SUPREME COURT OF QUEENSLAND

CITATION:	*The Council of the Qld Law Society Inc v Wright* [2001] QCA 58
PARTIES:	**THE COUNCIL OF THE QUEENSLAND LAW SOCIETY INC** (applicant/respondent) **v** **WENDY ANN WRIGHT** (respondent/appellant)
FILE NO/S:	Appeal No 349 of 2000 Solicitors' Complaints Tribunal Charge No 29
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Solicitors' Complaints Tribunal
DELIVERED ON:	27 February 2001
DELIVERED AT:	Brisbane
HEARING DATE:	5 October 2000
JUDGES:	McMurdo P, Davies JA and Helman J Separate reasons for judgment of each member of the Court, each concurring as to the order made.
ORDER:	**Appeal dismissed with costs**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – DUTIES AND LIABLITIES – TO COURT – MISCONDUCT, UNFITNESS AND DISCIPLINE – GROUNDS FOR DISCIPLINARY ORDERS – IN GENERAL – MISLEADING COURT AND PERVERTING COURSE OF JUSTICE – DISCIPLINARY ORDERS – STRIKING OFF AND ANCILLARY ORDERS – Solicitors' Complaints Tribunal found appellant guilty of professional misconduct – order that she be struck off the roll of solicitors – whether appellant knowingly misled the judge at summary judgment – whether appellant breached her duty to the court – whether appellant knowingly relied on false affidavit – whether appellant knowingly misled the court on material matters – whether appellant misled judge as to financial position of client's company – whether appellant attempted to suborn a witness to the Solicitors' Complaints Tribunal – whether appellant knowingly made false claims to the Queensland Law Society – whether the appellant's denial of allegations resulted in a breach of natural justice – whether fresh

evidence admissible – whether penalty imposed was excessive.

Queensland Law Society Act 1952, s 5F Part 2A, s 6M(I), 6Z
UCPR, 766(1)

Attorney-General v Gregory [1998] QCA 409, Appeal No 5511 of 1998, 4 December 1998, referred to
Clarke v Japan Machines (Australia) Pty Ltd [1984] 1 QdR 404, considered
Commonwealth Bank of Australia v Quade (1993) 178 CLR 134, considered
Gallagher v The Queen (1986) 160 CLR 392, referred to
Giannarelli v Wraith (1988) 165 CLR 543, referred to
Horne v Commissioner for Main Roads [1991] 2 QdR 38, considered
Mickelburg v The Queen (1989) 167 CLR 259, referred to
R v Main; ex parte Attorney-General [1999] QCA 148, CA No 387 of 1998, 30 April 1999, mentioned
Smith v New South Wales Bar Association (No2) (1992) 176 CLR 256, mentioned

COUNSEL: C E K Hampson QC, with P W Hackett, for the appellant
W Sofronoff QC for the respondent

SOLICITORS: Morrow & Associates for the appellant
Clayton Utz for the respondent

[1] **McMURDO P:** The appellant was found guilty by the Solicitors' Complaints Tribunal of six counts of professional misconduct, namely charges 1, 2, 4, 5, 6 and 7, charges 3 and 8 being alternatives to charges 2 and 7. The tribunal ordered that her name be struck off the roll of solicitors. The appeal is brought under s 6Z *Queensland Law Society Act* 1952 against both the findings of guilt and the penalty.

[2] The appellant was admitted as a solicitor in Queensland in 1986 and practised in the Caboolture-Morayfield area, principally in conveyancing. She worked initially as an employed solicitor and later either in partnership or as a sole practitioner.

[3] Her clients included Mr Tonge and his company, The Cluster Group Pty Ltd ("Cluster"). The appellant's family trust company invested $50,000 in a Cluster townhouse development undertaken and conducted as a unit trust. Two other clients accepted her advice to invest in the Cluster development.

[4] In November 1994, disputes between Cluster and Raygem Pty Ltd ("Raygem"), a company employed to carry out work on the townhouses, resulted in litigation. Raygem sought summary judgment against Cluster for non-payment for work done. Cluster resisted Raygem's claims on the basis that Raygem's work was defective. The supervising engineer, Graham Marsh Pty Ltd, also sued Cluster for professional fees; this claim, too, was defended, Cluster claiming the work was performed incompetently. Although the appellant's firm acted for Cluster in the

Raygem litigation, she played no significant part in it; that was predominantly undertaken by her employed solicitor, Mr Mugridge.[1]

[5] In November/December 1994, Mr Tonge appointed KR & TR Mansell (a firm) ("Mansells") to work on the townhouse development. Supervising engineer Mr Finn Nielsen certified that Cluster should pay three progress claims to Mansells. The first two were paid (late) by Cluster, but when the third claim for $48,397.15 was not paid by the due date Mansells made a creditor's statutory demand against Cluster. This was later set aside and Mansells brought an action in the District Court for the unpaid progress payment plus interest and costs. On 20 May 1996, Mansells applied for summary judgment. This was resisted by the appellant on behalf of Cluster in remarkably similar terms to its defence to the Raygem litigation. The charges against the appellant arose out of her conduct of Cluster's defence and counter-claim to Mansells' actions and subsequent events. I will deal with them chronologically.

Charge 5

[6] Charge 5 involved knowingly misleading the judge on the summary judgment application on 20 May 1996 by producing a letter from an engineer to the Court and representing that firm as "the Engineers" referred to in Mr Tonge's affidavit, on which the appellant relied in order to adjourn or defeat the summary judgment application.

[7] Most of the submissions on the application were not transcribed by the State Reporting Bureau. Mansells' solicitor, Mr Rochester, who instructed Mr Bates of counsel, took detailed notes during the hearing; his affidavit prepared from those notes was before the Tribunal. He was cross-examined as to the accuracy of his recollection, but the Tribunal accepted Mr Rochester's account as to what had transpired.

[8] The hearing commenced at about noon. The appellant relied upon Mr Tonge's affidavit sworn 8 May 1996, which stated that "the Engineers" regarded Mansells' work as of such a poor standard that it would require $200,000 for rectification and that Cluster intended to counterclaim. The "Engineers" neither gave evidence nor were identified. The judge stood the matter down.

[9] During the lunch adjournment the appellant contacted an engineer, Mr Hendriks, to ascertain how much time was needed to prepare the necessary material to prove the need for and cost of any rectification works. Mr Hendriks and the appellant shared office accommodation and a secretary.

[10] At about 2.30pm the hearing resumed and Mr Bates submitted that the evidence did not support Mr Tonge's claim that the work was of a low standard because the supervising engineer for the project, Mr Nielsen, had certified that the work had been performed properly.

[11] Mr Rochester's notes then record:

> "WRIGHT: engineers not Finn
> - Hendriks HOUSE – fax letter report within 14 days

---

[1] Mr Mugridge later changed his surname to "Ridge".

… ."

[12] Mr Rochester's evidence before the Tribunal was that the appellant responded that "the Engineers" who had provided the advice relied upon by Cluster were not Mr Nielsen's firm but Mr Hendriks' firm.

[13] The appellant next tendered a facsimile letter from Mr Hendriks; she described his firm as "the consulting engineers on the report". Mr Hendriks recorded in the letter that he had "recently carried out a preliminary inspection" and needed up to 14 days to prepare a full report. He gave evidence before the Tribunal that this inspection occurred at about 1pm on 20 May 1996, his first involvement with Cluster.

[14] In the course of his reasons for adjourning the summary judgment application until 9.30am on 27 May 1996 so as to allow the appellant time to prepare Cluster's case and obtain evidence, his Honour stated:

> "One would assume the engineers to be Finn Nielsen who issued the progress payment certificates and who has supplied an affidavit used by the plaintiff to the effect that the work was performed properly and to the appropriate standard. It now appears the engineers are another firm Hendriks House, and that they are in the course of preparing a report of some kind."

It was clear from the transcript when the matter resumed on 27 May that the judge and Mr Bates understood the appellant's submission to be that Mr Hendriks' firm were "the Engineers" referred to by Mr Tonge.

[15] The applicant did not correct this.

[16] The appellant has attempted to persuade this Court that the Tribunal erred in accepting the accuracy of Mr Rochester's recollection but that conclusion was plainly open on the evidence.

[17] The appellant submits that the evidence does not establish that she misled the court and that, in any case, this was not a significant matter, the adjournment being granted because of the late service of the material relied on by Mansells.

[18] As to the first point, once the Tribunal accepted Mr Rochester's version of events on 20 May, there was sufficient evidence to establish the charge.

[19] As to the second point, Cluster had set aside Mansells' statutory demand and was resisting a spirited application for summary judgment. Mr Tonge's affidavit relying on the opinion of "the Engineers" was crucial in defending or adjourning Mansells' claim. It is highly probable that the appellant thought that Cluster's position may have been strengthened if the judge accepted that "the Engineers" referred to by Mr Tonge were Mr Hendriks' firm. In any case, it is irrelevant whether the appellant's conduct which misled the court bore fruit; the appellant breached the duty of a practitioner of candour to the court. The appellant was successful in having the summary judgment application adjourned and the appellant's deliberately misleading conduct particularised in Charge 5 was a factor in gaining that result.

Charge 1

[20] Charge 1 involved the appellant's reliance on 27 May 1996 on Mr Hendriks' affidavit sworn 23 May 1996 when she knew it was no longer accurate.

[21] On 22 May 1996, Mr Hendriks informed the appellant that rectification to the value of $5,200 was required to the work done by Mansells.[2] In an affidavit sworn on 23 May 1996, Mr Hendriks said he would need to obtain detailed approved design levels from the Caboolture Shire Council in order to determine any significant deviation from the design; if the "as constructed" levels were significantly different to those design levels he would need at least three months to determine the effects of the deviation and the costs of rectification.

[22] At 9 am on Friday, 24 May 1996, Mr Hendriks inspected the Council building file which contained details of the approved design levels; he concluded that the levels as constructed by Mansells were not materially different. He told the appellant at her office that the "as constructed" levels were not materially different from the "as approved" levels and no additional rectification work would be required beyond the $5,200 outlined. Mr Hendriks' account was supported by a contemporaneous file note.

[23] The appellant asked Mr Hendriks to attend court in Brisbane the following Monday to give evidence. He agreed and arranged to meet her in the forecourt area of the District Court complex.

[24] On Monday, 27 May 1996, Mr Hendriks drove to Brisbane and parked at the King George Square carpark at about 9.30 am. He met the appellant in the forecourt at about 10.10 am. She advised him that he was not required to give evidence and could leave. A carpark receipt showed he left King George Square at 10.15 am.

[25] The appellant appeared before the District Court judge at about 10.10am apologising for her lateness. In seeking a further adjournment she relied upon Mr Hendrik's earlier sworn affidavit despite their discussion on 24 May. The appellant claimed that she still understood Mr Hendriks required three months to complete his investigations.

[26] The Tribunal found that the appellant's behaviour constituted professional misconduct, rejecting her evidence and accepting that of Mr Hendriks' whose account was supported by his carpark ticket and by his contemporaneous records. Having accepted Mr Hendriks' more plausible account, the Tribunal was then entitled to conclude that the appellant knowingly misled the judge by relying upon an affidavit she knew to be false. The appellant has failed to demonstrate any sound reason why this court should interfere with that conclusion.

[27] Alternatively, the appellant argues that even if she conducted herself in this way, it was not the cause of any injustice: the judge took a sensibly robust attitude, stood the matter down at 10.59am and by 11.40am it had settled.

[28] It is highly probable the appellant believed her tactics would improve Cluster's position: the appellant's reliance on Mr Hendriks' affidavit (which she knew was no

---

[2] An error in addition wrongly noted the sum as $5,400.

longer accurate) was almost certainly a factor in causing the judge to stand it down for a time to enable the appellant to produce witnesses. Otherwise, there would be no reason to refuse the substantive part of Mansells' application. In any case, it is irrelevant whether these deceitful tactics were successful, the misconduct being the practitioner's lack of candour to the court on a matter which was at the heart of any defence to the application.

Charge 2

[29] Charge 2 arose out of the appellant's false oral submissions to the judge during the hearing of 27 May 1996.

[30] These were particularised in the charge; it is unnecessary to refer to them all. An example was the appellant falsely informing the judge that she had been unable to contact Mr Hendriks that morning. Later she told his Honour:

> "We have made every attempt to get our experts here. We couldn't even get Mr Hendriks to come here today at such short notice. … Your Honour, I believe I would have (to) subpoena Mr Hendriks to ensure … ."

[31] The Tribunal was entitled to accept Mr Hendriks' evidence, to reject the appellant's evidence and to conclude the appellant knowingly misled the judge on material matters in order to gain an advantage: misleading the court in this manner is plainly professional misconduct.

Charge 4

[32] This charge arose out of the appellant's statement to the judge that Cluster "was not in financial strain".

[33] The appellant told the Tribunal that she did not believe that Cluster was in financial strain.

[34] Her family's interest in Cluster and her commendation to other clients of the development as an investment has already been noted.

[35] Prior to 27 May 1996, Cluster's banker, Westpac Banking Corporation, contacted the appellant as Cluster's solicitor for payment of overdue interest; because of late payments Westpac intended to transfer Cluster's account to its Asset Management Group. The appellant received Cluster's overdue rate notices in April 1996 and in early May the Caboolture Shire Council threatened legal action failing payment within 14 days. Although the appellant was acting on Cluster's behalf in re-financing the development, this alternative finance was on less favourable terms and was conditional upon the lender withholding a six months interest reserve and a reasonable fund for marketing in the event of a mortgagee's sale. Cluster was placed in liquidation on Mansells' petition on 5 September 1996.

[36] The Tribunal concluded that the appellant had no reasonable basis upon which to provide the assurance that Cluster "was not in financial strain", did so recklessly and was therefore guilty of professional misconduct. The Tribunal was entitled to reach this conclusion on the evidence.

Charge 6

[37] Charge 6 arose out of an attempt by the appellant to suborn Mr Hendriks to swear a false affidavit in order to deceive the Queensland Law Society.

[38] In May 1998, Mr Hendriks was contacted by Mansells' solicitors and swore an affidavit setting out his recollection of the relevant events. About two weeks later, the appellant telephoned him and said that the Queensland Law Society had contacted her about a complaint from Mansells, to which he was a party. She said she would prepare a response for him to look at and sign. He received the draft affidavit on 18 August 1998; this differed from his earlier affidavit on significant matters and exculpated the appellant. Mr Hendriks refused to sign it because it was inaccurate.

[39] The appellant told the Tribunal that the affidavit she drafted was consistent with her understanding of a telephone conversation with Mr Hendriks earlier that day and that he had at least implicitly agreed with its content.

[40] Once more, the Tribunal rejected the appellant's evidence, preferring that of Mr Hendriks. That view was reasonably open. The conclusion was then inevitable that the appellant, in attempting to suborn a witness to the Tribunal, was guilty of professional misconduct: the Queensland Law Society was bound to investigate the complaint[3] in the interests of the court, the profession and the public. The Tribunal which hears such a complaint has significant disciplinary and other powers.[4] An attempt to suborn a witness to the Tribunal is a serious departure from the minimum standard of professional conduct expected from a practitioner.

Charge 7

[41] This charge involved the appellant's claims in a letter dated 21 August 1998 to the Queensland Law Society that she believed Mr Hendriks was unable to attend court on 27 May 1996, only becoming aware of his presence at court after the adjournment of the summary judgment application at 10.59am and that she believed Mr Hendriks required three months to prepare a report when she relied upon his affidavit.

[42] Again, the Tribunal did not accept her version, preferring that of Mr Hendriks. On the evidence this conclusion was plainly open and supported a finding of guilt as to the appellant's professional misconduct in knowingly making false claims to the Queensland Law Society concerning the complaint against her.

Natural justice

[43] The appellant argues that the respondent requested a heavier penalty because of her denial of allegations in the course of defending herself before the Tribunal; this constituted a breach of natural justice.

[44] The submission to which objection is taken was as follows:

> "Those explanations have been rejected by you but … the mere maintenance of such a submission and the rejection of it manifests a lack of remorse and certainly in this case there can be no suggestion

---

3 *Queensland Law Society Act* 1952, s 5F.

4 Ibid, Part 2A

> at all on the part of the practitioner, rather the whole conduct of these proceedings has been the contrary; to deny the very dishonesty and deception which has now been found to have occurred."

[45] The appellant's experienced and senior barrister took no objection to that submission and for good reason: there was neither remorse nor cooperation. The submission was not developed in argument and there is nothing in the Tribunal's reasons to suggest that a heavier penalty was imposed because the appellant's evidence was rejected by the Tribunal: cf *Smith v New South Wales Bar Association (No 2)*.[5]

[46] The appellant cannot avoid the consequences of two matters which compounded her conduct in knowingly or recklessly misleading the court. First, she was found guilty on Charge 6 (an attempt to have Mr Hendriks swear a false affidavit) and on Charge 7 (knowingly giving a false written explanation to the Queensland Law Society). Second, the appellant was not entitled to the mitigating benefit of immediate remorse and cooperation.

[47] There has been no breach of natural justice.

Fresh evidence sought to be led at the appeal hearing

[48] The appellant sought to lead a body of further evidence on the appeal. The Court refused that application at the hearing and reserved its reasons.

[49] There are serious consequences to the appellant resulting from the Tribunal's findings and orders. For that reason, I am prepared to apply the same considerations as to the admission of further evidence on this appeal as pertain to criminal cases. The first requirement for the admission of such evidence is that the evidence could not have been produced at the trial with reasonable diligence on the part of the appellant, although this is not an inflexible requirement[6] and is often tempered by the demands of justice. Second, the evidence should be capable of belief. Third, the evidence will only be admitted if it demonstrates that there is a significant possibility that the fact finding body, acting reasonably, may have reached a different conclusion: see *Gallagher v The Queen*[7] and *Mickelberg v The Queen*.[8]

[50] The first category of evidence sought to be led was from an engineer, Mr Frame, and from Mr Tonge: in August 1995, they discussed that the road levels at the townhouse development may have been out. Mr Tonge also claimed to have relayed this information to the appellant prior to the relevant court hearings. The appellant submitted that this evidence was relevant to her state of mind and to the possibility that she was confused when making submissions to the judge about "the Engineers" referred to in Mr Tonge's affidavit.[9]

---

5 (1992) 176 CLR 256, 267-269.

6 *Gallagher v The Queen* (1986) 160 CLR 392, 395.

7 At 392, 399, 402.

8 (1989) 167 CLR 259, 273, 292, 301-302. Nor does it meet the test preferred by some of reasonable possibility referred to in *R v Main; ex parte Attorney-General* [1999] QCA 148, CA No 387 of 1998, 30 April 1999, [16], [17]. See also *Commonwealth Bank of Australia v Quade* (1993) 178 CLR 134, 140; UCPR 766(1); *Clarke v Japan Machines (Australia) Pty Ltd* [1984] 1 QdR 404, 408; *Horne v Commissioner of Main Roads* [1991] 2 QdR 38, 41.

9 See discussion on Charge 5 [8]-[19].

[51] This question was in issue before the Tribunal. The appellant gave evidence that Mr Tonge told her "the Engineers" were Goldner and Associates and Mr Frame. The evidence of Mr Tonge and Mr Frame was apparently available to the appellant at the time of the Tribunal hearing, yet for whatever reason, the appellant, who was represented by experienced senior counsel, chose not call it.

[52] Having elected to conduct her trial on this basis without success, it is undesirable that, in the absence of adequate explanation, she should now be permitted to have another try on a different basis. The evidence sought to be led is of limited relevance. When considered together with all the other evidence it does not raise a significant or reasonable possibility that, had it been led before the Tribunal, it would have affected the Tribunal's conclusion.

[53] The second category of additional evidence sought to be led at the hearing of the appeal was from the appellant's erstwhile partner Mr Cooper, who took photographs of the townhouse site after the Tribunal hearing. It was argued that the photographs supported the appellant's claim in evidence before the Tribunal that when she relied upon Mr Hendriks' affidavit on 27 May 1996 she honestly believed that the problem as to road levels remained. This evidence was also available at the time of the Tribunal hearing and is of limited relevance; it does not raise a significant or reasonable possibility that, had it been led before the Tribunal, it would have affected the decision.

[54] The third category of additional evidence sought to be given at the appeal hearing was from Mr Ridge (formerly Mugridge) and Mr Cooper. If Mr Ridge's evidence proved unfavourable, the appellant hoped to cross-examine him as to a prior inconsistent statement allegedly made by him to Mr Cooper to the effect that on 27 May 1996 he attended court with the appellant and did not see her approach, speak or have any contact with Mr Hendriks before the court hearing. The appellant submitted that this showed she truthfully informed the judge that she had not spoken to Mr Hendriks that morning and otherwise supported her credibility.

[55] The question as to whether the appellant met Mr Hendriks before the court hearing on 27 May 1996 was in issue before the Tribunal and was directly relevant to Charges 2, 6 and 7. Nothing has been placed before this Court to show that Mr Ridge was unavailable at the time of the Tribunal hearing. The appellant seems to have chosen not to call him even though his attendance was compellable.[10] It is undesirable that, in the absence of explanation, having been unsuccessful in adopting that tack, she should now be permitted to re-run her trial differently. In any case, because of the evidence supporting Mr Hendriks' version, particularly the carpark ticket, it seems improbable that Mr Ridge's evidence, especially if elicited by way of a prior inconsistent statement, would have affected the Tribunal's conclusion.

[56] For these reasons the appellant's application to call further evidence on this appeal was refused.

---

[10] *Queensland Law Society Act* 1952, s 6M(I)

Fresh evidence sought to be led after the appeal hearing

[57] On 13 December 2000, the appellant informed the Deputy Registrar (Appeals) that she wished to make an application to re-open the hearing to call fresh evidence and expected to file the application before Christmas. Consequently, the delivery of the prepared judgment was delayed. By 22 January the appellant had filed neither application nor supporting material. The Deputy Registrar then informed the parties that any application and supporting material should be filed immediately as judgment would be delivered on 30 January 2001. Immediately prior to the delivery of judgment on that day, the appellant made an application in court to re-open the appeal and call further evidence. Directions were given for the filing of the application, supporting material and written submissions. The issue as to whether the appeal should be re-opened to receive further evidence was to be heard by way of written submissions only. The appellant did not comply with the time frames in the directions but the material and submissions were all finally filed on 9 February 2001.

[58] I have earlier set out in these reasons the considerations that apply as to whether additional evidence should be admitted on an appeal. The additional evidence on which the appellant relies are the mobile telephone records of Mr Hendriks, Mr Cutting and Mr Mansell. These records were plainly available at the time of the trial but were not obtained by the appellant's lawyers either through oversight, because they did not believe it was within their power to obtain them or they were not thought relevant. It is noteworthy that the appellant tendered other phone records at the primary hearing.

[59] Mr Hendriks' telephone records show that a telephone call was recorded on his mobile phone service as made from Brisbane at 11.10am on Monday, 27 May 1996 (the morning of the hearing of the adjourned summary judgment application). This demonstrates that a call was made somewhere within the Brisbane area, not that the call was made from the Brisbane CBD. A further telephone call was made from Redcliffe at 11.32am on the same date. The telephone records, when considered with the other evidence in the case, including the evidence that the car trip from Brisbane to Redcliffe took between 45 and 60 minutes, are more consistent with Mr Hendriks' evidence than that of the appellant. These telephone records cannot improve the appellant's case in any significant way.

[60] The other telephone records of which evidence is sought to be led record phone calls between the mobile phone services of Mr Mansell and Mr Cutting on the one hand, and Mr Hendriks on the other. Mr Cutting worked for Mansells. His evidence did not feature in the reasons for judgment of the Tribunal or of this Court.

[61] Mr Hendriks gave evidence that he had no recollection of the dates on which he had contact with Mr Cutting but Cutting's firm (Mansells) was involved with a project for a client; he spoke to Mr Cutting about that project some time in the three months preceding 24 May 1996. Mr Hendriks could not recall any specific contact with Mr Cutting in the week preceding 24 May 1996 but nor did he state there was none.

[62] On 16 May 1996, a 16 second phone call was made from Mr Hendriks' mobile service to Mansells'. On 21 May a 32 second phone call was made from Mr Cutting's mobile to Mr Hendriks'; two calls were made from Mr Mansell's phone to Mr Hendriks', the second of which was over 8 minutes long; a further one minute

phone call was made from Mr Cutting's phone to Mr Hendriks'. On the day these calls were made Mr Hendriks was conducting a site inspection at the request of the appellant for Cluster. On 24 May 1996, Mr Hendriks inspected the Council file in the Cluster matter; a one minute phone call was made to Mr Mansell's phone from Mr Hendriks' phone.[11]

[63] The appellant submitted that had she been aware of these telephone records prior to the trial, her counsel may well have relied on them to cross-examine Mr Hendriks and test his credit, the acceptance of his evidence being central to the Tribunal's findings. The phone records are not, however, inconsistent with Mr Hendriks' evidence and, contrary to the appellant's submissions, do not establish any conspiracy between Messrs Hendriks, Cutting and Mansell. In the scheme of things, the evidence is of minimal significance.

[64] The appellant also relies on telephone records of 23 May 1996, which indicate that no calls were made between Mr Cutting's mobile service and Mr Hendriks'. Mr Hendriks gave evidence that he had no recollection of any phone conversation with Mr Cutting on 23 May. Mr Cutting's evidence was no higher than that he thought he spoke to Mr Hendriks on the afternoon of 23 May 1996 because of his diary notes; in his affidavit he swore the conversation occurred "on or about 23 May 1996". There is no evidence that these mobile services were the only telephones used by Mr Hendriks and Mr Cutting. This evidence, too, is of minimal significance.

[65] None of the evidence the subject of this application, either alone or collectively raises a significant or reasonable possibility that had it been led before the Tribunal it would have affected the decision. The evidence, whilst apparently credible, was readily available to the appellant at the time of the primary hearing. This is not a case where the interests of justice require the evidence to be led. I would refuse the application to re-open the hearing of the appeal to receive this fresh evidence.

Penalty

[66] The appellant submits that the facts of this case did not warrant an order striking her name from the roll of solicitors, especially where the misconduct occurred in the course of litigation in which she was inexperienced.

[67] A practitioner's duty to the court arises out of the practitioner's special relationship with the court; it overrides the duties owed by a practitioner to clients or others: see *Giannarelli v Wraith*.[12] The lawyer's duty to the court includes candour, honesty and fairness. The appellant abused her role as an officer of the court in relying on material she knew to be false and in deliberately and recklessly misleading the court in an attempt to further the interests of her clients and family. Her conduct was made more serious by its repetition. The effective administration of the justice system and public confidence in it substantially depends on the honesty and reliability of practitioners' submissions to the court. This duty of candour and fairness is quintessential to the lawyer's role as officer of the court; the court and the public expect and rely upon it, no matter how new or inexperienced the practitioner. Breaches such as this are hard to detect and once established to the requisite

---

11 These reasons at [22].

12 (1988) 165 CLR 543, 557-558.

standard are deserving of condign punishment, not only as a deterrent but also to reassure the public that such conduct on the part of lawyers will not be tolerated.

[68] After behaving dishonestly and recklessly in court, the appellant attempted to have Mr Hendriks swear a false affidavit and then further compounded her misdeeds by making false statements to the Queensland Law Society when they investigated her conduct in the public interest. Sir Walter Scott's words in "Marmion" are apposite: "Oh what a tangled web we weave, When first we practice to deceive". The appellant cannot have the mitigating benefit of any remorse or cooperation.

[69] Nor can it be said that the appellant had an unblemished record. In 1994, the Queensland Law Society enquired into her conduct in acting for one client in the purchase of a home unit from another client, in circumstances of an apparent conflict of interest. The appellant admitted that in providing her file to the Queensland Law Society, she represented that it contained material which gave the false impression to the Society that she had forwarded to her purchasing client a copy form of a trust account authority on 2 December 1991 and that authority was returned by the client to her on about 2 January 1992.

[70] Whilst it is difficult from the material before this Court to ascertain the precise consequences of her behaviour in 1994, it was found to constitute professional misconduct. She was fined $25,000 to be paid over nine months; she was also required to attend a counselling course conducted by Lawcare and was ordered to pay the costs of the application.

[71] It is a significant aggravating factor that just two years before the conduct the subject of this appeal, the appellant was found guilty of knowingly or recklessly misleading the Queensland Law Society on a matter material to their investigation.

[72] The appellant is a mature woman and was a solicitor of 10 years standing at the time of this shabby behaviour. She had been dealt with for professional misconduct just two years earlier. Regardless of inexperience the courts, practitioners and the public expect that every lawyer will act with candour, honesty and fairness before the court; will not to attempt to suborn a witness and will not knowingly make false claims to the practitioner's investigative disciplinary body. The order made by the Tribunal was entirely appropriate.

[73] I would dismiss the appeal with costs.

[74] **DAVIES JA:** I agree with the President that this appeal must be dismissed with costs. Proof of the charges before the Tribunal depended substantially on the Tribunal's findings of credit. No sensible basis was put forward for contesting those findings. On the evidence which the Tribunal accepted the charges were correctly found to be proved.

[75] They were all of a very serious nature. Charges 1, 2, 4 and 5 involved, on separate occasions, deliberately misleading a court. Charge 6 was, if anything, even more serious, involving as it did seeking to persuade an intended witness to swear a false affidavit. As the Chief Justice said of similar conduct in *Attorney-General v*

Gregory[13] at [4], such conduct "strikes audaciously into the heart of the judicial process" and "will inevitably establish unfitness to practice". Proof of it alone would therefore have required that the appellant be struck off. It may also be the case that proof of any of charges 1, 2, 4 or 5 would have required that consequence; in any event there could be no doubt that proof of all of them did.

[76] I agree generally with the reasons of the President for refusing to admit further evidence on this appeal and I agree that the application to re-open the hearing of this appeal to receive further evidence should be refused for the reasons which she gives.

[77] There is no substance in the so-called natural justice argument.

[78] **HELMAN J:** I agree with the reasons for judgment of the President and the order proposed by her.

---

13 [1998] QCA 409; Appeal No 5511 of 1998, 4 December 1998.