

**CITATION:** *Legal Services Commissioner v Busch*  
[2011] QCAT 165

**PARTIES:** Legal Services Commissioner  
(Applicant)  
v  
Gemma Anne Busch  
(Respondent)

**APPLICATION NUMBER:** OCR215-10

**MATTER TYPE:** Occupational regulation matters

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** **Justice Alan Wilson, President**  
Assisted by  
**Mr Geoffrey Sinclair**  
(Practitioner Panel Member)  
**Dr Margaret Steinberg AM**  
(Lay Panel Member)

**DELIVERED ON:** 21 April 2011

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- 1. That the respondent Gemma Anne Busch be publicly reprimanded.**
- 2. That the respondent pay the applicant's costs fixed at \$750.**

**CATCHWORDS:** PROFESSIONS AND TRADES –  
LAWYERS – COMPLAINTS AND  
DISCIPLINE – DISCIPLINARY  
PROCEEDINGS – PROFESSIONAL  
MISCONDUCT – where the respondent  
dishonestly altered a reference that was  
provided by her former employers – where  
the parties agree that the behaviour  
constituted professional misconduct – where  
the respondent acknowledges guilt, is  
remorseful, and has subsequently exhibited  
good behaviour – whether the penalty  
imposed should be public reprimand and  
payment of costs

*Legal Profession Act 2007, ss 418, 419*

*Legal Services Commissioner v Sorban*  
[2009] LPT 005

*Legal Services Commissioner v Chadwick*  
[2009] LPT 016

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

The matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Act 2009*. Written submissions were received from the Legal Services Commissioner and from the respondent's solicitors, Brian Bartley & Associates.

### **REASONS FOR DECISION**

- [1] Ms Busch is a lawyer aged 25. She was admitted as a solicitor on 16 October 2009. At the time of her admission she was employed by the firm John Crossan & Company. She left that employment in February 2010. It is the events surrounding her departure, and a reference she received from her former employer, which have led to the current disciplinary proceedings against her.
- [2] This Tribunal was provided with a Statement of Agreed Facts signed by the Legal Services Commissioner and Ms Busch's solicitors which recites that she left John Crossan & Company due to a deteriorating relationship with her supervising partner.
- [3] At the time of her departure Ms Busch says she was furnished with a reference that made specific mention of an issue which, as she says she believed, had been resolved with the supervising partner. The reference also made adverse comments about her spelling and grammar. In particular the reference, dated 4 February 2010, contained the following two paragraphs:

Initially, Ms Busch experienced problems with her grammar, spelling, punctuation, parsing and syntax. Considerable office time and effort was devoted by the partners and other staff member in assisting with tuition and coaching in those areas. Whilst not yet perfect, Ms Busch has demonstrated significant improvement with these issues during her time here.

And:

Regrettably, Ms Busch is obliged to leave our employment owing to her recent, perhaps naïve involvement in an exchange of unauthorised emails during office time with a former part-time employee in which, in our professional view, she most unfairly criticised and denigrated the character and good name of a senior partner of the firm.

- [4] The reference was supplied in these terms despite, she says, an assurance to her from her supervising partner at the time of her departure that the specific circumstances under which she was leaving would not be disclosed to subsequent prospective employers; and, that it would only be revealed that there had been a personal difference, which was subsequently resolved.

- [5] Ms Busch says she attempted to discuss this matter with her former employers, without success.
- [6] Concerned, it is said, about her ability to obtain further employment in light of this reference she created a document which was identical to the original, but removed the two paragraphs set out above.
- [7] In late March 2010 Ms Busch applied for employment at another firm of solicitors. Her application included this false, altered reference. Her attempted deception was discovered around that time.
- [8] Ms Busch says she made the alterations to avoid prospective employers being unwilling to interview her by reason of the adverse comments in the document which, she believed, were untrue, unfair, and against the previously agreed terms in which she believed a reference would be provided.
- [9] She is currently employed by solicitors in Rockhampton. She obtained that employment after making full disclosure of the circumstances leading to the current discipline application, and that the matter had been referred to the Queensland Law Society, and the Legal Services Commission.
- [10] At the request of the parties and their lawyers the Tribunal dealt with this matter on the papers. In addition to the Statement of Agreed Facts the parties have also prepared and signed joint submissions about penalty.
- [11] Through her lawyers Ms Busch asserts, and the Commissioner accepts, that she immediately acknowledged her wrongdoing, and manifested remorse; and, that she made full disclosure to her current employer. She is a junior lawyer who has not previously appeared before a disciplinary body.
- [12] Under the *Legal Profession Act 2007* there are two levels of conduct which may attract disciplinary proceedings. The first is *unsatisfactory professional conduct*, defined in s 418 to include conduct which falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.
- [13] Under s 419 the more serious count, *professional misconduct*, includes unsatisfactory professional conduct involving a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and, conduct which might justify a finding that the practitioner is not a fit and proper person to engage in legal practice.
- [14] It has been accepted by this Tribunal in its previous decisions that conduct of a lawyer involving actual dishonesty will usually be categorised as professional misconduct.<sup>1</sup> The joint submission accepts that this is the appropriate finding here. The Tribunal agrees: Ms Busch's changes to the reference were fraudulent, and involved actual dishonesty.

---

<sup>1</sup> *Legal Services Commissioner v Sorban* [2009] LPT 5; *Legal Services Commissioner v Chadwick* [2009] LPT 16.

- [15] As to penalty, the parties make the joint submission that it should be a public reprimand, and the payment of costs in an agreed sum. The Tribunal has reflected at some length on that submission. Ms Busch's offending conduct involved dishonesty at a time when she was a very junior lawyer, and wrongful conduct of that kind so early in her career is troubling.
- [16] That said, the Tribunal also acknowledges that there are significant mitigating factors operating in her favour including her immediate acknowledgement of guilt; her apparent remorse, corroborated by her conduct; her youth; the circumstances in which the offending occurred (which explain, but do not of course excuse, her behaviour); and, her subsequent good conduct in her new employment.
- [17] The Tribunal acknowledges, too, that (as the Queensland Court of Appeal has said) there is no element of punishment in the penalty to be imposed in these cases, and the purpose of that penalty is to protect the public and to deter other practitioners who might otherwise engage in professional misconduct.<sup>2</sup>
- [18] In *LSC v Sorban*<sup>3</sup> the lawyer had fabricated an email with the intention of deceiving his clients and another lawyer about the date on which it had originally been sent. The creation and sending of the false email was not done for direct pecuniary gain. The Tribunal found that, where the lawyer otherwise had a good record and had subsequently been of good conduct, his behaviour involved a '*temporary lapse of judgement*' and he '*...remain[ed] acutely aware of the responsibility of being absolutely honest in all his dealings with clients and other practitioners*'; and, accepted that a public reprimand was sufficient to satisfy matters of both general and personal deterrence, and no further penalty was necessary.
- [19] In *LSC v Chadwick*<sup>4</sup> the solicitor had on two occasions created letters purporting to be from his employer to assist his personal application for finance. Evidence before the Tribunal showed, however, that at the time he was suffering from an undiagnosed, but chronic and quite serious mental illness. The Tribunal imposed conditions requiring that he continue medical treatment, if necessary for a further five years; and, because he was a director of an incorporated legal practice, also required some conditions designed to ensure he did not reoffend including a regular audit of his practice, and supervision by another lawyer.
- [20] The Tribunal does not think that supervision, mentoring or auditing of Ms Busch's work is necessary, for three reasons: first, the imposition of a public reprimand is a serious matter which will involve an adverse mark upon the public record for the remainder of her legal career; second, her prompt acknowledgement of her wrongdoing, and apparent remorse, are significant mitigating factors; and, thirdly, her apparent

---

<sup>2</sup> *QLS v Carberry: A-G v Carberry* [2000] QCA 450 at 38.

<sup>3</sup> [2009] LPT 005.

<sup>4</sup> [2009] LPT 016.

good conduct in her new employment indicates she does not require continuing oversight.

- [21] In the circumstances, appropriate and sufficient orders are that Ms Busch be publicly reprimanded and (by agreement) that she pay the Commissioner's costs fixed in the amount of \$750.