

Independence

- Rule 4.1.4 and Rule 17 – solicitor must not act as the mere mouthpiece – must exercise forensic judgments called for during the case independently
- *Fleming case* (above)
- Diminished independence in conflict situations, when influenced by the wishes of clients

Candour in the presentation of the facts to court

- Rule 19.1 for solicitors, rule 24 for barristers – a solicitor must not deceive or knowingly or recklessly mislead the court
- A solicitor must take all necessary steps to correct any misleading statement: solicitors rule 19.2, Barristers: rule 25
- *LSC v Bridges 2014*: lawyer had a history of being struck off, guilty of professional misconduct and dishonesty in the past, later readmitted. Then in 2011, he was giving sworn evidence in the local court, being asked who he was etc, he testified he had been a practitioner for 46 years, yet court knew he was struck off in 1983, yet he denied it saying the finding of misconduct was political and he has no allegations of dishonesty
Found guilty of unsatisfactory professional conduct and professional misconduct
Found he should not practice again and if he does, should simply be an employee
- *Vernon v Bosley*:
Where, in an action for nervous shock, there was a failure to disclose to the court information that the P's medical condition was not as severe as the court had been led to believe
- A practitioner must at the appropriate time in the hearing inform the court of (a) any binding authority (b) other authorities which the practitioner reasonably believes to be directly in point, against the client's case (solicitors rule 19.6, Barristers rules 29)
- Rule 19.10 – relating to previous convictions

Abuse of process

- Solicitors and barristers must take care to ensure the solicitor's advice to involve the coercive powers of a court are justified, not to harass or embarrass nor gain collateral advantage (solicitors rules 21.1, Barristers rule 60) – may not have even been supposed to be brought to the court
Flower and Hart v White Industries
- Wasted time and money in hopeless cases
- Legal position weak
- Where delay is the purpose, the institution of and prosecution of proceedings will be an abuse of process. An abuse of process exists where proceedings are brought not to vindicate a legal right but some other purpose
- S23 – cannot lie in court documents (solicitors)

SLAPP Writs

- Strategic lawsuits against public participation – when company or government agency makes a civil claim, such as defamation, conspiracy, malicious prosecution or nuisance, in order to punish them for voicing their criticisms or silence them

TOPIC 11: SERVICE AND ACCESS TO JUSTICE

Access to Justice

What is it?

- Lawyers assist to ensure the access to justice
- For the public good
- Approaches to lawyering have some sort of influence on decision making
- Access to justice is about ensuring Australians receive appropriate advice and assistance no matter how they enter our justice system
- This is the role of lawyers- administration of justice – based on the rule of law
- Only penalised if disobeyed the law
- No one should suffer except for a distinct breach of law
- All subject to the law no matter where seated in hierarchy

Rule of law and access to justice

Equality of access to legal services – all Australians regardless of means should have access to high quality legal services

National equity - geography

Equality before the law: all Australian's regardless of race, religion, disability, gender are entitled to equal protection