SUPREME COURT OF QUEENSLAND

CITATION:	*Barristers' Board v Young* [2001] QCA 556
PARTIES:	**BARRISTERS' BOARD** (applicant) v **TARA VIRGINIA YOUNG** (respondent)
FILE NO/S:	Appeal No 8646 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Disciplinary Proceedings
DELIVERED ON:	7 December 2001
DELIVERED AT:	Brisbane
HEARING DATE:	6 November 2001
JUDGES:	de Jersey CJ, Davies JA and Mackenzie J Separate reasons for judgment of each member of the Court, each concurring as to the order made.
ORDER:	**Order that the name of Tara Virginia Young be removed from the roll of barristers admitted to practise within the State of Queensland.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – REMOVAL OF NAME FROM ROLL – application for removal of respondent from Barristers' Roll on ground that she knowingly gave false evidence on oath before CJC Inquiry – duties and necessary attributes of barristers – where respondent also failed to acknowledge the significance of her default – consideration of psychiatric report – relevance of references where inquiry is as to intrinsic character *Attorney-General v Bax* [1999] 2 QdR 9, cited *Barristers' Board v Darveniza* [2000] QCA 253, Appeal No 2107 of 2000, 30 June 2000, considered *Clyne v New South Wales Bar Association* (1960) 104 CLR 186, cited *In re Davis* (1947) 75 CLR 409, considered *Janus v Queensland Law Society* [2001] QCA 180, Appeal No 9202 of 2000, 15 May 2001, cited *New South Wales Bar Association v Cummins* [2001] NSWCA 284, cited *Re A Practitioner* (1984) 36 SASR 590, considered *Re Bell* Full Court Motion 622 of 1991, 6 December 1991, considered

Re Morrison [1961] QdR 343, cited
Re Thomas [1984] 2 QdR 460, cited
Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279, considered

COUNSEL: JK Bond SC, with DA Kelly for the applicant
MJ Byrne QC for the respondent

SOLICITORS: Hemming & Hart for the applicant
Bernard Bradley & Associates for the respondent

[1] **de JERSEY CJ:** The respondent Tara Virgina Young was admitted as a barrister of this Court on 13 July 1992. The applicant Barristers' Board seeks an order that her name be removed from the Roll of Barristers. The ground is that she knowingly gave false evidence on oath before the Criminal Justice Commission's Inquiry into Electoral Fraud, chaired by the Hon TF Shepherdson QC.

[2] The respondent gave evidence before that Inquiry on 30 November and 6 December 2000 and 12 January 2001. The evidence concerned the circumstances in which she came to vote in the 1996 East Brisbane plebiscite for the Australian Labor Party.

[3] The falsity of the evidence she gave on 30 November and 6 December was uncovered following her being shown, on 6 December, by counsel assisting the Inquiry, in the course of her giving evidence, a document which was admitted before the Inquiry as exhibit 320. That document, dated 16 April 1997, is an electoral enrolment application, signed by the respondent, by which she applied to vary her enrolled address from 20 Church Street, Woolloongabba to 104 Fernberg Road, Rosalie. Subsequent events demonstrated that at the earlier hearing on 30 November and again on 6 December, she knowingly gave false evidence on oath in two respects:

1. that she had no knowledge of the Church Street address until a matter of days before she first gave evidence at the Inquiry, and

2. that she believed she was entitled to vote at the plebiscite because she was a member of the relevant branch of the Australian Labor Party, and that, as she said, "it didn't matter where (she) lived".

[4] At the hearing on 30 November 2000 the respondent gave evidence that at the time of the 1996 plebiscite she was living at 104 Fernberg Road, Paddington, and that at about that time, she enrolled in the Chardons Corner Branch of the Australian Labor Party. She said that as at 1996, she believed that provided she was a member of that branch, she was entitled to vote in the plebiscite. Her claim was that she remained of that belief until about two or three weeks before 30 November 2000, when her misapprehension was pointed up by an explanation given in a "Four Corners" program. She swore that she had discovered she was not entitled to vote in the plebiscite only on the Tuesday of the week of the hearing, adding that she could not assist the Inquiry with any other knowledge about the plebiscite.

[5] At the subsequent hearing on 6 December 2000, the respondent again claimed a belief, held until the preceding Tuesday, that her membership of the relevant branch

was the criterion for her entitlement to vote in the plebiscite, and that it did not matter where she lived. She said that when she joined the Australian Labor Party, by application dated 2 April 1996, a time at which she had no permanent address, Catherine Birmingham, for whom she voted in the plebiscite, "offered (her) address (12 Prince Street Annerley)", which the respondent understood would merely provide a contact point for the branch. She said: "I was not aware of the relevance of the address or where I lived until last Tuesday." She also swore that until that Tuesday, she was unaware of the address 20 Church Street.

[6] It was at that point of the Inquiry hearing that the respondent was confronted with the document which became exhibit 320. Conceding that it was her application for change of electoral enrolment, she said, as to the entry of 20 Church Street as her previous address: "I don't – don't know why I would have put that." She also claimed to have no recollection of any conversation with Catherine Bermingham about that address.

[7] In material later provided to the Barristers' Board, the respondent said, in relation to the period between her giving evidence on 6 December 2000 and 12 January 2001 – the third occasion on which she gave evidence before the Inquiry:

> "There were two memories that I focussed on during this period, the first being that I had been contacted by Catherine in relation to where I was living at some stage during that year where she said, "They keep phoning me, we will have to move you." … This recollection was subsequent to my giving of evidence on 6 December 2000.
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> The second was a sense of déjà vu with the address 20 Church Avenue Woolloongabba somewhere before. I had experienced this when my solicitor had first shown me the document, but had not mentioned anything to him. When I approached my solicitor on 14 December 2000, and raised these two issues, he advised that by not revealing this information, that I had basically committed perjury."

[8] I note that the respondent has not, before this Court, verified those matters on oath – as, having regard to the nature of the proceedings, one might reasonably have expected her to do.

[9] The respondent voluntarily returned to the witness box at the Inquiry on 12 January 2001 with a view to explaining how she came to insert the 20 Church Street address into exhibit 320. She provided the Inquiry with a signed statement dated 19 December 2000, and on 12 January 2001 gave oral evidence.

[10] In her sworn oral evidence, she said that she had previously made false assertions from which she wished to resile. It is sufficient for present purposes to record this exchange between the respondent and the chairperson:

> "Chairperson: Could I just ask one question? While you're on that form that's got 20 Church Street there, when Mr Lambrides was asking you questions – this is at page 2772 about line 43 – one question, "Are you talking about Church Street or are you talking about 12 Prince Street?" And you started your answer by saying, "Well, I wasn't aware of 20 Church Street until last Tuesday." Now,

that's evidence you gave on 6 December?—That's right, sir.

That's obviously incorrect?—That's incorrect."

[11] That the respondent deliberately misled the Inquiry emerges plainly from her signed statement dated 19 December 2000, which included the following passages:

> "2. The instructions I gave to Gilshenan & Luton and the subsequent evidence I gave at the Shepherdson Inquiry were tailored by me to an extent which included false assertions. The reasons were:
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> (a) my fear of being implicated in electoral fraud …;
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> (b) I consider myself to be a relatively well-known person, especially within the legal fraternity, by virtue of my protracted tenure with the Legal Aid Office and my former position in the office of the Attorney General during 1996. I was gravely concerned about the compromise my integrity and standing would suffer upon the publication of any evidence which inferred I was a party to electoral fraud;
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> (c) …
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> …
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> 6. It is not the case, as I first indicated to the Inquiry, that I had no recollection of the address of 20 Church Avenue. At the time of first giving my instructions to my solicitor, Paul Byrne, I did have a niggling recollection of that particular address, however it was nothing more than this, and, as my memory of the events around that time was poor, I made no mention of the niggling recollection I harboured. And so, whilst giving instructions, I maintained the position that I knew nothing whatsoever of the address.
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> …
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> 7. I now wish to assert that at some stage after my joining the Chardons Corner branch of the ALP, Catherine Bermingham telephoned me and said words to the effect, *"They keep ringing you up and you are not there. We are going to have to move you."* It is my best recollection that in this context, Catherine was referring to the fact that my ALP membership had my address listed as 12 Prince Street, Annerley, and that other faction members or branch members were telephoning for me, at Catherine Bermingham's address, to confirm that I was actually living there and thus to confirm my right to vote in the plebiscite.
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> …
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> 13. As to the *plebiscite voting right prerequisite*, namely of enrolment in the appropriate electorate; the understanding I gleaned from my discussions with Catherine Bermingham was that my ALP membership had to bear an address within the ward where I wanted to vote in the plebiscite. When obliging Catherine Bermingham's requests of me to join the ALP and to vote for her in the plebiscite, I did not once turn my mind to the issue of false enrolment on the

> electoral roll per se. Rather, I thought that the fictitious address was simply going to be on ALP membership documentation which I rated no more highly than membership documents of any club one might choose to join – documents which I viewed as being non-legal in nature substance and import.
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> …
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> 23. I am remorseful in the extreme for having been so fearful as to be motivated to give false evidence to the inquiry. Doing so has had a deleterious effect on my well being. I feel compelled to put the record as straight as is possible given the constraints of memory."

[12] By letter dated 16 February 2001, the Barristers' Board drew the respondent's attention to a newspaper report asserting the respondent had given false evidence before the Inquiry, and invited the respondent to make submissions to the Board, in the context of a contention that such would amount to "serious professional misconduct". In the written submission she made to the Board, which was after May 2001, she said, in the covering letter:

> "I wish to state at the outset, that I have not committed any wrong doing. In fact, my return to the Inquiry was at my own instigation. It was an attempt to correct and clarify earlier evidence given on 30 November 2000 and 6 December 2000. My reason for such clarification was that after having given evidence, I reflected on that evidence. So with this reflection together with my memory being jogged by certain questioning and documents shown to me not previously sighted by me before giving evidence, I was led to the view that I was able to further amplify the evidence already given. I was not motivated by any sense that other evidence was going to be called which would contradict me or embarrass me to any extent as to my truthfulness."

[13] The submission itself began with this paragraph:

> "The Courier Mail article states that I admitted to committing perjury whilst giving evidence on the last occasion 12 January 2001, before the Commission of Inquiry conducted by the Criminal Justice Commission (CJC). I wish to address that issue in the attached submission. I wish to state at the outset, that I have not committed any wrong doing."

[14] (The Chairperson of the Inquiry, in his final report, said that he would not recommend that the Criminal Justice Commission refer, to the Director of Public Prosecutions, the possibility of bringing a charge of perjury against the respondent. The Chairperson appears to have been motivated substantially by the respondent's having voluntarily re-entered the witness box in order to correct her evidence, and, as he put it, "in a timely fashion and not in response to later evidence adverse to her".)

[15] The notion of a barrister's deliberately giving false evidence on oath is utterly repugnant to the essence of what goes to make up a barrister's fitness to practise: such as to erode, if not destroy, the complete confidence which a client, a fellow

practitioner, the courts and the public should be able, without hesitation, to assume. It is fanciful to think those persons would not be at least sceptical about the honesty, thence fitness and propriety, of a barrister who had so recently lied on oath on important matters before a significant Commission of Inquiry.

[16] Dixon J, as he then was, said in *re Davis* (1947) 75 CLR 409, 420:

> "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."

Kitto J put the matter in these terms in *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR, 279,298:

> "The Bar is no ordinary profession or occupation. These are not empty words, nor is it their purpose to express or encourage professional pretensions. They should be understood as a reminder that a barrister is more than his client's confidant, adviser and advocate, and must therefore possess more than honesty, learning and forensic ability. He is, by virtue of a long tradition, in a relationship of intimate collaboration with the judges, as well as with his fellow-members of the Bar, in the high task of endeavouring to make successful the service of the law to the community. That is a delicate relationship, and it carries exceptional privileges and exceptional obligations. If a barrister is found to be, for any reason, an unsuitable person to share in the enjoyment of those privileges and in the effective discharge of those responsibilities, he is not a fit and proper person to remain at the Bar."

All of those views are as apposite today as when they were expressed.

[17] One would ordinarily expect a barrister who departed so markedly from an essential obligation to be regarded as lacking "the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibility of a legal practitioner" (*Barristers' Board v Darveniza* [2000] QCA 253 para 37), such as to warrant nothing less than striking off. In such a case, if struck off, the former practitioner may subsequently apply for re-admission, and then seek to discharge the burden of establishing that over the intervening period, he or she has re-established fitness to be held out by the court as a proper person to practise (cf. *Ziems*, supra, p286; *re Morrison* [1961] QdR 343,348-9; *re Thomas* [1984] 2 QdR 460, 466).

[18] The respondent's default in giving false evidence is in this case to be seen in conjunction with her failure to acknowledge the significance of that default. That is to be drawn from her assertion to the Barristers' Board that she had not "committed any wrongdoing". It is extraordinary to contemplate that a barrister imbued with the requisite integrity would not immediately condemn any "tailoring" of evidence, or knowingly giving false evidence, as being entirely unacceptable. In what the respondent said to the Barristers' Board, she displayed a lack of insight into the repugnancy of her conduct. As I have said, she has not, surprisingly, given this court the benefit of any evidence sworn by her for the purposes of this proceeding. There has accordingly been no ground for considering excusing the manner in which she approached the Barristers' Board. The report of Dr Reddan, to which I

will come, does not contain material which would warrant our doing so.

[19] In order to persuade the court not to strike her off, the respondent offered an undertaking not to practise as a barrister for a period of 12 months, and would no doubt in any event urge that at the worst for her, she should be suspended. The respondent relies, in support of that position, on a comprehensive report dated 23 October 2001, from Dr Reddan, who is a consultant psychiatrist. Dr Reddan covers in detail a number of unfortunate aspects of the respondent's past life, and concludes with the following opinion which I should set out in full:

> "In formulating my opinion I have taken into account Mrs Tara Young's self-report, the mental state examination, the results of the other investigations and the accompanying material.
>
> Mrs Young's longitudinal history suggests that she has suffered several episodes of Major Depression (Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition, Text Revision). The first episode probably occurred in 1994. The second episode probably occurred in the first half of 2000 and her condition relapsed at the end of that same year. She was predisposed to the development of this condition because of genetic or biological factors (there is a family history of mood disturbance), her experience of her early childhood and her constitution and personality. She has some dependent personality traits. In particular, her self-esteem has been fragile. She has had difficulty in asserting herself and been conflicted about the appropriate expression of anger. She seeks to please and placate others and her tendency to be self-critical led to her being at times naïve about the behaviour and motivation of others. In particular, her experience of her father's temper coloured her childhood and adolescence and at times her fear of him immobilised her. It is likely that his often disproportionate reaction to any childish wrong doing played a role in Mrs Young developing a tendency to overreact to any possible wrong doing on her own part.
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> At the time Mrs Young appeared before the Inquiry into electoral misconduct, she had recently married and she believed that she had finally found a man with whom she could raise a family and spend the rest of her life. Earlier in the year she had suffered two significant losses, namely the loss of her relationship with her former fiancé, and then a pregnancy. The fact that she had herself decided to end both did not mean that these losses were any less significant for her. She had as a consequence developed an episode of Major Depression and in those predisposed to the development of depression significant losses are the most likely precipitant to another episode.
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> When she appeared before the Inquiry in November and December she was anxious which was a normal reaction, but also to a certain extent, ignorant of the issues or allegations which may be raised. She developed an acute relapse of her condition as evidenced not

only by her self-report, but also by her seeking of medical assistance at the time. As her recollection for the details of matters which had been brought to her attention during her two earlier appearances at the Inquiry became clearer, her depressed state at the time and her personality style led her to the rather extreme and self denigratory belief that she may have perverted the course of justice. Her behaviour at her third appearance on 12 January 2001 suggests a person troubled by a hypertrophied, punitive conscience as her depressed state amplified her negative evaluation of her earlier conduct. Although in no way am I seeking to be critical of her legal representation at that time or of any of the Barristers at the Inquiry, but it would not be unreasonable to question whether her experience of her father's behaviour throughout her childhood influenced her behaviour and reactions at that time. I am not suggesting that on 30 November 2000 or on 6 December 2000 that Mrs Young did not in any way seek to present her evidence in a way designed to protect herself at some level, but rather what I am suggesting is she was not being quite as deliberately untruthful as she later seemed to suggest. Her behaviour was quite self defeating.

Clearly, when Mrs Young became aware in 1997 that someone had earlier falsely enrolled her at an address where she had no connection she should have made further enquiry into the matter and not merely sought to correct it and then dismiss it from further consideration. It is likely that she did not realise the full import of the matter as she was certainly not an ALP "insider" and her involvement with the party had been very superficial. It is likely that she never thought to ask any questions about the matter.

As previously stated, Mrs Young has suffered from a number of episodes of Major Depression. Currently, she is anxious about these matters, but she is not pervasively depressed and her mental state and current functioning are well within the range of normal. She should continue to take Efexor over the next six to twelve months and then gradually withdraw it, as Efexor causes discontinuation symptoms. However, Mrs Young would benefit from some insight oriented psychotherapy with a psychiatrist as there are a number of issues arising from her childhood which are continuing to influence her behaviour and also predisposing her to the development of further episodes. It was interesting to note that during the evaluation Mrs Young initially presented her family of origin as being one characterised by close relationships, when in all likelihood her parents were rather self-absorbed, neglectful people and her father inspired in her considerable anxiety. She has, as yet, not made clear links between her later beliefs and behaviours and her childhood experiences and she would benefit from exploring these in a therapeutic relationship. Her prognosis however, is reasonably good, as her episodes of depression have responded to treatment and changes in circumstances and she has many personality strengths, including motivation, empathy for others and an above average

verbal intellect."

[20] I should mention in particular Dr Reddan's view that the respondent "was not being quite as deliberately untruthful as she later seemed to suggest". It is difficult to understand the precise purport of that view. A lie is always deliberate, and the respondent has admitted she lied. I would interpret Dr Reddan's view as suggesting that the respondent over-stated the seriousness of her deceit. But for purposes of this application, the Court must view it as serious.

[21] The views expressed by Dr Reddan do not dissuade me from the view that the respondent should, because of this serious misconduct, be struck from the roll of barristers. It appears the pressure of appearing before the Inquiry uncovered and aggravated a certain fragility in the respondent's emotional condition. That of itself, with the further psychotherapy advised, would cause one to query her capacity presently to fulfil the role of barrister, a role which is, in practice, not infrequently burdened by considerable pressure. (She does of course effectively acknowledge that by offering the undertaking not to practise for 12 months.)

[22] Subsequently to the hearing of the application, we were provided with references dealing with the respondent's character and work and personal history. Their authors, who are the respondent's friends and supporters, in a rather poignantly way offer substantial support for her position. Those references, also, however, do not dissuade me from the view that the respondent must, for this serious misconduct, be struck off. It is in that regard worth noting, as did Williams J (as he then was) in *re Bell* (Full Court motion 622 of 1991, 6 December 1991, unreported) that one should in this type of inquiry focus on a respondent's intrinsic character, and not be unduly distracted by reputed good fame, whether within the legal tradition or the wider community. (See also *Janus v Queensland Law Society Inc* [2001] QCA 180, para 12.) This misconduct of itself demonstrates the respondent's "intrinsic character", on these occasions, to have been disturbingly deficient.

[23] I would order that the name of Tara Virginia Young be removed from the roll of barristers admitted to practise within the State of Queensland.

[24] **DAVIES JA:** I agree with the reasons for judgment of the Chief Justice and with the order he proposes.

[25] **MACKENZIE J**: This is an application by the Barristers' Board of Queensland for an order that the respondent's name be removed from the roll of Barristers. The respondent was admitted as a Barrister on 13 July 1992. She has at various times been employed in the Legal Aid Office, the office of a former Attorney-General, in a solicitors firm for a brief period and in a position in another Government department. She also spent a brief period in private enterprise in a job unrelated to the law.

[26] While she was employed under secondment to the office of the Attorney-General, she formed a relationship with the Minister's Senior Policy Advisor who was at that time active in the ALP. Also working in that area was Catherine Bermingham who subsequently became a candidate in an ALP plebiscite for the Brisbane City Council Ward of East Brisbane. The respondent's decision to join the ALP, purportedly in that Ward, was influenced by those friendships. As her evidence

emerged, recruitment by Catherine Bermingham, so that she might vote for her in the plebiscite, was said to be the dominant reason. She terminated her relationship with her work colleague at the beginning of 2000. It is apparent that for part, but not all, of 2000 she suffered considerable personal turmoil as a consequence of related events. In late 2000, she married her present husband.

[27] Issues concerning enrolment practices were investigated by the CJC Inquiry into Electoral Fraud ("the Shepherdson Inquiry"). On returning from her honeymoon the respondent was summoned to appear before the Shepherdson Inquiry to give evidence concerning the circumstances in which she came to vote in the 1996 East Brisbane plebiscite. She gave evidence on three occasions, 30 November 2000, 6 December 2000 and 12 January 2001.

[28] It was common ground that her name was placed on the electoral roll, at the address 20 Church Avenue, Woolloongabba, by means of an enrolment form that she did not sign. However, on 16 April 1997 she signed another enrolment form giving her enrolled address as 20 Church Avenue, Woolloongabba and applying to be enrolled at 104 Fernberg Road, Rosalie. It was also common ground that she had never resided at 20 Church Avenue, Woolloongabba. It is an inevitable inference that she knew at the time of her application for change of enrolment that her address on the electoral roll was 20 Church Avenue, Woolloongabba.

[29] When she gave evidence on 30 November 2001 she swore that she could not assist the Inquiry in any way in relation to the enrolment form referring to 20 Church Avenue, Woolloongabba. She also gave evidence that until shortly before giving evidence to the Inquiry, she had believed that she could vote at the plebiscite, irrespective of her address, because she was a member of a branch in the Ward.

[30] On 6 December 2000 she repeated her belief about her entitlement to vote at the plebiscite. She said unequivocally that she was not aware of 20 Church Avenue until shortly before giving evidence on the first occasion. She was also shown the change of enrolment form showing her former enrolled address as 20 Church Avenue, Woolloongabba. She said that she did not know why she would have put that address in her change of enrolment form. She said that she had no recollection of where she had got that address from. She was cross-examined about the circumstances of her voting at the 1997 Brisbane City Council ("BCC") election. The evidence is somewhat inconclusive, but it was implicit in it that she did not become aware of the Woolloongabba address on that occasion. She said that the only possible source of the information was Catherine Bermingham, but she had no recollection of any conversation about it. She said that she could not recall why she considered it necessary to change her enrolment address on 16 April 1997.

[31] Under further examination by counsel assisting, she was asked whether she had taken any steps to bring to the attention of the authorities that she had been enrolled at an address of which she had no knowledge. She said that she had not. She was pressed with the proposition that her failure to do anything about it suggested prior knowledge of it. Her first response was that she did not recall. Then she claimed privilege. Upon being directed to answer the question she conceded that that inference could be made and that she did not think there was another inference.

[32] She then gave a statement in writing dated 19 December 2000 which stated, amongst other things, the following:

- that the instructions she had given her solicitors were "tailored to an extent which included false assertions";
- that the reasons for doing so included fear of being implicated in electoral fraud and the effect it would have on her integrity and standing;
- that it was not the case that she had no recollection of the address 20 Church Avenue, Woolloongabba.
- that at the time she originally gave the instructions she had a "niggling recollection of that address" but because it was only that and because her memory of events around that time was poor, she did not mention it. She "maintained the position that (she) knew nothing whatsoever of the address".
- that she had gleaned from discussions with Catherine Bermingham that she had to have an address in the ward in which she wished to vote at the plebiscite. However, she did not advert to the issue of false enrolment on the electoral roll.
- that she was "remorseful in the extreme for having been so fearful as to give false evidence to the Inquiry".

[33] The statements include the notions that her instructions and evidence were "tailored"; that she had "maintained the position" that she knew nothing of the address notwithstanding a niggling recollection to the contrary; and that she had given false evidence to the Inquiry. Each of these expressions necessarily implies a conscious decision to present a false account of events to the Inquiry.

[34] On 12 January 2001 she appeared before the Inquiry again, and admitted that her earlier evidence that she was unaware of the address 20 Church Avenue, Woolloongabba till shortly before she gave evidence was incorrect. She also advanced as the explanation for changing her enrolment in April 1997 that when she tried to vote at the BCC election a month earlier, she was not on the roll for the Ward where she then lived. She said she remembered a conversation she had with Catherine Bermingham and thought that she may have had an address in the East Brisbane Ward. She said she asked the polling officer and was told that her enrolled address was 20 Church Avenue, Woolloongabba. She said that that was the first time she was aware of that address.

[35] In his Report, Mr Shepherdson QC decided not to refer the respondent's conduct to the DPP for a possible perjury prosecution, essentially on discretionary grounds relating to the fact that the respondent had taken steps of her own accord to correct the position.

[36] The respondent's recantation was widely reported in the media. The Barristers' Board drew her attention to one such report and invited her to respond to the proposition that what she had done would amount to serious professional misconduct. After extensions of time were given she made a submission which included, in the covering letter and in the submission itself, the assertion that she had "not committed any wrong doing".

[37] The effect of her submissions was that she had, upon reflection and with jogging of her memory by questioning and the document shown to her, instigated her return to

the Inquiry in an attempt to correct, clarify and amplify her earlier evidence. Subject to certain matters to which reference will be made later, the tone of this response is, to my mind, a less contrite position than that taken in her statement of 19 December 2000.

[38] Assessment of the extent of a practitioner's appreciation of the significance of his or her actions and their nature and quality can be a relevant issue in matters of this kind (*Janus v Queensland Law Society Inc* [2001] QCA 180).

[39] The applicant has the benefit of a large number of favourable references mostly from people who have worked with her over the years. There is also a psychiatric report by Dr Reddan which expresses the opinion that the respondent had perceived that her behaviour was more deliberate and deceitful than it was. This conclusion seems to be based on the propositions that the respondent's concern that she could have "perverted the course of justice" seems somewhat extreme and that the transcript suggested that her desire to correct the record arose from her own internal concerns and was not the product of an attempt to engage in damage control because others had caught her out in either a deliberate lie or misleading statements.

[40] Dr Reddan properly qualified the first of those two propositions by acknowledging that it was a matter for legal comment. With regard to the second proposition, it is true that, to her credit, the respondent voluntarily approached the Shepherdson Inquiry to correct the evidence which she conceded was false. However, it is difficult to dismiss the feeling that the questioning by the counsel assisting the Commission on 6 December 2000 (referred to in paragraph [31]) which led to her concession as to the inference to be drawn from her failure to complain upon discovering that she was enrolled at Church Avenue, may have had some catalytic effect.

[41] There is a later observation by Dr Reddan that the respondent was "not being quite as deliberately untruthful as she later seemed to suggest" because her depressive state at the time amplified her negative evaluation of her earlier conduct. This seems to be based on the proposition that her recollection of events improved as "cues or reminders" were provided. It may be accepted as commonplace that that process often operates on a witness' mind. The difficulty in this case in sub-dividing "deliberate untruths" into sub-categories is that, even at its highest for the respondent, she has admitted that she chose to suppress evidence that she had some "niggling recollection" of the address and positively asserted that she knew nothing of it, for motives of self-protection. That in itself is conduct of a serious nature, especially in the context of the standard of conduct to which a Barrister must conform.

[42] One of the essential attributes of a Barrister which recurs in the cases is that he or she must command the confidence of the Judges and other members of the profession, allowing them to rely implicitly on the Barrister's word and behaviour. For example in *Re Davis* (1947) 75 CLR 409, 420 Dixon J said:

> "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."

(see also *New South Wales Bar Association v Cummins* [2001] NSWC 8284, par 20).

[43] Another authoritative statement is that of Kitto J in *Ziems v The Prothonotary of The Supreme Court of New South Wales* (1957) 97 CLR 279, 298, as follows:

> "… the Bar is no ordinary profession or occupation. These are not empty words, nor is it their purpose to express or encourage professional pretensions. They should be understood as a reminder that a barrister is more than his client's confident, adviser and advocate, and must therefore possess more than honesty, learning and forensic ability. He is, by virtue of a long tradition, in a relationship of intimate collaboration with the judges, as well as with his fellow-members of the Bar, in the high task of endeavouring to make successful the service of the law to the community. That is a delicate relationship, and it carries exceptional privileges and exceptional obligations. If a barrister is found to be, for any reason, an unsuitable person to share in the enjoyment of those privileges and in the effective discharge of those responsibilities, he is not a fit and proper person to remain at the Bar."

[44] The disciplinary function is not punitive. It is concerned with protecting the public and the standing of the profession. (*Clyne v New South Wales Bar Association* (1960) 104 CLR 186, 202; *Attorney-General v Bax* (1999) 2 Qd R9, 22). The range of options open to a court in a case where conduct justifying the court exercising its jurisdiction includes, at the top of the range, striking off and suspension. In *Barristers' Board v Darveniza* [2000] QCA 253 Thomas JA said the following:

> "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."

[45] He adopted the remarks of King CJ in *Re A Practitioner* (1984) 36 SASR 590, 593 which were:

> "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."

[46] In *Ziems,* 286, Dixon CJ had said:

> "… I think that it is open to the Supreme Court to suspend a barrister from practice: … . But, even so, it is probably a better course in most cases where room exists for the belief that time may give the barrister a title to resume his place at the Bar to allow him to re-apply at a subsequent time and offer positive evidence of the ground upon which he then claims to be re-admitted."

[47] Reference is made to these authorities because the respondent offered an undertaking not to practice as a Barrister for 12 months. She had accepted, as suggested in Dr Reddan's report, that she continue to take medication and undergo psychotherapy to address matters referred to in the report relating largely, if not wholly, to issues in the past, many of which preceded events in the Shepherdson Inquiry by many years.

[48] The references and the psychiatric report suggest that the respondent is well thought of by friends and workmates and has innate qualities upon which she could build if the predicted outcome of treatment occurs. As against this, the respondent demonstrated before the Shepherdson Inquiry, conduct of a kind that is the antithesis of what the authorities referred to in paras [42] and [43] require of a Barrister. There is authority that it is the intrinsic character of the person under inquiry that should be the focal point. In *Re Bell* (Full Court; Motion 622 of 1991, 6 December 1991, unreported), Williams J said that what is in issue is the person's intrinsic character, not necessarily his or her good fame either within the profession or the community at large. That was a case where a former practitioner was seeking reinstatement, but the principle is, in my opinion, also relevant in an application to strike off (see also *Janus v Queensland Law Society Inc* [2001] QCA 180).

[49] Applying the appropriate principles the conclusion that must be drawn is that in all the circumstances it is not a case where suspension is adequate to discharge the court's function of protecting the public and the standing of the profession. I would order that the name of Tara Virginia Young be removed from the roll of Barristers admitted to practise within the State of Queensland.