> Rather than have my clients go in at the retail rate, I want to get them together so they go in on the wholesale rate.
> JOHN WALKER, ICP

Shine may face class action on share fall

EXCLUSIVE

CHRIS MERRITT
LEGAL AFFAIRS EDITOR

A second listed law firm, Shine Lawyers, faces the risk of a shareholder class action after the collapse of its share price.

Shine Lawyers is being targeted by a newly launched class action adviser over a series of announcements that preceded February's 75 per cent decline in its share price.

That wiped more than $253 million from Shine's market capitalisation.

Investor Claim Partner, which is being launched today, is assembling a register of institutional shareholders who bought Shine shares in the five months before February. ICP's research shows that throughout that period Shine provided annual earnings guidance of between $52m and $56m before downgrading this on January 29 to between $24m and $28m.

Shine joins Slater & Gordon, which is also being targeted for possible class actions by rival law firms ACA Lawyers and Maurice Blackburn.

Shine, which has 48 offices and more than 700 staff, disclosed last month that its net profit for the year to June had fallen by 50 per cent to $14.8m.

In February Shine revealed that its net profit had plunged by 90 per cent for the six months to December from $13.3m to $1.3m.

However, Shine is still pursuing several class actions of its own and uses US legal identity Erin Brockovich as its "ambassador".

The possible claim against Shine was referred to ICP by litigation specialist Quinn Emanuel Urquhart & Sullivan after an approach from shareholders. It is one of three potential class actions that ICP is unveiling today.

Quinn Emanuel partner Damian Scattini said Shine had been over-estimating how much it would be able to recover from the firm's work in progress.

"They record the hours they have spent and they record it as revenue, whereas it is only hours they have spent. They have not recovered it at all," Mr Scattini said.

"They grossly over-estimated the amount they would recover."

Shine issued a statement denying any wrongdoing.

"Shine has not been contacted by the firm in question in relation to any potential cause of action," it says. "Shine has, at all times, met its continuous disclosure obligations including compliance with the Australian accounting standards and refutes any statements to the contrary."

ICP's chief executive and founder is John Walker, a former executive director of Bentham IMF, which is the nation's largest litigation funder. His new company is not a funder but instead acts as an adviser to institutional shareholders that identifies potential claims (see accompanying report). The other possible claims he has unveiled are against Sims Metal and Spotless, which have both suffered significant falls in their share price.

ICP's research shows the market capitalisation of Sims Metal fell by $530m in November last year after it effectively halved its earnings guidance. It had stated in September that its targets had been reviewed and were realistic.

The possible claim against Spotless concerns a decline in market capitalisation of $961m in December when the company said its earnings outlook was flat and profit would be down 10 per cent.

In October, ICP's research shows Spotless shareholders were told to expect the annual results to materially exceed those of the year before.

Shine was floated in 2013 and subsequently has acquired several small practices including Western Australia's Stephen Browne Personal Injury Lawyers and north Queensland's Emanate Legal.

ICP to change litigation balance

JANE DEMPSTER

John Walker intends to carve out a unique niche in the business of litigation with Investor Claim Partner

CHRIS MERRITT

John Walker's new business has an extremely ambitious goal: it wants to change the balance of power in commercial disputes and move power away from litigation funders and lawyers.

Mr Walker believes the power in commercial disputes needs to be returned to clients.

He hopes to achieve that goal with a new corporate vehicle known as Investor Claim Partner Pty Ltd that intends to carve out a unique niche in the business of litigation.

ICP will be an adviser to institutional shareholders, negotiating terms with law firms and litigation funders as well as surveying the market for potential claims for clients.

And when potential claims are identified, ICP will manage the "book-building" function that is needed when multiple parties have a valid action.

The goal, however, is to facilitate mediation and settlements, not expensive confrontations in court.

But if necessary, ICP will also manage the funding for class actions and the litigation.

It plans to charge 5 per cent of settlements in claims that ICP identifies and instigates, and 3 per cent of recoveries in claims that it administers for clients. Mr Walker believes that by negotiating with law firms and litigation funders on behalf of groups of corporate clients he will be able to use their combined buying power to cut the cost of recovering damages from corporate disputes.

"Rather than have my clients go in at the retail rate, I want to get them together so they go in on the wholesale rate," he said.

"It's basically a change in the market dynamic from funders and lawyers bringing people together on their terms, to institutions getting together and then identifying solicitors and barristers on their terms."

He proposes to establish committees of aggrieved institutions, represented by ICP, that will directly approach companies whose actions appear to have caused them losses.

"It just makes the process more efficient in having claims settled without third-party costs" or in having weak claims dropped, Mr Walker said.

After a long career as executive director of litigation funder Bentham IMF, Mr Walker said his new role would place him in a fiduciary relationship with his clients.

When he was a litigation funder, he said he never acknowledged a fiduciary duty to clients and instead acknowledged that he had a duty to act in good faith, which is similar to the duty that insurers owe their clients.

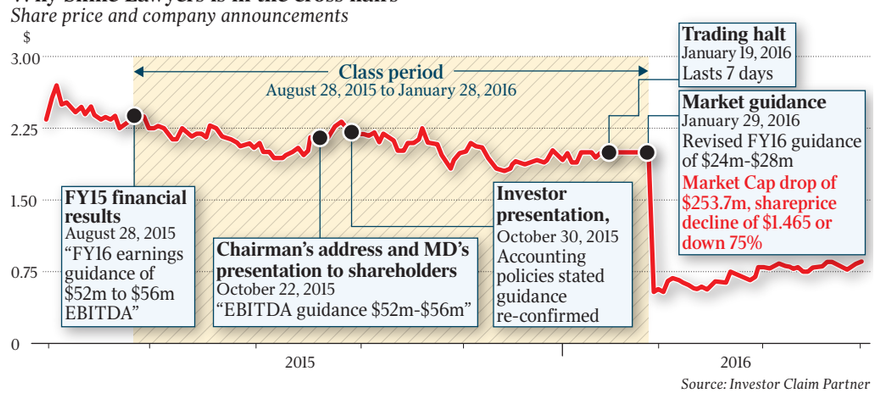
While lawyers owed a fiduciary duty to their clients, he noted that most law firms "to date" have been prepared to propose just one litigation funder to their clients.

Mr Walker believed that it was better for clients to have a choice of litigation funders and law firms.

"It's a question of commercial reality," he said.

"If 100 people with separate claims go to lawyers and funders individually ... there will be a set of terms. But if that 100 joined forces and have a competitive tendering process, pricing will be better."

Why Shine Lawyers is in the cross hairs
Share price and company announcements



Source: Investor Claim Partner

ICAC oversight needs thorough investigation

NSW has a very serious problem that involves two of the most senior officials in that state's legal system, Lloyd Babb SC and Megan Latham.

They have given very different versions of reality to a committee of state parliament that has been trying to determine who was responsible for botching the criminal prosecution of former emergency services commissioner Murray Kear.

Latham, who runs the Independent Commission Against Corruption, has given evidence to the ICAC oversight committee that, on first blush, seems difficult to reconcile with information supplied to the committee by Babb, the Director of Public Prosecutions.

Latham, whose organisation investigated Kear, has denied holding back evidence. Yet clearly, someone did, because that's why the charges were dismissed.

In order to fill in the gaps the oversight committee would be justified in recalling both of them. But as a first step, why not write to them? There might be a simple explanation.

Thanks to Babb's answers to the committee's questions on notice, we now know that when the trial was under way, ICAC was hit with a subpoena from Kear's lawyers. In response, the commission delivered two folders of material to the DPP that included 27 witness statements that the DPP had never seen before.

The timing is important. ICAC had already delivered some evidence to the DPP. Kear had then been charged with a criminal offence based upon that incomplete brief of evidence. When the 27 statements arrived, Kear's trial was already under way.

The way in which this happened is also important. ICAC did not disclose that evidence voluntarily after realising it had made a mistake. It took a subpoena to force its hand.

Latham and Babb need to be asked about both those points. Is it fair to lay criminal charges based on an incomplete brief of evidence? Is it fair to hold back evidence knowing that criminal charges are being considered? Is it fair to continue a prosecution after learning that the defendant has been kept in the dark?

Latham needs to name those who decided the 27 witness statements should be held back. The ICAC oversight committee might also need to take advice on whether an offence has been committed.

The seriousness of this affair is hard to overstate. Once Magistrate Greg Grogin became aware that evidence had been held back he dismissed the charges and awarded Kear indemnity costs — which will cost NSW $137,494.

According to the material Babb has supplied to the committee, ICAC is substantially to blame for that costs order.

If there is a hero in this affair it must be Grogin. This magistrate held the line and defended the integrity of the justice system.

The nature of those 27 statements needs to be revealed. If, as many now suspect, those statements supported Kear, Latham's explanation will be enlightening.

Babb, however, also has questions to answer. And Grogin's judgment is a good place to start.

The magistrate had some harsh words not just for the investigator — ICAC — but for the prosecutor — the DPP. His judgment points out that both had access throughout the case to information showing the evidence overwhelmingly favoured Kear.

Grogin found that the DPP did not even read one record of interview.

Babb's empire has an ICAC unit within its ranks and the suspicion has been growing that this has tended to erode the healthy tension that should exist between an investigative agency and the independent prosecutors.

In the wake of the Kear disaster, those tensions, thankfully, are returning. The DPP initiated changes that now require ICAC to provide "disclosure certificates" in summary prosecutions.

This proves that the DPP, like a few others, believes ICAC cannot be trusted to disclose all relevant evidence.

Babb, however, is the man responsible for ensuring prosecutions are fair. Did he, or anyone else, ever consider withdrawing the charges once they knew the defendant and the prosecutor had been kept in the dark?

Justice reinvestment offers glimmer of hope to reduce soaring number of indigenous inmates

STUART CLARK

No matter which way you look at it, indigenous imprisonment represents a national crisis. New approaches urgently are needed and the promising reports of the Bourke justice reinvestment trial offer a glimmer of hope.

Indigenous Australians represent 2.5 per cent of the population and 27 per cent of prisoners. About half of those behind bars are there for nonviolent offences, including driving offences, property offences and breaches of court orders. But we know those who have spent significant time in jail have a far greater propensity for violent crime on release.

In fact, 80 per cent of those released will return to prison at least once, and usually more than once. In many cases this will be for procedural offences, such as breach of parole. Many people who are in prison are being held on remand. In the case of youths in detention, most are on remand because in many cases no other options are available for at-risk children.

Putting people behind bars at the current rate is an economic and moral disaster.

Morally, the system fails on a number of levels. By the time a young indigenous person is imprisoned, it is usually at the end of a series of incidents or interactions with the justice system that have led to their imprisonment being inevitable.

Most indigenous perpetrators of crime are themselves victims of crime, as youths or as adults. The fastest growing cohort in Australian prisons are indigenous women, who are overwhelmingly victims of domestic violence.

We also know that the vast majority of those imprisoned suffer an intellectual, cognitive or sensory disability.

A system geared primarily towards imprisonment simply perpetuates the downward spiral.

The system also costs many billions of dollars and grows more costly each year.

It includes prisons, law enforcement, legal services, community services, lost tax income and a greater welfare burden (because former inmates cannot find employment). And these are just the costs we can measure.

In NSW, a new prison is being built to accommodate its burgeoning prison population. The Northern Territory opened a super prison in 2014 costing $1.8 billion.

However, politicians and governments need to answer a fundamental question: is the current approach to criminal justice working? All of the existing data suggests that it isn't.

During the past 10 years, most categories of crime — including violent crime — have trended downwards. However, indigenous imprisonment has continued to rise dramatically.

This is why the significant early strides being made by the Maranguka justice reinvestment pilot project in Bourke offer such hope.

Maranguka is the first major Australian trial of justice reinvestment. First developed in the US, justice reinvestment is a data-driven approach that aims to reduce offending and imprisonment, and reinvest savings into strategies that reduce crime and improve public safety. Justice reinvestment sometimes has been dismissed as a simple push for reduced sentences. This fundamentally misunderstands its objectives.

It is about listening to communities about crime and community problems at the local level, and constructing solutions that deal with those problems at the source.

Those who viewed the ABC's *Four Corners* on Monday will have seen many examples in action.

Problem: a significant proportion of the trouble in Bourke stemmed from driving offences — often, driving without a licence.

Reality: it became clear after speaking with members of the community that illegal driving was often the only form of driving familiar to local kids. Indigenous youths in Bourke don't typically have family members with cars, so driving lessons are impractical.

Solution: reinvest resources to free driving lessons.

Result: today the number of people jailed for driving offences in Bourke is the lowest in a decade. This approach is simple, effective and much, much less costly.

Another Bourke example is the allocation of police resources to follow-up visits with the perpetrators and victims of domestic abuse. A day or two after a domestic violence call-out, a local officer is dispatched to check in.

In the three months police have been following this procedure there has not been a single case of domestic reoffending.

While our instinctive reaction to crime is to punish criminals, we need to consider whether society's interests are best served by feeding an endless cycle of imprisonment and reoffending. Fortunately, there is evidence governments are starting to listen. Brad Hazzard MP, the former NSW attorney-general, has thrown his personal support behind the justice reinvestment trial in Bourke.

Malcolm Turnbull has said juvenile detention will be on the agenda at the next meeting of the Council of Australian Governments, which creates an excellent opportunity for the heads of government to establish a national strategy to address imprisonment.

The commonwealth can show its immediate commitment to these initiatives by reversing cuts to indigenous legal services slated for July next year.

Stuart Clark is president of the Law Council of Australia.