

## ***NSW Bar Association v. Maddocks***

On 23rd August 1988 the Court of Appeal constituted by Kirby P, Samuels J.A. and McHugh J.A. handed down a unanimous judgment in the matter of NSW Bar Association v. Maddocks.

The Court made orders in accordance with the summons declaring that Maddocks was not a fit and proper person to be a member of the NSW Bar Association and directing that his name be removed from the Roll of Barristers.

### **Findings of the Court of Appeal**

The Court found that Maddocks had:-

1. While a defendant in personal litigation threatened that unless the proceedings were withdrawn he would disclose to the police that the plaintiff had defrauded an insurance company.
2. In 1977 made a representation to the Equity Court that he was an appropriate person to be a company director without disclosing that he was an undischarged bankrupt in circumstances where he knew it to be an offence for an undischarged bankrupt to hold such office.
3. Accepted instructions as a barrister on behalf of a client without the intervention of an instructing solicitor; conducted conferences with him in inappropriate places and without the attendance of a solicitor or clerk and received from him payment of fees in cash.
4. Not been honest and candid with the Court in the explanations that he offered with respect to the above matters.

### **Points of Interest**

The case is of particular interest because:-

1. It contains a useful summary of the principles to be applied in disbarment proceedings.
2. It stresses the absolute necessity for barristers to be both honest and candid in answering complaints relied upon as the foundation for disbarment proceedings if they are to have any real prospect of remaining on the Roll.
3. It emphasises the seriousness with which the Court views misconduct directly involving Court proceedings or the barrister's relationship with the Court.
4. It acknowledges the diversity of the Bar and the inappropriateness of rigid insistence upon an unvarying mode of professional practice.
5. It suggests that seeing clients without solicitors present and/or taking cash directly from clients may not in the circumstances of a particular case be professional misconduct of such seriousness to warrant disbarment.
6. It suggests that it would be far more efficient and expeditious if the factual aspects of disciplinary cases were contested before a single judge whose findings would then be referred to the Court of Appeal for ultimate decision as to whether those findings justify any disciplinary action. □

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