Material Facts

In *Law Society of Tasmania v Richardson* [2003] TASSC 9 (‘*Richardson’),* the applicant is seeking to have the respondents’ names struck off the roll of legal practitioners. Scott Richardson’s failure to disclose a determination of academic misconduct on his application to the bar on 18th of August 2000 makes him not a ‘fit and proper person’ to practice law. The misconduct was determined on 29 June 1999 by the University's committee to the Court. The applicant also alleges the respondent failed to make sufficient enquires as to whether or not he had to disclose this, and failed to instruct counsel appearing on his behalf to make that disclosure. The misconduct was in breach of clause 1.2.1 of the Ordinance of Student Discipline was in relation to collusion on a University academic assignment. The respondent lodged an appeal against the decision on the grounds that the academic misconduct committee had failed to comply with the rules of natural justice. This hearing never occurred and the determination of the committee was not overturned. Following this on 29 November 2001, the Discipline Appeals Committee conducted a hearing and set aside the determination. It is alleged the respondent’s failure to disclose the determination when he applied for admission, makes him unfit to practice law. The applicant further alleges the names of his counsel, Gregory Richardson and Anita Betts, should be struck off the role for not disclosing the determination at his admission hearing. The applicant argued that their actions amounted to ‘professional misconduct’ for either willfully or recklessly not disclosing the determination.

Issues The Court Has To Resolve

The main issue to be decided is whether the Society has proved that Scott Richardson is not a ‘fit and proper person’ to remain a member of the profession. In determining this, the court will have to consider various aspects, including whether the applicant’s failure to disclose a finding of academic misconduct by a University committee was serious enough to render disbarment. The court would have to deliberate whether it was reasonable for the respondent

to believe he, nor his counsel, did not have to disclose this information, based on advice given to him by University staff and his counsel. Another issue is whether the failure of his counsel, Gregory Richardson and Anita Betts, to disclose the determination to the court amounts to professional misconduct. The judge will have to consider whether their choice to not disclose this on his admission was wilful or merely inadvertent; and based on this whether this 'misconduct' is serious enough render them unfit to practise law.

Ratio Decidendi Of The Case

A statement of *ratio* in *Richardson* is that not all misdemeanours or convictions will result in a finding that a person is not a 'fit and proper person' to practise [79]. Furthermore a person will be deemed unfit to practise if their misconduct would be reasonably be regarded by legal practitioners of good repute and competency as 'disgraceful or dishonorable' [91]. This case is also authority that the absence of an express rule, an applicant has a duty to disclose to the court any matter that might reasonably be relevant to the question of fitness to practice [78].

Obiter Dicta Of The Case

The Judge's comments at [87] could be classified as *obiter dicta*. Crawford J stated, "if there had existed rules of court prescribing matters to be disclosed" then the respondent could not argue that there had been no apparent possibility that the determination should be disclosed. This is merely a judicial observation of a hypothetical situation, and as it does not apply to the case at hand, it is not binding precedent. Crawford J's discussion of whether the presiding judge at the admission hearing had been made aware of the determination is an example of *obiter*. The Judge's comments at [59] that the respondent 'did not rely on [the judge's comments] as in any way persuading him not to make a disclosure'. This is *obiter* because it is a legal opinion that is irrelevant to the contended matter in this case.

Statutory Interpretation Exercise

Tracey (T) and Collette (C) have both been served fines for alleged offences under s.5 of the

Hairdressers Act 2010 (SA) (referred to as 'the Act'). There is a possibility they could successfully appeal their charges, assuming they are seeking advice within 60 days of the fine as per s.6(1). T is guilty of an offence under s 5(1) if she was an 'unqualified' person who carried on the practice of hairdressing for fee or reward. C will be guilty of her offence if she employed T as an unqualified person to carry on the practice of hairdressing. The following must be considered to determine whether they are guilty under the *Hairdressers Act 2010* (SA).

Was T a 'Qualified' Person Under s.4 of The Act?

T is guilty of s.5(1) if she is classified as an 'uqualified' person. The Interpretation section (s.4) defines a 'qualified' person, and deems the term 'unqualified' to have a 'corresponding meaning'. Under s.4, a 'qualified person' must have 'qualifications, training or experience' that is considered 'appropriate by the Commissioner' and a 'qualification certificate' issued by the Commissioner. A person will therefore be 'unqualified' if these express conditions of 'qualified' under s.4 are not satisfied. T does possess a Certificate IV in Hairdressing and was awarded Brisbane Hairdresser of the Year twice, which could satisfy the requirement of appropriate 'qualifications, training or experience'. T, however, would likely be classified as an 'unqualified' person for the purpose of the Act as she has not been issued a qualification certificate by the Commissioner and it is unlikely she would be successful in evading the fine on these grounds.

Was T Carrying Out The 'Practise Of Hairdressing'?

It appears clear on the facts that T was working 'for a fee' based on the ordinary meaning of the term. She was working on commission and despite not receiving a salary; she was receiving payment for specific services performed.

For her first offence of cutting Andrew's hair, it is clear that this falls under the definition of 'hairdressing' as it expressly states 'cutting' as part of the practice in s.4. T could, however,

attempt to evade the second fine for the waxing by arguing that this was not a practice of 'hairdressing' and therefore she cannot be guilty of the offence. According to s.4, 'hairdressing' for the purpose of the Act means 'the cutting, colouring, setting, or permanent waving or other treatment of a person's hair'. The use of the word 'means' indicates it is a closed definition, which the courts would accept as an exhaustive list. As waxing is not expressly mentioned, T could attempt to argue that she cannot be guilty of the offence. The definition, however, contains an ambiguity with the phrase 'other treatment'. As this is not defined in the Act, the court would apply the literal meaning of the word 'treatment', defined by the Macquarie dictionary as 'the application of a cosmetic preparation'. This is has ambiguity in its meaning, therefore the maxim of *ejusdem generis* can be applied as the words are general. Based on the specific words in the sentence, it can be determined the class of the words are that of hair styling, yet the interpretation is still very broad. Applying the *noscitur a sociis* principle, the meaning can be narrowed further by looking at the surrounding words such as 'cutting, colouring' indicating the treatment has to be of the kind that alters the appearance of the hair, and waxing does alter hair by removing it.

The court would then apply the purposive rule, and favour a construction which promotes the purpose of the act, according to s.22(1) of the *Acts Interpretation Act* 1915 (SA). The judge would turn to the Object section, in particular s.3(b) which suggests the Act is designed to 'protect the public from unqualified persons carrying out the practice of hairdressing'. In absence of legislation, the common law allows extrinsic materials to be considered in South Australia to determine the mischief to which an Act addresses, established in *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 252 ALR 471, [52]. The South Australian Minister for Consumer Affairs identified parliament's intention to protect the customer stating consumers should be "free of fear" of harm, such as that suffered by Andrew, at the Second Reading. The Commissioner also suggested hairdressing is "much more than just cutting

hair". Under the purposive approach, the court would likely find waxing to be a 'practise of hairdressing' and prioritize parliament's intention to protect the consumer. T would therefore be unlikely to succeed in challenging this notice.

Was T Employed By C For the 'Practise of Hairdressing'?

If T was found to be an 'unqualified' person undertaking the 'practice of hairdressing' then C can be fined for her offence under s.5(2) of the Act. She could possibly evade the fine if the latter circumstance were to occur based on the literal construction she did not 'employ' T and is not guilty of the offence under s.5(2) of the *Hairdressers Act (SA) 2010.* As T was previously retired and is working on commission, she receives her payment from whichever customers she completes her hairdressing service for. C merely accepted T's 'offer of assistance', and resultantly there is some ambiguity as to the meaning of the term 'employ'. In absence of a definition under the s.4 of the Act, the Macquarie dictionary can be consulted to apply the plain and natural English meaning, which is defined 'to use the services of (a person)'. It was the customers rather than C who are 'using' the hairdressing services of T, and providing her income in exchange for this. This would, likely be found to be inconsistent with the purpose of the Act, with s.3(b) listing the object of the Act to 'protect the public' from 'unqualified' hairdressers with the intention to protect consumers like Andrew. It would be unlikely C would be successful in challenging this notice.

Conclusion

T does not have good grounds to appeal her first fine issued under s.5(1) in relation to the haircut for Andrew. If T was deemed 'unqualified' and was carrying out 'the practise of hairdressing' C would be ill advised to dispute her fine under s.5(2) as she would likely be unsuccessful. T could be successful in disputing the second fine under s.5(1) regarding the waxing, however both clients would be unlikely to succeed in challenging their notices.