SUPREME COURT OF QUEENSLAND

CITATION:	*Barristers' Board v Darveniza* [2000] QCA 253
PARTIES:	**BARRISTERS' BOARD** (applicant) **v** **PAUL MATTHEW DARVENIZA** (respondent)
FILE NO/S:	Appeal No 2107 of 2000
DIVISION:	Court of Appeal
PROCEEDING:	Miscellaneous Application – Civil
ORIGINATING COURT:	Court of Appeal
DELIVERED ON:	30 June 2000
DELIVERED AT:	Brisbane
HEARING DATES:	5 June 2000, 8 June 2000, 22 June 2000
JUDGES:	McMurdo P, Thomas JA, White J Separate reasons for judgment of each member of the Court, each concurring as to the orders made.
ORDER:	**That the respondent's name be removed from the Roll of Barristers and that the respondent pay the costs of the Barristers' Board of these proceedings to be assessed.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS MISCONDUCT, UNFITNESS AND DISCIPLINE – CRIMINAL OFFENCE PROFESSIONS AND TRADES – LAWYERS MISCONDUCT, UNFITNESS AND DISCIPLINE – MISLEADING COURT AND PERVERTING COURSE OF JUSTICE PROFESSIONS AND TRADES – LAWYERS MISCONDUCT, UNFITNESS AND DISCIPLINE – DISCIPLINARY ORDERS – STRIKING OFF AND ANCILLIARY ORDERS PROFESSIONS AND TRADES – LAWYERS – REMOVAL OF NAME FROM ROLL – whether respondent a fit and proper person to remain a barrister – where respondent convicted of two counts of supplying a dangerous drug on basis of extended definition of "supply" in s 4 *Drugs*

Misuse Act 1986 – where respondent subsequently obtained certificate to practice as a barrister in New South Wales – failure to disclose prior drug convictions in statutory declaration – where respondent's affidavit denying further dealings with persons involved in offences refuted by unchallenged evidence of undercover police officer alleging that respondent offered further drug supplies and money-laundering services – deliberate attempt to present untrue picture to court – conduct revealing untoward opportunism and lack of respect for the law – disbarment only appropriate order.

Drugs Misuse Act 1986 s 4, s 43D

Clyne v The New South Wales Bar Association (1960) 104 CLR 186, considered
New South Wales Bar Association v Evatt (1968) 117 CLR 177, considered
New South Wales Bar Association v Hamman NSWCA No 404 of 1999, 29 October 1999, considered
In Re A Practitioner (1984) 36 SASR 590, considered
Queensland Law Society Incorporated v Smith [2000] QCA 109; CA No 1052 of 2000, 4 April 2000, considered
In Re Davis (1947) 75 CLR 409, considered
Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279, considered

COUNSEL: S L Doyle SC with D J Campbell for the applicant
N J Macgroarty for the respondent
J S Douglas QC with R P Devlin for the Bar Association of Queensland

SOLICITORS: Hemming & Hart for the applicant
Price & Roobottom for the respondent
Tutt & Quinlan for the Bar Association of Queensland

[1] **McMURDO P:** I have read the reasons for judgment of Thomas JA. I agree with his Honour's reasons and proposed orders.

[2] **THOMAS JA:** This is an application for removal of Mr Darveniza's name from the Roll of Barristers. The applicant is the Barristers' Board of Queensland. The Bar Association of Queensland, on its own application, was also joined as a party to the proceedings on the footing that it would not seek costs and that no other party would seek costs against it.

[3] The respondent is 39 years of age. He was admitted to practice as a barrister in Queensland on 10 April 1995. On 7 October 1998 he was convicted by a magistrate after summary trial upon two offences of supplying a dangerous drug. He was fined $1,000 on each offence with a further order that no conviction be

recorded. The stipendiary magistrate took into account what she described as "the devastating effects that you have already experienced in your professional life".

[4] The charges were based on the extended definition of "supply" in the *Drugs Misuse Act*[1], and although they revealed reprehensible conduct they were not particularly serious examples of the offence. The present application was initially brought before this court on the basis of these convictions and upon further allegedly improper conduct after these convictions in his obtaining a certificate for practice as a barrister within New South Wales.

[5] After final submissions the respondent sought and was granted leave to file a further affidavit. This was apparently prompted by a concern mentioned by a member of the court as to the lack of any positive material from the respondent indicating his cessation of the conduct or lifestyle that the evidence suggested he was following in January 1997. The affidavit filed by the respondent on its face allayed all such concerns. He maintained his denial of ever using illegal drugs of any kind. He admitted that he had been an attender of nightclubs and other licensed premises, as he had found this to be helpful to him in the development of his legal practice. Acknowledging that the second offence occurred on 26 January 1997, he asserted:

> "In early March, 1997 I travelled to Melbourne for the purposes of assisting a friend in the starting of his business in Melbourne. I remained mainly in Melbourne until the early part of August, 1997. I was arrested in September, 1997. After I had returned from Melbourne I did not continue with my previous practice of attending at nightclubs and accordingly I no longer involved myself socially with people who attended at such places.
>
> The reason for my ceasing contact with the three persons alleged to have been involved in the offences was that I had decided that I no longer needed to involve myself in going to nightclubs or to socialising with people who frequented such places.
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> Bradley Lund, Daniel Johns and even the undercover police officer Jeffrey Alan Spencer all became known to me through my attendance at licensed premises. I had no contact with these people subsequent to March 1997."

[6] In reply the Bar Association filed an affidavit by Spencer (the undercover police officer) refuting those allegations. With tapes to support his evidence he said that his association with the respondent continued until 17 July 1997, giving particularised accounts of eight meetings with the respondent over that period in circumstances highly discreditable to the respondent. During that time Spencer posed as and was plainly taken by the respondent to be a drug dealer. In the course of their meetings the respondent offered money-laundering services to Spencer. He also attempted to promote sales of ephedrine (a controlled substance) to Spencer and actually sold Spencer 300 tablets for $1,250. His conversations with Spencer will be mentioned in more detail later.

[7] When the matter was called on again counsel for the respondent did not seek to cross-examine Spencer or to challenge the material in his affidavit.

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1 *Drugs Misuse Act* 1986, s 4.

[8] It would seem then that in addition to the particulars upon which the case was originally brought, the respondent has been shown to have lied to the Court in endeavouring to present himself as a reformed character from very soon after the second conviction, and that serious reflections on his character flow from the nature of his dealings and attempted dealings with Mr Spencer whom he believed to be a drug dealer. The worst sting would seem to lie in the tail of this case.

[9] It will be convenient to set out the facts under four headings – conviction of two relatively minor drug offences, conduct in obtaining a practicing certificate in New South Wales, his untruthful affidavit, and his conduct with a putative drug dealer between February and July 1997.

Two drug offences

[10] The offences of which the respondent was convicted were:

(a) That on the 27th day of December 1996 he did unlawfully supply a dangerous drug namely methylamphetamine to another namely Geoffrey Spencer;

(b) That on the 26th day of January 1997 at the Gold Coast in the State of Queensland he did unlawfully supply a dangerous drug namely methyl dioxide methylamphetamine to another Geoffrey Spencer.

[11] The drug in the first offence is commonly described as "speed" and that in the second offence as "ecstasy".

[12] The first offence occurred at the respondent's unit on 27 December 1996. The police undercover agent (Spencer) went to the respondent's unit at about 5 pm. A number of persons were present and music was playing. Spencer was having a few drinks in the downstairs area when the respondent told him that the boys "were having a line of speed" and asked him if he wanted one. They went upstairs into the respondent's bedroom where Lund and Johns were already present. The respondent went to his cupboard, produced a bag with powder in it and handed it to Johns who tipped some of it onto a ledge, used a piece of paper to scrape it into a line about 30 centimetres long, and commenced to snort the line with a rolled up one hundred dollar note. This was done in the presence of the respondent who was about six feet away. Johns then said, "Who's having some?". The respondent replied, "Jay's having some" (referring to Spencer). Spencer declined, giving an excuse for so doing. The respondent then took the hundred dollar note from Johns, held it to his own nose and snorted a further portion of the remaining powder. Spencer and Lund left the room for a time and then returned to find Johns snorting some more of the powder with the same people present.

[13] The second offence occurred at a nightclub a little after 11 pm on 26 January 1997. Spencer asked the respondent "Do you know where I can get some E's?". This was a reference to ecstasy tablets. The respondent replied, "I'll ask Dan for you". He then shook Johns' shoulder asking him whether he could get Jay any E's. The respondent, having spoken further with Johns, returned to Spencer stating, "Dan's going to find out for you". Johns returned a few minutes later saying, "There's nobody about at the moment, but if you still want them in an hour, I should be able to get some for you". Some time later Johns asked him if he still wanted some E's. The respondent was present. Mr Spencer said he did, and asked the price. He was

told "60" and a short time later Johns and Spencer walked to the bar. Eventually Spencer paid Johns $240 for four tablets. Having obtained the tablets Spencer told the respondent he was going to drop them off to mates across the road. He then delivered them into police custody. They were analysed and found to be methyl dioxide methylamphetimine.

[14] A tape recording was produced which assisted the magistrate in accepting the evidence of Spencer, despite contrary evidence from the respondent. Obviously there was no actual sale by the respondent of the commodities on either occasion and there is no suggestion that he personally supplied anything on the second occasion. He was convicted because of the extended definition of "supply" in section 4 of the *Drugs Misuse Act* 1986. The relevant definition includes doing or offering to do any act preparatory to the giving or supplying of a prohibited drug. The drugs in question were second schedule drugs, the supply of which carries a maximum penalty of imprisonment for 15 years. However, if proceedings are taken summarily (as they were here) the maximum penalty is two years imprisonment.

[15] In the case presented to this court on this particular, counsel for the Board and for the Association relied only on conduct accepted by the magistrate as constituting the offences in question. In particular, they did not place any reliance upon other conduct described in the evidence including the respondent's own ingestion of the drug on the first occasion. There is no general requirement that such a limited approach be taken. Indeed in proceedings of the present kind any evidence of discreditable conduct could be received whether or not it was the subject of a conviction. However, for reasons relating to non-service of the transcript of proceedings upon the respondent in time for his due consideration and response, in relation to misconduct concerning the incidents of 27 December 1996 and 26 January 1997 counsel were content for the court to limit its scrutiny of this aspect of the respondent's conduct to the essential facts upon which the convictions were based.

Conduct in obtaining practising certificate in New South Wales

[16] Counsel for the Board also referred to the respondent's conduct in obtaining a Certificate of Admission in New South Wales in the latter part of 1999, which he submitted was improper.

[17] In October 1999 the respondent made an application that in due course came to the secretary of the Bar Association of Queensland for a certificate of fitness for his admission as a barrister in New South Wales. Surprisingly, he was given a clean certificate in the form of a letter stating that according to the Association's records no complaints had been made about the respondent, no order had been made directing his suspension from practice, no proceedings had been instituted to strike his name from the Roll of Barristers, and that the Association knew of no facts concerning him which should be disclosed to the Bar Association or to the court on the hearing of his application for admission in New South Wales.

[18] That letter was erroneous because there had been a complaint to the Association on another matter which had not been finally resolved, and the Association (through correspondence to its president) knew at least by October 1998 that the respondent had been convicted of the relevant offences. The Association was notified that the

respondent was appealing the convictions and it agreed to defer further consideration of the matter until determination of the appeal. It requested the respondent to keep it fully informed of developments with the appeal. He apparently did not do so when the appeal was dismissed. The convictions were material facts that should have been disclosed to the Bar Association of New South Wales. There would seem to have been some inadequacy in the Association's system of maintaining an electronic complaints register. In the event the relevant letter was apparently obtained without deception by the respondent. He should however have known that the letter was, to say the least, a windfall with a tendency to mislead the New South Wales authorities. He proceeded with his application. More importantly, he made a statutory declaration in a form addressed to the NSW Bar Association solemnly and sincerely declaring the information and particulars that he was giving were "true in substance and in fact". One of the questions on the form was "Are you aware of any facts or circumstances which might give rise to a complaint or disciplinary proceedings against you or which might influence or affect your good fame and character or your fitness to remain a legal practitioner? … If yes, attach full details". To this he answered "No". In due course he obtained a certificate for practice in New South Wales on 17 October 1999.

Untruthful affidavit

[19] The affidavit belatedly filed on behalf of the respondent was self-serving and designed to give to the court a picture of disinterest in drugs and of cessation of his limited association with those with whom he had been involved in relation to his offences after his return to Melbourne in March 1997. His affidavit cannot be explained as a mere error in relation to dates. It was a deliberate attempt to present an untrue picture to the court.

Conduct with Spencer February to July 1997

[20] On 1 February 1997, six days after committing the second offence the respondent spoke with Spencer, telling him that he knew that he was a dealer and that he should be careful because sooner or later he would get caught. The conversation was not otherwise notable.

[21] A number of meetings occurred between the two men on 17 June 1997. They had dinner together at the Marriott Hotel in the course of which the respondent asked Spencer if he knew anyone who wanted some ephedrine. The respondent said he had a specialist friend who could write prescriptions. The prescriptions take a few days to arrive. The tablets would be $5 each. They would come in packets of 100. He would "do" 300 for Spencer for $1,250.

[22] Spencer confirmed his interest later that night upon which the respondent told him that he was supplying one other person with ephedrine for the same price. Ephedrine is a schedule 6 substance, that is to say a "controlled substance" under the *Drugs Misuse Act* which may be sold only in conjunction with the keeping of a prescribed register and reporting such sales to the authorities[2].

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2 *Drugs Misuse Act* s 43D.

[23] The following day the respondent asked Spencer to come over to his office so they could talk. Spencer said he would take 300 ephedrine tablets and was told that $100 was needed "to secure it". He accepted $100 as a deposit. The respondent told Spencer that he used one ephedrine tablet himself per day. He told Spencer that it was an offence under the *Poisons Act* and that he was prepared to take risks with simple offences because he trusted Spencer.

[24] At this point the respondent volunteered to Spencer that he could launder money for him in two ways. One would be by an Internet investment with people in Melbourne, and the other through the respondent taking a commission and returning the money to Spencer in about 10 days. He explained that this would make Spencer's money clean so that both police and the taxation department could not touch the money and it would be safe for Spencer to use. The respondent indicated his willingness to launder Spencer's money, telling him that he knew that Spencer's money was from drugs and that he understood what he was getting into with Spencer.

[25] On the following day the respondent again called Spencer and arranged a meeting. He told Spencer that he had the scripts and had run around chemists but he would not be able to pick them up until tomorrow. He would only be able to do 300 a month. Spencer then asked him what would be the charge for laundering $10,000. The respondent replied that it would cost $550; that he would not be putting it through on the books; he would put it through as one transaction of $8,000 and another of $2,000 so it could not be detected. It would take about 10 days for the money to be turned around, and he (the respondent) would have to be made a signatory on the account that would be used.

[26] The respondent then drove Spencer to a "Versace" store where he told Spencer to buy him two pairs of jeans and take the cost off the payment for the ephedrine. This was done. Later the two men met and after careful arrangements in that behalf the respondent was handed a further $1,000 through the window of his car. The respondent delivered three bottles of tablets in his car the following day, telling Spencer that next time he could get 600 pills for $2,500. The respondent again raised the question of "overseas cleaning" and was told by Spencer that he had some money coming in in a week or so and might do something then.

[27] Some days later (25 June 1997) the two men and a third person described as a male solicitor went to a coffee club. Spencer told the respondent that the ephedrine was a bit expensive and that he could get 25 milligram tablets "through the gym" at $100 for 100 tablets. The respondent told him that his (the respondent's) tablets were 30 milligrams, that he was going to Melbourne that Friday, that he would be getting 600 tablets and needed to know if Spencer wanted any. Spencer said he was not sure because of the price. The respondent then asked him for some ephedrine tablets and was told by Spencer that he did not have any on him at the moment.

[28] On the following day (Thursday, 26 June 1997) the respondent called Spencer "to sort out things" before he went to Melbourne the following day. Spencer told him that he could not see anything going ahead (presumably on buying ephedrine) but that he would still want the respondent to clean some money for him. The respondent replied that that would not be a problem but he still wanted to see Spencer that evening. When they met later by arrangement the respondent pressed

Spencer to order some ephedrine tablets. Spencer repeated that he could get them cheaper and that they were not really his scene. The respondent then became angry, telling Spencer that this was his chance to get 600. Spencer however indicated that he did not want any, but was still interested in cleaning some money. It was arranged that the respondent would call him when he returned from Melbourne the following week.

[29] Finally on 17 July the respondent again contacted Spencer and they met by arrangement. The respondent asked Spencer how business was, and was told that it was very quiet but that there were two or three kilos of coke (cocaine) coming in next week. The respondent told him he would advise him not to be involved in it. They then continued general conversation including conversations about the Internet and business ventures involving it.

Principles in striking-off applications

[30] The primary relief sought by the Board is that the respondent be struck off. This court's jurisdiction to discipline, if necessary by striking off, legal practitioners, whether barristers or solicitors, is well recognised. It was recently discussed in *Queensland Law Society Incorporated v Smith*[3]. The power is exercised by the court in the public interest[4]. A high standard of conduct is expected of barristers, both by the public and the court:

> "The Bar is no ordinary profession or occupation. The duties and privileges of advocacy are such that, for their proper exercise and effective performance, counsel must command the personal confidence, not only of lay and professional clients, but of other members of the Bar and of judges."[5]

[31] Good fame and character are a pre-requisite of ethical fitness for the profession. Once the court admits a barrister, it holds out that person to members of the public as a fit and proper person to act for them[6]:

> "It is not difficult to see in some forms of conduct, or in convictions of some kinds of offences, instant demonstration of unfitness for the Bar. Conduct may show a defect of character incompatible with membership of a self-respecting profession; or, short of that, it may show unfitness to be joined with the Bench and the Bar in the daily co-operation which the satisfactory working of the courts demand. A conviction may of its own force carry such a stigma that judges and members of the profession may be expected to find it too much for their self-respect to share with the person convicted the kind and degree of association which membership of the Bar entails. But it will be generally agreed that there are many kinds of conduct deserving of disapproval, and many kinds of convictions of breaches of the law, which do not spell unfitness for the Bar; and to draw the dividing line is by no means always an easy task."

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3 [2000] QCA 109; CA No 1052 of 2000, 4 April 2000.
4 *In Re Davis* (1947) 75 CLR 409, 418.
5 Ibid at 420 per Dixon J as he then was.
6 *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 290.

[32] The court recognises that the loss by striking off or even by suspension for a limited period of the right to earn the livelihood for which the practitioner has trained is a very severe hardship. When it makes such orders the court does so not by way of punishment but in order to protect the public and maintain public confidence in the administration of justice. So far as the criminal law is concerned the respondent has already paid his debt to society by being found guilty of the offences in question and having been fined. He has also suffered a good deal of public ignominy. Further disadvantages will mean that he is dealt with more harshly for his transgressions than other members of the public. That however is an unavoidable consequence of maintenance of the necessary high standards in the profession of barrister.

[33] In the present case the respondent's conduct falls into a category described by Fullagar J in *Ziems*[7] as "personal misconduct". Such conduct is different from that which directly relates to the conduct of his profession. It is however regarded as a form of "unprofessional conduct" which, if serious enough, can lead to disbarment[8]. The ultimate test is whether the respondent is a fit and proper person to remain a barrister. Generally speaking the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system which he or she practises. Thus in *Clyne*'s case[9] the instigation of a baseless prosecution designed to intimidate an opponent was regarded as fundamentally inconsistent with the trust that needs to be maintained between a barrister and the court. Disbarment was also thought appropriate in *Evatt*'s case where there had been a systematic course of gross overcharging of lay clients[10].

[34] In *Hamman*[11] a barrister who was convicted of five charges relating to the dishonest understatement of income in his tax returns, with a total income understatement of over $600,000, was held by majority to warrant being struck from the roll. Significant character evidence was given in Hamman's favour from colleagues at the Bar by describing his misconduct as being out of character. He had repaid all of the taxes and paid all penalties and had suffered adverse publicity. Notwithstanding those circumstances Mason P agreed with the following comments:

> "In its own interest, the organised Bar simply cannot permit the public to gain the impression that its members flout the revenue laws or that it condones or tolerates or belittles the seriousness of crimes against the revenue.";

and

> "To lawyers especially, respect for the law should be more than a platitude."

His Honour added:

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7 Ibid at page 290.
8 *Queensland Law Society v Smith* above.
9 *Clyne v The New South Wales Bar Association* (1960) 104 CLR 186.
10 *The New South Wales Bar Association v Evatt* (1968) 117 CLR 177.
11 *New South Wales Bar Association v Hamman* NSWCA No 404 of 1999, 29 October 1999.

> "The legal profession enjoys a monopoly of the right to practise on the theory that those possessed of the requisite learning, skill and character can be trusted to perform legal services involving high levels of trustworthiness. Removal from the rolls for unfitness is an extreme remedy, but it is necessary in order to maintain public respect for the legal process."

[35] The need for conduct revealing the character of the practitioner to be of a kind that threatens the professional function of the practitioner is emphasised in *Ziems*' case[12]. The barrister, Mr Ziems, was convicted of manslaughter and sentenced to imprisonment for two years. He had driven a car after having been attacked and injured in a bar. A police sergeant had advised him to go to the hospital to have his injuries attended to. He had been drinking but there was conflicting evidence as to whether he was intoxicated or not. During his journey he drove on to the wrong side of the road and caused the death of a motorcyclist. The High Court, by majority, held that he should not be struck off. Kitto J observed:

> "It is not a conviction of a premeditated crime. It does not indicate a tendency to vice or violence, or any lack of probity. It has neither connexion with nor significance for any professional function. Such a conviction is not inconsistent with the previous possession of a deservedly high reputation, and, if the assumption be made that hitherto the barrister in question has been acceptable in the profession and of a character and conduct satisfying its requirements, I cannot think that, when he has undergone the punishment imposed upon him for the one deplorable lapse of which he has been found guilty, any real difficulty will be felt, by his fellow barristers or by judges, in meeting with him and co-operating with him in the life and work of the Bar[13]".

[36] Since 1957 when *Ziems* was decided, a more marked attitude of public disapproval of drink driving has emerged, and it does not necessarily follow that the same result would follow if any similar case was now brought. It is to be noted however that the factors that are to be taken into account in a sentence imposed by a criminal court are by no means the same as those in a disbarment case. Here the focus is more directly upon the personal conduct of the practitioner rather than upon its consequences:

> "If the *conduct* of the appellant – as distinct from its consequences – is considered it will be seen that the jury was satisfied that on the occasion in question the appellant was grossly negligent and, probably, that he drove his car under the influence of liquor. It may then be observed that if such conduct on a particular occasion is sufficient to constitute a professional disqualification it would be sufficient to disqualify a member of the Bar whether disclosed in support of a charge of manslaughter, or a charge of negligent driving or a charge of driving under the influence of liquor and whether or not upon conviction on any of these charges imprisonment followed.

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

13 *Ziems* above at 299-300.

> In my view the fact, without more, that the appellant so conducted himself on one occasion was quite insufficient to warrant his disbarment. It is, I think, essential to look further and form a judgment – so far as it is possible upon the evidence before us – concerning the nature and character of the appellant's conduct on that occasion."[14]

[37] The options available to the court are striking off, suspending for a limited period, imposing a fine[15], administering a reprimand[16], or making a declaration that the practitioner was guilty of unprofessional conduct without taking further action[17].

[38] Striking off is of course reserved for the very serious cases where the character and conduct of the practitioner is seen to be inconsistent with the privileges of further practice. Suspension is a less serious result, firstly because a limited period is specified and secondly because the right to resume practice is then preserved without any further onus upon the practitioner to prove that he or she is now a fit and proper person to practice.

> "The proper use of suspension is, in my opinion, for those cases in which a legal practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner."[18]

Level of seriousness of respondent's conduct

[39] The four principal areas of misconduct will now be considered.

[40] The misconduct revealed by the respondent's convictions has really been overtaken by the more serious conduct and attitude revealed in the course of his continued association with Spencer. His conduct on the particular occasions in relation to which charges were laid must be seen as part of a wider opportunistic involvement in the drug culture. However, even standing alone, the conviction of a barrister on such offences is a matter for some concern by the court.

[41] The drugs which the respondent was prepared to assist others to obtain are the origin of much suffering in the community. Participation in the furtherance of usage of such drugs is seriously regarded, even if the offence is toward the lower level of seriousness for such offences. An affidavit of Mr Brown, an expert pharmacologist, demonstrates the nature and effect of the drugs in question. These include their high rating for dependence liability, and a range of toxic results from their abuse, ranging from hyperactive reflexes to psychotic effects. Among other undesirable effects are those upon the drivers of motor vehicles. Experience in the criminal courts all too frequently reveals methylamphetamine or "speed" as a potent

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14 *Ziems* above 303-304 per Taylor J.
15 *Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498, 505.
16 *Prothonotary of the Supreme Court of New South Wales v Chapman* NSWCA No 40101 of 1992, 14 December 1992, BC 9201419.
17 *Prothonotary of the Supreme Court of New South Wales v Costello* [1984] 3 NSWLR 201.
18 *In Re A Practitioner* (1984) 36 SASR 590 at 593 per King CJ.

factor in serious crimes including homicide and armed robbery. I mention these matters to emphasise that the use of such drugs is generally seen by responsible persons in the community as a serious problem and particularly by persons interested in the maintenance of law and order.

[42] On the respondent's behalf it was submitted that the relevant acts happened in private, and that such acts do not scandalise the public unless and until there is a conviction. That submission is far from convincing. The same comment might be made of any crime (including murder) committed in private. What is relevant are the acts committed by the respondent and the extent to which they reflect upon his character as a barrister who is expected to play an important role in the administration of justice.

[43] The conduct in question plainly revealed irresponsible and antisocial behaviour. But this pales into insignificance in the light of his subsequent conduct.

[44] His conduct in denying awareness of any circumstances that might influence or affect his good fame and character when seeking admission in New South Wales reveals at best a lack of awareness of the standards of the profession. At worst it was a deliberate false statement in a statutory declaration. Of course a question of opinion is involved in the answer and there may be marginal cases where it is difficult for a practitioner or aspiring practitioner to know whether a conviction of a minor offence needs to be mentioned. I cannot think however that recent convictions by a practising barrister for supply of methylamphetamines could fairly be regarded as something that could not influence or affect his good fame and character. Standing alone this conduct might be regarded as an error or as attracting no more than a mild disciplinary response. But in the context of his other misconduct it is just another untoward demonstration of opportunism.

[45] The swearing of the respondent's supplementary affidavit was a deliberate attempt to present an untrue picture to the court. Quite apart from any question of perjury, "a barrister does not lie to a judge who relies on him for information"[19]. Such a rule is fundamental. His deception in the context of the present application is no less serious than deceptions in the course of practice that are condemned in the above statement.

[46] The respondent's conduct in June 1997 really speaks for itself. It shows a person who was willing to promote crime including money-laundering, and who was willing to fraternise with a known drug dealer with a view to profit. It shows persistence in attempting to sell unlawful money-laundering, the sale of the controlled substance ephedrine, and even some aggression in his attempt to obtain further sales. It shows a picture, far more tellingly than the limited convictions reveal, of an easy familiarity with the drug scene and of his willingness to make money from it. It shows a person with no respect for the law.

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[19] *Clyne v New South Wales Bar Association* (1960) 104 CLR 186, 200 per Dixon CJ, McTiernan, Fullagar, Menzies and Windyer JJ.

Conclusions

[47] The respondent who is 39 years old has practiced, mainly from the Gold Coast since his admission in April 1995. He has continued to practice after his arrest in September 1997 and after his conviction in October 1998. He had no obligation to cease practice unless restrained, and no proceedings were brought to restrict his activity until the present application was filed last March. He was formerly a member of the police force (1979-1993) where he served with distinction. He has deposed that he is a respected member of the legal community on the Gold Coast and is regularly sought by "professionals" seeking advice in respect to matters pertaining to liquor licensing and gaming law, and that he employs three persons at his chambers to assist in his workload. Three Gold Coast solicitors who brief him have filed affidavits expressing their confidence and belief in his knowledge of the law, professionalism and ability as an advocate. No testimonial was filed on behalf of any member of the Bar.

[48] The conduct revealed in this case by the respondent is inconsistent with the high standards expected of barristers. The misconduct shows utter disrespect for the law and is serious enough to demonstrate that the respondent's character is unsuitable for legal practice. In addition, it might be thought that his misconduct (including offers to perform money laundering) would readily transpose into his professional activities. Deprivation of the right to practice is a serious matter, but in the circumstances the only appropriate order that can be made is one of disbarment.

[49] It should be ordered that that the respondent's name be removed from the Roll of Barristers and that the respondent pay the costs of the Barristers' Board of these proceedings to be assessed.

[50] **WHITE J:** I have read the reasons for decision of Thomas JA. I agree that Mr Darveniza has shown by his conduct, particularly his lack of frankness with the admitting authorities in New South Wales and his lies to this court contained in his affidavit filed on 7 June 2000 that he is unfit to practise as a barrister. He has shown a disturbing willingness to engage in criminal activity.

[51] I agree with the order proposed by his Honour that Mr Darveniza's name be removed from the roll of barristers.