

LEGAL PRACTICE TRIBUNAL

de JERSEY CJ

MS B CUSHING-SULLIVAN
MS J CORK

No S5773 of 2005

LEGAL SERVICES COMMISSION

Applicant

and

KARA BRYANT

Respondent

BRISBANE

..DATE 27/09/2005

REASONS FOR FINDING

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE CHIEF JUSTICE: This is a discipline application under section 276 of the Legal Profession Act 2004. The respondent is, in terms of that legislation, a local legal practitioner. She was admitted to practice as a solicitor on the 31st of January 2000. She is 28 years of age. She is no longer a practising solicitor. She committed eight offences of dishonesty for which she was convicted in the District Court on the 15th of February 2005 and sentenced to 18 months' imprisonment wholly suspended for an operational period of five years.

The facts which led to those convictions are not in dispute and may conveniently be taken from the sentencing Judge's remarks. The offences were five counts of fraud and three of forgery. The respondent pleaded guilty. As his Honour stated:

"The first count arose because you were being followed up by a client for whom you were acting in an action. You had fallen behind in progressing the matter and was feeling under pressure from the client following you up about the progress of the matters. You decided to deal with the situation by taking \$7,000 from an estate account and paying it to that client and then, before detection, replenishing the estate account from your own funds and funds which you borrowed. It is an offence by a young misguided person under pressure making an erroneous decision not an offence created out of any desire for personal profit or any desire to see any client out of pocket.

Counts 2 and 3 relate to falsifying documents in order to enable your clients to escape fairly paltry amounts of money. In one case to obtain a stamp duty exemption to an amount of \$267 and in another case, to avoid an \$11 penalty. Again, these appear to be offences designed to cover your tracks with respect to relatively minor amounts. The fact that you were prepared to put your professional integrity on the line to avoid owing up to incurring an \$11 penalty for a client perhaps reflects your troubled state at the time.

Counts 5 and 6 involve a much greater amount of money, the sum of \$208,000 transferred to executives by the Commonwealth Bank upon the receipt of manufactured Court documents purporting to be a grant of probate. Although the sum involved was large ultimately no client was out of pocket. Subsequently, probate was granted and the transfer can be characterised as one where it was legally premature and your offence of dishonesty led to the premature transfer of funds.

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Counts 7 and 8 follow a similar pattern."

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The Legal Profession Act 2004 came into force on the 1st of July 2004. The conduct the subject of the charges occurred prior to the commencement of the Act. Mr McLean, who appears for the Commission, submits that because the respondent's conviction arose after the commencement of the Act the respondent's conduct falls to be assessed by reference to the notion of professional misconduct as defined in the Act. It does not seem to me to be necessary to determine that point because plainly the respondent's conduct amounted to professional misconduct at common law. It amounts to professional misconduct in short whether one looks at the Act or whether one looks at the common law position which applied prior to the commencement of the Act. It is, in fact, conceded by Mr Quinn who appears for the respondent that the conduct of the respondent amounts to professional misconduct. There will be a finding, therefore, that the conduct involved in the charges set out in the discipline application amount to professional misconduct on the part of the respondent.

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As to penalty, the focus of the Tribunal must, of course, be on protection of the public. As has been said many times the interest here is not in punishing the errant practitioner but

in protecting the public as necessary from persons who should not be practising in this profession.

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Mr McLean fairly points out that in the respondent's favour there are some features. She has no previous findings of breaches of the professional disciplinary code. She cooperated extensively with both the Queensland Law Society and the Queensland Police Service. She has expressed remorse and the commission of the offences did not lead to personal gain. However, the seriousness of the misconduct is patent and practitioners guilty of misconduct of that character plainly are not fit to practise.

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There will, therefore, be an order under section 280(2)(a) of the Legal Profession Act 2004 that the name of the practitioner - that is, Kara Bryant - be removed from the local roll. An agreement has been reached between the parties that the Tribunal make no order as to costs-----

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MR QUINN: That's so, your Honour.

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THE CHIEF JUSTICE: -----so there will be no order as to costs.

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