

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Bradshaw* [2009] QCAT 1

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
JAMES TODD BRADSHAW
(respondent)

FILE NO/S: BS 5723 of 2009

PROCEEDING: Discipline Application

DELIVERED ON: 18 December 2009

DELIVERED AT: Brisbane

HEARING DATE: 8 September 2009, further submissions received on papers

JUDGE: Fryberg J

PRACTITIONER PANEL
MEMBER: Mr L Bowden

LAY PANEL
MEMBER: Ms K Keating

ORDER: **The orders of the Tribunal are:**

1. **James Todd Bradshaw is publicly reprimanded;**
2. **For the period of 12 months after he is next issued with a practising certificate as a barrister, James Todd Bradshaw must disclose to and discuss with a barrister nominated by the Bar Association of Queensland (“the barrister”), at dates and times nominated by the barrister at intervals not longer than one month, all of his work on hand and any work completed since the previous meeting (or in the case of the first meeting, since his practising certificate was reissued);**
3. **In relation to Order 2:**
 - (a) **James Todd Bradshaw must provide the barrister with copies of any documents to facilitate the discussion and any documents required by the barrister, redacted to the extent necessary to avoid breaching client confidentiality;**
 - (b) **the Bar Association of Queensland must make**

the nomination reasonably promptly and before it next issues a practising certificate to James Todd Bradshaw;

- (c) the barrister may report any discussion to the Bar Association of Queensland;
4. For the period of 12 months after he is next issued with a practising certificate as a barrister, James Todd Bradshaw must promptly seek advice from the barrister and from any other legal practitioner nominated by the barrister about any ethical issue arising in relation to his practice or arising in the course of a discussion under Order 2;
 5. The parties and the Bar Association of Queensland have liberty to apply to the Tribunal about any matter arising in relation to the implementation of these orders; and
 6. James Todd Bradshaw is to pay the Commissioner's costs of the proceedings assessed as if they had been brought by way of application in the Supreme Court and on the standard basis.

CATCHWORDS: Profession and trades – Lawyers – Complaints and discipline – Disciplinary proceedings – Queensland – Proceeding in tribunal – Practitioner found guilty of professional misconduct and unprofessional conduct – Orders – Supervision and monitoring of practitioner's work for specified duration upon reissuing of practising certificate

Legal Profession Act 2007 (Qld), s 456(4), s 462(1)

Legal Services Commissioner v Bradshaw [\[2008\] LPT 009](#), cited

Legal Services Commissioner v Bradshaw [\[2009\] LPT 021](#), related

COUNSEL: B I McMillan for the applicant
The respondent appeared on his own behalf

SOLICITORS: Legal Services Commission for the applicant
The respondent appeared on his own behalf

- [1] **FRYBERG J:** On 8 September 2009 I found Mr Bradshaw guilty on one count of unprofessional conduct and two of professional misconduct. The circumstances of the conduct are set out in reasons for judgment delivered on that day.¹ It is unnecessary to repeat them. The question now for consideration is what sanctions should be imposed.

¹ *Legal Services Commissioner v Bradshaw* [\[2009\] LPT 021](#).

- [2] Mr Bradshaw is a barrister. He is about 67 years of age. He does not currently hold a practising certificate, but has applied for one. He previously practised in Cairns, doing mainly criminal and family work. He has previously been found guilty of unsatisfactory professional conduct in that he communicated directly with the client of an opposing lawyer. For that he was publicly reprimanded and ordered to undertake within the next 12 months not less than 10 hours of compulsory professional development approved by the Bar Association of Queensland in the areas of ethics and practice management in addition to the compulsory professional development requirements of the Bar Association.² The letter was sent in the context of litigation between Mr Bradshaw's wife and a company called Jilt Pty Ltd. That was the same context in which he sent the letter which is the foundation of the second charge of which he was found guilty in the present proceedings.
- [3] Mr Bradshaw's practising certificate was withdrawn in about October 2008 as a result of his conviction for failing to lodge tax returns, the matter which was the subject of the first charge in the present proceedings. He has not practised since that time and he describes the financial consequences as "devastating". A finance company has commenced proceedings against him to obtain possession of his home.
- [4] The Commissioner rightly recognised that this is not a case where it is open to the Tribunal to find that Mr Bradshaw is not presently fit to practise. He submitted that the need to protect the reputation of the profession and the need for personal deterrence mandated a public reprimand. Through his counsel he informed the Tribunal that he was not in a position to do anything to audit or supervise Mr Bradshaw's work.
- [5] Mr Bradshaw submitted that there was little need to make an order for the purpose of personal deterrence as he did not have a large civil or commercial practice and his letter writing was virtually non-existent. In his oral submissions he did not oppose a supervision order but submitted that he should be required to see his supervisor not more often than once a month. The supervision under discussion involved his meeting an experienced practitioner periodically to go through any work done and letters written by Mr Bradshaw to ensure that things were being done properly.
- [6] In that context the proceedings were adjourned to enable Mr Bradshaw to find a barrister of sufficient experience and standing who was willing to act as a supervisor. Mr Bradshaw undertook not to practise before 31 December 2009. He was directed to send a copy of his proposal to the Commissioner within four weeks and the Commissioner was directed to respond within one week of receiving that proposal. The parties were given six weeks to make further submissions in writing. Those submissions have now been received.
- [7] Mr Bradshaw submits that no supervision order should be made. He offers an undertaking that he will not communicate with other parties or their legal representatives directly and would consult colleagues if any communication were required. Precisely how such an undertaking would work he does not explain. He submits that the existence of a supervision order would effectively destroy any chance of his practising; his reputation would be damaged and clients would perceive him as an inferior barrister. He submits that apart from the failure to

² *Legal Services Commissioner v Bradshaw* [\[2008\] LPT 009](#).

submit tax returns, all of his offending conduct arises from helping his wife and can be regarded as an abhorrent [*sic; semble aberrant*].

- [8] The Commissioner submits that having regard to the need to protect the public Mr Bradshaw should not be granted a practising certificate until such time as he enters into a supervision arrangement approved by both the Commissioner and the President of the Bar Association of Queensland and that upon his recommencing legal practice he be under supervision for 12 months.
- [9] I accept that the events of the last two years or so have been very stressful for Mr Bradshaw, and that this will constitute a significant deterrent to his reoffending. However Mr Bradshaw has demonstrated impulsive conduct and a considerable lack of judgment. The public must be protected against the risk that these qualities will resurface in his professional behaviour.
- [10] By s 456(4) of the *Legal Profession Act 2007* the Tribunal is empowered to make the following orders:
- “(e) an order that the practitioner do or refrain from doing something in connection with the practitioner engaging in legal practice;
 - ...
 - (h) an order that engaging in legal practice by the practitioner is to be subject to periodic inspection by a person nominated by the relevant regulatory authority for a stated period;
 - (i) an order that the practitioner seek advice from a stated person in relation to the practitioner’s management of engaging in legal practice.”
- [11] In my judgment the protection of the public is best served in this case by requiring that Mr Bradshaw not less frequently than once a month discuss with an experienced practitioner of good standing all of his work on hand and any work completed since the previous meeting. The discussion should be at a sufficient level of abstraction to avoid any breach of client confidentiality. If any ethical issues arise in his practice or emerge during such discussions, Mr Bradshaw should seek advice from the practitioner or from any other practitioner nominated by the practitioner. The practitioner should be at liberty to report any problems to the Bar Association if he thinks such a report is warranted. An order putting such arrangements in place may in my judgment be made under the statutory provisions just quoted. The practitioner should be nominated by the Bar Association. I see no need for the Commissioner to be involved in that process.
- [12] Such an arrangement should be in place before Mr Bradshaw is reissued with a practising certificate, but that requirement must not be allowed to delay the reissue of the certificate. The arrangement should remain in place for 12 months after the certificate is issued. In case any difficulties emerge in implementing the orders, the parties and the Bar Association should have liberty to apply.
- [13] Mr Bradshaw did not submit that exceptional circumstances exist, so he must pay the Commissioner's costs.³

³ *Legal Profession Act 2007*, s 462(1).

Orders

[14] The orders of the Tribunal are:

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