

Media confusion follows Martin J's decision

There was considerable media hype and more than a little confusion following the decision of Justice Martin in the matter of Stone.

Headlines claiming all sorts of extraordinary action purporting to be taken by the Law Society fuelled rumour and counter-rumour.

Following persistent media enquiries for comment, the Society issued the following release:

The Council of the Law Society of the Northern Territory will further consider a complaint against Shane Stone in light of a recent decision of the Supreme Court.

The decision of Mr Justice Martin, handed down last Thursday, quashed a Law Society finding of professional misconduct against Mr Stone.

The Law Society President, John Stirk, said there appeared to be some confusion in the media about the effect of Justice Martin's decision.

"What the decision means is that the finding of professional misconduct for the purposes of section 47 of the *Legal Practitioners Act* is invalid," Mr Stirk said.

"His Honour specifically did not interfere with the finding that Mr Stone's conduct was unprofessional.

"However, because the Law Society's Professional Conduct Rules -- which have been in force since 1985 -- were not approved by the Chief Justice following an amendment to the *Legal Practitioners Act* some years ago, a breach of the rules of itself

cannot amount to professional misconduct.

"The definition of professional misconduct which refers to the professional conduct rules and imposes the requirement of approval by the Chief Justice was introduced in 1987. The rules remain valid and binding on legal practitioners.

"But because they were not approved by the Chief Justice at the time, a breach of the rules is not necessarily professional misconduct," he said.

Mr Stirk said that Justice Martin's decision means that the Law Society's finding of unprofessional conduct against Mr Stone stands.

But, he said, the Society needs to consider whether the conduct amounts to professional misconduct as a matter of general law and not only by virtue of being a breach of the professional conduct rules.

In his judgment, Justice Martin said: *Whether the conduct complained of amounted to professional misconduct without reference to the rules is not the point. A finding of professional misconduct in these circumstances may well require other evidence and consideration of issues going beyond that which might suffice in relation to a particular rule or rules said to have been infringed. Whether the result would have been any different if the complaint had been made by reference to general standards of professional conduct as opposed to the formulated standards*

is not for me to decide.

Mr Stirk said what the Society now has to do is determine whether or not the allegation of professional misconduct is proved.

"The Society has to consider three things," Mr Stirk said.

"First, whether it will proceed on the basis of the finding of unprofessional conduct to impose a penalty on Mr Stone or not.

"Second, it needs to decide whether it is satisfied that the unprofessional conduct amounts to professional misconduct under the Act.

"Third, if it considers that Mr Stone's conduct amounts to professional misconduct it will need to decide whether to refer the matter to the statutory Legal Practitioners Complaints Committee, or to impose a penalty within the limits of its own powers," he said.

Mr Stirk said that the Society must afford Mr Stone the opportunity to be heard, irrespective of which option it selected.

He said this was the crux of the judgment in Mr Stone's favour.

"The Court has appropriately referred the matter back to the Law Society for further consideration," Mr Stirk said.

"In circumstances where a legal practitioner's client has made a complaint of this nature, it is incumbent on the Society to perform its obligations under the Act.

"The Society will be doing to so in the very near future," Mr Stirk said.

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