SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY
FULL COURT

Case Title:	**The Council of the Law Society of the Australian Capital Territory v Davey**
Citation:	**[2019] ACTSCFC 2**
Hearing Date:	14 August 2019
Decision Date:	16 August 2019
Before:	Elkaim J, Charlesworth J, Crowe AJ
Decision:	See [37]
Catchwords:	**LEGAL PRACTITIONERS** – Complaints and discipline – dishonest conduct – application to remove practitioner from the roll of practitioners following ACAT recommendation – whether defendant is a fit and proper person – practitioner's name removed from local roll
Legislation Cited:	*Court Procedures Rules 2006* (ACT) r 3614 *Evidence Act 2011 (ACT) s 91* *Legal Profession Act 2006 (ACT) ss 27, 425(3)(a), 431(3)(b), 462*
Cases Cited:	*Council of the Law Society of the ACT v Bandarage* [2019] ACTSCFC 1 *Council of the Law Society of the ACT v The Legal Practitioner D3* [2018] ACTSC 45 *Craig v The State of South Australia* (1995)184 CLR 163 *Law Society of the ACT v Powrie* [2017] ACTSCFC 4; 12 ACTLR 184 *Law Society of the ACT v Stubbs* [2017] ACTSCFC 3 *Legal Profession Complaints Committee v Bower* [2019] WASC 281 *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589 *Practitioner D3 v ACT Civil and Administrative Tribunal* [2017] ACTCA 62. *Practitioner D3 v ACT Civil and Administrative Tribunal and Law Society of the Australian Capital Territory* [2016] ACTSC 61 *The Council of the New South Wales Bar Association v Sahade* [2007] NSWCA 145 *The Law Society of the Australian Capital Territory v Davey (No 2)* [2019] ACTSC 216 *The Queen v Gray; Ex parte Marsh* (1985) 157 CLR 351 *The Queen v Metal Trades Employers' Association; Ex parte Amalgamated Engineering Union, Australian Section* (1951) 82 CLR 208
Parties:	The Council of the Law Society of the Australian Capital Territory (Plaintiff) John Davey (Defendant)

Representation:	**Counsel**
	N Beaumont SC (Plaintiff)
	In Person (Defendant)
	Solicitors
	McInnes Wilson Lawyers (Plaintiff)
	Herm Legal & Migration Services (Defendant)
File Number:	SC 366 of 2018

THE COURT:

1. The defendant was admitted as a solicitor of the Supreme Court of South Australia on 5 September 1994. He was admitted as a solicitor of the Supreme Court of Victoria on 31 May 1995. Through mutual recognition, he was admitted as a barrister and solicitor of the Supreme Court of the Australian Capital Territory on 1 May 2002.

2. From 17 April 2008 to 17 August 2009, the defendant held a restricted practising certificate. On 18 August 2009, he was issued with an unrestricted practising certificate. He held this certificate until 30 June 2012 when he moved to Melbourne.

3. On 19 July 2018 the ACT Civil & Administrative Tribunal (**ACAT**) recommended that the name of the defendant be removed from the local roll pursuant to s 425(3)(a) of the *Legal Profession Act 2006* (ACT) (the *LPA*).

4. The recommendation having been made, and the consequent order having been filed in the Supreme Court, the plaintiff now seeks an order pursuant to s 431(3) of the *LPA* that the defendant's name be removed from the roll of people admitted to the legal profession maintained by the Supreme Court pursuant to s 27 of the LPA. The plaintiff's proceedings were commenced with the filing of an originating application on 8 August 2018.

5. The plaintiff relied on two affidavits of Mr Robert Reis sworn on 7 August 2018 and 22 July 2019 respectively. The defendant objected to the second affidavit for two reasons; firstly, he said that he required Mr Reis for cross-examination, but he was not available, and secondly, he relied upon s 91 of the *Evidence Act 2011* (ACT) to the extent that the affidavits annexed material containing previous judgments relating to the defendant. The first point, concerning cross-examination, was dealt with in *The Law Society of the Australian Capital Territory v Davey (No 2)* [2019] ACTSC 216. The second point does not arise because the judgments were not included to prove any fact, rather they were to place the defendant's actions into context and to provide evidence of court proceedings he had instituted.

6. The defendant relied on an affidavit of Ms Bertha Franklin, affirmed on 11 August 2019.

7. The matter is a little unusual in that the defendant consented to the orders made in ACAT, and in particular to the recommendation that he be removed from the roll, but now that the matter has arrived in the Supreme Court, he does not wish this to happen.

8. The defendant is not able to challenge the findings made in ACAT. As stated in cases such as the *Council of the Law Society of the ACT v Bandarage* [2019] ACTSCFC 1 (*Bandarage*) at [138]:

In exercising its statutory function under s 431(3), the Full Court must apply the Tribunal's findings of fact, including any findings as to the practitioner's state of mind or motive in relation to relevant conduct, and any findings that the conduct was unprofessional conduct or professional misconduct: *Law Society of the ACT v Powrie* (2017) 12 ACTLR 184 at [83]–[84]. The Court cannot make findings inconsistent with those made by the Tribunal.

9. This Court however, must make up its own mind about the defendant's fitness to practice. Again as stated in *Bandarage* at [134]:

> This Court must decide for itself whether the practitioner is fit to practise. The Court is not bound by a Tribunal recommendation that a practitioner's name be removed from the roll; it must make its own determination of whether the relevant conduct warrants removal of the practitioner's name from the roll: *Powrie* at [86].

10. The decision in this case arises directly from the defendant's own concessions and admissions.

11. The consent orders, at page 29 of Ex RAR-1, state:

> By consent, pursuant to s 55(1) of the *ACT Civil and Administrative Act 2008* (ACT) and s 425 of the *Legal Profession Act 2006* (ACT) (**LPA**), The tribunal being satisfied that the below orders are appropriate for the Tribunal to make and within its powers:
>
> 1. Finds that it is satisfied that the Respondent is guilty of professional misconduct in each of the respects set out in the admissions and further particulars signed by the Respondents, copies of which are attached hereto (Exhibits 1 & 2);
> 2. Recommends that the name of the Respondent be removed from the roll of legal practitioners in:
>   a. The Australian Capital Territory (pursuant to s 425(3)(a) of the LPA);
>   b. South Australia (pursuant to s 425(4)(a) of the LPA); and
>   c. Victoria (pursuant to s 425(4)(a) of the LPA).
> 3. Recommends, pursuant to s 425(4)(b), the cancellation of the Respondent's practicing certificate in Victoria;
> 4. Orders, pursuant to s 433(1) of the LPA, that the Respondent pay the Applicant's costs of proceedings as agreed or assessed;
> 5. Orders that the Further Application for Disciplinary Action (Corrected) filed by the Applicant be otherwise dismissed;
> 6. Grants the parties liberty to apply, in the event that costs are not agreed and it becomes necessary to seek further orders to the means by which the costs are to be assessed.

12. The attached exhibits, notably both signed by the defendant, state the following:

> Exhibit 1:
>
> [The Defendant] accepts that he sought to mislead the AAT in relation to evidence of his occupation of the premises in the proceedings before Senior Member Hatch.
>
> He accepts that he failed to disclose those circumstances to the society in his responses to the Law Society's investigation of the Commissioner's complaint.
>
> He accepts that he breached his undertaking to inform the Law Society of the outcome of the Supreme Court appeal.
>
> He accepts that his conduct in relation to the conduct of the proceedings before the AAT and the Law Society's complaint against him is professional misconduct

He accepts that the appropriate sanction in these circumstances is that the tribunal should make an order recommending that his name be removed from the Roll of Legal practitioners.

He apologises for his conduct and for his lack of insight in relation to the nature, seriousness and consequence of his conduct.

Exhibit 2:

1. The [Defendant] called his sister to give evidence in the AAT proceedings before Senior Member Hatch in relation to his occupation of the premises from August 2004 in circumstances where he knew:

    a. He and his sister had been estranged for many years and that his first contact with her was on 11 January 2005 after he had rented the premises;

    b. His sister had no personal knowledge of the facts in respect to which he sought to elicit evidence;

    c. The evidence his sister gave in relation to his occupation of the premises from August 2004, including that she attended the premises in August 2004 and helped him set up his wardrobes and set up the house as a home was untrue. [C.F. Affidavit of Robert Reis sworn on 18 July 2013 Ex RAR – 1 page 9 para. 12 of the reasons for decision of Senior Member Hatch].

2. In his evidence to the AAT the [Defendant] did not give truthful evidence in relation to his claim to have commenced to occupy the premises from April 2004 and subsequently that he lived there full time from August 2004.

3. The [Defendant] filed an application in the Supreme Court for leave to appeal against the decision of Senior Member Hatch on grounds that included a claim that the Tribunal had wrongly found that his sister "was wrong about where the [Defendant] was living or was not telling the truth." [Ex RAR – 1 p 20 at para. (g)].

4. The [Defendant] swore an affidavit in the Supreme Court in support of his application for leave to appeal in which he falsely stated:

    a. At Paragraph 16, that "from approximately February 2004... the Vendor permitted me pre-settlement access to the property... During this time I attended to some preliminary painting and decorating at the property and spent some nights at the property. The frequency of my stays at the property increased around August 2004."

    b. At paragraph 18, that "I reiterate my evidence... That I was living full-time in the property from about August 2004" [Ex RAR – 1 pp 31, 32].

5. The [Defendant] provided material to the Law Society in response to the complaint by the Commissioner for the ACT revenue that included the above-mentioned documents and assertions and at various times during the Law Society's investigation purported to rely on the veracity of the material when he knew it to be untrue.

6. In response to the Law Society's request on 31 July 2012 for the [Defendant] to indicate any other factors supporting his contention that he occupied the apartment as his principle place of residence the [Defendant] directed the Law Society "to the evidence that was give that the tribunal by myself and a number of other witnesses" when he knew that some of that evidence was untrue" [Ex RAR-1 pp 60.63]

13. The approach to be taken in an application of this sort was set out in detail in *Bandarage*, from [137]:

    General Principles to be applied in deciding a statutory application for removal

    Section 431(3) of the *LPA* gives the Court statutory discretion to remove the name of a local lawyer from the local roll if the Tribunal has recommended that the practitioner's name should be removed. Under s 425(3) of the *LPA*, if the Tribunal finds a practitioner guilty of

unprofessional misconduct or professional misconduct, the Tribunal may recommend that the practitioner's name be removed.

As stated above at [134] and below at [147], the Court is not bound by the Tribunal's recommendation of removal and is required to form its own independent assessment of whether, given the conduct that has been proven, the practitioner is a fit and proper person to practise law: *Ziems v Prothonotary of the Supreme Court (NSW)* (1957) 97 CLR 279; *Powrie* at [87].

Although it is not our task to determine whether the practitioner's conduct amounted to unprofessional conduct or professional misconduct within the meaning of the *LPA*, it is instructive to consider the range of conduct that may be so classified.

Under the *LPA*, unsatisfactory professional conduct is defined in s 386 as follows:

In this Act:

unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

Professional misconduct is defined in s 387 of the *LPA* as follows:

(1) In this Act:

professional misconduct includes –

(a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and

(b) conduct of an Australian legal practitioner whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

As these definitions are inclusive, recourse may be had to the common law, both for the purpose of understanding the type of conduct that may amount to unsatisfactory professional conduct or professional misconduct and for the purpose of understanding what it means to be "not a fit and proper person" to practise law.

The personal attributes of a practitioner are integral to an assessment of whether the person is a fit and proper person to practise law. When discussing the importance of honesty and integrity to the practice of law, in *New South Wales Bar Association v Cummins* [2001] NSWCA 284; 52 NSWLR 279 (***Cummins***) at [20], Spigelman CJ said:

There are four interrelated interests involved. Clients must feel secure in confiding their secrets and entrusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people.

A willingness to engage in dishonest conduct often compels a finding of unfitness to practise: *The Council of the New South Wales Bar Association v Sahade* [2007] NSWCA 145 (***Sahade***) at [58]. Even if it does not rise above recklessness or neglect, persistent misconduct will ordinarily justify a finding of unfitness to practise: *Law Society of South Australia v Murphy* [1999] SASC 83. A penalty of suspension is usually inappropriate if there is a finding of unfitness of practice: *Attorney-General v Bax* [1998] QCA 89; [1999] 2 Qd R 9, 22 (Pincus JA).

Insight into previous wrongdoing is another personal attribute that is important to an assessment of whether a person is a fit and proper person to practise law. A legal

practitioner's failure to appreciate the gravity of misconduct may be indicative of unfitness to practise: *Southern Law Society v Westbrook* (1910) 10 CLR 609, 626 (Isaacs J); *New South Wales Bar Association v Evatt* (1968) 117 CLR 177, 184; *Re Maidment* (1992) 23 ATR 629, 642 (Legoe J); *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408, 472 (Giles AJA).

At common law, professional misconduct includes conduct in the pursuit of professional activities that is reasonably regarded by professional colleagues of good repute and competency as disgraceful or dishonourable: *Sahade* at [54]. In the context of professional disciplinary proceedings, reference may be made to "good fame" in the sense of good reputation. Reputation is relevant to the purposes of disciplinary powers, which include "to maintain public confidence in the integrity and honesty of the profession": *Council of the Law Society of New South Wales v Parente* [2019] NSWCA 33 (***Parente***) at [12] (Basten and Meagher JJA) and [49] (Brereton JA).

A finding of professional misconduct does not, of itself, demand an order removing a practitioner's name from the roll: *A Solicitor v Council of Law Society (NSW)* (2004) 216 CLR 253 at [21]; *Powrie* at [87].

Removal from the roll is reserved for the most serious cases of wrong conduct, where the character and conduct of the practitioner is assessed to be inconsistent with the privileges of further practice; suspension may be adequate in those cases where a legal practitioner has fallen below proper standards, but not to the extent that would indicate that the practitioner lacks the necessary attributes of a person entrusted with the responsibilities of legal practice: *Barristers' Board v Darveniza* [2000] QCA 253.

In general, removal is appropriate only where the underlying reason for disqualification is permanent, or at least of indefinite duration: *Cummins* at [25]–[27]; *Parente* at [33]. In *Parente* at [34], Basten and Meagher JJA indicated that, where a practitioner has manifested a serious character flaw that would justify removal, it is for the practitioner to affirmatively satisfy the court that the unfitness was, or is, of limited duration.

14. Based only on the signed admissions made by the defendant, the following is apparent:

    (a) The defendant tried to mislead the Administrative Appeals Tribunal.

    (b) The defendant failed to honestly provide information to the Law Society's investigation of a complaint.

    (c) The defendant breached an undertaking made to the Law Society.

    (d) The defendant called his sister to give evidence in Administrative Appeal Tribunal proceedings which he knew was false. In fact, he organised for her to give the false evidence.

    (e) The defendant himself gave false evidence to the Tribunal.

    (f) The defendant filed an application in the Supreme Court based on a premise that he knew to be false. This involved him seeking leave to appeal on the basis that his sister's evidence had not been accepted.

    (g) The defendant swore an affidavit in which he made false statements.

    (h) The defendant made representations to the Law Society based on material that he knew to be false.

15. It is clear from the above stated general principles that only the "most serious cases of wrong conduct" will result in a removal from the roll. The conduct set out in the previous paragraph fits well into this description. A legal practitioner engaging in conduct of this type could not be trusted by clients and could not be trusted by fellow practitioners. They would describe his behaviour as "disgraceful or dishonourable" (*The Council of*

the New South Wales Bar Association v Sahade [2007] NSWCA 145 (*Sahade*) at [54]). Later in *Sahade*, at [58] the New South Wales Court of Appeal said:

> However, willingness to engage in deceptive or dishonest behaviour will generally be a matter of central relevance. Such a characteristic may be revealed by conduct in the practice of law or in conduct unrelated to the practice of law. Whatever the context of the conduct, the element of character thus revealed is likely to be relevant although if based on conduct in the practice of law, that context will usually give rise to heightened concern.

16. The defendant's behaviour traversed both his work as a solicitor (albeit acting on his own behalf) and his endeavours outside of the law. This passage from the *Law Society of the ACT v Stubbs* [2017] ACTSCFC 3, at [33], is also apt to this case:

> Honesty and integrity are essential characteristics in a legal practitioner because clients must feel secure when entrusting their personal affairs to legal practitioners, fellow practitioners must be able to depend on their colleagues, the judiciary must have confidence in legal practitioners, and the public must have confidence in the profession as a whole: *New South Wales Bar Association v Cummins* [2001] NSWCA 284; 52 NSWLR 279 at [19]–[20]; *Legal Profession Complaints Committee v in de Braekt* [2013] WASC 124 at [26].

17. When a solicitor is admitted, he or she states to the court that he or she will:

> well and honestly conduct myself in the practice of law as a lawyer of the Supreme Court of the Australian Capital Territory according to the best of my knowledge and ability. (*Court Procedures Rules 2006* (ACT) r 3614)

18. This oath or affirmation acknowledges to the Court that he or she will henceforth be an officer of the Court, dealing with the Court according to the highest standards of integrity. The defendant here blatantly breached this obligation in the interests of self-gain. A solicitor of the Supreme Court swearing a false affidavit in the Supreme Court is conducting himself at the highest levels of dishonesty.

19. As stated in *Law Society of the ACT v Powrie* [2017] ACTSCFC 4;12 ACTLR 184 at [88]:

> We consider the finding by the ACAT that the practitioner knowingly misled the Magistrates Court in his application for an adjournment of the proceedings before that Court to be the most serious finding (Ground 2A). In *Brett v Solicitors Regulation Authority* [2014] EWHC 2974 (Admin); [2015] PNLR 2, Lord Thomas CJ said, at [111]:
>
> > [M]isleading the court is regarded by the court and must be regarded by any disciplinary tribunal as one of the most serious offences that an advocate or litigator can commit. It is not simply a breach of a rule of a game, but a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings. Such conduct will normally attract an exemplary and deterrent sentence. That is in part because our system for the administration of justice relies so heavily upon the integrity of the profession and the full discharge of the profession's duties and in part because the privilege of conducting litigation or appearing in court is granted on terms that the rules are observed not merely in their letter but in their spirit. Indeed, the reputation of the system of the administration of justice... and the standing of the profession depends particularly upon the discharge of the duties owed to the court.

20. The defendant was asked, during the hearing, whether there were any matters which he wished to place before the Court before it made any final orders. The written submissions he relied upon do not raise any subjective factors. Almost to the contrary, notwithstanding a heading of "On the question of insight and remorse" the defendant expresses no remorse. Rather he seems to be saying that he has done a service to the law by his numerous challenges to the jurisdiction of ACAT and associated judgments of this Court. He stated:

> Indeed, the agitation for his personal common and statutory rights and the contribution that (he) has made to the development of jurisprudence (at great personal cost) ought properly be seen as a discharge of his duties to the Court not to permit or lead Courts into error. It is only through litigants testing the limits of statutory remit and executive action that any jurisprudence is developed.

21. In response to the question asked in the hearing, the defendant said that he was sorry for his conduct and that he was ashamed of it. He said he now had some insight into his conduct and he would like to redeem himself. These sentiments are accepted by the Court but they do not raise enough of a circumstance that could be seen to allow for a mitigation of the Court's conclusion.

22. The Court is very mindful that subjective circumstances may be taken into account and, perhaps more importantly, that the Court's decision should not include "any notion of punishing the practitioner" (*Legal Profession Complaints Committee v Bower* [2019] WASC 281, at [38] (*Bower*)). The "protection of the public and the maintenance of the reputation and standards of the legal profession" exceed any mitigatory element that arises from the subjective features (*Bower* at [38]).

23. It is also worth noting that the subjective factors were only raised at effectively the last moment in response to a question from the Court. They did not form any part of a detailed statement by the defendant. His efforts over the years since his admissions in ACAT have been more taken up with his efforts to impugn the jurisdiction of ACAT rather than any expression of regret for his conduct.

24. The references that are attached to the affidavit of Ms Franklin, while certainly evidencing good deeds performed by the defendant, must be treated with some caution. With one exception, they do not acknowledge, or display any knowledge of, the defendant's wrongdoings. The one reference that perhaps suggests some knowledge is from Ms Patricia Thompson. She stated:

> I can attest to his good character, and he has been candid with me concerning his issue before the Tribunal. I can state that despite this moment of weakness, John Davey is a person of moral strength. I have known him to do substantial legal representation cases pro bono with vulnerable populations and behave with integrity in my dealings with him. I ask that this be factored into the considerations regarding his one moment of weakness at a very vulnerable time for him.

25. Ms Thompson's suggestion that there was but a "moment of weakness" is to be compared with the fact that the misconduct occurred between July 2008 and July 2012.

26. The defendant's attempts to avoid the consequences of his admitted conduct also do not reflect well on him. His forays to the Federal Court and his last minute application to avoid what must be described as the inevitable result of his misdeeds also do not assist him.

27. It will be clear from all of the above that it is the opinion of this Court that the defendant is not fit to practice and that his name must be removed from the local roll.

28. The last minute application just referred to, is an application in proceedings dated 11 August 2019, in which the defendant sought the following orders:

    (1) That an Order in the nature of Certiorari issue against the decision of Plaintiff on the 17th June 2013 quashing the decision to commence an Application in ACT Civil and Administrative Tribunal in proceedings OR 20/2013.

(2) That an Order in the nature of Certiorari issue against the ACT Civil and Administrative Tribunal quashing the decision of Presidential Member Stefaniak on 22nd May 2014 and the Orders of Burns, J in *Practitioner D3 v ACT Civil and Administrative Tribunal and Law Society of the Australian Capital Territory* [2016] ACTSC 61 of this Supreme Court.

(3) Declare that each of the actions of the Plaintiff to commence the Appeal in the ACT Civil and Administrative Tribunal in proceedings OR 20 of 2013 before Presidential Member Stefaniak and to oppose the Appeal before his Honour Justice Burns (mentioned in Order 2) was commenced without the authority of the Plaintiff.

(4) Order that the Plaintiff by its officers servants and agents is restrained from taking further steps in the proceedings commenced in the Tribunal in reliance upon the decision in Order 1.

29. The plaintiff submitted that the Court should not deal with the application because it was not an interlocutory application and should have been filed as an originating application. This may be strictly correct, according to the *Court Procedure Rules 2006* (ACT), but it is an argument which would be easily overcome by an order dispensing with compliance with the rules.

30. Much more important is the fact that the application is not relevant and is probably an abuse of process. This is because the jurisdictional issues raised in it have been dealt with previously, including in the decisions of Penfold and Burns JJ.; see *Council of the Law Society of the ACT v The Legal Practitioner D3* [2018] ACTSC 45 and *Practitioner D3 v ACT Civil and Administrative Tribunal and Law Society of the Australian Capital Territory* [2016] ACTSC 61 Further the defendant, after considerable delay, made an attempt to appeal the decision of Burns J but that attempt was unsuccessful (*Practitioner D3 v ACT Civil and Administrative Tribunal* [2017] ACTCA 62). Any attempt now to raise defects in the decision making trail that led, in particular, to the decision of Burns J must be met by the propositions that:

(1) The argument as to the alleged defect has been determined against the defendant once and for all by the decision of a superior court; and,

(2) Insofar as the defendant seeks to raise other arguable defects, they are matters which should have been raised in the proceedings before Burns J. Indeed, they are so closely related to the argument which the defendant did ventilate before His Honour that it was unreasonable for the defendant not to raise them at that time. Moreover, to raise them now would create the possibility of inconsistent judgments. In that context the defendant is in our view estopped pursuant to the principles discussed in *Port of Melbourne Authority v Anshun Pty Ltd* (1981) 147 CLR 589 per Gibbs CJ, Mason and Aickin JJ at 602-603.

31. Another reason for the defendant's application being, essentially, hopeless, is that it seeks orders in the nature of certiorari pertaining to the decision of Burns J. This Court could not make any such order; see *Craig v The State of South Australia* (1995) 184 CLR 163 at 174, referring to *The Queen v Metal Trades Employers' Association; Ex parte Amalgamated Engineering Union, Australian Section* (1951) 82 CLR 208 and *The Queen v Gray; Ex parte Marsh* (1985) 157 CLR 351 and also Deane J at p 386-387.

32. It is probably not necessary to do so, but if the defendant's application dated 11 August 2019 needs to be dealt with formally, it is dismissed.

33. Finally, even if there had been some merit in the defendant's application, the same final conclusion would have been available to this Court pursuant to its inherent jurisdiction. Section 462 of the *LPA* reserves the powers of the Supreme Court.

34. The inherent powers of the Court include the capacity to regulate and control the conduct of local lawyers. This is made clear in *Bandarage*, from [17]. As there explained, the test remains the same, the difference being that the Court must make its own factual findings. This is achieved here because the admissions made by the defendant are before the Court. They alone would justify the exercise of the Court's inherent powers to remove the defendant from the roll.

35. This possibility was put to the defendant who, properly and fairly, conceded that the course was open to the Court and that there was nothing more of substance that he would have put to the Court than the matters he had already raised. He did make the point that if the Court proceeded by way of its inherent jurisdiction then his liability to pay the plaintiffs costs of the proceedings might be affected.

36. Lest there be any doubt, the orders made by the Court are in response to the plaintiff's proceedings. The reference to the Court's inherent jurisdiction is to emphasise that even if there had been some impediment in the plaintiff's proceedings, then the order to remove the defendant from the local roll would have been made in any event.

37. Accordingly, the Full Court makes the following orders:

    (i) By consent, the name of the plaintiff is amended to The Council of the Law Society of the Australian Capital Territory.

    (ii) The defendant's application in proceedings dated 11 August 2019 is dismissed.

    (iii) Pursuant to s 431(3) of the *Legal Profession Act 2006,* the defendant's name, John Patrick Davey, be removed from the roll of people admitted to the legal profession maintained by the Supreme Court pursuant to s 27 of the *Legal Profession Act 2006*.

    (iv) The defendant is to pay the plaintiff's costs of the proceedings.

I certify that the preceding thirty seven [37] numbered paragraphs are a true copy of the Reasons for judgment of their Honours Justice Elkaim, Justice Charlesworth and Acting Justice Crowe.

Associate:

Date: