of Appeal (Payne and McCallum JJA, Beech-Jones J) declared that the respondent was not a fit and proper person to remain on the NSW roll. This was because, over several years, the respondent repeatedly misrepresented to a regulatory authority in his applications for practising certificates the true position as to his intended principal place of practice.

Background

The respondent was admitted as a lawyer in NSW in 2007. He intended to practise as a barrister. To obtain a barrister's practising certificate in NSW, it was necessary as a first step to pass the NSW Bar exams.

In 2008 and 2009, the respondent sat, but did not pass, the NSW Bar exams. In 2008 and 2009, he obtained a practising certificate issued by the Law Society of Tasmania. Between 2010 and 2017, he obtained a practising certificate issued by the Bar Association of Queensland.

The Council of the NSW Bar Association alleged that, between late 2008 and mid-2017, the respondent's principal place of practice was NSW and that each time he applied for a practising certificate from another jurisdiction during that time, he made representations (12 in total) as to his current, or intended, principal place of practice that were false to his knowledge.

Representations in the period prior to June 2011

In relation to the allegations concerning the period from 2008 to mid-2011, the court was not satisfied, on the balance of probabilities and having regard to the seriousness of the allegations, that each representation made by the respondent as to his principal place of practice either was false and, if so, was false to the knowledge of the respondent (at [46], [49], [53], [62], [70], [186]).



Representations made in the period June 2011 to June 2017

For six years between June 2011 and June 2017, the respondent held a Queensland practising certificate. Each of his seven applications to the Bar Association of Queensland during that period included a representation by the respondent to the effect that Queensland would be his principal place of practice for the next 12 months.

The evidence and the respondent's admissions established that, by 30 June 2011, the respondent was residing in NSW, practised as a barrister from chambers in NSW and his wife worked in NSW at different chambers. A substantial volume of financial and phone records and other documents were directed to establishing that the respondent's principal place of practice was in NSW throughout the period from mid-2011 to mid-2017. The respondent had also admitted that NSW was his principal place of practice during that period but later sought to qualify that admission.

The court held that: (a) the evidence that NSW was in fact the respondent's principal place of practice for the whole period between mid-2011 and mid-2017 was overwhelming; (b) the respondent's residence in Sydney throughout the period from February 2011 to August 2017 was the result of a deliberate decision to settle in Sydney with his family on a permanent basis and to practise as a barrister in NSW from chambers in Sydney; and (c) the evidence to support an

inference that each representation between June 2011 and June 2017 was dishonest was overwhelming (at [92], [103]-[104], [112]).

Fitness

The court concluded that the respondent's conduct was incompatible with the characteristics of honesty and integrity required of a barrister and that he was unfit to practise as a barrister (at [191]).

The court emphasised that qualities of honesty, integrity and a preparedness to comply with the law are essential requirements for being a fit and proper person to be a legal practitioner. The court stated that applications for admission do not carry a lower standard of honesty, and observed that dishonest statements and omissions to an admission authority have been held to warrant removal from the roll (at [181]-[182]).

Factors that informed the court's assessment of the seriousness of the respondent's misrepresentations included that they were made dishonestly, multiple times, over a period of years and were accompanied by statutory declarations and made in the face of requests and reminders, in order to circumvent a legal requirement and for personal gain (at [184]-[190]).

Factors informing the court's assessment of fitness at the time of the hearing included that the respondent maintained his denial of wrongdoing, demonstrated no remorse or contrition, adopted an approach to the proceedings that necessitated extensive factual investigations (which included the need to obtain volumes of material from third parties to harness the body of evidence required to establish a circumstantial case of dishonesty when the true position was known to him at all times) and the absence of evidence of change of character or conduct (at [192]-[195]).

The court was satisfied that the respondent was not a fit and proper person to be a legal practitioner of the Supreme Court of NSW and ordered the removal of his name from the roll (at [196]-[197]).

Other issues

The Council also alleged, and the court found, that the respondent contravened certain provisions of the NSW legal profession legislation relating to a person's principal place of practice (s 45(6) of the *Legal Profession Act* (NSW) and cl 5 of sch 3 to the *Legal Profession Uniform Law* (NSW)) (at [118]).

In separate, Federal Court, proceedings cross-vested to the court and heard at

the same time, the respondent sought a declaration that that NSW legislation and similar legislation of Queensland and Tasmania was invalid. The Council did not allege any contravention of the Queensland or Tasmanian provisions.

As to the Queensland and Tasmanian provisions, the court concluded it did not need to determine the question as: (a) there was no 'matter' for the court to consider; and (b) even if there were a controversy between the respondent and Tasmania and

Queensland over the validity of the relevant provisions, it was unnecessary to determine the validity of the provisions to secure or protect the respondent's rights (at [130], [131], [134]).

As to the NSW provisions, the court considered the substance of, and rejected, the respondent's five arguments for their invalidity, which included allegations of invalidity by reason of ss 92 and 117 of the *Constitution* (at [135]-[178]). **BN**

