

**CITATION:** *Legal Services Commissioner v Baxter* [2013] QCAT 59

**PARTIES:** Legal Services Commissioner  
(Applicant)  
v  
Alexander John Baxter  
(Respondent)

**APPLICATION NUMBER:** OCR220-12

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** On the papers, 30 January 2013

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Alan Wilson, President**  
Assisted by:  
**J Cameron**  
(Practitioner Panel Member)  
**Dr S Dann**  
(Lay Panel Member)

**DELIVERED ON:** 5 February 2013

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. That the respondent's name be removed from the local roll.**
- 2. That the respondent pay the applicant's costs, fixed at \$2,000.00, within six months of this order.**

**CATCHWORDS:** PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – PROFESSIONAL MISCONDUCT – where the respondent misappropriated funds from legal practice trust accounts – where the applicant submits, and the respondent does not disagree, that this conduct should be categorised as professional misconduct – where the applicant submits, and the respondent does not disagree, that the respondent be removed from the local roll – where the applicant seeks an order for costs and the respondent does not oppose that order

*Legal Profession Act 2007*, ss 72, 418, 419  
*Queensland Civil and Administrative Tribunal Act 2009*, s 32

*In re A Practitioner* [1941] SASR 48, cited  
*Law Society of New South Wales v Jones*,  
 Unreported, NSWCA, CA 333 of 1997, 27 July  
 1978, cited  
*Legal Services Commissioner v Hockey* [2004]  
 LPT 001, cited  
*Legal Services Commissioner v Twohill* [2005]  
 LPT 001, cited  
*Legal Services Commissioner v Williams* [2005]  
 LPT 006, cited  
*Legal Services Commissioner v Wood* [2012]  
 QCAT 185, cited

### **APPEARANCES and REPRESENTATION (if any):**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* ('QCAT Act'). The members of the Tribunal met to consider the written submissions of the parties on 30 January 2013.

### **REASONS FOR DECISION**

- [1] Between August 2009 and early July 2011 Mr Baxter, a solicitor admitted in 1981, misappropriated almost \$6.7 million of client trust funds. Eighteen clients were involved, one of whom was defrauded of over \$5.4 million.
- [2] On 19 July 2011, Mr Baxter informed his partners in the well known firm, of which he himself had been a partner since 1981, of his misconduct. He resigned from the partnership almost immediately and has not practiced as a solicitor since that time – he surrendered his practicing certificate to the Queensland Law Society on 22 July 2011 and it was immediately cancelled under s 72 of the *Legal Profession Act 2007* ('LPA').
- [3] Some of the money has been repaid. There is some disagreement about the amount still outstanding but it is, the parties agree, over \$3.5 million.
- [4] During the proceeding here the parties signed and filed a Statement of Agreed Facts and, also, signified to the Tribunal that they wished to have the matter dealt with on the papers. They filed and exchanged submissions. Save for the disagreement about the amount still outstanding to Mr Baxter's former clients, all facts and matters are agreed and Mr Baxter does not dispute the Commissioner's contention that he must be removed from the local roll, and pay the Commissioner's costs fixed at \$2,000.00. For the reasons which follow, the Tribunal accepts that those orders are necessary, and appropriate.

- [5] Mr Baxter is 53. He practiced in Townsville, apparently successfully, for almost three decades. He was a partner in an old and respected law firm. He developed a gambling problem and began, in 2009, to embark upon a series of transactions with client's funds, held and received on trust for a variety of purposes.
- [6] Towards the end he was shuffling client's funds around in an effort to conceal the misappropriations from clients, and his partners. Finally, on 19 July 2011 he told his partners what had happened. The results have of course been very serious for his clients, himself and his family, and his partners.
- [7] He has cooperated fully with the Commissioner in these proceedings and immediately admitted all allegations in the original discipline application. As noted earlier, the proceedings have moved efficiently because of his cooperation. The Agreed Statement of Facts signed on his behalf and his written submissions to the Tribunal are, also, frank and forthright and he accepts that he cannot remain on the roll and must not practice again.
- [8] The LPA contains, in respect of complaints against and the disciplining of legal practitioners, two 'key concepts'. They are *unsatisfactory professional conduct* (s 418) and *professional misconduct* (s 419). The former includes conduct by a lawyer, occurring in connection with the practice of law, that falls short of the standard of competence and diligence which can reasonably be expected. The more serious offending, *professional misconduct*, is defined to include conduct occurring in connection with the practice of law which justifies a finding that the practitioner is not a fit and proper person to engage in legal practice.
- [9] This Tribunal (and other Australian courts and disciplinary bodies involved in legal discipline) have long held that high standards of honesty and integrity are to be expected of members of the legal profession and in particular, in the way they operate trust accounts. Reliability and integrity in the handling of trust funds has been said to be a fundamental pre-requisite in determining whether a person is fit and proper to be entrusted with the responsibilities belonging to a lawyer.<sup>1</sup> In a South Australian case Murray CJ described trust accounts as 'sacred'.<sup>2</sup>
- [10] The Commissioner's submissions referred to three recent cases in Queensland involving breaches of the legislation operating over trust accounts in amounts between \$11,000.00, and over \$1.2 million. Regardless of the amount involved the Tribunal affirmed, in each instance, that any misdealings involving contraventions of that legislation should be viewed seriously and, in the ordinary case, categorised under the more

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<sup>1</sup> *Law Society of New South Wales v Jones*, Unreported, NSWCA, CA 333 of 1977, 27 July 1978 at 10 per Street CJ.

<sup>2</sup> *In re A Practitioner* [1941] SASR 48 at 51.

serious of these concepts mentioned earlier – ie, as *professional misconduct*.<sup>3</sup>

- [11] The amounts involved in this case are very large. While the amount itself may not, in every case, be determinative of the appropriate sanction, it is inescapable (and plainly material) that the level of Mr Baxter's defalcations was enormous, and shocking.
- [12] His misconduct offends fundamental pre-requisites of honesty and integrity to be expected of legal practitioners in the operation of their trust accounts. Over a period of almost two years he committed a large number of discrete, compounding breaches of the relevant legislation.
- [13] The only possible conclusion is that the misconduct, which occurred at the heart of his practice of the law, justifies a finding that he is not a fit and proper person to engage in legal practice; and, that his offending is properly categorised, under s 419, as *professional misconduct*.
- [14] He has no previous adverse disciplinary findings and cooperated fully with the investigation of his affairs, and in the present proceedings, and has not sought to review his practicing certificate since it was cancelled. Those factors, while to his credit, carry little weight in the face of the serious and extensive nature of his misconduct.
- [15] As the present Chief Justice observed in *Legal Services Commissioner v Williams*<sup>4</sup>, in a case in which the practitioner had obtained loans of almost \$1.5 million by fraud, conduct involving systematic deceit is:
- ... glaringly incompatible with the utter integrity which must mark those held out by the Court to the public as fit to practice ... [D]eliberate fraud of this order involved an obvious affront to that necessary integrity.
- [16] As the Chief Justice also observed in that case, striking off is reserved for very serious cases where the conduct and character of the practitioner are such that the Tribunal should not hold him or her out to the public as fit to practice.
- [17] That conclusion reflects the only possible outcome in this matter: Mr Baxter's conduct clearly violates and falls short, to a very high degree, of the standards of professional conduct which must be expected of legal practitioners, and involved serious breaches of honesty and trust that go to the heart of the professional obligations of members of legal practitioners. His name must be struck from the local roll.
- [18] Mr Baxter should also pay the Commissioner's costs. He agrees, and does not oppose an order that he pay those costs, fixed at \$2,000.00, within six months.

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<sup>3</sup> *Legal Services Commissioner v Twohill* [2005] LPT 001; *Legal Services Commissioner v Hockey* [2004] LPT 001; *Legal Services Commissioner v Wood* [2012] QCAT 185.

<sup>4</sup> [2005] LPT 006 at 6.