

HIGH COURT OF AUSTRALIA
BAR ASSOCIATION OF QUEENSLAND v. LAMB
STEVENS v. LAMB

FULL COURT

MCTIERNAN, MENZIES, WINDEYER and OWEN, JJ.

19 November 1971—Sydney

Legal practitioner—Barrister—“Improper” and “unprofessional” conduct—Whether fit to be admitted to practice as a barrister—Application by Bar Association—Special leave to appeal.

Where the respondent as a solicitor: (a) communicated with witnesses to be called for the other party in a matrimonial cause in which he was acting for the petitioner, and further, (b) had extramarital intercourse with his client, after the decree absolute, but before questions of custody and maintenance had been determined.

Held, (1) per Menzies, Windeyer and Owen, JJ.: although the conduct complained of warranted the criticism that it was “improper” and “unprofessional” it nevertheless fell far short of amounting to unprofessional conduct rendering the respondent unfit to remain as a solicitor or to become a barrister.

Per McTiernan, J.: In the circumstances special leave to appeal should be granted.

Application for Special Leave to Appeal

The Full Court of the Supreme Court of Queensland, although admitting the respondent as a barrister, criticized recent conduct on his part as a solicitor. The Bar Association of Queensland sought leave to appeal against the order of admission.

J. D. Dunn, Q.C., and *C. F. McLoughlin*, for the applicant Bar Association of Queensland.

T. D. McCawley, for the applicant De Vere Stevens.

M. H. Byers, Q.C., and *P. V. Lowenthal*, for the respondent.

McTiernan, J.: The Court refuses the motion moved by Mr. McCawley, but without costs.

As for the motion moved by Mr. Dunn, in my opinion it should be granted. I think that on the argument which we have heard on that motion there are questions fit for the granting of special leave to appeal both because they admit of serious argument and are clearly of public importance.

Menzies, J.: It is my opinion that the application of the Queensland Bar Association should be refused for reasons which I shall state shortly.

The Full Court of the Supreme Court of Queensland, although admitting the applicant as a barrister, criticized recent conduct on his part as a solicitor in respect of three matters. In relation to two of these matters the Acting Chief Justice, with the agreement of Hoare, J., used the word “improper” to describe the conduct. With regard to the third, the word “unprofessional” was used. Had these descriptions been used to indicate that, by doing what he did, the applicant had shown himself to be unfit to be a solicitor, it would, of course, have followed that his application to be a barrister must fail. It is clear, however, that the words were not so used. The Acting Chief Justice makes this clear.

The conduct criticized was, in the first place, communicating with witnesses to be called for the other party in a matrimonial cause in which he was acting for the petitioner. The applicant suggested to one witness that she should not give evidence

without his first interviewing her. He did not interview her and she gave evidence, notwithstanding his discouragement. The applicant asked two other witnesses not to confine their evidence to one incident, but to broaden the scope of their evidence to relate to the position of general conduct as a wife and mother. These witnesses gave evidence.

I agree with the Acting Chief Justice that, in doing as he did, the applicant failed to observe the salutary rule, well stated by the Acting Chief Justice, as follows: "A solicitor for the adverse interest should be circumspect and delicate in approaching a person whose evidence has been opened by the other party." The departures from this rule by the applicant, which have been described, warranted criticism, but fell far short of amounting to unprofessional conduct rendering him unfit to remain as a solicitor or to become a barrister.

The third matter for criticism was that after decree absolute, but before questions of custody and maintenance had been determined, the applicant had extra-marital intercourse with his client. This was regarded as professional misconduct because it seems it was thought that her misconduct with him might affect the client adversely in the pending proceedings which were in the event determined by consent.

Having described the conduct as unprofessional conduct, the Acting Chief Justice said: "But this does not dispose of the matter. The critical question is whether that adulterous and unprofessional conduct, in the circumstances in which it occurred, should disqualify the applicant from admission to the Bar." His Honour then stated compelling reasons for giving a negative answer to that question.

It seems to me, therefore, that, notwithstanding the use of terms which have naturally caused the Bar Association concern, the Full Court did address itself to the right question and gave an answer which was open to it and no doubt accorded with the opinion formed earlier by the Barristers' Board which, after inquiry, had given the applicant a certificate expressing its satisfaction that he was a person fit to be admitted to practise as a barrister.

The application does relate to a matter of public importance. Moreover, having regarded the expressions used by the Acting Chief Justice, I fully understand the concern of the Bar to seek the ruling of this Court on the matter. Nevertheless, for the reasons stated, I consider that, in accordance with established principles, the application should be refused.

Windeyer, J.: I consider that the conduct complained of was reprehensible but not, I think, as described by the Supreme Court of Queensland such as necessarily to disqualify from membership of the legal profession.

Therefore I agree with my brother Menzies, for the reasons that he gives, that this application, although I consider it was understandably and properly made by the Bar Association of Queensland, should be refused.

Owen, J.: I am of opinion that both motions should be dismissed. I should add I agree with what has been said by my brother Menzies.

Motion dismissed.

Solicitors for the Bar Association (Qld.): *Henderson & Lahey.*

Solicitors for Paul De Vere Stevens: *D. P. Hempenstall & O' Donoghue.*

Solicitors for the respondent: *Flower & Hart.*