



## Carol Webster SC

Telephone 02 9224 1550  
Email [carol.webster@stjames.net.au](mailto:carol.webster@stjames.net.au)  
Clerk Natalie Biondi  
Clerk's telephone 02 9224 1501

### ***Detailed cases list***

*Administrative / Judicial review / Appeals in criminal matters*

High Court appeal [DQU16 v Minister for Home Affairs \[2021\] HCA 10 \(7 April 2021\)](#) from [DQU16 v Minister for Home Affairs \[2020\] FCA 518](#) (Reeves J), grant of special leave [DQU16 & Ors v Minister for Home Affairs & Anor \[2020\] HCATrans 136 \(9 September 2020\)](#) Appeal contending that the principles in *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473 are applicable in considering complementary protection criterion, whether Immigration Assessment Authority can rely on findings re claim for refugee status – for the appellants

[CXZ v Children's Guardian \[2020\] NSWCA 338](#) – successful appeal by leave regarding Tribunal determination of whether a person poses a risk to the safety of children under s 18 *Child Protection (Working with Children) Act 2012* (NSW) – whether three-step process – whether lingering doubt to count against applicant – for the appellant

[Devitt v Ross \[2018\] NSWSC 1675](#) (Hoeben CJ at CL) application to appeal out of time against sentence imposed in the Local Court, appeal incompetent in challenge to order of Local Court no longer operative, District Court dismissal of application for leave to appeal – for the DPP as amicus

[Chen \(Yan Ping\) v Director of Public Prosecutions \[2018\] NSWSC 783](#) (Fagan J) unsuccessful appeal from dismissal of application for permanent stay of prosecution for offence of making false accusation with intent to subject a person to investigation, whether signature of Inspector of Crime Commission necessary on summons to give evidence – for the DPP

[Barr \(a pseudonym\) v Director of Public Prosecutions \(NSW\) \[2018\] NSWCA 47](#) (2018) 97 NSWLR 246 – judicial review of bail decision in District Court, construction of the *Bail Act* – for the DPP

[Tarrant v R \[2018\] NSWCCA 21](#) appeal against sentence, allegation of apprehended bias in comments and questions by sentencing judge during trial and sentencing hearings, assessment of culpability and consistency with jury finding of substantial impairment – for the DPP

[PH v R \[2017\] NSWCCA 194](#) unsuccessful appeal against conviction, whether jury's verdict unreasonable or not supported by the evidence – for the DPP

[Medich v R \(NSWCCA\) s 5F Criminal Appeal Act](#) applications seeking to appeal from refusal of adjournment of trial – withdrawn / adjourned – for the DPP

[JW v District Court of New South Wales \[2016\] NSWCA 22](#) and [JW v R \[2016\] NSWCCA 26](#) (Simpson JA) stay sought of trial pending application to CCA / Court of Appeal seeking to set aside District Court refusal of stay of trial, proposed challenge to magistrate’s order in Children’s Court committing applicant for trial – for the DPP; substantive Court of Appeal / CCA decision (23 June 2016) restricted

[Lazarus v Director of Public Prosecutions \(NSW\) \[2015\] NSWCA 408](#) refusal of leave to appeal from [Lazarus v Director of Public Prosecutions NSW \[2015\] NSWSC 1776](#) (RS Hulme AJ) dismissal of appeal from Local Court to Supreme Court, pending conviction appeal to District Court – abuse of process; also [Lazarus v Director of Public Prosecutions \(NSW\) \[2015\] NSWSC 426](#) (Garling J) refusal of prerogative relief regarding Local Court convictions, allegations of bias – for the DPP

[Ghasemi v District Court of New South Wales \[2015\] NSWCA 267](#) (R A Hulme J) stay sought of sentence proceedings sought pending judicial review proceedings in Court of Appeal – complaints of apprehension of bias or prejudice by sentencing judge – for the DPP

[Firth v Director of Public Prosecutions \[2013\] NSWCA 403](#) appeal to District Court from convictions in Local Court of traffic offences - judicial review sought of dismissal of appeals, refusal to submit question of law to CCA – for the DPP

[Landsman v Director of Public Prosecutions \[2013\] NSWCA 369](#) judicial review of refusal of District Court to submit question of law to CCA, Crown granted leave to adduce fresh evidence on offender’s appeal from Local Court to District Court, of admissions made by offender to probation officer – for the DPP

[Medich v Local Court of NSW \(No 2\) \[2013\] NSWSC 1390](#) (R A Hulme J) judicial review of decision to not allow cross-examination of witness in committal proceedings, also [Medich v Local Court of NSW \[2013\] NSWSC 1338](#) re suppression order – for the DPP

[Yousaf v Director of Public Prosecutions \[2012\] NSWCA 397](#) judicial review sought of District Court dismissal of appeal from Local Court – complaints that evidence wrongly rejected, alleged apprehended bias, “Parker warnings” – statutory power for Court of Appeal to order recommencement of sentence upon determination of judicial review application – for the DPP

### *Discipline / Professional negligence*

[Terepo v Council of the Law Society of New South Wales \[2022\] NSWCA 210](#) appeal from Tribunal recommendation for removal from the Roll – Court satisfied as to appropriateness of proposed orders setting aside removal and certain findings on the basis Tribunal exceeded its jurisdiction, going beyond allegations put by the Law Society

[Odlum v Friend & Anor \[2022\] NSWSC 574](#) (Cavanagh J) unsuccessful professional negligence proceedings against former solicitor and counsel, advice about settlement and costs consequences – breach and standard of care – for the former counsel

[Council of the Law Society of New South Wales v Clarke \[2022\] NSWCA 57](#) removal from the Roll, practitioner convicted of offences of dishonestly obtaining an advantage, declaration that not a fit and proper person to remain on the roll of Australian lawyers – for the Law Society

[Council of the New South Wales Bar Association v EFA \(a pseudonym\) \[2021\] NSWCA 339](#) (2021) 106 NSWLR 383 – appeal from Tribunal decisions [Council of the New South Wales Bar Association v EFA \[2021\] NSWCATOD 21](#) (Stage 1) [Council of the New South Wales Bar Association v EFA \(No 2\) \[2021\] NSWCATOD 84](#) (Stage 2) – respondent barrister engaged in demeaning, humiliating and inexcusable conduct towards a female clerk at a function, issue as to whether particular words were said – whether the Tribunal erred in not finding that the respondent had engaged in professional misconduct, and by imposing only a formal reprimand – consideration of professional misconduct at common law and fitness to engage in legal practice – held respondent’s conduct and words warranted severe condemnation – for the Bar Association

[Determination in relation to the Episcopal Standards Commission referral concerning Roger Herft – 8 December 2021](#) Determination of the Episcopal Standards Board of the Anglican Church of Australia on questions relating to the conduct of Roger Herft while serving as Bishop of Newcastle and his response to allegations of child sexual abuse by clergy while he was Bishop of Newcastle – Board satisfied that Bishop Roger Herft is unfit to remain in Holy Orders and determines that Bishop Roger Herft be deposed – for the Episcopal Standards Commission

[XY v Council of the Law Society of New South Wales \[2021\] NSWSC 1263](#) (Adamson J) unsuccessful application for stay of decisions of the Council to suspend practising certificate until determination of the summons appealing the decisions; [XY v Council of the Law Society of New South Wales \(No 2\) \[2021\] NSWSC 1353](#) variation to non publication orders to balance impact on principles of open justice and protection of the plaintiff’s safety – for the respondent Law Society

[Council of the New South Wales Bar Association v Raphael \[2021\] NSWCATOD 44](#) legal practitioner – conduct towards female solicitor – unsatisfactory professional conduct – insight and understanding of nature of behaviour – for the respondent

[Council of the Law Society of New South Wales v Hislop \[2019\] NSWCA 302](#) application to remove from the Roll a practitioner convicted of aggravated robbery, sentenced to imprisonment, whether necessary to make declaration of unfitness, whether costs order should be made – for the Law Society

[Defence Inquiry](#) (Heard by the Hon TRH Cole AO RFD QC as Assistant IGADF in October 2019, determination not publicly available) – for the respondent

[Riley v Health Care Complaints Commission \[2019\] NSWCATOD 54](#) appeal re reprimand imposed by a Professional Standards Committee – appeal dismissed – for the HCCC (separate costs decision [Riley v Health Care Complaints Commission \(Costs\) \[2019\] NSWCATOD 65](#))

[Council of the Law Society of New South Wales v Levitt \[2018\] NSWCA 247](#) appeal in judicial review proceedings challenging commencement of proceedings in NCAT on a complaint, construction of the *Legal Profession Act 2004*;  
Special leave refused: [Council of the Law Society of New South Wales \[2019\] HCATrans 78 \(12 April 2019\)](#) – on the basis that the question of statutory construction sought to be agitated was not of sufficient general importance to warrant the attention of the Court (Gageler, Gordon and Edelman JJ) – for the Law Society

[Council of the Law Society of New South Wales v Parente \[2019\] NSWCA 33](#) application to remove from the Roll a practitioner convicted of drug supply offences and sentenced to imprisonment – for the Law Society

[Burrows v Law Society of New South Wales \[2019\] NSWCA 8](#) refusal of leave to appeal from decision awarding costs in appeal against Law Society's suspension of practising certificate – [Burrows v Law Society of New South Wales \(No 4\) \[2018\] NSWSC 943](#), [Burrows v Council for the Law Society of New South Wales \(No 3\) \[2018\] NSWSC 737](#) (Adamson J); [Burrows v Council for the Law Society of New South Wales \(No 2\) \[2018\] NSWSC 376](#), [Burrows v Council for the Law Society of New South Wales \[2018\] NSWSC 235](#) (Schmidt J) – for the Law Society

[Health Care Complaints Commission v Sultan \[2018\] NSWCA 303](#) appeal from NCAT findings – for the HCCC

[Potkonyak v Legal Services Commissioner \(No 2\) \[2018\] NSWCA 173](#) unsuccessful appeal by practitioner from NCAT findings of professional misconduct in respect of conduct of care proceedings, removal from the Roll; stay application [Potkonyak v Legal Services Commissioner \[2018\] NSWCA 1](#) (McColl JA) – for the Legal Services Commissioner

[Health Care Complaints Commission v CSM \[2018\] NSWSC 902](#) (Lonergan J) appeal from NCAT refusal to make proposed protective orders, procedural fairness denied (and re costs [Health Care Complaints Commission v CSM \(No 2\) \[2018\] NSWSC 1545](#) – for the HCCC

[Council of the Law Society of New South Wales v Bouzanis \[2017\] NSWCA 330](#) (2017) 97 NSWLR 488 – successful appeal from NCAT dismissal of disciplinary application, interpretation of legal profession legislation, whether client payment deposited into office account 'trust money' – for the Law Society

[Council of the Law Society of New South Wales v Kim \[2017\] NSWCA 292](#) application to remove from the Roll practitioner convicted of dishonesty – for the Law Society

[Council of the New South Wales Bar Association v Biscoe \[2017\] NSWCA 286](#) application to remove barrister from the Roll, practising without practising certificate, false and misleading statements to clients, solicitors, courts and Legal Aid – for the Bar Association

[Council of the Law Society of New South Wales v Kinchington \[2017\] NSWCA 278](#) application to remove solicitor from the Roll, forged client's signature on costs agreement and convicted of publishing false statement to obtain financial advantage – for the Law Society

[Sullivan v Council of the Law Society of New South Wales \[2017\] NSWCA 244](#) unsuccessful appeal by solicitor from NCAT findings re failure to comply with *Legal Profession Act* notice – for the Law Society

[Appeal of Keith Francis Slater](#) Determination of the Appellate Tribunal of the Anglican Church of Australia (19 January 2017) re determinations by or on behalf of the Diocese of Grafton leading to the deposition of the appellant from Holy Orders – Appellate Tribunal lacked appellate jurisdiction in the matter but concluded that the deposition was null and void on various grounds – for the appellant

[Russo v Legal Services Commissioner \[2016\] NSWCA 306](#) appeal from NCAT order removing appellant's name from Roll for failure to pay counsel's fees or account for payments made by client for counsel's fees, denial of procedural fairness, reprimand and fine substituted; stay application [Russo v Legal Services Commissioner \[2016\] NSWCA 95](#) (Barrett AJA) – for the Legal Services Commissioner

[Donaghy v Council of the Law Society of NSW \(No 2\) \[2015\] NSWCA 224](#) appeal from NCAT dismissal of review of decision to reprimand, complaint of failing to pay counsel's fees; also [Donaghy v The Council of The Law Society of New South Wales \[2013\] NSWCA 154](#) appeal from Tribunal decision dismissing review from reprimand – denial of procedural fairness by considering conduct not the subject of original complaint (remitted for re hearing) – for the Law Society

[Donaghy v Legal Services Commissioner of New South Wales \[2014\] NSWCA 445](#) appeal from Tribunal dismissal of review of decision to reprimand – error by Tribunal in considering matters extraneous to original complaint – for the Legal Services Commissioner

[Council of the New South Wales Bar Association v Franklin \(No 2\) \[2014\] NSWCA 428](#) application for removal from Roll, where lawyer convicted of offences including aggravated sexual assault, denial at trial and at sentencing hearing that he committed the offences; also [Council of the New South Wales Bar Association v Franklin \[2014\] NSWCA 329](#) advance ruling as to admissibility of evidence, proposed tender of transcripts of evidence from respondent's criminal trial – for the Bar Association

Briefed in 2014 as counsel assisting a Hearing Committee appointed by the Legal Profession Admission Board investigating an allegation of misconduct made against a student-at-law, a matter not the subject of any public decision

[Barakat v The Law Society of New South Wales \[2014\] NSWSC 773](#) (Beech-Jones J) appeal from refusal of practising certificate – practitioners facing potential insolvency - disposition of funds and assets – whether conduct dishonest, also [Barakat v Law Society of NSW \[2013\] NSWADT 271](#); [Roulstone v Law Society of NSW \[2013\] NSWADT 272](#) review of Law Society decisions to suspend solicitors' practising certificates, failure to establish fitness to hold practising certificates – show cause events (presentation of debtor's petitions, bankruptcy, disposal of assets)– for the Law Society

[Ability One Financial Management Pty Limited and Anor v JB by his Tutor AB \[2014\] NSWSC 245](#) (Lindsay J) remuneration of private manager appointed as financial manager of protected persons – for the Law Society as amicus

[Council of the New South Wales Bar Association v Costigan \[2013\] NSWCA 407](#) application for removal of legal practitioner from Roll – dealing with trust moneys received in advance on account of legal costs, practising without a practising certificate, also [Council of the NSW Bar Association v Costigan \[2013\] NSWSC 339](#) (Garling J) injunction restraining practitioner from continuing to appear without a practising certificate – for the Bar Association

[Scroope v Legal Services Commissioner \[2013\] NSWCA 178](#) appeal from Tribunal decision that senior employed solicitor's role in preparation of a bill that overcharged a client constituted professional misconduct; also [Legal Services Commissioner v Keddie \[2012\] NSWADT 106](#); [Legal Services Commissioner v Scroope \[2012\] NSWADT 107](#) claims of professional misconduct for charging grossly excessive fees – acceptance of overcharging by firm, deficiencies in computerised costing system – failure of supervision by responsible partner, responsibility of senior solicitor – for the Legal Services Commissioner

[Bechara v Legal Services Commissioner \[2011\] HCATrans 156 \(10 June 2011\)](#) solicitor's unsuccessful application for special leave to appeal from [Bechara v Legal Services Commissioner \[2010\] NSWCA 369](#) (2010) 79 NSWLR 763 – unsuccessful appeal by solicitor against Tribunal finding of professional misconduct for gross overcharging in billing for



proceedings heard together without apportioning time costed charges between the matters, solicitor's contention that preparation of itemised bills "in accordance with the respective costs agreements" foreclosed disciplinary consideration of the charges rejected – for the Legal Services Commissioner in the Court of Appeal and High Court

### *Property and equity matters*

[The Owners – Strata Plan No 61233 v Arcidiacono; The Owners – Strata Plan No 17719 v Arcidiacono \[2019\] NSWSC 1307](#) (Henry J) proceedings seeking declarations as to easements created by prescription, alternatively creation under statute or by express grant or implication in old system deeds of conveyance, for one of the plaintiff Owners Corporations; and re costs [The Owners – Strata Plan 17719 v Arcidiacono \(No 2\) \[2019\] NSWSC 1800](#)

Appeal dismissed by the Court of Appeal: [Arcidiacono v The Owners – Strata Plan No 17719; Arcidiacono v The Owners – Strata Plan No 61233 \[2020\] NSWCA 269](#) (2020) 104 NSWLR 199

Special leave refused: [Arcidiacono & Anor v The Owners - Strata Plan No. 17719; Arcidiacono & Anor v The Owners - Strata Plan No. 61233 \[2021\] HCASL 89](#) (15 April 2021)

[Arcidiacono v The Owners – Strata Plan 61233 \[2019\] NSWCA 46](#) Opposing application for leave to appeal from decision as to whether easements created by conveyances in 1839 bind present-day registered proprietors, whether successor in title could reopen ex parte proceedings in which orders were made that affect property – for one of the strata plans

[Rubino & Anor v Pineview Property Holdings Pty Ltd & Ors \[2016\] NSWSC 904](#) (White J) successfully opposing claim for compensation out of Torrens Assurance Fund, plaintiffs claimed to have been deceived into signing transfer documents, properties mortgaged to secure loan, loan proceeds disbursed largely to benefit of cross defendants – for the Registrar General

[B v U \[2012\] NSWSC 1416](#) (Pembroke J) s 37A *Conveyancing Act 1919* application seeking to set aside alienation of property – for the plaintiff

[Langford v Reddy \[2012\] NSWSC 289](#) (Sackar J) successfully defending a claim for compensation from the Torrens Assurance Fund, alleged deprivation of property by unconscionable conduct, undue influence, fraud, misrepresentation and negligence – for the Registrar-General

### *Acting for government*

[Inquest into the death of Huy Neng Ngo](#) Decision of Deputy State Coroner Truscott – defective Takata airbags, product safety, voluntary recalls – for the ACCC

Briefed for the State defendants in Supreme Court proceedings:

[Warragamba Winery Pty Ltd v State of New South Wales \(No 9\) \[2012\] NSWSC 701](#)

(Walmsley AJ) claim against public authorities for negligence – bushfire caused by lightning strike spreading to and burning houses and factories near national park; damages – method of valuation for tortiously destroyed buildings – for the State defendants, part of a team of counsel led by Larry King SC, responsible for quantum

[2001 Goobang bushfires](#) matters: the proceedings (*Atkinson & Ors v State of NSW*) resolved in 2006. Briefed as part of a team of counsel led by Bret Walker SC, responsible for quantum.

Thredbo Commercial Claims More than ten separate proceedings arising out of the 1997 Thredbo landslide were heard by Grove J in the Supreme Court between 2002 and 2003. Most matters were resolved by mid 2003 and the remaining matters were heard between 2003 and 2006, main judgment delivered [Aymost Pty Ltd v State of New South Wales & Ors; Hecher & anor v State of New South Wales & Ors \[2004\] NSWSC 1309](#). Briefed as part of a team of counsel led by Peter Garling SC, the only junior involved for the mediations conducted in 2003, responsible for quantum.

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