

## 4 Davida appealed

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[2005] LPT 006

LEGAL PRACTICE TRIBUNAL

de JERSEY CJ

MR L BOWDEN

MR J LAMONT

No BS1015 of 2005

LEGAL SERVICES COMMISSIONER Applicant

and

DAVIDA ELLEN WILLIAMS Respondent

BRISBANE

... DATE 24/10/2005

### 1 REASONS

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### 2 REASONS

THE CHIEF JUSTICE: This is the judgment of the Tribunal.

On the 2nd of February 1982, the respondent was admitted as a barrister of the Supreme Court. On 19th November 2004 she pleaded guilty in the District Court to one count of aggravated fraud and five counts of attempted aggravated fraud. She was sentenced to three years' imprisonment, suspended after six months for an operational period of four years.

The respondent's offences occurred over a period of approximately nine months. The first fraud in May 2001 involved the respondent obtaining \$198,000 from a bank to support a land purchase where the actual purchase price was \$138,000, but the respondent fraudulently presented a forged contract nominating a purchase price of \$248,000.

By the time the property was sold, increasing land values meant there was a deficiency of only \$20,000 in the amount to be repaid to the bank, which the respondent then met. The attempted frauds followed a similar pattern but for one reason or another failed. The respondent attempted by them to gain approximately in the aggregate \$1.3 million secured against property valued at purchase at approximately \$900,000.

The respondent's approach exploited the financial institutions' lending practices. An independent valuation would not generally be required where the amount sought was 80 per cent or less of the purchase price.

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### 3 REASONS

In some cases, when challenged by the financial institution, the respondent withdrew her loan application. On one occasion, when queried, she took umbrage and asserted 20 years' integrity in her practice as a barrister.

Her offending was deliberate and carefully planned and she persisted in it over a not insubstantial period, being nine months between May 2001 and February 2002. Over the period of the offending the respondent's marriage was breaking down. She was also subject to very severe debilitating abdominal problems for which she has endured many operations and protracted treatment.

Her condition is called Short Gut Syndrome and it has been allied with depression. The specialist's view, placed before the sentencing Judge in the District Court, was that the respondent's medical condition would have

"made for high distractibility and poor judgment".

Following her admission the respondent worked in the office of the Commonwealth Director of Public Prosecutions as a Prosecutor. For a time she headed the Crown Confiscation of Assets section in that office. In 1992 she was legal officer to the Queensland Commissioner of Police. Ill-health meant she was out of practice for some years. Then, as at the time of the first offence in May 2001, she was working in private practice until charged with that offence.

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#### **4 REASONS**

The respondent has not appeared in person at this hearing today. She filed affidavit material and a three page written submission dated five days ago, 19th October 2005. In that latest material she says that her health problems persist.

She no longer sees her future as resting in the law. She does not contest penalty but submits that striking-off is not warranted because her criminal offending amounted to personal misconduct and not professional misconduct. She has offered to sign an undertaking not to seek a practising certificate in Australia on an indefinite basis.

In *A Solicitor v. Council of the Law Society of New South Wales* (2003) 216 Commonwealth Law Reports 253 the High Court dealt with the distinction between personal misconduct and professional misconduct pointing out at page 267 that:

"Even though conduct is not engaged in directly in the course of professional practice it may be so connected to such practice as to amount to professional misconduct.

Furthermore, a person's behaviour may demonstrate qualities of a kind that require a conclusion that a person is not fit and proper to practise."

The latter point was made in *Ziems v. Prothonotary of the Supreme Court of New South Wales* (1957) 97 Commonwealth Law

Reports 279 at 290.

The systematic deceit which characterised these transactions was glaringly incompatible with the utter integrity which must mark those held out by the Court to the public as fit to practise as barristers and in the contemporary situation as 24102005 T04/JB27 M/T 1/2005 (de Jersey CJ)

## 5 REASONS

legal practitioners. Deliberate fraud of this order involved an obvious affront to that necessary integrity. Because that integrity rests at the root of proper legal practice it must be acknowledged first that the respondent's behaviour bespeaks her unfitness to practise and, second, that her fraud in these commercial dealings was so closely connected to the mores of legal practice that it amounted to professional misconduct.

As to the first of those matters, I note what was said by Justice Dixon, as he then was, in re Davis (1947) 75 Commonwealth Law Reports 409 at 420:

"It would almost seem to go without saying that a conviction of a crime of dishonesty of so grave a kind as housebreaking and stealing is incompatible with the existence in a candidate for admission to the Bar of the reputation and more enduring moral qualities denoted by the expression good fame and character which describes the test of his ethical fitness for the profession."

As to the second of those matters, the connection rested in the respondent's engaging, with utter disrespect for the law, in what she was falsely presenting as regular commercial dealings. She exploited her knowledge of the course of business of the institutions. In one case she sheltered behind her standing as a barrister. In all cases, in a way which struck at the heart of the integrity of commercial dealings, she acted with gross dishonesty. The character of this offending is, for present purposes, plainly different from the sexual offending which concerned  
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## 6 REASONS

The High Court in A Solicitor and from the manslaughter involved in Ziems where, in each case, suspension was imposed.

Striking-off is reserved for very serious cases where the conduct and character of the respondent are such that the Tribunal should not hold the respondent out to the public as fit to practise. This is such a case. It would not adequately protect the public for the Tribunal to leave the respondent's name on the roll and accept her undertaking that she not practise or seek a practising certificate. The very purpose of the roll is to record those held out as fit to practise.

In any case while the respondent remains on the roll she may be known and present herself as a barrister and the course taken by this Tribunal should not leave scope for misrepresentation or confusion in the minds of the public.

There will therefore be an order that the name of the respondent be removed from the local roll.

THE CHIEF JUSTICE: There will be an additional order that the respondent pay the applicant's costs of the proceeding to be assessed if not agreed.