SUPREME COURT OF QUEENSLAND

CITATION:	*Legal Services Commissioner v Baker* [2005] QCA 482
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant/appellant/respondent) **v** **MICHAEL VINCENT BAKER** (respondent/respondent/applicant)
FILE NO/S:	Appeal No 9331 of 2005 Appeal No 9533 of 2005 SC No 9619 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal Application for Stay of Execution
ORIGINATING COURT:	Legal Practice Tribunal at Brisbane
DELIVERED ON:	23 December 2005
DELIVERED AT:	Brisbane
HEARING DATE:	9 December 2005
JUDGES:	McMurdo P, Helman and Chesterman JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDER:	**1. Appeal by the appellant/respondent is allowed;** **2. Orders of the Tribunal which would stay or delay the implementation of the order made by it on 13 October 2005, recommending the name of the respondent/ applicant be removed from the local roll, are set aside;** **3. The respondent/applicant's application for a stay is dismissed, with no order as to costs;** **4. Costs of this appeal are costs in the appeal instituted by the respondent/applicant against the Tribunal's recommendation.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – STAY OF PROCEEDINGS – GENERAL PRINCIPLES AS TO GRANT OR REFUSAL – where Legal Practice Tribunal found respondent/applicant guilty of five charges of professional misconduct and three charges of unprofessional conduct and recommended his name be removed from local roll – where Tribunal granted a stay of its order pending the respondent/applicant's appeal – whether Tribunal has power

to grant the stay – whether Tribunal erred in the exercise of its discretion to grant the stay

Legal Profession Act 1987 (NSW), s 37
Legal Profession Act 2004 (Qld), s 276, s 280, s 285, s 432
Supreme Court Act 1970 (NSW), s 23

Alexander v Cambridge Credit Corporation Ltd (Receivers Appointed) (1985) 2 NSWLR 685, cited
Bryant v Commonwealth Bank of Australia (1996) 70 ALJR 306, considered
Dwyer v National Companies and Securities Commission (1988) 15 NSWLR 285, considered
Ex parte Farren; Re Austin (1960) 77 WN (NSW) 743, cited
House v The King (1936) 55 CLR 499, cited
New South Wales Bar Association v Stevens [2003] NSWCA 95; (2003) 52 ATR 602, considered
Robb v The Law Society of the Australian Capital Territory, unreported, Federal Court, No ACT G34 of 1996, 21 June 1996, considered
Veghelyi v Council of the Law Society of New South Wales (1989) 17 NSWLR 669, considered

COUNSEL: A J MacSporran SC for the appellant/respondent
P J Davis SC, with E J Longbottom, for the respondent/applicant

SOLICITORS: Brian Bartley & Associates for the appellant/respondent
Russell & Company for the respondent/applicant

[1] **McMURDO P:** I agree with the orders proposed by Chesterman J and with his reasons.

[2] **HELMAN J:** I have had the advantage of reading the reasons prepared by Chesterman J. I agree with his Honour's conclusion concerning the Tribunal's power to stay, in the exercise of its discretion, the effect of a decision, and with his reasons for arriving at that conclusion. I also agree with his Honour that the Tribunal's discretion miscarried, that this Court should intervene to set aside its order, and should dismiss the applicant's application. The costs order should be as his Honour has suggested.

[3] **CHESTERMAN J:** On 5 November 2004 the Legal Services Commissioner ('LSC') applied, pursuant to section 276 of the *Legal Profession Act* 2004 (Qld) ('the Act'), to the Legal Practice Tribunal ('the Tribunal') for orders pursuant to section 280 that the respondent be dealt with on charges that he had been guilty of unsatisfactory professional conduct and/or professional misconduct. Section 280 applies if the Tribunal has heard an application brought by LSC and is satisfied that a practitioner has been guilty of unsatisfactory professional conduct or professional misconduct. In that event the Tribunal may make an order 'recommending that the name of the practitioner be removed from the local Roll'. By section 285(3) the Registrar must act in accordance with the recommendation and remove the practitioner's name from the roll.

[4] After a hearing, the Tribunal on 27 September 2005, published its findings in relation to each of eighteen charges which had been particularised in an attachment to the application. The respondent was found guilty of five charges of professional misconduct and three charges of unprofessional conduct. A summary of the findings is that:

> Charge 1 – The respondent dishonestly charged professional fees in circumstances in which no fees were properly chargeable.
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> Charge 2 – The respondent wrongfully charged professional fees and disbursements in circumstances in which no fees or disbursements in excess of the sum recovered were properly chargeable.
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> Charge 7 – The respondent failed to maintain reasonable standards of competence and diligence in that he permitted proceedings to be instituted and pursued against the complainant in Charge 2.
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> Charge 9 – The respondent wrongfully charged professional fees and disbursements in circumstances in which no fees or disbursements were properly chargeable.
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> Charge 10 – The respondent dishonestly rendered to the complainant in Charge 9 an account of his firm's professional fees which were not in accordance with the retainer agreement entered into with that client.
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> Charge 14 – The respondent failed to adequately supervise the conduct by solicitors employed by his firm in that he failed to adequately supervise the drafting and sending of a letter on 30 May 2001 to the Queensland Law Society.
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> Charges 17 and 18 – The respondent used crude, insulting and offensive language in communications with and in the presence of a client of his firm and in communications with and in the presence of employees of the firm.

[5] The Tribunal concluded that the respondent's conduct which constituted the basis for Charges 14, 17 and 18 amounted to unprofessional conduct. It concluded that the conduct which constituted the basis for Charges 1, 2, 7, 9 and 10 amounted to professional misconduct. In respect of Charges 1 and 10 the Tribunal found that the respondent's conduct was dishonest. The other charges against the respondent were either dismissed or withdrawn.

[6] On 13 October 2005 the Tribunal heard submissions as to the appropriate order to be made consequent upon its findings. LSC submitted that the respondent's name should be removed from the roll. Counsel for the respondent submitted that he should be permitted to practise but subject to a regime of strict conditions which would ensure that he would not re-offend but would adhere to the requisite professional standards of competence and honesty. The Tribunal made an order, pursuant to section 280(2)(a) of the Act by which it recommended that the respondent's name be removed from the roll.

[7] The Tribunal said:

> '… [T]he clients … the conduct of whose affairs … led to the charges were in poor financial circumstances, not sophisticated people experienced in legal matters and who were particularly reliant on the practitioner and the firm to act in their interest. The findings reflect that a number of them were treated shamefully and that their interests were either ignored or subordinated to the firm and hence the [respondent's] interest.
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> …
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> It is … impossible to ignore the cumulative effect of the findings and of the charges … made out.
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> The [respondent] has been slow to recognise that the conduct engaged in was unacceptable …
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> In the end, however, the position seems to me to be that the [respondent] determinedly persisted in the conduct reflected in the charges which were proven, ignored his professional obligations to clients who were in need of proper professional detachment and service and sought to justify, what I have described as the unjustifiable.
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> The findings reflect a serious failure in a number of respects to observe proper professional standards and of appreciation of the consequences for the client and for the legal profession in general and hence the public interest.
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> In my view of the evidence, a serious question remains as to whether the [respondent] has a genuine appreciation of the impropriety of his conduct and the consequences to which I have referred. … [I]n my view … the [respondent] is unfit to practice …'

[8] After the Tribunal had pronounced its order senior counsel for the respondent informed the Tribunal that his client intended to appeal and suggested that the Tribunal 'may prefer in the meantime to issue a stay'. Counsel conceded that 'the public benefit comes into play' and that the Tribunal would 'be concerned … that having found the unfitness to practice … the Tribunal would [not] wish to see somebody practising who's not fit'. It was submitted, however, that as a means of 'balancing … rights' the respondent should be allowed to practise on his undertaking to prosecute his appeal with expedition and subject to conditions which would ensure that the public would be protected if the respondent were allowed to practise. The conditions proposed were those which had been advanced as a suitable basis for the respondent's being allowed to remain in practise and not being struck off.

[9] Counsel for LSC opposed the stay on the basis that the Tribunal did not appear to have power to make such an order, but he did not argue against it on any other basis. The Tribunal was satisfied of its power and made an order staying the operation of its recommendation until the appeal is determined. It was subject to conditions that:

(a) The respondent should not personally interview or confer with clients other than in the company of a named, reputable solicitor, or another experienced solicitor.

(b) The respondent should engage the named solicitor to:

(i) make himself available to receive complaints about the respondent from his staff;

(ii) visit the respondent weekly to review and supervise his professional work;

(iii) report to LSC at least monthly about the respondent's conduct.

(c) The respondent should regularly consult a psychologist 'for behavioural and anger management'.

(d) The respondent should procure the psychologist to report to LSC at least monthly about his 'behaviour, conduct and health'.

Other conditions obliged the respondent to notify any employer, in the event he sought employment as a solicitor, of the terms of the order made by the Tribunal. He was also to inform his employees that they could complain about any offensive conduct to the named solicitor.

[10] LSC has appealed against that part of the Tribunal's order made on 13 October 2005 which stayed the recommendation that the respondent's name be removed from the roll. Two grounds are advanced: that the Tribunal lacked power to order that its recommendation be stayed and that the discretion to order the stay was wrongly exercised. The respondent, in an endeavour to meet LSC's first point, has himself applied to the Court of Appeal for an order from this Court that the Tribunal's recommendation be stayed pending the hearing of the appeal. The respondent has instituted an appeal against the recommendation that his name be removed from the roll.

[11] It is first necessary to consider whether the Tribunal had the power to stay the effect of its own recommendation. Section 432 of the Act provides that:

'(1) The tribunal may do all things necessary or convenient to be done for exercising its jurisdiction.'

[12] Section 23 of the *Supreme Court Act* 1970 (NSW) provides that that court should 'have all jurisdiction which may be necessary for the administration of justice in New South Wales'. The grant of power to the Tribunal is wider: it has such power as is 'necessary or convenient' for the exercise of its jurisdiction. In *Dwyer v National Companies and Securities Commission* (1988) 15 NSWLR 285 the director of a company was served with a notice the effect of which was to prevent him acting as a director of any company without the leave of the Supreme Court. The director appealed from the decision of the regulator which had served the notice and sought a stay until his appeal could be heard. McLelland J thought that the power to stay the notice was incidental to the existence of a right of appeal to the court and derived both from its inherent power and from section 23.

[13] His Honour referred with approval to what had been said by Macfarlan J in *Ex parte Farren; Re Austin* (1960) 77 WN (NSW) 743 at 744, that the power conferred by section 23 'extends to whatever may be necessary to prevent any injustice occurring with respect to matters which come within its cognisance'.

[14] In *Veghelyi v Council of the Law Society of New South Wales* (1989) 17 NSWLR 669 the appellant sought an order from a judge of the Supreme Court that he be allowed to practice as a solicitor pending his appeal from the Law Society's refusal to issue him with a practising certificate. Section 37(2) of the *Legal Profession Act* 1987 (NSW) provided that subject to any order of the Supreme Court an appeal did not stay the effect of a refusal to issue a certificate. Smart J, following *Dwyer*, held that section 23 of the *Supreme Court Act* was a sufficient grant of power to order a stay, or to make an affirmative order that the applicant be permitted to practice pending his appeal. His Honour thought:

> 'The basis of the jurisdiction to make an interlocutory order pending appeal depends upon the need to avoid injustice.' (At 676.)

[15] The (New South Wales) Court of Appeal said in *New South Wales Bar Association v Stevens* [2003] NSWCA 95, that Macfarlan J's statement in *Farren* was a good expression of 'the scope of the power to stay the effect of a decision subject to appeal …'. The court approved the decisions in *Dwyer* and *Veghelyi*.

[16] These cases are more than adequate authority for the opinion that section 432(1) of the Act confers a power on the Tribunal to make an order deferring the operation of a recommendation that a practitioner's name be removed from the roll. If there were a proper case for a stay of an order made by the Tribunal injustice would be done if the stay could not be granted. In such a case an order granting a stay would be necessary or convenient for the exercise of the Tribunal's jurisdiction.

[17] LSC's first challenge to the Tribunal's order fails. It is necessary to consider the second challenge, which is that to grant the stay was an improper exercise of the discretionary power to grant it. The considerations relevant to this challenge are the same as those which arise on the respondent's own application for a stay and it is convenient to deal together with the appeal and the application. Perhaps, in strictness, it is not necessary to separately consider the respondent's application which is predicated upon this Court having, and the Tribunal not having, power to grant a stay. If this Court were to conclude that the stay ought not to have been granted by the Tribunal it is inconceivable that it would itself grant a stay, at least where there had been no change in circumstances since the Tribunal's consideration of the question.

[18] The factors relevant to the grant of a stay, pending appeal, of an order made by a lawyer's disciplinary authority have been discussed in two relatively recent cases. The first is *Robb v The Law Society of the Australian Capital Territory*, unreported, Federal Court, No ACT G34 of 1996, 21 June 1996, a decision of Finn J of the Federal Court to whom an application was made for a stay after the Supreme Court of the Australian Capital Territory ordered that Mr Robb be suspended from practice for 18 months. An appeal lay to the Full Court of the Federal Court. Finn J said:

> 'It cannot be a matter of dispute that, in exercising its disciplinary function, it is the duty of the Supreme Court to ensure that the standards properly required of members of the profession "are fully

> maintained": Harvey v Law Society of New South Wales … It equally is not open to argument that the "object of disciplinary action against legal practitioners is not to exact retribution; it is to protect the public and the reputation of the profession': Ex p Attorney-General for the Commonwealth; Re a Barrister and Solicitor …; Re Guild … The stay motion … needs, then, to be considered in the light of the role of the Supreme Court in disciplinary proceedings and of the object of the sanction it imposed … in the present instance.'

[19] Finn J thought that the 'ordinary rule' which determines whether in any given case an order should be made staying the enforcement of a judgment pending appeal is that the applicant for the stay should demonstrate 'a reason or an appropriate case to warrant the exercise of discretion in his favour'. The authority for this formulation was said to be *Alexander v Cambridge Credit Corporation Ltd (Receivers Appointed)* (1985) 2 NSWLR 685 at 694.

[20] His Honour went on:

> 'In applying this, though, it must be remembered that this is not the usual instance of civil litigation in which the question is whether a reason is there to hold a successful party out of the benefit of a judgment … until the appeal is heard. Here Mr Robb's "reason" must be considered, not in the context of a judgment giving a benefit to a litigant, but rather as one designedly made to protect both the public and the reputation of the profession.
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> The Supreme Court … regarded Mr Robb's professional misconduct as serious. … [T]o allow Mr Robb a stay in the face of such findings would require the demonstration of a reason of some cogency …
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> There is a variety of factors of which account can or should properly be taken when considering a stay in such cases. Among these are (i) the seriousness of the misconduct found; (ii) the likely prejudice to public confidence both in the integrity of the disciplinary processes themselves and in the reputation of the profession if the practitioner is granted a stay; (iii) the means available to mitigate the prejudice alleged; and (iv) the expedition with which the appeal can be heard.'

[21] Significantly, in my opinion, Finn J thought that the prejudice to a practitioner against whom findings of serious misconduct have been made, in not being able to practise until an appeal is heard, is not a reason of sufficient cogency to justify a stay. His Honour thought that that prejudice could not outweigh the very distinct prejudice to the public interest which would be sustained if the stay was granted.

[22] The second case is *Stevens*. Mr Stevens was a barrister who for many years omitted to furnish tax returns to the Australian Tax Office. For that reason the Council of the New South Wales Bar Association resolved to (i) cancel his practising certificate from a nominated future date; and (ii) institute proceedings in the Supreme Court for an order that his name be removed from the Roll of Legal Practitioners. Mr Stevens commenced proceedings for an order setting aside the

Council's resolution. Some few hours before the resolution was to come into effect he obtained an order staying the effect of the resolution pending the hearing of his own proceedings. The Court of Appeal set the stay aside.

[23] Spiegelman CJ (with whom Meagher and Sheller JJA agreed) said (at [91]-[95] and [150]-[151]:

> 'The relevant authorities indicate that the protection of the public is a matter entitled to significant weight on an application for a stay once it appears that a professional person has acted improperly to a substantial degree.
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> In Bannister v Walton … a bench of three was convened in this Court to consider an application for a stay of an order removing a medical practitioner from the register, pending an appeal to this Court. … Mahoney JA … concluded … "… taking into account the findings of the Tribunal … this Court must look to the possibility that, if the stay be granted, a right of practice will be preserved during the period of the stay to a person of the character indicated by the Tribunal. This is not a matter which lightly should be granted".
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> Where … there are proceedings on foot to permanently remove a legal practitioner from the Roll … which … can be seen to have substantial prospects of success, this Court should be very slow to exercise its discretion in such a way as permits the practitioner to continue in practice pending the determination of such proceedings.
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> This Court must be anxious to protect public confidence in the legal profession. Such confidence is likely to be undermined if a practitioner whose right to practice is the subject of serious challenge is able to successfully call upon the Court to exercise a discretion in his … favour permitting him … to continue in practice pending the ultimate determination.'

[24] These last remarks carry even greater force in a case, such as this, in which there has actually been a hearing and the Tribunal has found that a practitioner is unfit to practice.

[25] The Chief Justice expressly approved the judgment of Finn J in *Robb*, and particularly his Honour's expression of the importance of upholding disciplinary sanctions against legal practitioners to protect the public interest and the reputation of the profession and the conclusion that, to allow a practitioner against whom findings of unfitness have been made to continue in practice, would constitute a 'very distinct prejudice' to the public interest.

[26] By way of reinforcing the significance of the public interest in the exercise of the discretion to grant a stay in such circumstances as these the Chief Justice referred to the judgment of Kirby J in *Bryant v Commonwealth Bank of Australia* (1996) 70 ALJR 306 at 309:

> 'In the exercise of the jurisdiction to provide a stay, it has often been emphasised that cases involving a stay of the operation of the … laws designed to protect the public (eg deregistration of a

> professional lawyer …) are in a class different from cases involving no more than the suspension of the operation of orders affecting two private litigants only.'

[27] The Chief Justice criticised the stay because the judge had emphasised the balance of convenience between the Council and Stevens, and considered the respective advantages and disadvantages each would suffer from the stay as though they were ordinary citizens involved in litigation. The judgment did not recognise the peculiar interests of the Council in upholding the public interest and protecting the reputation of the profession. These factors were said to be 'entitled to determinative weight in the exercise of the discretion to grant a stay.'

[28] The cases contain strong statements but I respectfully think they are right. This Court should follow them. In particular it should be accepted that an applicant for a stay of a recommendation that his name be removed from the roll of Legal Practitioners should show a cogent reason for the stay, and he will not do so merely by showing that he will be unable to practice his profession until his appeal is heard and allowed. Every practitioner who is suspended from practice or whose name is removed from the roll suffers that prejudice but it is clearly not right that a stay is, or should be, granted as a matter of course. Something more must be shown than 'prejudice' of this kind. The additional factors which would justify a stay must be such as outweigh the public interest in having unfit practitioners debarred from practice. That interest is to be afforded particular significance. This point was made in *Robb* and approved in *Stevens*. It poses a problem for the respondent because the ground he advances for the stay is what might be called 'the common one': his inability to practise pending the appeal. No other ground was identified and that one is, on the authorities, insufficient.

[29] The respondent argues that he has substantial prospects of succeeding on the appeal and of having at least some of the charges on which he was found guilty dismissed. Indeed he puts this at the forefront of his argument. Counsel for LSC concedes that the respondent has an arguable case on appeal. The concession was no doubt made advisedly and it is clearly inappropriate, as well as very difficult, to express any opinion on the merits of the appeal in this judgment. It should, however, be pointed out that the Tribunal made findings of fact and of credit which are usually difficult to overturn. In particular the evidence against the respondent was contained in affidavits from former clients. The deponents were not required for cross-examination and their evidence was not challenged. The respondent did give evidence and in some respects at least was found to have been dishonest. In these circumstances the fact that the respondent has an arguable case on appeal is of less weight than usual.

[30] It goes without saying that the demonstration of an arguable appeal is a condition precedent to obtaining a stay. No court or tribunal would consider staying the operation of an order where it is clear that there was no realistic prospect of a successful appeal. That is not to say that the existence of arguable grounds of appeal is a sufficiently cogent reason for granting a stay. Both *Robb* and *Stevens* stand as authority against that suggestion.

[31] It is instructive to consider the four factors which Finn J mentioned as being relevant to a decision whether to grant a stay. His Honour was careful to point out that they are not the only factors which may be taken into account, but I think it

right to say that those four factors should always be considered. The first is the seriousness of the misconduct found. Here it was very serious indeed, involving dishonesty in dealing with a client. The second is the likely prejudice to public confidence in the integrity of the disciplinary process and the reputation of the profession if the practitioner is granted a stay. The judgment in *Stevens* suggests that that prejudice is grave. The third factor is the means available to mitigate the prejudice. The respondent points to the conditions under which he is allowed to practise as alleviating the prejudice to public confidence. Those conditions make it very unlikely that the respondent would misbehave and to that extent the public is protected, but practising under those conditions does nothing to promote public confidence in the integrity of the disciplinary process which found the respondent unfit to practice, or the reputation of the profession. The fourth factor is the expedition with which the appeal can be heard. Hearing dates are available late in February or early in March 2006. If the appeal is successful the respondent will not have been prevented from practising for a protracted period.

[32] An analysis of these factors in this case does not show that the respondent has a cogent reason for the stay.

[33] There remain the points that the judgment appealed from was made in the exercise of a judicial discretion and that counsel for LSC did not oppose the grant of the stay apart from submitting there was no power to grant it.

[34] Appeals from discretionary judgments are discouraged and can only be allowed in defined circumstances:

> 'It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed … It may not appear how the … judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way that there has been a failure properly to exercise the discretion …'

Per Dixon, Evatt and McTiernan JJ in *House v The King* (1936) 55 CLR 499 at 505.

[35] The Tribunal gave no reasons for granting the stay so none of the errors described in *House*, which would justify the setting aside of a discretionary judgment, can be demonstrated. The absence of reasons may well be explicable by the fact that there was no reasoned opposition to the application for a stay. This is, however, in my opinion, a case where to grant the stay was unreasonable and an error of an appealable sort should be inferred. The point, simply put, is that a stay should not be granted without good reason and a practitioner's inability to practise pending an appeal against a finding of unfitness to practise is not by itself a good reason. A discretionary judgment which is unexplained does not have the same inviolability as one which is reasoned. One may more readily conclude that a result is unreasonable when it appears so and is not supported by reasons which demonstrate otherwise.

[36] It is of concern that the Tribunal was not referred to, and did not advert to, authorities, such as *Robb* and *Stevens*, which emphasise the paramountcy of maintaining public confidence in the profession and which show that courts should

not lightly grant a stay of a disciplinary sanction where a practitioner has been found unfit to practice. The Tribunal's attention was not drawn to the fact that some cogent reason for the stay must be shown. Indeed the respondent's counsel did not propose any reason in support of the stay but was content merely to submit that the rights of the parties should be balanced and that the public interest would be protected by the imposition of the conditions. Both *Stevens* and *Bryant* show that the question of whether a stay should be granted is not to be approached as it is in cases of litigation between private citizens, which lack the element of public interest. As I mentioned the conditions do nothing to preserve the reputation of the profession.

[37] The second point might be good if the contest were between two private citizens. LSC should have plainly told the Tribunal it opposed the stay and given reasons for doing so. However it represents the public interest and seeks to protect that interest and to uphold the reputation of the profession. Indeed it is obliged to protect those interests and preserve public confidence in the legal profession. Its failure to articulate its opposition to the stay is not therefore fatal to the appeal.

[38] I reach this conclusion also for the reason that the manner in which the stay was applied for, and granted, was unsatisfactory. LSC was given short notice of the application. No authorities were put before the Tribunal for its assistance in deciding whether a stay was appropriate. The matter was dealt with casually and the seriousness of granting a stay does not appear to have been appreciated by counsel who sought it, nor the Tribunal which was given no proper assistance.

[39] There is another matter of concern and which demonstrates that the grant of a stay was inappropriate. The conditions on which it was granted are strict. Indeed they are onerous. They prevent the respondent practising in the normal way. He may not consult with clients except in the company of other experienced solicitors. His work must be reviewed at frequent intervals by a nominated reputable solicitor. Any putative employer must be informed of the Tribunal's findings against the respondent. His staff must be informed that they can complain if he should become abusive or use foul language. He must undergo treatment to help regain his self-control. These conditions recognise that the respondent is not fit to practise and can be allowed to do so under strict control and supervision. It is the essence of professional practice that one can act independently because of demonstrated competence and honesty. The conditions imposed here are a negation of that essence.

[40] I would allow the appeal by LSC and set aside the orders of the Tribunal which would stay or delay the implementation of the order made by the Tribunal on 13 October 2005, recommending that the name of the practitioner, Michael Vincent Baker, be removed from the local roll. I would dismiss the respondent's application for a stay, with no order as to costs.

[41] The costs of the appeal by LSC should be made costs in the appeal instituted by the respondent against the Tribunal's recommendation. I would not order the respondent to pay the costs of LSC's appeal because it may well have been unnecessary had LSC opposed the stay in reasoned argument before the Tribunal.