Supreme Court

New South Wales

Case Name:	Council of the New South Wales Bar Association v Rollinson; Council of the New South Wales Bar Association v Rollinson
Medium Neutral Citation:	[2022] NSWSC 407
Hearing Date(s):	16 March 2022
Date of Orders:	8 April 2022
Decision Date:	8 April 2022
Jurisdiction:	Common Law
Before:	Beech-Jones CJ at CL
Decision:	(1) The Court declares that Michael Rollinson is in contempt of this Court for breaching the undertaking given by him to the Court on 6 August 2021 by his conduct on 10 August 2021 in sending an email and attachments to the Registrar of the Court of Appeal and certain legal practitioners. (2) The Court declares that Michael Rollinson is in contempt of this Court for breaching the orders made by Wilson J on 16 August 2021 by his conduct between 23 August 2021 and 20 October 2021 in engaging in legal practice in New South Wales and representing or implying that he was entitled to engage in legal practice in New South Wales. (3) The Court declares that Michael Rollinson is in contempt of Court for breaching orders 1(a)(ii) and 1(b)(i) and Order 5 made by Campbell J on 16 September 2021 by his conduct on 17 September 2021 in communicating with an employee or officer of the Local Court of New South Wales in relation to the matter of Vinja Holdings Pty Ltd v Style Investments Pty

Ltd, appearing in that matter and appearing as an advocate in the Local Court at Wollongong in that matter on that day.

(4) Michael Rollinson is committed to a correctional centre for a period of 9 months commencing on the date of his arrest.

(5) Order that the terms of imprisonment imposed by order (4) be suspended on condition that for a period of 3 years from today, Michael Rollinson, comply with order (1) made by Wilson J on 16 August 2021 in proceedings No 2021/00224727.

(6) Grant the parties liberty to apply on 7 days' notice in respect of any application to lift the suspension imposed by order 5.

(7) The contemnor, Michael Rollinson, is to pay the costs of the Bar Council of the New South Wales Bar Association of the notice of motion filed on 15 September 2021 in proceedings No 2021/00224727 and the notice of motion filed on 29 September 2021 in proceedings No 2021/00265078.

(8) The notice of motion filed on 15 September 2021 in proceedings No 2021/00224727 and the notice of motion filed on 29 September 2021 in proceedings No 2021/00265078 be otherwise dismissed.

Catchwords: CONTEMPT – Barrister – ceased to hold practising certificate – continued to practice – gave undertaking to Bar Association – breached – gave undertaking to Court – breached – injunctions issued by Court – breached – wilful disobedience to Court orders – plea of guilty – psychiatric condition – approach to imposition of punishment – imprisonment – suspension of punishment

Legislation Cited: Crimes (Sentencing Procedure) Act 1999
Supreme Court Rules 1970

Cases Cited: AMIEU v Mudginberri Station Pty Ltd (1986) 161 CLR 98; [1986] HCA 46
Barbaro v The Queen (2014) 253 CLR 58

	Cahyadi v R (2007) 168 A Crim R 41; [2007] NSWCCA 1 CFMEU v Boral (2015) 256 CLR 375; [2015] HCA 21 Council of the New South Wales Bar Association v Rollinson [2021] NSWSC 1090 Dinsdale v The Queen (2000) 202 CLR 321; [2000] HCA 54 Director of Public Prosecutions (Cth) v De La Rosa (2010) 79 NSWLR 1; 205 A Crim R 1; [2010] NSWCCA 194 Dowling v Prothonotary of the Supreme Court (2018) 99 NSWLR 229; [2018] NSWCA 340 Johnson v The Queen [2004] 78 ALJR 616; [2004] HCA 15; Kazal v Thunder Studios Inc (California) (2017) 256 FCR 90; [2017] FCAFC 111 Mill v The Queen (1988) 166 CLR 59 Mirus Australia Pty Ltd v Gage [2018] NSWSC 35 NHB Enterprises Pty Ltd v Corry (No 8) [2022] NSWSC 97 Pelechowski v Registrar, Court of Appeal (NSW) (1999) 198 CLR 435; [1999] HCA 19 R v Zamagias [2002] NSWCCA 17 Registrar of the Court of Appeal v Maniam (No 2) (1992) 26 NSWLR 309 Stanizzo v Fregnan; Stanizzo v Badarne; Stanizzo v State of New South Wales [2021] NSWCA 195 Sun v He (No 2) [2020] NSWSC 1298 Valentine v The Queen [2020] NSWCCA 116 Witham v Holloway (1995) 183 CLR 525; [1995] HCA 3
Category:	Principal judgment
Parties:	Council of the New South Wales Bar Association (Plaintiff) Michael Rollinson (Defendant)
Representation:	Counsel: Ms K Richardson (Plaintiff) Ms B Tronson; Mr D Bhutani (Defendant) Solicitors:
File Number(s):	2021/224727; 2021/265078

JUDGMENT

1 This judgment addresses the punishment to be imposed on a barrister for contempt of court in the form of his repeated wilful disobedience to Court injunctions preventing him from engaging in legal practice.

Summary

2 By notice of motion filed 15 September 2021 in proceedings No 2021/00224727, the Council of the New South Wales Bar Association (the "Bar Council") seeks two declarations that the contemnor, Michael Rollinson, was in contempt of Court and that he be punished for the contempt. The first declaration concerns his conduct described in [11] to [15] which was a breach of an undertaking that he gave to this Court on 6 August 2021 to, inter alia, not practice as a Barrister without a practising certificate (the "First Contempt"). The second declaration concerns his conduct described in [16] to [51] which was in breach of injunction granted by this Court to similar effect on 16 August 2021 (the "Second Contempt").

3 By a notice of motion filed 29 September 2021 in proceedings No 2021/00265078, the Bar Council sought a further declaration that, by his conduct described in [52] to [62], the contemnor was in contempt of a further injunction granted by this Court on 16 September 2021 which prevented him from appearing in certain proceedings in the Local Court (the "Third Contempt").

4 Despite the filing of those motions, the contemnor continued to practise as a barrister. On 29 October 2021 the contemnor pleaded guilty to the contempt charges. The proceedings were then adjourned until 16 March 2022 for submissions and evidence on the appropriate penalty. In the meantime, the contemnor swore an affidavit expressing regret for his actions. However, as explained below, he continued to practice as a barrister even after swearing that affidavit.

5 For the reasons that follow the only sanction that can be imposed on the contemnor is a substantial custodial sentence. Nevertheless, having regard to the psychiatric evidence and his otherwise blameless conduct prior to these events, I have determined to suspend the sentence for a period of three years

conditional on the contemnor observing the injunction preventing him from practising without a practising certificate.

The Contempts

6 The following facts are taken from two agreed statement of facts filed in each of the two contempt proceedings. Those agreed facts reflect the contents of the final iterations of the statement of charges filed against the contemnor with the two notices of motion noted above.

7 The contemnor was admitted as a solicitor of the Supreme Court of New South Wales in 1994. He was admitted as a barrister in 1995. He held a practising certificate as a barrister continuously from his admission until 30 June 2021.

8 The contemnor's application for a renewal of his practising certificate for the 2021 to 2022 practice year was unsuccessful because he did not pay the entirety of the appropriate fee. On 2 July 2021, he was sent an email from the New South Wales Bar Association (the "Bar Association") advising him, inter alia, that that he would be in contravention of the *Legal Profession Uniform Law* (NSW) 2014 (the "Uniform Law") if he practised or held himself out as a barrister.

9 On 22 July 2021, the contemnor sent an email to the Bar Association's "Certification Officer" advising that he had paid the outstanding balance of his practising certificate and membership fees, and attaching his application for a practising certificate. He also enclosed a statutory declaration sworn 20 July 2021 in which he stated he had engaged in legal work on or after 1 July 2021. This prompted an immediate response from the Bar Association's Director of Professional Conduct. The response requested further information about the contemnor's disclosures. It requested the contemnor provide an undertaking that: he would not engage in legal practice while he did not hold a practising certificate; and would not advertise or represent, or do anything that stated or implied, that he was entitled to engage in legal practice while he did not hold a practising certificate.

10 By a letter dated 23 July 2021, the contemnor provided the undertaking as requested. In another letter dated 26 July 2021, the contemnor provided further

information including details of matters that he has been working on since 1 July 2021.

First Contempt: Breach of 6 August 2021 Undertaking

11 On 6 August 2021, the Bar Council filed a summons in this Court seeking injunctive relief under s 447 of the Uniform Law against the contemnor (being proceedings No 2021/224727). These proceedings were listed before Button J on that same day. The contemnor appeared by telephone and provided the following undertaking (the "Undertaking") to the Court:

> On a without admissions basis, the Defendant undertakes to the Court, until the plaintiff's Summons is heard and determined, to:
>
> a) not engage in legal practice in New South Wales;
>
> b) not advertise or represent, or do anything that states or implies, that he is entitled to engage in legal practice in New South Wales; and
>
> c) take steps (during the week commencing 9 August 2021) to ensure that his name and contact information are removed from, and do not appear on, the website of Latham Chambers.

12 The agreed facts record that the contemnor "was aware of the Undertaking and knew of his obligations under that Undertaking". The agreed facts specify many particulars to support that agreed fact including the correspondence just noted, the contemnor's verbal confirmation to Button J on 6 August 2021 providing the undertaking, a statement he made to Wilson J on 16 August 2021 confirming he had given the undertaking on 6 August 2021 and the fact that he:

> "ha[d] been served on 5 August 2021 with the Affidavit of Mr Andreas Ha\eger made 5 August 2021 and its accompanying exhibit (which included correspondence from President Bell of the Court of Appeal stating that the respondent had been seeking to file written submissions in the *Stanizzo v State of NSW* matter [the "Stanizzo appeal"] in defiance of directions of the Court and noted that the fact that the respondent 'apparently no longer holds a practising certificate only exacerbates the situation')".

13 The contemnor had previously appeared for the appellant in the Stanizzo appeal and had filed and attempted to file written submissions on his behalf.

14 On 10 August 2021 at 1.13pm, the contemnor sent by email a four-page written submission to the Registrar of the Court of Appeal described as "the Further Supplementary Submission by the Appellant" for "*Stanizzo v State of New South Wales and Related Appeals No 2020/151357*"). The written submissions stated that they were "Filed for the Appellant". The email attaching them was

sent to the legal practitioners acting for the other parties in the *Stanizzo* appeal from the contemnor's email address associated with Latham chambers.

15 The agreed facts record that this conduct breached paragraph (a) of the Undertaking. It also breached paragraph (b) of the Undertaking in that it represented or implied that the contemnor was entitled to engage in legal practice in New South Wales. It was further agreed that this conduct was undertaken in wilful disobedience and contravention of the Undertaking. As explained below, it follows that it amounts to a criminal contempt.

Second Contempt: Breach of 16 August 2021 Injunction

16 On 16 August 2021, Wilson J heard the proceedings noted in [11] on a final basis. The contemnor appeared at the hearing by audio-visual link and relied upon a submitting appearance. He was present in court (via audio-visual link) when Wilson J gave an *ex-tempore* judgment and made final orders.

17 Her Honour made, inter alia, the following order (*Council of the New South Wales Bar Association v Rollinson* [2021] NSWSC 1090) (the "Injunction"):

> 1. Pursuant to s 447(3) of the Legal Profession Uniform Law 2014 (NSW), an injunction is to operate during the period in which the defendant does not hold a current practising certificate, including:
>
> a) restraining the defendant from engaging in legal practice in New South Wales;
>
> b) restraining the defendant from advertising or representing, or doing anything that states or implies, that he is entitled to engage in legal practice in New South Wales; and
>
> c) restraining the defendant from republishing his name and contact information on the website of Latham Chambers (at www.lathamchambers.com.au).

18 The agreed facts record that the contemnor was aware of the Injunction and knew of his obligations under the Injunction. Again, the agreed facts contain many particulars said to support the agreed fact, including the contemnor having been present in Court via audio-visual link and hearing Senior Counsel for the Bar Council refer to the contemnor's conduct in relation to the *Stanizzo* appeal, his experience as a Barrister and:

> "[his] having been served, on 12 August 2021, with the affidavit of Mr Andreas Heger made 12 August 2021 (and accompanying exhibit) which contained correspondence between [the] Bar Council's lawyers and President Bell of the Court of Appeal dated 10 and 11 August 2021 which stated, inter alia, "we are

> concerned that the respondent may have breached the undertaken (sic) he gave to the Court around 5.30pm, on Friday, 6 August 2021" by reason of his attempt to file written submissions with the Court on 10 August 2021".

19 Despite this, on 23 August 2021 at 4.12pm, the contemnor sent an email to the Registrar of the Court of Appeal in the *Stanizzo* appeal which attached two District Court judgments said to relate to the appeal and a two-page letter. In that letter, the contemnor requested a response from the Registrar as to whether a Notice of Motion was required for his various written submissions to be considered and referred "for completeness" to the attached judgments. The email was copied to the other legal practitioners involved in the matter and was sent from the contemnor's email address associated with Latham Chambers. The two-page letter used the following letterhead:

> "Michael Rollinson,
>
> Barrister,
>
> Level 8,
>
> 67 Castlereagh Street,
>
> Sydney, NSW 2000"

20 The address of "Latham Chambers" is Level 8, 67 Castlereagh Street, Sydney, NSW 2000.

21 On 3 September 2021, the Court of Appeal delivered judgment in the *Stanizzo* appeal (and related appeals: *Stanizzo v Fregnan; Stanizzo v Badarne; Stanizzo v State of New South Wales* [2021] NSWCA 195; the "*Stanizzo* CA Judgment").

22 The agreed facts record that between about 4 September 2021 and at least until 12 October 2021, the contemnor represented and advised Mr Vincent Stanizzo on a direct access basis in relation to an application for special leave to appeal to the High Court of Australia from the *Stanizzo* CA Judgment.

23 Between about 4 and 6 September 2021, the contemnor gave legal advice to Mr Stanizzo in relation to an application for special leave to appeal to the High Court of Australia, including advice in relation to whether "there were grounds in the Stanizzo CA Judgment that warranted an application for special leave".

24 On 7 September 2021, the contemnor sent an email with the subject line *Stanizzo v Fregnan; Badarne & State of New South Wales*". The email

attached a letter. Both the email and the letter were addressed to the other legal practitioners involved in the Stanizzo appeal. The letter discussed the reasoning in the *Stanizzo* CA Judgment and expressed the conclusion that "[t]herefore, the said judgment begs for an Application for Special Leave to the High Court". The email was sent from the contemnor's email address associated with Latham Chambers and the letter had the letterhead noted above (at [19]).

25 On 7 September 2021, the contemnor had a telephone conversation with the solicitor for one of the respondents to the *Stanizzo* appeal. The contemnor said to him words to the effect that he is a currently a practising barrister who continues to represent Mr Stanizzo.

26 On 8 September 2021 at 9.01am, the contemnor sent an email with the subject line: "VINJA HOLDINGS PTY LTD v STYLE INVESTMENTS PTY LTD - Local Court Wollongong". The sole director and shareholder of Vinja Holdings Pty Ltd is Mr Vincent Stanizzo. The email attached a letter. Both the email and the letter were addressed to the solicitor acting for Style Investments Pty Ltd ("Style") in those proceedings ("Vinja v Style"). The letter identified those proceedings as the subject of the letter and requested the solicitor urgently notify him of what arrangements he was making with the Local Court in Wollongong for the hearing of a motion the solicitor had filed for Style which was due to be heard on 17 September 2021 via audio-visual link. The letter discussed the inadequacy of Style's evidence in support of the motion, made assertions as to Mr Stanizzo's position in relation to evidence on the motion and stated that his client would be entitled to indemnity costs if Style failed. The letter used the contemnor's chambers email address and the same letterhead as noted above.

27 On 10 September 2021, the contemnor telephoned the solicitor for Style and left a message for him to call the contemnor about his letter of 8 September 2021.

28 On 13 September 2021, the contemnor again telephoned the solicitor for Style and left a message. Later that day the solicitor for Style telephoned the contemnor on his chamber's number. They had a conversation in relation to

the matter of *Vinja v Style* and the motion listed for hearing at Wollongong Local Court on 17 September 2021.

29 On 13 September 2021 at 4.01pm, the solicitor for Style sent an email to the contemnor's chamber's email address suggesting that the motion be adjourned as the principal of Style was in hospital.

30 On 13 September 2021 at 4:24pm, the contemnor telephoned the solicitor for Style and requested that additional medical evidence be obtained so that the contemnor could consider the adjournment application.

31 On 13 September 2021 at 4.35pm, the contemnor sent an email to the solicitor for Style from his chamber's email, identifying the subject matter of the email as relating to Vinja v Style. He confirmed the request for additional information in relation to the medical condition of the principal of Style.

32 On 13 September 2021 at 5.51pm, the contemnor sent a further mail to Style's solicitor from his chamber's email specifying a deadline for the provision of the additional medical evidence, being "no later than 12 noon, Wednesday 15 September 2021" and stated that he would "seek costs of any adjournment granted (which is not consented to) [on] an indemnity basis and immediately payable".

33 On 15 September 2021 at 2.30pm, the contemnor telephoned Style's solicitor and left a message for him to call the contemnor about his recent emails.

34 On 15 September 2021 at 5:14pm, the Bar Councils' solicitors sent an email to the contemnor serving on him the notice of motion referred to in [2] with an accompanying statement of charge and affidavits in support. (The statement of charge has since been amended to include conduct engaged in by the contemnor up to and including 20 October 2021.)

35 On 15 September 2021 at 5:15pm, a solicitor acting on behalf of the Bar Council telephoned the contemnor and advised him that these documents had been sent by email. She advised him that the Bar Council would be seeking an urgent listing of the existing proceedings in this Court the following day. The contemnor advised her that he was not in chambers at that time but would review the material when he returned.

36 At 8.20am on 16 September 2021, the contemnor sent the solicitor acting on behalf of the Bar Council an email requesting that she provide him with copies of certain exhibits to the affidavits that had been served. They were sent to him by email at 8.43am and 9.04am on 16 September 2021.

37 On 16 September 2021 at 9.16am, the Bar Council's solicitors sent an email to the Duty Registrar of this Court which was copied to the contemnor. The email referred to the motion that had just been filed seeking to punish the contemnor for contempt and sought that the "matter be referred to the Common Law Duty Judge today for an urgent injunction hearing today".

38 Despite receiving this email, at 11.14am that morning, the contemnor sent an email to the Local Court at Wollongong attaching an unaffirmed copy of an affidavit from himself in Vinja v Style, his unsigned submissions dated 11 March 2021 and a further set of unsigned submissions dated 16 September 2021. The covering email identified the matter, stated that the attachments were for filing, was copied to the solicitor for Style and was sent from his chamber's email address. In the affidavit the contemnor described himself as a barrister, provided his practising details, stated that the affidavit was made on behalf of the "judgment creditor" (i.e., his client, Vinja) and referred to an exhibit that included correspondence between himself and the solicitor for Style.

39 On 16 September 2021, the Bar Council filed a summons initiating proceedings No 2021/00265078. The summons sought further injunctive relief under s 447 of the Uniform Law against the contemnor. The events that followed in those proceedings are set out below, but it suffices to state that on 16 September 2021 those proceedings came before Campbell J and his Honour made orders specifically directed to restraining the contemnor's participation in the Vinja v Style proceedings which the contemnor breached. His breach of those orders is the basis for the further notice of motion seeking to punish him for contempt that was filed on 29 September 2021 described below.

40 The orders made by Campbell J on 16 September 2021 included an order restraining the contemnor from using his email address and obliging him to provide the Bar Council with an alternative email address at which he could be

contacted for the purposes of receiving communications in relation to the proceedings.

41 On 21 September 2021, the contemnor provided the Bar Council with an alternative email address.

42 During the period of at least 30 September 2021 to 6 October 2021, the contemnor drafted, prepared, and revised various versions of an application for special leave to appeal to the High Court of Australia in respect of the Stanizzo CA Judgment, including versions that were sought to be filed in the High Court on 29 September 2021 and 1 October 2021 and the version that was filed in the High Court on 6 October 2021.

43 On about 30 September 2021 and on 5 October 2021, the contemnor received notifications from the High Court of Australia concerning versions of an application for special leave to appeal in respect of the Stanizzo CA Judgment which had been the subject of attempts to file in the High Court on 29 September 2021 and 1 October 2021, respectively.

44 On or about 6 October 2021, the contemnor signed an Application for Special Leave to Appeal to the High Court of Australia in respect of the Stanizzo CA Judgment. It was filed that day. He signed it as "*Counsel for Applicant*". The application contained a statement by the contemnor that: "[t]he Applicant is represented by Michael Rollinson, barrister".

45 On the same day, the contemnor affirmed an affidavit in support of an application for an extension of time to seek special leave to appeal to the High Court of Australia. In the affidavit the contemnor stated he was a barrister and "I have assisted and represented the Applicant on a direct access basis, in the appeal below and on this application". He described his conduct in representing Mr Stanizzo since early September 2021.

46 On 11 October 2021 at 1.52pm, a firm of process servers sent an email to the Crown Solicitor's Office who acted for the one of the respondents to the special leave application. The email attached by way of service various documents relating to the special leave application.

47 On 11 October 2021 at 4.24pm, the contemnor sent to the solicitors acting for the parties named in the Special Leave Application, an email with an attachment containing an unfiled copy of the Special Leave Application. He sent an identical email and attachment at 4.32pm to the same recipients although the email concluded with the additional words "Regards, M K Rollinson" and the Special Leave Application was a filed copy.

48 On 12 October 2021 at 9.12am, the firm of process servers sent an email to the solicitors for the other contemnor to the Special Leave Application. The email attached by way of service various documents relating to the special leave application.

49 On 20 October 2021, at or around 9:20am, the contemnor appeared in the Registrar's List of the Common Law Division Civil List at a direction hearing in the matter *James Smith v RCL Cruises Ltd trading as Royal Caribbean Cruises* (Proceedings number 2020/00181035).

50 The agreed facts record the following as having occurred during the directions hearing:

> "a. the contemnor said words to the effect of:
>
> > "I seek leave to appear as I don't actually hold a brief in this matter but I've been asked to appear as the solicitor is unavailable."
>
> b. The registrar then enquired of the solicitor for RCL Cruises Ltd as to whether she had any objection to the [contemnor] appearing for the plaintiff;
>
> c. RCL Cruises Ltd's solicitor indicated to [the registrar] that she had no objection to the [contemnor] appearing;
>
> d. in response to a question from [the registrar], the contemnor provided details to the Court about the "background" of the case as a personal injury case on a ship;
>
> e. the [contemnor] made a submission to the Court about whether conclaves were needed in the matter in which he described the medical evidence and submitted "[b]ut just speaking for the plaintiff's part it's not the sort of issue I think that any conclave would deal with";
>
> f. the [contemnor] informed the Court that he had been briefed with knowledge of what medical reports had been served by the plaintiff;
>
> g. the [contemnor] then provided details to the Court about the medical expert reports that had been served by the plaintiff in the Proceedings, as well as the other material served;

h. the [contemnor] responded to questions raised by the Registrar about the plaintiff's case during the Directions Hearing, including as to whether there had been discussion between the parties as to the timetabling orders needed to ready the matter for hearing; whether there was a need for conclaves including stating "[b]ut if the Court wanted to make a direction that such a conclave should take place by a certain date the parties could try to attend to that";

i. at no point during the Directions Hearing did the contemnor inform the Registrar that:

i. he was not entitled to engage in legal practice in New South Wales;

ii. he did not hold a practising certificate; and/or

iii. he was the subject of an injunction [order] by Justice Wilson on 16 August 2021.

51 The agreed facts record that the conduct of the contemnor referred to in paragraphs [19], [22], [23], [24], [25], [26], [27], [28], [30]-[33], [38], [42]-[45], [47], [49] and [50] was in breach of both paragraphs (a) and (b) of the Injunction and that it involved wilful disobedience and contravention of the Injunction.

Third Contempt: Breach of 16 September 2021 Injunction

52 As noted, on 16 September 2021 at 2pm, the Bar Council and the contemnor appeared before the Common Law Duty Judge, Campbell J. The Bar Council filed in Court a summons commencing proceedings No 2021/00265078 seeking further injunctive relief under s 447 of the Uniform Law against the contemnor. The contemnor appeared by telephone link between 2pm and 2.11pm and later appeared by audio-visual link between approximately 2.11pm and 4.10pm.

53 The agreed facts record that during the hearing on 16 September 2021, when the contemnor was present by audio-visual link:

"a. Senior Counsel for Bar Council and Justice Campbell each referred to the fact that the Notice of Motion charging the [contemnor] with contempt constituted an allegation of criminal contempt and was a separate matter that was still to be heard …

b. Senior Counsel for Bar Council referred to the fact that the Notice of Motion charging the [contemnor] with criminal contempt included a number of factual allegations in relation to the *Vinja Holdings Pty Ltd v Style Investments Pty Ltd* matte and referred to the fact that there was a threat that the [contemnor] might appear in Wollongong Local Court the following day in that matter …

c. the [contemnor] acknowledged in relation to the injunction sought by Bar Council:

i. that he understood that the injunction sought by Bar Council would preclude him from taking any steps in the Local Court in Wollongong …

ii. that the injunction sought would have a "final effect" in relation to the proceedings in the Local Court in Wollongong …

d. Senior Counsel for Bar Council submitted that order 1(b)(i) of the injunction sought was 'motivated by the threat… that Mr Rollinson will seek to appear in the matter, the notice of motion listed tomorrow' …

e. Senior Counsel for Bar Council made detailed submissions as to why the [contemnor] ought to be restrained from appearing in any capacity in the Local Court in Wollongong the following day and that if he was to appear in any capacity 'inevitably he would be in fact engaging in legal practice tomorrow' …

f. towards the conclusion of the hearing, Justice Campbell indicated that he proposed to make the orders sought and gave the [contemnor] the opportunity to leave the hearing to call his client, saying: 'Mr Rollinson, I propose to make the order. And only out of regard for those who might think they are depending on you to be there tomorrow, I got to give you 10 minutes to make a phone call and then I am going to give my reasons. Okay?'; to which the contemnor replied 'Yes, your Honour …

g. Justice Campbell then stated to the [contemnor]: 'Even in the pandemic I seem to - well, if it wasn't at the bar during the pandemic. But briefs were flipped in less time than this, especially in the Local Court. So I propose to give you 10 minutes. Then I will explain why I am going to make the orders sought. Okay?' to which the contemnor replied 'May the Court please'."

54 Campbell J then made, inter alia, the following orders while the contemnor was present via audio-visual link:

"The Court orders:

1. Pursuant to s 447(3) of the Legal Profession Uniform Law 2014 (NSW), an injunction to operate during the period in which the defendant does not hold a current practising certificate, restraining the defendant from:

a. engaging in legal practice in New South Wales by:

i. communicating with any legal practitioner in relation to the matter of Vinja Holdings Pty Ltd v Style Investments Pty Ltd;

ii. communicating with any employee or officer of the Local Court of New South Wales in relation to the matter of Vinja Holdings Pty Ltd v Style Investments Pty Ltd;

b. doing the following things that state or imply that he is entitled to engage in legal practice in New South Wales:

i. appearing before, or communicating with, any judicial officer of the Local Court of New South Wales in relation to the matter of Vinja Holdings Pty Ltd v Style Investments Pty Ltd;

ii. describing himself as a "barrister" or as "counsel";

iii. using the email address michael.rollinson@lathamchambers.com.au.

2. Pursuant to s 447(3) of the Legal Profession Uniform Law 2014 (NSW), an injunction requiring the defendant to take all necessary steps within 5 days to ensure that the email address michael.rollinson@lathamchambers.com.au is deactivated, or otherwise rendered inoperative and to not take steps to re-activate or render that email address operative unless authorised by a further order of the Court.

3. Pursuant to s 447(3) of the Legal Profession Uniform Law 2014 (NSW), an injunction requiring the defendant to provide to the Council of the New South Wales Bar Association within 5 days details of an email address at which he can be contacted for the purposes of receiving communications in relation to these proceedings.

55 After delivering an *ex tempore* judgment during which the orders referred to above were granted, Campbell J ordered that the orders "be taken as having been entered forthwith". The following exchange then occurred between his Honour, the contemnor, and Senior Counsel for the Bar Council:

> "Richardson: Could I just clarify, your Honour, in respect of order 1 the (i) (sic), which is the order in relation to appearing in the Vinja matter?
>
> HIS HONOUR: Yes.
>
> RICHARDSON: That the effect of the injunction your Honour is about to order is that Mr Rollinson may not appear in any capacity in that matter in the Local Court? With leave as a lay person or otherwise, he may not appear at all tomorrow. Is that the intention?
>
> HIS HONOUR: That's my intention. I'm sure Mr Rollinson understands that. And that's the whole reason why I gave him a short adjournment to make a phone call, so that other arrangements can be made for another appearance. It's certainly my intent that he is not to appear in the Local Court tomorrow.
>
> Richardson: May it please the court.
>
> HIS HONOUR: I think, Mr Rollinson, you understand that well enough, do you not?
>
> DEFENDANT: Yes, your Honour."

56 Further Campbell J also stated:

> "I think that the chapeau to order 1 makes it abundantly clear that these are interim orders, as much as they operate during the period that Mr Rollinson is without a practising certificate. Mr Rollinson, I'm going to order costs, and I'm going to add as order 5, for the avoidance of doubt: "The defendant is restrained by order 1 from appearing as an advocate whether by leave or otherwise in the Local Court at Wollongong on Friday 17 September 2021."

57 The agreed facts record that the contemnor was aware of the injunctions described in [54] and [56] above (the "Further Injunction") and knew of his obligations under them.

58 On 17 September 2021 at approximately 12.37pm, the matter of *Vinja v Style* was listed for an audio-visual hearing of a Notice of Motion before a magistrate of the Local Court sitting in Wollongong. During that audio-visual hearing the solicitor for Style advised his Honour of the effect of the Further Injunction.

59 Despite the Further Injunction, the contemnor made an application to the Magistrate for leave to appear in *Vinja v Style* on the basis that he had not been able to make alternative arrangements for anyone else to appear for his client that day. In making his application for leave to appear, the contemnor described the scope of the Further Injunction that had been granted by Campbell J as "[t]he judge made certain orders and they were orders restraining me from appearing as counsel in this matter or any matter".

60 The solicitor for Style then read on to the record the orders that Campbell J had made. The presiding Magistrate refused to grant the contemnor leave to appear on behalf of Vinja.

61 After the Magistrate refused the contemnor leave to appear on behalf of Vinja the contemnor attempted to answer a question that the Magistrate raised, however his Honour refused to allow the contemnor to answer the question.

62 The agreed facts record that the conduct of the contemnor referred to in [59] and [61] above was in breach of Order 1(a)(ii), Order 1(b)(i) and Order 5 of the Further Injunction and involved wilful disobedience and contravention of the Further Injunction.

Plea of Guilty

63 As noted, the contemnor entered pleas of guilty to the three charges of contempt on 29 October 2021. There was some debate as to whether this amounted to a plea of guilty at the earliest opportunity. The contemnor's submissions noted that it was entered immediately after he was referred for legal assistance through the pro bono legal assistance scheme. It does not appear that the contemnor was ever asked to enter a plea at any time prior to 29 October 2021. I accept that it was entered at the earliest opportunity.

64 The significance of the contemnor's plea is three-fold. First it has a utilitarian benefit in that it avoided a hearing of two contested notices of motion. Second,

his entry of the plea and agreement with the facts alleged by the Bar Council indicates a willingness to facilitate the proceedings which are ultimately directed to vindicating the Court's authority. Third, the contemnor's plea of guilty represents some evidence of his remorse although there is other evidence on that topic noted below.

The Contemnor's Evidence

65 The contemnor affirmed an affidavit on 15 February 2022. He lists his occupation as "unemployed". His affidavit reveals that he is now 62 years of age. He was awarded an LLB from the University of Sydney in 1981 and an LLM in 1999. After obtaining his LLB he worked in the public service. In 1994 he was admitted as a solicitor of this Court. As noted, he was admitted as a barrister in 1995. He commenced as a reader in a room in Chalfont Chambers shortly afterwards. He has remained with those chambers until recently. In 1998 Chalfont Chambers was renamed Latham Chambers.

66 The contemnor described his practice as consisting of interlocutory work as well as plaintiff's personal injury and defamation briefs accepted "on a speculative basis". He states that, after the first few years of practice, he "usually made enough to live on" but that approximately three years ago "my financial situation started deteriorating and there was a considerable reduction in my work" which declined further when the pandemic commenced. He said that by mid-2021, when his practising certificate was due to be renewed, he had "depleted my savings almost entirely".

67 The contemnor stated that after 30 June 2021 he knew he did not have a valid practising certificate but that he "foolishly continued to practise". He said that he "felt it was not feasible to stop work on my matters" because both clients and solicitors were relying on him and he had been briefed for a "long time, so I could not pass the briefs on." His affidavit lists 12 matters in which he worked during the first weeks of July 2021 including the matters noted above. He states that he issued an invoice in one of the matters for $825.00 during this period for which he was paid. He states that on 27 July 2021, after correspondence from the Bar Association, he attempted to refund that amount.

Prior to affirming his affidavit, he discovered that his attempt was unsuccessful and arranged to transfer the amount invoiced again.

68 In relation to his breach of the undertaking which he gave to the Bar Association, the contemnor explained that following the hearing in the Court of Appeal in the *Stanizzo* appeal his client "regularly contacted me with concerns about issues he felt were not fully raised at the hearing" and so he lodged additional submissions. He accepts that he should not have done so "particularly in light of the undertaking I had given to the Bar Association" and apologised for doing so. (I understand the reference to "particularly" as not excluding an understanding that he was not permitted to file submissions after the hearing in the Court of Appeal without leave to do so.)

69 The contemnor acknowledged that his conduct on 10 August 2021 was in breach of the undertaking and apologised to the Court.

70 The contemnor also accepted that his conduct noted above (at [16] to [51]), was in breach of the Injunction and apologised to the Court. The contemnor stated that he had been briefed in the *Stanizzo* matter for more than nine years "and did not feel I could tell [Mr Stanizzo] to go elsewhere". With the *Vinja v Style* matter he stated that he regretted his actions. He said he "knew there would be ramifications arising from my actions, but I nonetheless continued". He said that "[i]n hindsight, I think it was because I was embarrassed to tell people that I no longer held a practising certificate and the reasons why."

71 In relation to the Further Injunction and his appearance at the Local Court in Wollongong on 17 September 2021, the contemnor said that he appeared for the purpose of "convey[ing] the nature of the orders made by Justice Campbell, explain[ing] that [he] had been unable to find anyone else to appear and seek[ing] leave to appear to note the directions the Court would make." He said he was motivated by a "desire to preserve my client's position" and that he was aware that his conduct "could" be a breach of the Further Injunction. He apologised for his conduct. In light of the contents of the agreed facts I am dealing with the contemnor on the basis that he was aware that his conduct was in breach of the Further Injunction. Otherwise, I note that the affidavit does not address whether or not the contemnor made attempts to retain someone

else to appear on his client's behalf in the Local Court as was contemplated by Campbell J.

72 In relation to the appearance before the Registrar on 20 October 2021 in proceedings 2020/181035, the contemnor said he had appeared at all the previous direction hearings. He said he now "appreciate[d] that the language I used in seeking leave to appear did not convey the whole of the situation, particularly to the solicitor for the defendant."

73 At the conclusion of his affidavit, the contemnor states as follows:

> "**Apology**
>
> 44. As I now fully realise, my conduct in regard to all the above incidents was unacceptable and contrary to the standards of conduct expected of a barrister, and I apologise for that conduct.
>
> 45. At the times I engaged in the conduct described above, I felt that the solicitors who had been instructing me depended on me to continue. I felt significant loyalty to them. I was reluctant to tell them I did not have a practising certificate as I felt that I would be letting them down. I thought that I could sort out the problem by applying for and obtaining a fresh practising certificate and I would then deal with any disciplinary ramifications.
>
> 46. I also did not want my predicament of not having a practising certificate to get more publicity than it had to because I found it embarrassing. For this reason, I did not immediately tell colleagues at the Bar. I have now talked to close colleagues about my predicament, including the various proceedings against me.
>
> 47. All of the solicitors who were instructing me in maters I was briefed in as at 30 June 2021 now know that I cannot work as a barrister. I also have no continuing connection to Latham Chambers.
>
> 48. In view of all that has happened, it is unlikely that I will be able to resume practice at the Bar and I do not intend to do so. I realise that the matter will also be considered by a Professional Conduct Committee of the Bar Association."

74 The contemnor was not cross-examined on his affidavit. In the absence of challenge, and save for the matter noted in [71], I accept what he stated in the affidavit about his actions and his explanation for them. I take the above apology in that affidavit and the other apologies as a genuine expression of his state of mind at the time he affirmed the affidavit. However the weight to be attached to his explanations and expressions of remorse (including his pleas of guilty) especially the duration of his feelings of remorse have to be assessed in light of the report of a psychiatrist, Dr Ellis, described below, and what is revealed by an affidavit in reply filed on behalf of the Bar Council. This affidavit

attached a letter from the contemnor dated 24 February 2022 to the solicitors for the three respondents to the application for special leave to appeal to the High Court from the *Stanizzo* CA judgment. It seems that on 18 February 2022 the High Court notified the parties that special leave to appeal had been refused on the papers. In his letter, the contemnor wrote:

> **Re: Stanizzo v Fregnan & Others – Application for Leave to Appeal No. S 163/2021**
>
> I am writing on behalf of the Applicant
>
> I refer to the letter from the High Court Registry dated 18 February 2022 and the enclosure, also copied to you.
>
> The Applicant considers the Court's determination to be erroneous as, inter alia, the Applicant has not been afforded an opportunity to place before the Court in writing and/or orally all evidence and materials in support of the Application: see *Re Sinanovic* [2001] HCA 40 at p. 3, par 3, per Kirby J. Contrary to the determination, the Application does involve questions of general application and it involves more than mere questions of fact.
>
> This letter is therefore to notify you that the Applicant has been advised by his counsel(s) to file a fresh Application together with submissions and other material in relation to all three matters."

75 I infer that the reference to "his counsel" in this letter is to the contemnor himself. This is an astonishing letter. It was written only six days after the contemnor affirmed an affidavit acknowledging his contempts and apologising to the Court for them. The contemnor is not to be punished for any contempt revealed by this letter. However, it means that, while the expressions of regret in his affidavit may have been genuine at the time they were expressed, they cannot be afforded any real weight in the assessment of the likelihood of the contemnor repeating the conduct complained of.

76 On behalf of the contemnor an affidavit was read from an experienced Senior Counsel, Mr Mark Robinson SC. Mr Robinson has practised in administrative law and general law for nearly 29 years. He was appointed senior counsel in 2011. He refers to two cases in which he led the contemnor and notes that he has given advice to and with the contemnor in other matters. He has read both the statement of agreed facts and statement of charges. He describes the contemnor as a "considerably experienced barrister" who, to his observation, is "exceptionally loyal to his clients". He states that "[i]n all the years I have worked with the [contemnor], I have never observed him to be anything other

than law-abiding, truthful, reliable and dependable" and that the matters described in the statement of charges "are exceptions to his otherwise excellent legal career". He said he would be "happy to work with him again in the future".

77 Mr Robinson was not cross-examined. I accept his evidence. Its relevance is two-fold. First, it confirms that the contemnor is to be punished on the basis that he has not previously breached the law or any relevant norm or professional standard. Second, it confirms that, although the contemnor's practice has struggled, were it not for his conduct since July 2021 it was likely that it would have continued with the support of solicitors and professional colleagues such as Mr Robinson. However, I regard it as almost a virtual certainty that either by way of being refused a practising certificate or removed from the roll of practitioners (or both) the contemnor will not (lawfully) practice again. In considering the appropriate sanction for his contempts I will have regard to the fact that his conduct has destroyed his career regardless of the order made by the Court at this point.

Dr Ellis' Report

78 The contemnor tendered a report from an experienced forensic psychiatrist, Dr Andrew Ellis, dated 18 February 2022. Dr Ellis had a two-hour consultation with the contemnor in January 2022. He was also provided with the statements of charge and information from the contemnor's general practitioner. Dr Ellis recorded the contemnor explaining his conduct in similar terms to that set out in his affidavit including expressing a concern for the interests of his clients had he stopped working. Dr Ellis records the contemnor expressing regret for his actions. Dr Ellis noted that a cognitive evaluation indicated some impairment of his short-term memory. Dr Ellis opined that this "likely represents an early decline in his cognitive function[ing]". Dr Ellis considered that further medical investigation was required to exclude potential causes beyond age related decline. Dr Ellis considered that it was unlikely that this aspect of his testing was feigned and concluded "[i]t is likely he would be considered to suffer from mild cognitive impairment."

79 In terms of a diagnosis, Dr Ellis focused on the contemnor's "pattern of limited social interaction across his lifespan." Although Dr Ellis considered that alternative explanation for his conduct might be an autism spectrum disorder, he concluded as follows:

> "… [The contemnor] shows an ability to understand the motives of others, and interact socially appropriately where required, if not at a high level by his description. The most appropriate psychiatric classification for this pattern of interpersonal isolation is schizoid personality disorder. This references a pervasive pattern of detachment from social relationships and a restricted range of expression of emotions beginning in early childhood. He neither desires nor enjoys close relationships …. and appears indifferent to the praise or criticism of others, showing limited self-awareness about his appearance and occupational performance."

80 Three further matters should be noted about Dr Ellis' report.

81 First, under the remorse heading, Dr Ellis noted that "[w]ith time [the contemnor has] been able to reflect on alternate options he might have taken". This aspect of Dr Ellis' report does not alter my assessment of this topic above.

82 Second, Dr Ellis concluded that the contemnor's "personality disorder, age and build would render him vulnerable to intimidation" in custody. Dr Ellis has considerable knowledge of custodial settings. I accept his assessment. The contemnor's vulnerability would be exacerbated if his (possible) cognitive impairment worsens.

83 Third, in relation to his risk of reoffending, Dr Ellis noted that the contemnor expresses no intention of "flaunting rules in the future", a matter I have addressed. Dr Ellis noted that, if his memory continues to worsen, then his fitness to practice issues may supersede any risk of "reoffending". Otherwise, Dr Ellis notes that, if the contemnor's presentation only relates to anxiety and personality problems, then if he undergoes psychotherapy it should address the concerns about him reoffending.

84 It is curious that nothing in Dr Ellis' report or the descriptions of schizoid personality disorder suggest that the contemnor is inclined to become obsessed with a particular matter as might be suggested by his refusal to accept either the outcome of the appeal and the special leave application in *Stanizzo* and the restrictions on his practice generally. In terms of reoffending, his conduct, including his letter of 24 February 2022, demonstrate a strong

potential for him to involve himself in the litigious affairs of his former clients or even new clients should the occasion arise over the next few years. At some point in the medium term his removal from the profession should result in the cessation of any opportunity he may have to breach the Injunction.

Punishment for Contempt: Principles

85 A breach or disobedience to a court order or breach of an undertaking in civil proceedings is usually a civil contempt. However where that disobedience involves deliberate defiance, i.e., it is "contumacious", then it amounts to a criminal contempt (*Witham v Holloway* (1995) 183 CLR 525; [1995] HCA 3 at 530; *CFMEU v Boral* (2015) 256 CLR 375; [2015] HCA 21 at [67]). The admissions by the contemnor that his conduct involved a wilful disobedience to the Court's orders is an admission that his conduct was contumacious (see *Pelechowski v Registrar*, *Court of Appeal (NSW)* (1999) 198 CLR 435; [1999] HCA 19 at [147] to [148] per Kirby P). To the extent that it may be necessary to find, I am also satisfied that the contemnor's conduct involved a public defiance of the Courts' orders such that the primary purpose of the exercise of the Court's power to punish for contempt in this case is the "vindication of the court's authority" (*AMIEU v Mudginberri Station Pty Ltd* (1986) 161 CLR 98; [1986] HCA 46 at 108). A deliberate, wilful and public disobedience of Court orders by a barrister strikes at the heart of the Court's authority.

86 The *Crimes (Sentencing Procedure) Act 1999* (the "Sentencing Act") does not apply in proceedings that seek punishment for a criminal contempt (*Dowling v Prothonotary of the Supreme Court* (2018) 99 NSWLR 229; [2018] NSWCA 340; "Dowling"). It follows that the forms of punishment that may be imposed are those specified in Part 55 rule 13 of the Supreme Court Rules 1970 ("SCR"). Where the contemnor is not a corporation, the Court is empowered to punish by committal to a correctional centre or fine or both (SCR, r 55.13(1)). This power can be exercised on terms:

> "(3) The Court may make an order for punishment on terms, including a suspension of punishment or a suspension of punishment in case the contemnor gives security in such manner and in such sum as the Court may approve for good behaviour and performs the terms of the security."

87 I do not take the requirement to give security for good behaviour as limiting the conditions attaching to a suspension of any such penalty. In *Registrar of the*

Court of Appeal v Maniam (No 2) (1992) 26 NSWLR 309 ("Maniam No 2") the Court of Appeal held that it had power to impose a condition that the contemnor perform community service as a condition of suspending a fine (at 319 per Kirby P; 320 per Mahoney JA and 321 per Hope AJA). Bell P, as his Honour then was, adopted that course in *NHB Enterprises Pty Ltd v Corry (No 8)* [2022] NSWSC 97 (at [96]; "NHB"; see also *Mirus Australia Pty Ltd v Gage* [2018] NSWSC 35; "Mirus"). Further, just because SCR, r 55.13 empowers the Court to impose a fine or commit a contemnor to a correctional centre does not preclude a Court from determining that neither sanction should be imposed and, say, the making of a declaration or an order as to costs will serve the purposes of punishment.

88 Four further points about the approach to punishment should be noted.

89 First, as noted, the ultimate purpose of the exercise of the power to punish for contempt is the vindication of the Court's authority. In that context, in *Maniam (No 2)* at 314 Kirby P observed that in determining the appropriate punishment it is "appropriate to bear in mind … the purposes of punishing the contemnor; deterring the contemnor and others in the future from committing like contempts; and denouncing the conduct concerned in an appropriately emphatic way". Similar to sentencing, it has been held that such factors as motive, remorse, character and antecedents and the contemnor's personal circumstances are to be considered (*Kazal v Thunder Studios Inc (California)* (2017) 256 FCR 90; [2017] FCAFC 111 at [101] per Besanko, Wigney and Bromwich JJ; *NHB* at [31] to [32]).

90 Second, the helpful submissions of both counsel both contended that the Court should proceed on the basis that punishing a contempt by imprisonment is a penalty of last resort (see *NHB* at [30] and cases cited). I agree. So far as the power to suspend is concerned, counsel for the contemnor, Ms Tronson, referred to the judgment of Kirby J in *Dinsdale v The Queen* (2000) 202 CLR 321; [2000] HCA 54 at [84] to [87] ("Dinsdale") where his Honour rejected the approach of considering the power to suspend only by reference to the necessity for the rehabilitation of the offender (at [84]) and instead held that all the circumstances of the offence and offending should be considered (at [85]). I

agree, although I would subsume that contention into an adoption of the approach formerly taken to the imposition of considering suspended sentences under the *Sentencing Act.* This approach involves two steps namely first determining the appropriate length of the period in custody, without regard to the possibility that it may be suspended, and then considering whether it should be suspended by reference to, inter alia, the nature of the offence, its objective seriousness, the need for specific or general deterrence and the subjective circumstances of the offender (*R v Zamagias* [2002] NSWCCA 17 at [26] and [32]).

91 Third, the principles applied to sentencing mentally ill offenders are applicable to the imposition of punishments for contempt. The relevant principles were summarised by McClellan CJ at CL in *Director of Public Prosecutions (Cth) v De La Rosa* (2010) 243 FLR 28; 205 A Crim R 1; [2010] NSWCCA 194 at [177] as follows:

> ● Where the state of a person's mental health contributes to the commission of the offence in a material way, the offender's moral culpability may be reduced. Consequently the need to denounce the crime may be reduced with a reduction in the sentence ...
>
> ● It may also have the consequence that an offender is an inappropriate vehicle for general deterrence resulting in a reduction in the sentence which would otherwise have been imposed ...
>
> ● It may mean that a custodial sentence may weigh more heavily on the person. Because the sentence will be more onerous for that person the length of the prison term or the conditions under which it is served may be reduced …
>
> ● It may reduce or eliminate the significance of specific deterrence …
>
> ● Conversely, it may be that because of a person's mental illness, they present more of a danger to the community. In those circumstances, considerations of specific deterrence may result in an increased sentence ... Where a person has been diagnosed with an Antisocial Personality Disorder there may be a particular need to give consideration to the protection of the public ..." (case citations omitted)

92 It can be accepted that the contemnor's personality disorder potentially contributed to his commission of the contempts in that in his disdain for personal relationships and the opinions and criticisms of others, this may have contributed to a disdain for the constraints imposed by court orders. However, even if that was the case, I do not accept that it materially reduces his moral

culpability or reduces the need for general deterrence. Someone who assumes the responsibilities of counsel and is able to function effectively as such for over 20 years does not have their moral culpability reduced because an apparently long-standing personality disorder may have impacted on a deliberate refusal to comply with a court order. If a person can function in a highly regulated system with a particular condition for over 20 years then the existence of that condition does not diminish such a blatant disregard for Court orders. The contemnor remains a strong candidate for general deterrence. Moreover he is also a strong candidate for personal deterrence. The position has been reached that the contemnor has been subject to highly specific court orders precluding him from acting in a particular manner and he still chose not to comply. The prospect of incarceration is the last remaining means of deterring him from contravening court orders. So far as imprisonment is concerned, I accept that his condition will make him especially vulnerable if he is incarcerated.

93 Fourth, as there are three contempts committed over a number of months, questions of totality arise. The totality principle requires a sentencing court that has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate' (*Mill v The Queen* (1988) 166 CLR 59 at 63; “Mill”). Traditionally it is given effect to by either imposing separate and appropriate custodial sentences for each individual offence and then making them wholly or partially concurrent with the sentences imposed for other offences, or by reducing the periods of imprisonment for one or more of the individual offences below what would otherwise be appropriate and, depending on the context, then cumulating the sentences. Generally, the former method is preferable (*Mill id*; *Johnson v The Queen* [2004] 78 ALJR 616; [2004] HCA 15 at [26]).

94 In *Dowling* the contemnor was given an aggregate sentence of 18 months imprisonment by the primary judge for three contempts. As noted, the Court of Appeal held that the imposition of a punishment for contempt is not governed by the *Sentencing Act*. In relation to the punishment imposed by the primary

judge, Basten JA (with whom Meagher JA agreed) observed that the "overall conduct identified in the declarations was properly dealt with by a committal for single fixed term of imprisonment" (at [61]). In imposing its own punishment of 4 months' imprisonment the Court of Appeal did not specify any individual periods referable to each contempt. However, I do not understand their Honours to have proscribed that course. As I will impose a punishment of imprisonment in this case, then like *Dowling* I will fix a single period of custody referable to all three contempts. However, unlike *Dowling* and to enhance transparency, I will also indicate the individual periods I consider appropriate for each contempt. Ultimately, however, the critical consideration is that the total period of custody reflect the overall culpability of the contemnor's conduct (*Cahyadi v R* (2007) 168 A Crim R 41; [2007] NSWCCA 1 at [27]).

Submissions

95 The Bar Council's submissions set out the principles applicable to the determination of the appropriate punishment for contempt, most of which have been outlined above. However, it accepted that its role is either that of, or analogous to, a prosecutor, and hence it did not make any submission that a particular penalty was appropriate (*Barbaro v The Queen* (2014) 253 CLR 58 at [6] to [7] and [29] to [33]).

96 The Bar Council submitted that the contemnor's conduct was of the utmost seriousness and involved a high degree of culpability. It submitted that his evidence reveals that his conduct was at least partly driven by his own personal interest in avoiding embarrassment. Otherwise, it accepted that he subjectively believed that some of his conduct was undertaken to preserve his client's position, but submitted that there was no justification for that belief. They pointed to his appearance in the Local Court at Wollongong on 17 September 2021 in defiance of Campbell J's specific order as demonstrative of this. This occurred 12 weeks after his practising certificate was cancelled. The Bar Council submitted that there was "mixed evidence" as to the need for personal deterrence being a reference to the apologies in the contemnor's affidavit, Dr Ellis' report and the letter the contemnor wrote on 24 February 2022 noted above (at [74]). The Bar Council submitted that general deterrence was of particular significance to a case such as this.

97 The submissions of counsel for the contemnor were primarily focussed on the potential to suspend any sanction that may be imposed. The submission made in relation to *Dinsdale* has already been noted. It was submitted that, at least so far as suspension is considered, the factors that ought to be given the greatest weight are the contemnor's prior good character, his apology and remorse, his plea of guilty at the earliest opportunity, his motivation to assist his clients, his vulnerability in custody, his mental health diagnosis, the unlikelihood that he will return to custody and his limited career and financial prospects. It was submitted that his conduct should not be seen as falling within the worst categories of contempt, some of which have the potential to endanger the safety of others. Finally it was submitted that any assessment of whether to imprison the contemnor and, if so, for how long, should take into account the severe effects on prisoners of the pandemic and the associated restrictions imposed by correctional centres (see *Valentine v The Queen* [2020] NSWCCA 116 at [59] to [62]).

Determination

98 The starting point is an assessment of the objective seriousness of the three instances of contempt. There is no doubt that each of them represented a serious challenge to the Court's authority that was exacerbated by the contemnor's status as an officer of the very Court he deliberately and repeatedly defied. By the time of the first contempt, the contemnor had been placed on notice by the Bar Association that he could not practice, he had provided an undertaking to the Bar Association to that effect, and he was aware of the Court of Appeal's concern that he was practising without a practising certificate. The second contempt was even more serious. Theoretically, it was open to the Bar Council to charge the contemnor with a separate contempt for each aspect of his conduct set out in [16] to [51]. Instead, they are grouped together. Overall, his conduct reveals a breathtaking and flagrant disregard for this Court's authority. His actions involved most aspects of the practice of a barrister including the provision of legal advice to a client, communicating with other legal practitioners and the Court, drafting submissions and other court documents and appearing in Court. All at times the contemnor knew that each aspect of that activity was contrary to an

injunction issued by this Court. From 15 September 2021 he knew that he was facing a charge of criminal contempt yet still he continued to practise. The third contempt is equally breathtaking. The contemnor was specifically told, and then ordered, by a Supreme Court judge not to appear in the Local Court at Wollongong the following day yet he did so.

99 These are all grave instances of contempt. The parties' submissions helpfully referred the Court to some recent cases involving punishment for contempt by wilful disobedience to a court order (e.g., *NHB*, *Mirus*, *Maniam (No 2)*, *Dowling* and *Sun v He (No 2)* [2020] NSWSC 1298; "Sun"). Most of these cases involved a breach of a court order undertaken to pursue some personal financial benefit or unfair advantage in litigation. Thus, in *NHB* one contemnor was imprisoned for three months by retaining and continuing to use confidential information contrary to a court order. He was assisted by his wife who was fined, with the fine suspended on condition she perform 25 hours of community service. In *Sun*, the contemnor deliberately destroyed a large number of electronic records and failed to provide a password contrary to the terms of a search order. The contemnor was committed to a correctional centre for six weeks (at [121]).

100 However, in this case the contemnor's conduct is not explicable by such motives but mostly by a concern to save face with his clients to whom he was apparently attached and perhaps saving face with himself. His conduct is closer to two of the three contempts committed by the contemnor in *Dowling*, namely the disclosure of a transcript of a hearing that the contemnor participated in and the deliberate breach of a non-publication order. The third contempt was making scandalous allegations against a judge and a registrar at a directions hearing. It was the transcript of that hearing which the contemnor was ordered not to disclose. The contemnor had twice previously been convicted of contempt (at [63]). On appeal he was sentenced to a single term of four months imprisonment (at [61] and [66]).

101 There are three related matters distinguishing the breaches of court orders in *Dowling* from this matter. First, unlike this case, the contemnor in *Dowling* was not an officer of the Court. Second, the contempts in *Dowling* were committed

within a short period of time whereas the contempts in this case took place over months. Third, the conduct of the contemnor in *Dowling* was characterised as "in the nature of irrational abuse which would readily be seen by the broader public to be irrational and to reflect more seriously upon the applicant than the Court" (at [64]). In contrast the conduct in this case, if left unchecked and undeterred, threatens the Court's ability to function. Overall, the contemnor's conduct in this case is far more serious than that of the contemnor in *Dowling*. That said, his subjective case is stronger.

102 I have already canvassed considerations affecting the contemnor's moral culpability including his mental health. Both general and specific deterrence are especially significant in this case. In terms of his subjective case, I have already accepted that he has not previously engaged in similar conduct and that he will suffer the destruction of his career from his actions regardless of the punishment imposed at this point. He is entitled to a utilitarian benefit from his plea of guilty. I have already addressed his level of remorse, Dr Ellis' report, and his vulnerability if he is placed in custody.

103 Ultimately, I am satisfied that the attack on the authority of the Court demonstrated by the contemnor's conduct is so grave that a term of imprisonment must be imposed. After allowance for the contemnor's plea of guilty, I would impose a punishment of imprisonment for 2 months, 6 months and 4 months for the first, second and third contempts respectively. Overall, I consider that imprisonment for a period of 9 months is the appropriate sanction for the contemnor's conduct**.**

104 The remaining issue is whether the imprisonment should be suspended. I accept that the punishment for the undermining of the Court's authority by the contemnor is rendered appreciably more lenient if the imprisonment is suspended. However, suspending the imprisonment for a sustained period on condition that he comply with the Injunction (made by Wilson J on 16 August 2021) provides a significant incentive for the contemnor to comply in circumstances where he has been unable to do so to date. The authority of the Court is not so fragile that it can only be vindicated by committing a vulnerable

person to jail without him being afforded one last opportunity to comply with the orders made against him.

Form of Relief

105 It is necessary to note three points about the form of the orders that will be imposed.

106 First the Bar Council urged the Court to make declarations that the contemnor is in contempt. I will do so. The declarations will specify the conduct of the contemnor the subject of the declaration in stand-alone terms.

107 Second, SCR 55.13(3) confers on the Court an express power to suspend the order committing the contemnor to a correctional centre "on terms" including as to "good behaviour". Before the option of imposing suspended sentences was removed from the *Sentencing Act* the practice was to suspend the custodial sentence for a specified period and state the conditions which the offender must comply with in the meantime, which usually included a requirement to be of "good behaviour". If the conditions were breached, then the matter was called up before the sentencing judge who would determine the appropriate sanction. SCR 55.13(2) appears to contemplate a similar practice. In particular it would be unfair to suspend a sentence permanently. Instead, a period of suspension should be specified. In this case the relevant condition to be complied with is the final injunction granted by Wilson J on 16 August 2021. I will specify a period of three years as the period in which the injunction must be complied with in order to suspend the sentence. That period appears to be the likely period in which all disciplinary proceedings that are to be commenced can be conducted. It seems to represent the period of greatest risk of the contemnor attempting to act on behalf of clients. If the contemnor breaches her Honour's injunction in that period then, in addition to whatever action may be taken against him for that breach, it will be open to the Bar Council to apply to a judge of this Court to lift the suspension on the contemnor's imprisonment. If the contemnor complies with the injunction for a period of three years, then all the conditions of the suspension will be fulfilled. If he breaches the injunction granted by Wilson J after the three-year period, then he may face a sanction

for that breach, but he will not face an additional sanction of having the suspension of the custodial sentences which were imposed today, lifted.

108 Third, the Bar Council sought costs for its two notices of motions but only on the ordinary basis. Counsel for the contemnor did not oppose that course. I will so order.

Orders

109 I record the Court's appreciation of the assistance it derived from counsel and their solicitors in determining the matter, especially from Ms Tronson and Mr Bhutani, whom the Court understands acted for the contemnor pro bono.

110 The orders of the Court are:

(1) The Court declares that Michael Rollinson is in contempt of this Court for breaching the undertaking given by him to the Court on 6 August 2021 by his conduct on 10 August 2021 in sending an email and attachments to the Registrar of the Court of Appeal and certain legal practitioners.

(2) The Court declares that Michael Rollinson is in contempt of this Court for breaching the orders made by Wilson J on 16 August 2021 by his conduct between 23 August 2021 and 20 October 2021 in engaging in legal practice in New South Wales and representing or implying that he was entitled to engage in legal practice in New South Wales.

(3) The Court declares that Michael Rollinson is in contempt of Court for breaching orders 1(a)(ii) and 1(b)(i) and Order 5 made by Campbell J on 16 September 2021 by his conduct on 17 September 2021 in communicating with an employee or officer of the Local Court of New South Wales in relation to the matter of *Vinja Holdings Pty Ltd v Style Investments Pty Ltd*, appearing in that matter and appearing as an advocate in the Local Court at Wollongong in that matter on that day.

(4) Michael Rollinson is committed to a correctional centre for a period of 9 months commencing on the date of his arrest.

(5) Order that the terms of imprisonment imposed by order (4) be suspended on condition that for a period of 3 years from today, Michael Rollinson, comply

with order (1) made by Wilson J on 16 August 2021 in proceedings No 2021/00224727.

(6) Grant the parties liberty to apply on 7 days' notice in respect of any application to lift the suspension imposed by order 5.

(7) The contemnor, Michael Rollinson, is to pay the costs of the Bar Council of the New South Wales Bar Association of the notice of motion filed on 15 September 2021 in proceedings No 2021/00224727 and the notice of motion filed on 29 September 2021 in proceedings No 2021/00265078.

(8) The notice of motion filed on 15 September 2021 in proceedings No 2021/00224727 and the notice of motion filed on 29 September 2021 in proceedings No 2021/00265078 be otherwise dismissed.

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